

## Chapter 1

### Section 1.05

Ministry of the Attorney General

# Legal Aid Ontario

Follow-Up on VFM Section 3.05, 2018 Annual Report

#### RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1		1			
Recommendation 2	2	2				
Recommendation 3	2	1	1			
Recommendation 4	2	1	1			
Recommendation 5	4			4		
Recommendation 6	1		1			
Recommendation 7	2	1	1			
Recommendation 8	1		1			
Recommendation 9	1		1			
Recommendation 10	1	1				
Recommendation 11	1	1				
Recommendation 12	1		1			
Recommendation 13	2		2			
Recommendation 14	1		1			
Recommendation 15	3	1	1	1		
<b>Total</b>	<b>25</b>	<b>8</b>	<b>12</b>	<b>5</b>	<b>0</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>32</b>	<b>48</b>	<b>20</b>	<b>0</b>	<b>0</b>

## Overall Conclusion

According to the information Legal Aid Ontario and the Ministry of the Attorney General (Ministry) provided to us, as of July 10, 2020, 32% of actions

we recommended in our 2018 Annual Report had been fully implemented. Legal Aid Ontario and the Ministry had made progress in implementing an additional 48% of the recommendations.

Fully implemented recommendations included finalizing the process that gave Legal Aid Ontario direct access to court documents. Legal Aid

Ontario is now able to email courts directly with the details of the information they require, and the courts can respond with the required scanned documents within 10 business days at no cost to Legal Aid Ontario. At the time of our follow-up, Legal Aid Ontario was using this process to verify lawyers' billings.

Progress had been made in implementing recommendations such as developing and implementing a quality assurance program to oversee lawyers. At the time of this follow-up, Legal Aid Ontario was seeking changes to legislation that would allow it to develop and implement a quality assurance program. Legal Aid Ontario would have the authority to establish a roster of private-sector lawyers and standards, including standards for quality assurance to oversee those lawyers. In anticipation of the new legislation, Legal Aid Ontario had established a working group to develop rules and policies for lawyers on the roster.

However, Legal Aid Ontario had made little or no progress on 20% of the recommendations, including tracking reasons why financial eligibility was not assessed for clients receiving duty counsel assistance.

The status of actions taken on each of our recommendations is described in this report.

## Background

Legal Aid Ontario is an agency of the Ontario Government responsible for providing legal services to low-income Ontarians. It reports to the Ministry of the Attorney General (Ministry) under the *Legal Aid Services Act, 2020* (Act). Our 2018 audit was conducted when the Legal Aid Ontario operated under the *Legal Aid Service Act, 1998*.

Legal Aid Ontario has three main services:

- It funded 79 community legal clinics, including seven Student Legal Aid Services Societies, across Ontario to serve low-income clients. In 2019/20 the clinics handled over

185,000 files (170,000 in 2017/18) at a cost of \$89 million (\$85.8 million in 2017/18).

- It issued certificates to qualified individuals for retaining private-sector lawyers who then billed Legal Aid Ontario for services provided. In 2019/20, the agency issued about 105,310 certificates (102,870 in 2017/18) at a cost of \$242.8 million (\$252.8 million in 2017/18).
- It provided free duty-counsel services in the province's courts. In 2019/20, duty-counsel lawyers assisted over 618,690 people (643,970 in 2017/18) at a cost of \$56.5 million (\$56.1 million in 2017/18).

In 2019/20, the costs for these programs, plus \$73.4 million in operating costs for its head office, and 17 district and area offices totalled \$461.7 million (\$476.1 million in 2017/18).

Among our 2018 findings:

- In 2016/17, legal aid clinics handled 9,435 Ontario Disability Support Program (ODSP) applications and appeals, representing 44% of the clinics' total caseload. Seventy-eight percent of survey respondents at clinics indicated that they could better serve human rights, employment and seniors' issues with fewer ODSP cases.
- Legal Aid Ontario's Clinic Information System was completed three years late at more than double the \$3.25 million budget because the vendor started the project late and declared bankruptcy before completing it. Legal Aid Ontario then hired the vendor's former employees on contract, and its own IT department managed the project to completion. This could have been avoided if the agency had evaluated the vendor's financial viability prior to awarding the contract.
- Legal Aid Ontario's process for verifying lawyers' billings was ineffective because it did not have direct access to information about court proceedings. This made it difficult to verify lawyers' time spent and the types of

court proceedings, which affected how much lawyers were paid.

