



2009 Legal Aid Alberta Review

November 19, 2009

EXECUTIVE SUMMARY

This executive summary has been taken from the final report, which provides options to ensure that current and future service delivery of legal aid is targeting the appropriate, priority needs of Albertans.



Presented to:

The Honourable Alison Redford, Minister of Justice and Attorney General

Presented by:

The Review Steering Committee

11/19/2009



Letter of Transmittal

November 16, 2009

The Honourable Alison Redford
Minister of Justice and Attorney General
Province of Alberta
403 Legislature Building
Edmonton, Alberta T5K 2B6

Dear Minister Redford:

The Steering Committee overseeing the 2009 Review of Legal Aid Alberta is pleased to present its final report, entitled “The 2009 Review of Legal Aid Alberta”, which provides options to ensure that current and future service delivery of legal aid is targeting the appropriate, priority needs of Albertans.

It reflects our understanding of the larger environmental factors affecting the provision of legal aid in the Province of Alberta and includes a number of recommendations which overall, outline a proposal to enable Legal Aid Alberta to weather its current funding shortfall and chart a course for the future.

The Report has been reviewed and approved by the Board of Directors of Legal Aid Alberta. However, the Board recognizes that further discussions between Legal Aid Alberta and Alberta Justice are required to assess the costs, timing and affordability of putting in place those recommendations that are ultimately approved by the Board and the Minister for implementation.

The Law Society and Alberta Justice representatives on the Steering Committee are signing this Letter of Transmittal in their capacity as members of the Committee and their signature does not reflect approval of the report or recommendations by the Law Society or the Minister.

Respectfully submitted,

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Executive Summary

At the request of the Minister of Justice, Legal Aid Alberta (LAA) has undertaken a complete review of the current legal aid plan of Alberta. LAA was assisted in this review by a Steering committee composed of representatives from the Ministry of Justice, Law Society and Legal Aid Board and management. The review focused on the following questions:

- what are the legal needs of Albertans of limited needs;
- how those needs should be prioritized;
- who LAA's clients should be;
- what services LAA should provide;
- how should legal aid be provided;
- what level of compensation should LAA pay to the private bar who provide the services;
- and
- what other sources of revenue or support in kind could be developed for LAA

The Review provides an initial brief history of LAA and a discussion of the current legal environment in which LAA operates. Additional factors such as population growth, economic conditions, increasing pressure on government funding; the loss of significant revenues for foundations, such as the Alberta Law Foundation; changes to legislation or the legal system itself; and a reduction in the number of lawyers practicing in those areas most needed by legal aid clients have all made the environment in which LAA operates exceedingly complex. The Report concludes that the traditional method of providing legal aid services - one client, one lawyer, full representation focused on the courts – may no longer be sustainable. It is suggested



that the nature of legal services must be rethought, that too many people are left with unmet legal needs. A new service delivery model must identify the needs of each client and, where appropriate, consider embracing prevention, dispute avoidance, and collaboration between the legal, social and government sectors of society.

LAA provided a total of 193,700 assists in 2008/09 including representational service as well as provision of information and advice. Service volume has increased by 43% over the last five years. These services are provided through a mixed model of delivery relying predominantly upon the services of a roster of private lawyers and less so on the services of staff lawyers. The Report identifies that the other legal aid plans in Canada, with the exception of B.C., rely more heavily on the services of staff lawyers than does Alberta.

One of the questions of the Review was to identify the legal needs of low income Albertans. Through a research literature review and review of a needs assessment completed for LAA, the legal problems most frequently experienced by low income persons were identified as consumer, money/debt, housing, employment, family law and relationship breakdown, income assistance and health, and estates. It is suggested that, where plans are setting criteria for prioritizing services, they consider matters such as responding to a broad range of needs, integrating delivery model issues with priority-setting processes and focusing the debate on client impact.

