
MINISTRY OF THE ATTORNEY GENERAL

4.02—Legal Aid Ontario

(Follow-up to VFM Section 3.02, 2001 Annual Report)

BACKGROUND

The purpose of Legal Aid Ontario is to promote access to justice throughout Ontario for eligible low-income individuals. Its primary method of serving clients' legal needs is through the use of legal aid certificates, which allow clients to receive legal representation from their choice of private-sector lawyers for a variety of legal problems. 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—in 2003, 79 independent clinics (about 70 in 2000/01) specializing in addressing the needs of low-income individuals who need legal help in such areas as income maintenance, housing, and access to basic social services; and
- a duty counsel program—a combination of private-sector and staff lawyers providing assistance to clients who do not have a lawyer to represent them in the courtroom.

For the 2002/03 fiscal year, Legal Aid Ontario had operating expenditures of over \$291.7 million (\$247.3 million in 2000/01) and received funding of \$282.2 million (\$249.5 million in 2000/01). Of the total funding, contributions from the province amounted to \$199.4 million in 2002/03 (\$171 million in 2000/01), which represented about 70% of the total in both years. The other contributors to the funding included the federal government, the legal profession, clients, and others.

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. Some of our more significant concerns 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 had 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 more recent four years.

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- Efforts to collect over \$100 million of accounts receivable required improvements.

We made a number of recommendations for improvement and received commitments from Legal Aid Ontario that it would take corrective action.

CURRENT STATUS OF RECOMMENDATIONS

Based on information received from Legal Aid Ontario, action has been taken to implement the majority of our recommendations and action is in progress for the remaining recommendations. The current status of all our recommendations is outlined as follows.

LEGAL AID CERTIFICATION PROGRAM

Service-Level Requirements and Needs Assessment

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.

Current Status

In 2000/01, Legal Aid Ontario initiated a two-phase needs assessment process. It has now completed phase one of the process, which includes a number of components: project planning, a clinic needs-assessment project, consultations with clients and service providers, needs-based legislative analysis, demographic studies, pilot projects, and a federal needs-research program. Phase two of the process, which is still ongoing, includes: second-phase needs-assessment strategy, special projects, a pilot/research program, and ongoing needs-assessment capacity.

Legal Aid Ontario further indicated that all the information gathered from the needs-assessment process is used to determine the most cost-effective manner of meeting the needs of Legal Aid Ontario clients, through, for example, the certificate and duty counsel programs.

Controlling the Cost of Legal Aid Certificates

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.

Current Status

Legal Aid Ontario advised us that it has established a Business Analysis Unit to perform ongoing detailed analysis of certificate costs. It has also undertaken a review of the “big-case management” program to study factors affecting costs of certificates for cases with budgeted costs of over \$20,000 each and it has developed methods to manage these costs more effectively.

In addition, as part of the Certificate Management Program established in June 2001, Legal Aid Ontario has developed a program to target specific legal aid certificate services to be reduced or diverted to duty counsel. Target guidelines have been established for the province, for each local office, and for the type of cases handled. Legal Aid Ontario is in the process of developing strategies for high-volume offices. As well, it is determining long-term strategies to raise awareness and identify the impact of Crown and bail practices on legal aid demand and costs.

Legal Aid Ontario indicated that it plans to develop an improved management information system to analyze lawyers’ billings with the implementation of its new information technology systems in 2004/05. The Total Service Network information technology project, for example, will provide information on utilization rates of tariff maximums for the full Legal Aid Ontario caseload. The legal aid “tariff” is a schedule of fees payable to certificate lawyers for the services they provide to clients. The tariff sets hourly rates and maximum number of hours for which Legal Aid Ontario is willing to pay. In developing this IT network, Legal Aid Ontario will assess how much data to collect in a cost-effective manner from lawyers about services provided on an ongoing basis, and for which types of cases.

Review of Hourly Rates

At the time of our 2001 audit, Legal Aid Ontario had established a Tariff Review Task Force and was preparing a business case to submit to the Attorney General later that year. We encouraged Legal Aid Ontario to consider the matters discussed in our report regarding the participation rate of lawyers and the hourly rates paid by other Canadian jurisdictions as part of its determination of an appropriate level of compensation for private-sector lawyers.

Current Status

The Tariff Review Task Force completed its business case in November 2001 for the consideration of the Attorney General. Subsequently, the province revised the tariff rates for certificate lawyers with an increase of 5% effective April 1, 2002. Another increase of 5% came into effect on April 1, 2003, bringing current tariffs to between \$73.87 and \$92.84 an hour, depending on the lawyer’s experience with legal aid cases. Lawyers working in certain designated areas in the North are given additional incentives.

