

Chapter 16

Saskatchewan Legal Aid Commission—Providing Legal Aid Services

1.0 MAIN POINTS

Legal aid is an important feature of a democratic society, aimed at helping to promote fair and equitable access to justice and the legal system. Legal aid involves providing publicly funded legal services to persons who otherwise cannot afford them.

Under *The Legal Aid Act*, the Saskatchewan Legal Aid Commission (Commission) is responsible for providing publicly funded legal aid services. The Commission provides legal aid services primarily through staff at its head office and 14 area offices located throughout the province. It handled over 14 thousand cases in 2014-15.

For the 12-month period ended January 31, 2016, the Commission had, other than the following, effective processes to provide legal aid services to eligible persons.

The Commission needs to clearly set out what it views as timely and quality legal aid services. This will enable it to better assess its success in providing such services.

Also, the Commission needs to keep key information about legal aid cases in its electronic case management system up-to-date (e.g., status of cases). Keeping up-to-date information in its system would enable centralized monitoring of lawyer caseloads, and accurate reporting of the timeliness of legal aid services.

The Commission also needs to formally evaluate, at least annually, the performance of staff lawyers. Written performance evaluations can provide staff with useful feedback on the quality and timeliness of legal aid services and support a culture of professional engagement.

2.0 INTRODUCTION

This chapter reports the results of our audit of the effectiveness of the Commission's processes, for the period of February 1, 2015 to January 31, 2016, to provide legal services to eligible persons. **Section 5.0** contains definitions relevant to the audit.

2.1 Incidence of Crime in Saskatchewan

In 2014, Saskatchewan experienced a crime rate of 10,505 per 100,000 population.¹ Based on 2014 statistics, while Saskatchewan's crime rate is dropping, it remains significantly higher than the national average of 5,046 per 100,000 population.² Research shows impoverished people are particularly prone to legal problems and may have difficulty affording legal services.³

¹ www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/legal50c-eng.htm (9 December 2015).

² Ibid.

³ Prairie Research Associates, *Maximizing the Federal Investment in Criminal Legal Aid*, (2014), p. 4.



Legal aid promotes access to justice for economically disadvantaged persons, and helps ensure the fairness, relevance, and accessibility of the justice system. Having reasonable access to justice promotes public confidence in the justice system.⁴ Effective legal aid services help economically disadvantaged persons be more informed, aware of their legal rights, and able to have proper defence in the courts. Without legal aid, there is an increased risk of compromising people's legal rights.

Research shows restricted access to justice can have a variety of negative outcomes – from poor health to increased social isolation and conflict.⁵ Timely access to legal aid services improves the effectiveness of the justice system (e.g., may reduce time a person is held in custody, may resolve cases faster, may provide protection such as a restraining order sooner to individuals).

Research also shows that clients who receive legal advice fare substantially better in court proceedings than those who do not get legal advice.⁶ The effects of self-represented individuals in the courts are many, and may include:

- ▶ Increase in court delays
- ▶ Reduced possibility of early resolution
- ▶ Potentially unjust results (e.g., higher rates of remand, harsher sentences, inappropriate guilty pleas, and wrongful convictions), all of which can increase court-system and correctional costs
- ▶ Tying up police officers and social workers with court delays, contributing to inefficiencies in the use of these resources⁷

2.2 Legal Aid Services in Saskatchewan

The Commission provides publicly funded legal services to persons who otherwise cannot afford them. Persons in need of legal aid typically represent the more vulnerable in society.⁸

As shown in **Figure 1**, the Commission provides more than legal assistance to persons appearing before the courts. It provides varying levels of legal services that include civil (e.g., family) and criminal (including both adult and youth) matters. As the level of intensity of its service increases, the number of individuals eligible to receive those services decreases. It makes basic legal information widely available on its website, and provides full legal representation only to persons who meet eligibility guidelines.

