

## 1.0 Summary

Legal Aid Ontario is responsible for providing legal services to low-income Ontarians. It is an agency of the Ontario Government and reports to the Ministry of the Attorney General (Ministry), under the *Legal Aid Services Act, 1998* (Act). Legal Aid Ontario provides assistance to eligible Ontarians in the following three major ways:

- **Community Legal Clinics:** Legal Aid Ontario funds and oversees 80 community legal clinics (clinics), including seven Student Legal Aid Societies, across Ontario that provide a variety of services to low-income individuals in their local communities. In 2017/18, clinics handled over 170,000 files for a total cost of \$85.8 million.
- **Legal Aid Certificates:** Legal Aid Ontario issues certificates to individuals who then retain private-sector lawyers who in turn bill Legal Aid Ontario for legal services provided. In 2017/18, Legal Aid Ontario issued about 102,870 certificates with a cost of \$252.8 million.
- **Duty Counsel:** Legal Aid Ontario provides free duty counsel services within the courts in Ontario. In 2017/18, duty counsel lawyers assisted over 643,970 persons for a cost of \$56.1 million.

The costs for the three major programs and \$81.4 million of Legal Aid Ontario's operational costs for its 17 district and area offices and other head office costs totalled \$476.1 million in 2017/18, an increase of 27% from \$373.9 million in 2013/14.

Our specific concerns are as follows:

### Community Legal Clinics

- **Ontario Disability Support Program (ODSP) application and appeal cases comprise 44% of community legal clinics' workload.** In 2016/17, clinics handled 9,435 cases related to clients' ODSP applications as well as appeals when they had been turned down for ODSP. This was 44% of the clinics' caseloads. Legal Aid Ontario estimated that the total ODSP cases cost it approximately \$21 million, or about \$2,200 per case. This was about 24% of Legal Aid Ontario's clinic budget. Seventy-eight percent of respondents to our survey of community legal clinics indicated that if the ODSP case volume was reduced, they would be able to serve other needs in employment law, human rights matters, issues that impact senior citizens, and expanding the service areas that they already serve.
- **Working with the Ministry of Children, Community and Social Services (MCCSS) to reduce ODSP appeals presents an opportunity to reduce community**

**legal clinics' usage and costs.** Almost three-quarter of all ODSP appeals heard at the Social Benefits Tribunal (Tribunal) in 2017/18 were ruled against MCCSS's decisions. This high overturn rate is partly due to the fact that the Tribunal often receives more medical information at the time of the appeals than is previously submitted with the original applications to MCCSS. Another reason for the significant rate of decisions against MCCSS is that the Tribunal considers the applicants' oral testimony as formal evidence whereas the MCCSS mainly relies on medical records and other written evidence. The Ministry of the Attorney General, through funds transferred by Legal Aid Ontario, funds applicants who use clinic services and the Tribunal. Therefore, cost and time savings could likely be realized if the number of ODSP appeals could be reduced.

- **The clinics' new Information Management System was almost \$4 million over budget and three years late.** Legal Aid Ontario's clinic information system was completed in September 2017, three years late at a total cost of \$7 million (more than double its original budget of \$3.25 million). The primary causes of the delay and budget overruns were that the vendor was late in starting the project, encountered financial difficulties and was unable to complete the project before declaring bankruptcy in February 2017. Legal Aid Ontario subsequently had to hire the vendor's former employees on contract and have its own internal IT department manage the project. This likely could have been avoided if Legal Aid Ontario had evaluated the vendor's financial viability prior to awarding the contract.

### Legal Aid Certificates

- **The process for Legal Aid Ontario to verify lawyers' billings is ineffective.** Legal Aid

Ontario does not have direct access to the original court documents and other information that contains the start and end time for each court proceeding. As such, it is difficult to verify both the nature of the court proceeding and the amount of time spent by the lawyer in court—both factors affect how much a lawyer is paid. In 2016/17, over 27,500 invoices for over 22,500 certificates issued included time billed for court proceedings. Legal Aid Ontario cannot verify these billings without obtaining the court transcripts from third-party transcriptionists for each invoice unless the courts start to track the length of proceeding, which should also be shared with Legal Aid Ontario. As a result, Legal Aid Ontario does not routinely verify lawyers' billing for the time spent in courts.

- **Follow-ups on billing issues on Guaranteed Daily Rate (Daily Rate) are not timely.**

The Daily Rate is a fixed fee of \$1,181 paid to lawyers if they are required to fly in to remote courts, or drive to a court that is more than 200 kilometres from the lawyer's office. Legal Aid Ontario noted instances of inaccurate billing from lawyers, but has not taken timely action to follow up on each case. For example, a lawyer billed almost \$150,000 from May 2013 to August 2016 under the Daily Rate despite the fact that the lawyer's office was only a short distance from the court. The lawyer should be paid an hourly rate, not the higher Daily Rate, for the service provided. While Legal Aid Ontario stopped paying for the Daily Rate since it notified the lawyer in August 2016 of its concern, it has not examined how much of the \$150,000 is allowed under the hourly rate and has not recovered any overpayment from the lawyer.

- **Private-sector lawyers are not assessed for quality nor are they peer reviewed.** More than 90% of certificate services and over one-third of duty counsel assists were delivered by private-sector lawyers in 2017/18. The Act

states that Legal Aid Ontario has the authority to direct the Law Society of Ontario to perform quality assurance audits of lawyers, but since its inception Legal Aid Ontario had not asked the Law Society of Ontario to do so. It did, however, refer lawyers to the Law Society, on a reactive basis, when it became aware of serious matters such as potential misconduct. Legal Aid Ontario received 211 complaints in 2016/17, of which about one-third concerned lawyers' services. This was a 30% increase from 162 complaints in 2012/13.

- **Private-sector lawyers are providing services without meeting all of Legal Aid Ontario's professional requirements.** Legal Aid Ontario lacks a policy to follow up on lawyers who have not met all its professional requirements for more than two years and on those who do not submit their annual self-report on continuous learning requirements. As a result, Legal Aid Ontario cannot ensure these lawyers have maintained the required competency level. For example, during the 2016 calendar year, 1,959 of the 5,423 private-sector lawyers on Legal Aid Ontario's rosters did not provide their annual self-report. Of the 1,959 lawyers who did not self-report, 395 billed Legal Aid Ontario \$7.7 million during the period from April 1, 2017, to March 28, 2018.

### Financial Deficits at Legal Aid Ontario

Legal Aid Ontario incurred a total of \$40 million in deficits over two years—\$14 million in 2015/16 and \$26 million in 2016/17. We noted that the significant increase in refugee and immigration cases and Legal Aid Ontario's rushed decision-making in expanding eligibility for certificates contributed to these deficits. In particular:

- **Legal Aid Ontario has been using a larger portion of the provincial transfer payments to address the increase in refugee and immigration cases.** Legal Aid Ontario

has recently faced challenges managing the increase in refugee and immigration cases without a known increase of funding from the federal government. The provincial transfer allocated by Legal Aid Ontario for these cases increased by almost 30%, from \$19.3 million in 2014/15 to \$24.9 million in 2017/18. We noted that if federal funding was more predictable or stabilized, Legal Aid Ontario would be able to better plan and budget accordingly. As well, the agreement between the federal and Ontario governments does not specify a percentage split in sharing the refugee and immigration expenses between them. The decision to support immigrants and refugees is a federal government decision. We noted that, in 2017/18, British Columbia's federal funding portion was 72% of total funding, and Manitoba's was 90%. For Quebec, the federal funding portion was 69% of total funding in 2016/17. In contrast, Ontario's federal funding portion was only 37% in 2016/17 and 39% in 2017/18.

- **In June 2015, Legal Aid Ontario expanded its eligibility criteria for certificates in order to keep unspent funding.** In February 2015, Legal Aid Ontario realized that a 6% rise in financial eligibility thresholds covered by increased provincial funding did not result in the expected increase in certificates. Instead of returning the unused funding for 2015/16 to the Ministry as would have been required, Legal Aid Ontario expanded its non-financial eligibility criteria in June 2015 to allow more people to be approved for a certificate. More people qualified than it projected and that subsequently contributed to the deficits.

### Duty Counsel

- **Duty counsel did not consistently track whether an eligibility test was required before providing legal services in court.** During 2016/17 (the most recent data

available), duty counsel did not perform an eligibility test for 95% of the individuals assisted on criminal matters. Duty counsel services are mainly provided without an eligibility test unless duty counsel suspects that the person may not be eligible and because some services (such as bail hearings) do not require that a person be financially eligible. However, because duty counsel did not consistently indicate whether a financial eligibility test was required for each case, it is unclear how many of the 95% should have been tested, and therefore may not have been eligible for legal aid.

This report contains 15 recommendations, consisting of 25 actions, to address our audit findings.

## Overall Conclusion

Our audit concluded that, for **community legal clinics**, the number of Ontario Disability Support Program cases can be reduced to free up clinic resources for other needs. As well, Legal Aid Ontario overspent on the Clinic Information Management System and the system was completed three years late.

For **legal aid certificates**, Legal Aid Ontario's oversight of payments to private-sector lawyers can also be more effective. This is especially so when lawyers bill on an hourly basis for representing their clients in courts because the court systems do not track the length of proceedings. Also, Legal Aid Ontario is unable to ensure that consistently high-quality legal services are provided by private-sector lawyers. This is because it has not exercised its legislative authority by asking the Law Society of Ontario to perform quality reviews of lawyers providing legal aid services on a regular and proactive basis.

Legal Aid Ontario prepares long-term business and strategic plans regularly, but it should complete a thorough analysis before making key policy changes (particularly with regard to the eligibility requirement). It also needs to take precautions to not overspend its limited budget on refugee and

immigration cases, unless it can secure enough predictable funding from the federal government to serve the increasing demand in this area.

Further, Legal Aid Ontario cannot ensure clients who received **duty counsel** services are eligible because it does not consistently track whether an eligibility test was required and completed for most of the cases it assisted.

## LEGAL AID ONTARIO OVERALL RESPONSE

Legal Aid Ontario welcomes the Auditor General's report, and appreciates the comprehensive audit that was performed by the Auditor General. Legal Aid Ontario agrees with, and has already started to address, the recommendations that are directed to Legal Aid Ontario.

Legal Aid Ontario exists to serve the low-income people of Ontario who require legal services. Legal Aid Ontario is committed to ensuring that these people are able to quickly access consistently high-quality legal services. Legal Aid Ontario is an independent agency and is accountable to taxpayers, always ensuring that public resources are used cost-effectively.

Legal Aid Ontario understands that clients are at the centre of our mandate, and to that end, is working hard to:

- ensure our clients receive high-quality legal services;
- eliminate red tape for clients in accessing service;
- streamline processes to maximize efficiency and effectiveness;
- demonstrate the impact and outcome of money spent;
- forecast the demand for legal aid services and respond accordingly; and
- demonstrate openness, transparency and accountability to the public.

## 2.0 Background

### 2.1 Overview

Legal Aid Ontario was established as a provincial agency reporting to the Ministry of the Attorney General under the *Legal Aid Services Act, 1998 (Act)*. It is publicly funded and tasked with administering the Province's legal aid program.

Legal Aid Ontario has a statutory mandate under the Act to provide access to justice throughout Ontario for low-income individuals by means of the following:

- providing consistently high-quality legal aid services in a cost-effective and efficient manner;
- encouraging and facilitating flexibility and innovation in the provision of legal aid services;
- identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario; and
- providing legal aid services to low-income individuals through a corporation that will operate independently from the Government of Ontario but within a framework of accountability to the Government of Ontario for the expenditure of public funds.

Legal Aid Ontario's Board of Directors consists of 11 members appointed by the Lieutenant Governor in Council. Board members serve a two- or three-year term, at which time they can be reappointed.

In 2017/18, Legal Aid Ontario's total revenue was \$487.6 million. The provincial government provided \$365.4 million, or 75%, which is slightly below the range of 77%–80% over the four years prior to 2017/18. In the same year, Legal Aid Ontario had \$476.1 million in expenditures.

**Figure 1** shows the breakdown of revenue, expenditures and the surplus or deficit from 2013/14 to 2017/18.

## 2.2 Description of Legal Aid Services

Legal Aid Ontario provides three main services: Legal Aid Certificate Program, community legal clinics and duty counsel.

### Legal Aid Certificate Program

The **Legal Aid Certificate Program** is Legal Aid Ontario's largest program by expenditures.

**Figure 1** shows that \$252.8 million (53% of expenditures) was spent on certificates in 2017/18. A certificate allows a client to retain a private-sector lawyer on one of Legal Aid Ontario's rosters (referred to as "panels" as defined by the Act). The certificate program has 15 rosters, related to criminal, family, civil, mental health or refugee areas of law. The lawyer then bills Legal Aid Ontario for the legal services provided to the client. Family income thresholds determine the client's eligibility initially. If the person is financially eligible, other, non-financial criteria are also assessed, such as whether incarceration is possible. A person might not receive a certificate, depending on the severity of the matter, but might instead receive assistance from duty counsel. Certificates are provided in the areas of criminal law, family law, immigration and refugee law, and civil law.

Private-sector lawyers who accept legal aid certificates are paid based on hourly rates and block fees, which are a set amount depending on the type of service provided, such as a bail hearing. The rates and fees are set by Legal Aid Ontario through regulations. Over 4,000 private-sector lawyers bill Legal Aid Ontario each year for the services they provide.

**Figure 2** shows the expenditure, number of certificates issued and cost per certificate, by area of law, from 2013/14 to 2017/18. Specifically:

- The total number of certificates increased by 23%, from 83,658 to 102,873.
- The total certificate expenditure increased by 37%, from \$183.8 million to \$252.7 million in the period.

**Figure 1: Legal Aid Ontario's Total Revenue and Expenditures, 2013/14–2017/18 (\$ million)**

Source of data: Legal Aid Ontario

	2013/14	2014/15	2015/16	2016/17	2017/18	% Change	
						2013/14– 2017/18	2017/18 % of Total
<b>Revenue</b>							
Province	299.1	312.4	344.4	353.9	365.4	22.2	75
Federal government <sup>1</sup>	51.1	50.7	50.9	60.4	62.6	22.5	13
Law Foundation of Ontario	25.6	29.2	25.2	29.3	46.9 <sup>2</sup>	83.2	10
Other <sup>3</sup>	12.2	11.9	12.2	12.3	12.7	4.0	2
<b>Total Revenue</b>	<b>388</b>	<b>404.2</b>	<b>432.7</b>	<b>455.9</b>	<b>487.6</b>	<b>25.7</b>	<b>100</b>
<b>Expenditures</b>							
Certificate program	183.8	190.3	218.2	254.4	252.8	37.5 <sup>4</sup>	53
Community legal clinics	75.5	83.9	92.3	87.1	85.8	13.6	18
Duty counsel	46.7	51.2	55.6	56.2	56.1	20.1	12
Administration and other <sup>5</sup>	46.6	49.0	52.0	54.9	55.5	19.1	12
Program support <sup>6</sup>	21.3	25.9	28.3	28.8	25.9	21.6	5
<b>Total Expenditures</b>	<b>373.9</b>	<b>400.3</b>	<b>446.4</b>	<b>481.4</b>	<b>476.1</b>	<b>27.0</b>	<b>100</b>
<b>Surplus/(Deficit)</b>	<b>14.1</b>	<b>3.9</b>	<b>(13.7)</b>	<b>(25.5)</b>	<b>11.5</b>		

1. Revenue from federal government is transferred to the province and is included in the provincial transfer payment to Legal Aid Ontario.

2. The increase from 2016/17 was mainly due to the increase in interest earned on the trust accounts maintained by the Law Foundation of Ontario.

3. Other includes client contributions, client and other recoveries, investment income, and miscellaneous income.

4. The increase was mainly due to the financial eligibility expansion funding discussed in [Section 4.1.2](#).

5. Administration and other includes head office costs, amortization and bad debts, service innovation projects and service provider support.

6. Program support includes operation costs incurred by regions, district and area offices, and the Client and Legal Centre (call centre).

- In 2017/18, the majority of certificates issued were for criminal law (56,777), followed by family law (27,049), refugee and immigration (13,687) and civil law (5,360).
- In 2017/18, family law certificates were the most costly, at an average of \$3,224 per certificate issued. This was mainly because family matters take longer to resolve. Next costly were criminal cases (\$2,260), refugee and immigration cases (\$2,170), and civil matters (\$1,399). The average cost per certificate was \$2,456.

### Community Legal Clinics

**Community Legal Clinics** (clinics) provide a variety of services to low-income individuals in their local areas, mainly in areas other than criminal law or family law.

