

Justice and Solicitor General—Funding Sustainable and Cost-Effective Legal Aid Services

INTRODUCTION

Legal aid is a means of providing legal assistance to eligible low-income individuals who could not otherwise afford legal representation when dealing with matters that could significantly impact them. In Alberta, legal aid services are provided by Legal Aid Alberta, a provincially funded not-for-profit organization operating at arm's length from the government. LAA also receives some funding from the federal government and the Alberta Law Foundation,¹ as well as through client recoveries and contributions.

Some of the services that LAA provides are required under law or because of court rulings. For example, the *Canadian Charter of Rights and Freedoms* gives individuals the right to a fair trial, and legal aid exists in part to help those who cannot afford to pay for a legal defence against the Crown in criminal prosecutions and in child welfare matters.

However, not all legal aid services are mandatory, such as in cases of family law and civil law. It is up to the Alberta Department of Justice and Solicitor General to decide which non-mandatory services to fund in order to have a sustainable, effective legal aid program.

The decision to fund a non-mandatory service is not always obvious. Some services, while initially appearing expensive, could ultimately save the government and the justice system money in other ways. Other services may not save money but could have a valuable social benefit instead. Deciding on whether or not to fund a service, therefore, requires analysis of how that service will benefit the province and Albertans, if at all.

In November 2015, cabinet approved a department-led comprehensive review of legal aid delivery. The stated goal of this review is to make recommendations on how to provide an affordable and more cost-effective legal aid program that provides the best possible coverage for low-income Albertans. As of February 2017, no changes have been made to legal aid delivery as a result of this review.

See Appendix A for additional information on Alberta's legal aid services.

AUDIT OBJECTIVE AND SCOPE

The objective of our audit was to determine whether the department has adequate systems and processes to (a) determine the funding needed to effectively deliver and sustain legal aid services and (b) monitor and evaluate the delivery of these services.

¹ An annual grant paid by the Alberta Law Foundation from the percentage of interest earned on lawyers' general trust accounts pursuant to the *Legal Profession Act*.

We did this work in response to a request from a member of the Legislative Assembly to conduct an audit into the sustainability and funding of legal aid.

WHY THIS IS IMPORTANT TO ALBERTANS

Accessible, appropriate and properly funded legal aid services are essential to ensure all Albertans are supported during their interactions with the justice system, regardless of their ability to pay. Legal aid cost the Alberta government \$65.8 million in 2016–2017. This amount is forecast to be higher in coming years, in part because of the poor economy and increasing demand for services. Three times in the last five years the department has provided LAA with supplemental in-year funding, most recently \$9.4 million in 2016–2017. Albertans should be confident the department has adequate systems to determine what it should fund, and can afford to fund, to ensure that cost-effective and sustainable legal aid services continue to be available when needed.

WHAT WE EXAMINED

We examined:

- documents Legal Aid Alberta provided to the department between April 1, 2014 and January 31, 2017, including business plans, budgets and monthly financial reports and activity summaries
- department reports, briefing notes and other documents referencing legal aid or LAA between April 1, 2014 and January 31, 2017
- publicly available business plans, strategic plans and annual reports for LAA and legal aid plans in B.C., Saskatchewan, Manitoba and Ontario

We also conducted interviews with department staff and senior management at LAA.

We conducted our field work in September and October 2016, and we substantially completed our audit on March 3, 2017. We did not examine any processes or procedures at LAA.

CONCLUSION

The department needs to improve its processes to determine the type and scope of services it can afford to fund for a sustainable and appropriate legal aid program. It has more than doubled its legal aid funding since 2005 and provided LAA with a combined \$21.9 million in supplemental in-year funding over the past five years.² While the department has identified potential cost savings, they will not be enough to avoid the need for supplemental funding in 2017–2018 as well if LAA is to continue with its current level and type of services. The department also has only recently taken steps to ensure there will be processes in place to measure, monitor and report on the efficiency and effectiveness of publicly funded legal aid services.