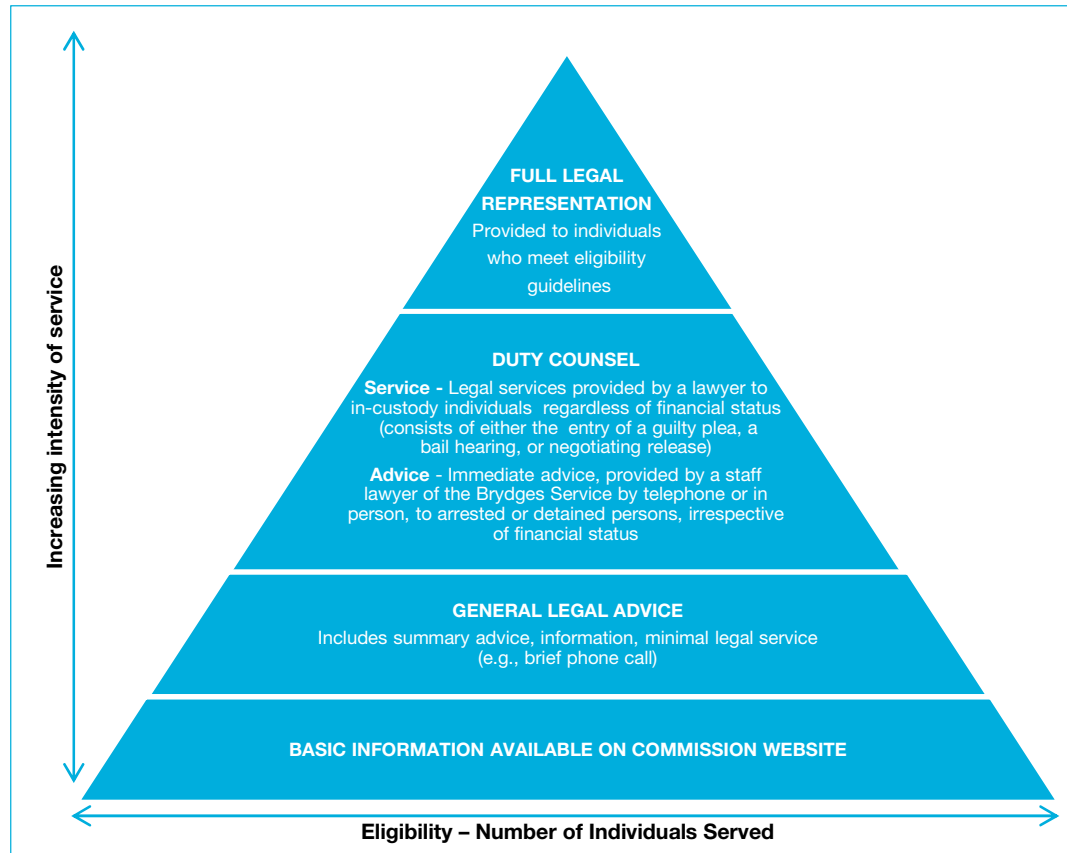
⁴ www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html (1 December 2015).

⁵ Legal Aid Directorate – Deputy Minister Advisory Panel on Criminal Legal Aid, *Report on the Deputy Minister Advisory Panel on Criminal Legal Aid*, (2014), p. 21.

⁶ Canadian Practice Association, *Moving Forward on Legal Aid*, (2010), p. 2.

⁷ Legal Aid Directorate – Deputy Minister Advisory Panel on Criminal Legal Aid, *Report on the Deputy Minister Advisory Panel on Criminal Legal Aid*, (2014), p. 21.

⁸ Victorian Auditor-General, *Access to Legal Aid*, (2014), p. 1.

Figure 1 – Intensiveness and Eligibility of the Commission’s Legal Services

Source: Adapted from Legal Aid Saskatchewan website and Legal Aid Saskatchewan, 2014-15 Annual Report.

Under *The Legal Aid Act*, the Commission is responsible for providing full legal representation to persons, with respect to civil matters and criminal matters (where those persons are charged with matters that could result in jail time), and who are financially unable to secure those services with their own resources. Since the 2008 amendments to the *Legal Aid Regulations*, all Saskatchewan youth (i.e., persons under 18 years of age) are eligible for services when charged under *The Youth Criminal Justice Act (Canada)*.

On July 1, 2014, the Commission revised the financial eligibility thresholds used to determine who is eligible to receive services to expand its services to more individuals.⁹ It considers persons financially eligible if they:¹⁰

- Receive Saskatchewan social assistance from Social Assistance Program, Saskatchewan Assured Income Disability, or Saskatchewan Income Plan for Seniors
- Receive band funding from Indigenous & Northern Affairs Canada Income Assistance Program¹¹

⁹ www.legalaid.sk.ca/legal_help/eligible.php (10 December 2015).

¹⁰ Under *The Legal Aid Act*, the Commission may establish procedures to determine the eligibility of applicants for legal aid services. This includes setting financial thresholds for income.

¹¹ To support low-income First Nations people, the Federal Government (through Aboriginal Affairs and Northern Development Canada) provides an income assistance program with the purpose of alleviating extreme poverty by providing a monthly payment to people with little or no income. Its broad objective is to provide individuals and families with the means to meet basic needs for food, clothing, and shelter.



- Have income levels below specified financial thresholds (e.g., yearly income of less than \$11,820 for a single person; less than \$18,480 for a family with one child)
- Have income levels within 10% of the specified financial thresholds and contribute to the cost of the legal services received

As shown in **Figure 2**, the Commission primarily uses salaried staff to deliver legal services. It uses private-practice lawyers where staff has conflicts of interest (real or perceived) with a case, or if staffing allocations preclude it providing timely legal aid services to an eligible individual (client).

