

Review of Refugee Law Office

***Mandate and Role within a Mixed Environment
Of Refugee Legal Aid***

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Final Report

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Organizations by Design

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Introduction

Since the establishment of the RLO as a three-year pilot project in 1994, there have been a preliminary review with recommendations in 1995 and an evaluation of the pilot phase (with recommendations) in 1998. In addition, the 1997 Review of Legal Aid also provided recommendations for the Refugee Law Office. As a result of the recommendations and other factors, there have been a number of key changes in personnel, location, range of services, and focus of activities since March 1994.

The purpose of this review is to address two main questions. First, based on the experience to date, should a staff office be maintained as one component of a mixed model of service delivery to convention refugee applicants? Second, if yes, what should be the role of a staff office?

Background

In June 1993, the Refugee Pilot Sub-Committee provided a series of recommendations to establish the Refugee Law Office (RLO) as a three-year pilot project. When the RLO opened in March 1994, it was the first staff legal aid

office in Ontario. For the Refugee Pilot Project Sub-Committee, the primary rationale for a staff office was the potential contributions to the quality of legal assistance for refugee claimants. At the same time, the Sub-Committee acknowledged that the Provincial Government viewed a staff model as a potential cost-saving initiative. Thus, the Refugee Law Office, from the start, faced a dual mandate, to contribute to increasing overall quality of refugee legal representation and to operate cost-effectively.

According to the vision put forth by the Refugee Pilot Project Sub-Committee, the Refugee Law Office was to be staffed with experienced refugee lawyers who could develop the “materials, precedents, and arguments” for quality representation of refugee claims, appellate cases, and test cases. Moreover, it was hoped these could be shared with lawyers in the private bar and, in this way, influence the overall quality of refugee legal services, as well as reduce the time and cost of individual preparation. Cost-effectiveness within the staff office would be achieved, in part, through the provision of paralegal assistance to help prepare Board cases and appeal cases but also to represent expedited cases (those not requiring a full Board hearing). Finally, it was proposed that the Refugee Law Office could serve as a resource for community-based nongovernment organizations (NGOs) that serve refugee populations.

In summary, the Refugee Law Office’s primary mandate was to contribute to quality of refugee legal aid. There are a number of indicators that can be used

to measure the degree to which this mandate is being achieved. First, the RLO can establish benchmarks for quality representation of refugee claimants in terms of amount and type of background research and case materials, including expert testimony. Second, the RLO can develop precedents and arguments in test cases or novel and complex cases. Third, the RLO can establish benchmarks for preparation and support of clients, such as preparation time and consultations. Fourth, the RLO can provide assistance to judicare lawyers and the Legal Aid Office. Fifth, they can provide support to community organizations to increase their capacity for serving refugee clients. Sixth, the RLO can establish models and procedures for increasing cost-effectiveness, for example, by determining the most effective use of paralegals in refugee legal aid practice.

Defining the Role of the Refugee Law Office

The evaluation of the pilot project concluded in March 1998 concluded that the Refugee Law Office provided a consistently high calibre of services. There were several indicators of quality associated with the RLO that were recognized by all other stakeholders, including members of the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB), judicare lawyers, refugee-serving community-based organizations, and refugee applicants. These indicators included:

- ?? quality of case preparation (that is, documentation and arguments)
- ?? accessibility, timeliness and quality of interaction with clients
- ?? ability to handle complex or novel cases (especially those from countries that produced few refugee applicants)
- ?? ability to provide support to community organizations and individuals beyond the handling of refugee claims

The pilot evaluation also observed that the average cost-per-case for the RLO had decreased from the initial year of operation but was still higher than the average reimbursement for judicare cases. There were several recommendations made to increase cost-effectiveness, including increasing referrals and generating economies of scale by serving a greater number of refugee applicants from a few designated countries. In addition, it was proposed that the comparison of cost-effectiveness of the RLO and the private bar should be based on comparable case requirements. For example, cases from high-volume refugee producing countries should require less unique preparation (resulting in lower average cost-per-case) than cases from low-volume refugee producing countries. Thus, the comparisons need to control for country and other case parameters.

These observations were generated from case file reviews, questionnaires, and interviews with representatives of all stakeholder groups. For the purposes

of this review, the observations drawn from the pilot project evaluation were framed as hypotheses. If the hypotheses were substantiated, it would confirm the observations and lend support to the conclusions of the pilot evaluation. If not, it would put into question the conclusions regarding quality and cost-effectiveness and, perhaps, raise additional issues for review. The following hypotheses were developed to guide this review and to help address the key objective of defining the role of the RLO within a mixed model of refugee legal services.

Hypothesis 1a: RLO provides quality legal services to refugee claimants and contributes to the overall quality of services.

Hypotheses 1b: RLO is a benchmark for quality service and contributes to the private bar and other stakeholders in the provision of services to refugee applicants.

The RLO was established under a specific mandate to provide quality services to clients and to contribute to the overall quality of legal services to the refugee community. Two important factors to achieving these ends have been the qualifications of the staff and the way in which the office functions. The lawyers hired were highly experienced and capable. Moreover, the office exercised greater flexibility in the ability to allocate hours and services to

individual cases as required than did the private bar. Under the “fee-for-service” tariff model, judicare lawyers have limited discretion to provide more than the maximum number of preparatory and interpreter hours per case. Many lawyers reported billing the maximum number of hours for most cases, in part to compensate for additional hours provided in a few cases. In contrast, the RLO theoretically can expend the optimal amount of time required for any individual case, so long as it manages its total time allocations cost-effectively. If the RLO is operating cost-effectively overall (relative to judicare), the time and quality of work can be used as benchmarks for quality and cost per case.

Hypothesis 2: The RLO operates cost-effectively relative to the private bar by developing an appropriate caseload and case mix, along with value-added services.

This hypothesis was tested by dividing it into three sub-hypotheses.

Hypothesis 2a: RLO is a cost-effective alternative for providing legal services to refugee claimants who come from countries where there have been a large number of refugee applicants.

There are many reasons why cases from high-volume refugee producing countries should be cost effective. (For discussion, see [Appendix A](#)). Examples of high-volume countries are Sri Lanka, Somalia, Iran, and Nigeria. In theory,

the reason there are so many people applying for refugee status is because these countries have perpetrated widespread persecutions and abuses. In many of the cases, the bases of claim are similar; the key issue in each case is proving the identity of the applicant. Moreover, information about the conditions in the country is likely to be easily accessible and applies similarly to a large number of cases.

A staff office like the RLO could have a tremendous advantage in this scenario if paralegals were used to interview clients and to prepare the cases. Moreover, many of these claims would likely be dealt with as expedited cases, that is, no hearing is required, no substantive issues are at stake, and claimants are likely to be accepted if they can prove identity. Under most circumstances, an expedited hearing can be effectively handled by a paralegal.

Hypothesis 2b: RLO is cost effective in handling cases from moderate-volume countries where it can develop expertise and economies of scale.

Examples are claims from moderate-volume countries, such as Afghanistan or Albania, where there is a large enough refugee base that the lawyers can develop a significant caseload. Again, the use of paralegals could give the RLO an advantage over the private lawyer, especially the sole practitioner.

Hypothesis 2c: The RLO is cost-effective in handling cases from countries that produce few refugee claimants or in handling cases that represent novel issues or test claims.

Examples are Haiti, Chile, Brazil, Taiwan, Palestine, and Zimbabwe. These “orphan” claims are generally from countries with a democratic (or otherwise stable) government, homogenous population (few ethnic minority groups), and relatively little conflict with neighboring countries. In many cases, there may be limited published information about the country or specific region.

When neither the private bar lawyer nor the RLO has the advantage of economies of scale, the RLO may be able to proceed more efficiently because of its expertise with a wide range of countries. The only exception will be private bar lawyers who also have an advantage with a specific country, e.g., they are personally familiar with the country conditions, speak the language, or have connections in the country of origin that allow them to extract information pertinent to a refugee claim.

Context for Review

The following sections discuss the changes that have been implemented by the Refugee Law Office, by Legal Aid, and by the CRDD of the IRB, as a

context for evaluating the quality and cost-effectiveness of the RLO relative to the private bar. The changes at the RLO have had the impact of increasing the scope of services provided as well reducing the cost-per-case. At the same time, changes initiated by Legal Aid have also reduced the cost-per-case for judicare lawyers. Finally, some of the major developments at the IRB have helped to streamline the refugee determination process for all cases. (For a more complete discussion of the context, see Appendix B).

Changes in RLO

The evaluation of the pilot project (1994-1998) indicated that the Refugee Law Office provided high-quality service but would require adjustment in staffing and increase in caseload to achieve truly cost-effective services relative to the private bar. (For discussion, of factors and resolution, see: Appendix B).

In 1998, the RLO added an additional service by assuming responsibility for assisting persons awaiting detention reviews at two sites in Toronto, Metro West Detention Centre and the Celebrity Inn. In some cases, individuals had been placed in the detention centres awaiting deportation; others had been detained because of criminal charges, record of violence, or suspicion of other offenses that warranted their being held in a secure facility. While the Legal Aid was willing to reimburse private lawyers through certificates to provide legal assistance to detainees, in most cases, private lawyers did not find the trips to

the centres to be cost-effective. The RLO allocated one half-time lawyer and one half-time paralegal to provide legal assistance and to serve as advocates for detainees, often helping them to arrange for bond or to represent them at detention reviews.

Because this service is distinct from the legal services provided to convention refugee applicants, we excluded the time and resources allocated to detention clients from those allocated to refugee applicants in our comparison of the RLO with the private bar. The appropriateness of the RLO services to detention clients and the contribution of these services to the perceived value of the staff office and the overall quality of refugee legal aid are discussed in a separate section at the end of this review.

Changes in Legal Aid and Judicare

Prior to and since the establishment of the RLO, there have been a number of important changes to the judicare component of refugee legal aid. The number of certificate hours available to judicare lawyers to prepare a refugee claim was reduced in 1992 and then again in 1996. As of 1996, the maximum number of preparation hours (hours prior to hearing) has been reduced from a maximum of 39 to 16 hours. Private lawyers interviewed reported that it was also more difficult to get permission for discretionary hours; most lawyers reported that they billed for fewer hours than actually worked. Lawyers also

reported concerns about reductions in disbursements; they indicated that they did not have the time deemed necessary for interpreters, expert opinion, and client consultation.

These reductions in tariff hours and the perceptions of more difficult access to discretionary hours and disbursements have had an impact on how judicare lawyers provide legal assistance to refugee applicants. They have also affected the relative cost-effectiveness of the RLO because they affect the bases for comparing service delivery.

Changes in Immigration and Refugee Board

There have been significant changes in the operations of the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB), and these have affected how lawyers prepare cases, how they participate in hearings, and the length of time from filing to hearing date. Following the merger of the University and Front Street offices, each of the members of the CRDD of the IRB has been assigned to one of six geographic teams. The six teams, Africa, the Americas, Europe, Middle East, Asia, and Sri Lanka, are each led by a Coordinating Board Member. In some teams, the IRB members may hear cases from any country in the region; in other teams, the members are further divided into specific country panels. Regional teams have increased the ability of Board members to focus on learning the issues associated with a geographic region and specific group of countries. Refugee Case Officers (RCOs, formerly Refugee Hearing Officers) are assigned to geographic teams and often to specific Board Members. This practice has increased communication and teamwork among the IRB members and reduced delays in hearings.

Because Board Members are more familiar with the countries in their geographic region and with each other, they can agree more quickly on the issues of relevance and reduce most cases to critical areas of contention. To this end, the Board has adopted a policy of establishing early contact with claimants

(through their lawyers) at the screening stage to obtain agreement on issues and information required. The RCO generally contacts the client's lawyer prior to assigning a case for hearing to assure that the relevant documents and other materials have been obtained.

