
**External Review of Legal Aid in
Newfoundland and Labrador**

(Volume 1 - Text)

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Executive Summary

This Review was ordered by the Provincial Government of Newfoundland and Labrador in June 2013. The Legal Aid Commission (the ‘Commission’) is the corporate entity responsible to administer the provision of legal aid services within the Province.

The legal aid regime in this Province is directed by the provisions of the *Legal Aid Act* and Regulations which set forth various processes for the delivery of legal aid service to residents who cannot afford to retain their own legal counsel. The Commission is in compliance with the requirements of that legislation. It operates multiple area offices where staff solicitors perform most of the work on behalf of applicants who have applied for and are entitled to receive legal services. The Commission also can choose to retain outside legal counsel from time to time and, in limited serious criminal charges as detailed by the Act, legal aid clients themselves can choose their own outside counsel from a list of lawyers who have agreed to act for the Commission’s clients. Outside counsel are paid a tariff as set by the Regulations.

The Commission is not just mandated to provide legal advice and representation in matters involving criminal or family law issues. Other areas of law, such as immigration and appearances before administrative tribunals, can be covered by their mandate, but there is currently little demand for work in those disciplines. The staff solicitors from the 11 area offices provide not only traditional advice and representation in matters before the courts, they also deliver province-wide duty counsel services to anyone appearing before the criminal courts, irrespective of financial need, and also to accused persons as soon as they are detained by a police force. Duty counsel services are now an essential part of the delivery of justice.

The result of this wide range of legal services is that the Commission’s operations have now become an integral part of the justice system in the Province. To change or reduce the delivery of this integrated legal service would significantly impact the operations of the courts. In rural Newfoundland and Labrador especially, the vast majority of the court’s caseload is criminal or family law, and the vast majority of persons appearing before these courts are clients of legal aid

who are represented by the Commission's staff solicitors. To change this model of service delivery would have huge impacts on the administration of justice at the courtroom level.

Providing the traditional concept of legal advice and representation is just one aspect of the modern delivery of law-related services by the Commission. Various projects are also now operating within the Province based on a non-adversarial model, utilizing teams of professionals working in a collaborative way with the courts and other professionals. The Family and Child Offices (FCOs) are one example where family law issues are often resolved without recourse to lengthy and fractious litigation. The Mental Health Court Office is an example of health-sensitive intervention within the criminal justice system. While these services were commenced as projects, they are also now a part of the fabric of the delivery of a comprehensive justice service to residents of the Province.

The services offered by the Commission's staff solicitors, both in their traditional legal counsel role with clients and in their new duty counsel role, effectively reduce the number of unrepresented litigants appearing the Province's courts. That is a huge advantage for the courts that otherwise have to contend with unrepresented parties who have little information on how the court system operates. Legal aid services allow the court system to operate more smoothly and efficiently. Changes in the services that legal aid offers would have significant impacts of the courts themselves.

Unfortunately, there are many misconceptions about the quality of service rendered to legal aid clients by the staff solicitors employed by the Commission. In the overall, they deliver a high quality service, competently representing the Commission's clients on matters in which they have vast amounts of experience. There are, however, limited occasions where some of these lawyers may have failed to perform at a high level, often due to workload. The Commission needs early intervention mechanisms to ensure that performance failures by its professional staff are corrected promptly. Its performance management process requires additional focus and resources to help ensure that a high quality of service is delivered at all times.

The current delivery model occasionally relies upon private practice solicitors to represent clients. The Commission sometimes needs the ability to assign cases to outside lawyers where

workload, conflict or other causes make it difficult to source a staff solicitor to act. If clients are to retain their choice of counsel in limited cases of serious criminal offences, which is ultimately a policy decision of the legislature, that option is troublesome because it creates incorrect perceptions about the ability of the Commission's staff solicitors, suggesting that staff solicitors are not necessarily skilled and appropriate for some cases. For that reason, and because of cost considerations, the choice of counsel right in the *Act* should be removed.

In any event, the rate to be paid to lawyers outside the Commission's employment must be fair compensation and adequate in order to always attract counsel who are prepared to act. That is not the case with the currently paid rates. Those rates need to rise significantly, in the range of double the current amounts, to be compensable for private practice lawyers. The appropriate rate is once again a policy decision of the legislature, developed in consultation with the Law Society, as is required by the *Act*.

The executive administration of the legal aid regime needs enhancement. The Board of Commissioners as currently constituted is too small in size to provide the oversight and policy direction required. A larger board made up of 7 to 9 persons representing gender, finance, communications, criminal and family law knowledge, the regions of the Province and aboriginal interests would be more appropriate. Using the board's standing committees to engage important issues, more thorough corporate governance should follow.

To support its day-to-day operations, the Commission has its head or administrative office (the PDO) in St. John's. The essential administrative support in finance, information technology, conflict management, human resources, client intake and appeals, plus the mentoring of staff solicitors, is provided from this office. The management committee of 2 senior managers is rather small and needs one additional Deputy Director (Legal) position to be fully functional. Restructuring is currently ongoing under the direction of the board and the newly-appointed Provincial Director and Deputy Director (Administration). Their efforts should be supported. Additional financial resources may be required to bolster current personnel or provide funding for short-term outside consulting advice. The critical personnel issues of recruitment, retention and performance management should be an early focus of management.

The Commission is faced with many challenges in its delivery of legal aid service to residents of Newfoundland and Labrador. The greatest challenge is geography. It presents obstacles to delivery of an equal service in all regions, especially in Labrador where a) recruitment and retention of professional staff, and b) the high cost of and complex logistics surrounding staff travel, which itself is impacted by weather conditions, both require high attention from management. Better use of technology may offer some resolution to these concerns. Appropriate service to and relationships with our aboriginal groups is important, but can only be achieved effectively and efficiently in concert with similar improvements being made by other stakeholders within the Provincial justice system. Resource sharing with other stakeholders may assist in finding cost-sensitive solutions to some geographic challenges.

Other challenges for legal aid in delivery of an improved service include:

- a) improving the efficiency and speed of the intake and appeals system for applicants seeking legal aid;
- b) improving the system of conflicts management which currently creates major drains on limited financial and human resources. An alternate system is required, but the most appropriate method will require closer study by the Commission; and
- c) allowing more extensive use of modern information technology, especially in remote areas where communication and travel are both difficult and costly.

A major change in the delivery method for providing legal aid advice and representation, by instituting for example a private practice lawyer-based model, cannot be recommended at this time. Insufficient numbers of private practice lawyers with developed skills in both family and criminal law exist in all regions of the Province to immediately take up the demand that would be created by a significant reduction in number of the Commission's staff solicitors. No significant savings would be created if realistic and compensable hourly rates were being paid to those outside lawyers to perform that work. The use of outside counsel to augment the Commission's staff solicitors may offer opportunities for an improved service, especially where conflicts of interest occur, but not for all work.

The reduction of core legal aid services, such as reducing the area offices and the duty counsel service to the Provincial Courts, cannot be recommended as such changes would significantly

and adversely impact the administration of justice in the Province. A reduction in the number of the Commission's project offices is also not recommended. They, too, are now an integrated part of the delivery of modern legal services to the public. The one anomaly for the Commission is the Family Justice Service (FJS) Office in Central NL which is not connected in any meaningful way to the Commission's other activities. FJS Central should be structured directly under the Department of Justice.

Finally, a new sustaining grant structure is required by the Commission to ensure that its important operations are funded adequately. Major amounts of funding must continue to come from the two levels of government, federal and provincial. Because the amount now received from the Law Foundation of Newfoundland and Labrador is so relatively small in relation to the total budget of the Commission, an effort should be made to revise the funding formula for contributions from the Law Foundation, so that it is better able to focus its limited financial resources on other worthy objectives.

A complete listing of Recommendations and suggestions arising from this Review can be found in Section 5 of this Report.

1. Preliminary

In a news release dated June 13, 2013, the Minister of Justice and the Attorney-General together announced an external review of the legal aid system in Newfoundland and Labrador. The Terms of Reference for the review are as follows:

Terms of Reference of the External Review of Legal Aid in Newfoundland and Labrador

A comprehensive review of legal aid in Newfoundland and Labrador shall be undertaken and a report submitted to the Department of Justice within three months of retention. The review will examine the cost-effectiveness of the delivery of legal aid services in ensuring that the residents of the province have access to justice. The review should consider:

- *The development of the current staff/certificate model;*
- *Review and analysis of the current staff/certificate model including:*
 - *Workload: Solicitor, Management, Administrative;*
 - *Specific challenges to the delivery of services: geographical, cultural, and economic;*
 - *Conflict of Interest Offices;*
 - *Counsel Certificates (including the current tariff);*
 - *Choice of Counsel mandate;*
 - *Specialty Offices;*
 - *Duty Counsel; and,*
 - *Paralegals.*
- *Review and analysis of the current administrative model including:*
 - *Management/Executive structure;*
 - *Hiring processes, review and performance management;*
 - *Corporate Services including Human Resources, Financial management, policy development;*
 - *Funding.*
- *Recommendations on legal aid services that should be enhanced, maintained, or reduced.*

The review shall reflect the following principles:

- *The Newfoundland and Labrador Legal Aid Commission's mission is to ensure all eligible residents of Newfoundland and Labrador and non-residents receive competent legal advice and representation;*
- *The Commission operates as a Crown agency at arm's length from government;*
- *The Commission must be accountable to the members of the public which it serves for the quality of legal services it provides;*
- *The solicitors employed by the Commission must be accountable to their clients, the Law Society, and the Commission for the quality of their work and their ethical behavior;*

- *The management and direction of the Commission must demonstrate expertise in the law and in the legal needs of Newfoundlanders and Labradorians;*
- *The Legal Aid Commission staff are a valued and important component of a successful legal system; and,*
- *The information received by the Legal Aid Commission from people who seek and/or receive assistance from the Commission is subject to solicitor client privilege.*

On the same date, the appointment of John Rorke to conduct the review was made. Unfortunately, Mr. Rorke was unable for personal reasons to continue his assignment and the Ministers subsequently appointed this Reviewer to the position on August 30, 2013. At that time, the completion date for the Review was extended.

a) Methodology

With the appointment of a single reviewer on a limited timeframe (effectively 60 working days), the approach to the assignment required that some early decisions be made. Consultation with the major stakeholders, including private practice lawyers, members of the judiciary at both the Supreme and Provincial Court levels, and the board and staff of the Commission made up the core component of the review process. A review of existing documentation and some scholarly writings which might provide insights also made up the early days. All legal aid's office locations (except the remote part-time locations in the Labrador Aboriginal Project) were visited or the key personnel were interviewed.

As this was a publicly announced review, submissions from the public were sought. A Public Notice (attached as Appendix A) was published in newspapers of widespread circulation throughout the Province. The electronic media were also aware of the project and assisted in soliciting input from the general public. This invitation, together with pre-existing interest which had been expressed by some individuals, resulted in a small number of private responses, some of which offered interesting and useful insights into how legal aid is delivered on an individual case basis or raised complaints into how legal aid service is perceived by consumers within the Province. The response to that invitation to the public did not, however, generate the wider level of response which had been anticipated. Only one provincial organization, the Status of Women Council, and two aboriginal groups, the Nunatsiavut Government and the Innu Nation, sought an opportunity for formal input. One MHA also made contact.

Although legal aid in this Province is just one of many comparable systems administered throughout Canada, the variety of delivery regimes is quite broad. Given the short time given for the entire Review, it was impossible to analyze, compare and contrast all provincial programs. Contact was made with only one other province, Nova Scotia, to see if administrative, operational or structural experiences there could offer insights which might assist here. Nova Scotia was chosen because of proximity and the similar culture of its residents. It operates a regime with a significant number of staff solicitors working from 16 ‘district’ offices (compared to NL’s 11 ‘area’ offices) and has a number of parallel services available to the public (Appendix B). It primarily uses staff solicitors to deliver the service. That province does not, however, have equivalent geographic challenges to those presented in this Province, so some comparisons must be made carefully. There was no scientific analysis or choice of comparator to be made in the circumstances and within the time available. This choice of that province was simply a judgment of the Reviewer.

Legal aid staff and the board of commissioners co-operated fully in providing requested information and support during the review process. Without that co-operation, a review of this nature would have been more difficult. That being said, the conclusions and opinions in this Report are solely those of the Reviewer (except that in the case of the suggested reorganization of the administrative office, where consultation with the Provincial Director and Deputy Director resulted in a consensus approach).

A listing of all persons consulted during the Review process, as well as those who provided written briefs, is attached (Appendix N).

While the majority of headings and subject matters within this Report follow the items listed in the Terms of Reference, some additional subject matters, which appeared to be relevant to the broad scope of this Review, have also been included and are commented upon.

The background research, interviews of individuals, visits to legal aid sites and the review of the submissions made were all complete by November 23, 2014, within the 90-day review period. The scope of legal aid service in Newfoundland and Labrador is quite broad; the organizational structure is complex. Because of that complexity and the limited time available, many of the

recommendations developed from this Review can only be general in nature. There was insufficient time to develop the detailed plans that would be required. The Commission itself is able to develop the details necessary to implement those changes.

Finally, there will likely be small factual findings within this Report which may not be entirely accurate. In any review of a large organization by an external reviewer, it is very difficult to ensure that every fact reported will be completely accurate. The Reviewer believes that the broader comments and recommendations contained in this Report should not be negated simply because of such individual inaccuracies.

b) Historical Context

The original legal aid plan in this Province was established by the Law Society of Newfoundland (as it was then known, without the reference to ‘Labrador’) in 1968. At that time, two administrative offices were opened, one in St. John’s and one in Corner Brook, then the two larger communities in the Province. The services provided were rendered by members of the legal profession in private practice, who at that time maintained their own law offices only in St. John’s, Grand Falls and Corner Brook. The first legal aid offices were staffed by part-time secretaries who were the only employees. The plan was administered and managed by a committee of the Law Society. There was no government funding provided. Lawyers who performed services for clients of legal aid did so on a ‘*pro bono*’ (i.e., no fee) basis.

In 1972, the Federal and Provincial Governments first provided funding to the legal aid plan so that those lawyers participating in the plan were then able to be paid an hourly fee for the work they performed. The first hourly rates were \$20.00 to \$30.00, depending on the nature of the service rendered.

Finally, the first Legal Aid Commission (as we now know it) was formed in 1976 under the authority of the Legal Aid Act of 1975 when the first staff solicitors were hired to augment the work of private practice lawyers.

That original legislation still forms the basis of the current Act, which now includes amendments made from time to time thereafter. There has, however, been no general overhaul of the original legislation in almost 40 years.

From 1976 to 2013, legal aid's operations have grown steadily, initially through the addition of more area offices and staff solicitors throughout the Province and, more recently, by the addition of the various project offices and duty counsel services.

c) Statutory Authority

The current Legal Aid Commission and the entire legal aid program exists under the authority of the *Legal Aid Act* (the 'Act') contained in the Revised Statutes of NL, 1990, Chapter 11, as amended. As already noted, it is based on the original 1975 legislation.

As a corporation created by statute, the Commission's operations should be first examined in the context of looking at the statutory provisions to ensure compliance with the legislative framework. Sections of the *Act* less relevant to this Review will be omitted for brevity, and some sections may be relocated to ensure relevance to others. While this may appear to be a tedious approach, it is important for the reader to be aware of the extent to which legal aid's functions and activities in this Province are directed in detail by that legislation.

The Board of Commissioners

The executive body, known here as the 'board of commissioners', but similar in function to the more commonly-known corporate designation 'board of directors', is established and structured under the following sections from the *Act*:

Legal Aid Commission

3. (1) *The Newfoundland and Labrador Legal Aid Commission is continued as a corporation.*
- (2) *The affairs of the commission shall be managed by a board of commissioners consisting of 5 members appointed by the Lieutenant-Governor in Council and of 2 members who shall be the Deputy Minister of Justice and the provincial director.*

- (3) *Three members of the board shall be appointed from a list of 5 persons to be submitted by the law society at the request of the minister.*
- (4) *A member of the board, other than the Deputy Minister of Justice and the provincial director, shall hold office during pleasure for the term of 2 years from the date of his or her appointment and is eligible for reappointment.*
- (4.1) *Where the term of office of a member of the board expires, he or she continues to be a member of the board until reappointed or replaced.*
- (5) *Where a vacancy occurs in the board in respect of the unexpired term of office of a member appointed in accordance with subsection (3), the Lieutenant-Governor in Council may, from a current list submitted by the law society at the request of the minister, appoint another person to fill the vacancy for the balance of the unexpired term.*
- (6) *Where a vacancy occurs in the board in respect of the unexpired term of office of another member appointed by the Lieutenant-Governor in Council, the Lieutenant-Governor in Council may appoint another person to fill the vacancy for the balance of the unexpired term.*

Chairperson

4. (1) *The Lieutenant-Governor in Council shall designate 1 of the members of the board to be chairperson and the members shall select another member to be vice-chairperson.*
- (2) *The chairperson of the board shall keep regular minutes of the board and shall ensure that complete books of accounts and records are kept.*

Meetings of board

5. (1) *The board shall hold a meeting at least once in each month except when the chairperson considers a meeting unnecessary.*
- (2) *Where a member of the board, other than the Deputy Minister of Justice and the provincial director, without giving a reasonable explanation to the chairperson, fails to attend 3 consecutive meetings of the board, he or she stops being a member of the board.*

Payment to members of board

7. *The Lieutenant-Governor in Council may authorize the payment of remuneration and expenses to some or all of the members of the board.*

Powers of commission

8. (1) *The exercise of the powers of the commission shall not be impaired because of a vacancy in the membership of the board.*

- (2) *All acts done by the board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member of the board, be as valid as if the defect had not existed.*

Commission reports to minister

16. *The commission shall, through its chairperson, report to the minister, whenever the minister so requires, with respect to its progress and activities and submit to the minister the reports and estimates that the minister may require.*

Commission responsible

17. *The commission is responsible to the minister.*

The current board members have been appointed by the Lieutenant-Governor in Council, as required by the legislation. There are actually only three active appointed commissioners, plus two ex officio members. Two others individuals who were appointed as commissioners have become inactive. In recent years, the Deputy Minister of Justice as *ex officio* member, rather than serving personally on the board, has normally requested that the Assistant Deputy Minister serve in his or her place. The Provincial Director of legal aid has always been an active *ex officio* commissioner. The absence of a fully active and complete board is permitted by Section 8 of the *Act*.

The terms of office for all of the appointed commissioners have now expired. These appointments have not, however, been renewed nor have the individuals been replaced, so the members continue to serve beyond their normal appointment expiration dates, as is permitted by the *Act*.

The board of commissioners meets monthly as required by the *Act*.

The Commission reports to the Minister as required by Section 16 through its Annual Reports which have been submitted on a timely basis.

Administrative Structure

The following sections of the *Act* guide the core business structure of the Commission.

Head office

9. (1) *The head office of the commission shall be in the City of St. John's.*
- (2) *Subject to the approval of the minister, the commission may establish other offices and agencies in the province that it considers expedient.*

Provincial Director

11. (1) *The commission may appoint a provincial director of legal aid and fix that person's salary.*
- (2) *The provincial director is, subject to the commission, the chief executive officer of the commission and is charged with the general direction, supervision and control of the business of the commission and has those other powers, duties and functions that are or may be conferred on him or her by this Act, the regulations or the commission.*

Staff of commission

12. *The commission may establish posts for and appoint those technical and professional and other employees and workers that it considers necessary, and fix their remuneration and terms of service and prescribe their duties and functions.*

Powers of commission

13. *The commission may*
 - (a) *purchase, lease or otherwise acquire land or personal property, or an interest in them, which the commission considers necessary, convenient or advisable to acquire for or incidental to the exercise of the powers, functions or duties of the commission;*
 - (b) *receive lands, buildings, money or other property, by way of gift or trust for public uses or for the use of the commission;*
 - (c) *sell, improve, manage, exchange, lease, mortgage, charge, dispose of, turn to account, grant a term easement, right or interest in, over or affecting, otherwise deal with, all or a part of the property and rights of the commission;*
 - (d) *draw, make, accept, endorse, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments; and*
 - (e) *generally do all things which the commission considers necessary, convenient or advisable for or incidental to the exercise of the powers, functions and duties of the commission.*

Legal aid plan

15. *The commission shall, under this Act and the regulations, take the action that it considers necessary for the establishment and administration of a plan of legal aid for residents of the province.*

The head office for the Commission is located at Suite 300, 251 Empire Avenue, St. John's. The Provincial Director, until his retirement in September 2013, had served in that capacity for 37 years. His salary had been set from time to time by the board. That position has now been filled by a long-term employee who had been a staff solicitor with the Commission for many years, most recently serving as Deputy Director.

In addition to the head office, numerous branch or area offices have been established across Newfoundland and Labrador to carry out the Commission's objectives. No lands or buildings have been purchased as all office space occupied by legal aid is leased using a public tender process. The Commission operates area offices in St. John's (2), Carbonear, Clarenville, Marystown, Gander, Grand Falls-Windsor, Corner Brook, Stephenville, Happy Valley-Goose Bay and Western Labrador (Wabush). It also operates various Project Offices in St. Johns, Grand Falls-Windsor, Corner Brook and Happy-Valley Goose Bay as well as small part-time offices in two Labrador communities. The rationale for and the specific reasons behind the creation of these various offices will be examined in detail later in this Report.

As of October 13, 2013, the Commission employed a total of 126 employees to fulfill its statutory mandate to provide service. 58 of those employees are staff lawyers providing direct service to the public, with an additional 68 comprising (i) a very small management team of 2 professionals (one with legal skills and one with accounting skills), plus (ii) 66 support staff comprising solicitors, social workers, paralegals and law students, together with bookkeeping, human resources and other administrative/clerical personnel providing support. In addition to its staff lawyers, legal aid also from time to time retains private practice lawyers on a 'certificate' basis. This two-fold approach to service will be discussed in detail later in this Report.

The Commission operates the complete legal aid system within the Province through its area and project offices. No other legal entities provide legal aid service (as compared to, for example, Nova Scotia where Dalhousie Law School independently operates a legal aid clinic in the Halifax region). Residents of Newfoundland and Labrador apply to the Commission for legal aid and, if deemed qualified based on financial means and merit of the case, are given the services of a lawyer available to them for the specific offences or litigation detailed in the *Act*.

The Commission also provides duty counsel services to the Provincial Court system and to the Unified Family Court, utilizing its staff lawyers and other administrative support personnel.

Financial Model

The financial structure supporting the Commission's mandate to provide legal aid services is guided by the following provisions of the Act:

Legal aid fund

18.(1) The commission

- (a) shall establish and maintain a fund to be known as the legal aid fund, and all money and revenues of the commission, including all money appropriated by the Legislature for the fund and all costs awarded to recipients of legal aid who are required to pay a part of its cost, shall be paid into the fund;*
- (b) shall keep those accounts and records of the transactions of the fund that the regulations prescribe; and*
- (c) has full authority to administer all the money deposited to the credit of the fund for the purpose of this Act.*

(2) The commission shall, subject to the regulations, pay out of the fund

- (a) expenses attributable to the establishment and administration of the legal aid plan, including expenses and allowances of members of the board and members of committees, salaries, allowances, retainers, office expenses, travelling expenses, advertising expenses, insurance premiums, superannuation contributions or contributions to pension plans that benefit the persons employed by the commission in the administration of this Act or to which the persons may contribute;*
- (b) the fees and appropriate disbursements of solicitors for legal aid;*
- (c) a refund authorized by this Act of a contribution to the fund;*
- (d) money required for the purpose of this Act; and*
- (e) other sums that are authorized by this Act and the regulations to be paid out of the fund.*

Payments to commission

- 19. The minister may, from money voted by the Legislature for the purpose, make available and pay to the commission funds for the proper carrying out of its powers, functions and duties.*

Commission may accept grants

- 20. Nothing in this Act shall prevent the commission from receiving and accepting money that may be paid to it by way of grant, contribution or reimbursement from a source, if it receives the money to help it in the attainment of its objects or in the*

proper exercise of its powers, functions or duties or to reimburse it for disbursements made by it or on its behalf.

Financial year

21. *The financial year of the commission shall correspond to the financial year of the province.*

Annual financial statement to minister

- 22.(1) *The commission shall, not later than September 30 in each year, prepare and submit to the minister a financial statement setting out the assets and liabilities of the commission and the receipts and expenditures of the commission for the previous financial year, together with a report concerning the work of the commission during the previous financial year.*
- (2) *The financial statement referred to in subsection (1) shall be signed by the chairperson and the provincial director and certified by the auditor general.*

Audit

- 23.(1) *The auditor general shall audit the accounts of the commission and has authority to call for and shall be supplied by the commission with all books and vouchers which he or she considers necessary for the audit.*
- (2) *Where the auditor general makes an interim examination of the accounts of the commission during the course of a financial year, he or she shall submit a report of the examination to the chairperson of the commission and to the minister.*

Annual budgets

- 25.(1) *The commission shall, not later than September 30 in each financial year, prepare and adopt and submit to the minister a budget containing estimates of all sums required during the next financial year for the purposes of the commission, and in each budget there shall be set out the estimated revenue and expenditure in the detail and in the form that the minister prescribes.*
- (2) *Where in a financial year it appears that the actual revenue or expenditure of the commission is likely to be substantially greater or less than estimated in its budget, the commission may, and, where required by the minister, shall submit to him or her a revised budget containing the particulars required under subsection (1), and, in addition, the particulars of actual receipts and payments and outstanding liabilities up to the date of submission.*
- (3) *The minister may disapprove or, subject to the approval of the Lieutenant-Governor in Council, approve a budget submitted by the commission.*
- (4) *Where the minister requires the commission to submit a revised budget under subsection (2), he or she may notify the commission that the approval given in*

respect of a budget previously submitted is withdrawn and in each case shall state the date upon which the withdrawal takes effect.

Approval needed to exceed budget

26. *Except with the approval of the Lieutenant-Governor in Council, the commission shall not in a year incur, enter upon, or contract or become liable for an expenditure or indebtedness beyond or in excess of the estimated amount of expenditure set out in an approved budget.*

The legal aid plan is funded annually by contributions from three primary sources: the Provincial Government, the Federal Government and the Law Foundation of Newfoundland and Labrador. Other special ‘historical’ excess funding (detailed later in the Report), plus small contributions made by users who have the ability to partially pay for their legal services, together with a nominal amount of interest earned on banking deposits, make up the entire available revenues. The funding sources for the current fiscal year are shown in the ‘*Financial Reports for the Period Ending October 15, 2013*’ (Appendix C).

The Commission utilizes the fiscal year of the Province, that is, from April 1 to March 31. Auditing services are provided by the office of the Provincial Auditor-General. The results of these audits are provided to the Minister.

The Commission accounts for all revenues it receives and all expenses made using its own internal accounting system. Financial statements are provided to the commissioners on a monthly basis for their consideration and review at board meetings.

Annual budgets are developed by the board of commissioners in consultation with legal aid’s senior management staff. Government establishes the timeline for budget submissions, which is generally in the fall of the year, to tie into Government’s budgetary process. The budgeting timeline is a subject for later comment in this Report.

Area Offices

The broad outline of the required geographic structure necessary to achieve the Commission’s delivery of legal aid service is also dictated by the legislation:

Province divided into areas

27. *The province, as prescribed by the regulations, is divided into areas.*

Area directors

- 28.(1) *The commission may appoint, on a full-time or part-time basis, a solicitor to act as an area director and an area director so appointed is responsible for the general administration of the legal aid plan in his or her area in accordance with this Act and the regulations.*
- (2) *The commission may appoint representatives to be known as legal aid agents and the duties of a legal aid agent shall include*
- (a) *the making available to residents of his or her community and surrounding areas of application forms for legal aid and helping applicants in completing the required forms;*
 - (b) *the distribution of information concerning legal aid to the residents of his or her community and surrounding areas; and*
 - (c) *other duties entrusted to him or her by this Act and the regulations.*
- (3) *Legal aid agents, while they hold the office and by virtue of their office, are empowered to take and receive statutory declarations, and each of them shall write or stamp his or her signature on declarations made before him or her the words "A Legal Aid Agent acting under the Legal Aid Act".*

Legal aid centres

29. *The commission may establish and maintain neighbourhood legal aid centres as prescribed by the regulations.*

Each established office has an area director who is responsible to immediately supervise its operations. The roles of area directors and the important function of conflict management that each of the area offices provides will be examined more closely in other portions of this Report.

There are currently no ‘legal aid agents’ as permitted by Section 28 and no neighbourhood ‘legal aid centres’ as provided under Section 29 of the *Act*.

Service Delivery

Legal advice and representation are provided to members of the public mainly by the Commission’s staff solicitors, but can also be provided through the service of lawyers in private practice who may agree to act on behalf of a client of legal aid in return for fees that are paid by the Commission as set out in the Regulations.

Counsel may be appointed

30. *The commission may appoint counsel, as prescribed by the regulations, to attend in a court, administrative board or tribunal in the province on a daily or other basis that may be required, for the purpose of representing a person in a civil matter, an administrative law matter, or a person charged with a criminal offence or who is being detained or is under arrest.*

Solicitor may be appointed

- 31.(1) *An applicant who is found eligible for legal aid may be provided with the professional services of a solicitor in the employ of the commission.*
- (2) *Rep. by 2008 c25 s1]*
- (3) *The commission may provide, in certain circumstances and taking into account the requirements of good management, that certain professional service for legal aid shall be exclusively rendered by solicitors employed full time or part time by the commission.*
- (3.1) *Where the application is for legal aid with respect to an offence of murder, manslaughter or infanticide, the applicant may select a solicitor employed by the commission or a solicitor in private practice in the province, except a solicitor whose name has been removed from the panel, other than upon his or her own request, however, this subsection does not place an obligation on that solicitor to act for the applicant.*
- (4) *[Rep. by 1996 c9 s2]*
- (5) *Where the commission has insufficient staff in a legal aid area to provide the applicant with legal aid through a solicitor employed by the commission, the applicant shall be assigned to another solicitor.*
- (6) *Where the nature of the problem, dispute, case or proceeding requires specific competence that the commission is unable to provide through a solicitor in its employ, a member of a panel of solicitors shall be assigned to the client.*
- (7) *Where a person applying for legal aid is a party to a dispute or case which involves a client for whom a solicitor employed by the commission acts as counsel, the applicant, if found eligible, may be assigned either to another solicitor who is employed by the commission or to a solicitor who is a member of the appropriate panel in an area.*
- (8) *Notwithstanding the Law Society Act, a solicitor employed by the commission does not commit a breach of a rule or code of legal ethics of the Law Society of Newfoundland relating to conflict of interest, by reason only of advising or representing a person in a dispute or case where another person involved in that dispute or case is being advised or represented by another solicitor employed by the commission.*

Panels

33. *There may be established in accordance with the regulations*
- (a) panels of solicitors who agree to provide professional services to eligible legal aid applicants;*
 - (b) panels of solicitors who agree to provide professional services as duty counsel; and*
 - (c) panels of solicitors who agree to give legal advice only.*

Solicitor on appropriate panel

- 34.(1) *Except where otherwise authorized in this Act or the regulations, a solicitor not in the employ of the commission shall not act for a person under a legal aid certificate or provisional certificate unless his or her name is on an appropriate panel in relation to the services to be performed under that certificate.*
- (2) *Where a solicitor provides professional services to a holder of a legal aid certificate or a provisional certificate other than those services that are authorized by the certificate, he or she is not entitled to be paid for those services out of the fund.*

The relationship between the Commission's full-time staff solicitors and outside counsel who are occasionally retained will be examined in greater detail later in this Report. The Commission does maintain panels or lists of private practice lawyers who have indicated that they may be prepared to take on legal aid cases at the rates established. If a solicitor in private practice is not on a panel, he or she is not entitled to perform legal aid work.