Figure 2—2013-14 Provincial/Territorial Legal Aid Commission Legal Services Expenditures Broken down by Commission Staff Lawyer and Private-Practice Lawyer Costs

Jurisdiction	Staff direct legal service expenditures	Private law firm legal service expenditures	Total legal service expenditures	% of direct legal service expenditures	2014 Population
	(in thousands)				
Saskatchewan	\$ 18,563	\$ 2,630	\$ 21,193	88%	1,122.3
Newfoundland and Labrador	\$ 12,190	\$ 389	\$ 12,579	97%	529.1
Prince Edward Island	\$ 1,654	\$ 202	\$ 1,856	89%	146.2
Yukon	\$ 1,573	\$ 201	\$ 1,774	89%	37
Nova Scotia	\$ 17,323	\$ 4,217	\$ 21,540	80%	942.4
New Brunswick	\$ 4,938	\$ 1,782	\$ 6,720	73%	754.6
Northwest Territories	\$ 2,190	\$ 811	\$ 3,001	73%	44
Nunavut	\$ 4,174	\$ 1,780	\$ 5,954	70%	36.1
Quebec	\$ 84,597	\$ 59,473	\$ 144,070	59%	8,214.9
Manitoba	\$ 13,150	\$ 11,319	\$ 24,469	54%	1,280.2
Alberta	\$ 28,183	\$ 40,199	\$ 68,382	41%	4,120.9
Ontario	\$ 93,885	\$ 192,073	\$ 285,958	33%	13,677.7
British Columbia	\$ 5,178	\$ 62,331	\$ 67,509	8%	4,638.4

Sources: Statistics Canada, *Legal Aid in Canada*, (2013-14) and Statistics Canada, *Population by year, by province and territory (Number)*, (2011-2015).

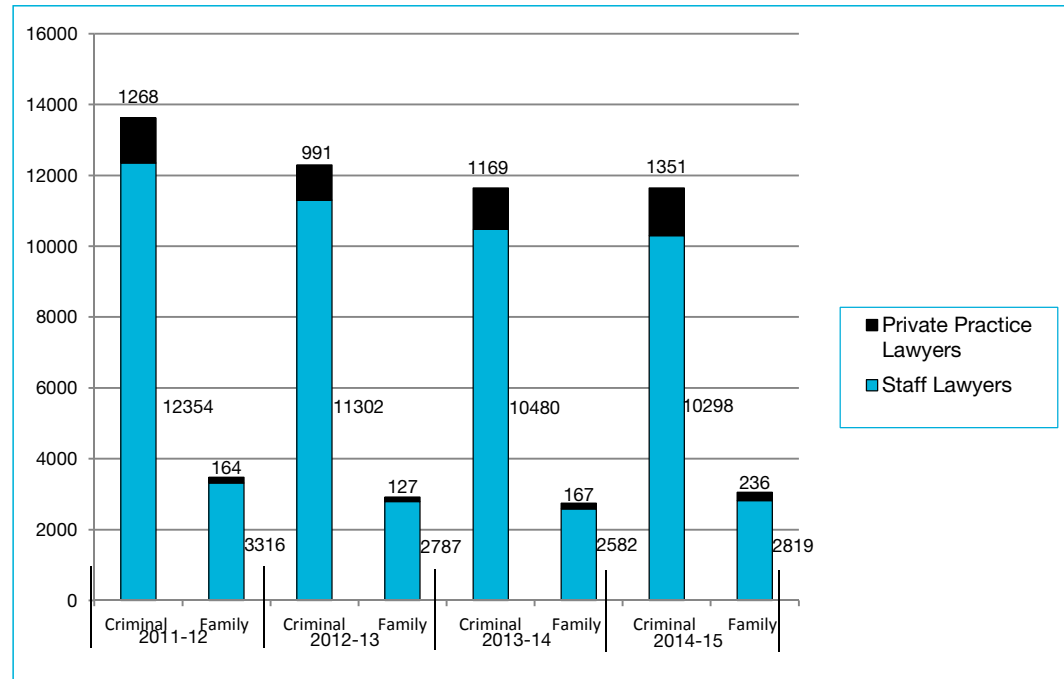
The Commission provides legal services through its head office in Saskatoon and 14 area offices. The location of its area offices align with courts throughout the province. The Commission employs over 80 staff lawyers located throughout the province to provide full representation for cases within the Commission's range of service.¹² A Legal Director at each area office oversees staff lawyer work. In 2014-15, the Commission's legal services (i.e., salaries and benefits, provision of legal services, area office administration, and travel) cost \$23.3 million.¹³ The Commission's revenue for 2014-15 was \$23.5 million, including \$23.3 million of grants from the Ministry of Justice.

¹² www.legallaid.sk.ca/about/legal_services.php (30 November 2015).

¹³ Legal Aid Saskatchewan, *2014-15 Annual Report*, (2015), p. 11.

In 2014-15, the Commission's staff lawyers handled 91% (2013-14: 91%) of cases, with 112 private-practice lawyers (2013-14: 91 lawyers)¹⁴ handling the remainder¹⁵ at a cost of \$3.0 million.¹⁶ As shown in **Figure 3**, over the last four years, criminal cases have generated the majority of the Commission's workload for legal aid services. Full representation cases have declined over the same period.

