



LEGAL AID ONTARIO

Submission to the Standing Committee on Justice and Human Rights

February 2, 2017

Overview

Legal Aid Ontario (LAO) is pleased to present this submission to the Standing Committee on Justice and Human Rights. LAO is Canada's largest legal aid plan, with a mixed-model service delivery system that includes private bar, staff, telephone-based and online services. Additionally, LAO is responsible for the funding and oversight of 76 independent legal clinics. LAO has broad experience in delivering and working to improve access to justice.

The federal government provides funding to support the delivery of legal aid services in the areas of criminal and refugee law and, more indirectly, in civil and family law. Criminal, family and refugee law represent LAO's three largest areas of service delivery. This submission identifies the major challenges that exist in relation to eligibility for legal aid more generally and in each of these major areas of law. It also provides information on what LAO has done and is doing to address these challenges, and offers recommendations on how the federal government can help to promote expanded access to justice.

Eligibility for Legal Aid

It is well-known that the financial eligibility thresholds for legal aid, which vary across the country, are set at levels which leave many people who are unable to afford to privately retain counsel ineligible for legal representation through legal aid. Legal eligibility, which refers to whether or not a legal aid plan offers coverage for a particular type of legal matter, also varies and is restricted according to the ability of an individual legal aid plan to offer services. A study conducted for LAO in 2012 confirmed that the "gap" population - made up of those who had incomes below the 2011 Low Income Measure maintained by Statistics Canada but who were ineligible for legal aid - was at that time disproportionately made up of families, children and teens, the working poor and precariously employed, Indigenous peoples and members of visible minority groups. The "gap" population is also known to be growing; a report from 2015 indicates that the phenomenon of insecure work now affects 44% of working adults in the southern Ontario region, impacting the lives, health, and social outcomes of these workers and their families.

With the assistance of new funding from Ontario's provincial government, beginning in 2014, LAO has been able to expand both financial and legal eligibility. As a result, as of April 2016, an additional 400,000 low-income Ontarians have become eligible for legal aid services. LAO's goal has been to bring financial eligibility for legal aid, which had not

been adjusted for two decades prior to the 2014 investment, up to the standard of the 2011 Low Income Measure over a period of seven to ten years. Three 6% increases have come into effect so far and LAO anticipates that another 6% increase will take effect on April 1, 2017.

Access to Justice for Vulnerable Clients

Indigenous people, victims of domestic violence, persons with mental illnesses and persons who are members of racialized communities are known to experience particular challenges and barriers in accessing justice. The over-representation in the justice system of Indigenous people and persons with mental illnesses, as well as the prevalence of and societal impact of violence against women, are well-documented.

In recent years LAO has responded to the needs of these client groups by developing vulnerable client strategies that focus on addressing the specific legal needs and challenges experienced by each of these groups. The purpose of these strategies is to promote access to justice by highlighting and prioritizing the needs of the most disadvantaged of low-income people, those who face the greatest barriers to access and who are disproportionately over-represented in the justice system. Many of LAO's recommendations reflect the insights provided through the work of its vulnerable client strategies.

Technology

LAO has increasingly adopted an innovative and integrated approach to service delivery, which includes harnessing technology to expand access and deliver services. Technology offers many opportunities to expand access to legal aid services, including to those who do not live in urban centres that offer more immediate access to services and resources. LAO has been working to expand its use of technology to improve services to clients and also to provide assistance to people who do not currently qualify for legal aid.

Criminal Law

Criminal justice system delay and issues affecting the bail and remand system have been the subject of reports, studies, jurisprudence, and government initiatives to ameliorate these problems. In February, 2016, LAO was privileged to appear before the Senate Standing Committee on Legal and Constitutional Affairs to provide that Committee with information and recommendations on the issue of criminal justice system delay, which is a serious barrier to access to justice. LAO has been working to

address the problem of delay through a number of initiatives including improved management of complex criminal cases, the introduction of an enhanced complex case rate for lawyers defending clients charged with murder and other serious offences, the establishment of quality standards and a new “Second Chair” mentoring program for lawyers, and the provision of funding for mandatory second judicial pre-trials.

In recognition of the importance that a bail decision can have in the eventual outcome of a criminal matter, and in response to problems affecting the bail and remand system, LAO has developed and is continuing to implement a Bail Strategy. LAO has expanded certificate coverage for bail proceedings and has invested in providing training and resources to duty counsel, who conduct most of the bail hearings in Ontario. LAO will also play a key role, by expanding duty counsel services in courts and in correctional institutions, in supporting bail reform initiatives introduced by Ontario’s Attorney General in December 2016.

Family Law

The problems in accessing the family justice system are well known. It has been estimated that perhaps half of all litigants in Ontario’s family courts may be unrepresented, most often because they are unable to afford the assistance of a lawyer. LAO has worked with Ontario’s Ministry of the Attorney General and other justice system partners to increase access to family justice through services that are focused on providing more early information and advice services, and offering access to more affordable, less confrontational means of resolving family law issues. Examples include: mediation services for family law matters and independent legal advice certificates for clients who choose mediation; a wide range of family law services at 11 Family Law Service Centres around the province; telephone summary legal advice; and enhanced telephone and online public legal information services on a wide range of family law topics.

Refugee Law

In refugee law, a combination of successful constitutional challenges to legislative reforms of the past seven years, a new and more refugee-friendly federal government, and the global surge in forcible displacement have resulted in the number of refugee claims rising dramatically over the past year. Recent events, including the outcome of the 2016 U.S. election, are expected to further increase refugee claimant arrivals in the coming months and years. Refugee claimants fleeing persecution, torture and other cruel treatment are among Ontario’s most vulnerable people.

Notwithstanding the extraordinary vulnerability of refugee claimants and the significant rights and interests at stake in refugee proceedings, federal funding for legal aid services to these individuals has not kept pace with demand over the past several years, and needs to be substantially increased to meet projections. As a result of recent advocacy efforts, LAO was successful in obtaining additional one time in-year funding from the federal and provincial governments, but concerns for future years remain. Given the volatility and fluctuation of demand for refugee and immigration legal services, it is important that a new funding arrangement with the federal government be calibrated to actual refugee claimant arrivals. There must be opportunities for annual or semi-annual funding adjustments to respond to significant changes in demand.

LAO is also concerned about the over 3,000 backlogged 'legacy claims' at the Immigration and Refugee Board (IRB), and supports the regularization of these claims outside of the IRB process. Additionally, LAO would value federal government support in adding countries to the IRB's Refugee Protection Division expedited country list, since claims that proceed by expedite are 50% less costly for LAO than claims that proceed by hearing.

LAO's Recommendations

Improved Eligibility, Access and Effectiveness

LAO supports the development of national benchmarks for the provision of legal aid services. If the federal government adopts benchmarks for financial eligibility for legal aid, they should incorporate indexing for inflation. The establishment of benchmarks for legal eligibility coverage in the areas of greatest unmet need should also be considered.

The federal government should continue to encourage legal aid services that demonstrably expand access to justice for vulnerable and marginalized groups. LAO's vulnerable client strategies have successfully focused attention and resources on increasing awareness and improving services to priority groups.