² \$7 million in fiscal 2012–2013, \$5.5 million in fiscal 2014–2015 and \$9.4 million in fiscal 2016–2017.

FINDINGS AND RECOMMENDATIONS

Identifying services that can be sustained by Alberta's publicly funded legal aid system

CONTEXT

Legal Aid Alberta delivers legal aid services in the areas of criminal and civil law in Alberta. It does this under the authority and terms of an agreement with the Ministry of Justice and Solicitor General and the Law Society of Alberta.³ LAA operates at arm's length from the government—this is necessary because part of its role is to provide legal representation for individuals facing prosecution from the Crown. Some of the services provided by LAA are required under law or because of court rulings:

- depending on case-specific circumstances, to protect an individual's rights under the *Canadian Charter of Rights and Freedoms* against an action by the state, such as the right to a fair trial
- because of Supreme Court rulings, such as *Brydges Duty Counsel*⁴
- where specifically required by statute, such as youth criminal defence for all offences⁵ or as directed by the court in certain child welfare matters, such as proceedings under the *Child, Youth and Family Enhancement Act*

Other services are not mandatory but are currently funded and provided through agreement with the government so that low-income Albertans can obtain legal assistance they could not otherwise afford for matters that may significantly impact their lives. The intent of providing these services is also to help ensure more efficient operation of the court system in criminal and family law matters by reducing the number of self-represented participants in court. These services include:

- Duty Counsel in criminal and youth courts
- non-criminal Duty Counsel in provincial and Queen's Bench family courts
- legal representation for other family matters, such as divorce, spousal and child support, and custody matters

CRITERIA: THE STANDARDS OF PERFORMANCE AND CONTROL

The department should have processes to:

- periodically review and assess legal aid services covered by the governance agreement to ensure the legal aid plan is accessible and responsive to Albertans' needs and is achieving the department's goals for the justice system
- identify what amount of funding is needed to effectively deliver and sustain legal aid services as set out in the most current governance agreement, and identify where that funding should come from
- identify the risks of underfunded or underperforming legal aid services to:
 - access to and function of the justice system
 - department goals

³ This governance agreement sets out the types of services to be provided by LAA in the areas of criminal and civil law as well as the authority, responsibilities and obligations of each of the three parties signatory to the agreement. The current agreement expires March 31, 2017. This agreement is unique in Canada; all other provinces except PEI use a statute-based commission to deliver legal aid services. PEI uses a government-delivered model. <http://www.legalaid.ab.ca/about/Documents/Legal%20Aid%20Governance%20Agreement%20dated%20November%206%202015.pdf>.

⁴ From a 1990 Supreme Court of Canada decision, *R. v. Brydges*, that an individual's right to retain and instruct counsel under Section 10(b) of the *Canadian Charter of Rights and Freedoms* imposed a duty on the police to provide information and access to a legal aid lawyer if needed.

⁵ Section 25 of the *Youth Criminal Justice Act*.

OUR AUDIT FINDINGS

KEY FINDINGS

- The department’s current processes for identifying potential cost savings and efficiencies for the delivery of legal aid services do not allow it to sufficiently answer two key questions:
 - How much is it able to pay for a sustainable legal aid program?
 - What non-mandatory services should it pay for?
- The department and Legal Aid Alberta have conducted various analyses and taken actions to find cost savings and efficiencies in delivering legal aid services, yet the pressure of finding sustainable funding for the current type and scope of services continues to increase.
- The department has provided Legal Aid Alberta with supplemental in-year funding three times in the last five years, most recently \$9.4 million in 2016 funded through a supplementary estimate from Treasury Board a month prior to the end of the 2016–2017 fiscal year.
- Unless Treasury Board continues this increased financial support to the ministry for legal aid funding into the next fiscal year, the department may again need to consider internally reallocating monies from other departmental programs in order to meet funding pressures from Legal Aid Alberta.

