

Ministry of the Attorney General

Program Evaluation of Legal Aid Ontario Client Legal Services

December 11, 2003



Deloitte & Touche LLP
79 Wellington Street West
Suite 1900
Toronto, ON M5K 1B9

Tel: (416) 601-6150
Fax: (416) 601-6151
www.deloitte.ca



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Ms. Terese Weisberg
Senior Policy / Program Analyst
Program Support
Ontario - Family Justice Services Division
Ministry of the Attorney General
595 Bay Street, Suite 800
Toronto, Ontario
M5G 2M6

Dear Ms. Weisberg:

We have concluded our Program Evaluation of Legal Aid Ontario's (LAO) Client Legal Services Division. Attached is the final version of our report for your review.

If you have any questions or concerns with the content of this report, please do not hesitate to contact me directly at 416-601-6511 or Andy Potter at 416-643-8938.

Yours very truly,

DELOITTE & TOUCHE LLP

Stephen Diotte
Partner



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Executive Summary

BACKGROUND & SCOPE

April 1st, 1999 marked the end of the Legal Aid Plan under The Law Society (which formally began in 1967) and the beginning of 'Legal Aid Ontario'. Legal Aid Ontario (LAO) is an independent, but publicly funded and publicly accountable non-profit corporation set up to administer the Province of Ontario's legal aid program. The objective of this assignment is to evaluate the relevance, efficiency, effectiveness and sustainability/affordability of the Client Legal Services component of LAO. This review is part of the Government of Ontario's four-year program evaluation strategy and is consistent with the Program Evaluation Guidelines issued by the Program Management and Estimates Division (PMED) of Management Board Secretariat.

The scope of this review is the Client Legal Services component of LAO. Therefore, our focus is on the following areas:

- The Certificate Program
- The Duty Counsel Program
- Support Functions

SUMMARY OF THE PROGRAM EVALUATION & RELATED KEY FINDINGS

This Executive Summary provides an overview of the analysis and summarizes the key findings and observations related to each of the evaluation questions. The overall assessment for each component area is also provided based on the following legend. (Please refer to the end of the Overall Conclusion section for a summary of the results of our review.)

Assessment of the risk level or significance of the findings	
	Strong results no material improvements required
	Satisfactory results but some improvements required
	Significant improvements required
	Unsatisfactory results and does not meet requirements

In order to put our assessment of the individual components within the Client Legal Services function in perspective, we have presented the following spectrum, which summarizes the history of LAO's Client Legal Services programs, the current state of the programs and potential future attributes of the programs.

Spectrum of LAO's Client Legal Services Program

Sample Attributes of the Client Legal Services Program pre April 1999

Sample Attributes of the Client Legal Services Program as at November 2003

Sample Target Attributes of the Client Legal Services Program

	<i>Sample Attributes of the Client Legal Services Program pre April 1999</i>	<i>Sample Attributes of the Client Legal Services Program as at November 2003</i>	<i>Sample Target Attributes of the Client Legal Services Program</i>
Overall Client Legal Services	<ul style="list-style-type: none"> Lack of integration between the Duty Counsel and Certificate service delivery models Lack of integration between the Certificate Program and the Clinic System Poor governance structure 	<ul style="list-style-type: none"> Some area offices contributing to more integrated service delivery by referring clients from the Certificate Program to Duty Counsel Minimal number of co-located clinics and area offices Administrative tasks are conducted by numerous service areas (ie. family staff offices, area offices and staff duty counsel) 	<ul style="list-style-type: none"> Prioritized choices on service levels Needs based approach to meeting target client needs Rationalized admin. activities Collaboration with industry partners Integration with Clinic Program
Certificate Program	<ul style="list-style-type: none"> One pilot staff office Increasing number of certificates issued Escalating costs of big cases Absence of quality assurance standards for certificate lawyers Narrow and stagnant financial eligibility criteria Lack of tracking and monitoring of case costs, lawyer and paralegal utilization and volume of certificates in the refugee law office 	<ul style="list-style-type: none"> Successful adoption of family law staff offices and development of criminal staff office pilot program Certificate Management Program has reduced the number of certificates issued and helped LAO to manage its expenditures more effectively More effective management of big cases but overall average case costs continue to rise Lack of quality control standards for certificate lawyers and lawyers in the family law offices but development of Quality Service Office to address the issue No defined cost/benefit for staff lawyer use relative to use of the criminal private bar Reactive response to tariff pressures Narrow and stagnant financial eligibility criteria Decreasing supply of lawyers accepting certificates Lack of defined and monitored outcomes for the Certificate Program Lack of tracking of case costs, utilization and certificate volume in the refugee law office 	<ul style="list-style-type: none"> Defined cost / benefit for staff lawyers relative to use of private bar and optimized delivery model between staff and private bar delivery based on local needs Defined and monitored outcomes for the Certificate Program Formalized tariff review process Formalized eligibility criteria review process Quality assurance standards and mechanisms for certificate and staff lawyers Tracking and reporting of case costs, utilization and volume of certificates in the refugee law office Alternative application acceptance mechanisms – internet, kiosk etc.
Duty Counsel Program	<ul style="list-style-type: none"> Private bar delivery model Limited number of staff positions Lack of Duty Counsel Coordination Reactive response to tariff pressures Absence of quality assurance standards for per diem Duty Counsel 	<ul style="list-style-type: none"> Successful introduction of Supervisory Duty Counsel positions but still relatively few staff lawyer positions Implementation of Family Law Information Centres and Advice Lawyers Lack of defined and monitored outcomes for Duty Counsel Program but LAO has begun to track dispositive outcomes Some tracking of staff duty counsel time spent by activity Reactive response to tariff pressures Lack of quality control standards for per diem Duty Counsel but development of Quality Service Office to address the issue 	<ul style="list-style-type: none"> More full-time staff lawyer positions Defined and monitored outcomes for Duty Counsel Program Tracking of staff duty counsel time spent by activity Formalized tariff review process Quality control standards for per diem Duty Counsel
Support Functions	<ul style="list-style-type: none"> No Quality Service Office Lack of information analysis and reporting Operational Support provides manuals for some area offices 	<ul style="list-style-type: none"> Establishment of the Quality Service Office Provision of on line research facility for lawyers providing legal aid service Poor financial eligibility policy manual Manual auditing of lawyer accounts 	<ul style="list-style-type: none"> Improved financial eligibility policy manual Movement away from conducting manual audits of lawyer accounts with the implementation of TSN
Conclusion	<ul style="list-style-type: none"> Not Efficient Not Effective Not Sustainable in the short term 	<ul style="list-style-type: none"> Partially Efficient Partially Effective Sustainable in the Short Term 	<ul style="list-style-type: none"> Efficient Effective Sustainable & Affordable in the Long Term

OVERALL CONCLUSION

As illustrated in the spectrum, LAO's Client Legal Services has made considerable progress since becoming an independent agency of the government in 1999. Based on our review, we have determined that overall the Client Legal Services function of LAO is performing at a satisfactory level but some improvements are required. In particular, LAO has demonstrated a strong commitment to identifying areas of opportunity and weakness and developing action plans to address these issues. In addition, our review indicates that management understands its responsibility to maximize its use of limited resources and is continually looking for more efficient ways to deliver effective client service.

With respect to the Certificate Program, LAO has demonstrated strong progress in its management of the program over the last few years. In particular LAO has improved its management of certificates issued and its expenditures on big cases. Additionally LAO has built upon recommendations made in the McCamus review and has experimented with alternative service delivery models. Some of these alternative service delivery models include the implementation of the family law offices in 1999 and the pending roll out of the criminal staff law offices. As with any organization going through a period of great change, some improvements are required to increase the efficiency and effectiveness of operations. Key areas of priority include identifying opportunities to consolidate administration functions, defining outcome measures and targets for the Certificate Program and developing innovative ways of managing private bar supply and demand issues.

LAO has also demonstrated its commitment to enhancing the service delivered under the Duty Counsel program. We recognize the steps that LAO has taken to improve its delivery mostly through experimenting with alternative service delivery models such as the expansion of Staff Duty Counsel, with most taking on a Supervisory role, and the implementation of the Expanded Duty Counsel model. While limited data exists related to the efficiency and effectiveness of these programs, initial anecdotal comments indicate the programs have increased court efficiencies and provided better service to clients. Recognizing that LAO is still a developing organization, significant attention to the Duty Counsel Program is still needed. Key areas of opportunity for improvement include defining outcome measures and targets, developing consistent definitions for costs incurred relative to clients served and improving the accuracy and consistency of all financial information. The Total Service Network (TSN) project will considerably enhance LAO's ability to manage its operations more effectively once it goes live in April 2004.

Our conclusion on the Support Functions is that they are operating in a satisfactory manner and some improvements are still required.

However, the underlying issue faced by the Client Legal Services Program relates to its on-going affordability and sustainability in light of its current role in the Justice System in the Province of Ontario. As we have identified in several areas of this report, LAO is largely a reactive organization that faces external demand drivers over which it has no control. It is clear from our review that based upon tariff pressures and current funding envelope, there is a significant risk of jeopardizing the availability of services to low income Ontarians. This issue of sustainability is over-and-above the existing question of whether a significant proportion of Ontarians are ineligible for legal aid, despite having no realistic capability of retaining a private lawyer.

Given short-term fiscal realities, LAO is an increasingly difficult position to continue fulfilling its legislative mandate of providing high quality legal services to low income Ontarians. In our view LAO management has already demonstrated its recognition of this issue through its strategy to divert clients to lower cost services. The long-term sustainability of achieving operating efficiencies is questionable since at some point there will be a detrimental impact on the effectiveness of LAO services, which would have far reaching negative consequences on the broader justice system.

OVERALL ASSESSMENT BY COMPONENT & PROGRAM AREA

Overall, the results of our program evaluation can be summarized as:

Components of the Process	Relevance	Efficiency	Effectiveness	Affordability & Sustainability	Overall Assessment
Certificate Program					
Duty Counsel Program					
Support Functions					
Overall Assessment by Component	A	B	C	D	Overall Conclusion

The following provides a more detailed summary of our assessment of LAO's Client Legal Services:

A) RELEVANCE

Our analysis of relevancy was largely limited to initial documentation review and obtaining perspectives from stakeholders across the Justice System. Their view was unanimous that LAO Client Legal Services (the Certificate and Duty Counsel programs) are an integral part of the Justice System in the Province of Ontario. In addition, the ability to provide access to legal representation to low-income Ontarians, through either one of the core programs, is a critical component of the broader social support infrastructure in the Province of Ontario.

The initiatives of LAO Client Legal Services are also consistent with the following objectives of the Ministry of the Attorney General:

- Providing justice support services to vulnerable people;
- Supporting victims throughout the criminal justice system; and
- Providing criminal, civil and family courts and related justice services that are fair, coordinated, timely and accessible.

Additionally, as enablers of the core Client Legal Services program, we also assessed the Support Functions as relevant since they assist the effectiveness of the core programs.

B) EFFICIENCY

On an overall basis, Efficiency has been assessed as satisfactory with some areas that require improvement.

With respect to the Certificate Program, factors that have contributed to increased efficiency include:

- The successful implementation of the Certificate Management program which has decreased the number of certificates and contributed to better cost management.
- The adoption of video applications for certificates.
- Timely processing of appeals by the Appeals Department.
- Establishment of family law staff offices, which are operating on comparable levels to the private bar in terms of average cost per completed certificate.
- The refinement of the Big Case Management Program which has contributed to a reduction in the average completed big case cost.

With respect to the Certificate Program, factors that have detracted from efficiency include:

- A significant increase in the average case cost over the past five years.
- Application officers are often unable to determine financial eligibility in the first instance.
- There is a high abandonment rate for certificate applications. This detracts from the efficiency of the program since LAO's application officers are spending large amounts of time on abandoned applications, time which could be redeployed to other activities if the abandonment rate was decreased.
- Although the Toronto family law office has increased its number of closed certificates it is still unable to achieve its annual targets for the number of closed certificates.
- There is a backlog of cases in some family law offices.

It should be noted that while on a program level basis, average costs per certificate have increased, this is not entirely reflective of inefficiency since the key cost drivers are case complexity and the tariff rate, factors which are outside of LAO's control.

With respect to the Duty Counsel Program, factors that have detracted from efficiency include:

- In certain locations Duty Counsel are taking certificate applications. It would be more cost effective if LAO application officers took applications since they have a lower hourly rate.
- Duty Counsel Program costs have increased over the past few years and costs related to the Family Law Information Centres, Advice Lawyers and the Expanded Duty Counsel offices have also increased.

Overall, it is difficult to assess the efficiency of the Duty Counsel Program since there are a number of external factors such as the court system that affect the cost of the program. A number of initiatives such as the Expanded Duty Counsel Program and the hiring of the Supervisory Duty Counsel were only recently implemented and thus relatively little cost data is available. Our review of the Duty Counsel Program also revealed inconsistencies in the definition of attributable costs in relation to clients served as well as inconsistencies in the data maintained within different departments. As such, it was difficult to draw firm conclusions on the trend in costs per client served and the efficiency of operations.

With respect to Support Functions, factors that have contributed to increased efficiency include:

- The hiring of a manager in the Business Analysis Unit and a greater focus on data collection and analysis.
- The ability of LAO to re-organize LAO Law and absorb the removal of a full time employee while providing the same level of services. LAO Law has also enhanced the efficiency of its services by distributing more of its materials electronically.

With respect to Support Functions, factors that have detracted from efficiency include:

- A lack of resources in the Operational Support department which has resulted in slow turnaround times for policy and procedure manuals.
- A number of resources are dedicated towards manually auditing lawyer billings.

C) EFFECTIVENESS

On an overall basis, Effectiveness has been assessed as satisfactory with some areas that require improvement.

With respect to the Certificate Program, factors that have contributed to increased effectiveness include:

- The implementation of family law staff offices and the development of pilot criminal law staff offices which have increased the available supply of lawyers.
- The development of the Quality Service Office to develop panel standards.

With respect to the Certificate Program, factors that have detracted from effectiveness include:

- Stringent and aging financial eligibility criteria and narrow legal eligibility criteria for certificates may be reducing the availability of certificates to target clients.
- Since the financial eligibility criteria do not take into consideration regional differences in the cost of living, it is harder for the "working poor" in large urban centers, such as Toronto and Ottawa, to qualify for legal aid. This is because the current financial eligibility test renders many of them ineligible, despite the practical reality that their net disposable income is insufficient to afford a private lawyer due to the high cost of living in large urban centers.
- The number of lawyers willing to accept legal aid certificates is declining. Additionally the number of geographic areas with relatively low acknowledgement rates is increasing. Both of these factors indicate that LAO may be having difficulty in providing service to its target clients.
- Information on the number of appeals of denied legal aid applications to area committees is not centrally tracked and analyzed which makes it difficult to determine if certificates are granted or denied in a consistent manner.
- There is a lack of integration between the Certificate Program and other LAO services such as the clinic system.
- There is a lack of quality assurance mechanisms and standards for both private bar and staff lawyers.
- Information on the refugee law office related to volume, average case costs, or utilization is not tracked or monitored. This makes it difficult to determine if the office is operating in an efficient manner.

- LAO's ability to track actual certificate hours spent by activity and by case type is limited. This reduces LAO's ability to analyze the extent to which lawyer billings are under/over or in line with certificate available hours.
- A clear cost / benefit analysis for a criminal staff model versus private bar model has not been conducted.

With respect to the Duty Counsel Program, factors that have contributed to increased effectiveness include:

- The introduction of the Supervisory Duty Counsel position has been positively viewed by other stakeholders in the Justice System.
- Overall, stakeholders in the Justice System view Duty Counsel services as a key step to expedite court proceedings.
- Introduction of the Expanded Duty Counsel role has been beneficial for family law cases in which continuity of representation is more critical.

With respect to the Duty Counsel Program, factors that have detracted from effectiveness include:

- There is a lack of quality control standards for the Duty Counsel Program. This is compounded by the fact that a small proportion of lawyers incur a significant proportion of Duty Counsel fees and there are no mechanisms in place to ensure the quality of their work. Additionally some lawyers only provide Duty Council services a few times a year and thus may not have enough experience to provide Duty Counsel services in an effective manner.
- Certain Duty Counsel panel members are too reliant on legal aid work to sustain their law practice, which increases the need for quality standards.
- The declining population of private bar lawyers willing to provide Duty Counsel service may contribute to difficulties in finding qualified private bar lawyers to provide high quality service to clients.
- Absence of activity level information with respect to Duty Counsel service makes it difficult to determine if Duty Counsel is operating in a cost effective manner.
- LAO is in the early stages of developing outcome measures for Duty Counsel activities. These measures will help LAO to understand Duty Counsel outcomes.
- Data integrity issues resulting from maintaining financial information in two different systems decreases the ability to determine if the program is operating in a cost effective manner.

It is important to note that the absence of activity level and outcome information limited our ability, and in turn we assume management's ability, to measure the efficiency and effectiveness of the Duty Counsel program. This represents a significant improvement requirement since it hinders management's ability to effectively monitor and control the quality of the program.

With respect to Support Functions, factors that have contributed to increased effectiveness include:

- The provision of high quality service by LAO Law.
- The development of a high quality area office policy manual.
- The establishment of a Quality Service Office.

- The refinement of the certificate estimation model.
- The hiring of a manager in the Business Analysis unit.

With respect to the Support Functions, factors that have detracted from effectiveness include:

- Data integrity issues resulting from maintaining financial information in two separate systems that are not integrated.
- The financial eligibility manual is difficult to understand. Additionally there is a lack of publicly available information on the financial and legal eligibility guidelines. If clients had better information on the guidelines they might be able to determine for themselves if they qualify for legal aid instead of having to go to an area office to have an application processed.

It should be noted that LAO has a large PeopleSoft project implementation (referred to as the “Total Service Network” or “TSN” project) underway. It is expected that PeopleSoft will be operational in less than one year and will provide LAO with significantly better information that will enhance its ability to monitor service delivery.

D) AFFORDABILITY & SUSTAINABILITY

We have assessed the area of Affordability and Sustainability as the greatest area for improvement within Client Legal Services. As part of our evaluation plan, we determined that it was most appropriate to assess the affordability and sustainability of Client Legal Services at an overall level rather than for each of its component parts. This is because the demand drivers behind each of the Certificate Program and the Duty Counsel Program are largely the same.

At a high level, LAO continues to face four critical demand drivers for its services:

- Growing demand for its services caused by increasing charges in the criminal justice system, legislative change and increases in resources to the justice system, Children’s Aid Societies and the police;
- Overall delays in the criminal and family justice system;
- Regional shifts in demand caused by changing demographics; and
- Increasing complexities in the overlapping legal and social needs of clients.

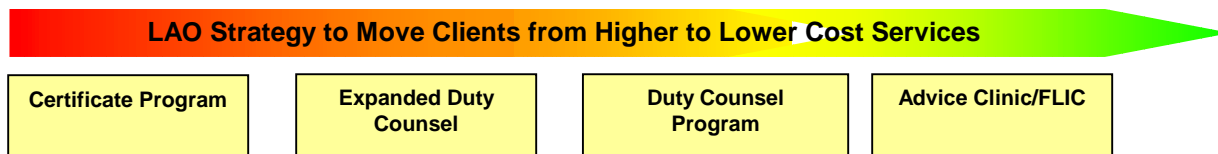
Our analysis also considered other demands on the program such as the fact that the increasingly stringent financial and legal eligibility criteria, are making legal aid certificates less available to a significant proportion of LAO target clients. This may need to be addressed if the existing mandate is to be fulfilled and would clearly require additional funding.

In addition, we examined important considerations around the available supply of private bar lawyers to render legal aid work. These indicated that the number of private bar lawyers making themselves available to deliver legal aid services is declining. Although the legal aid tariff was recently increased it is still too early to conclude on its impact on the supply of private bar lawyers willing to accept legal aid certificates.

In evaluating the affordability and sustainability of LAO’s Client Services, it is important to understand the extent to which LAO has already made progress to manage its costs more efficiently. In the illustration below, we have reflected LAO’s core services on a spectrum from

highest to lowest cost. The critical point is that LAO already has a clearly articulated strategy to move its target clients from the Certificate Program through to other lower cost services. The evidence of the results of the Certificate Management program supports this strategy combined with the introduction of other innovations such as Expanded Duty Counsel and Family Law Information Centres.

Illustration of Cost of LAO Client Services



The fact that LAO has been successful in managing this dynamic is not just testament to LAO management’s recognition of the issue, but also raises significant sustainability questions itself. While cost efficiencies are desirable in the short-term, they raise the question of whether they have been achieved at the expense of effectiveness in meeting client needs. Also, cost efficiencies and service innovations are only sustainable up to a point, after which, there may be no other options but to increase the funding envelope to LAO in order to maintain service levels.

From purely a financial perspective, our review of LAO’s business plan indicated that the Client Legal Services Program is affordable and sustainable in the short-term, based upon the recently developed financial plan. However, this conclusion does not take into account the client service and staff workload implications inherent in the current service delivery model. LAO is likely to face a continued increase in demands on its resources, which when factored with pressures on eligibility criteria and the tariff, and the diminishing supply of private bar lawyers, begins to raise significant questions on affordability and sustainability.

Given this environment and with the current funding envelope, we concluded that in the long-term, the Client Service Program would not be affordable and sustainable to meet its current mandate. However this conclusion does not detract from the continuing need to realize additional short-term operating efficiencies.

We also performed some cursory analysis on the Contingency Reserve Fund, since it is integral to the discussion on the affordability of LAO. The history and issues pertaining to the Contingency Reserve Fund are complex and there are compelling competing viewpoints. In our view, the issue is less whether the fund is used over the next few years to fund tariff increases, but more whether LAO and the Government can agree on its purpose, future use and a replenishment plan in the event that future contingencies materialize. All government programs are under fiscal pressures so difficult short-term choices may need to be made related to the fund.

KEY OPPORTUNITIES FOR IMPROVEMENT

As the details in this report illustrate, LAO is currently in a state of change with a strong emphasis on continuous improvement. Although legal aid services have been delivered in the Province of Ontario since 1967, LAO's current structure has only been in place for the past four years and is therefore in a state of infancy. This transition has required a paradigm shift for LAO, with an increased focus on customer service, alternative service delivery models and new internal business processes. The following are the key areas for improvement that LAO should continue to address (refer to the Recommendations section of this report for a more detailed list of recommendations):

Overall Client Legal Services Program

In order to improve the overall efficiency, effectiveness, affordability and sustainability of Client Legal Services at an aggregate level, LAO should implement the following recommendations:

- We recommend that LAO conduct a study to investigate the number, nature and location of people who fail to meet the financial and legal eligibility test and to determine the extent of actual need in order to improve access to justice.
- A key component of this study needs to include a detailed assessment of the extent to which the "working poor" in large urban centers, such as Toronto and Ottawa, are ineligible for legal aid. This would confirm or repudiate the hypothesis that the current financial eligibility test renders many of them ineligible, despite the practical reality that their net disposable income is insufficient to afford a private lawyer due to the high cost of living in large urban centers. In our view, this is important because LAO experiences the greatest demand pressures in large urban areas.
- We further recommend that LAO conduct a study to investigate the financial and operational implications of changing the financial and legal eligibility criteria if it is determined that a significant group of low income Ontarian's needs are not being met.
- With reference to both the financial and legal eligibility criteria, we recommend that a formalized review cycle be developed for potentially changing the eligibility criteria and thresholds. Such a cycle could then be incorporated into the forecasting process as well as communicated to target client groups.
- We would like to reiterate that before changes are made to the financial or legal eligibility criteria, LAO must study the financial and operational implications since any changes to the eligibility criteria could have a significant impact on the overall cost of the program. Such a study would allow LAO to determine whether or not to reduce, expand, maintain or slightly modify certain components of the eligibility criteria in order to provide enhanced or reduced service to its target client group. However, in our view, a modification of the financial eligibility criteria to take account of regional differences in the cost of living, need not necessarily lead to an overall increase in cost to the system, since any resulting certificate volume changes might balance out across the Province. In addition, LAO could continue to increase its diversion of clients to lower cost channels.

- LAO should implement in conjunction with MAG, a formalized review cycle to examine potential tariff increases. Such a process would ease tensions with the private bar and hopefully avoid repetition of the recent strike.
- The Contingency Reserve Fund will continue to be a controversial issue at LAO. We recommend that LAO and the Government reach firm consensus as soon as possible on the short-term implications of using the fund for tariff increases, relative to the longer-term implications of maintaining a lower fund.
- We recommend that LAO continue to monitor and refine its forecasting of certificate and duty counsel costs so that more information can be developed on the optimal size of the Contingency Reserve Fund. This exercise will also serve to provide more information on replenishment needs.
- We recommend that LAO conduct a compensation study, with a view to moving all salaries closer to market levels. This recommendation is in line with the need to sustain the quality of service. However, this recommendation is inconsistent with the need to gain operating efficiencies so that its feasibility is contingent upon its perceived priority relative to competing service needs.

Certificate Program

In order to improve the efficiency and effectiveness of the Certificate Program, LAO should focus on implementing the following recommendations:

- Our review of the application process indicated that a surprisingly high number of applications are abandoned. LAO should investigate and then mitigate the causes behind the high abandonment rate for certificate applications since the processing of applications that end up being abandoned may detract from the cost efficiency of the program.
- LAO should track the number of appeals to area committees and it should track information on the number of certificates that are issued or denied due to an appeal and the basis for the decision on the appeal (i.e. the service is not covered). This information should be tracked and monitored to demonstrate the consistency of the application process and to ensure that appeals are being resolved in a timely manner.
- In order to more effectively manage certificate costs in the short term, and to more accurately predict evolving changes over the long term, we recommend that LAO track the number of hours that are billed by private bar lawyers by offence / certificate type.
- We recommend that LAO continue to monitor the supply of lawyers willing to accept certificates and the demand for services within each area in Ontario where service is provided. On the basis of this analysis, LAO should continue to explore options for opening more staff offices and other service delivery models, if there are significant supply and demand issues, or if it can verify perceived cost advantages.

- We recommend that quality assurance mechanisms such as minimum years of experience, training or qualifications in specialized areas of law should be required for panel admission in order to increase the likelihood of high quality service delivery.
- LAO should continue to explore co-location opportunities between area offices and clinics. A more integrated “one-stop shopping” service delivery concept would better enhance overall program effectiveness for LAO. In addition, such a concept would also create some limited cost savings due to shared infrastructure and administration.
- We further recommend that LAO begin to investigate collaboration opportunities with other Municipal, Provincial and Federal social service organizations with respect to sharing infrastructure, reducing costs and integrating service delivery to target clients.
- LAO should further investigate the reasons why the Toronto family law office is unable to achieve its targets for the number of closed certificates. Additionally LAO should focus on reducing the amount of time clients have to wait to receive service in certain family law offices.
- LAO should track information related to volume, average case costs and utilization for the refugee law office. This will enhance LAO’s ability to determine if the office is operating in an efficient manner.

Duty Counsel Program

In order to improve the efficiency and effectiveness of the Duty Counsel Program, we have developed the following recommendations.

- In order to increase the likelihood of high quality service delivery we recommend that LAO develop and implement policies and standards with respect to the qualifications required for private bar Duty Counsel panel membership.
- We recommend that LAO further investigate the adoption of Staff Duty Counsel positions if they can be shown to enhance efficiency on an area-by-area basis.
- LAO should track the time spent by Staff Duty Counsel on all activities. This may identify low-value added tasks that may be better performed by staff in the area office or in other programs and service areas, ultimately allowing the Staff Duty Counsel to focus on improving the quality of the Duty Counsel Program in their area.
- We recommend that LAO regularly monitor its current strategy of having most Staff Duty Counsel positions on a contract basis. Full time positions would help to ensure continuity of service.
- LAO needs to develop clear definitions for costs incurred relative to clients served for the Duty Counsel program so as to enable fair comparison on a go-forward basis.

- Data relating to the Duty Counsel program should be maintained in one central location since the maintenance of data by different departments is contributing to data integrity issues.

Support Functions

In order to improve the efficiency and effectiveness of the Support Functions, we have developed the following recommendations.

- Better training manuals for the financial eligibility test should be developed. Additionally more information on the eligibility guidelines should be published. If clients have better information on the guidelines they might be able to determine for themselves if they qualify for legal aid instead of having to go to an area office to have an application processed.
- LAO should clearly define and communicate the types of complaints and or issues that should be referred to the investigations departments.

Acknowledgements

As part of the Program Evaluation of LAO Client Legal Services, Deloitte & Touche conducted a number of consultation sessions with key program stakeholders, the objectives of which were as follows:

- To engage program stakeholders, partners, users and other key informants as primary inputs for the program assessment.
- To gain an overall understanding of stakeholder views and perspectives on current program operations and objectives.
- To gain input on areas for improvement and in particular opportunities for improvement relating to the program structure and service delivery model.

