

3.02—Legal Aid Ontario

BACKGROUND

In 1998, the Ontario government introduced the *Legal Aid Services Act, 1998*, which created an independent agency called Legal Aid Ontario. It replaced the Ontario Legal Aid Plan, which had been administered by the Law Society of Upper Canada (Law Society) since 1967. The purpose of Legal Aid Ontario is to promote access to justice throughout Ontario for eligible low-income individuals. Eligibility for legal aid is based on financial need and the nature of the legal help required.

Legal Aid Ontario may provide legal aid services by any method it considers appropriate. Its primary method of serving clients' legal needs is through the use of legal aid certificates. Potential clients can apply at any of 51 area offices across the province for a legal aid certificate that allows them to receive legal representation from their choice of private-sector lawyers. Certificates are available for a variety of legal problems, including specific criminal, family, immigration and refugee, and some civil law matters. Private-sector lawyers are reimbursed by Legal Aid Ontario according to tariffs (hourly rates) fixed by government regulation. During the 2000/01 fiscal year, over 107,000 legal aid certificates were issued, and about 5,000 private-sector lawyers provided services to legal aid clients.

In addition to providing legal aid certificates, Legal Aid Ontario also delivers legal aid services through:

- community legal clinics—about 70 independent clinics across the province offer a variety of client services including legal advice and representation to clients who have problems in the areas of housing, social assistance, pensions, workers' compensation, and employment insurance; and
- a duty counsel program—a combination of private-sector and staff lawyers provide assistance to unrepresented people in the criminal, family, and youth courts.

The province provides the majority of the funding for Legal Aid Ontario, with contributions from the federal government through cost-sharing arrangements and from the Law Foundation of Ontario. During the 2000/01 fiscal year, Legal Aid Ontario had operating expenditures of over \$247.3 million and received funding of \$249.5 million. Of the total funding, contributions from the province amounted to \$171.1 million or 70%.

Sources of Funding for the Ontario Legal Aid System, 1989/90–1999/2000



Sources of data: Ontario Legal Aid Plan/Legal Aid Ontario

AUDIT OBJECTIVES AND SCOPE

Our audit objectives were to assess whether Legal Aid Ontario had adequate procedures and systems in place to:

- ensure that its services and programs were being delivered with due regard for economy and efficiency and in accordance with legislative requirements; and
- measure and report on the effectiveness of its key services and programs delivered.

The scope of our audit, which was substantially completed in May 2001, included interviews with appropriate staff as well as a review and analysis of relevant policies, procedures, samples of files, and quality-assurance audit reports on independent community clinics. Our audit also included visits to Legal Aid Ontario's offices across the province and a review of legal aid practices in other Canadian jurisdictions.

Prior to the commencement of our audit, we identified criteria that would be used to address our audit objectives. These were reviewed and accepted by senior management of Legal Aid Ontario.

Our audit was conducted in accordance with the standards for assurance engagements, encompassing value for money and compliance, established by the Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

OVERALL AUDIT CONCLUSIONS

We concluded that certain procedures and systems were not in place to ensure that legal aid services and programs were provided with due regard for economy and efficiency and in accordance with legislative requirements. Our major observations were as follows:

- To meet the legal needs of low-income individuals cost effectively and to comply with the *Legal Aid Services Act, 1998*, a proper assessment of how those legal needs can best be met is required. However, such an assessment has not yet been done.
- The legal aid system had not been effective in controlling the costs of its certificates. Annual levels of funding for the four fiscal years from 1996/97 to 1999/2000 were similar to the level of funding for the 1991/92 fiscal year. However, two to three times more people were provided with legal aid certificates in 1991/92 when compared to the number of people served in each of the past four years.
- Efforts to collect over \$100 million of accounts receivable required improvements.
- Pilot projects for alternative service-delivery models had not been properly designed and managed to enable fair comparison of the cost effectiveness and quality of service between staff and private-sector lawyers.
- In general, eligibility assessments were performed in accordance with legislative and corporate requirements.

We also concluded that, at the time of our audit, appropriate performance standards and indicators had not been developed to measure and report on the effectiveness of the key services and programs delivered by Legal Aid Ontario.

Since April 1, 1999, there have been a number of changes in the senior management of Legal Aid Ontario, and a permanent board of directors was not established until December 1999. Legal Aid Ontario was continuing to undergo major changes during the period of our audit. At the time of our audit, the organization was in the process of reviewing its future directions and developing strategic plans for implementation. Management indicated to us that it was aware of a number of the concerns raised in our audit and that work was well underway to address these concerns.

DETAILED AUDIT OBSERVATIONS

Between 1967 and 1994, legal aid was provided through the Ontario Legal Aid Plan, which was administered by the Law Society, and the province covered any shortfall in funding.

In September 1994, in response to the escalating costs of providing for legal aid, the province moved away from what had been an open-ended funding arrangement and negotiated a Memorandum of Understanding with the Law Society. The Memorandum established annual provincial funding based on the Law Society's projection of a fixed number of certificates to be issued each year to the fiscal year ending March 31, 1999. In return, the Law Society agreed to manage legal aid within the limits of that funding. However, the cost of legal aid certificates continued to increase far above projected limits, and the Law Society responded with substantial service cuts. The viability of legal aid in Ontario became a challenge for both the Law Society and the province.

In 1996, the province appointed Professor John McCamus to head a review of the Ontario Legal Aid Plan. That review (the *Report of the Ontario Legal Aid Review*, also known as the McCamus Report) was released in August 1997. It contained a number of recommendations and resulted in the creation of Legal Aid Ontario as an independent body to provide legal aid services in Ontario. The new organization is required under the *Legal Aid Services Act, 1998* to “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 assumed the administration of the legal aid system from the Law Society on April 1, 1999.