Two key questions

As the primary funder of the legal aid system,⁶ the department should be able to answer two key questions:

- How much is it able to pay for a sustainable legal aid program?
- What non-mandatory services should it pay for?

Neither question has been sufficiently answered with the department’s current processes for identifying potential cost savings and efficiencies for the delivery of legal aid services.

Continuing funding pressures

The department has more than doubled its funding to LAA since 2005.⁷ In contrast, federal funding has remained relatively constant at 2005 levels, except for a recent \$1.3 million increase. Revenue received from the Alberta Law Foundation and client recoveries has declined because of continuing low interest rates and poor economic conditions.

Despite these increases in provincial funding, LAA’s operating expenses have exceeded revenues in five of the past seven fiscal years. To prevent LAA budget shortfalls and possible service delivery cuts, the department provided supplemental in-year funding grants of \$7 million in fiscal 2012–2013 and \$5.5 million in fiscal 2014–2015.

In November 2015 the Minister of Justice and Solicitor General approved increases in two key cost drivers to the delivery of legal aid services:⁸

- a three per cent increase in the financial eligibility guideline (FEG) amounts⁹
- a 10 per cent increase in the tariff rate¹⁰ to \$92.40 per hour

⁶ For the fiscal year 2016–2017 the Alberta government provided 78 per cent of LAA’s total funding; see Appendix A for more information.

⁷ From \$20.25 million to \$55.2 million as of April 1, 2015, as set out in documentation provided by the department; we did not independently verify these numbers.

⁸ Another key cost driver is scope of services offered.

⁹ See Appendix A for the current financial eligibility guideline amounts.

¹⁰ As defined in LAA Rules 2015: “the detailed statement of the amount and type of legal fees and disbursements a roster lawyer may ask Legal Aid Alberta to pay the lawyer for legal services provided under a certificate.” See Appendix A for additional information.

In 2016 the government approved \$68.5 million in funding¹¹ for LAA, which was \$6.5 million less than LAA had initially requested for 2016–2017 to cover its expected increase in operating costs from the tariff and FEG increases. LAA subsequently advised the department this level of funding left it \$9.4 million short of what it needed to provide the current approved level of services to the end of March 2017. LAA indicated that without this funding it would have to stop issuing new legal representation certificates¹² after September 30, 2016 so as to remain operationally viable without proposing further cuts to service.

The department did give LAA the additional \$9.4 million, initially by considering reallocating funding from some of the department's other programs.¹³ At that time, the justice minister advised LAA that this internal reallocation was not a trend that could continue in future years since it took funds and service capacity from other programs in the department that faced similar demand challenges and cost pressures. The minister further noted that the continued escalation of costs to provide legal aid services is a critical concern, and that significant reduction in projected expenditure growth is necessary. However, a month prior to the end of the 2016–2017 fiscal year, Treasury Board proposed to give the ministry this \$9.4 million as part of a budget increase done through a supplementary estimate.¹⁴

In its most recent business plan submission,¹⁵ LAA says it will need this top-up funding of \$9.4 million again in 2017–2018, as well as an additional \$5.1 million,¹⁶ if it is to be able to provide all approved services. Further, this additional funding will be enough only if LAA is able to successfully implement the cost-saving options it has proposed (see below). Unless Treasury Board continues this increased financial support to the ministry for legal aid funding into the next fiscal year, the department may again need to consider internally reallocating monies from other departmental programs in order to meet funding pressures from LAA.

Steps taken to identify potential cost savings

Both the department and LAA have undertaken or commissioned various analyses, and met on various occasions, to identify potential cost savings and efficiencies in the delivery of legal aid services. For example:

- Corporate Internal Audit Services (CIAS) performed an analysis for the department that identified and costed out various cost-saving scenarios, primarily around changes to the delivery of currently approved services or identified administrative processes.
- CIAS developed a high level cost model to show how various service delivery changes to LAA's current three core service areas might affect LAA's revenues, expenses and anticipated net savings or increased costs.¹⁷
- LAA provided the department with a number of options in mid-2016, including reductions and changes to service delivery that could potentially generate sufficient cost savings for it to be able to operate in the next two fiscal years with no funding increase.