We would like to extend our appreciation to the all of the groups of stakeholders who actively participated in the consultation process. Each group provided valuable insight and a unique perspective on the program structure and delivery, and identified opportunities for improvement with respect to the program evaluation of Client Legal Services.

Stakeholder Consultations:

For a detailed list of people who contributed to this report refer to Appendix A.

1.0 Introduction

PURPOSE OF THIS REVIEW

The objective of this assignment is to evaluate the relevance, efficiency, effectiveness and sustainability/affordability of LAO Client Legal Services. This review is part of the Government of Ontario's four-year program evaluation strategy and is consistent with the Program Evaluation Guidelines issued by the Program Management and Estimates Division (PMED) of the Management Board Secretariat.

REVIEW OBJECTIVES

Specifically, the objectives of this review are to assess the following four program evaluation components (for specific questions related to each program evaluation area refer to Section 3.0 – The Evaluation Plan).

1. *Relevance of the program* -

The objective is to assess whether LAO's Client Legal Services department is relevant to the core business of the government. Relevancy is based on whether the Program is aligned with government priorities, responsive to public needs and delivers a service that is of value and for which there is a perceived governmental role.

2. *Efficiency* -

The objective is to measure the extent to which LAO's Client Legal Services department is operating efficiently on the basis of productivity, performance, and a measure of inputs versus outputs. Key areas of efficiency include cost efficiency and service delivery efficiency.

3. *Effectiveness* –

The objective is to assess the overall effectiveness of LAO's Client Legal Services department based on whether it is producing intended results, meeting objectives, satisfying user needs, and whether it is appropriately designed, structured and monitored. This criterion also includes an assessment of accountability and client satisfaction.

4. *Affordability & Sustainability* -

The objective is to determine whether LAO's Client Legal Services department will continue to be affordable and sustainable based on the current costs and medium to long-term budget and fiscal context. Alternatively, are certain cost cutting measures required to increase affordability and promote sustainability given the current and expected pressures and risks?

SCOPE

The scope of this review is LAO's Client Legal Services department. Therefore, our focus is on the following areas:

- Certificate Program
- Duty Counsel Program
- Support Functions

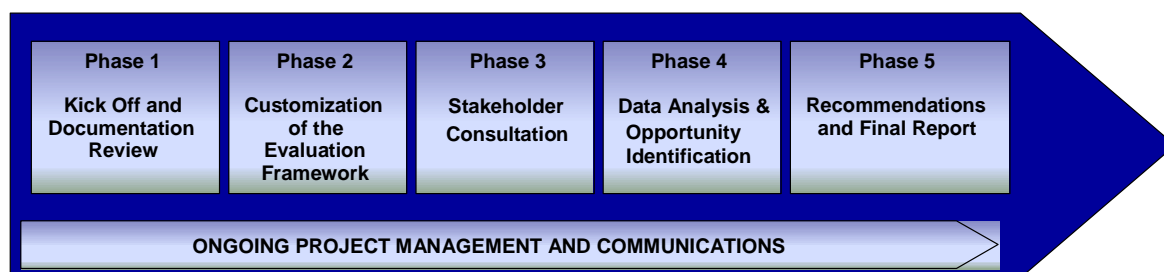
When assessing LAO Client Legal Services, our scope focuses on the period of time since LAO became an independent agency of the Government. Therefore, our scope is from April 1st, 1999 until November 2003. Although our scope is multi-year, emphasis has been placed on current policies, procedures and processes. Historical information has only been used for trending purposes and as a point of reference.

METHODOLOGY AND APPROACH

The methodology and approach utilized for this review are consistent with the Program Evaluation Guidelines issued by the Program Management and Estimates Division (PMED) of the Management Board Secretariat. Key principles of our approach to this review include:

- Consultations across all relevant groups at LAO and the broader Justice System within the Province of Ontario, with an appreciation of the needs of various stakeholders.
- Independence and objectivity to ensure the credibility of findings and recommendations.
- Open communications that enable both internal and key external stakeholders to provide input throughout the project.
- Balanced consideration of the risks and benefits associated with our recommendations.

Our approach to conducting the Program Evaluation of LAO's Client Legal Services function is comprised of five discrete phases that are outlined below:



2.0 Background

Before commencing with a discussion of the analysis conducted for this Program Evaluation, it is important to provide some contextual background on the history of LAO and the Legal Aid Services Act, some of the competing dynamics faced by LAO and LAO's role within the broader Justice System within Ontario. This discussion will serve to provide the environmental context to this review from which we developed and performed our analysis.

AN INTRODUCTION TO LEGAL AID ONTARIO

Legal Aid Ontario was established in 1999 as an independent non-profit corporation to administer and manage the Ontario Legal Aid Plan (OLAP), which had been run by the Law Society of Upper Canada since 1967. This change in governance and structure was the result of the Legal Aid Services Act, (LASA), enacted by the Ontario government in 1998.

Legal aid is delivered in four ways:

1. LAO issues certificates to people meeting strict financial eligibility requirements. Clients use LAO certificates to retain private lawyers, who in turn bill LAO for the legal services provided to the client. This service is delivered through 51 Area Offices across the Province.
2. LAO also delivers legal aid services through 4 Staff Offices: three in family and one in refugee and immigration law.
3. LAO pays and manages Duty Counsel who provide summary advice and assistance to people appearing in court without counsel, usually at their first appearance. This includes duty counsel service to people with special needs, such as mental health needs. Most duty counsel are private lawyers retained per diem, but, LAO has a number of staff duty counsel as well.
4. LAO provides transfer payment funding to 79 independent community legal clinics that assist low-income people with such issues as income maintenance and landlord/tenant disputes. LAO oversees and provides support to these clinics. **A review of the clinics is not in the scope of this Program Evaluation.**

IMPLICATIONS OF THE LEGAL AID SERVICES ACT ON LAO

The Act gives the Corporation the authority to establish priorities, policies, operational, and administrative arrangements in pursuance of its mandate. Section 4 of the *Act* outlines the Corporation's objectives:

- to establish and administer a cost-effective and efficient system for providing high quality legal aid services to low-income individuals in Ontario;
- to establish policies and priorities for the provision of legal aid services based on its financial resources;

- to facilitate co-ordination among the different methods by which legal aid services are provided;
- to monitor and supervise legal aid services provided by clinics and other entities funded by the Corporation;
- to co-ordinate services with other aspects of the justice system and with community services; and
- to advise the Attorney General on all aspects of legal aid services in Ontario, including any features of the justice system that affect or may affect the demand for or quality of legal aid services.

In addition to these objectives, LASA was amended in 2002 to require LAO to consider “an effective balance among the different methods of providing legal aid services.”

This recent amendment is important because it starts to challenge one of the fundamental premises on which legal aid delivery has historically been based in Ontario – namely that the legal needs of low-income individuals can best be met through the provision of legal services by the private bar, on the grounds of freedom of choice and independence. It is clear that this premise, combined with the fact that the plan was originally administered by the Law Society are the reasons behind the dominance of the private bar in the current delivery model for legal aid in Ontario.

Professor John McCamus was one of the first people to challenge the premise behind legal aid being exclusively delivered by the private bar in Ontario in his report in 1997, which was commissioned by the government to review the Legal Aid plan and provided the impetus to establish LAO. The extent to which LAO has successfully experimented with alternative service delivery models will be a key component of this review.

COMPETING DYNAMICS EXPERIENCED BY LAO

One of the many challenges faced by LAO is that it is still a relatively new organization that is continually operating in an environment of competing interests amongst different stakeholder groups. For example, its direction to allocate resources to variable service delivery models is tempered by the historical delivery model and legislation that promotes the private bar as the foundation of legal aid service delivery. The recent strike by private bar lawyers demonstrates the sensitivity to the subject and the extent to which LAO is constrained within the current system.

In addition, there are conflicts within the private bar. While it may be true that there is an implicit responsibility assumed by the private bar to provide legal aid services as a contribution to society, this is complicated by the continued desire for higher tariffs. Furthermore, the Law Society has recently publicized an initiative called the Pro Bono Law Ontario (PBLO), the purpose of which is to promote more pro bono legal services and access to justice for vulnerable Ontarian citizens.

Another competing dynamic faced by LAO is the need to balance cost efficient delivery of services with effective client service. LAO needs to allocate scarce resources across a

number of competing services. In addition, LAO is also operating in a Justice System in which the Crown has significantly more resources. This is more an issue in larger, high profile cases, which can consume hundreds of thousands, if not millions of dollars for the LAO funded defence team. The offset of this dynamic for LAO is the potential requirement to reduce the number of lower value certificates, a pressure that is not faced by the Crown.

Again, understanding the competing dynamics faced by LAO is important contextual background in order to assess fairly the performance of the Client Legal Services Program.

THE INTERDEPENDENCIES WITHIN THE JUSTICE SYSTEM

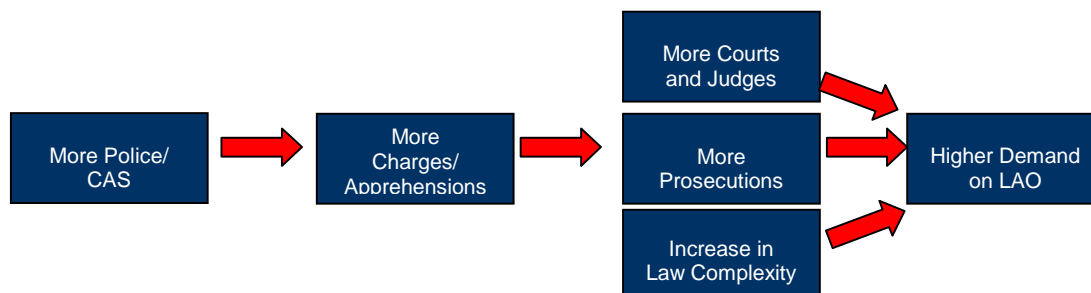
In performing a review of the Client Legal Services component of LAO, it is critical to understand the integrated nature of the Justice System in Ontario. As such, one needs to understand the role of the other stakeholders within the system and the downstream impacts of changes in activity levels.

At a high level, the key stakeholders within the criminal and family Justice System can be defined as follows:

Stakeholder	Role
Police	To press charges
Children's Aid Society	To make apprehensions
Crown Prosecutors	To prosecute charges
Children's Aid Society Lawyers	To contest hearings
Judges	To preside over all court matters
Courts	To provide access to justice and to ensure that cases are heard by an unbiased arbitrator
Legal Aid Ontario	To provide legal assistance to low-income individuals

The performance challenge faced by LAO is that it has no control over the level of demand for its services. This is both a function of the typical sequence of events for all court cases but also the adversarial nature of the Justice System in which two sides take differing legal views of the same evidence. Our sole reference point for conducting this review is to examine the Justice System, as it exists today, rather than consideration of what it could be. Exhibit 1 below demonstrates, at a high level, the downstream demand impacts on LAO.

Exhibit 1 – Justice System Demand Drivers for LAO Services



The scope of this evaluation does not include a detailed assessment of the LAO demand drivers but it is incumbent on us to consider how these factors have impacted LAO and to what extent LAO has sufficient planning and monitoring processes in place to address them. This analysis will be detailed later in the Affordability and Sustainability section of our report.

Given the interdependencies of the Justice System, it becomes apparent that the definition and measurement of outcomes is extremely complex in view of the number of stakeholders and the absence of overall accountability. While each stakeholder can be measured on its component roles and responsibilities, the delivery of “Justice” relies on all groups working together. In addition, the notion of “Justice” is dependent on personal, social and political persuasions.

For example, governments like to be seen as focused on law and order within society. This typically translates into increasing the level of the police resources with an associated increase in charges and custodial sentences. From a public and political perspective, does that represent justice? From an outcome perspective, does it matter that these steps put further burden on the court system and LAO in terms of their ability to be efficient and effective? In its simplest form, this discussion generates key questions for governments to answer - what is justice and what are the costs of delivering it?

Again, we do not seek to answer these questions in this evaluation, but it is critical for users of this report to recognize the interdependencies of the Justice System. In terms of evaluating LAO, a fair review requires a relatively narrow focus on those items over which it has direct control.

3.0 Evaluation Plan

Prior to the commencement of this engagement, The Ministry of the Attorney General in conjunction with LAO developed an Evaluation Framework. The Evaluation Framework presented below formed the basis of our review:

Evaluation Questions	Data Required	Key Evaluation Step Certificate Program	Key Evaluation Step Duty Counsel Program	Key Evaluation Step Support Functions
Core Business Relevance				
1. To what extent is the program aligned with the policy objectives and fiscal priorities of the government, and a core business of the ministry?	<ul style="list-style-type: none"> LASA (Legal Aid Services Act) MAG Business Plan LAO Business Plan 	<ul style="list-style-type: none"> Document Review Senior LAO Interviews MAG interviews 	<ul style="list-style-type: none"> Document Review Senior LAO Interviews MAG interviews 	<ul style="list-style-type: none"> Interview Director Operational Support
2. In what ways does this program serve the public interest?	<ul style="list-style-type: none"> LASA (Legal Aid Services Act) 	<ul style="list-style-type: none"> Document Review Senior LAO Interviews MAG interviews 	<ul style="list-style-type: none"> Document Review Senior LAO Interviews MAG interviews 	<ul style="list-style-type: none"> Interview Director Operational Support
Effectiveness				
3. To what extent is the program achieving its expected short, intermediate and long-term outcomes?	<ul style="list-style-type: none"> Outcome performance data Stakeholder Input 	<ul style="list-style-type: none"> LAO / MAG / other stakeholder interviews Outcome performance data analysis including: # of clients served, # of certificates issued, budget to actual cost comparison Benchmarking LAO's effectiveness against other Provincial LOA equivalents 	<ul style="list-style-type: none"> LAO / MAG / other stakeholder interviews Outcome performance data analysis including # of clients served, types of cases served Benchmarking LAO's effectiveness against other Provincial LOA equivalents 	<ul style="list-style-type: none"> Operational Support program interviews Area office interviews Data Analysis on items including number of accounts processed, cycle time of account processing
4. To what extent is the program achieving its performance targets?	<ul style="list-style-type: none"> Performance Measures Data 	<ul style="list-style-type: none"> Data Analysis Document Review 	<ul style="list-style-type: none"> Data Analysis Document Review 	<ul style="list-style-type: none"> Data Analysis Document Review

Evaluation Questions	Data Required	Key Evaluation Step Certificate Program	Key Evaluation Step Duty Counsel Program	Key Evaluation Step Support Functions
5. To what extent are clients or customers satisfied with the program's services?	<ul style="list-style-type: none"> • Clients/ Customer Input 	<ul style="list-style-type: none"> • Review area office surveys if available • LAO interviews • Legal community interviews 	<ul style="list-style-type: none"> • Review area office surveys if available • LAO interviews • Legal community interviews 	<ul style="list-style-type: none"> • Operational Support program interviews • Area office interviews
6. To what extent do accountability systems support accountability within the ministry, and between the ministry and its partners, clients and the public?	<ul style="list-style-type: none"> • MOU • LASA 	<ul style="list-style-type: none"> • Document review • LAO senior interviews • MAG interviews • Program interviews 	<ul style="list-style-type: none"> • Document review • LAO senior interviews • MAG interviews • Program interviews 	<ul style="list-style-type: none"> • Operational Support program interviews • Area office interviews
Efficiency				
7. What are the annual multi-year unit costs for the Program for the previous fiscal year (actuals), the current fiscal year (preliminary actual), and the next fiscal year (projected)?	<ul style="list-style-type: none"> • Financial Statements 	<ul style="list-style-type: none"> • Historic and forecast data analysis, including cost relative to throughput and headcount • High-level review of actual to budget certificate model variances • Benchmarking of cost against other provincial jurisdictions (dependent upon the availability of information) 	<ul style="list-style-type: none"> • Historic and forecast data analysis, including cost relative to throughput and headcount • Benchmarking of cost against other provincial jurisdictions (dependent upon the availability of information) 	<ul style="list-style-type: none"> • Historic and forecast data analysis, including cost relative to throughput and headcount
8. To what extent did the program achieve its objectives within the established timeframes and costs?	<ul style="list-style-type: none"> • Financial Statements • Performance Measures • Stakeholder Input • Annual Report 	<ul style="list-style-type: none"> • Historic data analysis • Case load analysis • Document review 	<ul style="list-style-type: none"> • Historic data analysis • Case load analysis • Document review 	<ul style="list-style-type: none"> • Historic data analysis • Case load analysis • Document review

Evaluation Questions	Data Required	Key Evaluation Step Certificate Program	Key Evaluation Step Duty Counsel Program	Key Evaluation Step Support Functions
9. To what extent is there duplication of effort/funding/administrative process related to program or grant delivery? What are the efforts/opportunities to reduce such duplication?	<ul style="list-style-type: none"> Stakeholder input 	<ul style="list-style-type: none"> LAO senior interviews MAG interviews Program interviews 	<ul style="list-style-type: none"> LAO senior interviews MAG interviews Program interviews 	<ul style="list-style-type: none"> LAO senior interviews MAG interviews Program interviews
10. To what extent are the program and its services appropriately integrated with others (within or outside the OPS) to provide efficient, cost-effective, customer-focused service? What are the efforts/opportunities to increase integration?	<ul style="list-style-type: none"> Program Reviews Business Plan Pilot Projects 	<ul style="list-style-type: none"> LAO senior interviews MAG interviews External interviews Document Review 	<ul style="list-style-type: none"> LAO senior interviews MAG interviews External interviews Document Review 	<ul style="list-style-type: none"> LAO senior interviews MAG interviews External interviews Document Review
Affordability & Sustainability				
11. Can the ministry continue to deliver the program in light of current and projected fiscal realities or other factors (e.g., economic, demographic, social, technological) that impact on the program?	<ul style="list-style-type: none"> Financial Statements MAG/LAO Business Plans LAO Annual Report 	<ul style="list-style-type: none"> Historic and forecast data analysis Qualitative input from interviews 	<ul style="list-style-type: none"> Historic and forecast data analysis Qualitative input from interviews 	<ul style="list-style-type: none"> Historic and forecast data analysis Qualitative input from interviews
12. Are there pressures or under-resourcing that impact on program sustainability?	<ul style="list-style-type: none"> Financial Statements Stakeholder Input Performance Measures 	<ul style="list-style-type: none"> Historic and forecast data analysis (cost vs. volumes) Qualitative input from interviews 	<ul style="list-style-type: none"> Historic and forecast data analysis (cost vs. volumes) Qualitative input from interviews 	<ul style="list-style-type: none"> Historic and forecast data analysis (cost vs. volumes) Qualitative input from interviews

4.0 Findings on Core Business Relevance, Efficiency and Effectiveness

The following section includes the detailed analysis of our findings related to the Client Legal Services Program. These findings have been grouped according to the following categories:

- The Certificate Program
- The Duty Counsel Program
- Support Functions

Furthermore, we have assessed the Client Legal Services program according to the three Program Evaluation Criteria of:

- A. Core Business Relevance;
- B. Efficiency; and
- C. Effectiveness.

For the Duty Counsel and Certificate Programs the analysis of the efficiency and effectiveness of the program has been conducted at the activity level while the criteria of core business relevance has been conducted at a macro level. Since the Support Functions constitute such a small portion of the Client Legal Services budget we limited our analysis to a macro assessment of the core business relevance, efficiency and effectiveness of the various Support Functions. The affordability and sustainability analysis will be presented in the next section of the report.

THE CERTIFICATE PROGRAM

OVERVIEW

LAO has 51 area offices in 48 communities across Ontario. Area offices receive and process legal aid applications and issue legal aid certificates to financially and legally eligible people. Legal aid certificates allow clients to receive legal services from their choice of a private bar lawyer or from lawyers employed by LAO at the family law offices or the refugee law office. Certificates are available for a variety of legal problems, including specific criminal, family, immigration and refugee matters and some civil law matters. After a lawyer provides an LAO client with legal service, LAO reimburses the lawyer according to the legal aid tariff.

In the 2003 fiscal year LAO issued 106,622 certificates and the expenditures of the Certificate Program during that time period amounted to over \$144 million. It is important to note that the number of certificates issued within a particular year is not directly correlated with the expenditures incurred within the same year. This is due to the fact that a case may last from a few weeks to a number of years and as a result certificates are completed and fully paid at different points in time. LAO reported that certificates generally have a three year lifecycle since it generally takes up to three years to complete a certificate. Therefore the certificate expenditures of \$144 million in the 2003 fiscal year is the result of certificates issued in 2003 and previous years.

The Certificate Program is a large and complex program that requires extensive coordination and effort in order to deliver service to low income individuals across Ontario. Some of the key activities conducted in the program include:

1. Processing Legal Aid Applications
2. Processing Appeals
3. Delivering Legal Aid Service Through Private Bar and Staff Lawyers
4. Managing the Panel of Legal Aid Lawyers
5. Managing Certificates and Expenditures

CORE BUSINESS RELEVANCE

It is clear from our review that the Certificate Program is relevant and it serves the public interest as it enables low income Ontarians to receive high quality legal representation from the lawyer of their choice. This provides clients with the ability to receive representation from lawyers with expertise in specific areas of law. Additionally the Certificate Program is relevant as it is aligned with the core objectives and the fiscal priorities of the Ministry of the Attorney General. In particular the Certificate Program:

- Provides justice support services to vulnerable people;
- Supports victims throughout the criminal justice system; and
- Provides criminal, civil and family courts and related justice services that are fair, coordinated, timely and accessible.

All stakeholders consulted during our review concurred unanimously on the relevance of the program, such that relevancy testing formed a very minor part of this review.

EFFICIENCY & EFFECTIVENESS

Our analysis of the efficiency and effectiveness of the Certificate Program was conducted at the activity level. The key activities conducted in the program include:

1. Processing Legal Aid Applications
2. Processing Appeals
3. Delivering Legal Aid Service Through Private Bar and Staff Lawyers
4. Managing the Panel of Legal Aid Lawyers
5. Managing Certificates and Expenditures

1. PROCESSING LEGAL AID APPLICATIONS

We segmented our analysis of the efficiency and effectiveness of the application process into two distinct activities:

- 1.1 Receiving requests for service
- 1.2 Determining eligibility and issuing certificates

1.1 PROCESSING LEGAL AID APPLICATIONS – RECEIVING REQUESTS FOR SERVICE

EFFICIENCY OF RECEIVING REQUESTS FOR SERVICE

Historically LAO has primarily taken legal aid applications in-person, from either its area offices or at other locations such as jails located across Ontario. Additionally, application officers have recently begun to take applications in a few court houses in the GTA. In 2002 LAO began to take video applications. Taking video applications has significantly improved the efficiency of the application process since applications from in-custody accused persons can be taken directly from area offices. As a result of this new process, there are cost savings since application officers no longer have to travel to jails in order to take applications. Additionally, prior to the implementation of video conferencing, application officers recorded information related to a person's application on paper forms and then they were forced to re-enter information into the computer system once they returned to the office. With video conferencing, applications are processed immediately, which reduces costs since applications do not have to be re-entered into the computer system. Based on a LAO study of four sites where the video application process has been implemented, LAO estimates that the cost per application has decreased between 49% to 67%.

Although video conferencing has increased efficiency, applicants often have to wait a significant amount of time to have their application processed at certain area offices.

EFFECTIVENESS OF RECEIVING REQUESTS FOR SERVICE

With the exception of video conferencing the majority of applications are taken from area offices. LAO could provide greater access to its services by taking applications from more locations such as LAO community clinics and shelters. Additionally, LAO should explore the option of placing application officers in more court houses. If application officers are located directly in the courts they would be able to issue certificates to eligible applicants. Additionally LAO could increase access to its services by accepting more applications by telephone, mail, fax and the internet if possible.

1.2 PROCESSING LEGAL AID APPLICATIONS - DETERMINING ELIGIBILITY AND ISSUING CERTIFICATES

EFFICIENCY OF DETERMINING ELIGIBILITY AND ISSUING CERTIFICATES

Our review indicated that application officers often spend considerable time verifying financial eligibility information. As a result of this, clients are often forced to return to area offices several times in order to provide financial information. Sometimes this information is not always necessary to determine if the person is eligible for legal aid. Ultimately this detracts from the efficiency of the entire application process. In order to reduce the likelihood of this event occurring, LAO should provide application officers with better training on how to collect the required financial eligibility information.

Another factor that has detracted from the efficiency of the application process, is the number of applications that are abandoned by clients after submission. In the 2002 fiscal year 150,288 applications were taken and 36,244 applications were denied. Of the 36,244 applications that

were denied, 49% or 17,824 were abandoned. This is an issue since a significant amount of funds are spent on application officers who may be wasting their time processing applications that are never fully completed.

EFFECTIVENESS OF DETERMINING ELIGIBILITY AND ISSUING CERTIFICATES

One of LAO's key objectives is to provide high quality service to low income Ontarians. In order to receive legal aid applicants must pass both a financial eligibility test and a legal eligibility test. The extent to which low income Ontarians qualify for legal aid service is an indicator of the effectiveness of the Certificate Program.

Financial Eligibility

Throughout the course of the review numerous stakeholders from LAO and the broader legal community identified the financial eligibility criteria as a significant issue for the Certificate Program. The financial eligibility assessment consists of both an asset test and an income test. The test was developed several years ago and interviewees commented that the financial eligibility criteria are too low and do not take into consideration the current cost of living in Ontario.

In order to determine whether or not a person passes the income test a financial assessment is conducted. In the simplest case, an LAO application officer determines a person's monthly net income and expenses. Once this information is collected LAO compares monthly expenses to standard allowances for items such as basic needs, shelter and debts. If an individual's expenses are greater than the LAO standard allowance he or she will be ineligible for legal aid.

Interviewees commented that the shelter allowance, in particular, is unreasonable. For example, for a family size of one, the shelter allowance is \$487.00. Depending on the area in which the applicant lives this allowance can be significantly under prevailing market rental rates. Presented in the table below are the average monthly rental rates for bachelor apartments in selected areas in Ontario.

Area	Oct. 2002 Average Monthly Rate for a Bachelor Apartment	LAO Rental Allowance for a Family Size of One Person
Toronto	\$ 729	\$487
Ottawa	\$ 624	\$487
Hamilton	\$ 476	\$487
Windsor	\$ 481	\$487
London	\$ 440	\$487
Thunder Bay	\$ 398	\$487

Source: Canada Mortgage and Housing Corporation 2002

In certain areas such as Toronto the average monthly rental rate for a bachelor apartment is significantly above the LAO rental allowance for a family size of one. However in other areas such as London and Thunder Bay the average monthly rate for a bachelor apartment is under the LAO monthly allowance. This finding is not surprising given that there are significant regional differences in the cost of living within Ontario.

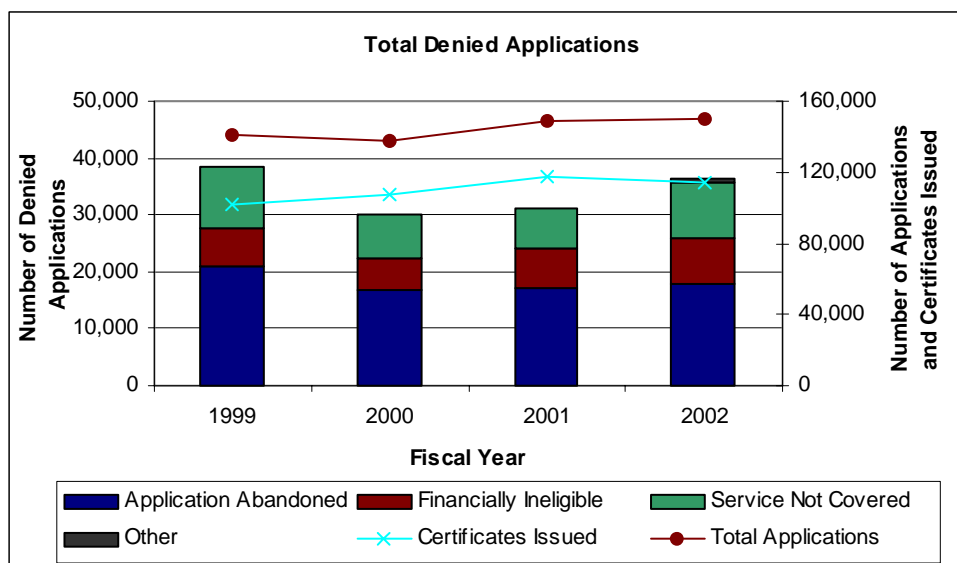
Another issue related to the allowances is the fact that they have not changed since April 1, 1996 and thus do not reflect the current cost of living. Presented below is the percentage increase in the average monthly rental rate since 1996.

