
2.33 Newfoundland and Labrador Legal Aid Commission

Introduction

The Newfoundland and Labrador Legal Aid Commission (the Commission) was created under section 3(1) of the *Legal Aid Act* (the *Act*) to ensure persons with limited financial resources have access to legal counsel. The Commission operates under the direction of a Board of Commissioners which consists of five members appointed by the Lieutenant-Governor in Council and two ex-officio members, namely, the Deputy Minister of Justice and the Provincial Director of Legal Aid. The Provincial Director of Legal Aid is the Chief Executive Officer of the Commission and is responsible for the general direction, supervision and control of its business.

The Commission provides legal representation to financially eligible persons, where legal merit exists, in criminal (both adult and young offender), civil, family and immigration matters. Examples of criminal proceedings include charges for indictable offences, summary conviction offences under Federal legislation and, in limited situations, for Provincial offences. Civil matters include such things as motor vehicle negligence, damage actions and personal injury. Family matters could consist of divorce, custody and access. Young offenders may be provided with assistance for all Federal indictable and summary conviction offences.

Legal aid services are provided at 10 area offices throughout the Province: St. John's (2 offices), Carbonear, Marystown, Clarenville, Gander, Grand Falls-Windsor, Corner Brook, Stephenville and Happy Valley-Goose Bay. Each area office is managed by an Area Director who is responsible for general administration of legal aid in that area. The Commission has 42 lawyers to provide legal aid services. From 1 April 2003 to 12 March 2004, the Commission received applications for legal aid services from 7,584 individuals. Figure 1 provides information on the number of lawyers and number of applications per office.

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Figure 1

**Newfoundland and Labrador Legal Aid Commission
Lawyers and Applications per Office**

Office	Number of Lawyers	Applications
St. John's	22	3,373
Carbonear	2	425
Marystown	1	301
Clarenville	1	350
Gander	2	563
Grand Falls-Windsor	2	488
Corner Brook	5	924
Stephenville	4	538
Happy Valley - Goose Bay	3	622
Total	42	7,584

Source: Newfoundland and Labrador Legal Aid Commission

Eligible expenditures under the legal aid program for assistance provided in relation to criminal (both adult and young offender) and immigration matters are reimbursed under an agreement with the Government of Canada. The Provincial Director indicated that Federal funding of legal aid expenditures for assistance with civil and family matters are included in the Canada Health and Social Transfer but that it is not possible to separately identify the amounts that relate to civil and family matters. Figure 2 shows expenditures of the Commission for the past five years and the amount recovered by the Province from the Federal Government in relation to criminal and immigration matters.

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Figure 2

**Newfoundland and Labrador Legal Aid Commission
Expenditure Information
Years Ended 31 March
(\$ Millions)**

Year	Total Expenditure	Federal Portion Recovered by Province
2000	6.2	1.6
2001	6.7	1.2
2002	7.0	2.9
2003	7.4	0.2
2004	7.7	1.7

Source: Audited Financial Statements for Total Expenditure
Public Accounts of the Province for Federal Portion Recovered by the Province.

Scope and Objectives

We completed our review of the Commission in October 2004. We reviewed 100 legal aid applications, both accepted and rejected, for the period 1 April 2003 to 31 March 2004. The objectives of our review were to determine whether:

- sufficient documentation is contained in applicant files to demonstrate that legal aid was provided or denied in accordance with the provisions of the *Legal Aid Act* and *Legal Aid Regulations*;
- the Commission is collecting the amounts applicants have agreed to contribute towards their legal fees; and
- there are processes to monitor the cost of legal aid to individual applicants.

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Conclusions

Initially when we notified the Commission of our intended review, we were informed that we would not be able to examine the applications due to the principle of client - solicitor privilege. After some discussion between our Office and the Commission, the Commission agreed to provide our Office with copies of the applications with all of the identifying information obscured. As a result of the restrictions placed on our access to the applications we were unable to determine, with certainty, whether the documentation we examined belonged to the applications selected from the Commission's records for review. In addition, there were instances where there was insufficient information to verify the reasonableness of information contained in the applications.

Our review of legal aid applications indicated that the decision to provide legal aid was not always supported. In particular:

- Individuals who indicated that they were in receipt of income support received legal aid even though there was no documentation to indicate that they were in receipt of income support.
- Individuals not in receipt of income support received legal aid even though they did not provide all information on income and expenses required to assess whether they were eligible. Furthermore, there was no documentation supporting whether the Commission obtained information on liquid assets (cash, etc.) as required by the *Regulations*.
- The Commission is not consistent in applying basic living and transportation allowance rates to applications for individuals in similar circumstances and who have not provided any documentation to support increases in these allowances.
- Legal merit assessments are not typically documented.