Federal encouragement and assistance in support of a greater emphasis on more effective use of technology by legal aid plans would be helpful. The federal government could assist all provincial and territorial plans in working towards developing their own version of an interactive website like MyLawBC. A centrally coordinated effort in this regard would help to eliminate duplication of work and would reduce expenditures. It would also support more consistency and uniformity in the ability of legal aid plans across the country to deliver these types of online services.

Assistance could be provided to provinces that are interested in working towards improved data collection and outcomes reporting. This is important work but legal aid plans are just beginning to experiment in this area, and they lack access to resources that would help them to develop this capacity. Partnership and collaboration between jurisdictions should be encouraged and efforts could potentially be coordinated through the Association of Legal Aid Plans of Canada. Ideally, data collection of this kind would be used to support the first Canadian study demonstrating the economic benefits of investing in legal aid.

Criminal Law

The federal government should continue to implement the goals for the improvement of the criminal justice system set out in the Prime Minister's November 2015 mandate letter to the Minister of Justice and Attorney General. In particular, the federal government should prioritize the following kinds of initiatives: sentencing alternatives and bail reform; increased use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians; the treatment of those with mental illness; and improved use of information technology to make the system more efficient and timely.

With respect to sentencing:

- The federal government should continue to revisit sentencing amendments introduced to the *Criminal Code* over the last decade in order to provide alternative sentences short of incarceration for less serious offences and for less serious offenders;
- The federal government should continue to reduce the number of offences that attract a mandatory minimum sentence, or should provide for more judicial discretion in the imposition of mandatory minimum sentences;
- Similarly, the Federal government should commit itself to reverse the legislative trend of the last decade and make conditional sentences more widely available for an increased number of *Criminal Code* offences, and offenders who are not a risk to public safety.

With respect to bail:

- In response to various reports on the bail crisis in this country including in Ontario, the federal government should develop a new legislative framework to address the problems with bail and remand. This new legislation would provide explicit legal guidelines to support the basic principles of the presumption of innocence and that no person may be detained unless the Crown demonstrates a need to do so. The introduction of a new legislative framework via *the Youth Criminal Justice Act* in 2003 to address the over-criminalization of young people in this country produced dramatic results in reducing youth incarceration rates. A similar legislative overhaul is required to reduce the remand population.

Family Law

Federal funding for civil matters should include funding specifically targeted to expand access to family law services and to assist in addressing the problem of high numbers of self-represented litigants in family courts. The focus should be on supporting front-end, rather than purely litigation-focused, services, and on service innovation.

Refugee Law

To address pressures and expand access for vulnerable refugees, the federal government should:

- Increase its contribution to refugee services to ensure access to justice as demand for refugee legal aid services, driven by global forces, continues to grow. The Federal contribution must be responsive to fluctuations of increased demand and allow for annual or semi-annual adjustments as required;
- Support greater collaboration among all refugee system partners, including the Immigration and Refugee Board, Immigration, Refugees and Citizenship Canada, the Federal Court, and the Department of Justice;
- Support the adding of countries to the Immigration and Refugee Board's Refugee Protection Division expedited country list. Claims that proceed by expedite are 50% less costly for LAO than claims that proceed by hearing;
- Support a substantial increase in overall assistance to the legal aid plans across the country for refugee and immigration services, to ensure equal and adequate access to justice across the country for this exceptionally vulnerable client group. Legal aid coverage for certain refugee and immigration proceedings is

unavailable in some provinces, and in some provinces, the tariff paid to service providers is substantially inadequate and unfair, creating inequity across the country;

- Support the regularization of the status of over 3,000 “legacy” refugee claimants through the creation of a statutory class of persons, both to limit legal aid costs associated with the processing of these claims that date back to 2012 and earlier, as well as to expeditiously resolve the injustice many of these claimants have endured due to unreasonable delay.

Introduction

Legal Aid Ontario (LAO) is an independent statutory agency of the Ontario government, governed by the *Legal Aid Services Act*, 1998.¹ Its statutory mandate is to promote access to justice for low-income individuals and to identify, assess and recognize the diverse legal needs of low-income individuals and disadvantaged communities in Ontario.² LAO operates independently from government, but is accountable to the province for the expenditure of public funds and is required by statute to provide its services in a cost-effective and efficient manner.

LAO is Canada's largest legal aid plan and its services help over 4,000 low-income people in Ontario every day.³ Over the past few years LAO has made significant progress in expanding access to its services, but at the same time it continues to encounter some serious financial challenges. LAO welcomes the opportunity to share its experience with this committee and to offer some ideas for ways in which the federal government can help to promote expanded access to legal aid services.

Access to Legal Aid Services in Canada

Because each province and territory is responsible for developing and managing its own legal aid program, there is no "Canadian standard" for access to legal aid. Despite jurisdictional differences, however, the issues and challenges associated with access to legal aid are known to be quite similar across Canada:

- Restrictions on financial and legal eligibility for legal aid services drive many low-income people who fail to qualify for legal aid assistance to represent themselves in court, and this is particularly the case in the area of family law;

¹ *Legal Aid Services Act*, 1998, S.O. 1998, c.26 (LASA).

² LASA, s.1.

³ *Legal Aid Ontario 2014/15 Annual Report*, online: <<http://www.legalaid.on.ca/en/publications/downloads/2014-15-Annual-Report-EN.pdf?t=1484840648804>>, at page 3.

- Increasing demand for refugee and immigration law services places intense financial pressure on legal aid plans in jurisdictions that receive large numbers of refugee claimants, making it difficult for them to maintain these important services without implementing service cuts;
- The legal needs and the access to justice challenges facing vulnerable and marginalized client groups are tremendous, and geographic and language barriers often make it more difficult for people in need to access legal aid;
- Systemic issues like criminal justice system delay and bail system dysfunction, and insufficient coordination between justice system partners, make it more difficult for legal aid to deliver services cost-effectively;
- The ability of legal aid plans to invest in technology and infrastructure that would enable them to make services more efficient and available to more people is limited.

Legal Aid Eligibility and Coverage

There are two kinds of eligibility for legal aid services. The first is financial eligibility, which refers to the income and asset thresholds that apply to applicants for legal aid. The other kind of eligibility is sometimes referred to as legal eligibility, which describes whether or not a legal aid plan offers coverage for a particular type of legal matter, and where coverage can vary according to the ability of an individual legal aid plan to offer services.

The financial eligibility thresholds for legal aid, which vary across the country, are set at levels which leave many people who are unable to afford to privately retain counsel ineligible for legal representation through legal aid. In Ontario, where financial eligibility for legal aid is established by provincial regulation, the financial eligibility standard for legal aid remained at mid-1990s levels for nearly two decades before a new provincial government invested in a series of increases beginning in 2014. An independent study that was carried out for LAO in 2012 by Environics Analytics established that more than

one million fewer low-income Ontarians were eligible for a legal aid certificate in 2011 than in 1996.⁴ Two million low-income Ontarians were eligible in 1996 and by 2011 fewer than one million remained eligible due to erosion of the eligibility standard, through inflation, over time.

The detailed statistical analysis in the 2012 study that was commissioned by LAO provided some important information about the composition of the “gap” population – defined in that study as people who were not currently eligible for a legal aid certificate but who would be eligible if the financial eligibility threshold were set at the 2011 Low Income Measure (LIM) maintained by Statistics Canada. Groups that were found to be disproportionately over-represented within the gap population were families, children and teenagers, the working poor and precariously employed, Indigenous people and members of visible minority groups. Many people intuitively and anecdotally know this to be the case, but LAO’s study provided data to confirm this understanding.

