

## Chapter 41

# Saskatchewan Legal Aid Commission – Providing Legal Aid Services

### 1.0 MAIN POINTS

Legal Aid involves providing publicly funded legal services to persons who otherwise cannot afford them.

By August 2018, the Saskatchewan Legal Aid Commission had made some progress in improving its processes to provide legal aid services. It implemented one of the five recommendations from our 2016 audit of its processes to provide legal aid services and was working on implementing the remaining four recommendations.

The Commission updated and approved its policies and procedures. It also began using a standard form to evaluate the performance of newly hired/promoted lawyers and plans to create evaluation forms for the rest of its lawyers. Commission staff still need to keep data in the electronic case management system accurate to support effective caseload assignment and monitoring. The Commission has further work planned around setting expectations and reporting on the quality of legal aid services provided.

### 2.0 INTRODUCTION

Under *The Legal Aid Act*, the Saskatchewan Legal Aid 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. All Saskatchewan youth are eligible for legal aid services when charged under *The Youth Criminal Justice Act (Canada)*.<sup>1</sup>

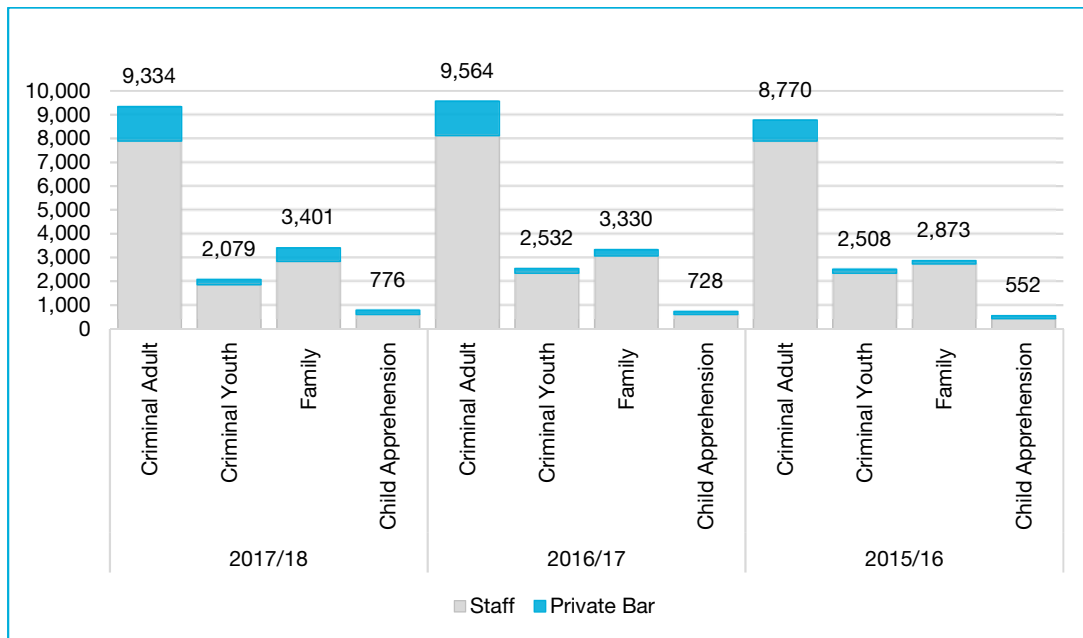
In 2017-18, the Commission had expenses of \$25.3 million of which \$16.7 million was salaries and benefits and \$5.1 million was for provision of legal services using private bar lawyers.<sup>2</sup> The Commission is financed primarily through grants from the Ministry of Justice.

The Commission provides services primarily through staff at its head office in Saskatoon, and staff located in its 14 area offices located throughout Saskatchewan. At March 2018, it had staff in 154 staff positions, of which 90 were lawyers.

As shown in **Figure 1**, from 2015-16 to 2017-18, the Commission had a 6% increase in the number of new cases (i.e., case files). The total number of cases in 2015-16 was 14,703 (including 8,770 criminal adult cases) compared to 15,590 cases (including 9,334 criminal adult cases) in 2017-18.

<sup>1</sup> Persons under 18 year of age.

<sup>2</sup> The Commission hires private-practice lawyers to handle some of its case files. In 2017-18, private-practice lawyers handled about 15% of cases.

**Figure 1 – New Full Legal Representation Files Opened in Fiscal Years 2015-16 to 2017-18<sup>A</sup>**

Source: *Saskatchewan Legal Aid 2017 – 2018 Annual Report*, p. 11.

<sup>A</sup> An opened file is one in which the applicant was found eligible for legal aid.

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 family law restraining order sooner to individuals).