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LEGAL AID CERTIFICATE PROGRAM

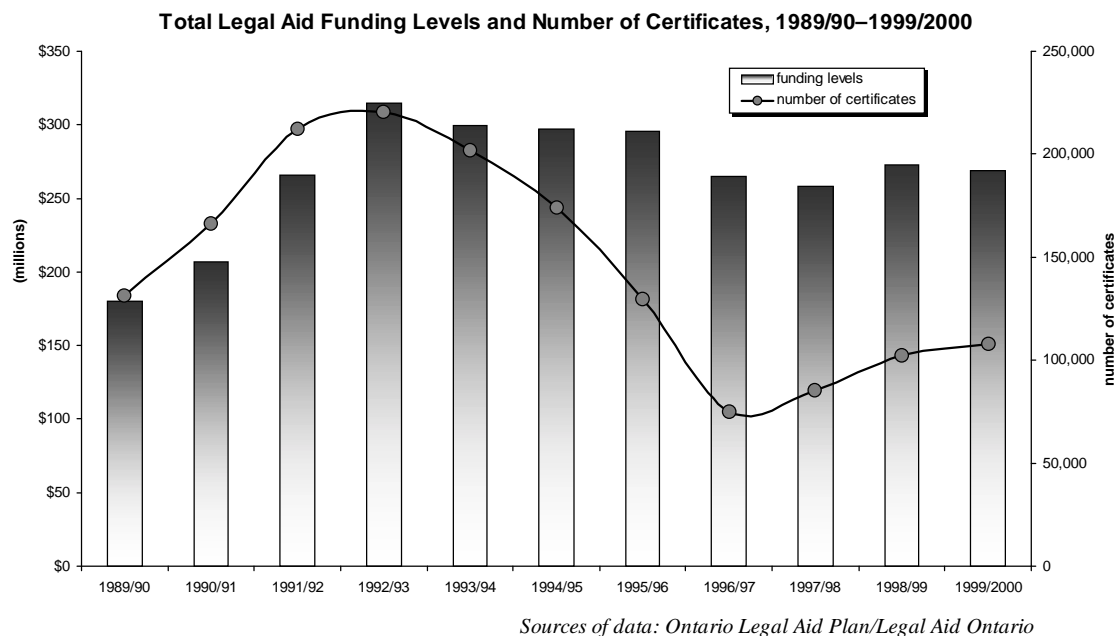
Most of the expenditures for legal aid services in Ontario are for providing legal aid certificates. During the fiscal years 1989/90 through 1999/2000, the legal aid system in Ontario issued over 1.6 million legal aid certificates. For the same period, total funding to provide legal aid in the province amounted to over \$2.9 billion.

Service-level Requirements and Needs Assessment

In Legal Aid Ontario’s *2001/02 Business Plan*, increases in the demand for services were cited as budgetary pressures. According to the business plan, “demand for legal aid services has increased in all areas since 1997, notwithstanding a period of sustained economic growth in Ontario.” The plan stated specifically that, between 1996 and 2000, there were increases ranging from 21% to 153% in the numbers of certificates issued for various legal services.

However, our review of the numbers of certificates issued over the years indicated that basing a claim of increases in the demand for services on the number of certificates issued since 1997 is misleading. The number of certificates issued for that year was the lowest in the last 10 years—not because of a lower demand for services but because of substantial cuts in services imposed by the legal aid system. Specifically, a total of 74,792 legal aid certificates were issued in 1996/97 compared to 129,683 certificates in 1995/96, a drop of 42%.

Total legal aid funding levels and numbers of certificates issued from the 1989/90 through the 1999/2000 fiscal years were as follows.



As indicated by the graph above, the annual levels of funding from 1996/97 to 1999/2000 were similar to that for the 1991/92 fiscal year. There was no increase in the hourly rates paid to legal aid lawyers throughout the years that would increase the costs of certificates. However, two to three times more clients were served in 1991/92 than were served in each of the past four years.

As mentioned earlier, the low level of certificates issued in 1996/97 was due to substantial cuts in services in 1995 and 1996. According to the Ontario Legal Aid Plan’s *1996 Annual Report*, by April 1996, certificates were to be granted “only where the accused is facing the likelihood of incarceration upon conviction” in criminal cases and, in family law, only in cases where the safety of a spouse or child was at risk.

In 1997, according to the then-chair of the Ontario Legal Aid Plan, a large number of people were not being represented in the courts. In addition, the lack of legal aid for court appearances and in preparing complicated legal documents created significant inefficiencies in the justice system as a whole. In the Ontario Legal Aid Plan’s *1997 Annual Report*, the then-chair concluded that: “The need for legal aid services is vast, and to a distressing extent, unmet.”

The *Legal Aid Services Act, 1998* requires Legal Aid Ontario to promote access to justice throughout Ontario for low-income individuals by “identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario.”

Since taking over the operations of the legal aid system on April 1, 1999, the management of Legal Aid Ontario has placed “identifying and responding to clients’ needs” as one of its strategic priorities. However, we noted that action to address this issue has been slow in coming. For example, in its *2001/02 Business Plan*, Legal Aid Ontario noted that, although legal needs assessments had been undertaken either at a local level or in response to ad hoc issues, “there has not, however, been a comprehensive assessment of client needs across the province.”

For example, we noted that Legal Aid Ontario did not gather information on and analyze the unmet needs of applicants denied legal aid or those who attended court without representation and received help from duty counsel lawyers. Such information would provide at least a starting point for assessing legal needs in the community. Consulting with service providers is certainly necessary to obtain the views of those providers on the legal needs of their clients. However, service providers are usually more concerned with the areas of service they provide, and their perception of legal needs may not be the same as those of potential legal aid clients.

With a surplus of over \$41 million in the 1999/2000 fiscal year, Legal Aid Ontario originally allocated \$1 million to be spent in the following year for a client needs assessment project. That allocation was subsequently reduced by 80% to \$200,000. Management indicated that it had a more cost-effective approach for assessing client needs. However, our review of the amounts used in the 2000/01 fiscal year for projects requiring one-time funding revealed that the client needs assessment project had been deferred to the 2001/02 fiscal year due to other priorities. Of the \$1 million that had been allocated to projects requiring one-time funding in 2000/01, \$400,000 was allocated to a review of hourly rates for legal aid lawyers and how the rates affected service, and \$300,000 was assigned to helping to establish a pro bono lawyers' office, with the remainder going to other, smaller projects.

In the absence of a comprehensive analysis of the diverse legal needs of low-income people across the province, Legal Aid Ontario has no basis for knowing whether those needs are being served or how such needs can be addressed in the most cost-effective manner.