It is well known that the ranks of the working poor and precariously employed are increasing. A 2012 report documented a 42% increase in the number of the working poor in the Toronto region between 2000 and 2005.⁵ Another report, from 2015, indicates that the phenomenon of insecure work now affects 44% of working adults in the southern Ontario region, impacting the lives, health, and social outcomes of these workers and their families.⁶

When the province of Ontario invested new funding in legal aid in its 2014 budget, the financial thresholds were increased for the first time in two decades. LAO was also able to use the new funding to support legal, as well as financial, eligibility expansion. Before introducing its expanded legal eligibility initiatives in June 2015, LAO consulted widely with its advisory committees and stakeholder groups to ensure that the initiatives selected for certificate expansion would make the greatest possible difference in

⁴ Environics Analytics, *LAO Final Report* (2012), on file with LAO.

⁵ John Stapleton, Brian Murphy and Yue Xing, *The “Working Poor” in the Toronto Region: Who they are, where they live, and how trends are changing* (February 2012), online: Metcalf Foundation <<http://metcalfoundation.com/wp-content/uploads/2012/02/Working-Poor-in-Toronto-Region.pdf>> [The Working Poor], at page 9. This report adopted a definition of the working poor as being working-age persons who are not students and who are living independently with after-tax incomes above \$3,000 and below the Low Income Measure.

⁶ Poverty and Employment Precarity in Southern Ontario (PEPSO), *The Precarity Penalty: The impact of employment precarity on individuals, households and communities – and what to do about it* (May 2015), online: <<http://pepso.ca/2015/05/21/new-report-launched/>>. See also The Canadian Centre for Policy Alternatives (Ontario Office), *Ontario’s Working Poor* (2016), online: <<https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2016/07/CCPA%20ON%20OnPolicy%20Summer%202016%202.pdf>>.

addressing the unmet legal needs of the most underserved and vulnerable low-income groups. These consultations highlighted unmet legal needs in every area of law.

Expanded eligibility in Ontario has been entirely positive from an access to justice perspective. Expanded financial eligibility resulted in the issuance of more certificates to newly eligible Ontarians at higher income levels. As a result of the three successive 6% increases to the eligibility thresholds that have taken place since November 2014, an additional 400,000 low-income Ontarians are now financially eligible for legal aid, and another 6% increase is expected to come into effect next April. Starting in November 2014, LAO increased its eligibility thresholds for victims of domestic violence seeking representation in a family law matter, raising it from the certificate standard to the higher duty counsel standard and making many more of these vulnerable applicants eligible.

In June 2015 LAO implemented a range of expanded legal eligibility initiatives that made new certificates available to family, criminal, mental health and refugee law clients for assistance with legal matters that had previously been ineligible for certificate coverage. LAO used the opportunity to experiment with a form of asymmetrical eligibility that prioritized services to the most vulnerable client groups, including Indigenous persons, refugees, persons with mental illnesses, and persons experiencing domestic violence. Overall, the number of certificates issued by LAO increased by 24%, or approximately 18,000 certificates on an annual basis, since the expansion of legal eligibility. This included a 21% increase in criminal law certificates and a 70% increase in certificates issued in the area of domestic family law, in cases where domestic violence was identified as a factor. Prior to expansion, approximately 35% of all certificates were issued to women, and this proportion has increased to 37% following expansion.

With the new funding, LAO was also able to provide Ontario's legal clinic system with over \$20 million to invest in providing services to new clients, and strengthened non-certificate legal aid services provided through duty counsel, summary legal advice lawyers, student legal clinics and the LAO call centre.

The province's investment in expanding eligibility for legal aid – over \$86 million to date – was unprecedented. LAO anticipated a surge in demand for services, particularly in the area of family law. However LAO did not fully anticipate the level and depth of unmet need among the newly eligible clients, including those in the vulnerable client groups. The demand for the new services was so great that it outpaced available funding. The unanticipated demand for services related to financial eligibility and a 44% increase in demand for refugee services this year – with this number likely to increase

next year – meant that LAO faced incurring a deficit of \$26M for this year versus an annual budget of \$440M. Without immediate action, this number would continue to increase next year. To respond to this fiscal situation, in December 2016 LAO was required to scale back the implementation of new expanded criminal certificate services until they align with available funding. LAO is also reviewing its own practices to ensure that every dollar possible goes to client services.

The scaling back of expanded criminal law coverage for persons facing secondary consequences of a conviction and persons from vulnerable client groups charged for the first time means that with very few exceptions certificate coverage is once again only available if an accused faces a substantial likelihood of incarceration if convicted. However, although LAO is facing a serious budget challenge, it will not put the rights and safety of the most vulnerable accused persons at risk in meeting that challenge, and will continue to issue certificates to persons from vulnerable client groups where the allegations and facts of the case merit a trial. In addition, LAO will issue criminal law certificates to survivors of domestic violence without a criminal record who have been charged with assault against their abusive partner while defending themselves, where the accused identifies as First Nation, Métis or Inuit, or has a continuing family matter with LAO, or has an ongoing refugee status claim.

The temporary suspension will not impact LAO's other certificate expansion initiatives that have assisted vulnerable client groups by providing them with more access to enhanced services from the private bar. Notably the following certificate expansions for vulnerable groups remain in effect:

- Expansion of access to family law certificates for victims of domestic violence through raising the allowable income threshold for certificate services to the duty counsel standard;
- Expansion of certificates for families in difficulty prior to a formal Children's Aid Society (CAS) application;
- Certificates for persons involved in guardianship disputes under the *Substitute Decisions Act* and for substitute decision makers where a family disagrees with proposed treatment; and
- Expansion of legal services for bail matters for accused persons.

In addition, LAO continues to provide duty counsel services across the province in the same manner that it has always done, and works to ensure that clients are appropriately

represented at all stages of the judicial process. When duty counsel represent a client who wishes to plead guilty, LAO staff work to ensure that the client understands the implications of their decision. LAO has developed a Plea Comprehension Inquiry Form and has also established a hotline that will link duty counsel with LAO's Refugee Law Office to discuss the impact of a guilty plea on clients' immigration status.

LAO believes that its expanded eligibility program is valuable not only because it has been meeting the legal needs of so many more low-income clients but also because it has been providing concrete evidence of what happens in terms of uptake when the eligibility “gap” begins to be addressed. LAO also believes that that its unique experience with eligibility expansion presents a good opportunity to study the broader impact of providing certificate representation, including for vulnerable client groups. While this is not something that can be done by a legal aid plan in isolation, there may be opportunities for LAO to work on developing metrics with others, including both the federal and provincial governments. Such an effort would require cooperation and coordination, and the federal government could play an important role in this regard.

Access to Criminal Law Services

As is the case with other legal aid plans, criminal law services make up LAO's largest single area of service delivery, by area of law. In 2015-2016, LAO issued 63,688 criminal law certificates and its duty counsel, telephone summary advice and court worker services assisted 534,591 persons in the area of criminal law.

