



A review of the Legal  
Aid Online Lawyer  
Billing Portal  
Legal Aid Ontario

Deloitte & Touche LLP  
33 Yonge Street  
Suite 210  
Toronto ON M5E 1G4

Tel: 416-601-6150  
Fax: 416-601-6690  
[www.deloitte.ca](http://www.deloitte.ca)

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**Private and confidential**

Mr. David Field, Director, General  
Legal Aid Ontario  
Atrium on Bay  
40 Dundas Street West, Suite 200  
Toronto, ON, M5G 2H1

Dear Mr. Field,

**Subject: A review of the Legal Aid Online Lawyer Billing Portal – Report**

Further to our engagement, please find enclosed our report pertaining to our review of the Legal Aid Online lawyer billing portal.

This review does not constitute an audit in accordance with Canadian Generally Accepted Auditing Standards, and had we been engaged to perform additional procedures or an audit in accordance with professional standards, other matters might have come to our attention that would have been reported. Accordingly, we do not express any opinion on the assertions made in this report.

This report was prepared solely for the information and internal use of the management of Legal Aid Ontario. Any other use or distribution of this report is strictly prohibited.

Should you have any questions or concerns, please contact the undersigned

Yours truly,

Sandra Roberts  
Partner  
Deloitte & Touche LLP

David Stewart  
Partner  
Deloitte & Touche LLP

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# 1 Executive summary

## 1.1 Background

### 1.1.1 Legal Aid Ontario and the Billing Portal

1. Legal Aid Ontario (“LAO”) is mandated to promote access to justice throughout Ontario by providing low-income individuals with consistently high-quality legal aid services efficiently and effectively. Ontarians eligible to receive legal aid are provided certificates from LAO, allowing clients to receive legal services from private lawyers on LAO’s lawyer panel while guaranteeing payment to the lawyer.
2. The certificates stipulate the type of service the client is eligible to receive and is subject to the tariff rates approved by the Ministry of the Attorney General. As services and costs associated with the case are incurred, lawyers can provide interim billing against the certificate.
3. In 2005, LAO rolled out the ‘Legal Aid Online’ billing portal allowing lawyers to confirm the acceptance of a certificate, to bill for services rendered and associated costs incurred. Accounts submitted by lawyers are paid automatically as long as they are issued for amounts at or below the tariff for given charges defined by the Ministry.
4. Over the past two years, a number of risks related to Legal Aid Online have been identified by management. Specifically:
  - a) Automated controls within the portal environment do not adequately support established billing rules and policies;
  - b) Capabilities within the Lawyer Services and Payments and Post Payment Examination departments may be insufficient to support rigorous review of lawyer billings;
  - c) Challenges establishing adequate lines of communication between the various groups responsible for ensuring the integrity of the billing process; and,
  - d) Due to the implementation of the Legal Aid Online billing portal, and the reduced requirement for lawyers to provide supporting documentation with reference to bills submitted, LAO is currently unable to verify services rendered for all accounts submitted.

## 1.2 Scope and approach

### 1.2.1 Introduction

1. In order to address the Legal Aid Online issues identified, LAO engaged Deloitte to undertake a review to:
  - a) Verify the adequacy, effectiveness, and efficiency of internal controls related to the lawyer billing process;
  - b) Quantify the potential financial annual losses incurred by LAO; and,
  - c) Provide recommendations and share leading practices for improvement to enhance efficiencies, effectiveness and overall operational performance in relation to online billing processes of the lawyer payment portal.



### **1.2.2 Review activities**

1. Our review was structured into the following activities:
  - a) Review of the structure of lawyer billing compliance and monitoring groups;
  - b) Review of the lawyer billing compliance and monitoring processes; and,
  - c) Review of Legal Aid Online billing portal.

### **1.2.3 Data analytic review: scope and approach**

1. A key ask from LAO was an attempt to quantify the potential impact of inappropriate lawyer billing over the period of analysis (April 1, 2006 through March 31, 2009). In addition to reviewing billing breaches defined by LAO's post payments examination group, we performed tests on additional risks to the lawyer billing process. The risks identified were translated into a set of queries that were applied to the billing data supplied by LAO. All tests were completed in accordance with Deloitte's data analytic methodology.
2. It is critical to note that our observations and testing results are not specifically indicative of fraud. The objective of our testing approach was to identify normative rates of specific types of billing activity, and then quantify the transaction and dollar amounts of billings activity that were anomalous with regard to these expected rates. The figures indicated in this report are indicative potential dollars at risk as a result of observed transactional activity, and should assist the LAO in directing PPE and Investigative review strategies to areas where potential issues exist.

## **1.3 Organizational structure**

### **1.3.1 Observations and recommendations**

1. LAO established compliance and monitoring functions to provide oversight and stewardship of the lawyer payment process. In January 2010, LAO restructured the compliance groups so that Post Payment Examinations (PPE) was removed from the purview of Lawyer Services and Payments (LS&P) to the Director General. This was performed to increase the objectivity of the PPE group, and to align with other compliance and monitoring functions (i.e. Investigations and Internal Audit functions).
2. We understand that the Director, General has a Board appointed mandate with reference to compliance and corporate monitoring. By moving PPE to this compliance function, and aligning it with other monitoring groups, LAO is improving the ability of these groups to work more closely together to identify, triage, and investigate potentially inappropriate billing practices.
3. In addition to the changes already implemented, we are proposing that LAO develop a compliance management framework aimed at detecting and investigating inappropriate billing activities, and promoting the understanding of, and compliance with LAO billing policies by panel lawyers. This should form an integral part of LAO's overall compliance strategy. LAO's Compliance Committee could facilitate the development and establishment of the framework.

## **1.4 Lawyer Services and Payments observations & recommendations**

### **1.4.1 LS&P overview**

1. With reference to the lawyer billing process, LS&P group is responsible for the review and approval of submitted accounts above tariff maximums, and for the review and approval of bills submitted with discretionary requests (referred to as match exceptions).
2. The following observations and recommendations are based on our analysis of the LS&P group and related processes.

## **1.4.2 Skills and Capabilities**

1. With the implementation of Legal Aid Online, A/P staff assumed the role of Adjustors responsible for reviewing and approving discretionary payment increases. To date, a competency profile has not been developed for Adjustors and a skills assessment for the group has not been completed. There are concerns that Adjustors do not have the required skills to appropriately review accounts with match exceptions.
2. To improve the skills and capabilities of the Adjustors, it is recommended that LAO:
  - a) Clearly identify and document a competency profile for Adjustors to ensure that all requisite skills and knowledge are possessed by Adjustors executing reviews of lawyer accounts.
  - b) Implement a more robust Adjustor performance management program that includes periodic review by management of departmental Key Performance Indicators.

## **1.4.3 Operations**

1. There is an opportunity to improve inter-department communications related to the lawyer payment process and monitoring activities as there is limited formalized communication between Investigations, PPE, and Lawyer Services and Payments groups.
2. To improve coordination of compliance efforts, it is recommended that LAO:
  - a) Establish more formal communication between the relevant compliance and monitoring functions to ensure that the groups are coordinated and effectively working together. This should include the development of standing meetings and the development of reports summarizing compliance and monitoring activities.
3. A quality assurance framework for the review of discretionary payments processed by the Adjustor group currently exists; however, LAO indicated that this process is not currently followed.
  - a) LAO should execute on its existing Adjustor quality assurance program

## **1.4.4 Technology**

1. LAO reduced the requirement for lawyers to provide supporting documentation with reference to bills submitted when Legal Aid Online billing portal and as a result LAO is unable to verify services rendered for all accounts submitted. Further, Legal Aid Online requires limited details from the lawyer about the services rendered (i.e. aggregate hours and disbursements amounts) and the system does not apply specific business logic to data entry (i.e. specific tariff enhancers only applicable to certain charges).
2. To improve the overall control environment related to lawyer billings, it is recommended that LAO:
  - a) Require lawyers to provide supporting documentation (e.g. dockets, disbursement invoices) with all invoices submitted to LAO for payment at the time of billing.
  - b) Implement additional business logic and mandatory data capture in the collection of lawyer billing data.

## **1.5 Post Payment Examinations observations & recommendations**

### **1.5.1 PPE overview**

1. PPE performs post payment file reviews to verify that accounts paid by LAO are supported with requested documentation (e.g. dockets, invoices) and that submitted accounts are in accordance with the Tariff & Billing Handbook.
2. The following observations and recommendations are based on our analysis of the PPE group and related processes.

### **1.5.2 Strategic and Organizational alignment**

1. There is an opportunity to better align the mandate and objectives of the PPE function with the overall strategic direction of the LAO as it was noted that PPE had overlapping roles with other compliance function.
2. To improve LAO's overall approach to billing compliance monitoring, it is recommended that LAO:
  - a) Align the objectives and mandate of the PPE group with LAO's compliance management framework and strategic direction.

### **1.5.3 Skills and Capabilities**

1. When Legal Aid Online was implemented, A/P staff previously responsible for the manual processing of lawyer payments assumed Examiner responsibilities in the PPE department. To date, a competency profile has not been developed for Examiners and a skills assessment for the group has not been completed. There are concerns that Examiners do not have the necessary skills to adequately scrutinize the post payment reviews.
2. To improve the skills and capabilities of the Examiners, it is recommended that LAO:
  - a) Clearly identify and document a competency profile for Examiners to ensure that all requisite skills and knowledge are possessed to execute post payment reviews.
  - b) Develop a more robust Examiner performance management program that includes periodic review by management of departmental Key Performance Indicators.

### **1.5.4 Operations**

1. There is an opportunity evolve the PPE group from a compliance monitoring group to become more proactive and ensure that activities are focused on value added services aimed at reducing lawyer billing errors and inappropriate billing activities.
2. To evolve the PPE function, it is recommended that:
  - a) PPE should implement risk-based sampling and certificate reviews as part of the group's examination process.
3. There is an opportunity to improve inter-department communications related to the lawyer payment process and monitoring activities as there is limited formalized communication between Investigations, PPE, and Lawyer Services and Payments groups.
4. To improve coordination of compliance efforts, it is recommended that:
  - a) PPE be an active participant in inter-department communications.
5. A quality assurance framework for the review of post payment reviews completed by the Examiners currently exists; however, LAO indicated that this process is not currently followed.
  - a) Execute on its existing Examiner quality assurance program.
6. There is an opportunity to improve the monitoring and reporting of the billing process. The error rate reported, based on lawyer payment audits performed by PPE, does not provide a sufficient indication of the risks faced by LAO.
7. To improve provide better oversight of all billing compliance monitoring, it is recommended that LAO:
  - a) Develop, monitor and report risk indicators related to LAO's lawyer billing process, beyond the error rate reported by PPE.

## **1.6 Investigations observations and recommendations**

### **1.6.1 Investigations overview**

1. The Investigations group proactively investigates abuse and potential abuse to LAO. This includes review of potential misappropriation of assets and the commission of other offences by lawyers and other external service providers, Legal Aid clients or applicants, and employees.
2. The following observations and recommendations are based on our analysis of the Investigations group.

### **1.6.2 Strategic and organizational alignment**

1. The lack of an overall mandates has resulted in each of the compliance groups working towards their own objectives. For instance, the Investigations group prepares highly detailed reviews to provide adequate support and evidence for possible criminal prosecution, but it has not been clearly communicated if this is the level of due diligence LAO requires to complete its objectives.
2. To improve efficiencies and effectiveness of the Investigation group, it is recommended that LAO:
  - a) Align the objectives and mandate of the Investigation group with LAO's compliance management framework and strategic direction.

### **1.6.3 Skills and capabilities**

1. To date, a competency profile has not been developed for Investigators and LAO does not track performance metrics for Investigators.
2. To ensure that the Investigations group has the correct skills profile, it is recommended that LAO:
  - a) Clearly identify and document a competency profile for Investigators to ensure that all requisite skills and knowledge are possessed by Investigators to executing reviews.
  - b) Develop a robust Investigator performance management program should be implemented including periodic review by management of departmental Key Performance Indicators.

### **1.6.4 Operations**

1. There is an opportunity to improve inter-department communications related to the lawyer payment process as there is limited formalized communication between the Investigations department, PPE, and Lawyer Services.
2. To facilitate better integration between that the Investigations group and other compliance and monitoring group, it is recommended that:
  - a) The Investigations group needs to be an active participant in inter-company communications
3. To ensure a comprehensive approach to compliance management, it is recommended that:
  - a) Management consider implementing a "whistleblower" program (e.g. confidential hotline) that allows individuals inside and outside the organization (e.g. panel lawyers, clients) to report any unusual or suspicious activity to LAO.

## **1.7 Data Analytic Review – Key Findings**

1. Deloitte performed a review of LAO's billing and payments data with respect to key lawyer billing risks identified through our review of LAO documentation, and discussions with key stakeholders.

2. The objective of the testing was to define statistically normal patterns of billing behaviour and to identify where certain billing activities appeared anomalous and potentially indicated inappropriate billing practices. We undertook this approach due to the absence of corroborative information such as lawyer dockets, court records, and other data which would support a definitive conclusion as to the appropriateness of billings submitted.
3. The total payments to lawyers over the period of analysis were \$441.7M, and covered payments made between fiscal years 2007 and 2009. Through our testing procedures we identified \$17.5 M or 3.95% of total lawyer billings as being at risk. This was determined through tests that identified suspicious account timing, and the manipulation of certificate tariff maximums with billing options such as enhancers, and trial elections. Again, this figure is a quantification of statistically anomalous billings, and should be reviewed further by LAO to determine if this constitutes inappropriate lawyer billing activity. It is also important to note that we were unable to execute certain tests due to the lack of data collection by LAO , i.e. lawyer dockets, specific service delivery dates, court dates, etc:
4. In our report, we have also provided recommended system enhancements and data entry controls that should be considered by LAO. These include:
  - a) An electronic method of collecting docket data;
  - b) Required collection of court dates and court case numbers in lawyer billing accounts;
  - c) Enhancement of LAO's data warehouse with external data sources such as key fields from Ontario Court records (ICON); and,
  - d) Incorporation of embedded business logic into the online billing portal to more effectively guide the use of enhancers and other tariff modifying billing options.
5. We feel that the implementation of stronger data collection measures and preventative system based controls will enhance LAO's ability to mitigate large portions of system generated billing risk and to identify instances of potential lawyer billing non-compliance more quickly.
6. Further, better quality data and more robust collection practices will also provide LAO with a richer data set that it can mine using advanced analytic tools to identify key opportunities to generate greater enterprise value.