Figure 3—Number of Full Legal Representation Cases Opened in the Fiscal Years 2011-12 to 2014-15



Source: Adapted from Legal Aid Saskatchewan 2014-15 Annual Report, p. 7.

Eligible individuals rely on the Commission to provide effective legal services. Providing effective legal services helps avoid adverse impacts on a clients' experiences and outcomes of court proceedings.

3.0 AUDIT OBJECTIVE, SCOPE, CRITERIA, AND CONCLUSION

The objective of this audit was to assess the effectiveness of the Saskatchewan Legal Aid Commission's processes, for the period of February 1, 2015 to January 31, 2016, to provide legal services to eligible persons.¹⁷

We did not examine files for individuals charged under *The Youth Criminal Justice Act (Canada)*. In addition, we did not examine or question the advice or decisions of individual staff lawyers or individual private-practice lawyers employed by the Commission.

¹⁴ Ibid., p. 1.

¹⁵ Ibid.

¹⁶ Based on information provided by management of the Commission.

¹⁷ For the purposes of the audit, eligible persons are those who meet the eligibility criteria prescribed by the Commission as set out in *The Legal Aid Act* and *The Legal Aid Regulations, 1995* (e.g., full representation for those who are financially unable to obtain those services themselves). Legal services are those designated in *The Legal Aid Regulations, 1995*.



We examined the Commission's policies and procedures (e.g., related to applications, eligibility, use of private-practice lawyers, quality assurance). We also reviewed key documents, manuals, and publications. We interviewed staff at both head office and the area offices. In addition, we sampled eligibility applications for individuals receiving legal aid services from the Commission respecting the confidentiality of client information throughout our audit.

To conduct this audit, we followed the standards for assurance engagements published in the *CPA Canada Handbook – Assurance*. To evaluate the Commission's processes, we used criteria based on our related work, reviews of literature including reports of other auditors, and consultations with management. The Commission's management agreed with the criteria (see **Figure 4**).

Figure 4—Audit Criteria

- 1. Plan for provision of legal aid services**
 - 1.1 Assess need for legal aid services
 - 1.2 Identify barriers to provide accessible legal aid services
 - 1.3 Use information gathered in environmental scan to develop strategies
 - 1.4 Set policies and procedures to deliver legal aid services in accordance with law
 - 1.5 Develop performance measures and targets to guide and evaluate service delivery
 - 1.6 Allocate resources
- 2. Deliver legal aid services to eligible applicants**
 - 2.1 Intake and prioritize eligible applicants
 - 2.2 Provide timely legal aid services to eligible applicants in accordance with law
 - 2.3 Administer timely appeals to address disputes regarding eligibility
 - 2.4 Monitor legal services provided by private-practice lawyers
 - 2.5 Review quality and timeliness of staff lawyer work
- 3. Monitor performance in the provision of legal aid**
 - 3.1 Collect key information based on selected performance measures
 - 3.2 Assess results against performance targets
 - 3.3 Address areas where results fall short of targets
 - 3.4 Report results to senior management, the Commission, and publicly

We concluded that, for the period of February 1, 2015 to January 31, 2016, the Saskatchewan Legal Aid Commission had, other than for the following, effective processes to provide legal services to eligible persons. The Saskatchewan Legal Aid Commission needs to:

- › **Set expectations for quality and timely legal aid services, report on differences between actual and expected results, and plan to address shortfalls**
- › **Electronically capture data on the status of case files**
- › **Annually evaluate performance of staff lawyers**

4.0 KEY FINDINGS AND RECOMMENDATIONS

In this section, we set out the criteria (expectations) and our key findings along with related recommendations.

4.1 Legal Aid Service Expectations Need to be Set

4.1.1 Environmental Scanning Completed and a Strategic Plan Created

We expected the Commission to perform environmental scanning activities including:

- › *Regular assessment of the drivers (factors) influencing the demand for legal aid services*
- › *Assessment of the level and type of need for legal aid services*
- › *Regular review of programs and services to determine whether there are any gaps in delivery*
- › *Regular assessment of organizational risks and opportunities*
- › *Periodic identification of barriers that can restrict access to legal aid services*

We expected the Commission to use information gathered as part of its environmental scan to develop strategies. We expected decisions made to be evidence based.

The Commission uses a variety of channels to gather information on drivers influencing the need for legal aid services (e.g., involvement in national committees, completing a strengths/weaknesses/opportunities/threats [SWOT] analysis). Additionally, the Commission reviews information outlining the need for legal aid services through Statistics Canada reports (e.g., police reported crime statistics and adult criminal court statistics).

The Commission completes an annual threat and risk assessment each year. The annual assessment typically considers risks related to the Commission's assets, electronic files, human resources, and finances. Also as part of the 2015-16 budget submission, the Ministry of Justice required the Commission to submit a SWOT analysis and information on some key risks. The risk analysis information submitted identified the top three risks affecting the Commission – these risks were consistent with those in its annual threat and risk analysis.

Using this information, the Commission revisits its strategic plan on a three-year cycle. Its current strategic plan covers 2014 to 2017. The Plan outlines the Commission's goals, strategic priorities, and definitions of success (performance measures). The Commission reports on performance measures in its annual report.