LAA must recognize when setting priorities that there are services they are required to deliver by law and that those services will take priority over other needs, regardless of where they may rank. Serious criminal and youth defence work must be provided by legal aid plans and therefore will take precedence. LAA's Needs Assessment identified the following common



legal concerns of low-income Albertans: family law; landlord and tenant/housing disputes; government benefits (income support issues); criminal law; employment; immigration; and bankruptcy/debt. Participants in the Review's public consultations agreed that these legal problems were the most frequently faced by low-income persons. Based on the above, it is suggested that Albertan's legal needs should be prioritized as follows:

- Serious criminal, youth or other problems (e.g. child welfare) where LAA is required by law to provide legal services;
- Family law matters;
- Landlord and tenant/housing disputes;
- Income support/government benefits problems;
- Other criminal law matters (e.g. those where the likelihood of incarceration is small);
- Employment matters;
- Immigration matters; and
- Bankruptcy and debt actions.

With respect to the non-family civil needs, LAA may need to explore the best ways of meeting those needs.

Identifying who should be LAA's clients is exceedingly complex. Saskatchewan and Nova Scotia base their client financial eligibility on social assistance levels and Manitoba use low income cutoff (LICO) as its basis. The other Canadian plans do not appear to have an express rationale for their choice of financial eligibility. The ultimate decision as to who is in the client pool is value-laden and linked to what the decision-makers see as the role of government and of legal aid in today's democratic society.



It is suggested that the method used to identify LAA clients should be the one that can be most objectively justified, the one that is most-evidence based and transparent. The overlap of the populations with the areas of greatest or most frequent legal need (eg. issues and outcome) and the percentage of the Alberta population least able to afford legal services (income and expenditure levels) would be a target client group that could be identified from existing research and economic tools and modified in the future through subsequent experiential data analysis.

Financially, LAA FEGs should provide coverage for the 20% of individuals with the lowest income in each size of household, with a higher percentage of coverage for one person households. With respect to legal problem, priority should be given to those requiring mandated services (eg. criminal and youth defence) and then to those requiring legal services in the highest ranking legal needs areas: family law; landlord and tenant/housing disputes; government benefits (income support issues); employment; immigration; and bankruptcy/debt.

The general level of efficiency and effectiveness of the delivery of legal aid services in Alberta was considered by benchmarking LAA to other Canadian plans. LAA's coverage was concluded to be comparable to most other legal aid plans, with both financial and substantive coverage considered to be at or above average. Per capita, Alberta is the third lowest government funded plan in Canada and is the fifth lowest in overall funding. Expenditures for LAA are also fourth lowest for 2008/09 but Alberta will increase to fifth position among the provinces for expenditures for 2009/10. The report indicates that this is due to an overall increase in demand for service, without a corresponding increase in revenue and not due to a sharp increase in any one cost area. Administrative costs for LAA have progressed in the same ratio as other expenditures.



Funding for LAA is provided by the Government of Alberta, Alberta Law Foundation, client recovery, investment income, and minimal grant income. The report identifies that LAA's total funding for 2009/10 is down 13% from 2008/09, and more than 19% below original expectations and that LAA's revenue is projected to decrease further in 2010/11 when Alberta Law Foundation funding decreases by an additional \$5.05 million. As the organization faces increasing demand for service, LAA's total funding will have decreased by more than 20% over a two-year period and the funding gap could easily exceed \$20 million annually. The Report concludes that the status quo cannot be maintained under this possible scenario.

The Report discusses potential ways of addressing this shortfall in funding. Provision of only mandated services would result in cost savings of \$35 million over a two year period however reduction in services to this minimal level of service is not a desired outcome for LAA and during public consultations for the Review was rejected as a viable alternative. All services currently being provided by LAA were seen as valuable. If only mandated services are provided, almost 180,000 Albertans would be impacted. This consequence would result in decreased access to justice and would additionally overburden the courts and other pro bono or service programs.