The accounts receivable balance from clients for the year ended 31 March 2004 totalled \$369,082 (2003 - \$394,575) with an allowance for doubtful accounts of \$202,373 (2003 - \$207,273). These receivables represent situations where a client is able to contribute to the cost of legal aid provided to them. Many of these accounts have been outstanding in excess of ten years and have had little collection activity.

The Commission does not have a system in place to monitor the costs of providing legal aid services to various legal aid clients.

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Findings and Recommendations

Legal Aid Application Process

The *Act* states applications “...shall set out the financial condition of the applicant and the basis of his or her claim and all the information prescribed by the regulations and additional information required by the area director.” Applicants are required to have a financial assessment and a legal merit assessment before they can qualify for legal aid.

Application review procedures are necessary to assess and establish financial eligibility and legal merit to ensure that legal aid services are only provided to individuals in accordance with the *Act* and *Regulations*. We reviewed a sample of 100 applications for legal aid service to determine whether the Commission obtained sufficient information to support the application and whether the Commission was completing financial eligibility and legal merit assessments of these applications in accordance with the *Act*, *Regulations* and Commission policy.

Our review indicated the following:

1. Financial Eligibility Assessment

All applicants for legal aid must complete an application for legal aid and provide a brief description of the legal problem and information on the income, living expenses and net assets of the applicant including their spouse and dependents. An applicant is considered financially eligible if they provide supporting documentation to show that their living expenses exceed income and that they do not have adequate liquid assets (cash, etc.) to hire a private lawyer. Applicants receiving income support from the Department of Human Resources, Labour and Employment automatically qualify financially for legal aid.

Living expenses are defined in the *Regulations* to include a basic living allowance (cost of food, clothing, household supplies and personal requirements), a reasonable amount for shelter, utilities, transportation expenses, medical expenses, life insurance premiums, installment payments on debt incurred prior to the date of application for legal aid and other expenses as approved by the Provincial Director. In determining the basic requirements the Commission uses amounts that the Department of Human Resources, Labour and Employment uses in assessing individuals for income support. The Commission also allows fixed amounts for transportation and telephone costs and applicants are not required to submit support for these expenses unless they can demonstrate that it is reasonable for them to claim more than the fixed amounts allowed by the Commission for these expenses. The applicant must provide supporting documentation for living expenses other than the basic living allowance and fixed amounts.

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In certain situations an applicant may only be eligible for assistance with a portion of the entire cost of providing legal services. In determining whether to require the applicant to contribute towards the cost of providing legal services the Commission will consider the amount of surplus resources that the applicant has in relation to what the expected cost would be of having the applicant use a private lawyer to represent them. If it is determined that the applicant does not have enough surplus resources to hire a private lawyer the Commission may agree to represent the applicant and recover a portion of the costs from the applicant. In these situations, the applicant must sign an agreement with the Commission to pay their portion.

Commission staff accept applications, collect supporting documentation and assess financial eligibility. Applications that qualify financially are forwarded to a lawyer for legal merit assessment.

The 100 applications we reviewed included 39 individuals who were in receipt of income support and 61 individuals who were not. Our review indicated the following:

Of the 39 individuals who were in receipt of income support:

- 28 applications did not contain documentation to demonstrate that the applicant was in receipt of income support and therefore qualified financially for legal aid. All of these applications were forwarded for legal merit assessment. 24 of these 28 eventually received legal aid.
- 10 applications provided documentation to demonstrate that the applicant was in receipt of income support and were forwarded for legal merit assessment. 9 of these 10 eventually received legal aid.
- 1 application was withdrawn by the applicant.

Of the 61 individuals who were not in receipt of income support:

- 41 did not provide all information required to assess whether they were eligible for legal aid. Of these 41, 35 qualified financially for legal aid and were forwarded for legal merit assessment. 27 of these 35 eventually received legal aid.

Of the 35 approved for financial eligibility, 22 had no documentation for either income or expenditures, 11 had documentation on income but not all documentation on expenditures, 2 had documentation on expenditures but no documentation on income.

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- 9 did provide all information required to assess whether they were eligible for legal aid. Of these 9, 1 did not qualify financially for legal aid and 8 were forwarded for legal merit assessment. 7 of these 8 eventually received legal aid.
- 7 applications were withdrawn by applicants.
- 3 applications were from wards of the Director of Child Welfare or from incarcerated individuals. Although there is no provision in the *Legal Aid Act* or *Regulations* exempting these individuals from the requirement to provide financial information, the Commission did not require them to provide the information. All 3 were forwarded for legal merit assessment and eventually received legal aid.
- 1 individual did not provide all information required to assess whether they were eligible for legal aid. Based upon the information that was provided, the application was rejected because the individual did not qualify financially. However, the Court ordered that the Attorney General of the Province provide the applicant with a lawyer. The Attorney General then requested that the Commission provide a lawyer to this individual.