It is important to note the right of an accused person, when charged with certain serious criminal offences as set out in Section 31(3.1) of the *Act*, to have his or her own choice of legal counsel. This restrictive right was the subject of controversy in an application heard at the Supreme Court in the fall of 2013, as will be mentioned later.

The issue of conflict of interest is also addressed by the legislation in Section 31(7). Conflicts create major costs and challenges for the Commission's operations. Section 57 has some impact here as well. This whole issue will also be examined in greater detail within this Report.

Applications for legal aid

Not every applicant is entitled to have legal aid service provided by the Commission without payment of legal fees. There are tests, both financial and case merit, required to qualify a person.

When legal aid provided

- 36.(1) *The commission may, upon receipt of an application and where the applicant is found eligible, provide legal aid in civil, criminal and administrative law matters*
 - (a) *without charge to an individual who is unable to pay; and*
 - (b) *with a partial charge, to an individual who is able to pay a portion of the cost.*
- (2) *A person who qualifies under the Act and the regulations is entitled to receive legal aid.*
- (3) *In determining whether a person is qualified for legal aid, an area director or the provincial director shall consider the matter from the standpoint of a usual solicitor and client relationship, taking into account the possibility of success, the cost of the proceedings in relation to the anticipated loss or recovery, and the likelihood of enforcing judgment.*

Aid may be granted

- 37.(1) *Legal aid may be granted at any stage of the proceeding before the court or administrative board or tribunal of original jurisdiction, or in an appeal, before a court, an administrative board or tribunal and for a proceeding, contentious or not, including proceedings in execution.*
- (2) *Legal aid may not be granted after the matter for which legal aid may have been granted has been completed, except in unusual circumstances and then only with the consent of the provincial director.*

Application for legal aid

- 38.(1) *An application for legal aid shall be made in the manner and form prescribed in the regulations to a legal aid agent or to the area director in the area in which the applicant lives at the time the application is made and in which the matter or proceeding for which legal aid is required arises or in which the legal services required are to be performed or to the provincial director.*
- (2) *Where an application has been made to a legal aid agent he or she shall forward the application as soon as possible to the area director for the area in which he or she lives.*
- (3) *An application for legal aid 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.*
- (4) *An applicant or recipient of legal aid shall notify without delay the area director or the solicitor in charge of his or her case of a change in his or her condition making inaccurate the information supplied by him or her to obtain legal aid.*

No aid unless applicant has certificate

- 39.(1) *Except as to professional services provided by duty counsel or staff solicitors, a person is not entitled to legal aid in a matter unless the person holds a certificate or provisional certificate respecting the matter that has been issued to him or her in accordance with this Act and the regulations.*
- (2) *Where the holder of a legal aid certificate does not retain a solicitor within 30 days of the date of issue of the legal aid certificate, the legal aid certificate expires.*

Duties of area director

- 41.(1) *Upon receipt of an application for legal aid an area director shall*
- (a) investigate the circumstances of the applicant in the manner that he or she considers appropriate;*
 - (b) require the applicant to provide the information that is required by this Act or as is prescribed by the regulations and to declare under oath or affirmation the truth of the information disclosed; and*
 - (c) determine whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for and the sum that the applicant is able to contribute toward the cost.*
- (2) *Whether the legal aid authorized is to be provided by a staff solicitor or a solicitor in private practice, the area director shall issue a legal aid certificate in the manner and form prescribed in the regulations.*
- (3) *The area director may issue a legal aid certificate on the terms that in his or her opinion are warranted by the circumstances.*
- (4) *Where in the opinion of the area director the circumstances of the applicant require the issue of a certificate immediately, he or she may issue a provisional certificate without having first complied with subsection (1).*

The Commission has developed a 40-page manual which outlines the various criteria which must be met in order for a person to financially qualify for legal aid. The intake process is initially based on the applicant not exceeding the income limitations, but other considerations can apply. Persons with incomes higher than simply the receipt of social assistance benefits can qualify for legal aid if their income/debt ratios and the other income/expense tests are not exceeded.

Certificates are the documents issued by the Commission as a means of ensuring that legal representation will take place, that costs are monitored on a file basis and that appropriate legal fees will be paid to external lawyers when they are engaged to represent a client of legal aid.

Rejection of applicants

Not every person applying for legal aid will qualify for coverage. Even applicants who are initially approved can have their coverage withdrawn.

Refusal of legal aid

- 42.(1) *Legal aid may be refused, suspended or withdrawn or a certificate cancelled with regard to a person otherwise eligible when that person, without sufficient reason*
- (a) neglects to provide the information or documents required to study his or her application;*
 - (b) neglects to provide the information required under this Act and by the regulations;*
 - (c) refuses or neglects to exercise his or her legal rights and remedies;*
 - (d) refuses or neglects to co-operate with the solicitor rendering professional services for him or her, in the manner that is normal and customary between a solicitor and his or her client; or*
 - (e) makes a false statement or conceals information in applying for legal aid.*
- (2) *An area director may cancel a legal aid certificate issued by him or her or by a former area director for that area or may suspend or withdraw the legal aid where he or she is satisfied that*
- (a) legal aid should not have been given or a legal aid certificate should not have been issued; or*
 - (b) because of changed circumstances since the date of granting legal aid or the issuing of the certificate, the benefits of this Act should not be extended to the client.*
- (3) *Where legal aid has been suspended or withdrawn or where a legal aid certificate has been cancelled, the client, unless exempted from this provision by the provincial director on the grounds that its application would prove unjust as against the client, shall reimburse the commission for the cost to the commission of providing legal aid up to the time of the suspension, withdrawal or cancellation, and the amount payable is a debt owing to the commission.*
- (4) *Where it is found that a client knowingly made false or misleading statements or provided false or misleading information in his or her application, the client shall, unless exempted by the provincial director on the ground that its application would prove unjust as against the client, be required to reimburse the commission for the total cost to the commission of providing legal aid to the client with respect to the matter for which the client made the statements or provided the information, and the amount payable is a debt owing to the commission.*

Agreement re contribution by client

- 44.(1) *Where an area director determines that the applicant can pay some part of the cost of the legal aid applied for, and the applicant does not pay that part of the cost at that time, the area director shall require the applicant to enter into a*

written agreement to pay that part of the cost under the conditions and at the time that may be set by the area director.

- (2) The amount that the applicant agrees to pay under subsection (1) is a debt owing to the commission but where the amount exceeds the cost to the commission of providing legal aid to the applicant the debt shall at that time be considered to be an amount equal to the cost to the commission of providing legal aid to the applicant.*
- (3) An area director may require as a condition of authorizing legal aid that the applicant secure a debt referred to in subsection (2) by depositing with the provincial director the security that is authorized by the regulations.*
- (4) Where legal aid has been suspended or withdrawn or where a legal aid certificate is cancelled or expires or where all duties imposed by this Act and the regulations with respect to that legal aid or legal aid certificate have been discharged
 - (a) a portion of the contribution already paid by the client that exceeds the amount of debt owing to the commission shall be refunded to the client; and*
 - (b) the portion of security taken that is no longer necessary for securing a debt owing to the commission shall be returned to the client unless in the opinion of the provincial director it would be impractical or unreasonable to release the security in whole or in part.**

Some recipients of legal aid must contribute to the cost of their legal service, if their ability to partially pay is established by the criteria or if they become entitled to receipt of monies, such as may arise in a court order resulting from the service that they receive through the provision of legal aid. In those cases, the total cost of providing those legal services is measured through the Commission's internal accounting and file records. As will be seen, in the end, very little revenue is received from this source.

Coverage for Limited Cases

In addition to the fact that an individual must financially qualify for legal aid, the service rendered is also restricted to certain types of legal actions before courts and tribunals; in the case of criminal law, only with respect to more serious charges and offences. Not every legal dispute in the courts can be supported by legal aid representation.

Coverage

- 47. Except as otherwise provided in this Act or the regulations, legal aid may be granted to a person otherwise entitled to it in respect of a proceeding or proposed proceeding
 - (a) in the Supreme Court;**

- (b) in a Family Court;
- (c) in the Provincial Court;
- (c.1) before an administrative board or tribunal respecting a person's
 - (i) income,
 - (ii) entitlement to benefits,
 - (iii) ability to earn a livelihood, or
 - (iv) immigration status;
- (d) where the applicant is charged with an indictable offence or where an application is made for a sentence of preventive detention under Part XXIV of the Criminal Code;
- (e) under the Extradition Act (Canada); or
- (f) in the Federal Court of Canada.

Legal aid in summary conviction matters

- 48.(1) The area director may only grant legal aid to a person otherwise entitled to it in a summary conviction proceeding under an Act of the Parliament of Canada or of the Legislature where he or she is of the opinion that
- (a) there is a likelihood of imprisonment or loss of means of earning a livelihood upon conviction; or
 - (b) because of extraordinary circumstances, it is in the interests of justice that the applicant be represented by counsel.
- (2) For the purposes of paragraph 47(d), an offence that may be tried on indictment or on summary conviction shall be considered to be an offence triable on summary conviction until the time that the prosecution elects to proceed on indictment.

Aid where accused elects manner of trial

50. Where an applicant is found eligible for legal aid with respect to a criminal offence and where he or she has an election as to the manner in which to be tried, the legal aid granted shall authorize proceedings in the Provincial Court only unless the applicant's solicitor certifies to the area director that in his or her opinion the interests of the accused require that he or she elect to be tried in some other manner or unless the Crown elects trial in some other manner, in which case the authorization shall be amended accordingly.

No legal aid

- 51.(1) Legal aid shall not be granted to a person
- (a) in proceedings respecting defamation;
 - (b) in relator actions;
 - (c) in proceedings for the recovery of a penalty where the proceedings may be taken by a person and the penalty in whole or in part may be payable to the person instituting the proceedings;
 - (d) in proceedings relating to an election;
 - (e) in private prosecutions in criminal and civil matters or proceedings; or

(f) *in malpractice, accident, civil property or damages claims.*

- (2) *For the purpose of paragraph (1)(f), civil property claims shall not include family law matters relating to matrimonial property or property matters between cohabiting partners.*

Legal aid in an appeal

52.(1) *Subject to the approval of the provincial director, legal aid may be authorized to help a person otherwise entitled to it*

(a) *in an appeal*

(i) *to the Supreme Court of Canada ,*

(ii) *to the Federal Court of Canada,*

(iii) *to the Court of Appeal,*

(iv) *to the Trial Division,*

(v) *to a judge sitting in court or chambers, or*

(vi) *under Part XXVII of the Criminal Code or the*

Summary Proceedings Act; or

(b) *in a proceeding by way of mandamus, quo warranto, certiorari, motion to quash, habeas corpus or prohibition.*

- (2) *Except where, in the opinion of an area director, the circumstances of an application require the immediate granting of legal aid, the area director shall not authorize legal aid in respect of an appeal referred to in paragraph (1)(a) unless*

(a) *the applicant has included in his or her application*

(i) *the opinion of his or her solicitor as to the advisability of instituting or defending an appeal, where the applicant was represented by a solicitor in the initial proceeding,*

(ii) *a copy of the order or judgment appealed from, and*

(iii) *other information that the area director requires him or her to provide;*

(b) *the area director considers that it is reasonable that the appeal be instituted or defended;*

(c) *the area director has submitted the application to the provincial director; and*

(d) *the provincial director has approved the granting of legal aid in respect of the appeal.*

The Commission does apply the requirements of the *Act* to determine in which cases it will render assistance. Trial and appeal level cases are included, as are matters before a variety of courts.

For criminal matters, indictable offences always qualify. In summary conviction matters, only those instances where a conviction could result in imprisonment or a loss of livelihood are

covered, although the Commission does have some discretion it can exercise to extend coverage, where appropriate.

In non-criminal matters, the Commission has jurisdiction to carry a limited number of types of ‘civil’ law cases. Accidents (negligence) and property law matters, which form much of the litigation in the courts of the Province, are excluded from legal aid coverage. The only exception is for family law cases, which form the vast majority of civil disputes that are regularly accepted for legal aid; in these cases matrimonial property actions are not excluded.

Appeals from a Refusal to Grant Aid

If an applicant is rejected from being qualified for legal aid, an appeal of that decision is subject to internal review.

Appeals to provincial director

- 53.(1) Where an area director refuses to grant legal aid or refuses to issue or amend a legal aid certificate, or conditions the granting of legal aid or issuing of a certificate on the contribution of the applicant, or suspends or withdraws legal aid, or cancels or amends a legal aid certificate, the applicant or client may appeal to the provincial director in a form prescribed in the regulations.*
- (2) Where the refusal, issuing, suspension, withdrawal, cancellation or amendment referred to in subsection (1) was originally made by the provincial director, the applicant or client may appeal to the appeal board established by the regulations in a form prescribed in the regulations.*
- (3) An area director or the provincial director shall make available to each applicant entitled to appeal under subsection (1) or (2) the form referred to in those subsections and shall inform the applicant of the name and address of the person to whom the form is to be delivered.*

Approvals for the grant of legal aid are initially decided by the appropriate area director. The Provincial Director handles the first level of appeal from all area director decisions. While not specifically stated in the *Act*, the Regulations also provide for another level of appeal to an appeal board made up of members of the board of commissioners. This appeal structure will be examined in detail later in the Report.

General Provisions

The legislation has a few remaining sections which are of interest in this Review:

Agreement with Government of Canada

54. *Subject to the approval of the Lieutenant-Governor in Council, the minister may on behalf of the government of the province enter into, vary or amend an agreement with the Government of Canada respecting legal aid upon the terms and conditions that may be agreed upon.*

Commission not considered to practise law

56. *Notwithstanding the Law Society Act, the commission, in carrying out its objects and powers, is not considered to be practising law within the meaning of the Act.*

Solicitor subject to rules

57. *A solicitor remains subject to all the rules of the law society with respect to legal aid provided by him or her.*

Tariff of fees

60. *The law society shall be consulted by the minister or the commission with reference to the tariff of fees to be paid to solicitors under this Act and the regulations in respect of legal aid, the manner and form in which the fees shall be paid and changes in connection with them.*

Law students

61. *Where permitted by the Law Society Act, a student-at-law, under the supervision of a solicitor, may perform the duties that the solicitor may assign to him or her in respect of legal aid which the solicitor is providing.*

Collection of debts

- 62.(1) *Debts owing to the commission under this Act and the regulations are collectable in a court.*
- (2) *Amounts adjudged to be owing to the commission under this Act and the regulations by recipients of legal aid in respect of the legal aid provided are not subject to garnishment under the Judgment Enforcement Act.*

Assistance in other projects

63. *The commission may, on those terms and conditions consistent with this Act and the regulations and with the approval of the minister, encourage and help, by means of financial support or otherwise, the projects of an individual or group*

having objects similar to and consistent with the objects of this Act and regulations and carried on under the supervision of the commission or of the law society.

While the Commission is not considered to be practising law, its staff solicitors are still subject to the rules of the law society which, as will be seen later, includes a requirement that conflicts of interest must be avoided.

The setting of tariffs (or the fee scales to be paid to outside lawyers who are working on a certificate) is the domain of the Regulations, after consultations between the Minister and the Law Society of Newfoundland and Labrador.

The participation of the Commission in various projects initiated by the courts or by other agencies of government has given birth to much growth in the scope of legal aid in the Province, as will be seen later in this Report.

Regulations

Finally, the Act enables regulations to be passed for detailing methods to carry out of the specific objectives of the legislation. This feature, common to modern legislation, gives an opportunity for greater detail on the activities of the Commission to be directed and, if necessary, changes can be made without returning to the legislature for amendments to the Act.

Regulations

67. *The Lieutenant-Governor in Council may make regulations*

- (a) designating regions of the province as areas for purposes of this Act;*
- (b) prescribing the powers, duties and functions of the provincial director, the area directors, staff solicitors and other persons employed for the purposes of this Act;*
- (c) prescribing oaths of office and secrecy and requiring persons, or a class of them, engaged in the administration of this Act to take and sign the oaths or affirmations;*
- (d) respecting the non-disclosure of information provided by or about an applicant for or recipient of legal aid;*
- (e) describing the accounts and records that shall be kept of the transactions of the fund;*
- (f) respecting the payment out of the fund of the expenses of the commission attributable to the administration of this Act and the regulations;*

- (g) *preventing unnecessary use or abuse of legal aid;*
- (h) *providing for the investigation of complaints of violations of this Act or the regulations or of an order made under this Act or the regulations;*
- (i) *providing for the settlement, recovery and payment into the fund of costs and other money due to the fund;*
- (j) *providing for the payment out of the fund of costs awarded against a person to whom legal aid has been given;*
- (k) *respecting panels referred to in section 33, including the removal of solicitors from them;*
- (l) *respecting the participation of students-at-law in legal aid;*
- (m) *respecting applications for legal aid;*
- (n) *respecting entitlement to legal aid;*
- (o) *prescribing procedures for applying for legal aid;*
- (p) *prescribing information to be disclosed by applicants for legal aid;*
- (q) *respecting non-disclosure of information provided by or about an applicant for legal aid;*
- (r) *prescribing rules for determining financial eligibility for legal aid;*
- (s) *respecting the fees to be paid to solicitors for professional services under this Act or the regulations;*
- (t) *respecting the establishment and revision of a tariff of fees to be used in taxing a solicitor's bill;*
- (u) *providing for the settlement of accounts for professional services under this Act or the regulations;*
- (v) *respecting appeals under section 53;*
- (w) *respecting solicitor's reports on legal aid;*
- (x) *respecting the repayment of disbursements to solicitors;*
- (y) *respecting legal aid agents, their appointment, duties, responsibilities and remuneration;*
- (z) *respecting the number, location, organization and staffing of the neighbourhood legal aid centres that may be established under section 29, and prescribing the remuneration and duties of persons employed there;*
- (aa) *respecting assistance to projects referred to in section 63;*
- (bb) *prescribing methods for the distribution of information to the public and to detained persons respecting legal aid and legal rights and obligations;*
- (cc) *providing for the establishment or payment into established plans respecting pensions, insurance benefits and other health and welfare benefits for members of the board or employees of the commission, or both;*
- (dd) *governing the calling of meetings of the commission and the conducting of business at the meetings;*
- (ee) *governing the appointment of committees and subcommittees and prescribing the duties of committees and subcommittees;*
- (ff) *respecting the establishment of the appeal board referred to in section 53 and providing for its constitution, powers and duties;*
- (gg) *prescribing the procedures to be followed and the forms to be used in carrying out this Act and the regulations; and*
- (hh) *generally, to give effect to the purpose of this Act.*

There is no need to examine at this point all of the Regulations already promulgated. They do, however, add additional levels of guidance and direction on how legal aid is conducted and administered within the Province. The Regulations now cover such core issues as applicant's appeals to rejection, client financial contributions, the responsibilities of various senior officers, duty counsel documentation and protocols, tariffs and definition of the 'areas' for the purposes of opening office locations. There are in excess of 150 Regulations currently passed under the Act.

When any of those Regulations become relevant in the context of a specific issue under review within this Report, they may be referred to at that time.

Summary

Thus, the current model for delivery of legal aid in the Province is, in general terms, consistent with the spirit and in accordance with the dictates of the Act. There are no significant non-compliance issues. Because the Act is so directive in its drafting style and content, if major changes in scope or delivery method are to be considered, they may require consequent amendments to the legislation before they can be implemented.

2. The Development of the Current Staff/Certificate Model:

An understanding of how the current ‘staff/certificate model’ operates requires an appreciation of the corporate structure and the function of the various offices already developed, together with the current reliance on staff solicitors to provide the majority of the service, which work is only occasionally supplemented by the retention of private practice lawyers.

The public can gain access to legal aid services by visiting any of the Commission’s area or project offices. While some services are delivered from a business location operated by the Commission itself, such as the area or project offices, other services are provided directly at premises controlled by others, such as at a courthouse.

As already stated, the vast majority of services are rendered by the lawyers and other professionals directly employed by the Commission. Because of various provisions of the *Act*, which are discussed specifically later, lawyers engaged in the private practice of law are sometimes retained by the Commission to represent persons accused of crimes or involved in some civil cases, but this reliance on outside counsel is currently quite limited. In exceptional cases, as for example when staff solicitors are unavailable or where staff solicitors are completely conflicted out of a fact situation, the Commission may itself retain an outside lawyer to represent that client. In rare criminal cases, the client is entitled to exercise the choice of either having a staff solicitor employed by the Commission or an independent counsel, chosen from the list or ‘panel’ held by the Commission,

Whether it is staff solicitors or outside legal counsel providing the direct service to the clients, determining entitlement and providing administration of that benefit both require an extensive support structure.

a) Administration

The Commission’s head office (the ‘Provincial Director’s Office’ or the ‘PDO’ as it is known internally) provides the necessary administrative or management support to the numerous offices

operated and the services supplied by the Commission throughout the Province. Understanding the roles and functions of the staff within the PDO is essential to understanding the business model.

Some of the principal administrative staff at the PDO include:

Provincial Director: This ‘chief executive officer’ position was recently filled (September 2013) by a long-term staff solicitor and former Deputy Director who has extensive legal aid work experience. He is responsible to the board of commissioners for the overall operation of legal aid. This position has had in excess of 24 employees directly reporting under the current organizational structure, but that structure is being reviewed as this Report is being written. (The Provincial Director and the Deputy Director make up the small two-person ‘Management Committee’).

Deputy Director: This is a newly-filled position (October 2013) resulting from an outside hire. The incumbent employee has prior experience in managing a large private law firm plus chartered accountant training, experience and designation. The reporting structure of employees to this position is also currently under review. (Prior to the spring 2013 staff reductions and a retirement, there had been two Deputy Director positions, both reporting to the Provincial Director.)

Senior Solicitor (Family & Civil): This long-term legal aid staff solicitor provides mentoring and professional support (70%) to legal aid solicitors engaged in family law practice, carries a small workload of family law cases on behalf of clients (20%) and provides research, resource and precedent development (10%) for staff solicitors practicing in family law.

Senior Solicitor (Criminal): This long-term legal aid staff solicitor provides mentoring and professional support (30%) to solicitors in criminal law practice, acts as co-counsel (30%) to more junior staff solicitors in a limited number of criminal cases, assesses the merit of criminal appeals and presents appeals and other major cases (40%) on behalf of clients to the Court of Appeal and to the Supreme Court of Canada

Accountant: This long-term employee is responsible for the day to day functioning of the finance department, including accounts receivable, accounts payable, general ledger entries, balance sheet preparation, tracking of budgets (all using legal aid’s ACCPAC accounting software), and monthly financial reporting to the board of commissioners. The incumbent also supervises four accounting clerks. The position traditionally reported to the Provincial Director, but now reports to the Deputy Director.

Human Resources Manager: A relatively new position to the Commission’s administration, this long-term employee supervises and resources the recruitment, hiring, wage and benefit division, including the direct supervision of the payroll and benefits officer and interacting with the one accounting clerk whose function is primarily associated with payroll. The incumbent employee is currently taking training towards a human resources professional designation.

Systems (or Business) Analyst: In a newly-created position, this employee performs various research and policy development tasks for management, including the preparation of annual reports, the production of three-year activity planning and other documents required by Government, developing cost analyses and statistical reporting using legal aid's management information system (LAMIS) and its financial reporting system (ACCPAC). This position replaces a former 'Management Analyst' position.

Client Services Officer: This long-term legal aid employee, formerly involved in the intake process, now provides advice to and necessary liaison with clients who are incarcerated in any of the Province's correctional institutions or lock-ups, the Province's inmates at federal institutions outside the Province as well as those who are held at the Waterford Hospital on crime-related issues.

Administrative Coordinator: This long-term employee is responsible for the overall supervision of the day-to-day corporate functions of the Commission, including purchasing, information technology, property management, maintenance of locations and the supply of goods. The position currently reports to the Provincial Director.

Senior Intake Worker: (Senior Client Services Officer): This employee supervises and provides resources to all of the intake workers in the 11 area offices (plus the Client Services Officer at the Unified Family Court Project), and performs operational audits to ensure uniformity of applications for services.

Appeals and Conflicts Co-ordinator: This employee is responsible for processing applicants' appeals on refusals to grant legal aid. Appeals are formalized and documented to go first to the Provincial Director and then to a three-person committee of the board. The employee also directs the assignment of client files to either staff solicitors or outside counsel when conflicts of interest are found in the originating area office.

Other than two paralegal employees, one of whom assists the Senior Solicitor (Family & Civil) and one whom works mainly in the intake and appeals process, all remaining administration positions at the PDO are generally secretarial, clerical or accounting in nature.

b) Area Offices

As directed by the Regulations, area offices can only be instituted with specific approval from Government. Core criminal and family law service is primarily delivered through the work of the many staff solicitors who are located in 11 separate area office locations. These offices are located in communities that have Provincial and/or Supreme Court facilities. The two exceptions are the Carbonear office, which is just 7 kilometres from the Town of Harbour Grace where the Provincial Court is located, and the Marystown office, which is approximately 55 kilometres from the Town of Grand Bank where the Provincial and Supreme Courts are both located.

- i) **St. John's, Suite 200, 251 Empire Avenue:** This primary St. John's area office employs 16 lawyers, including the area director, plus 7 support staff performing all administrative support functions (with the exception of intake which for this office and the Elizabeth Avenue office is provided by two employees associated with the Provincial Director's Office.) One staff solicitor from this location is currently assigned to the Family Court Duty Counsel function. This Empire Avenue location also supplies conflict work for the Grand Falls-Windsor, Gander, Corner Brook, Stephenville and Happy Valley-Goose Bay locations. In addition, it currently provides two of its staff solicitors on a part-time basis (one week, per employee per month) to the Grand Falls-Windsor office to supplement the work of the two full-time solicitors employed there. Two paralegal positions and one administrative support person were eliminated from the Empire Avenue office in early 2013. The low number of support staff to the total number of staff solicitors employed here is creating work backlogs that are affecting the solicitors' workload and productivity. Although the division of files is 60/40 in favour of family law, this office also carries the largest amount of duty counsel work, so the overall work emphasis of this office is on criminal law matters.
- ii) **St. John's, Elizabeth Avenue (the 'Conflict Office'):** This office is the primary conflict office for the St. John's area office on Empire Avenue. It has 6 staff solicitors, including the area director, plus two support staff (one was eliminated in early 2013) who perform secretarial and reception functions only. One staff solicitor is currently assigned to the Family Court Duty Counsel function. No intake is performed at this location as all files are referred from other offices. The location has a conflict office for visiting solicitors, plus adequate modern space for all staff. This location performs conflict work for the Clarenville, Carbonear, and Happy Valley-Goose Bay area offices. The area director also provides the only French language service when required for any legal counsel function within the Province. Extensive travel is required for the staff solicitors in this office. Workload is heavy and divided equally between criminal law and family law matters. The office space is adequate to the current need, with some area for growth.
- iii) **Carbonear:** This office has 2 staff solicitors, including the area director, and 2 support staff who provide all intake, secretarial and reception services. Workload is reported as heavy, but currently manageable. This office provides conflict support to the two St. John's area offices, plus the Marystown and Clarenville offices. There is extensive road travel for these lawyers in providing conflict support, mainly for family court in St. John's, but also in any matters for the Marystown or Clarenville offices. This is a very large office layout, sufficient for at least 4 lawyers and a higher number support staff, plus it has a separate conflict and visiting lawyer offices. Growth in personnel to fill that space seems unlikely.
- iv) **Marystown:** This office has just 1 staff solicitor who also acts as area director, plus 1 full-time support person performing intake, secretarial and reception services. Administrative duties have become so heavy recently that a former part-time support person is now working almost full-time. The staff solicitor has to drive 55 km one-way whenever required to appear in either level of court in Grand Bank, but the office is conveniently located for the majority of clients who are mostly from Marystown and surrounding communities on the Burin Peninsula. Workload is 2/3 criminal law and 1/3 family law. This office provides conflict support mainly to the Clarenville and St. John's area offices.

The office space is large and includes a separate conflict office, which is reported to be seldom used.

- v) **Clarenville:** This office has 2 staff solicitors, including the area director, plus 2 support staff (1 intake/secretarial worker and 1 receptionist who also performs secretarial duties). Workload is currently at high but acceptable levels, although conflict travel is the challenge. This office provides conflict support mainly to the St. John's area offices, but also to the Marystown, Gander and, occasionally, Happy Valley-Goose Bay offices. Very extensive travel is involved for both solicitors (up to 150 days per year reported by one solicitor). This location has a separate conflict office space, but the entire suite size is not unduly large, on an overall basis, compared to some other locations.
- vi) **Gander:** This office currently has 2 staff solicitors, including the area director. Both are very new to this office and to employment with the Commission (late summer 2013). One solicitor is a contract replacement position for a solicitor on maternity leave. One additional solicitor position was eliminated from the office in early 2013. Two support staff perform all intake, secretarial and reception duties. This office undertakes conflict work mainly for the Grand Falls-Windsor office. There is a 60/40 division between family and criminal law cases, both solicitors performing in both disciplines. There are currently significant file delays arising from an extensive period of time during the summer of 2013 when this office did not have any staff solicitors assigned, due to the unexpected retirement of the area director, complicated by the maternity leave of one staff solicitor and the reduction in one solicitor position. Part-time staff solicitors from the St. John's offices provided an essential service only during that interim period. Office space is quite adequate, with room for some growth, but it is not overly large.
- vii) **Grand Falls-Windsor:** This office has 2 full-time staff solicitors, including the area director, currently assisted by 2 part-time solicitors from the St. John's office (who each attend one week per month), plus 2 support staff who perform all intake, secretarial and reception duties. One paralegal worker was also employed there until early 2013. Both lawyers perform equal volumes of family and criminal law cases. Workload is at very high levels and a waitlist for service is acknowledged to currently exist. This office performs conflict work mainly for the Gander office. The office has more than an adequate amount of space for current staff, including a separate conflict office, but is not overly large.
- viii) **Corner Brook:** This area office, somewhat larger than most outside St. John's, has 6 staff solicitors, including the area director, plus 3 support staff performing all of the required secretarial, reception and intake duties. Workload is considered heavy, but not excessive. One solicitor concentrates primarily on criminal law cases, one on family law, while the other solicitors work in both disciplines. This office provides conflict support mainly to Stephenville office, but also to Grand Falls-Windsor, Gander and Happy Valley-Goose Bay. There is also considerable travel to St. Anthony, where solicitors attend Provincial Court circuits held there, plus they appear at the Stephenville court and occasionally in some Labrador court circuits. The office space was recently enlarged, with many rooms currently not filled and not needed. It also has a separate conflict office.
- ix) **Stephenville:** This office, which formerly had 4 staff solicitors including the area director, now has 3 solicitors following one retirement. That position has not been refilled. There

are now 2 support staff (following one spring 2013 staff decrease) performing all reception, intake and secretarial duties. Caseload is equally divided between criminal law and family law matters. All solicitors and support staff report they are grossly overworked due to recent staff reductions. This office provides conflict support mainly to the Corner Brook office (one solicitor attends on an almost on a daily basis at the court in that City). This location also covers any Provincial Court circuits to Port aux Basques. This location has sufficient space for four lawyers, plus a visiting lawyer office and separate conflict office.