- More than 90% of certificate services and over one-third of duty-counsel assists were delivered by private-sector lawyers in 2017/18. Legal Aid Ontario had the authority to direct the Law Society of Ontario to perform quality assurance audits of lawyers—but Legal Aid Ontario had never asked for one. It did refer lawyers to the Law Society for serious issues. One third of the 211 complaints Legal Aid Ontario received in 2016/17 concerned lawyers' services, up 30% from 2012/13.
- Legal Aid Ontario had been using more of its provincial funding to address the increase in refugee and immigration cases due to federal policy decisions. Provincial funding allocated by Legal Aid Ontario for these cases increased to \$24.9 million in 2017/18, up by almost 30% from 2014/15. Ontario's federal funding portion was only 37% in 2016/17 and 39% in 2017/18. In contrast, British Columbia's 2017/18 federal portion was 72% of total funding, and Manitoba's was 90%; Quebec's was 69% in 2016/17.
- Legal Aid Ontario expanded eligibility criteria for legal aid certificates in June 2015 to keep unspent funding instead of returning it to the Ministry as required. More people qualified than expected when the eligibility criteria was changed, contributing to deficits in 2015/16 and 2016/17.

We made 15 recommendations, consisting of 25 action items, to address our audit findings. We received a commitment from the Ministry and Legal Aid Ontario that they would take action to address our recommendations.

## Status of Actions Taken on Recommendations

We conducted assurance work between May 2020 and August 2020. We obtained written representation from the Ministry and Legal Aid Ontario that effective October 2, 2020, they have provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

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

#### 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.*

**Status: In the process of being implemented by March 2022.**

#### Details

Legal Aid Ontario incurred a total of \$40 million in deficits over two years from 2015/16 to 2016/17. Our 2018 audit found that a significant increase in refugee and immigration cases, and associated costs, contributed to these deficits, although the allocation of immigration and refugee funding provided by the Province had steadily increased from \$19.3 million in 2014/15 to \$23.6 million in 2016/17.

Our audit also noted the decision to support immigrants and refugees was a federal government decision. An agreement is in place covering the period April 1, 2017 to March 31, 2022, but the agreement does not specify a percentage split for

sharing refugee and immigration expenses between Ontario and the federal government. The annual funding amount was 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. We noted that if federal funding was more predictable or stable, Legal Aid Ontario would be better able to plan and budget accordingly.

After our audit, the Ontario government made the decision to discontinue provincial funding for new immigration and refugee cases, effective April 2019, and that all legal aid for new immigration and refugee cases in Ontario would have to be federally funded. In August 2019, the federal government agreed to provide additional funding of \$25.7 million to cover the Legal Aid Ontario's shortfall and maintain legal aid for new immigration and refugee cases for 2019/20, bringing total federal funding for immigration and refugee legal aid in Ontario to \$40.9 million for the year.

At the time of our follow-up, Legal Aid Ontario had again requested additional funding for 2020/21 from the federal government for immigration and refugee cases. In August 2020, the federal government confirmed that it intends to provide an additional contribution up to \$26.8 million for six provinces that have immigration and refugee programs, subject to Parliamentary and Treasury Board of Canada approval. This additional funding, if approved, will bring the total federal contribution for immigration and refugee legal aid for Ontario up to \$36 million in 2020/21.

In addition, we noted that both Legal Aid Ontario and the Ministry had expressed their support to the federal government for sustainable and predictable funding of legal aid for refugee and immigration cases. They also expressed support for a contribution agreement between Legal Aid Ontario and the federal government. The Ministry indicated that renegotiating the existing agreement between the province and the federal government might achieve more sustainable funding. The current agreement expires March 31, 2022, and negotiations were expected to begin in late 2020.

## 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.*

**Status: Fully implemented.**

### Details

Our 2018 audit found that Legal Aid Ontario's rushed decision-making contributed to \$40 million in deficits in 2015/16 and 2016/17. In 2014, Legal Aid Ontario began receiving additional annual provincial funding to increase the number of people qualifying for Legal Aid Ontario assistance by raising the financial eligibility threshold for major legal services, including legal aid certificates.