According to the Act, clinics are recognized as “the foundation for the provision of legal aid services in the area of clinic law.” It defines “clinic law” as the areas of law that particularly affect low-income individuals or disadvantaged communities, including legal matters related to (a) housing and shelter, income maintenance, social assistance and other similar government programs, and (b) human rights, health, employment and education.

Legal Aid Ontario funds 80 community legal clinics, including seven Student Legal Aid Societies, throughout the province. See [Appendix 1](#) for a list of all community legal clinics in Ontario by four regions. The clinics are not-for-profit, and each one is governed and managed by a volunteer board of directors. Clinics are independent from, but accountable to Legal Aid Ontario under the Act. In 2017/18, \$85.8 million (18% of total expenditures) was spent on community legal clinics (see [Figure 1](#)).

**Figure 2: Certificate Expenditures, Number of Certificates Issued and Cost per Certificate, by Area of Law, 2013/14–2017/18**

Source of data: Legal Aid Ontario

	2013/14	2014/15	2015/16	2016/17	2017/18	% Change 2013/14– 2017/18
<b>Criminal</b>						
Expenditures (\$ million)	107.5	105.7	117.5	130.5	128.3	19
# of certificates issued	54,949	54,182	63,688	63,855	56,777	3
Cost (\$)/certificate issued	1,956	1,951	1,845	2,044	2,260	16
<b>Family</b>						
Expenditures (\$ million)	52.8	59.1	72.7	88.9	87.2	65
# of certificates issued	19,027	22,086	30,195	30,303	27,049	42
Cost (\$)/certificate issued	2,775	2,676	2,408	2,934	3,224	16
<b>Refugee and Immigration</b>						
Expenditures (\$ million)	18.0	19.5	21.8	27.6	29.7	65
# of certificates issued	5,308	6,445	9,268	12,658	13,687	158
Cost (\$)/certificate issued	3,391	3,026	2,352	2,180	2,170	(36)
<b>Civil</b>						
Expenditures (\$ million)	5.5	5.9	6.3	7.4	7.5	36
# of certificates issued	4,374	4,566	5,108	5,293	5,360	23
Cost (\$)/certificate issued	1,257	1,292	1,233	1,398	1,399	11
<b>All Areas of Law</b>						
Expenditures (\$ million)	183.8	190.2*	218.3*	254.4	252.7*	37
# of certificates issued	83,658	87,279	108,259	112,109	102,873	23
Cost (\$)/certificate issued	2,197	2,179	2,016	2,269	2,456	12

\* Slightly different than the certificate program expenditures shown in Figure 1 due to rounding.

**Figure 3** shows the number of active clinic files and average cost per active file from 2012/13 to 2017/18.

### Duty Counsel

Duty counsel are lawyers who can give immediate legal assistance to those appearing in court. In 2017/18, Legal Aid Ontario spent \$56.1 million (12% of total expenditures) on the duty counsel program (see **Figure 1**).

Duty counsel are available in all of Ontario's more than 50 courthouses, and about 30 remote and fly-in locations. Legal Aid Ontario employs close to 200 in-house duty counsel staff and pays about 1,120 private-sector lawyers on seven rosters—related to criminal, family, and civil areas of

law—to provide duty counsel services in the courthouses on an hourly or a daily rate.

Duty counsel provide more basic representation than a lawyer retained on a certificate. Duty counsel advise about legal rights, obligations and the court process. For criminal matters, duty counsel do bail hearings, first appearances, adjournments, guilty pleas, and sentencing. For family law matters, duty counsel negotiate and settle issues, review and prepare court documents, and assist their client in the courtroom for child protection hearings, garnishment and support hearings, request adjournments, and argue motions. Although certificate services include all of the above services, a lawyer retained on a certificate likely provides more time to the client and could go to trial.

**Figure 3: Number of Active Clinic Files and Average Cost per Active File, 2012/13–2017/18**

Source of data: Legal Aid Ontario

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	% Change 2012/13– 2017/18
# of clinic files	202,390	208,019	205,619	208,775	226,134	170,429	(16)
Average cost per file (\$)	357	363	408	442	385	503	41

Note: Prior to 2017/18, files included any services provided to a client, such as case representation, brief services, advice and referrals. Starting 2017/18, the new clinic system includes files only when case representation is provided to a client. As a result, the number of files recorded in 2017/18 is significantly lower than previous years. This also explains the higher cost per case in 2017/18.

**Figure 4: Number of Persons Assisted by Duty Counsel, by Area of Law, 2013/14–2017/18**

Source of data: Legal Aid Ontario

Area of Law	2013/14	2014/15	2015/16	2016/17	2017/18	% Change 2013/14– 2017/18
Criminal	467,510	438,343	434,772	456,594	504,636	8
Civil and others*	163,249	160,990	153,660	143,976	139,339	(15)
<b>Total</b>	<b>630,759</b>	<b>599,333</b>	<b>588,432</b>	<b>600,570</b>	<b>643,975</b>	<b>2</b>

\* Others include family, tenant, and mental health matters.

**Figure 4** shows the total number of persons assisted by duty counsel from 2013/14 to 2017/18, by area of law.

## 2.3 Eligibility

There are different eligibility criteria for legal aid certificates, duty counsel services and clinic services.

### Eligibility for Legal Aid Certificates

Legal Aid Ontario follows two categories of eligibility criteria for issuing legal aid certificates: financial and non-financial.

**Financial Eligibility Criteria**—In order to be eligible for a certificate, an applicant's gross family income must fall below the income levels listed in **Figure 5** depending on whether a client has a contribution agreement (explained below) or faces domestic violence. In addition, applicants of certificates must have no more than \$2,676 in liquid assets, such as cash and investments that can be

cash in, in order to be eligible, or no more than \$10,000 for domestic violence clients. The most recent increase of the financial eligibility thresholds was on April 1, 2018. The financial eligibility thresholds have increased 6% annually since 2014, with the intent that there will be an annual increase every year for 10 years until 2024 (explained in **Section 4.1.2**). The annual increase has not been approved by the Province as of May 2018. Provincial regulation sets financial eligibility thresholds.

**Non-financial Eligibility Criteria**—Criteria relating to the severity of the legal matter, such as the probability of jail time, is also considered to determine whether the applicant is eligible for a certificate. If the matter will not result in severe consequences, the client may not be eligible for a certificate (see Certificate Program above). As part of its role under the Act, Legal Aid Ontario may adjust its non-financial eligibility criteria, with the approval of its Board, in order to manage the volume of certificates issued, so that certificate budgets can be adhered to.



**Figure 5: Maximum Family Income Eligible for a Legal Aid Certificate or Duty Counsel, Effective April 1, 2018**

Source of data: Legal Aid Ontario

# of Family Members	Certificate	Certificate	Certificate	Duty Counsel (\$)
	(without Contribution Agreement) (\$)	(with Contribution Agreement) (\$)	Domestic Violence <sup>1</sup> (\$)	
Single boarders <sup>2</sup>	9,501	10,973	n/a	n/a
1	14,453	16,728	22,720	22,720
2	25,003	30,110	32,131	32,131
3	28,503	35,088	39,352	39,352
4	32,207	40,307	45,440	45,440
5+	35,749	45,446	50,803	50,803

1. Certificates issued to clients who are facing domestic violence are considered a priority and thus have a higher income threshold than other certificates.
2. A single boarder is an individual who is in a living arrangement where living expenses, such as food and shelter, are provided for them. The single boarder has a slightly lower income threshold due to decreased living expenses.

**Contribution Agreements**—Individuals may be eligible for a certificate with a contribution agreement, requiring them to sign a lien against a property or direction to cover all or part of the legal fees related to their matter. Monthly repayments range from \$50 to \$115 depending on the income levels and number of family members, with some exceptions due to personal circumstances. Legal Aid Ontario has a process to ensure all outstanding debts are collected. **Figure 5** shows the family income levels for a certificate with and without a contribution agreement.

#### Eligibility for Duty Counsel in Courts

Duty counsel lawyers at the courts are responsible for assessing the financial eligibility for clients who need legal assistance when applicable. Income level cut-offs are specified where the applicant's gross family income must fall below the income levels listed in **Figure 5** in order to be eligible for duty counsel assists. Also, all applicants of duty counsel services must have no more than \$2,007 in liquid assets in order to be eligible. The financial eligibility thresholds for duty counsel services are also set by regulation, and they are generally higher than the thresholds for certificates. The higher the thresholds, the more people would be financially eligible for services.

#### Eligibility for Services Provided by Community Legal Clinics

As set out in regulation, Legal Aid Ontario establishes guidelines for clinics to determine financial eligibility of clients to receive clinic services. Clinics may use discretion when considering the financial situation of the client on a case-by-case basis approved by each clinic's board of directors. Clients of clinics must provide evidence of income and asset eligibility.

**Figure 6** presents Legal Aid Ontario income eligibility guidelines for clinic services. A net asset guideline also applies, where applicants of clinic services must have less than \$12,000 in net assets (cash, bonds, stocks, mutual funds less short-term debt) in order to be eligible.

## 2.4 Key Players in Ontario's Legal Aid System

**Figure 7** depicts the key players who are involved in delivering legal aid services in Ontario, as well as the flow of funding within the system.

#### Ministry of the Attorney General (Ministry)

The Ministry is mainly accountable and responsible for the following:

**Figure 6: Guideline for Maximum Family Income Eligible for Services Provided by Community Legal Clinics, Effective April 1, 2018**

Source of data: Legal Aid Ontario

# of Family Members	One-Adult Family		Two-Adult Family	
	Automatically Eligible (\$)	Discretionary Financial Eligibility* (\$)	Automatically Eligible (\$)	Discretionary Financial Eligibility* (\$)
1	21,144	22,720	n/a	n/a
2	24,490	32,131	28,638	32,131
3	28,638	39,143	30,980	39,352
4	30,980	42,288	34,192	45,440
5	34,192	46,303	36,667	49,648
6+	36,667	50,518	39,879	50,803

\* The clinic's board of directors may use discretion to consider eligibility if the applicant's family income is above the Automatically Eligible but below the Discretionary Financial Eligible threshold. Factors such as the applicant's debt load, necessary transportation costs, and excessive child-care costs are considered when making an eligibility decision.

- reviewing and approving Legal Aid Ontario's budget for its business and operational plans and recommending to Treasury Board what funding to provide;
- analyzing reports and other sources of information to identify performance issues and concerns; and
- undertaking risk assessments of Legal Aid Ontario on behalf of the Attorney General and recommending corrective action if necessary.

### The Federal Government

The Province has an agreement for funding with the federal government as represented by the Minister of Justice of Canada respecting criminal legal aid and immigration and refugee legal aid. While the funding for criminal legal aid is based on a predetermined formula, the funding of immigration and refugee legal aid is based on the case volume from the prior year. The most recent agreement covers the period from April 1, 2017, to March 31, 2022. For 2017/18, the contribution from the federal government was \$46.7 million for criminal legal aid, and \$15.9 million for immigration and refugee legal aid cases (further discussed in **Section 4.1.1**).

### Law Foundation of Ontario (Law Foundation)

The Law Foundation has a mandate to improve access to justice for the people of Ontario. It achieves this mandate through a variety of grants and awards in addition to annual payments to Legal Aid Ontario. The Law Foundation's primary source of revenue is interest earned from lawyers' and paralegals' trust accounts. At least 75% of this revenue after operating expenses must be given to Legal Aid Ontario under the Law Society Act.

### Private-Sector Lawyers and Paralegals

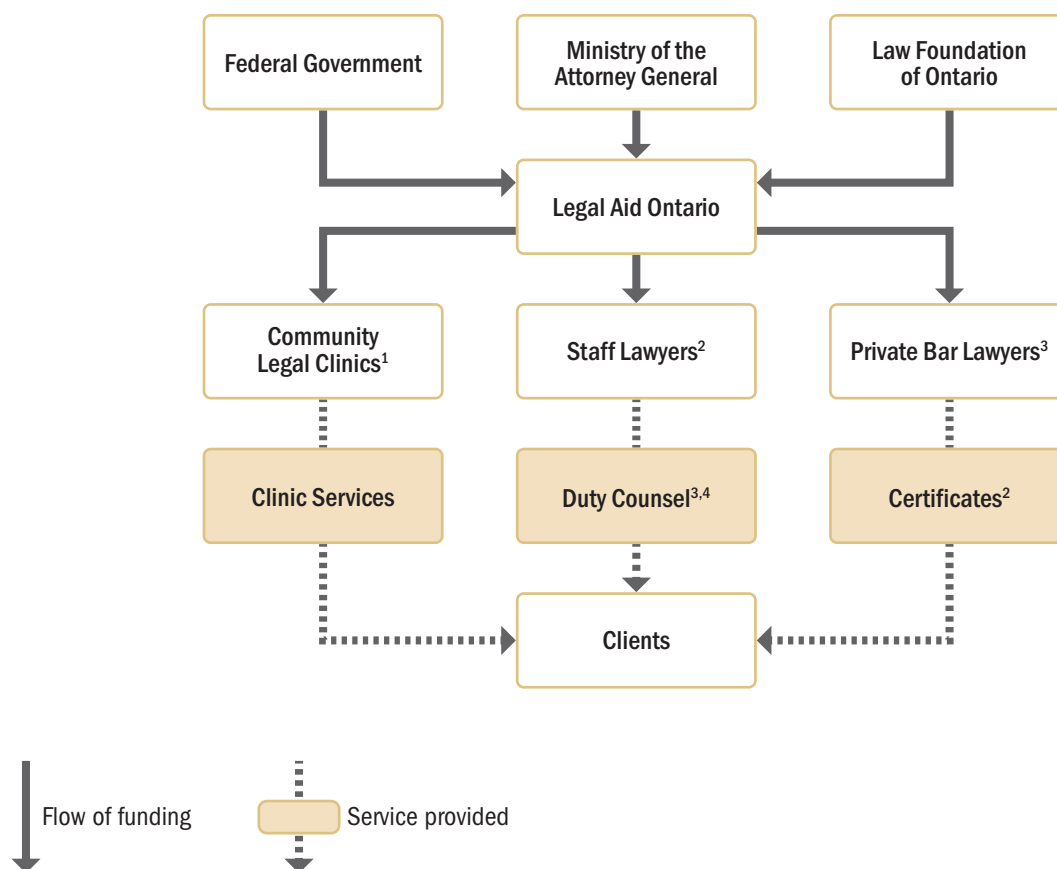
Under the *Legal Aid Services Act, 1998* (Act), only a lawyer or someone under the direct supervision of a lawyer, such as a law student or paralegal, can provide legal services. Lawyers can work for Legal Aid Ontario directly as employees, charge for services through the certificate program, or provide duty counsel services on a per diem basis, or as employees of community legal aid clinics.

The Law Society regulates paralegals to provide legal services to the public. Community legal clinics employ paralegals to provide clinic law services.

In order to provide certificate and/or duty counsel services, lawyers must register to be on Legal Aid Ontario's roster for the type of law that they practise. Legal Aid Ontario has 15 certificate

**Figure 7: Key Players in Ontario's Legal Aid System**

Source of data: Legal Aid Ontario



1. Community legal clinics hire lawyers, paralegals, and other employees to provide clinic services.
2. About 10 staff lawyers also provide certificate services.
3. Of the more than 4,000 private bar lawyers, about 1,100 of them also provide duty counsel services in courts.
4. Legal Aid Workers, paid by Legal Aid Ontario, also work in the courts to assist duty counsel.

rosters, (such as criminal, family, refugee and child protection) and seven duty counsel rosters (such as criminal, family and general advice). Its professional standards provide the minimum experience and professional development requirements that lawyers must meet.

### Law Society of Ontario (Law Society)

The Law Society governs Ontario's licensed lawyers and paralegals in the public interest by ensuring they meet high standards of learning, competence, and professional conduct. Under the Act, only the Law Society can conduct quality assurance audits of

lawyers who provide legal aid, although Legal Aid Ontario may direct the Society to do so and reimburse it for costs.

## 2.5 Organizational Structure

Legal Aid Ontario has about 980 full-time equivalent employees throughout the provincial office and district offices in the four regions, which include the Greater Toronto Area, Southwest region, North region and the Central/Eastern region. Seventeen district and area offices deliver legal aid services within the four regions. In addition to the 17 district and area offices, Legal Aid Ontario maintains a

presence in each of Ontario's over 50 courthouses. Refer to **Appendix 2** for a description of Legal Aid Ontario's relevant branches and their corresponding responsibilities.