# 2 Background, Scope and Approach

## 2.1 Background

### 2.1.1 Legal Aid Ontario

1. Legal Aid Ontario (“LAO”) is an independent, but publicly funded and publicly accountable non-profit corporation set up to administer the Province of Ontario’s legal aid program. LAO was created in 1999 as a result of the enactment of the Legal Aid Services Act (“LASA”) by the Ontario Government in 1998.
2. The LASA stipulates that LAO’s mandate is to promote access to justice throughout Ontario by providing low-income individuals with consistently high-quality legal aid services efficiently and effectively. Each day, LAO assists nearly 4,000 people with a range of legal concerns such as domestic violence, child support disputes, child custody, workplace injuries and immigration issues.
3. LAO provides access to certificate services, clinic law services, duty counsel services, and advice lawyer services. LAO’s services protect these individuals from the effects of poverty, while preventing potential backlogs caused by litigants appearing in court without legal representation.

### 2.1.2 Lawyer payment process

1. Ontarians eligible to receive legal aid are provided certificates from LAO, allowing clients to receive legal services from private lawyers forming part of the LAO lawyer panel while guaranteeing payment to the panel lawyer. The certificates stipulate the type of service the client is eligible to receive and is subject to the tariff rates approved by the Ministry of the Attorney General.
2. As services and costs associated with the case are incurred, panel lawyers can provide interim billing against the certificate referred to as accounts. There can be multiple accounts associated with a certificate.
3. In 2005, LAO rolled out the ‘Legal Aid Online’ billing portal (“online billing portal”) allowing lawyers to confirm the acceptance of a legal aid certificate and to bill LAO for services rendered and associated costs incurred.
4. The online billing portal was implemented to create efficiencies within the legal aid payment process and to compensate lawyers on LAO’s panel in a timely manner. Accounts submitted by panel lawyers are paid automatically as long as they are issued for amounts at or below the tariff for identified legal charges defined by the Ministry of the Attorney General. According to LAO 70-75% of the accounts (lawyer bills) that are submitted are paid automatically; the remainder is examined manually by the Lawyer Services and Payment (“LS&P”) department.

### 2.1.3 Payment Process Issues

1. LAO has defined types of non-compliance within the established billing process as a series of ‘breaches’. These breaches range from a lawyer’s failure to provide appropriate supporting documentation during the post payment examination process through to billing practices which may result in overpayment for services rendered. Each type of breach is documented by LAO and the frequency of their occurrences is assessed through the post payment examination process which is discussed later in this report.



2. The LAO Board of Directors has established an acceptable risk tolerance level of 0.4% with reference to billing breaches. However, the actual identification of billing breaches through the post payment examination process indicates the risk exposure of LAO is rather higher. The table below illustrates the total dollar value of accounts deemed to be in breach of LAO billing policy:

	Billing breach rate
Per the sample selected through the PPE process	5.3%
With reference to 'Breach 1' (failure to provide documentation on request)	3.9%
<b>With reference to all remaining breaches</b>	<b>1.4%</b>

3. The rate of billing breaches as determined by the Post Payment Examinations group ("PPE") appears to be increasing over the last four years. The 2008-2009 total billing breach rate was determined to be 5.3%, which encompasses all manner of breaches including failure to provide documentation, through to billing for the same services twice. Also, LAO reports on certain breaches separately, namely, failure of lawyers to provide documentation supporting billings upon request (known as "breach 1").
4. Over the past two years, a number of risks have been identified by LAO management that may be contributing to the increased billing breach rate:
  - a) Upon the implementation of the Legal Aid Online billing portal, there was a reduced requirement for lawyers to provide supporting documentation with reference to accounts submitted. Therefore, LAO is currently unable to verify services rendered for all accounts submitted, unless such information is requested from or submitted by the lawyer;
  - b) Automated controls within the online billing portal environment do not appear to adequately support established account billing rules and policies;
  - c) Capabilities within the LS&P and PPE departments may be insufficient to support an increase in reviews of lawyer accounts; and,
  - d) Challenges with reference to establishing adequate lines of communication between the various groups responsible to ensuring the integrity of the billing process.
5. In an attempt to clarify the underlying issues that may cause an increase to the breach rates, we were engaged by LAO to undertake the following:
  - a) An assessment of the risks related to the lawyers' certificate billings using the portal including a review of the security systems and internal controls;
  - b) An assessment of the effectiveness of existing automated and manual internal controls and monitoring systems in reducing LAO's exposure to inappropriate billing practices;
  - c) An estimate of the potential and actual annual losses incurred by LAO supported by data analysis;
  - d) Based on the risk assessment the development of a risk mitigation strategy to improve portal internal controls and monitoring systems;
  - e) Recommendations on the level of supporting documentation that would need to be provided by lawyers to address audit and assurance requirements; and,
  - f) An assessment of the various monitoring and compliance functions to determine if various reasonable avenues of review and investigation are being pursued and to provide recommendations on how to reorganize the functions in order to have a coordinated and seamless approach to compliance.

## **2.2 Process Review: Scope and approach**

### **2.2.1 Introduction**

1. The purpose of this review was to evaluate:
  - a) the adequacy, effectiveness, and efficiency of internal controls related to the lawyer billing process;
  - b) to quantify the potential financial annual losses incurred by LAO; and,
  - c) to provide recommendations and share leading practices for improvement to enhance efficiencies, effectiveness and overall operational performance in relation to online billing processes of the lawyer payment portal.
2. This review was structured into the following activities:

### **2.2.2 Review of the structure of lawyer billing compliance and monitoring groups**

1. Reviewed and documented the roles and responsibilities of staff within the lawyer monitoring groups and assessed alignment to the overall LAO mandate; and,
2. Assessed effectiveness of the current organizational structure for the compliance and monitoring groups in enhancing communication, and managing workflow.

### **2.2.3 Review of lawyer billing compliance and monitoring processes**

1. Reviewed monitoring and compliance processes with reference to the lawyer payments process;
2. Identified and documented risks and current mitigating controls related to the monitoring and compliance process;
3. Assessed the effectiveness of current controls to address risk;
4. Assessed risk exposure and identified gaps; and,
5. Developed recommendations and opportunities for improvement.

### **2.2.4 Review of Legal Aid Online billing portal**

1. Reviewed the process of billing through the online portal and developed work flows;
2. Identified and documented risks and current mitigating controls in the online billing portal;
3. Assessed the effectiveness of current controls to address risk;
4. Assessed risk exposure and identified gaps; and,
5. Developed recommendations and opportunities for improvement.

### **2.2.5 Timing of review**

1. The review of Legal Aid online lawyer billing portal was completed between December 2009 to March 2010. Our observations and recommendations are as at this period.

### **2.2.6 Nature of review**

1. This review does not constitute an audit in accordance with Canadian Generally Accepted Auditing Standards, and had we been engaged to perform additional procedures or an audit in accordance with professional standards, other matters might have come to our attention that would have been reported. Accordingly, we do not express any opinion on the assertions made in this report.



2. This report was prepared solely for the information and internal use of the management of Legal Aid Ontario. Any other use or distribution of this report is strictly prohibited.

## 2.3 Data Analytic Review: Scope and Approach

### 2.3.1 Introduction

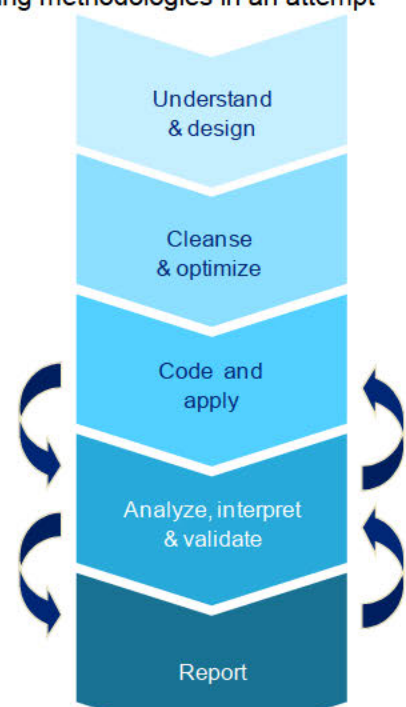
1. We attempted to quantify the potential impact of lawyer billing breaches for the period of review for lawyer payments; between April 1, 2006 and March 31, 2009.
2. In addition to reviewing all billing breaches identified by LAO, we performed interviews and billing process walkthroughs with LOA personnel to identify any other potential risks inherent to the on-line billing portal process.
3. Those additional risks identified by us were validated with key stakeholders at LAO including the Directors of Finance and Lawyer Billing Services. The account billing risks were translated into a set of additional tests that were applied to the data supplied by LAO for analysis.
4. It is important for the reader to understand that any data analytic anomalies which are included in our observations and testing results do not automatically constitute fraudulent behaviour. We understand that LAO will review those transactions identified in our tests for further review to determine if additional actions are necessary and appropriate.
5. The objective of our testing approach was to identify normative rates of specific types of billing activity, and then quantify the transaction and dollar amounts of billings activity that were anomalous with regard to these expected rates. We have attempted to quantify the potential amount of dollars at risk as a result of those observed transactional activities, in an attempt to assist LAO in determining future PPE and Investigative review strategies.
6. We applied our data analytic methodology, which is a five stage approach in the analytic review of LAO's billing portal data:

### 2.3.2 Understand and Design

1. We obtained an understanding of LAO's information and technology environment that supports the lawyer on-line billing payment process and identified relevant sources of LAO data required for our analysis.
2. In conjunction with the LAO, we identified potential risks of overbilling in the account submission and review process and developed data testing methodologies in an attempt to detect those anomalies which could be indicative of potentially inappropriate account billing behaviours.

### 2.3.3 Cleanse and Optimize

1. We acquired multiple data sources from LAO, predominantly the PeopleSoft billing portal application databases, in addition to other key reports executed by LAO on a periodic basis from its data warehousing and analysis environment.
2. We unified these disparate data sources into common data set for our analysis. We applied rules-based methods to cleanse and structure the data obtained and through the concept of data domains developed additional data perspectives to facilitate our data mining approach. Examples of the cleansing activities performed included standardizing of date formats, between LAO's billing and payments systems.
3. A comprehensive data audit was executed against the LAO dataset to ensure that all data fields acquired contained complete and valid data. Instances where we



observed potential risks in regards to data hygiene were identified and followed up with LAO.

#### **2.3.4 Code and Apply**

1. We developed a database to identify billing breach occurrences and accounts demonstrating statistically anomalous characteristics versus the account population.

#### **2.3.5 Analyze, Interpret, and Validate**

1. We performed detailed analysis and validation of results, followed by a detailed cross-referencing of results obtained against issues known to the LAO to support our testing methodology and results.

#### **2.3.6 Report**

1. This report captures our analysis of potential inappropriate lawyer billings activity and provides our perspectives, on LAO's fraud prevention and investigation framework.



# 3 Lawyer Payment Monitoring and Compliance Organizational Review

## 3.1 Current organizational structure

1. To assist compliance with billing policies as well as to deter inappropriate billing practices, LAO established compliance and monitoring functions to provide oversight and stewardship of the lawyer payment process.
2. The following compliance and monitoring groups were developed out of the Accounts Payable group in place prior to the implementation of the online billing portal:
  - a) **Lawyer Services & Payments (LS&P)** - this group's primary responsibility is to review lawyer accounts submitted through the online billing portal, prior to payment, for amounts above the tariff established by the Ministry of Attorney General for providing legal services in response to charges appearing on each legal aid certificate.
  - b) **Post Payments Examinations (PPE)** – this group's primary objective is to determine compliance with the tariff by examining a sample of paid accounts against source documents (which are requested separately by PPE during their review) to determine any potential billing errors or other billing process abuses by panel lawyers.
3. LAO's compliance function also includes the following:
  - a) Investigations team whose primary objective related to the online billing portal is to proactively detect potential abuses of the online portal. The Investigation team performs reviews of those lawyers identified with possible inappropriate billing activities.
  - b) The Complaints function who maintain a centralized intake of client complaints.
  - c) Internal Audit who provide an independent objective assurance function that advises on business practices including the lawyer billing payment process; and
  - d) The Finance Department which is ultimately responsible for the financial administration and public funds within LAO of funds to lawyers.
4. The organizational and reporting structure of LAO's compliance functions, prior to December 2009, is summarized below:





10. LAO's Internal Audit function can be used to provide an independent, objective assessment of risk management practices and the operating effectiveness of controls as designed by management related to the lawyer billing process and systems. The review of the billing portal process could be included as a review as part of the audit plan to evaluate the effectiveness of internal controls implemented by LAO. Internal Audit should not be responsible for ongoing or daily monitoring of the lawyer payment portal.
11. LAO may wish to consider providing Internal Audit direct access to the Board or Audit Committee while reporting to the Director, General for daily administrative matters to align with leading practices.
12. In addition to the changes already implemented by LAO, we propose that LAO develop a compliance management framework aimed at proactively detecting and investigating inappropriate billing activities, while promoting the understanding of, and compliance with LAO billing policies by panel lawyers. This should form an integral part of LAO's overall compliance strategy.
13. We understand that LAO desires to ensure that the framework is well defined, integrated and transparent and is supported by management to ensure that it achieves program objectives. Further, this framework should be reviewed and updated on a regular basis (e.g. annually) to ensure consistency with changes to LAO's billing processes.
14. Key components of the compliance framework should include:
  - a) **A mission statement** - The mission of LAO's compliance function should include the key concepts of integration, coordination, transparency and accountability. An illustrative example of a potential mission statement is as follows:
    - i) "To develop and execute a comprehensive, integrated and transparent compliance program that aims to support improved accountability and service delivery as well as the safeguarding of public funds with LAO by reducing inappropriate activities"
  - b) **Objectives** - The objectives of the compliance management program should be clearly defined and transparent. Example of such objectives may include:
    - i) Ensure that lawyers are paid in accordance with the Legal Aid Services Act and the Regulations made pursuant to the Act.
    - ii) Maximize the detection and deterrence of inappropriate activities (including but not limited to billing activities).
    - iii) Conduct appropriate investigative procedures upon the detection, suspicion or complaint of inappropriate billing activities.
    - iv) As necessary use available enforcement options to recover those funds from panel lawyers subject to enforcement.
    - v) Develop effective enforcement options to both recover funds and deter panel lawyers from inappropriate billing practices.
15. A primary component to the compliance framework is ensuring that dedicated groups are coordinated and aligned with the overall objectives of the compliance function. This is critical with respect to the PPE and Investigations, as these groups are recognized to having overlapping detection and investigative responsibilities.
16. Appendix B provides an outline for LAO to implement a general compliance management program framework.
17. LAO has adopted a Compliance Committee with direction provided by the Audit and Finance Committee. The Compliance Committee provides oversight of LAO's risk management, control and accountability processes and is responsible for promoting continuous improvement that supports a consistent approach to risk management across the organization. The Compliance Committee Terms of Reference has been documented and could be expanded to include framework components as listed above. Specifically, LAO could expand the terms of reference to include responsibilities to deter and enforce inappropriate billing activities, and the responsibility to coordinate the groups responsible for deterring inappropriate billing activities.