In February 2015, Legal Aid Ontario had accumulated \$17.1 million in unused funding. A 6% rise in financial eligibility thresholds covered by the increased provincial funding had not resulted in the expected increase in certificates provided. Instead of returning the unused funding for 2015/16 to the Ministry as required, in June 2015, Legal Aid Ontario expanded its non-financial eligibility criteria to include secondary consequences, such as potential loss of employment, so more people would be approved for certificates. Our audit found that this policy change was implemented too quickly, without adequate analysis. More people qualified for certificates than Legal Aid Ontario projected, contributing to subsequent deficits.

Our follow-up found that since the large deficits of 2015/16 and 2016/17 were incurred, Legal Aid Ontario had experienced operating surpluses of \$11.4 million, \$13.2 million, and \$14.4 million in 2017/18, 2018/19, and 2019/20 respectively. This eliminated its accumulated deficit of \$30.9 million in 2016/17.

Between 2016/17 and 2019/20, provincial funding to Legal Aid Ontario decreased by \$86.7 million. As mentioned in **Recommendation 1**, the Ontario government had made the decision to discontinue provincial funding for new immigration and refugee cases effective April 2019. Before the announcement of additional federal funding, Legal Aid Ontario had performed detailed analyses of different options for reduced immigration and refugee services to avoid cost overruns, and was monitoring and updating projected costs continuously.

Legal Aid Ontario had not needed to seek approval from the Ministry to use surplus or unused funding since our audit, but indicated it was committed to doing so in the future according to its Memorandum of Understanding with the Ministry.

## Legal Aid Certificates

### 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;  
**Status: Fully implemented.**

#### Details

Our 2018 audit found that the process for Legal Aid Ontario to verify lawyers' billings was ineffective. Legal Aid Ontario did not have direct access to original court documents and other information that included the start and end time for each court proceeding. As such, it was difficult to verify both the nature of the court proceeding and the amount of time spent by the lawyer in court—both factors that affected how much a lawyer was paid.

Our follow-up found that the Ministry, in collaboration with Legal Aid Ontario, implemented a process in May 2019 to allow Legal Aid Ontario to request and obtain court documents for the purpose of verifying lawyer billings. Under the new process, Legal Aid Ontario could email courts

directly with the details of the matter and information it required, and the courts would respond with the required scanned documents within 10 business days, at no cost to Legal Aid Ontario. At the time of our follow-up, Legal Aid Ontario was utilizing this process to obtain court information to verify lawyers' billings.

- *take steps toward filing original copies of court documents electronically, and record and track proceeding time in its court information systems.*  
**Status: In the process of being implemented by April 2023.**

#### Details

Our 2018 audit noted that many courthouses maintained only paper copies of court documents, which limited the efficiency of court information-sharing. In addition, Legal Aid Ontario did not routinely verify lawyers' billings for their time spent in criminal or family court because the verification process was ineffective and costly. In order to verify the billings, Legal Aid Ontario would have had to request court transcripts from third-party transcriptionists, which included the start and end time of the proceeding. Length of proceeding was not tracked on court documents in any other format that was accessible to Legal Aid Ontario.

Subsequent to our audit, the Ministry received approval to expedite the development and implementation of electronic filing and payment for all civil and family court filings. We noted some electronic civil court filings were implemented in 2019/20, with a target to have all civil filings online by March 2021 and family filings by January 2022.

In addition, the Ministry and the Ministry of the Solicitor General jointly received approval for a multi-year initiative named "Criminal Justice Digital Design" in October 2019. The initiative involved several projects, and would allow for electronic document exchanges between police, crown attorneys, court clerks and other parties to a matter. The initiative would also allow for digital evidence management, including a new criminal case management

system. At the time of our follow-up, some projects in the initiative were being piloted. The Ministry indicated significant work needed to be completed in selecting vendors, establishing additional pilots and rolling out solutions to municipal police services and courts. The Ministry's target for the completion of the initiative was April 2023. However, at the time of our follow-up, the Ministry had not yet developed plans to record and track court proceeding times in its court information systems.