This chapter describes our first follow-up of the Commission's actions on the five recommendations we made in 2016. In our *2016 Report – Volume 1*, Chapter 16, we concluded that for the 12 month period ending January 31, 2016, the Commission had, other than areas related to five recommendations, effective processes to provide legal services to eligible persons.<sup>3</sup>

To conduct this audit engagement, we followed the standards for assurance engagements published in the *CPA Canada Handbook – Assurance (CSAE 3001)*. To evaluate the Commission's progress towards meeting our recommendations, we used the relevant criteria from the original audit. The Commission agreed with the criteria in the original audit.

During this follow-up audit, we examined the Commission's related policies and procedures, and reviewed key documents, manuals, and publications. In addition, we interviewed relevant Commission staff, and tested a sample of case files of individuals receiving legal aid services from the Commission, respecting the confidentiality of client information throughout our audit.

<sup>3</sup> 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*.

## 3.0 STATUS OF RECOMMENDATIONS

This section sets out each recommendation including the date on which the Standing Committee on Public Accounts agreed to the recommendation, the status of the recommendation at August 31, 2018, and the Commission's actions up to that date. We found that the Commission implemented one recommendation and was working on implementing the other four recommendations.

### 3.1 Policies and Procedures Updated and Approved

***We recommended 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.*** (2016 Report – Volume 1; Public Accounts Committee agreement January 11, 2017)

**Status** – Implemented

The Commission revised its policies and procedures about providing legal services to make them up-to-date and congruent; the Board of the Commission approved its policy changes.

The Commission updated two key manuals so that their contents align with its updated policies, and guidance previously provided to staff. It updated key operational policies in its Governance Policy Manual related to providing legal aid services. It also updated its Eligibility and Service Delivery Manual. The Manual includes detailed procedures on delivering legal aid (e.g., steps to determine client eligibility). The Board of the Commission approved the updates.

In addition, the Commission developed practice directives and related forms to aid staff in providing criminal, family, and duty counsel legal services, and documenting information about the provision of those services consistently.

The Commission makes its manuals, directives, and forms readily available to staff on its internal website.

Having up-to-date policies and guidance that is consistent with those policies provides staff with clear direction and expectations, and reduces the risk of staff providing services to ineligible clients.

### 3.2 Further Staff Performance Evaluations Needed

***We recommended that the Saskatchewan Legal Aid Commission conduct written annual performance evaluations of its lawyers.*** (2016 Report – Volume 1; Public Accounts Committee agreement January 11, 2017)

**Status** – Partially Implemented

While the Commission has always undertaken evaluations of staff on probation, it started to use a standard form for this process. The Commission does not formally evaluate all lawyers on an on-going basis.



Since our 2016 audit, the Commission is using a standard form to evaluate the performance of probationary new lawyers and lawyers transferred to new/promoted positions. It developed this form and expects supervising lawyers to complete the form:

- For probationary lawyers, within the first nine months of the lawyer being in the position
- For lawyers transferring within the Commission, within the first six months of the lawyer being in a new position

We found that each of the 14 area offices use this evaluation form for these positions as expected.

In addition, the Commission indicated it plans to evaluate the work performance of the rests of its lawyers on staff using a standard performance evaluation form. At August 2018, it had not yet developed this form.

In preparation for these performance evaluations, the Commission created and gave all staff practice directives and forms (for criminal, family, and duty counsel matters). It plans to use the requirements set out in the directives as a portion of the performance evaluation form for lawyers.

Also, the Commission is implementing a new timekeeping system to track time lawyers spend on various case files. In August 2018, it was piloting this new system in an area office. If successful, it expects to use information from the timekeeping system as an element of performance evaluations.

Periodic written performance evaluations provide feedback on the quality and timeliness of legal aid services of staff lawyers. Doing evaluations can promote a supportive culture of professional engagement, and enable timely coaching of staff on areas identified as needing improvement.

### 3.3 Electronic Case Management Data Not Always Accurate

***We recommended 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.*** (2016 Report – Volume 1; Public Accounts Committee agreement January 11, 2017)

**Status** – Partially Implemented

Staff lawyers do not consistently keep information in the electronic case management system accurate or up-to-date. In addition, the Commission does not track key dates for criminal and family matters in an accessible way to facilitate monitoring the timeliness of providing legal aid services.

The Commission uses an electronic case management system to help track and monitor caseloads of staff lawyers (e.g., number of cases assigned to individual staff lawyers or to area offices), and the status of case files (e.g., eligibility approved, client abandoned,

matter completed). Also, management uses this information to assign case files in area offices and to staff lawyers, and help determine the location and number of lawyers needed at each area office.

The electronic case management system does not track the date of the court decision in criminal matters or the date of resolution in family matters. Staff lawyers keep this information in individual paper files. At August 2018, the Commission was working with the Ministry of Justice to create access between its electronic case management system and the electronic provincial court system. The electronic provincial court system contains the court decision and date of decision for many criminal matters.

In addition, we found that key dates in the electronic case management system did not always agree with dates in the related paper case file. For 2 of 30 case files we tested, the date the client was deemed eligible to receive services differed by 14 and 123 days respectively. For 2 other of 30 case files we tested, the case closing dates differed by 79 and 89 days respectively.