## 3.2 Observations and recommendations

1. The following sections of the report provide a summary of observations and recommendations based on review and analysis of the current lawyer payment process at LAO.
2. A summary of the potential implications and impact of the observations are provided along with recommendations, anticipated benefits of each recommendation, and implementation considerations.
3. The observations identified related to the LAO's lawyer payment process, based on interviews with process owners, review of key documents and reports, data analytics and walkthrough of the lawyer payment process including the use of the PeopleSoft system, and where appropriate arranged by the following risk areas:
  - a) Strategic and Organizational Alignment;
  - b) Skills and Capabilities;
  - c) Operations; and,
  - d) Technology.
4. The observations and recommendations are categorized by compliance function and are intended to improve the efficiency and effectiveness of the monitoring of the lawyer billing process.
5. The scope of our observations and recommendations encompasses the following compliance groups which are addressed in turn:
  - a) Lawyer Services and Payments;
  - b) Post Payment Examination; and,
  - c) Investigations.



# 4 Lawyer Services & Payments review and recommendations

## 4.1 Lawyer Services and Payments Overview

1. The Lawyer Services and Payments (“LS&P”) group is responsible for the review and approval of submitted accounts above tariff maximums, and for the review and approval of bills submitted with discretionary requests (up to 15 hours). LS&P liaises with lawyers and their staff to provide information regarding account status, account information, and use of the online billing portal.

## 4.2 Skills and Capabilities

### 4.2.1 Observations

1. We provide the following observations with reference to Skills and Capabilities reviewed in the LS&P group:
  - a) When Legal Aid Online was implemented, responsibilities for existing Accounts Payable (“A/P”) staff were reassessed. A/P staff in the LS&P department assumed the role of Adjustors, responsible for reviewing and approving discretionary payment increases. To date, a competency profile has not been developed for Adjustors.
  - b) The performance of an Adjuster is partly evaluated on the number of discretionary payment requests that they process in a day. This creates a risk where an Adjustor is potentially incentivized to process an account with full discretionary increase, as it takes longer to process partial or denied discretion requests.
  - c) Over a three-year period, we identified approximately \$61.1 million of discretionary billings requests in which approximately \$44.7 million were approved by LAO. It appears that the value of discretionary requests granted (in aggregate) by an Adjustor are not monitored.
  - d) Current performance metrics are not coupled to any positive or negative outcome (i.e. incentive, discipline) for the employee.

### 4.2.2 Impacts and Implications

1. Potential implications faced by LAO in reference to our observations in regards to skills and capabilities within the LS&P group are:
  - a) Adjustors may not have the necessary competencies and experience needed to complete a sufficient review which may increase the risk of approving inappropriate discretionary payment requests.
  - b) There is a risk that adjustors may inappropriately process discretionary requests in an attempt to meet personal performance metrics.
  - c) The absence of skill competency assessment for the role of an Adjustor increases the risk of insufficient technical knowledge and therefore translates into a missed opportunity to increase LS&P’s effectiveness.

#### **4.2.3 Recommendation 1: LAO should clearly identify and document a competency profile for Adjustors to ensure that all requisite skills and knowledge are possessed by Adjustors executing reviews of lawyer accounts**

1. A competency profile assessment should be developed by management to establish core behavioural, technical and functional expertise required for Adjustors that is congruent to the overall objective of LAO's compliance function. The competency profile should be used when LAO is hiring or relocating staff to ensure that employees have the required skill sets to execute responsibilities effectively. A sample competency profile for Adjustors is included in Appendix C.
2. Key skills required by Adjustors may include:
  - a) Relevant experience or professional legal training to understand and evaluate accounts triggering match exceptions, in addition to the professional skepticism required in assessing the reasonableness of panel lawyer requests for discretionary increases;
  - b) A thorough technical understanding of the lawyer billing process, the tariff, and related LAO policies;
  - c) Developed communication skills in order to articulate and discuss any potential inappropriate billing issues both internally and to external parties (i.e. panel lawyers).
3. It may be prudent to conduct a skill assessment determine any skills gaps (see Appendix D for an example of a skills assessment framework). Human Resources and management should develop an action plan outlining next steps to close identified gaps. Action steps could include staff training, reallocation of LAO staff with the required skill sets, and hiring new staff with the required skill sets.

#### **4.2.4 Anticipated Benefits**

1. Increased effectiveness and efficiencies in the processing of discretionary requests that may result in increased panel lawyer satisfaction.
2. Increased confidence in the decisions made by the Adjustors with reference to discretionary requests.

#### **4.2.5 Implementation considerations**

1. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.
3. **Re-organization** – Opportunity to introduce new job descriptions with new required skill sets. A working session should be held with HR, key leadership, and legal to review and ensure that the staffing approach is fair, equitable, and legally defensible.

#### **4.2.6 Recommendation 2: Implement a robust Adjustor performance management program including periodic review by management of their Key Performance Indicators (“KPI’s”).**

1. Adjustor performance metrics should be defined, implemented and monitored by management on a regular basis. These metrics should be coupled to organizational objectives and targets which would be developed and communicated prior to any evaluation.
2. All performance metrics should be used to develop incentive systems and/or corrective actions that promote organizational and individual accountability. Management should



establish regular reporting of performance metrics, identify staff that deviate significantly from expectations and develop action plans to remediate.

3. We provide some examples to consider of KPI's that can be tracked by Adjustor:
  - a) Dollar value of discretionary increases reviewed, approved, and referred by the Adjustor.
  - b) Percentage of discretionary accounts inappropriately approved based on a sample of accounts reviewed as part of the quality assurance program (see recommendation #8 – Quality Assurance Reviews)
  - c) Number of legitimate complaints from panel lawyers on Adjustor performance.

#### **4.2.7 Anticipated benefits**

1. Increased effectiveness and efficiencies in the processing of discretionary requests resulting in lower administrative costs and a reduction in inappropriate approvals of discretionary requests.
2. Continuous monitoring of adjustor performance metrics will highlight emerging issues with reference to the payment of discretionary requests. Through an iterative evaluation and learning process, Adjustors will enhance their skill sets and ability to exercise improved professional judgments in approving or referring discretionary requests.

#### **4.2.8 Implementation considerations**

1. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.
3. **System functionality** – LAO should consider using PeopleSoft functionality to the measure and report on performance metrics of the Adjustor group.

### **4.3 Operations**

#### **4.3.1 Observations**

1. We provide the following observations with reference to Operations reviewed in the LS&P group:
  - a) There is an opportunity to improve inter-department communications related to the lawyer payment process and monitoring activities, as currently there is limited formalized communication between Investigations, PPE, and LS&P functions.
  - b) There is no requirement for panel lawyers to submit documentation to support the costs incurred or services provided (e.g. dockets, disbursement invoices) unless requested by LAO for audit purposes or if the panel lawyer is requesting a discretionary increase. We note that panel lawyers are granted a total of 55 days (including requests and grace periods) to submit dockets for review upon receiving the initial request.
  - c) A quality assurance framework for the review of discretionary payments processed by the Adjustor group currently exists; however, LAO indicated that this process is not currently followed.

#### **4.3.2 Impacts and Implications**

1. Impacts faced by LAO in reference to our observations around Operations within the LS&P group are:

- a) LAO allocates limited resources to issue requests and follow-up on documents from panel lawyers for audit purposes.
- b) It is reasonable to assume that certain panel lawyers may not create dockets at the time they provide services and may only create such dockets in response to a request from LAO. This reasonable assumption is based on the experiences of PPE in relation to their investigations of billing Breach 1. This is where a panel lawyer has failed to provide dockets supporting services or disbursements provided to their client, which has increased from 1.2% in 2005/06 to 3.9% in 2008/09. It is reasonable that dockets should be created, and readily available, in each instance services are provided by the panel lawyer to their clients.
- c) In the absence of dockets with account submissions, LAO is unable to determine the completeness, accuracy and validity of accounts submitted for payment. Currently, LAO is unable to detect all types of billing breaches documented by LAO.

#### **4.3.3 Recommendation 3: In order to ensure that the various monitoring and compliance functions are coordinated and effectively working together, LAO needs to establish formal communication channels between the relevant functions.**

1. We provide two approaches to improve communication between the compliance function which are: a) to establish a standing compliance team meeting with representatives from all functions; and b) to establish regular reporting related to lawyer billing monitoring and compliance.
  - a) A compliance team meeting should be held on a regular basis from representatives across LAO's compliance functions which include PPE, Complaints, Investigations, LS&P, and Internal Audit. The agenda for these meetings could include:
    - i) Current activities within the departments
    - ii) Trend analysis of breaches or inappropriate billing activities observed by the departments
    - iii) Status of any referrals made to Investigations from PPE or other LAO departments
    - iv) Discussions regarding new fraud prevention techniques or tools
    - v) Discussion of the risk indicators (see recommendation 14) and development of action plan to address any areas of concern
  - b) LAO has established a working group to create a lawyer billing scorecard that received inputs from PPE, Investigations, Finance and Lawyer Complaints. This scorecard should promote communication and awareness between departments. LAO should ensure that this reporting includes key risk indicators. Key Risk Indicator reporting is discussed in detail in recommendation 14. The risk indicators should be discussed as part of the compliance meeting which should include an analysis of the risk indicators and the development of action plans to address any areas of concern.

#### **4.3.4 Anticipated benefits**

1. Identification, examination and resolution of high risk accounts submitted by panel lawyers.
2. The creation of a proactive approach to monitoring compliance with the lawyer billing policies.

#### **4.3.5 Implementation considerations**

1. **Change management** – employees will have develop stronger working relationships to make communications between departments more efficient (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **Tools** – ability of systems to track metrics to develop and monitor key risk indicators.

#### **4.3.6 Recommendation 4: Lawyers should be mandated to provide supporting documentation (e.g. dockets, disbursement invoices) at the time of submission for all accounts submitted to LAO for payment.**

1. It is reasonable to expect that dockets and disbursement invoices should be created by lawyers prior to the submission of the account to LAO. LAO may assess the ability to consider Legal Aid Online billing portal system enhancements that would allow a lawyer to submit complete docket and disbursement information in support of each account submitted for payment.

#### **4.3.7 Anticipated benefits**

1. Access to complete, accurate and timely information that apply risk based approach to PPE and other monitoring and enforcement activities.
2. Submission of complete, accurate and timely information may create a deterrent to those panel lawyers considering or attempting to submit an inflated or false account.
3. Improved efficiencies in LAO’s monitoring functions (e.g. PPE, Investigations), as each department would reduce the amount of time allocated to documentation requests and follow up.

#### **4.3.8 Implementation considerations**

1. **Agent management** – this could be perceived as an additional administrative burden by the panel lawyers. It may be prudent to establish consultative sessions articulating the overall benefits of submitting complete docket information at the time of submission of an account.
2. **Technology requirements** – LAO will have to assess the capabilities of PeopleSoft to allow for dockets and other supporting documents to either be attached or capture during an account submission.

#### **4.3.9 Recommendation 5: LAO should execute on its existing Adjustor quality assurance program**

1. LAO should consider increasing its current quality assurance program to ensure that panel lawyers are being fairly reimbursed for their services while ensuring that the services provided are complete, accurate and verified in accordance with established LAO policies and tariffs.
2. The Supervisor of Lawyer Payments should review a predetermined number of files per Adjustor weekly, to confirm that discretionary requests are approved in accordance with LAO guidelines. Performance feedback should be provided to the Adjustors to improve their performance and results of the reviews could be rolled into the Adjustors performance reviews (see recommendation 2).

#### **4.3.10 Anticipated benefits**

1. The ability to facilitate transparent adjudication regarding discretionary requests which may result in an increased understanding of service delivery while attempting to reduce inappropriate discretionary approvals.

2. Provision of a framework and transparency where subjectivity is less prevalent between Adjustors in the approval of discretionary account increases.

#### **4.3.11 Implementation considerations**

1. **Workload** – completing the quality assurance program will have to be prioritized within the schedule of the Lawyer Payments Supervisor.
2. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.
3. **Regionalization of operations** – Lawyer Services is realigning its operations to provide services by regions. In this model, Area Directors will be responsible for approval of discretionary requests.

### **4.4 Technology**

#### **4.4.1 Observations**

1. We provide the following observations with reference to Technology reviewed in the LS&P group:
  - a) Legal Aid Online requires limited account supporting information from the panel lawyer about the services rendered (i.e. aggregate hours and disbursements amounts) at the time of account submission.
  - b) The on-line portal does not apply specific business logic to data entry (i.e. specific tariff enhancers only applicable to certain charges).
  - c) The on-line portal does not prompt the review of data entered for completeness and accuracy in an attempt to provide legitimacy of each account submitted.
  - d) Solicitor master files do not appear to be current possibly because LAO does not force lawyers to submit a final bill.
2. We discuss specific application control issues within the section identified as 'Discussion of Legal Aid Online system based controls' of this report.

#### **4.4.2 Impacts and Implications**

1. Impacts faced by LAO in reference to our observations around Technology within the LS&P group are:
  - a) Lack of preventative/detective controls on the portal system may increase the risk of inaccurate or inappropriate billings, and overpayments may be processed by LAO. This is discussed in more detail in the 'Discussion of Legal Aid Online system based controls'.
  - b) There appears to be a lack of clarity with reference to tariff maximums, due to the lack of a cumulative total of the tariff maximum information for the panel lawyer, which may result in instances of accounts incurring match exceptions requiring manual review by LAO.