Area	Oct. 1996 Average Monthly Rate for a Bachelor Apartment	Oct. 2002 Average Monthly Rate for a Bachelor Apartment	% Change in Average Monthly Rental Rate (1996 – 2002)
Toronto	\$ 541	\$ 729	35%
Ottawa	\$ 484	\$ 624	29%
Hamilton	\$ 389	\$ 476	22%
Windsor	\$ 394	\$ 481	22%
London	\$ 408	\$ 440	8%
Thunder Bay	\$ 350	\$ 398	14%

Source: Canada Mortgage and Housing Corporation 2002

In October 2002 the Canadian Council on Social Development conducted a study on the legal aid eligibility criteria in Canada. A key finding of the study was that LAO's yearly net income waiver level, (this is the maximum amount of net income that a family can earn in order to be eligible automatically for legal aid) is lower than Statistics Canada's After Tax Low Income Cut-off for nearly all family sizes and communities of all sizes. Additionally the study found that the gap between the eligibility criteria and the after tax low income cut-off was greatest in large urban areas. Therefore a higher proportion of low income Ontarians that live in large urban centers likely will be ineligible for legal aid. This is due to the fact that the eligibility criteria is standard across the Province and is not modified to take into consideration regional differences in the cost of living. In our view, this is an issue since demand for legal aid is highest in large urban areas.

The financial eligibility criteria have a great impact on the ability of LAO to service low income Ontarians. In 2002, 22% of LAO applications for certificates were denied based on the financial eligibility criteria. Between 1999 and 2002 the total number of legal aid applications for certificates that were denied based on financial eligibility criteria increased by 17% from 6,740 applications to 7,907 applications. Applications denied on the basis of financial eligibility criteria have increased faster than any other category. It is important to note that the increase in applications denied on the basis of financial criteria is not simply a result of an increase in the total number of legal aid applications.



Source: Legal Aid Ontario

It is also important to note that the number of applicants that are denied legal aid certificates based on financial eligibility criteria is not truly representative of the number of low income Ontarians that cannot afford legal service. It is likely that there is a larger “unknown group” of low income Ontarians that never apply for legal aid because they know that they will not be able to pass LAO’s strict financial eligibility guidelines.

Legal Eligibility

If applicants are deemed to be financially eligible, a certificate will only be issued if their case meets specific legal coverage guidelines. In criminal and quasi-criminal proceedings a certificate will only be issued if there is a probability of incarceration. In the area of family law, certificates are issued in a number of areas including child protection, child custody, spousal and/or child support and adoption. With respect to immigration and refugee law there is coverage in a number of areas including refugee claims to the Refugee Division of the Immigration and Refugee Board, judicial reviews, deportation and sponsorship appeals. Interviewees commented that overall the legal eligibility guidelines are too limited and as a result people with serious charges are forced to go unrepresented. With respect to the criminal law coverage, numerous interviewees commented that impaired driving offences should be covered and in the area of family law, several interviewees commented that there should be enhanced coverage for varying access and supervised access.

2. PROCESSING APPEALS

If an applicant is denied legal aid they have the option of appealing the decision to an Area Committee. If the Area Committee denies the appeal then the applicant can appeal that decision to the Appeals Department which is located in the Provincial head office. These appeals are categorized as appeals related to trial matters since they are in the original jurisdiction of the Area Director. Additionally there are appeals that are within the original jurisdiction of the Area Committee which are appeals related to appellate matters.

EFFICIENCY OF PROCESSING APPEALS

Currently LAO does not centrally track any information related to appeals that are made to Area Committees. This is due to the fact that information on appeals to Area Committees is maintained within each area office and as a result LAO is unable to report information at an aggregate level. Since this information is unavailable we cannot provide a conclusion on the efficiency of appeals at that stage of the process. However, LAO does maintain information on appeals made to the Appeals Department. Appeals made to the Appeals Department are efficiently processed as evidenced by the fact that the department has surpassed its client service performance targets for the first quarter of the current fiscal year. Specifically the performance of the Appeals Department against its client service targets is as follows:

Client Service Measure	Target	Fiscal Year 2004 – First Quarter Results
<ul style="list-style-type: none"> Percentage of urgent appeal files decided within five working days of receipt of complete file 	<ul style="list-style-type: none"> 90% of decisions in urgent matters decided within five working days of receipt of complete file 	<ul style="list-style-type: none"> 100% of urgent appeal files were decided within five days of receipt of complete file
<ul style="list-style-type: none"> Percentage of appeals files (not urgent) decided within two weeks of receipt of complete file 	<ul style="list-style-type: none"> 80% of decisions on non-urgent appeals within two weeks of receipt of complete file 	<ul style="list-style-type: none"> 100% of all non-urgent appeal files were decided within two weeks of receipt of complete file

Source: Legal Aid Ontario

EFFECTIVENESS OF PROCESSING APPEALS

As mentioned earlier, the only information that LAO tracks related to appeals, concerns those made to the Appeals Department. Presented in the following tables are the number of appeals to the Appeals Department.

Appeals Related to Trial Matters - Total As of September 2003			
Basis of Appeal	Appeals Granted	Appeals Denied	Total
Financial	26	186	212
Merit	14	37	51
Priorities	7	85	92
Total	47	308	355

Source: Legal Aid Ontario

Appeals Related to Appellate Matters - Total As of September 2003		
Appeals Granted	Appeals Denied	Total
30	166	196

Source: Legal Aid Ontario

As of September 2003, the Appeals Department received 355 appeals for legal aid applications related to trial matters that were denied by Area Committees. Of these appeals, 47 or 13% resulted in certificates being issued and the remainder of appeals were denied. Of the 47 appeals that were granted more than half of them were related to financial eligibility.

In terms of appeals related to appellate matters, as of September 2003 the Appeals Department received 196 appeals and 30, or 15%, of those appeals were granted.

Since LAO does not track information on the number of appeals to Area Committees the total number of appeals is unknown. Therefore it is very difficult to determine if the appeals process is operating in an effective manner. If information was tracked on the total number of appeals LAO could analyze the number of certificates that are granted as a result of an appeal. This analysis is important as it would provide insight into the consistency of decisions regarding the eligibility of LAO applicants. Several interviewees commented that in particular, the decisions regarding financial eligibility, are not made consistently since Area Committees

often use their discretion during the appeals process to override decisions made by area offices.

3. DELIVERING LEGAL AID SERVICE THROUGH PRIVATE BAR AND STAFF LAWYERS

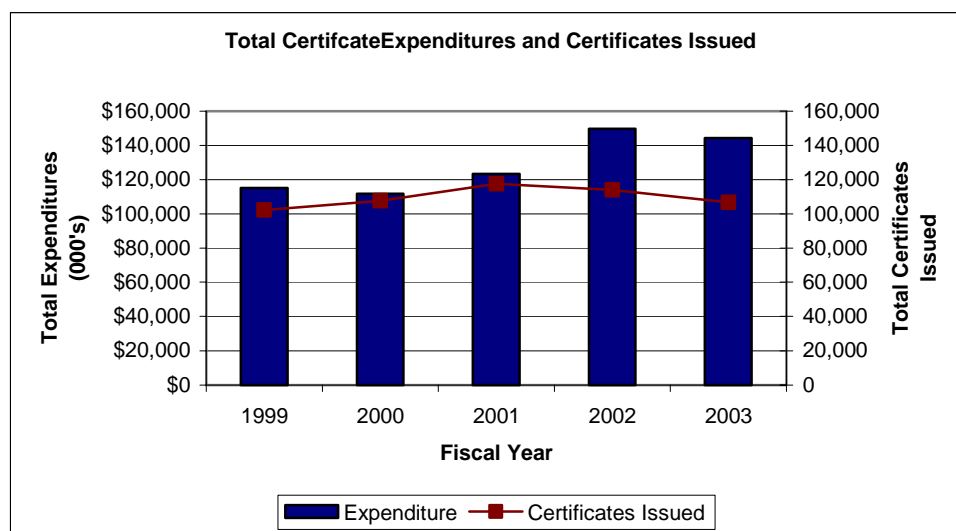
Legal aid in Ontario is primarily delivered to clients by private bar lawyers who accept legal aid certificates. Additionally, a small proportion of legal aid is delivered through LAO's four staff offices. Our analysis of the delivery of legal aid goes beyond measures such as the quality of service provided and client satisfaction and focuses on the service delivery model itself as an effective and efficient means of delivering service. Since LAO uses both private bar lawyers and staff lawyers to deliver service, we have segmented this section into two areas:

3.1 Delivering Legal Aid Service Through Private Bar Lawyers

3.2 Delivering Legal Aid Service Through Staff Lawyers

3.1 DELIVERING LEGAL AID SERVICE THROUGH PRIVATE BAR LAWYERS

EFFICIENCY OF DELIVERING LEGAL AID SERVICE THROUGH PRIVATE BAR LAWYERS

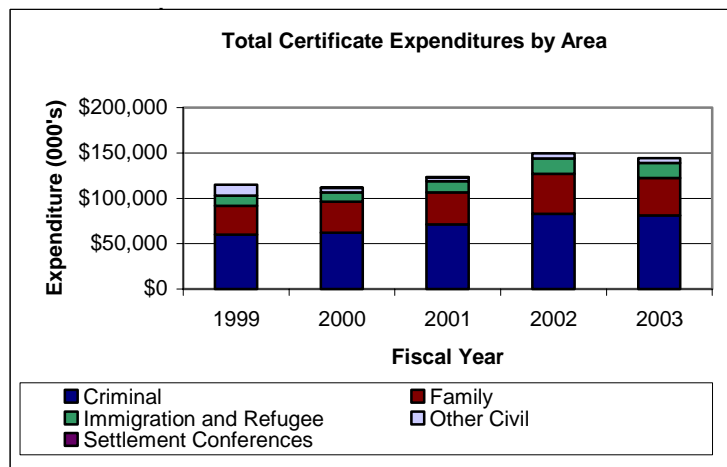


Source: Legal Aid Ontario

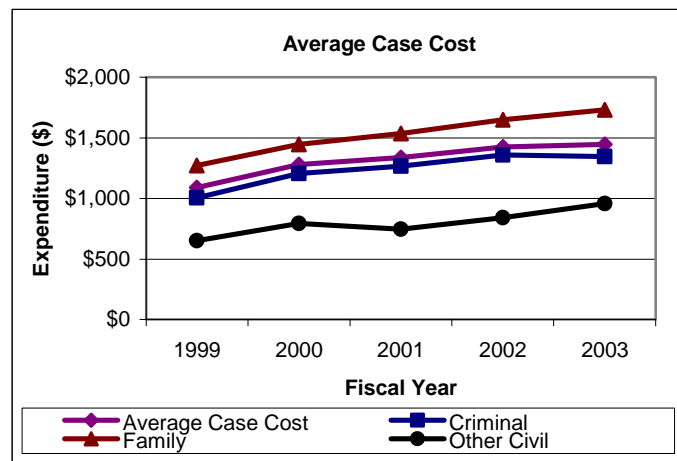
After issuing the highest number of certificates in the 2001 fiscal year since 1996, LAO implemented a Certificate Management Program aimed at reducing the number of certificates issued and effectively managing expenditures. As part of this program LAO set provincial and local targets for the number and the total cost of certificates issued. These targets are monitored on a monthly basis and since the implementation of the program, the number of certificates issued has decreased by nearly 10%.

Although LAO has succeeded in decreasing the number of certificates issued in the 2003 fiscal year expenditures in the Certificate Program amounted to over \$144 million. This represents a 26% increase in expenditures over a five year period. Part of this increase can be attributed to the fact that over the past five years average case costs have increased by 33%.

Average criminal and family law case costs have increased by 34% and 36% respectively since 1999.



Source: Legal Aid Ontario



Source: Legal Aid Ontario Annual Reports

There are a number of factors that drive total certificate expenditures. The primary cost drivers are the number of certificates issued and the cost per case. To a certain extent LAO can control the number of certificates issued and as mentioned above LAO has been successful in decreasing the number of certificates issued in recent years. Additionally given the three year lifecycle of certificates LAO should expect to see the benefits of its cost containment strategies in future years. However, LAO has less control over the cost per case. The cost per case is driven by two factors, the legal aid tariff and the number of hours spent on each case.

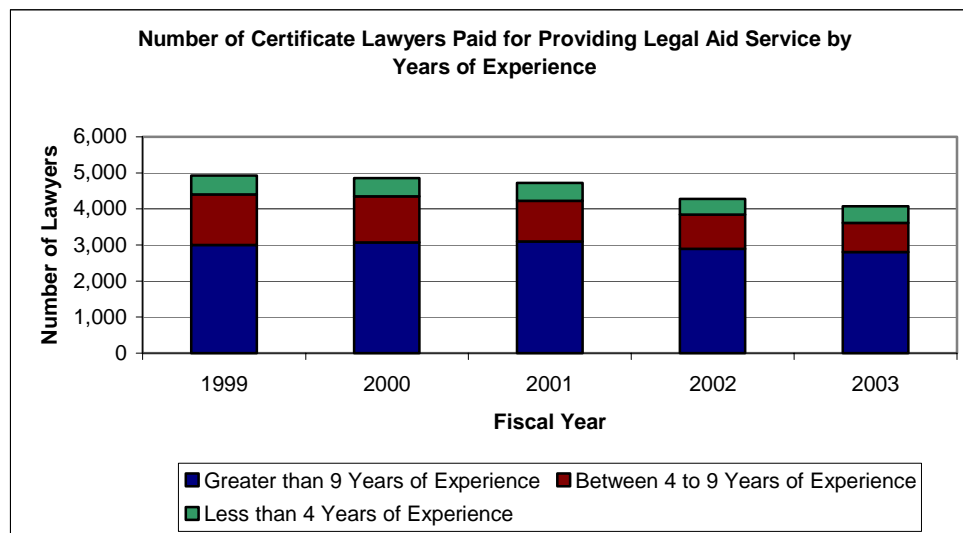
The legal aid tariff is structured in such a way that lawyers are compensated based on their experience. Since clients have a choice of counsel, LAO is faced with the tariff attributable to that lawyer even if it is in the highest band.

The other component that drives average case costs, the number of hours expended on a case, is driven by a number of factors that are largely out of LAO's control. Interviewees commented that a number of events have occurred over the past few years which have contributed to more hours being expended per case. Some of these factors include increasing case complexity, increasing disclosure requirements, delays in the court system and changes in the Child and Family Services Act (CFSA).

Although LAO does not have control over factors such as case complexity it does determine the number of hours allotted for activities that are conducted during the course of a case. A few interviewees commented that certain lawyers take advantage of the legal aid system and charge more hours than are actually required to complete a case. Currently LAO does not keep track of the number of hours that lawyers bill for various activities. In order to have better control of its costs LAO should track the number of hours that are typically billed by lawyers for different activities so that it can have a benchmark for the amount of time required for various activities. With the implementation of TSN LAO's ability to track such data should improve.

EFFECTIVENESS OF DELIVERING LEGAL AID SERVICE THROUGH PRIVATE BAR LAWYERS

One of the key drivers of the effectiveness of the private bar service delivery model is a sufficient supply of legal aid lawyers that are willing to accept legal aid certificates.



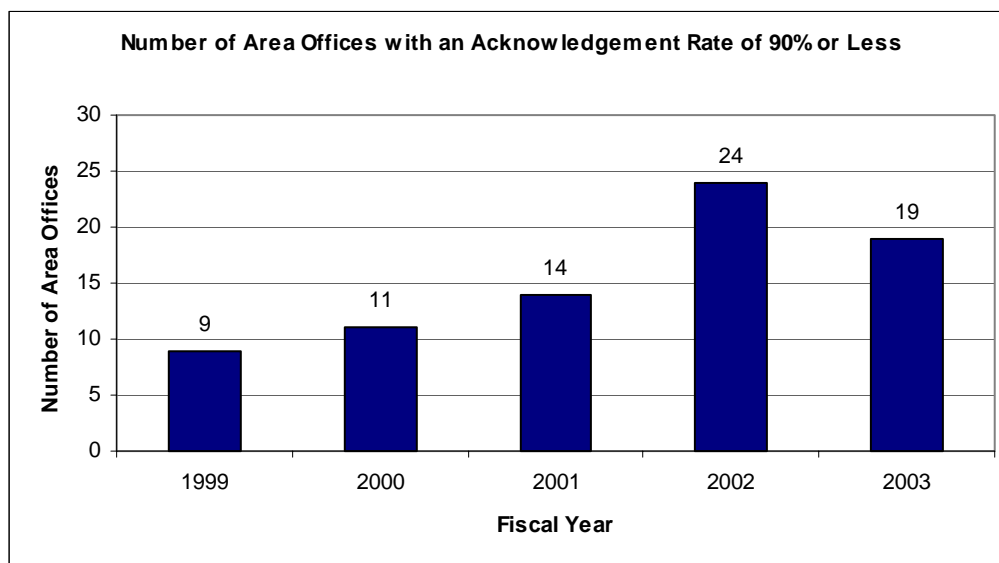
Source: Legal Aid Ontario

Over the past five years the number of certificate lawyers that were paid for providing legal aid service declined by 17%. Furthermore the number of certificate lawyers with between four to nine years of experience declined at the fastest rate over the five-year period, at a rate of 43%. Interviewees commented that a key factor that has contributed to the decline in lawyers willing to accept legal aid certificates is the legal aid tariff. The hourly rate for certificate lawyers is between \$73.87 and \$92.34 depending on the lawyer's experience. Although the tariff was increased in 2002 by 5% for the first time in fifteen years and then again in 2003 by 5%, it is still significantly below market rates. Given that the tariff was increased so recently, it is difficult to determine the impact of the increase on attracting or maintaining the number of lawyers that provide legal aid service. However interviewees commented that the tariff rate is still too low and the number of hours allotted per certificate is also too low which is making lawyers less willing to take on legal aid certificates.

In addition to an overall increase in the tariff, a Northern Incentive was introduced on August 1, 2002 to cover the designated areas of Cochrane, Kenora, Rainy River, Temiskaming and communities served by the Nishnawbe Aski Nation. This tariff was introduced to ensure that low-income clients in Northern Ontario continue to have access to high-quality legal representation by providing a financial incentive to lawyers to serve these areas. Due to its recent introduction, there is insufficient evidence at this stage to reach a firm conclusion on its impact, although our consultations in Northern Ontario revealed positive feedback.

The acknowledgment rate is a key indicator of the impact of the supply of lawyers on LAO's ability to service low income Ontarians. The acknowledgement rate is a measure of the number of certificates that are acknowledged within a particular time frame. LAO reported that an acknowledgment rate of 90% or less indicates that there may be an insufficient supply of lawyers within a particular area.

Between 1999 and 2003 the acknowledgment rate for certificates across all areas of law remained relatively constant at a rate of approximately 91% to 92%. The acknowledgment rate for criminal law certificates, in particular decreased from 94% to 89% between 1999 and 2002. However the acknowledgment rate for family law certificates decreased at a greater rate from 90% to 83% between 1999 and 2002. Additionally, since 1999 the number of area offices with an acknowledgment rate of 90% or less has increased significantly. (Please note that a contributing factor to the high acknowledgment rate in 2002 is the private bar lawyer strike). The lowest acknowledgment rate reported for an area office was 80% and 6 area offices had acknowledgment rates between 80% to 84% and 13 area offices had acknowledgment rates between 85% and 90%. Some of the area offices with low acknowledgment rates include: Orangeville (80%), Walkerton (84%), Oakville (84%), Brockville (83%), Brampton (83%) and Barrie (84%). This indicates that increasingly there are areas in which clients are having difficulty placing certificates, although there could be other external factors.



Source: Legal Aid Ontario

In addition to having a sufficient supply of lawyers a greater degree of integration between the various programs that LAO offers to clients is required. Interviewees commented that a person who is deemed ineligible for one service, is not always referred to another service which might meet their needs. Part of this can be attributed to the fact that application officers do not always have a full understanding of the variety of services offered and/or the specific eligibility tests that applicants must pass. The distribution of LAO's services across a number of locations within a particular area may also add to the challenges of providing a more integrated service offering. The key integration opportunity is between the area offices and the clinic system.

Another key indicator of the effectiveness of service is client satisfaction. LAO has administered client satisfaction surveys during its evaluation of some of its pilot projects (i.e. the family law offices) and results indicated relatively high client satisfaction. However LAO does not consistently measure the client satisfaction of services provided by the private bar on a provincial basis.

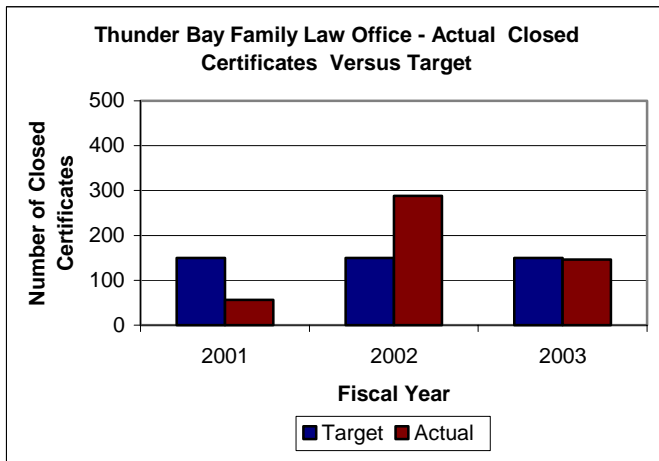
3.2 DELIVERING LEGAL AID SERVICE THROUGH STAFF LAWYERS

Traditionally LAO has primarily used private bar lawyers on certificates to provide service to its clients. In 1999 family law staff offices were opened in Ottawa, Thunder Bay and Toronto. Prior to the opening of the family law offices the refugee law office was opened in 1994. For our evaluation of the staff offices we analyzed data related to the efficiency of each office, but our assessment of the effectiveness of the program is presented at an aggregate level at the end of the section.

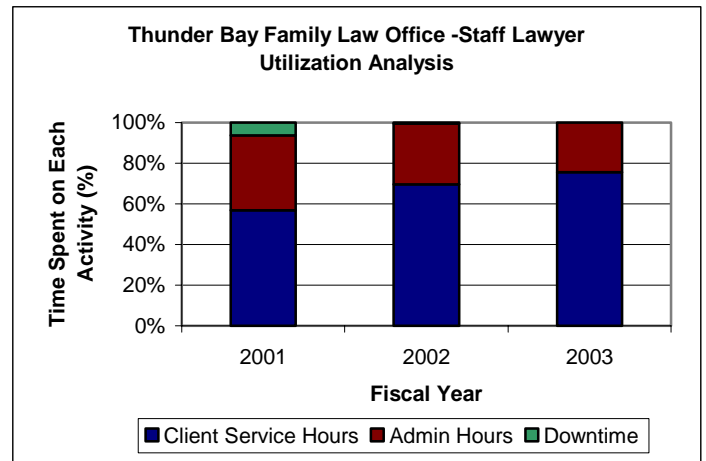
The Thunder Bay Family Law Office

EFFICIENCY OF DELIVERING LEGAL AID SERVICE THROUGH STAFF LAWYERS

In order to assess the efficiency of the LAO family law offices we focused our analysis on the volume of certificates closed by the offices, staff utilization rates¹ as well as average case costs.



Source: Legal Aid Ontario

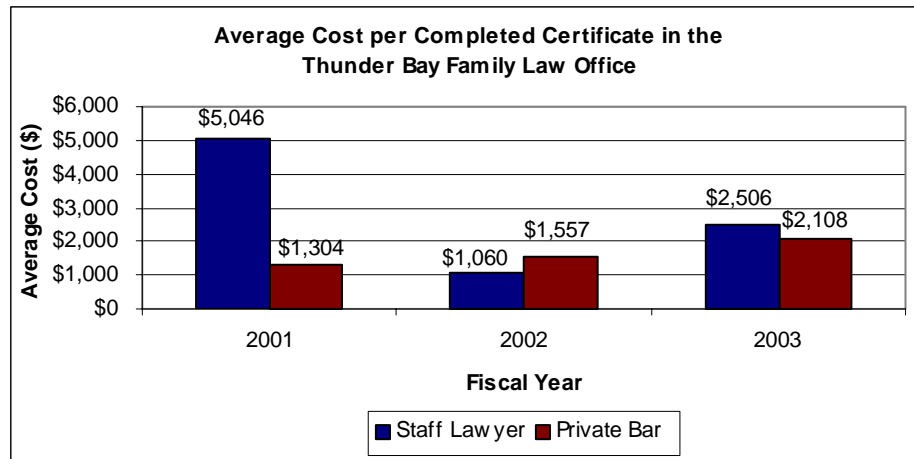


Source: Legal Aid Ontario and Deloitte & Touche Analysis

Over the past three years the volume of closed certificates within the Thunder Bay family law office has increased significantly from 56 closed certificates in 2001 to 146 closed certificates in 2003. Driving the increase in closed certificates is an increase in the utilization rates of lawyers from 57% in 2001 to 82% in 2003.

Although utilization rates are relatively high, the Thunder Bay family law office reported that its office has waiting lists for clients who require legal aid service. This is indicative of the high demand for family law service in Thunder Bay which further validates the need for a staff office within that area.

¹ Utilization rates are based on a seven hour day. Client service hours include time spent on Special Duty Council, Family Violence, Uncontested and Old Divorces.

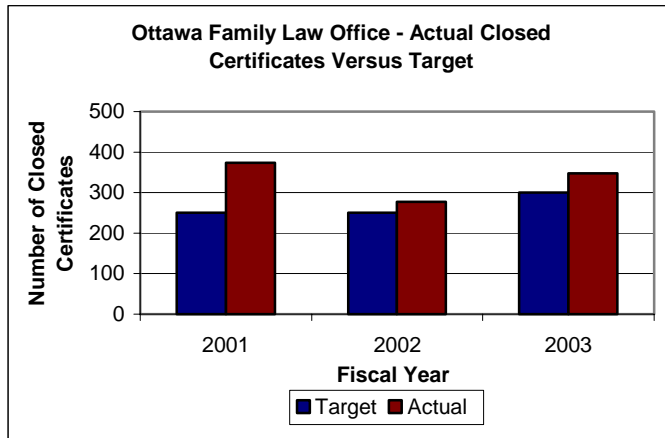


Source: Legal Aid Ontario

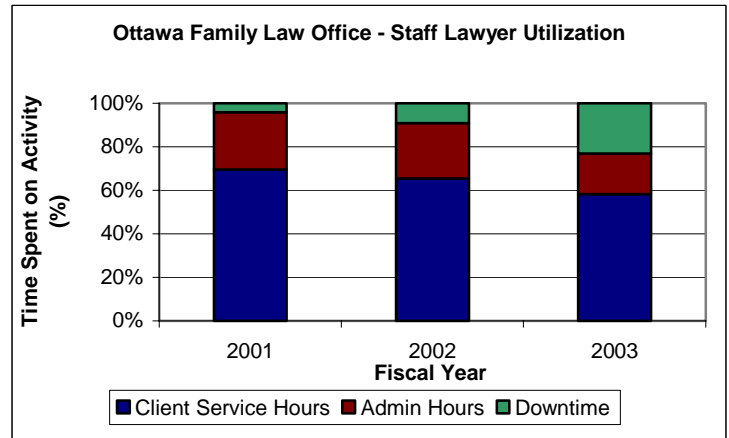
In 2001 the average cost per completed certificate by staff lawyers in the Thunder Bay family law office was almost three times as high as the average cost of certificates completed by private bar lawyers in Thunder Bay. However, as the staff utilization rates and the number of closed certificates increased, the average cost per completed certificate by the family law office has decreased significantly. In 2002 the average certificate cost within the family law office was lower than that of the private bar and in 2003 the average certificate cost was only slightly higher than the average cost of certificates completed by the private bar. Given that the Thunder Bay family law office is still relatively new it is difficult to determine if the average cost per completed certificate will be higher or lower than the private bar in the long term. However recent results indicate that it is possible for the Thunder Bay family law office to achieve costs that are either lower or close to the average cost per completed certificate by the private bar.

