

# Legal Aid Ontario

Follow-up to VFM Section 3.09, *2011 Annual Report*

## Background

Legal Aid Ontario is an independent corporation accountable to the Ministry of the Attorney General with a mandate to provide low-income people with consistently high-quality legal aid services in a cost-effective and efficient manner, while recognizing the private bar (private-sector lawyers) and clinics as the foundation for providing such services.

Legal Aid Ontario provides assistance to people in three ways: it issues legal aid certificates to people who then retain private lawyers who in turn bill Legal Aid Ontario for those services; it pays and manages about 1,500 staff and contract lawyers to provide duty counsel services for people who arrive at criminal and family courts without a lawyer; and it funds and oversees 77 independent community legal clinics to assist people with government assistance issues and tribunal representation issues, such as landlord-tenant disputes. Legal Aid Ontario received \$354 million in funding during the 2012/13 fiscal year, which was unchanged from 2010/11, most of that from the provincial government.

In our *2011 Annual Report*, we noted that for at least the past decade, Ontario had spent more on legal aid support per capita than any other province, even though it had one of the lowest income eligibility thresholds and issued fewer certificates entitling people to legal aid per capita than most

other provinces. Legal Aid Ontario acknowledged the need to address a history of operating deficits, make its operations more cost-effective, improve access to its services and help make the courts more efficient. We noted that it had a well-defined long-term strategy to address these issues and that it had moved to increase access to legal aid services beyond the issuing of certificates, such as through expanded use of duty counsel available at court-houses and through its new call centre.

We felt that Legal Aid Ontario's multi-year long-term strategy was heading in the right direction. However, the following were some of the areas the program needed to address if it was to be fully successful in meeting its mandate:

- Only people with minimal or no income qualified for legal aid certificates or for assistance from community legal clinics, and the financial eligibility cut-offs for qualifying had not changed since 1996 and 1993, respectively. This, combined with an escalation in the average legal billing for each certificate issued, meant fewer people over the previous couple of years had been provided with certificates and more clients had been required to rely on duty counsel, legal advice and information from Legal Aid Ontario's website for legal services.
- Since its inception in 1999, Legal Aid Ontario had not had a quality assurance audit program in place with the Law Society of Upper Canada to help ensure that legal services

provided by contract and staff lawyers to its low-income and vulnerable clients were of a high standard.

- At the time of our audit, Legal Aid Ontario was working to address deficiencies with its lawyer payment system. Most importantly, strengthening of controls was required to ensure that all payments, which then totalled \$188 million annually, were justified.
- Legal Aid Ontario's efforts to extract greater efficiencies from community legal clinics had strained its relationship with the clinics.
- With the significant amount of solicitor–client privileged information on Legal Aid Ontario's information technology systems, we expected it to have performed recent and comprehensive privacy and threat risk assessments of its computer databases. However, the last privacy assessment was in 2004, and its systems had changed significantly since then.

As with our 2001 audit, we again noted that Legal Aid Ontario was lacking key performance measures on the services it provides to its clients and stakeholders, and its publicly available annual report to the Attorney General of Ontario was three years overdue.

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

## Status of Actions Taken on Recommendations

Legal Aid Ontario provided us with information in spring and summer 2013 on the status of our recommendations. At the time of our follow-up, Legal Aid Ontario had taken action on all of the recommendations we made in 2011. A review of financial eligibility guidelines and access to legal aid services had been completed and new performance

measures developed. However, some recommendations required more time to fully implement. Legal Aid Ontario was in the process of implementing its strategy for modernizing and expanding financial eligibility for legal aid, and reviewing the efficiency and effectiveness of the community legal clinic system in Ontario. In reforming the clinic system, Legal Aid Ontario developed proposed clinic service delivery ideas with the objective of enhancing service levels and providing a greater range of services within the clinics.

The status of action on each of our recommendations was as follows.

### RECENT INITIATIVES

#### Recommendation 1

*To better inform the Legislature and the public of its strategic priorities and success in achieving its mandate of providing legal assistance to low-income Ontarians, Legal Aid Ontario should develop and implement meaningful performance measures on its key services and program outcomes, and enhance both the information in its annual report and on its website. It should also work with the Ministry of the Attorney General to ensure that its annual report is made public on a more timely basis.*

#### Status

At the time of our follow-up, performance measures on Legal Aid Ontario's key services and program outcomes had been developed and approved by its board of directors. These measures would be used to help reduce the number of client complaints and the cost per client. These measures are included in its annual report for the 2012/13 fiscal year, which had been approved by Legal Aid Ontario's board of directors, but had not yet been tabled in the Legislature and therefore was not yet available to the public. Additional work on data collection systems was planned to enable Legal Aid Ontario to capture and report on additional performance measures in future years.