In addition, the IRB has implemented a process of streaming, whereby, fairly early in the process, the Coordinating Board Member will decide the type of hearing to which the case will be assigned. The decision is based on a number of factors, including the country of origin, number of issues, familiarity with the lawyer, and the availability of documents. There are four options. The first is process that has been in place for a number of years and that is the expedited hearing whereby the merit of the case is clear, no hearing is required, and there is generally no need for counsel to be present. The second is a new process, the short hearing, in which there are no substantive issues to be decided. A short hearing is estimated to last less than three hours and only one Board Member is assigned to the hearing. The last two options are long hearings. The long hearing-routine is a full hearing with two Board Members; however, most issues have been agreed upon and the hearing is assumed to last no more than one sitting. Finally, the Coordinating Board Member may define a case as suitable for a long hearing-complex. These are usually assigned to designated Board Members who have experience with complex cases.

The impact of the changes at the CRDD has been to encourage lawyers to work very efficiently. There is less time interval between the filing of the PIF and the hearing of the claimant. While the Board has not yet met the target of six months from filing to completion, it has been able to reduce most of the backlog and to shorten the timeframe for almost all cases. One impact on lawyers has been [the ability] to reduce the amount of time spent on case preparation and the number of client meetings. Previously, a lawyer may have met with the client several times prior to the hearing. He or she would also review the case and prepare with the client immediately prior to the hearing date, only to learn that the case had been postponed. If the postponement were long enough, the lawyer would need to go through the preparation process a second time. Because the Board is better able to adhere to a shorter time schedule, lawyers need to prepare with the client fewer times prior to the hearing.

Moreover, the Board has become increasingly reluctant to grant adjournments to a client simply because the lawyer is not prepared. This has encouraged lawyers to focus on the most critical issues in preparing a case; it also means that lawyers who have an excessive number of clients may experience difficulties in meeting their hearing schedules. Overall, modifications introduced by the CRDD in the refugee determination process have reduced the amount of preparation time between the filing of the application and determination hearing. One possible advantage for the RLO over the sole

practitioner in this respect is that the RLO lawyers can call upon other staff lawyers to help meet deadlines, if necessary.

Changes in the Community Agencies Serving Refugees

Many newly arriving refugees come to Canada without family or ethnic community connections. Community agencies serving refugee and immigrant populations report they have felt pressured to assume a bigger role and more responsibility in helping these new arrivals as government services have been reduced. In Toronto, there has been less financial assistance available and affordable housing is more limited. Many of these non-government organizations (NGOs) feel they are working with little additional funding despite the increased demand for support and services. Their primary mandates include emergency housing, English language training, counselling and adjustment services, and work skills training. Most do not consider themselves qualified to provide legal advice to refugee claimants.

Community agencies report that private lawyers appear to have less time to assist refugee applicants than they did in previous years. They report that there is less time given to refugees to help them understand the process of applying for refugee status, less time for counselling, less time to making sure that applicants are well prepared for their hearings, and less time to provide

additional assistance. Agencies perceive the RLO as having less constraint on the time available to clients because they are not paid on an hourly basis.

Methodology

This report uses both quantitative and qualitative data to review the current status of the Refugee Law Office (RLO) and to address the hypotheses proposed. Data were collected from various sources, including the provincial Legal Aid Office, the Refugee Law Office, and private bar lawyers. One of the key challenges was to ensure that the figures used for the private bar represented total case costs. (For a summary of methodological issues, see: Appendix C).

Sources of Data

1. The following quantitative data were obtained from Ontario Legal Aid and Refugee Law Office (RLO) files:

?? Annual operational budgets of the Refugee Law Office, 1994-2000

?? Annual expenses for Legal Aid—Immigration and Refugee Cases, including fees for certificates, disbursements, and operating costs of the Legal Aid Plan (1997-2000)

?? Country Reports (disposition of cases) from the Immigration and Refugee Board for Toronto, Ontario, and Canada (1997-99)

?? Judicare costs for individual certificates (1997-2000)

?? RLO record of intakes by referral source (1999-2000)

?? Legal Aid refugee certificates awarded—open and close dates (1997-99)

2. In addition, samples of individual client files were obtained from the RLO and private lawyers. Cases were selected to represent high, moderate, and low volume refugee-producing countries and then matched (to the degree possible) for country of origin and fiscal year opened.

?? RLO case files (1997-2000)

?? Legal Aid judicare files (1997-2000)

3. The final source of data was interviews with key stakeholder groups. Not included were individual clients. While clients of both the RLO and the private bar contributed valuable insights to the previous evaluation of the RLO pilot project, there were practical constraints that precluded a meaningful contribution here. The key value of individual input would have been to determine any changes in perception since the previous evaluation. However, there was neither the time nor the resources to identify and interview a sample of clients who had received services from the RLO and the private bar between 1997 and 1999 that were comparable to each other and to the previous sample. Interviews were conducted with representatives from the following categories of stakeholders.

?? **Nongovernment, community-based organizations serving refugees and**

immigrants. Using the United Way list of community organizations, we selected twenty organizations from among community organizations in the Greater Toronto Area to ensure that a range of client groups was included. Organizations selected included those serving specific ethnic groups (e.g., Afghanistan women), broad geographic regions (e.g., South East Asia), specific languages (e.g., Spanish), all new arrivals (e.g., COSTI), and general community (for example, Covenant House). Organizations were sent a written request with a description of the review and a list of questions. The principle researcher or the research assistant conducted interviews with the 12 organizations who responded to the request, using a semi-structured interview format over the phone or in person.

?? **Judicare lawyers providing refugee legal aid.** An alphabetical list of

refugee lawyers who had filed claims in 1999-2000 was divided into 10 groups. From each group, we identified six lawyers, with the goal of ensuring a range of practice patterns was included in each group. From each group, we identified three refugee lawyers who specialized in one country (e.g., China); three refugee lawyers who dealt with a very diverse population (representing, for example, up to 18 different countries); and two lawyers for whom refugee legal aid represented less than 10% of their

caseload (only 2 or 3 clients a year). The final sample consisted of 75 lawyers (five had moved or discontinued refugee practice). There were 40 lawyers who participated in the full interviews; each was provided with a list of questions prior to the interview. The principle researcher or the research assistant conducted all interviews, using a semi-structured interview format, either in person or over the telephone.

?? **RLO lawyers and paralegals.** Four lawyers and three paralegals were interviewed. One of the lawyers was an experienced refugee lawyer who had recently joined the RLO and was able to provide a very useful perspective on differences between the staff and judicare environments. One of the paralegals had been with the RLO since it opened in 1994 and offered valuable insights on changes in the RLO in response to changes in Legal Aid, the IRB, and the refugee communities.

?? **IRB Members.** The principle researcher conducted interviews with the Assistant Deputy Director and the six Coordinating Members of the IRB who served as the regional team leaders. Members were provided with an outline of the goals of the review and a list of questions prior to the interview. All interviews, except one, were conducted in person; the remainder was conducted over the phone.

Findings

Hypothesis 1 was overwhelmingly supported by the interview responses and the information obtained from the case files.

Stakeholders felt that the RLO provided exemplary quality legal services for refugee claimants, facilitated the refugee determination process of the CRDD, contributed to the quality of services provided by the private bar, and contributed to the ability of community organizations to serve refugees.

The following sections discuss quality of service from three perspectives: members of the Immigration and Refugee Board, nongovernment community-based organizations serving refugees and immigrants, and case files from the RLO and judicare lawyers.

Members of IRB

Interviews were conducted with the Coordinating Members of the Immigration and Refugee Board who serve as the team leaders for the six geographic regions. The members varied as to the amount of direct contact with lawyers from the RLO. While some were personally very familiar with the RLO lawyers, others could not recall having presided at a case in which the RLO were present. However, all of the members were aware of the RLO at least through

the members of their team, if not directly. Members were asked several questions, in particular:

?? their perceptions of the RLO

?? their perception of the performance of the RLO in comparison to the private bar

?? the value that the refugee staff office contributes to the overall quality of refugee legal aid.

Not all of the Board Members reported direct observation of the RLO lawyers. However, all of the members interviewed believed that the RLO provided the highest quality service. As observed by one Board Member, the RLO lawyers had a reputation as being “among the best refugee lawyers in Ontario”. They were cited as “consistent in performance with the best private bar lawyers” and better than the average refugee lawyer. According to one Board Member whom the RLO had appeared before, “the issues brought forward are always legitimate,” and this facilitated the hearing process. “If the RLO presents a series of arguments, we have faith that the issue has been well researched and likely to be legitimate.” Moreover, because the arguments were felt to be well substantiated, often with evidence that had not been brought forth by others, it increased the knowledge base of the Board Member.

The RLO also received high praise for preparing clients. In contrast to clients of some private bar lawyers, RLO clients tended to be more aware of what to expect from the hearing and more familiar with the issues to be discussed. Again, the contrast was between the RLO and those private lawyers who were less capable and not those who were average or above average. A couple of Board Members responded that they did not understand how some of the judicare lawyers could actually prepare the number of clients on their roster. In a few cases, said one Board Member, it was “clear that the lawyer and the client had only just met in the waiting room.”

Another Board Member who dealt with cases from countries with substantial refugee population, when asked to compare the RLO to lawyers to those who represented large numbers of these claimants, responded that the RLO was at least as knowledgeable as the most experienced of the private bar. Moreover, Board Members expressed no concerns with paralegals representing claimants in expedited cases. Board Members familiar with the paralegals at the RLO believed they were preferable to most of the consultants representing clients and on par with some lawyers.

None of the managing Board Members interviewed had any reservations about the RLO nor were they aware of other Board Members having performance issues with the RLO. The unanimity of opinion compares favourably with responses from the IRB members interviewed for the 1994-98

evaluation. In that evaluation, the RLO lawyers were regarded as superior in performance but IRB members still had some reservation as to the value of a staff office.

In contrast, the IRB members interviewed regarded the performance among private bar lawyers as quite varied. While there were some very fine refugee lawyers, there were also many that were considered poorly qualified. Some of the poor performers were not lawyers but consultants or paralegals; however, some were also lawyers. The key concerns were the lack of preparation, lack of timeliness with required submissions and documents, caseloads that were too large to permit timely scheduling of cases, and poor preparation of clients. In some cases, it was obvious that the lawyer did not appropriately brief the client. There were a few examples of lawyers apparently having met the client just prior to the hearing, in the waiting room. While some of the Board Members felt there were no major changes that needed to be made to the provision of legal assistance to refugees, some felt that pre-qualifying lawyers and especially non-lawyers who provided legal assistance to refugees would be valuable.

The IRB Members were concerned in particular about applicants who had managed to submit applications with no real access to legal assistance. It was difficult to serve these clients appropriately since many did not sufficiently understand the determination process nor were they appropriately prepared to

present their cases. In some instances, the RCO has had to serve as both advocate for the client as well as support to the hearing process. This does not adequately serve the client.

When asked, the Board Members responded that the RLO does help to establish a benchmark for refugee legal assistance, and they could, perhaps, do more. Issues brought forward by the RLO were considered to be legitimate and well researched and often helpful to the Board in its interpretation of issues. The RLO could play a valuable role, given its resources and time, in developing and presenting “test” cases of novel claims or challenges to the definitions of convention refugee status. The RLO could also play in a role in training other refugee lawyers. Finally, the RLO could serve as a support to private bar lawyers in providing materials, research, and consultation.

While there was no consistent view with regard to how RLO services should be expanded, if at all, no one felt that the best use of the RLO was to handle “routine cases from high volume countries.” Perhaps the broadest consensus was that the RLO model could be expanded to include more lawyers and to serve more applicants, perhaps in another location.

In summary, based on feedback from the IRB, the value of expanding the RLO is not just the availability of more skilled lawyers to serve the refugee claimants, but increased opportunity for the RLO to improve the overall quality

of refugee legal services. They should be more available to do test cases and appeals, to make their materials and arguments available to other stakeholders, and to train and support the lawyers in the private bar. However, as noted by the Pilot Sub-Committee, the RLO needs to handle a certain volume of direct claims as well as test cases in order to be effective. Therefore, to truly benefit from the capabilities of the RLO, there would need to be more full-time lawyers on staff who can help assure both the delivery of service to clients and also the transfer of knowledge to the rest of the legal community.