### 3.0 Audit Objective and Scope

The objective of our audit was to assess whether Legal Aid Ontario had effective systems and procedures in place to ensure that:

- appropriate legal aid services are provided to low-income and eligible Ontarians in a cost-effective and timely manner;
- payments to lawyers and community legal clinics are in accordance with legislation and agreements; and
- accurate and complete data on the effectiveness of Legal Aid Ontario's key services and programs is collected, analyzed, used for decision-making and service improvements, and publicly reported.

In planning for our work, we identified the audit criteria (see **Appendix 3**) we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management reviewed and agreed with the suitability of our objectives and associated criteria.

We conducted our audit between December 2017 and June 2018. We obtained written representation from Legal Aid Ontario's and the Ministry of the Attorney General's management that, effective November 1, 2018, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work was conducted at Legal Aid Ontario's head office in Toronto. In conducting our audit, we reviewed relevant documents, analyzed information, interviewed appropriate Legal Aid Ontario staff, and reviewed relevant research from

Ontario and other Canadian provinces, as well as jurisdictions in other countries. The majority of our file review went back three to five years, with some trend analysis going back as far as 10 years.

We conducted the following additional work:

- reviewed the work conducted by Legal Aid Ontario's internal audit unit and considered the results of these audits in determining the scope of this value-for-money audit.
- visited and conducted more in-depth interviews with key personnel at four community legal clinics representing all four geographic regions, as well as the Association of Community Legal Clinics of Ontario. We spoke to one specialty clinic that advocates for income security for low-income individuals. We also conducted unannounced visits at an additional 16 community legal clinics to speak with on-site personnel and observe their operations.
- met and interviewed both criminal and family duty counsel in Toronto, London, Ottawa and Thunder Bay in order to gain an understanding of unique issues within each geographic region in Ontario.
- talked with representatives from stakeholder groups, including the Law Society of Ontario (Law Society), the Criminal Lawyers Association of Ontario and the Social Benefits Tribunal. We also obtained relevant appeal data from the Social Benefits Tribunal. We observed a hearing at the Landlord and Tenant Board. We also met with representatives from the Nishnawbe-Aski Legal Services Corporation, the Aboriginal legal services corporation which provides services to Nishnawbe-Aski Nation peoples and which is funded by Legal Aid Ontario. As well, we spoke with representatives from the Office of the Children's Lawyer, Ministry of the Attorney General, Ministry of Children, Community and Social Services and Department of Justice Canada.

- spoke with a member of Legal Aid Ontario's Board of Directors, who was a former board member of the Law Society, to obtain further understanding of Legal Aid Ontario's relationship with the Law Society.
- engaged an expert with legal background and expertise in government-funded legal aid plans, access to justice, and poverty law.
- conducted a survey with the remaining 76 community legal aid clinics that we did not have an in-depth discussion with to obtain an understanding of how clinic law services are delivered in Ontario. The response rate for the survey was 66%.
- considered the relevant issues reported in our 2011 Annual Report audit of Legal Aid Ontario and incorporated them into our audit work.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Canadian Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

## 4.0 Detailed Audit Observations

### 4.1 Rising Costs of Refugee and Immigration Cases and Legal Aid Ontario's Rushed Decision-Making Contributed to \$40 Million Deficit

Legal Aid Ontario incurred a total of \$40 million in deficits in two years—\$14 million in 2015/16 and \$26 million in 2016/17. We noted two major contributing factors as follows:

- there was a significant increase in refugee and immigration cases (discussed in **Section 4.1.1**); and
- Legal Aid Ontario expanded its eligibility criteria for certificates in order to keep unspent funding (discussed in **Section 4.1.2**).

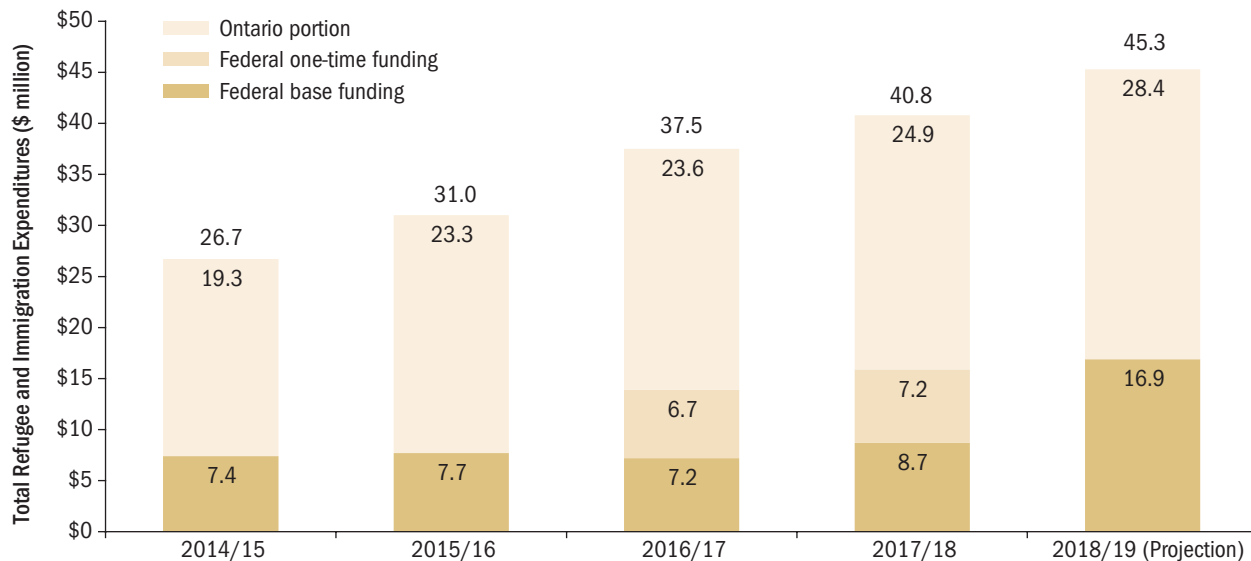
#### 4.1.1 Unpredictable Federal Funding Leaves Legal Aid Ontario Exposed to Rising Costs of Refugee and Immigration Cases

Legal Aid Ontario has recently faced challenges managing the increase in refugee and immigration cases without a known increase of funding from the federal government. We noted that if federal funding was more predictable or stabilized, Legal Aid Ontario would be able to better plan and budget accordingly. We also noted that the agreement between the federal and Ontario governments does not specify a percentage split in sharing the refugee and immigration expenses between them. The decision to support immigrants and refugees is a federal government decision. The *Constitution Act, 1982* specifies that citizenship, immigration, and deportation are responsibilities and duties of the federal government.

However, our audit found that Legal Aid Ontario has been using a larger portion of the provincial transfer payments—covering certificates, legal clinics and duty counsel—to address the increase in refugee and immigration cases (as shown in **Figure 8**).

**Figure 8: Difference Between Federally Funded and Provincially Funded Refugee and Immigration Expenditures\* (\$ million)**

Source of data: Legal Aid Ontario



\* Expenditures include certificates, staff costs, clinics, duty counsel, administration and other related to immigration and refugee matters.

- In 2014/15, the Province provided \$19.3 million to Legal Aid Ontario and the federal government contributed \$7.4 million, based on a funding formula agreement (explained below) it has with the Province.
- In 2017/18, the federal government contributed just \$8.7 million through the agreement, but the provincial transfer, such as from the Province and the Law Foundation, rose to \$24.9 million, which was close to a 30% increase from \$19.3 million in 2014/15. The federal government also provided \$7.2 million in that fiscal year, but that was one-time funding that Legal Aid Ontario had to request.
- In May 2018, Legal Aid Ontario requested a total of \$17.5 million from the federal government, and in September 2018, the federal government committed to providing \$16.9 million for refugee and immigration legal aid for 2018/19. Legal Aid Ontario is projecting that, for 2018/19, even with the federal funding, it might still require at least

\$7.4 million more that would need to be covered from provincial revenue sources.

The allocation of immigration and refugee funding provided by the Province has steadily increased, from \$19.3 million in 2014/15 to \$23.6 million in 2016/17. Given that, prior to its deficit, Legal Aid Ontario spent \$19.3 million on immigration and refugee cases in 2014/15, we estimated that the subsequent increase in spending over and above \$19.3 million in this area had contributed to about \$8 million of the \$40 million deficit over 2015/16 and 2016/17. Legal Aid Ontario indicated that, in the absence of additional funding from the federal government, it has had to rely on provincial funds to address the increase in refugee and immigration cases.

Between 2015/16 and 2016/17, Legal Aid Ontario issued an increased number of certificates for refugees and immigrants, and community legal clinics provided legal services to more immigrants, as follows:

- The number of refugee and immigration certificates issued increased by 37%, from 9,268 to 12,658.
- The number of immigration and citizenship cases opened at community legal clinics increased by 24%, from 936 to 1,161.

The increases in demand were driven by many factors, including the unstable geopolitical environment that resulted in more people seeking asylum in Ontario and requiring legal aid services in Ontario.

The federal government specifies the amount of funding to be distributed to Ontario's Ministry of the Attorney General related to immigration and refugee legal aid. An agreement is in place covering the period April 1, 2017, to March 31, 2022. The annual funding amount is calculated using Ontario's total demand for immigration and refugee services, using statistics provided by the Immigration and Refugee Board, Immigration, Refugees and Citizenship Canada, and the Federal Court.

This agreement states that the federal government may provide additional one-time financial resources in addition to the amounts provided in the agreement, if needed, and supported by a business case by each province.

The Department of Justice Canada, which is in charge of the funding calculation, indicated that the formula to calculate immigration and refugee funding may change in the future because of anticipated process changes at the Immigration and Refugee Board. An April 2018 review of the Immigration and Refugee Board made over 60 recommendations that could impact how and when lawyers are involved in all parts of the immigration and refugee hearing process. This could directly impact how much legal aid is required. At the time of our audit, there were no confirmed plans or changes to the funding formula.

The federal government allocates immigration and refugee funding to six provinces that provide immigration and refugee services: British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland and Labrador. While we were unable to

obtain information from Alberta and Newfoundland and Labrador for federal funding relating to immigration and refugee services, we noted that, in 2017/18, British Columbia's federal funding portion was 72% of total funding, and Manitoba's was 90%. For Quebec, the federal funding portion was 69% of total funding in 2016/17. In contrast, Ontario's federal funding portion was only 37% in 2016/17 and 39% in 2017/18.

Legal Aid Ontario said it supports immigration and refugee services, but also said it may have to cut other services if federal funding is not sufficient to cover the cost of the growing demand for immigration and refugee legal aid.

## RECOMMENDATION 1

To help meet increasing service demands for refugee and immigration related cases, resulting from federal policy decisions, we recommend that Legal Aid Ontario, together with the Ministry of the Attorney General, work with the federal government (as represented by the Minister of Justice Canada) to obtain a more predictable and appropriate proportion of expense coverage from the federal government.

## LEGAL AID ONTARIO AND MINISTRY RESPONSE

Legal Aid Ontario and the Ministry of the Attorney General agree to work collaboratively to demand that the federal government provide more predictable and appropriate funding for immigration and refugees that reflects the cost of delivering these services.

### 4.1.2 Eligibility Criteria for Certificates Was Expanded in Order to Use Unspent Funding

Legal Aid Ontario's rushed decision-making contributed to the \$40 million deficit—after quickly expanding eligibility for certificate funding for court cases. It did so because it wanted to use the funding it would have had to return to the Ministry

**Figure 9: Changes to Legal Aid Ontario's Non-financial Eligibility Criteria for a Certificate in Criminal Matters\***

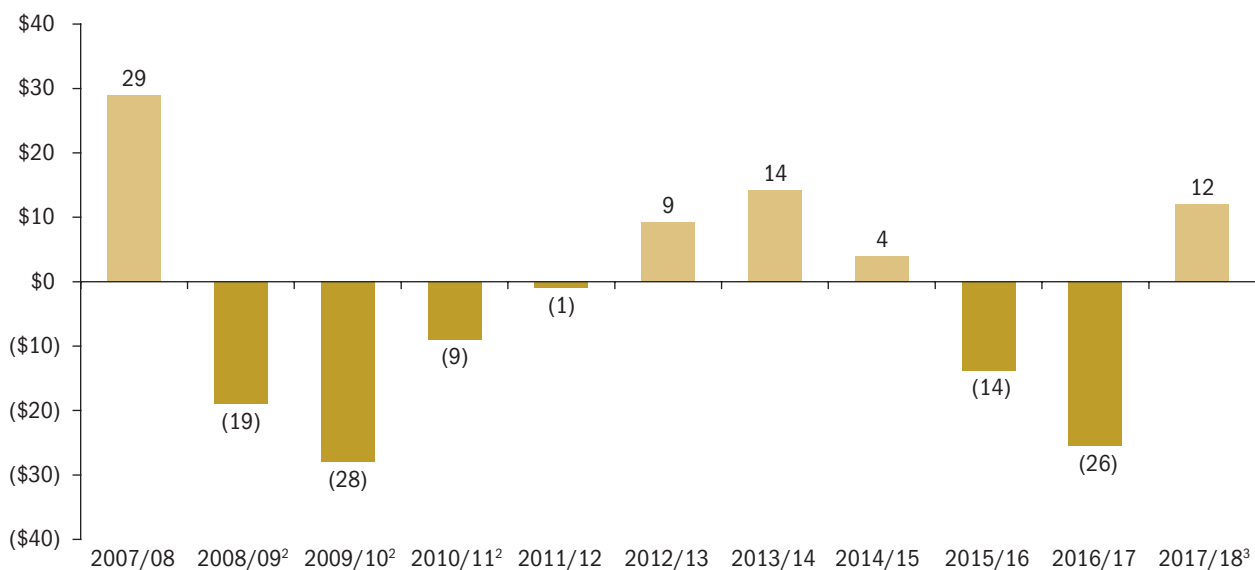
Prepared by the Office of the Auditor General of Ontario

Before June 1, 2015	June 1, 2015–December 31, 2016	After December 31, 2016
Financially eligible people who faced incarceration if convicted would qualify.	Financially eligible people who faced secondary consequences if convicted would qualify. Secondary consequences included loss of employment, loss of planned educational opportunities, or a significant impact on access to family and child custody.	Financially eligible people who faced incarceration if convicted would qualify. Some vulnerable people, such as First Nations, Métis or Inuit, or those with mental health issues, are assessed for eligibility on a case-by-case basis, even if there is no risk of incarceration.

\* This figure includes criminal examples only.

**Figure 10: Legal Aid Ontario Operating Surplus/Deficit<sup>1</sup>, 2007/08–2017/18 (\$ million)**

Source of data: Legal Aid Ontario



1. Legal Aid Ontario may transfer a surplus of up to \$20 million to its Contingency Reserve Fund. The fund's purpose is to give Legal Aid Ontario the ability to fund severe and extraordinary financial emergencies. Surpluses are used to reduce the accumulated deficit and used to replenish the depleted Contingency Reserve Fund.
2. The deficits in 2008/09 to 2010/11 were a result of the economic downturn starting in 2008. Interest rates dropped significantly after 2008, which resulted in decreased revenue from the Law Foundation of Ontario.
3. While Legal Aid Ontario had a net accumulated deficit of about \$30 million as of March 31, 2017, it had realized a surplus of about \$12 million in 2017/18 to reduce the accumulated deficit to about \$18 million as of March 31, 2018.

of the Attorney General (Ministry) if it was not spent within the 2015/16 fiscal year.

In 2014, Legal Aid Ontario began receiving additional annual provincial funding to raise the financial eligibility threshold for major legal services, including legal aid certificates, to increase the number of people qualifying for Legal Aid Ontario assistance. The financial eligibility threshold had not been increased since 1996.

However, in February 2015, when Legal Aid Ontario found that it had not issued substantially

more certificates to spend the additional funding of \$17.1 million, it quickly expanded non-financial eligibility criteria in June 2015. That led to a higher number of certificates being issued than it anticipated, putting it in a deficit. Refer to **Figure 9** for the changes in non-financial eligibility coverage between June 1, 2015, and up to and after December 31, 2015. Legal Aid Ontario issued more certificates than it had expected—28% more between 2014/15 and 2016/17.



