



Written Submission Responses Government of Alberta's Survey Legal Aid in Alberta November 15, 2024

Current State Service Delivery in Alberta

1) What are the advantages and disadvantages of Alberta's current legal aid plan (as delivered through Legal Aid Alberta)?

- Prompt: To what extent is the current legal aid plan efficiently serving all Albertans?

Legal Aid generally does a good job of serving those Albertans who qualify for the services that are within Legal Aid's scope.

Participants

The only significant complaint regarding Legal Aid is that it is underfunded and does not serve Albertans who need help, but do not meet the Financial Eligibility guidelines (FEG) or who require legal services that are outside of Legal Aid's scope. The current FEGs are so low that even low income working Albertans do not qualify for Legal Aid. This means that Albertans who do not qualify for Legal Aid are forced to represent themselves at Court. As noted in the Canadian Bar Association, Alberta Branch's (CBA Alberta) 2021 report "[Estimates of Alberta Court Time and Public Expenditure Savings Resulting from Reduced Rates of Self Representation](#)", self-represented litigations can cause up to an additional 60 hours of Court time per case. There is broad public support for Legal Aid, with many Canadians expressing the view that it should receive the same funding priority as other important social services ([Reaching Equal Justice](#), Canadian Bar Association, 2013).

Research conducted by the Canadian Bar Association, Alberta Branch, in 2020 found that 56% of Albertans polled supported increasing the FEG to provide greater access to Legal Aid. CBA Alberta recommends that Legal Aid's FEG be tied to inflation. In addition, Legal Aid coverage should be granted to clients receiving AISH or social assistance.

In addition, Legal Aid does not adequately cover family law matters. Except for criminal law matters, Legal Aid has restricted access to telephone only. This is a problem for some Legal Aid clients because if they are in rural areas, they may not have good cellular connectivity. Also, it may be prohibitively expensive for some Legal Aid clients to use a cellular phone to talk to a Legal Aid representative.

What specific changes or improvements could further enhance it?

1. Provide Legal Aid with the funding to meet with clients "where they are":
 - i. Not all clients are comfortable using a telephone to discuss their very personal problems. In addition, clients for whom English is not their first language may have difficulty expressing themselves or understanding the advice that they are given if delivered over the telephone. A face-to-face discussion, or even allowing for video calls, may improve the client's ability to communicate with a Legal Aid representative when compared to a telephone.
 - ii. Legal Aid should ensure that clients have access to professional translators to ensure that language does not become a barrier to access to justice.
 - iii. In-person Legal Aid clinics should be available in the communities where the Legal Aid clients live and work.
 - iv. Where in-person Legal Aid clinics are not feasible or where demand does not support sending a representative, free public video conference access should be made available so that clients can see and speak with a Legal Aid representative. Video conference access could be facilitated in Court house libraries or public libraries.
2. Lobby the Federal Government to provide their fair share of funding to Legal Aid. At one time, the Federal Government contributed over 50% of the funds for Legal Aid, but in Alberta now, they contribute less than 20%.

• Prompt: Are there particular benefits or challenges you have observed regarding specific communities (urban, rural, Indigenous) or areas of law (criminal, family, immigration, etc.)?

1. Legal Aid does not provide sufficient coverage for family law matters, both in terms of time required, and for the kinds of matters. Family law matters usually take much more time to resolve than Legal Aid currently allocates. Unfortunately, family law lawyers are in great demand. This, coupled with the Legal Aid tariff rate being significantly below market for family law lawyers, means that it is difficult for Legal Aid clients to find competent family law lawyers to handle their case. In addition, Legal Aid does not cover all matrimonial property issues. This makes it difficult for family law matters to be resolved, or fully resolved, because a major issue is left to the clients to resolve themselves.
2. As noted above, other than for criminal matters, the only way to contact Legal Aid Alberta is by phone. This single method of communication unfairly discriminates against Indigenous peoples, who are less likely to have a phone at all, have good cellular service, or a cellular plan with unlimited talking minutes. As well, there are cultural differences between Indigenous peoples and most urban Legal Aid staff, which a face-to-face meeting might help bridge.

• Prompt: If applicable, what elements from other provincial legal aid plans would you suggest may enhance Alberta's legal aid plan?

1. The GOA may consider bundling Legal Aid with other government services to create multi-disciplinary centers, to provide other services, such as mental health support, social services, drug addiction counseling, etc. The GOA should continue to explore Community Justice Centre models.
2. The GOA should consider greater integration between the various free or subsidized legal service providers, so that clients can quickly be in touch with the right service provider for their legal needs. While referrals are already common, perhaps Legal Aid and the other providers could standardize their intake forms or at least share their completed forms with other providers to reduce duplication of effort and decrease client's frustration. The Alberta Law Foundation's Bridging the Gaps project can provide further guidance regarding ways the GOA can support coordination of free or subsidized legal services providers and "warm hand-offs".

2) In your opinion, to what extent are legal aid services accessible to Albertans (e.g., physical/geographic/technological access, timeliness, service availability, etc.)?