Recommendation

To comply with legislation and to ensure that the legal needs of low-income individuals are served in an appropriate and cost-effective manner, Legal Aid Ontario should perform comprehensive and ongoing assessments of service-level requirements and the legal needs of potential clients.

Management Response

Legal Aid Ontario has begun an extensive needs-assessment process. Identifying and responding to client needs is a top priority of Legal Aid Ontario's four-year strategic plan. Through outreach and regular analysis, Legal Aid Ontario is developing ongoing needs assessment that includes demographic analysis, changes in key drivers such as provincial and federal legislation, policies, and priorities, and extensive direct consultation with other partners serving the needs of low-income clients. Legal Aid Ontario has initiated reviews of new federal and provincial legislation and will analyze the impact of changes in legislation on legal aid service delivery.

Legal Aid Ontario will also seek input from its new advisory committees.

Controlling the Cost of Legal Aid Certificates

The cost of legal aid certificates first became a major concern for the province in 1993 when the Ontario Legal Aid Plan requested funding of \$39 million to cover escalating costs in its certificate program for that year.

Under the 1994 Memorandum of Understanding, a new funding agreement was negotiated based on caseload projections over the next four fiscal years (made in terms of the number of certificates to be issued) and the average cost per case. The province agreed to renegotiate funding levels if it undertook major new initiatives that would substantially increase the legal aid caseload or the cost per case. The province further agreed to advance loans totalling \$25 million in the 1994/95 fiscal year and to guarantee up to \$35 million in commercial loans up to the 1997/98 fiscal year.

The Memorandum stipulated that, should the caseload drop below projected levels, the resulting savings were to be used to pay off any outstanding debts and fund the implementation of a clinic investment strategy; any remaining surplus was to be returned to the province.

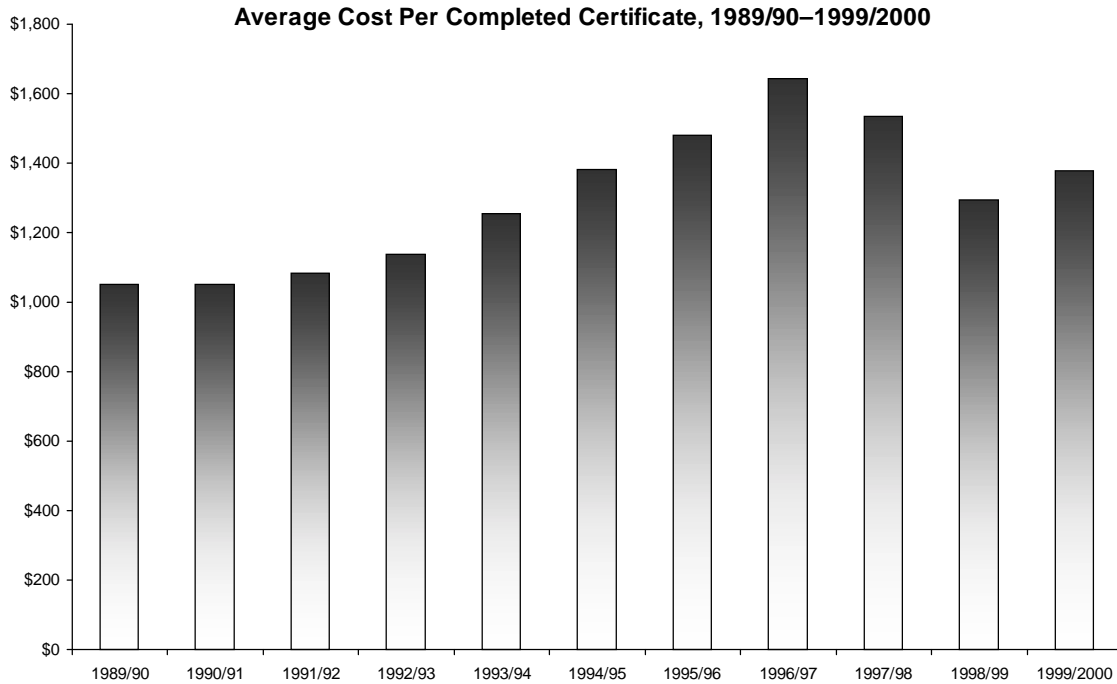
From the time that the funding arrangement was put in place, costs of certificates continued to increase. In order to manage the costs of legal aid within the limits of the funding arrangement, during 1995 and 1996 the Ontario Legal Aid Plan initiated a number of cost-cutting measures intended to reduce legal aid expenditures by over \$275 million by March 31, 1999. These measures included the following:

- New hourly rates were established to roll back costs to 5% below 1994 levels.
- Each lawyer's daily billing was limited to a maximum of 10 hours plus additional time in court, if required.
- Fees to each lawyer for legal aid services were capped at \$187,500 per year.
- Maximum hours that lawyers were allowed to charge for various legal aid services were reduced.

However, the average costs of certificates still continued to increase, and efforts to reduce legal aid expenditures by over \$275 million were not effective. Although the Ontario Legal Aid Plan reported a net surplus of \$126 million during the four years up to March 31, 1999 (which enabled the Plan to pay off all outstanding debt), that surplus was largely the result of the Plan receiving a fixed level of funding for legal aid certificates while decreasing the number of certificates issued.

As indicated earlier, annual levels of funding for the four fiscal years from 1996/97 to 1999/2000 were similar to the level of funding for the 1991/92 fiscal year. However, two to three times more people were provided with legal aid certificates in 1991/92 when compared to the number of people served in each of the past four years.