- x) **Happy Valley/Goose Bay:** This office has 4 staff solicitors, including the area director, plus 3 support staff performing all reception, secretarial and intake duties. One additional paralegal position was eliminated in early 2013. All staff solicitors are relatively new to their positions and to legal aid employment. Workload is high, but at levels acceptable to current staff, although the contribution of the paralegal worker is missed. This office operates with the support of the Commission's community resources in Sheshatshiu and Natuashish, each with a part-time Innu worker, and those in Hopedale and Nain, each with a part-time Inuit worker. The solicitors here provide conflict support mainly to the Labrador West (Wabush) office. Solicitors from this office regularly attend circuit courts in Nain, Natuashish, Hopedale, Makkovik, Rigolet, Cartwright and Port Hope Simpson, so extensive air travel to remote locations in Labrador is involved for all staff solicitors. The office has sufficient space for all staff, with a separate conflict office.
- xi) **Labrador West:** This office has 1 just staff solicitor, who also acts as area director, plus 1 support staff who performs all reception, intake and secretarial duties. The staff solicitor is new to the region and to employment with legal aid. Workload in this office is significantly lower than all other area offices. Caseload is made up primarily of criminal law cases, with only very limited family law issues presenting. This office provides conflict support primarily to the Happy Valley-Goose Bay Office. The office suite is very large, with far more offices than currently required (or could be anticipated), but the entire suite is without any windows or access to natural light, which is not considered healthy by the staff.

c) Project Offices

These offices perform functions which may not originally have been considered as core 'legal aid' service, but now form part of the modern delivery of specialized and socially-sensitive legal services to the public.

- i) **Mental Health Office:** The office operates from Suite 101 at 251 Empire Avenue, St. John's and deals with the Commission's contribution to the Mental Health Court which is explained in this extract from the Provincial Court website:

"The Mental Health Court is a project of the Provincial Court of Newfoundland and Labrador (St. John's), the Public Prosecutions Division of the Department of Justice, the Mental Health Project of the Newfoundland and Labrador Legal Aid Commission, Eastern Health and Corrections and Community Services.

The Court is designed to provide an increased level of support, both medical and community based, to accused persons appearing before it. The Mental Health Court is based on the recognition that certain offenders who suffer from a mental disorder may commit offences as a consequence of their mental disorder or due to lifestyle issues related to their mental disorder such as inadequate or inappropriate housing, lack of employment, lack of support, non-compliance with medications and inappropriate self medication with alcohol or drugs. Health care professionals and corrections personnel provide medical support and community based support to the individuals who are accepted into the Court.

The Mental Health Court deals with criminal offences that do not raise an overriding public interest in proceeding.”

This office employs a team of 2 solicitors and 2 paralegals who are all committed to this project as Legal Aid’s contribution to the Mental Health Court. One solicitor is the project lead. The team works together with Eastern Health’s 2 social workers and 2 LPNs as a multi-disciplinary team. There are no legal aid administrative support staff and there is no financial or case merit intake process required. Clients are accepted if they admit to having committed an offence and are diagnosed by a physician as having a mental illness. Clients are directed towards remedial health care alternatives, including counselling and medical treatment, not to normal penal sanctions, other than probation orders. Workload levels are considered high, but manageable.

- ii) **Family and Child Services Offices (FCOs):** The Department of Child, Youth and Family Services (CYFS) is a Provincial Government department created in response to child protection concerns arising from a review of the ‘Turner Case’. The Department is responsible to ensure the protection and well-being of children and youth who are deemed to be at risk within the Province.

One of the CYFS services is ‘Child Protection’, described at the Departmental web page as follows:

“The primary goal of Child Protection Services is to help ensure the safety and well-being of children. Social workers investigate allegations of maltreatment (physical, sexual, emotional) and provide necessary interventions, supports and services to families.

.....
When there is concern of child abuse by a parent, social workers assess the risk to the child. The assessment of risk involves some of the most critical decisions that are made in the protective intervention program. The social worker, together with the family, develops a plan to reduce the identified risk. All decisions to intervene with the family are made in the best interest of the child.”

Children are often taken into care as the result of decisions made by managers in Child Protection Services. Legal aid’s three FCOs are specialty offices which ensure that the governmental authority to remove ‘children at risk’ from the custody of their parents is

balanced by legal representation for the custodial parent(s). This service assumes that the legal rights of parents must be balanced with the protection of children from possible harm. The regime uses an interdisciplinary team in a collaborative atmosphere, adopting a non-adversarial approach to resolution. The team attempts to successfully and safely reunite the child(ren) with at least one of the custodial parents, if that can be safely done. In the event that a custodial arrangement satisfactory to all parties is not achieved, judicial intervention and a formal decision will follow. No financial or case merit intake process is required.

The Commission's involvement in these 3 FCOs is still considered as a project under study. Each location's team is led by the staff solicitor who performs the 'project lead' function.

FCO - St. John's: A team of 2 solicitors, 1 social worker and 1 paralegal worker (2 paralegals before spring 2013) occupy a separate office at Suite 102, 251 Empire Avenue (the same building as the PDO and area office). These employees are currently under considerable stress from heavy workloads and the complain of being close to failure due to the reduction of one key paralegal member from their former five-person team.

FCO - Corner Brook: A team of 1 solicitor, 1 social worker and 1 paralegal occupy an office in Corner Brook at a location separate from the legal aid area office in that City. Workload is high, but acceptable to current staff.

FCO- Happy Valley-Goose Bay: A team of 1 solicitor, 1 social worker and 1 paralegal occupy an office in Happy Valley-Goose Bay, separate from the legal aid area office in that Town. This FCO also relies significantly on support from the aboriginal staff in the Commission's community resources at Nain, Natuashish, Sheshatshiu and Hopedale to provide assistance and liaison with the aboriginal clients who make up the majority of this office's significant workload.

- iii) **Family Justice Services – Central NL** – This office is an anomaly to the Commission and does not, strictly speaking, perform any 'legal' function. It is the Central NL office of a division of the Department of Justice known as "Family Justice Services" (FJS) whose function is described this way on Government's website.

"Family Justice Services (FJS) assist families in resolving separation and divorce issues.

FJS emphasizes the best interest of children and promotes dispute resolution outside the Court process. Dispute resolution occurs when parties talk to a neutral third person to explore ways to resolve their family law matters.

FJS provides the following services:

*Parent Information Sessions on family law and parenting after separation
Dispute resolution in cases of custody, access, and child support*

*Counselling services may be available for children and their families as determined by FJS
Recalculation of Child Support*

FJS does NOT provide the following:

Assistance with division of property

***Legal advice. It is recommended that parties obtain independent legal advice
Divorce applications”***

(Bold emphasis added)

This office is operated separately from the Commission’s area office in Grand Falls-Windsor. It normally employs 1 counsellor, 1 mediator (this position was not been filled for over 2 years) and 1 secretary, all of whom are paid out of the Commission’s budgeted finances. No staff solicitors or paralegals are employed in this activity. Rent and other office expenses are paid by the Provincial Government. All other personnel working at FJS offices throughout the Province are employed and paid by the Department of Justice, not by the Commission.

The origins of this unusual funding and administrative arrangement are unknown to current workers in this FJS office and to the Commission’s current administration. The Commission originally received an annual grant to cover the staff payroll expense, but it has not received that allocation in recent years, so costs are borne out of the Commission’s other financial resources.

- iv) Family Court Duty Counsel – (St. John’s only):** In response to a court-identified need for advice and representation for the many unrepresented parties appearing in the Unified Family Court on Kingsbridge Road in St. John’s, a new duty counsel service was established there in 2011. There are up to four courtrooms operating daily in this busy judicial location.

For conflict reasons, 2 solicitors (one assigned from each of the St. John’s offices) are on duty daily working from two small court-provided offices. They are assisted by 1 client services officer who performs triaging, scheduling and conflict resolution functions. No financial or merit intake process is required. The solicitors provide free advice and representation to any parties who are appearing at this court without their own legal counsel. The level of service varies from case to case, and includes sometimes just advice only, but may also include brief representation at court for cases where uncontested or simple matters are to be adjudicated upon. These duty counsel do not provide full legal representation in a contested matter; in those cases, the parties must either retain their own lawyer or seek legal aid representation through the Commissions’ normal application process.

This is a pilot project only and the service is not provided to other Supreme Court locations that are performing similar family law functions elsewhere in the Province. This service is considered by the family court justices as highly beneficial to the smooth and efficient operation of their court, but it is a costly service to provide due to the required seniority of

the solicitors and the fact that two counsel are required. The service model is significantly different from the criminal law duty counsel function which is discussed below.

- v) **Aboriginal Justice Project:** The Commission employs 1 aboriginal worker in each of 4 Labrador locations. Natuashish has a part-time Innu worker, but with no office, while Sheshatshiu has a full-time Innu worker who has an office location. Nain and Hopedale each have a part-time Inuit worker; the worker in Nain has an office location, but there is no office for the worker in Hopedale. Employees without offices work from their own homes.

These employees assist the Happy Valley-Goose Bay area office and the Labrador FCO when they are dealing with aboriginal clients, many of whom do not normally reside in the immediate Happy-Valley Goose Bay area. In addition to requiring liaison services, scheduling for interviews and other assistance in completing documentation, these aboriginal clients are often not fluent in English. Because the clients are more comfortable working in their native language, the staff here also provide translation services to enable solicitor/client communication with the Commission's staff, none of whom speak aboriginal languages. These workers are not court interpreters. Without the services of these aboriginal employees, the Commission's staff have great difficulty even locating their clients who often have no telephones or other easy means of making contact.

d) Duty Counsel Services (not having independent office locations)

The concept behind duty counsel is to have a solicitor available to provide information and advice at the earliest available opportunity including, if appropriate and required, brief courtroom representation, to persons entering the criminal justice system so that they fully understand their rights and obligations under the law. No financial means test, case merit or intake process is applied before duty counsel consultation takes place. Any individual charged with an offence has the right to avail of duty counsel services.

- i) **Provincial Court Duty Counsel:** At the St. John's Provincial Court location, in two courtrooms (one for a full day and one for one half-day) up to 2 duty counsel solicitors are present each day for first appearances, interim release applications or bail hearings. At the other Provincial Courts throughout the Province, on their first appearance or 'plea' day (or days as may be required), one duty counsel solicitor is also present in the courtroom for first appearances, interim releases and bail applications. The assigned legal aid staff solicitors provide information, advice and, if necessary, representation to any person appearing on criminal charges who request assistance. Guilty pleas and other brief appearances may be supported by duty counsel, but they do not conduct contested trials. Duty counsel service is also provided on court circuits. Provincial Court judges speak highly of the benefits of this service to both the public and to the efficient operation of the court system. More than 6,450 persons were assisted by this service during fiscal year 2012/13.

- ii) **‘WASH’ Court Duty Counsel:** This is an additional advice service provided to all Provincial Courts throughout Newfoundland and Labrador by the Commission’s staff solicitors, but utilizes a different format from the daily Provincial Court Duty Counsel service (referred to above).

WASH Court is a Province-wide first appearance court operating on weekends and statutory holidays for persons held in custody, usually having been arrested on the prior evening. A staff solicitor from one of the two St. John’s area offices is available by telephone link after normal business hours on **Weekends And Statutory Holidays** (hence the acronym ‘WASH’) to provide advice to all persons who are being held in custody prior to the next regular court session. The sole solicitor who is on duty provides advice to any person held in custody anywhere in the Province. Up to 15-20 cases per day can be handled by the solicitor who is on duty.

- iii) **‘Brydges’ Duty Counsel:** (named ‘Brydges’ after a leading decision from the Supreme Court of Canada regarding the early right to receive legal advice.) To help fulfill the obligation that arises under Canada’s *Charter of Rights and Freedoms* to give immediate access to legal advice, this service uses a 1-800 telephone number to provide province-wide access on a 24-7-365 frequency basis for all individuals who have been arrested or detained by a police force. Staff solicitors in all area offices volunteer to provide this service (to be on duty for one-week periods) on a rotational basis, and they receive additional financial compensation for agreeing to act. The area director in the St. John’s Conflict Office provides the French-language Brydges Duty Counsel service, if required.

e) Other Services (which do not have independent office locations)

Two additional services to the public are provided by legal aid personnel, but they do not work from independent office locations.

- i) **Client Services Officer:** This employee works out of the St. John’s Provincial Director’s Office, reports to the Provincial Director and provides liaison and advice on intake, plus community outreach services, to a) any person incarcerated in one of the provincial penal institutions or held in the local lockups; b) provincial inmates at federal institutions; and c) those held on crime-related issues at the Waterford Hospital in St. John’s.
- ii) **Bilingual Service:** A staff solicitor who is working out of the St. John’s Conflict Office is sufficiently bilingual to be able to communicate competently about legal matters and, if necessary, conduct trials in French on behalf of any persons who need to communicate in the French language. There are very few demands for this service, other than occasional contact initiated by French-speaking individuals who generally reside in the Labrador West region of the Province.

Summary

As is seen from the above, the diverse range of services supplied by the Commission's employees provides a broad spectrum of law-related services to residents of the Province, some in financial and case-merited circumstances and some to all members of the public without regards to means or case merit. Adjusting, eliminating or changing any of these services would have immediate impacts on the delivery of justice. The smooth and efficient operation of the court system now assumes that the Commission's supporting operations will continue.

Therefore, care must be exercised in making changes to any of these services because they are connected in a very integrated way to the operation of the courts within the Province.

3. Review and Analysis of Current Staff/Certificate Model:

As was noted in Section 2 of this Report, the current model for the delivery of legal aid service in Newfoundland and Labrador is one where the vast majority of service to clients is provided by staff solicitors that the Commission assigns to the files. Only in the case of charges for specific serious crimes is the client entitled to choice of legal counsel, either internal (staff solicitors) or external (from private law practice). Additionally, the Commission may from time to time assign a matter to a private practice lawyer where its staff solicitors are not available, or where, because of conflicts, scheduling problems or the requirement for a particular legal background or experience, it is indicated that staff solicitors cannot act. Otherwise, the staff solicitors perform all legal work on behalf of the Commission's clients.

Legal aid staff solicitors represent clients involved mainly in criminal law and family law cases. While the Commission may accept other types of civil law cases or disputes at various administrative tribunals (such as immigration cases, workplace compensation, landlord/tenant, etc.), those cases are the exception, and are not at all common.

This delivery model is not common to all provinces in Canada. Some provinces rely more significantly on service being provided by private practice lawyers, as for example in New Brunswick and Ontario. In Nova Scotia, which has been chosen for comparison in this Report, approximately 80% of the service is supplied by staff solicitors; the remaining 20% is delivered by private practice lawyers, mainly in conflict of interest cases. Although Nova Scotia does have in its legislation a 'choice of counsel' provision for some serious crimes, this translates into only about 10-12 cases per year in that jurisdiction.

There appears to be a perception held by some that the public in Newfoundland and Labrador would be better served if there was more reliance on the work of private practice lawyers, or that any client should be allowed to choose between staff solicitors or those in private practice. A closer examination of the true facts and circumstances within this Province may suggest otherwise.

Quality of Service

Before considering the mandated issue of ‘workload’, which is essentially an examination of the quantity of work being performed, something must be said about the quality of the work of the Commission’s staff solicitors on behalf of residents of this Province who normally must rely on them to provide their legal representation.

Although staff lawyers are referred to internally (and throughout this Report) as ‘solicitors’, they are in every sense of the word ‘barristers’ who practice their legal and forensic skills almost daily in the Provincial and Supreme Courts of this Province. Although Newfoundland and Labrador no longer maintains the British tradition of dividing lawyers into the two distinct categories of ‘barristers’ (those who perform mainly courtroom duties) and ‘solicitors’ (those whose role in court proceedings is to perform research and preparation for barristers), the staff solicitors working at the Commission hone their legal and courtroom skills daily while representing clients in active court cases. Their area of practice, unlike many lawyers involved in the private practice throughout the Province, is essentially restricted to two disciplines – criminal law and/or family law. For that reason alone, they become very good at what they do. Unfortunately, this important fact seems to be lost on some of their clients and on many members of the public.

Legal aid staff solicitors are often compared, by some members of the public and by some of their clients, to private practice lawyers and unfairly found to be inferior. That opinion, simply put, is not one which is founded in fact and it is time for this unwarranted denigration to end.

Many members of the judiciary report that litigants or accused persons sometimes openly claim that they prefer to be represented by “*a real lawyer, not a legal aid lawyer*”. In response to comments of that nature, more than one judge has given the following response: “*In my experience in this court, legal aid staff lawyers are every bit as skilled and competent as private practice lawyers*”. Although that may be a statement of true fact coming from an informed person with considerable experience and ability to recognize ‘good counsel’, some clients seem not to want to listen. They believe, based presumably on advertising and inaccurate urban legend, that private practice lawyers are better skilled and can do a better job for them. (See also the comments of Adams, J. in *R. v. Pardy*, referred to in more detail in the section of this Report entitled ‘Choice of Counsel’.)

Unlike private practice lawyers who are now permitted to advertise their claimed experience and expertise, legal aid's staff solicitors are not entitled to promote their status in their work. An accused person in a murder case before the court at the time that this Report was being written was represented very competently by two staff solicitors, but perhaps quite properly, their employment status was never mentioned by the media in any reporting of that case. The accused simply had "two lawyers" representing him.

In family law matters, where the Commission's staff lawyers often represent both sides in a dispute, there is almost always one client who feels that he or she did not get what they believed they were entitled to receive at resolution. They are understandably unhappy with the outcome and the lawyer is often blamed.

In criminal law cases, many accused persons, who are ultimately guilty of the offences for which they have been charged, are subsequently convicted by the court, despite competent legal representation from legal aid staff solicitors. It is not easy to 'win' (in the eyes of the public or the accused) a criminal law case unless an acquittal is registered. The practice of defending in criminal law is not about winning – it is about delivering competent advice and representation to the client. The facts and the law will usually dictate the result.

In Nova Scotia, where the delivery model also primarily relies on a staff solicitor base, their legal aid website contains the following endorsement:

"The Nova Scotia Legal Aid Commission (NSLAC) employs Staff Lawyers who are located in offices throughout the Province. Staff Lawyers assist thousands of clients every year and they spend a majority of their time in court. The combined experience of staff at Legal Aid is incredible. Staff are very dedicated and committed to assisting their clients and they care. The majority of the Staff Lawyers and Legal Assistants have been working for Legal Aid for 15-30+ years."

Very similar comments should perhaps be made about Newfoundland and Labrador's legal aid staff lawyers on the Commission's web page, although the hyperbole of the word 'incredible' could be softened with a slightly more restrained word 'significant'. Legal aid staff solicitors currently have an average of more than 13 years of practice experience each, and 22 of those solicitors have 15 years or more of service. The years of seniority of the Commission's staff

solicitors is shown on Appendix D. The Commission's staff solicitors are not primarily 'junior' or inexperienced lawyers.

Based on reports from many members of the Province's judiciary, who are well positioned to hold evidence-based opinions, the overall quality of service rendered by legal aid's staff solicitors is very good. These solicitors appear sometimes to be stressed and overworked, but their knowledge of the law and their ability to competently represent clients in family and criminal law cases is without doubt. As with any law firm of comparable size, and the Commission, which employs 60 lawyers, is perhaps larger than any other law firm in this Province, not every staff solicitor is as skilled or experienced as some others. Some lawyers have greater skills than others, some are more experienced, and some are more stressed and overworked. In this Review, however, there has been no evidence or significant indication of incompetence or systemic lack of attention to files given by legal aid's staff solicitors. They perform very well in most instances.

Complaints and Concerns

During this review process there were a small number of complaints and adverse comments received, either from clients and their family members or from other advocates, regarding quality of service received. Some members of the bench have expressed limited concerns as well. These criticisms cannot be ignored but they need to be considered in context and in relation to the overall good quality of service. Complaints must be taken seriously, even if they are in small numbers.

One seasoned staff solicitor, when asked why she chose to work at legal aid, responded that her work was a "vocation, not just a job". Most professional staff at the Commission demonstrate that commitment to and sensitivity for their clients. Even following much publicity surrounding this Review and the large '*Public Notices*' (Appendix A) that were placed in newspapers of wide circulation in the Province, and encouragement to the public to respond voiced by the host of at least one radio 'phone-in' program, only a very small number of complaints were ever received. Interestingly, but perhaps not surprisingly, the majority of those complaints involved family law cases, not criminal law ones.

Outcomes, especially in family law matters, are not always what clients expect or want. Sometimes a decision on how to conduct a case must be made in the heat of the courtroom moment, which decision may turn out to be, with the benefit of full 20/20 hindsight, not the better one. A lawyer may choose not to call a witness or may call a witness who does not deliver the expected evidence. Even the ultimate decision to place a matter before the courts – or to settle a case before trial – involves a difficult professional judgment. The outcome of such decisions is sometimes decisive, but that is the world in which courtroom lawyers choose to work.

There is no evidence that, in a high majority of cases, the Province's legal aid staff lawyers do not exercise competent skills in the best interests of their clients. If the quality of practice delivered by a few of the Commission's solicitors is in any jeopardy, it would be primary from excessive workload, not from a lack of experience or expertise. Failures in individual cases are more likely attributable, not to lack of 'drive', a lack of interest or a lack of commitment to the client, but rather to a consequence of excessive workload and sometimes a failure to communicate possible outcomes frankly with the client. Expectations of clients should be managed.

One criticism leveled on more than one occasion is that clients sometimes only meet with their legal aid lawyer at the last minute, often at the courthouse or just before their matter is to be heard. If workload is the excuse, then that workload must be better managed or the lawyer's style of practice should be corrected. Clients must be treated with respect on all files and it is clearly not respectful to prepare the case on the courthouse steps. Perception is often a mighty weapon. If a client only meets the lawyer to prepare for the case shortly before (or on the day of) the hearing, that lawyer is unlikely to leave a good impression with the client. Whether the legal representation arising from that late solicitor/client meeting was thorough and competent or not, the client is not going to be easily convinced that it was, especially if the outcome was adverse to that client's interest. Great care needs to be exercised in managing client expectations, interviewing and counselling the client on a timely basis, appearing to be thorough - as well as actually being thorough - and creating a true relationship of trust between solicitor and client. A lawyer with a heavy workload, or a too-busy or distracted lawyer, can quickly fall into the trap of appearing to be ill-prepared for the case.

As the guardian of the public's right to high quality representation, the Commission must be vigilant to ensure that its performance management processes are diligent and able to identify early any quality control issues or individual staff solicitor failures. Performance management is discussed later as an individual item in this Report.

A failure at any level of the organization – executive, administrative or professional - may affect the quality of the service supplied to the public. But failure is clearly the exception, not the rule at the Commission. As an overall statement, the quality of the service provided by legal aid personnel, especially its staff solicitors, is very good. This fact is not commonly understood, but should be. The Commission's clients do not get a 'second class' of service simply because they do not pay for their own legal counsel or because staff solicitors perform most of the work.

a) Workload

The workload of the corporate board of any organization should be restricted to governance supervision. Board members should provide oversight and policy direction to management; they should not, however, assume management's responsibilities or micro-manage the business operation. Day-to-day management is the responsibility of senior staff, not the board. Corporate board members normally meet periodically, sometimes as frequently as monthly but more often quarterly, so that their workload is more difficult to measure and can vary greatly from board to board.

Management workload is generally a function of the type of work or duties carried out by the front line employees and will depend in large part on the structure and the number of supports that management has available to it. Often, workers performing for clients or customers have no real appreciation of the necessary administrative work being performed by management personnel. When the organization is a Crown corporation, there are additional functions or reports that often have to be performed at the direction of the 'shareholder', which is government. That relationship can add to the workload at the management level.

The measurement of the workload of lawyers can be the most challenging task. Each client file is different, with some being resolved in just a few hours of work and effort, while others go on

for weeks, months and sometimes even years. The legal profession recognizes that family law files generally take longer to resolve than criminal law files, although that is not always the case. And even within one file type, some matters can be far more factually complex than others. A family law file that involves simply a divorce is far less time-intensive than one which involves child and spousal support, intermingled with issues of custody and access.

For those reasons, one must be very careful in simply analyzing caseload numbers. The quantity of cases or files carried by any solicitor is just one factor of workload. An understanding of the complexity of every case or file is necessary to attain a full understanding of the actual workload carried.

Stress levels are clearly high at almost all locations and levels of the Commission. High workload is causing much of this stress, especially at locations where recent staff cuts have left remaining workers with more work to do, but with no additional time to devote to it.

This review process itself has clearly added to that stress level as many staff, not only support workers but also solicitors, have wondered and asked what their employment future with the Commission may be following this Report. Their concerns are understandable and should be put to rest.

- i) **Solicitors** –The total number of files carried by staff solicitors can fluctuate up and down from year to year. Management maintains, and it is an easy argument to accept, that files are becoming more complex now than they were in prior years, so historical comparisons are not entirely reliable. That is the nature of the evolving framework of the law. *Charter of Rights and Freedoms* arguments, which did not exist in criminal law cases years ago because there was no *Charter*, now become regular occurrences. *Charter* arguments can also arise in family law matters, particularly child protection cases, but that is less common. Interim applications and procedural interruptions to the main issues in contention often consume significant time in a case, all within the overall workload of that file. That complicating factor does not become apparent in a simple count of file numbers.

Notwithstanding the inherent challenges in making judgments about professional workload, the Commission has used for a number of years a file management system which measures and monitors, among other things, the time spent on files and other useful information about solicitors' workloads. 'LAMIS' (acronym for **L**egal **A**id **M**anagement **I**nformation **S**ystem) is the purpose-built computer program on which all staff solicitors' time, disbursements and important file notations are recorded. Based on the accepted adage that 'you cannot manage what you cannot measure', information management systems are an important management tool.

Most staff solicitors report that they carry a heavy workload; that fact is not seriously in any doubt. There is a huge demand for legal aid services with approximately 5,000 files being accepted province-wide in fiscal year 2012/13, based on over 8,900 applications for service. Duty counsel services add an additional 6,400 client contacts (Appendix E). Only a small core of employees delivers those services. Many legal aid offices are comprised of 2 to 4 staff solicitors; within that environment, any vacation, maternity or other leave time for one solicitor places a heavier burden on the remaining solicitor(s) who must take on additional work during those times.

Solicitors themselves point to 'files open' as evidence of their workload. A workload of more than 100 active files per solicitor sounds daunting. While 'files open' is one indicator of that workload, 'files closed' within a period may be a better measure for the output of solicitors. The existence of a large number of open files may simply indicate that a solicitor has not taken the one or two final steps necessary to complete the matter. The Commission's existing policy guideline is that staff solicitors are expected to, on average and depending on the type of work performed, close between 150-200 files per year, with at least 90 closed as the minimum expected standard. To complicate the assessment, individual duty counsel services, while documented in the Commission's records, are not assigned as 'files' to the solicitor providing that service. Thus, those solicitors who do extensive duty counsel work will, of necessity, only be able to carry a smaller number of full-service criminal or family law files.

An example of the typical caseload carried by a selection of the more senior staff solicitors across the Province is shown in Appendix F. Note that ‘Lawyer 6’ practices in family law almost exclusively, hence, the number of files is significantly lower.

If workload is truly too high, and it does appear to be right now, especially in some offices, then the number of solicitors and support staff handling their files must be increased, the manner of distributing the files must be changed (i.e., eliminate unnecessary conflict travel or contract out more conflict work) or the number of clients or the type of cases now accepted by the Commission must be reduced. These are the only realistic solutions. Reducing service to the public is not a desirable solution, so that either adding support or finding operational efficiencies must be the avenues for solution.

- ii) **Management** – At the Commission, management of the many area offices is achieved not only by having an overall administrative office, but also by having each office managed by an ‘area director’ who is responsible to administer the staff and business affairs of that immediate office. Management by that definition is present in each area office, although not to the same degree in some of the project offices (some do have a ‘project lead’ person).

The organizational structure of the Commission that was in place as of January 2013 appears quite complex, as is shown in Appendix G. That structure did not reveal a ‘modern’ model of an appropriate management reporting regime and may simply have reflected the traditional management style of the former senior management.

As chief executive officer, the former Provincial Director maintained more than 28 employees directly reporting to him. All of the area directors, many of the employees at the project offices and a number of direct service employees (as, for example the client services officer), as well as some clerical and administrative personnel at the PDO were directly under the Provincial Director’s responsibility and control. That is a very large number of ‘direct reports’ for a manager who is effectively the most senior officer of the organization. That workload alone is a factor likely to lead to failure over a period of time. No senior executive can have that number of employees reporting and still carry out

the other important duties of that senior administrative office. Under that scenario, the important functions of liaison with government and other stakeholders, community outreach, policy development and visioning for the future can get lost in the day-to-day functioning as ‘the boss’. Other management responsibilities may be unfulfilled because insufficient time is available to do it all.

Since the spring of 2013, the only members of the senior management team have been the Provincial Director and one Deputy Director. Financial management of this \$14,000,000 enterprise is clearly the major responsibility of the Deputy Director; but personnel and professional management issues must also be exercised and accounted for from the highest levels of management. Without another Deputy Director who would be responsible for legal and professional issues, the Provincial Director or the Deputy Director will have to maintain responsibility for that function. That is, simply put, too much work for two individuals to undertake on a long term basis.