**Figure 11: Financial Eligibility Expansion Funding to Legal Aid Ontario by the Province, 2014/15–2023/24 (\$ million)**

Source of data: Legal Aid Ontario

	Funding <sup>1</sup>
<b>Approved by the Province</b>	
2014/15	6.4 <sup>2</sup>
2015/16	31.5
2016/17	48.8
2017/18	67.0
2018/19	86.3 <sup>3</sup>
2019/20	106.4 <sup>3</sup>
2020/21	120.1 <sup>3</sup>
<b>Not Yet Approved by the Province</b>	
2021/22	123.2 <sup>4</sup>
2022/23	126.4 <sup>4</sup>
2023/24	129.8 <sup>4</sup>

1. Legal Aid Ontario allocated about 65% of the funding to the certificate program, 20% to clinics, 5% to duty counsel, and 10% to administration costs.
2. Legal Aid Ontario received, in November 2014, \$6.4 million, which is pro-rated based on the annual amount of \$15.3 million for 2014/15.
3. The total funding committed by the Province from 2018/19 to 2020/21 was \$312.8 million.
4. In 2014, Legal Aid Ontario requested a total of \$379.4 million for the years from 2021/22 to 2023/24. As of May 2018, the Province has not approved the amount yet.

Legal Aid Ontario prepares long-term business and strategic plans regularly, but it needed to do more analysis before making key policy changes in spending the financial eligibility funding committed by the provincial government. Increasing the pool of people eligible for legal aid certificates requires detailed budgetary planning and appropriate forecasting for future certificates. However, Legal Aid Ontario changed its policies too fast, resulting in more people becoming eligible than projected, and resulting in the deficit situation. **Appendix 4** details significant events that occurred relating to the deficits in 2015/16 and 2016/17.

**Figure 10** shows Legal Aid Ontario's surpluses and deficits from 2007/08 to 2017/18. **Figure 11** shows the rise in total funding approved by the Province from 2014/15 to 2020/21, and the

amount requested by Legal Aid Ontario that has not yet been approved by the Province as of May 2018.

Increased provincial funding allowed for an increase of 6% in the financial eligibility threshold for certificates starting on November 1, 2014, with the intent that there be an annual increase every year for 10 years until 2024. **Figure 12** provides the actual and planned change in the gross income threshold (for a single-person family) up to 2023/24.

Since Legal Aid Ontario has three more years of financial eligibility funding from the Ministry of the Attorney General (see **Figure 11**) totalling \$312.8 million from 2018/19 to 2020/21, it needs to increase either financial or non-financial eligibility with caution and not to exceed this fixed budget.

As well, the sudden changes in the non-financial eligibility criteria, shown in **Figure 9**, also affected the people who were trying to qualify for Legal Aid Ontario assistance. More people qualified when the eligibility criteria were expanded in June 2015. But when the eligibility criteria were tightened in December 2016, people who would have qualified from June 2015 to then were suddenly disqualified by the policy change. Legal Aid Ontario serves a vulnerable segment of the population and in future needs to ensure that it does not need to reverse policies that were rolled out too quickly, thereby taking away services from low-income people.

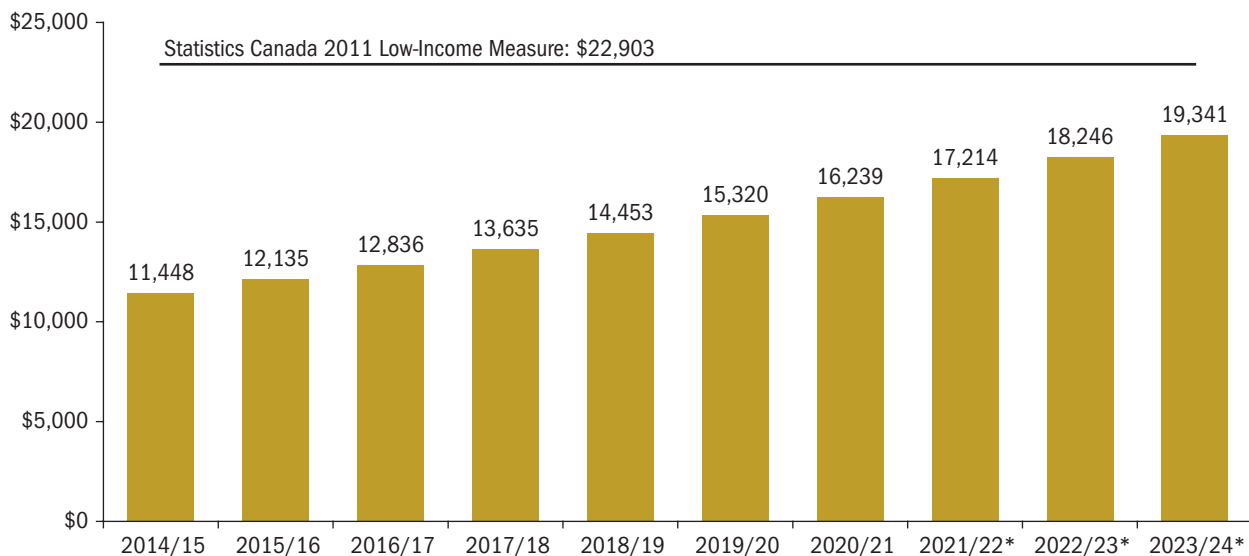
### 4.1.3 Legal Aid Ontario Now Collecting Race-Based Client Information to Formulate Service Strategies

On April 1, 2018, Legal Aid Ontario started to collect race-based information on the clients it serves under the certificate program. It cites that understanding which racial groups use its services will help it identify whether all demographics are receiving the same services and to see whether special services and strategies are required.

Legal Aid Ontario identified that, in April and May 2018, certificates were issued to the following racial groups:

**Figure 12: Legal Aid Ontario’s Financial Eligibility Income Thresholds (for a Single-Person Family) for Certificates, 2014/15–2023/24 (\$)**

Source of data: Legal Aid Ontario



\* Legal Aid Ontario projected the income eligibility thresholds for the period between 2021/22 and 2023/24 and that had not been reflected by the Legal Aid Services Act Regulation as of June 2018.

- 11% to 13% Indigenous clients;
- 32% to 37% visible minority clients;
- 44% to 48% white clients (Legal Aid Ontario uses the term “non-visible minority”); and
- 7% to 9% “others.”

Legal Aid Ontario currently has a strategy for serving Indigenous clients. Also, in January 2018, the Black Legal Action Centre was announced, to be opened in 2018 with funding from Legal Aid Ontario.

As well, Legal Aid Ontario has identified that major users of the legal aid system are repeat offenders and people who are incarcerated while waiting for bail hearings or trials. Over 12 years up to 2017/18, 47% of individuals who received criminal certificates were issued more than one certificate during this time. Thirty percent were issued more than two certificates. Also, Ontario has more people incarcerated on remand awaiting trial than those who are sentenced. Significant backlog for bail courts is a contributing factor to the large remand population. Statistics Canada reported that, for Ontario, in 2016/17, about 70% of the incarcerated population were awaiting trial.

For family law, about three out of four certificates are issued for women, and over 50% of these were for domestic violence cases.

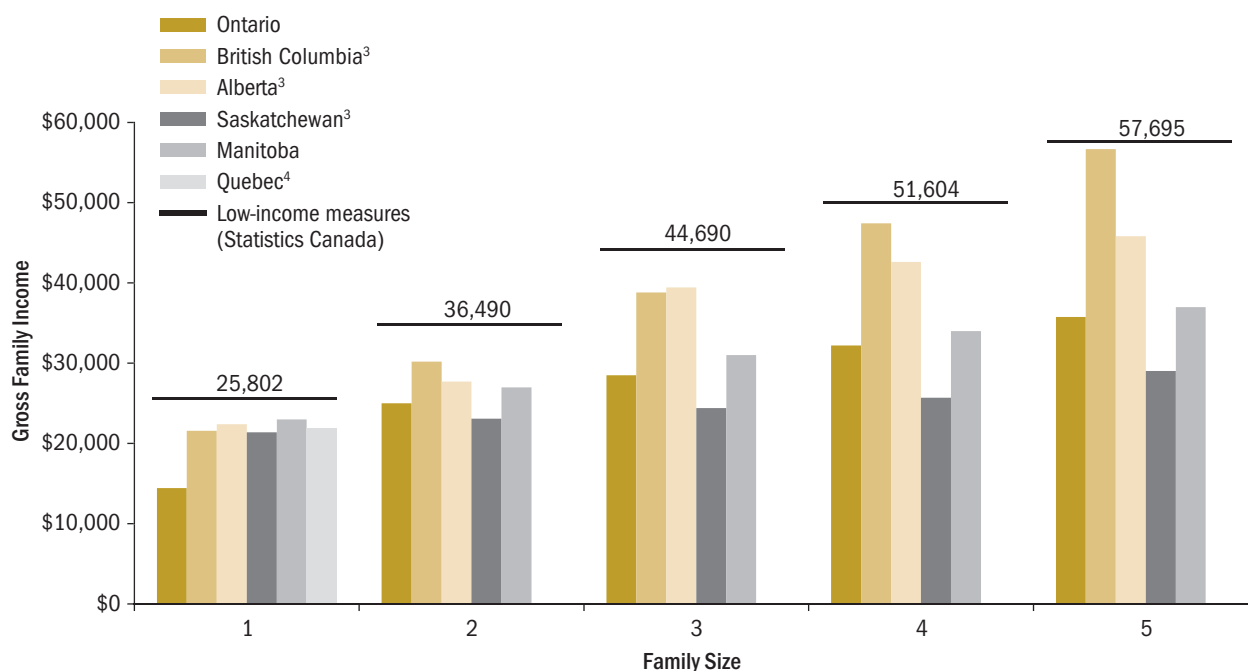
Gathering and analyzing these statistics is a good step in understanding that the gross income threshold is not the only way to evaluate access to justice for low-income individuals. Other factors, such as what type of legal problems are covered and the amount and type of service provided, can also be reviewed.

#### 4.1.4 Legal Aid Ontario Plans to Meet Statistics Canada 2011 Low-Income Definition by 2024

As discussed in **Section 4.1.2**, in 2014, the provincial government increased financial eligibility thresholds (the higher the threshold, the more people would be eligible for services) for all major legal services—legal aid certificates, duty counsel and clinic services. The intent of the amendment was to make more Ontarians eligible for legal aid services by meeting Statistics Canada’s 2011 low-income definition by 2024.

**Figure 13: Comparison of Legal Aid Ontario's Gross Income Threshold for Certificate Eligibility to Other Large Provinces, as of April 2018<sup>2</sup>**

Sources of data: Legal Aid Ontario and Statistics Canada



1. Provinces with population of over one million are included.
2. Most provinces, including Ontario, require an applicant's assets to be considered when determining eligibility. We excluded asset assessments from our comparison.
3. British Columbia, Alberta and Saskatchewan reported their income thresholds on a net income basis while the remaining provinces reported on a gross income basis. Therefore, we adjusted the income threshold for British Columbia, Alberta and Saskatchewan so that their gross income figures are comparable to other jurisdictions.
4. Quebec uses a different definition of family income and is not comparable for a family size of more than one.

After 10 years, in 2024, the financial eligibility threshold (based on a family gross income) for a single-person family will be \$19,341, which will be closer to the Statistics Canada 2011 low-income measure of \$22,903. Refer to **Figure 12** for the anticipated change in the gross income threshold (for a single-person family) up to 2023/24, and **Figure 11** for the cost associated in achieving the plan.

Comparing Ontario with other large provinces with a population over one million (**Figure 13**), we noted for a single-person family, as of April 1, 2018, Ontario's gross income threshold is the lowest, followed by Saskatchewan, British Columbia, Quebec, Alberta and Manitoba. For a family of more than one, Ontario's gross income threshold is roughly in the middle: higher than Saskatchewan but lower than British Columbia, Alberta and Manitoba. (Quebec is excluded because it uses a different def-

inition of family income and is not comparable for a family size of more than one.)

To understand how much Ontario pays for legal aid services compared with other provinces, we calculated the legal expenditure per capita for large provinces (British Columbia, Alberta, Saskatchewan, and Manitoba) where information is publicly available. We found that, in 2016/17, Ontario had the highest legal aid expenditure per person at \$33, whereas British Columbia had the lowest legal aid expenditure per capita at \$18. This is because Legal Aid Ontario, in general, provides a relatively broader range of legal services than other provinces. For example, Ontario funds poverty law through the clinic system, covering areas such as landlord and tenant, employment, human rights, and social assistance matters. British Columbia does not fund any of these matters. (Clinic services are discussed in **Section 4.3.5**.)

## RECOMMENDATION 2

To help keep spending of limited legal aid funding within budget, we recommend that Legal Aid Ontario:

- roll out new initiatives with proper analysis, monitor the impact and take corrective action in the event of cost escalation; and
- seek approval from the Ministry of the Attorney General before using any surplus or unused funding.

## LEGAL AID ONTARIO AND MINISTRY RESPONSE

In 2015/16, Legal Aid Ontario (LAO) used its funding to expand services to meet unmet demand for services; when that unmet need proved too great, LAO took corrective action by limiting the expansion and implementing a balanced budget plan to eliminate the deficit, which resulted in a balanced budget in 2017/18. LAO continues to refine stronger processes for analyzing the use of funding.

The Ministry of the Attorney General agrees with the recommendation and will work with LAO to return any surplus or unused funding back to the Ministry.

## 4.2 Legal Aid Certificates

### 4.2.1 The Process for Legal Aid Ontario to Verify Lawyers' Billings Is Ineffective

Legal Aid Ontario does not have direct access to original court documents and other information that contains the start and end time for each court proceeding. It therefore is difficult to verify the nature of the proceeding and the actual time lawyers spent at the proceeding; both factors affect how much lawyers are paid.

Although Legal Aid Ontario can verify that lawyers attended court on behalf of their clients for criminal, family and civil cases on any given day, it cannot easily track the amount of time lawyers

spend in court. Some fees are hourly; others are a block fee, which is a set amount depending on the type of service provided, such as a bail hearing. In 2017/18, the certificate program cost \$252.8 million, of which \$232.4 million was paid to over 4,000 private-sector lawyers. The remaining \$20.4 million in expenditures were salary for staff lawyers who also provide certificate services.

### Time-Consuming and Unreliable Way to Verify the Nature of Court Proceeding

Administration of Ontario's courts is the responsibility of the Ministry of the Attorney General (Ministry). Court office staff manually key information into the court information systems and the original court documents are filed in physical form.

In order to verify the nature of the proceeding, Legal Aid Ontario currently requires the lawyer to request copies of original court documents from the courthouse and provide them to Legal Aid Ontario. For example:

- If a lawyer submits a bill to Legal Aid Ontario for payment on a criminal case, he or she could bill \$754 for a court attendance to complete a guilty plea if the Crown elected to proceed summarily, which is a less complex legal matter. Or the lawyer could bill \$1,411 if the Crown elected to proceed by indictment, which is a more serious matter. However, in order for Legal Aid Ontario to verify that the matter proceeded summarily or by indictment, it asks the lawyer to request copies of original court documents from the courthouse and provide them to Legal Aid Ontario.

Lawyers collecting and submitting court documents to Legal Aid Ontario is less reliable than Legal Aid Ontario's Audit and Compliance Unit (Compliance Unit) obtaining the documents directly from the courts. Legal Aid Ontario informed us that at the time of our audit it was in discussions, since April 2018, with the Ministry to explore a process that would give Legal Aid Ontario direct access to court documents in order to routinely

verify billings. To further increase efficiency in sharing court information, the Ministry could expand efforts to file copies of court documents in electronic form. Currently, many courthouses continue to maintain only paper copies.

### Verifying Hours Spent in Court Is Not Practical

Legal Aid Ontario does not routinely verify lawyers' billing for their time spent in criminal or family court because the current verification process is ineffective and costly. In order to verify the billings, Legal Aid Ontario would have to request court transcripts or a portion of the transcript, which include the start and end time of the proceeding. The length of proceeding is not tracked on court documents or any other format that is useful and accessible for Legal Aid Ontario. If the transcript substantiates the lawyer's billing, then Legal Aid Ontario pays for the cost of the transcripts. On the other hand, if Legal Aid Ontario found that the lawyer billed inappropriately, the lawyer would have to pay for the cost of the transcripts.

Fees for court transcripts are regulated by law in Ontario, ranging from \$4.30 per page for a normal request to \$8 per page for transcripts produced within 24 hours, and are paid to third-party transcriptionists. The cost of the transcripts could be expensive, so obtaining transcripts as billing verification is neither efficient nor economical.

In 2016/17, over 2,350 private-sector lawyers billed Legal Aid Ontario for court attendance time on over 27,500 invoices for more than 22,500 certificates, which is about 20% of all certificates in that fiscal year. Legal Aid Ontario could not verify these billings without obtaining the court transcript from third-party transcriptionists for each invoice unless the courts start to track the length of proceeding and also share this with Legal Aid Ontario.