The Commission is not consistent in applying basic living and transportation allowance rates to applications for individuals in similar circumstances and who have not provided any documentation to support increases in these allowances:

- The monthly allowance for one adult and one dependent should be \$433; however, in 2 of the 7 applications where this allowance was applied, the allowance was set at \$490. There was no documentation provided by the Commission to explain the differences in this allowance.
- The monthly allowance for one adult and three dependents should be \$516; however, in 4 of the 5 applications where this allowance was applied, the allowance was set at amounts greater than \$516 (3 at \$567 and 1 at \$625). There was no documentation provided by the Commission to explain the differences in this allowance.
- Although the normal maximum transportation allowance is \$100 per month, there were 5 instances where the allowance was higher than this (2 were set at \$200 each). There was no documentation provided by the Commission to explain the differences in this allowance.

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The Commission does not always obtain information on liquid assets as required by the *Regulations*. The *Regulations* indicate that liquid assets include cash, bonds, stocks, debentures and other assets that can be readily converted to cash and require the Area Director to consider these assets in determining whether the applicant can pay all or a portion of the legal aid costs. Our review indicated that there was no documentation supporting whether there were liquid assets for the 37 applications approved for legal aid from individuals not in receipt of income support.

2. Legal Merit Assessment

A legal merit assessment is completed, for criminal matters, to determine if there is a possible defense to the charge. Such an assessment would also include a consideration of other factors as outlined in the *Act*, for example “... *there is a likelihood of imprisonment or loss of means of earning a livelihood upon conviction, there are in existence circumstances that would serve to mitigate the severity of the penalty that may be imposed, and because of extraordinary circumstances it is in the best interest of justice that the applicant be represented by counsel.*” For matters other than criminal, a legal merit assessment would consist of a judgment by the lawyer of whether the Commission could provide any useful work to the applicant.

The Provincial Director indicated that legal merit assessments are not prepared or documented in situations where an applicant: is charged with an indictable offence; is charged as a young offender; or, is involved in a family court matter dealing with child and spousal support that either arose during divorce proceedings or where the other party is represented by a private lawyer.

A total of 84 applications, from the 100 applications we tested, were accepted based on financial eligibility. Our review of the legal merit assessment for these 84 applications indicated the following:

- 14 applications were rejected as the Commission concluded that no useful legal work could be provided or the action had no merit.
- 70 applications were approved for legal aid; however, there was no documentation of a legal merit assessment being performed. Officials indicated that such assessments are not typically documented and acceptance of the application indicates the case has legal merit. However, it is not possible to determine on what basis legal aid was provided without documentation to support legal merit.

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Although the Provincial Director indicated that in some cases legal merit is readily apparent, we did find examples where we felt documentation should have been on file to support the reason for providing legal aid. These examples included: assistance with credit problems, landlord-tenant relations, public mischief, and failure or refusal to provide a breath sample.

Although the Provincial Director also indicated that legal merit is inherent for indictable Criminal Code of Canada offences, matters involving young offenders, or in family court matters dealing with child and spousal support that either arose during divorce proceedings or where the other party is represented by a private lawyer, we are of the opinion that this is not appropriate. In our opinion, legal aid should only be provided after legal merit is assessed and documented.

Accounts Receivable

In certain situations applicants are able to contribute towards the cost of legal services provided by the Commission. In these situations, the applicant must sign an agreement with the Commission to pay their portion and the Commission will record a receivable from the applicant.

The accounts receivable balance from clients for the year ended 31 March 2004 totalled \$369,082 (2003 - \$394,575) with an allowance for doubtful accounts of \$202,373 (2003 - \$207,273). Many of these accounts have been outstanding in excess of ten years and have had little collection activity. Although the Commission had informed my Office in 2003 that it was preparing to seek authority to write-off its older receivables, this has not been done.

Monitoring Legal Aid Costs

We would expect the Commission to have a system in place to monitor the costs of providing legal aid services to various legal aid clients.

However, the Commission does not monitor the cost of legal aid to individual applicants. During 2003-04, lawyers' time was being entered into a Legal Aid Management Information System; however, Commission officials indicated that the accuracy of the data would be difficult to verify. As a result, the Commission was unable to provide verifiable time and cost data for the individual legal aid cases we selected for audit testing.

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Recommendations

The Commission should:

- *Ensure that legal aid is only provided to applicants who qualify financially and whose cases have legal merit.*
- *Ensure that all required documentation is on file to support financial and legal merit assessments.*
- *Continue efforts to recover those accounts receivable considered collectible. For those accounts not considered collectible, the Commission should seek the direction of Treasury Board as to their final disposition.*
- *Have a system to provide accurate information necessary to monitor legal aid costs by individual cases.*

Commission's Response

No response provided.