The Ottawa Family Law Office

EFFICIENCY OF DELIVERING LEGAL AID SERVICE THROUGH STAFF LAWYERS



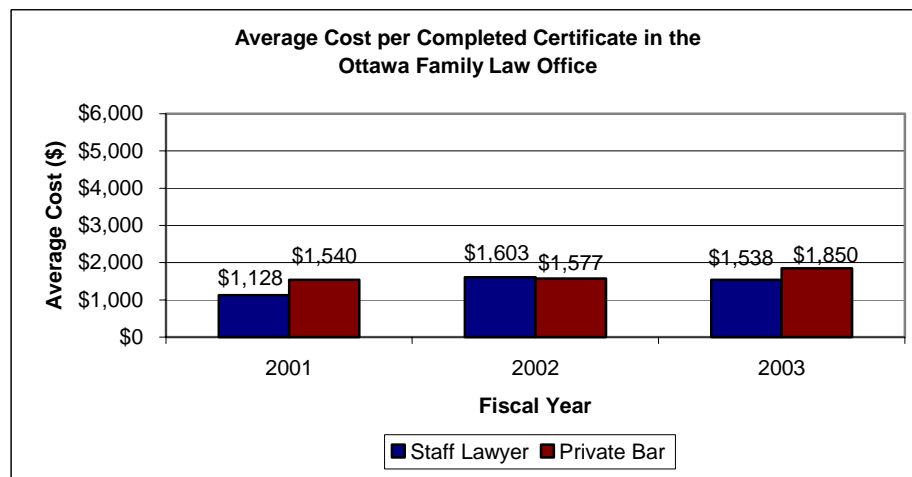
Source: Legal Aid Ontario



Source: Legal Aid Ontario and Deloitte & Touche Analysis

Since 2001 the volume of closed certificates in the Ottawa family office has been high and it is the only LAO family law office that has been able to consistently exceed its targets for the number of closed certificates over the past three years. Although the Ottawa family law office has been able to achieve its targets for the number of closed certificates, staff utilization rates over the past three years have trended downwards and the amount of lawyer downtime within the office has increased significantly since 2001. The Ottawa family law office reported that staff lawyers are not accurately docketing their client service hours and as a result staff lawyer utilization rates are artificially low.

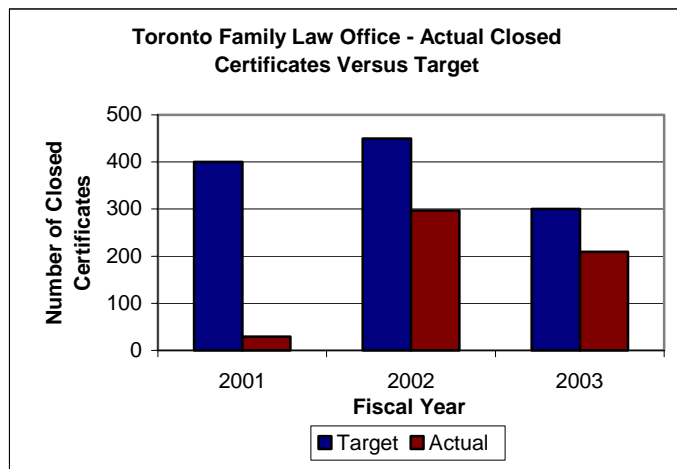
In comparison to the other family law offices, the Ottawa family law office has been able to achieve the most competitive average certificate cost. This finding is not surprising given that the Ottawa family law office has consistently exceeded its targets for the number of closed certificates which creates economies of scale.



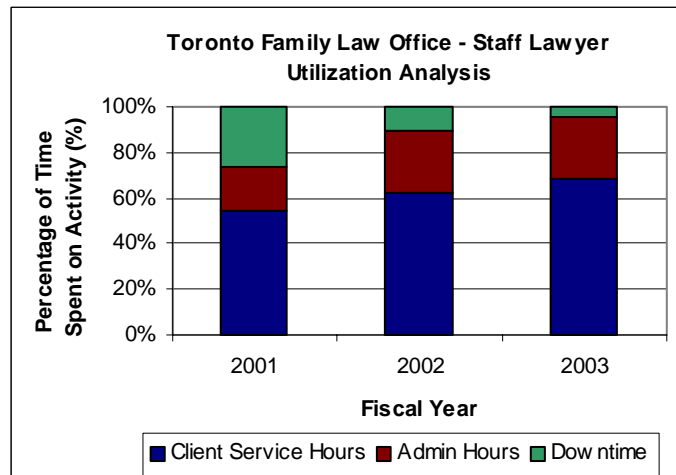
Source: Legal Aid Ontario

The Toronto Family Law Office

EFFICIENCY OF DELIVERING LEGAL AID SERVICE THROUGH STAFF LAWYERS



Source: Legal Aid Ontario



Source: Legal Aid Ontario and Deloitte & Touche Analysis

Since the Toronto family law office opened it has had difficulty achieving its target number of closed certificates. In particular in the 2001 fiscal year a very small number of certificates were closed. LAO reported that part of this is attributable to the fact that the office did not follow the proper procedures of issuing additional certificates when more work was required on a case. Instead the office tended to leave files open until all of the legal issues related to a case were resolved. However since 2001 the office has been following proper procedures and as utilization rates increased over the past three years the volume of closed certificates has increased.

However, in the 2003 fiscal year the office was still well below its targets for the number of closed certificates. LAO reported that part of the difficulty in achieving its target for closed certificates can be attributed to the fact that the cases seen by the Toronto family law office are more complex than the family law cases received by the private bar in Toronto. However the target for the number of completed certificates received by the Toronto family law office has already been adjusted downwards to take into consideration a more complex caseload². Even after this adjustment the Toronto family law office is well under its complexity adjusted target for the number of closed certificates. Additionally, the Toronto family law office reported that there is a three-week backlog of cases. Although factors such as staffing issues have been present, the inability of the Toronto family law office to achieve its targets is an indication that the office is having difficulty in resolving cases in an efficient manner.

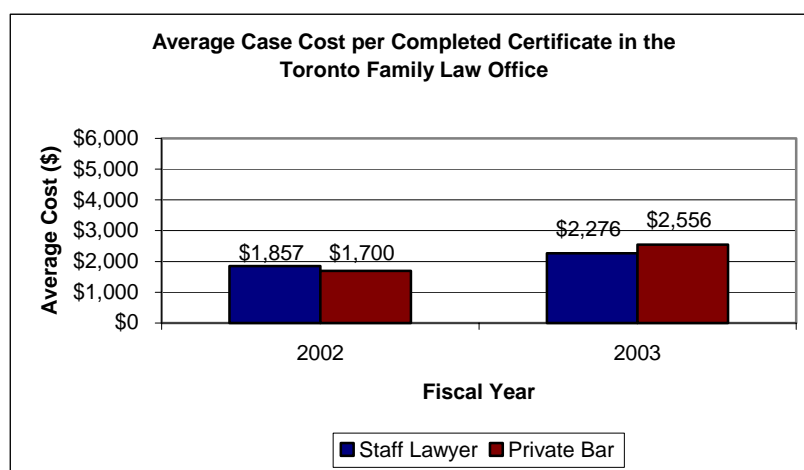
Despite the difficulties that the office has faced in achieving its targets for closed certificates, in the 2003 fiscal year it was able to achieve an average case cost³ that is comparable to the

² Complexity of a case in the Family Law Office Pilot Project was defined as the presence of complicating factors and the degree of impact those factors have on a case. 61 complicating factors were categorized by the legal issues addressed in the case (30 factors), the characteristics of the opposing side (9 factors), and context factors in the case (22 factors). The presence of factors and a rating of the level of impact for each factor present determined the degree of complexity in a case.

³ Average case costs have been adjusted downwards for the increased complexity of Toronto files as established in the evaluation of the Family Law Offices.

private bar. It is important to note that LAO adjusts its average case costs downwards for the Toronto family law office by 18% (see graph below). This is due to a previous evaluation of the Toronto family law office that concluded that cases accepted by the Toronto family law office have a greater level of complexity than family law cases received by private bar lawyers in Toronto. The actual average case costs achieved by the office (without the adjustment for complexity) in 2002 and 2003 were \$2,265 and \$2,685 respectively.

We are not clear on the rationale for adjusting actual costs incurred. In our view, complexity represents a driver of costs which needs to be explained and not used as a mechanism to adjust the actual cost. Additionally the complexity of cases is something that can change over time and by systematically adjusting average costs downward LAO is not getting a true picture of its average case costs and whether or not cases are being resolved efficiently.



Source: Legal Aid Ontario

Please note that average cost data for 2001 was omitted since only a small number of cases (29) were closed in 2001.

Similar to the Thunder Bay family law office, the number of hours dedicated towards client service in the Toronto family law offices has increased steadily since 2001.

The Refugee Law Office

Currently LAO does not track any information on the refugee law office related to volume, average case costs, or utilization. Therefore it is impossible to determine if the refugee law office is operating in an efficient manner.

EFFECTIVENESS OF DELIVERING LEGAL AID SERVICE THROUGH STAFF LAWYERS

In 2002 an independent consulting firm completed an evaluation of the three LAO family law offices⁴. As part of the evaluation 151 family lawyers that were familiar with the LAO family law offices completed a survey on their perceptions of the office. Of the 151 lawyers that were

⁴ Prepared by ARC Applied Research Consultants on August 8, 2002

surveyed, the majority of lawyers in Toronto, Ottawa and Thunder Bay, 44%, 54% and 61% respectively, thought that there was no difference between the quality of work provided by the family law office and the private bar. Additionally, the majority of survey respondents that were familiar with the family law offices reported that they perceived the offices as a positive addition to the range of services available to legal aid clients.

Although the quality of service provided by the LAO family law offices was perceived to be at least comparable to the private bar, currently there are no quality assurance mechanisms in place, such as routine audits of the work performed by lawyers. In order to ensure the on-going quality of the service provided, quality assurance mechanisms such as periodic audits of lawyer's work should be conducted. Since lawyers within the family law office are employees of LAO, the family law office has a greater ability to invoke quality assurance practices and standards.

ALTERNATIVE SERVICE DELIVERY MODELS

A key question that was raised during the course of this evaluation was whether or not LAO is using the most effective model to deliver its services. One of the strongest arguments for using the certificate model is that it enables low income Ontarians to receive high quality legal representation from the lawyer of their choice. While that is a strong benefit of the certificate model there are also significant challenges to the model. One of the primary challenges is that the certificate model depends on the participation of private bar lawyers. As discussed earlier in the report, the LAO tariff is well below market rates and as a result the number of lawyers willing to accept certificates has declined steadily over the past five years. This has resulted in a shortage of lawyers in certain areas of Ontario which ultimately impacts LAO's ability to achieve its mandate of providing high quality service to low income Ontarians.

Given the realities of operating in a private bar model, LAO should explore the option of opening more staff offices and exploring other alternative service delivery models in Ontario in response to significant supply and demand issues. The opening of the LAO family law staff offices indicates that staff offices can provide clients with good service at a cost that is comparable to the private bar certificate cost. Staff offices also provide LAO with an opportunity to service clients in highly specialized areas of law such as refugee law. This is especially important if there is a gap in terms of the number of qualified lawyers willing to accept certificates in particular areas of law.

4. MANAGING THE PANEL OF LEGAL AID LAWYERS

Managing the panel of legal aid lawyers focuses primarily on the effective management of the legal aid panel. Analysis of factors such as costs and throughput is not relevant in the evaluation of this activity so the evaluation of the efficiency criterion is not included in this section.

EFFECTIVENESS OF MANAGING THE PANEL OF LEGAL AID LAWYERS

In 2003, 4,070 lawyers were paid for providing legal aid service. As long as a lawyer is in good standing with the law society he or she can be admitted on to the legal aid panel. Other than that requirement, there are no standards governing the admittance of a lawyer on to the

panel. Given that LAO's mandate is to provide high quality service, quality assurance mechanisms such as minimum years of experience, training or qualifications in specialized areas of law should be required in order to increase the likelihood of high quality service delivery. Additionally, several interviewees commented that the process for removing a lawyer from the legal aid panel is too cumbersome and should be streamlined.

Without standards there is a lack of accountability between LAO and its primary service providers. It is important to note that several interviewees expressed that there are a number of challenges in implementing standards. However the Province does utilize stricter panel criteria for children's lawyers who are also paid based on a tariff.

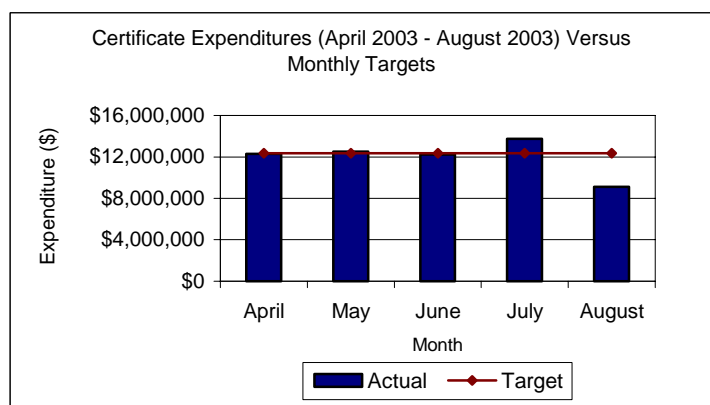
Although no standards are currently in place, LAO has established a Quality Service Office, whose mandate is to develop panel standards by the end of the fiscal year for the refugee bar and the Duty Counsel.

5. MANAGING CERTIFICATES AND EXPENDITURES

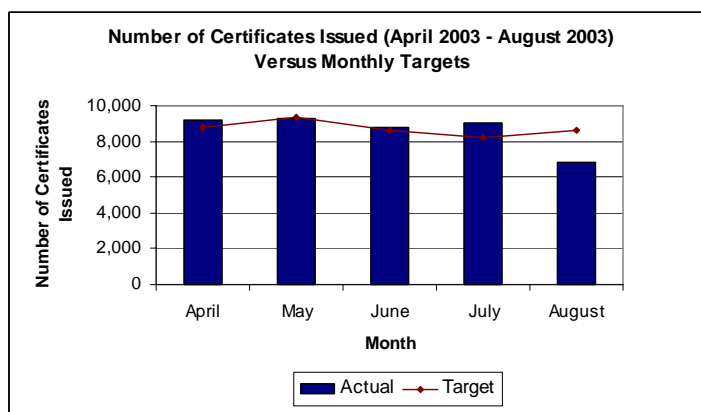
This activity pertains to the management and control of the number of certificates issued and the associated impact on expenditures.

EFFICIENCY OF MANAGING CERTIFICATES AND EXPENDITURES

As discussed earlier in the report, after issuing the highest number of certificates in the 2001 fiscal year since 1996, LAO has been successful in decreasing the number of certificates issued by nearly 10%.



Source: Legal Aid Ontario



Source: Legal Aid Ontario

Within the current fiscal year, as of August 2003, LAO is under its year-to-date target for certificate expenditure by 0.4%. In terms of the number of certificates issued, as of August 2003, LAO is under its year-to-date target by 0.9%. It is important to note that due to the power outage, the number of clients that applied for legal aid decreased significantly in the month of August.

Big Case Management

In addition to the Certificate Management Program, LAO also has a Big Case Management Program. The Big Case Management Program is a program that LAO established to manage the cost of criminal cases that cost more than \$20,000. In the 2003 fiscal year there were 571 cases in the program.

Interviewees commented that the Big Case Management Program has enabled LAO to manage the cost of big cases more effectively. For example, between the 2000 and the 2003 fiscal years the number of big cases increased by 15% from 238 to 273, but the average completed case cost decreased by 13%.

EFFECTIVENESS OF MANAGING CERTIFICATES AND EXPENDITURES

While having targets for the number of certificates issued contributes to overall fiscal management, targets for certain offices are not aligned with the demand for certificates in particular areas. For example, as of September 30, 2003 the Lindsay area office was 158% over its year-to-date target for certificates. This is primarily due to a super jail located in Lindsay which has significantly increased the volume of applications. This increase in demand must be reflected in certificate and expenditure targets.

Big Case Management

In the 2003 fiscal year nearly half of the cases in the Big Case Management Program amounted to less than \$20,000. LAO should explore why such a large number of cases under \$20,000 are in the program. This could potentially be an issue since once a case is accepted into the program, the lawyer covering the case is allotted a certain number of hours to perform specific activities. Therefore there is potential for the lawyer to spend the maximum number of hours allotted to them, even if they are not required. Additionally, an evaluation that LAO conducted on the Big Case Management program in 2002 found that if the wrong cases are accepted into the program it might cost LAO more money. This may occur if lawyers spend more time preparing in the initial stages of a case which may resolve before it goes to trial. Typically a lawyer would not expend such preparation time until it is clear that the case is either not going to be withdrawn or finished with a negotiated plea.

Interviewees commented that in order to manage costs more effectively, LAO should provide more training to Area Directors on how to set up proper budgets for big cases since this was cited as an area of weakness in the current program.

DUTY COUNSEL

OVERVIEW

The Duty Counsel Program is designed to provide assistance to unrepresented individuals in criminal, family and youth courts through a combination of private bar and staff lawyers. Duty Counsel services are available in more than 70 provincial court houses as well as satellite courts and fly-in locations in more remote areas. In addition to assisting unrepresented individuals in court, Duty Counsel also provide summary advice to family law clients at locations across Ontario, including Family Law Information Centres.

A recent enhancement to the Duty Counsel Program is the adoption of Staff Duty Counsel across all areas of the Province of Ontario. In most areas the Staff Duty Counsel is also a Supervisory Duty Counsel except in larger urban areas such as Toronto or Ottawa where there is a Supervisory Duty Counsel and other Staff Duty Counsel. LAO continues to explore additional service delivery options with the introduction of the Expanded Duty Counsel model in London, Hamilton and Oshawa, the purpose of which is to provide continuity of service for family law Duty Counsel clients.

In the 2003 fiscal year LAO assisted 714,264 clients through the Duty Counsel program and the expenditures of the Duty Counsel program amounted to over \$28 million.

CORE BUSINESS RELEVANCE

Our review of the Duty Counsel Program indicates that it is a key part of the broader Justice System, a view that was unanimously held by all stakeholders whom we interviewed. Key factors that demonstrate the relevance of the Duty Counsel Program include:

- Access to justice is a charter right in serious and complex criminal law matters and child protection cases;
- In family law there is a disproportionate impact on women and children who are not represented; and
- Unrepresented individuals may receive fairer or more appropriate sentences with the presence of counsel.

The relevance of the Duty Counsel Program is also demonstrated by the impact it has on the court system. Most interviewees agreed that Duty Counsel help the court to run more smoothly for the following reasons:

- Duty Counsel help people who are unfamiliar with the law to navigate through the system.
- When a person is unrepresented the judge and/or crown attorney will spend more time explaining the court process to the person, thus increasing court inefficiencies.
- A judge is allowed to maintain the role of arbitrator more effectively because when there is an unrepresented individual, the judge feels he or she has to ensure that the accused is treated "fairly" (premise of equally matched system).

EFFICIENCY & EFFECTIVENESS

We conducted our evaluation of the efficiency and effectiveness of the Duty Counsel Program at the activity level. Some of the key activities of the program include:

1. Managing the Panel of Lawyers
2. Coordinating Duty Counsel
3. Delivering Duty Counsel Services
4. Delivering Expanded Duty Counsel Services
5. Operating Family Law Information Centres and Advice Clinics

1. MANAGING THE PANEL OF LAWYERS

Managing the panel of legal aid lawyers focuses primarily on the effective management of the legal aid panel. Analysis of factors such as costs and throughput is not relevant in the evaluation of this activity so the evaluation of the efficiency criterion is not included in this section.

EFFECTIVENESS OF MANAGING THE PANEL OF LAWYERS

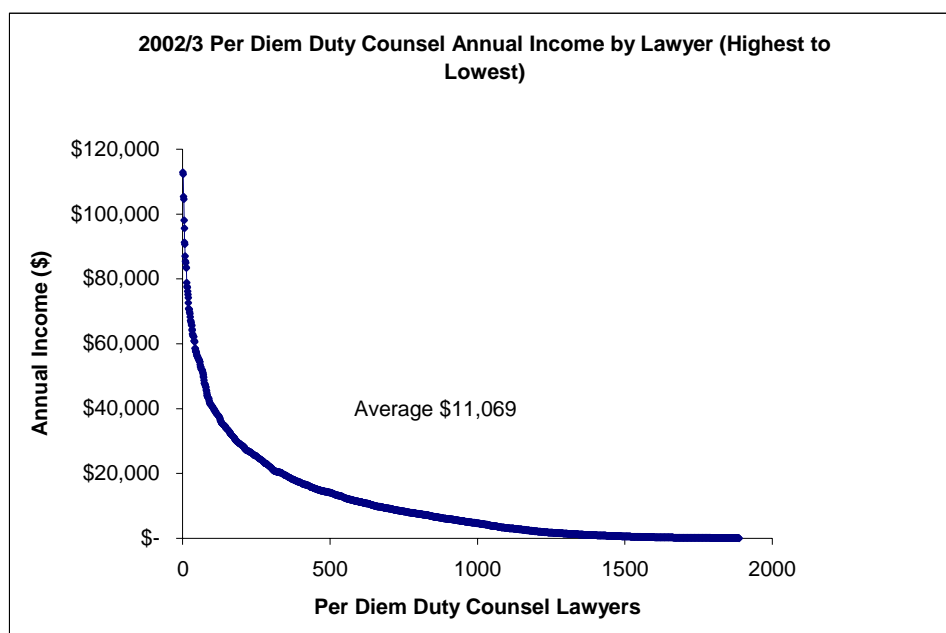
In 2003, 1,887 lawyers were paid for providing Duty Counsel services. Currently, as long as a lawyer is in good standing with the law society they can be admitted on to the legal aid panel. Other than that requirement, there are no standards governing the admittance of a lawyer on to the panel. Given that LAO's mandate is to provide high quality service, quality assurance mechanisms such as minimum years of experience, training or qualifications in specialized areas of law should be required in order to increase the likelihood of high quality service delivery. Without standards there is a lack of accountability between LAO and its primary service providers.

Although no standards are currently in place, LAO has established a Quality Service Office. Between June 2002 and July 2003, the Quality Service Office hosted five regional focus group sessions with Supervisory Duty Counsel and Duty Counsel to build support on a number of initiatives related to enhancing the quality of service. For the 2005 fiscal year, educationals and performance feedback are the likely first initiatives that will be introduced to enhance the quality of Duty Counsel services. Several interviewees commented that as long as the initiatives are focused on quality improvement, rather than quality control, the initiatives should be well received.

In the Duty Counsel Program unlike the Certificate Program, it is easier to monitor the quality of service of Duty Counsel lawyers. This is due to the existence of informal community networks that can provide feedback on the effectiveness of Duty Counsel service delivery (i.e. Supervisory Duty Counsel or the Area Director may receive a phone call from a judge, crown attorney or private bar lawyer regarding service delivery concerns). Additionally, in smaller areas it is easier for the Supervisory Duty Counsel and/or the Area Director to know the panel members and directly monitor their service levels.

Additionally, several interviewees commented that the process for removing a lawyer from the legal aid panel is too cumbersome and should be streamlined.

Another issue to consider when analyzing panel management is the amount of fees paid to a private bar lawyer for the performance of Duty Counsel work. Such an analysis demonstrates the extent to which private bar lawyers rely on legal aid to sustain their law practices. The graph below shows the distribution of annual per diem Duty Counsel fees paid to private bar lawyers.



Source: LAO Duty Counsel Billings 2002/3

It is evident from the graph above that a small proportion of lawyers incur a significant proportion of Duty Counsel fees. In fact, our analysis shows that 3% of lawyers account for 20% of total fees and 32% of lawyers account for 80% of fees. This clearly demonstrates the need to have appropriate quality control procedures in place and well-defined protocols for panel admission and suspension in order to avoid the possibility of high volumes of services being delivered by lawyers that may provide low quality service.

2. COORDINATING DUTY COUNSEL

Duty Counsel lawyers all over the Province of Ontario are required to be in different courts at different times, to provide both criminal and civil law services to otherwise unrepresented individuals. Ensuring that Duty Counsel are present in court at the right time is a significant exercise. Thus coordinating Duty Counsel is an important factor to consider in the analysis of the efficiency and effectiveness of the Duty Counsel Program.

In the 2002 fiscal year, LAO began to implement a Supervisory Duty Counsel role with a view to improving both the efficiency and effectiveness of Duty Counsel services. With this in mind our analysis on coordination focused on the impact of that role. Additionally, we incorporated comments received in specific areas related to the Duty Counsel Program. Thus, we segmented our analysis of the efficiency and effectiveness of co-ordinating Duty Counsel into two areas:

- 2.1 The impact of the Supervisory Duty Counsel role on co-ordination; and
- 2.2 Area specific concerns

2.1. THE IMPACT OF THE SUPERVISORY DUTY COUNSEL ROLE ON CO-ORDINATION

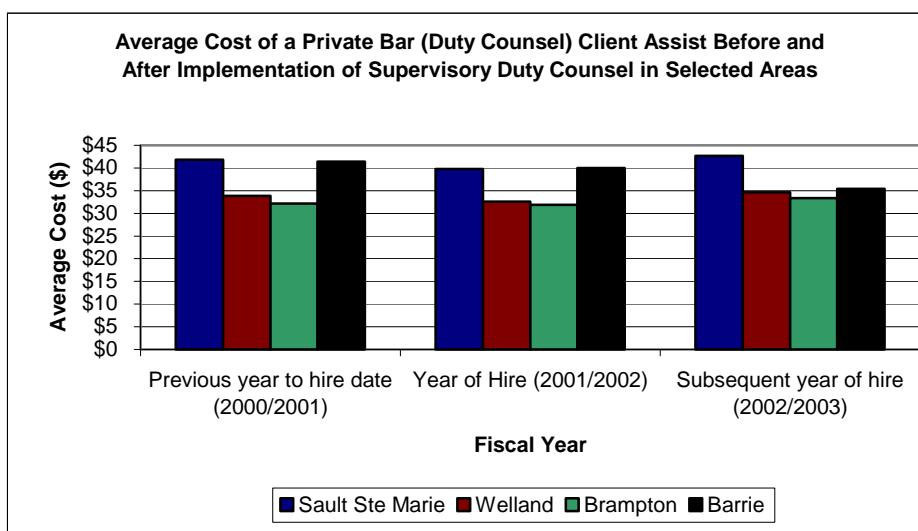
EFFICIENCY OF CO-ORDINATING DUTY COUNSEL

Our interview findings indicate that in certain areas, part of the role of Supervisory Duty Counsel is administrative (for example, in certain areas it was reported that Supervisory Duty Counsel spend from one third to one half of their time preparing schedules to cover court time). It was also reported that in Toronto due to the significant volume of cases, office staff conduct some administrative Supervisory Duty Counsel tasks. Additionally, no data is captured related to the amount of time spent by Supervisory Duty Counsel on such administrative tasks. We recommend that this information be captured as it may help to highlight areas where it may be more cost efficient to delegate administrative duties to office staff that have lower hourly rates. This would allow the Supervisory Duty Counsel to spend more of their time providing client service instead of having to rely on additional private bar Duty Counsel to deliver service at a higher cost.

Additionally, data related to downtime for each Supervisory Duty Counsel and staff lawyer should be maintained to ensure that there is sufficient demand to justify the cost of using Supervisory Duty Counsel and staff lawyers. This data may also indicate the need for additional staff lawyers in certain areas.

Interviewees commented that the implementation of the Supervisory Duty Counsel role should decrease the costs of providing Duty Counsel services for two reasons:

- The Supervisory Duty Counsel is a staff position which is paid a salary instead of a more expensive per diem rate; and
- Supervisory Duty Counsel can monitor the volume of cases to ensure that per diem Duty Counsel are only in court when their services are required thus avoiding unnecessary costs.



Source: Duty Counsel Management Reports Fiscal Years Ended 2000 to 2003 & Human Resources Information relating to Supervisory Duty Counsel Hire Dates

In order to determine the cost impact of the implementation of Supervisory Duty Counsel positions we analyzed the average cost of a private bar Duty Counsel client assist before and after the implementation of the position in Sault Ste Marie, Welland, Brampton and Barrie (note the sample size is so small due to the recent implementation of the program). The graph reflects that in 3 of the 4 locations sampled, the average cost of providing Duty Counsel services increased by 2% to 3%. In Barrie, the average cost decreased by approximately 15%. The graph provides inconclusive results on whether the implementation of the Supervisory Duty Counsel role has decreased program costs. There are other factors that may have impacted costs such as the increase in tariff rates in the fiscal year ended 2003 and possible increases in demand in the area.

EFFECTIVENESS OF CO-ORDINATING DUTY COUNSEL

Interviewees commented that the coordination role of the Supervisory Duty Counsel has improved the quality of service because there is now a person who is strictly accountable to ensure staff and/or private bar lawyers provide service in the right place at the right time.

2.2. AREA SPECIFIC CONCERNS

We determined that the effectiveness criterion is not applicable to this section, so our analysis only covers efficiency.