Starting in the fall of 2011, Legal Aid Ontario began producing a new Quarterly Performance Overview Report that included updates on the organization's financial position, client services, legal aid certificates and payments to lawyers. The reports are distributed to stakeholders by email and posted on Legal Aid Ontario's external website. In addition, an email-based newsletter, called LAO Express, that details current issues, projects and other events concerning Legal Aid Ontario was more frequently issued to stakeholders beginning January 2012 and also posted to Legal Aid Ontario's external website.

The annual reports for fiscal years 2009/10 to 2011/12 have now been tabled in the Legislature and posted on Legal Aid Ontario's external website. Legal Aid Ontario's three-year strategic business plan for fiscal years 2013/14 to 2015/16 has been approved by the Ministry of the Attorney General and was made available to the public in September 2013.

## MEETING DEMAND FOR LEGAL AID

### Recommendation 2

*To help ensure that its multi-year efforts to modernize legal aid services result in delivering cost-effective services to those in need, Legal Aid Ontario, in collaboration with the Ministry of the Attorney General, should:*

- *study the impact on low-income individuals of its current financial eligibility threshold, which has not been raised since 1996, and its shift to using less costly legal aid support services;*
- *assess legal aid programs in other provinces to identify the factors and best practices contributing to their lower costs that can be applied in Ontario; and*
- *continue to identify alternative ways to meet the legal needs of low-income individuals in a cost-effective manner.*

### Status

Legal Aid Ontario's board chair headed an academic study group that in April 2013 completed an

analysis of Legal Aid Ontario's financial eligibility guidelines, its relationship to legal aid services, access to justice and the broader justice system, and an analysis on the impact of its financial eligibility on low-income Ontarians. As a result of the study, Legal Aid Ontario completed a Financial Eligibility Modernization Plan for 2013/14 that includes a strategy for modernizing and expanding financial eligibility for legal aid. For example, Legal Aid Ontario is planning three financial eligibility pilot projects to address legal needs in youth criminal justice, family law and clinic law. The strategy to expand financial eligibility was approved by its board of directors in June 2013.

In spring 2012, Legal Aid Ontario began a comparative analysis of its per capita costs with those of other Canadian legal aid plans. This project, which is expected to be completed by the end of the 2013/14 fiscal year, examines legal aid programs in other provinces to identify the factors and best practices that contribute to their lower costs. Legal Aid Ontario advised us that data had been analyzed and results shared with other legal aid plans in January 2013. Legal Aid Ontario developed a framework for conducting an analysis of legal aid services across Canada and presented its framework at the Association of Legal Aid Plans of Canada annual meeting in June 2013.

We were advised that Legal Aid Ontario is continuously developing service delivery options. For instance, at the time of our follow-up it was developing a new service delivery model for refugee legal aid services to address recent changes to the federal government's new refugee and immigration legislation, and pilot programs of refugee claims matters handled by community legal clinics had begun in two locations.

In addition, in its 2013 budget, the provincial government announced that it is investing \$30 million over three years into Legal Aid Ontario to improve access to justice and enhance outcomes for low-income families, victims of domestic violence and other vulnerable groups to respond to evolving needs.

## QUALITY OF LEGAL SERVICES

### Recommendation 3

*To strengthen its ability to ensure that consistently high-quality legal aid services are being provided as required by legislation, Legal Aid Ontario should:*

- *assess the reasons for a high number of lawyers being on conditional status for panel membership beyond the two-year maximum time allowed, and take timely action to ensure that those not meeting requirements are appropriately followed up on; and*
- *either address long-standing impediments to establishing a quality assurance audit program with the Law Society of Upper Canada or seek changes to its legislation that would allow alternative means of developing and implementing a quality assurance audit program to oversee lawyers, including considering best practices in other jurisdictions.*