#### 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;*

**Status: Fully implemented.**

#### Details

Our 2018 audit found that, unlike Ontario's courts, the Immigration and Refugee Board's (Board) information system tracked how long proceedings lasted. However, Legal Aid Ontario could not directly compare individual lawyer billings to the proceeding data provided by the Board because it did not track the Board's file numbers, which would have allowed it to link its billing data to the Board's data.

Our follow-up found that Legal Aid Ontario changed its billing system in July 2019 to require lawyers to input the Board's file number when they billed for hearing time. We reviewed the billing data between July 21 and September 30, 2019 (the data used to conduct a preliminary analysis, described under the second action in **Recommendation 4**), and found that all billings for Board hearings during this period included Board case file numbers. Legal Aid Ontario could now match billed amounts with the Board's records, such as time spent in board hearings, to ensure the billings were accurate.

- *investigate, when necessary, lawyers whose hourly billings do not agree to actual proceeding time reported by the Board, and take corrective action on billing irregularities.*

**Status: In the process of being implemented by April 2021.**

#### Details

As part of our 2018 audit, we 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 using available data such as lawyers' names and dates of hearings. We were able to match only 226 of the over 17,000 certificates issued between 2014 and 2016. Data matching could not be completed because Legal Aid Ontario did not use the same file numbers used by the Board. Our analysis of the 226 certificates showed 68% of certificates were billed hours greater than the hours reported by the Board, 4% were under-billed, and 28% were billed within 15 minutes' accuracy.

Our follow-up found that Legal Aid Ontario had begun using the Board's file numbers to verify billing hours in its audits of immigration and refugee lawyer billings, and recover any subsequent over-billings identified. In addition, Legal Aid Ontario had performed a preliminary analysis of over 500 certificates that included Board hearings after it began tracking Board case file numbers between July 21 and September 30, 2019. The analysis showed that lawyers billed relatively accurately for the majority of Board hearings. We noted that requiring lawyers to submit Board case file numbers likely acted as a deterrent to overbilling.

Legal Aid Ontario did identify some instances of overstated hours on certificates in their analysis. For example, the five lawyers with the most overstated hours recorded a combined 40 hours more for hearings than the Board's recorded proceeding time data supported on 39 certificates over the two-and-a-half-month period. Some of these overstated hours resulted in lawyer overpayments. Legal Aid Ontario indicated that it would wait for the collection of nine months of billing data to conduct

further comparative analysis and determine steps for addressing overpayments. At the time of our follow-up, the collection of additional data had been delayed by the suspension of Board hearings on March 17, 2020 due to the COVID-19 public health emergency. Legal Aid Ontario anticipated completing the analysis by April 2021, pending the Board resuming operations at a time to be determined by the federal government.

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

### 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.*

**Status: Little or no progress.**

### Details

Our 2018 audit reviewed the Guaranteed Daily Rate (Daily Rate), a fixed fee of \$1,181 paid to lawyers each time they were required to fly to remote courts, or travel by car to a court that was more than 200 kilometres, one way, from the lawyer's office. In 2016/17, total payments for the Daily Rate billed by 87 lawyers were \$2 million.

Our audit found that Legal Aid Ontario had noted instances of inaccurate billing of the Daily Rate, but had not taken timely action to follow up on each case or strengthen its controls to prevent overbilling. Based on a tip of potential billing

irregularities and results from its routine audits of lawyers' billings, Legal Aid Ontario started a review of the Daily Rate in January 2018. The review identified double billing (billing for the Daily Rate and hourly billing for the same day on a certificate), and lawyers billing Legal Aid Ontario for meals on flights when meals are included in the cost of airfare. The review also identified a lawyer who billed \$150,000 for the Daily Rate between May 2013 and August 2016, but used a P.O. box address instead of the primary address on file with the Law Society of Ontario. The lawyer's primary address was only five kilometres away from the court and therefore did not qualify under the Daily Rate policy.

Our follow-up found that Legal Aid Ontario had made little progress in finalizing its review of the Daily Rate, and had not made progress toward implementing effective controls preventing double billing, and other inappropriate billing practices related to primary office locations and meals. In addition, Legal Aid Ontario had not clarified or communicated the Daily Rate policy and the importance of complying with the policy to private-sector lawyers, and had not yet taken steps to recover any overbillings identified.