#### **4.4.3 Recommendation 6: LAO should implement additional business logic and mandatory data capture in the collection of lawyer billing data**

1. An evaluation of the portal interface should be performed to ensure system functions are meeting organizational objectives. Based on leading practices, some suggestions to consider include:
  - a) Mandatory fields should be added to the account entry interface to capture specifics related to services performed, for example services rendered dates, court file

numbers, etc. These are discussed further in the 'Discussion of Legal Aid Online system based controls'.

- b) Map system controls to business rules – LAO should develop preventative controls within the lawyer billing portal to reflect business rules, and known instances where specific combinations of 'line item' detail are not permitted. For example, the inability to bill certain enhancers relating to certain charges. These are discussed further in the 'Discussion of Legal Aid Online system based controls'.

#### **4.4.4 Anticipated benefits**

1. Enhanced application controls should help to reduce billing errors submitted by panel lawyers and reduce the potential for over payment.
2. Enforcing minimum billing amounts may reduce the administrative costs by decreasing the workload and backlog in the LS&P group and will reduce the total number of samples that require PPE review under the current sampling techniques.

#### **4.4.5 Implementation considerations**

1. **System capabilities** – discussions with LAO Information Technology resources will be required to determine which system modifications are practical based on perceived benefits versus costs.
2. **Agent management** – this could be perceived as an additional administrative burden by the panel lawyers. It may be prudent to establish consultative sessions articulating the overall benefits of submitting complete docket information at the time of submission of an account.

#### **4.4.6 Recommendation 7: LAO should enforce its policy of not paying accounts in excess of tariff maximums without the presence and diligent review of discretionary increase requests**

1. LAO should consider paying only up to the tariff maximum in instances when the panel lawyer has not requested a discretionary increase, but have billed over the tariff amounts.
2. Additionally, system capabilities should be evaluated to determine whether discretionary increases on certificates can be tracked and monitored automatically by the system to ensure the 15 hour maximum approval policy is adhered to.
3. The implementation of monitoring techniques (i.e. review reports that list total discretionary hours per certificate processed by Adjusters) should be considered by management to ensure compliance with policy.

#### **4.4.7 Anticipated benefits**

1. Timely payment of lawyer invoices when adequate support is provided during account submission.

#### **4.4.8 Implementation considerations**

1. **System capabilities** – discussions with LAO Information Technology resources will be required to determine which system modifications are practical based on perceived benefits versus costs.
2. **Lawyer appeals** – there may be an increase in the number of panel lawyer appeals in those instances where LAO only reimbursed up to the tariff maximum when the account amount is greater than the tariff amounts, but a discretionary increase has not been requested.

#### **4.4.9 Recommendation 8: LAO should ensure its solicitor file is up to date and reflects accurate list of solicitors on the lawyer panel**

1. The solicitor master file should be reviewed and updated on a regular basis. Specifically, the master file should be reviewed to ensure panel lawyers have only one active solicitor number within the on-line portal system. Additionally, panel lawyers who are not active members of the Law Society should have access privileges revoked to the online portal.
2. The provision of the lawyer status update emails is dependent on a third-party and therefore LAO may not be able to implement any additional automated controls. In the absence of automated controls, LAO will have to continue to depend on manual controls to ensure the completeness, timeliness, and accuracy of updates to the solicitor master file.

#### **4.4.10 *Anticipated benefits***

1. By removing duplicate solicitor numbers, it will reduce the risk of LAO paying over the lawyer cap.

#### **4.4.11 *Implementation considerations***

1. **System capabilities** – discussions with LAO Information Technology resources will be required to determine which system modifications are practical based on perceived benefits versus costs.

# 5 Post-Payment Examination review and recommendations

## 5.1 Post Payment Examinations Overview

1. Post Payment Examinations (“PPE”) performs audits on selected accounts to verify that accounts paid by LAO are supported with documentation (e.g. dockets, disbursement invoices) and are in accordance with the Tariff & Billing Handbook. Key lawyer billing related activities PPE performs include:
  - a) Perform random and targeted examinations to verify conformity with LAO billing requirements;
  - b) Recover overpayments and pay underpayments based on outcome of examinations;
  - c) Request billing supporting documentation and follow-up with panel lawyers who have not provided supporting billing information;
  - d) Identify common billing errors and discrepancies and make recommendations on improvements to the online billing system;
  - e) Recommend corrective action (e.g. removal from billing portal, additional education) for panel lawyer with serious breaches or ongoing failure to comply with billing guidelines; and
  - f) PPE reports a quarterly and annual error rate that is based on the number of defined breaches identified by the unit compared to the number of accounts examined in a given period.

## 5.2 Strategic/ Organizational alignment

### 5.2.1 Observations

1. We provide the following observation with reference to Strategic/ Organizational Alignment reviewed in the PPE group:
  - a) There is an opportunity to better align the mandate and objectives of the PPE function with the overall strategic direction of LAO.

### 5.2.2 Implication and Impact

1. Impacts faced by LAO in reference to our observations around Strategic/ Organizational Alignment within the PPE group are:
  - a) PPE and Investigations are both responsible for detecting and remediating panel lawyer billings occurring in breach of LAO billing policies. With this degree of functional overlap, their siloed reporting relationships do not appear to provide for strong channels of communication, alignment, and efficiency in regards to the investigative process.
  - b) The lack of an overall mandate has resulted in each of the compliance groups working towards their own objectives.

### 5.2.3 **Recommendation 9: LAO should align the objectives and mandate of the PPE group with LAO's compliance management framework and strategic direction.**

1. Once LAO's compliance management framework and strategic direction is documented, the role of PPE needs to be clearly defined and should include the activities the group is responsible for completing.
2. We recommend that the PPE group engage in more proactive auditing activities to evolve beyond a basic compliance monitoring function. In order to achieve this, PPE will have to adopt new processes including risk-based sampling and data analytics which will require new competencies be developed or recruited into the department. Recommendations to evolve the PPE group are included throughout this section of the report. The following activities should be the responsibility of PPE:
  - a) Development and execution of data analytics strategy through data mining, data matching and predictive modeling. This activity should be completed as part of the targeted sampling to detect high-risk lawyer billings;
  - b) Quantification of billing risk indicators and measurement of monitoring and compliance efforts;
  - c) Verifying the integrity of payments disbursed to panel lawyers are in accordance with Tariff & Billing Handbook;
  - d) Communicating to the Investigations group cases suspected of inappropriate billing (beyond potential account errors);
  - e) Providing the Investigation group access to data that was collected as part of the PPE review; and,
  - f) Participating in the Compliance Advisory Committee.
3. This allocation of responsibilities dictates that PPE acts as the monitor of billing activities and recovers overpayments made to panel lawyers due to error and possible inappropriate billing activities (beyond billing errors) identified by PPE are transitioned for an investigation by the Investigations group.
4. For this alignment of responsibilities to be effectively achieved, the relationship and communications between PPE and the Investigations department will need to be improved. This recommendation is discussed further in recommendation 12. The new alignment of PPE and the Investigations groups reporting to the same Director better aligns the scope of services they provide, and should promote better inter-department communications and related efficiencies.

### 5.2.4 ***Anticipated benefits***

1. Alignment of compliance groups mandate to the compliance management framework and strategic direction will help to ensure that resources are being used effectively to achieve a common goal.

### 5.2.5 ***Implication considerations***

1. **Overall strategic direction of LAO's compliance function** – LAO's compliance management framework and strategic direction needs to be created and communicated before the mandate and objectives of the PPE group can be defined.
2. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E "Change Management" which provides a high level framework for implementing change in an organization).
3. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.



4. **Re-organization** – opportunity to introduce new job descriptions with new required skill sets. A working session should be held with HR, key leadership, and legal to review and ensure that the staffing approach is fair, equitable, and legally defensible.
5. **Skill Set** – The current skill set in the PPE may not be able to effectively complete data analytic activities.

## 5.3 Skills and Capabilities

### 5.3.1 Observations

1. We provide the following observations with reference to Skills and Capabilities reviewed in the PPE group:
  - a) When the on-line portal was implemented, responsibilities for existing Accounts Payable (“A/P”) staff were reassessed. A/P staff previously responsible for the manual processing of lawyer payments assumed Examiner responsibilities in the PPE department. To date, a competency profile has not been developed for Examiners.
  - b) LAO monitors the number of accounts examined in a given period by a PPE Examiner but no other metrics are tracked or reviewed.
  - c) Performance metrics that are measured are not coupled to any positive or negative outcome (e.g. incentive, discipline) for the employee.

### 5.3.2 Implication and Impact

1. Impacts faced by LAO in reference to our observations around Skills and Capabilities within the PPE group are:
  - a) Examiners may not have the necessary competencies needed to scrutinize panel lawyer accounts and payment which may increase the risk that breaches not being identified.
  - b) PPE may not have the skill sets required to complete the objectives of the department once realigned with LAO’s compliance framework.
  - c) Employee efficiency and effectiveness may be low due to lack of motivation to meet performance standards.

### 5.3.3 **Recommendation 10: LAO should identify and document a competency profile for Examiners to ensure that all requisite skills and knowledge are possessed by Examiners executing post payment reviews.**

1. A competency profile should be developed by management to establish core behavioural, technical and functional expertise required for Examiners in alignment with the overall objective of LAO’s compliance function. The competency profile should be used when LAO is hiring or relocating staff to ensure that employees have the required skill sets to execute responsibilities effectively. A sample competency profile for Examiners is included in Appendix C.
2. Key skills required by Examiners may include:
  - a) Sufficient audit training and / or background required to complete reviews of billing files for compliance with identified breaches;
  - b) Ability to perform data analytics and analyze results;
  - c) Strong technical understanding of the lawyer billing process, the tariff, and related LAO policies; and,
  - d) Ability to work effectively in cross-functional teams as Examiners will have to work closely with the Investigations group when possible inappropriate billing has been identified.

3. A skill assessment should be conducted and analyzed to identify any skill gaps (see Appendix D for an example of a skills assessment framework). Human Resources and management should develop an action plan outlining next steps to close identified gaps. Action steps could include staff training, reallocation of LAO staff, and hiring new staff with the required skill sets.

#### **5.3.4 Anticipated Benefits**

1. Increased effectiveness and efficiencies in the review of lawyer billings by Examiners resulting in lower administrative costs.
2. Increased confidence in the lawyer billing reviews performed by Examiners.

#### **5.3.5 Implementation considerations**

1. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.
3. **Re-organization** – Opportunity to introduce new job descriptions with new required skill sets. A working session should be held with HR, key leadership, and legal to review and ensure that the staffing approach is fair, equitable, and legally defensible.

#### **5.3.6 Recommendation 11: A more robust Examiner performance management program should be implemented including periodic review by management of departmental Key Performance Indicators.**

1. Examiner performance metrics should be defined, implemented and monitored by management on a regular basis. These metrics should be tied to organizational objectives and targets should be developed and communicated prior to evaluation. The performance metrics should be used to develop incentive systems and/or corrective actions that promote organizational and individual accountability. Management should establish regular reporting of performance metrics, identify staff who deviate significantly from the norm or target and develop action plans to remediate.
2. Some examples of performance metrics that can be tracked by Examiner to consider include:
  - a) Percentage of accounts examined accurately by each Examiner as part of the quality assurance program (see recommendation 15).
  - b) Dollar value of accounts recovered by Examiner.
  - c) Number of complaints by panel lawyers per Examiner for accounts recovered inappropriately.

#### **5.3.7 Anticipated benefits**

1. Increased accuracy and efficiency in examining post payments and improved accuracy identifying billing breaches.
2. Continuous monitoring of Examiner performance metrics will highlight emerging issues with reference to the payment examination process. Through an iterative evaluation and learning process, Examiners will enhance their skill sets and ability to exercise improved professional judgments in completing payment reviews.

### 5.3.8 *Implementation considerations*

1. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.
3. **System functionality** – LAO should consider using PeopleSoft functionality to the measure and report on performance metrics of the Examiners.

## 5.4 **Operations**

### 5.4.1 **Observations**

1. We provide the following observations with reference to operations reviewed in the PPE group:
  - a) There is an opportunity to improve inter-department communications related to the lawyer payment process and monitoring activities as there is limited formalized communication between Investigations, PPE, and LS&P functions.
  - b) The following observations relate to PPE’s file selection and audit process.
    - i) The PPE reviews a random sample of approximately 5% of panel lawyer accounts submitted each month and reconciles the on-line submission against the supporting documents requested from and provided by the panel lawyer.
    - ii) Post payment examinations are performed on the requested invoice and not by certificate (which could include multiple lawyer invoices and disbursements).
    - iii) Through discussions with the PPE group, it was identified that they do perform some data queries for targeted examinations, but currently, data analytics are not performed on a routine basis.
    - iv) PPE does not maintain or monitor performance measures for individual lawyers, other than breach for no supporting dockets. There are no reports on individual and aggregate performance of panel lawyers for review by regional offices, the Executive Committee, and the Board.
    - v) Billing breaches identified by an Examiner will result in a negative voucher to the panel lawyer's account in PeopleSoft. There is currently no punitive action (e.g. such as an administrative penalty) or required training by the panel lawyer taken to deter future or repeated inappropriate activity.
  - c) There is an opportunity to improve the monitoring and reporting of the billing process. The breach rates reported, based on lawyer payment audits performed by PPE, does not provide a sufficient indication of the risks faced by LAO.
  - d) A quality assurance framework for the review of post payment reviews completed by an Examiner currently exists; however, LAO indicated that this process is not currently followed.

### 5.4.2 **Implication and Impact**

1. Impacts faced by LAO in reference to our observations around Operations within the PPE group are:
  - a) Potential inappropriate panel lawyer payment practices identified as part of the PPE process may not be communicated and followed-up for further investigation by the Investigation group.
  - b) Flagged panel lawyers who may require additional training to comply with LAO billing requirements may not be communicated to Panel Management.

- c) PPE's limited resources are not being allocated to value-added activities (e.g. monitoring "high risk" transactions).
- d) Post payment examination of a single account reduces LAO's ability to identify all billing breaches, including:
  - i) #11 Billed Same Services and/or disbursements more than once
  - ii) #20 Trial days were inaccurately summarized
  - iii) #26 Billed multiple trial days or trials held on the same day
  - iv) #27 Billed for more than one enhancement item per trial
- e) Examiners' technical gaps may not be identified and corrected.