### Status

In 2004, Legal Aid Ontario began phasing in standards that require lawyers to demonstrate a specific level of knowledge, skill and experience in the area of law they practice. Those who meet the requirements are assigned to one or more of 10 panels to provide service in specific areas of law. New lawyers or lawyers new to a particular area of law who do not meet the experience requirement can be conditionally admitted to a panel if they agree to meet the minimum experience level within 24 months. A conditionally approved lawyer must attend training and be mentored, as determined by a district area director. Conditionally approved lawyers are authorized to accept legal aid certificates. To improve monitoring of lawyers whose status is conditional, in April 2012, Legal Aid Ontario's Quality Services Office began issuing quarterly reports to its nine district offices listing lawyers who have been admitted to the certificate panel on a conditional basis, and those who have been conditional for more than two years. District managers are expected to follow up on those lawyers. The data is summarized in a quarterly report to senior

management that tracks changes over time. As a result of introducing these new measures, the number of lawyers whose status has been conditional on at least one panel for more than two years has dropped from more than 800 as per our 2011 audit report to 230 as of March 31, 2013, a 71% decrease. In addition, the percentage of lawyers on panels on a conditional basis has been reduced from 22% as of July 2011 to 14% as of April 2013.

Since 2007, lawyers have certified their compliance with Legal Aid Ontario's panel standards, including meeting experience requirements, by submitting the Lawyer's Annual Self Report. Starting in 2012, all certificate lawyers and per diem duty counsel were required to report on activities related to their conditional status.

We were told that, starting in September 2013, Legal Aid Ontario will perform random audits of lawyers to ensure their self-reporting has been accurate, and new updated panel rosters will be generated based on this self-reporting. This will allow Legal Aid Ontario to follow up with lawyers who fail to self-report to determine their compliance and ongoing intention to continue panel membership. We were also advised that a meeting was scheduled for September 2013 between Legal Aid Ontario and the Law Society of Upper Canada to discuss introducing a quality assurance audit program. Depending on the outcome of the meeting, Legal Aid Ontario may consider pursuing legislative changes.

## BILLINGS BY LAWYERS

### Recommendation 4

*To help ensure that internal controls over lawyer billing and payment processing are appropriate, Legal Aid Ontario should:*

- *assess the recoveries achieved in the most recent year's billings using the new targeted, risk-based approach, and on that basis decide whether or not to proceed with an examination of billings from additional prior periods; and*

- *assess the cost-effectiveness of its investigation activities and continue to work with the Ministry of the Attorney General for timely access to court information that is needed for verifying lawyers' billings.*

### Status

Legal Aid Ontario advised us that in June 2012 its Audit and Compliance Unit implemented a revised risk-based approach to review payments to lawyers. Accounts that are at high risk for inappropriate payment are selected for examination. In addition, the Unit had developed an improved risk-based fraud detection tool, which would use computer analyses of past payments to identify inconsistencies. We were advised that the tool was in use starting in fall 2013. Legal Aid Ontario told us it planned to use the new risk-based approach and fraud detection tool to examine billings going forward, but it decided that it would not be cost effective to systematically examine all accounts from prior years.

Legal Aid Ontario's Investigations Department had implemented an improved case file management system, and we were advised that the new system allows staff resources to be more cost effectively allocated.

The Ministry of the Attorney General has provided Legal Aid Ontario with access to its court information for certain cases. A memorandum of understanding governing the data-sharing relationship between the Ministry and Legal Aid Ontario is in place for the five-year period ending in 2016. Although access to court information that is needed to verify lawyers' billings has improved, Legal Aid Ontario advised us that the information from the Ministry is still somewhat limited, and it was continuing to negotiate with the Ministry for further information at the time of our follow-up.

## COMMUNITY LEGAL CLINICS

### Recommendation 5

*To better address the legal needs of low-income individuals served by community legal clinics, Legal Aid Ontario should:*

- *assess the impact of not increasing the clinics' income threshold for determining financial eligibility since 1993;*
- *consider requiring clinics to capture and report on the number of applicants who are denied assistance and the reasons they are denied;*
- *improve the timeliness of the clinic budget review and approval process; and*
- *develop and implement performance measures for clinics that are reflective of the outcomes achieved, together with a quality assurance program that includes the quality of legal advice and services delivered to clinic clients.*

*Legal Aid Ontario, in conjunction with representatives of community legal clinics, should assess the overall effectiveness of the local clinic structure and consider whether any changes are possible that would help serve more clients using available funding.*

### Status

An analysis of clinic financial eligibility guidelines was incorporated in Legal Aid Ontario's overall financial eligibility study completed in April 2013. The study noted that the clinic eligibility test, including its outdated financial eligibility thresholds, is likely posing a significant barrier to clinics being able to meet the needs of low-income people. Legal Aid Ontario's Financial Eligibility Modernization Plan for 2013/14 also includes a strategy for modernizing and expanding financial eligibility for legal aid at clinics.