The Commission reviews its programs and services using a combination of internal and external sources. We found that head office staff, with assistance from area office staff, performed operational reviews at each area office. The reviews covered: the structure



within the area office, the current assignment of duties and caseloads, and the staff's perception of the client experience. Head office staff gave the results of the reviews to the Legal Directors at each area office. The results included a summary of findings, observations, and recommendations to address identified gaps in service, if any.

The Commission identifies barriers to accessing legal aid services through a number of channels (e.g., involvement in national committees, consultations with Legal Directors, periodic client satisfaction surveys [last completed in July 2013], and periodic employee engagement surveys [last completed in January 2015]). Barriers identified included transportation, language, literacy, and ability to contact clients.

We found that the Commission developed action plans to address priority barriers. For example, it had strategies to improve the way staff contacts clients, such as using text messages where possible.

Also in July 2014, the Commission completed a review of its client financial eligibility guidelines (which set limits to who can access legal aid services). As a result, the Commission revised its eligibility guidelines and increased the maximum amount of income¹⁸ an eligible applicant may earn. Also as part of this review, management estimated potential increases for its services given these revisions.

4.1.2 Policies and Procedures Require Updating

We expected the Commission to maintain up-to-date policies and procedures to guide the provision of legal aid services.

The Commission has an *Eligibility and Legal Services Delivery Manual* to guide its provision of legal aid services. The Manual contains policies on areas such as application procedures, financial eligibility, range of services, private-practice lawyers, appeals, withdrawals of service, complaints, and file administration. The Commission's Board approves key policies.

We found the Manual is outdated, as it does not reflect the Commission's recently approved policies and forms. Many sections of the Manual were last updated 15 years or more ago.

Management indicated it provides staff with current guidance in key areas where the manual is not up to date. For example, the Commission posts current eligibility guidelines and private-practice lawyer appointment information on its public website, as well as a frequently asked questions section on its staff-accessible website.

However, having conflicting and outdated policies and guidance available to staff may create confusion. It may also increase the risk of staff using outdated guidance that may result in providing services to ineligible clients.

- 1. We recommend that the Saskatchewan Legal Aid Commission update its policies and procedures guiding the provision of legal aid services and obtain Commission approval of key policy revisions.**

¹⁸ For example, the maximum amount a single person can earn increased to \$11,820 from \$9,420.

Management advised us that it is currently undertaking a comprehensive policy review. It expects to complete this by March 2017.

4.1.3 Electronic System to Monitor Caseload Not Updated

We expected the Commission to effectively match available supply for legal aid services with demand (e.g., determining area office location, number of lawyers needed, service delivery mix).

As shown in **Figure 2**, legal aid plans across Canada use a mixed service delivery model in which both staff and private-practice lawyers provide legal aid services. The Commission's model uses primarily staff to provide services. In 2014-15, the Commission's staff lawyer expenditures represented 86% (2013-14: 88%) of the total amount spent on legal aid services.

The Commission has an electronic case management system (Legal Aid Information Network [LAIN]) to help track its work on individual legal cases. The Commission collects certain information on applicants and client files through LAIN.

LAIN can capture eligibility information on all applicants and the date the applicant was determined as eligible. It also can capture details on criminal charges or family services to be provided, court appearance dates, meeting dates with clients, completion of cases, or reasons why cases did not continue (e.g., client abandonment).

We observed head office staff and Legal Directors primarily use informal methods to monitor caseload assignments of staff lawyers given summarized caseload data available. They periodically receive information from LAIN on the caseloads for their area office. Legal Directors use this information to determine the location and number of lawyers needed at each area office's court points (i.e. the court where a lawyer generally works).

However, we found some staff do not keep LAIN up to date. Legal Directors from area offices across the province agreed. For example, about one-quarter of the adult criminal court cases¹⁹ in LAIN have been open for more than twice the length of time of the Statistic Canada's 2013-14 median length of court case time of 71 days for Saskatchewan.²⁰ We sampled case files shown as open for more than 180 days in LAIN. We found almost one quarter did not have their status up to date in LAIN and should have been closed.

Staff lawyers not keeping LAIN up to date, as required by policy, provides an inaccurate picture of lawyer caseloads (it makes caseloads look larger). Because of the volume of case files, lack of accurate summarized caseload data in LAIN increases the risk of ineffective monitoring and allocation of resources to the right place at the right time.

¹⁹ Adult criminal court cases represented 70% of the Commission's work in 2014-15.

²⁰ The median length of court time comes from Statistics Canada, *Adult criminal court statistics in Canada, 2013/2014*, (2015), p. 18. Statistics Canada counts court time as the time from the first court appearance to final decision.



2. **We recommend that the Saskatchewan Legal Aid Commission use its electronic case management system to capture accurately the status of legal aid cases in a timely manner to facilitate monitoring of lawyer caseloads.**

Generally, Legal Directors assign lawyers to handle cases that are at their court point. If Legal Directors identify a spike in caseloads in a particular area office, they work with head office staff to determine whether the area office needs additional resources, or if it can share the work with another area office.