In February, 2016, LAO was privileged to appear before the Senate Standing Committee on Legal and Constitutional Affairs to provide that Committee with information and recommendations on the issue of criminal justice system delay, which is a serious barrier to access and which LAO has been working to address through a number of initiatives. The Committee's report highlighted the impact of systemic delay on victims, witnesses, accused persons, and on the justice system itself. Its recommendations focused on the need for best practices in case and case flow management, the development of best practices and procedures for “mega trials”, the

development of alternatives to the traditional criminal justice system model, and the modernization of the system through the use of technology.⁷

These are all important areas for reform. LAO would also like to point to an increasing focus on systemic bail and remand problems in Canada. In Ontario, remand populations are now so high that the majority of persons in Ontario jails are not serving a sentence but have been remanded into custody awaiting trial or sentencing. Two reports that comprehensively document the many concerns in this area have been released since 2013, one by the John Howard Society of Ontario and the other by the Canadian Civil Liberties Association. In their report, *Reasonable Bail?*⁸ The John Howard Society of Ontario summarized the problems with bail in Ontario as follows:

Less people are being released on bail, less quickly, and with more conditions, during a time of historically low, and still declining crime rates. These trends have not only impacted the amount of backlog in the criminal court processes, but have also had a dramatic impact on provincial remand populations. The net effect is significant expenditures on criminal justice processes on the taxpayers' dime.⁹

In response to these problems, and in recognition of the importance that a bail decision can have in the eventual outcome of a criminal matter, LAO has developed and is continuing to implement its Bail Strategy. The strategy highlights the impact of bail system problems on LAO's most vulnerable client groups, and proposes concrete ideas for improvement.¹⁰ In 2015, LAO expanded legal aid coverage for bail proceedings to enable more people to challenge unreasonable bail conditions or to have their conditions of release varied. LAO has also made certificate coverage for a second bail hearing available to persons who are arrested while on out on bail, which frequently happens in connection with violating an unreasonable bail condition. Additionally, LAO has invested in providing training and resources to duty counsel, who conduct most bail hearings in Ontario.

⁷ Report of the Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada* (August 2016), online: <http://www.parl.gc.ca/content/sen/committee/421/LCJC/Reports/CourtDelaysStudyInterimReport_e.pdf>.

⁸ John Howard Society of Ontario, *Reasonable Bail?* (2013), online: <<http://www.johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf>>

⁹ *Reasonable Bail?* at page 3.

¹⁰ Legal Aid Ontario, *A Legal Aid Strategy for Bail* (December 2016), online: <<http://www.legalaid.on.ca/en/publications/paper-legal-aid-strategy-for-bail-2016-11.asp>>.

LAO will play a key role in implementing bail reform initiatives introduced by Ontario's Attorney General in December 2016. With the support of funding to promote a "Faster and Fairer Criminal Justice System", LAO will be enhancing the duty counsel services that it provides to accused persons who are seeking pre-trial release. In ten busy bail court locations, new dedicated LAO duty counsel positions will work with newly developed Senior Crown vettors to ensure that bail matters in those courts proceed expeditiously, and in accordance with the law of bail, so that persons are not detained unreasonably, or have their pre-trial release subject to onerous and unnecessary conditions.

In addition, with the same source of provincial funding and for many of the same reasons, commencing in April 2017, LAO will provide on-site duty counsel in six correctional institutions. These duty counsel will provide direct legal services to inmates in remand matters, including bail proceedings. The use of on-site duty counsel will, in conjunction with the expanded use of video technology in courts, streamline remand proceedings by requiring fewer in-person court appearances without prejudicing the rights of the accused. LAO is already involved in a similar project using duty counsel for the same purposes in the Toronto South Detention Centre, which is the largest jail in Ontario.

More generally, LAO continues, with other justice participants, to follow the direction of the 2015 decision of the Supreme Court of Canada in *R. v. Jordan*¹¹ to set aside the "culture of complacency towards delay that has pervaded the criminal justice system in recent years". LAO is working with the Ministry of the Attorney General, the Chief Justice of the Ontario Court of Justice and others to "modernize" the criminal justice system to provide for more timely justice. In particular, LAO has agreed, following an initial pilot phase, to fund legally aided defence counsel who are required to attend a mandatory second Judicial Pre-trial (JPT) less than eight weeks before a scheduled trial date. The Ontario Court of Justice recently introduced these mandatory second JPTs for many matters set for trial on the basis of clear evidence showing that they save court time by lowering collapse rates and adjournments.

In the Superior Court, LAO has provided additional in-court staff who can advise both the court and unrepresented accused on the status of an accused's application for "Rowbotham" state funding after they have been found ineligible for legal aid services. This process has proved very successful in streamlining what had been previously been a very time-consuming, administrative process.

¹¹ *R. v. Jordan*, 2016 S.C.C. 27.

Delay associated with the increasing complexity and length of criminal trials has been the most comprehensively studied aspect of delay in the criminal justice system. LAO has continued to improve its oversight of complex criminal cases through its Big Case Management (BCM) Program, and has strengthened its emphasis on quality assurance and outcome tracking. In 2010 LAO introduced an enhanced complex case rate for lawyers defending clients charged with murder or other serious charges, thus addressing in large part the statement of the Supreme Court in *R. v. Jordan* that legal aid plans have a role to play “in securing the participation of experienced defence counsel, particularly for long complex trials”.¹²

“Enhanced” or “expanded” duty counsel services have been introduced by LAO in certain locations, to provide a fuller range of services. The provision of enhanced duty counsel services is made more efficient in some locations by the addition of non-lawyer staff supports. Enhanced duty counsel services increase LAO’s capacity to offer specialization and continuity of client service through the staff duty counsel model. The enhanced approach to duty counsel services also allows more clients to resolve their matters earlier in the process, providing better results for the client at lower cost, while allowing matters to be referred to the private bar where the client is financially eligible, there are triable issues, and the client does not want to resolve the matter.

Finally, LAO actively supports quality service, in all areas of legal aid service delivery, through the establishment of panel standards for certificate lawyers and the provision of training and practice supports for legal aid service providers. Training supports for lawyers include access to LAO LAW, a centralized legal research service for certificate lawyers and duty counsel that can provide general or specific-issue research support, and recorded training programs, webinars and “lunch and learn” sessions that are accessible to the private bar as well as to LAO’s legal staff. Other quality supports that LAO has provided include the duty counsel immigration hotline and tools such as the plea comprehension inquiry form.

Mentoring for the private bar is another area where LAO has been focusing attention. LAO has created a “Second Chair Fund” that is available to lawyers in the areas of criminal, family and immigration and refugee law. The fund provides paid “second chair” opportunities for private lawyers, enabling new or mid-level lawyers to apply for mentoring on a complicated matter or to be paid as a second chair working with senior

¹² *R. v. Jordan*, at paragraph 140.

counsel on the matter. The fund also allows senior counsel on complicated matters to apply to work with a junior counsel.