### RECOMMENDATION 3

To better verify private-sector lawyers' billings are accurate for court cases, we recommend that the Ministry of the Attorney General:

- finalize the process that would give Legal Aid Ontario direct access to court documents; and
- take steps toward filing original copies of court documents electronically, and record and track proceeding time in its court information systems.

### MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) continues to work with Legal Aid Ontario (LAO) to finalize a process to give LAO direct access to court information in the Ontario Court of Justice (OCJ). It should be noted that the Ministry would need to secure the consent of the OCJ to implement this recommendation.

The Ministry is also in the early stages of exploring criminal process modernization, including an electronic documents strategy and enhancements to criminal justice technologies.

The Ministry will consider the recommendations about tracking duration of court proceedings and standardized electronic filing for future iterations of this work.

### \$100,000 of Irregular Billings Identified After Internal Review of Immigration and Refugee Board Data

In 2016, Legal Aid Ontario received data, as far back as 2013, from the Immigration and Refugee Board (Board) for the first time, to analyze the actual length of proceeding time. Legal Aid Ontario initiated this review once it became aware that the Immigration and Refugee Board tracked this data. Proceedings for refugee cases for which certificate lawyers can bill their attendance time do not fall under the administration of the Ministry because the Immigration and Refugee Board is a federal board. However, Legal Aid Ontario can audit the lawyers that bill it for work done at the Board. Unlike Ontario's courts, the Board's information system tracks how long proceedings last.

However, Legal Aid Ontario cannot directly compare individual lawyer billings to the proceeding data provided by the Board because it does not track the Board's file numbers, which would allow it to link its billing data to the Board's data. Instead, it analyzed the data to identify lawyers who potentially billed significantly more attendance time, between 2013 and 2016, than the average hearing time and targeted those lawyers for in-depth reviews.

At the time of our audit, Legal Aid Ontario's Compliance Unit had completed reviews of 11 lawyers. Those 11 reviews, among other billing errors, resulted in more than \$100,000 of recoveries. They also led to two lawyers being removed from rosters for knowingly billing for hearings that did not take place and billing for hearing time greater than the actual hearing. The Compliance Unit initiated or was working on reviewing another 24 lawyers at the end of our audit.

### Immigration and Refugee Board Data Inconsistent with Lawyers' Reported Attendance Time

We also reviewed the Board's data to analyze the actual length of proceeding time. We compared the Board's data to Legal Aid Ontario's billing data and were able to match only 226 of the over 17,000 certificates issued between 2014 and 2016, using available data such as lawyers' names and dates of hearings. A complete matching of data was not possible given Legal Aid Ontario does not use the same file numbers used by the Board (as discussed above). Our further analysis of the 226 certificates showed the following:

- 153, or 68%, of those where the lawyers' billed hours were greater than the hours reported by the Board, ranged from 15 minutes to 6.25 hours. Assuming these invoices were billed at an hourly rate of \$122.78, we estimated that the potential overbilling totals \$22,215.

- 10, or 4%, of them were under-billed, ranging from 16 minutes to three hours. We estimated that the potential under-billing for these cases totals \$1,260.
- 63, or 28%, of them were billed within 15 minutes' accuracy.

We discussed the discrepancies with staff from the Compliance Unit and they indicated that they would have to follow up and investigate further on each case to confirm the reasons for the discrepancies.

## RECOMMENDATION 4

To better verify private-sector lawyers' billings for immigration and refugee cases, we recommend that Legal Aid Ontario:

- require lawyers to submit Immigration and Refugee Board (Board) case file numbers when they bill and link them to its billing data for all cases; and
- investigate, when necessary, lawyers whose hourly billing does not agree to actual proceeding time reported by the Board, and take corrective action on billing irregularities.

## LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario (LAO) agrees. Work is under way to obtain case file numbers. LAO has been reviewing refugee hearing attendance time and taking action to recover on billing irregularities.

### 4.2.2 Follow-Ups on Billings Issues on Guaranteed Daily Rate Not Timely

The Guaranteed Daily Rate (Daily Rate) is a fixed fee of \$1,181 paid to lawyers each time they are required to fly to remote courts, or travel to a court by road that is more than 200 kilometres one way from the lawyer's office. Legal Aid Ontario noted instances of inaccurate billing from lawyers, but has not taken timely action to follow up on each case or strengthen its controls to prevent overbilling as detailed below.

### Legal Aid Ontario Has Paid Almost \$150,000 to One Lawyer Who Inappropriately Billed the Guaranteed Daily Rate

We noted one lawyer who billed, using the Daily Rate, almost \$150,000 from May 2013 to August 2016 even though the lawyer's office location was only five kilometres away from the court and therefore did not qualify under the Daily Rate's policy. Although the lawyer should be paid an hourly rate for the service provided, Legal Aid Ontario did not have records to determine how much the billing should have been. Legal Aid Ontario indicated that it discussed the issue with the lawyer in August 2016 and the lawyer stopped billing the Daily Rate since then. Legal Aid Ontario has not explored how much was overpaid and therefore should be recovered from the lawyer.

### Legal Aid Ontario Has Not Strengthened Its Control to Prevent Double Billings

The Daily Rate is approved and processed by Legal Aid Ontario's district office managers. However, certificate case accounts are processed at Legal Aid Ontario's centralized billing department, and it has no controls in place to ensure lawyers are not billing for the Daily Rate and billing for the same day on a certificate. This creates the opportunity to double bill.

Based on a tip of potential billing irregularities, and results from its routine audits on lawyer billings, Legal Aid Ontario started a review in January 2018 to identify double billings. While it has the ability to go back six years to audit billings, it has not done so routinely regarding the Daily Rate. As of July 2018, Legal Aid Ontario still had not finalized its review. In 2016/17, total payments for the Daily Rate were \$2 million billed by 87 lawyers.

In its preliminary review, Legal Aid Ontario also found other examples of overbillings:

- The lawyer, who inappropriately billed almost \$150,000 for the Daily Rate as mentioned above, used a P.O. box address instead of his/her primary address on file with the

Law Society of Ontario. The lawyer stopped billing Legal Aid Ontario after the case was identified.

- Other lawyers were billing Legal Aid Ontario for meals on flights when meals are included in the cost of airfare.

Legal Aid Ontario explained that a lack of clarity of its Daily Rate policy might have contributed to lawyers' possible inappropriate billings, but it could not confirm the causes until the review is finalized.

The purpose of the Daily Rate is to recognize the challenges of harsh northern weather conditions, risks of travel in small aircraft and unpredictable and extended workdays, and to provide incentive for lawyers, such as those based in Thunder Bay, to provide legal aid services to remote communities. The fee covers all legal aid services provided on that day including travel fees, but excluding flights.

## RECOMMENDATION 5

To help keep payments of the Guaranteed Daily Rate in accordance with applicable rules, we recommend that Legal Aid Ontario:

- finalize its review to determine the extent of inappropriate billings in a timely manner;
- implement effective controls preventing double billing and other inappropriate billing related to primary office locations and meals;
- clarify the Guaranteed Daily Rate policy and communicate it to private-sector lawyers and the importance of complying with the policy; and
- recover any overbilling from lawyers when identified.

## LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario will finalize the Guaranteed Daily Rate review, clarify the policy, strengthen controls and recover any overbilled funds.

### 4.2.3 Legal Aid Ontario Has Not Made Progress with Law Society to Audit Quality of Lawyers' Services

We noted that since its inception Legal Aid Ontario has not once directed or asked the Law Society of Ontario (Law Society) to perform quality assurance audits on any lawyers providing legal aid services. The majority of legal aid services are provided by private-sector lawyers, but Legal Aid Ontario has no mandate to govern the quality of service that they provide.

The *Legal Aid Services Act, 1998* (Act) requires Legal Aid Ontario to implement a quality assurance program to ensure that it is providing high-quality legal aid services in a cost-effective and efficient manner. The Act also states that Legal Aid Ontario may conduct quality assurance audits of providers of legal aid services but *not* of lawyers; it must instead direct the Law Society to perform quality assurance audits of lawyers. The Act also specifies that the Law Society of Ontario shall be reimbursed by Legal Aid Ontario for its costs of conducting quality assurance audits, which range between \$6,500 and \$12,000 each with a timeline of 12 to 15 months.

Although lawyers are required by their professional ethics and conduct standards to provide high-quality services, a risk still exists that legal aid services may not be of a consistently high quality. As well, legal aid clients are typically more vulnerable and may not be as aware that the level of service they receive is not adequate.

#### No Co-ordination between Legal Aid Ontario and the Law Society of Ontario on Quality Reviews

The Law Society and Legal Aid Ontario have had preliminary discussions about conducting quality assurance audits and the costs of potentially engaging in practice reviews. We noted that these discussions have been happening over many years but have never progressed into an agreed upon protocol. We also noted this issue in our 2011 audit on Legal Aid Ontario.

The most recent discussions between Legal Aid Ontario and the Law Society occurred in 2015 and 2017 in respect to establishing a formal Memorandum of Understanding to enable Legal Aid Ontario to make use of the Law Society's Practice Management Review program for the purpose of Legal Aid Ontario's quality assurance audits of lawyers who provide legal aid services. However, no protocol was agreed upon at the time of this audit.

Although the Law Society conducts its own practice reviews of lawyers, Legal Aid Ontario does not provide input as to which specific lawyers to review. The Law Society uses its own criteria for selecting lawyers to audit. The Law Society audits lawyers for compliance in areas such as time management, file management and client service, financial management, communications, technology and equipment, professional management, and personal management. Although the Law Society Act prohibits the Law Society from sharing audit results with Legal Aid Ontario, nothing prohibits them from working together to identify the lawyers who should be considered for audit.

In January 2018, the Law Society issued a *Report of the Legal Aid Working Group: An Abiding Interest*. The mandate of the working group, among other things, was to identify opportunities to support and enhance the delivery of strong and sustainable legal aid services, and to identify opportunities for engagement with Legal Aid Ontario. The report emphasized that there are many compelling reasons for the Law Society to be more involved in legal aid, with an aim to build stronger relationships between the two organizations, since they have a mutual interest in facilitating access to justice. The report also stated that as a regulator, the Law Society should focus on quality assurance regarding legal aid services provided by licensees and consider whether rule changes should be undertaken. However, at the time of this audit, no changes or decisions were made regarding a quality assurance program of private bar lawyers who specifically provide legal aid services.



Legal Aid Ontario does, however, have a process in place to refer lawyers to the Law Society if it becomes aware of serious matters such as potential professional misconduct. Legal Aid Ontario liaises with the Law Society on disciplinary actions against lawyers, initiated by the Law Society as the result of a referral from Legal Aid Ontario. In 2016/17, Legal Aid Ontario referred seven lawyers to the Law Society for service- and conduct-related issues.

Ontario has about 50,000 lawyers. The Law Society completes about 500 practice management reviews per year. In addition to those reviews, the Law Society receives and responds to complaints from the public about lawyers and paralegals and investigates those that are warranted. In 2016, it received over 6,300 complaints, of which about 2,000 warranted a formal investigation. Of those, 50% were related to service issues such as fail to communicate or fail to serve client.

### Quality of Legal Advice by Private Lawyers Not Measured for Certificate Cases and Duty Counsel

As discussed above, none of the private-sector lawyers who work for Legal Aid Ontario have had quality assurance audits performed on the work they provide. During 2016/17, 4,196 private-sector lawyers billed for legal aid certificate and duty counsel services. (For a discussion of certificates and duty counsel, see **Section 2.2** for the major types of legal aid services provided.) Most of the legal aid certificate program, which totalled \$254 million in 2016/17 for 112,000 certificates, is carried out by private-sector lawyers. Some Legal Aid Ontario staff lawyers deliver services for clients that have received a legal aid certificate, but this equates to about 9% of the \$254 million.

As of April 1, 2018, Legal Aid Ontario employed 196 staff lawyers in duty counsel offices within Ontario's courts. Legal Aid Ontario also hires private-sector duty counsel lawyers on a per diem basis to cover staff vacancies or vacation time, or during busy periods in the courts. Legal Aid Ontario has a performance evaluation process in place for

its in-house staff lawyers. However, 34% (217,205 of 643,975 in 2017/18) of the duty counsel services that were provided by private-sector lawyers lacked formal quality assurance procedures.

### Legal Aid Ontario Has Begun Peer Reviews in Refugee and Immigration Cases

Legal Aid Ontario conducts in-house peer reviews on complex refugee and immigration cases, but not on standard certificate cases. It recently started peer reviews of lawyers who handle refugee and immigration cases because Legal Aid Ontario became aware of quality concerns of certain lawyers; however, it has not conducted regular and proactive peer reviews in the past.

### Mixed Client Satisfaction Rates Based on Legal Aid Ontario Surveys

Since 2011, Legal Aid Ontario has surveyed its clients to measure client satisfaction. In 2016, 93% of clients responded in Legal Aid Ontario's in-person survey that they were satisfied with the overall quality of service from the lawyer. Six percent responded negatively, and 1% was neutral. However, web-survey results were significantly different. Only 43% of clients responded that they were satisfied with the overall quality of service from the lawyer, while 47% responded negatively. Ten percent were neutral. Legal Aid Ontario indicated that there are many reasons why a web survey might show a lower satisfaction rate, such as clients completing the web survey may feel they can be more honest completing a survey in private rather than in person with the lawyers they are rating.

### Complaints about Quality of Service by Lawyers Are Increasing; More Removed from Rosters

In what might be a red flag of a rising problem in the quality of services provided by lawyers, the number of complaints against lawyers to Legal Aid Ontario was up 30% in 2016/17 to 211 from 162 complaints in 2012/13. The majority of complaints,

72 out of 211, relate to service issues, as shown in **Figure 14**.

Legal Aid Ontario appears to be acting on problems regarding lawyers' services. **Figure 15** indicates that the number of private-sector lawyers removed from Legal Aid Ontario's rosters increased from two in 2012/13 to 29 in 2015/16 and 20 in 2016/17.

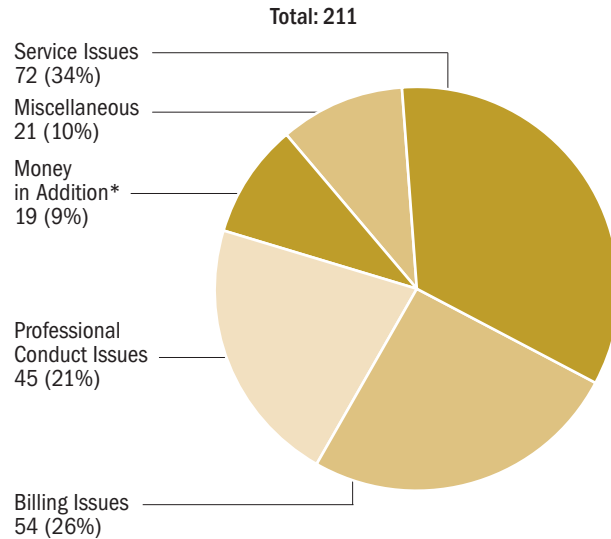
The *Legal Aid Services Act, 1998* allows Legal Aid Ontario to remove a lawyer from a roster if he or she fails to meet standards, or if there is reasonable cause, such as being found guilty of professional misconduct or found guilty of a criminal offence.

Of the 20 lawyers removed from the roster in 2016/17, two were not meeting Legal Aid Ontario standards, three incurred criminal charges, four had issues that originated from the Law Society, and 11 were removed for reasonable cause. For example, reasons cited for reasonable cause included bad faith in interactions with Legal Aid Ontario, crossing professional boundaries with a client, or findings of inappropriate behaviour by a court.

The removals were in response to complaints, rather than Legal Aid Ontario determining quality of services through a regular review of lawyers.