¹¹ This consisted of \$57.7 million in provincial funding, which included a \$2.5 million increase over the previous year and \$10.8 million in federal funding.

¹² As defined in LAA Rules 2015: "the document issued by Legal Aid Alberta to a service provider authorizing him or her to provide specified legal services to a client." See Appendix A for additional information.

¹³ Based on funding composition data provided by the department, part of this \$9.4 million was offset by the recent \$1.3 million increase in federal funding. The department would have to find the remaining \$8.1 million through internal budget reallocation, bringing the provincial portion of LAA funding to \$65.8 million for 2016–2017.

¹⁴ The government has yet to vote on and approve this supplementary estimate as of the substantial completion date of our audit, March 3, 2017. Department management expects this will occur shortly after the spring session starts on March 2.

¹⁵ Legal Aid Alberta 3-Year Business Plan (2017/18–2019/20), dated 27 January 2017.

¹⁶ \$3.8 million of this would come from the Alberta government and \$1.3 million from an expected increase in federal funding.

¹⁷ These are the Criminal Resolution Office, Family Law Office and Youth Criminal Defence Office.

- In November 2016 LAA provided the department with additional proposed changes to service delivery and identified possible sources of additional program funding so as to find potential savings for the fiscal years 2017–2018 and 2018–2019.

What cost savings or efficiencies may come from these proposals will be realized only as they are implemented.

Changes made to service delivery

The department and LAA have taken some concrete action to seek out efficiencies and cost savings in legal aid service delivery. For example, in November 2015 LAA, with the minister's approval:

- discontinued providing services that only offered legal information, referral and advice, concentrating instead on providing full legal representation services
- discontinued offering representation in some civil matters such as employment, debt and housing
- made family duty counsel available in Provincial and Queen's Bench courts outside Edmonton and Calgary, where a need for this was identified
- established a pilot appeal mechanism to reduce the number of Rowbotham applications¹⁸ being made to the courts

Despite these efforts, the cost of providing the current type and scope of legal aid services continues to increase, as do the pressures and challenges the department faces in finding sustainable funding.

Additional analysis needed

As part of its current comprehensive review of legal aid delivery, the department has sought input from various stakeholders and users of legal aid services throughout the province. It has also done cross-jurisdictional comparisons with other provinces' legal aid programs around the scope of services provided and tariff and fee structures.

However, we have not seen any analysis by the department focusing on areas such as:

- the type and scope of non-mandatory services it can afford to fund, factoring in cost drivers it can control (such as financial eligibility guidelines, scope of services, or tariff rates) and those it cannot (such as the economy and demand for service)
- what the maximum sustainable funding levels are for non-mandatory services it wishes to fund without having to divert funding from other departmental programs
- the costs and benefits (both quantitative and qualitative) of the various non-mandatory services to the justice system, to other government programs and to low-income Albertans
- whether there should be changes to the way some or all non-mandatory legal aid services are funded, such as capping annual funding regardless of demand or having different FEG amounts

This analysis would help the department, as the primary funder of legal aid services, establish an evidence-based baseline of what is an affordable, sustainable and appropriate legal aid program. It could then move forward and work with LAA to ensure the provider delivers these legal aid services in an economical and efficient manner.

¹⁸ Rowbotham applications for a state-funded lawyer are granted when an individual cannot afford a lawyer, has been rejected by legal aid, and the courts rule would have their Charter right to a fair trial violated because of a lack of legal representation. Rowbotham applications increased from fewer than five in 2013–2014 to 323 in 2014–2015 (Legal Aid Alberta 2015 Annual Report, page 18).