EFFICIENCY OF CO-ORDINATING DUTY COUNSEL

During our interviews in Napanee it was noted that Duty Counsel take certificate applications, while providing advice at some of the surrounding prisons. It was reported that at times two Duty Counsel are sent to prisons to provide advice, but on most visits only one of the Duty Counsel provides advice while the other spends the majority of time taking legal aid applications. We recommend that in this location, and in any other location where this might

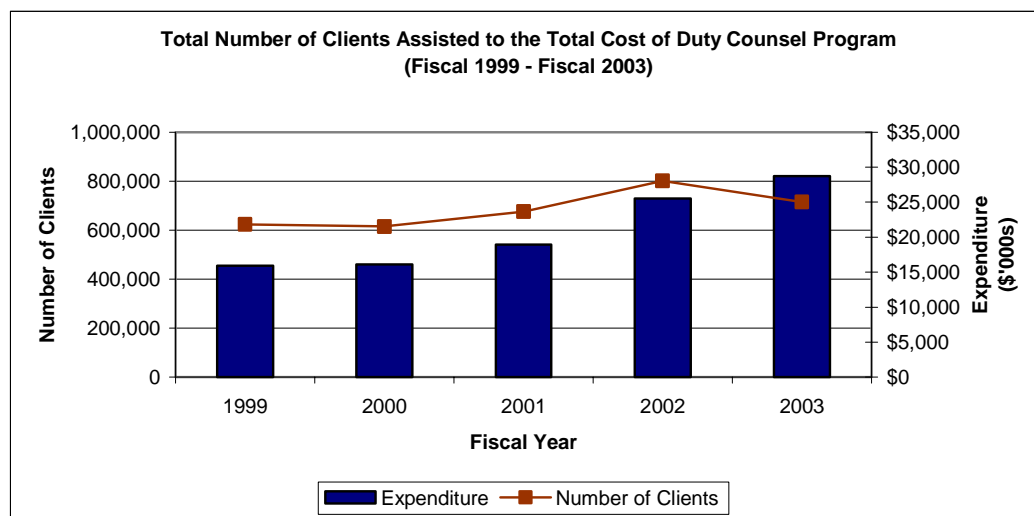
be occurring, application officers should be used to take applications since it is more cost efficient.

3. DELIVERING DUTY COUNSEL SERVICES

In Ontario, staff lawyers and private bar lawyers provide service to clients in the Duty Counsel Program. While our analysis of the Certificate Program was clearly able to segment cost and output data across staff lawyers and the private bar, this was more difficult for the Duty Counsel program since less data is available on the program. Therefore our analysis focuses on the Duty Counsel program as a whole with distinctions drawn, where possible, regarding the differences between staff and private bar Duty Counsel. Finally, as in the Certificate Program, our analysis concludes with a discussion on the service delivery model itself as a determinant of the effectiveness and efficiency of the program.

EFFICIENCY OF DELIVERING DUTY COUNSEL SERVICES

In 2003 expenditures in the Duty Counsel Program amounted to over \$28 million. The following graph compares the total cost of the Duty Counsel program to the total number of clients assisted. Between 1999 and 2003 the cost of the Duty Counsel Program increased by 81% while the number of clients only increased by 15%.



Source: Annual Reports for Fiscal Years ended 1999 – 2003

Factors Affecting Cost

Some of the factors that have contributed to the increase in the overall cost of the program include:

- There have been changes in the accounting of administrative costs. Administrative costs are now allocated directly to the Duty Counsel Program cost centers, whereas previously they were allocated to corporate accounts;
- A number of Family Law Information Centers (FLICS) were added to family courts in 2001;

- WASH (Weekend & Statutory Holiday) courts were introduced between 2002 and 2003, although Area Directors have discretion over whether to serve those courts; and
- The tariff was increased in 2002 and 2003.

In addition, it is possible that eligibility testing and other external factors may have driven Duty Counsel costs.

Eligibility Testing

The Duty Counsel program does incorporate financial eligibility testing but because of the nature of the services provided by Duty Counsel, interviewees noted that the test is rarely administered. In the area of criminal law, the majority of cases dealt with by Duty Counsel involve clients in jail for whom financial eligibility testing is not required. In civil law, Duty Counsel are only required to carry out a financial eligibility test where they receive information in a conversation that leads them to believe that the client may not be eligible for Duty Counsel assistance.

Most people are being provided with Duty Counsel services and in fact interviewees commented that in both criminal and civil law areas, limited services are performed for people who would normally be deemed as ineligible for legal aid.

While we cannot determine the direct cost impact of providing these limited services, it might be possible to save costs in the Duty Counsel program by enforcing eligibility testing. However, by conducting more eligibility tests, Duty Counsel would spend more time testing, thus decreasing the amount of time available to assist clients with legal matters. This in turn would have an adverse impact on the court system.

External Factors

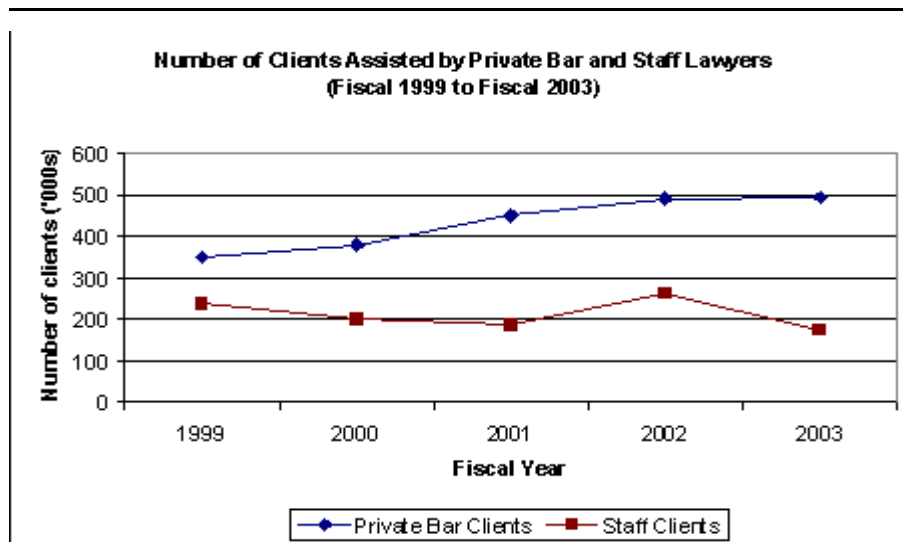
The efficiency of the delivery of legal aid services, and in particular Duty Counsel, is impacted by many other external factors. Interviewees commented that the delivery of Duty Counsel services is impacted by items such as:

- Requests by Judges to provide services not necessarily covered by LAO;
- The court process (i.e. it was reported that Brampton has one of the most complicated procedures for scheduling a court appearance);
- Increases in the number of arrests and/or criminal charges; and
- The evolution of the law. Family law has become more paper intensive and has increased the amount of time Duty Counsel spends with a client.

It is important to remember that Duty Counsel costs are partially driven by external factors and are not necessarily due to the inefficient management of the program by LAO.

Factors Affecting the Number of Clients Assisted

In order to analyze further the graph that plots the total number of clients assisted against the total cost of the Duty Counsel Program served, we analyzed the number of client assists broken down by private bar and staff lawyers.



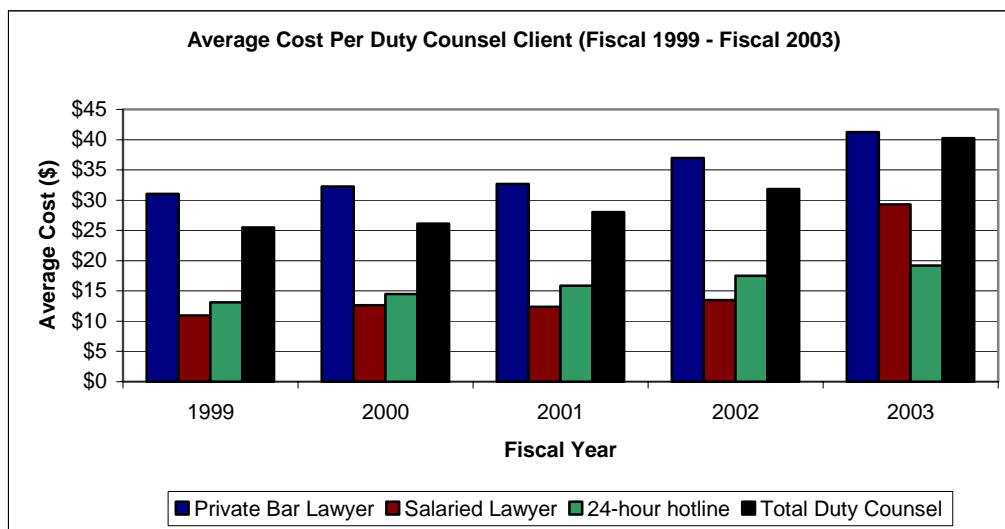
Source: Annual Reports for Fiscal Years ended 1999 – 2003

Overall total Duty Counsel client assists have increased by 15% over the past five years with private bar client assists increasing by 41% and staff lawyer client assists decreasing by 27%.

Our analysis revealed a number of key insights including:

- The overall increase in clients assisted is to be expected given LAO's strategy to control the number of certificates issued, thereby inherently pushing more clients into the Duty Counsel program.
- Similar to the cost discussion above, the increased demand created by the increase in FLICs also led to a higher number of clients.
- However, the number of clients assisted by staff lawyers has decreased over time. This is a concern since staff lawyer positions were implemented in order to satisfy increasing client demand. (Please note that the sudden increase of staff lawyer client assists in 2002 is due to the private bar strike)

However, our analysis is further complicated by the fact that there are inconsistencies in LAO's matching of clients served to costs incurred. For example, the numbers for clients served exclude those assisted through the Expanded Duty Counsel program.



Source: Annual Reports for Fiscal Years ended 1999 - 2003

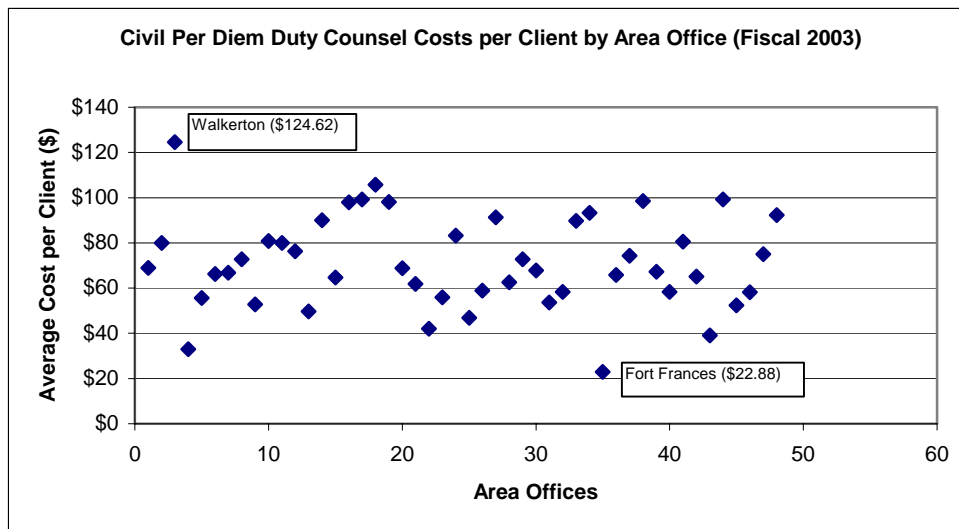
The graph above illustrates that the average cost per Duty Counsel client is increasing in all areas. Furthermore, it is interesting to note that in this instance, the average cost per client is lower for staff lawyers than the private bar. However, this does not infer that LAO should move to a larger staff model. Rather, it suggests that LAO needs to continue monitoring the supply and demand for Duty Counsel on an area-by-area basis and additional staff Duty Counsel positions should be implemented, as necessary, if there is sufficient demand. Additionally, factors that impact effectiveness, which are discussed below, need to be considered.

Going forward, it will be critical for LAO to develop consistent definitions for attributable costs and match them to all clients served to determine cost per client trends over time. This must not be done in isolation but with reference to activities delivered and outcomes achieved, especially by Staff Duty Counsel.

We also recommend that the amount of time spent with each client be tracked as this would indicate trends by certain lawyers (ie. if they are spending too much time per client) and/or in certain areas of law which may impact costs and the quality of service.

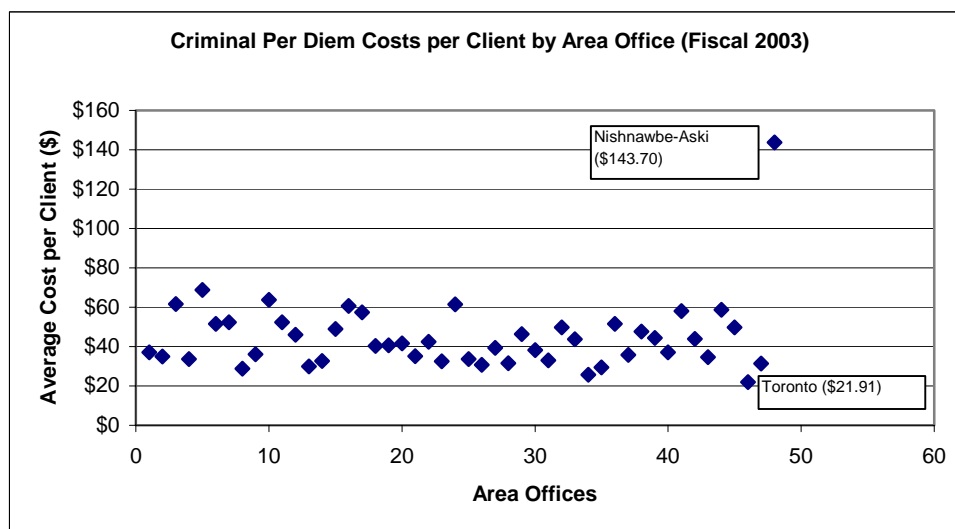
Factors Affecting Regions

Another driver of Duty Counsel Program costs is the role that area offices play in dictating and managing costs. Therefore we reviewed Duty Counsel costs by area office.



Source: Duty Counsel Management Report Fiscal Year ended 2003

The graph above shows the average cost per client in the 2003 fiscal year of providing civil per diem Duty Counsel services was \$60.51. Walkerton is the most expensive at \$124.62. LAO stated that the costs in Walkerton were so high because local private bar lawyers would not provide civil services and thus the Area Director had to rely on out-of-area lawyers that bill travel time, which is clearly a more expensive option. It was reported that a Staff Duty Counsel has been hired in Walkerton to address this issue. Fort Frances is the least expensive and LAO stated that this is due to the fact that only one lawyer provided limited Duty Counsel services.



Source: Duty Counsel Management Report Fiscal Year ended 2003

The above graph shows the average cost per client in the 2003 fiscal year of providing criminal per diem Duty Counsel services was \$34.30. Nishnawbe-Aski is the most expensive as it is a northern location and costs such as the northern incentive (minimum amount per day) and fly-

in costs are incurred. Toronto has the lowest cost per client due to the volume of clients serviced by the court.

After analyzing both of the graphs, there is a larger spread in the civil costs per client by area versus the criminal costs per client by area. While it is difficult to provide conclusive comments for this range LAO offered the following reasons:

- Criminal Duty Counsel activities are conducted within the courts and Duty Counsel are only present for as long as they are required. Alternatively, family Duty Counsel are scheduled in blocks of time even if no clients show up (i.e. Family Law Information Centres and Advice Lawyers). Each area determines how long and how often the family Duty Counsel is scheduled.
- The average time for a client assist is greater in family law than in criminal law.
- Criminal Duty Counsel services do not vary greatly since services are mostly provided in court across Ontario while family Duty Counsel services vary greatly (for example, court time, preparation of documents, advice, mental health services) and usually require more time with each client.
- Case complexity in criminal versus family law cases varies greatly with family law cases generally being more complex.

Additional Insights on the Efficiency of Delivering the Duty Counsel Program

While it would be helpful to provide additional information to measure the efficiency of the Duty Counsel Program, our review discovered that limited qualitative and quantitative information has been maintained related to the Duty Counsel Program. For example, information regarding consolidated budget versus actual Duty Counsel Program costs is only available from March 2003 and information relating to staff and private bar lawyer activities is limited (i.e. information relating to downtime, administrative time in relation to client time is not maintained).

Additionally, information is not maintained in one central system which makes it difficult to obtain and different systems, at times maintain inconsistent information (either in actual number or in calculation definitions over time). We recommend that LAO define key reporting information requirements and capture and maintain it in a consistent fashion.

Service Delivery Model Considerations

One of the key questions in this evaluation is whether or not LAO is using the most efficient model to deliver its services. One area of particular interest to the Ministry is the possible use of paralegals within the Duty Counsel Program. Throughout the course of this study it became evident that there may be a role for paralegals in the following areas:

- Assisting Supervisory Duty Counsel with administrative activities; and
- Assisting family law Duty Counsel in completing required documents for court proceedings.

While there is clearly some benefit to using paralegals to complete family law paperwork since they have cheaper rates, it would be more efficient to have the area office assist with these administrative tasks.

Furthermore, we recommend that additional studies be conducted on using paralegals in the area of criminal law. Interviewees commented that many of the tasks of criminal lawyers have to be carried out as an officer of the court. However, tasks such as contacting sureties can be done by paralegals. It is also evident that the role of paralegals outside of the court room has not been fully explored.

As discussed in the relevance section for the Duty Counsel Program, the role of Duty Counsel has a direct impact on court proceedings. Interviewees commented that without Duty Counsel in the court room, the burden to explain court proceedings would fall on the judge. This would increase court time and all of the related expenses associated with running the court. This anecdotal finding is further supported by the following quotes from the *National Court Site Study of Adult Unrepresented Accused, Chapter 9*⁵:

- “Crowns will not generally talk to unrepresented accused or negotiate a plea with them, but will only discuss plea resolutions in open court.”
- “Most interviewees agreed that trials involving unrepresented accused take longer than those of represented persons – perhaps twice as long....”

While the Study does not provide conclusive information, as Scarborough was the only participating court in Ontario, it adds further support to the argument that Duty Counsel makes the court process more efficient.

EFFECTIVENESS OF DELIVERING DUTY COUNSEL SERVICES

In order to assess the effectiveness of the delivery of the Duty Counsel program we analyzed the following items:

- a. Current Outcome Measures
- b. Quality of Duty Counsel Services
- c. Impact of Supervisory Duty Counsel on Quality
- d. Supply of Private Bar Lawyers
- e. Staff Lawyer Considerations
- f. Alternative Service Delivery Models

a. Current Outcome Measures

LAO does not currently measure outcomes of the Duty Counsel program. While the eventual legal outcome discussion is complex, there are some outcome measures that should be tracked for the Duty Counsel Program. Such measures would provide LAO with insight on potential trends which impact the end result for their clients, relative to those who are unrepresented. Our review identified that the province of Alberta measures the number of unrepresented and uses this information to identify trends in outcomes of represented versus unrepresented. Possible outcome measures include dispositive tasks, adjournments, client appearance rates, the number of unrepresented and the number of times a client returns for Duty Counsel assistance. When we discussed these measures with interviewees, they were careful to note that outcome measures should not focus on the speed of the services provided but the quality of those services provided.

⁵ Carried out by Robert Hann & Associates Limited with ARC Applied Research Consultants.

It is important to note that LAO is in the early stages of collecting data on dispositive tasks. In LAO's quarterly client service report for March 2003, it stated that 13% of all 2003 assists were dispositive (an increase from 10% in 2002), with 14% in criminal and 10% in civil.

Thus, we recommend that LAO begin to define and track outcome measures and that such an exercise be conducted prior to the final implementation of the TSN project so that potential data requirements can be incorporated into the design of the system.

b. Quality of Duty Counsel Services

Throughout our interviews it became clear that the changing role of Duty Counsel was impacting client service. In the beginning, the role of Duty Counsel was to help in the initial legal process by assisting in simple, more routine matters such as early attendance matters, bail hearings, simple trials and routine adjournments. Over time Duty Counsel have taken on more cases and responsibilities, beyond the scope of their original purpose. Part of this change is driven from an overall move by LAO to reduce certificate costs by pushing some matters from the Certificate Program to the Duty Counsel Program. However, interviewees commented that clients are confused or lack knowledge of the Duty Counsel role. We recommend that LAO prepare a summary document for clients in the court house explaining the roles and responsibilities of Duty Counsel.

It is difficult to determine the impact of the expanded role of Duty Counsel on client satisfaction, since we did not solicit feedback from clients during the course of the review and at the time of the review, client satisfaction feedback was not available. However, LAO is currently in the process of administering its first set of client satisfaction surveys related to the Duty Counsel Program. Client satisfaction surveys have been administered in the past on the Expanded Duty Counsel Program, but collection of client satisfaction feedback related to the entire Duty Counsel Program is a recent initiative. We recommend that LAO administer client satisfaction surveys on a regular basis to provide valuable feedback on the quality of Duty Counsel service.

Comments from Interviewees on the Quality of Duty Counsel Services

Since client satisfaction data is not available, we relied on the anecdotal comments provided by interviewees related to the quality of Duty Counsel service. These comments indicate that factors external to LAO have negatively impacted on the quality of service provided to clients including a general decline in the level of advocacy, the paper intensive nature of family law and increasing complexity of law. Comments on the quality of service provided by LAO lawyers varied greatly by geographic area. As we recommended earlier, an improvement in panel management would help to address some of these client service issues. The following are some of the comments that were received relating to the quality of Duty Counsel services:

- In the area of criminal law, Duty Counsel has historically been seen as a training ground for new lawyers. Some interviewees commented that this is not appropriate because the law is getting more complex and inexperienced lawyers may provide poor service which may result in negative client outcomes.
- Alternatively, some respondents commented that quality of service is driven by the competency of the lawyer, which is not necessarily a function of experience.

- Many interviewees noted that it is important to have an experienced, competent lawyer serving as Duty Counsel in bail court. It was noted that clients only have one chance and if their lawyer is inexperienced and/or incompetent, it can result in unnecessary incarceration and/or a guilty plea that is not in the best interests of the client.
- With regard to family law matters, some respondents felt that using Duty Counsel was inappropriate because the amount of time Duty Counsel is able to spend with a client is insufficient to gather the necessary information about a case, thus impacting on the quality of client outcomes.
- On the other hand, some interviewees felt that on routine family law matters, Duty Counsel provided effective service to clients in the areas of administration, paperwork and simple advice.

It is clear that LAO needs to address the concerns related to the quality of service provided by Duty Counsel. We recommend that in addition to the quality service measures that LAO intends to implement, LAO consider some of the following suggestions:

- Introduce a requirement that certificate lawyers must do a minimum threshold of Duty Counsel work since this will increase the number of Duty Counsel service providers (a practice that is carried out in New Zealand for all but the most experienced of lawyers); and
- Implement a “floating” Duty Counsel in some additional areas to provide additional time with clients.

We note that LAO has already implemented several initiatives to improve the quality of Duty Counsel services, such as:

- A Duty Counsel training program;
- A Duty Counsel manual; and
- The implementation of Supervisory Duty Counsel (see discussion below).

Service Gaps

Another area of importance related to the quality of Duty Counsel services is the possibility that the program does not provide a sufficient level of service. For example Duty Counsel are not always available in WASH courts and Duty Counsel do not currently provide service in simple trial matters. LAO should monitor these variables on an area-by-area basis.

Continuity of Files and Representation

One area of particular interest to many stakeholders within LAO and in the broader legal community is whether continuity of files and/or representation would increase the level of service provided to Duty Counsel clients. The majority of interviewees on this matter felt that the absence of client files can sometimes lead to inefficiencies since clients have to repeat the details of their case to more than one Duty Counsel. Interviewees did note that the need for files is decreased in situations where there is some level of consistency with Duty Counsel, either due to the presence of Staff Duty Counsel or a private bar lawyer who works in the same court and tends to see the same client on multiple occasions.

Interviewees also felt that continuity of representation would improve service to LAO clients since it increases the sense of lawyer accountability to the client. Interviewees commented that where client files are maintained, continuity of representation becomes less important as

lawyers following up on a case can rely on notes in the file. The risk that clients might perceive Duty Counsel lawyers as their own, given continuity of representation, was not felt to be high.

c. Impact of Supervisory Duty Counsel on Quality

The implementation of the Supervisory Duty Counsel role has improved the quality and hence the effectiveness of service provided by staff lawyers and private bar lawyers to justice system stakeholders, including clients. Interviewees commented that quality has improved because Supervisory Duty Counsel create an increased sense of accountability. This is due to the following activities that are conducted by Supervisory Duty Counsel:

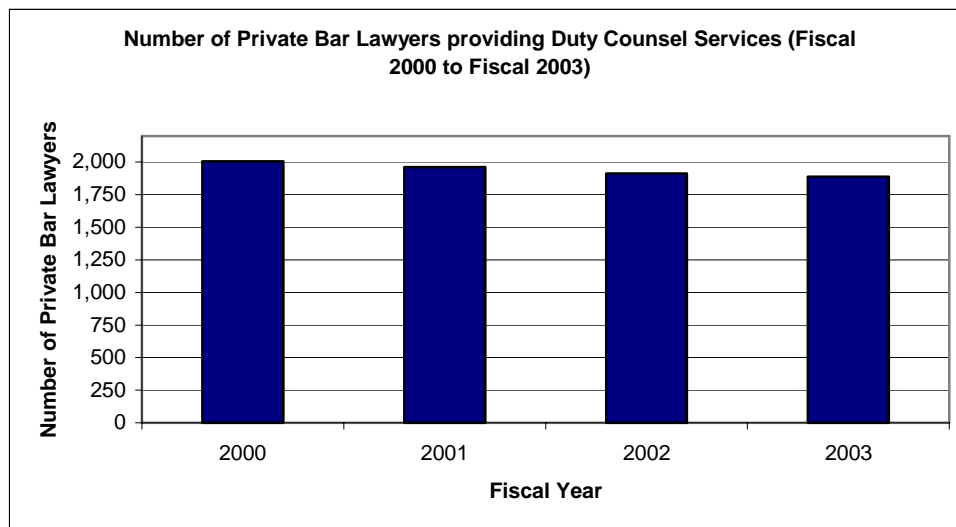
- All of the time billed by per diem Duty Counsel is approved;
- Periodic visits are made to observe Duty Counsel in court;
- Mentoring is provided to new Duty Counsel; and
- Training sessions are provided for Duty Counsel lawyers.

Interviewees also commented that in certain areas, Supervisory Duty Counsel contribute to the quality of service since they determine when a per diem Duty Counsel is performing poorly and can limit their time in court.

Finally, a few interviewees commented that through the role of Supervisory Duty Counsel both court relations and community relations are improved. Clients can make complaints or ask questions about the role of the Duty Counsel to the Supervisory Duty Counsel. Judges and private bar lawyers can also approach Supervisory Duty Counsel with complaints or concerns. Through this closer relationship with Justice System stakeholders, it was felt that concerns can now be addressed quickly and efficiently, thus increasing service levels.

d. Supply of Private Bar Lawyers

One of the key drivers of the effectiveness of a service delivery model that depends on the use of private bar lawyers is a sufficient supply of private bar lawyers.



Source: Business Analysis Unit Data Banks (AS 400)

Over the past four years the number of lawyers providing Duty Counsel services has decreased by 5%. Interviewees commented that it was possible that a contributing factor to this decline is the legal aid tariff. The hourly rate for Duty Counsel lawyers is \$73.87. Although the tariff was increased in 2002 by 23%, it is still significantly below market rates. Given that the tariff was increased so recently, it is difficult to determine the impact of the increase on attracting or maintaining the number of lawyers that provide legal aid service. However, interviewees commented that the increase in the tariff will not necessarily increase the supply of lawyers but it may decrease the rate of attrition of lawyers from the program. Interviewees also commented that an experience incentive for Duty Counsel lawyers may assist in bringing lawyers back into the program, although there is no conclusive evidence that bringing in more experienced lawyers would improve client service.

As discussed in the findings on the Certificate Program, it is too early to determine whether the Northern Incentive has had an impact on the number of lawyers providing service to the North.

e. Staff Lawyer Considerations

Interviewees commented that with a few exceptions, Staff Duty Counsel positions are three-year contract positions and that the absence of full-time status is creating uncertainty. This uncertainty increases the likelihood of turnover, which would decrease the effectiveness of service.

While we have not conducted a salary benchmarking exercise, it is our understanding that compensation levels for Staff Duty Counsel salaries are materially lower than those for the private bar and Crown attorneys. We are cognizant of role, regional and, in some instances, experiential factors that contribute to these differences. However, LAO's ability to hire and retain competent lawyers is compromised by this situation, thus impacting the effectiveness of the Duty Counsel Program.

f. Alternative Service Delivery Models

A key question that was raised during the course of this evaluation was whether or not LAO is using the most effective model to deliver its services. In the past LAO relied on private bar lawyers to provide the majority of Duty Counsel services. In 2002, LAO began its rollout of a Staff Duty Counsel model. Our interview findings indicate that the supply and demand for Duty Counsel services varies by geographic area so the appropriate mix of staff and private bar lawyers needs to vary by geographic area. While many interviewees commented that the staff model is currently more cost efficient, they felt that a mix of staff and private bar lawyers was appropriate to ensure choice of representation and to address conflict issues.