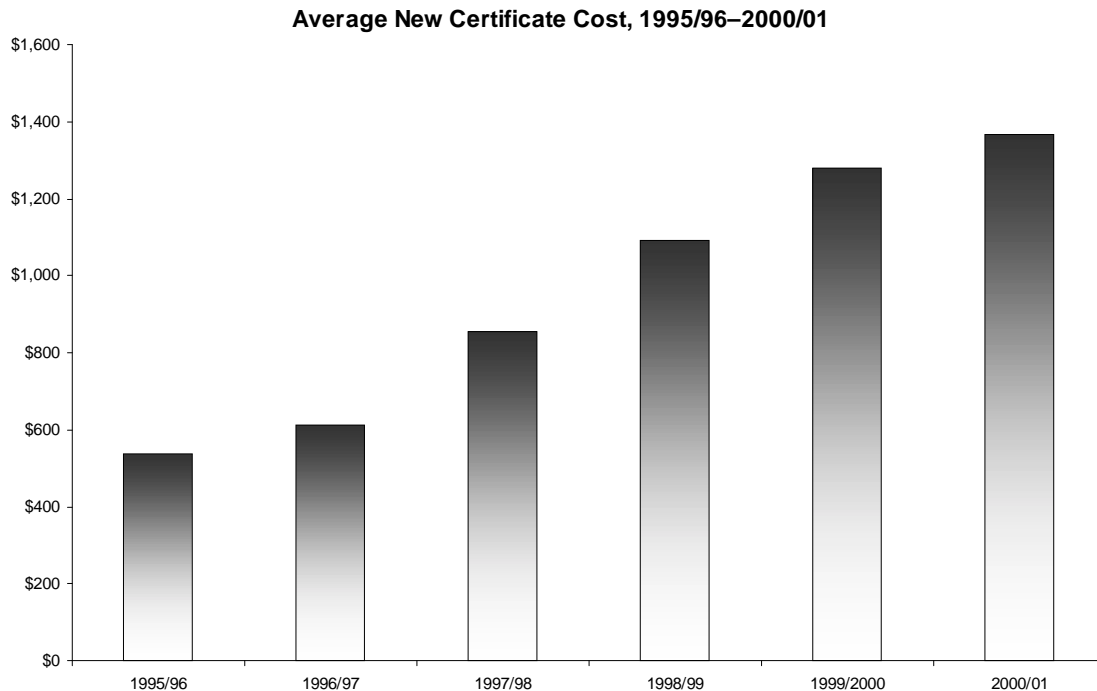
The actual average cost per completed certificate from the 1989/90 to 1999/2000 fiscal years is as follows.



Sources of data: Ontario Legal Aid Plan/Legal Aid Ontario

According to Legal Aid Ontario management, the effectiveness of the cost-cutting measures should be assessed using a three-year certificate life cycle. In addition, if the above chart used the average cost of “new” certificates issued since the cuts, instead of blending them with the “old” certificates, the analysis would demonstrate that the cost-reduction measures implemented in 1995 and 1996 were quite effective.

However, our review indicated that the time between the issuance of a legal aid certificate and the completion of the case varies from six months to several years. The majority of certificates issued are completed within two years, with the average elapsed time being eight to 12 months. Our review of the average cost of only the “new” certificates issued since 1995/96 showed the following.



Source of data: Legal Aid Ontario

We noted that the legal aid system did not have adequate procedures for monitoring and analyzing lawyers’ billings to ensure certificate costs were being prudently managed. In addition, in the 1998/99 fiscal year, the Legal Aid Plan actually increased the maximum hours that lawyers could bill per certificate, in some cases by as much as 100%. Although these increases were made possible by a surplus in the system, our audit indicated that there had been no analysis of billings to justify the increases in allowable hours.

Recommendation

To more effectively manage the cost of legal aid certificates, Legal Aid Ontario should establish adequate procedures for monitoring and analyzing lawyers’ billings to establish reasonable billing standards and to ensure adherence to those standards.

Management Response

Legal Aid Ontario analyzes reports on lawyers’ billings under the certificate and private-bar duty counsel programs on a monthly and an annual basis. The reports show lawyers’ billings by the major areas of law—criminal, family, refugee, and other civil law—and in detail for specific types of cases. Reports are produced for Legal Aid Ontario’s 51 area offices and at a province-wide level.

Legal Aid Ontario has now developed a model for forecasting certificate costs that uses these data to project the costs of the program. It enables Legal Aid

Ontario to anticipate trends in costs and take appropriate action at an early stage.

Legal Aid Ontario recently completed an organizational review. A prominent consideration in the design of the new organizational structure was to strengthen the focus on policy research, business planning and analysis, program development, and stakeholder relations as critical development areas. Changes to information-technology systems will allow Legal Aid Ontario to track costs more effectively and provide improved management information. We will develop the capacity to analyze lawyers' billing patterns as part of monitoring the adequacy of hourly maximums under the legal aid tariff and the quality of legal services provided.

Review of Hourly Rates

The cost of legal aid certificates is largely dependent on the fees paid to private-sector lawyers. The fees are in turn dependent on two critical factors: the hours charged by the service providers and the hourly rates, or tariffs, paid to them. Accordingly, for management of certificate costs to be effective, management must ensure that adequate procedures are in place to establish appropriate standards for hours billed (as discussed in the previous section) and that hourly rates are reasonable for the services provided. It is the responsibility of the Attorney General to establish such rates.

Legal Aid Ontario indicated that hourly rates have not increased since 1987. In April 2000 Legal Aid Ontario established a Tariff Review Task Force. A Tariff Review Task Force report was submitted to Legal Aid Ontario in December 2000. During our audit, Legal Aid Ontario indicated that the draft document was being analyzed and was not ready for our review. The report is to be used in the preparation of a business case for raising the hourly rates to be presented to the Attorney General in late 2001.

Given the significant impact of hourly rates on legal aid expenditures, we reviewed other information made available to us and found that Legal Aid Ontario's 2001/02 *Business Plan* stated that supporting the providers of legal aid services was considered one of Legal Aid Ontario's strategic priorities. The legal profession was encouraged to "build a strong business case in support of an increased or restructured tariff."

In addition, as part of the preparation for its Strategic Plan for 2001–2004, Legal Aid Ontario invited its staff, community clinics, private-sector lawyers, and other stakeholders to submit written responses to 10 strategic questions, including one relating to lawyers' participation and hourly rates. The responses from the survey were used to formulate the Strategic Plan, which was approved by the board in January 2001.