O If there are areas where accessibility can or should be improved, what specific changes would you recommend?

Other than for criminal matters, the only way to contact Legal Aid is via telephone. Legal Aid should:

1. Invest in a call-back system to not waste clients' and potential clients' cell phone minutes and time.
2. Provide other methods of communication, including in-person consultation, ideally in the communities where the clients live.
3. Hire lawyers or staff that can speak the languages that Legal Aid clients speak. Requiring Legal Aid clients to find their interpreters creates an additional barrier to accessing Legal Aid. Furthermore, the quality of interpretation can vary significantly and information, possibly crucial information may more easily get lost in translation. Alternatively, Legal Aid could hire in-house translators to ensure a consistent high-quality translation. The Court has a tele-service, which has pros and cons, but it may provide a model for further consideration.

O How can the current range of legal aid services be modified (added and/or excluded) to better support access to justice for Albertans/in Alberta?

Family law matters account for over 35% of all civil Court cases in Alberta. In the Alberta Court of Justice, 40% of all family law matters have at least one party who is not represented by a lawyer.

1. Legal Aid should consider hiring more family law staff lawyers to reduce Legal Aid's reliance on family law roster lawyers.
2. Family law services should be expanded to adequately cover family law matters. We understand that family law matters are only covered to a maximum of 20 hours, but family law practitioners typically require in excess of 50 hours to resolve.
3. All family law matters should be covered. Currently, not all property matters are covered. However, it is very difficult to resolve family matters in isolation from property matters.
4. Legal Aid should cover alternative dispute resolution services for family law matters. Currently, Legal Aid only covers lawyers assisting with Court processes. However, the family law bar employs a variety of alternative dispute resolution tools, including collaborative family law, mediation/arbitration, and parenting coordination. These alternative processes keep parties out of an already overburdened Court system.
5. Legal Aid should permit roster lawyers to bill for their paralegal's time. Currently, Legal Aid will only cover time spent by lawyers. However, it is common for family law lawyers to employ paralegals to help them do certain well-defined tasks. Legal Aid should encourage family law lawyers to be efficient with Legal Aid funds by permitting them to use paralegals, where appropriate.

O Are there special considerations or recommendations for improving access for vulnerable and lower-income Albertans?

CBA Alberta recommends that Legal Aid's FEG be tied to inflation. In addition, Legal Aid coverage should be automatically granted to clients receiving AISH or social assistance.

Governance/ Independence, Accountability & Oversight

1) Legal Aid Alberta is accountable for GOA funding provided to it to serve Albertans who require legal aid services through its reporting obligations as outlined in the 2024-2029 Governance Agreement Respecting Legal Aid. In your view, are there areas of the legal aid plan where fiscal accountabilities can be improved? [Refer to the 2024-2029 Governance Agreement Respecting Legal Aid].

We suggest that the GOA should be looking at the justice system as a whole, when evaluating the fiscal accountability of Legal Aid. Legal Aid is part of the justice system and impacts from other parts of the justice system will impact Legal Aid's ability to provide services. For example, a change in policy to contest bail by the Crown Prosecutors' office resulted in some increased coverage from Legal Aid to deal with bail. Conversely, Legal Aid coverage results in less self-represented Albertans in Alberta Courts. According to a recent economic study conducted by CBA Alberta, every additional dollar spent on Legal Aid results in the Courts saving the equivalent of \$6 in time savings. This time savings reduces Court wait times and improves Albertan's ability to access justice.

O Should areas of accountability, such as transparency, service quality, or performance monitoring, be changed to ensure the legal aid plan is more accountable to Albertans?

While measuring the performance of Legal Aid is important, the GOA should not lose sight of the fact that what gets measured, gets managed, even if it is the wrong thing. The GOA should consider measuring the performance of Legal Aid, within the context of the justice system's performance as a whole. In a survey of Albertans in 2024 undertaken by CBA Alberta, almost 80% of respondents thought that it was important to have access to a lawyer to ensure fair outcomes in Court; and 92% said that it was important or somewhat important to invest in the justice system to reduce delays. With respect to Legal Aid specifically, 92% of Albertans said supporting Legal Aid is important or somewhat important.

O Prompt: What are some performance measures that might be used to evaluate the accountability and sustainability of a legal aid plan?

No comment.

2) How can the GOA ensure the long-term viability and sustainability of Alberta's legal aid plan in way that ensures independence while maintaining accountability for the entity delivering the legal aid plan?

O How should the key priorities and accountabilities of Alberta's legal aid plan and its service delivery entity be established? Who should be responsible?

The government, as the major funder of Legal Aid, should establish the key priorities and accountabilities of the Legal Aid plan, in conjunction with stakeholders including Legal Aid and the Law Society of Alberta.

O What are some factors that would support sustainability, effectiveness, and efficiency in rural and urban settings (e.g., collaboration, technological advances, more involvement from senior counsel, etc.)?

