



Legal Aid Ontario 2018 Value-for-Money Audit

Why We Did This Audit

- Legal Aid Ontario's total expenditures were \$476 million in 2017/18, an increase of 27% from 2013/14. It incurred a total of \$40 million in deficits over two years—\$14 million in 2015/16 and \$26 million in 2016/17.
- Over 4,000 private-sector lawyers are reimbursed by Legal Aid Ontario for providing legal services to eligible Ontarians.

Why It Matters

Legal Aid Ontario has a statutory mandate to provide access to justice to low-income Ontarians. It does so in three major ways:

- funds and oversees 80 community legal clinics that provide a variety of services across Ontario;
- issues legal aid certificates to individuals who then retain private-sector lawyers who in turn bill Legal Aid Ontario for services provided; and
- provides free duty counsel services within the courts.

What We Found

- Ontario Disability Support Program (ODSP) applications and appeal cases comprise 44% of community legal clinics' (clinics') workload. Legal Aid Ontario estimated that the total ODSP cases cost it approximately \$21 million, or about 24% of Legal Aid Ontario's clinic budget. Seventy-eight percent of respondents to our survey of clinics indicated that if the ODSP case volume was reduced, they would be able to serve other legal needs.
- Almost 75% of all ODSP appeals heard at the Social Benefits Tribunal (Tribunal) in 2017/18 ruled against the Ministry of Children, Community and Social Services' decisions. The Ministry of the Attorney General (Ministry) funds applicants who use clinic services and the Tribunal; therefore, cost and time savings could likely be realized if the number of ODSP appeals could be reduced.
- Legal Aid Ontario does not routinely verify lawyers' billings for time spent in court because the process it uses to verify lawyers' billings is ineffective. In 2016/17, over 27,500 invoices for over 22,500 certificates issued included time billed for court proceedings. Legal Aid Ontario could not verify these billings without obtaining the court transcripts from third-party transcriptionists because the courts do not track the length of proceedings.
- Legal Aid Ontario noted instances of inaccurate billings from lawyers but did not follow up on each case. For example, a lawyer billed almost \$150,000 from May 2013 to August 2016 under the Guaranteed Daily Rate, when the lawyer should have been paid under a lower, hourly rate. Legal Aid Ontario has not examined how much of the \$150,000 is allowed under the hourly rate and has not recovered any overpayment from the lawyer.
- More than 90% of certificate services and over 30% of duty counsel assists were delivered by private-sector lawyers in 2017/18. However, private-sector lawyers are not assessed by Legal Aid Ontario for quality of work, nor are they peer-reviewed by the Law Society of Ontario.
- Legal Aid Ontario has been using a larger portion of its provincial funding to address the increase in refugee and immigration cases. Provincial funding allocated by Legal Aid Ontario for these cases increased to \$24.9 million in 2017/18, or 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 federal funding portion was 72% of total funding in 2017/18, and Manitoba's was 90% for the same year. For Quebec, the federal funding portion was 69% of total funding in 2016/17.
- In February 2015, Legal Aid Ontario realized that a 6% rise in financial eligibility income thresholds covered by increased provincial funding did not result in the expected increase in certificates. Instead of returning the unused funding for 2015/16 to the Ministry as required, Legal Aid Ontario expanded its non-financial eligibility criteria in June 2015 to allow more people to be approved for a certificate. More people qualified than it projected and that subsequently contributed to the deficits.

Conclusions

- Legal Aid Ontario has an opportunity to reduce the money spent by clinics on handling ODSP application and appeal cases by working with the Ministry of Children, Community and Social Services and the Social Benefits Tribunal so that legal resources can be better utilized.
- Legal Aid Ontario's oversight of private-sector lawyers conducting legal aid work could be more effective if it was given direct access to court documents and other information to assist with its review of billings, and if it, or the Law Society of Ontario, conducted risk-based quality reviews of lawyers providing legal aid services.
- Legal Aid Ontario should complete thorough analyses before making key policy changes. It needs to take precautions not to overspend its budget in the future, and seek additional federal funding for refugee and immigration cases.

Read the [Legal Aid Ontario](http://www.auditor.on.ca) audit report at www.auditor.on.ca