Legal Aid Ontario indicated that it needed to consult with Nishnawbe Aski Legal Services, the Indigenous legal services corporation which provides services to Nishnawbe-Aski Nation peoples funded by Legal Aid Ontario, before finalizing the review, implementing controls, clarifying the Daily Rate policy and recovering overbillings. Legal Aid Ontario noted that Nishnawbe Aski Legal Services had suspended all consultations to protect their communities during the COVID-19 public health emergency, and therefore could not provide a timeline for implementation of this recommendation. Legal Aid Ontario also indicated that it was waiting to adjust the Daily Rate policy and related controls until after new legislation, the *Legal Aid Services Act, 2020*, was passed. In July 2020, the *Legal Aid Services Act, 2020* was passed and has yet to be proclaimed by the government.

### 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.*

**Status: In the process of being implemented by April 2021.**

#### Details

Our 2018 audit noted that private-sector lawyers providing legal aid services were not assessed for quality, nor were 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 *Legal Aid Services Act, 1998* stated that Legal Aid Ontario had the authority to direct the Law Society of Ontario to perform quality assurance audits of lawyers, but, Legal Aid Ontario had not asked the Law Society of Ontario to do so since its inception. It did, however, reactively refer lawyers to the Law Society when it became aware of serious matters such as potential misconduct. Legal Aid Ontario received 211 complaints in 2016/17, and about one-third concerned lawyers' services. This was a 30% increase from the 162 complaints received in 2012/13.

Subsequent to our audit, Legal Aid Ontario sought changes to legislation to allow it to develop and implement a quality assurance program by itself. New legislation, the *Legal Aid Services Act, 2020* had received a third reading at the time of our follow-up and was passed in July 2020. Under the new act, Legal Aid Ontario has the authority to establish roster lawyers and standards, including standards for quality assurance, to oversee those lawyers.

In anticipation of the new act, Legal Aid Ontario had established a working group to develop rules and policies for its roster of private-sector lawyers. These policies would include ensuring compliance and reporting, and establishing quality standards,

administrative suspensions, monitoring and remediation programs. At the time of our follow-up however, Legal Aid Ontario had not yet explored after-case peer review as part of a quality assurance framework.

In July 2020, the *Legal Aid Services Act, 2020* was passed after a delay due to the COVID-19 public health emergency. In June 2020, Legal Aid Ontario had been expecting to finalize rules and policies related to roster management of private-sector lawyers by the time the act was effective, anticipated at the time by April 2021.

### 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;*

**Status: In the process of being implemented by April 2021.**

#### Details

Our 2018 audit noted that 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 varied by roster, but all included 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. Legal Aid Ontario did not impose consequences on lawyers who failed to submit a self-report.

Our audit also found that new lawyers, or lawyers who were new to a particular area of law who did not meet the experience requirements to be on

a Legal Aid Ontario roster in their area of law, could be conditionally admitted to a roster if they agreed 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 had been conditional for more than three years. Although conditionally approved lawyers are allowed to accept certificates, their conditional status meant that they had not satisfied all of Legal Aid Ontario's requirements.

Subsequent to our audit, Legal Aid Ontario implemented automated controls that eliminated the need to follow up with lawyers who had not submitted an annual self-report, as discussed under the next recommended action.

Our follow-up found that there were still many lawyers on conditional status for more than two years. As of March 31, 2020, 996 of the 4,839 private-sector lawyers on rosters at that time with conditional status on at least one roster for more than two years. However, we also found that Legal Aid Ontario was manually reviewing and following up with these lawyers. Legal Aid Ontario indicated that additional steps, such as automating data collection and correction, were needed to make further progress on following up and reducing the number of conditional-status lawyers. These steps were expected to be completed in time for the implementation of the *Legal Aid Services Act, 2020*, expected at the time by April 2021.