If one compares, for example, the Nova Scotia management structure, there is a management team of four positions: Executive Director, Chief Financial Officer, Service Delivery Director and Internal Operations Director. Each position has separate areas of responsibility. The Executive Director has overall management responsibility. The Chief Financial Officer’s duties are obvious from the title. The Service Delivery Director has responsibility to ensure that external-lawyer certificates are properly issued and managed, and that intake and appeals are monitored. The Internal Operations Director has internal human resource, professional development, conflict management and performance management duties. That is not to say that our Province’s structure must necessarily be the same as Nova Scotia’s (their system relies more heavily on outside counsel to work conflict files), but it may be an indication that the decision in this Province to eliminate the Deputy Director Legal position should be reconsidered.

It is clear that the new Provincial Director and the newly-hired Deputy Director have a common view that reorganization of the PDO is required. They are working on that assignment as this Report is being prepared and submitted. They are fully aware that the reporting structure must change for it to become more efficient and effective. Without

financial resources to add an additional senior management person, the workload of these two senior management persons will continue to be very high and will inhibit overall effectiveness in management for the Commission.

- iii) Administrative** - If one message came through clearly in the environmental scan conducted in all offices throughout the Province, it was that many administrative and support staff are clearly overworked, particularly in the area offices which were affected in the cutbacks which arose from the 2013 staff decreases. It must be remembered that, especially in the smaller offices (although this principle applies in almost all offices), support staff at legal aid's area offices do not simply perform 'secretarial' duties, in the normal law office understanding of that term. The essential and additional intake process that they perform is very time consuming. Applicants do not always produce the required information on first request or office visit, so follow-up is regularly required, many times more than once. The staff solicitors are often out of their offices attending court daily, travelling to interview clients or witnesses or on conflict assignments to other areas. When the lawyers are absent so often from their offices, their staff have to deal more extensively with clients who have inquiries which have to be addressed. Even when the lawyers are physically present, the document production requirements related to intake plus the preparation of written submissions and other documents required by the courts all create significant workloads on the small number of available support staff. In offices where paralegals have been removed, some of the workload formerly carried by those paralegals has now been transferred to the remaining administrative staff and some has been assumed by the solicitors. The work does not go away simply because staff are eliminated.

Support staff shortages may also impact and reflect badly on the professional work that the staff solicitors are performing. Some members of the judiciary have noted that deadlines for the filing of documents are sometimes missed by staff solicitors. That may not always be the result of lack of support staff, but many solicitors have complained about the shortage of secretarial support and its consequent impact on their litigation filing obligations. It is not, however, appropriate for these solicitors to tell the courts that

the failure lay “at the office”. Professionals must take personal responsibility for institutional failures, wherever the cause may lie.

In an environment where limited financial resources may be available to address all the needs, establishing priorities is essential. When the Provincial Director was asked to create a priority list of resources that were needed immediately, additional support staff was at the top of his list. Adding back the removed staff solicitor positions was the second priority. It was also interesting to note that, as he began to explore his new duties and realize the challenges of the most senior management position, the new Provincial Director quickly added the Deputy Director Legal position to his list of vacancies that needed to be filled.

b) Specific Challenges to the Delivery of Service

The Province of Newfoundland and Labrador is a large land mass populated sparsely in many regions, especially on the numerous peninsulas of the Island (other than on the Avalon Peninsula where population density is significantly higher). Providing a consistent and equal service on a province-wide basis must take that geography into consideration. Offices must be located in strategic locations to allow reasonable access by all residents. Some offices will of necessity have to be located in regions where populations are lower, yet access to the larger or more busy centres is not practical (as, for example, in Wabush where regular service from the larger Happy Valley-Goose Bay area office is simply not practical). Delivering a comprehensive legal aid service requires a significant number of service centres. Legal aid’s 11 area offices are positioned in or near those communities where the Provincial and/or Supreme Courts are located. It cannot be any other way. The provision of an equal and province-wide duty counsel service alone requires that solicitors be available in close proximity to all Provincial Courts.

This Provincial geography also helps to drive the choice of delivery model, as discussed later in this Report.

i) Geographic

Adding to the overall geographic challenges as noted above, the Labrador region is particularly challenging, given the sparse population, the distances between communities, the unique needs

of the aboriginal communities and the difficulties in travelling from one community to another, especially in seasons of bad weather. Legal aid's two Labrador area offices are located in the two communities where, not only are the immediate populations greater, but permanent court facilities are located. The Commission's service in the land mass of Labrador beyond those two communities is essentially limited to: i) solicitors travelling with the periodic court circuits to the coastal communities, and ii) the Commission's full or part-time representatives in four aboriginal communities.

Remoteness alone is not the only challenge. Population increases and demographics, especially in the Happy Valley-Goose Bay region arising from recent industrial development, bring additional service challenges, as observed by one resident of the Labrador region who commented in a written submission to this Review:

“Based on what I see here in Labrador, a vigorous legal aid system is essential to the work of justice in all our communities. The communities where we are busiest are growing, as the 2011 federal census bears out, and the populations are overwhelmingly young. They are also highly mobile, which means that Happy Valley-Goose Bay now has a high transient population. The 2011 census data shows that the cohorts under age 24 years are at least a majority of each of the populations of the three largest coastal communities in Labrador.

When one considers these demographics together with the social issues that are widespread, it is very unlikely the incidence of crime and family dysfunction will diminish any time soon in Happy Valley-Goose Bay and elsewhere on the coast where the young populations are swelling. The influx of more young people, mostly men, for work purposes over the next 5 to 7 years may well add to the level of crime and social disorder. This implies there will be more work, not less, for the courts in Labrador and more demands on both legal aid and prosecution services over the next 10 years or so.”

This extract predicts that there will be more rather than less demand for legal aid's services in parts of Labrador in the coming decades. That conclusion seems compelling.

The travel requirements consequent on this geography, its high cost and the impact on workload should not be underestimated. Travel from the Happy Valley-Goose Bay office to the coastal communities of Labrador is a regular factor for the staff solicitors employed there. In times of bad weather, a short trip to the coast for 2-3 days of circuit court can sometimes turn into a much longer and unexpected stay until the weather improves, allowing flights to resume. Telephone and electronic communication is not as easy on the coast as it is in more highly developed areas.

Even travel between the Commission's two area offices in Labrador involves either a very long and difficult highway drive or an expensive and schedule-sensitive flight.

A huge challenge for the Commission in serving Labrador has been and perhaps will continue to be attracting, recruiting and retaining staff, particularly more experienced solicitors and other professionals, to work in these northern portions of the Province. The current group of staff solicitors in both area offices is made up of relatively young legal practitioners. In the Happy Valley-Goose Bay area, they often have clients facing serious crime issues and the family law issues are sometimes exacerbated by aboriginal traditions and practices. Ensuring a quality service with less experienced solicitors requires more mentoring and professional support from the Commission's administrative office. The more senior staff solicitors work primarily on the Island portion of the Province. This monitoring requirement brings into the analysis the additional costs and time consumed in travel that these more seasoned practitioners would have to undertake to provide support. (Travel issues are dealt with as a separate challenge in this Report.)

Labrador is not alone in presenting geographic challenges in the delivery of legal aid in this Province. The Burin Peninsula, for example, is currently fortunate to have a staff solicitor who is both well experienced and a long-time resident of that region. He is also the sole lawyer in that office, but his career may not always keep him there. Recruitment to that area office and to others throughout the Province will require constant succession planning by the Commission. During the spring and summer of 2013, the Gander office was without a resident staff solicitor for many months while the recruitment process was slow and the task of securing experienced counsel was difficult. Developing more attractive compensation packages with lengthy term-of-service obligations may be required to place solicitors permanently in some locations. As a backup, contingency plans for unexpected departures must also be maintained. How the Commission can be expected to provide continuing coverage for emergencies from a small pool of already overworked professionals is difficult to understand.

Maintaining on staff professionals with lower workloads who can move when needed is an expensive solution. The answer found during the summer 2013 of moving staff from other area offices to temporarily fill an empty office in Gander simply added to workload problems already

inherent at those other locations. Hiring outside counsel might be a better solution, provided that lawyers can be found who are willing to work at legal aid's tariff rates. A more competitive compensation rate (an issue dealt with later) would assist in facilitating that option.

That type of strategic planning is essential to managing the geographic challenges for the Commission.

ii) Cultural

There is no definition of the word 'cultural' within the Terms of Reference. It is understood in the context of this Review that any one or more of the following groups could have cultural issues that may challenge the delivery of legal aid services.

French language: Legal aid has only one staff solicitor in the entire Province who is responsible for communication with citizens wishing to speak with a lawyer fluent in the French language about an issue within the Commission's mandate. That requirement would include ordinary legal representation as well as duty counsel needs. That solicitor reports that there has been little demand for his skills in recent years. On that basis, the current level of service is considered adequate to the demand.

Innu: In its written submissions, the Innu Nation asserted that the legal aid system in Labrador is inadequate for its needs because of three major deficiencies. The service was stated to be:

- i) underfunded and overburdened, leaving the Innu people seriously underserved by it. Delay is the major factor cited, but insufficient time and resources to adequately represent the Innu was another problem identified. Understaffing and high employee turnover were also noted as contributors;
- ii) 'culturally disconnected' from the Innu and lacking legitimacy in their aboriginal communities. For this reason alone, the Innu rarely choose to use any service of the justice system which they consider to be entirely foreign to their culture; and

iii) lacking any engagement in culturally-based diversion programs which would not only reduce caseload and increase effectiveness but also promote justice and cost-efficiency. Insufficient use of family group conferencing, community-based family support programs and sentencing circles, all of which would better serve their aboriginal values, was said to be evidence of this failure.

The Innu Nation referred to the fact that, despite the extensively researched '*Aboriginal Justice Project Report*' prepared for the Commission in 2005 by Jennie M. Reid following a total of 350 interviews, including 100 interviews in the Innu communities, little has changed in the provision of legal aid service or the administration of justice generally for the Innu people. The Innu representatives conclude in their brief to the Review that the current legal aid system, which is inextricably linked to the Province's justice system, is in their own words - "*inadequate, dysfunctional and full of gaps and inefficiencies*".

These criticisms are thought provoking. All those consulted in this review process agreed that cultural sensitivity is not only a challenge for legal aid, it is endemic to the entire justice system in Labrador. It is unlikely that changes or reforms in the manner in which legal aid itself operates, being just one part of the justice system, would result in major improvements without a much larger review and revision of the manner in which justice on an overall basis is administered in relation to the indigenous peoples of Labrador. That larger issue is well beyond the scope of this Review which is limited to just one facet of the justice system.

Inuit: The Nunatsiavut Government representative identified communication challenges and access to justice issues as the major concerns of the Inuit people of Labrador.

The inability to use the same interpreter for solicitor/client communications and for translation in the courts puts huge demands on the few individuals who are competent to perform such translation services in Labrador. Legal terms and expressions are not necessarily within the competence of those persons who happen to speak both English and Inuttitut. Much context and meaning can often be lost in communication if the nuances of legal terms of art are not competently used by the translator. This deficiency can become a barrier to justice for the Inuit people.

The very small number of legal practitioners available in the numerous coastal communities in Labrador, which are the areas inhabited by most of the Inuit, creates a significant obstacle to the ability to access justice services in a time-sensitive and cost-effective way. Travel to the Labrador area offices is simply not practical for those who live on modest means in coastal communities. The Commission's offices in Happy Valley-Goose Bay only offer the beginnings of a legal aid service to the Inuit. Easier access to the staff who provide legal advice is necessary.

The timing of court circuits does not always allow sufficient time for aboriginal people to leave their local homes and their native activities to attend at the court's more formal and time-structured events. As with the Innu's complaints, this cultural insensitivity issue goes well beyond the scope of this Report, but the concerns must be important to the Commission if they are to attempt any improved delivery of their own portion of the justice system.

The newly-created group of more affluent Inuit workers, earning higher than average incomes from their work at the industrial site at Voisey's Bay, no longer financially qualify for legal aid, yet they are unable to pay the huge cost of bringing independent legal counsel to their communities because of the high travel costs involved. This is simply another manifestation of the access to justice issue for many Inuit people. The suggestion would be that separate financial means testing may be required in Labrador.

The Nunatsiavut Government suggested that the Commission should dedicate a lawyer within one of its Labrador offices to Inuit issues. That lawyer should be expected to carry a smaller workload because of all of the challenges associated with serving that native community. The large cost of providing a dedicated service is not currently a part of the Commission's budgetary process.

iii) Economic

There are many items which could be captured by this single heading in the Terms of Reference. Without further definition, the following topics are considered as significant and should be addressed:

Rental space: The Commission occupies many office locations which are all leased from commercial landlords in arm's length transactions. Rental space is obtained by the Commission using the protocols of the *Public Tender Act*. As observed, most area office layouts are modern and large, with extensive empty space remaining in most locations. It appears that an office layout 'template' was developed which anticipated a) future growth, b) the office structure requirements arising from the conflict issue and c) the likelihood of visiting lawyers periodically needing to occupy office space for their work. The template has a separate reception area and even separate washrooms, exclusively dedicated for conflict client use. Unless significant growth is predicted, the current template may be too elaborate and too large for use in many rural locations. Existing leases must, however, be honoured for their term.

It was explained that the overly large offices in some locations (as for example in Wabush or Carbonear) may have resulted from tender calls that sought a smaller size, but the landlord have offered the larger space for the same price simply because the remaining space in the building was too small to offer to other tenants. If that were the case, the impression of wasted space and finances is unfortunate.

The offices in St. John's are not within close walking distance of the City's various court facilities which are all located in downtown neighbourhoods. Some private practice lawyers have criticized the Commission as occupying offices that are too 'remote' from the courts. Recent economic growth in the City core has, however, made office rentals there unaffordable. Two former Water Street offices were recently relocated to Empire Avenue and Elizabeth Avenue locations. The Commission estimated that the cost of its solicitors traveling by car or taxi to the three courthouses (Water Street, Duckworth Street and Kingsbridge Road) would be less than the additional rent which would have been paid if their offices were to remain in the City's downtown. The moves were found to be financially advantageous and they did not create huge logistical challenges for staff who needed to attend court.

The Commission's cost for its entire office space rental requirement exceeds \$1,500,000 annually. These rentals and their current total annual costs are shown in Appendix H. The cost requirement for office rentals is growing annually and already exceeds the budgeted amounts

approved by Government for that expense. Closer scrutiny of the future space requirement is also needed once the leases have expired and future needs are reviewed.

High cost of travel: Travel is a necessary and expected cost of delivering legal services over a large geographic area. Managing that cost effectively is the challenge for the Commission and, as concluded by this Review, it does require closer monitoring. Based on its current accounting processes, it is difficult for the Commission to ascertain with any certainty the amounts paid for conflict travel only, as compared to the amounts for necessary travel of solicitors to courts or court circuits and the amounts involved in discretionary (i.e., conference or business meeting) travel. It is apparent that some management of these costs has been possible, however, because the Commission has been able to reduce some travel costs during this current fiscal year. A more detailed breakdown of reasons for travel is needed in order to manage this large operational cost. To weigh the various options for managing high travel costs, one needs to know the precise contributing factors.

There can be, however, some unfortunate consequences to restricting discretionary travel, yet in time of restraint, this is an obvious place to look for savings. All Commission staff are understandably complaining that in recent years their annual conference and semi-annual area directors' meetings have not occurred. They have been cancelled due to tight budgets. Sadly, it is very easy for staff, especially in more remote or distant locations, to quickly lose sight of the fact that they are part of one large organization. The seminars and topic discussions presented at group meetings are an important part of the continuing legal education process, but more importantly in some respects, the interaction and cohesion created between staff is quickly lost when they are not able to periodically meet in person.

The Commission is challenged to find new and cost-efficient ways to restore that lost bond. The use of modern technology, such as teleconferencing or videoconferencing can help to some degree, but the value of actual face-to-face meetings is still critical to having a cohesive workforce.

Budget Fluctuations: The unpredictability of the Law Foundation's level of annual funding, the sensitivity to governmental restraint requirements which understandably arise from time to time,

and the inability to ensure that activities funded from past accumulations of excess revenue (for details, see Law Foundation funding, discussed later in this Report) all create challenges to the Commission's ability to perform effective financial forward planning. Government requires that the Commission create a written 3-year plan, yet the Commission cannot know with any degree of certainty what funding will be available to it over that time frame based on current funding arrangements.

Strategic planning on these budgetary challenges is necessary and must receive more focus. Adequate sustaining funding is also necessary. And more advance notice, if possible, from Government of anticipated funding shortfalls would also help. Otherwise, the sudden lack of fiscal resources can cause opportunities for failure in the delivery of some services to the public.

c) Conflict of Interest Offices

All lawyers in Newfoundland and Labrador are charged professionally to avoid conflicts of interest. To illustrate the issue in its simplest form, it would be a 'conflict' and thus improper for two lawyers within one law firm to act on both sides of one piece of litigation or on behalf of two co-accused in a criminal offence because confidentiality of each client's information could not be ensured. The Law Society's *Code of Conduct* requires that conflicts be eliminated. Rule 3.4.1 of that *Code* states that "A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code." As with many things in life and law, this concept of 'conflict' is capable of much interpretation.

The Commission as a corporate entity is, in essence, one law firm with many 'branch' offices. But for the saving provision of the legislation, it would generally be improper for two of the Commission's staff solicitors, even from separate offices, to act for two accused persons in a criminal charge or to represent both sides in a family law dispute. Section 31(8) the *Act* provides the exception:

(8) Notwithstanding the Law Society Act, a solicitor employed by the commission does not commit a breach of a rule or code of legal ethics of the Law Society of Newfoundland relating to conflict of interest, by reason only of advising or representing a person in a dispute or case where another person involved in that dispute or case is being advised or represented by another solicitor employed by the commission.

The Commission has chosen to interpret this ‘by-pass’ legislative provision as meaning that its staff lawyers on opposite sides of a file or acting for co-accused persons should come from separate area offices to avoid the conflict. Both lawyers cannot work out of one area office under that interpretation. There is also the sensitive issue of avoiding two hostile litigants being forced to face one another while awaiting meetings with their respective solicitors in the same office location. By instigating separate conflict or area offices, the Commission avoids running afoul of the professional obligation for its staff lawyers not to be in conflict with one another. That structure also avoids those possible confrontations involving two or more clients, although that is not always a true ‘conflict’ in the legal sense of the word – it more resembles an apparent conflict which can be troubling in the eyes of the client.

The Elizabeth Avenue office in St. John’s is called the ‘Conflict Office’ and no intake is performed for its files as they all originate from the Empire Avenue area office or some other office location. Elsewhere in the Province, one area office is usually assigned as the primary conflict provider for the next closest area office. Thus, for example, the area office in Stephenville is able to provide primary conflict support to the area office in Corner Brook, and vice versa. While each area office has a primary office which is intended to cover conflicts, offices farther distant must sometimes be accessed to avoid the conflict appearing or to find an available staff solicitor. Avoiding conflicts is an important aspect of operating the Commission’s business with integrity.

The Commission already has a documented ‘Conflict Policy’ which identifies two recognized levels of conflict and then sets forth steps to be used to establish when they exist and how they can be remediated. One of the available cures under that Policy is to seek a waiver from the client where the conflict is not prejudicial to that client’s interest. It appears that these waivers are seldom, if ever, used by the staff solicitors as a means to resolve the problem. Conflicts are invariably assigned to a different office, sometimes to one many miles distant from the area in which the client resides, from where the offence was committed or where the court seized with the matter is situated. Travel costs to the Commission escalate and clients are inconvenienced. Waivers should be sought and used more often in cases where there is no real prejudice to the client’s legal rights.

In fact, conflicts are so prevalent that the layout of all area offices are designed such that a staff solicitor, travelling from one location to visit a client in another office, is able to gain access to private office space (with a separate door entrance and separate washrooms) in the visited premises in order for the travelling solicitor to meet with clients without having to go through the main door of that area office and without interacting with any personnel in that area office. The wall of confidentiality is achieved, but valuable and expensive office space is required to be committed to a use that is sometimes very limited.

The Commission has an employee responsible to oversee the assignment of cases in conflict situations. Many times, the immediate 'conflict office' is unable to represent the client because of a 'double conflict' (i.e., both offices have previously acted for another individual in conflict with the proposed client, thereby creating conflicts in both locations). With cases of multi-accused persons in a single criminal event, which can happen frequently, conflicts create situations where solicitors are appointed frequently from more than one office, often far from the home of the client. Some clients are frequent offenders of the criminal law and some have family law and criminal law issues presenting more than on one occasion. The situation often arises in family law cases where both sides to the dispute seek representation from legal aid staff lawyers. Outside independent counsel sometimes are retained in order to find a lawyer without conflicts for those clients. Managing that myriad of variables requires the daily attention of that one Commission employee, with some oversight from senior management being needed to resolve the more troubling fact situations.

Sometimes the conflict is clear and sometimes it is far more subtle. Occasionally, judgments are made by individual solicitors who claim the 'conflict' exists when only a close personal relationship appears (such as with neighbours, friends, acquaintances, etc.) Some employees have a greater tolerance to 'close relationships' than others. The Commission needs to be more vigilant in clamping down on mere file avoidance issues.

In the result, many staff solicitors engage in extensive amounts of conflict travel, often by automobile and sometimes by air, to serve clients in another region of the Province. One solicitor from the Clarenville area office travels on the highways of Newfoundland up to 150

days per year, mainly performing conflict work. This practice brings with it at least three concerns:

1. The travelling solicitor is spending many hours in the transit from one area to another, often by car in all seasons and all driving conditions. This highway driving creates personal safety hazards which, although sometimes a necessary part of the job, should be avoided as much as possible.
2. The travelling solicitor is wasting valuable professional time while travelling. If the transit is from, for example, Clarenville to St. John's by car for a two-hour court appearance in the City, that solicitor will consume at least 4-5 hours of a working day travelling to and from the court, using only 2 hours for actual professional work. This is a waste of a lawyer's valuable workday.
3. While a solicitor is working on a conflict file, the 'home files' of that solicitor are unable to be advanced. In high workload situations, additional file responsibility exacerbates the problem.

This entire issue of conflict resolution needs to be examined in far more detail than this Review will allow. A more efficient solution needs to be found by the Commission itself.

The cost of disbursements on conflict travel alone is significant. In fiscal year 2011/12, the Commission estimated that conflict travel alone accounted for more than \$277,000 of operating expense. In 2012/13, that amount had fallen to \$209,000, a worthwhile reduction, but still a large amount. Unfortunately, that saving did not go to the 'bottom line' as there was an increase in the expense for 'Court Call' (a process under which the Commission pays in excess of \$30,000 annually for telephone linked appearances in any of the Provincial Courts) which cost rose by almost \$10,000 in the same period. Efficiencies can be found with the use of technology, but advantages and disadvantages of any options must be carefully weighed.

Efficiencies can also be found by adding greater clarity to the conflict rules and greater diligence to ensure that overly busy staff solicitors are not simply using these rules to avoid additional workload which should be absorbed within their own area offices. Finally, it is also not clear that separate washrooms are a necessary component of avoiding professional conflicts of interest.

In St. John's, as an example of another possible approach, two area offices could be converted into three or four smaller ones, eliminating most if not all unnecessary solicitor travel from outside the St. John's regional area. The *Act* does anticipate the use of 'neighbourhood' legal aid centres (Section 29), which suggests the creation of smaller offices, but none have been developed to date. The cost of such sub-division of offices would have to be examined in detail to determine if it was truly a cost-effective solution.

In Nova Scotia, much of the conflict work is contracted out to private practice lawyers. Approximately 20% of the total certificates in that province are issued to private lawyers, mostly to perform conflict work. That might be a viable and cost-effective alternative in this Province as well, but it would have to be costed against the current model to ensure that it was a better solution. The rate paid to other lawyers, as discussed elsewhere in this Report, would be another factor in the ability to secure the work of private lawyers. Currently, the Commission often has difficulty finding private practice lawyers who are even willing to take on occasional duty counsel services because of the low rates paid. This solution for conflict cases will only work if tariff rates are more attractive to all members of the Bar.

The Commission's very cautious interpretation of Section 31(8) may even require reconsideration. Perhaps two clients could be represented out of one area office provided always that client confidentiality could be assured and real conflicts (as opposed to apparent ones) avoided by a more secure filing system. There are Supreme Court of Canada decisions which set out the basic requirements which cannot be avoided. Eliminating client confrontations in the one waiting room is simply a matter of careful scheduling of appointments.

The process of balancing policy and professional considerations with financial restraint is an assignment that cannot be performed by an external reviewer. The Commission may require additional financial and personnel resources on a short-term basis (e.g., an outside consultant's detailed review) to assist in investigating and tackling the important task of more efficiently managing client conflicts of interest.

d) Private Counsel Certificates

The issuance of ‘certificates’ (in essence, an authority to a solicitor to act on behalf of a legal aid client) is the method by which the Commission tracks its files and its clients. Every file has a ‘certificate’ issued in relation to it. When certificates are issued to staff solicitors acting for clients, they are simply used as an accounting mechanism to track costs to a particular file. Sometimes certificates are issued to lawyers who are not staff solicitors employed by the Commission. That is the limited issue which is under consideration here.

i) Certificates

By virtue of Section 31(3.1) of the Act, accused persons who have passed the intake process and are charged with one of the three more serious crimes of murder, manslaughter and infanticide are entitled to receive a certificate from the Commission allowing them to retain their choice of either a staff solicitor employed with the Commission or an independent lawyer in private practice in the Province. That issue alone is dealt with in more detail below. Additionally and sometime of necessity, when no staff solicitors are available or are otherwise in conflict on a file, the Commission may itself choose to issue certificates to outside counsel to act for clients. A certificate is the Commission’s authorization to that lawyer to act for the client together with the commitment from the Commission to pay the fee account of the independent lawyer at the regulated rates.

In order to be selected, a lawyer must be on a ‘panel’ (or list) kept by the Commission. There are separate panels for full service work and for duty counsel work. Inclusion on a panel is subject only to the lawyer: a) being in good standing with the Law Society, and b) agreeing to perform the work at the regulated rates set out in the ‘tariff’ discussed below. There are no ‘preferred’ or ‘recommended’ lawyers on a panel. If outside counsel are to be considered, the client must choose from a lawyer from the panel, not just any lawyer who happens to be in private practice in the community. The panel of lawyers who have agreed to accept regular cases (as opposed to duty counsel service) currently has approximately 42 lawyers included, but the Commission admits that only 6 or 7 lawyers from that list actively agree to take cases because of the currently low tariff. Recipients of certificates have also claimed to have encountered the same difficulty in obtaining a private practice lawyer on the panel who is willing to accept a file at those rates.

That problem is real and must be solved. Private lawyers consider that the hourly rate is ridiculously low and cannot possibly compensate them adequately for the work to be performed, based on the lawyer's need to operate a financially successful law practice. A review of the current tariff will demonstrate the extent of the problem

ii) Tariff

The tariff for payment of private practice lawyers' fees is found in the Regulations and was last updated in 1990. (Note: The evidence before Mr. Justice Adams in the *Pardy* decision referred to below was that the base year was 1991, but subsequent investigation has established 1990 as the correct date.)

When the legal aid regime was first set up to make payments to private practice lawyers in 1972, the first tariff rates were set at \$20.00 to \$30.00 per hour, depending on the nature of the service given. The 1990 tariff rates, which are still in effect today and are reflected in the current Regulations, have essentially only doubled in the past 40 years. They are still set at an hourly rate, the amount of which now depends initially on the seniority of the lawyer conducting the file, with a small hourly uplift for certain matters heard before the Supreme Court. Lawyers practicing for less than 5 years receive \$45.00 per hour for their efforts, those practicing for 5 years or more receive \$55.00 per hour, and certain limited Supreme Court matters (jury trials, dangerous offender applications, and appeals to the Court of Appeal or to the Supreme Court of Canada) attract the highest rates of \$50.00 or 60.00 per hour, again dependent on the lawyer's seniority.

These rates are set out in Schedule B of the Regulations (which currently contain a significant typographical error – the wording in the Regulation states that the numbers inserted in Section 2(1) of Schedule B refer to 'maximum hours' of work, when they actually refer to the 'hourly rates' which are to be paid. This error in the wording of the Regulation should be corrected).

Such hourly rates are considered by most all private practice lawyers in Newfoundland and Labrador, and by any individuals who understand the costs of running a private law office, as inadequate to attract private solicitors to perform work on behalf of the Commission's clients.

As one lawyer stated, *“It doesn’t even cover my overhead, let alone leave something for me!”* That statement is not simply hyperbole. Rates are ridiculously low by 2013 standards.

Establishing a fair and reasonable rate may be aided by looking at some comparisons and economic indicators, but ultimately setting the right amount is a judgment call or policy decision for Government after consultation with the Law Society, as the Regulations require, and the consideration of a variety of factors, some of which follow.

Rates being paid in other Canadian jurisdictions may be an initial guideline. The hourly rates paid throughout the provinces and territories of Canada, current as of May 2013, are shown on Appendix I. They reveal a high range of \$91.50 to \$153.00 per hour paid to lawyers in Nunavut to a low range of \$45.00 to \$60.00 paid in Newfoundland and Labrador. There is clearly no consistency and it should be remembered that private practice lawyers in many Canadian provinces are also complaining that their current rates are far too low to be attractive. Simply following another province is not the solution.

Our Province has the lowest rates. Without doing a full review of the other jurisdictions, comparing and contrasting when those rates apply (some jurisdictions also have set ‘total fees’ for certain bulk pieces of work), it is difficult to tell on the surface how attractive or compensable the various rates are to lawyers working in those other locations. In Nova Scotia, for example, rates are only slightly higher than in Newfoundland and Labrador: their lawyers with up to 5 years’ experience receive \$60.00 per hour, those practicing 5 years or more receive \$70.00 per hour, and homicide matters attract the highest rate of \$80.00 per hour, provided that the lawyer also has more than 10 years’ experience. Those rates are currently under review. They are each considered by legal aid in that province to be at least \$10.00 per hour lower than where they should be to help attract more senior and experienced solicitors to accept legal aid work.

Assuming that the Commission’s current rates might have been adequate and compensable when they were set in 1990, and that is an assumption that is now difficult to determine, even applying the annual rate of inflation to those rates, compounded to 2013, would generate these indicators of current value (rounded to the nearest dollar):

| | |
|-------------------------------|---------|
| Less than 5 years practice | \$70.00 |
| More than 5 years practice | \$86.00 |
| Certain Supreme Court matters | \$94.00 |

Many lawyers in private practice in this Province would quickly reject those rates as still being far too low to constitute reasonable payment for the work being performed. Setting the above rates in 2013 may not solve the problem. They could be considered as the very bottom of the ‘fair’ range.