Access to Family Law Services

The problems in accessing the family justice system are well known. It has been estimated that perhaps half¹³ of all persons in Ontario's family courts may be unrepresented, most often because they are unable to afford the assistance of a lawyer. The 2013 final report of the Action Committee on Access to Justice in Civil and Family Matters,¹⁴ chaired by the Supreme Court of Canada's Justice Thomas Cromwell, identified "a serious access to justice problem in Canada", noting that civil justice problems are pervasive, that the poor and vulnerable are particularly prone to legal problems, and that unresolved legal problems come with social and economic costs.¹⁵

The report also observed that the cost and length of legal proceedings is increasing, that legal aid "covers only a limited number of areas", and that many people try to solve their problems on their own, "usually not by choice".¹⁶ The report identified a need to "fundamentally re-think how we approach legal problems in terms of preventing them from happening where possible, and when they do occur, providing those who experience them with adequate information and resources to deal with them in an efficient and effective way".¹⁷ Similarly, the Canadian Bar Association's *Reaching Equal Justice* report argued that the system needs to be people-based, that is to say designed for the people who will be using it, and must focus attention and resources on preventing legal problems, not just on resolving them after they arise.¹⁸

¹³ Some estimates place the proportion of unrepresented litigants in family court as high as 80%.

¹⁴ Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* (October 2013), online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf> [Cromwell Report]

¹⁵ Cromwell Report, at pages 2-3.

¹⁶ Cromwell Report, at page 4.

¹⁷ Cromwell Report, at pages 7-8.

¹⁸ Canadian Bar Association, *Reaching Equal Justice: an invitation to envision and act* (Report of the CBA Access to Justice Committee) (November 2013), online: <http://www.cba.org/CBA/equaljustice/secure_pdf/EqualJusticeFinalReport-eng.pdf>.

LAO's family law services were negatively affected by cutbacks during the financial crisis in Ontario in the mid-1990s, but they have been expanded in recent years as a result of new provincial investment and the development of new approaches. In 2015-2016 LAO issued 30,195 family law certificates and assisted 197,896 persons through the provision of duty counsel, summary legal advice and court worker services.

LAO has worked with Ontario's Ministry of the Attorney General and other justice system partners to increase access to family justice through services that are focused on providing more early information and advice services, and offering access to more affordable, less confrontational means of resolving family law issues. Examples include:

- Mediation services for family law matters
- Document preparation and advice services for family law clients, as part of a wide range of family law services available at LAO's 11 Family Law Service Centres around the province
- Telephone legal advice services, which offer up to 20 minutes of advice to financially eligible persons from advice lawyers who are also trained to provide support to callers who are experiencing domestic violence or mental health issues
- Advice lawyer services at the Ministry of the Attorney General's Family Law Information Centres located at family courthouses
- Enhanced Public Legal Information (EPLI) services provided by non-lawyers working at LAO's call centre; workers are trained to provide and interpret basic information on a wide variety of family law issues and to refer callers to various legal aid and non-legal aid programs
- Online family law information

In addition to issuing certificates for child protection matters and for domestic family law matters such as child custody and access, child support, and restraining orders, LAO's certificate services have recently been expanded for eligible clients who have complex, contested family law cases or who are particularly vulnerable. Certificates are now also available for separation agreements and for independent legal advice (ILA) to support clients who choose mediation services to address their family law issue. Pre-litigation

services for families involved with Children's Aid Societies have been introduced, along with coverage for third-party caregivers in child protection proceedings.

LAO prioritizes services for clients experiencing domestic violence and, in 2015/2016, 13,196 of the 30,195 family law certificates that LAO issued related to cases in which domestic violence was identified as a factor.

In 2016 LAO made a submission to the province of Ontario's *Family Legal Services Review*, led by the Honourable Justice Annemarie Bonkalo. The purpose of this review was to consider whether a broader range of legal services providers, such as paralegals, law clerks and students, should be allowed to handle certain family law matters. LAO's response to this consultation focused on its own positive experience to date with service provision by non-lawyers, most particularly as members of interdisciplinary teams under lawyer supervision. For example, LAO has studied how licensed paralegals can enhance service delivery in criminal duty counsel offices as members of interdisciplinary teams, working alongside lawyers and legal aid workers.

LAO has also entered into partnerships with a number of community hubs to offer family law services to clients in an integrated setting where clients are able to access other legal and social services. These partnerships enable clients to address their intersecting needs in a holistic way and at a one-stop location. Family law services that are provided by LAO at hub locations include summary advice, preparation of court documents, referrals to mediation and referrals to services provided by other hub partner agencies. LAO's Integrated Legal Services Office in Ottawa also offers one-stop help with a variety of matters, including immigration and refugee law matters, in addition to family law assistance.

Providing Refugee Law Services in a Changing Environment

There are an unprecedented 65 million forcibly displaced persons around the globe. While the vast majority of these displaced persons (86%) remain in or near their own countries or regions, a tiny percentage are able to leave their regions and seek

protection under the 1951 Refugee Convention in the industrialized countries of the Global North, including Canada.¹⁹

While the number of refugee claims being made in Canada dropped following a number of legislative reforms over the past 7 years, the combination of successful constitutional challenges to some of those reforms, a more refugee-friendly federal government, and the global surge in forcible displacement have resulted in the numbers rising dramatically over the past year. LAO issued 6,445 certificates in 2014-2015 and 9,268 in 2015-2016, with 2016-2017 to date also seeing a steep increase. Recent geopolitical events, including the outcome of the 2016 U.S. election, are expected to further increase refugee claimant arrivals in the coming months and years. Indeed, recent and expected Executive Orders relating to the US immigration and refugee system raise serious questions about the sustainability of Canada's 2004 designation of the US as a "Safe Third Country" for asylum-sharing purposes. Should that designation be withdrawn or quashed by the Courts, Canada – and Ontario – can expect a further dramatic increase in refugee claimants arriving at the Canada-US border.

Refugee claimants fleeing persecution, torture and other cruel treatment are among Ontario's most vulnerable populations. Facing linguistic, cultural and economic barriers, and often suffering from trauma relating to their reasons for flight, they require counsel to represent them effectively in their refugee hearings at the Immigration and Refugee Board. Studies show that unrepresented claimants have a substantially lower chance of success.²⁰ Because of this, LAO has for many years provided legal services and access to justice for these vulnerable women, men and children, provided they meet LAO's financial and legal eligibility criteria.

LAO's refugee and immigration program is delivered through three types of service providers:

Private bar: Approximately 90% of the LAO refugee and immigration services are delivered by the private bar. LAO has a refugee and immigration panel of about 350 lawyers located throughout the Province, with the greatest numbers being in the GTA.

¹⁹ The Office of the United Nations High Commissioner for Refugees (UNHCR), *Global Trends in Forced Displacement in 2015*, online: <<http://www.unhcr.org/576408cd7.pdf>>.

²⁰ Sean Rehaag, *The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment* (2011), *Osgoode Hall Law Journal*, Vol. 49, No. 1, online: <<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1073&context=ohlj>>.

Staff offices: LAO's three refugee staff offices located in the GTA, Ottawa, and Hamilton deliver the full range of refugee and immigration services with a focus on complex clients, ie., clients with mental health challenges, unaccompanied minors, victims of domestic violence, and severely traumatized clients.

Community legal clinics: LAO has a network of 17 community legal aid clinics that deliver services to refugees and immigrants throughout the Province.

The service delivery method works well overall, providing legal access to refugees and immigrants throughout the Province. LAO recently developed and implemented a set of quality standards for the lawyers on its refugee and immigration panel. All of the lawyers on the panel underwent a service quality review based on LAO's best practices guidelines. Lawyers and staff paralegals who failed to meet the standards were provided with remedial assistance, asked to resign, or were removed from the panel. By increasing quality, LAO hopes to increase positive outcomes at first instance and reduce the need for costly appellate proceedings.