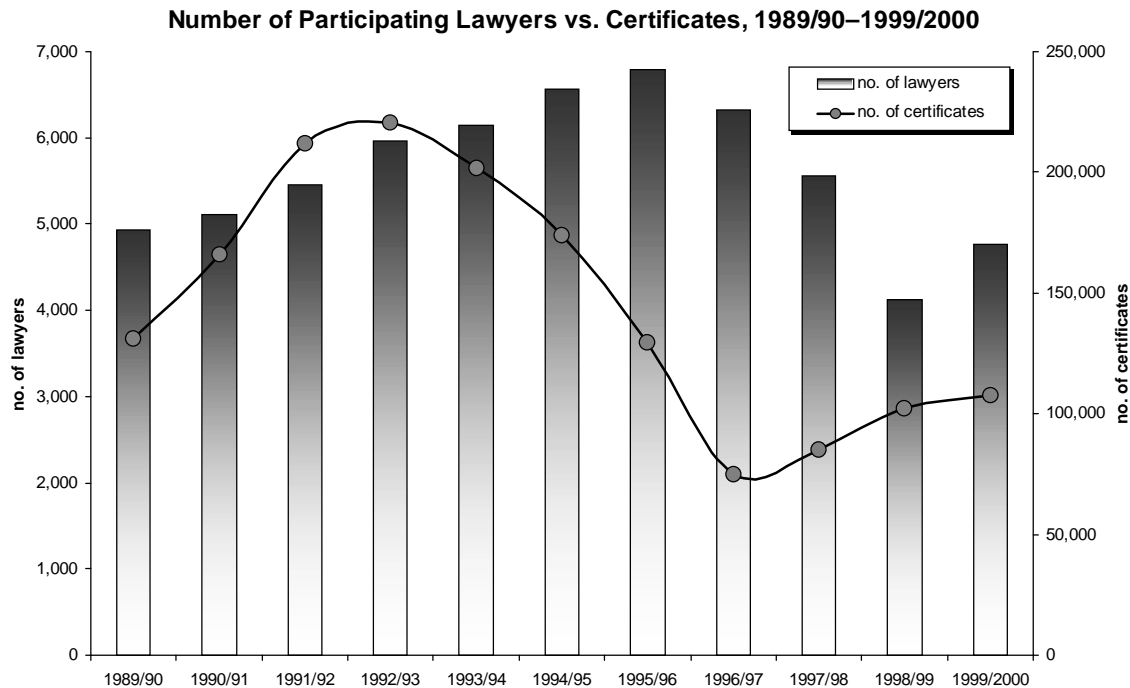
Thirty-five submissions were received by Legal Aid Ontario. In response to the question relating to lawyers' participation and hourly rates:

- Ten responses (28.8%) indicated that hourly rates should be increased, with half of the responses indicating that other options should also be considered.
- Twenty-five responses (71.2%) either indicated that participation could be encouraged by means other than raising hourly rates or provided no answer to the question about participation. Ways to encourage participation suggested in these responses included:

establishing training programs for lawyers in legal aid services, reducing bureaucracy, increasing recognition, and providing more research and other supports.

The Strategic Plan went on to indicate that, starting with the 2002/03 fiscal year, Legal Aid Ontario anticipated that it would require a funding increase due to a substantial increase in the hourly rates required to maintain private-sector participation in the certificate program.

Higher hourly rates would, to a certain extent, increase lawyers' participation in the legal aid system. However, our review of the legal aid system in Ontario did not support the notion that lawyers were discouraged from participating. According to Statistics Canada, the percentage of lawyers who participated in providing legal aid services in Ontario was the second highest of all the Canadian provinces in the 1999/2000 fiscal year. We found no evidence of complaints from clients with legal aid certificates of being unable to obtain legal aid or of the quality of the legal aid services they received. In fact, as the following chart indicates, although the number of legal aid certificates issued steadily dropped from the 1992/93 to the 1996/97 fiscal years, the number of lawyers participating in the legal aid system was at its highest level between the 1994/95 and 1996/97 fiscal years.



Sources of data: Ontario Legal Aid Plan/Legal Aid Ontario

Some researchers have suggested that in times of recession lawyers are more likely to take on legal aid cases because there is a lack of work available to sustain their desired levels of income.

To provide a perspective on whether Legal Aid Ontario's hourly rates for legal aid lawyers were competitive, we compared Ontario hourly rates for private-sector lawyers involved in legal aid work or as contract Crown prosecutors with the corresponding pay rates in other Canadian jurisdictions. Except for Quebec, the rate information we obtained as of April 2000 is shown in the following chart. In Quebec, private-sector lawyers are paid a fixed amount per case that

depends on the type of case. Legal Aid Ontario management calculated the Quebec hourly rate to be about \$45 per hour on a nominal basis.

Comparison of Legal Aid Fees for Lawyers by Jurisdiction

Legal Aid Ontario	Ontario Crown Prosecutors	Federal Crown Prosecutors	Legal Aid Manitoba	Alberta Legal Aid	B.C. Legal Services Society
\$67/hour (up to 3 years' experience)	\$27.59/hour (\$200/day up to 4 years' experience)	\$60/hour (up to 4 years' experience)	\$48/hour for all legal aid lawyers (the rate was recently increased from \$45 in August 2000)	\$72/hour for all legal aid lawyers (the increase from \$61 was announced in February 2001)	\$80/hour for all legal aid lawyers
\$75.38/hour (4–10 years' experience)	\$34.48/hour (\$250/day for 5–8 years' experience)	\$71/hour (5–10 years' experience)			
\$83.75/hour (over 10 years' experience)	\$41.37/hour (\$300/day for 9 or more years' experience)	\$82/hour (over 10 years' experience)			

Source of data: OPA Research

Lawyers' participation is not solely a function of hourly rates. For example, Statistics Canada indicated that, in 1999/2000, Manitoba, with an hourly rate of \$45, had the highest percentage of lawyers providing legal aid services among all Canadian provinces. Participation is also a function of competitive pressures within the legal profession as well as many other factors, such as satisfaction in helping disadvantaged individuals—before 1967, all legal aid services were provided by lawyers who volunteered their time. Other reasons why lawyers participate in legal aid work include: the fields of law they specialize in coincide with the most common legal needs of clients receiving legal aid; legal aid work provides a supplemental source of income; payments for legal aid services rendered are timely; and legal aid work can provide steady income even during economic downturns.