Another test might be to compare the current legal aid hourly rates to the hourly rates being paid by clients in Newfoundland and Labrador to their own private choice of legal counsel. A senior criminal practitioner in this Province is able to obtain rates as high as \$350.00 per hour for his or her services. Rates from \$200.00-300.00 per hour are normal for experienced criminal law counsel. Family law practitioners with significant experience are charging rates well in excess of \$275.00-\$300.00 per hour to their clients, depending mainly on seniority. Very young lawyers with less experience might receive rates as low as \$150.00 per hour, but not below. Experience, reputation and location will all factor into the market rate, but a range of \$150.00 - \$250.00 per hour is easily justified as ‘market’ rates for experienced lawyers, based on a comparison to privately paid rates.

Yet another guide to fair rates might be found using the principle of ‘equal pay for work of equal value’, a concept which would compare the salary for staff solicitors working for the Commission to the net income expected by private practice lawyers who might be assigned the same work under a legal aid certificate. The annual salaries of the Commission’s lawyers are established using a grid similar to that used by the Provincial Government for its departmental lawyers. The Commission’s pay grid, last updated in 2011, for its staff solicitors is shown at Appendix J. Relatively senior staff solicitors (Level SL-04, Steps 5 to 7) receive approximately \$100,000-\$110,000 as annual salary. There are employee benefits received in addition to that salary, including a defined benefit pension plan, insurance benefits and vacation leave. For the sake of discussion here, and this is simply a very rough estimate, those benefits might drive the value of that total compensation package to an amount in excess of \$120,000 per year.

It is well accepted axiom of the legal profession in this Province that, after paying the costs of operating a law office, private practice lawyers are only able to ‘take home’ approximately 50% of their total billings. Busy lawyers generally work about 1,800 per year (37.5 hrs per week x 48 weeks, allowing for vacation and holidays). The Commission’s staff solicitors are expected to work at least 1,710 hours per year, but some unpaid overtime is also expected, so that 1,800 hours may very well be normal for them as well. For a lawyer in private practice to ‘take home’ \$120,000 per year (the ‘equal pay’ comparison) he or she would have to bill out all of his or her services for the entire year at \$133.00 per hour. There are often unbillable cases or ones where discounts or write-offs have to be taken, so the effective rate would more likely be \$140.00-\$150.00 per hour. That is an interesting comparator, especially when one looks at the whole issue of the cost and efficiency of the Commission’s operations on the current service delivery model, an issue dealt with separately and later in this Report.

All of these indicators suggest that the current legal aid rates for certificated outside lawyers are far too low to be attractive or compensable for private practitioners to take on files on behalf of the Commission’s clients. The Commission admits that it often has considerable difficulty attracting private practice lawyers to take on its cases. Occasionally, high profile criminal cases might be taken at the lower rate because the publicity associated with those rare cases may put the lawyer’s name in the public eye, allowing him or her to attract other privately-paying clients as a result of the exposure. But those cases are few and far between. Many criminal law cases fall well below the media’s radar screen. Almost all family law cases are in that category.

Whether or not the choice of counsel by the client remains (as discussed below), or whether only the Commission should decide when to assign a file to an outside lawyer, the tariff must be fair, appropriate and sufficient to attract experienced independent counsel to accept an appointment. The use of issuing certificates to outside lawyers may assist the Commission in solving some of its workload and conflict problems.

The current rates paid by the Commission were last established in 1990, which is 23 years ago. They need to be increased. The only question is establishing the appropriate rates for 2013 and beyond.

According to s. 60 the *Act*, tariffs are to be set in the following process:

Tariff of fees

60. *The law society shall be consulted by the minister or the commission with reference to the tariff of fees to be paid to solicitors under this Act and the regulations in respect of legal aid, the manner and form in which the fees shall be paid and changes in connection with them.*

It is now time for that process of consultation to begin. Some of the analysis above may assist in focusing those discussions.

Since the Commission's current budget is costed on the basis of the current tariff rates, if new higher rates are set, the Commission would consequently require a budgetary increase for that issue alone.

e) Choice of Counsel Mandate

This topic is integrally connected to the 'certificates' and 'tariff' issues discussed above. Some repetition will necessarily occur.

The current legislative regime calls for a legal aid client to be entitled to choice of counsel only the case of charges for murder, manslaughter or infanticide. External counsel from the panel or internal staff solicitors can be chosen by the client in those cases, and experience has shown that an accused often wishes to retain outside counsel for these serious criminal charges (that desire may partially be borne out of the perceived and inaccurate 'quality of service' issue discussed earlier in this Report). There is no indication in the legislation why those three offences only are selected. It should be noted that the highest rates in the current tariff are not tied to the same three types of cases only, as one might have expected, so the rationale for the three types of case limitation is difficult to determine. There are many serious provisions, including the dangerous offender section (which attracts the highest tariff rate in the Regulations), contained within the Canada's *Criminal Code*. Why other offences or applications with serious consequences for the offender (such as dangerous offender applications) are not included in the choice of counsel provision is a matter that must be left to some speculation.

That right to choice of counsel, which was introduced as an amendment to the *Act* in 2007, is perhaps a recognition that some serious charges bring with them additional rights. Otherwise, it cannot be rationalized. As has already been noted, legal aid staff solicitors have significant amounts of experience in handling serious crime defenses. As this Report was being prepared, two staff solicitors from the St. John's office conducted the defense in a controversial murder case, involving forensic evidence and an extensive police investigation. A number of the Commission's staff solicitors have conducted lengthy murder and manslaughter trials in this Province. Those lawyers do not just work in the St. John's area. Some are located in area offices across the Province. They have large amounts of experience in the defense of criminal cases, often more experience than held by many lawyers in private practice, particularly in areas outside of the St. John's region where not many independent lawyers practice extensive amounts of criminal law.

This 'choice of counsel mandate' in the *Act* may even be unwittingly supporting the ill-conceived notion that legal aid lawyers are not 'real lawyers', an issue dealt with earlier in this Report. After all, why would legal aid lawyers not have to be used for all criminal offences if they are fully qualified? Is it that clients who commit lesser offences are worthy of only a lesser service? That type of question should not be a factor and it should not be able to be interpreted as such.

This choice of counsel mandate, in one particular fact situation, was recently before the Trial Division of the Supreme Court in the case of *R. v. Trevor Pardy*. In a preliminary application to the Court, the application lawyer argued that, while the accused had been offered by the Commission a number of staff solicitors who were prepared to act for him on his defense, he claimed he could not form a proper solicitor/client relationship with any of them for various reasons. Since he held a certificate from the Commission which allowed him to choose a private practice lawyer from the panel who then would be paid the tariff by the Commission, he proposed that he was unable to find an experienced counsel on the panel whom he wanted. He did not want a lawyer from the panels. He wanted his own 'favoured' lawyer. Mr. Pardy asked the Supreme Court to order that the Attorney-General pay for his personal choice of counsel at normal market rates. The Commission was a party to that litigation.

A decision on the *Pardy* matter was rendered on November 7, 2013. Mr. Justice Adams, rejecting the application, focused on the fact that the Commission was able to offer Mr. Pardy a number of competent staff solicitors and that the accused's case did not have the exceptional circumstances necessary to invoke the court's inherent jurisdiction to grant access to special legal counsel.

In coming to that conclusion, the court did observe that:

“There was no evidence that competent counsel from the staff of Legal Aid is not available. Indeed, the opposite is true; there are several.

..... I am satisfied that any competent experienced criminal defence lawyer could ensure that Mr. Pardy receives a fair trial. Legal Aid has offered him a choice of such counsel employed by the Commission.”

That decision focused on the fact that there were both a) competent staff solicitors available to act for the accused and b) a number of lawyers on the panel who would be able to act on a person's behalf at the current rate, so the low rate problem became collateral. It was argued by the accused's counsel that the rate was too low, and his position was supported by affidavits and evidence from private practice lawyers attesting to that fact. The court avoided commenting on the issue. The degree of difficulty in obtaining one's 'choice' of private practice solicitor, when only 6 or 7 of the total of 42 on the list were actively participating, was not explored.

This mandated right to choice of counsel is problematic right now for two reasons: firstly, clients are have difficulty achieving a solicitor/client relationship with most outside counsel who are on the panel because the rates are so low; and secondly, the notion of the accused's ability to choose outside counsel in specified cases only helps, perhaps inadvertently, to undermine the confidence that the public has in the quality and skill of legal aid's staff solicitors. Removal of that right from the *Act* would eliminate those problems. The Commission is best able to choose appropriate counsel for an accused person in any type of criminal case.

f) Specialty Offices

Into this category one can include a number of locations that are not normal legal aid 'service' offices: the three Family and Child Offices (FCOs) in each of St. John's, Happy Valley-Goose Bay and Corner Brook, the Mental Health Office in St. John's, the Labrador-based Aboriginal

Project Offices in each Nain and Hopedale (in each of Natuashish and Sheshatshiu there is an employee only, no actual office) and the Family Justice Services (FJS) Office in Central NL. Because ‘Duty Counsel’ issues are dealt with specifically in the paragraphs below, they are excluded from discussion here. Each of these specialty offices does not perform traditional ‘legal aid’ services.

The FCO’s in St. John’s and Happy Valley-Goose Bay were originally opened as novel concepts, funded by the Commission’s earlier budgetary savings which are now running out. The FCO in Corner Brook has been funded from ‘poverty reduction’ allocations annually from the Provincial Government. In 2010, the ‘Effectiveness and Efficiency’ of all three FCOs were reviewed by an academic team from the Gardner Centre at MUN which concluded that stakeholders either ‘agreed’ or ‘strongly agreed’ that the FCO concept was beneficial. These offices have quickly become core to the operation of the CYFS child protection regime now operating in this Province. Members of the judiciary are familiar with the FCOs; their services complement and balance the powerful influence of the Department’s CYFS operations. It is clear that the now balanced child protection system would be significantly impacted if these project offices were to cease operation. They have, like many other aspects of legal aid’s business operations in this Province, become part of the fabric of the court. To eliminate them now, having introduced them initially, would cause significant upset in the administration of justice in these difficult family-related cases. In addition, some of the workload now carried out by the personnel employed in the FCOs would likely have to be carried by other solicitors, most of whom already carry significant workloads of traditional family law files. As judges have often stated, unrepresented parties in any litigation are an obstacle to the smooth operation of the courts.

The Mental Health Office is not a stand-alone function of legal aid. It forms a necessary portion of the work of the Mental Health Court, which by all accounts has had a very successful history of diverting mentally-challenged individuals from incarceration or punishment in the criminal justice system to recovery, better health and the avoidance of ongoing criminal activity. The actions which caused these clients to offend the criminal law are driven more by their mental illnesses than by normal criminal intent. Society in the broadest sense benefits from this enhanced service. It should also continue as a function of ‘legal aid’ in the broader and more modern understanding of that term.

Aboriginal Project staff and offices provide an essential communication, liaison, and translation service to legal aid's Happy Valley/Goose Bay area office and to the FCO in that community. The closer relationship that these individuals, who need legal aid's assistance, have with the justice system is essential for any meaningful representation to exist. To eliminate these projects now would be to further separate the solicitors from meaningful communication with their aboriginal clients. These offices may form only the beginnings of a link to working with the aboriginal peoples in Labrador, but they are a start. They perhaps need to be expanded in scope if we are to begin to properly bridge the divide that currently exists between the justice system and the various indigenous cultures in Labrador.

The Family Justice Service (FJS) Office in Central NL is a total anomaly. It somehow has become associated with legal aid because, by some now-forgotten fact of history, its staff have come under the legal aid payroll. There is no supervision of these workers from the Commission's administration. The relationship is totally artificial. All other FJS office expenses at this location are paid by the Provincial Government under other budgetary allocations within the Department of Justice. All other FJS employees in the Province are managed and funded by the Department. While originally the Commission was granted funds which were allocated specifically to cover these employees' payroll costs, recently that contribution has been eliminated and those costs are currently borne out of legal aid's other staff allocations. There is no rational reason for the Commission continuing to be fiscally tied to this FJS function. This payroll obligation, in fact, detracts funds from an already financially-strapped organization which has other needs that are not being fully met.

FJS Central should be eliminated from any ongoing connection with the Commission.

g) Duty Counsel

Duty Counsel is a medley of services, all predicated on the principle that early access to legal advice improves the delivery of legal service in the community. It provides, in essence, a 'triaging' process for the courts. Legal aid staff solicitors provide advice to anyone who requests assistance, without regard to financial resources, ability to pay or case merit.

The court system benefits from having litigants in family law cases and accused persons in criminal law cases who are aware of their legal rights and responsibilities at an early stage. As noted by all judges and justices interviewed, unrepresented litigants present a significant obstacle to the smooth and efficient delivery of trials and hearings. The public benefits from a system where early and accurate legal advice helps in individual decision-making. Some advice is provided in person at the courthouses (as, for example, at Unified Family Court in St. John's), while some is provided by telephone link rather than in person (as for example in the WASH Court Duty Counsel or the Brydges Duty Counsel). The latter two services are now an essential segment of society's obligation to provide *Charter* protection to members of the public. The Unified Family Court service has been found to be worthwhile and should perhaps be expanded.

All duty counsel services should continue to exist and the Commission must be funded appropriately for the provision of these services into the future.

h) Paralegals

A large number of legal aid personnel interviewed in this review process spoke very highly of the service rendered by legal aid's staff paralegals. They have (or had) been employed in some area offices, at the PDO administrative office and on the three FCO teams. All paralegals employed by legal aid (except one person whose abilities were considered to be equal to those formally trained and was given 'grand-parented' status) hold training certificates issued by recognized learning institutions in the Province or elsewhere in Canada. The duties these employees are able to perform are quite varied, depending on the requirements of the office in which they are or were employed, but include interviewing clients, setting up schedules, performing preliminary research on legal issues, drafting court documents and other job functions sometimes performed by solicitors. Some paralegals have made brief appearances in courts when permitted to do so by members of the judiciary, principally in more remote areas of the Province and only to deal with uncontested or scheduling matters. With salary rates at less than one-half the average solicitor's salary, these employees can, at an attractive wage rate, relieve solicitors from duties which require a lower level of expertise and training, freeing the solicitors to take on more difficult client and court-required tasks. The analogy to the relationship between the Province's LPNs and RNs is compelling, although perhaps not

identical. Assigning work to the employee appropriately trained and skilled is the most efficient use of any organization's personnel and financial resources.

In the spring of 2013, most paralegal positions in the legal aid area offices were eliminated and one position was eliminated in the St. John's FCO. The remaining trained individuals continue to find employment in the St. John's administrative office, in the Mental Health Office and in the two other FCOs.

While paralegal personnel are not always accepted by some solicitors as having a valuable role to play in the legal world, most modern thinking professionals recognize that the combination of a variety of trained individuals, each exercising competencies for which they are adequately trained, can all make a worthwhile and cost-effective contribution to the workplace. It should be for the Commission to decide, working with individual staff solicitors, where these paralegals can be best placed within the organization.

i) Other Operational Issues

Three other challenges or opportunities for improvement, not specifically mandated in the Terms of Reference, would include the hiring of law students, the current intake and appeals process and the use of information technology.

- i) Law Students:** The Commission has an established practice of hiring law students in the area offices during the students' professional articling periods. Section 61 of the *Act* anticipates the role that they may play. These employment positions provide two valuable resources to legal aid. In the first instance, the research and file preparation they are able to perform can assist a solicitor whom is carrying a heavy workload. More importantly, the group of students hired can become a valuable resource in the recruitment of new staff solicitors. While not all students may display an interest and ability in the areas of law covered by legal aid's mandate, the opportunity to find eager and worthy young lawyers from the law student pool should not be missed. While recent funding reductions to the Commission did not suggest that students not be employed or continued in employment, making difficult decisions on where to cut services to the

public can result in this resource pool being avoided in order to retain other staff positions. The Commission should be encouraged to continue hiring law students.

ii) Intake and Appeals: Every prospective client needs to be qualified on the basis of his/her financial need and on the merit of case. The Regulations under the *Act* govern the processes of application and appeal. The Commission has also developed a 66-page ‘*Application Eligibility Assessment and Assignment Policy*’ to guide that process. The financial aspect is reviewed initially by an intake officer applying established criteria. If the client passes the financial needs test, the merit of the case will be then assessed by a staff solicitor to determine if the issue is within legal aid’s mandated subject matters as set out in the *Act* and to ensure that the Commission’s limited resources are expended wisely.

Section 36(3) of the *Act* grants a level of discretion to the Commission on which non-criminal cases to accept in terms of case merit:

(3) In determining whether a person is qualified for legal aid, an area director or the provincial director shall consider the matter from [sic] the standpoint of a usual solicitor and client relationship, taking into account the possibility of success, the cost of the proceedings in relation to the anticipated loss or recovery, and the likelihood of enforcing judgment.

For criminal matters, a person is normally covered on merit issues if charged with an indictable offence, which would include more serious charges generally. Some summary conviction matters are also covered as long as there is the likelihood that the accused person would receive, on conviction, a term of imprisonment or the loss of earning a livelihood (Section 48(1) of the *Act*). There is also an overall ‘catch-all’ provision (Section 48(2)) which allows an individual to be represented “*in the interests of justice*”, which expression has been interpreted by the Commission to cover exceptional factual circumstances only (such as, for example, for an illiterate or intellectually challenged person).

The local area director makes the initial overall determination on whether to accept the client on both financial qualification and, if relevant, case merit. If the decision is made to reject the claim for either reason and the applicant wishes to appeal that decision, the

application then goes to the Provincial Director who reviews the file and makes the second determination. If the Provincial Director rejects the application, the applicant can make an appeal of that decision to the appeals board which is normally made up of 3 members of the board of commissioners (except where one is conflicted out). Subject only to some form of judicial review, which is costly and time consuming, that step is the final avenue of appeal for the applicant. There are two issues within that process that may be problematic.

The time consumed by the total intake and subsequent appeal process is far too long. It often takes months to complete, not just weeks. In criminal cases, that delay impedes the courts and ultimately may affect the course of justice. The Provincial Court is particularly affected by these delays as it is normally the entry point for criminal charges. In family law cases, delay is often very prejudicial to a party, especially where custody and access issues abound, as they often do. In all cases, there are other consequences of delay for both the party and society generally. The trite expression ‘justice delayed is justice denied’ comes quickly to mind.

It has to be understood that in some instances the applicant can be at fault in initiating delay. Many applicants are unsophisticated in gathering evidence of their income, debt and expenses. It takes considerable time to get applicants’ heads around these technical matters when they are not used to dealing with them. Some applicants are reluctant to produce information and to advance their file quickly. Delay to them may be seen as somehow beneficial. If one has not been convicted of an offence, one has freedom and no criminal conviction. So when litigants or accused persons tell a court that “*legal aid hasn’t approved me yet*”, what they may be saying is that they only brought the required information into the legal aid office yesterday, yet the Commission may be tagged publicly with being the cause of the delay. Prospective clients who are initially rejected for legal aid are not always quick to file notices of appeal. If the appeals themselves are rejected simply because of delay, the applicants may choose to make another application for coverage and start the entire process over again. There must be some tolerance for these client-initiated items, but more diligence is required by the Commission in progressing applications for coverage and appeals.

The delays within the Commission's control are more manageable. Reviews of initial area director determinations by the Provincial Director can be and are advanced quickly, but appeals to the appeal board, effectively to the board of commissioners, can be delayed by up to 30 days, depending on when the board is next scheduled to meet, when the appeal was filed and when it was processed by the appeals coordinator.

Three issues come forward from the existing processes:

1. Can the speed within which intake and appeals are processed be improved? Clearly the answer is yes. The courts are complaining of the delays and a more efficient process needs to be developed by the Commission.
2. Does the board of commissioners need to be involved in these appeals? One would suggest not necessarily. While the board may wish to be aware of how the appeal process is working, because of their need to see the number and quality of those appeals as a way of gauging management's decision-making and responsiveness, applicants should not be required to wait up to 30 days for a final appeal to be heard. The current Regulations dictate only that a member of the board must chair the appeal board. Even that requirement is problematic. It is understood that, even if the board wishes to be aware of and engaged in the appeals that are appearing, the transparency issue (next discussed) would direct that this need could be better met by having a member of the board simply serve as a member of that appeals tribunal.
3. Finally, applicants would feel that fairness and transparency is better served by their appeals being judged by an independent body, not by the ultimate 'bosses' of Commission staff, that is, the board of commissioners. Some independence of review would be helpful in establishing credibility to the process. An independent chair would be more appropriate than a chair who is a board member. A three-member appeals panel, with only one member from the Commission, would adequately ensure that independence is maintained yet the Commission is connected to the process of appeal.

iii) Technology: It became apparent during the review process that the Commission is not particularly advanced in terms of its use of and reliance upon modern information and communication technology. One staff solicitor travelling from Labrador and needing to make contact advised that she was, while travelling from her office, unable to access her normal legal aid e-mail account while travelling and, because she did not have a cellular telephone provided by the Commission, she would need to provide her personal cell number for contact to be made. Other employees point out the same challenges that she encountered. Many solicitors use their own personal cell phones and laptop computers while travelling as the Commission does not normally supply them to all professional staff.

There is a sense in this workplace that the absence of modern communication technology (smart phones and laptop computers capable of linking from any location into the Commission's e-mail server) is as much a product of outdated thinking as a lack of financial resources, although undoubtedly the latter is also a factor. Many employees stated that it was their understanding that administration did not trust modern forms of communicating as being sufficiently confidential to fully protect clients' interests. With a group of employees who are often out of their offices or travelling widely throughout the Province, access to information is important to their productivity. If private practice lawyers can use smart phones with their confidentiality intact, and they certainly do, so can the Commission's staff solicitors.

The LAMIS information management system is either loved or hated by the staff who must currently use it. There was no consistency in approval ratings. Some complain that it consumes far too much time to input the requested information; others accept it as an effective and necessary 'evil'. The system was designed specifically for the Commission many years ago. It may now require at least major updating or perhaps even a total renovation. Technology has moved hugely in the past 10-15 years, and user-friendliness is now a core ingredient of most IT systems. There are many off-the-shelf law office management systems now available worldwide that may be more appropriate in this era. Nova Scotia legal aid uses one such system. A comparative review of the current LAMIS system with others readily available may now be prudent.

In remote areas, consideration should be given to the Commission partnering, if possible, with other stakeholders in the justice system to find enhancements, the costs of which can and should be shared, if at all possible. The cost of some technologies is quite high, but sharing is already happening on a more limited basis. For example, the Commission already is permitted to use the RCMP's teleconferencing facilities in some parts of Labrador in order for staff solicitous to occasionally 'meet with' their clients electronically, avoiding costly and time-consuming travel. Having client interviews held at the local RCMP detachment, especially in criminal cases, also creates difficult perceptions about impartiality that may trouble some clients, so care in partnering must be taken.

The Commission and Government should explore other governmental agencies which may already have technology which is able to be shared. Health care facilities in the province have good technology already developed. Other departments and agencies of government may be able to offer partnering opportunities. Duplicating expensive technologies is unwise and should be avoided as long as professional obligations and sensitivities are met for all parties.

j) Coverage

Although not specifically mandated, it is impossible to overlook the issue of the extent of entitlement to receive legal aid benefits in Newfoundland and Labrador. There is much criticism of the current financial qualification threshold. It has been said that, under the current financial tests, the 'working poor' (as defined below) are excluded from coverage.

Many judges emphasize that the greatest problem in administering their courts is dealing with unrepresented litigants. This is especially so in family law cases. An unrepresented party does not know the procedural rules of court, does not understand the differences between acceptable and unacceptable evidence and does not understand the many other nuances of the court system. Judges must try to explain those facets and restrictions as the case proceeds, assisting the litigant as much as possible without crossing the line of impartiality. Cases proceed much more slowly in those circumstances. Access to real justice for the unrepresented litigant is the challenge.

In family law cases especially, separated spouses may not be certain of their fiscal capacity at the time of dispute and so they both may appear without legal counsel. The Family Court Duty Counsel project begins to address that problem, but its application is currently limited to the St. Johns region. Sometimes, litigants apply for legal aid and are found not to be within the financial guidelines set down by the Commission, yet they cannot really afford to hire a private practice lawyer at market rates. They are the group of residents often called the ‘working poor’ and were identified as being disadvantaged in the excellent brief provided to this Review by the *Provincial Advisory Council on the Status of Women in Newfoundland and Labrador*.

For the purposes of this Review, it is not necessary to examine the details on where applicants are financially entitled to receive legal aid and where they are excluded under the current guidelines. The challenge is coming up with an opportunity that can offer legal service or advice to more citizens, yet still be affordable.

If the solution is to enlarge the group who are entitled, by opening up the financial limits with higher income levels as the threshold, then more staff will have to be hired because the system does not currently have sufficient capacity to fully represent those new applicants. The incremental costs will be significant.

The amount of growth and the attendant costs may depend on the type of service that is to be offered. In Nova Scotia, this challenge has been tackled through the introduction of a new category of service called ‘Summary Service’ which is a level of service higher than duty counsel assistance but less than full representation, which are the two options currently available in this Province. Under Summary Service, the client receives advice and direction from a staff solicitor on how to conduct the case, together with negotiating advice (if appropriate) and direction on how to adduce evidence in a courtroom setting, including sometimes advice on the probable outcome of the case, but the lawyer does not actually represent the client in court. The litigants are, however, better able to represent themselves in court than they would be without receiving such advice. This ‘half a loaf’ approach is one option.

Creating a two-tiered system may not be the best solution to the problem of inadequate coverage and unrepresented litigants, but it may allow scarce resources to be applied more broadly to

additional cases to benefit more individuals who are in need of help. The door should be at least open for discussion on how to increase and improve delivery of service and broaden the scope of the legal aid system.

k) Alternate Service Delivery Models

Once again, while not specifically mandated in the Terms of Reference, it would be remiss to not consider whether other models for delivery of service might be appropriate. The primarily staff solicitor model (i.e., the current provincial program) could be replaced by a more blended model which used a mixture of private practice lawyers and staff solicitors in a regime still administered by the Commission (as is the case, to a limited degree, in Nova Scotia), or it could be replaced with a model based entirely on the use of private legal counsel, but once again with the regime being administered by the Commission. Under all three models, there would continue to be a need to administer the program; accordingly, significant administrative costs would still have to be incurred.

Having visited members of the judiciary during the course of this Review in most locations where the Commission has its area offices, and having discussed with them the small number of private lawyers practicing in many of those areas, it is clear that the ability to source sufficient numbers of private practice lawyers to take on the quantity of files equal to those now carried by staff solicitors would present a huge challenge, both in any transition and thereafter. In many rural areas, finding lawyers who have a reasonable amount of experience in and knowledge of criminal law and family law would be difficult. As one judge (not in the St. John's region) observed: *"In our court, over 90% of the cases before us involve either criminal law or family law; and in those cases, over 90% of the lawyers who appear before us are legal aid staff solicitors."* There is no large pool of lawyers available to take on this additional work, other than perhaps in the St. John's region where the number of lawyers in active practice is significantly higher. In the Marystown area, for example, where Law Society records indicate that there are only 5 lawyers who currently operate private law offices, the departure of the sole legal aid staff lawyer would create a huge gap to fill. One cannot assume that all of the 5 available private practice lawyers would be interested in taking on legal aid files, or that the staff solicitor would remain as a private lawyer in that community. In Western Labrador, where the

Commission also employs one staff solicitor, there are only 3 other lawyers in full-time practice to take on the work of the Commission. Those lawyers already have busy practices. It cannot be assumed that they have a desire to expand their practices into legal aid matters.

The issue of supply would also be aggravated if the tariff remained at rates not considered to be compensatory. No private practice lawyer would be able to maintain a law practice relying significantly on current rates.

The remaining question is the cost of operating a different service model. The cost of the current model needs to be compared to the cost of an alternative to determine affordability.

For the purposes of this Review, the Commission has determined the hourly cost of delivering legal aid service in all of its area offices (Appendix K). Because of efficiencies or economies of scale that might be available in some areas and solicitors' salary levels which can vary significantly from office to office depending on the seniority of the staff solicitors, the hourly cost of service in 2010-2011 varied from a low of \$99.00 per hour at the St. John's Conflict Office to a high of \$186.00 per hour in the Marystown office, with other area offices combining to create an average hourly cost of \$135.00. Current 2013/14 costs would be somewhat higher.

Even if an adequate supply of private practice solicitors could be found in some or all locations, the savings under this regime would not be significant if the hourly rates to be paid to private practice lawyers were close to the rates needed to create successful law practices for those lawyers who were interested in performing mainly legal aid work.

For this simple analysis, the cost of operating the administrative function is excluded as it would be assumed to be about the same under either regime. Some functions like intake and conflict resolution would continue to be required, but different functions might have to be undertaken under a different model to ensure that an acceptable level of quality service was being provided when oversight of a multitude of independent solicitors was required.

Based primarily on the lack of availability of legal counsel skilled in criminal and family law, but also on the lack of significant savings, it is impossible to recommend that alternative model.

A blended model, where external counsel were used more often than currently, but less than 20-30% of the total cases carried by the Commission, may offer some opportunities for improved service. Conflict cases are the obvious place where this model should first be examined more closely to see if savings and/or overall improved service can be found. Having additional private practice lawyers available to assist in times of highest workload for staff solicitors or to be retained when staff solicitors are from time to time in transition, as happened in Gander last summer, would be another opportunity to use a more blended model. This model will only work, however, if the tariff becomes more attractive.

Once again, the need to examine more closely the full cost, the availability of willing outside counsel, and the full advantages or disadvantages of other service models suggests that any recommendations made from this Review can only be an initial step.

4. Review and Analysis of Current Administrative Model

The Commission's current administrative model is driven mainly by the legislation and by its historical development. As has already been said, the support systems that are in place are those required to direct and manage a service delivery model that primarily utilizes staff solicitors to represent clients. The administrative office, locally called the 'Provincial Director's Office' or the 'PDO', is located at 251 Empire Avenue, St. John's. It oversees the work carried out in all of the Commission's area and project offices.

a) Management/Executive Structure

The Board: St. John's lawyer Nick Avis was appointed and serves as chair of the board of commissioners; lawyer William Collins (recently retired from private law practice) and retired civil servant John Jenniex are also serving as appointed commissioners. The fourth and fifth most recent appointees, Katie Riche and Christa Gillam, have not been active commissioners for a number of years, although Ms. Gillam continues to take on specific tasks from time to time at the request of the Commission, such as recently serving on the selection committees for the new Provincial Director and Deputy Director positions. Until his appointment to the bench in 2012, former Deputy Minister of Justice, Donald Burrage, as ex officio member of the board had appointed Assistant Deputy Minister Donna Ballard to serve as commissioner in his stead. During the timeframe of this assignment, Ms. Ballard was appointed as CEO of the Labour Relations Agency and has been replaced on the board by Todd Stanley, a new Assistant Deputy Minister of Justice. Until his retirement in September 2013, the Provincial Director of legal aid for 37 years had been Newman Petten. He was replaced by Nicholas Summers, a former Deputy Director, who now serves as ex officio member of the board.