Reduction of Financial Eligibility Guidelines (FEGs) is proposed as a viable option for reducing LAA expenditures in the future. Alberta's FEG's were increased in 2007 and 2008 giving Alberta the most generous guidelines in comparison to those other provinces with stated eligibility guidelines. Temporary reduction of the FEGS by 30% would place them more or less in the middle of Canadian eligibility guidelines, with two of the major plans having FEGs higher (British Columbia and Manitoba) and two others having FEGs which are lower than LAA's



reduced FEGs (Saskatchewan and Quebec). It would provide coverage to only 6% to 8% of the lowest-income individuals in each household size, except for one-person households of which 20% would be covered. It would allow LAA to reduce its expenditures by \$5.58 million per annum. The Report stresses that although this proposal would result in a potential 6,100 individuals not receiving full representational service, a new service delivery model, the Legal Service Centre and Enhanced Duty Counsel could, if implemented, provide clients with a level of assistance. Reduction of FEGs is favored in the report as it reduces the severity of reductions that would be experienced in any specific area that might be targeted with selected substantive reductions. Choosing the temporary reduction in eligibility guidelines also maintains the flexibility to expand service again when funding circumstances improve.

Throughout the consultation process stakeholders (judiciary, crown, community services agencies and the private bar) voiced strong broad-based support for the legal aid program and indicated that any further reductions to the legal plan would result in higher costs to the justice system. Keeping in mind the rippling effect any changes to LAA has on the justice system, the Review identified some key improvements LAA can make in order to continue providing service to its clients. The Report discusses the development of Legal Services Centres, with the goal being “Tailoring Services to Meet Client Needs”, which embodies the idea that a certificate (ie full representation) will not be the default option for service delivery but rather embrace a wide range of legal services focussing on client assessment, the use of paralegals, unbundling and collaborating more closely with partners and services providers. Reassessing of the client application process, better coordination of documentation movement within LAA and review of the need for all regional offices are also discussed as additional system improvements.



Enhancement of Duty Counsel services, piloted in Edmonton and Calgary regions, are also reported to be a viable improvement in services for LAA with a projected savings of approximately \$4 million per annum. Establishment of legal clinics are also discussed as a means of better meeting the needs of low income Albertans. However the start-up and maintenance costs are seen as substantial.

Legal Aid Alberta is predominantly a judicare model and the increase in the use of staff offices is discussed in the report. Research has indicated that staff offices allow for fixed salaries, and more easily controlled expenditures and efficiencies are obtained. The advantages also include a more consistent approach and improved file management. Studies have found that on a per case basis, staff lawyers are more cost effective than roster lawyers. However, the relative cost effectiveness of the two basic delivery modes is a function of three variables; the level of the tariff, the sum of costs of staff lawyer salaries, benefits and overhead, and the *productivity* of the staff lawyers. Where an active, experienced private bar exists, this type of service provider would likely be most appropriate. Staff lawyers may be the most appropriate where high volume and/or specialized services require a consistency of approach and focus or in geographic areas where the number of private bar lawyers may be insufficient to meet demand. The Report identifies the Wetaskiwin Region as a potential area for development of additional staff offices providing both family law and enhanced criminal duty counsel services. The area has expressed a significant need for family law services and efficiencies in staff duty counsel could be realized.



The Report also discusses possible efficiencies that might be achieved through block contracting, better performance monitoring and quality assurance and improvement of business practices.

A component of achieving sustainability through doing business better is to look at other methods of compensating roster lawyers and the Review was asked to investigate various options. Legal aid plans have many ways of paying roster lawyers. Most Canadian jurisdictions pay combination of a fixed fee tariffs and hourly rate. Ontario, British Columbia and the Maritime provinces use a tiered system based on years of call. LAA also uses a combination of fixed fee tariffs and an hourly rate of \$84 per hour. Lawyer dissatisfaction with tariff rates seems to be the norm, as they are uniformly much lower than market rates. Numerous reports in Canada have noted the need to raise tariff rates so that roster lawyers can be recruited and retained. Each \$1 increase in the tariff rate, however, results in an increase of approximately \$750,000 in LAA's annual legal expenditures. Raising rates to \$125/hour would require additional funding of \$30 million annually, and an increase to \$150/hour would cost \$50 million. Provision of a tiered tariff system would cost over \$4 million if tiered by years of experience and over \$2 million if tiered by case complexity. Increasing the use of block fees may be a cost neutral alternative and provide a measure of increased satisfaction for the Private Bar in the tariff.