**Figure 14: Categories of Complaints Relating to Lawyers, 2016/17**

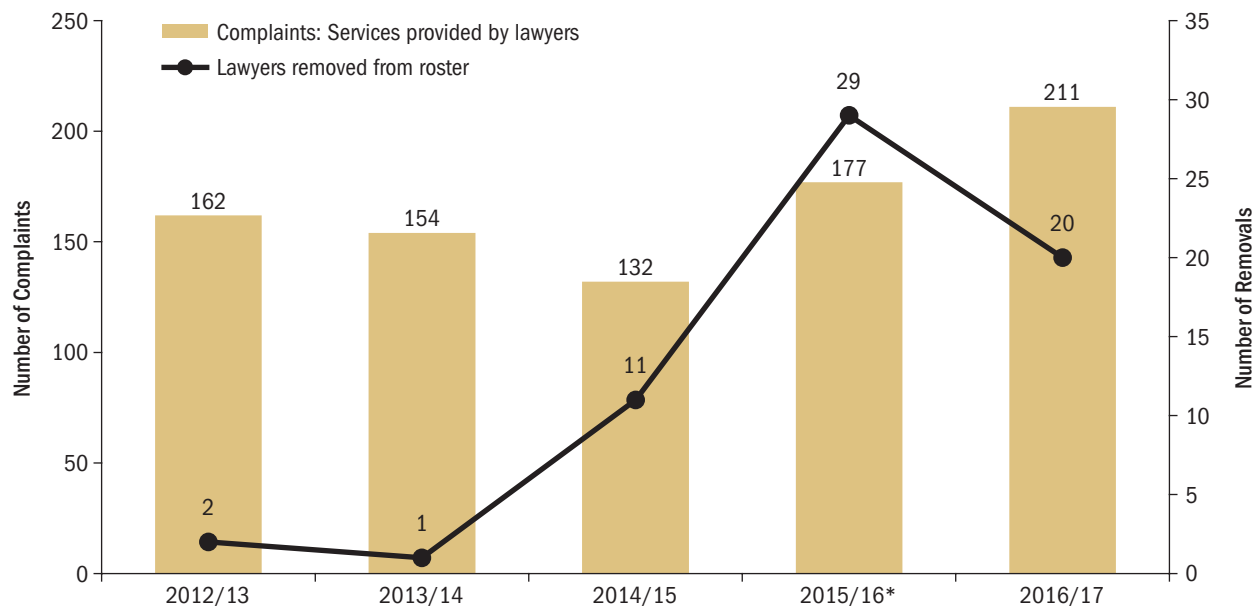
Source of data: Legal Aid Ontario



\* Lawyers may not accept any money from clients in addition to the amount paid under the certificate.

**Figure 15: Number of Complaints Received Regarding Services Provided by Lawyers and Number of Lawyers Removed from Legal Aid Ontario Roster, 2012/13–2016/17**

Source of data: Legal Aid Ontario



\* In 2015/16, 29 lawyers were removed from the roster; 13 of their files originated in 2014/15 but were not finalized until 2015/16.

## RECOMMENDATION 6

To oversee lawyers or examine the feasibility of developing and implementing a quality assurance program on its own, we recommend that Legal Aid Ontario work with the Law Society of Ontario to create a quality assurance audit program, including after-case peer review, to oversee lawyers or seek changes to legislation that would allow it to develop and implement a quality assurance program by itself.

## LEGAL AID ONTARIO RESPONSE

Although Legal Aid Ontario (LAO) does monitor lawyers' work and billings, LAO will explore with the Law Society of Ontario the feasibility of a quality service review that meets the needs of LAO. If not feasible, LAO will seek changes to the regulation.

### 4.2.4 Private-Sector Lawyers Providing Services without Meeting All Legal Aid Ontario Professional Requirements

#### Lawyers Who Fail to Confirm Continuous Learning Requirements Face No Follow-Up or Consequences

During the 2016 calendar year, 1,959 of 5,423 private-sector lawyers on Legal Aid Ontario rosters did not provide their annual self-report. Legal Aid Ontario requires that all roster lawyers confirm annually that they have met the experience and continuous learning requirements as a mechanism to ensure competence. Requirements vary by roster, but all include six hours of legal education and completion of a minimum number of case files in the previous year.

Of the 1,959 lawyers who did not self-report, 395 billed Legal Aid Ontario \$7.7 million during the period from April 1, 2017, to March 28, 2018, while the remaining 1,564 likely did not provide a self-report because they were not actively providing legal aid services and they had no billings. Of the

395 lawyers, 329 did not submit a self-report for the following 2017 calendar year as well. However, Legal Aid Ontario does not impose consequences on lawyers who fail to submit a self-report.

Legal Aid Ontario's online billing portal automatically reminds lawyers to complete their self-report upon logging in, until they have submitted it. Other than this, Legal Aid Ontario does not routinely follow up to ensure that lawyers comply each year. There is no administrative consequence for failing to submit an annual self-report.

#### Legal Aid Ontario Does Not Follow Up On Conditionally Approved Lawyers

New lawyers or lawyers who are new to a particular area of law who do not meet the experience requirements to be on a Legal Aid Ontario roster in their area of law can be conditionally admitted to a roster if they agree to meet the minimum experience level within two years. We found that as of February 2018, 1,064 of the 5,059 private-sector lawyers on rosters at that time had a conditional status on at least one roster for more than two years and 800 of them had been conditional for more than three years.

A conditionally approved lawyer must attend training and be mentored. Conditional status lawyers are paid the lowest hourly rate at \$109.14. Top rate lawyers bill \$136.43 an hour, if they meet the requirements of more than 10 years' experience in total and more than four years of experience in either criminal law or civil law.

Based on our review, we noted that although these 1,064 lawyers have billed Legal Aid Ontario only minimal amounts (an average of less than \$1,500 per lawyer in 2017/18) relating to the area of law that they were conditional on, Legal Aid Ontario does not regularly follow up on how long the lawyers have been conditional. Although conditionally approved lawyers are allowed to accept certificates, their conditional status means that they have not satisfied all of Legal Aid Ontario's requirements.

## RECOMMENDATION 7

To help private-sector lawyers meet Legal Aid Ontario's professional requirements, we recommend that Legal Aid Ontario:

- follow up promptly with lawyers who are on conditional status for more than two years and those who do not annually self-report on the continuous learning requirements; and
- establish cost-effective consequences for lawyer who do not provide an annual self report on their continuous learning.

## LEGAL AID ONTARIO AND MINISTRY RESPONSE

Legal Aid Ontario (LAO) will implement cost-effective processes for follow-up with lawyers on the conditional panel and those who do not self-report.

LAO and the Ministry of the Attorney General believe that private-sector lawyers who do not meet LAO's professional requirements should no longer be entitled to receive legal aid certificates and LAO will work with the Ministry to streamline the process to effectively and efficiently manage its private lawyer panels.

### 4.3 Community Legal Clinics

#### 4.3.1 Ontario Disability Support Program (ODSP) Application and Appeal Cases Comprise 44% of Community Legal Clinics' Workload

##### Working with the Ministry of Children, Community and Social Services (MCCSS) to Reduce ODSP Appeals Presents an Opportunity to Reduce Community Legal Clinics' Usage and Costs

In 2016/17, community legal clinics (clinics) handled 9,435 ODSP application and appeal cases, which accounted for 44% (9,435 of 21,289) of their caseload, as shown in **Figure 16**. Legal Aid Ontario estimated that the 9,435 ODSP cases had an approximate cost of \$21 million, or about \$2,200

per case. This is about 24% of Legal Aid Ontario's clinic budget.

Due to the recent initiatives, as discussed later in this section, taken by the MCCSS and the Tribunal to streamline their processes, ODSP cases as a percentage of the total caseload handled by clinics decreased from 53% in 2014/15 to 44% in 2016/17 (the latest year for which data is available). Nevertheless, ODSP cases, including assistance in applications and appeals, are still the most common type of cases that clinics handle.

Two of the four clinics with which we had a more in-depth discussion, plus one specialty clinic, indicated that the significant resources spent on ODSP cases prevent them from providing services in other areas, such as consumer, debtor and creditor law matters, wills and powers of attorney, tenant issues, and immigration and refugee matters. Also, 78% of respondents to our survey of clinics indicated that if ODSP case volume was reduced, they would be able to serve other needs such as employment law, human rights matters, workers' compensation, housing law matters, issues that impact senior citizens, and expanding the service areas that they already serve.

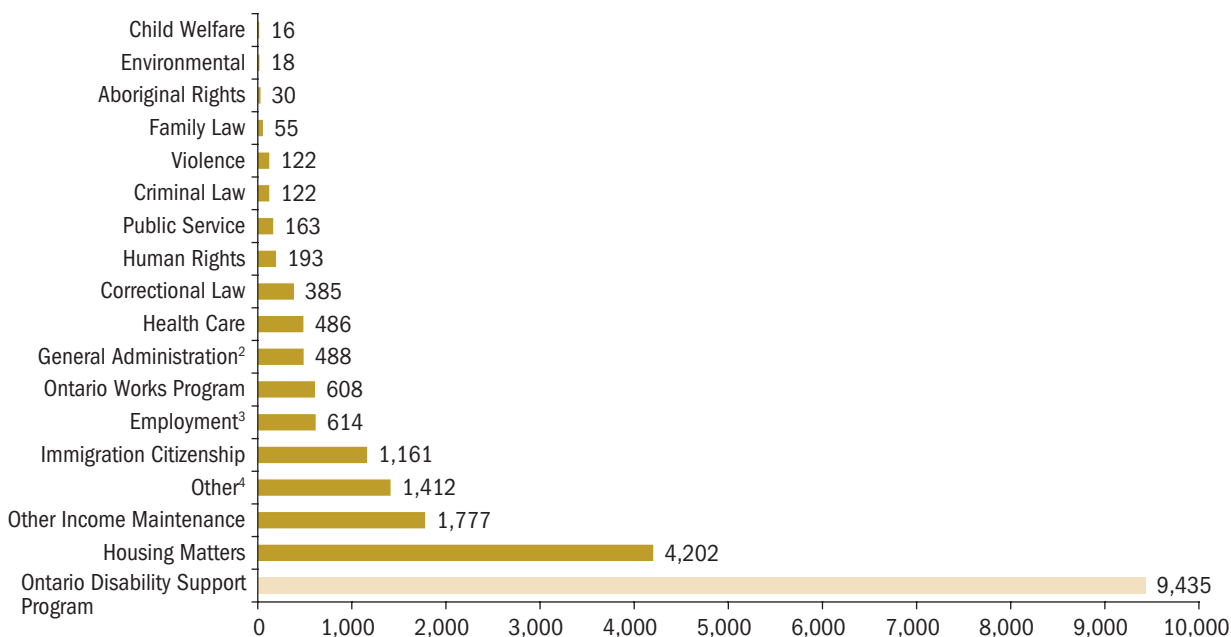
Not all ODSP cases went to the Tribunal, and Legal Aid Ontario did not know how many of these cases handled by the clinics eventually went to the Tribunal. Some clinics might have collected this data, but they are not required to report the number of appeals to Legal Aid Ontario until the information system (discussed in **Section 4.3.3**) is fully functional. This information is useful because it allows Legal Aid Ontario and clinics to understand how much of clinics' resources were spent on which stage of ODSP cases and to identify areas for further improvement.

#### Ministry of the Attorney General Funds Applicants and Tribunal in the Appeal Process

The Ministry of Children, Community and Social Services (MCCSS) is responsible for ODSP, which provides financial assistance and benefits for

**Figure 16: Breakdown of Clinic Cases by Type, 2016/17<sup>1</sup>**

Source of data: Legal Aid Ontario



1. Data excludes Student Legal Aid Societies Services. 2016/17 is the most recent data available.
2. General administration matters may include assistance with obtaining social insurance number, birth certificate or name change.
3. Employment matters may include employment standards issues, wrongful dismissals, or occupational health.
4. Other matters may include consumer protection, debt, or estates and wills.

individuals with disabilities. ODSP applications are evaluated based on financial eligibility criteria and whether an individual meets the program's definition of a person with a disability or other criteria.

Applicants can apply online by themselves or in person with the help of an ODSP caseworker. The applications are detailed and require the applicant to provide financial information and health-care professionals to provide complete medical records and other documents. If denied benefits either on financial grounds or for not meeting the definition of a person with a disability, applicants can appeal first in writing, which is called an internal review, and if unsuccessful, then to the Social Benefits Tribunal (Tribunal). Clinics provide assistance and representation with these appeals. Some clinics also provide guidance on applications before they are submitted to MCCSS.

The Ministry of the Attorney General, through funds transferred by Legal Aid Ontario to the clinics, funds the clinics and also funds the Tribunal.

Cost effectiveness could be achieved if the number of ODSP appeals was decreased so that the Ministry of the Attorney General's resources are not used as frequently to fund the appeal process. The large number of ODSP appeals has been a longstanding issue, which our Office also identified in our audit of ODSP in our *2009 Annual Report*. Under the *Ontario Disability Support Program Act, 1997*, an applicant has the right to appeal the decision of MCCSS to the Tribunal.

### Various Reasons for Overruling MCCSS's Decisions on ODSP Cases

We noted that 73% of all ODSP appeal cases heard at the Tribunal in 2017/18 ruled against MCCSS's decisions (**Figure 17**). The high overturn rate of appeals is partly due to the fact that the Tribunal often received more medical information at the time of the appeals than was submitted to MCCSS prior to the appeals. However, the Tribunal does

**Figure 17: Number of Ontario Disability Support Program Appeal Cases Heard at the Social Benefits Tribunal, and Their Overturn Rates, 2013/14–2017/18**

Source of data: Social Benefits Tribunal

	# of Ontario Disability Support Program Appeal Decisions <sup>1,2</sup>	Overturn Rate (%) <sup>2</sup>
2013/14	7,227	66
2014/15	7,617	67
2015/16	6,369	66
2016/17	6,160	72
2017/18	4,784	73

1. These appeals include other cases that were not represented by the clinics.
2. Includes only cases where the Social Benefits Tribunal granted or denied an appeal, where the applicant was present. Cases that were resolved for other reasons, or denied because the appellant did not show up at a hearing, are not included.

not formally track how often this occurs and could not provide an estimate.

Another reason why many appeals are overturned is because the Tribunal considers the applicants' oral testimony as formal evidence, but MCCSS does not. An internal review of the Tribunal in 2016 indicated that the then Ministry of Community and Social Services process is paper-based whereas at a Tribunal hearing, applicants can provide oral testimony in person and elaborate on evidence in person. Tribunal members indicated that additional information regarding the severity of a disability can be gleaned from in-person testimony. We noted that Section 15 of the *Statutory Powers Procedures Act* (Act) gives the Tribunal the authority to consider any oral testimony relevant to the subject matter of the proceeding, as evidence. (This Act provides the general framework for the conduct of hearings before Ontario's administrative tribunals.) However, the Tribunal does not formally track how often oral testimony contributed to an overturned MCCSS decision. Although all Tribunal decisions are made public, it is not always reported whether oral testimony was a contributing factor to the overturned MCCSS decisions.

Further, we obtained the overturn rates by the five geographical regions (Central, North, East, South and West) and noted that, for 2017/18, the overturn rates ranged from a low of 67% in the Central region to a high of 84% in the North region. The Tribunal could not explain the regional variation, but indicated that each decision is unique because they were made on a case-by-case basis.

### Ministry of Children, Community and Social Services and the Tribunal Collaborate to Streamline Processes

The Ministry of Children, Community and Social Services (MCCSS) has collaborated with the Tribunal to streamline the adjudication process at MCCSS as well as to improve the appeal process at the Tribunal. For example, the Tribunal launched a Medical Review Early Resolution Pilot project in November 2015, which MCCSS also participates in. The purpose of the project is to review appeals, and to clarify, exchange and share information, with the goal of reaching a resolution as soon as possible. MCCSS and the Tribunal also started to exchange data related to ODSP appeals electronically to increase efficiencies between the two organizations.

We noted that MCCSS's overturn rate at its own Internal Review process has increased from 7% in 2014/15 to 11% in 2017/18, meaning more cases were resolved prior to a formal hearing at the Tribunal. Overturn rates due to additional medical information submitted prior to the Tribunal hearing dates has also increased, from 24% in 2014/15 to 37% in 2017/18, further indicating that more cases were resolved prior to a formal hearing at the Tribunal.

At the Tribunal, we also noted that the number of appeals decreased during the same time period from 7,617 in 2014/15 to 4,784 in 2017/18 (**Figure 17**), or by 37%, because more cases were resolved at MCCSS.

## RECOMMENDATION 8

To help make better use of community legal clinics' resources, we recommend that the Ministry of the Attorney General, on behalf of Legal Aid Ontario and the Social Benefits Tribunal, continue to work with the Ministry of Children, Community and Social Services to further reduce the number of Ontario Disability Support Program cases that proceed to an appeal process.

## MINISTRY RESPONSE

The Ministry of the Attorney General agrees with this recommendation and will work with the Social Justice Tribunals Ontario, the Social Benefits Tribunal and the Ministry of Children, Community and Social Services to address this issue.

## RECOMMENDATION 9

To better understand how resources are being used by community legal clinics (clinics) on Ontario Disability Support Program cases, we recommend Legal Aid Ontario work with clinics to formally record how much of clinics' resources are used to assist with applications versus appeals.

## LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario (LAO) will work with clinics to record the type of work done on Ontario Disability Support Program cases in order to better assist the government in making underlying changes as per **Recommendation 8**. The new clinic information management system allows LAO and clinics to track resources to different types of cases.

### 4.3.2 IT System Almost \$4 Million over Budget, Three Years Late and Increased Administrative Work for Clinics

Legal Aid Ontario's Clinic Information Management System (System) was in place in 2017 at a total cost of \$7 million, but it was three years later than planned and cost \$3.75 million (115%) more than the original budget of \$3.25 million. We found that Legal Aid Ontario's request for proposals for the System, although competitive, did not include an evaluation of the vendor's financial viability. Given the strategic importance of the new system for all of Ontario's community legal clinics, an evaluation of financial viability might have avoided the cost overruns, project delays, and difficulties experienced in completing the System.

In early 2013, Legal Aid Ontario began accepting vendor proposals for a new case management system for community legal clinics. The new electronic system was to replace the previous system used by clinics since 1999 to track client information, case information, and staff hours worked. At the time, Legal Aid Ontario expected the System to be fully operational in April 2014; however, the winning vendor had not started to develop the System until June 2014 and the System was not completed until September 2017. At the time of this audit, the System still does not work as intended, as discussed in **Section 4.3.3**.

Legal Aid Ontario indicated that the primary cause of the delay and budget overruns was that the vendor was late in starting the project, encountered financial difficulties and was unable to complete the project before declaring bankruptcy in February 2017. Legal Aid Ontario subsequently had to hire the vendor's former employees on contract and have its own internal IT department manage the project.

Legal Aid Ontario advised us that at the time of the request for proposals, the Ontario Public Sector Procurement Directive and Legal Aid Ontario's internal procurement process did not require a review of the financial viability of a potential

vendor. We noted several examples of other jurisdictions recommending the assessment of financial viability for complex procurements, such as:

- The Canadian federal government's supply manual requires that all vendors must have the financial capability to fulfill the contract, and it is the responsibility of the contracting party to verify this capability.
- In British Columbia, a provincial-wide guide for the request for proposals process lists financial viability as a potential criterion in evaluating a vendor's capability to deliver the contract.
- The Australian Department of Finance advises that complex, high-value, and relatively important projects, such as centralized information technology, should include consideration of the need for a financial viability assessment.

### RECOMMENDATION 10

To help future projects be reliably sourced and avoid vendors failing to complete projects, we recommend that Legal Aid Ontario implement a policy to evaluate vendor financial viability for critical procurements.

### LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario's procurement processes and policies are being updated and will be implemented to include a financial viability test.

#### 4.3.3 Clinics Demanding Improvements to Burdensome Information Management System

All four clinics that we had a more in-depth discussions with and the representative from the Association of Community Legal Clinics of Ontario indicated that the new Clinic Information Management System (System) has negatively affected clinics' operations. Some common complaints include:

- excessive time is spent on loading and saving information into the System;
- the System is not user-friendly and does not flow logically;
- client intake takes far longer to input than performing actual case/legal work for the client, leading to workarounds such as taking client information by hand and inputting the data later to the System, creating duplication of work;
- some features, such as conflict-of-interest checks, do not work; and
- reports must be custom built with no guidance on how to do so.

The four clinics also indicated that issues with the new System have put a strain on their resources. One clinic closes its office one morning each week so that staff can catch up on data entry. Staff at another clinic indicated that they completed data entry after hours. A third clinic hired an additional employee dedicated to managing issues related to the new System after staff threatened to quit because of the increased workload. The fourth clinic cited similar problems and frustration.

Based on our survey of community legal clinics that we did not have in-depth discussions with, we noted similar issues as follows:

- 80% of clinic respondents indicated that the System is slow and requires excessive time to load and save information.
- 82% indicated that the System is not user-friendly and does not flow logically from one screen to another.
- 69% indicated that client intake takes longer than performing actual case or legal work for the client.
- to input data into the System, 22% closed their doors during office hours, 33% asked staff to work after hours, and 27% hired additional staff to assist with inputting data.
- 58% of clinic respondents said that they somewhat disagreed and strongly disagreed that the System is achieving its intended purpose, which is to better capture and report on



client and case information; 24% indicated that they somewhat agreed that the System is achieving its intended purpose, while 18% were neutral.

- 91% of clinic respondents reported that the implementation of the System created an administrative burden at the clinic, while 9% indicated that it has minimal to no impact on the clinic's daily operations. However, 22% of respondents indicated that in addition to creating an administrative burden, the System did provide more data for better decision-making.

Legal Aid Ontario responded that it was working on improving the System based on the formal feedback it has received from the clinics that raised similar concerns as mentioned above. Legal Aid Ontario, together with representatives from some clinics, created a Clinic Information Management System Working Group. It consists of clinics' Executive Directors and their staff and Legal Aid Ontario's IT department and is working on prioritizing specific IT requirements. Legal Aid Ontario also hired a third-party vendor to assist its IT department with developing navigation changes and other enhancements to the flow of the System as requested by clinics. The most recent changes were made in May 2018.

### RECOMMENDATION 11

To allow better use of the community legal clinics' time for delivering services, and to help ensure the significant investment in the new Clinic Information Management System provides value, we recommend that Legal Aid Ontario continue to address the complaints received from the clinics and resolve the issues identified.

### LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario has made significant improvements to the Clinic Information Management System since it was rolled out and remains committed to work with clinics to further enhance the system.

### 4.3.4 Legal Aid Ontario So Far Unable to Reduce Funding Gaps Between Clinics

The majority of clinic funding is based on historical amounts—meaning that funding is primarily based on prior years' funding—rather than equitably distributed based on local needs in each community. As a result, average funding per low-income person varies significantly between clinics.

In 2016/17, total funding to clinics was \$87.1 million, of which \$80.9 million was to clinics for direct client service delivery. Of the \$80.9 million, \$71.6 million was historical; \$5.4 million was financial eligibility funding (discussed in **Section 4.1.2**); and the remaining \$3.9 million was specified funding to clinics that had the fewest resources per low-income person.

Legal Aid Ontario committed to increase funding to clinics that had the fewest resources per low-income person by allocating them a total of \$10.2 million for the three years between 2014/15 and 2016/17 to help close the funding gaps, with a commitment of \$3.9 million permanent annual funding thereafter.

However, that was only about 5% of the total annual funding to clinics and the slight adjustment did not reduce the funding gaps between clinics and regions. For example, in 2016/17, the 10 top-funded clinics received an average of \$75 per low-income person while the 10 lowest-funded clinics averaged just \$14, resulting in a \$61 gap. The gap between the top and bottom 10 increased by 19%—from \$51 in 2013/14 to \$61 in 2016/17.

Average funding to clinics per low-income person in 2016/17 also differed among the four regions as follows:

- Northern: \$61;
- Central and Eastern: \$43;
- Greater Toronto Area: \$29; and
- Southwestern: \$28.

The average funding to clinics was \$36 per low-income person.

In 2016/17, the highest-funded clinic in Ontario received \$145 per low-income person in its catchment area, compared with \$11 per low-income

person for the lowest-funded clinic. The most well-funded clinic received \$145 per low-income person in 2016/17, a 14% increase from \$127 in 2013/14. During this time, the clinic's funding increased 6% while the population of the catchment area considered low-income actually fell by 7%.

Mapping where low-income people live is considered by experts in legal aid sector as an effective proxy indicator for identifying clinic service needs, and so Legal Aid Ontario used this measure to increase funding to clinics that had the fewest resources per low-income person.

In addition, Legal Aid Ontario started in April 2018 to collect demographic data, such as race, for the legal aid certificate program to understand the users of the program and better plan for their needs (see **Section 4.1.3**). It plans to collect similar data from clinics once the issues of the information system are resolved as discussed in **Section 4.3.3**.

## RECOMMENDATION 12

To better address local needs and priorities equitably, we recommend that Legal Aid Ontario, together with community legal clinics, collect complete, accurate and current demographic data on which to base its decisions about allocating funding to clinics.

## LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario will work with community legal clinics (clinics) to collect complete, accurate and current demographic data, and other relevant data about clinic clients and communities, to inform funding allocations to clinics.

### 4.3.5 Clinics Received Increased Funding; Provided More Advice, but Handled Fewer Cases

Clinics report providing services to clients under three main categories: case, brief service, and advice. A case is the most resource intensive, while advice is the least resource intensive (described

in **Figure 18**). While Legal Aid Ontario increased funding to community legal aid clinics, we found that the clinics were providing more advice but handling fewer cases.

In the four years from 2013/14 to 2016/17, Legal Aid Ontario's funding to clinics increased by \$12.7 million (or 19%) from \$68.2 million to \$80.9 million. The majority of the funding increase was provided by financial eligibility funding (discussed in **Section 4.1.2**). We noted that, however, in the same period while the number of advice assists increased by 17%, the number of cases fell by 5%. The number of brief services increased slightly by 1%. See **Figure 18** for the trend analysis.

We also noted the following examples:

- One clinic received 24% more base funding in 2016/17 than it did in 2013/14. However, the number of case files decreased by 15%.
- Another clinic received 38% more base funding in 2016/17 than it did in 2013/14; however, the number of case files decreased by 34%.

We recognize that all clinic cases are counted the same, whether it is a case where a single client is represented in a matter, or the case is a "test case" that can have broader systemic impact on low-income people across the province. A test case is a case that sets a precedent for other cases involving the same question of law. The latter would include significantly more time and effort. However, at the time of the audit, Legal Aid Ontario was not able to provide a breakdown of cases by types or complexity, or the number of hours clinics spend on the average case.

### Tracking of Clinics' Performance Outcomes Significantly Delayed

Legal community clinics measure and report on outputs, such as number of cases, number of public education sessions held, and number of referrals. However, Legal Aid Ontario does not have aggregated data on whether these outputs are achieving the desired program outcomes for clinic

**Figure 18: Community Legal Clinics<sup>1</sup> – Number of Assists Provided by Service Type, 2013/14 and 2016/17**

Source of data: Legal Aid Ontario

Service Type	Average Time Spent	# of Assists Provided		
		2013/14	2016/17	% Change
<b>Case</b> – Any group of services related to a client's matter where the clinic is providing representation before the courts, tribunals or boards	11–23 hours <sup>2</sup>	22,316	21,289	(5)
<b>Brief Service</b> – Assists with minimal advocacy and no representation	1/2 hour up to 2 hours	41,053	41,423	1
<b>Advice</b> – Advice with no advocacy	1/2 hour or less	111,162	129,749	17

1. Student Legal Aid Societies Services are not included in this data.

2. Amount of time spent per case was based on survey results. Thirty-eight percent of survey respondents estimated that an average case took between 11 and 23 hours. Twenty-five percent of respondents estimated 24 hours or more.

law matters, such as each clinics' success rates of appeals of disability income cases (our data on Ontario Disability Support Program appeals came from the Social Benefits Tribunal) and landlord-tenant disputes. This issue was also identified in our 2011 audit on Legal Aid Ontario.

Legal Aid Ontario indicated that it plans to address this issue through further development of the Clinic Information Management System, discussed in **Section 4.3.3**. Legal Aid Ontario developed its first draft of proposed performance measures in early 2013, targeting December 2015 for reporting various performance measures through the Clinic Information Management System. At the time of this audit, however, the performance data required to produce these measures was not yet being reported by clinics.

### RECOMMENDATION 13

To help keep funding to community legal clinics (clinics) used for the intended services and to achieve the intended outcome, we recommend that Legal Aid Ontario work with clinics to:

- finalize the reporting of performance measures that are used to evaluate the effectiveness of clinics; and
- monitor actual outcomes and address areas of underperformance in a timely manner.

### LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario (LAO) will continue to work with clinics to implement performance measures and outcome reporting so LAO and clinic boards can support and evaluate clinic effectiveness in serving their communities. Results will be monitored and data will be used to address areas of underperformance in a timely way.

#### 4.3.6 Comprehensive Review of Community Legal Clinics Model Not Done Over the Last Decade

At the time of our audit, Legal Aid Ontario, together with the clinics, was developing a plan for clinics, to renew its accountability and governance framework with individual clinics and with the clinic system. However, it does not plan to conduct a review of the clinic model, which has not been done over the last decade.

Clinics are required by the *Legal Aid Services Act, 1998* (Act) to be independent community organizations. They are structured as a corporation without share capital that provide legal aid services to the low-income community they serve. The legislation also established that a clinic's board of directors determines the legal needs of the individuals and communities served. Independence from Legal Aid Ontario and the government was determined to

be essential because the government is often the opposing party in litigation involving clinic clients.

### Historical Tension between Legal Aid Ontario and Community Legal Clinics

In our 2011 audit of Legal Aid Ontario, we noted significant tension between it and the community legal clinics. At that time, Legal Aid Ontario's efforts to extract greater efficiencies from community legal clinics had caused relationships to deteriorate. Although the Act technically gives Legal Aid Ontario significant authority and control over all areas of the clinics' operations and expenditures, this conflicted with the clinics' culture of independence and their individual board of director governance structure. Clinics have resisted Legal Aid Ontario's attempts to impose measurement criteria because this is time-consuming and tends to take away from the provision of services.

Although clinics are legally independent from Legal Aid Ontario, they are dependent on it for virtually all their funding and support, including information technology. For example, Legal Aid Ontario approves the clinics' client financial eligibility threshold, budgets, salaries, rent, and supporting requirement.

At the time of our audit, the relationship between Legal Aid Ontario and community legal clinics has improved overall since our 2011 audit. However, all four clinics that we had a more in-depth discussion with expressed concerns that clinic law services are not given enough attention and that Legal Aid Ontario addressed clinics' problems on a reactive basis only. Some of the concerns clinics raised include the following:

- The annual funding application is an onerous and resource-intensive process resulting in little benefit. Some suggested that the process should change to a multi-year (three-year) funding exercise. Seventy-nine percent of our survey respondents said that, in their opinion, the frequency of annual funding applications was not appropriate, while 11% said it was

appropriate and 10% were neutral; 58% of survey respondents indicated that every three years would be more appropriate.

- The approved budget from Legal Aid Ontario is not received by clinics until several months into the fiscal year (usually around July), making it difficult for clinics to manage their spending and proceed with planned expenditures. Based on our survey, 81% of respondents indicated that their 2017/18 budget was approved between July and September 2017, already the second quarter of that fiscal year; 17% indicated that it was approved between October and December 2017, the third quarter of that fiscal year; and only 2% said their budget was approved between April to June 2017, the first quarter of the year. Thirty-eight percent of respondents said the late approvals negatively impacted their ability to manage and budget their spending.
- Some of the clinics' contracts for leasing space are ending and Legal Aid Ontario had no commitment to address the increased costs that the clinics anticipated. Of the clinics in our survey who were expecting a lease increase in the next two years, 73% indicated that Legal Aid Ontario had not committed to address those expected increased lease expenses at the time of the survey.

### Community-Based Clinics in Other Jurisdictions

Ontario is the only Canadian province that provides clinic law services through independent community-based clinics. Other provinces deliver similar clinic services through their provincial legal aid programs. See **Appendix 5** for an inter-jurisdictional comparison.

Most jurisdictions in Australia have community-based clinics similar to those in Ontario. Several states have done comprehensive reviews of their clinic system to ensure they are meeting client need to the greatest extent possible within fixed

budgets. For example, South Australia's Community Legal Service Review Project projected demand for both five- and 10-year time horizons, using local government area population projection data to estimate the projected population growth for each postal code, age range and gender combination. It also considered where the low-income population resides. Specific clinic matters by type (such as consumer complaints and tenancy issues) are predicted by region in order to predict the need for each clinic.

### RECOMMENDATION 14

To help community legal clinics achieve their legislative mandate and intended objectives cost-effectively, we recommend that the Ministry of the Attorney General work with Legal Aid Ontario to conduct a comprehensive review of the service delivery model and identify areas for improvement.

### LEGAL AID ONTARIO AND MINISTRY RESPONSE

With Legal Aid Ontario's (LAO's) reorganization, effective January 2019, one Vice President will have accountability for clinic oversight and will review (with input from clinics) the service model to identify areas for improvement and to review the foundational documents that define the LAO-clinic relationship.

The Ministry of the Attorney General agrees with the recommendation and will conduct, in consultation with LAO, a comprehensive review of the legislation and the service delivery model, and identify areas for improvement of the community legal clinics.