In April 2016 (after our initial audit), management identified over 3,600 stale files and closed them in June 2016. Since then the Commission has implemented a review of stale files. On a quarterly basis, the Legal Director from each area office reviews the criminal cases that have not been closed within one year, family cases that have not been closed within 18 months, and duty counsel cases that have not been closed within 60 days to assess why the files have not been closed.

However, we found the status of case files in the electronic case management system was not always up-to-date. For seven criminal cases we tested in our sample of 30 case files, staff closed these case files, on average, 18 days after the court decision with one case not closed until 118 days after the court decision.

Having the court decision date in criminal matters and date of resolution in family matters electronically would allow the Commission to more accurately monitor the number of active case files. Not having up-to-date case status information in the electronic case management system provides an incorrect picture of lawyer caseloads—delays in closing files makes caseloads look larger than actual. Furthermore, not having accurate dates in the case management system affects the accuracy of information about the timeliness in handling cases. Not having complete, accurate, or up-to-date summarized caseload data increases the risk of ineffective monitoring of the provision of legal aid services, and not allocating resources to the right place at the right time.

### 3.4 Need to Set Expectations for Delivering Quality Legal Aid Services

***We recommended that the Saskatchewan Legal Aid Commission set expectations to assess the quality and timely delivery of legal aid services.*** (2016 Report – Volume 1; Public Accounts Committee agreement January 11, 2017)

**Status** – Partially Implemented

Since our 2016 audit, the Commission made progress in setting expectations related to timely delivery, but not the quality of legal aid services provided.



As shown in **Figure 2**, the Commission set timeliness expectations for the following:

- First meeting with a legal aid lawyer (timeliness expectation: three weeks)
- Eligibility response to an online application (expectation: two business days)
- Response to a complaint made to the Commission (expectation: two weeks)

It enhanced the information that it captures in its electronic case management system to enable measuring whether it meets these timeliness expectations. For example, staff are to record the date of the booked first appointment with the client. We realize that clients may decline the first available appointment that the Commission offers them.

**Figure 2—Commission’s Client Service Standards**

| Target (i.e., Expectation)  | 2017-18 Result  | 2016-17 Result     |
|---|---|--------------------|
| 90% of clients see a lawyer within three weeks of being declared eligible for legal aid         | 70%   | 70%                |
| 100% of online applications receive a response within two business days (regarding eligibility) | <i>Not tracked. The Commission estimated it to be 89% based on the number of applications that were received after the process was changed.</i>                 | 100%               |
| 95% of complaints receive a response within two weeks   | <i>87% (based on 67 files received after January 1, 2018). 71% of decisions were sent within two weeks (based on 472 files received during the fiscal year)</i> | <i>Not tracked</i> |

Source: Saskatchewan Legal Aid 2017 – 2018 Annual Report, pp. 8-9.

The Commission published its three new timeliness service expectations (service standards) shown in **Figure 2** in its *2017-18 Annual Report*.

At August 2018, the Commission was planning to expand its client service standards to include whether it provides quality legal aid services. It was considering a Department of Justice Canada’s outcomes monitoring framework for criminal legal aid.

This framework sets out specific criminal case statistics (e.g., cost per case, applications received/approved/denied, demographic information on clients, client satisfaction survey results) that all Canadian legal aid commissions could report. The Commission is also considering similar statistics for its family cases.

As noted in its *2017-18 Annual Report*, the Commission intends to develop and publish activity measures on the percentage of criminal files in Saskatchewan with legal aid representation, and the amount of child and spousal support orders secured.

The Commission is expected to provide full legal representation to those in Saskatchewan who are financially unable to secure these services themselves. Setting and using clear written expectations for quality legal aid services allows management to identify and address factors inhibiting the effective provision of legal aid services. Quality expectations allow for better planning and gauging of success.

### 3.5 Action Plans to Address Shortfalls Needed

*We recommended 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.*

(2016 Report – Volume 1; Public Accounts Committee agreement January 11, 2017)

**Status** – Partially Implemented

While the Commission did not publish the reasons for key differences between actual and expected results for its client service standards, it published some of its planned actions to improve legal aid services.

The Commission's *2017-18 Annual Report* compares actual to expected results for each of its client service standards set out in **Figure 2**.<sup>4</sup> In addition, it identified plans to improve its services (e.g., identify and address root causes of large number of family files where client contact was lost before case completion). However, its annual report did not describe the reasons for not meeting expected results (e.g., why it did not achieve its target of 90% of clients seeing a legal aid lawyer within three weeks).

Publishing reasons for key differences between expected and actual results shows legislators and the public the Commission has identified underlying causes for its performance, and had designed action plans to address services that did not meet its expectations.

<sup>4</sup> [www.legalaid.sk.ca/community\\_resources/annual\\_reports.php%20](http://www.legalaid.sk.ca/community_resources/annual_reports.php%20) (12 September 2018).