The Review also discusses the need for high cost case management which would result in possible savings as well as better risk management and mentoring opportunities. Potential government supports which would assist LAA in operating the legal aid plan are also discussed.



The Government of Alberta provides the bulk of the revenue for LAA. Alberta Law Foundation provides 25% of their revenue each year to LAA. The above said, this Report does look at other options which may include:

- expanding services to more paying clients;
- stabilizing and/or increasing Government of Alberta funding; and
- stabilizing and/or expanding Alberta Law Foundation funding.

The Report concludes with the following recommendations:

- A. Reduce LAA Financial Eligibility Guidelines by 30% to 50% to help address its funding/revenue reductions.
- B. Place a cap on Immigration and Refugee Services, equal to the amount of funding received from the Federal Government.
- C. To maintain service to those it is not assisting through its FEGs, LAA should pilot a Legal Service Center, using lawyers and non lawyers currently on staff, to be the place of first contact for the public and which will address more legal needs of low income persons by providing:
 - Client legal need assessment services;
 - Legal information and referrals;
 - Legal Advice and brief services including settlement advocacy; and
 - Connect clients to other LAA services in a seamless and effective manner.
- D. Identify, implement and support the use of non-lawyers, under the supervision of managing lawyers, in the provision of targeted legal services, especially in the Legal Services Center



- E. Pilot enhanced criminal and family duty counsel in Edmonton and Calgary with the goal of encouraging more timely and better resolutions of client legal matters; reducing the number of full representation certificates required for lower level criminal offences and some family matters; and reducing the burden on the justice system by lowering the volumes of matters going to full hearings.
- F. Provide legal services in an unbundled manner wherever it would work to the benefit of the client and Legal Aid Alberta.
- G. Develop its own internal mediation process and alternative delivery methods to support its clients through the mediation process work with Alberta Justice and community stakeholders to develop and coordinate the delivery of these services.
- H. Pilot a civil legal clinic, limited to specific areas such as housing, government benefits, consumer/debt and employment, which could become a means for addressing the civil duty counsel, and continue to collaborate with stakeholders in the potential development of other legal clinics that address LAA clients' unmet legal needs.
- I. Establish a civil law and enhanced criminal duty counsel staff office in Wetaskiwin.
- J. Explore innovative ways to continue to monitor LAA's performance.
- K. Work collaboratively with the Law Society of Alberta to develop a quality assurance program.
- L. Pilot, in Calgary, making Family Resource Facilitators available to roster lawyers when they are providing services to legally-aided clients in youth justice and child welfare matters.



- M. Continue to leverage technology to provide more efficient and effective services that provide clients with option for accessing LAA service, including developing a greater number of points of contact and alternatives for clients to apply for legal aid coverage (eg. through a lawyer's office, online, by telephone etc).
- N. Pilot block contracting for Duty Counsel services in rural or remote areas, where staff duty counsel is not feasible.
- O. Actively develop more formal partnerships with stakeholders – eg. LAA should work together with other service providers and the Alberta Law Foundation, to explore ways in which LAA can provide the forum through which knowledge-sharing, needs identification and service delivery coordination and collaboration can occur, including development of collaboration protocols.
- P. Pilot the use of block fees (for certain offences or civil matters) to encourage effective decision-making and earlier case resolution.
- Q. Compensate roster lawyers through the introduction of a tiered system of tariff rates, based on complexity.
- R. Implement a High Cost Case Management program that would provide greater oversight of complex, high cost cases, and mentoring opportunities for less experience counsel.
- S. Given that Alberta is a resource-based economy and subject to revenue fluctuations which may be hard to predict and/or extreme, the three partners (LAA, Alberta Justice and the Law society) should address, in the upcoming renegotiation of the Governance Agreement, the issue of providing the LAA Board with more flexibility and authority to



reallocate its approved budgeted resources, as it considers necessary to fulfill its responsibilities/obligations under the Agreement.