4.1.4 Need to Set Expectations for Delivering Timely and Quality Legal Aid Services

We expected the Commission would define the timeliness and quality of legal aid services it expects to deliver and how it intends to measure to see if it is meeting that expectation (i.e., what will be measured, how it will be collected, and how it will be calculated).

Several years ago, the Commission developed measures to help evaluate its success in providing legal aid services. It decided to measure several quality and client-focused (e.g., timeliness) aspects of how it delivers legal aid services. The Commission reconfirmed those measures in its latest strategic plan (see **Figure 5**).

We found that the Commission set out what it wanted to measure, and what information to collect for each measure. Other than for one measure (i.e., wait time for first meeting with lawyer), its process seemed reasonable. For the wait time measure, we found head office staff estimated this measure only on May 1 each year. Instead of using data from LAIN, they took a simple average of responses from Legal Directors at each area office on their estimate of the length of time they thought it took a client to meet with a lawyer for the first time.

We note that LAIN can track the actual length of time clients had to wait for their first appointment with a staff lawyer. Similar to not keeping status of cases up to date, legal aid staff did not enter meeting date information into LAIN. Using actual waiting time information would yield a more meaningful measure of timely provision of legal aid services. (See **Recommendation 2**)

Figure 5—Definitions of Success Related to Provision of Legal Aid ServicesClient-Focused Service Measures

- › Wait time for first meeting with lawyer [as of May]
- › Number and relative proximity of physical access points for clients
- › Appropriate proportion of family law and criminal cases
- › Number of lost clients [discontinued applications and client abandoned files]

Quality and Perceived Quality of Service Measures

- › Appropriate number of cases per office
- › Appropriate number of cases per lawyer
- › Appropriate level of professional development for staff
- › Number of complaints received

A Healthy Organization Measures

- › Budget to actual expenditure variance
- › Appropriate staff retention rates
- › Employee absences
- › Employee engagement

Source: Legal Aid Saskatchewan 2014-17 Strategic Plan.

We also found the Commission does not collect and measure adequate information on the timeliness of legal aid services. For instance, its only timeliness measure is the length of time clients had to wait for their first appointment with a staff lawyer (i.e., wait time for first meeting with lawyer). As **Figure 5** shows, many of the Commission's measures track the extent of services it provides (e.g., the number of case files).

We found that other Canadian legal aid jurisdictions have additional measures for evaluating timeliness and quality of legal aid services. They also set expectations (referred to as targets) for their measures.

For example, Legal Aid Ontario evaluates timeliness by measuring phone call wait time against targets,²¹ percentage of same day decisions on eligibility,²² and wait time against target for area office appeals.²³ Also, Legal Aid Ontario and the Legal Services Society of British Columbia use periodic client surveys to measure the quality of the legal aid services they provide.

In addition, for several measures, the Commission had not set clear expectations (i.e., the amount it is striving to achieve). For instance, it has not set out what it considers an appropriate number of cases per office or per lawyer.

Setting clear expectations helps determine the extent of effort and resources needed to reach the desired results. Setting clear written expectations for timely and quality legal aid services would also allow the Commission to identify and address factors inhibiting the effective provision of legal aid services. It would allow the Commission to better plan for and gauge its success.

²¹ This performance measure is defined as the time spent waiting on the phone to apply for service. The targets set include the maximum number of minutes based on type of call.

²² This performance measure is defined as the percentage of applicants receiving a decision on their eligibility the same day they applied for legal aid services. The target is to improve over last year.

²³ This performance measure is defined as the wait time between applying for the appeal and the decision. The target set is for an appeal to be heard within three days.



3. We recommend that the Saskatchewan Legal Aid Commission set expectations to assess the quality and timely delivery of legal aid services.

4.2 Legal Aid Services Delivered to Eligible Applicants but Staff Evaluations Needed

4.2.1 Processes to Verify Client Eligibility Followed

We expected the Commission to:

- › Establish a triage and intake process
- › Provide timely legal aid services to eligible applicants in accordance with legislation (e.g., income/asset thresholds, range of service)

The Commission has policies and procedures for triage and intake of legal cases. These are set out in its *Eligibility and Legal Services Delivery Manual*. The Commission's website describes the application process and includes a copy of its standard application form. The Commission requires applicants to provide the information listed on the form when applying for legal aid. Applicants can apply in person, online or over the phone. Generally, management expects staff to process completed applications the same day they are received.

We found that legal aid staff assess the completed application form against eligibility requirements. At this stage, it does not confirm whether applicants receive social assistance or their income and assets. Staff enter the application information into LAIN and assign a staff lawyer.

We assessed how long it took staff to assess and approve a sample of applicants for services. We found the Commission approved 42% of applications on the same day of receipt; for the remaining 58%, it approved applications on average of 10 days after receipt.