We acknowledge that Legal Aid Ontario will be taking the recommendation of the Tariff Review Task Force into consideration in preparing its business case for submission to the Attorney General in late 2001. However, we encourage Legal Aid Ontario also to consider the matters discussed in this section as part of its determination of an appropriate level of compensation for private-sector lawyers. We will follow up on the result of this matter in due course.

ALTERNATIVE SERVICE-DELIVERY MODELS

The *Legal Aid Services Act, 1998* is based on the recommendations of the 1997 McCamus Report and requires Legal Aid Ontario to provide access to justice throughout Ontario for low-income individuals by:

- providing consistently high-quality legal aid services in a cost-effective and efficient manner; and
- encouraging and facilitating flexibility and innovation in the provision of legal aid services.

In addition to the legal aid certificate program, for many years the Ontario legal aid system has been using two other programs—the community legal clinic program and the duty counsel program—to provide legal services to eligible individuals.

Since 1994, a number of pilot projects have been implemented to assess whether other ways of delivering legal aid services would be more cost effective.

The 1997 McCamus Report recommended experimentation with alternative means of providing legal services and meeting individual client needs; such alternative means include, for example, using staff lawyers, contracting, and making wider use of duty counsel lawyers.

Community Legal Clinics

Community legal clinics are independent, non-profit organizations that receive annual funding from Legal Aid Ontario. They were first established in the early 1970s under the community legal clinic program.

The clinics specialize in addressing the needs of low-income people who need legal help in such areas as income maintenance, housing, and access to basic social services. They may also provide legal education and specialized services in certain areas of law, depending on the local community's needs.

Each clinic has its own board of directors made up of volunteers from the local community and determines its own operational policies within the established policy framework set out by Legal Aid Ontario. Services are delivered by three categories of clinic employee: salaried lawyers, paralegal staff, and administrative support staff.

In the 1999/2000 fiscal year, there were 70 community legal clinics across Ontario. At the time of our audit, Legal Aid Ontario was in the process of implementing a number of initiatives to make community legal clinics available in geographic areas of the province and to groups of low-income people that have not traditionally had access to clinics. By the end of the 2001/02 fiscal year, Legal Aid Ontario plans to have nine more community clinics in operation as well as to have completed various enhancements to a number of existing clinics. We found that Legal Aid Ontario regularly performed quality-assurance audits of these community legal clinics that indicated the clinics were generally providing high-quality services to their clients.

Duty Counsel Program

Duty counsel lawyers are assigned to criminal, family, and youth courts to assist clients who do not have a lawyer with them in the courtroom. In the criminal court, duty counsel lawyers advise clients of their right to plead guilty or not guilty, help clients apply for bail, and ask for adjournments.

Duty counsel services are provided by both private-sector and staff lawyers. Private-sector lawyers are paid on a per diem basis, and staff lawyers are hired on contract for a maximum of two years. Duty counsel lawyers provide cost-effective assistance to people who otherwise would have no legal representation. They also provide 24-hour assistance over the telephone.

Over the years, few cases—on average, between 6% and 8%—have been disposed of by duty counsel lawyers. Most cases result in the duty counsel asking for adjournments so that the accused can seek representation by private-sector lawyers under legal aid certificates.

We noted that, in 1994, Manitoba piloted an expanded duty counsel program to find appropriate ways of concluding cases more quickly. The pilot program had more lawyers supported by paralegals and articling students, as well as improved scheduling to ensure continuity, and gave

greater discretion to duty counsel lawyers to dispose of cases up to and including a trial. Manitoba found the expanded duty counsel program to be successful and made it permanent.

In 1999, Legal Aid Ontario implemented an expanded duty counsel pilot project and adopted an “anchor system” that entails local employment of salaried duty counsel lawyers. A preliminary evaluation by Legal Aid Ontario indicated that the expanded program was operating satisfactorily.

Other Pilot Projects

Ontario and New Brunswick are the only two provinces where legal aid services, other than those provided by community legal clinics and the duty counsel program, are provided almost exclusively by private-sector lawyers. Other provinces use a mix of private-sector and staff lawyers. Newfoundland, Nova Scotia, Prince Edward Island, and Saskatchewan use staff lawyers for over 90% of their legal aid cases.

Manitoba and Quebec offer eligible individuals a choice between private-sector and staff lawyers. Clients in these two provinces use private-sector and staff lawyers almost equally.

Legal aid expenditures and caseloads for Canadian provinces for the 1999/2000 fiscal year are as follows.

Legal Aid Expenditures and Caseloads by Province, 1999/2000

Province	Total Expenditures (\$000s)	Per Capita Expenditures (\$)	Approved Applications		
Newfoundland	(no data)	(no data)	(no data)	(no data)	mainly staff
Nova Scotia	11,117	11.83	15,481	23	mainly staff
New Brunswick	4,087	5.41	4,637	21	mainly private-sector lawyers
P.E.I.	695	5.04	1,209	21	mainly staff
Quebec	101,943	13.88	215,991	22	staff/private-sector lawyers
Ontario	223,608	19.53	140,903	29	mainly private-sector lawyers
Manitoba	17,637	15.42	17,374	33	staff/private-sector lawyers
Saskatchewan	10,616	10.33	21,891	20	mainly staff
Alberta	26,142	8.82	32,051	22	mainly private-sector lawyers
British Columbia	83,650	20.79	51,534	23	mainly private-sector lawyers

Source of data: Legal Aid in Canada: Resources and Caseload Statistics 1999-2000 (Statistics Canada, 2001)

The 1997 McCamus Report, while acknowledging the certificate program (also known as the *judicare* model) as the foundation of the Ontario legal aid system, recommended that legal aid

services be delivered through a wide spectrum of alternative means, including the use of staff offices. The report stated that:

...we favour setting up Staff Offices with a full range of responsibilities for service delivery in particular areas of the law (e.g., criminal law, family law, and immigration law), in competition with the judicare system, so that conjectures can be tested as to where the comparative advantages and disadvantages of Staff Offices really lie.

In response to the McCamus Report's recommendation, the legal aid system initiated a number of pilot projects designed to test different ways of delivering services using staff lawyers. For the 1999/2000 fiscal year, approximately \$3 million was spent on pilot projects. At the time of our audit, many of these projects were either in the process of being evaluated or were scheduled for evaluation in the near future. Our review indicated, however, that most of the projects were significantly underutilized with regard to caseload per staff when compared to their original designs.