#### **5.4.3 Recommendation 12: PPE needs to be an active participant in inter-department communication.**

1. LAO needs to establish more formal channels of communication between the compliance groups to ensure a coordinated and seamless approach to compliance and monitoring activities across the organization. Recommendations to improve communication between the compliance function include; a) establish a standing compliance team meeting with representatives from all groups and b) establish regular reporting related to lawyer billing monitoring and compliance. These recommendations are discussed further in recommendation 3 above.
2. Beyond the formal meeting between the compliance functions, it will be important that PPE and the Investigations department develop a strong working relationship. If PPE performs and reviews the results of data analytic procedures on lawyer billing activities, it will be important to establish clear expectations and understanding of when to involve the Investigations department.
3. An escalation policy should be documented and communicated to clearly outline when an account error or possible inappropriate account activities should be escalated to the Investigations group or Panel Management for further review and remediation.
4. PPE group should discuss with the Investigations department any information already gathered as part of their review performed on the post payment accounts.
5. The Investigations department will need to communicate with PPE whether the file was reviewed further by Investigations and if it was not further reviewed, understand why, so that the process can be improved in the future.

#### **5.4.4 Anticipated benefits**

1. The identification of those panel lawyers who frequently trigger LAO breach categorizes.
2. Proactive approach to monitoring compliance with the panel lawyer billing policies.

#### **5.4.5 Implementation considerations**

1. **Change management** – employees will have to develop stronger working relationships to make communications between departments more efficient (see Appendix E "Change Management" which provides a high level framework for implementing change in an organization).

#### **5.4.6 Recommendation 13: PPE should implement risk-based sampling and certificate reviews as part of the group's examination process.**

1. Targeted examinations applying a risk-based approach may increase and identify inappropriate billing activities for remediation.
2. Data analytic queries can be created in IDEA, which is a current auditing software used by PPE for data mining and complex sampling techniques. The use of data analytics can

provide PPE the opportunity to complete examinations on target behaviours that LAO wishes to mitigate and promote.

3. We have supplemented an LAO list of high risk transactions identified by PPE based on the data analytics which we performed during our review, which is described in additional detail within Appendix A of this report:
  - a) Repeated or high incidence of errors identified by PPE spot audits
  - b) Client initiated complaints from the Complaints department
  - c) Charges heard separately
  - d) Multiple guilty pleas
  - e) Outliers from average peer billing amounts
  - f) Pattern of high billing
  - g) Frequent billings at end of certificate life
  - h) Frequent billings of small accounts
  - i) Potential abuse of enhancers (e.g. by average use of enhancers, timing of billing for each type of enhancer)
  - j) Minor charges proceeding by indictment
  - k) Weighting of non-lawyer hours
4. LAO should develop a policy indicating when a panel lawyer could be selected for a file review by an Examiner. Guidelines could include a panel lawyer appearing on several of the tests, or on a single test deemed to be strong indicator of risk.
5. PPE should continue to perform random sampling on the entire billing population, but on a limited basis, to act as a general deterrent and to verify compliance with the Tariff Handbook.
6. PPE should begin to include as part of their monthly audits, reviews at the certificate level rather than only on individual accounts. The certificate examinations would allow LAO to review panel lawyer billings for additional breaches (e.g. breach #11, 20, 26 and 27).
7. A working group is developing a dashboard report that will begin to track panel lawyer's performance using metrics from departments across the LAO (PPE, Investigations, Finance, etc.). These metrics should be used to support an escalation of penalties for repeat offenders.
8. The PPE group should track the frequency of each breach identified as part of the examinations, which could be used by management to initiate corrective actions with Panel Management (e.g. panel lawyer training) to address frequently occurring breaches with panel lawyers.

#### **5.4.7 Anticipated benefits**

- a) Ability to more effectively evaluate and conclude on the performance of LAO's billing methods.
- b) The application of data analytics go beyond quantitative totals and allows LAO to understand the behaviour patterns of the panel lawyers, through account submissions, to determine if strategic objectives are on target.

#### **5.4.8 Implementation considerations**

1. **Effect on current results** – may affect the evaluation of current results depending on whether risk tolerance increases or decreases.
2. **Block fees** – LAO will need to determine how to manage file selection and sampling techniques if block fees are introduced.

#### **5.4.9 Recommendation 14: LAO should develop, monitor and report risk indicators related to LAO's lawyer billing process.**

1. PPE currently reports an error rate that is based on the results of the post payment file reviews compared to a LAO Board approved risk tolerance levels. However, this measure of risk does not consider all compliance and monitoring activities engaged by LAO.
2. LAO could continue to report on the breach rates as determined by PPE, but this should be viewed as only a risk indicator and not the sole measure of account risk exposure to LAO. The risk indicators developed for LAO should consider financial, operational, political and reputational risks in order to provide a comprehensive and balanced understanding of a compliance framework. The calculation of Risk Indicators could be included as part of PPE's data analytic activities which is discussed in recommendation 1.
3. Potential risk indicators to consider include:
  - a) Number of panel lawyers referred to Investigations
  - b) Number of files reviewed by Investigations
  - c) Number of panel lawyers referred to the Law Society or the police
  - d) Number of panel lawyer removed from the billing system
4. The risk indicators could be communicated to management and the Board in a dashboard report. Management should provide relevant commentary related to trends in the risk indicators and actions taken to address any areas of concern.

#### **5.4.10 *Anticipated benefits***

1. Monitoring risk indicators would provide LAO a better understanding throughout the organization of the risks related to lawyer billing process and the management of those risks.

#### **5.4.11 *Implementation considerations***

1. **System capability** – ability of the system to track metrics to be used to monitor risk.

#### **5.4.12 Recommendation 15: LAO should execute on its existing Examiner quality assurance program**

1. LAO needs to have a strong quality assurance program in place to ensure that panel lawyers are being consistently and fairly paid but also verify that panel lawyer invoices are accurate and in accordance with established LAO policies and mandated tariffs.
2. The PPE Manger should review predetermined number of files per Examiner weekly to confirm that files are being examined in accordance with LAO guidelines. Performance feedback should be provided to the Examiners to improve their performance and results of the reviews could be rolled into the Examiner's performance reviews (see recommendation 15).

#### **5.4.13 *Anticipated benefits***

1. Increased effectiveness and efficiencies in the processing of post payment reviews requests resulting in lower administrative costs and an improvement in the consistency and quality of the examinations performed by Examiners.
2. Continuous monitoring of Examiner performance metrics will highlight emerging issues with reference to the post payment file review. Through an iterative evaluation and learning process, Examiners will enhance their skill sets and ability to exercise improved professional judgments in reviewing post payment files.

#### **5.4.14**    ***Implementation considerations***

1.    **Workload** – completing the quality assurance program will have to be prioritized within the schedules of the PPE Manager.
2.    **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.

# 6 Investigations

## 6.1 Introduction

1. The Investigations group proactively investigates alleged potential abuses of LAO services and resources. This includes review of potential misappropriation of assets by lawyers and other external service providers, legal aid clients or applicants, and employees. Key lawyer billing related activities include:
  - a) Investigate alleged breaches of the Legal Aid Services Act in relation to panel lawyers and other external service providers, legal aid clients, legal aid applicants and employees of LAO;
  - b) Recover overpayments based on outcome of investigations;
  - c) Request billing supporting documentation and follow-up with panel lawyers who have not provided requested information for investigations;
  - d) Train LAO staff on fraud prevention and detection leading practices;
  - e) Recommend corrective action (e.g. additional education, criminal indictment) for panel lawyer with serious breaches or ongoing failure to comply with billing guidelines; and,
  - f) Remove panel lawyers from the billing portal based on outcome of investigations or from recommendation of other compliance functions. Use style List Number.

## 6.2 Strategic and Organizational Alignment

### 6.2.1 Observations

1. We provide the following observation with reference to Strategic/ Organizational Alignment reviewed in the Investigations group:
  - a) There is an opportunity to better align the mandate and objectives of the Investigation group with LAO's compliance management framework and strategic direction.

### 6.2.2 Implications and Impact

1. Impacts faced by LAO in reference to our observations around Strategic/ Organizational Alignment within the Investigations group are as follows:
  - a) PPE and Investigations are both responsible for detecting and remediating panel lawyer billings occurring in breach of LAO billing policies. With this degree of functional overlap, their siloed reporting relationships do not appear to provide for strong channels of communication, alignment, and efficiency in regards to the investigative process.
  - b) The lack of an overall mandate has resulted in each of the compliance groups working towards their own objectives. For instance, the Investigations group prepares very detailed reports to provide adequate support and evidence for consideration of criminal charges against the panel lawyer but it is not clear if this is the level of due diligence LAO requires to accomplish in terms of investigative objectives.



### 6.2.3 **Recommendation 16: LAO should align the objectives and mandate of the Investigation group with LAO's compliance management framework and strategic direction.**

1. Once LAO's compliance management framework and strategic direction is documented, the role of the Investigations group needs to be clearly defined. This should include the activities the group is responsible for completing. Key activities of the Investigations should include:
  - a) Participation in the Compliance Advisory Committee that proactively identifies and addresses fraud risks;
  - b) Management of a fraud risk assessment process;
  - c) Management and investigation of all cases of suspected inappropriate billing (beyond common errors) and referral to appropriate authorities, as required;
  - d) Management of the whistle blowing program, if created;
  - e) Development and coordination of counter fraud communications and education programs for employees, consumers, providers and other stakeholders;
  - f) Coordination of counter fraud agreements with appropriate regulatory and professional bodies; and,
  - g) Interacting with and updating compliance groups with new fraud detection techniques or inappropriate billing detection techniques.
2. Based on the allocation of activities above, it suggests that the Investigations group complete their investigations based on referrals including those from PPE and would no longer be responsible for performing data analytics on panel lawyer billing activities.
3. For this alignment of responsibilities to be effectively achieved, the relationship and communications between PPE and the Investigations group will need to be improved. This recommendation is discussed further in recommendation 3. The new alignment of PPE and the Investigations groups reporting to the same Director better aligns the scope of services they provide, and should promote inter-department communications and related efficiencies.
4. LAO should evaluate the level of due diligence required to meet the objectives LAO's compliance management framework and the desired outcome. Outcomes to consider include:
  - a) Criminal trial;
  - b) Discipline by the Law Society;
  - c) Removal or suspension from the LAO lawyer panel; and,
  - d) Removal or suspension from Legal Aid Online.

### 6.2.4 ***Anticipated benefits***

1. Alignment of compliance groups mandate to the compliance management framework and strategic direction will help to ensure that resources are being used effectively to achieve a common goal.
2. Increased number of accounts that can be reviewed by the Investigations department.

### 6.2.5 ***Implementation considerations***

1. **Overall strategic direction of LAO's compliance function** – LAO's compliance management framework and strategic direction needs to be created and communicated before the mandate and objectives of the PPE group can be defined.
2. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E "Change Management" which provides a high level framework for implementing change in an organization).

3. **Union employees** – LAO may need to articulate the benefits of our recommendation to each labour union prior to implementation. This process may take an undetermined length of time which could delay the implementation of the recommendation.
4. **Re-organization** – opportunity to introduce new job descriptions with new required skill sets. A working session should be held with HR, key leadership, and legal to review and ensure that the staffing approach is fair, equitable, and legally defensible.
5. **Background** – consider the background and training required to complete the level of investigation. For instance, lawyers are trained to provide highly detailed and accurate documents which may not be required to complete an investigation.

## 6.3 Skills and capabilities

### 6.3.1 Observations

1. We provide the following observations with reference to Skills and Capabilities reviewed in the Investigations group:
  - a) To date, a competency profile has not been developed for Investigators.
  - b) LAO does not track performance metrics for Investigators.

### 6.3.2 Implications and Impact

1. Impacts faced by LAO in reference to our observations around Skills and Capabilities within the Investigations group are:
  - a) The Investigations group may have to consider changing the types of reviews required to achieve the objectives of the Investigative department which would be aligned with the LAO's compliance management framework.
  - b) Employee efficiency and effectiveness may be low due to lack of performance standards.

### 6.3.3 **Recommendation 17: LAO should identify and document a competency profile for Investigators to ensure that all requisite skills and knowledge are possessed by Investigators to executing reviews.**

1. A competency profile should be developed by management to establish core behavioural, technical and functional expertise required for Investigators and in alignment with LAO's compliance management framework. The competency profile should be used when LAO is hiring or relocating staff to ensure that employees have the required skill sets to execute responsibilities effectively.
2. Key skills required by Investigators may include:
  - a) Sufficient legal training and / or background required to understand bills submitted by panel lawyers;
  - b) Specific fraud related training or designations (e.g. Certified Fraud Examiner);
  - c) Ability to perform data analytics and analyze results completed as part of the investigations; and,
  - d) Ability to work effectively in cross-functional teams as Investigators will have to work closely with PPE when possible inappropriate billing has been identified.
3. A skill assessment should be conducted to identify current skills gaps (see Appendix C for an example of a skills assessment framework). Human Resources and management should develop an action plan outlining next steps to close identified gaps. Action steps could include staff training, reallocation of LAO staff, and hiring new staff with the required skill sets.

#### **6.3.4 Anticipated Benefits**

1. Increased efficiencies in the Investigation department resulting in lower administrative costs.
2. Increased effectiveness and efficiencies in the investigations performed by the Investigators resulting in lower administrative costs.
3. Increased confidence in the investigations performed by the Investigations department.

#### **6.3.5 Implementation considerations**

1. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **Re-organization** – Opportunity to introduce new job descriptions with new required skill sets. A working session should be held with HR, key leadership, and legal to review and ensure that the staffing approach is fair, equitable, and legally defensible.

#### **6.3.6 Recommendation 18: A robust Investigator performance management program should be implemented including periodic review by management of departmental Key Performance Indicators.**

1. Investigator performance metrics should be defined, implemented and monitored by management on a regular basis. These metrics should be tied to organizational objectives and targets should be developed and communicated prior to evaluation. The performance metrics should be used to develop incentive systems and/or corrective actions that promote organizational and individual accountability. Management should establish regular reporting of performance metrics, identify staff who deviate significantly from the norm or target and develop action plans to remediate.
2. Some examples of performance metrics related to panel lawyer billing activities that can be tracked by Investigator to consider include:
  - a) Dollar value of recoveries.
  - b) Number of cases reviewed.
  - c) Number of cases referred to the Law Society or the police.
  - d) Number of lawyers removed from the portal.
  - e) Average number of hours to review file.

#### **6.3.7 Anticipated benefits**

1. Continuous monitoring of Investigator performance metrics will highlight emerging issues with reference to the investigations process. Through an iterative evaluation and learning process, Investigators will enhance their skill sets and ability to exercise improved professional judgments in completing investigations.