The following items should be considered in order to address the appropriate mix in each area and thus optimize costs in each area:

- Demand for Duty Counsel services by area of law (volume, court days, number of court rooms)
- Need for specialized services
- Size of private bar panels
- Quality of service currently provided
- Ability of the Area Director and/or Supervisory Duty Counsel to monitor panel
- Proximity of the area office to the court
- Experience of Panel
- Court house facilities (office space for Staff Duty Counsel)
- Compliance with the financial eligibility test by the private bar

The above reflects the view that both qualitative and quantitative factors need to be considered in administering the Duty Counsel Program in order to drive quality, which in turn has an impact on cost.

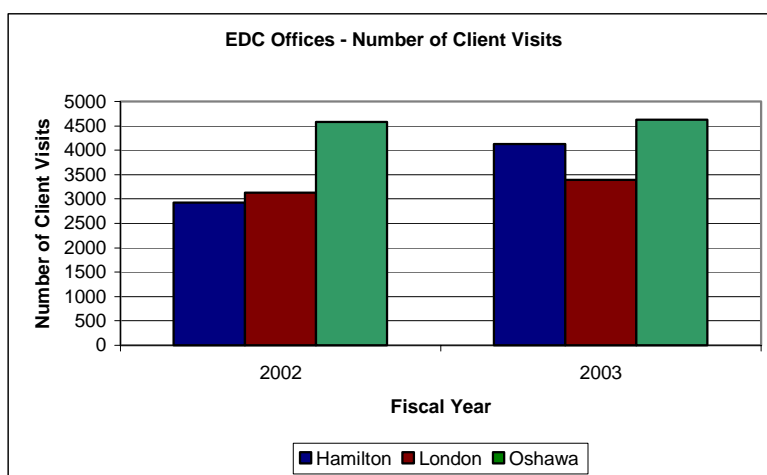
4. DELIVERING EXPANDED DUTY COUNSEL SERVICES

Impact of Expanded Duty Counsel – Family

Traditionally LAO has primarily used private bar lawyers to provide the majority of its Duty Counsel service to its clients. In 1999, LAO implemented the Family Law Expanded Duty Counsel (EDC) pilot project in Hamilton, Oshawa and London. The EDC offices use a mix of private and staff lawyers to provide continuous service to clients including representation in court, maintaining files, drafting documents and developing ways to resolve cases early without going to court. The project was initially piloted and was made permanent in 2003.

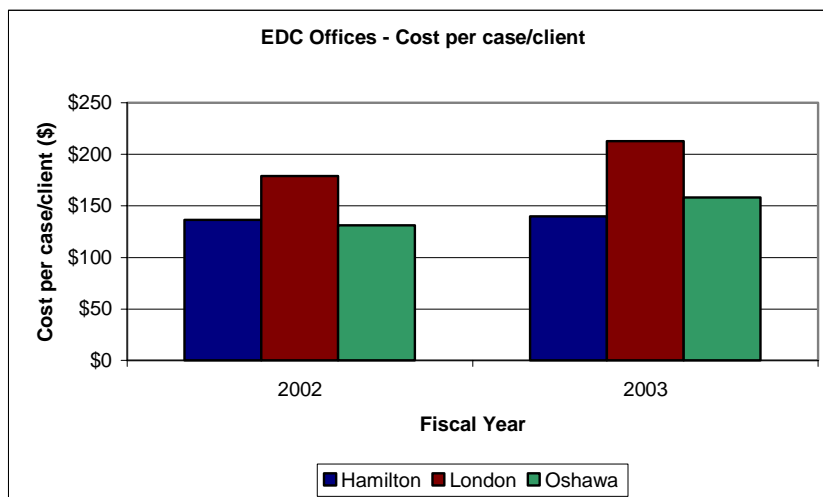
EFFICIENCY OF DELIVERING EXPANDED DUTY COUNSEL SERVICES

In order to assess the efficiency of the EDC offices, we focused our analysis on the number of client visits, cost per client/case and staff utilization rates.



Source: 2002/2003 Annual Report for the Expanded Duty Counsel Program

The number of client visits increased in each of the EDC offices by 41% in Hamilton, 8% in London and 1% in Oshawa between the 2002 and 2003 fiscal years.



Source: 2002/2003 Annual Report for the Expanded Duty Counsel Program & the Evaluation of the Family Law Expanded Duty Counsel Pilot Project – Final Report

The average cost per client visit across the 3 sites is \$91 and given the average number of visits per client (1.91) the average cost per client or case is \$174. This compares to \$87 in the previous fiscal year with an average of 1.71 visits per client and an average cost of \$149 per case. The number of client visits increased in each of the EDC offices by approximately 3% in Hamilton, 19% in London and 21% in Oshawa between the 2002 and 2003 fiscal years.

Additionally cost per client visit in the 2003 fiscal year was the lowest for Hamilton at \$64 while London and Oshawa were slightly higher at \$104 and \$106 respectively.

Cost comparisons from year to year by site and between sites however, are complicated by a number of factors. For example, an increase or decrease in the number of clients served can drastically change the cost per client visit. In the case of Hamilton, the increase in client visits over the previous year resulted in a decline in the cost per visit from \$78 to \$64. The average time per visit also decreased from 0.7 hours in the 2002 fiscal year to 0.58 hours in the 2003 fiscal year. Since demand cannot be controlled, resources were spread across a larger number of clients resulting in less time per client.

Comparing Hamilton and London also illustrates the affect of the demand in different sites. London's cost per visit is \$104 compared to a cost per visit of \$64 in Hamilton. London however spent .89 hours per visit with possibly increased client service.

Alternatively, case/matter mix, court demands, panel demands, changes in staffing ratios, emphasis on quality, external factors, and staff turnover dramatically impact cost per visit. Therefore, cost per visit should not be used as the only indicator of efficiency.

LAO should explore other comparative factors in analyzing the efficiency of the EDC Program as well as the overall Duty Counsel Program.

EDC Offices - Staff Utilization for 2002 and 2003							
		London		Hamilton		Oshawa	
		2002	2003	2002	2003	2002	2003
Per Diem Lawyers	Direct Service Time	61%	82%	60%	58%	61%	71%
	Non Direct Service Time	39%	18%	40%	42%	39%	29%
Staff Lawyers	Direct Service Time	39%	37%	53%	67%	39%	27%
	Non Direct Service Time	61%	63%	47%	33%	61%	73%

Source: 2002/2003 Annual Report for the Expanded Duty Counsel Program

The table above reflects the staff utilization in each of the EDC offices. Note that direct service time is the sum of all time spent on client related activities. Non-direct service time is the sum of downtime and/or staff administration time. It is important to note that some of the staff lawyers in the EDC program fulfill supervisory duties similar to those of a Supervisory Duty Counsel. Again a number of factors drive these rates, for example while Oshawa's rate of 27% for staff direct service time seems to have decreased significantly from the previous year, a change in the court structure in the area has added additional travel time and administrative burdens to the staff role.

The information above provides inconclusive results about whether the EDC offices are operating in an efficient manner. We recommend management's continued commitment to tracking the information above in order to assess the efficiency of the EDC program.

EFFECTIVENESS OF DELIVERING EXPANDED DUTY COUNSEL SERVICES

EDCs are expected to assist with the production of documents within the family law system. Therefore, an important measure is time spent on document production.

EDC Offices – Document Production for 2002 and 2003							
		London		Hamilton		Oshawa	
		2002	2003	2002	2003	2002	2003
Per Diem Lawyers		4%	6%	1%	3%	3%	5%
	Staff Lawyers	5%	15%	4%	14%	3%	11%

Source: 2002/2003 Annual Report for the Expanded Duty Counsel Program

The table above reflects that in all offices the percentage of time spent on document production has increased over the past year. While this evidence is promising, it is early in the developmental stage of the program and data collection specific to document production is limited.

Additional information was gathered from interviewees supporting the EDC model and its positive impact on client service and satisfaction:

- Continuity of files means that a lawyer spends less time revisiting information gathered during the first meeting with a client and is able to continue moving the case forward in subsequent visits with the client.
- Although continuity of files results in a slower intake process due to file creation, better client service is achieved in the long run.
- Clients perceive that EDC spend more time with them and thus are generally more satisfied.
- EDCs have a greater ability to advance cases through the system as they seek to resolve cases.

Furthermore, an Evaluation of the EDC Pilot Projects⁶ found the following in support of the effectiveness of the program:

- A large majority of client survey respondents commented that they received quality service from the EDC.
- There was a strong consensus among stakeholders that the EDC model had clear advantages over the traditional Duty Counsel model and file continuity was a clear advantage of the model.
- Stakeholders felt the supervisory function of the EDC Coordinator was an important benefit for similar reasons to those expressed around the Supervisory Duty Counsel role.

The EDC program is still in its infancy. We recommend that LAO continue to monitor its efficiency and effectiveness and to evaluate periodically the relevance of the program and the service it provides to clients.

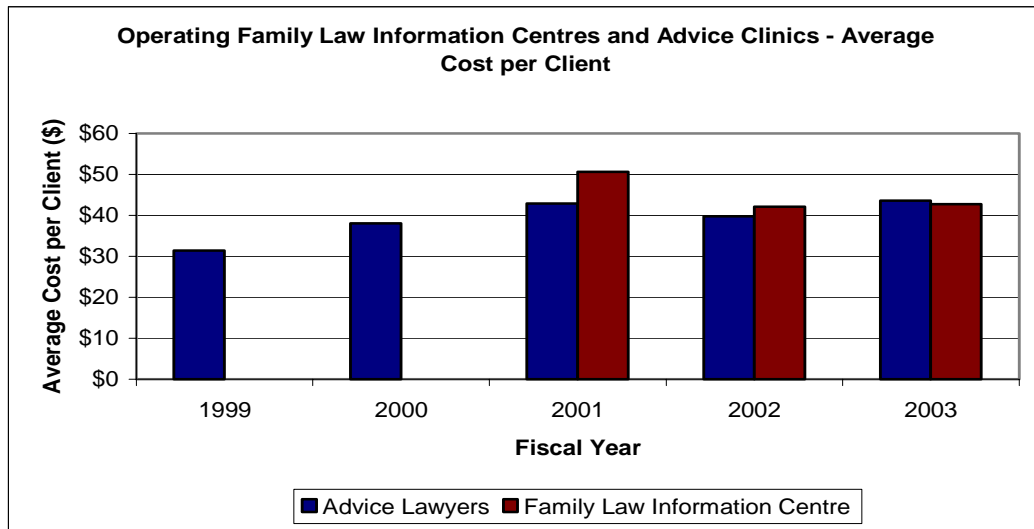
5. OPERATING FAMILY LAW INFORMATION CENTRES AND ADVICE CLINICS

Duty Counsel Advice Lawyers provide out of court assistance to unrepresented persons in approximately 130 locations across the Province of Ontario. General Advice Lawyers provide legal advice for anyone who needs it, review legal documents and provide some negotiation for financially eligible clients. As of the 2002 fiscal year, Advice Lawyers began providing advice and assistance in preparing documents through Family Law Information Centres.

EFFICIENCY OF OPERATING FAMILY LAW INFORMATION CENTRES AND ADVICE CLINICS

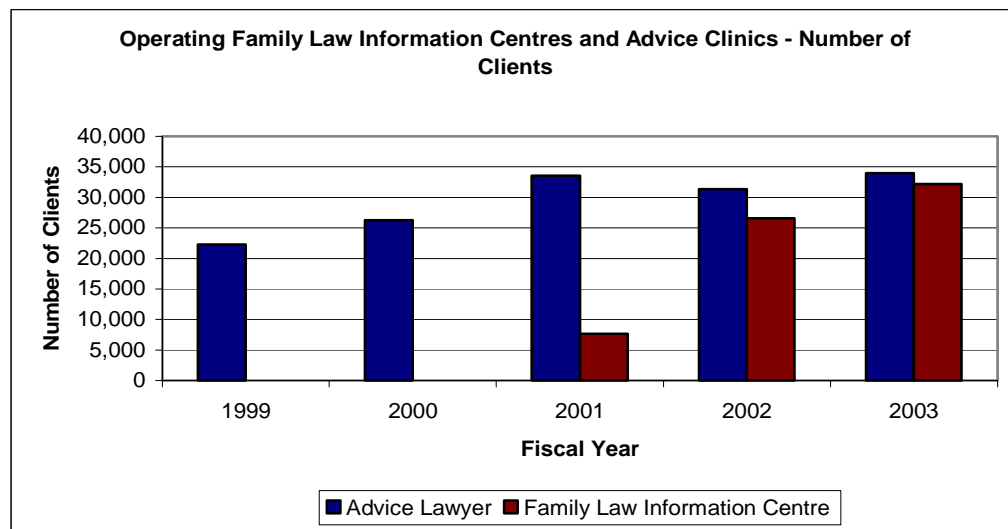
In order to assess the efficiency of the Family Law Information Centres (FLIC) and Advice Clinics we focused our analysis on the average cost per client and the number of clients served by the program.

⁶ Prepared by PRA Inc. on October 3, 2002



Source: Duty Counsel Management Reports for Fiscal Years ended 1999 to 2003

The average cost per client for the FLIC decreased by 15% from fiscal 2001 to 2003. However the average cost per client for the Advice Clinics increased by 39% from 1999 to 2003. The main cost drivers for this increase is the increasing complexity of family law and thus the need to spend more time with each client combined with tariff increases.



Source: Duty Counsel Management Reports for Fiscal Years ended 1999 to 2003

The graph above reflects the increasing client demands on the Family Law Information Centres and Advice Clinics. The number of clients served by the Advice Clinics has increased by 52% from 1999 to 2003.

EFFECTIVENESS OF OPERATING FAMILY LAW INFORMATION CENTRES AND ADVICE CLINICS

Since program outcome measures are not maintained we relied on anecdotal comments received from interviewees related to the effectiveness of the FLICs and Advice Clinics. Since the two programs are so interlinked we decided to discuss their effectiveness together.

All interviewees agreed that the benefit of the FLICs and Advice Clinics is that they provide advice to clients in the area of family law that they would be otherwise unable to receive, mostly because they would not qualify for legal aid or could not afford to retain a lawyer privately. They felt that the assistance provided in completing paperwork is vital because in their opinion, forms that are filled out properly have more credibility and thus pass through the court system faster.

In some regions interviewees noted that FLICS and/or Advice Clinics had long wait times and were not easily accessible to clients. For example, in Thunder Bay interviewees commented that the FLIC was a long distance from the LAO office making it difficult to access. Areas such as Napanee have noticed improvements in the service provided to rural areas since some lawyers now travel to different surrounding areas to provide service to clients who are unable to attend weekly advice clinics.

SUPPORT FUNCTIONS

OVERVIEW

LAO has a number of Support Functions that are designed to enhance the delivery of client service. These Support Functions include:

1. LAO Law
2. Investigations
3. Complaints
4. Information Management
5. Operational Support
6. The Quality Service Office

LAO's budget for the 2004 fiscal year for the Support Functions listed above is \$3,591,234

CORE BUSINESS RELEVANCE

The Support Functions are relevant as they enhance the delivery of client service. Additionally several of the Support Functions provide necessary control mechanisms that increase LAO's accountability to the Ministry for the expenditure of public funds.

1. LAO LAW

LAO Law is LAO's research facility. LAO Law provides case specific research in criminal, family, immigration and refugee law as well as areas of mental health, aboriginal, and correctional law to lawyers in the Certificate Program, Duty Counsel, LAO and Clinic lawyers and LAO Law's internal partners. LAO Law's budget for the 2004 fiscal year is \$2,105,549.

LAO Law offers a number of services including: general law memos, case-specific research Duty Counsel memos, an electronic newsletter, and a Duty Counsel hotline where LAO LAW staff are immediately available to provide support.

EFFICIENCY OF LAO LAW

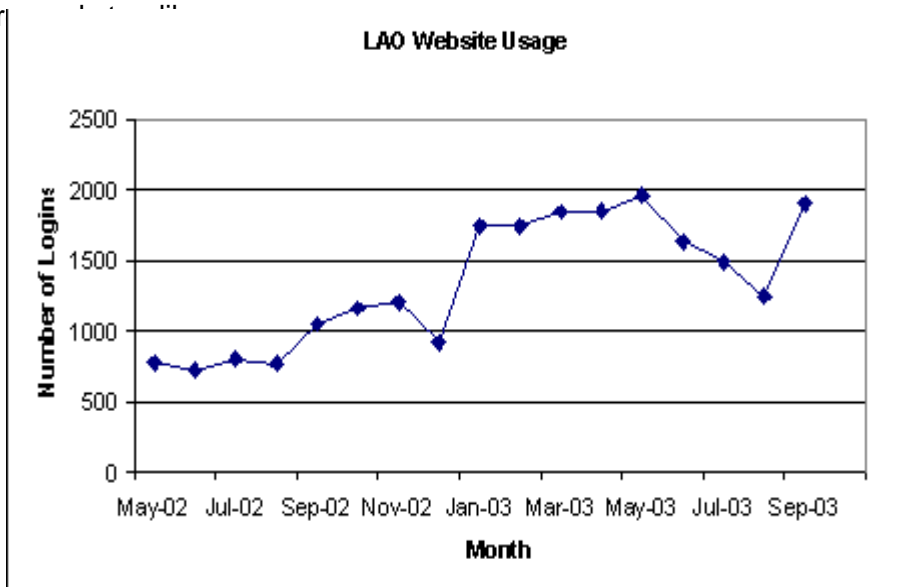
Over the past three years LAO Law has managed to effectively control its costs and remain under budget. Additionally, in order to save costs LAO Law's budget for the 2004 fiscal year was decreased by 8%. The majority of the budget cut will be absorbed by removing a position in the department while providing the same level of service.

In order to more effectively manage costs LAO Law should continue to focus on electronic dissemination of information in order to reduce postage and photocopying costs.

Interviewees also commented that research requests are generally processed in a timely manner.

EFFECTIVENESS OF LAO LAW

Overall interviewees commented that the quality of service provided by LAO Law is very good and research requests are processed in a timely manner. In May of 2002 LAO Law provided unlimited access to its website to LAO’s panel of lawyers. Since May of 2002 usage of the site has increased significantly.



Additionally in the 2003 fiscal year, 1645 lawyers accessed the site and there were 26,689 “hits” for general memos located on the site and there were 13,349 individual sessions (“visits”) on the site (please note that both of these numbers include multiple “hits” or sessions from one person).

2. INVESTIGATIONS

The mandate of the Investigations Department is to protect LAO from fraud or other criminal acts, to proactively seek out abuse and potential abuse on the Legal Aid Fund and to investigate breaches of the Legal Aid Services Act and other complaints in relation to lawyers and service providers. The budget for the Investigations Department for the 2004 fiscal year is \$361,137

EFFICIENCY OF INVESTIGATIONS

One of the primary functions of the Investigations Department is to conduct post payment audits of the accounts of legal aid lawyers. Currently this process is highly inefficient since it involves manually entering information into Microsoft Excel related to a lawyer’s account including the type of service performed and the amount of time billed. Once the information is entered into Microsoft Excel, it is analyzed for a number of improper billing practices such as double billing of travel, billing in excess of the 10-hour daily tariff maximum and billing more than 24 hours for one day. Due to the manual nature of the process a significant amount of time is spent on data entry. However, LAO reported that a post payment audit function is being incorporated into TSN.

EFFECTIVENESS OF INVESTIGATIONS

The Investigations Department conducts a number of activities that increase the accountability of LAO to the Ministry and the public for the expenditure of public funds. Some of these activities include conducting client, internal and lawyer investigations including post payment audits of lawyer accounts. Although the Investigations Department provides an important “check and balance” in the system LAO should investigate whether or not the department is making the most effective use of its resources. For example, it was reported that the majority of investigations of lawyer billing practices result in a finding that lawyers are not abusing the system. Additionally if a post payment function is implemented in the TSN system then it will no longer be necessary to conduct some of the tasks that are currently carried out by the department.

Interviewees also commented that the investigations process is not properly communicated. Additionally there are no defined criteria for the types of issues that should be sent to the department. This makes it difficult for area offices to know when they should refer a person to the Investigations Department.

3. COMPLAINTS

The Complaints Department was established in November 2002. Previously, the department was part of the Investigation and Complaints Department but the department was divided into two separate units in order to make the departments independent of one another. The budget of the Complaints Department for the 2004 fiscal year is \$142,566.

The complaints process is a three stage process. Complaints are first submitted to an area office. If the complainant is not satisfied with local resolution of the complaint, the complainant has the right to escalate it to the second stage where the Manager of the Complaints Department investigates it. If the complainant is still unsatisfied he or she has the right to escalate it to General Counsel who reviews the complaint and attempts to resolve it.

For the first quarter of the 2004 fiscal year 70 complaints were recorded. Nearly half of the complaints were related to lawyers acting on certificates. Approximately one third of the complaints on certificate lawyers were related to billing practices.

EFFICIENCY OF COMPLAINTS

LAO does not have specific client service performance measures and targets for complaints made to area offices. Instead, on a quarterly basis the Manager of the Complaints Department reviews all complaints made to the area office including the time it takes to resolve complaints. LAO does have client service measures and targets for complaints that are escalated to the Complaints Department. Complaints received by the Department of Complaints are efficiently processed as evidenced by the fact that the department has surpassed its client service performance targets for the second quarter of the current fiscal year. Specifically the performance of the Complaints Department against its client service targets is as follows:

Client Service Measure	Target	Fiscal Year 2004 – 2 nd Quarter Results
<ul style="list-style-type: none"> Time to acknowledge a complaint that is not resolved at the local level 	<ul style="list-style-type: none"> Written acknowledgement within two business days of receipt of the complaint 90% of the time 	<ul style="list-style-type: none"> Target exceeded. Acknowledgment sent within two business days 100% of the time
<ul style="list-style-type: none"> Length of time to commence an investigation 	<ul style="list-style-type: none"> Investigation will be commenced within 14 days 	<ul style="list-style-type: none"> Target exceeded. Investigations commenced within 14 days of receipt of complaint 100% of the time
<ul style="list-style-type: none"> Length of time to send out a resolution letter 	<ul style="list-style-type: none"> Resolution letters will be sent to complaints within 14 days following collection of all relevant information 90% of the time 	<ul style="list-style-type: none"> Target exceeded. Resolution letters were sent within 14 days of collection of all relevant information 100% of the time

EFFECTIVENESS OF COMPLAINTS

The complaints process contributes to the accountability of the expenditure of public funds since it provides individuals with a mechanism to voice any concerns or issues related to the delivery of legal aid service.

4. INFORMATION MANAGEMENT

LAO's Business Analysis Unit is responsible for information management and some of the specific activities conducted by the department include:

- Providing business analysis support to LAO management;
- Planning the overall design of data collection for information and knowledge management projects;
- Data collection and analysis; and
- Preparing periodic statistical reports for senior management.

The budget for the Business Analysis Unit for the 2004 fiscal year is \$236,537.

EFFICIENCY OF INFORMATION MANAGEMENT

Historically LAO's data collection and analysis has been poor. However, over the past few years LAO has significantly improved this area of its business. In particular, LAO hired a Manager in its Business Analysis Unit and thus the overall efficiency of this function has improved. Interviewees did comment that the timeliness of reports could be improved.

EFFECTIVENESS OF INFORMATION MANAGEMENT

Over the past few years LAO has increased its management of information. For example the number and cost of certificates issued is monitored on a monthly basis. Over the years LAO has also been able to refine its certificate estimation model, although the number of certificates forecasted in the 2002 and 2003 fiscal years varied by -2.5% and -0.1% respectively.

In the process of gathering data for this review we noticed that there are significant discrepancies between the data maintained by the Finance Department and the data maintained by the Business Planning Unit. For example, there was nearly a three million dollar difference between the total expenditure on certificates reported by each department. Additionally, the costs of the Duty Counsel Program supplied by the Finance Department were materially different than the program costs maintained by the Business Planning Unit. Some of the data integrity issues are attributable to the fact that financial data is maintained into two separate financial systems that are not integrated. The lack of data integrity detracts from the ability of LAO management to make effective decisions. LAO reported that the implementation of TSN should resolve some of the data integrity issues.

5. OPERATIONAL SUPPORT

The Operational Support Department is responsible for developing a number of LAO policies and procedures including area office policies and procedures, financial eligibility policies and procedures and financial contribution policies and procedures. Additionally the department is responsible for providing some operational training. The budget for the Operational Support Department for the 2004 fiscal year is \$187,566.

EFFICIENCY OF OPERATIONAL SUPPORT

It was reported that the Operational Support department has relatively slow turnaround times. This is primarily due to a lack of resources in the department.

EFFECTIVENESS OF OPERATIONAL SUPPORT

Interviewees commented that the area office policy manual is good but certain policy and procedure manuals require improvement. The financial eligibility manual, in particular was cited as being very difficult to understand. The lack of a proper financial eligibility manual detracts from the ability to train application officers on how to administer the financial eligibility test. Additionally certain area offices have been forced to dedicate resources towards developing more simplified versions of manuals so that their staff can be trained more effectively.

Throughout the course of our evaluation interviewees commented that better information needs to be published for clients on the financial and legal eligibility guidelines. If clients have better information on the guidelines they might be able to determine for themselves if they qualify for legal aid instead of having to go to an area office to have an application processed.

Interviewees also commented that very little training on how to conduct day-to-day activities is provided to new Area Office Administrators and new Area Directors.

6. THE QUALITY SERVICE OFFICE

The Quality Service Office (QSO) was established in January 2003. The objectives of the QSO include assisting in the development of and implementation of quality service initiatives and ensuring that legal aid programs are accountable for the expenditure of public funds. The budget for the Quality Service Office for the 2004 fiscal year is \$557,879

Since the QSO was only implemented recently it is difficult to conclude if the office is operating in an efficient and effective manner. In terms of effectiveness early results indicate that the department is working on a number of initiatives that will promote the accountability of the expenditure of public funds. Some of these initiatives include:

- Developing client satisfaction surveys; and
- Developing panel standards by the end of the fiscal year for the refugee bar and the Duty Counsel. Standards for the broader Certificate Program will be developed in subsequent years.

5.0 Findings on Affordability and Sustainability

As part of our evaluation plan, we determined that it was most appropriate to assess the affordability and sustainability of the Client Legal Services Program at the program level, rather than at the component level. This is because the demand drivers behind each of the Certificate Program and the Duty Counsel Program are largely the same.

At a high level, LAO continues to face four critical demand drivers for its services:

- Growing demand for its services caused by increasing charges in the criminal justice system, legislative change and increases in resources to the Justice System, Children's Aid Societies and the police;
- Overall delays in the criminal and family justice system;
- Regional shifts in demand caused by changing demographics; and
- Increasing complexities in the overlapping legal and social needs of clients.

In addition, there are important considerations around the available supply of private bar lawyers to render legal aid work.

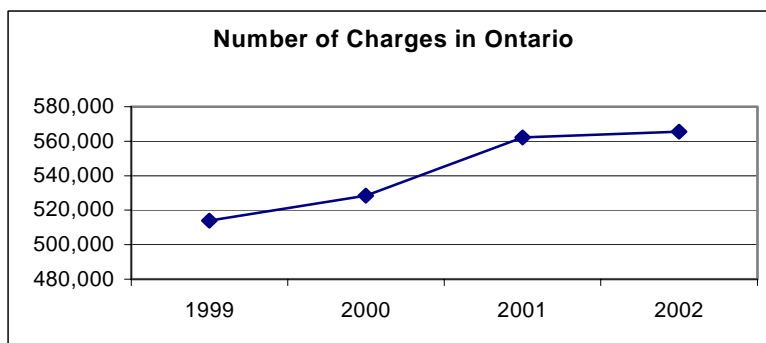
In this section of the report, we have performed a high-level review of these demand and supply issues before switching to examine the projected financial implications on LAO and develop conclusions on the affordability and sustainability of the program on a go-forward basis.

DEMAND DRIVERS FOR LAO

The analysis presented is focused solely on Criminal and Family Law issues since these represent the majority of LAO's business.