Notwithstanding the extraordinary vulnerability of refugee claimants and the significant rights and interests at stake in refugee proceedings, federal funding for legal aid services to these individuals has not kept pace with demand over the past several years, and needs to be substantially increased to meet projections.

The federal Government has been contributing \$11.5M annually to all provinces and territories for refugee legal services—an amount that has not changed since 2002. This funding is allocated to provinces and territories based on their volume of refugees. Legal Aid Ontario's share of this \$11M has been in the \$7M range. In total, LAO's certificate budget for refugee legal aid is \$15.6M - enough to provide services to about 6,450 refugees. However, in the first two quarters of 2016-17 LAO experienced a 45 per cent increase in refugee applications for legal services compared to last year; and as noted this increase is accelerating. As a result, LAO now anticipates that approximately 11,700 refugees will require legal services this year. This figure does not include an increase in claims likely to occur with the removal of the Canadian visa by the federal government on citizens from Mexico. Prior to the introduction of the visa on Mexican citizens in 2009, the cost of legal aid services for Mexican claims amounted to over \$2M.

As a result of recent advocacy efforts, LAO was successful in obtaining \$7.72 million additional one time in-year funding, comprised of \$6.72 million from the federal

government (the Department of Justice, and Immigration, Refugees and Citizenship Canada) and \$1 million from Ontario's Ministry of the Attorney General (MAG). LAO has been fortunate to receive this support, but its one-time nature means that concerns for future years remain.

An area of concern for LAO deals with the processing of 'legacy claims' at the Immigration and Refugee Board (IRB). "Legacy claims" refer to a class of claimants totalling over 3,000 in the IRB backlog. These claimants initiated refugee claims prior to the introduction of new immigration legislation in 2012; some of these claimants have been waiting over five years to have their claims heard. LAO supports the regularization of these claims outside of the IRB process through the creation of a statutory class of persons, both to limit legal aid costs associated with the processing of these claims, as well as to resolve expeditiously the injustice many of these claimants have endured.

LAO would also value the federal government's support in the adding of countries to the Immigration and Refugee Board's Refugee Protection Division expedited country list. Claims that proceed by expedite are 50% less costly for LAO than claims that proceed by hearing. Currently, the IRB expedites claims from Syria, Iraq and Eritrea only.

Given the volatility and fluctuation of demand for refugee and immigration legal services, it is important that a new funding arrangement with the federal government be calibrated to actual refugee claimant arrivals. There must be opportunities for annual or semi-annual funding adjustments to respond to significant changes in demand.

In the coming weeks and months LAO will consult with stakeholders to examine opportunities for efficiencies and cost savings in the delivery of necessary legal services to qualifying refugees and immigrants; however, it is not expected that administrative cost-saving measures and program adaptations alone can come close to meeting the projected increase in costs arising from increased demand. LAO therefore urges the Committee to support a substantial increase in overall assistance to the legal aid plans across the country for refugee and immigration services, to ensure equal and adequate access to justice across the country for this exceptionally vulnerable client group. Legal aid coverage for certain refugee and immigration proceedings is unavailable in some provinces, and in some provinces, the tariff paid to service providers is substantially inadequate and unfair creating inequity across the country. LAO also requests support for greater collaboration among all government agencies and tribunals (Immigration and Refugee Board, Canadian Border Services, Federal Court, Department of Justice,

Immigration, Refugees and Citizenship Canada) to ensure system effectiveness. A great deal more can be achieved working more closely together.

A Strategic Approach to Improving Legal Aid Services for Vulnerable Client Groups

Indigenous people, victims of domestic violence, persons with mental illnesses and persons who are members of racialized communities are known to experience particular challenges and barriers in accessing justice. The over-representation in the justice system of Indigenous people and persons with mental illnesses, as well as the prevalence of and societal impact of violence against women, are well-documented.

In recent years LAO has responded to the needs of these client groups by developing vulnerable client strategies that focus on addressing the specific legal needs and challenges experienced by each group. LAO has developed or is in the process of developing a number of client strategies. The purpose of these strategies is to promote access to justice by highlighting and prioritizing the needs of the most disadvantaged of low-income people, those who face the greatest barriers to access and who are disproportionately over-represented in the justice system.

The client strategies are carefully developed over a period of years and each involves an intensive consultation process. LAO believes that they are an effective vehicle for putting an organization-wide focus on improving services and access for particularly vulnerable client groups and also for identifying and addressing systemic problems that have a demonstrably disproportionate impact on LAO's vulnerable clients.

LAO's first client strategy was its Aboriginal Justice Strategy, which was established by LAO's Board of Directors in 2008 to improve legal aid services for First Nation, Inuit and Métis clients and to respond to Aboriginal over-representation in the criminal justice and child protection systems. While Aboriginal Peoples make up less than 4% of the population, they represent 18% of the federal prison population. Nearly a quarter of all crown wards in Ontario are Aboriginal children. 15% of all LAO certificates are issued to individuals who identify as an Aboriginal Person. LAO's Aboriginal Self Identification

Question (ASIQ) was developed and implemented across the organization because LAO believes that understanding who its clients are is critical to serving them better.

Now in its second five-year phase, the Aboriginal Justice Strategy has successfully implemented initiatives to expand client services, including by increasing client access to Gladue report writing services across the province and establishing over 20 on-site legal advice clinics within First Nation communities or Aboriginal service agencies. LAO's consultative approach has been successful in strengthening relationships with communities. There has also been a focus on building the knowledge and awareness of LAO's staff, including through staff engagement initiatives and the development of cultural competency training. This year, LAO is developing LAO staff as local leads who will build and sustain local expertise and increase the effectiveness of strategy initiatives through their participation in a new Aboriginal Justice Strategy working group. They will also play a role as LAO responds to the Truth and Reconciliation Commission's Calls to Action.

LAO's second client strategy, the Mental Health Strategy, was publicly launched in March 2016, following an extensive three-year consultation process. It is believed that one in three legal aid clients experiences mental health or addiction issues, making mental health a significant access to justice issue for LAO. In its first year the Mental Health Strategy is focusing on a number of initiatives, including making legal services more accessible to clients by locating lawyers in places where clients are likely to go, like community mental health agencies, drop-in centres, food banks and youth centres. Through the strategy LAO is also expanding access to civil and forensic mental health appeals, and is providing mental health training to staff, focused initially on the area of criminal law. LAO anticipates that this training will be adapted and offered to staff working in other areas of law and that it will also be made available to the private bar and to other legal aid plans in Canada, for adaptation to their own use.

LAO is currently consulting on and developing client strategies to respond to the needs of clients who are victims of domestic violence and members of racialized communities. The Domestic Violence Strategy is expected to have a public launch in 2017. Concurrent with the development of the Domestic Violence Strategy, LAO has improved access to legal aid for victims of domestic violence, including by increasing the financial eligibility criteria to the duty counsel threshold for certificate applicants in a family law matter where they identify as victims of domestic violence. LAO has also focused on providing domestic violence awareness training. Training for all LAO staff was completed in September 2015, and LAO is currently providing the training to per diem duty counsel, legal clinics, and private bar lawyers who are on LAO's domestic violence panel.