- *establish cost-effective consequences for lawyers who do not provide an annual self-report on their continuous learning.*

**Status: Fully implemented.**

#### Details

In early 2020, Legal Aid Ontario implemented a new control in its online billing system. The consequences for a lawyer not providing annual self-reporting on continuous learning were that the lawyer would not be able to accept new certifi-

cates or submit accounts for payment through the online billing system until the self-reporting was completed. In addition, Legal Aid Ontario planned to notify lawyers who did not submit their annual self-report within eight months of the due date that they might be removed from rosters.

## Community Legal Clinics

### 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.*

**Status: In the process of being implemented by March 2022.**

#### Details

Our 2018 audit found that, in 2016/17, clinics handled 9,435 cases related to clients' Ontario Disability Support Program (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 expand in other existing service areas.

Furthermore, our audit noted that the Ministry, through funds transferred by Legal Aid Ontario to the clinics, funds the clinics and also the Social Benefits Tribunal (Tribunal) that hears ODSP appeals. Cost effectiveness could be achieved if the number of ODSP appeals was decreased so that the Ministry's resources were not used as frequently to fund the appeal process.

Subsequent to our audit, joint efforts by the Ministry of Children, Community and Social Services (MCCSS) and the Tribunal to streamline the appeals process, such as early resolution, continued to lead to reductions in the number of appeals heard by the Tribunal. Our follow-up noted that the number of appeals granted or denied following a hearing decreased from 7,617 in 2014/15 to 4,784 in 2017/18, and further decreased to 4,318 in 2018/19 and 3,649 in 2019/20, or 52% since 2014/15.

In addition, the Ministry had initiated a review of tribunals in Ontario, including the Social Benefits Tribunal, while MCCSS had undertaken a social assistance reform initiative. Under these initiatives, the Ministry and MCCSS had collaborated on potential reforms of the ODSP appeals process and the Tribunal. Work completed included jurisdictional scans for best practices, development of options for reform, and estimation of timelines. The Ministry advised that amendments to the current process would require legislation to be passed, expected by March 2022.

### 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.*

**Status: In the process of being implemented by April 2021.**

#### Details

Our 2018 audit found that although clinics assisted with both ODSP applications and appeals, the clinic information system did not differentiate between applications and appeals. Legal Aid Ontario also did not know how many appeals handled by the clinics eventually went to the Tribunal. Some clinics might have collected this data, but they were not required to report the number of appeals to Legal Aid Ontario. This information would have been useful because it would allow

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.

Our follow-up found that Legal Aid Ontario had made changes to the Clinic Information Management System that would allow clinics to differentiate between ODSP applications and appeals. However, there had been limited uptake by the clinics in utilizing the feature, primarily because the clinics were not yet required to do so. Legal Aid Ontario indicated that clinics would be required to report this information when performance measurement reporting was fully implemented, expected by April 2021.

### 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.*

**Status: Fully implemented.**

#### Details

In 2018, our audit found that Legal Aid Ontario's clinic information system was completed in September 2017—three years late, and 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 starting the project, then encountered financial difficulties and was unable to complete the project before declaring bankruptcy in February 2017. Legal Aid Ontario subsequently hired the vendor's former employees on contract and had its own internal IT department manage the project to completion. This likely could have been avoided if Legal Aid Ontario had evaluated the vendor's financial viability prior to awarding the contract.

At the time of our audit, 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, including the Canadian federal government, the British Columbia government, and the Australian Department of Finance.

Our follow-up found that Legal Aid Ontario entered into a contract in January 2019 with a company that provided credit reports for potential vendors. At the time of our follow-up, Legal Aid Ontario had received credit reports for multiple potential vendors. The reports included detailed information about the vendors, the services they provided, and the industries in which they operated. In addition, the reports evaluated business risk, financial viability, and stability, and assigned a probability of the vendor discontinuing operations.

In addition, in June 2020, Legal Aid Ontario implemented a new procurement policy. The policy stated that a procurement team would determine the level of due diligence required for each procurement, which might include confirmation of financial viability.

### 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.*

**Status: Fully implemented.**

#### Details

During our 2018 audit we found that all four clinics that we had more in-depth discussions with and the representatives from the Association of Community Legal Clinics of Ontario indicated that the new Clinic Information Management System (System) had negatively affected clinics' operations. Common complaints included excessive time to load and save, features not working and a lack of useful reports. The four clinics also indicated that issues with the new System had put a strain on their resources, such as the need to complete data entry

after-hours. These observations were supported by our survey of other community legal clinics that were not included in our in-depth discussions.