#### **6.3.8 Implementation considerations**

1. **Change management** – Employees will need to adopt incremental changes to their roles (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).
2. **System functionality** – LAO should consider using PeopleSoft functionality to the measure and report on performance metrics of the Investigators.

## 6.4 Operations

### 6.4.1 Observations

1. We provide the following observation with reference to operations reviewed in the Investigations group:
  - a) There is an opportunity to improve inter-department communications related to the lawyer payment process as there is limited formalized communication between the Investigations department, PPE, and LS&P.
  - b) The Investigations department does not have direct access to court documents and is therefore reliant on the Ministry of the Attorney General.

### 6.4.2 Implications and Impact

1. Impacts faced by LAO in reference to our observations around operations within the Investigations group are:
  - a) Possible inappropriate billing activities identified by PPE may not be communicated and further investigated by the Investigations group.
  - b) Panel lawyers identified by Investigations as requiring further billing training may not be communicated to the Lawyer Panel for follow-up and corrective action.
  - c) It is difficult and time consuming for the Investigations department to retrieve court documents and therefore have to spend considerable time requesting and following-up on documents requested for audit purposes.

### 6.4.3 Recommendation 19: The Investigations group needs to be an active participant in inter-departmental communications

1. LAO needs to establish more formal communication channels between the compliance groups to ensure a coordinated and seamless approach to compliance and monitoring activities across the organization. Recommendations to improve communication between the compliance function are: a) establish a standing compliance team meeting with representatives from all groups; and b) establish regular reporting related to lawyer billing monitoring and compliance. These recommendations are discussed in recommendation 3 above.
2. Based on the actions or outcomes of cases that were initiated by PPE and reviewed by Investigations, follow-up communication will need to occur with PPE as to whether the file was reviewed further by Investigations and if it was not further reviewed, understand why, so that the process can be improved in the future.
3. There should be a formal and regular communication channel between PPE, Investigations and Panel Management to discuss open cases, panel lawyers that require further training and receive recommendation(s) from Panel Management on the direction of open investigations and the level of effort that is required to achieve the desired outcome (e.g. removal from the panel vs. criminal charges).

### 6.4.4 Anticipated benefits

1. Identification, examination and resolution of high risk panel lawyers.
2. Proactive approach to monitoring compliance with the panel lawyer billing policies.

### 6.4.5 Implementation considerations

1. **Change management** – employees will have develop stronger working relationships to make communications between departments more efficient (see Appendix E “Change Management” which provides a high level framework for implementing change in an organization).

#### **6.4.6 Recommendation 20: Management should consider implementing a “whistleblower” program (e.g. confidential hotline) that allows individuals inside and external to LAO (e.g. panel lawyers, clients) to report any unusual or inappropriate activities.**

1. LAO should consider if a whistleblower program should be implemented and then determine if this should be monitored by external third parties with formal communications channels when a whistleblower call is received. It is not unusual for this whistleblower programs to be open to all employees, lawyers on the panel and posted on LAO’s website for the public participation.

#### **6.4.7 Anticipated benefits**

1. Increased awareness of potential inappropriate behaviours through anonymous reports that can augment current detection processes. Organizations that have implemented fraud hotlines experience a shorter time until detection a median duration of 18 months as compared to 24 months for other organizations. Fraud hotlines are not only effective at detecting fraud, they can also be very effective in preventing or limiting fraud losses since they may increase employees’ perception that fraudulent conduct will be detected.<sup>1</sup>
2. Public demonstration of LAO’s resolve to deter inappropriate billing practices and other inappropriate activities.
3. Alignment with leading practices with regards to fraud deterrence. From the study “Detecting Occupational Fraud in Canada: A Study of its Victims and Perpetrators – 2008 Association of Certified Forensic Examiners” it was noted that:
  - a) While only 24.4% of the victim organizations used a formal fraud reporting mechanism or hotline to prevent and detect fraud, those organizations that had such a mechanism in place experienced much lower median fraud losses than organizations that did not (C\$90,099 versus C\$197,500).
  - b) The median fraud loss in organizations that did not have a fraud hotline was more than double the loss of organizations that had one in place (C\$197,500 as compared to C\$90,099).

#### **6.4.8 Implementation considerations**

1. **Initial investment** – in order to establish a whistleblower program, LAO may have to invest in new tools and technology as well as resources to operation such a program effectively.
2. **Complaints Department** – LAO staffs a Complaints Department responsible for the intake of complaints from external parties (e.g. panel lawyers, clients) related to certificate lawyers, LAO policy, LAO staff and duty counsel. LAO could consider expanding this role to manage the whistleblowing program including the intake of complaints or concerns from LAO employees, but would have to consider how to protect the anonymity of callers.

#### **6.4.9 Recommendation 21: Investigations should continue to the pilot project with the liaison from the Ministry of the Attorney General to facilitate the retrieval of account dockets.**

1. Pending the results of the pilot project, LAO should consider lobbying for direct access to the Ministry of the Attorney General’s Integrated Court Offenses Network system (ICON). This recommendation is further discussed in “Discussion of Legal Aid Online system based controls” section.

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<sup>1</sup> Source: Detecting Occupational Fraud in Canada: A Study of its Victims and Perpetrators – 2008 Association of Certified Forensic Examiners

2. The LAO should also review those recommendations that suggest that docket information be captured at the time of account submission by the panel lawyer.

#### **6.4.10     *Anticipated benefits***

1. Easier access to court documents will reduce the amount of administrative time and costs that the Investigators group currently spends requesting the documents.

#### **6.4.11     *Implementation considerations***

1. **Third- party relations** – LAO needs to work with a third-party to accommodate this recommendation.

# 7 Data analytic observations of Legal Aid Online lawyer billing transactions

## 7.1 Introduction

1. A key component of the Legal Aid Online risk assessment was an analytic review of portal billing data. The purpose of this review was to attempt to identify lawyer billing activity posing financial risk to Legal Aid Ontario. The Legal Aid Online billing portal provides the flexibility to lawyers to bill their time efficiently. In so doing, it has opened certain control vulnerabilities; specifically, the lawyers' ability to manually manipulate the maximum allowable tariff.
2. A certificate is the means by which a lawyer is authorized to bill LAO for legal services rendered to a client qualifying for financial assistance. In practice, a certificate is represented by a purchase order in the LAO billing system. The purchase order number is communicated to the lawyer via documentation provided to the client by an LAO local office authorizing the service. After the certificate is accepted by the lawyer through the billing portal, services rendered can be billed through the submission of accounts detailing time and disbursements incurred by the lawyer. These accounts reflect billings for completed services.
3. LAO defines a maximum billable amount for all certificates issued based on the type of law (criminal, family, immigration, and civil) and the nature of the procedures (charges) associated with a type of case. These limits, referred to as tariff maximums, are defined by the Ministry through the tariff handbook, which is distributed to all LAO panel lawyers, and is further calculated within the portal during lawyer billing.
4. LAO's primary concern around online portal billing originates from the potential risk of misapplication of account billing options by the lawyers that results in overbilling. LAO's Post Payment Examinations, Investigations and Internal Audit groups have previously identified and documented potential risks related to overbilling by lawyers.
5. As part of our analytic review, Deloitte examined available documentation and conducted interviews with these stakeholders to confirm overbilling risks and to develop an analytic testing plan aimed at quantifying LAO's potential financial exposure.
6. The following analysis is divided into three sections:
  - a) Lawyer billing review - provides statistical context to the analytic review, which provides a baseline analysis of lawyer billing activity over the period of review. This baseline is valuable in understanding the analytic results when compared to the total volume of billings managed by LAO;
  - b) Lawyer billings at risk - discusses the key risks and associated tests performed to quantify LAO's potential financial exposure, and provides risk quantification results, and;
  - c) LAO identified billing breaches - are identified by the Post-Payment Examination group where we were able to include in the course of our analytic testing. These breaches are procedural in nature and are provided for additional context.

## 7.2 Methodology

1. We reviewed a listing of billing breach typologies identified by LAO's Post Payments Examinations group and performed additional interviews with PPE, Investigations, Internal Audit, the Lawyer Billing Services group, and the Finance department. We also executed a billing portal process walkthrough to identify additional potential billing risks inherent to the current on-line billing process. The complete list of risks identified was validated by key stakeholders at LAO including the Directors of Finance and Lawyer Billing Services.
2. We have included a detailed inventory of the additional risks identified and the current list of LAO breaches within "Appendix A – Scope of data testing" of this report.
3. We obtained lawyer billing data from LAO's PeopleSoft billing system. This data was housed in our analytic querying environment and was reviewed for completeness and validity. Where our ability to perform certain analytic tests was impeded due to data quality and completeness issues, this has been identified in Appendix A – "Scope of Tests", in addition to the comprehensive data audit included in our working papers.
4. Based on the definition of the lawyer billing risks and associated tests required to quantify their impact to LAO, we developed a series of data analytic testing procedures.
5. We examined lawyer billing activity between April 1, 2006 and March 31, 2009 (fiscal 2007 through 2009). Our tests were based on understanding the mean<sup>2</sup> and standard deviation<sup>3</sup> of observed billing activity in the portal environment:
  - a) The billing activity mean, represented the average number of occurrences of a particular billing activity over the population of certificates observed.
  - b) The standard deviation is a statistical measure of variability with respect to the observed population mean. Under a normal distribution, 68.2% of all observations in a population fall within 1 standard deviation of the mean. Similarly 95.4% of all observations fall within 2 standard deviations of the mean.
6. Our findings identified those observations that exceeded the population mean by at least 2 standard deviations, which is a reasonable approach for identifying population outliers.
  - a) For illustrative purposes, if we assumed that the mean number of accounts submitted against a certificate for the entire population is 2, and the standard deviation is 1.5, we would identify any certificates where the number of accounts observed exceeded  $(2 + [2 (1.5)] = 5$ .
7. We also assumed that lawyer billing activity was relatively normally distributed. In some cases, where we observed skewed billing activity distributions (for example timing of billing of enhancers, which is heavily right skewed<sup>4</sup>), we used the top 5% of observations as our threshold of potentially risky activity.

## 7.3 Lawyer billing overview

### 7.3.1 Scope of lawyer billings reviewed

1. To provide overall context to the analysis of potential risk to LAO from lawyer billings, we have provided descriptive statistics for the period of review.
2. LAO provided data related specifically to payments for three fiscal years, commencing April 1, 2006 and ending March 31, 2009. We were advised by LAO that legacy payment data was incomplete due to data migration issues experienced during the Legal Aid Online portal implementation and therefore, with LAO's agreement, we opted not to review data preceding fiscal 2007.

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<sup>2</sup> <http://en.wikipedia.org/wiki/Mean>

<sup>3</sup> [http://en.wikipedia.org/wiki/Standard\\_deviation](http://en.wikipedia.org/wiki/Standard_deviation)

<sup>4</sup> <http://en.wikipedia.org/wiki/Skewness>



- As a part of our data analytic review, we identified several data quality issues constituting invalid data within certain fields. Where possible, we attempted to remediate these formatting issues and obtained supplementary data from LAO to correct the issues. Where it was not possible to remediate the deficiencies identified, this impacted our ability to conduct certain tests. A listing of these deficiencies is provided in the data audit supplied with our report.
- The following provides a high level overview of billing and payment activity observed in the portal during the period of analysis:

Lawyer billings reviewed – key statistics	All Areas of Law <sup>5</sup>	Criminal Law	Civil Law	Family Law	Immigration Law
Total number of certificates provided (includes legacy data, inactive and active certificates)	311,663 (100%)	179,119 (57.5%)	16,756 (5.4%)	81,305 (26.1%)	34,846 (11.2%)
Total number of certificates provided (active during the three year payment review period)	309,472	178,531	16,486	80,229	34,223
Average certificate life (in months)	32	33	34	30	32
Average certificate billed value	\$1,418.14	\$1,291.58	\$1,114.01	\$1,761.43	\$1,413.98
Total number of accounts issued against these certificates	497,541	231,654	22,097	189,563	54,805
Average number of accounts per certificate (all certificates)	1.60	1.29	1.32	2.33	1.57
Total Billings for Fiscal 2007 (04/06-03/07)	\$145,552,537.82	\$74,862,966.75	\$6,139,695.05	\$48,102,840.14	\$16,694,729.38
Total Billings for Fiscal 2008 (04/07-03/08)	\$142,369,315.57	\$76,073,307.07	\$6,021,754.76	\$45,472,090.23	\$14,929,933.66
Total Billings for Fiscal 2009 (04/08-03/09)	\$153,730,794.85	\$80,405,834.66	\$6,247,471.01	\$49,590,810.81	\$17,640,345.84
Total Billings for Fiscal 2007-2009	\$441,652,648.24	\$231,342,108.48	\$18,408,920.82	\$143,165,741.18	\$49,265,008.88

### 7.3.2 Lawyer billing insights: Match Exceptions

#### 7.3.3 Introduction

- During account submission a system based 'match exception' condition occurs when the total value of accounts submitted exceeds the tariff limit on a certificate. In this situation payment to the lawyer is held in suspense until it is reviewed by a payment administrator in LAO's Lawyer Billing Services department.
- By default, accounts incurring a match exception will be paid to a lawyer for the amount up to and including the tariff maximum. Should the lawyer wish consideration for the extra time or disbursements incurred, a request for additional payment through a discretionary request must be issued with the account submission.

<sup>5</sup> The total of "All Areas of Law" is slightly different to the summation of certificates within each of the four areas of law as there are a several certificates that appear in multiple areas of law (e.g. a single certificate is issued and includes both Criminal and Family law).