Alberta Justice and the Law Society are partners with Legal Aid Alberta for the provision of legal aid in Alberta. It is recommended that each of the partners consider ways whereby they can be of greater assistance in improving the provision of legal aid in Alberta.

The Law Society can:

1. Work with Legal Aid Alberta in exploring the feasibility of a quality assurance program for private bar roster lawyers;
2. Work with Legal Aid Alberta in the development of job and role description of paralegals within LAA;
3. Take an active role in advocating for a properly funded legal aid plan and raising the public profile of Legal Aid; and
4. Actively encourage all Alberta Lawyers to meet their professional obligation to support access to justice through legal aid.
5. Work with LAA in exploring the feasibility of reducing Law Society fees for those members of the Society who do legal aid work.

The Minister of Justice can:

1. Advocate within the Government of Alberta for sustainable funding to operate the revised legal aid plan;
2. Work with the Law Society of Alberta and LAA, in the renegotiation of the Governance Agreement to address:



- a) the issues referred to in Recommendation S and Part 10 of this Report; and
- b) the issue of funding for court-ordered counsel as described in Part 8(k) of this Report;
3. Review with Alberta Infrastructure whether space would be available in courthouses for LAA court based service staff and in provincial buildings for all LAA offices, where possible;
4. Review, with Service Alberta whether LAA could benefit from government pricing and supply discounts;
5. Review with Alberta Finance and Alberta Pensions Services Corporation all issues in respect of LAA accessing any of the Provincial Government employees' pension plans;
6. Work with LAA to explore options in regard to the use of ALF funding in LAA's in the context of LAA's annual approved budget; and
7. Continue to advocate with the Federal Government for increased federal funding of legal aid for both criminal and civil coverage areas.

A chart showing the savings and cost impacts of the specific recommendations relating to changes to LAA service delivery or processes is set out below:

Saving and Cost Impact Summary for 2010/11			
Recommendation/Option	Savings/New Revenue	New Expenditures	Net Impact
A. Restrict eligibility - reduce FEGs			
<i>i. 30% reduction</i>	5,580,000	0	5,580,000
<i>ii. 40% reductions</i>	8,650,000	0	8,650,000
<i>iii. 50% reductions</i>	11,800,000	0	11,800,000
B. Cap I&R Services	800,000	0	800,000
C. Legal Service Centre/Eliminate Opinions	173,866	535,000	-361,134



Saving and Cost Impact Summary for 2010/11			
Recommendation/Option	Savings/New Revenue	New Expenditures	Net Impact
D: Use of non-lawyers	Not Known	Not Known	Not Known
E: Enhanced Duty Counsel	5,556,284	1,500,000	4,056,284
F: Unbundled Services	Not Known	Not Known	Not Known
G: Develop internal mediation process	5,840,218	1,574,160	4,266,058
H: Pilot a civil legal clinic	0	300,000	-300,000
I: Staff Office Wetaskiwin	73,087	608,250	-535,163
J: Monitor performance	Not Known	Not Known	Not Known
K: Develop quality assurance program	Not Known	Not Known	Not Known
L: FRFs for Roster Lawyers	0	60,000	-60,000
M: Leverage technology, better access	Not Known	Not Known	Not Known
N: Pilot Block Contracting	Not Known	Not Known	Not Known
O: Partner, Knowledge-sharing forum	Not Known	Not Known	Not Known
P: Tariff Restructuring - Pilot Block Fees	Cost Neutral	Cost Neutral	Cost Neutral
Q: Tariff Restructuring - Tiering			
<i>i. Tiering based on experience</i>	0	4,248,986	-4,248,986
<i>ii. Tiering based on complexity</i>	0	2,041,226	-2,041,226
R: High Cost Case Management	Cost Neutral	Cost Neutral	Cost Neutral
S: Board resource flexibility	Cost Neutral	Cost Neutral	Cost Neutral
Aggregate Impact, with a 30% FEG reductions and Tariff restructuring by complexity			\$11,404,819