Our follow-up found that Legal Aid Ontario had continued to work with clinics to address issues with the System. We also noted that the System working group continued to meet and work on improvements to the system, and System support requests submitted by clinics to Legal Aid Ontario dropped from 406 in 2018 to 266 in 2019.

We spoke again with the four clinics we had in-depth discussions with during our audit, as well as the Association of Community Legal Clinics of Ontario. Clinics emphasized that Legal Aid Ontario had made significant improvements to the System since our audit in 2018, and had dedicated additional resources to making ongoing improvements and resolving issues. For instance, improvements had been made to the speed and functionality of the System, reports had been improved and training was provided. However, representatives from these clinics still had concerns and suggestions for more improvements. For example, they would have liked the System to operate more robustly. Legal Aid Ontario had committed to continue addressing clinics' concerns in a timely manner within its budget where resources were available.

### 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.*

**Status: In the process of being implemented by April 2021.**

#### Details

Our 2018 audit noted that the majority of clinic funding was based on historical amounts—meaning that funding was primarily based on prior years' funding—rather than being equitably distributed based on local needs in each community. As a result, average funding for each person with a low

income varied significantly between clinics. 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—a \$61 gap. Despite some efforts by Legal Aid Ontario to reduce the gap in funding between clinics, we found it had been unable to do so. The gap between the 10 top-funded and 10 lowest-funded clinics had actually increased by 19%—from \$51 in 2013/14 to \$61 in 2016/17.

Mapping where people with low incomes live is considered by experts in legal aid as an effective indicator for identifying clinics' service needs. Legal Aid Ontario began using this measure to identify clinics that had the fewest resources per low-income person.

Our follow-up found that clinics now had the option to report some additional demographic information for clients through the Clinic Information Management System, such as age and the first three digits of the client's postal code. As of March 2020, clinics could also record information on client race. Legal Aid Ontario was providing training to clinics on asking clients race-based questions for clinics who wished to collect race-based data.

Legal Aid Ontario had also begun compiling summary demographic data for clinic service areas to inform funding decisions. This data included information such as education level, citizenship, place of birth and employment status. Legal Aid Ontario indicated it had not yet decided on how to use this information to determine funding, but was planning potential changes to the clinic funding model as part of the implementation of the *Legal Aid Services Act, 2020*, expected at the time to be effective by April 2021.

### 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.*

**Status: In the process of being implemented by April 2021.**

### Details

In our 2018 audit, we noted that community legal clinics measured and reported on outputs, such as number of cases, number of public education sessions held and number of referrals. However, Legal Aid Ontario did not have aggregated data on whether these outputs were achieving the desired program outcomes at each clinic, such as success rates of disability income appeals and landlord tenant disputes. This issue was also identified in our 2011 audit on Legal Aid Ontario.

Our follow-up found that Legal Aid Ontario began piloting the performance measures and performance management reports at nine of 72 clinics in February 2020. At the time of our follow-up, Legal Aid Ontario had not decided which performance measures would be used to evaluate the effectiveness of clinics, stating it would evaluate the usefulness of the measures after all clinics began reporting and sufficient data was available. Legal Aid Ontario expected to roll out performance management reports to the remaining clinics in stages, beginning in September 2020.

In addition, Legal Aid Ontario indicated that addressing underperformance would be included in the rules, policies, and contracts developed for clinics as part of new measures related to the *Legal Aid Services Act, 2020*, and that it would begin monitoring and addressing underperformance when the act became effective, expected at the time by April 2021.

### 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.*

**Status: In the process of being implemented by April 2021.**

#### Details

At the time of our 2018 audit, there were no plans to conduct a review of the community-based clinic model. Such a review had not been done in the previous decade. We noted Ontario was the only Canadian province that provided law services through independent community-based clinics. Other provinces delivered similar clinic services through their provincial legal aid programs. We also found that most jurisdictions in Australia had community-based clinics similar to those in Ontario, and that several Australian states had done comprehensive reviews of their clinic systems to ensure they were meeting client need to the greatest extent possible within fixed budgets.