Each month, staff test a random sample of 50 applications²⁴ to confirm clients were eligible to receive legal aid services. Staff independently confirms whether applicants receive social assistance or their income and assets (resources).

For 2014-15, staff found for 3% of client files tested, clients were not eligible for service based on the confirmed amount of resources (2013-14: 4%). For each of these cases, the Commission had provided minimal services from a staff lawyer (i.e., generally less than one hour of service provided in each case) (2013-14: similar finding to 2014-15). This is less than its 5% acceptable eligibility error rate (i.e., the percentage of clients later determined as not being eligible to which it provided services). Management reports the results of its testing to the Commission's Board annually.

²⁴ When the Commission establishes the sample size and acceptable error rate, it recognizes the trade-off between the cost of testing eligibility of applicants (i.e., verifying additional applications takes time away from providing legal aid services), the risk of ineligible applicants, and the importance of providing timely legal aid services.

We assessed whether services were provided to eligible applicants (e.g., eligibility assessment based on age, source of income/maximum income and asset thresholds, and scope of service request is within the range of services set in law). All applicants we sampled met the eligibility criteria.

We found that the Commission relies on the professional judgement of staff lawyers to decide which assigned cases to handle first. Management indicated this approach provides staff lawyers' flexibility to deal with situations that arise. At January 2016, its staff lawyers had on average 20 years of professional experience.

4.2.2 Complaints Regarding Eligibility Addressed Timely

We expected the Commission to implement a process to administer appeals regarding eligibility in a timely manner.

The Commission's *Eligibility and Legal Services Delivery Manual* set out procedures to address eligibility complaints from applicants. The Manual describes the complaints process. Applicants can submit a complaint when they think the Commission made an error in determining their eligibility.

The Commission expects to review a complaint within two weeks of receipt of a completed complaint form. When the Chief Executive Officer denies an eligibility complaint for services, the applicant can launch, within 20 days after the Chief Executive Officer's decision, a secondary appeal (only for a family matter on financial eligibility) to an independent Civil Appeal Committee.

Over each of the last four years, the Commission denied legal aid to about 14% of all full service applications (i.e., between 2,300 to 3,000).²⁵ When it denies legal aid, the Commission expects legal aid staff at each area office to communicate with each denied applicant and give them a complaint form.

Over each of the last four years, the Commission received complaint forms from about 30% of denied applicants (i.e., between 650 to 820 complaint forms).²⁶ The Chief Executive Officer reviews the documents and decides on the complaint. For complaints we tested, we found the Chief Executive Officer responded to complaints within six business days. Typically, about 32% of complaints result in the Commission providing legal aid services (about 130-200 applicants that complain each year).²⁷

The Civil Appeal Committee decided on 11 secondary appeals in 2014-15. The Committee granted four of these appeals and the Commission provided the legal aid services.

4.2.3 Legal Services Provided by Private-practice Lawyers Effectively Monitored

We expected the Commission to implement a process to properly approve private-practice appointments. We also expected the Commission to have appropriate controls

²⁵ Legal Aid Saskatchewan, *2014-15 Annual Report*, (2015), p. 7.

²⁶ Ibid.

²⁷ Ibid.



over private-practice billing and payment (e.g., lawyer is on the list of private-practice lawyers, billings reviewed, services received reviewed, billings approved).

The Commission appoints private-practice lawyers where a conflict of interest with a client exists, or a staff vacancy exists that would prevent providing timely legal aid. It has policies to guide this process.

The Commission pre-approves lawyers to conduct legal aid work and keeps a list of approved private-practice and staff lawyers. Interested private-practice lawyers must complete standard applications. The Commission's website provides information on the process and the standard application form. Lawyers record, on their completed application, their knowledge, skills, and abilities, and areas of practice. Commission staff review applications and recommend lawyers for approval to the Chief Executive Officer.

Legal Directors, located at each of the 14 area offices, use the list to assign client cases to specific staff lawyers or private-practice lawyers.

For private-practice appointments we tested, we found private-practice lawyers were on the approved list and the reason for their appointment made sense.

The Commission pays private-practice lawyers a set tariff fee. The tariff fee is either a flat fee or an hourly fee of \$88 per actual hour worked up to a set maximum number of hours based on the type of offence/civil matter. The Commission may adjust the maximum hours due to the nature of the offence or complexity of the case.

Commission staff review and approve private-practice lawyer invoices. For private-practice billings we tested, the amounts charged were within tariff fees and support was submitted along with the billings. Commission staff verified and approved these billings.

4.2.4 Staff Performance Evaluations Needed

We expected the Commission to maintain a staff lawyer quality assurance program (e.g., quality, timeliness). A quality assurance program includes processes to maintain standard file documentation, provide professional development opportunities, provide adequate staff supervision, and evaluate staff performance.

Staff lawyers have the discretion to decide the structure and content of their client files. They are subject to the Law Society of Saskatchewan's standards and regulatory processes.

The Law Society can perform quality review of the Commission's case files. The last review completed at the Commission was about 15 years ago.