Some Legal Aid costs are driven by other parts of the justice system. For example, some rural Courts discourage or prohibit virtual appearances by lawyers, even for non-controversial matters. This results in more costs to clients generally, including to Legal Aid. It also makes it more difficult for Legal Aid to find experienced private lawyers to take these matters on, leaving Legal Aid clients with less experienced lawyers, or representing themselves.

Legal Aid should also have the flexibility to adjust the tariff to respond to changing factors. For example, private lawyers are less willing to take on Legal Aid files in rural areas. Legal Aid might be able to attract appropriately experienced lawyers if they could offer a higher tariff. In addition, the tariff for lawyers is the same for all lawyers, regardless of their experience levels. Legal Aid should be able to pay more experienced lawyers a higher tariff to deal with more complicated matters.

O What is required from the GOA to support increased fiscal responsibility, effectiveness, and efficiency of the legal aid plan?

No comment.

O What is required from the participants involved in Alberta's legal aid plan to support the same?

No comment.

O The scope of services is currently established as an appendix to the 2024-2029 Governance Agreement Respecting Legal Aid. Should government retain the authority to approve and deny additional requested services to be provided?

The government should retain the authority to approve and deny additional requested services to be provided, with input from stakeholders, such as Legal Aid and the Law Society of Alberta. The government should recognize that adding additional services must be accompanied by additional funding, to enable Legal Aid to carry out the additional services. The government should also be aware that changes in the law, practice and policies also have an impact on Legal Aid services; and also be accompanied by additional funding. For example, a policy decision to oppose bail more often, could require Legal Aid to fund additional lawyers to appear on behalf of accused Albertans in their bail hearings. While Legal Aid funds bail duty counsel full-time, in more complex matters (like intimate partner violence and firearms cases), bail is often adjourned for a lawyer and preparation of a bail plan for consideration by the prosecution service or a Justice. Changes in policy related to bail could therefore have an unintended impact on Legal Aid.

3) In your opinion, how would changes to the service delivery, accountability and governance of the legal aid plan affect the protection of Albertans' rights and freedoms? What risks or benefits do you anticipate with potential changes to service delivery, accountability, or governance?

Legislation

1) The majority of other provinces and territories have legislation guiding the provision of legal aid plans. Should Alberta do the same? Why or why not?

No, Alberta should not pass new legislation to guide the provision of Legal Aid services; at least not without extensive consultation with stakeholders and a clear understanding of what problem Alberta is trying to solve with legislation, that it cannot solve without it. Anecdotally, we understand that Provinces that have legislation, even legislation that had broad stakeholder support, still require substantial non-legislative support, such as additional memorandums of agreements.

O Prompt: Do you see value in shifting to a legislative model? If yes, please explain what elements are important to include.

The advantages of shifting to a legislative model are that it can provide stability and predictability to the provision of Legal Aid services. For example, increases in Legal Aid funding and the financial eligibility guidelines could be tied to increases in the consumer price index (CPI), or to increases in population. Similarly, increases to the fees paid to private lawyers on the Legal Aid roster could be increased based on increases to the CPI. Nonetheless, it may warrant further discussion on how this advantage could be incorporated into the current model before considering it a justification to move to a fully legislative model.

O Do you see risk in shifting to a legislative model? If yes, please explain what areas are important to include and your concerns.

The risk in shifting to a legislative model is that Legal Aid may lose the ability to react quickly to changing circumstances. For example, rapid increases in residential apartment rents could

create a crisis for Alberta's low-income renters. Legal Aid may be best suited to assist renters who are abused by landlords, by representing them in a dispute with their landlord. If Legal Aid services are set in legislation, Legal Aid may not have the flexibility to deal with an emerging issue quickly, before significant harm to Alberta families is caused.

2) If the GOA was considering legal aid legislation, what provisions should be included in Alberta's legislation?

As noted above, increases in Legal Aid funding and the financial eligibility guidelines could be tied to increases in the consumer price index (CPI), or to increases in population. Similarly, increases to the fees paid to private lawyers on the Legal Aid roster could be increased based on increases to the CPI. In addition, the independence of Legal Aid should be enshrined in the legislation. Even the appearance of a conflict of interest may create doubt in Legal Aid, particularly amongst some of the most vulnerable Albertans.

O What components of Alberta's legal aid plan should be legislated?

See above.

O Are there components from another legal aid legislative scheme that could be suggested to compliment or enhance Alberta's current delivery through the GA?

We have not had an opportunity to adequately assess other legal aid legislative schemes to enable us to provide you with any suggestions.

3) In your opinion, might legislating Alberta's legal aid plan have more benefits for Albertans than the current model of the 2024-2029 Governance Agreement Respecting Legal Aid? If not, why?

It is difficult to respond to this question without seeing the draft legislation, or an understanding of the problem that the legislation is intended to solve. Our other responses here indicate several areas for improvement in the delivery of Legal Aid to better serve Albertans, none of which require a move to a legislative model to address.

With respect, the current model is working and we do not see the value of changing to a legislative model, particularly as a model change would have significant transition costs, and those funds could be put to better use in delivering services to Legal Aid's clients.