ALTERNATIVE SERVICE-DELIVERY MODELS

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.

Current Status

Legal Aid Ontario indicated it is taking the Provincial Auditor's findings into account when it designs and operates pilot projects. The design and planning of pilot projects is based on:

- setting specific objectives related to the service model to be tested;
- stakeholder consultation on the design;
- clearly established measures of performance and evaluation at the beginning of the project;
- accurate costing; and
- regular review and evaluation of results.

According to Legal Aid Ontario, current and recently completed pilot projects are conforming to this approach. Projects started prior to our 2001 audit that have recently been completed include: Youth Court Counsel, Unbundled Family Services, Family Case Management, Expanded Duty Counsel, and Family Law Offices. Projects that were started after our 2001 audit and are still in process include: Legal Services for Homeless People, Youth Court Duty Counsel Pilot, Community Outreach and Quality Support in Refugee Law, and Children's Aid Society (CAS) Mediation. Legal Aid Ontario expects to complete all the pilot projects in the 2003/04 fiscal year.

ELIGIBILITY FOR LEGAL AID

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.

Current Status

According to Legal Aid Ontario, it completed and produced a revised manual in September 2001 to ensure that area committees understand and stay within policy guidelines. Area committee decisions and the pattern of appeals granted and refused are now reported six times a year to area directors and the senior management committee. Area committee practices are also discussed at annual conferences with area directors. There are established procedures to report problematic area committee decisions to the vice-president, client legal services.

CLIENT CONTRIBUTIONS

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.

Current Status

Legal Aid Ontario informed us that it launched a major project to overhaul and improve control over its accounts-receivable system and collection processes. Legal Aid Ontario indicated that it has been developing and implementing operational policies, procedures, and programs for managing client contributions in the future. For instance, operational recommendations have been developed based on a “best practices” review of Legal Aid Ontario area offices. Legal Aid Ontario indicated it would ensure that its future information technology system would have the capacity to process collections. Review of performance within the collections department has been completed. The role of private agencies in support of Legal Aid Ontario collection activities is under review.

Based on its analysis, Legal Aid Ontario developed a new definition of accounts receivable and determined that the amount of money in client contributions outstanding as at March 28, 2002, was \$103.4 million. Of this amount, approximately \$89.9 million (66,000 accounts) were secured by liens or other property. The remaining \$13.5 million was unsecured debt. Further analysis enabled Legal Aid Ontario to identify that 26,000 of the 66,000 accounts secured by liens, or \$30.9 million of the \$89.9 million, were no longer receivable. As a result, these accounts were subsequently closed on January 31, 2003.

Legal Aid Ontario indicated that it has been testing various strategies (such as giving discounts and other incentives to clients for paying) to determine how to collect the balance in the remaining 40,000 accounts secured by liens. The results of these strategies to collect outstanding debt will be used to draft and implement policies to support future collection activities. Legal Aid Ontario has started to assess its legal tools for collection of debt by: analyzing past payment agreements to determine ability to enforce collection using these instruments; reviewing the effectiveness of writs; analyzing impact of writs on policy and operations; preparing recommendations; and identifying some “quick fixes” to correct certain key problems.

EFFECTIVENESS OF LEGAL AID SERVICES

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.

Current Status

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. Legal Aid Ontario indicated that its various departments had developed performance standards and effectiveness measures for reporting on their effectiveness in providing client services. In addition, Legal Aid had also created a Quality Service Office to work with managers, staff, and service providers to develop and implement management tools and processes to achieve continuous improvement in the quality of service to clients.

According to Legal Aid Ontario, 70 community clinics and five Student Legal Aid Services Societies (SLASSs) had undergone Legal Aid Ontario’s on-site quality assurance reviews. The reviews’ results and recommendations were to be used by the Quality Service Office to support the clinics and SLASSs in the continuous development of performance and outcome measures in the coming year. Legal Aid Ontario reported that it had completed regional consultation with duty counsel regarding quality standards and that consultations with lawyers dealing in refugee law were underway. As well, it indicated that it had begun discussing with the Law Society of Upper Canada the objectives and approaches common to their respective quality assurance programs, as well as identifying areas where Legal Aid Ontario and the Law Society of Upper Canada can co-ordinate their efforts and support each other’s initiatives.