



## **Management Response and Action Plan**

### **Legal Aid Program Evaluation**

**Department of Justice Canada**

## Management Response and Action Plan

**Project Title:** Legal Aid Program Evaluation

**Responsibility Centre:** Legal Aid Directorate

Conclusions	Recommendations	Management Response	Action Plan	Responsible Manager (Title)	Planned Implementation Date
<p>Role of the FPT PWG</p> <p>Almost all key informants believe that the FPT PWG is a useful forum for building relationships and sharing information, ideas and best practices. However, the need to review the group's role and governance structure was expressed by some key informants.</p> <p>A significant undertaking of the FPT PWG over the period covered by the evaluation was the development of an FPT business case on criminal legal aid, which, in addition to negotiating agreements, consumed a considerable amount of the group's time. Few representatives from the provinces and territories think there is sufficient policy discussion at the FPT PWG.</p> <p>Some key informants pointed to the need for more consultation with the FPT PWG regarding the potential impacts of new legislation or regulations on the demand for legal aid. The federal government's criminal justice reforms were cited by several key informants as a cost driver for the legal aid plans. Members of the FPT PWG believe that bringing forward issues that drive costs and discussing their implications should be an important function of the FPT PWG.</p>	<p>1. Clarify the role and responsibilities of the FPT PWG.</p>	<p>Agreed.</p> <p>The terms of reference for the FPT PWG are contained in the criminal and I&amp;R legal aid contribution agreements with each province and territory, and explain the PWG's role and responsibilities, as approved by FPT Ministers Responsible for Justice. The LAP will ensure that the PWG terms of reference will be reviewed with the PWG to identify necessary changes, and that any agreed upon additions or changes will be presented to the FPT Deputy Ministers and then to FPT Ministers for approval as part of new funding agreements. As well, the LAP will ensure that PWG activities continue to involve a range of FPT operational and policy discussions. This includes time for discussion of broader justice policy issues affecting legal aid identified in collaboration with the P/T Co-chair.</p>	<ul style="list-style-type: none"> <li>• Internal review of PWG terms of reference</li> <li>• Discussion with PWG</li> <li>• PWG approval of revised terms of reference</li> <li>• FPT Deputy Ministers' approval of revised terms of reference</li> <li>• FPT Ministers' approval of revised terms of reference</li> </ul>	<p>Director, Legal Aid Directorate</p>	<p>November 2012</p>

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<p>In addition, interview results indicate that members of the FPT PWG consider the working group to be an appropriate forum through which operational discussions could be held and challenges addressed with respect to the delivery of legal aid across the country. Representatives from the legal aid plans report that little has been achieved by the FPT PWG to assist the plans in dealing with their pressures and in discussing best practices.</p> <p>Consequently there is a need to re-examine and to clarify the role and responsibilities of the FPT PWG with respect to supporting the Deputy Ministers Responsible for Justice. At the same time, it will be important to examine if there are means by which all members of the FPT PWG can benefit more fully from their participation in the working group. Substantive changes to the FPT PWG terms of reference will require the approval of the Deputy Ministers Responsible for Justice.</p>					
<p>Challenges to maximizing the efficiency and economy of the federal LAP</p> <p>The rising cost of legal aid, the increasing demand, and the concerns expressed about whether provinces and territories can continue to increase their contributions were cited in the evaluation as findings indicating the</p>	<p>2. Initiate discussions on operational efficiency with provincial, territorial, and legal</p>	<p>Agreed.</p> <p>The LAP funding for criminal legal aid currently represents about 29% of total national shareable criminal legal aid expenditures, and this percentage is expected to decrease as the federal contribution remains</p>	<ul style="list-style-type: none"> <li>• PWG consultation</li> <li>• Conduct review</li> <li>• Prepare report on findings</li> </ul>	<p>Director, Legal Aid Directorate</p>	<p>September 2014</p>