Management indicated that some of the projects had been implemented only recently and needed more time to build up caseloads. However, our review of pilot projects that had been operating for a few years indicated that their capacities were not being fully utilized due to restrictions of access and a lack of outreach effort.

Of the \$3 million spent on pilot projects in the 1999/2000 fiscal year, \$688,000 (23%) was for the refugee law office in Toronto and \$2.2 million (74%) was for the family law offices in Toronto, Ottawa, and Thunder Bay. The balance was spent on a number of smaller projects. However, we noted that there had been no creation of a staff office for criminal law, for which about half of all legal aid certificates are issued.

THE REFUGEE LAW OFFICE

The Ontario legal aid system established the refugee law office as a pilot project in 1994. It had 14 staff and, according to the McCamus Report, "was constituted as a pilot project to compare cost-effectiveness and quality of service between a staff clinic and the judicare model." In order to conduct an effective comparison, the mandate and operations of the refugee law office were designed to parallel the activities of the private bar.

The McCamus Report indicated that the quality of service provided by the refugee law office was more than satisfactory. However, according to the Report, the most serious problem with the refugee law office was that "at no time has it been able to attract a sufficient case load to operate at full capacity." The Report also commented that:

A critical pre-condition for the establishment of the RLO [refugee law office] was that it not interfere in any way with the principle of "counsel of choice". This meant that the Plan [Ontario Legal Aid Plan] could not direct clients to the RLO. At present, if an applicant for legal aid does not have a lawyer, the Plan will supply a list of counsel that includes the RLO, but will go no further.

While the RLO has made efforts to publicize its existence, it is arguable that it underestimated the need for systematic and regular outreach.

The McCamus Report recommended substantially expanding the refugee law office to undertake all initial screenings for legal aid certificates for immigration and refugee matters in Toronto. Successful applicants for legal aid would then be given the choice of using the services of the refugee law office or private counsel.

According to recent internal evaluation reports, the refugee law office continued to be “perceived by both clients and community organizations as providing consistently high quality, expert, conscientious, client-centered services in a multicultural setting.”

However, the office has been downsized to only six staff. We also noted that the refugee law office was not even listed in local telephone directories. Management indicated to us that this was an administrative oversight.

FAMILY LAW OFFICES

The family law offices were initiated in January 1998 in response to the McCamus Report. A large, a medium-sized, and a small office were set up in Toronto, Ottawa, and Thunder Bay, respectively, to test the cost effectiveness of staff offices in comparison to large, medium-sized, and small law offices in the private sector.

For the comparison, the Ontario Legal Aid Plan established a caseload benchmark based on the average hours charged for family-law legal aid certificates by private-sector lawyers. With an additional allowance of three hours per week in administration, a normal caseload was established at around 150 closed cases per year or an active burden of 200 open files per staff lawyer.

When compared to the caseload benchmark on a per-staff-lawyer basis, our analysis showed the following:

Comparative Data on Caseload Per Staff Lawyer, 2000–01

Case Status	Caseload Benchmark	Toronto		Ottawa		Thunder Bay	
		Actual	% Achieved	Actual	% Achieved	Actual	% Achieved
open	200	61	30	130	65	125	63
closed	150	15	10	140	93	30	20

Source of data: Legal Aid Ontario

Legal Aid Ontario management indicated that the 1998 caseload benchmark was unrealistic. However, current management has not established any benchmarks for evaluating cost effectiveness. In any case, the significant underutilization of the Toronto office, especially when compared to the two smaller offices, should be a major concern.

One important purpose of these pilot projects is to compare the cost effectiveness of using staff lawyers to the cost effectiveness of using private-sector lawyers. Not fully utilizing the client capacity the projects were designed for will negatively affect project cost-effectiveness results. Without allowing these pilot projects to compete fairly with the private sector, their comparative advantages and disadvantages cannot be properly assessed.

Recommendation

In order to properly assess whether its pilot legal aid projects are cost-effective alternative service options, Legal Aid Ontario should ensure that these projects are better designed and managed.

Management Response

Pilot projects are experimental by their very nature. Based on learning from the first pilot project experiments, Legal Aid Ontario will more effectively design and plan future pilot projects.

The original design of the refugee law office anticipated significant numbers of cases being expedited by the Immigration Review Board, and, when that did not happen, adjustments were made in the program. A spring 2001 assessment of the refugee law office indicated that the office is operating at full capacity and that the cost efficiency of cases it handles is comparable with that of cases handled by the private bar. The family law office data reviewed in this audit reflect the earliest days of the pilot projects, and the projects are under continuous assessment as they reach the halfway mark.

ELIGIBILITY FOR LEGAL AID

Legal Aid Ontario assesses the eligibility of all applicants for legal aid certificates based on their financial circumstances and the nature of their legal problems. The financial test is based on both income and assets and takes into account monthly expenses. Individuals with little or no income, or who are on social assistance, usually qualify for legal aid. In some cases, clients may be asked to make a financial contribution towards the cost of their legal services.

Staff at the area offices are to perform eligibility assessments according to the criteria outlined in Legal Aid Ontario’s policies and procedures manual. Under exceptional circumstances, applicants who normally would not be eligible may be granted a contribution payment agreement at the discretion of the area-office director. Applicants refused by an area office can appeal to an area committee made up of volunteers and lawyers from the local community.

We found that area offices generally performed eligibility assessments in accordance with the policies and procedures of Legal Aid Ontario. However, there were no guidelines to ensure consistency in the decisions made by the various area committees. We noted that, on average, 30% of area-office directors’ decisions were overruled when applicants appealed to the area committees. Our audit indicated that many of these decisions involved judgments concerning the level of the applicant’s disposable income. We also noted that the reasons for the area committees’ decisions in overruling the area directors were often not documented.

Our discussions with area-office staff indicated they usually spent significantly more of their time justifying their refusals of ineligible applicants than assessing applicants’ eligibility. In addition, they were concerned that applicants with similar situations might be treated inconsistently by different area committees.