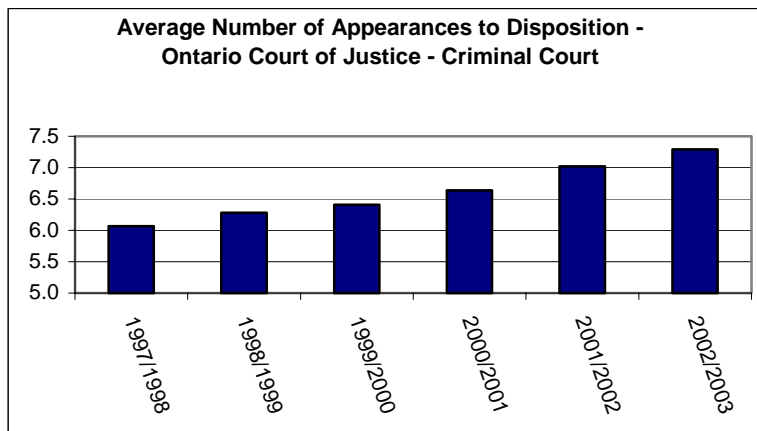
Demand for Criminal Justice Services

LAO is continuing to deliver criminal legal aid services in an environment of increasing charges. Between 1999 and 2002, the number of criminal charges received in the Ontario Court of Justice increased by 13%. LAO's experience in this matter shows that every nine additional charges translate into approximately one certificate.



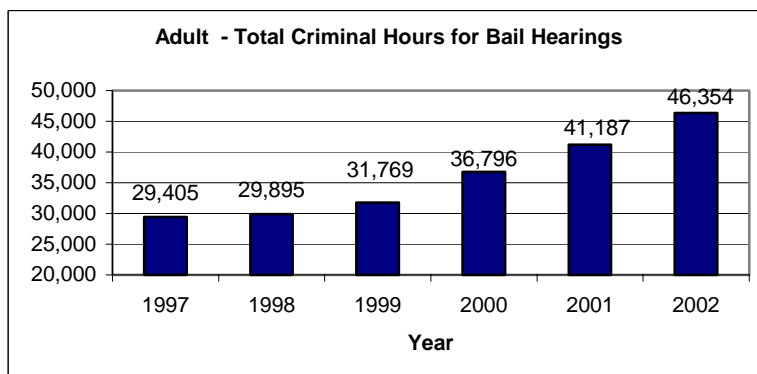
Source: LAO Business Plan 2004/5

In addition to an environment of increasing charges, the number of appearances is also driving demand. The analysis shows that between the 1998 and 2003 fiscal years that the average number of appearances increased by 20%.



Source: LAO Business Plan 2004/5

Another key driver for LAO to factor into its business planning is the amount of time dedicated to bail hearings by the Justice System. The chart below reveals a 58% increase in bail hearings over a six-year period. Since Duty Counsel conducts more than 80% of the bail hearings in many areas, there is clearly an increased demand on LAO Duty Counsel Program resources.

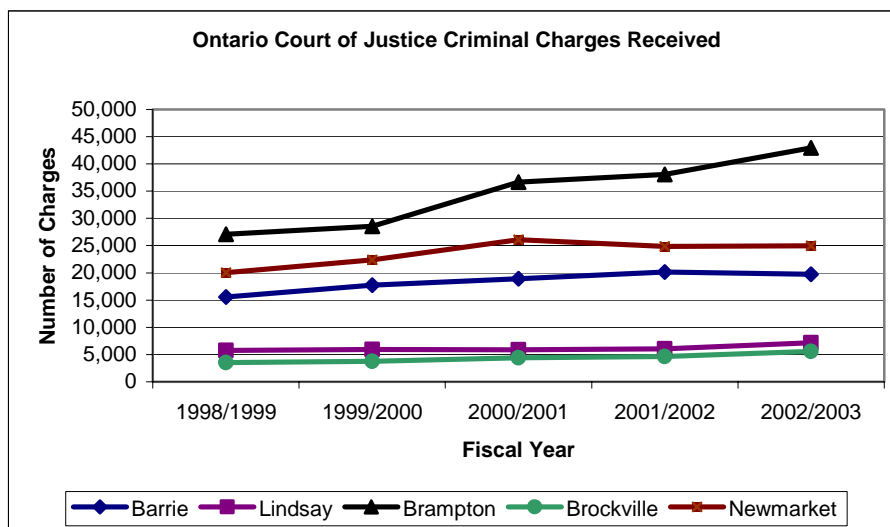


Source: LAO Business Plan 2004/5

Regional Trends

Although there are Province-wide increases in demand on the Justice System, there are some areas which continue to experience even larger increases in demand due to population growth, increases in police and/or Crown resources, or the regional consolidation of forensic, mental health and other correctional facilities.

The chart below highlights five court locations in which the growth in criminal charges far exceeds the provincial average, with the percentage change over the five-year period ranging from 25% in Lindsay to over 58% in Brockville.



Source: LAO Business Plan 2004/5

The implication for LAO is that it must continue to respond to the demand for its services on an area-by-area basis, once again dealing with factors outside of its control.

Increased Resources to the Justice System

One of the key drivers for LAO is the Justice Delay Reduction Initiative (JDRI) within MAG, the key purpose of which is to ensure that people facing criminal charges go to trial within a reasonable length of time. Key components of this initiative include:

- The appointment of 15 new judges to the Ontario Court of Justice; and
- The hiring of a complementary prosecution team, including at least 36 new Crown attorneys, and other staff needed to support court operations and help victims.

In addition to the JDRI, it was announced in May 2003 that 1,000 new police officers would be hired in Ontario through the Community Policing Partnerships program over the next five years. However it was recently announced that the hiring of the new police officers has been delayed so the start date for these new police officers is unknown.

Each of these announcements has a downstream impact on LAO and will increase the demand for legal aid certificates. The Ministry has recognized this impact and is providing additional resources.

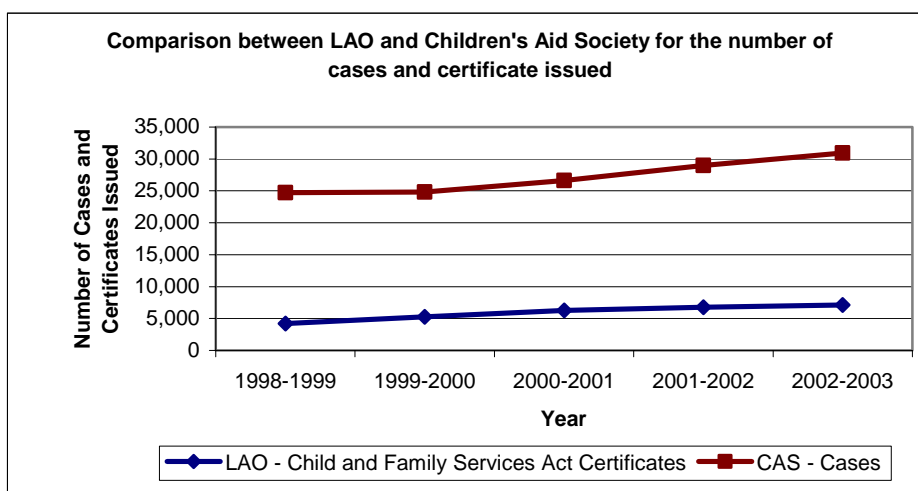
Demand for Family Law Services

- Family Law is the second largest category of legal aid certificates after criminal law. There have been developments related to the CFSA that have had a significant impact on LAO.

CHILD AND FAMILY SERVICES ACT

CFSA cases are the largest growing area in legal aid services. Over the last three years there have been two major cost drivers in this area which are recent amendments to the law and the increasing level of resources provided to Children’s Aid Societies. In relation to the first point, the CFSA was amended to broaden the definition of “child in need of protection” and lower the threshold for Children’s Aid Society intervention.

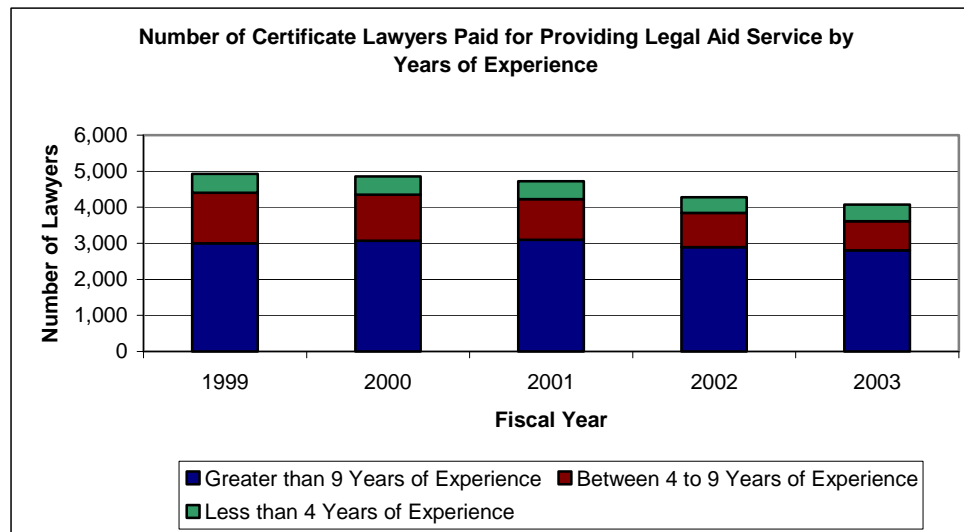
The second point is indicated by the increase in funding supplied to Children’s Aid Societies which has grown from \$638 Million in 1999 to \$974 Million in 2002. The downstream impact on LAO is indicated in the chart below which shows a positive correlation between the number of Children’s Aid Society cases and the number of LAO certificates in this area.



Source: LAO Business Plan 2004/5

The net effect of this on LAO is the likelihood that demands in this area will continue to grow.

AVAILABLE SUPPLY OF PRIVATE BAR LAWYERS



Source: Legal Aid Ontario

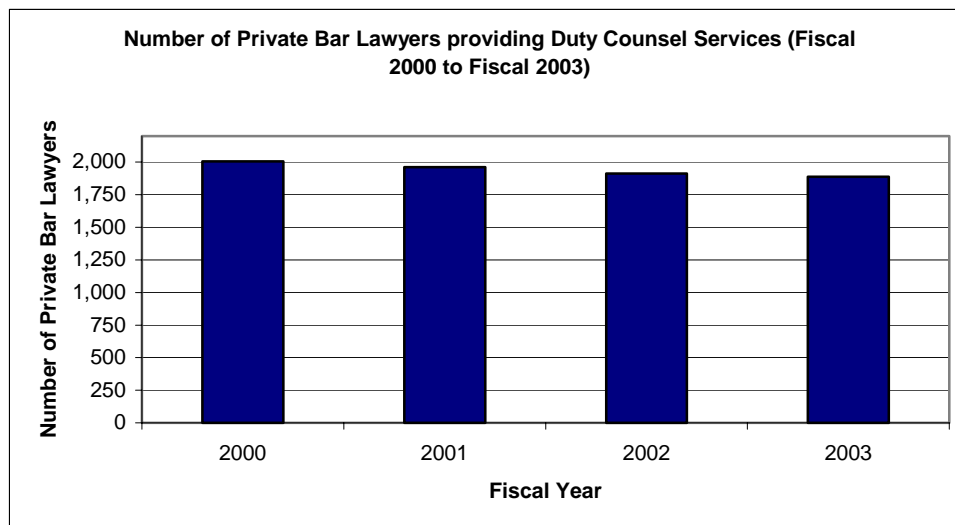
Over the past five years the number of certificate lawyers that were paid for providing legal aid service declined by 17%. The number of certificate lawyers with between four to nine years of experience declined at the fastest rate over the five-year period at a rate of 43%.

The tariff was increased in 2002 by 5% for the first time in fifteen years and then again in 2003 by 5%. Given that the tariff was increased so recently it is difficult to determine the impact of the increase on attracting or maintaining the number of lawyers that provide legal aid service. However interviewees commented that the tariff rate is still too low and the number of hours allotted per certificate is also too low which is making lawyers less willing to take on legal aid certificates.

In a similar fashion, the number of private bar lawyers providing Duty Counsel services has also reduced over time. Over the past four years the number of lawyers providing duty counsel services has decreased by 5%.

Interviewees from our review commented that a financial experience incentive for Duty Counsel lawyers may assist in bringing lawyers back into the program, although we have no conclusive evidence that bringing in more experienced lawyers would serve to improve client service.

Given the declining number of certificate and Duty Counsel lawyers over time it will be important for LAO to monitor these trends, analyze the effect of tariff increases and develop recruitment and retention strategies to maintain both adequate and high levels of quality service.



Source: Business Analysis Unit Data Banks (AS 400)

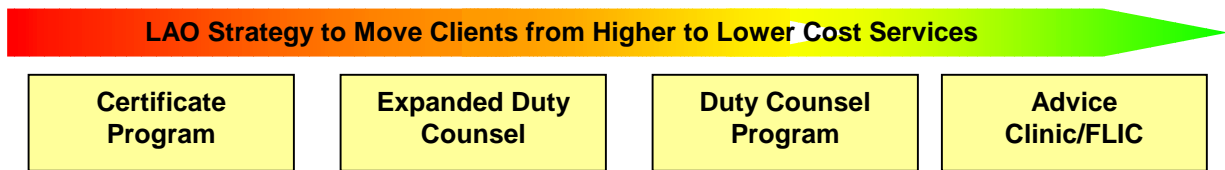
Overall, a decline in the supply in the number of legal aid lawyers has a significant impact on the ability of LAO to sustain service to its clients based on the current reliance on private bar lawyers to accept certificates and deliver Duty Counsel services, which needs to be factored in to a discussion on affordability and sustainability. It should be pointed out though that this measure should be treated with caution, since, within an individual area, an over-supply of lawyers may exist, such that a reduction in panel size would not have a negative impact.

Similarly, while the certificate acknowledgement rate may be a better measure of supply issues, it could also be complicated by other external factors such as clients who have resolved their issue in some other way and thus no longer need a certificate. The overall point here is that given LAO's current reliance on the private bar for the delivery of legal aid services, it is dependent on an available supply of qualified lawyers on a region-by-region basis.

REVIEW OF BUSINESS PLAN FINANCIAL ASSUMPTIONS

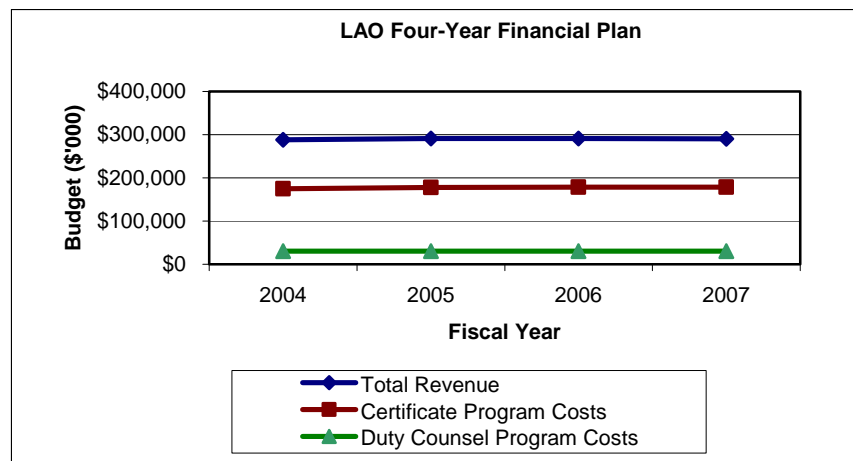
In evaluating the affordability and sustainability of LAO's Client Services, it is important to understand the extent to which LAO has already made progress to manage its costs more efficiently while maintaining effective client service. In the illustration below, we have reflected LAO's core services on a spectrum from highest to lowest cost. The critical point is that LAO already has a clearly articulated strategy to move its target clients from the Certificate Program through to other lower cost services. The evidence of the results of the Certificate Management Program supports this strategy combined with the introduction of other innovations such as Expanded Duty Counsel and FLIC's.

Illustration of Cost of LAO Client Services



The fact that LAO has been successful in managing this dynamic is not just testament to LAO management’s recognition of the issue, but also raises significant sustainability questions itself. While cost efficiencies are desirable in the short-term, they raise the question of whether they have been achieved at the expense of effectiveness in meeting client needs. Also, cost efficiencies and service innovations are only sustainable up to a point, after which, there may be no other options but to increase the funding envelope to LAO in order to maintain service levels.

We have reviewed the environmental scan within LAO’s 2004/5 business plan and concluded that LAO is increasing the depth and sophistication of its demand driver analysis. As such, management is fully aware of potential impacts on LAO’s business and is actively planning to respond to manage its use of scarce resources. In the chart below, LAO’s four-year financial plan is summarized. This demonstrates the continued assumption that there will be no increases in revenue, which by necessity must result in no increases in program expenditure. As such, the programs must absorb any planned inflationary increases in cost.



Source: LAO2004/05 Business Plan

Our review of the business plan reveals that LAO has made the following key assumptions:

- Certificate Management Program continues to divert clients from the Certificate Program to other services.
- An overall provision for increasing costs of 2% to take into account normal economic increases year-over-year, including salary increases. This increase is absorbed within the program.

From purely a financial perspective, a review of the plan indicates that the Client Legal Services Program is affordable and sustainable in the short-term, based upon the recently

developed financial plan. However, this conclusion does not take into account the client service and staff workload implications inherent in the current service delivery model. As indicated by the analysis in the preceding sections, LAO is likely to face a continued increase in demands on its resources, which when factored with pressures on eligibility criteria and the tariff, and the diminishing supply of private bar lawyers, begins to raise significant questions on the affordability and sustainability of the program. Given this environment and with the current funding envelope, we conclude that in the long-term, the Client Service Program will not be sustainable to meet its current mandate.

Contingency Reserve Fund Analysis

A contentious point in the management of LAO is the requirement for and extent of its Contingency Reserve Fund, which has significant impacts on LAO's affordability and sustainability. Although, detailed analysis of the fund is not within the scope of this evaluation, it is incumbent upon us to provide high-level analysis on the history of the fund with associated recommendations on its future use.

History

The Fund is required by the Legal Aid Services Act and was initially funded with an \$18.4 Million deposit from the accumulated surplus inherited by LAO from OLAP. The balance as at March 31, 2004 is estimated to be \$19.8 Million, though the fund reached a high of \$31.9 Million as at March 31, 2001. Movements in the fund are shown in the table below (all figures are in thousands):

	2000	2001	2002	2003	2004
Opening Balance – April 1	\$ 18,242	\$ 24,938	\$ 31,889	\$ 31,889	\$ 27,493
Transfer of Investment Income	\$ 6,696	\$ 6,951			
August 1, 2002 Tariff Increase				\$ (3,233)	\$ (8,050)
Pay Equity #2				\$ (1,131)	
Contingency Reserve Evaluation				\$ (32)	
Total Change For Year	\$ 6,696	\$ 6,951	\$ -	\$ (4,396)	\$ (8,050)
Closing Balance – March 31	\$ 24,938	\$ 31,889	\$ 31,889	\$ 27,493	\$ 19,443

Source: LAO 2004/05 Business Plan

The following are some key points around the movements in the fund:

- By March 31, 2004, the investment income component of the Contingency Reserve Fund will be spent. Additional income will not materialize due to low interest rates and income being used to fund operations.
- The large withdrawals in fiscal 2003 and 2004 pertain to additional costs borne by LAO arising from the tariff increase. These withdrawals were made on the instruction of staff within the Government of Ontario.

Ongoing Use and Size of the Fund

A key question under discussion at the moment is the extent to which the Contingency Reserve Fund should be used as an on-going source to fund recent tariff increases. Our understanding from LAO is that a Government proposal exists to use the fund for this purpose

which would result in the balance dropping to about \$6 Million by the end of the 2006 fiscal year. We also note that LAO has prepared in its 2004/05 Business Plan, an analysis that determined that the optimum level of the contingency fund is \$22.5 Million, based on a compounded 5% unexpected increase in certificates. On this matter, we would make the following observations:

- All interviewees on the subject of the contingency reserve fund agreed that it makes sense for LAO to maintain such a fund.
- There is no consensus on the optimal size.
- The recent deposits and withdrawals to the fund are not representative of future transactions and are more due to one-time events.
- The fund was originally established in an environment of large certificate variances. Recent experience and the implementation of the Certificate Management Program indicate that LAO can now more accurately predict certificate volumes and costs.
 - If the original need for the fund is less relevant in the current environment, the level of the fund may not need to be so high.
- There is no formal evidence to substantiate LAO's need for a contingency fund to cover unexpected 5% increases over a three –year period. That being said, 5% is not a large variance on a base of approximately 100,000 certificates. An alternative way of looking at this is to examine the financial implications if the fund was reduced to \$6 Million and if an unexpected 5% increase in certificates did materialize in each of the next two years. In this case, the fund would only cover the incremental costs for the first year, and approximately half of the second year (based upon LAO's standard 3 year certificate redemption model).
- Unforeseen Government policy initiatives should not create contingencies since these should be fully communicated to LAO in advance, with potentially additional resources.
- One of the statutory provisions for use of the contingency fund is to develop on-going plans to avoid using the fund for the same purpose. As such, continued use of the fund for tariff increases does not seem appropriate although it is not clear to us whether accountability for that resides with LAO or the Government. While LAO is the operator, the Government controls the decision on tariff levels.
- We are not aware of any plans to replenish the contingency reserve fund. LAO's short-term financial plans indicate annual deficits to be funded out of the accumulated surplus.

Conclusions

The history and issues pertaining to the contingency reserve fund are complex and there are compelling competing viewpoints. In our view, the issue is less whether the fund is used over the next few years to fund tariff increases, but more whether LAO and the Government can agree on its purpose, future use and replenishment plan, in the event that future contingencies materialize. In addition, if the incidence of contingencies may be decreasing, then the optimal size of the fund may be lower.

It is clear that the Government may introduce initiatives or policies that have cost impacts on LAO. In our view initiatives / policies should not be created unless the Government can assist with the financial implications.

It is also clear that all Government programs are under fiscal pressures, so difficult short-term choices may need to be made related to the fund. We would reiterate though that a program

such as Client Legal Services inherently requires a contingency reserve fund due to the nature of the business. It is paramount that LAO and the Government reach common ground on this issue.

While performing our review of the contingency reserve fund, it was brought to our attention that another possible source of short term funding for LAO might be its cash investments. Having performed a cursory analysis of LAO's financial statements, in our opinion, this would not be fiscally prudent. The cash investment balance primarily exists because of timing differences between the issuance of certificates and payments to private bar lawyers on those certificates. As such, LAO's cash investment balance is already committed and should not be viewed as a source of funding for future operational requirements.

OPTIONS TO ADDRESS AFFORDABILITY AND SUSTAINABILITY IMPLICATIONS

We would summarize the key affordability and sustainability issues facing LAO as follows:

- Continued tariff pressures
- Pressures to change eligibility criteria, both legal and financial
- Increasing demands for LAO services
- Shrinking supply of private bar lawyers
- Hiring and retention issues for qualified staff lawyers

In our view, questions around the eligibility criteria and the tariff level are broader political issues, the outcome of which are the key drivers for LAO in terms of the demand for services and the supply of private bar lawyers. In combination, these factors combine to form the environmental baseline from which LAO needs to plan and manage its business. We recommend that LAO actively work with the Government to develop plans that formally review eligibility criteria and tariff levels on a regular basis.

On the assumption that eligibility criteria and tariff levels are set and regularly reviewed, we have developed several options with respect to the delivery of legal aid which might improve the affordability and sustainability of the program, each of which will be discussed in more detail:

- Increase the funding envelope to LAO
- Reprioritize LAO available services to target clients
- Seek operating savings from the existing service delivery model
- Realign use of the private bar in the service delivery model
- Improve standards and controls over private bar lawyers
- Integrated service delivery

It should be noted that the above options are not mutually exclusive. In addition, it is critical to point out that LAO is acutely aware of these options and has already made demonstrable progress in pursuing some of them.

Increase the Funding Envelope to LAO

The demand driver analysis presented in this section clearly indicates increasing demands on LAO resources. Given this environment, the simplest response would be to increase the funding envelope. However, in our view, the current fiscal and economic environment within the Province of Ontario is such that, in the short term, this is not likely. Many programs are

facing financial pressures and competing for limited Government resources. LAO cannot necessarily rely on the Government to cover the cost of on-going pressures, despite a compelling business case. As such, LAO should continue endeavouring to control its costs through operational efficiencies, to the extent that these remain practical. However, we would observe that this does not preclude requesting Government assistance.

It is important to point out that future changes to the tariff or the eligibility criteria would constitute a significant change in LAO's financial baseline and would require increases to the funding envelope. We consider this discussion to be separate from the one on continuing increases in demand and a scenario that would clearly require an increase in the funding envelope. It should be noted that to date, new funding committed to LAO from the government has been in response to new pressures.

Reprioritize LAO Services to Target Clients

While LAO undoubtedly has a mandate to provide legal aid services to low income Ontarians, future fiscal realities may require an assessment of the sustainability and affordability of those services. LAO may have to face the reality that it may no longer be able to provide the current level of service to its target client group. Again though, we would emphasize LAO's recognition of this point through the Certificate Management Program and the drive to push more clients through lower cost channels. The key point about the reprioritizing of services is that one has to question whether the quest for operational efficiency is balanced with the effectiveness of services and LAO's ability to meet client needs. The challenge for LAO will be to continually balance operational efficiency with the delivery of high quality service.

Although further reprioritization of services would represent a reduction in LAO's ability to meet its current mandate, again, this would be consistent with other government programs. Several interviewees in this process commented on the need for LAO to perform a needs analysis of how best to meet the legal needs of low income Ontarians.

Seek Operating Savings from Existing Service Delivery Model

Assuming the status quo in the service delivery model (i.e. predominantly private bar certificate model), there may be opportunities for LAO to seek further operating savings.

Our review indicates several potential opportunities to rationalize at the area office level:

- There may be opportunities to consolidate the back-office administration functions of area offices in regional centers.
- At the same time, there may be opportunities to integrate the administrative functions of the Duty Counsel Program into area offices.

Realign the Use of Private Bar Lawyers in the Service Delivery Model

One of the key questions in this review is whether it is more cost efficient to adopt a staff model for legal aid relative to a private bar model. At this point in Ontario, the staff offices are relatively new and the cost trend data is inconclusive as to whether one model is more cost efficient than the other. One of the critical points to note is that any comparison is not really a fair comparison since the tariff is artificially low and does not represent the market costs for providing legal services. It is widely known that private bar lawyers subsidize the legal aid component of their practice with private clients.

It is also important to re-emphasize the supply and demand issues that pertain to use of the private bar. On the one hand, the provision of legal aid through the private bar allows for controlled scaling of the business according to client demand. On the other hand, the supply of private bar lawyers in some areas of law is limited, such that a staff model better fits the needs of clients in those areas.

In our view one of the key benefits of the staff model, is that it allows LAO to exert greater control over the lawyers that provide legal aid services. This seems to be particularly relevant in the area of certificate cost management.

LAO must continually monitor the performance of its staff offices and ultimately validate, or repudiate, the hypothesis that the staff model is more cost efficient. This needs to be on an area-by-area basis since there is no uniform answer. It should be noted that the Family Law Office Pilot Project did indicate comparable cost and quality between the staff office model and the certificate model.

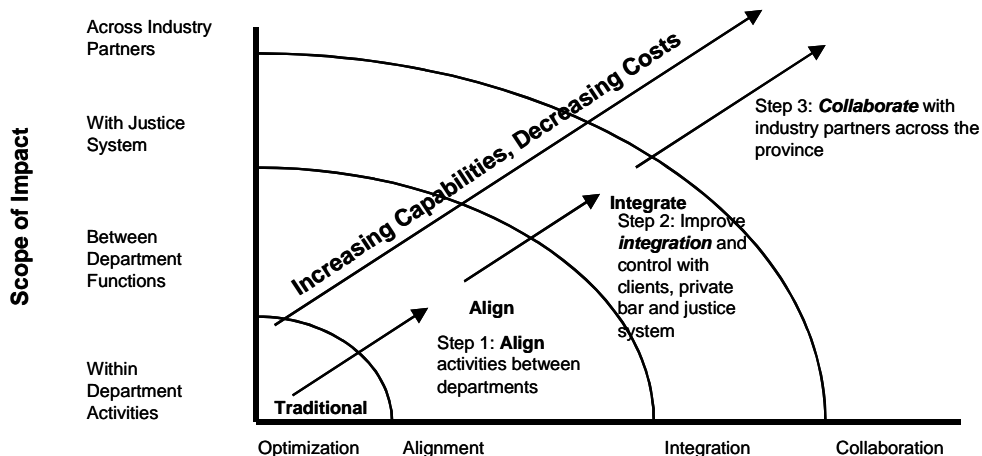
Improve Standards and Controls over Private Bar Lawyers

The point above raised the issue of the need for LAO to exert greater control over certificate costs. It is not fully clear from our review how certificate hours are determined and to what extent private bar lawyer billings align to budgeted certificate hours. This is an area for LAO to investigate further in order to determine hours billed versus required hours. This may lead to the development of stricter standards and controls pertaining to the hours required to deliver a certificate that may lead to a reduction in cost. Additionally, after analyzing the number of hours billed for certain types of activities, LAO may be able to readjust the number of hours downwards if it is determined that certain activities do not take as long as originally thought.