Subsequent to our audit, Legal Aid Ontario and the Ministry hosted meetings in August and September of 2019 with key stakeholders including clinics, various advisory committees, employees, and union representatives on the delivery of legal aid in Ontario. Included in these meetings were significant discussions regarding the clinic service delivery model and potential improvements. In December 2019, the Attorney General introduced the *Legal Aid Services Act, 2020*, which had received a third reading at the time of our follow-up and was passed in July 2020. The new act gives Legal Aid Ontario the ability to enter into agreements with a broader array of service providers. The Ministry indicated community legal clinics would continue to play a role in providing legal services for low-income Ontarians.

At the time of our follow-up, the Ministry informed us that if the new act was passed, the Ministry and Legal Aid Ontario would work with stakeholders to develop new agreements for service providers, including clinics, aligned with the new legislation. The Ministry anticipated that the new

agreement framework would be completed in April 2021, the effective date of *Legal Aid Services Act, 2020* expected at the time.

## Duty Counsel

### 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;*

**Status: In the process of being implemented by April 2021.**

#### Details

Our 2018 audit found that during 2016/17 (the most recent data available at the time), duty counsel did not perform eligibility tests for 95% of the individuals they assisted on criminal matters. Duty counsel services were mainly provided without an eligibility test unless duty counsel suspected that the person might not be eligible, and because some services (such as bail hearings) did not require a person to be financially eligible. However, because duty counsel did not consistently indicate whether a financial eligibility test was required in each case, it is unclear how many of the 95% of individuals assisted should have been tested, and might not have been eligible for legal aid.

Subsequent to our audit, Legal Aid Ontario implemented a system change in March 2020 that will make filling in the field for financial eligibility for duty counsel assists mandatory. Duty counsel staff will be required to indicate whether a client is eligible, not eligible, exempt, or if they were unable to conduct the financial eligibility test. Legal Aid Ontario had made duty counsel aware of the changes and had developed mandatory training. However, the training, which was expected to be completed by the first quarter of 2020/21, had been delayed due to the COVID-19 public health emergency. Legal Aid Ontario was waiting until the completion of training, expected to be provided by April 2021, before activating the system change.

- *track duty counsel assists to non-eligible clients when directed to by judges;*

**Status: Fully implemented.**

#### Details

Our 2018 audit found that in some cases, a judge might instruct duty counsel to provide assistance to those who were unrepresented in court, in order to increase efficiency in the court process. Legal Aid Ontario, however, did not track how many times duty counsel was directed by a judge to provide an assist to an individual who was not financially eligible, so it is unknown how frequently this occurred across Ontario courts. Overextending duty counsel services to ineligible clients could have taken away duty counsel resources available to assist clients who were eligible.

Subsequent to our audit, in June 2019, Legal Aid Ontario communicated to judges in both criminal and family courts that access to duty counsel would be limited to clients found eligible through the financial eligibility test or those deemed exempt from the test, such as clients in custody, or child protection cases involving bringing a child to a place of safety. Therefore this action has been addressed.

- *track reasons why financial eligibility was not assessed, such as because a financial eligibility test was not required and in what circumstances.*

**Status: Little or no progress.**

#### Details

In our 2018 audit, we reported that duty counsel lawyers did not track consistently whether eligibility testing was required or not, and the circumstances of each service.

As mentioned in the first action under **Recommendation 15**, duty counsel will soon be required to indicate whether or not a client is exempt from the financial eligibility test. Legal Aid Ontario had clearly defined limited exemption criteria, and therefore tracking reasons for exemption will not be required. Exemption criteria included the client being in custody, a youth client facing criminal charges and urgent child protection matters.

Although duty counsel will no longer be able to simply indicate that no financial eligibility test was conducted without providing a rationale, as part of the systems changes previously mentioned, they will be required to indicate if they were unable to complete the test. Legal Aid Ontario had developed guidance that this option should only be selected in extenuating circumstances where it is not feasible to conduct the test, such as when the interaction with the client was too brief or the client was suffering a mental health crisis. However, by not tracking the reason that duty counsel did not conduct the test, Legal Aid Ontario will be unable to assess whether the decision was justified and if duty counsel resources are being utilized appropriately.