The Law Society also requires every lawyer to complete 36 hours of accredited continuing professional development activities in a three-year period.²⁸ The Commission requires lawyers to be in good standing with the Law Society including meeting their continuing professional development requirements.

The Commission requires the Legal Directors at each area office to supervise staff lawyers, monitor caseloads, and assign the work. Regina, Saskatoon, and Prince Albert

²⁸ www.lawsociety.sk.ca/continuing-professional-development/cpd-program/program-overview.aspx (23 March 2016).

area offices each has on average 12 staff lawyers and 1 Legal Director. Each of the other 11 area offices has on average 3 staff lawyers and 1 Legal Director.

Staff lawyers and other legal aid staff are unionized. The collective bargaining agreement in place between the Commission and the union representing staff lawyers and other legal aid staff at January 2016 requires the review of work of every staff lawyer once a year.²⁹

Legal Directors indicated they review client files of particular staff lawyers upon receipt of complaints, or if they become aware of poor court proceedings. Legal Directors indicated these situations rarely occur.

We found Legal Directors conducted formal performance evaluations on staff lawyers only during their probationary period. They did not conduct formal (written) annual evaluations afterwards.

Periodic written performance evaluations are a useful tool to provide feedback on the quality and timeliness of legal aid services of staff lawyers. They also allow taking of timely corrective action and, overall, promote a supportive culture of professional engagement.

4. We recommend that the Saskatchewan Legal Aid Commission conduct written annual performance evaluations of its lawyers.

The Commission uses the number of complaints received about its work as a measure of the quality of its services. The Commission has procedures to address complaints (see **Section 4.2.2**).

The Commission also assesses the complaints referred to it by the Minister of Justice and the Provincial Ombudsman. Over the last four years, the complaints have ranged from 35-67 annually.³⁰ The Commission indicated that the complaints are most often about the denial of legal aid services.

4.3 Better Legal Aid Services Results Reporting Needed

We expected:

- › *Key performance information related to providing legal aid services to be collected*
- › *Established performance measures aligned with organizational goals*
- › *Results to be compared against performance benchmarks*

²⁹ A committee composed of General Counsel to the Commission and the Legal Director shall, once a year, review the work of every lawyer and such lawyer shall be advised in writing if their work is deemed to be acceptable up to the date of such review.

³⁰ Legal Aid Saskatchewan, *2014-15 Annual Report*, (2015), p. 10.



- ▶ *Timely action to be taken to address areas related to legal aid services that fall short of established benchmarks*
- ▶ *Key performance indicators regularly reported to senior management, the Commission, and publicly*

We expected the Commission to report its performance measures in a way that an informed reader could understand. We expected them to state the source of the data and disclose any significant limitations. We also expected the Commission to explain any progress against expectations including major events or situations that influence the results.

To report on results for its measures, the Commission uses information collected in LAIN or its financial system. As noted in **Section 4.1.3**, some staff are not keeping LAIN up to date. They did not record in LAIN when they completed files (status). Not documenting file completions resulted in reporting inaccurate information for various legal aid service measures in **Figure 5** (i.e., the number of discontinued applications, client abandoned files and full service cases closed).

The Commission presented three- or four-year trend information for most measures in its annual report. The Report does not clearly describe its actual progress against expectations because it had not set clear expectations for its delivery of legal aid services. As a result, it is difficult to determine whether the Commission delivered timely and quality legal aid services.

Providing reasons for key differences between expected and actual results facilitates informed decision-making. It also aids in determining action plans to address services that did not meet expectations.

5. We recommend that the Saskatchewan Legal Aid Commission publish reasons for key differences between actual and expected results for legal aid services and establish actions to address shortfalls in its plans.

5.0 GLOSSARY

Civil Law – Deals with disputes between private parties, or negligent acts that cause harm to others. Examples include: divorce, custody matters, spousal support, and protective matters (i.e. restraining orders). The Commission provides services in these areas however it does not deal with the division of family property.

Criminal Law – Deals with acts of intentional harm to individuals. Examples include assault, theft, break and enter, fraud, and impaired driving causing bodily harm.

Duty Counsel Service – Legal services provided by a lawyer to in-custody individuals regardless of financial status (consists of either the entry of a guilty plea or a show cause hearing or negotiating release).

Full Legal Representation – Legal services provided by a lawyer to a client until legal problem is resolved.

Legal Services – As defined in *The Legal Aid Act*, means any services designated in the regulations and includes related services but does not include fee-generating services.

Phone Service (Brydges) – Immediate (although temporary) legal advice by telephone, to any person who is arrested or detained. The Commission provides this service 24 hours a day, 7 days a week to those who have been arrested. This service is referred to as "Brydges" per the Supreme Court of Canada decision *R. v. Brydges*.

Remand – Held in custody while awaiting trial or sentencing.

Summary Advice – Lawyer's opinion based on the facts of a legal situation is summary advice. The lawyer may suggest steps to take for a case, such as needed evidence. The lawyer can also provide procedural information.

6.0 SELECTED REFERENCES

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