Having developed standards and controls, LAO would then be in a position to implement them on both the staff and private bar models. As previously mentioned, a staff model would likely be easier to monitor in this regard.

Integrated Service Delivery

Based on our review, the greatest opportunity for LAO seems to exist with the integration of Client Legal Services activities with other components of the Justice System and the broader social service infrastructure across the Province. In order to illustrate this, we present the following model.



LAO Relationships along the 'Supply Chain'

Our review of Client Legal Services and our knowledge of LAO in general suggest that improvements have historically been achieved from *optimizing* activities within current programs, for example, the Certificate Program or the Duty Counsel program. Some of the findings from this review show that LAO is now starting to realize the benefits from *aligning* activities between programs, for example, the Certificate Management program designed to push more clients to other service areas.

The next step for LAO is to take a more *integrated* approach to service delivery with constituent members of the Justice System. Our review indicates that some aspects of this, particularly with respect to the private bar, will be achieved through the TSN project in terms of establishing on-line communications. However, our hypothesis is that from a cost perspective, the largest opportunity may exist between Client Legal Services and Clinic Services. We should emphasize that we have not analyzed Clinic Services in this review but the hypothesis is based on the assumption that the adoption of a “one-stop shopping” delivery model must inherently lead to cost savings.

The final step in the “supply chain” is the notion of *collaboration* with industry partners across the Province. Our review indicates that LAO’s client base is often the same client base that touches other municipal, provincial or federal social support services. As such, cost saving opportunities may exist by integrating service delivery across as many providers as possible.

It should be emphasized that this model is illustrative in nature and the various steps are not mutually exclusive or sequential. The key point is that, based on our review, LAO will soon exhaust its *optimization* opportunities within the current delivery model and therefore needs to investigate the integrated and collaborative service delivery options introduced above.

6.0 Conclusions

OVERALL CONCLUSION

The overall results for each of Management Board Secretariat's questions related to relevance, effectiveness, efficiency, affordability and sustainability are based on a cumulative assessment of each program component within Client Legal Services.

We have used a Program Evaluation Scorecard to summarize the results of our review. The Score Card provides both the individual assessment by component for each Program Area and the overall assessment. The colour coding signifies the assessment rating and is explained in the legend below. (Please refer to the end of the Overall Conclusion section for a summary of the results of our review.)

ASSESSMENT OF THE RISK LEVEL OR SIGNIFICANCE OF THE FINDINGS	
	Strong results no material improvements required
	Satisfactory results but some improvements required
	Significant improvements required
	Unsatisfactory results and does not meet requirements

Based on our review, we have determined that overall the Client Legal Services function of LAO is performing at a satisfactory level but some improvements are required. In particular, LAO has demonstrated a strong commitment to identifying areas of opportunity and weakness and developing action plans to address these issues. In addition, our review indicates that management understands its responsibility to maximize its use of limited resources and is continually looking for more efficient ways to deliver effective client service.

With respect to the Certificate Program, LAO has demonstrated strong progress in its management of the program over the last few years. In particular LAO has improved its management of certificates issued and its expenditures on big cases. Additionally LAO has built upon recommendations made in the McCamus review and has experimented with alternative service delivery models. Some of these alternative service delivery models include the implementation of the family law offices in 1999 and the pending roll out of the criminal staff law offices. As with any organization going through a period of great change, some improvements are required to increase the efficiency and effectiveness of operations. Key areas of priority include identifying opportunities to consolidate administration functions, defining outcome measures and targets for the Certificate Program and developing innovative ways of managing private bar supply and demand issues.

LAO has also demonstrated its commitment to enhancing the service delivered under the Duty Counsel program. We recognize the steps that LAO has taken to improve its delivery mostly

through experimenting with alternative service delivery models such as the expansion of Staff Duty Counsel, with most taking on a Supervisory role, and the implementation of the Expanded Duty Counsel model. While limited data exists related to the efficiency and effectiveness of these programs, initial anecdotal comments indicate the programs have increased court efficiencies and provided better service to clients. Recognizing that LAO is still a developing organization, significant attention to the Duty Counsel Program is still needed. Key areas of opportunity for improvement include defining outcome measures and targets, developing consistent definitions for costs incurred relative to clients served and improving the accuracy and consistency of all financial information. The Total Service Network (TSN) project will considerably enhance LAO's ability to manage its operations more effectively once it goes live in April 2004.

Our conclusion on the Support Functions is that they are operating in a satisfactory manner and some improvements are still required.

However, the underlying issue faced by the Client Legal Services Program relates to its ongoing affordability and sustainability in light of its current role in the Justice System in the Province of Ontario. As we have identified in several areas of this report, LAO is largely a reactive organization that faces external demand drivers over which it has no control. It is clear from our review that based upon tariff pressures and current funding envelope, there is a significant risk of jeopardizing the availability of services to low income Ontarians. This issue of sustainability is over-and-above the existing question of whether a significant proportion of Ontarians are ineligible for legal aid, despite having no realistic capability of retaining a private lawyer.

Given short-term fiscal realities, LAO is in an increasingly difficult position to continue fulfilling its legislative mandate of providing high quality legal services to low income Ontarians. In our view LAO management has already demonstrated its recognition of this issue through its strategy to divert clients to lower cost services. The long-term sustainability of achieving operating efficiencies is questionable since at some point there will be a detrimental impact on the effectiveness of LAO services, which would have far reaching negative consequences on the broader justice system.

OVERALL ASSESSMENT BY COMPONENT & PROGRAM AREA

Overall, the results of our program evaluation can be summarized as:

Components of the Process	Relevance	Efficiency	Effectiveness	Affordability & Sustainability	Overall Assessment
Certificate Program					
Duty Counsel Program					
Support Functions					
Overall Assessment by Component	A	B	C	D	Overall Conclusion

7.0 Recommendations

The following section summarizes the recommendations contained throughout the body of this report. Our recommendations have been grouped according to the high-level components of the Client Service Program; specifically we have categorized our recommendations to correspond to the main areas contained within the Findings section of this report.

Overall Client Legal Services Program

In order to improve the overall efficiency, effectiveness, affordability and sustainability of Client Legal Services at an aggregate level, LAO should implement the following recommendations:

Consolidation of Administration

- While the timelines of our review did not allow for consultation or visitation with all area offices, we were able to seek participation from a representative sample of offices that covered all core activities of the program. Our review indicated that there might be opportunities to gain cost savings by consolidating the administrative components of the core program activities within each area. For example, administrative activities are currently performed within the area office, within Family Law offices and by Staff Duty Counsel. We recommend that LAO perform an activity analysis to understand the nature and extent of administration within areas, with a view to identifying consolidation opportunities. This would be particularly beneficial for Staff Duty Counsel, as it would increase their available time to enhance the Duty Counsel program.
- Similar to the above recommendation, we recommend that LAO examine opportunities to centralize administrative functions across geographic areas. While we understand and fully support the need to have local presence in order to meet client needs, cost saving opportunities may exist by consolidating back-office administration. Such a scenario, might lead to “super regional” offices that perform back office administration for smaller local offices.

Definition of Outcome Measures

- As discussed throughout this report, LAO is a critical component of the Justice System, but it is the interdependencies between all the stakeholders that together create the eventual legal outcome. Given these interdependencies, no single party is individually accountable for the eventual legal outcome. However, we recommend that LAO begin to define and track legal outcomes for both the Certificate Program and the Duty Counsel Program so as to gain insight on potential trends which may impact the end result for their clients, relative to those who are unrepresented or who can afford a private bar lawyer. LAO should also attempt to develop outcome measures in order to measure the impact of the Client Legal Service Program on the Justice System.

- While the eventual legal outcome discussion is undoubtedly complex, there are some intermediary outcomes for which LAO is accountable and can exert direct control. For example, within the Duty Counsel Program, LAO is in the early stages of tracking the extent of Dispositive outcomes for clients assisted by Duty Counsel. Also, LAO is currently in the process of analyzing client satisfaction, a process we feel should be carried out on a regular basis. We recommend that LAO develop and implement a performance management framework for the Client Legal Services Program with a focus on outcome measures. We further recommend that such an exercise be conducted prior to the final implementation of the TSN project so that potential data requirements can be incorporated into the end design.

Eligibility for Legal Aid

- It is clear from our review that financial eligibility continues to be the major obstacle for target clients to qualify for legal aid. Given that the criteria have been frozen for a number of years while the cost of living has increased, there is an increasing “unknown” group of people whose needs are not being met. It is important to note that some individuals may not necessarily apply for legal aid because they may already be aware of their ineligibility, while others, in fact, may be eligible and may not apply for legal aid, hence creating the “unknown” group that require legal aid. We recommend that LAO conduct a study to investigate the number, nature and location of people who fail to meet the financial eligibility test and to determine the extent of actual need in order to improve access to justice. Having identified the “unknown” group, LAO will be able to identify the financial implications of serving them.
- A key component of this study needs to include a detailed assessment of the extent to which the “working poor” in large urban centers, such as Toronto and Ottawa, are ineligible for legal aid. This would confirm or repudiate the hypothesis that the current financial eligibility test renders many of them ineligible, despite the practical reality that their net disposable income is insufficient to afford a private lawyer due to the high cost of living in large urban centers. In our view, this is important because LAO experiences the greatest demand pressures in large urban areas.
- We further recommend that LAO conduct a study to investigate the financial and operational implications of changing the financial and legal eligibility criteria if it is determined that a significant group of low income Ontarian’s needs are not being met.
- With reference to both the financial and legal eligibility criteria, we recommend that a formalized review cycle be developed for potentially changing the eligibility criteria and thresholds. Such a cycle could then be incorporated into the forecasting process as well as communicated to target client groups.
- We would like to reiterate that before changes are made to the financial or legal eligibility criteria, LAO must study the financial and operational implications since any changes to the eligibility criteria could have a significant impact on the overall cost of the program. Such a study would allow LAO to determine whether or not to reduce, expand, maintain or slightly modify certain components of the eligibility criteria in order to provide enhanced or reduced service to its target client group. However, in our view, a modification of the financial eligibility criteria to take account of regional differences in the cost of living, need

not necessarily lead to an overall increase in cost to the system, since any resulting certificate volume changes might balance out across the Province. In addition, LAO could continue to increase its diversion of clients to lower cost channels

Tariff Levels

- There is insufficient evidence at this stage to reach a firm conclusion on the impact of the recent tariff increases. We are confident that LAO management has sufficient processes in place in order to monitor this impact on the supply of private bar lawyers over time.
- Similar to the recommendation on eligibility criteria, we recommend that a formalized review cycle be implemented in order to examine potential tariff increases. Such a process would ease tensions with the private bar and hopefully avoid repetition of the recent strike.

Contingency Reserve Fund

- The Contingency Reserve Fund will continue to be a controversial issue at LAO. We recommend that LAO and MAG reach firm consensus as soon as possible on the short-term implications of using the fund for tariff increases, relative to the longer-term implications of maintaining a lower fund.
- We recommend that LAO continue to monitor and refine its certificate forecasting process so that more information can be developed on the optimal size of the Contingency Reserve Fund. This exercise will also serve to provide more information on replenishment needs.

Staff Compensation

- While we have not conducted a salary benchmarking exercise, it is our understanding that compensation levels for staff lawyers and staff Duty Counsel are materially lower than those for the private bar and Crown Attorneys. We are cognizant of role, regional and, in some instances, experiential factors that contribute to these differences. However, LAO's ability to hire and retain qualified and competent lawyers is compromised by this situation, thus impacting the sustainability and effectiveness of the program. We recommend that LAO conduct a compensation study, with a view to moving all salaries closer to market levels.
- It should be noted though that this recommendation is inconsistent with the need to gain operating efficiencies so that its feasibility is contingent upon its perceived priority relative to competing service needs.

Certificate Program

In order to improve the efficiency and effectiveness of the Certificate Program, LAO should focus on implementing the following recommendations:

The Application Process

- In order to increase its accessibility to target client groups, LAO should explore the cost/benefit of taking applications from locations outside of its area offices. Some of these locations might include court houses, clinics and shelters. LAO should also explore the cost/benefit of taking more applications through mediums such as telephone, mail, fax and

even Internet if possible. We note that implementation of the TSN project will allow for applications to be taken from laptops from more locations such as court houses.

- Our review of the application process indicated that a surprisingly high number of applications are abandoned, the reasons for which we were unable to substantiate. We recommend that LAO investigate and then mitigate the causes behind the high abandonment rate. It seems clear that LAO's application staff must be spending large amounts of time on abandoned applications, time which could be redeployed to other activities if the abandonment rate decreased.
- Our review of the area offices revealed significant variations in waiting room times to render a certificate. While we are cognizant to variations in local demand, we recommend that LAO investigate ways to decrease wait times in order to improve client service. A possibility might be the use of kiosks that could then be portable between locations based on changes in demand. However, this may also be an issue of under-staffing.

Appeals

- LAO should track the number of appeals to area committees and it should track information on the number of certificates that are issued or denied due to an appeal and the basis for the decision on the appeal (i.e. the service is not covered). Additionally, no information exists centrally on the time to resolve appeals made to area committees. This information should be tracked and monitored to demonstrate the consistency of the application process and to ensure that appeals are being resolved in a timely manner.
- In order to increase the consistency of decisions regarding an applicant's eligibility for legal aid, there should be stricter guidelines related to the circumstances upon which an area committee can grant a certificate as a result of an appeal. Again, the tacking of appeal outcomes by area will help to identify inconsistencies.

Certificate Management

- Our review indicated that for some areas, the target number for certificates is materially inaccurate to the actual number that will be issued. We are cognizant to the evolving nature of the Certificate Management Program such as the need to incorporate the growth in new super jails which has significant impacts in some areas. However, inaccuracies in the forecasting process significantly negate the value of actual to budget comparisons as an on-going management tool. We recommend that targets for the number of certificates issued for each area office should be examined and revised based on the demand for legal aid services within a particular area.
- In order to better manage certificate costs in the short term, and to predict evolving changes over the long term, we recommend that LAO track the number of hours that are billed by private bar lawyers by activity, by offence / certificate type. These hours should be compared to the available hours granted on the certificate to arrive at a "utilization" percentage. Such an analysis would identify for example:
 - Trends in case complexity
 - Lawyer billing practices (extent to which billings are under/over or in line with certificate available hours)

Service Delivery Model

- Our review has brought us to the conclusion that there is no single service delivery model that can be consistently deployed across the Province. It is clear to us that extreme regional variations exist both in the demand for legal services, but equally significantly, in the available supply of private bar lawyers. LAO management is actively managing this dynamic to the best of its capabilities as demonstrated by the continuous stream of pilot service delivery models. We recommend that LAO continue to monitor the supply of lawyers willing to accept certificates and the demand for services within each geographic area in Ontario where service is provided. On the basis of this analysis, LAO should continue to explore the options of opening more staff offices and other service delivery models if there are significant supply and demand issues or if it can verify perceived cost advantages.
- It is important to note that we are not recommending that LAO move to a purely staff model of service delivery since both the staff model and the certificate model have advantages and disadvantages. In particular the staff model can be used as a mechanism to meet the demand for services in geographic areas where there is an insufficient supply of lawyers willing to accept certificates. A staff model also provides LAO with an opportunity to service clients in highly specialized areas of law such as refugee law. This is especially important when there are gaps in terms of the number of qualified lawyers willing to accept certificates in particular areas of law. Additionally it is easier to implement and monitor quality assurance mechanisms within a staff model. However the staff model also has its disadvantages since the cost effectiveness of the model is dependent on the volume of cases processed by the office. If there is insufficient volume of cases then the office will be unable to obtain economies of scale and average case costs will increase.
- Alternatively, the certificate model provides clients with the ability to have the lawyer of their choice and it automatically adjusts to fluctuations in demand for legal aid service. However there is a potential for “runaway” costs if costs are not monitored and controlled carefully. As discussed above, if only private bar lawyers are used it may be difficult to meet demand for services in certain geographic locations and in certain areas of law where there is an insufficient supply of lawyers willing to accept certificates. It is also more difficult to implement quality control mechanisms within the certificate model.

Panel Management

- Our review indicates significant variations in the level of certificates accepted by private bar lawyers, which is a function of local area supply and demand drivers but also an indicator of the extent to which individual lawyers rely on LAO to sustain their private practices. Given that LAO’s mandate is to provide high quality service, we recommend that quality assurance mechanisms such as minimum years of experience, training or qualifications in specialized areas of law should be required in order to increase the likelihood of high quality service delivery. A more sophisticated model would include client satisfaction, although that is harder to measure.

Staff Offices

- In order to ensure the on-going quality of service provided by LAO's staff offices, quality assurance mechanisms such as periodic audits should be conducted on the work provided by staff lawyers. Since staff lawyers are employees of LAO, LAO has a greater ability to invoke quality assurance practices and standards.
- Our review revealed that lawyers within certain staff offices do not accurately docket their time. If time is docketed inaccurately LAO cannot analyze if the office is operating in an efficient manner.
- LAO should further investigate the reasons why the Toronto family law office is unable to achieve its targets for the number of closed certificates. Additionally LAO should focus on reducing the amount of time clients have to wait to receive service in certain family law offices.
- Currently LAO does not track any information related to volume, average case costs and utilization for the Refugee Law Office. It is critical that LAO collects and reports on this information so that it can determine if the office is operating in an efficient manner.

Integrated Service Delivery

- Although there are instances across the Province of co-location between Area Offices and Clinics, for the most part this is not the case. We are cognizant to the fact that practical issues such as the availability of appropriate space and the timing of lease expiries is a contributor to this, although it is also apparent that the independent nature of the clinic system is a key factor. A more integrated "one-stop shopping" service delivery concept would enhance overall program effectiveness for LAO. In addition, such a concept would also create some limited cost savings due to shared infrastructure and administration.
- We further recommend that LAO begin to investigate collaboration opportunities with other municipal, provincial and federal social service organizations.

Big Case Management

- In order to manage the big case management program more effectively, LAO should provide more training to area directors on how to set up proper budgets for big cases.

Duty Counsel Program

In order to improve the efficiency and effectiveness of the Duty Counsel Program, we have developed the following recommendations.

Panel Management

- We recommend that LAO develop and implement policies and standards with respect to the qualifications required for private bar duty counsel. Our understanding is that qualifications are a function of both experience and competency but not necessarily both. It is clear that some panel members rely heavily on duty counsel work to sustain their practice. In such instances, the quality of the duty counsel becomes more important. We further recommend that LAO develop policies and procedures relating to lawyer removal from the panel.

Delivering Duty Counsel Services

- Our review indicates that the supply and demand for Duty Counsel services varies by region. Based on the areas that we visited, there may be opportunities for LAO to investigate the use of more Staff Duty Counsel. Such positions might be full-time or part-time in order to cover the busiest period at the start of the week that deals with the backlog from the weekend. This model would need to take into account other factors such as how to supplement a part-time position with other activities (for example, taking on staff lawyer certificates) as well as the need to avoid conflicts of interest such that a Duty Counsel cannot then represent an accused person under a certificate.
- A consistent theme throughout our consultation was recognition of the vast improvement brought about by the implementation of the Supervisory Duty Counsel position. In order to further improve the value provided by this position, we recommend that LAO track the time spent by Supervisory Duty Counsel on all activities. This would help to identify low-value add tasks that might be better performed by staff in the area office and other value-added tasks that contribute to the efficient running of the court system. This would allow the Supervisory Duty Counsel to focus on improving the quality of the Duty Counsel Program in their area.
- Our understanding is that with a few exceptions, the Staff Duty Counsel positions are three-year contract positions. Our review indicates that the absence of full-time status is creating uncertainty amongst the Staff Duty Counsel community that increases the likelihood of turnover, which would decrease the effectiveness of services. We recognize that LAO made a conscious decision to implement these positions on a contract basis but we recommend that LAO continually review this strategy in event that staff turnover becomes an issue.
- Our review of the Duty Counsel program revealed inconsistencies in the definition of attributable costs in relation to clients served as well as inconsistencies in the data maintained within different departments. As such, it was difficult for us to draw firm conclusions on the trend in cost per client served. We recommend that LAO develop clear definitions for costs incurred and clients served, as well as a designated central storage location for Duty Counsel data, so as to enable fair comparisons on a go-forward basis. In addition, with respect to Staff Duty Counsel, it is important to match these definitions to activities delivered and outcomes achieved, for example, dispositive outcomes. This is important because certain activities may drive higher costs per client but achieve better outcomes for the court system. LAO needs to be able to substantiate these impacts.

Support Functions

In order to improve the efficiency and effectiveness of the Support Functions, we have developed the following recommendations.

Operational Support

- Our review indicated that the financial eligibility training manuals are difficult to understand. This is an issue as it makes it difficult to train application officers. Furthermore it was reported that application officers do not fully understand which financial information needs to be collected in order to make an efficient decision on financial eligibility. In light of these issues a new financial eligibility manual should be developed.
- Additionally more information on the eligibility guidelines should be published for clients. Better information on the guidelines might allow clients to determine their own eligibility for legal aid, instead of having to go to an area office to have an application processed.
- Our findings revealed that training is not provided to new area Area Office Administrators and new Area Office Directors. LAO should consider developing and implementing a formal training program for these individuals. The training program should cover the management of day-to-day operations.

Investigations

- Interviewees commented that the criteria are unclear for the types of issues that should be referred to the Investigations department. In order to improve the effectiveness of the process LAO should develop standard criteria for the types of matters that should be sent to the department and the criteria should be clearly communicated to all area offices.

Appendix A – List of Participants

As part of the Program Evaluation of Client Legal Services, the following people were interviewed either on a one on one basis or during a focus group session:

	Name	Organization	Title
1	Mark Freiman	Ministry of Attorney General	Deputy Attorney General
2	Elizabeth Patterson	Ministry of Attorney General	Assistant Deputy Attorney General, Family Services Division
3	Debra Paulseth	Ministry of Attorney General	Assistant Deputy Attorney General, Court Services Division
4	Lori Newton	Ministry of Attorney General	Director, Toronto Regional Office, Court Operations
5	John McMahon	Ministry of Attorney General	Director, Crown Operations, Toronto Region
6	Honourable Sidney B. Linden	Legal Aid Ontario	Chairman of the Board
7	Angela Longo	Legal Aid Ontario	President and CEO
8	Rob Buchanan	Legal Aid Ontario	Vice President, Client Legal Services
9	George Biggar	Legal Aid Ontario	Vice President, Policy, Planning & External Relations
10	Ruth Lawson / Linda Hall	Legal Aid Ontario	General Counsel / Appeals and FIPPA, Director
11	Larry Kowan	Legal Aid Ontario	Internal Audit and Investigations
12	Bill DeConkey	Legal Aid Ontario	Complaints, Investigator
13	Michelle Seguin	Legal Aid Ontario	Vice President, Finance
14	Gordon MacDonald	Legal Aid Ontario	Evaluation Manager
15	John Zado	Legal Aid Ontario	Manager, Duty Counsel Services - Criminal
16	Helena Birt	Legal Aid Ontario	Manager, Duty Counsel Services - Family
17	Lesley Byfield	Legal Aid Ontario	Director, Operational Support
18	Jane Morley	Legal Aid Ontario	Director, LAO LAW
19	Sherrie Cameron-Stobie	Legal Aid Ontario	Director, Quality Service Office
20	Janet Froud	Legal Aid Ontario	Manager, Legal Accounts
21	Tom LeRoy	Legal Aid Ontario	Manager, Big Case Management
22	Nye Thomas	Legal Aid Ontario	Client Access and Service Program, Director
23	Maryanne Loch	Legal Aid Ontario	Reciprocity Coordinator / Videoconference
24	Patrice Nadeau	Legal Aid Ontario	Manager, Business Analysis
25	Phil Brown	Legal Aid Ontario	Coordinator, TSN Project, Lawyer Relations
26	Vicki Moretti	Legal Aid Ontario – Etobicoke Area Office	Area Director
27	Fatima Senra	Legal Aid Ontario – Etobicoke Area Office	Application Officer
28	Heather Robertson	Legal Aid Ontario – Toronto Area Office	Area Director
29	Sheilagh O'Connel	Legal Aid Ontario – Toronto Area Office	Family Law Office, Director
30	Megan Hall	Legal Aid Ontario – Toronto Area Office	Supervisor, Application/Assessment Officers

	Name	Organization	Title
31	Helen Carbone	Legal Aid Ontario – Toronto Area Office	Staff Lawyer/Supervisor Support Staff
32	Stacey Christ	Legal Aid Ontario – Toronto Area Office	Supervisory Duty Counsel, Criminal
33	David McKenzie	Legal Aid Ontario – Oakville Area Office	Area Director
34	Ann Curtis	Legal Aid Ontario – Oakville Area Office	Area Office Administrator
35	Heather McKenzie	Legal Aid Ontario – Oakville Area Office	Application officer – video
36	Elizabeth Cassavoy	Legal Aid Ontario – Oakville Area Office	Supervisory Duty Counsel, Criminal
37	Toni Hammond-Grant	Legal Aid Ontario – Oakville Area Office	Supervisory Duty Counsel, Family
38	Marc Bode	Legal Aid Ontario – Thunder Bay Area Office	Area Director
39	Sandra Jokinen	Legal Aid Ontario – Thunder Bay Area Office	Area Office Administrator
40	Kevin Cleghorn	Legal Aid Ontario – Thunder Bay Area Office	Family Law Office, Director
41	James Wilcox	Legal Aid Ontario – Thunder Bay Area Office	Supervisory Duty Counsel, Family
42	Kelly Eberhard	Legal Aid Ontario – Thunder Bay Area Office	Supervisory Duty Counsel, Criminal
43	Cindy R. Wasser	Ontario Bar Association, Chair, Criminal Justice Section	
44	Kevin Brothers	Private Bar – Thunder Bay	Family and Out of Town Criminal Lawyer
45	David Dubinsky	Private Bar – Thunder Bay	Criminal Lawyer
46	Gwen O'Reilly	Northern Women's Centre	Women's Advocate
47	Dan Mitchell	Ministry of the Attorney General	Crown Attorney, Thunder Bay
48	Tom Fitzgerald	Ministry of the Attorney General	Director of Crown Operations for the North
49	David MacKenzie	Ministry of the Attorney General	Assistant Crown Attorney, Thunder Bay
50	Justice Dino DiGiuseppe	Ministry of the Attorney General	Judge, Thunder Bay
51	Deborah Hastings	Legal Aid Ontario – Oshawa Area Office	Area Director
52	Robin Galbraith	Legal Aid Ontario – Oshawa Area Office	Area Office Administrator
53	Janelle Bereznik	Legal Aid Ontario – Oshawa Area Office	Expanded Duty Counsel Coordinator
54	Manfred Schlender	Private Bar - Oshawa	Family Lawyer - Duty Counsel, Certificate and Family Law Information Centre
55	Mary Clare McKinnon	Legal Aid Ontario – Oshawa Area Office	Supervisory Duty Counsel, Criminal
56	William Sirman	Legal Aid Ontario –	Area Director

	Name	Organization	Title
		Napanee Area Office	
57	Nancy Myers	Legal Aid Ontario – Napanee Area Office	Area Office Administrator
58	Lynn Cook	Legal Aid Ontario – Napanee Area Office	Supervisory Duty Counsel, Hybrid
59	Lucy MacLauchlan	Private Bar - Napanee	Criminal and Family Lawyer, Certificate
60	Jack Martin	Legal Aid Ontario – Refugee Law Office	Director
61	Pam Reardon	Legal Aid Ontario – Toronto Area Office	Supervisory Duty Counsel, YCJA
62	Bruce Thompson	Legal Aid Ontario – Bracebridge Area Office	Supervisory Duty Counsel, Hybrid
63	Johanne Leger	Legal Aid Ontario – Ottawa Area Office	Supervisory Duty Counsel, Criminal
64	Yolande Edwards	Legal Aid Ontario – Scarborough Area Office	Supervisory Duty Counsel, Criminal
65	Gerard Michaud	Legal Aid Ontario – Brampton Area Office	Supervisory Duty Counsel, Family
66	Kathryn Papineau	Legal Aid Ontario – St Thomas Area Office	Supervisory Duty Counsel, Hybrid
67	Chief Justice Lennox	Ministry of the Attorney General	Chief Justice, Ontario Court of Justice
68	Nancy Brown	Legal Aid Society of Alberta	Executive Director
69	Mark Benton	Legal Services Society of British Columbia	Chief Executive Director
70	Jane Lancaster	Saskatchewan Legal Aid Commission	Chief Executive Officer
71	Tim Bannatyne	Legal Services Agency, New Zealand	Chief Executive
72	John Hodgins	Legal Aid Queensland, Australia	Chief Executive Officer
73	Michelle Adkins	Federal Department of Justice	Counsel, Legal Aid Program