Using Innovation and Technology to Expand Access to Legal Aid

LAO provides legal aid services through a mixed-model delivery system that recognizes the private bar as the foundation for providing services in criminal and family law while responding, at the same time, to LAO's statutory mandate to provide legal aid services through a wide variety of methods.²¹

LAO has increasingly adopted an innovative and integrated approach to service delivery. This has included a focus on increasing client access through one-stop shopping, the introduction of interdisciplinary service delivery teams, an emphasis on harnessing technology to expand access and deliver services, and the establishment of an overall service model based on the provision of a continuum of legal services.

The major foundations for this approach were laid in 2008-2009, with the "LAO in the Courthouse" initiative which made legal aid staff more accessible to clients by locating them in criminal and family courthouses instead of in dedicated legal aid offices, which was the previous model. In 2008, only eight locations across the province had an on-site legal aid application office. Today, 57 court sites have an on-site office or LAO staff available at the court to process legal aid applications.

LAO also committed, at about the same time, to a strategy to expand its range of services along a broader, more flexible continuum that would make more services accessible to a larger number of people, based on the principle of triaging clients and matching client need to the appropriate service and service provider. Utilizing cost-effective service delivery methods, including telephone and internet-based technology, and concentrating on providing more "upfront" information and assistance, to help people deal with their problems before they escalate into costly litigation, were key components of this strategy.

²¹ LASA, s. 14, states that LAO "shall provide legal aid services by any method that it considers appropriate, having regard to the needs of low-income individuals and of disadvantaged communities, the need to achieve an effective balance among the different methods of providing legal aid services, the costs of providing such services and the Corporation's financial resources....."

The theory behind the continuum of service model is that a client's needs will be matched with a service that allows the matter to be resolved as expediently and cost effectively as possible. This means that certificate services are reserved for the most complex cases or the most vulnerable clients. To support its continuum of services, LAO has developed assessment and triage protocols, including for domestic violence, that ensure appropriate referrals across its various service lines by intake staff.

In January 2010, LAO formally launched its Client Service Centre, now the Client and Lawyer Service Centre (CLSC), as a toll-free, one-stop access point for all legal aid services that can be accessed from anywhere in the province. The call centre handles over 1,300 calls a day (300,000 calls a year) and offers toll-free access to clients anywhere in the province of Ontario, with the capacity to provide interpretation in over 200 languages and dialects. The CLSC currently issues approximately half of all legal aid certificates and provides information, referrals and access to summary legal advice services (in criminal, family and refugee law) over the telephone.

Technology offers many opportunities to expand access to legal aid services, including to those who do not live in urban centres that offer more immediate access to services and resources. LAO has been working to expand its use of technology to improve services to clients and also to provide assistance to people who do not currently qualify for legal aid:

- The Client and Lawyer Service Centre is a one-stop access point to legal aid from anywhere in Ontario;
- LAO has made more information available to the public on its website and, in 2011 launched Lawfacts.ca, a free website that is accessible through all browsers and mobile devices and offers practical information about criminal, family, and refugee law;
- Summary legal advice is available over the telephone, through the call centre, to financially eligible persons anywhere in the province;
- LAO recognizes that clients have a growing appetite for efficient access to information and are increasingly expecting to interact via the use of technology. In addition, sending messages electronically significantly shortens delivery times while reducing the cost of postage. Since the fall of 2016, clients who declare email as their preferred method of communication are able to easily access documents through the web from anywhere. Already over 52% of clients select email as their preferred method of communication. Documents are provided in

more accessible formats for clients. LAO intends to build on these successes and is assessing the feasibility of leveraging additional technologies to further empower clients and trusted intermediaries with improved access to services.

- Because a growing percentage of the population now accesses the internet through a mobile device, LAO launched its first mobile phone “app” in 2015. The free app provides basic information about LAO and includes a financial eligibility calculator;
- In 2016, LAO introduced an electronic worksheet and bring-forward system for duty counsel working in criminal courts. The “service integration” worksheet allows users to view, track, monitor and update information including assists, referrals and outcomes. The new worksheet improves the client experience since clients do not have to repeat their story each time they attend court, and it increases the efficiency of the duty counsel program itself;
- LAO also provides technology support to legal clinics. LAO has undertaken a clinic technology infrastructure upgrade, to ensure that clinics have the technological support they need. This year will see the implementation of the Clinic Information Management System (CIMS), a new client database that will enhance clinics’ tracking, reporting and performance measurement capabilities;
- Beginning in summer 2010, a toll-free advice service in French was established through a clinic partnership initiative to bring poverty law advice in French to unserved and under-served areas of the province.
- LAO is also directly supporting legal clinics’ innovative projects to harness technology. For example, LAO provides funding to support the use of a Legal Health Check-Up Tool that was developed and piloted by Halton Community Legal Services, and is now being used by other legal clinics in the Southwest Region of the province. The Legal Health Check-up is used to help people who are living in poverty to identify their legal problems and make it easier for them to address or prevent these problems at an early stage.

In September 2016, LAO hosted “a Wired Justice” conference with the assistance of Osgoode Hall Law School, and is looking forward to being able to do more to expand access to justice via technology in the future. LAO is particularly interested in the development of interactive websites like the MyLawBC initiative that has been undertaken in British Columbia.

LAO believes that there is much more that can be done to expand access through innovation. One area that LAO has been exploring has to do with creative approaches to contribution agreements. While LAO has had a contribution agreement program in effect for many years, its experience has been that there is a low rate of return on contribution agreements from clients at extremely low income levels. For clients at slightly higher income levels, however, expanded access to contribution agreements could represent a bridge to eligibility for working poor and middle-income people.

Taking an Active Role in Justice System Improvement

LAO has taken on a broader and more active role in advancing justice system reform. Through its vulnerable client strategies and its new bail strategy, LAO is focusing in a strategic way on issues and client communities which require a more concentrated focus. LAO participates in systemic reform initiatives that involve multiple justice system partners, plays a major role in advancing systemic reform priorities established by the Ministry of the Attorney General, and makes submissions to consultations and reviews. LAO also supports groundbreaking test case work.

As an organization, LAO is making its voice heard more frequently on important issues that affect legal aid clients and access to justice more broadly. For example, LAO has made submissions to:

- The Standing Senate Committee on Legal and Constitutional Affairs, on criminal justice system delay
- The House of Commons Committee on Citizenship and Immigration, on citizenship legislative reform
- The Ministry of Community Safety and Correctional Services, on carding and street checks
- The Ministry of the Attorney General's Family Legal Services Review, on the potential for non-lawyers to deliver family legal services
- The Ministry of Community Safety and Correctional Services, on the development of a Strategy for a Safer Ontario
- The Ministry of Community Safety and Correctional Services, on the use of segregation in adult correctional facilities and on conditions at the Ottawa-Carleton Detention Centre

- The Family Rules Committee, on potential changes to the Family Law Rules

LAO also participates in justice system improvement initiatives like the Attorney General's criminal and family justice roundtables, and recently, with the John Howard Society of Ontario, made joint recommendations on bail system improvements to the Attorney General's Criminal Justice Roundtable.

Through its Test Case Program, LAO supports public interest litigation that has the capacity to increase access to justice, protect rights, and improve the lives of many low-income Ontarians and disadvantaged communities. LAO has recently expanded the capacity of the program to support important test cases and has implemented test case strategies in the areas of refugee law and prison law.