Perceptions of Community-Based NGOs

Overall, there was strong support for the RLO among most of the community organizations serving refugee communities. The most positive endorsements came from those organizations dealing with a variety of ethnic groups (such as COSTI) and those providing services to the most distressed (for example, the homeless or victims of torture or abuse). Approximately 20 community-based nongovernment organizations that serve refugee and immigrant populations were approached to provide feedback about the RLO. There were 12 organizations that participated in an interview process (see: **Table 1**). Of these, 25% (3) served almost exclusively Asian populations; 8% (1) served Spanish-speaking populations, 17% (2) served refugees and immigrants from African countries, and the remaining 50% (6) served immigrants and ethnically

based communities in addition to refugees. Most of these organizations provided social support, language classes, and work-related services. None of them reported providing legal assistance. Most of the organizations, 83% (10), provided some interpreter services; most of which was provided through in-house staff, although a few used interpreters on contract.

Of those interviewed, about 83% (10) were aware of the RLO and its services. This is slightly less than the awareness rate we recorded during the evaluation of the pilot project for 1994-97, whereby 92% were aware of the RLO. This decrease may be a difference in sampling or it may reflect the fact that the RLO has not invested in the same amount of time community outreach as it did when it was set up. The importance of outreach is demonstrated by the fact that of the NGOs aware of the RLO, 100% said they referred clients, and this is an increase from the 75% who referred in 1994-97. As shown in Table 2, the RLO relies heavily on referrals from the NGOs, even for those countries from which they attract the most clients. About one-third of Albanian and Yugoslavian referrals are through the multicultural organizations or the NGOs serving European immigrants, and about 40% of the Afghanistan and Angolan clients come through the community organizations serving African communities.

The primary reason given by community organizations for preferring referrals to the RLO over the private bar was the consistent quality and high level of service provided to the clients. With the RLO, community agencies felt

that there was “no concern over the amount of time that could be given to clients.” Moreover, according to one respondent, “the staff office is better because they don’t charge clients for any of their services while some of the private lawyers will.” A couple of the multi-ethnic organizations were particularly positive about the “level of knowledge” at the RLO. “They are all professionals and you can rely on their advice. With some of the other lawyers, you don’t know how much they really know, especially if they don’t do much refugee work.”

One of the counsellors at a downtown service organization credited the RLO with providing her with the education and support to better serve their refugee clients. “In the beginning, we relied on the RLO a lot. When we had a client who might be eligible for refugee status, we either sent them [to the RLO] or, sometimes, we asked [[the RLO] to come and talk to us here. Now, I feel like I am much more able to help our clients and we don’t have to call on [the RLO] as much.” Several organizations indicated that they consulted with the RLO for on-going advice regarding their clients. “A couple of times, even though the clients had another lawyer, we called the staff office to check out some advice our client had been given, or to just get another opinion. They were always very helpful.”

Finally, a couple of NGOs who served a broad clientele, of which only a portion were immigrants or refugees, mentioned that they were particularly

pleased that the RLO was able to help clients with other matters, including “the paperwork”, applications, and other legal advice. The RLO was available following a case to help with matters such as the application for landed status.

Table 1 presents the feedback regarding the perceived quality of service provided by the RLO from the organizations interviewed. The largest percentage, 42%, (5 respondents) felt that the RLO had provided good to excellent services while 17% (2) gave it a negative rating. A very small percentage, 8% (1 organization), believed that the RLO was about the same as the private bar.

The negative perception of the RLO was due primarily to concerns about language capabilities. One organization serving clients from Africa observed that the RLO did not have the in-house language capabilities of the client group, and the organization would choose to refer clients to a lawyer with the ability to deal directly with clients in their mother language. Interestingly, the RLO had recently hired a paralegal who spoke the language in question but the NGO was not aware of this fact. The remaining third (4 organizations) of those interviewed claimed not to have first-hand knowledge about the RLO, even if they knew of clients who had used the RLO, and therefore declined to evaluate the quality of services.

To summarize the evaluative feedback, despite the fact that the RLO accounts for only 3% of all refugee cases, more than half of the community organizations interviewed believed the RLO was a better choice than the private bar in terms of quality of service. The reasons offered for preferring the RLO were that the RLO staff were more flexible and more readily available and they had more time to spend with clients. The RLO was also perceived as more knowledgeable about refugee clients as well as the ethnic communities served. There was clear concern about the lack of time provided to clients through many private lawyers. Those who favoured the private bar mentioned the importance of clients' having a choice of counsel and importance of lawyers' being able to speak the same language as the client.

The NGOs that spoke most strongly for the RLO were the multicultural agencies that served many different ethnic communities as well as the community-based service organizations that served low-income and other persons in need, not just immigrants and refugees. The groups serving a single ethnic community were less likely to refer to the RLO and less likely to believe they were a better option than the private bar. These biases are reflected in the referral patterns to the RLO. As presented in Table 3, 31% of 1999-2000 RLO referrals came from community organizations; however, these 69 clients came from 27 different countries. Many of their referrals come through organizations like Covenant House that serves low-income individuals, COSTI, which

provides resettlement services to a wide variety of immigrants and refugees, and the Canadian Center for Victims of Torture, which has the capacity for support to individuals from many ethnic backgrounds.

The community organizations that had working relationships with the RLO spoke strongly about the value of services received. There was a direct contribution in educating the clients as well as support to staff in dealing with issues related to refugee application. The RLO filled a gap that existed in support to organizations serving refugees. Nevertheless, while it would be easy to suggest that the RLO increase its community outreach, there is a cost to this activity. In the absence of legitimacy for this outreach function, the RLO runs the risk of being indirectly penalized when they are compared with the private bar in terms of overall global costs.

In summary, the RLO has made a positive impact on refugee-serving organizations, , despite the fact that it consists of a single staff office serving less than 3% of all refugee claimants in the province. To make this service truly accessible to the community, it would be important for the RLO to have a “community outreach and service function” recognized not only in their mandate but also in their budget allocations. Dedicated personnel time to community service, as well as other resource supports, would allow the RLO to provide the service effectively, in the same way as personnel time is designated for the detention review component of the RLO.

Review of RLO and Judicare Case Files

Approximately 90 RLO case files (representing 25% of approximately 400 cases completed) and 200 judicare files (representing approximately 1.5% of 1400 cases completed in fiscal years 1998-99 and 1990-2000) were reviewed. These were obtained by request from the RLO and Legal Aid as well as individual judicare lawyers. The goal was not to exact a point-by-point comparison of case preparation but to identify overall patterns in the delivery of services. In particular, the files were examined for a number of indicators of quality. These indicators were identified by all stakeholders in the 1994-98 evaluation (including experienced lawyers, IRB members, and refugee applicants) as the key indicators of thoroughness in the preparation of a case and effective preparation of clients. We did not attempt to compare the quality of legal arguments or justifications for claim. Moreover, we chose not to use case outcome, that is, whether the applicant attained refugee status as an indicator of quality, primarily because there are many factors that can influence “successful outcomes.” In particular, if a greater percentage of RLO cases (as compared to the percentage of judicare cases) consisted of difficult and complex claims, it is likely that they would achieve a lower acceptance rate, despite the quality of preparation or the quality of the arguments. The following were the indicators used.

- ?? Preparation of PIF (comprehensiveness, uniqueness, length)
- ?? Comprehensiveness of supporting documents
- ?? Consultations, including client examinations and expert testimonials
- ?? Notation on preparation of client
- ?? Follow-up with client.

In addition, the following quantitative data were examined:

- ?? Number of days case remains open.

Description of Private Bar Lawyers

The majority of the lawyers who responded to our request for interviews spent most of their time on legal aid and refugee cases. Thus, the sample over-represents lawyers who specialize in refugee legal aid and under-represents those who provide refugee services on an occasional basis. On average, lawyers reported that about 80% of their casework were legal aid cases and about 70% of the cases consisted of refugee claims. Most refugee lawyers accepted clients from only a few countries, on average, 3.4 countries per lawyer. This pattern is much more restrictive than was noted in previous years. Lawyers reported

feeling pressured by the tariffs and the hearing schedule to achieve economies of scale and to limit the time spent in preparing cases.

Most of the lawyers interviewed appear truly committed to serving their refugee populations. The majority of those interviewed appear to provide services knowing that they will not be reimbursed for all of the time spent. They tend to take on very large caseloads; a few lawyers will accept over two hundred new referrals in one year. Most function as sole practitioners and do not derive any benefits of a group practice, such as sharing equipment and country files or even consulting with one another on cases. There appear to be fewer referrals from one lawyer to another than were taking place in previous years.

Review of Case Files—RLO and Private Bar

The files from the RLO represented a consistently high quality of preparation, on par with those of the best judicare lawyers and considerably more comprehensive than those of the majority of the private bar. The quality of the private bar files, reviewed varied considerably from lawyer to lawyer whereas all of the files from the RLO were consistent in terms of:

- (1) individualized case details;
- (2) country documentation;

- (3) use of consultation and expert witness testimony;
- (4) breadth of issues; and
- (5) thoroughness in developing and presenting cases to the client and to the Board.

?? The PIFs prepared by the RLO tended to be longer and contained more individually specific references than did those from the private bar. In several cases, private bar lawyers had prepared PIFs that were almost identical from one client to another. The basis for claim was similarly worded and the supporting information drawn heavily from fairly general sources, such as newspaper articles. Individual statements were sometimes similarly worded.

?? The comprehensiveness of documentation, including country research, varied widely among the cases from the private bar, and this makes it difficult to arrive at an overall generalization based on the files reviewed.. On the other hand, it was evident that the documentation from the RLO was consistent and complete in all files reviewed. At times, this appeared to require considerably effort on the part of the RLO staff to obtain information through a variety of sources. This may also help explain why some cases took longer through the RLO than through the private bar. Comments from the IRB members support the perception that the RLO does an exceptional

job of preparing and documenting cases, whereas this was clearly not true for all of the private bar lawyers. While most of the lawyers included the “standard” country file as well as up-to-date, client-specific, localized information, some included only the country files. In a few cases, IRB members reported that hearings were postponed until additional documentation was produced.

?? From a sample of 25 RLO cases representing five countries (Czech Republic, Mexico, Pakistan, Afghanistan, and Nigeria) and 50 “matched” private bar cases from 27 lawyers, we found that the RLO commissioned an average of 3.1 supporting reports while the private bar had requested, on average, 1.8 reports. In addition, there were, on average, 3.0 pieces of identification filed for each client from the RLO and 2.2 for the private bar. Thus, the RLO files reviewed appeared to include almost twice as many consultation reports as did those from the private bar. The RLO files included reports from consultants in Canada as well as experts from other countries. In addition, more RLO files included examination reports from physicians or social workers than did files from the private lawyers.

This difference may be attributed, in part, to the nature of the cases referred to the RLO. The RLO, in comparison to judicare, appears to handle a greater percentage of cases where clients had suffered mental anguish or had been sexually abused, in addition to suffering physical abuse and

torture. These types of claims are generally more difficult to substantiate and require more expert consultation and examination. However, even if we were to take into account case difficulty, the RLO cases would still include more expert opinions and consultation reports.

?? Some of the private bar lawyers whom we had interviewed in the pilot evaluation had been quite active in handling complex cases or developing test cases. All of them reported that it had become increasingly difficult to give such cases the amount of time required. Many of the best lawyers that we had interviewed for the evaluation of the RLO pilot project indicated they were doing very few refugee cases or no longer providing refugee legal assistance because there was not enough time to do adequate preparation. Others tended to specialize in a few countries where they were able to develop a library of country files and background documents. Newer refugee lawyers serving high-volume countries like China or Nigeria were able to develop “prototypical” case files to cover a number of different types of claims. Some indicated they did not have the in-house resources to follow up on individual consultations and examinations; others delegated these responsibilities to an assistant or interpreter.