### 7.3.4 Data insights

1. The table below provides a summary of the match exceptions identified during our review:

Match exceptions – key statistics	
Total number of panel lawyers observed during the period of review	4,912
Lawyers raising at least one match exception through the issuance of an account (as a % of total lawyers on file)	4,498 (91.6 %)
Lawyers raising match exceptions on at least 10 certificates during the period of review (as a % of total lawyers on file)	2,014 (41.0%)
Total number of certificates provided (active during the three year payment review period)	309,472
Number of certificates against which a match exception has been raised (%of total certificates reviewed)	83,574 (27.0 %)
Total dollar amount over tariff for certificates raising match exceptions	\$61,122,409.77
Total dollar value paid out by LAO (%of total dollars over tariff certificates reviewed)	\$44,705,569.06 (73.1%)
Residual not paid out by LAO (%of total dollars over tariff certificates reviewed)	\$16,416,840.71 (26.9%)
Total dollar value of accounts paid to lawyers, raising match exceptions across 10 or more certificates	\$39,143,403.97 (64.0%)
Average percentage over tariff maximum (i.e. how far over tariff max did billings applied to the certificate go?)	83%

1. LAO indicated particular concern that lawyers had the ability to inflate the tariff limit to avoid triggering match exceptions and facilitating immediate payment. However, the data demonstrated not only a high proportion of lawyers triggering match exceptions, but that many lawyers triggered match exceptions on a frequent basis. The following insights are of particular interest:
  - a) 91.6% of all lawyers triggered at least one match exception during the period of review, while a high percentage some 40.1% incurred match exceptions on 10 certificates or more;
  - b) The average margin by which match exceptions exceeded the tariff maximum for certificates was 83.0%. This indicates that when a certificate exceeded the tariff maximum, it appeared to do so by a strong margin.
2. We also observed that 73.1% of all incremental account billings incurred through match exceptions were paid out by LAO, with the majority of these proceeding through the discretionary request process. This tends to indicate that lawyers are being transparent in billing certificate overages.

### 7.3.5 Requests for discretionary increases

#### 7.3.6 Introduction

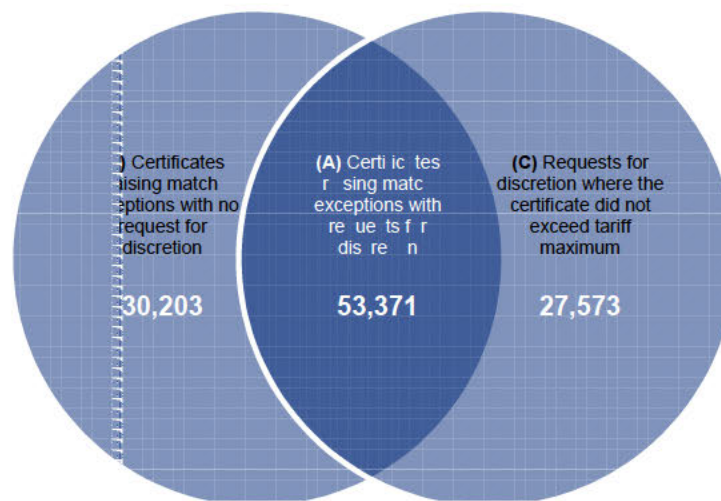
1. A discretionary request is a written explanation that accompanies an account justifying a tariff overage and subsequently requesting payment. We understood that where there is no discretionary request received with the account, the lawyer risks not being paid the amount in excess of the tariff.
2. We compared the number of certificates triggering match exceptions to the number of requests for discretionary increases observed. We further compared the average number of days required to issue a payment on those accounts with a request for a



in the case versus a discretionary exception where a match request.

### 7.3.7 Data Insights

- We observed 83,571 requests for discretionary increases. However, only 53,371 underlying certificates actually exceeded tariff. This is suggestive of lawyers' discretion in requesting a discretionary increase. We observed 80,908 requests for discretion, which suggests that lawyer behaviour could be categorized into three categories:
  - Lawyers correctly requesting a discretionary increase where appropriate;
  - Lawyers consistently billing over tariff and leaving the excess billings on the table; and,
  - Lawyers consistently requesting discretion to bill for all hours even if they don't ultimately hit the tariff limit.



- Based on interviews with LAOs, a potential relationship between match requests for discretionary increases is that the LAOs' billing portal does not allow a lawyer to bill to a certificate if the amount can be billed to a credit account, and the amount is greater than the balance available on the certificate. The lawyer's understanding of the tariff handbook.
- Our analysis did suggest that lawyers who were not aware of the amount exceeding the tariff maximum, and therefore requested a discretionary increase more than once, were more likely to request a discretionary increase more than once.
- In addition, on the analysis below, those lawyers who were not aware of their account maximum were also willing to wait on average of 69 days, versus the 11 days for those who were aware of their account maximum.

Area of Law	Average days to pay an account triggering a match exception where discretionary increase is requested	Average days to pay an account triggering a match exception where no discretionary increase is requested
Criminal	70 days	9 days
Civil	69 days	9 days
Family	68 days	11 days

Area of Law	Average days to pay an account triggering a match exception where discretionary increase is requested	Average days to pay an account triggering a match exception where no discretionary increase is requested
Immigration	67 days	7 days

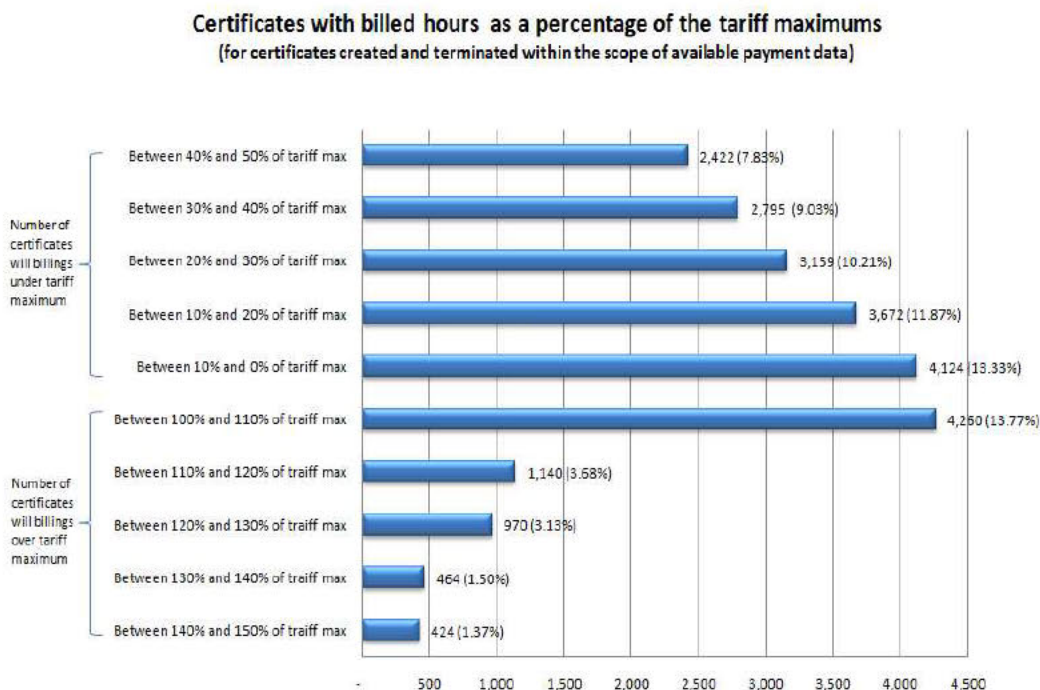
### 7.3.8 n t ariff maximums

#### 7.3.9 Introduction

- We reviewed a subset of certificates where the period of review of the certificate fell within the period of review. A concern raised by the review identified that the propensity of lawyer to bill by the LAO billing portal system was higher than the propensity of lawyer to bill by the LAO billing portal system.

#### 7.3.10 Data insights

- To obtain an analysis of certificates with a total billing amount close to the tariff maximum, we conducted a search of certificates with a total billing amount close to the tariff maximum. We have represented these certificates with a total billing amount close to the tariff maximum, as follows:



7 certificates were closed with less than 50% of their tariff maximums billed to LAO, and 2,757 (8.91%) of certificates with billings over 50%.

- Following observations:
  - 5 certificates were closed with less than 50% of their tariff maximums billed to LAO.

- b) 2,757 (8.91%) of certificates were closed with their tariff maximums being exceeded by 50%.
  - c) 49.18% of the certificates were billed between 20% of the tariff maximum and 10% over the tariff maximum.
  - d) 27.10% of the certificates were billed between 10% of tariff maximum and 10% over tariff maximum.
  - e) We observed a marked decrease in the number of certificates being identified as greater than 10% and 20% of tariff maximum.
3. This analysis may be indicative that the frequency of match exceptions being raised is due in part to a lack of clarity around the calculation of the tariff. As noted earlier, lawyers are required to calculate the tariff maximum for criminal certificates through their review and understanding of the tariff handbook issued by LAO. Another potential indicator of this lack of clarity is the significant number of requests for discretionary increases, where the tariff maximum has not been exceeded.

## 7.4 Lawyer billings at risk

1. The following tests were executed in relation to quantifying an estimate of potential billing risk to LAO through lawyer use of the billing portal:

Data Analytic Test	Risk quantification estimate
Frequent billing near certificate end of life	\$ 267,146.23
Frequent issuance of small account values	\$ 565,003.16
Potential abuse of enhancers (frequency)	\$ 1,029,558.00
Potential abuse of enhancers (billing timing)	\$ 762,048.00
Minor charges proceeding by indictment	\$ 1,581,141.07
Charges heard separately	\$ 7,187,217.57
Contested trials	\$ 5,564,400.67
Election of a co accused	\$ 414,240.63
Heavy weighting of non-lawyer hours	\$ 60,477.20
Billing acceptance fees with no further work	\$ 22,212.66
Total 'risk' identified through data analytic tests	\$17,453,445.19

### 7.4.1 Lawyer billing risks: Frequent billing near certificate 'end of life'

#### 7.4.2 Introduction

1. Certificates issued by LAO have a maximum life span of three years. As lawyers issue accounts against a certificate throughout its life, the total remaining billable amount on the certificate is drawn down. Should the certificate expire prior to the tariff maximum being met or exceeded, this extra amount cannot be billed by the lawyer.



2. We identified a potential 'topping up' behaviour, where the lawyer billed frequently at the end of the certificate life in an attempt to capture a greater proportion of the remaining value of the certificate prior to its expiration.

### 7.4.3 Data insights

1. We analyzed the dataset to determine a statistically based "expected number of accounts" to be issued by a lawyer in the last two months of the certificate's natural life, or prior to its cancellation or termination, by type of law. The results of this analysis are detailed below:

	Total	Criminal Law	Civil Law	Family Law	Immigration Law
Estimated expected frequency of accounts issued within final 2 months	n/a	1.79	2.04	2.14	1.80
Exceptional number of accounts issued for a certificate in final 2 months	n/a	2 or more Accounts	3 or more Accounts	3 or more Accounts	2 or more Accounts
Total Billings in excess of expected billing frequency	<b>\$267,146.23</b>	\$141,230.55	\$15,609.31	\$90,724.57	\$19,582.11

2. We provide the following observations:
  - a) Of the \$441,652,648.24 of total payments by LAO, we observed 2,152 payments totalling \$2,209,660.30 (0.5% of total payments) for accounts submitted in the last two months of certificate life.
  - b) Of the \$2,209,660.30 we identified a total of \$267,146.23 (12.08% of total payments submitted in the last two months of certificate life) paid by LAO for accounts issued in excess of the expected billing frequency
  - c) We did note some individual instances of significantly higher billing frequencies. For example, one lawyer billed eight (8) accounts in the last two months of certificate life, with total billings amounting to \$2,066.39.
3. To mitigate the risks identified above, LAO may wish to consider implementing a 'frequent account biller' report that highlights instances where lawyers are billing accounts in a frequency that may exceed expectations. This report should be run regardless of proximity to 'end of life'.

### 7.4.4 Lawyer billing risks: Frequent issuance of small account values

#### 7.4.5 Introduction

1. We reviewed small accounts, where accounts for lawyer hours and disbursements were below \$500 and \$50 respectively. This type of account was identified by LAO as high risk as it potentially reflects an attempt on the part of the billing lawyer to 'top up' the certificate in the final accounts.
2. It was also identified by LAO that the load placed on the payment administration group resulting from high account volumes of low dollar value may negatively impact the level of review placed on all accounts adjudicated through payment review process.

#### 7.4.6 Data insights

1. To mitigate the risk of identifying a single account, minor value certificates in our tests, we limited our review to those certificates where the proportion of total tariff hours charged before the final account was greater than 50% of the total value of the certificate.
2. We identified a total of 1,962 certificates where the final account was for an amount less than \$500 and disbursements were less \$50, and where the cumulative account totals after final billing, brought the certificate billing amount to within 10% of the tariff maximum:

Number of accounts issued by a solicitor per certificate reviewed	Number of certificates exhibiting this account frequency
2 - 5	1,737
5 - 10	196
11 - 15	21
16 - 20	6
20 +	2
Total certificates identified in 'Frequent billing of small accounts'	1,962

1. We provide the following observations:
  - a) Of the \$441,652,648.24 of total payments by LAO, we observed 1,962 certificates with payments totalling \$565,003.16 (0.12% of total payments) where the final account was for an amount less than \$500 and disbursements were less \$50, and where the cumulative account totals after final billing, brought the certificate billing amount to within 10% of the tariff maximum.
  - b) Of the 1,962 certificates we noted, that the average number of accounts billed per certificate is 3.37 accounts versus a population average of 1.48 accounts. In certain instances we observed lawyers demonstrating a tendency to issue accounts with an even higher frequency than expected versus the population average.
2. While a policy restricting the issuance of low value bills has been implemented, LAO should consider implementing a control monitoring such behaviours, similar to the frequent biller report discussed above to assess lawyer compliance with the policy. Those that exhibit anomalous frequencies should be contacted to determine the rationale for such practices.

#### 7.4.7 Lawyer billing risks: Potential Abuse of Enhancers

##### 7.4.8 Introduction

1. The use of enhancers was identified by LAO as a potential problem area. Enhancers are representative of additional hours that can be used to increase the tariff maximum on a certificate. There are five main types of enhancers:
  - a) Bail Hearings,
  - b) Pre-trial Hearings,
  - c) Pre-trial Hearings in Superior Court,
  - d) Charter Motion Hearings, and
  - e) DNA requests.
2. Each of these enhancers can be selected by the lawyer during the account submission process representing an additional 2 hours of time that is added to the allowable tariff maximum. For example, a certificate with a tariff maximum of 10 hours, with a bail hearing enhancer selected, increases the tariff maximum to 12 hours (10 hours + 2 hours



per enhancer). As up to 5 enhancers can be selected per charge (and many charges can appear on a certificate), lawyers have the ability to significantly increase the calculated tariff maximum.