A very simple analogy may be building a house: sometimes a person has to make a difficult decision between what they want and what they can really afford in terms of size, style, location, property taxes, upkeep, etc.

Under the terms of the current agreement LAA shall provide to the minister any financial, statistical or other non-Legal Aid, client-specific information relating to the business and operations of LAA and the services provided by it that may be reasonably requested by the minister.¹⁹ This information would help the department to do the type of analysis described above.

Determining value to justice system of legal aid services

In a November 2013 report, *Reaching Equal Justice: An Invitation to Envision and Act*, the Canadian Bar Association reported that a number of studies from Australia, England and the U.S. concluded that the average social return on investment for every dollar spent on legal aid spending was a saving of about six dollars in public funds elsewhere.²⁰ The report also referenced a 2009 Australian PricewaterhouseCoopers study that found every dollar spent on family law legal aid provided a benefit to the overall justice system of between \$1.60 and \$2.25.²¹

The department does not currently have a process that could determine or validate similar findings for Alberta to help it decide the type and scope of non-mandatory legal aid services it should pay for to best meet Albertans' needs. It is aware of the possible negative ripple effects and expense an underperforming legal aid system can have on the justice system: more unrepresented individuals (leading to more adjournments), longer trial times, additional administration costs, delays in trial scheduling, increased remand of individuals unable to make bail while they wait for trials, etc. However, it has not yet quantified what the economic costs to the justice system or the impact on users of legal aid would be from reducing or removing certain services. Department management indicated they would need a performance measurement framework with associated benchmark indicators to help them determine this, something which is not currently in place.

The department currently has systems to collect data such as the number of people remanded in custody while they get legal representation for bail hearings (and the associated cost to keep them in jail), criminal trial lead times, and how many defendants self-represent for court proceedings. However, the department does not specifically analyze how these results are affected, if at all, by the number of eligible individuals unable to obtain legal aid.

RECOMMENDATION 1: DETERMINE THE TYPE AND SCOPE OF SERVICES A PUBLIC LEGAL AID SYSTEM CAN SUSTAIN

We recommend that the Department of Justice and Solicitor General determine, through analysis, the type and scope of services Alberta's publicly funded legal aid system can provide and sustain.

CONSEQUENCES OF NOT TAKING ACTION

Without a well-defined process to identify and evaluate the type and scope of services a publicly funded legal aid system can realistically afford to sustain in the face of increasing cost and demand pressures, decisions made by the department may not be based on the information necessary to best serve Albertans.

¹⁹ Section 13(c) of the governance agreement.

²⁰ Canadian Bar Association, [https://www.cba.org/Publications-Resources/Resources/Equal-Justice-Initiative/Reaching-Equal-Justice-An-Invitation-to-Envisi-\(1\)](https://www.cba.org/Publications-Resources/Resources/Equal-Justice-Initiative/Reaching-Equal-Justice-An-Invitation-to-Envisi-(1)).

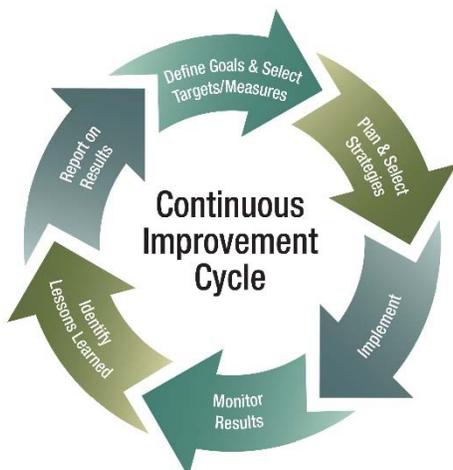
²¹ Same reference, page 55.

Performance measures for legal aid services

CONTEXT

Before an organization can assess the effectiveness and efficiency of a particular program, it must obtain information to measure and analyze the results.