?? Preparation of clients. The RLO clients received more hours of consultation and preparation, in part, because they had access to both lawyers and paralegals.

However, the amount of time allocated to preparing the client has decreased for both the RLO and private bar, in comparison to the evaluation review of 1994-97. The client experience of larger caseloads and fewer case preparation hours was “difficulty in contacting” their lawyers and “not enough time” with their lawyer. In many of the offices, there is not even a full-time receptionist; as a result, clients could only access the lawyer’s answering machine. This has created frustration for the client and has also affected the quality of preparation and representation. Interestingly enough, the private bar’s case files suggest that they are providing as much preparation time as the RLO and, in some cases, more time. In general, private bar lawyers report one or two meetings to prepare the client for the hearing. The billing submissions from all of the lawyers indicate that they are personally involved in preparing the clients for hearing. Nevertheless, the concerns raised about the lack of time from the private bar lawyers were not expressed by clients of the RLO. This may be due, in part, to the fact that the clients can often get time with the paralegal or are able to reach an administrative staff member who can answer their questions or take a message.

In terms of follow-up, both the private bar and the RLO appear to be providing less individualized follow-up and additional services than previously. In some cases, the lawyers reported that the services were being provided but not documented or billed. In the RLO, the service provided by the

lawyer or paralegal may be supplemented by support from the administrative staff. In all cases, the RLO appears to have more flexibility to provide additional follow-up and support. These are valuable services for refugee applicants. If lawyers do not have the capacity to provide them, the activities fall upon the community organizations, which may not be as qualified to follow through.

The files were also analyzed to compare the number of days that the case remained open. The assumption is that cases that are well prepared can be heard expeditiously, requiring fewer delays and resumptions. A key factor contributing to delays is the fact that lawyers are often not prepared. If the lawyer has done the appropriate country research, obtained all of the necessary documentation, and has adequately prepared the client, the case can be heard with minimum delay. Table 4 compares the number of days a case remained open for a sample of 75 cases, matched for country of origin and time of filing, selected from the private bar and from the RLO. There were 11 countries represented, including cases from high-acceptance countries like Afghanistan and Yugoslavia and lower-acceptance countries like Mexico and China. The other countries represented in the sample were Cuba, Ethiopia, Hungary, Nigeria, Pakistan, Russia, and Somalia.

On average, the RLO cases were completed in 297 days while the private bar cases remained open an average of 370 days. On a country-by-country basis, the RLO cases took less time for 10 of 11 countries. The only exceptions were the

cases from Pakistan, which took the RLO 387 days, on average, to complete and the private bar, 364 days. For other countries, the RLO was sometimes much more efficient. Timeliness also represents less cost to the system, because refugee applicants without a clear indication of status are supported in Canada for shorter duration of time. Thus, there are potentially large savings as a result of being able to bring a case to completion in a shorter period of time.

In summary, the RLO provides a consistent, comprehensive and thorough preparation of all cases. This is not always the case in the private bar. While there are many private lawyers who also provide excellent services, they report that it is increasingly difficult for them to be comprehensive under the current tariff restrictions. Moreover, there are many private lawyers who have been able to function under the current billing restrictions by handling large numbers of cases, developing prototypical case files, and specializing in only a few countries and, in some cases, certain types of claims. The RLO continues to provide a benchmark in terms of both quality and quantity of services, as well as a standard for research, documentation, and consultation that is not restricted by pre-established limits, and this information should be extremely useful to the Ontario Legal Aid Plan in establishing its limits for tariff hours and disbursements.

Hypothesis 2: The RLO operates cost-effectively relative to the private bar by developing an appropriate caseload and case mix, along with value-added services.

This review, which focuses on performance from 1997 to 2000, shows that the RLO has improved operating effectiveness to bring it in line with the private bar.

?? The number of intakes has been increased to a level that optimizes available lawyer and paralegal time.

?? The case mix includes “high volume” cases that allows for economies of scale in addition to “low-volume”, novel, or test cases that require additional time for research and preparation.

?? The RLO provides value-added services, such as legal assistance to those awaiting detention reviews, that could not be provided cost-effectively through the private bar.

?? The RLO has reduced overhead costs by reducing office size and the number of permanent staff.

Case Mixture

Canada's refugee applicants come from a large number of countries. In 1998-99, the Immigration and Refugee Board heard cases from 148 different countries. However, a large percentage of applicants applying for refugee status came from only a very small number of countries. As shown in Table 5, based on data from Legal Aid for 13723 refugee applicants who qualified for legal aid from 1997 to 2000, almost half (48%) of the judicare referrals came from just six countries. Moreover, 31% were from just two countries, Sri Lanka and China. Conversely, less than one-fourth of refugee applicants were classified as coming from "other" countries, a category comprised of more than 120 countries, each with (generally) only a small number of applicants.¹

The situation for the Refugee Law Office is quite different, with lawyers seeing clients from a disproportionately large number of countries. In the same three years, according to Legal Aid data, the RLO accepted almost 40% of its clients from "other" countries and only 34% from the most six frequently represented countries. Table 6, which focuses on 1998-99, shows the trend toward greater specialization on the part of the RLO and slightly less concentration of cases overall. Half of judicare clients came from six countries and only one-fifth from more than 70 other countries. For the RLO, 38% were

¹ Included in the "other" category are a few countries, like Hungary and Djibouti, that have a large number of applicants but were not identified separately because the influx of refugees was unexpected.

identified as coming from the six most frequently represented countries, while an equivalent number (37%) represented the “other” category.

Table 7 presents the 1999-2000 distribution of intakes based on the RLO’s own records. These data suggest that the RLO caseload mix may be moving towards specialization in a few countries, at one end, while retaining a considerable case mix at the other end. As can be seen, the RLO has developed a sizeable caseload for two countries: Albania (17%) and Afghanistan (10%). Moreover, there are four other countries that have a reasonably large representation, Ethiopia, Angola, Tanzania, and Mexico. None of these are high-volume countries in the overall refugee population but together account for 25% of the caseload at the RLO.

The difficulty for the RLO is that they also received single case referrals for 23 different countries and another 11 countries generated only 2 referrals each. This meant that 25% of the caseload consisted of cases for which there could be considerable research and preparation.

What one can imply from these data is that the average RLO lawyer must develop case files for many more countries than does the average judicare lawyer. While some refugee lawyers do handle clients from up to 18 countries², a review of billing records showed that a majority of the top billing judicare lawyers accepted clients from only three to four countries. In contrast, of the 223

cases received by the RLO in 1999, there were 52 different countries represented. This translates into 20.8 countries per lawyer (based on 2.5 full-time equivalent lawyers at the RLO). A significant amount of time is allocated to preparing country files, establishing contacts with informants and experts, understanding local conditions, and developing cases.

Intakes

The number of new files opened by the RLO is dependent, in part, on the number of lawyers available to receive applicants and the overall number of new refugee applicants to Canada. In the past two years, the RLO has been able to increase the number of intakes, despite a decrease in overall staff. This has greatly improved the overall cost-effectiveness of the office on a cost-per-case basis. As shown in the following table, with four lawyers and six paralegals, the office opened 205 cases in its first year of operation and increased by 10% to 225 cases in 1995-96. There was a significant decline in the next two fiscal years, to 140 and 151 new cases, respectively, reflecting an overall decrease in new refugee cases as well as a reduction in staff. In 1998-99, intakes increased back up to 183 (an increase of 22% over the previous year) and in 1999-2000, there were 266 files opened, reflecting an increase of 45%.

² Legal Aid data for 1998

Refugee Law Office Intakes

1994/95 to 1999-2000

Fiscal Year	Number of Intakes	Intakes per Lawyer
1994-95	205	58.6
1995-96	225	64.3
1996-97	140	56.0
1997-98	150	60.0
1998-99	183	73.2
1999-2000	266	106.4

Overall, this office has achieved a significant increase in new intakes per lawyer. While staff is under considerable pressure, the caseload appears to be managed extremely well with no decline in service. Obviously, experience and a balance of cases to include some countries with “high-volume” caseload have helped. However, it appears as if the office is operating at full capacity and it is unlikely that the caseload could be increased comfortably without additional staffing.

Comparison of Total RLO and Judicare Costs

Table 8 compares the total costs and the cost per case for the RLO and judicare for 1994-95, 1998-99, and 1999-2000. In its first year of operation, the total operating costs (not including Legal Aid administration) for the RLO was \$812,637, or \$3,061 per case (based on an estimate of 200 cases). For judicare cases, the total costs were \$24,498,520, which included \$1,084,842 as the refugee component of the costs for administration of legal aid. There were 10,371 cases completed that year, for an average cost of \$2,142 per case. This figure was approximately 43% lower than the cost per case for the RLO for the same period. The comparisons are not exact since the RLO figures are based on operating costs and number of intakes and the judicare portion based on accounts paid and number of completed cases. Nevertheless, these figures provide an approximate comparison of relative costs.

In 1998-99, the caseload for the RLO was again approximately 200; however, salaries were lower for two reasons. First, the number of staff had been reduced from four lawyers to three and from six paralegals to three. Second, the staff office also provided other non-case-specific services. Both lawyers and paralegals spend time on noncase-specific activities, such as, interviewing refugee applicants for the Toronto Area Office regarding their potential eligibility for legal aid; developing country files for private bar lawyers (including lawyers on the panels for Nigeria and Mexico); developing test cases;

providing advice to community organizations; and the usual meetings and administrative work including legal assistance to immigrants and refugees awaiting detention review at two sites in Toronto. Overall, it was estimated that approximately 30% of RLO time was spent providing non-certificate services; hence, only 70% of the total RLO expenses are allocated to refugee cases. The total budget for refugee services, then, was \$434,027 for 1998-99, with an additional \$72,884 included as the RLO portion of the overall costs for Legal Aid administration.³ Total costs were \$506,911, which resulted in a total cost-per-case (based on 200 cases) of \$2,535.

In comparison, the private bar costs for refugee legal aid were \$10,756,651 for 1998-99, with an additional \$1,809,350 allocated for its share of legal aid administration. The total cost was \$12,566,001 for 6,764 completed refugee case files. This resulted in a cost per case of \$2,031, approximately \$500, or 25%, less than the cost-per-case for the RLO. The expenses for 1999-2000 are based on preliminary data. However, they indicate that the RLO is approaching the cost-per-case of the private bar. This is due, primarily, to an increase in new cases. The expenses allocated to refugee cases are approximately \$481,835; the legal aid administration has been maintained at the same figure, resulting in a total expenditure of \$554,719. Based on 266 new cases, the cost per case for 1999-2000 is \$2,116, more than \$400 less than the previous year.

³ The components that make up the administrative costs are Provincial Office Administration

The costs for the private bar are approximately the same as the previous year, with total expenditures of \$13,240,872 for 7,881 convention refugee cases.. The cost-per-case was calculated at \$2,021, and this was only \$95 less than the RLO average cost-per-case, or less than 5%.

Costs Attributed to Overhead and Administration

The Refugee Law Office opened in March 1994 with four lawyers and six paralegals. (The plan has been to add two additional lawyers as the caseload increased.) Table 9 presents the overhead costs (facilities and administration) of the RLO and private bar (OLAP) as a percentage of total costs for 1994-95 (the first year of RLO operations) and 1999-2000 (the most recent year included in the review). In 1994-95, overhead costs (including rent, utilities, office administration, and personnel development) accounted for about 9% of the RLO's total operating costs (\$72,826 out of total budget of \$812,637). In contrast, overhead costs for the refugee portion of administration of the Ontario Legal Aid Plan (based on percentage of legal aid cases that are refugee applicants) accounted for only 4.4% (\$1,084,842) of the total refugee legal aid budget of \$24,498,520.

In an attempt to reduce overhead costs, the number of lawyers was reduced from four to three lawyers, and the number of paralegals was reduced

Expenses, Area Office Expenses, GST, Research Facility, and Quality Assurance.

from six to three. In addition, the office was moved from its original location to space adjacent to the Toronto Area Office. There were two goals for the move: to increase referrals from Legal Aid and to reduce the overhead (smaller office spaced managed by Legal Aid). While the former goal was achieved, the latter was not.