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<p>legal aid system faces serious pressures. There is a need to identify and implement efficient and economical practices as a means of relieving these pressures. Legal aid plan representatives indicated that they have undertaken several measures to improve the efficiency and/or economy of their legal aid service delivery, including greater use of duty counsel and enhanced duty counsel. It would be beneficial to explore these measures further.</p> <p>Whether the LAP is economical in achieving its outcomes related to enhancing the capacity of legal aid is not clear. Enhanced capacity was found to the extent that the number of applications and approved applications has increased. Meanwhile, the total cost per application has increased.</p>	<p>aid plan partners, in order to ensure the federal legal aid contribution is allocated such that efficiency and economy are a priority.</p>	<p>level and criminal legal aid costs continue to increase. Within the context of the static federal contribution to criminal legal aid costs, the LAP will review options with respect to exploring how the federal investment can maximize the effectiveness and efficiency of criminal legal aid while minimizing federal costs. This work would involve discussions with all provinces and territories.</p>			
<p>Challenges to determining levels of immigration and refugee legal aid</p> <p>Demand for I&amp;R legal aid was reported to be unpredictable from year to year, but has generally increased based on available data. Currently, funding for I&amp;R legal aid does not allow for unanticipated arrivals or other spikes in demand. The current funding formula is based on the demand for I&amp;R legal services in the previous fiscal year, determined by using IRB and FCC data to which a weighting formula is applied. Given</p>	<p>3. Review the funding formula for I&amp;R legal aid and give consideration to methods of increasing its flexibility.</p>	<p>Agreed.</p> <p>The approach used to distribute federal I&amp;R legal aid resources was developed in consultation with the I&amp;R Sub-Committee of the PWG (which has representatives from each of the six participating jurisdictions), and was approved by FPT Deputy Ministers and by FPT Ministers, as contained in the signed contribution agreements. The approach is based on statistics for the preceding year from reliable</p>	<ul style="list-style-type: none"> <li>• Prepare new approach based on <i>BRR</i>A in collaboration with CIC and the PWG</li> <li>• FPT Deputy Ministers' approval of revised approach</li> <li>• FPT Ministers' approval of revised approach</li> <li>• Implementation</li> </ul>	<p>Director, Legal Aid Directorate</p>	<p>November 2013</p>

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<p>the volatility of I&amp;R legal aid demand, calculating the federal contribution on the basis of the previous year's demand was considered by some key informants to be too rigid, as it makes it difficult for jurisdictions to manage unexpected increases in the year in which the costs are incurred.</p>		<p>federal sources (the IRB and the FCC), related to seven weighted variables that reflect the various stages of the current refugee status determination process. Although these statistics cannot currently be provided in advance of, or during, a given fiscal year (which would be required in order to calculate quarterly payments), possible options to address this concern will be explored. Given the upcoming changes to the refugee system under the <i>Balanced Refugee Reform Act (BRRRA)</i>, the LAP and Citizenship and Immigration Canada (CIC) will review and revise the I&amp;R funding approach, in collaboration with the PWG, for approval by FPT Deputy Ministers and FPT Ministers.</p>			
<p>Challenges to data availability</p> <p>There is a need to review what data is required to assess the effectiveness, efficiency and economy of the federal contribution to legal aid. Due to the shared responsibility of the federal, provincial and territorial governments with respect to legal aid, it is important to determine what legal aid data is relevant to the federal LAP and should be collected from provinces, territories, and legal aid plans. Data that appropriately assesses the effectiveness of the federal LAP in achieving its intended outcomes, and on the cost efficiency and economy of the federal contribution to legal aid</p>	<p>4. Identify indicators appropriate for measuring the efficiency and economy of the federal LAP, and collect relevant data from provinces, territories, and legal aid plans on the effectiveness, efficiency and economy of the LAP to assist future evaluations.</p>	<p>Agreed.</p> <p>The LAP collects detailed statistical and financial data related to the criminal and I&amp;R legal aid contribution agreements through the audited final claims packages submitted by provinces and territories annually. The information contained in the final claims packages relates specifically to the activities funded under the criminal and I&amp;R legal aid agreements. As well, through an MOU, the LAP provides resources to Statistics Canada in support of the national legal aid survey conducted by the Canadian Centre</p>	<ul style="list-style-type: none"> <li>• Discussions with Justice Evaluation Division and Research Division</li> <li>• Discussions with CCJS</li> <li>• Discussions with PWG</li> <li>• Revisions, if any, to final claims packages and CCJS data</li> </ul>	<p>Director, Legal Aid Directorate</p>	<p>April 2013</p>

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<p>spending, should be collected.</p>		<p>for Justice Statistics (CCJS). Through this survey, the CCJS collects aggregate legal aid data annually directly from provinces and territories. Further, provinces and territories each have their respective information management approaches designed to meet their specific needs. Any changes to these provincial-territorial approaches would have to consider financial implications for provincial-territorial governments. With these factors in mind, the LAP will work with provinces and territories and with the CCJS, in consultation with the Department's Evaluation Division and Research Division, to ascertain what additional and/or different data, if any, can be provided on a sufficiently consistent basis so as to support the LAP's work and assist future departmental evaluations of the LAP.</p>			