The organization should:



- identify expected results and strategies to achieve the results
- create relevant performance measures for internal and external reporting
- set targets for the performance measures
- analyze the current results for the performance measures against the targets, as well as analyzing trends in relation to prior years
- identify ways to improve
- develop and implement a plan to improve
- report results in relation to desired outcomes, including lessons learned and plans for improvement

The current governance agreement between the ministry and Legal Aid Alberta for delivery of legal aid services stipulates that the LAA annual budget and business plan must include key

program and business performance measures in regard to quality, efficiency and cost-effectiveness. The ministry approves both the budget and the business plan.

CRITERIA: THE STANDARDS OF PERFORMANCE AND CONTROL

The department should have processes to:

- ensure Legal Aid Alberta provides appropriate key program and business performance measures in its annual budget and business plan
- obtain sufficient, appropriate and timely reporting from Legal Aid Alberta
- analyze and evaluate the reporting received from Legal Aid Alberta so that the department can conclude if the services provided are meeting identified goals and performance measures for legal aid services and the justice system
- publicly report on the performance of legal aid services

OUR AUDIT FINDINGS

KEY FINDINGS

- Legal Aid Alberta has only recently added performance measures to its three-year business plan, even though these have always been required by the governance agreement.
- The ministry last reported a performance measure on the legal aid program in its 2010–2011 annual report, but this did not focus on organizational performance or whether the program was achieving its goals and desired outcomes.

Internal measuring and monitoring

None of the following documents prepared by LAA include any reporting on established or proposed performance measures:

- LAA's 2015–2016 budget and business plan, which contains a proposal for a technology capital project to improve monitoring and reporting
- LAA's 2016 annual report, which, as with previous years' reports, contains only statistical information, such as the number and types of services provided—on its own, this kind of statistical information does not provide a measure of the quality or effectiveness of program or service delivery
- LAA's three-year strategic plan²²

LAA last included a strategic goals and performance measures section in its 2012–2013 to 2014–2015 corporate business plan.

Other Canadian legal aid services have more robust external reporting in this area. Legal Aid Ontario has a section in its 2014–2015 public annual report setting out the results of a number of key performance indicators.²³ Legal Aid Saskatchewan reported on three identified measures of success in its 2015–2016 annual report.²⁴

Despite the weaknesses mentioned above, we did not find any evidence that the department had asked LAA for an explanation for the absence of performance measures in these documents. Only recently has the department requested LAA add measures to its three-year business plan that are relevant to managing performance and which LAA will use for business decision-making processes.²⁵ Subsequently, LAA has now included a section in its most recent three-year business plan submitted to the department setting out a number of critical strategic priorities with corresponding goals and target measures.²⁶ It still remains to be seen how LAA will report on the performance results of these measures.

The department does receive monthly management reports from LAA, which include financial and operation highlights and various variance analyses, as well as the current financial position (actual versus budget and variances). While these reports do allow the department to monitor the ongoing state of LAA's finances, in the absence of established benchmarks they do not permit the department to fully measure or conclude on the efficiency and effectiveness of the delivery of publicly funded legal aid services.

Ministry external reporting

The ministry last reported a performance measure on the legal aid program in its 2010–2011 annual report. This was a satisfaction measure of the program based on a survey of past clients. There were no measures that focused on organizational performance or whether the program was achieving its goals and desired outcomes. Satisfaction measures should rarely be the only measure; they should be used in conjunction with measures focusing on organizational performance.

The ministry has a priority initiative directly related to legal aid in its 2015–2016 annual report.²⁷ We would expect the ministry to include information to enable readers to assess the progress made toward

²² Legal Aid Alberta Strategic Plan 2014/15–2016/17, <http://www.legalaid.ab.ca/about/Pages/Business-Plan.aspx>.

²³ Legal Aid Ontario 2014–2015 Annual Report, <http://www.legalaid.on.ca/en/publications/reports.asp>.