The overall budget decreased primarily as a result of the reductions in personnel, resulting in a drop in salaries from \$655,453 to \$499,520 (which included an increase of one-half time lawyer for detention cases). However, the overhead costs actually increased by almost 50% to \$106,307, so the overhead costs for 1999-2000 rose to 15.4% of the total budget. Chart 1 illustrates the changes in each component of case costs for the RLO and OLAP from 1994/95 to 1999/2000. As can be seen, all costs decreased with the exception of overhead. Fortunately for the RLO, the administrative costs of judicare have also increased. The refugee portion of legal aid (judicare) budget has declined by almost one half to \$9,477,200; however, overhead has increased by nearly 50%, to \$1,490,000. Thus, overhead now represents 11.7% of the refugee legal aid judicare budget. The increase in overhead was attributable, in part, to the fact that the total number of legal aid certificates declined and a larger portion of Legal Aid administrative costs was allocated to the refugee component.

While the actual amount attributed to overhead is small, overhead continues to represent a barrier toward cost-effectiveness for the RLO compared

to the private bar. There are many fixed costs associated with operating an office, only a portion of which is rent and utilities. Thus, the move to smaller offices has not had much impact on overhead and, in fact, has limited the ability of the RLO to function as efficiently as possible. There is no waiting room and very little room for library and files. The lack of space limits the ability of the RLO to expand its service component.

Caseload

As noted previously, lawyers can gain significant efficiencies by serving a large number of clients from the same country. The best way to achieve this is through referrals from those affiliated with specific ethnic groups: previous clients, interpreters, or ethnic organizations. In the evaluation of the pilot project, most refugees indicated that they chose their lawyer based on recommendations from personal sources, that is, previous clients, family members, or friends. (For additional discussion of referrals to RLO, see: Appendix D)

About 90% of those interviewed had been in contact with a lawyer prior to their application for legal aid through the Legal Aid Office. Hence, the RLO could not rely upon Legal Aid for referrals. The increase in caseload at the RLO can be attributed, in part, to an increase in referrals from previous clients and community organizations. However, it is still not receiving personal referrals at

the same rate as the private bar. As shown in Table 10, about one-third of the RLO intakes are through community organizations and only 15% through Legal Aid. However, only 13% of the RLO intakes are through previous clients, whereas more than half of the referrals to the private bar are from previous clients or other personal sources.

It was expected that the RLO would need a period of time to achieve optimal efficiency, that is, to receive sufficient referrals to keep the office fully occupied.

A complicating factor, however, is the fact that during the period of time that the RLO has been in operation, Legal Aid has cut the maximum number of judicare hours several times. The net result has been a reduction in billable hours by more than 50%, from a maximum of 39 preparation hours in 1992 to only 16 hours in 1996. From an evaluation perspective, it has been extremely difficult to evaluate the quality and cost-effectiveness of the RLO when the standards of comparison are constantly shifting.

Another approach is to consider the number of clients that the RLO would need to match the cost per case of the private bar. Table 11 presents the equivalent number of intakes required of the RLO for 1994 and 1999 to achieve cost effectiveness with the private bar. In 1994, the expenditures for the RLO were 3% of the expenditures for judicare refugee certificates while the number of

RLO cases was only 2% of the total CRDD caseload. Therefore, in order to achieve parity in terms of cost-per-case, with a staff configuration of four full-time lawyers providing 3.2 full-time equivalents⁴ and six paralegals would have required a caseload of 344 cases or 108 cases per full-time equivalent (FTE) lawyer.

With staffing reduced to three lawyers (2.5 FTEs) and three paralegals in 1998, the RLO could have achieved equivalent cost-per-case with the private bar if the maximum number of billable hours and the average cost-per-case had remained at the same level as in 1994. However, when the maximum number of preparation hours was reduced to 16, the RLO would have had to receive 330 referrals in 1999 in order to match the private bar cost-per-case. This means a caseload of 132 clients per lawyer and 110 clients per paralegal. This translates to almost 2.8 hearings per week for each lawyer.

In reality, for fiscal year 1999-2000, the number of intakes had increased to 266. This represents 106 clients per lawyer and 89 clients per paralegal, which is still a significant caseload. For the lawyers, 266 intakes translate into 2.2 hearings per week, which is manageable if some of the clients are expedited (no hearing) and some of the cases are assigned into the “short hearing” track. In other words, a significant number of the clients must come from countries where the conditions clearly fit the definition of convention refugee (acceptance rate is

⁴ 3.2 FTEs providing legal services and 0.8 FTE allocated to administration

high) and the RLO has handled enough cases to have country files and background documents in house. The primary task for the lawyer is to prove the identity and credibility of the client.

In conclusion, for 1999-2000, the RLO has increased its cost-effectiveness to approximately the same level as the private bar, despite the fact that the number of billable hours available to the private bar has declined. The RLO is specializing in a number of countries, a few of which have a relatively high acceptance rate, and this has allowed it to prepare cases in less time without any sacrifice in quality of service to these clients. Moreover, the office provides value-added services that could not be provided cost-effectively through private lawyers, such as legal assistance to detainees. This has contributed to the overall benefit of a staff environment. Finally, the RLO has continued to serve refugees from “low-volume” countries and to develop cases for novel and complex cases. By making this information available to the private bar lawyers, the RLO can contribute to the overall cost effectiveness of refugee legal services.

Direct Costs Per Case (Hours and Disbursements)

The RLO has clearly increased cost-effectiveness by reducing average case preparation time. Table 12 presents the breakdown of hours for different categories of case preparation for a sample of RLO and private bar cases for each fiscal year from 1995/96 to 1998/99. These data are derived from a review of

individual case files matched for country and complexity of case. The number of cases included in the sample range from 35 (RLO 1998/99) to 202 (OLAP 1996/97).

Table 12 presents the combined number of lawyer and paralegal hours used by the RLO to prepare a case. There has been a significant reduction, from an average of 65.9 hours in 1994/95 to 27.4 hours in 1998/99, a reduction of 58%. The impact of caseload is perhaps most clearly reflected in the change from 1995/96 to 1996/97 when the number of paralegals had been reduced by three and the number of lawyers reduced by one. In particular, there has been significantly less time allocated to preparing the PIF (from 16.1 hours to 4.9 hours) and less time spent preparing the case for hearing (from 34.1 hours to 8.9 hours). Moreover, there has been a reduction in time spent on country research, from an average of 4.6 hours per case in 1996/97 to 2.2 hours in 1998/98. This reduction may be due, in part, to the development of a library of country files as well as a greater number of cases from a few key countries, in particular, Afghanistan, Iran, and Ethiopia.

While some of this difference reflects changes in coding⁵, most of the change can be attributed to experience and a larger caseload, which reduces the amount of preparation time required for each case.

⁵ Coding of client hours in 1995/96 and 1996/97 did not include hours spent with client prior to hearing whereas hearing preparation was included in 1997/98 and 998/99; country research was not accounted separately prior to 1996/97.

The RLO lawyers and paralegals have also significantly reduced the amount of time provided for other types of assistance not directly related to the case (for example, applying for a work permit, preparing an application for landed immigrant status, and applying for social assistance). Some of this assistance is now provided by the administrative staff, who also spend more time contacting clients and following up with appointments.

The private bar has also reduced its case preparation time but not as dramatically. Lawyers are spending less time preparing the PIF (from an average of 6.2 hours per case to 3.6) and less time on country research (from an average of 3.5 hours to 2.0 hours). Interestingly, the amount of time spent attending cases has increased, on average, from 3.5 hours in 1995/96 and 2.9 hours in 96/97 to 4.1 hours in 1997/98 and 4.3 hours in 1998/99. It is not clear why this difference is occurring, since there is no parallel increase in hearing time with the RLO. It may reflect the fact that the IRB had limited the number of cases heard through the expedited process.

The private bar has also reduced the amount of time billed for post-hearing activities as well as administration. According to the lawyers interviewed, they often cannot get reimbursed for these services. Many have quit billing for these activities; others have ceased to provide them. Certainly, in some cases, the caseloads are so large that there is no opportunity for the lawyer

to provide any additional services. Unlike the RLO, most private lawyers do not have other staff that can provide additional assistance to clients.

Table 13 provides a comparison of case preparation by the RLO and the private bar using a number of other parameters. In this table, the average number of lawyer hours and the average number of paralegal hours per case have been differentiated. Not surprisingly, the number of paralegal hours has dropped more than the number of lawyer hours, reflecting both the reduction in number of paralegals and also a change in practice. Previously, paralegals had also been used as interpreters in client meetings with the lawyers. However, with fewer paralegals, there were fewer languages represented in-house and paralegals were required to spend more time in case preparation and less time serving purely as interpreters. Using interpreters on contract has actually been a more cost-effective strategy for the RLO since interpreters are paid less than the paralegals.

Nevertheless, there has been no real increase in interpreter costs or total disbursements. In fact, costs for interpretation declined somewhat in 1998/99, from \$260 in 1996/97 to \$160 in 1998/99. This may be attributed, in part, to the fact that staff are spending, on average, less time with clients collecting information for the PIF and less time preparing clients for hearings. What is most apparent, however, is the difference between the interpreter hours for the RLO (which is not conscious of restrictions on interpreter hours) and the private

bar (which perceives limited access to interpreter hours). In 1996/97, the RLO spent about 15% more than did the private bar on interpreters. Since 1998, however, the private bar lawyers interviewed report that they do not feel they have access to sufficient interpreter hours. In 1997/98, the RLO spent almost five times as much as did the private bar on interpreters, and in 1998/99, the RLO spent about twice as much. Whether the private bar lawyers' assumptions about disbursement restrictions are valid or not, the concerns appear to have had an impact on their use of interpreters.

Table 14 provides a summary comparison of hours and fees for an approximately matched randomly selected sample of cases for the RLO and the private bar for fiscal year 1998-1999 and fiscal year 1999/2000. As can be seen, the average number of hours per case decreased to 24.1 hours, a reduction of 3.3 hours over 1998/99. However, the average number of hours for the private bar also decreased by about three hours, from 21.5 to 19.6.

Interestingly enough, however, the number of lawyer hours at the RLO has declined by more than one-third while the number of paralegal hours has increased by about 15%. And because lawyer hours are more costly than paralegal hours, the total reduction in cost for the RLO was almost 20% over the previous year, from \$1,542 to \$1,245.

In summary, because the RLO costs are made up of lawyer and paralegal salaries whereas the judicare costs are almost exclusive lawyer fees, the number of legal aid hours provided by the RLO is almost 20% more than the number provided by the private bar for approximately the same costs. The RLO provided, in average, 26.6 hours of legal services while the private bar provided an average of 21.5 hours.

Hypothesis 2a was only partially supported by the data.

If the RLO served a large number of clients from a high-volume country, it was as cost-effective as the private bar. This review found that the RLO provided quality, cost-effective services to refugees from high-volume refugee-producing countries if it handled enough cases from a particular country to derive economies of scale. However, there is no advantage or benefit over the private bar because judicare lawyers who specialize in these countries can achieve the same quality and cost-benefits.

We had proposed that dealing with refugee applications from “high-volume” refugee-producing countries was potentially a cost-effective role for the RLO, in part, because much of the work, including hearings, could be provided by trained paralegals specialized in those countries. In particular, we made the following observations.

?? The RLO does not demonstrate cost-effectiveness (equivalent hours per case) for clients from high-volume countries if they do not serve a large number of clients from that country. Examples of these countries are Sri Lanka, Somalia, and China.

?? The RLO is cost-effective if clients come from high-volume refugee-producing countries and the RLO serves a relatively large number of those clients. These countries include Iran and Zaire (the Congo).