Because of the small number of active Commissioners, there has been only limited governance that the current board has been able to undertake. At monthly board meetings, management regularly reports on activities and issues as they may arise, seeking direction where necessary. Monthly financial reports to the board capture only the high-level numbers (Appendix C). Board members are actively engaged in the appeals process, reviewing management's decisions to deny

legal aid to applicants. As a result, the Board's monthly meeting agenda only consumes approximately one-half of a business day, with the appeals process occupying the remaining time. There have been no standing committees of the board, only ad hoc committees formed for specific and limited assignments, which occurred a number of years ago for the design of the Commission's performance management system. That is not to say that the existing commissioners have not added some value to the functioning of the Commission, but their contribution could, of necessity based on size and structure, only be relatively small in terms of governance oversight.

The final appeal level in the intake process is a valuable step in the determination of who is entitled to receive legal aid, but it is not necessarily a function which is required to be performed by board members. Their skills could be better used for other governance functions, such as providing more aggressive financial oversight, designing risk management protections, or assisting in policy development and renewal. The whole communications aspect of the Commission's valuable but misunderstood public service has not yet been able to be explored.

The existing active commissioners have either a legal background (2 appointed members and both ex officio members) or a civil service work experience (1 appointed member). There is no member currently appointed holding specific financial management or human resources backgrounds. No current member appears to have significant other corporate board experience. Appointing members with diverse professional and personal backgrounds can add measurable value to a board's deliberations.

A larger board of commissioners would enable more governance activities to be undertaken at this executive level. Corporate boards typically have a number of committees made up of three-five members each, which committees then undertake specific assignments on behalf of the board, such as human resource policy and development (employee performance, succession planning, etc.), audit and financial reporting (financial statement critical analysis, internal audit controls, etc.) and corporate governance (operational risk management, etc.). The Commission would benefit from a larger board which could make a greater contribution to the functioning of legal aid.

In the neighbouring jurisdiction examined during this Review, Nova Scotia has a very large board, described on their website as follows:

“The Commission has 17 Directors, 2 of whom are non-voting members selected from the public service. All other Directors are appointed by the Provincial Governor-in-Council; 8 are nominated by the Minister of Justice (Attorney General) and 7 are nominated by the Council of Nova Scotia Barristers' Society. One of the Directors is named as Chair. The Directors need not all be lawyers; they represent all geographical areas of the Province, serve three-year terms and may be reappointed.”

This is not to suggest that another province's model need be adopted entirely. A very large board, such as in Nova Scotia, brings with it additional meeting costs and complexity in scheduling meetings. A more modest-sized board would be quite acceptable and could still add great value to the administration of the Commission's services.

One final comment needs to be made. The current board chair has served faithfully for many years. He is passionate about the importance of legal aid in the legal community. He has been retained from time to time by the Commission to represent it or its clients in limited court cases because of his skills, his fervent interest in the objectives of the Commission and because he has wanted to set an example for other members of the bar, encouraging them to participate. While these objectives are laudable and there is no suggestion of improper benefit to him personally (in fact, at the current tariff rates, the opposite might be more accurate), the chair of the board should not be engaged in the business of the corporation. Good governance requires independence in thought and perspective from the business affairs of the corporation.

The Administrative Office (the ‘PDO’): The Provincial Director, as stated before, has far too many employees reporting directly to him. While he must retain responsibility for the 11 area directors, the Deputy Director and the two Senior Solicitors, other less senior administrative positions could and should report to other head office personnel so that the workload is properly shared at this executive level.

As indicated earlier in this Report, the Commission has a complex governance structure at its head office. The model which the Commission had utilized prior to the spring of 2013 anticipated a Provincial Director leading the organization, assisted by two Deputy Directors - one

with administrative responsibilities and one responsible for legal matters, both of whom reported to the Provincial Director. Now there is only one Deputy Director. There were other staffing reductions at the same time, with additional positions being either deleted or duties modified. The organizational model in effect when this Review was commenced is shown in Appendix L. Like the earlier version, it is not a particularly appropriate model for modern governance of this type of organization.

Administration of a large organization includes an internal communication or education role that must be better managed here. Staff solicitors, who work for clients and do not have any administrative functions, often fail to see or lose sight of the role that the administrative level brings to an organization. It is obvious from comments made by some staff solicitors during this Review process that they do not understand or appreciate the role that senior management plays in their workplace, especially in the context of it being a Crown-funded agency. The financial audit function, which is carried out annually by the provincial Auditor-General's office, is a far more time consuming process than it would be if performed by a private auditing firm for an industrial enterprise. Provincial auditors can be present at this workplace for many weeks, consuming valuable time of the senior administrative staff while these auditors perform their important review. Annual budgets, reports and planning documents which are required by Government need to be prepared, reviewed and presented as they are necessary in order to receive government funding. Staff does not often see the amount of time consumed by such functions, nor do they always understand why such activities need to be undertaken or how they add value to the Commission's functioning.

Fortunately and unconnected to the Review, there is a currently a dramatic change in senior management happening at the Commission arising from retirements and new appointments. It is clear that the newly-appointed Provincial and Deputy Directors both have their sights set on changing the organization's governance model. They should be allowed an opportunity to initiate their own changes and see if efficiencies can be achieved. The model that they are currently working on (Appendix M) is far more functional. It may not be the final version they settle on, but it is a significant improvement over the past and they are clearly on an improved path.

b) Hiring Processes, Review and Performance Management

The Commission hires its own staff solicitors, other professionals and support personnel using the basic recruitment and interview processes adopted by the Province's Public Service Commission (PSC), although the Commission acknowledges that its own processes are not always identical to those of the PSC. Job postings are normally offered internally and externally, where appropriate. Newly hired employees or those promoted to higher positions are subject to a probationary period of employment for one year. Employees who are on probationary status are subject to a review of their performance every 3 months while on probation. An employee whose work performance or attitude requires closer review will be mentored for improvement and, ultimately if necessary, either terminated or returned to the former position if a promotion had been involved. The Provincial Director and the Deputy Director are both currently serving in their probationary periods.

All employees are subject to an annual performance review and staff solicitors also are subject to an annual file review done in advance of their performance review. This performance management process has been phased in over the past 4-5 years. The regime was instituted after development by the board of commissioners in consultation with advice from the Gardiner Centre of Memorial University. It is a robust regime generally, but it currently lacks one important ingredient. It does not involve any review of clients' views and opinions of their solicitor's performance. Management is aware of that deficiency. Surveying clients can be a challenging task, especially in some criminal law cases or in fractious family laws cases, but the right questions to clients will elicit important information about how a solicitor has performed. Building a solid client relationship is one part of the necessary work of managing a legal file.

Area directors are responsible for performance reviews on their subordinates. Area directors themselves are reviewed by the Provincial Director. Other head office reviews are performed by their immediate supervisors. The performance review of the Provincial Director is the responsibility of the board.

An annual file review is a separate performance indicator. Area directors or a manager from the PDO randomly selects 10-15 files per solicitor, incorporating criminal and family cases if a solicitor works in both disciplines, to ensure notes are being appropriately kept, clients are being

consulted and involved in decision-making, important deadlines are being achieved and the solicitor is making appropriate use of the LAMIS system. If that review indicates that the solicitor may be experiencing failure on important issues, a senior solicitor will perform an audit of all of the files then being carried by that staff solicitor. A more in-depth practice review will follow and more remedial (including disciplinary) action can be taken. This detailed file audit process has only been performed 4 or 5 times during the past 7-8 years.

Some area directors have expressed concerns that, especially in smaller offices, it is difficult to conduct a candid review of their co-workers, some of whom may have more working or professional seniority than the area director who is performing the review. Support should be given while this role is being learned (there are only very limited management skills taught in Canada's law schools), but ultimately managers must manage. An area director who cannot accept the responsibility to supervise personnel should not be left in that position of management authority.

It is apparent that the current senior administrative staff are fully aware of their responsibilities in providing a high level of performance management. More integrity needs to be provided to eliminate some of the client complaints raised and noted earlier in this Report. At least in the short term, the Commission may require additional financial assistance in bringing this functioning to a higher level.

c) Corporate Services

As a Crown corporation, the Commission is required to: a) maintain financial and corporate documents and records; b) have employment processes in place to provide that its staffing requirements are met; and c) develop appropriate policies and guidelines to ensure that its corporate objectives are achieved. These objectives are the responsibility of administrative or head office employees.

At the Commission's head office, the PDO, there are 20 employees who currently work at these objectives. There were at least 6 additional employees whose positions were eliminated early in 2013. It is not apparent that the current Management Committee desires to replace all of those

positions, as restructuring is currently being considered, but additional personnel may be required to ensure that the Commission achieves all of its corporate objectives.

i) Human Resources

The Commission has a total of 126 employees, of which approximately 60 are solicitors or other professionals. Only 1 of those solicitors, the Provincial Director, is exclusively engaged in administrative functions. Those employees are dispersed over more than 20 business locations. This is not an easy model to manage from a human resource perspective. The FJS Central NL office is excluded from this count because the Commission has had little interaction as ‘manager’ in that enterprise.

In a 2011 report to the Commission, Pat Angel, an independent human resources consultant, recommended the creation of a new human resources department within legal aid’s administrative office, which department would have four new positions: Manager HR, Benefits and Leave Administrator, HR Programs Coordinator and HR Analyst. No action has been taken on that report because funds were not available to institute the changes and hire the additional staff. That recommendation would be considered as creating a high functioning human resources department at the Commission. The lack of a more developed human resources capacity at this time is evident in the current functioning of the human resources division. The lack of up-to-date human resource policies is cited as just one example of the consequences of insufficient personnel in this division.

The current human resources component of the Commission comprises a total of 5 employees, one manager and 4 payroll/accounting clerks. The payroll function is adequately managed and operating smoothly. The supervision of those 4 clerks is easy to achieve. Corporate human resource management normally involves much more in planning and foresight, including developing recruitment and retention policies and practices, high disciplinary and performance standards, and a risk management system to deal with the consequences of vacancies, to name just a few. Providing appropriate levels of human resources support beyond the minimum standards will be a challenge for the Commission in the immediate future, unless an opportunity for growth in that department occurs. The incumbent human resources manager is now undertaking a training course to achieve a

professional human resource management designation, but before that level of education and performance is achieved, that employee's skills must be considered as limited. The former Provincial Director clearly had dominance in that area in the past. The current Deputy Director may be able to offer additional support to that department in the interim, but the HR function should be considered as under-resourced at the moment.

It is clear that appropriately managing personnel issues has been a challenge for the Commission. In the spring of 2013, the retirement of a senior solicitor from one area office attracted significant media attention and some public criticism. As this Report was being prepared, there was litigation underway in the Supreme Court involving the termination of a former staff solicitor where wrongful dismissal has been alleged. The outcome of that litigation is unknown and the fact situation may have developed in any event. It is reasonable to conclude, however, these matters may have been avoided or at least affected by a more robust and effective human resources regime.

ii) Financial Management

As with the human resources function, day-to-day financial management at the Commission has in the past been the primary domain of the Provincial Director who held demonstrated financial skills developed over his entire working lifetime. The Commission has in the past received unreserved audits from the Auditor-General, although it is noted that the audit process is not up to date. The 2010-11 financial year audit was only being performed in 2013.

The new Deputy Director holds a professional chartered accountant designation. She will bring to the Commission the knowledge and ability necessary to appropriately structure and oversee the finance department. Under the proposed corporate reorganization, the staff accountant and others in the accounting department will report directly to the new Deputy Director, as opposed to the Provincial Director.

The Commission's own operational budget being tied to the Provincial Government's budgetary planning process creates its own distinct issues. The Commission and the Government share the same fiscal year, that is, April 1 to March 31. The provincial

budgetary process begins in the fall of the prior year. Normally, the Commission proposes its own needs and opportunities for growth and suggests increases in its operations, which requirements are reflected in its budgetary proposals to Government. There normally follows an exchange of information between departmental representatives and the Commission over a period of some months where the various proposals may be explored and discussed, but no certainty is achieved until Government introduces the Spring budget in the House of Assembly, where the amount of the annual grant is finally established. Details of the approved amounts come later in the whole process. It can be many weeks after the Provincial Budget is released before the Commission is fully aware of the details of its approved funding.

This Provincial budgetary process does not take into consideration the Commission's real need to understand on a more timely basis what financial resources will be available. Timing is important so that the Commission can, for example enter into new leases for those that may be expiring, recruit law students who are being pursued during the fall and early winter by other prospective employers, or make arrangements for large meetings of staff when hotel conference rooms must be booked many months in advance. There may be no answer to this dilemma, but an understanding of the problems created by the budgetary process is essential for Government to understanding how the Commission sometimes has to function without knowledge of its financial future. Private law firms would not have this additional challenge.

The Commission has experienced considerable difficulty in the past in the collection of its accounts receivable from clients who have entered into agreements to make a contribution to their legal costs. There is little engagement by the staff solicitors on these files to assist in collection while their files are active. In private practice, the lawyer with carriage of the file would be required to be diligent in assisting on such collections, principally because the lawyer's income would depend on the recovery of those fees. While the legal aid file is ongoing and even after it is closed, the Commission's clients are not being pursued actively enough to recover a reasonable percentage of their contractual obligations. Only one Commission employee is assigned on a part-time basis to attempt collection of these debts. The level of recovery, currently at about 10% of total debt, is smaller than should be expected, although larger than normal commercial write-offs could be anticipated from these

clients, many of whom are already financially-challenged. This process of creating unrecoverable accounts receivable may need to be eliminated, entirely re-thought or given far more diligence in collection.

iii) Policy Development

The Commission's current Policy Manual contains three categories of corporate policies, identified as 'Operations', 'Administration', and 'Personnel'. All current policies are dated as having become effective in September 2004. There have been no revisions or updates.

In the Operations section, there are 7 written policies in place and 3 shown as being "In Progress". The existing policies govern mainly professional issues involving the solicitors' work, including Conflicts and the Solicitor-client Relationship. The incomplete policies are intended to cover related issues including Client Communications and Provision of Services in Circuit Court Areas.

In the Administration section, there are 18 written policies in place and 10 stated to be "In Progress". The written policy statements cover a diverse group of policy objectives, some of which might more properly be included in the Personnel section (Occupational Health and Safety, Meeting-Provincial Staff, Paid Leave Procedure, etc.) The incomplete policies include those to be entitled Search Warrants, Travel Rules, and Archiving of Files.

In the Personnel section, there are also 18 written policies and 10 stated to be "In Progress". The written policies involve normal employment-related issues, including Leaves of Absence, Discipline, Grievances (as appropriate in a non-union environment), and Oath of Office. The incomplete policies would cover important items including Overtime, Recruitment and Hiring Procedures, and Probationary Employees.

Because there have been no updates or additions to these policies since 2004, it is clear that the Commission has been unable to address the outstanding policy objectives that have been "in progress" for almost 10 years. The updating of the existing 2004 policies is also an important but unpursued activity. The addition or renewal of policies is, however, a very time-intensive process which should ideally often involve the board and the Commission's

staff working together to ensure that all policies necessary to operate the business and protect the Commission are relevant and up to date. Finding both the necessary time commitment and the appropriate human resources to develop and complete the intended policies has been unachievable for the Commission.

d) Funding

Annual funding for legal aid is made up of various grants and contributions from three primary sources:

- i) **The Federal Government**, through inter-governmental arrangements with the Provinces, provides annual grants for the operation of legal aid in all Provinces. Those funds are paid to the Province, rather than directly to the Commission, and then become part of the total funds advanced annually by the Provincial Government.

The Federal contribution level has been fixed for a number of years, based on a formula using population as a source for determination. Since the Commission has no interaction with the Federal Government on the amount of this grant, it has no ability to lobby for additional funding or to impact the decision-making formula. It must rely on the Province to undertake that task. Because the amount has not increased annually, it has been a declining percentage of an annually increasing budget.

In the 2013-14 fiscal year, the budgeted Federal contribution is \$2,826,935 which constitutes approximately 21% of the Commission's total approved budget of \$13,487,100 (Appendix C).

- ii) **The Provincial Government** is the prime contributor to legal aid. Grants from the Province can be, as evidenced in the Provincial 2013 Budget, subject to the availability of funds in the hands of Government, an issue entirely beyond the ability of the Commission to predict, anticipate or control. So-called 'sustaining funding' is not always as predictable as the name suggests.

In the 2013-14 fiscal year, the Provincial contribution is \$10,067,165 which is approximately 75% of the Commission's total approved budget (Appendix C).

iii) The Law Foundation of Newfoundland and Labrador receives as revenue the interest which all lawyers' trust accounts (monies they hold for clients) would otherwise generate in bank or trust company deposits. These revenues are paid to the Foundation by the banking institutions instead of being paid to the lawyers who hold those trust accounts. In recent years, the Foundation's revenues have been significantly lower than historically experienced, primarily because interest rates have been inordinately low as compared to, for example, the 1990's when double-digit interest rates were being paid on deposits. The current rate of interest recovered on trust accounts is only in a range from 0.25% to less than 1.0%, depending on the institution providing the service and the amount of funds in the lawyer's trust account.

The Commission receives as an annual grant two-thirds of the net annual revenue of the Law Foundation. For reasons unknown to the Commission, huge fluctuations have often occurred in the past annual grants from the Law Foundation. In 2009, only \$88,000 was paid to the Commission, yet one year earlier in 2008 almost \$730,000 was remitted. Historically, the annual grant has ranged from a low of \$69,000 in 1997 to a high of \$1,126,000 in 2000.

As a result of these major fluctuations and the Commission's inability to predict what the amount will be, the Law Foundation's grant to the Commission has sometimes exceeded the funds budgeted for in that year. If the funds were not required to sustain the Commission's annual operations in that year, they were allowed to accumulate. In recent years, the Commission has budgeted annually for \$300,000 from the Law Foundation on an understanding with Government that, if the amount actually received is less than that amount, Government will make up the loss; if the amount received was more than budgeted, the excess would become part of the reserve funds that were being carried by the Commission. The result was that a reserve fund in excess of \$4,000,000 was once held by the Commission. Those excess monies have since been used in the years following to hire additional staff not specifically budgeted, to fund various new projects

or to support other functions not specifically funded by Government's annual operating grant. Those reserve funds are almost entirely depleted as of 2013. The consequences of the elimination of this pool of funds will be detailed later in this Report.

The Law Foundation has long advocated a reduction in its annual contribution to legal aid in this Province. The Foundation wishes to retain a larger amount of its annual revenues to allocate to its other worthy objectives, including scholarships and other educational initiatives. A submission was made by the Foundation to this Review requesting that the statutory allocation be reduced. In place of the current formula requires that two-thirds of the Foundation's net annual revenues be paid to the legal aid fund, the Law Foundation proposes that the annual grant be set at \$150,000 or 50% of its available funds, whichever is lesser.

In the 2013-14 fiscal year, the Law Foundation's contribution is estimated to be \$300,000.00 which if received would only be approximately 2% of the Commission's total budget (Appendix C).

Other Sources of Funding: The Commission's budget reveals two additional small sources of revenue.

The total category entitled 'Client Contribution & Interest' is budgeted at only \$95,000 for fiscal year 2013-14. The breakdown of each source is not given, but interest would be expected to be quite small, given current low deposit rates at banking institutions. What is more interesting here is that the Commission only budgets to recover a very small portion of the revenue that it initially anticipates from its clients' contribution contracts, as discussed earlier in this Report. Clients often make only one or two contributions to their service cost, yet even though they become delinquent in making subsequent payments, the legal service continues to be rendered to them. Once the file closes, little money is ever recovered.

While the Commission's balance sheet for October 31, 2013 shows an Accounts Receivable balance of almost \$1,200,000.00 and an Allowance for Doubtful Accounts of

only \$278,000.00 (a 23% write-off allowance), for the same fiscal period, it budgets only for the recovery of less than \$95,000.00 (Appendix C).

Current Funding Challenges

Two unusual challenges now arise for the Commissions in its quest to secure annual funding which is adequate to sustain its current level of operations.

1. Certain salaried positions have not been funded under the approved annual budget, thus they are not funded by the annual Provincial grant. The cost of these positions has been paid annually out of one or both of the two following sources:
 - i) the accumulated funds from past Law Foundation grants, or
 - ii) other internal savings from the Commission's past operations (such as when positions have been vacant for a fiscal period, yet funds were approved for that entire period, or when a position was funded at a higher salary rate but the employee who was ultimately hired was less senior, and was thus paid at a lower salary level).

The salaried positions currently affected by this non-renewable source of funding, and who will not be funded in the future without an increase in the Provincial grant, are:

- 1 staff solicitor position in the St. John's Empire Avenue area office
- 1 staff solicitor position in the Elizabeth Avenue (Conflict) office
- 1 conflicts/appeals co-ordinator position in the PDO
- 1 paralegal position in the PDO
- 1 receptionist in the PDO
- 1 systems analyst in the PDO
- 1 accounts clerk in the PDO
- 1(almost) full-time support person in the Marystown area office
- 1 staff solicitor in the Corner Brook area office
- 1 human resources manager in the PDO
- 2 staff solicitor positions in the Family Court Duty Counsel Project
- 1 client services officer in the Family Court Duty Counsel Project
- 1 records (IT) technician in the PDO

2. As mentioned throughout this Report, the Commission's operations are currently under considerable strain. A significant number of positions were eliminated in the spring of 2013 due to necessary fiscal restraint. Many of those positions, perhaps not all, need to be put back into the organization. For example, the Deputy Director Legal needs to be reinstated in the PDO. Because of huge workloads, there is an immediate need for an additional staff solicitor in the Stephenville area office plus as many as four additional staff solicitors may be needed to assist in other locations. The St. John's and Stephenville area offices require additional administrative support staff. Whether the intake officer at the Provincial Court needs to be reinstated is an issue that management can best determine once a review of the entire intake process is complete.

Without the ability to secure adequate annual funding for many of the positions identified in paragraphs 1 and 2 above, the Commission believes it will not be able to achieve all of its mandated and current services. It takes the position that a loss of so many staff positions will materially affect its service levels. The extent of the deficiency is so great that some services to clients are already being delayed and some programs may have to be reduced and/or eliminated entirely unless adequate support staff are available.

It is impossible to disagree with that conclusion, given the large number of staff positions involved. Laying blame for the consequences of past decisions will not solve the problem. Finding efficiencies, finding new revenues or curtailing services are the only available options. Management of the Commission is best able to find efficiencies and determine exactly which positions are essential to the delivery of service. Curtailing services to the public should be avoided, if at all possible.

5. Recommendations on Changes to Legal Aid Services

The social context within which this Review is mandated was expressed succinctly by the Minister Marshall's statement which accompanied the release of the Terms of Reference. In that statement he noted:

“Ensuring that our legal aid system continues to successfully meet the varied needs of Newfoundlanders and Labradorians solidifies the public’s confidence in the province’s justice system.....Our ultimate goal continues to be ensuring that all residents have fair and safe access to legal services throughout Newfoundland and Labrador”

(Emphasis is added)

The difficulties experienced in the delivery of legal aid services in Newfoundland and Labrador are not unique to this Province. In fact, the challenge to deliver quality legal services to the general population has been the subject of many discussion groups and studies throughout Canada. The Canadian Bar Association (‘CBA’) has been engaged for a long period of time in studying the role that legal aid plays throughout Canada within the whole spectrum of access to justice. Two fine working papers, one entitled ‘*Future Directions for Legal Aid Delivery*’ and one entitled ‘*Towards National Standards for Publicly-Funded Legal Services*’ were published by the CBA in April 2013. Those papers were authored by a working group of 8 individuals from across the country. A more broad-reaching report entitled ‘*Reaching Equal Justice: An Invitation to Envision and Act*’ followed the two April studies and was released in August 2013.

A very useful analysis of some of the current challenges was captured in CBA’s April 2013 discussion paper ‘*Future Directions for Legal Aid Delivery*’, which made the following insightful comments about the public being served by the legal aid system and the difficulties faced by those who attempt to deliver it:

“Regeneration and renewal requires more than just meeting budgetary targets. Legal aid must be based on a solid understanding of the legal needs and daily realities of people living in poverty, so services address the real constraints that marginalized and disadvantaged people live with. A comprehensive policy approach to regenerating and renewing legal aid is required, to ensure that every innovation is directed to attaining a more principled vision of equal justice. Even small steps are important if they are consistently directed toward that common vision.”

This Review has had a short mandated time limit. It has not been able to consider in detail all of the myriad and complex policy issues which confront the delivery of legal aid within this Province. To expect it to do so would be unrealistic. These issues have confounded lawyers and legal academics throughout Canada for a number of years. The country has yet to see a final and unified vision on the future delivery of legal aid service.

Compounding the normal complexities of delivering a comprehensive and efficient legal aid program is the obligation to ensure a strong service to our aboriginal communities. The delivery of a culturally-relevant service brings unique challenges arising from their lack of comfort with our entire western-based system justice. Equality of service in that context may not mean ‘the same service’ for all. That issue alone is worthy of individual study.

With a vision of equal justice in mind, however, and recognizing the time limitations within which this Review was commissioned, this Report turns to make recommendations (perhaps the CBA’s “small steps”, referred to above) with the hope that they are consistent with a vision of improved service to those who require legal assistance in their lives from time to time, but do not have the fiscal capacity to hire an independent private practicing lawyer using their own funds.

One must also not forget, however, that many of the modern law-related services supplied by the Commission’s many employees, like the various duty counsel services, the Mental Health Office and the three Family and Child Offices, are not rooted in origins based on insufficient financial ability to hire a lawyer. All residents of this Province, regardless of their financial means, are entitled to avail of these services, when and if required. That is a departure from the original vision for legal aid, but it appears to hallmark the way into the future.

Finally and as stated previously, the legal aid regime in Newfoundland and Labrador is now an inextricable facet of the Province’s judicial system. To reduce any service already provided by the Commission would be to impact the costs for and the efficient operation of the courts. A reduction in service from the Commission will likely create a concomitant increase in operational costs for the courts. In that scenario, finding overall savings for the Province may be difficult, if not impossible.

The current service delivery model, where reliance on staff solicitors is the prime method for providing legal advice and representation, is an efficient and workable model for our Province at this time. Greater reliance on the work of private practice lawyers to supplement the efforts of the Commission's staff solicitors may present an opportunity for improvement, as for example, in the management of conflicts of interest; but total reliance on private practice lawyers to provide a province-wide legal aid system is not an efficient or workable option at this time, given costs and availability of an adequate number of practitioners holding the requisite skills and experience.

a) Enhanced Services

- i) **Tariff:** *It is recommended that the process of consultation with the Law Society now commence to bring tariffs to a currently acceptable level.* A reasonably-sized panel of independent legal counsel cannot currently be found who are actively willing to accept files at the present tariffs. Some guides to appropriate levels of tariff are provided within this Report, but the precise levels should be set in those consultations. Adjusting the tariff is a process which statutorily involves the Law Society. Setting a scale of rates for various levels of lawyer seniority and/or for various types of cases, to make acceptance of legal aid work more attractive to a broad range of private practice lawyers, must be the objective.

- ii) **Projects:** *It is recommended that consideration be given to: a) funding Family Court Duty Counsel on a permanent basis, and b) extending a comparable service to other locations where similar family law issues come before the Supreme Court.* The Family Court Duty Counsel project has been proven as beneficial to members of the public who are unable to attend at the Unified Family Court in St. John's with their own paid legal counsel. A recent (September 2013) study entitled '*Report of the Evaluation of the Family Division Duty Counsel Project*' from Goss Gilroy, Management Consultants, fully assessed this service and found to be successful.

To offer this valuable service to residents in one location and not make it available to others who live elsewhere in the Province would be an unfortunate outcome. Service

levels (for example, full-time or part-time service) may, however, need to vary depending on the location and the demand, but the ability of the public to access family law duty counsel services should exist throughout the Province.

b) Maintained Services

- i) Existing Core Legal Aid Services:** *It is recommended that Government seek from the legislature sustaining funding to ensure the continued operation of core legal aid services with adequate staff support to maintain a high level of quality.* The continuation of core legal aid service, such as the 11 area offices and the various duty counsel services provided to the Provincial Courts, is vital to the smooth and efficient administration of justice in the Province.
- ii) Existing Projects (services not included above):** *It is recommended that Government seek from the legislature sustaining funding for these existing programs operated as projects by the Commission.* (This recommendation would not include the FJS Central NL project office referred to separately below). These projects may be in jeopardy arising from deficiencies in funding. A failure to provide that funding and a reduction in the number or extent of these projects is likely to result in increased costs elsewhere in the Province's justice system.

c) Reduced Services

- a) 'Family Justice Services (FJS)' Office - Central NL:** *It is recommended that payroll and management responsibility to supervise the staff of Family Justice Services Central NL office be transferred from the Commission to a department of Government.* There is no clear and convincing rationale why this activity is operated under the auspices of the Commission. It is, simply put, not a core or even ancillary function of the legal aid program to operate such an office, particularly in light of the fact that other similar FJS offices are operated fully by a department of Government without the engagement of the Commission.

b) **Choice of Counsel Mandate:** *It is recommended that consideration should be given to curtailing entirely the so-called ‘choice of counsel’ provision of the Act.* All clients should receive legal aid services delivered by either a) the Commission’s staff solicitors or b) private practice counsel, as the Commission itself may decide, based on achieving competent representation for the client. The Commission is best able to know the abilities, workloads and limitations of its own personnel.

d) Other Efficiencies/ Opportunities for Change:

i) **Governance and Administration:** *It is recommended that the size and composition of the current board of commissioners be increased to allow for a total of 7 to 9 commissioners. A committee structure to encourage greater engagement of commissioners in specific tasks, in addition to attending regular board meetings, is also recommended.* Board members should represent as many as possible of the following disciplines: criminal and family law, finance, communications, corporate governance, geographic diversity, gender and aboriginal interests. The chair position need not be a lawyer, but if that person is a practicing lawyer, he or she should not be engaged in the delivery of the Commission’s services (i.e., not be on a panel or be retained as Commission counsel at the courts) to ensure an independent view of the business of the Commission. If applicants’ appeals are to be handled separately, the board of commissioners need only meet quarterly to be effective in governance.