²⁴ Legal Aid Saskatchewan 2015–2016 Annual Report, http://www.legalaid.sk.ca/community_resources/annual_reports.php.

²⁵ This was contained in a November 25, 2016 email sent to LAA.

²⁶ Legal Aid Alberta 3 Year Business Plan (2017/18–2019/20) dated 27 January 2017.

²⁷ Justice and Solicitor General Annual Report 2015–2016, Desired Outcome 3.1: Engage with partners and stakeholders to support improvement to legal aid, page 22, https://justice.alberta.ca/programs_services/about_us/Publications%20Library%20%20About%20Us/JSGAnnualReport-2015-2016.aspx/DispForm.aspx?ID=80.

this priority initiative. We found two activities related to legal aid cited within the narrative. We did not observe reporting on:

- targets, historical information or performance measures for legal aid
- whether desired results for legal aid were achieved or lessons were learned
- the costs related to specific program expenditures of legal aid

RECOMMENDATION 2: ENSURE PERFORMANCE MEASURES IN PLACE FOR LEGAL AID SERVICES

We recommend that the Department of Justice and Solicitor General ensure there are processes in place to measure, monitor and report on the quality, efficiency and cost-effectiveness of publicly funded legal aid services.

CONSEQUENCES OF NOT TAKING ACTION

In the absence of appropriate measuring, monitoring and results analysis reporting, the department and stakeholders will not have adequate information to assess whether legal aid services are achieving desired results efficiently and effectively for the public funds spent.

APPENDIX A: ADDITIONAL INFORMATION ON ALBERTA'S LEGAL AID SERVICES

Primary sources of LAA funding

Fiscal year	Federal government ²⁸	% of total revenue	Alberta government	% of total revenue	Alberta Law Foundation	% of total revenue	Recoveries and client contributions	% of total revenue
2016–17*	\$12.1M	14%	\$65.8M	78%	\$3.0M	4%	\$3.5M	4%
2015–16	\$10.8M	14%	\$55.2M	72%	\$6.0M	8%	\$4.0M	5%
2014–15	\$10.9M	14%	\$53.4M	71%	\$6.0M	8%	\$4.3M	6%
2013–14	\$10.9M	16%	\$47.9M	69%	\$5.5M	8%	\$4.3M	6%
2012–13	\$10.8M	14%	\$55.0M	72%	\$5.5M	7%	\$4.5M	6%

* Amounts based on estimates.

Eligibility for legal aid

For adult matters, eligibility is determined using a means test that considers both an applicant's financial situation (whether household income, including assets, is below established eligibility thresholds) and the nature of their legal matter. All youth (anyone between 12 and 18 years of age) are eligible for representation through legal aid for criminal matters, as mandated under the *Youth Criminal Justice Act*.

Alberta's financial eligibility guidelines (FEGs) for legal aid as of November 2016 are:

FAMILY SIZE*	MONTHLY INCOME (NET)	ANNUAL INCOME (NET)
1	\$1,638	\$19,653
2	\$2,027	\$24,333
3	\$2,885	\$34,627
4	\$3,120	\$37,434
5	\$3,354	\$40,242
6+	\$3,587	\$43,050

*Includes the applicant, their spouse and any dependents, such as children, or a common law spouse.

Lawyers used

LAA uses either its own in-house staff lawyers or appointed private bar roster lawyers to provide legal representation for eligible clients. It appoints private lawyers by issuing them certificates. LAA's rules define a certificate as "the document issued by Legal Aid Alberta to a service provider authorizing him or her to provide specified legal services to a client."²⁹ The rules also set out the fees (referred to as "tariffs") that lawyers can charge for the different types of certificates issued by LAA. These tariffs are a combination of block fees and hourly payments (currently \$92.40 per hour). LAA issued 38,289 certificates in fiscal 2015–2016, most of which (70 per cent) were for adult criminal matters. This number represented a 38 per cent increase from the previous fiscal year.³⁰ Typically it can take several years to conclude the legal matter for which a certificate is issued, so the associated costs must be accounted for over the corresponding fiscal years.