As was shown in Table 5, the RLO deals with very few clients from some of the countries that produce a large number of refugee applicants. Thus, while Sri Lankans represented 18.2% of all refugee applicants to Legal Aid in 1997-2000, they constituted less than 2% of applicants to the RLO. Similarly, the country with the second highest percentage of applicants during these three years was China (12.7%) but Chinese refugees represented only 1.2% of total intakes for the RLO. The next two countries in terms of volume, Pakistan and Somalia, each represented 5% of the total refugee applicants; they constituted 3.4% and 2.4% of the RLO caseload, respectively.

Of the top five refugee-producing countries, only Iran had a significant representation at the RLO, and it contributed about 5% of total intakes for this period of time. The Congo (formerly Zaire) was the only other so-called “high-volume” refugee-producing country that saw a significant number of refugee

applicants go to the RLO, about 3.2% of the RLO's total intake for that period. In contrast, three of the countries that provide the greatest number of intakes to the RLO are "moderate" in terms of total volume of refugees to Canada. These are Afghanistan (9% of RLO intakes but only 2.3% of total intakes), Albania (7% of RLO intakes and 2.3% of all intakes) and Ethiopia (6.6% of RLO intakes and 1.2% of all intakes).

The RLO also had a significant number of intakes from countries that would be considered as sending a very "low volume" of refugees to Canada. These include Angola (which constitutes 7% of RLO intakes but less than 2% of total intakes for Toronto), Tanzania (which constitutes 6.5% of RLO intakes but less than 1% of total intakes for Toronto), and Belarus (which is about 3% of total RLO intakes but less than 2% of all of Toronto's intakes).

The data suggest that high-volume countries with few RLO Clients are not cost-effective for RLO. Table 15 presents the comparison of hours and costs for a sample of cases representing high-volume countries for the RLO and the private bar for the years 1997-2000. The data for the private bar are drawn from the final billings submitted to Legal Aid, and the data for the RLO are taken from the individual case files. With the exception of Iran and the Congo, the RLO tends to do very few cases from these countries. In contrast, the private bar lawyers tend to specialize in these countries; some provide services predominantly to one country. Some of the lawyers specializing in Sri Lanka or

China have more than a hundred active cases from one country. There are only a few cases included in the RLO data because the RLO had completed only a few cases from these countries in the time period of this review, 1997-2000.

Because the sample is small, it was not possible to conduct any statistical analyses, and any generalizations from the data need to be interpreted with caution. Moreover, the comparisons do not take into consideration other differences among cases such as complexity, basis for claim or number of applicants on a single certificate. However, despite these caveats, the data that the RLO is not cost-effective in comparison to the private bar for “high-volume” countries where the RLO does not have a large caseload. In particular, based on the sample analyzed, the RLO utilized significantly more hours to prepare cases from China, Pakistan, and the Congo than did the private bar.

In terms of China, we could get access to only one completed case file. In discussing other cases in progress, it appears as if this case may over-represent the number of hours required; however, the RLO acknowledges that Chinese cases are among the most time-consuming. The RLO case from China required 25.7 hours of lawyer time and 24.1 hours of paralegal time for a total of 49.8 hours, almost twice as many as the average of 25.2 hours for private bar lawyers. It is not surprising that Chinese cases require a considerable number of hours to prepare, at least initially. There are no clear pervasive country conditions that would support a claim for convention refugee status; most applications

represent individual, isolated incidents of alleged persecution or fear of persecution for political or religious activities that can require considerable research to acquire the proper supporting information. Most of the private bar lawyers serving Chinese refugees have very large caseloads; many seem to specialize in applicants from specific regions and some appear to specialize in specific types of issues.

Similarly, Pakistani cases averaged 50.4 hours of RLO time and 26.3 hours of private bar time; again, the RLO spent nearly twice as many hours as did judicare lawyers. However, because half of the RLO hours were provided by paralegals, there was a slightly lower cost differential; legal fees amounted to 43% more for the RLO than the private bar. Pakistani cases also tend to vary considerably; the bases for claim are often complex (key bases for claim are religion and political opinion) and the claims are difficult to substantiate because of need to research specific instances, local practices, and local conditions.

Finally, the two RLO cases that we sampled from the Congo indicated that the RLO provided about 36% more hours of legal assistance than did the private bar. Most of the legal assistance was from lawyers, and the cost differential was about 29%. Again, lawyers may be involved in the initial cases from a new country with more activities assumed by paralegals as the experience in the office grows, especially if the acceptance rate is good.

Acceptance rates from high-volume countries tend to be above average. In the case of the Congo, the acceptance rate is above 80%. The acceptance rates for China and Pakistan are somewhat lower but still good, about 67% for China and 60% for Pakistan in calendar year 1999.

For Somalia and Nigeria, and the differences between RLO and private bar preparation time were considerably less, with the RLO providing, on average, six hours more service to cases from Somalia and four hours more for Nigerian cases. In terms of fees, the RLO was from 5% to 15% higher. These countries are quite different with regard to country conditions, and this is reflected in the difference in acceptance rate, with over 94% of Somalian applicants accepted in 1999 and only 20% of Nigerian applicants accepted. For Somalia, the basis for refugee status has been clearly established and individual claims general revolve around identifies of the client. The number of hours of preparation is quite low in the private bar, and most cases can be prepared in the time allowed.

In summary, these data clearly demonstrate that for high-volume countries where the RLO does not have a large caseload, it is at a disadvantage in comparison to private bar lawyers. The private bar lawyers appear to develop large caseloads around these high-volume countries and to be able to derive efficiencies and economies of scale within the limits of the tariff schedule.

We conclude that high-volume countries with significant RLO clients are cost-effective for the RLO. The RLO's experience with Iran, while limited in number of cases, confirms this hypothesis. Iranian refugees accounted for almost 5% of all RLO clients accepted in 1999. The RLO has in-house personnel knowledgeable about Iran and Iranian cases and, from the beginning, has been able to attract a fair number of prospective clients. The RLO currently benefits from having a developed network of contacts, prepared country files, and demonstrated experience with difficult cases. The RLO is highly effective compared to the private in terms of Iranian cases. In 1999, the number of combined lawyer and paralegal hours was 26.5 which was 4.8 hours less than the average for the private bar lawyers. Disbursements were about 60% lower, in part, because of in-house language capabilities. Overall, the RLO case costs were about 45% lower than were case costs for the private bar.

Again, while the sample size is small, the data confirm that the RLO can be as cost-effective as the private bar if it specializes in high-volume countries. As part of on-going evaluation, it will be important to test this conclusion with more cases from other "high-volume" countries that count significantly among the RLO caseload.

Hypothesis 2b was supported by the data.

The RLO was as cost-effective as *judicare* in serving refugees from moderate-volume countries where the RLO had sufficient client base to derive economies of scale.

The data collected from countries that have a significant caseload at the RLO clearly supported this hypothesis, while the findings from countries that had a lower percentage of representation at the RLO only weakly supported the hypothesis. The countries included in this grouping were those with intakes of less than 2.5% of total applicants for refugee status. These countries provide opportunities for cost-efficiencies because they generate enough refugees to allow a few lawyers to specialize and develop modest economies of scale, but they generally do not constitute the bulk of anyone's practice. In some of these countries, the RLO has developed a specialty; in others, they do not service very many clients. Countries examined were: Afghanistan (with 2.3% of total intakes in 1997-2000 and 9% of RLO intakes), Albania (2.3% of total intakes and 7.1% of RLO intakes), Ethiopia (1.2% of all intakes and 6.6% of RLO intakes), Mexico (0.9% of all intakes and 2.2% of RLO intakes), and Yugoslavia (1.5% of all intakes and 2.7% of RLO intakes).

For three of the countries, Afghanistan, Albania, and Ethiopia, the RLO also has a significant caseload. As shown in Table 16, for every one of these

countries, the cost for legal fees appears to be lower among the RLO lawyers than the private bar lawyers. The range is from 12% lower for Ethiopian cases to 45% lower for cases from Yugoslavia. On average, the RLO was 21% lower in legal fees than the private bar. Moreover, for Afghanistan and Ethiopia, the RLO still provided more legal service hours than did the private bar, at a lower cost-per-case by allocating more activities to paralegals

Overall, the data support the hypothesis that the RLO will be cost-effective for moderate volume countries if it develops a large enough caseload to benefit from the experience gained from one case to another. Even where the caseload is only moderate, if there are enough clients to provide learning and economies of scale, the RLO can operate very efficiently.

Hypothesis 2c was generally supported by the data.

The RLO is cost-effective for low-volume refugee producing countries, regardless of the number of cases handled. The data supported the overall hypothesis of lower cost per case for low-volume countries but also indicated that the RLO spends more on interpreters and other disbursements than does the private bar for these cases.

Countries included in this category tend to provide very few refugee applicants to Canada on an annual basis, at least over the past three years.

Moreover, these countries are also not heavily represented in the RLO caseload. The only exception in this list is Hungary which, until this past year, did not provide a large number of refugee applicants but, in 1999, accounted for 10% of refugee cases referred to the IRB. Nevertheless, they are included as a “low-volume” country based on their historical data.

Low-volume or, in some cases, “orphan” countries from which very few refugees apply each year, generally require more time and effort than the high-volume cases. As discussed previously, the lawyers need to invest more time in developing a country background file, understanding the conditions in order to determine the grounds for establishing a refugee claim, developing contacts for additional information or supportive evidence (in Canada and in the country of origin), and collecting supportive documents. Novel cases often require more preparation by the lawyer as well as more time in hearings.

Amount of preparation is also affected by IRB acceptance rates, with refugee cases from “low-acceptance” countries generally requiring more work and preparation than those from “high-acceptance” countries. However, these differences do not take into consideration the fact that many “low-acceptance” cases are abandoned before going to hearing, and this tends to lower the average time and cost for cases from these countries. Acceptance rates vary greatly for this sample of low-volume countries. The acceptance rates in 1999 were 15% for

Hungary; 25% for El Salvador; 70% for Tanzania; 80% for Czech Republic, and 96% for Cuba.

In general, the RLO was more efficient in handling cases from the sample of low-volume countries examined (see: Table 17) but was not necessarily less costly overall. On average, the RLO cases cost about 2% less when only legal fees were considered but 7% higher when disbursements were included. The legal fees were lower for the RLO for every country except El Salvador. In terms of this particular case, it appears as if there were some extraordinary issues. The case was open for a very long period of time, from November 1997 to July 1999, and the basis for claim was “membership based on gender identity.” This almost constituted a test case, with close to 20 hours spent on research and another 11 on preparation of the PIF. With that exception, the RLO ranged from 4% (Hungarian cases) to 46% (Tanzanian cases) lower in legal fees than the private bar.

However, it is important to note that the RLO also spent considerably more in disbursements than did the private bar. Some of the difference is attributable to interpreter hours. There are two apparent reasons why judicare uses, on average, fewer interpreter hours than does the RLO for this sample of countries. First, judicare has limits on the number of interpreter hours that can be used for a single case, whereas the RLO does not. Second, some of the judicare lawyers come from the same ethnic background and, are able to

converse without interpreters, and this reduces the average number of interpreter hours. There was little difference in access to medical examinations for clients but some difference in access to country experts or witnesses. The judicare lawyers interviewed expressed considerable discontent with regard to allowances for interpreters and other disbursements.

Summary of Cost-effectiveness related to Volume of Cases

Overall, it is clear that lawyers can save both time and additional costs if they do not have to rely on interpreters. Not only is there a cost for the interpretation services, but the interviews, by necessity, take almost twice as long. In the private bar, lawyers may be attracted to serving refugee applicants from countries in which they have a language or cultural affinity. Some discontinue providing refugee services when the demand shifts to other countries. The RLO model is limited by the need for diverse language capabilities and the ability to bring in lawyers with new language skills as the refugee populations change.

On the one hand, the RLO has the capacity to provide refugees with service in several languages through lawyers and paralegals, and this is a definite advantage in terms of cost and quality. On the other hand, it clearly does not have the in-house capabilities for the language requirements of all 23 different countries served, and this is where private bar lawyers who are

affiliated with the ethnic communities could be perceived as more effective by the community and by Legal Aid. Overall, despite the fact that the majority of refugees from “low-volume” countries must be served through interpreters, the RLO remains highly cost-effective in these cases.