## 4.4 Duty Counsel

### Eligibility Test Not Done for 95% of Clients in Criminal Cases

In 2016/17, duty counsel assisted 600,570 individuals who required legal assistance in criminal and civil courts. The majority, or 456,594, of them

**Figure 19: Percentage of Financial Eligibility Tests Conducted for Duty Counsel Clients, 2016/17**

Source of data: Legal Aid Ontario

Court	Not Tested	Tested		Total
		Eligible	Not Eligible	
Criminal	95	4	1	100
Civil	37	38	25	100

were assisted in criminal courts, and 143,976 were assisted in civil courts.

Duty counsel services are provided largely on an honour basis, because an eligibility test is only required when duty counsel suspects that the person may not be eligible.

During 2016/17 (the most recent data available), of the 456,594 individuals assisted on criminal matters, duty counsel did not conduct eligibility tests for 95% of the assists (see **Figure 19**). Another 4% where the eligibility test was conducted was recorded as eligible. The remaining 1% was recorded as not eligible.

In the same year, of the 143,976 persons assisted on civil matters, duty counsel did not conduct eligibility tests for 37% of the assists (see **Figure 19**). Another 38% where the eligibility test was conducted was recorded as eligible and 25% was recorded as not eligible.

We noted that duty counsel also did not consistently input all their assists information into the tracking system. Duty counsels' practices vary across the province for both criminal and civil courts, and the amount of times they recorded that no test was completed varied depending on the courthouse, as shown in **Figure 20**.

Legal Aid Ontario could not explain the large discrepancy but indicated that the required information and statistics were not entered consistently across the province. Legal Aid Ontario indicated that some services do not require a person to be financially eligible, such as bail hearings, incarcerated people, referrals, adjournments or diversions. However, duty counsels do not track consistently whether the test is required or not and for which circumstances.

**Figure 20: Percentage of Duty Counsel Clients Assisted Where Financial Eligibility Test Was Not Conducted, 2016/17**

Source of data: Legal Aid Ontario

% of Clients Assisted Where No Test Was Conducted	# of Court Houses	
	Criminal	Civil
80-100	39	10
60-79	8	11
40-59	3	9
20-39	0	9
1-19	1	11
<b>Total</b>	<b>51</b>	<b>50</b>

In other cases, a judge might instruct duty counsel to provide assistance to those who are unrepresented in court, in order to increase efficiency in the court process.

Legal Aid Ontario, however, does not track how many times duty counsels were directed by judges to provide assists to individuals who were not financially eligible, so it is unknown how frequently this occurs across all of Ontario's courts. Also, Legal Aid Ontario was not able to provide us with an estimate of the related cost.

Duty counsel may inform the judge that the person is not eligible. We were informed that in many of these cases, however, the person is assisted anyway because of the pressure by judges to ensure an efficient court process.

In certain circumstances, judge-appointed duty counsel is necessary for the courts to operate effectively, because self representation in court is inefficient and frustrating for the courts. However,

Legal Aid Ontario is the only entity that pays for the services.

The current legislation is silent as to who should pay for the legal services for those who are not financially eligible for legal aid services. Over-extending duty counsel services to those clients could take away duty counsel resources available to assist clients who are eligible.

## RECOMMENDATION 15

In order to collect reliable data on duty counsel assists, we recommend that Legal Aid Ontario:

- instruct duty counsel to input data appropriately and consistently across the province;
- track duty counsel assists to non-eligible clients when directed to by judges; and
- track reasons why financial eligibility was not assessed, such as because a financial eligibility test was not required and in what circumstances.

## LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario (LAO) is committed to improving the consistent and accurate reporting of duty counsel assists and services and has developed a tool to support this initiative.

LAO will instruct duty counsel to consistently and appropriately input data across the province. LAO will develop a process to track duty counsel assists to non-eligible clients when a financial eligibility test is conducted, and track reasons why a financial eligibility test was not conducted.

## Appendix 1: Community Legal Clinics

Source of data: Legal Aid Ontario

### Greater Toronto Area – 22

Aboriginal Legal Services	Parkdale Community Legal Services Inc.
Chinese and Southeast Asian Legal Clinic	Rexdale Community Legal Clinic
Community Legal Clinic of York Region	Scarborough Community Legal Services
Downsview Community Legal Services	Services d'Aide Juridique du Centre Francophone de Toronto
East Toronto Community Legal Services Inc.	South Asian Legal Clinic of Ontario
Flemington Community Legal Services	South Etobicoke Community Legal Services
Jane Finch Community Legal Services	The Centre for Spanish-Speaking Peoples
Kensington-Bellwoods Community Legal Services	Unison Health and Community Services
Mississauga Community Legal Services	West Scarborough Community Legal Services
Neighbourhood Community Legal Services	West Toronto Community Legal Services
North Peel and Dufferin Community Legal Services	Willowdale Community Legal Services

### Southwest Region – 15

Chatham-Kent Legal Clinic	Justice Niagara
Community Legal Assistance Sarnia	Legal Assistance Windsor
Community Legal Clinic—Brant, Haldimand, Norfolk	Legal Clinic of Guelph and Wellington County
Elgin-Oxford Legal Clinic	Neighbourhood Legal Services (London and Middlesex) Inc.
Grey-Bruce Community Legal Clinic	Niagara North Community Legal Services
Halton Community Legal Services	Waterloo Region Community Legal Services
Hamilton Community Legal Clinic	Windsor-Essex Bilingual Legal Clinic
Huron Perth Community Legal Clinic	

### Central East Region – 13

Centre des Services Communautaires de Vanier	Kingston Community Legal Clinic
Clinique Juridique Populaire de Prescott et Russell Inc.	Lake Country Community Legal Clinic
Clinique Juridique Roy McMurtry Legal Clinic	Northumberland Community Legal Centre
Community Advocacy and Legal Centre	Peterborough Community Legal Centre
Community Legal Clinic—Simcoe, Haliburton, Kawartha Lakes	Renfrew County Legal Clinic
Community Legal Services Ottawa	The Legal Clinic
Durham Community Legal Clinic	

### North Region – 10

Algoma Community Legal Clinic	Lake Country Community Legal Clinic
Clinique Juridique Communautaire Grand Nord Community Legal Clinic	Nipissing Community Legal Clinic
Elliot Lake and North Shore Community Legal Clinic	Northwest Community Legal Clinic
Keewaytinok Native Legal Services	Sudbury Community Legal Clinic
Kinna-aweya Legal Clinic	Timmins-Temiskaming Community Legal Clinic

### Specialty Clinics<sup>1</sup> – 13

Advocacy Centre for Tenants Ontario	Industrial Accident Victims Group Ontario
Advocacy Centre for the Elderly	Injured Workers' Consultants Justice for Children and Youth
ARCH Disability Law Centre	Justice for Children and Youth
Canadian Environmental Law Association	Landlord's Self-Help Centre
Community Legal Education Ontario	Queen's Prison Law
HIV and AIDS Legal Clinic Ontario	Toronto Workers' Health and Safety Legal Clinic
Income Security Advocacy Centre	

### Student Legal Aid Services Societies<sup>2</sup> – 7

Community and Legal Aid Services Program (Osgoode Hall Law School)	Downtown Legal Services (University of Toronto)
Community Legal Aid University of Windsor	Lakehead University Community Legal Services
Community Legal Services (University of Western Ontario)	Queens Legal Aid
	University of Ottawa Community Legal Clinic

1. Specialty Clinics represent specific individuals, such as seniors, or people living with AIDS, and deal with specific areas of law, such as disability law or tenant law.

2. Student Legal Aid Services Societies operate out of Ontario's seven law schools.

## Appendix 2: Legal Aid Ontario's Branches and Corresponding Responsibilities

Source of data: Legal Aid Ontario

Branch	# of Full-Time Employees	Responsibilities
17 District and Area Offices	161	Manage the roster of lawyer memberships, client certificates and duty counsel services. They are the first line of appeal for clients whose applications for legal aid are rejected.
Audit and Compliance Unit	7	Audits lawyer billings to ensure compliance with its billing rules. This unit conducts random and targeted audits of lawyers' billings, and when errors or patterns are identified, it makes recommendations to Legal Aid Ontario for billing process improvements and topic-specific communication and training for Legal Aid Ontario's rostered lawyers. When an error is found, the unit will provide information to help lawyers submit bills accurately, and will recover funds when overpayments are made.
Complaints Department	5	Assists with resolving incoming complaints in all areas, such as about lawyers, Legal Aid Ontario policy, Legal Aid Ontario staff, duty counsel, and clinic services. Legal Aid Ontario considers complaints to be opportunities to create a depository of issues, to identify trends, and to evaluate how it is performing as an organization. Legal Aid Ontario's complaints policy provides for resolution of complaints at the local level before the complaint is dealt with by the provincial complaints department. In addition to complaint resolution, the Complaints Department acts as the liaison between Legal Aid Ontario and the Office of the Ombudsman.
Client Service Centre and Account Services	121	Staff working at the call centre take certificate applications over the phone, assess financial eligibility, and answer clients' questions (for example, about their contribution agreements).
Corporate, Policy, Administration and Other	226	Make Legal Aid Ontario corporate and policy decisions. Administrative and Other includes providing legal research to private bar lawyers and clinics, finance, human resources, accounting, communications, facilities, general counsel and others.
Duty Counsel	196	Gives immediate legal assistance to those appearing in court. Duty Counsel are available in all of Ontario's more than 50 courthouses, and about 30 remote and fly-in locations.
Staff in Support of Duty Counsel Operations	91	Provide support to Duty Counsel operations in advancing a client's legal matter through triage, procedural information and referrals (e.g., Legal Aid Worker and Paralegal).
Criminal, Family and Refugee Law Offices	81	Offers eligible clients a range of legal services related to criminal, family law and refugee law.
Information Technology	54	Responsible for the support, strategy, architecture and development of all information technology work. The unit supports all of Legal Aid Ontario employees and about 1,000 clinic employees.
Internal Audit Unit	4	Provides independent and objective services to support Legal Aid Ontario's management team and Board of Directors achieving their strategic goals. Assurance and consulting services conducted by the Internal Audit Unit are designed to improve the effectiveness of governance practices, internal controls risk management, and add value across Legal Aid Ontario, by making audit recommendations for improvement of processes.
Investigations Department	5	Protects Legal Aid Ontario from fraud and provides strategies to reduce financial and reputational risk to the organization. This department also acts as the liaison between Legal Aid Ontario and the Law Society of Ontario. Investigations usually fall into two categories: lawyer related and client related. Lawyer-related cases involve billing irregularities and lawyer misconduct, while client cases usually involve financial eligibility concerns.
Lawyer Services and Payments	30	Provides billing supports and payments to private-sector lawyers who bill Legal Aid Ontario for legal aid work.
<b>Total Full-Time Employees</b>	<b>981</b>	



## Appendix 3: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Roles and responsibilities are clearly defined and accountability requirements are established to provide legal aid services to low-income Ontarians.
2. Clients' needs and eligibility are properly assessed and verified in a timely and equitable manner, and matched with the most appropriate legal services available.
3. Effective processes are in place to ensure that legal aid services meet minimum quality assurance standards and client needs. Quality reviews of services provided by lawyers and community legal clinics are conducted on a timely basis, and appropriate actions are taken to address any issues identified.
4. Appropriate and effective controls are in place over the billing and payment to lawyers and community legal clinics and collection of client contributions.
5. Management information systems are effective in providing timely, accurate and complete information for decision-making on eligibility criteria, billing structure, program and service delivery, workload management, funding arrangement, and operating costs and forecasts.
6. Appropriate performance measures are in place to monitor and report publicly on the effectiveness of legal aid services. In addition, reasonable targets are established to allow evaluation of performance relative to these targets and periodic public reporting. Corrective actions are taken on a timely basis when issues are identified.

## Appendix 4: Significant Events Relating to Legal Aid Ontario's Deficits in 2015/16 and 2016/17

Prepared by the Office of the Auditor General of Ontario

Date	Event
December 2013	Legal Aid Ontario submits a business case to the Ministry of the Attorney General (Ministry) to expand financial eligibility over 10 years in order to be more in line with Statistics Canada's 2011 Low-Income Measure, which is \$22,903 for a single person.
June 2014	The Ministry approves the business case as part of the June 2014 Ontario Budget.
August 2014	Legal Aid Ontario receives confirmation from the Ministry that it has approval to proceed with requested annual 6% increases to the gross income financial eligibility threshold for the first three years (from 2014/15 to 2016/17). Subsequently, the Province commits additional funding for another four years (from 2017/18 to 2020/21).
February 2015	Legal Aid Ontario observes that the expanded financial eligibility thresholds have not produced the expected increase in certificates and it will not be able to use all the available funding by March 31, 2016. Legal Aid Ontario is required to return to the Province any financial eligibility funding that it does not use by that time.
June 2015	Legal Aid Ontario's Board approves the expanding of its non-financial eligibility criteria for vulnerable clients. In a short period of time, from February to June 2015, the decision is made to expand non-financial eligibility across seven areas of law, all with the same implementation date. Legal Aid Ontario does not calculate the expected final costs presented to the Board in a single, comprehensive report.
June 2015– March 31, 2016	The number of applicants who are eligible for certificates increases dramatically. Legal Aid Ontario issues 108,259 certificates in 2015/16, or 20,980 more certificates than it issued in 2014/15, and spends more than it anticipated.
March 31, 2016	Legal Aid Ontario has a deficit of \$14 million for the fiscal year ended March 31, 2016. Despite the deficit, Legal Aid Ontario's senior management is optimistic that future surpluses will offset what it calls a "short term" deficit; therefore, it makes no policy changes.
June 1, 2016	Legal Aid Ontario management proposes a strategy to the Board to tighten the non-financial eligibility criteria, which were expanded in June 2015, in order to decrease the certificate issuance.
December 2016	Legal Aid Ontario decides to suspend the non-financial eligibility criteria, which were expanded in June 2015, in order to further decrease certificate issuance and address the growing deficit.
March 31, 2017	Legal Aid Ontario's deficit is \$26 million for the fiscal year ended March 31, 2017, bringing the total over two years to \$40 million.

## Appendix 5: Jurisdictional Comparison of Clinic Law Services in Canada\*

Prepared by the Office of the Auditor General of Ontario

Province or Territory	Description of Clinic Law Services Delivered	Delivery of Services
Alberta	Clinic law services include income support and government benefits.	Delivery is integrated through Alberta's legal aid program, Legal Aid Alberta.
Manitoba	Clinic law services include residential tenancies, mental health, government benefits, public interest law, and other cases accepted on a discretionary basis.	Delivered through the Public Interest Law Centre, which is an independent office from Legal Aid Manitoba but partially funded by Legal Aid Manitoba.
Ontario	Clinic law services include the Ontario Disability Support Program appeals, housing matters, the Ontario Works Program, human rights, employment, and other.	Delivered by 80 independent community legal clinics across the province that are funded by Legal Aid Ontario.
Quebec	Clinic law services include social assistance, landlord and tenant, auto insurance, employment insurance, old age security pension, consumer protection, occupational accidents, disability insurance, and other.	Delivery is integrated through Quebec's legal aid program, La commission des Services Juridiques.
Newfoundland and Labrador	Clinic law services include workers compensation appeals, Mental Health Review Board, employment insurance appeals, Canada Pension Benefit Appeals, and social assistance appeals.	Delivery is integrated through Newfoundland and Labrador's legal aid program, Newfoundland and Labrador Legal Aid Commission.
Nova Scotia	Clinic law services include Canada Pension Disability, employment insurance, income assistance, residential tenancies and landlord-tenant issues.	Delivery is integrated through Nova Scotia's legal aid program, Legal Aid Nova Scotia.
Nunavut	Clinic law services include landlord and tenant issues, employment law problems, human rights issues, and other.	Delivery is integrated through Nunavut's legal aid program, the Legal Services Board of Nunavut.
Northwest Territories	Clinic law services include housing, landlord and tenant issues, employment rights, Worker's Health and Safety Commission claims, wills and estate advice, mental health and guardianship reviews, elder abuse, debtor, creditor, and small claims, Canada Pension Plan, employment insurance, and other.	Delivered through Outreach Legal Aid Clinic, which is funded by the Northwest Territories legal aid program, Legal Aid Commission.
Yukon Territory	Clinic law services include employment insurance, Canada Pension Plan and Canada Pension Plan Disability Insurance, social assistance benefits, landlord and tenant issues, and disability issues.	Delivered through The Neighbourhood Law Centre, which is funded by the Yukon Territory legal aid program, Yukon Legal Services Society.

\* Provinces or territories not listed do not provide clinic law services funded by their legal aid plan. However, some clinic services may be provided by not-for-profit organizations not funded by the government.