²⁸ Revenue received from both levels of government cumulatively shows as sourced from the Province of Alberta on LAA's public Statement of Revenues and Expenses. The majority of the federal government contribution must go to youth and adult criminal matters (95 per cent of \$10.8 million contributed in fiscal 2016), with the remainder to be used for immigration and refugee matters.

²⁹ LAA Rules 2015, <http://www.legalaid.ab.ca/information-resources/Documents/Rules%20and%20Policies/LAA%20Rules%20Dec%207%202015.pdf>.

³⁰ Legal Aid Alberta 2016 Annual Report, page 9; we did not independently verify this number.

Private bar lawyers provide the majority of legal representation services by certificate for LAA clients: 87 per cent of the total in fiscal 2014–2015.³¹

LAA legal representation services

Child welfare matters in accordance with the <i>Child Youth and Family Enhancement Act</i>	<ul style="list-style-type: none"> • Legally required
Youth (12 to 18 years) criminal defence for all offences under the <i>Youth Criminal Justice Act</i>	<ul style="list-style-type: none"> • Legally required
Adult criminal defence <ul style="list-style-type: none"> • All indictable offences in the <i>Criminal Code</i> or any other federal act • Summary conviction offences where there is a risk of imprisonment or loss of livelihood upon conviction 	<ul style="list-style-type: none"> • Legally required • Must meet financial eligibility guidelines
Youth and adult criminal duty counsel (province-wide)	<ul style="list-style-type: none"> • Available in all criminal adult and youth docket courts (court of first appearance) across Alberta • Free to all Albertans
Brydges duty counsel (youth and adult) for criminal matters	<ul style="list-style-type: none"> • Legally required • Free 24-hour telephone service available to all Albertans under arrest, in custody, or under active investigation by law enforcement who need immediate legal advice on their charter rights.
Family duty counsel (non-criminal matters)	<ul style="list-style-type: none"> • Provincial and Queen’s Bench court: Edmonton, Calgary, Siksika Nation, Fort McMurray, Grande Prairie, St. Paul, Wetaskiwin, Red Deer, Medicine Hat • Free to all Albertans
Emergency protection order duty counsel (relating to domestic violence)	<ul style="list-style-type: none"> • Provincial and Queen’s Bench court: Edmonton, Calgary, Lethbridge and surrounding areas • Fee to all Albertans

³¹ Legal Aid Alberta 2015 Annual Report, page 18; we did not independently verify this number.

Other duty counsel	<ul style="list-style-type: none"> • Disciplinary hearings at correctional facilities • Mental Health Review Panel hearings • Free to all Albertans
Full legal representation in family matters	<ul style="list-style-type: none"> • Divorce • Parenting • Constructive trust • Spousal and child support • Interjurisdictional support orders • Custody matters
Other areas of full legal representation	<ul style="list-style-type: none"> • Youth in high-conflict family matters • Guardianship and trusteeship • Extradition and refugee claims • Income support and other government benefits • Hague Convention • Not criminally responsible • Parole board hearings • Dangerous offender applications • Drug treatment court programs

Examples of demand³²

Fiscal year 2015–2016

		PER CENT CHANGE FROM PREVIOUS YEAR
Calls for service		
General	173,721	+32
In custody	56,269	+41
Total	229,900	+34
Certificates issued		
Young offenders	3,477	-2
Family/civil	8,066	+39
Adult criminal	26,746	+44
Total	38,289	+38
Duty Counsel services		
Youth Brydges	3,995	-7
Young offenders	9,616	-13
Adult Brydges	17,144	+1
Civil/family	26,480	+55
Adult criminal	148,753	+30
Total	205,988	+25

³² Legal Aid Alberta 2016 Annual Report; we did not independently verify these numbers.