At the time of our follow-up, in addition to refreshing the information technology infrastructure in clinics, Legal Aid Ontario was implementing its Clinic Information Management System (CIMS) to modernize how clinics track and report services to Legal Aid Ontario. CIMS will require clinics to better capture and report on the



number of applicants who are denied assistance and the reasons they are denied. Draft performance measures had been developed and were being consulted on with clinics. Legal Aid Ontario told us that CIMS was scheduled for implementation in 2014.

Legal Aid Ontario had made some progress in improving the timelines of the clinic budget review and approval process, and had set a new target date of June 30 of each fiscal year to approve all budgets. Clinic budgets for the fiscal years beginning on April 1, 2012 and April 1, 2013 were finalized by regional vice-presidents for those years by June 2012 and early July 2013.

Legal Aid Ontario has been reviewing the efficiency and effectiveness of the clinic system in Ontario over the last four years. In May 2012, Legal Aid Ontario released a paper called *Ideas for the Future Development of Clinic Law Delivery Services in Ontario*, as part of its strategic planning process. In addition, Legal Aid Ontario developed proposed clinic service delivery approaches for both general and specialty legal clinics, with the objective of enhancing service levels and providing a greater range of services within the clinics. Legal Aid Ontario retained third-party consultants to evaluate the proposals and were presented with an evaluation report in December 2012. A consultation paper on clinic performance measures was finalized and published on the Legal Aid Ontario website in March 2013. On May 16, 2013, Legal Aid Ontario released its strategic direction for the delivery of clinic law services over the next five years. The Clinic Law Service Strategic Direction outlines the key objectives and principles that will shape how the future of clinic law will be further developed to improve client service in the most cost-effective way. We were advised that how change will be implemented will be the subject of much consultation and discussion with clinics and others in the months and years ahead. At the time of our follow-up, Legal Aid Ontario had plans to conduct teleconferences and in-person meetings

with clinics from August to November 2013 to obtain more feedback.

## INFORMATION TECHNOLOGY

### Recommendation 6

*To ensure that information technology systems meet privacy, security and service level standards, Legal Aid Ontario should:*

- *periodically assess threats and risks associated with its sensitive information and assets and take steps to manage the issues identified; and*
- *engage the users of the information technology services in the development of key performance measures that would provide management with information on their progress in meeting user needs.*

### Status

In July 2012, Legal Aid Ontario established its Privacy Impact Assessment/Threat Risk Assessment (PIA/TRA) program, which adopted principles and methodology required by all agencies and ministries of the Ontario government. We were informed that PIA/TRAs had been performed with all system changes effective mid-2012. At the time of our follow-up, a PIA/TRA for Legal Aid Ontario's key accounting and case management IT system was nearly completed. Legal Aid Ontario had hired a consulting firm to review the overall PIA/TRA program and to evaluate the PIA/TRA test plans for the accounting and case management Information Technology (IT) system. A report was received in September 2013.

Legal Aid Ontario's IT department completed an internal threat risk assessment on its production servers, where a list of short and longer term safeguards were identified. At the time of our follow-up, the IT department was in the process of establishing a plan to address each safeguard. In February 2013, a third-party consultant completed a review of the production servers and confirmed the setup and configuration was correct for reducing the risk of threats.

Legal Aid Ontario established a new, more holistic and formal strategic corporate security program, including a plan for increasing security over its external and internal IT infrastructure that was completed in fall 2013. Its internal auditor also had plans to review the implementation of the program.

IT key performance measures were formally established in 2012, and include measures for its services such as maximum phone wait times, number of incidents opened and resolved on first contact, time required to resolve issues and availability of core business application systems. Legal Aid Ontario advised us that results of performance measures are reviewed quarterly to analyze trends and identify deficiencies. In addition, an IT end-user satisfaction survey was sent out to Legal Aid Ontario staff and clinic staff in April 2013, and we were informed that the results will be used to further refine its key performance measures.