A Potential Role for the Federal Government

The federal government supports legal aid service delivery, financially, through the federal contribution program for legal aid, which focuses on criminal and refugee law. Contributions to civil legal aid are made through a block transfer to the provinces known as the Canada social transfer. It has been noted by other witnesses that increases to the federal contribution in support of legal aid has, over the past decade or so, lagged behind increases in provincial and territorial funding.

Obviously the unmet need for access to legal aid services is great, and the need for resources is also great. In particular, LAO's submission has noted that legal aid plans that deliver refugee law services have fallen behind in their ability to afford these services. However, beyond increased financial assistance, LAO believes that there is much that the federal government can do to not only support but also to shape expanded access. In the areas of refugee law and criminal law, there are concrete steps that the federal government can take to relieve systemic pressures, remove bottlenecks, and help these systems to function more effectively and cost-efficiently.

The federal government could establish national standards or benchmarks for both financial and legal eligibility access that would require a consistent baseline of services

to be offered across the country, and could provide directed funding to help to support those baseline services. There are many unmet legal needs that have a serious impact on people's lives but for which most, if not all, legal aid plans do not currently offer coverage. Ontario is lucky to have a well-established clinic system that provides much-needed poverty law services, but these services are stretched in Ontario and are not available at all in many other parts of the country. Precedence is given, of necessity, to providing services that are legally and constitutionally mandated, primarily in the area of criminal law and primarily to those accused who have serious cases that would attract a penitentiary sentence. This operates to the detriment of those who face civil legal issues, most particularly in the area of family law. Within the area of criminal law itself, it means that there is no coverage for those who are not facing jail time but who do face the acquisition of a criminal record that will have an impact on almost every aspect of their future lives.

The access to justice crisis in civil law, and particularly in family law, has been noted on many occasions. LAO has been part of a significant effort to address the growth in the number of self-represented litigants in Ontario, and has introduced a number of new family law services that focus on the provision of early information and assistance. While the federal government does provide funding to support civil law services, it is part of a block transfer and not specifically dedicated and targeted to the services that are most needed.

The committee has heard from some witnesses that studies in other countries have shown that there is a significant return on investment, most immediately in relation to reduced expenditures for other social programs and services, when governments invest in legal aid. Canada has not yet been able to undertake such a study, but there is an opportunity to do so. If coordinated at the federal level, perhaps with the assistance of the Association of Legal Aid Plans of Canada, this would be of significant benefit. Without data collection and coordination, not only between legal aid plans across the country – most of which are not yet equipped to undertake outcomes measurement – but also between provincial and territorial governments and the “silos” of health, social assistance, education and corrections, an effort of this kind will prove impossible.

The federal government can also support coordination, partnership and service innovation to help resolve systemic issues such as justice system delay, immigration and refugee system pressures, and bail system dysfunction. Legal aid plans are only one part of the justice system, and too often they are forced into a reactive role.

LAO's Recommendations

Improved Eligibility, Access and Effectiveness

LAO supports the development of national benchmarks for the provision of legal aid services. If the federal government adopts benchmarks for financial eligibility for legal aid, they should incorporate indexing for inflation. The establishment of benchmarks for legal eligibility coverage in the areas of greatest unmet need should also be considered.

The federal government should continue to encourage legal aid services that demonstrably expand access to justice for vulnerable and marginalized groups. LAO's vulnerable client strategies have successfully focused attention and resources on increasing awareness and improving services to priority groups.

Federal encouragement and assistance in support of a greater emphasis on more effective use of technology by legal aid plans would be helpful. The federal government could assist all provincial and territorial plans in working towards developing their own version of an interactive website like MyLawBC. A centrally coordinated effort in this regard would help to eliminate duplication of work and would reduce expenditures. It would also support more consistency and uniformity in the ability of legal aid plans across the country to deliver these types of online services.

Assistance could be provided to provinces that are interested in working towards improved data collection and outcomes reporting. This is important work but legal aid plans are just beginning to experiment in this area, and they lack access to resources that would help them to develop this capacity. Partnership and collaboration between jurisdictions should be encouraged and efforts could potentially be coordinated through the Association of Legal Aid Plans of Canada. Ideally, data collection of this kind would be used to support the first Canadian study demonstrating the economic benefits of investing in legal aid.

Criminal Law

The federal government should continue to implement the goals for the improvement of the criminal justice system set out in the Prime Minister's November 2015 mandate

letter to the Minister of Justice and Attorney General. In particular, the federal government should prioritize the following kinds of initiatives: sentencing alternatives and bail reform; increased use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians; the treatment of those with mental illness; and improved use of information technology to make the system more efficient and timely. In particular:

With respect to sentencing:

- The federal government should continue to revisit sentencing amendments introduced to the *Criminal Code* over the last decade in order to provide alternative sentences short of incarceration for less serious offences and for less serious offenders;
- The federal government should continue to reduce the number of offences that attract a mandatory minimum sentence, or should provide for more judicial discretion in the imposition of mandatory minimum sentences;
- Similarly, the Federal government should commit itself to reverse the legislative trend of the last decade and make conditional sentences more widely available for an increased number of *Criminal Code* offences, and offenders who are not a risk to public safety.

With respect to bail:

- In response to various documented reports on the bail crisis in this country including in Ontario, the federal government should develop a new legislative framework to address the problems with bail and remand. This new legislation would provide explicit legal guidelines to support the basic principles of the presumption of innocence and that no person may be detained unless the Crown demonstrates a need to do so. The introduction of a new legislative framework via *the Youth Criminal Justice Act* in 2003 to address the over-criminalization of young people in this country produced dramatic results in reducing youth incarceration rates. A similar legislative overhaul is required to reduce our remand population.

Family Law

Federal funding for civil matters should include funding specifically targeted to expand access to family law services and to assist in addressing the problem of high numbers of self-represented litigants in family courts. The focus should be on supporting front-end, rather than purely litigation-focused, services, and on service innovation.

Refugee Law

To address pressures and expand access for vulnerable refugees, the federal government should:

- Increase its contribution to refugee services to ensure access to justice as demand for refugee legal aid services, driven by global forces, continues to grow. The Federal contribution must be responsive to fluctuations of increased demand and allow for annual or semi-annual adjustments as required;
- Support greater collaboration among all refugee system partners, including the Immigration and Refugee Board, Immigration, Refugees and Citizenship Canada, the Federal Court, and the Department of Justice;
- Support the adding of countries to the Immigration and Refugee Board's Refugee Protection Division expedited country list. Claims that proceed by expedite are 50% less costly for LAO than claims that proceed by hearing;
- Support a substantial increase in overall assistance to the legal aid plans across the country for refugee and immigration services, to ensure equal and adequate access to justice across the country for this exceptionally vulnerable client group. Legal aid coverage for certain refugee and immigration proceedings is unavailable in some provinces, and in some provinces, the tariff paid to service providers is substantially inadequate and unfair, creating inequity across the country;
- Support the regularization of the status of over 3,000 "legacy" refugee claimants through the creation of a statutory class of persons, both to limit legal aid costs associated with the processing of these claims that date back to 2012 and earlier, as well as to resolve expeditiously the injustice many of these claimants have endured due to unreasonable delay.