Staffing: *It is recommended that the Commission create and fill (and that Government fund) the position of Deputy Director - Legal since that role is essential to ensuring adequate human resources and efficient performance at the senior management level. It is further recommend that Government provide the Commission with an adequate consultancy budget to allow short-term studies to be undertaken on particularly challenging issues, such as performance/human resource management and conflict resolution.* The Commission will require these additional resources, either on a short-term basis (i.e., consultant’s services) or a long-term basis (i.e., additional management staff) to assist in restructuring process.

The Commission is also encouraged to reinstitute its annual staff conferences to ensure a cohesive and committed workforce.

- ii) **Intake and Appeals Process (on the refusal of legal aid):** *It is recommended that the Commission review and revise its intake and appeals processes to ensure faster disposition and a level of independence at the final appeal level.* The speed in which: a) applications are processed and considered during the intake process, b) decisions are made at the area and PDO levels, and where necessary, c) appeals are processed must be improved significantly. The entire process should not exceed 30 days, other than in exceptional circumstances. Consideration should be given to having the appeals function handled by a specialized committee or panel of individuals trained in the intake and approval process and in other areas of concern for the Commission, but two members of that appeal panel should be independent of the Commissions to ensure transparency and independence. One member of the board should continue to be involved in that committee to ensure communication of issues, but that appointee should not, for transparency purposes act as chair of the appeals committee.
- iii) **Technology and Communication:** *It is recommended that the Commission review and revise its use of and reliance on modern information technology. In remote areas or where cost savings can be achieved, the Commission should explore partnering, where possible, with other service agencies that exist in the community and are funded by Government.* The Commission needs to improve its information technology structure and develop more modern approaches to service delivery. Communication in remote areas should be a priority and partnering opportunities with other stakeholders in the justice system should be sought to share costs. More web page information would be an important tool in communicating with the public not only the various services available, but also profiles or information on the experience and skills of its representatives. The LAMIS system must be reviewed to ensure it is still relevant, user-friendly and up to date.

iv) **Collection of Accounts Receivable:** *It is recommended that the Commission review and revise its policy of entering into, managing and collecting its accounts receivable from clients.* The Commission must take responsibility to ensure better collection efforts on these accounts or simply not enter into them at all unless they are able to anticipate that significant payments are likely. It is financially misleading and unwise to set up unrealizable assets as nominal accounts receivable, only to have to subsequently write large amounts of them off as unrecoverable.

e) Sources of Funding

Achieving a secure level of sustaining funding is now the challenge for both Government and the Commission. Additional monies will be needed beyond the 2013/14 Provincial grant level to properly sustain the existing services which are in now jeopardy because of either recent reductions in the Provincial grant or the consumption of Law Foundation funds formerly accumulated over a period of time, which funds had been considered as in excess to prior annual needs.

This Report also suggests additional services and internal improvements at the Commission which may require additional government funding, either for a short term (as may be required for additional study or investigation) or on an ongoing basis (for the delivery of enhanced services or the addition of staff positions, such as the Deputy Director Legal).

It is clear that the major source of funding to the Legal Aid Commission will have to continue to be the Provincial Treasury. No other source for an annual grant of approximately \$15,000,000 is currently evident. New sources will need to be found if Government's fiscal capacity does not match the Commission's needs.

The Law Foundation: *It is recommended that Government should allow the Law Foundation to retain \$300,000 of its net annual resources to apply to its other worthwhile and mandated objectives, after which the 2/3 contribution to the Commission from the Foundation should apply.* The relatively small current annual grant from the Law Foundation restricts that organization's ability to fund its other statutory objectives. The amounts generated annually for

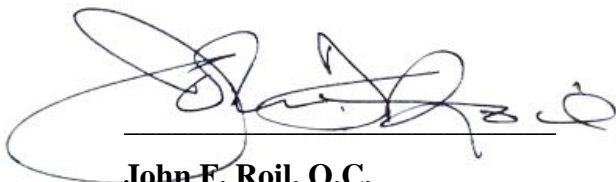
legal aid were at one time significantly higher, but the currently lower amounts now seem to be the norm, unless interest rates soar again, which seems unlikely in the immediate future. Although the amount paid by the Foundation annually is now quite small in relation to the Commission's total budget, replacement for that funding should be sought. Foundation revenues in excess of the \$300,000 retention amount, which may happen once again in the future if interest rates rise, could then form part of the Commission's annual grant structure, based on two-thirds of that revenue being paid to the Commission.

The legal aid system in Newfoundland and Labrador was originally the creation of the Law Society which identified a public need and then created the service to meet it. The current legal aid plan has obviously grown beyond the Society's ability to sustain it. One interviewee consulted during the Review suggested that lawyers in the Province should once again be asked to perform free or '*pro bono*' work for the Commission's clients as the Society's contribution to the overall effort. While that approach initially sounds laudable, there are large numbers of lawyers in the Province who perform no criminal or family law work in their practices. Therefore, the burden of any contribution of that nature would fall on a small group of lawyers who practice regularly in those disciplines. That would be an unfair distribution of support. Thus, the Law Society's financial contribution will have to continue to come from the Law Foundation source, unless a new revenue stream from the Law Society or its members can be developed.

Caveat

As stated at the outset of this Report, because the current legislation is so prescriptive in its drafting, many of the recommended changes may require a change in the *Act* before they can be implemented.

All of which is respectfully submitted this 14th day of January, 2014.

A handwritten signature in black ink, appearing to read 'John F. Roil', written over a horizontal line.

John F. Roil, Q.C.

Reviewer

**External Review of Legal Aid in
Newfoundland and Labrador**

(Volume 2 - Appendices)

By: John F. Roil, Q.C.

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Public Notice

External Review of Legal Aid System in Newfoundland and Labrador

The Minister of Justice and the Attorney General have directed that the undersigned conduct an External Review of Legal Aid within Newfoundland and Labrador.

The full Terms of Reference for this review can be found online at :
www.gov.nl.ca/releases/2013/just/0613n04.htm.

As stated in the news release, the review must “thoroughly examine the delivery of legal aid services in the province in ensuring that residents have appropriate access to justice. Areas to be reviewed include workload of staff, geographical, cultural and economic challenges to the delivery of service, the use of private counsel and an examination of the current administrative model.”

The Terms of Reference also require “recommendations on legal aid services that should be enhanced, maintained or curtailed.”

The various services that the Legal Aid Commission currently provides are outlined on their website: www.legalaid.nl.ca.

Any persons or organizations wishing to express their views on these issues, or on any matter within the mandate of the undersigned, should do so in writing, to be received not later than **October 15, 2013**, using one of the following delivery methods:

By Mail to:

John F. Roil, QC
8 MacPherson Avenue
Corner Brook, NL A2H 6Z2

By e-mail to:

johnfroil@gmail.com

Inquiries or questions may also be directed to the e-mail address above.

ALAPC – INVENTORY OF PROVINCIAL LEGAL AID PLANS

| | YT | BC | AB | NT | SK | MA | ON | PQ | NB | NS | PEI | NL |
|---|----|----|----|------|----|----|----|----|----|----|-----|----|
| 5. yes to #4, areas considered | | | | | | | | | | | | |
| • Area of Law | ■ | ■ | ■ | ■ | | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Chance of success | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Benefit to applicant | ■ | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | ■ | ■ |
| • Complexity of case | ■ | ■ | ■ | | | ■ | ■ | | | ■ | ■ | ■ |
| • Whether case is an appeal | ■ | ■ | ■ | ■ | | ■ | ■ | | ■ | ■ | ■ | ■ |
| • Other | | | | | | | | | | | ■ | |
| ○ Applicant or Respondent in litigation | | | | | | | | | | | ■ | |
| 6. Payment Agreements | | | | | | | | | | | | |
| • No | | ■ | ■ | | | | | | | | | |
| • yes | ■ | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| ○ full | | | | | | ■ | | | | | | ■ |
| ○ partial | | | | | ■ | ■ | | | | | ■ | ■ |
| ○ discretion of Director | ■ | | | | | | ■ | | | | | |
| ○ Board on Appeal | ■ | | | | | | | | | | | |
| 7. Can Rejected Applications receive summary advice? | | | | | | | | | | | | |
| • No | ■ | | | | ■ | ■ | | ■ | ■ | | | |
| • Yes | | ■ | ■ | ■ | | | ■ | | | ■ | ■ | ■ |
| • Sometimes | | | | | | | | | | | ■ | |
| ○ On appeal | ■ | | | | | | | | | | | |
| ○ Other | | | | | | | | ■ | | | | |
| 8. Is there an Appeal process? | | | | | | | | | | | | |
| • No Appeal | | | | | | | | | | | | |
| • Internal Appeal | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Appeal to external agency | | | | ■ | ■ | ■ | | | | | | |
| • Appeal to a court | | | | | | | | | | | | |
| • Other | | | | | | | | | | | | |
| 9. If yes to Appeal process, check all that apply: | | | | | | | | | | | | |
| • Written submissions | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • In person hearing | ■ | | ■ | ■ | ■ | ■ | | ■ | | ■ | ■ | ■ |
| • Telephone hearing | ■ | | ■ | ■ | ■ | ■ | | ■ | | ■ | ■ | ■ |
| • Review of application | ■ | | | ■ | ■ | | | | | ■ | ■ | |
| • Other | | | | | | | | | | | | |
| CRIMINAL MATTERS | | | | | | | | | | | | |
| 10. Does your plan assist on: | | | | | | | | | | | | |
| • Summary conviction matter | ■ | ■ | ■ | Som | ■ | ■ | ■ | ■ | | ■ | ■ | ■ |
| • Indictable charges | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Peace bonds | | | ■ | Rare | ■ | | | ■ | | | ■ | |
| • Emergency protection order | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | ■ |
| • Young offender charges | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Prison internal charges | | ■ | ■ | Rare | | ■ | ■ | ■ | | | | ■ |
| • Parole applications | | | | Rare | | ■ | ■ | ■ | | | | |
| • Applic. To vary probation | | | | Rare | | | | ■ | | ■ | ■ | ■ |
| • Appeals from conviction | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Appeals from sentence | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Other | ■ | | | ■ | | | | | | ■ | | |
| 11. If the above is not ordinarily handled, is there room to make exceptions? | | | | | | | | | | | | |
| • Yes | ■ | ■ | | ■ | ■ | ■ | | | ■ | ■ | ■ | ■ |
| • No | | | ■ | | | | ■ | | | | | |

12/23

ALAPC – INVENTORY OF PROVINCIAL LEGAL AID PLANS

| | YT | BC | AB | NT | SK | MA | ON | PQ | NB | NS | PEI | NL |
|--|-----|-----|-----|-----|-----|-----|------|------|-----|-----|-----|-----|
| • Other | | | | | | | | | | | | |
| 12. Does your plan provide a lawyer for: | | | | | | | | | | | | |
| • Duty Counsel | ■ | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | ■ | ■ |
| • Youth Duty Counsel | ■ | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | | ■ |
| • Mental Health Court | ■ | ■ | ■ | | | ■ | ■ | ■ | ■ | ■ | | ■ |
| • Drug Court | | ■ | ■ | | ■ | ■ | ■ | | | | | |
| • Family Violence Court | ■ | | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | | ■ |
| • Other criminal or quasi-criminal venues | ■ | | | | | | | | ■ | | ■ | |
| 13. Are there caps on the amount of money or time which can be spent on criminal matters | | | | | | | | | | | | |
| • Yes | ■ | ■ | | ■ | ■ | ■ | ■ | | | ■ | ■ | ■ |
| • No | | | | | | | | ■ | ■ | | | |
| 14. Funding provided for expert witnesses and reports? | | | | | | | | | | | | |
| • Yes | ■ | ■ | ■ | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • No | | | | | | | | | | | | |
| • Other | | | | ■ | | | | | | | | |
| 15. percentage of legal work | | | | | | | | | | | | |
| • approved applications | | | | | | | | | | | | |
| ○ In House | 95% | 4% | | 50% | 90% | 35% | .01% | 36.9 | 58% | 80% | 90% | 96% |
| ○ Private | 5% | 96% | | 50% | 10% | 65% | 99.9 | 63.1 | 42% | 20% | 10% | 4% |
| • Duty Counsel | | | | | | | | | | | | |
| ○ In House | 70% | 10% | | 40% | 90% | 65% | 54% | 0% | 75% | 80% | 75% | |
| ○ Private | 30% | 90% | | 60% | 10% | 35% | 46% | 0% | 25% | 20% | 25% | |
| CIVIL MATTERS | | | | | | | | | | | | |
| FAMILY LAW MATTERS | | | | | | | | | | | | |
| 16. Do you assist on: | | | | | | | | | | | | |
| • Child support | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Spousal support | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Custody | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Access | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Divorce | | | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | ■ |
| • Property matters | | | ■ | | | ■ | ■ | ■ | | ■ | ■ | ■ |
| ○ Matrimonial | | | ■ | | | ■ | ■ | ■ | | ■ | ■ | ■ |
| ○ Common-law | | | ■ | | | ■ | ■ | ■ | | ■ | ■ | ■ |
| • Peace bonds | | | ■ | | | | | ■ | ■ | | ■ | |
| • Mediation | | ■ | ■ | | | ■ | ■ | ■ | | | ■ | |
| • Child protection | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Appeals | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Interprov. Support matters | ■ | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| • Other | ■ | ■ | | | | | | | | | | |
| 17. If the above is not ordinarily handled, is there room to make exceptions? | | | | | | | | | | | | |
| • Yes | ■ | ■ | | ■ | | ■ | ■ | | ■ | ■ | ■ | ■ |
| • No | | | | | ■ | | | | | | | |
| • Other | | | | | | | | | | | | |
| 18. Does your plan provide a lawyer for Duty Counsel: | | | | | | | | | | | | |
| • Family Law | no | Yes | yes | No | No | Yes | Yes | No | Yes | Yes | | Yes |

ALAPC – INVENTORY OF PROVINCIAL LEGAL AID PLANS

| | YT | BC | AB | NT | SK | MA | ON | PQ | NB | NS | PEI | NL |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| • Yes | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| • No | | | | <input checked="" type="checkbox"/> | | | | | | | | |
| 27. Percentage of Legal Work | | | | | | | | | | | | |
| • approved applications | | | | | | | | | | | | |
| ○ In House | 100 | 10% | | 100 | | 42% | 0% | 68% | | 95% | | |
| ○ Private | 0% | 10% | | 0% | | 58% | 0% | 32% | | 5% | | |
| OTHER CIVIL LAW MATTERS | | | | | | | | | | | | |
| 28. Does your plan assist on: | | | | | | | | | | | | |
| • Landlord/tenant disputes | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| • Civil actions | | | | | | | | <input checked="" type="checkbox"/> | | | | |
| ○ Plaintiff | | | <input checked="" type="checkbox"/> | | | | | <input checked="" type="checkbox"/> | | | | |
| ○ Defendant | | | | | | | | <input checked="" type="checkbox"/> | | | | |
| • Estates / Wills | | | <input checked="" type="checkbox"/> | Som | | | | <input checked="" type="checkbox"/> | | | | |
| • Corporate / Commercial | | | | | | | | <input checked="" type="checkbox"/> | | | | |
| • Tax matters | | | | | | | | <input checked="" type="checkbox"/> | | | | |
| • Liens | | | | | | | | <input checked="" type="checkbox"/> | | | | |
| • Real estate | | | | | | | | <input checked="" type="checkbox"/> | | | | |
| • Other | | | | <input checked="" type="checkbox"/> | | | | | | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| 29. If your plan does not ordinarily handle any of the above areas, is there any room for exceptions? | | | | | | | | | | | | |
| • Yes | | | | | | <input checked="" type="checkbox"/> | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| • No | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | | | | <input checked="" type="checkbox"/> | |
| • Other | | | | | | | | | | | | |
| 30. Are there caps on the amount of money or time which can be spent on civil matters? | | | | | | | | | | | | |
| • Yes | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | | | <input checked="" type="checkbox"/> | | | | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| • No | | | | <input checked="" type="checkbox"/> | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | | |
| 31. Funding provided for expert witnesses and reports? | | | | | | | | | | | | |
| • Yes | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | | | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| • No | | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | | | <input checked="" type="checkbox"/> | | | | | |
| 32. Percentage of Legal Work | | | | | | | | | | | | |
| • approved applications | | | | | | | | | | | | |
| ○ In House | 100 | | | 100 | | 42% | 0% | 65% | | 95% | | |
| ○ Private | 0% | | | 0% | | 58% | 0% | 35% | | 5% | | |

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**NEWFOUNDLAND AND LABRADOR LEGAL AID COMMISSION
FINANCIAL REPORTS
FOR THE PERIOD ENDING OCTOBER 15, 2013**

Budget Review

Balance Sheet

Statement of Earnings

Newfoundland Legal Aid Comm.

STATEMENT A

Budget Review

For The Year Ending October 31, 2013

| Object of Expenditure | Unaudited | | | |
|--|--------------------------------------|--|---|--------------------------------|
| | (1) Approved Budget 2013-14 | (2) Approved Budget to 10/31/2013 | (3) Expenditures To 10/31/2013 | (4) Difference (2) - (3) |
| 1. Salaries | \$9,086,053 | \$5,300,198 | \$5,904,894 | (\$604,697) |
| 2. Employee Benefits | \$1,447,481 | \$838,927 | \$728,335 | \$110,592 |
| 3. Payroll Tax | \$169,820 | \$104,502 | \$118,098 | (\$13,596) |
| 4. Transportation | \$5,054 | \$2,948 | \$37,067 | (\$34,119) |
| 5. Supplies | \$195,904 | \$114,278 | \$134,729 | (\$20,452) |
| 6. Professional Services | | | | |
| PRIVATE | \$365,000 | \$212,917 | \$155,939 | \$56,978 |
| STAFF | \$505,700 | \$294,992 | \$323,603 | (\$28,612) |
| 7. Information Technology | \$155,550 | \$90,738 | \$32,570 | \$58,168 |
| 8. Purchased Services | \$1,289,542 | \$752,233 | \$925,715 | (\$173,481) |
| 9. Other | \$68,996 | \$40,248 | \$8,827 | \$31,421 |
| HST PAYMENTS | \$198,000 | \$115,500 | \$48,077 | \$67,423 |
| Sub-total | \$13,487,100 | \$7,867,480 | \$8,417,855 (i) | (\$550,376) |
| 10. Deduct: | | | | |
| Law Foundation | \$300,000 | \$175,000 | \$0 | \$175,000 |
| Client Contribution & Interest | \$95,000 | \$55,417 | \$45,458 | \$9,958 |
| HST REBATE | \$198,000 | \$115,500 | \$0 (i) | \$67,423 |
| Provincial Grant | \$12,894,100 | \$7,521,563 | \$8,372,397 | (\$802,757) |
| 11. Related Revenue, Government of Canada | | | | |
| 1. Adult Criminal and Young Offender | \$1,820,000 | \$1,061,667 | \$1,061,667 | \$0 |
| 2. Canada Health and Social Transfer Estimate | \$1,006,935 | \$587,379 | \$587,379 | \$0 |
| Total Government of Canada | \$2,826,935 | \$1,649,045 | \$1,649,045 | \$0 |
| Cost to Newfoundland Government | \$10,067,165 | \$5,872,518 | \$6,723,352 | (\$802,757) |

NOTE:

(i) Col 3 HST Outstanding Rebate for fiscal year

LGLADBAL.XLS

Newfoundland Legal Aid Comm.Balance Sheet
As At October 31, 2013

Unaudited

STATEMENT C**ASSETS****Current assets:**

| | | |
|--------------------------------|----|------------------|
| PETTY CASH | \$ | 1,075 |
| BANK FUND | \$ | 8,000 |
| CURRENT ACCOUNT | \$ | 639,880 |
| TRUST BANK ACCOUNT | \$ | 1,090,474 |
| DEFERRED SALARY ACCOUNT | \$ | 71,656 |
| CLEARING ACCOUNT | \$ | 76,905 |
| ACCOUNTS RECEIVABLE | \$ | 1,195,152 |
| ALLOWANCE FOR DOUBTFUL ACCOUNT | \$ | -278,467 |
| PREPAID EXPENSE | \$ | 127,032 |
| HST RECEIVABLE | \$ | 48,077 |
| TOTAL CURRENT ASSETS | | <u>2,979,785</u> |

Fixed assets:

| | | |
|--------------------------|----|-----------------|
| FURN & FIX. | \$ | 1,137,282 |
| ACCUMULATED DEPRECIATION | \$ | <u>-913,896</u> |
| | | 223,386 |

Other assets:

| | | |
|-------------------------------|----|------------------|
| LEASEHOLD IMPROVEMENTS | \$ | 78,189 |
| AMORTIZATION LEASEHOLD IMPRV | \$ | -52,991 |
| FURN & FIX. IT | \$ | 627,484 |
| AMORTIZATION INFORMATION TECH | \$ | -550,218 |
| SOFTWARE | \$ | 189,073 |
| AMORTIZATION SOFTWARE | \$ | <u>-185,543</u> |
| | | 105,974 |
| | \$ | <u>3,309,145</u> |

LIABILITY AND SHAREHOLDER'S EQUITY**Current liabilities:**

| | | |
|-------------------------------|----|--------------|
| AMOUNTS ON DEPOSIT | \$ | 894,472 |
| INCOME TAX PAYABLE | \$ | -4,538 |
| CPP PAYABLE | \$ | -5,179 |
| EI PAYABLE | \$ | 5,860 |
| DEFERRED SALARY PAYABLE | \$ | 71,656 |
| CANADA SAVINGS BONDS PAYABLE | \$ | 7,457 |
| MEDICAL AND INSURANCE PAYABLE | \$ | 7,622 |
| ACCOUNTS PAYABLE | \$ | 259,059 |
| ANNUAL LEAVE PAYABLE | \$ | 1,040,001 |
| OVERTIME PAYABLE | \$ | 63,752 |
| JAIL AND BAIL PAYABLE | \$ | 44,369 |
| SEVERANCE PAYABLE | \$ | 1,288,955 |
| PAYROLL TAX PAYABLE | \$ | 11,088 |
| DENTAL PLAN PAYABLE | \$ | 2,503 |
| STALEDATED CHEQUES | \$ | 1,929 |
| PENSION PLAN PAYABLE | \$ | -4,010 |
| UNEARNED CRIMINAL REVENUE | \$ | 481,950 |
| UNEARNED REVENUE CIVIL | \$ | 33,393 |
| UNEARNED REVENUE FAMILY | \$ | 389,923 |
| UNEARNED REVENUE YO | \$ | <u>2,354</u> |
| TOTAL CURRENT LIABILITIES | | 4,392,618 |

Long term liabilities:0**Shareholder's equity:**

| | | |
|--|----|------------------|
| SURPLUS OR DEFICIT | \$ | -278,841 |
| PROFIT (LOSS) FOR PERIOD | \$ | <u>-804,632</u> |
| TOTAL SHAREHOLDER'S EQUITY | | -1,083,473 |
| TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY | \$ | <u>3,309,145</u> |

Newfoundland Legal Aid Comm.

Statement of Earnings
For The Year Ending October 31, 2013

| | Unaudited | | Difference |
|---|---------------------|-----------------------|---------------------|
| | Current YTD | Budget YTD | |
| Revenue: | | | |
| NFLD GRANT | \$ 7,506,558.00 | 0.00 | 7,506,558.00 |
| LAW FOUNDATION GRANT | \$ 0.00 | 175,000.07 | (175,000.07) |
| INTEREST REVENUE | \$ 8,937.33 | 0.00 | 8,937.33 |
| RECOVERED COSTS CRIM | \$ 173.25 | 0.00 | 173.25 |
| RECOVERED COSTS CIVIL | \$ 36,521.10 | 0.00 | 36,521.10 |
| EARNED CIVIL | \$ 772.75 | 0.00 | 772.75 |
| EARNED FAMILY | \$ 1,597.75 | 0.00 | 1,597.75 |
| EARNED CRIMINAL | \$ 919.05 | 0.00 | 919.05 |
| MISCELLANEOUS REVENUE | \$ 20.00 | 0.00 | 20.00 |
| Total Revenue | <u>7,555,497.23</u> | <u>175,000.07</u> | <u>7,380,497.16</u> |
| Expenditures: | | | |
| CIVIL FEES | \$ 34,155.28 | 17,284.05 | 16,871.21 |
| CIVIL DISBR | \$ 128,405.03 | 90,955.08 | 35,449.97 |
| CRIM FEES | \$ 48,061.44 | 191,257.50 | (143,196.06) |
| CRIM DISB | \$ 86,152.37 | 68,920.95 | 17,231.42 |
| YO FEES | \$ 0.00 | 583.38 | (583.38) |
| YO DISB | \$ 5,851.14 | 12,886.31 | (6,835.17) |
| DUTY COUNSEL FEES | \$ 24,319.16 | 3,208.45 | 21,110.71 |
| DUTY COUNSEL DISB | \$ 46,306.86 | 60,311.93 | (14,005.07) |
| YO DUTY COUNSEL FEES | \$ 178.16 | 583.31 | (405.15) |
| YO DUTY COUNSEL DISB | \$ 3,097.13 | 4,122.51 | (1,025.38) |
| DUTY COUNSEL BRYDGES | \$ 55,790.88 | 57,995.00 | (2,204.14) |
| PROFESSIONAL SERVICES PRIVATE BAR | \$ 49,225.15 | 0.00 | 49,225.15 |
| MISC ADJ AND PENALTIES | \$ 15.73 | 0.00 | 15.73 |
| COMMISSION FEES | \$ 21,733.80 | 62,064.94 | (40,331.14) |
| COMMISSION DISBURSEMENTS | \$ 10,094.08 | 0.00 | 10,094.08 |
| AUDIT FEES | \$ 0.00 | 5,728.94 | (5,728.94) |
| CONFERENCE | \$ 1,061.92 | 16,172.10 | (15,110.18) |
| CONFERENCE CRIMINAL | \$ 495.00 | 0.00 | 495.00 |
| ED AND TRAINING SOLICITOR | \$ 6,024.28 | 0.00 | 6,024.28 |
| ED AND TRAINING STAFF | \$ 6,385.29 | 0.00 | 6,385.29 |
| MAINTENANCE AND REPAIRS | \$ 8,385.32 | 7,625.59 | 759.73 |
| EQUIPMENT RENTAL | \$ 2,465.99 | 1,718.01 | 747.98 |
| BAR FEES | \$ 15,651.74 | 60,398.31 | (44,746.57) |
| LIBRARY CIVIL | \$ 523.06 | 0.00 | 523.06 |
| LIBRARY CRIMINAL | \$ 7,592.13 | 18,754.33 | (11,162.20) |
| OFFICE RENTAL | \$ 874,786.42 | 689,106.32 | 185,680.10 |
| OFFICE SUPPLIES | \$ 37,190.90 | 23,463.37 | 13,727.53 |
| POSTAGE | \$ 13,528.17 | 12,279.19 | 1,248.98 |
| SOLICITOR SALARIES | \$ 3,708,977.63 | 3,562,338.50 | 146,639.13 |
| STAFF SALARIES | \$ 2,164,088.78 | 1,675,794.19 | 488,294.59 |
| SOLICITOR BENEFITS | \$ 467,498.39 | 574,537.88 | (107,039.49) |
| STAFF BENEFITS | \$ 349,316.64 | 292,321.05 | 56,995.59 |
| PHONE & LIGHT | \$ 40,077.03 | 53,783.45 | (13,706.42) |
| TRAVEL | \$ 19,451.89 | 2,948.40 | 16,503.49 |
| MOVING EXPENSES | \$ 17,615.24 | 0.00 | 17,615.24 |
| OFFICE EXPENSE | \$ 28,074.53 | 40,671.19 | (12,596.66) |
| OFFICE EXP. ADVERTISING | \$ 9,693.00 | 0.00 | 9,693.00 |
| OFFICE EXP. BANK FUNDS | \$ 241.71 | 0.00 | 241.71 |
| MISCELLANEOUS | \$ 0.00 | 13,380.50 | (13,380.50) |
| MISCELLANEOUS BANK CHARGES | \$ 1,866.36 | 0.00 | 1,866.36 |
| MISC TAXIS | \$ 27,101.54 | 0.00 | 27,101.54 |
| MISC COURIERS | \$ 8,918.05 | 0.00 | 8,918.05 |
| OFFICE EXPENSE IT | \$ 31,731.93 | 0.00 | 31,731.93 |
| | <u>8,380,129.09</u> | <u>7,620,994.71</u> | <u>739,134.38</u> |
| Excess of Income over Expenditures | <u>(804,631.86)</u> | <u>(7,445,994.64)</u> | <u>6,641,362.78</u> |

| Office | First Name | Last Name | Bar call number | # of Years @ Bar |
|--|------------|-----------|-----------------|------------------|
| | | | | 41547 |
| (SV-19) | | | 28901 | 34.63 |
| (CL-13) | | | 29326 | 33.46 |
| (FCO-SJ-31) | | | 29934 | 31.79 |
| (MHP-K-32) | | | 30665 | 29.79 |
| (GF-16) | | | 31145 | 28.48 |
| (SV-19) | | | 31888 | 26.44 |
| (CB-14) | | | 32608 | 24.47 |
| (PDO-10) | | | 32682 | 24.27 |
| (CB-14) | | | 33336 | 22.48 |
| (MHP-CIVIL-33) | | | 33336 | 22.48 |
| (HV-17) | | | 33702 | 21.48 |
| (CFL-36) | | | 33702 | 21.48 |
| (SJA-09) | | | 33784 | 21.25 |
| (FCO-CB-PR-41) | | | 34148 | 20.26 |
| (SJ2-11) | | | 34435 | 19.47 |
| (SJ2-11) | | | 35170 | 17.46 |
| (SJA-09) | | | 35170 | 17.46 |
| (MA-18) | | | 35170 | 17.46 |
| (SJA-09) | | | 35170 | 17.46 |
| (SJ2-11) | | | 35170 | 17.46 |
| (SJ2-11) | | | 35534 | 16.46 |
| (SJ2-11) | | | 35969 | 15.27 |
| (SJA-09) | | | 36270 | 14.44 |
| (SJA-09) | | | 36270 | 14.44 |
| (CA-12) | | | 36326 | 14.29 |
| (HV-17) | | | 36641 | 13.43 |
| (SJA-09) | | | 36661 | 13.38 |
| (SJA-09) | | | 36704 | 13.26 |
| GA | | | 37425 | 11.28 |
| (SJ2-11) | | | 36987 | 12.48 |
| (SJA-09) | | | 36987 | 12.48 |
| (SJA-09) | | | 37069 | 12.26 |
| (SJ2-11) | | | 37657 | 10.65 |
| (SJA-09) | | | 37657 | 10.65 |
| (FCO-SJ-31) | | | 37720 | 10.48 |
| (CL-13) | | | 38156 | 9.28 |
| (CB-14) | | | 38156 | 9.28 |
| (SV-19) | | | 38772 | 7.60 |
| (SJA-09) | | | 38918 | 7.19 |
| (CB-14) | | | 38996 | 6.98 |
| (SJA-09) | | | 39192 | 6.44 |
| (LABWEST-21) | | | 39234 | 6.33 |
| (CB-14) | | | 39241 | 6.31 |
| (SV-19) | | | 39241 | 6.31 |
| (GA-15) | | | 39253 | 6.28 |
| (GA-15) | | | 39448 | 5.75 |
| (CB-14) | | | 39990 | 4.26 |
| (SJA-09) | | | 39990 | 4.26 |
| (SJA-09) | | | 40347 | 3.28 |
| (SJA-09) | | | 40347 | 3.28 |
| (SJA-09) | | | 40592 | 2.62 |
| (SJA-09) | | | 40648 | 2.46 |
| (HV-17) | | | 40704 | 2.31 |
| (HV-17) | | | 41320 | 0.63 |
| (HV-17) | | | 41383 | 0.45 |
| | | | Average | 13.93 |
| Years of service in this Province only. Some solicitors practiced in other provinces previously. | | | | |