Chart 2 presents an overview of the comparisons between costs for the RLO and costs for the private bar for low, moderate, and high-volume refugee-producing countries. For low-volume countries, the RLO and judicare were equally cost-effective in terms of legal fees. For the moderate-volume countries where the RLO has a reasonable caseload, the RLO is more cost-effective. Finally, for the high-volume countries, the majority of which the RLO does not serve in significant numbers, the private bar is obviously more cost-effective. Indeed, for these high-volume countries, the RLO is considerably more expensive than they are for moderate and low-volume countries.

Case Costs independent of Volume

The total cost per case for clients served by the private bar does not vary much, regardless of whether the client comes from a country that produces a high-volume of refugees or from countries that produce a low-volume of refugees. One of the key factors contributing to this pattern is the restricted number of hours allowed to the private bar. In almost all cases, regardless of complexity or commonness of argument, the private bar is billing close to the

maximum number of allowable hours. In interviews with lawyers, 90% reported that they felt the tariffs were inadequate. While 30% said they had reduced their preparation time, about 60% reported that they billed for extra hours and 60% reported working hours that were not billed. The interviewed lawyers reported that more than 50% of their cases exceeded the time allowed.

Chart 3 compares the legal fees and the total costs (including disbursements) for the three categories of cases. In this chart, costs are plotted as the percentage of RLO below or above the private bar. In terms of legal fees, as previously discussed, the RLO is 2% lower than the private bar for low-volume countries and 19% lower for moderate-volume countries. They are 27% more costly in terms of legal fees for high-volume countries. With disbursements added, the RLO costs were higher for both low-volume and high-volume countries, about 7% higher for low-volume countries and 21% higher for the high-volume ones. However, they were still less costly for moderate-volume countries, about 13% lower overall.

In summary, the private bar appears to bill at close to the maximum amount for all countries regardless of volume or their specialization with that country. However, the RLO performs relatively better with low-volume and moderate-volume countries. It is especially cost-effective for those moderate-volume countries where it has been able to develop a significant caseload. There is no reason to believe that the RLO could not be as cost-effective for high-

volume countries if it were to specialize in those, as well. However, the private bar seems to be able to specialize in those countries quite easily and, in fact, some lawyers operate as a form of “staff” environment, informally trading off hours from one case against those available in another.

Service to Detention Review Clients

This section discusses the services provided by the RLO to immigrants and refugees who have been detained at two city centres. Following the recommendation of the McCamus Report, *A Blueprint for Publicly Funded Legal Services*, the Refugee Law Office implemented a program to represent immigrant and refugee detainees at two sites, the Celebrity Inn and Metro West Detention Centre in Toronto. Some of these individuals are immigrants and refugee claimants who have been detained for reasons such as: pending deportation, suspected fraudulent identity documents, and suspected criminal activity. Others have been picked up for reasons such as overstaying their visa. Some of those in detention have applied for refugee status; others who might be eligible have not. Detainees have a right to a status review and, often choices other than staying in detention, such as returning to the country of origin or posting bail and being released to await their claims in the general community. While a few can afford a private lawyer, most detainees receive little or no legal representation. While certificates for legal aid are theoretically available, there is

insufficient incentive for private bar lawyers to provide services to this population.

The RLO has hired a half-time lawyer and has allocated one-half of a paralegal position to detention reviews. A review of 36 client summaries (out of about 60 seen in the first year) indicated that much of the work was related to helping the person understand and set up bond. In some cases, the individual was not fully aware of the process of review, appeal and application for bond. Many clients had been detained for months without any hearing. Many did not know how to contact a bond person or set up bond using personal resources (family and friends). In 21 of the 36 cases (60%), the RLO lawyer intervened by helping to contact a bond person, arranging for hearing, and representing the client at hearing. In 48% (10) of these cases, the client was granted a review and released.

Clients awaiting deportation were offered advice and, in some cases, provided representation at appeal hearings. The role of counsel in other cases included contact with immigration to determine status of case, writing letters supporting the merit of immigration or refugee application, reviewing evidence and obtaining release of wrongfully detained client, and requesting hearings for long-term detainees. About half of the interventions resulted in expedited review of the case and appropriate action, whether that be deportation or release. About 5% of these cases were converted to refugee applications.

The cost-effectiveness of this activity is difficult to assess since the alternative is no services. However, it is clear that these services are valuable and, in at least half of these cases, resulted in appropriate release of clients who would otherwise have remained in detention. Therefore, an appropriate comparison might be the cost of services if provided through the private bar. These services would need to be reimbursed at minimally the rate for refugee or criminal cases, since lawyers would not choose to accept these cases otherwise. Moreover, there would need to be sufficient hours allowed for activities such as interviewing the client (often through an interpreter), seeking additional information, contacting family or others who could provide bond, and representation at hearing. At minimum, this could require 10 to 12 hours or approximately \$700 to \$840 per case. If there were 60 cases a year, the equivalent private bar value would be approximately \$50,000.

An additional barrier for the private bar lawyer is the amount of time required to get to the detention sites and often the long wait to see clients or an official. Such a service is not cost-effective for lawyers with only one or two clients in detention. The RLO counsel generally arranges a number of visits at one time and has sufficient other activities that could be performed on site if the client is not readily available. Finally, there are obviously economies of scale (for example, efficiencies based on familiarity with staff and experience with process and issues) obtained by having dedicated lawyers and/or paralegals

provide the service rather than a number of private contractors who would handle only one or two cases a year.

Conclusions and Recommendations

This review of the Refugee Law Office focused on two questions. First, should the staff office be maintained as one component of a mixed model of service delivery to convention refugee applicants? Second, what should be the role of the staff office? Two main hypotheses derived from the findings and recommendations of the pilot evaluation were proposed to guide the collection and analysis of data. By testing these hypotheses, we were able to draw stronger conclusions and to confirm the observations made in the pilot evaluation about the quality and cost-effectiveness of the RLO.

Both hypotheses were confirmed, with a few caveats.

Conclusion 1: The RLO is perceived to provide quality legal services to refugee claimants.

Based on the feedback from the CRDD members of the Immigration and Refugee Board and the nongovernment organizations serving refugees in Toronto, it is clear that the Refugee Law Office is considered to provide very high quality services. They are regarded as experienced and competent, as well as having more time to give to refugee clients than the average judicare lawyer has. Moreover, they have filled a gap by providing legal assistance to potential immigrants and refugees who have been detained and by facilitating their release or return.

The RLO is regarded as a benchmark for quality refugee legal service and has contributed to the ability of the private bar and other organizations to better serve individuals applying for refugee status.

The RLO also contributes directly to the quality of refugee legal services. . The RLO has also assisted the Toronto Area Office in interviewing potential refugee applicants. The RLO has also been able to provide the private bar with country files and background documents.

The RLO has been effective in handling cases with unique circumstances that require extensive research and case preparation. These cases are complex because the conditions underlying the basis for claim, as defined by the Geneva Convention, may not be pervasive or countrywide. The putative conditions may be specific to a region (local political conditions), related to a particular ethnic group or cultural practice, unique to a family or clan, or based on a claimed lack of protection for specific human rights violations. There may be few precedents (from that country) on which to base such claims. Moreover, information specific to the claim may be difficult to obtain for various reasons. Finally, expert witnesses or individuals with relevant information may not be forthcoming. For all of these reasons, the cases are time-consuming, complex, and difficult to prepare and present effectively. The RLO has proven to be an effective environment for handling these types of cases because the lawyers are experienced, paralegals are available to do background research, time

constraints are not perceived as a barrier, connections with foreign experts are well established, and resources for research, expert witnesses, and client examinations are available, as required.

Because the RLO has developed credibility and a reputation for quality services, it is sometimes regarded by refugee-serving community agencies or other refugee lawyers as the agency of choice for complex, difficult, or novel claims. In some of these situations, it is believed that the RLO has better access to the necessary resources to collect relevant data and to prepare the case.

Recommendation 1: The Refugee Law Office is a valuable component of delivery of refugee legal services that provides quality services and cost-effective delivery, especially to key target populations. A staff legal aid office should be maintained to assure quality and cost-effectiveness as a component of refugee legal aid.

Recommendation 2 The RLO should be encouraged to set up processes for formally sharing its research files and background documents with private lawyers, perhaps by establishing a library and making materials available, upon request, to others, reducing duplication of efforts and increasing overall quality of materials.

Recommendation 3: The RLO should serve as a resource to private bar lawyers for consultation on cases from low-volume countries or on other

complex cases. The RLO should monitor these services to assure appropriate designation of staff resources and recognition for this service through budget allocations.

Recommendation 4: The RLO should continue to provide services to detainees at the Celebrity Inn and Metro West Detention Centre. The services are beneficial to clients and to the system. It is unlikely that the cost would be less through the private bar. It is likely that quality would be much less through the occasional services of private bar lawyers.

Conclusion 2: The RLO was found to operate cost-effectively relative to the private bar because it has developed an appropriate caseload and case mix, along with value-added services.

Overall, the RLO has increased in cost-effectiveness by specializing in some countries that have a large volume of applicants, thus reducing preparation time and, in some cases, hearing time. This accounts for approximately half of new cases and helps to balance the remainder of the caseload that comes from low-volume countries requiring additional country research and preparation time.

In particular, it was found that the RLO is as cost-effective as the private bar in providing legal services to refugee claimants who come from a country

where there have been a large number of refugee applicants, if it handles a “significant” number of clients from that country.

The caveat here is that the RLO did not tend to develop large caseloads in high-volume countries, in part, because there were lawyers who specialized in these communities and were connected to the referral networks. In the majority of these high-volume refugee-producing countries, the RLO was at a distinct disadvantage relative to the private bar. Only in that case where the RLO also had a significant caseload did it prove cost-effective in terms of time spent to prepare the case.

Private bar lawyers generated significant economies of scale by focusing on a limited number of “high-volume” countries or regions with similar-type claims. Moreover, some judicare lawyers selectively accepted only those cases from their specialty countries, and they were able to limit the amount of research and case preparation time. While the RLO was able to make use of paralegals to prepare aspects of these types of case, including development of the PIF, the private bar was not disadvantaged because there was often not much novel preparation required. The one problem for the private bar is that very high caseloads affect the quality of casework and the time provided to clients.

Recommendation 5 The Refugee Law Office should not be directed to focus on refugee cases from countries that produce a large number or applicants

to Canada. There is no advantage to the RLO in terms of preparation time, cost, or quality.

Recommendation 6: Private bar lawyers should be encouraged to accept a significant number of cases from countries that produce a large number of refugee applicants. These cases can be handled cost-effectively in this manner; moreover, lawyers can develop expertise that translates into more efficient and effective case preparation. The challenge is to ensure that qualified lawyers who are specialized in a particular country receive an optimal number of referrals to help generate economies of scale.

Recommendation 7: Private bar lawyers should be limited as to the number of intakes per year, per lawyer within their practice group. This will help to avoid lawyers with excessive caseloads that affect quality of preparation, time allocated to the client, and ability to meet the hearing schedule.

It was found that the RLO was cost effective in handling cases from moderate-volume countries where it developed expertise and economies of scale. All of the moderate-volume countries with significant RLO caseload were cost-effective compared to judicare both in terms of preparation time and also with regard to disbursements.

Recommendation 8: The RLO should continue to identify and develop specialty countries that produce a moderate-to-large volume of refugee applicants.

Recommendation 9: The RLO should develop partnerships with the community-based nongovernment organizations that serve immigrant and refugee communities to ensure mutual support and referrals. Service to community organizations should be recognized by Legal Aid, and the RLO should designate appropriate staff resources to these activities.