Recommendation

To ensure consistency in granting legal aid services, Legal Aid Ontario should develop appropriate guidelines to assist area committees in making decisions about whether or not to overrule legal aid area-office assessments of eligibility.

Management Response

Legal Aid Ontario will work more closely with its area committees to ensure that they understand and stay within policy guidelines. Often, applicants bring forward new information at the area-committee stage, resulting in decisions to reconsider eligibility. Legal Aid Ontario recently updated the area-committee manual. The new manual was distributed at the end of September 2001. The manual describes area-committee discretion and procedures. Legal Aid Ontario will monitor the patterns of area-committee decisions to identify any local or systemic problems. Area committees hold annual general meetings to discuss new directions and policy changes.

CLIENT CONTRIBUTIONS

Over the last 10 years, legal aid clients have contributed from \$10 million to \$20 million per year to legal aid revenues. In the 1999/2000 fiscal year, Legal Aid Ontario was owed \$115 million by clients. Of this amount, over \$100 million had been established as doubtful based on the history of actual collections from clients in prior years.

We noted that proper financial controls were not in place over client contributions or accounts receivable, despite repeated comments in letters to management in connection with our Office's annual financial statement audits. For example:

- There was no accounts-receivable control ledger, no aging of reports of accounts in default, and no complete doubtful-accounts listing to provide an accurate record and ensure proper management of accounts receivable.
- Monthly reconciliations of bank accounts, a critical control for detecting errors and irregularities, had not been performed for years. These reconciliations were brought up to date towards the completion of our audit.
- Receipt books issued to area offices were not accounted for by head office. In one area office we visited, staff issued receipts purchased from a local stationery store instead of using official Legal Aid Ontario receipts.

In addition, we noted that the systems in place to collect amounts owing from clients were inadequate. Many of the accounts receivable have been outstanding for over 15 years with no collection efforts having been made. The majority of the \$100 million in doubtful accounts was secured by liens against real estate properties. However, management indicated that the majority of those doubtful accounts were not collectible because most of the clients were at or below the poverty level and would not be able to pay.

We agreed that many of these clients did not have sufficient income or liquid assets at the time they applied for legal aid. However, Legal Aid Ontario had not reassessed these clients' financial situations to determine if they had improved and if the assets pledged had significantly increased in value. According to Legal Aid Ontario's policy, clients are required to report any changes of financial circumstances within seven days. In addition, area offices are to reassess clients every 12 months, and the amounts of contribution payments may be revised depending on clients' situations.

Management indicated that there were difficulties in collecting on many of the lien accounts in that all liens registered under the old *Legal Aid Act* required an external triggering event (such as the refinancing or sale of a property by the client) before collection could take place. However, our review indicated that all clients had signed agreements stating that the financial assistance received by them was payable “on demand or if in default.” Therefore, Legal Aid Ontario could reassess the financial situation of these individuals and set up new payment agreements.

Recommendation

To properly safeguard its assets, Legal Aid Ontario should implement appropriate controls over its accounts-receivable system.

To ensure timely collection of amounts owed, Legal Aid Ontario should follow up on outstanding inactive accounts to assess the current financial situation of clients and take appropriate action, including collection and/or arranging for new payment agreements.

Management Response

Legal Aid Ontario is pressing on with improvements and changes in accounts receivable. In the summer of 2001, Legal Aid Ontario began to tighten up on monthly payment accounts that were in default by advancing the triggering of the certificate-cancellation process in those cases.

Legal Aid Ontario also adopted new cash receipt and deposit processes for area offices. Where possible, Legal Aid Ontario will ensure segregation of duties within the office between collection of cash, functions such as queries from clients on payment agreements, and changing account information on the system. Receipt books and ledgers are now in use, and a new deposit process is also in place.

With the help of recently available technology support, Legal Aid Ontario has started to review all its historical collections data, with a view to determining the likelihood of being able to collect on old accounts. Information-technology improvements expected in the near future will make further improvements possible.

The majority of the accounts-receivable balance are difficult to collect because Legal Aid Ontario has no means of initiating enforcement on liens prior to the new Legal Aid Services Act, 1998. Legal Aid Ontario is launching a project to review sales or refinancing related to the old liens.

EFFECTIVENESS OF LEGAL AID SERVICES

The *Legal Aid Services Act, 1998* requires Legal Aid Ontario to provide “consistently high-quality legal aid services in a cost-effective manner” to low-income individuals throughout

Ontario. The Act further stipulates that Legal Aid Ontario is to establish a quality-assurance program to be carried out by the Law Society to ensure such services are being provided as required.

As mentioned earlier, a quality-assurance program was in place for independent community legal clinics. However, the legal aid certificates program, which accounted for most of Legal Aid Ontario's expenditures, had no quality-assurance program. Discussion with management revealed that, since assuming the administration of legal aid in April 1999, Legal Aid Ontario had not met with the Law Society to discuss how to perform quality assurance of the certificate program. We also noted there was no quality-assurance program in place for the duty counsel program.

At the completion of our audit in May 2001, Legal Aid Ontario had not developed any indicators for measuring and reporting on its effectiveness in providing "consistently high-quality legal aid services in a cost-effective manner" to low-income individuals.

In addition, Legal Aid Ontario had yet to submit its 1999/2000 annual report to the Attorney General. The *Legal Aid Services Act, 1998* requires the submission of an annual report within four months of the fiscal year-end. The annual report is required to include both audited financial statements and a statement of how Legal Aid Ontario has met its performance standards.

Recommendation

To ensure proper accountability for its mandate and the services it delivers, Legal Aid Ontario should develop appropriate performance standards, effectiveness indicators, and a quality-assurance program. In addition, it should measure and report on its effectiveness in providing legal aid services on a timely basis.

Management Response

Developing comprehensive and meaningful performance standards for all of its activities is one of Legal Aid Ontario's strategic goals. At Legal Aid Ontario's provincial office, each department has developed client service performance measures and is using those measures to report quarterly on performance.

Legal Aid Ontario has made establishing corporation-wide quality assurance a priority in its business plan for the current year. Legal Aid Ontario has completed draft terms of reference for a corporation-wide quality-assurance initiative to develop standards and monitoring on a program-by-program basis.

The annual report is now complete and will be submitted to the Attorney General in early fall.