OVERVIEW REPORT

VOLUME OF CLIENTS PROVIDED DUTY COUNSEL SERVICES

Date of Report: November 13, 2013

**FOR PERIOD OF: April 1, 2012

TO: March 31, 2013

| - Law Office - | - Family - | - Criminal - | | - Total - | - Hours - |
|--------------------------|------------|----------------|--------------|--------------|----------------|
| | | Young Offender | Adult | | |
| CARBONEAR | 0 | 6 | 209 | 215 | 106.45 |
| CLARENVILLE | 0 | 22 | 305 | 327 | 194.30 |
| CORNER BROOK | 3 | 222 | 1311 | 1536 | 965.05 |
| ELIZABETH AVE | 175 | 2 | 54 | 231 | 216.19 |
| GANDER | 8 | 92 | 755 | 855 | 500.85 |
| GRANDFALLS-WINDSOR | 3 | 64 | 460 | 527 | 191.24 |
| HAPPY VALLEY | 3 | 62 | 1388 | 1453 | 706.24 |
| LABRADOR WEST | 6 | 13 | 194 | 213 | 257.70 |
| MARYSTOWN | 5 | 63 | 131 | 199 | 172.30 |
| ST. JOHN'S | 133 | 470 | 5763 | 6366 | 2708.04 |
| STEPHENVILLE | 0 | 30 | 325 | 355 | 432.05 |
| Total Commission: | 336 | 1046 | 10895 | 12277 | 6450.41 |

LAMIS
Newfoundland Legal Aid Commission
Overview Report Closed Cases by Lawyer
Years 2006 – 2011

| Lawyer 1 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 70 | 80 | 112 | 141 | 84 | 171 |
| % of Global Avg. | 56% | 66% | 89% | 107% | 62% | 132% |

| Lawyer 2 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | N/A | 35 | 245 | 202 | 212 | 180 |
| % of Global Avg. | | 28 % | 194% | 153% | 126% | 139% |

Solicitor Started in 2007

| Lawyer 3 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 125 | 131 | 97 | 139 | 172 | 180 |
| % of Global Avg. | 100% | 108% | 76% | 105% | 126% | 139% |

| Lawyer 4 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 194 | 174 | 186 | 191 | 144 | 198 |
| % of Global Avg. | 156% | 143% | 147% | 144% | 105% | 153% |

| Lawyer 5 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 107 | 77 | 99 | 114 | 104 | 105 |
| % of Global Avg. | 76% | 63% | 78% | 86% | 76% | 81% |

| Lawyer 6 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 88 | 75 | 76 | 66 | 75 | 69 |
| % of Global Avg. | 70% | 61% | 60% | 50% | 55% | 53% |

| Lawyer 7 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 117 | 140 | 97 | 123 | 132 | 125 |
| % of Global Avg. | 94% | 115% | 76% | 93% | 97% | 96% |

| Lawyer 8 | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 140 | 123 | 174 | 155 | 142 | 140 |
| % of Global Avg. | 112% | 101% | 138% | 117% | 104% | 108% |

Breakdown of total Closed Cases for 2006-2011 years:

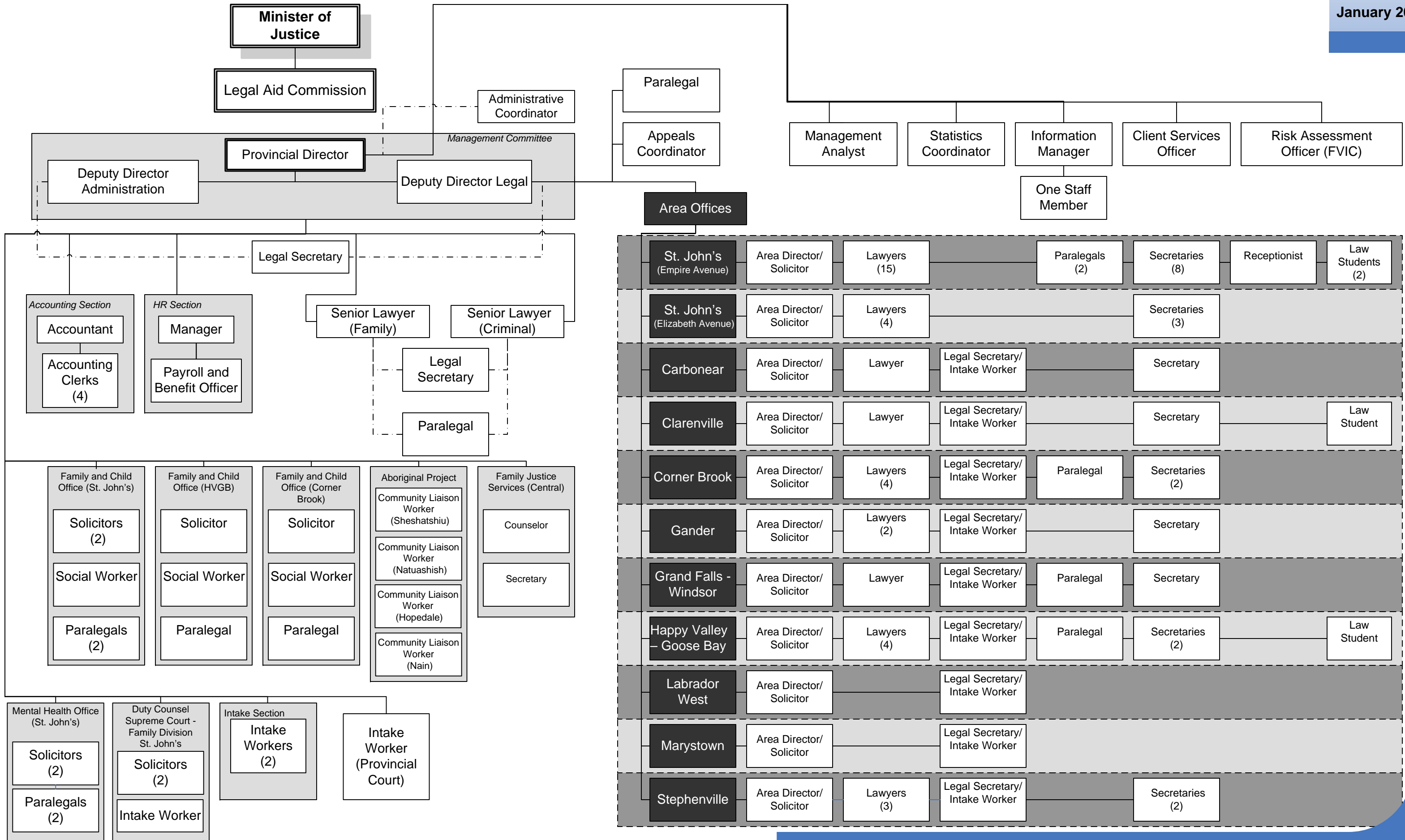
| Total Commission | 2006-2007 | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total Closed | 5206 | 5329 | 5555 | 5954 | 6100 | 5789 |
| # of Solicitors | 42 | 44 | 44 | 45 | 45 | 45 |
| Avg. Case per Lawyer | 124 | 121 | 126 | 132 | 136 | 129 |

September 30, 2013

C. Corcoran

Legal Aid Commission

January 2013



| Newfoundland and Labrador Legal Aid Commission | | |
|--|-------------------------------------|---|
| Review of Leases | | |
| Location | GL BUDGET Amount 2013-2014 | ESTIMATED Expense Amount 2014-2015 |
| St. John's Area Office | \$290,767 | \$252,564 |
| Provincial Director's Office | \$223,500 | \$252,564 |
| FCO-St. John's | \$27,500 | \$68,880 |
| Mental Health-Crim | \$100,000 | \$97,884 |
| Elizabeth Ave. | \$53,475 | \$160,692 |
| Carbonear | \$24,629 | \$66,996 |
| Clarenville | \$31,700 | \$36,432 |
| Corner Brook | \$41,580 | \$78,388 |
| Gander | \$39,950 | \$64,260 |
| Grand Falls | \$38,985 | \$69,744 |
| Happy Valley | \$58,872 | \$58,872 |
| Marystown | \$64,735 | \$60,000 |
| Stephenville | \$40,800 | \$91,896 |
| Wabush | \$64,280 | \$64,284 |
| FCO-Corner Brook | \$43,052 | \$38,700 |
| FCO-Happy Valley | \$27,500 | \$27,204 |
| Aboriginal - Inv. Fund | \$5,000 | \$6,720 |
| Aboriginal - Inv. Fund | \$5,000 | \$6,000 |
| | \$1,181,325 | \$1,502,080 |
| Note: | 2013-2014 | 2014-2015 |
| Budget | \$1,181,325 | \$1,181,325 |
| Expense | -\$1,500,646 | -\$1,502,080 |
| Surplus/Defecit | -\$319,321 | -\$320,755 |

Provincial Legal Aid Tariffs
Hourly rates as of May 8, 2013

| Jurisdiction | Low | High |
|---------------------------|--------------------------|--|
| British Columbia | \$83.90 | \$92.29 |
| Alberta | \$84.00 | \$84.00 |
| Saskatchewan | \$80.00 | \$80.00 |
| Manitoba | \$80.00 | \$80.00 |
| Ontario | \$98.99 | \$123.74 |
| Quebec | block fees | block fees |
| New Brunswick | \$58.00 | \$70.00 |
| Nova Scotia | \$60.00 | \$70.00 (choice of counsel-homicide - \$85.00) |
| Prince Edward Island | \$70.00(4 years or less) | \$80.00 (+ 4 years) |
| Newfoundland and Labrador | \$45.00 | \$60.00 |
| Yukon (2012 rates) | \$67.00 | \$88.00 |
| Northwest Territories | \$53.00 | \$135.00 |
| Nunavut | \$91.50 | \$153.00 |

EFFECTIVE JULY 1, 2010

| | <u>STEP 1</u> | <u>STEP 2</u> | <u>STEP 3</u> | <u>STEP 4</u> | <u>STEP 5</u> | <u>STEP 6</u> | <u>STEP 7</u> | <u>STEP 8</u> | <u>STEP 9</u> |
|-------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| SL-01 | 44,032 | 45,033 | 46,028 | 47,033 | 48,034 | | | | |
| SL-02 | 54,036 | 56,038 | 58,037 | 60,044 | 62,042 | | | | |
| SL-03 | 64,042 | 66,044 | 68,048 | 70,048 | 72,051 | 74,048 | 77,047 | 80,056 | 83,059 |
| SL-04 | 87,059 | 91,059 | 95,062 | 99,067 | 103,072 | 107,074 | 111,077 | 115,078 | 118,080 |
| SL-05 | 100,068 | 104,071 | 108,075 | 112,078 | 116,078 | 120,080 | 124,082 | 128,084 | 132,087 |

SOLICITORS PAY PLAN
EFFECTIVE JULY 1, 2011

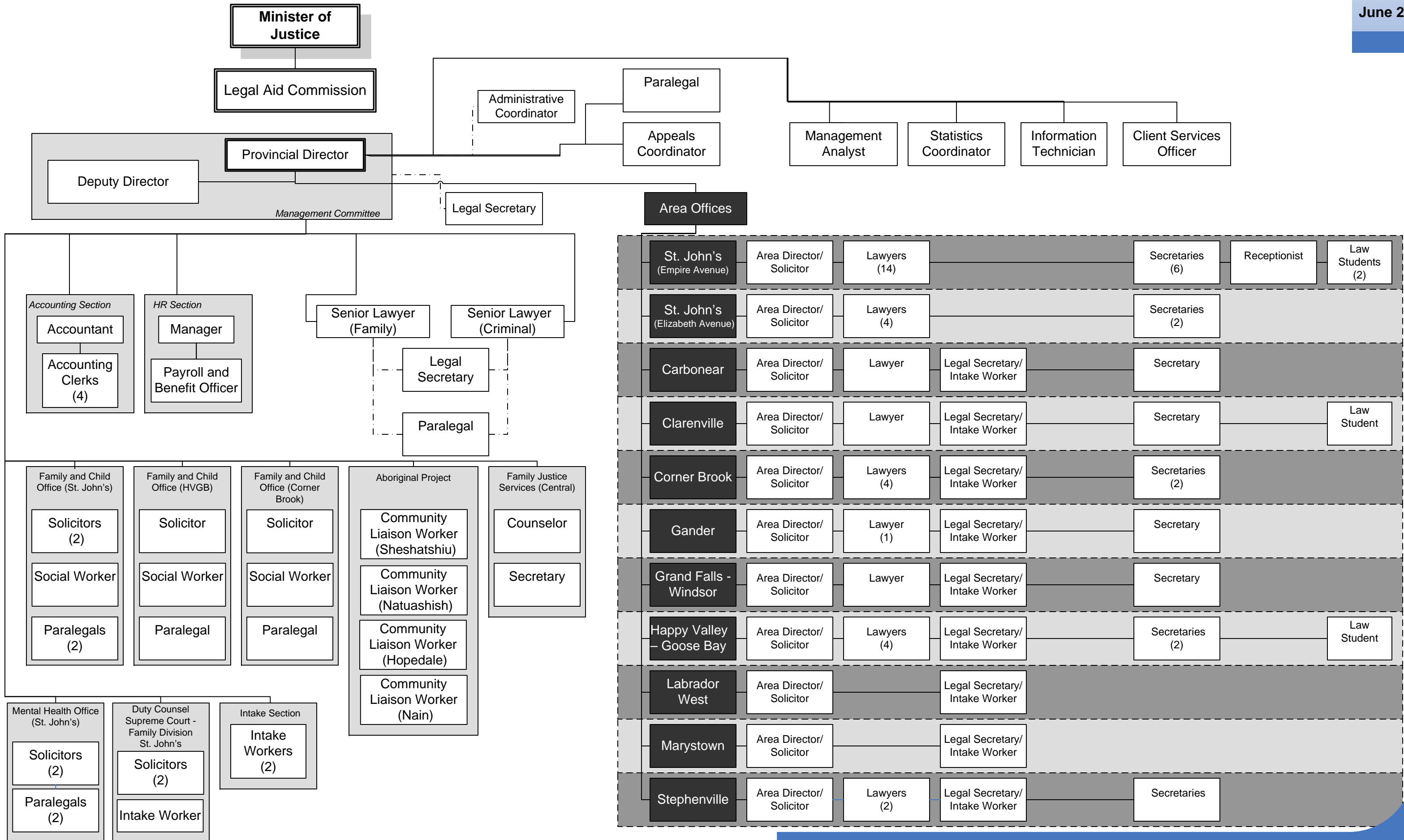
| | <u>STEP 1</u> | <u>STEP 2</u> | <u>STEP 3</u> | <u>STEP 4</u> | <u>STEP 5</u> | <u>STEP 6</u> | <u>STEP 7</u> | <u>STEP 8</u> | <u>STEP 9</u> |
|-------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| SL-01 | 45,793 | 46,834 | 47,869 | 48,914 | 49,955 | | | | |
| SL-02 | 56,197 | 58,280 | 60,358 | 62,446 | 64,524 | | | | |
| SL-03 | 66,604 | 68,686 | 70,770 | 72,850 | 74,933 | 77,010 | 80,129 | 83,258 | 86,381 |
| SL-04 | 90,541 | 94,701 | 98,864 | 103,030 | 107,195 | 111,357 | 115,520 | 119,681 | 122,803 |
| SL-05 | 104,071 | 108,234 | 112,398 | 116,561 | 120,721 | 124,883 | 129,045 | 133,207 | 137,370 |

ANALYSIS OF CLOSED CASES AND COST ASSOCIATED 2010-2011
BASED ON HOURLY RATE

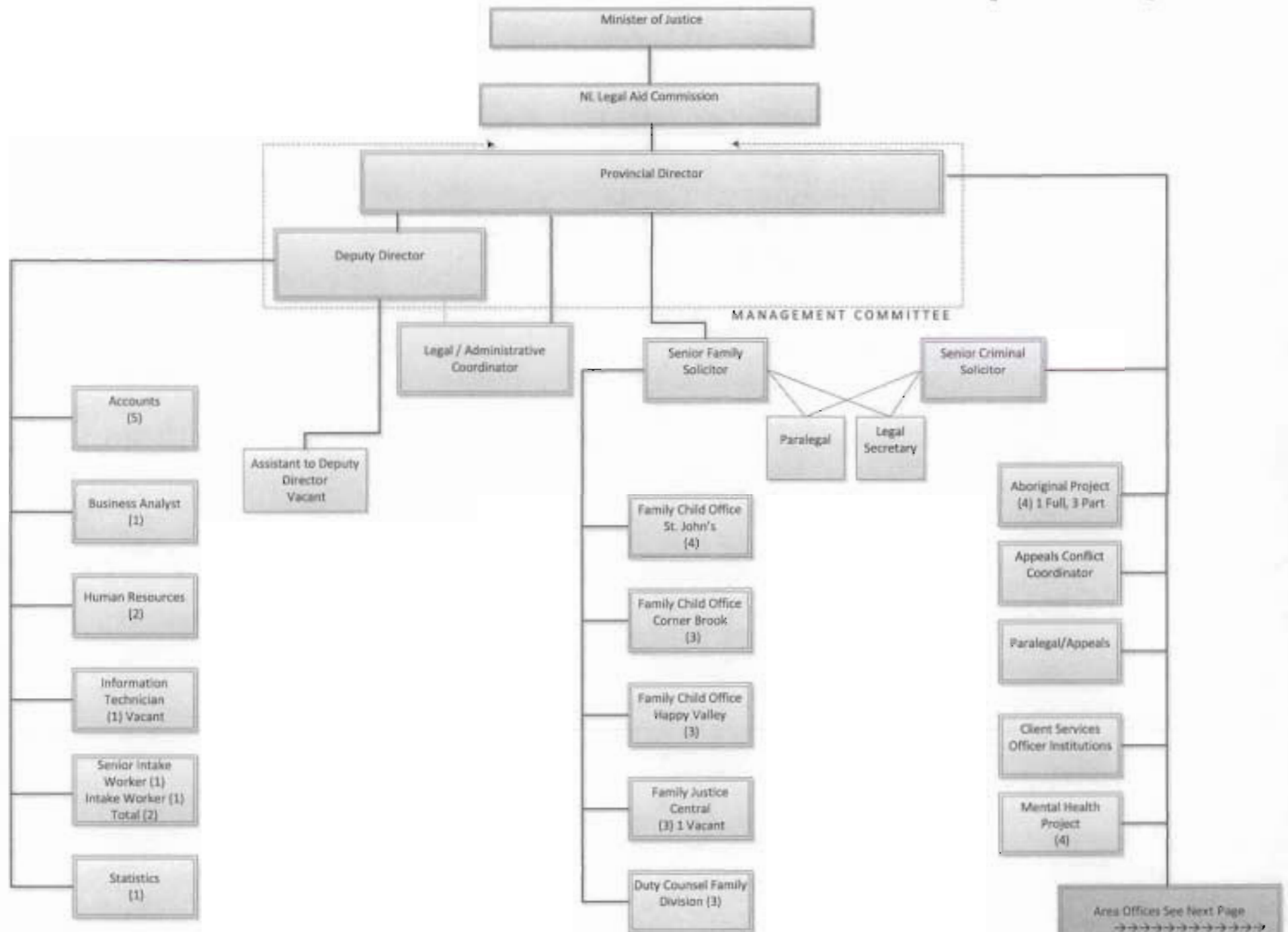
| OFFICES | # OF LAWYERS | TOTAL DIRECT SERVICE COST | ANNUAL BILLABLE HOURS* | HOURLY RATE |
|------------------|--------------|---------------------------|------------------------|--------------|
| Conflicts Office | 5 | \$852,580.23 | 1719 | \$99 |
| St. John's | 19 | \$3,215,110.95 | 1719 | \$98 |
| PDO | | \$2,466,451.59 | | |
| Carbonear | 2 | \$471,354.77 | 1719 | \$137 |
| Clarenville | 2 | \$480,671.97 | 1719 | \$140 |
| Corner Brook | 4 | \$937,322.23 | 1719 | \$136 |
| Gander | 2 | \$552,031.32 | 1719 | \$161 |
| Grand Falls | 2 | \$470,611.43 | 1719 | \$137 |
| Happy Valley | 4 | \$928,383.13 | 1719 | \$135 |
| Lab West | 1 | \$223,907.02 | 1719 | \$130 |
| Marystown | 1 | \$319,359.33 | 1719 | \$186 |
| Stephenville | 4 | \$837,708.54 | 1719 | \$130 |
| TOTAL | 46 | \$11,755,492.51 | | |
| Average | | | | \$135 |

*Overtime hours not included

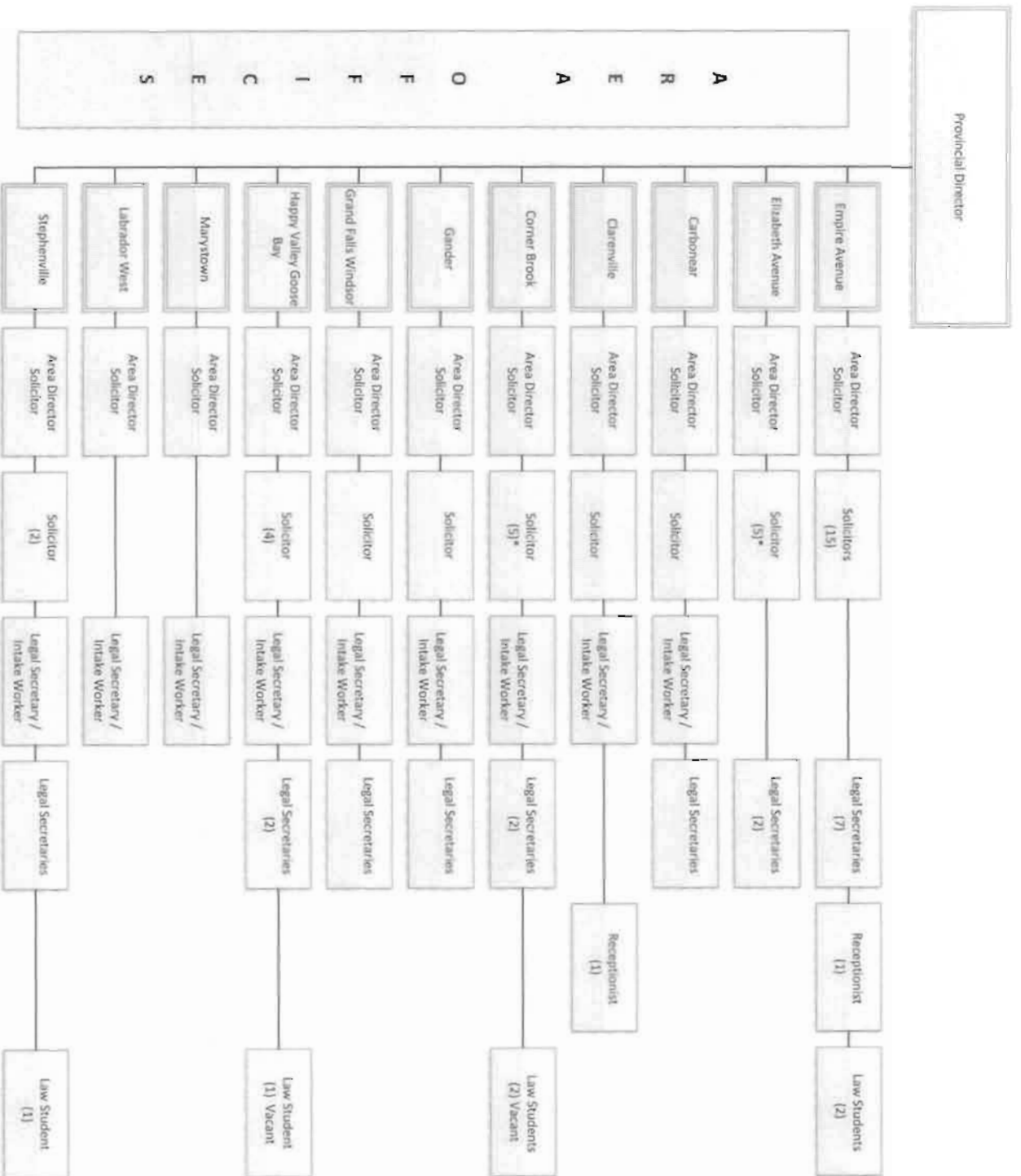
Legal Aid Commission



| Area Office | Area Director/Solicitor | Lawyers | Legal Secretary/Intake Worker | Secretaries | Receptionist | Law Students |
|-------------------------------|-------------------------|---------|-------------------------------|-------------|--------------|--------------|
| St. John's (Empire Avenue) | 1 | 14 | 0 | 6 | 1 | 2 |
| St. John's (Elizabeth Avenue) | 1 | 4 | 0 | 2 | 0 | 0 |
| Carbonear | 1 | 1 | 1 | 1 | 0 | 0 |
| Clarenceville | 1 | 1 | 1 | 1 | 0 | 1 |
| Corner Brook | 1 | 4 | 1 | 2 | 0 | 0 |
| Gander | 1 | 1 | 1 | 1 | 0 | 0 |
| Grand Falls - Windsor | 1 | 1 | 1 | 1 | 0 | 0 |
| Happy Valley - Goose Bay | 1 | 4 | 1 | 2 | 0 | 1 |
| Labrador West | 1 | 0 | 1 | 0 | 0 | 0 |
| Marystown | 1 | 0 | 1 | 0 | 0 | 0 |
| Stephenville | 1 | 2 | 1 | 0 | 0 | 0 |



NL Legal Aid Commission Organizational Chart



* Indicates Additional Staff Over Normal Complement

Functional Responsibility of Legal Secretary/Intake Workers and CSOs to Senior Intake Worker

Schedule N - Consultations

Avalon

Chief Justice of Newfoundland and Labrador, J. Derek Green

Chief Justice Trial Division, Supreme Court, David Orsborn

Justice Richard LeBlanc, Unified Family Court, St. John's

Chief Judge Mark Pike, Provincial Court, St. John's

Donna Ballard (in her capacity as former ADM, NL Department of Justice)

Nick Avis, QC, Chair of the Board of Commissioners, NL Legal Aid Comm.

Newman Petten, Provincial Director (retired), NL Legal Aid Comm.

Nicholas Summers, Provincial Director and Provincial Office staff, NL Legal Aid Comm.

Lauren Chafe, Area Director Empire Ave Office, NL Legal Aid Comm.

Tony St. George, Area Director Elizabeth Ave (Conflict) Office and staff, NL Legal Aid Comm.

Paul Davis, Project Lead and his team, FCO St. John's

Peter Kearsey and Joan Dawson, Mental Health Office, NL Legal Aid Comm.

Heidi Marshall, Family Court Duty Counsel Project, St. John's

Kevin Baker, Area Director Carbonear and staff, NL Legal Aid Comm.

Mary Anne Fleming representing 'Justice for Children and Youth' advocacy group

Sergeant Pete McKay representing the RCMP

Robert Simmonds, QC, independent legal counsel, St. John's

Bob Buckingham, independent legal counsel, St. John's

Peter Ralph, Dept. of Justice, (former Project Lead, Mental Health Office, NL Legal Aid Comm.)

Carol Chafe, Child and Youth Advocate's Office, St. John's

Eastern

Arnold Hussey, Area Director Clarenville and staff, NL Legal Aid Comm.

Marcus Evans, Area Director Marystown and staff, NL Legal Aid Comm.

Justice Garrett Handrigan, Supreme Court Trial Division, Grand Bank

Judge Harold Porter, Provincial Court, Grand Bank

Central

Judge Timothy Chalker, Provincial Court, Grand Falls-Windsor

Heather Jewer-Mills, Area Director Grand Falls-Windsor and staff, NL Legal Aid Comm.

Judge Bruce Short, Provincial Court, Gander

Sandra Sarto, Acting Area Director Gander and staff, NL Legal Aid Comm.

Myra Dean, Family Justice Services (Central NL), Grand Falls-Windsor

Western

Justices David Peddle and Alan Seaborn, Supreme Court Trial Division, Corner Brook

Judge Catherine Allen-Westby, Provincial Court, Corner Brook

John Jenniex, Board Member, NL Legal Aid Comm.

Andrew Parsons, MHA Burgeo-LaPoile

Gary Kearney, Area Director Corner Brook and staff, NL Legal Aid Comm.

Kevin Dunphy, Area Director Stephenville and staff, NL Legal Aid Comm.

Shelly Senior, Project Lead FCO Corner Brook and team, NL Legal Aid Commission

Donald Morey, Corner Brook, a consumer of legal aid services

Labrador

Justice Robert Stack, Supreme Court, Happy Valley-Goose Bay

Judges John Joy and (by telephone) William English, Provincial Court, Happy Valley-Goose Bay

Judge Wynne Anne Trahey, Provincial Court, Wabush

Mark Gillette, Legal Counsel, Nunatsiavut Government

Stacy Ryan, Area Director Happy Valley-Goose Bay and staff, NL Legal Aid Comm.

Cory Binderup, Area Director Labrador West (Wabush) and his assistant, NL Legal Aid Comm.

Kendra Grabo, Project Lead FCO, Happy Valley-Goose Bay

Gary O'Brien, independent legal counsel, Happy Valley-Goose Bay and Natuashish

Nova Scotia Legal Aid Commission

Karen Hudson, Q.C., Executive Director

Jennifer Cain, C.A., Chief Financial Officer

Peter Mancini, Service Delivery Director

Joseph Cameron, Internal Operations Officer

Written Submissions

Olthuis Kleer Townshend LLP, Legal Counsel, Ontario, representing the Innu Nation

Provincial Advisory Council on the Status of Women, Newfoundland and Labrador

The Law Foundation of Newfoundland and Labrador