The RLO was found to be cost-effective in handling cases from countries that produced few refugee claimants or in handling cases with novel issues or “test” claims. The RLO was more cost-effective than the private bar in providing services to clients from low-volume refugee producing countries. This appears to be an important niche for the RLO, and they can be beneficial in terms of defining standards for quality service and amount of time required per case. The RLO appears to use more disbursements than the private bar for cases from low-volume countries, and this may represent a more appropriate level of expenditures for these cases.

Recommendation 10: Approximately half of the RLO clients should come from low-volume refugee-producing countries. These may include more complex cases and novel, test cases. The RLO should monitor closely the

amount of time and service required to effectively handling these cases to ensure that they are served as efficiently as possible, without sacrificing appropriate preparation and service to clients.

Recommendation 11: The RLO should make available to the private bar case files and background documents for low-volume countries. Information about this resource should be widely disseminated through mechanisms like the Refugee Lawyer Association.

Appendix A

High-Volume Countries

Many of the refugee lawyers who serving clients from countries that produce a large number of refugee applicants to Canada tend to specialize in these countries and develop fairly large caseloads. There are many not-mutually-exclusive reasons why cases from “high-volume” refugee countries are more cost-effective (require fewer hours per case to prepare for hearing) than those from “low-volume” refugee-producing countries. Refugees from “high-volume” countries tend to have a higher rate of acceptance. Often, if there are large numbers of refugees fleeing a country, the country conditions and the basis for claiming refugee status are fairly well documented and less research and preparation are required. From an operational perspective, these cases are more likely to tracked into an expedited or short hearing stream and, hence, require less client preparation.

In addition, there are a number of factors that may facilitate a lawyer’s ability to prepare cases from “high-volume” countries more efficiently. First, as they develop a reputation within a particular community, those lawyers who are perceived as effective are referred to newly arriving refugees, and this reduces the amount of time that the lawyer needs to invest in recruiting clients. Second, in ethnic communities where there is a high volume of claimants, lawyers can

invest in developing relationships with interpreters, community leaders, and experts who, in turn, can provide assistance with doing research, finding documentation, or giving expert testimony. Third, as the clientele grows, lawyers develop country files and prototypical cases that greatly reduce preparation time. Fourth, as lawyers become familiar with a specific group of applicants, they are able to determine the validity of claims more quickly and only pursue those that are likely to receive a certificate. Finally, because the IRB operates in geographic teams, lawyers who specialize in a particular set of countries become familiar with the relevant Board Members and their RCOs, their style, and their preferences in documentation and evidence.

Obviously, those lawyers who provide services to clients from countries that do not produce a large number of applicants to Canada do not experience the same efficiencies. At the same time, because these countries are not clearly recognized as falling within the definition of convention refugee conditions, the arguments are likely more difficult (time consuming) to prepare. The Ontario Legal Aid Plan provides no explicit allowance for preparing test cases or “orphan” cases, that is, cases where conditions of persecution or recrimination are not well documented and each individual claim must be researched and substantiated. Discretionary hours have become difficult to obtain and not usually granted simply because there are few refugees applying from that particular country.

Appendix B

RLO in Context

The optimal role for the RLO within a mixed model would ideally be based on the advantages of the RLO, the advantages of judicare, and the requirements for legal assistance as defined by the CRDD's current process for hearing and adjudicating refugee applications.

Advantages of RLO

To ensure quality in service, the staffing of the Refugee Law Office was done under very a competitive process. The staff lawyers selected were regarded as among the best in field. They tended to specialize in refugee cases, had considerable experience with refugee applicants from many different countries, and had expertise dealing with novel and complex cases. The RLO quickly gained a reputation for conducting thorough country research and became the experts in a number of issues, including fear of persecution based on gender identify and sexual abuse.

Paralegals are a unique advantage of the RLO. They are trained professionals, experienced in refugee applications, and often fluent in several languages. They have the advantage of working as members of a team in a supervised environment. From the perspective of the RLO lawyers, the paralegals are invaluable in assuming many of the case responsibilities that

require both knowledge of CRDD issues and the ability to relate to clients. The paralegals often conduct the initial intake interview, gather the information to fill out the Personal Information Form (PIF), and prepare the first draft of the PIF for review by lawyer and client.

Because the staff work in a salaried environment, allocation of time to individual cases can be more flexible than in a private, fee-for-service environment. The lack of time constraints can be a significant advantage when dealing with test cases, complex issues, refugees from countries with few applicants, and cases involving numerous delays.

Overall, there are probably as many, if not more, administrative tasks required of the RLO than of most judicare offices. The time and service provided for each case must be documented even though hourly billings are not required. Management of staff, including training, supervision, and work load assignment are issues relevant to most law firms; however, they are not encountered by most of the refugee legal aid counsel who work as either sole practitioners or in a shared office environment but rarely in a large firm. Conversely, the RLO does not have to generate actual billings, and the Ontario Legal Aid Plan does not have to review case files or submissions for reimbursement.

Because of the staff environment, the RLO has been able to develop significant relationships with many community agencies that serve refugees and immigrants. These are a distinct advantage in providing referrals and information to the RLO, especially to facilitate more effective handling of applications. However, the agencies also require time and services from the RLO, often to educate their staff about the refugee application processes as well as assist clients who are applying for legal aid or refugee status.

With the relocation to the same building as the Legal Aid Office, the RLO is often called upon to help screen applicants as to the potential merits of their case, that is, the likelihood that they would be eligible to make a refugee claim. This is a valuable service to the Legal Aid and also brings the RLO into contact with potential clients at an earlier stage of engagement with the legal system.

As a staff office, the RLO is in a position to provide ancillary services to clients that are not directly related to their refugee application. When the office was first opened (before the caseload had built to the current level), they were able to assist clients in their application for work permits, housing, financial assistance, health cards, drivers license, etc. They were also more available to talk to clients, and this often engaged them in other forms of support. These services helped to create a very positive image of the RLO among the refugee communities; the RLO was perceived as a caring and supportive environment and a good place to seek legal assistance. These attitudes prevail, and the RLO

has attempted to maintain an atmosphere of compassion and support, even though the staff have less time for support services.

Disadvantages of RLO

Perhaps the most difficult disadvantage to overcome in the initial stage has been the lack of flexibility in overhead and staff costs. Moreover, while both the RLO and private bar lawyers are vulnerable to shifts in which countries are producing refugees, the RLO appears somewhat more vulnerable. As the refugee-producing countries change, or as the number of refugees seeking status from a specific country increases or decreases, the office must attempt to maintain an optimal caseload. Unlike judicare lawyers who theoretically can move from providing refugee services to other forms of legal aid, including immigration services, the RLO is committed to one service area (although it has added detention reviews as an additional service over the past year).

Another disadvantage for the RLO is the small number of staff relative to the number of different countries served. Unlike a private law office, the RLO cannot turn clients away. As initially proposed, the office would have been staffed with six lawyers and six paralegals, and this may have constituted a sufficient number to allow each lawyer and each paralegal to focus on a limited number of countries. Currently, there are only three lawyers and three paralegals. As a result, while each lawyer has his or her own areas of specialty, each is also required to deal with up to 20 different countries. This diversity

adds to research and preparation time, further reducing cost-effectiveness relative to the private bar.

Finally, while judicare lawyers are limited as to the number of preparatory hours they can allocate to each case, the RLO lawyers have no established limits. On the one hand, the RLO has the advantage of being able to spend as many hours as deemed necessary on a specific case. On the other hand, with an open-ended time frame, there is the risk that lawyers and paralegals will spend too much time on an individual case. Moreover, clients, knowing that the RLO does not work on an hourly scale, may demand more of the RLO lawyer than they would of a private bar lawyer. Private bar lawyers with limited preparatory hours may be forced to focus on fewer issues than do the RLO lawyers. In some cases, a limited focus may not affect the outcome; in other cases, it may. In an ideal world, judicare lawyers would be able to spend as many hours as they felt necessary and staff lawyers would have sufficient case load that the time available would be sufficient but not excessive.

Appendix C

Methodological Issues

A key problem was the lack of reliable data. There were inconsistencies between data received from one database and data retrieved from another database that dealt with the same cases. There were further inconsistencies with key data points, such as opening and closing dates and total fees and disbursements, obtained from the Legal Aid databases and from case files.

There was also inconsistency in data entry, with dates often entered as categorical information rather than quantitative information. It was not possible, in those cases, to calculate the length of time a case remained opened. There were additional inconsistencies in coding of data, again making it impossible to link data from one database with data from another. There was no way of assuring that a “final” billing did indeed represent “total costs” without reviewing the actual lawyer submission and the client file. Even then, the final account often did not include previous billings (if the client had changed lawyers) and it did not include supplemental billings.

The documentation varied considerably from year to year, both in terms of content and format. It was impossible to ensure that comparisons between years were comparisons of parallel data.

The documentation from judicare lawyers was incomplete, inconsistent, and sometimes inaccurate. It is clear that some lawyers regarded sending documentation to Legal Aid as a necessary task rather than an accurate record of case management.

The amount of information available in the individual case files submitted to Legal Aid as a part of the billing provides little real information on which to interpret the time and resources expended. Only a few lawyers provide a copy of the PIF; very few report the final disposition.

There is an inconsistency between the cost per completed case based on individual billings and the cost per case calculated by dividing the total refugee lawyer fees by the number of cases finalized. The cost per completed case based on individual billings is approximately 25% higher than the calculated cost per case. Part of this difference may be attributed to the fact that almost 20% of cases are abandoned or withdrawn prior to hearing; hence they would cost considerably less than the cost per case completed with hearing. In this review, the billed cost per case is used in almost all analyses (except where noted) because these figures are closest to the costs derived from other sources, including the Legal Aid case files and the sample cases provided by the judicare lawyers.

To compensate for these methodological difficulties, several sources of data have been used and several different comparisons provided. In all comparisons, however, the data are matched as closely as possible.

Appendix D

Referrals

First, the initial point of contact for most newly arrived refugee applicants is family, ethnic community, ethnic association or refugee service agency, and their introduction to a refugee lawyer is often through one of these informal relationships. As a new entity, the Refugee Law Office was not a part of most referral networks, and this limited the number of referrals received. Second, under the agreement in establishing the RLO, refugee applicants were assured “choice of counsel”; therefore, refugee applicants could not automatically be referred to the RLO, even if they had not retained counsel prior to applying for legal aid. Third, refugee applicants often indicated they had counsel even though they had not retained a lawyer. In some cases, they had been referred to counsel but had not entered an agreement; in other cases, they thought it would increase their likelihood of receiving legal assistance if they responded affirmatively to the question.

Referral barriers have been successfully addressed over the years. The RLO has developed a record of effective representation, and they have built up their own referral networks. Moreover, the office was relocated to the same building as the Toronto Area Legal Aid Office. This move has allowed easier access to referrals from the Legal Aid Office. In addition, the RLO began to assist the Legal Aid Office in screening applicants for potential merit of the case,

and this has given them earlier contact with applicants, especially those without counsel.

A second strategy to increase cost-effectiveness was to reduce the number of staff from four to three lawyers and from six to three paralegals. When proposed, the RLO was to comprise of six lawyers and six paralegals because the Pilot Sub-Committee felt that it would take an office of this size to have a “measurable impact.” Moreover, it would also take an office of this size to realize economies of scale and to offset the overhead costs. However, when the office opened in March 1994, all six of the paralegals were hired but only four lawyers of the six lawyers, with one serving as half-time director. The plan was to incrementally hire the remaining two lawyers as the caseload developed. Unfortunately, the caseload did not materialize as rapidly as anticipated.

This created a significant imbalance in workload, with too many paralegals for the tasks required. Moreover, when the office was designed, the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) was still permitting a substantial number of expedited cases (decision without formal hearing), and it had been expected that paralegals, rather than lawyers, could represent clients at expedited hearings. Unfortunately, sometime prior to the office becoming fully established, the IRB greatly reduced the number of “expedites.” The result was that the RLO paralegals were under-employed and devoted more time to each case than they

might have otherwise. The solution, then, was to reduce the number of paralegals by half.