3. A key control weakness surrounding enhancers is the current lack of programmed business logic restricting the use of enhancers to appropriate charges and the number of occasions the enhancer can be billed to a certificate.
4. We reviewed the use of enhancers from two different perspectives: the first pertained to frequency of use of enhancers by lawyers, while the second pertained to where they were initiated in the context of the certificate lifecycle.
5. The first perspective is an attempt to establish a normative frequency of use for each type of certificate and to identify where lawyers were potentially using certain enhancers excessively. We then quantified the potentially excessive usage of enhancers based on the statistically computed, expected usage amount. Our analysis was constrained to Criminal certificates as enhancers do not typically apply to cases of family, civil, or immigration law.
6. Our second analytical perspective sought to identify where in the life span of a certificate an enhancer would normally be initiated. We then identified the usage of enhancers at within the certificate life cycle that were statistically at odds with the population mean, and quantified the additional tariff maximum billable amounts arising from this activity.

#### 7.4.9 *Data insights: Average use of enhancers per certificate*

1. Total enhancers used by type of law are included in the table below. As detailed above, the vast majority of enhancers were used in relation to Criminal certificates (representing 179,119 of the total 311,663 certificates reviewed). We did identify several instances where a certificate overlaps on the area of law (e.g. a certificate may pertain to both criminal and family law), however such instances appear to be limited.

	Total Enhancers	Bail Hearing	Pre-trial Hearing	Pre-trial hearing (Superior court)	Charter Motion	DNA request
All Areas of Law	115,118	46,140	49,096	1,751	5,650	12,481
Criminal	115,091	46,131	49,081	1,750	5,649	12,480
Civil	4	2	2	0	0	0
Family	23	7	13	1	1	1
Immigration	0	0	0	0	0	0

2. Our quantification of potential overpayments through the use of enhancers follows:

Calculation	Criminal law
Average number of enhancers used by lawyers	0.55 / certificate
Standard Deviation of number of enhancers used by lawyers <sup>6</sup>	0.78 / certificate
Exception threshold	2.11 (3 or more, as a fraction of an enhancer is not possible)
Total number of certificates demonstrating the use of 3 or more enhancers	4,421
Total number of enhancers billed on these certificates	14,759
Total enhancers over the expected amount	5,917
Estimated potential financial impact	<b>\$1,029,558.00</b>

Calculation	Criminal law
Maximum number of enhancers used on a single certificate	15
Maximum number of a single type of enhancer used on a single certificate	5

1. Of the 311,663 certificates reviewed during the period, a total of 115,118 enhancers were used, for a total potential additional cost of \$22,102,656.00. Based on our analysis of those certificates with 3 or more enhancers, the value of those enhancers was \$1,029,558.00.
2. Of the 4,516 lawyers reviewed, only 24 (0.52% of total solicitors) had an average use of more than 3 enhancers per certificate billed. This is low based on the fact that the online billing portal allows up to 5 additional enhancers (10 additional hours) to be billed for each charge appearing on an account.
3. We have identified the total number of certificates exhibiting 3 or more enhancers during the life of the certificate:

Number of enhancers selected on a single certificate	Number of certificates where this was observed
3	3,439
4	709
5	154
6	69
7	19
8	18
9	4
10	3
11	2
12	1
13	0
14	0
15	3

4. Overall, the frequency of use of enhancers does not appear to have resulted in significant financial risk to LAO. This is important as the lack of programmed business logic limiting the use of enhancers opens LAO to much greater risk than we observed being potentially realized in the data.

#### 7.4.10 **Data insights: Timing of billing for each enhancer type**

1. The use of various enhancers is logically incurred at certain points during the lifecycle of a certificate (or case). For example, a bail hearing is reasonably among the first activities conducted by a lawyer on behalf of their client, and therefore it is reasonable to anticipate that this would be included among the first accounts submitted by the lawyer.
2. In our second approach to identifying anomalous use of enhancers, we determined the the account sequence where by 95% of the total of each type of enhancer had already been billed. We identified the final 5% as potentially anomalous. For example, 95% of all 'Bail Hearing' enhancers were billed by the second account submission, meaning that a Bail Hearing enhancer included within the 3<sup>rd</sup> account submission or higher would trigger an exception.



Calculation	Bail Hearing	Pre-trial Hearing	Pre-trial hearing (Superior court)	Charter Motion	DNA request
Number of accounts where 95% of total enhancers have been billed	2 <sup>nd</sup> account	3 <sup>rd</sup> account	5 <sup>th</sup> account	3 <sup>rd</sup> account	3 <sup>rd</sup> account
Account number where enhancer billing represents an exception	3 <sup>rd</sup> account or greater	4 <sup>th</sup> account or greater	6 <sup>th</sup> account or greater	4 <sup>th</sup> account or greater	4 <sup>th</sup> account or greater
Total number of enhancers billed on accounts where the enhancer billing represents an exception	2,187	1,155	62	274	291
Total enhancements	\$419,904.00	\$221,760.00	\$11,904.00	\$52,608.00	\$55,872.00
Total	<b>\$762,048.00</b>				

1. Of the 311,663 certificates reviewed during the period, a total of 115,118 enhancers were used, for a total potential additional cost of \$22,102,656.00. Based on our analysis of those certificates where enhancer billing represents an exception, the value of those enhancers was \$762,048.00.
2. LAO should consider the implementation of automated application controls that ensure that enhancers are only applied to charges where they are appropriate, and that the frequency of use of the enhancers is also appropriate across the life of the certificate.

#### 7.4.11 Lawyer billing risks: Minor charges proceeding by indictment (MCI)

##### 7.4.12 Introduction

1. Another manner in which a lawyer is able to increase the tariff maximum is by indicating whether the crown has elected to pursue a charge through an indictment or a summary conviction. If the lawyer indicates that the trial has proceeded by indictment, the tariff maximum is automatically increased to reflect the additional effort required.
2. The lawyer is able to identify that the charge proceeded under an indictment regardless of the actual tact taken due to the lack of a system based control or manual validation against the court record. This presents a risk to LAO in that the lawyer is able to bill for additional time not worked, if the charges proceeded by summary conviction.

##### 7.4.13 Data insights

1. To assess the potential impact of this activity, we calculated the historic rates of indictments and summary convictions on the basis of charge types appearing on accounts. For example, we determined that across the lawyer population and over the period of analysis, charge CRIM059 (Breach of Probation) is proceeded by indictment 7% of the time and by summary conviction 93% of the time.
2. For all charges, we compared historic election rates (indictment or summary conviction) to the observed elections indicated by each lawyer through their online submissions. Using a statistical calculation of the difference between the actual election proportions we analyzed the incremental billings issued by lawyers.
3. Further to reduce the potential of false positive results, we limited our quantification to instances where the lawyer had the opportunity to identify that a charge proceeded by indictment or summary conviction on no less than 10 separate accounts. This was done

to prevent unfair skewing of results for lawyers who had only seen the same charge on a very limited number of occasions.

	Incremental payments made based on anomalous indictment elections
Incremental amount paid to lawyers indicating that a case proceeded by indictment versus summary conviction, with a frequency in excess of the observed population rate	\$1,581,141.07

4. Of the \$441,652,648.24 of total payments by LAO, we identified \$1,581,141.07 (0.35% of total payments) as the incremental amount paid to lawyers where they indicated that a case proceeded by indictment versus summary conviction, with a frequency in excess of the observed population rate
5. We identified individual examples where lawyer election rates appeared to differ substantially from the population. For example, we observed one lawyer indicating that the crown proceeded by indictment in excess of 93% of the time, where the population average for indictment was 7% (CRIM059 Breach of Probation).
6. LAO should investigate these results to determine if additional review procedures are required in following up with those lawyers noted who submitted the \$1,581,141.07, and consider implementing a reporting mechanism to highlight potentially suspicious charge election practices.

#### 7.4.14 Lawyer billings risks: Charges heard separately (CHS)

##### 7.4.15 Introduction

1. A criminal certificate will often contain authorizations for a lawyer to perform services in relation to multiple charges. In the majority of cases, the crown will elect to hear all charges in a common proceeding. However, the crown can elect to hear charges at separate times, which incurs additional court time and preparation time for the lawyer.
2. Within the LAO billing portal environment, a lawyer can elect whether a charge listed on the certificate was heard separately. This election causes the allowable tariff maximum on the certificate to increase to reflect the added work requirement. However, with no means of validating that the charge was actually heard separately, the risk exists where a lawyer can raise the tariff maximum and bill for work not performed.

##### 7.4.16 Data insights

1. To assess the potential impact of this activity, we calculated the historic rates of charges heard separately on the basis of the number of charges appearing on accounts. We then calculated a probability distribution of charges being heard separately for two or more accounts across the population, and compared this to individual lawyer activity. Through a statistical calculation of the difference between the CHS election proportions we analyzed the incremental payments made to lawyers.
2. Further to reduce the potential for false positive results, we limited our quantification to instances where the lawyer had the opportunity to identify that a charge was heard separately on no less than 10 accounts. This was done to prevent unfair skewing of results for lawyers who issued accounts with a particular number of charges on a few occasions.



	Incremental payments made based on anomalous 'Charges Heard Separately' elections
Incremental amount paid to lawyers indicating that charges were heard separately with a frequency statistically exceeding of the observed population rate	\$7,187,218

1. Of the \$441,652,648.24 of total payments by LAO, we identified \$7,187,218.57 (1.63% of total payments) as the incremental amount paid to lawyers who indicated that charges were heard separately with a frequency statistically exceeding of the observed population rate.
2. We identified individual examples where lawyer election rates appeared to differ substantially from the population. For example, we observed one lawyer indicating CHS on 26 of 27 accounts submitted, versus a population average of approximately 1 in 5.
3. LAO should investigate these results to determine if additional review procedures are required in following up with those lawyers noted who submitted the \$7,187,218.57 and consider implementing a reporting mechanism to highlight potentially suspicious charge election practices.

#### 7.4.17 Lawyer billing risks: Contested trials (CCT)

##### 7.4.18 Introduction

1. Another manner in which the tariff maximum can be increased is in the election of a contested trial versus a plea agreement. For each charge listed on a criminal certificate, the lawyer will indicate whether the defendant pleads guilty on a charge or whether the charge was contested, necessitating a trial.
2. A risk exists where the defendant may have agreed to a guilty plea, the lawyer can indicate that a trial was required to settle the matter, thus increasing the tariff limit on the certificate. There is currently no automated or practical manual means of determining if a contested trial election is invalid.

##### 7.4.19 Data insights

1. To assess the potential impact of this activity, we calculated the historic rates of contested trials on the basis of charge types appearing on accounts. We then calculated a probability distribution of charges resulting in contested trials versus plea agreements across the population, and compared this to individual lawyer trial election rates. Through a statistical calculation of the difference between the trial election proportions we quantified the incremental payments made to lawyers.
2. Further to reduce the potential for false positive results, we limited our quantification to instances where the lawyer had the opportunity to identify that a charges were heard separately on no less than 10 accounts. This was done to prevent unfair skewing of results for lawyers who had only issued accounts with a set number of charges on a few occasions.

	Incremental payments made based on anomalous contested trial elections
Incremental amount paid to lawyers indicating that a case proceeded with a contested trial versus a plea with a frequency statistically exceeding of the observed population rate	\$5,564,401

1. Of the \$441,652,648.24 of total payments by LAO, we identified \$5,564,401.67 (1.26% of total payments) as the incremental amount paid to lawyers who indicated that a case proceeded with a contested trial versus a plea with a frequency statistically exceeding of the observed population rate.
2. We identified individual examples where lawyer election rates appeared to differ substantially from the population. For example, we observed one lawyer indicating a contested trial for charge CRIM419 (Possession Under), 22 of 24 times, or 92% of the time, versus a population average of less than 1%. Following a more detailed review of a sample of certificates, this charge appears minor in the context of other charges that it typically accompanies, and as such would likely be dismissed.
3. LAO should investigate these results to determine if additional review procedures are required in following up with those lawyers noted who submitted the \$5,564,401.67 and consider implementing a reporting mechanism to highlight potentially suspicious charge election practices.

#### **7.4.20 Lawyer billing risks: Election of a co-accused versus two separate certificates**

##### **7.4.21 *Introduction***

1. In cases where there are multiple defendants for a common offence, a single lawyer may represent multiple individuals charged with a common set of offenses. During the billing process, the lawyer will indicate the presence of a co-accused on the account and the tariff limit will be increased automatically by 40% to reflect the incremental effort required.
2. A risk exists where a lawyer does not indicate that there was a co-accused in the case, and obtains two certificates, each billed separately, and therefore effectively bill an additional 60% over the tariff maximum on the second certificate.

##### **7.4.22 *Data insights***

1. To determine if this type of activity was present in the data, we generated a list of all certificates that met the following criteria, where the:
  - a) accepting lawyer matched; and,
  - b) acceptance date matched; and,
  - c) number, and type of charges matched.
2. Our analysis identified 1,311 certificates, with a total of \$1,380,802.12 in payments that matched another certificate which was accepted on the same day, by the same lawyer, for the same charges where the co-accused flag was either not selected or was elected as "No".
3. Of the \$1,380,802.12 in payments, the incremental amount billed, reflecting the 60% lift in the tariff maximum on the second certificate was determined to be \$414,240.63.
4. We noted 15 lawyers exhibiting over 10 instances where the certificate was accepted on the same day, for the same charges where the co-accused flag was either not selected or was elected as "No". We further identified one lawyer who on 196 occasions, accepted a certificate on the same day, for the same charges where the co-accused flag was either not selected or was elected as "No".
5. LAO should consider the implementation of system based validation check that will challenge the entry of two identical accounts during the course of a given time period and request that the lawyer confirm the presence or absence of a co-accused.

## 7.4.23 Lawyer billing risks: Heavy weighting of non-lawyer hours

### 7.4.24 Introduction

1. The use of students and law clerks by lawyers in the delivery of services to clients is a standard and accepted practice. In regards to student and law clerk hours, a lawyer has the potential to increase the hourly tariff maximum to a rate above that of a top tier lawyer, which for the purposes of this analysis is \$96/hr. In the calculation of the yearly billing cap of 2,350 hours, student hours are attributed at 1/3 of a lawyer hour. That is to say, a lawyer can use three hours of student time, and it will only count towards one hour of lawyer time in the calculation of the yearly billing cap.
2. A risk exists where the student and law clerk fees do not equate to 1/3 of the lawyer tariff, and therefore a new tariff maximum can be manufactured through the extensive use of student hours. For example, a lawyer is billed at \$96/hour, whereas three student hours are billed at \$46/hour equates to \$138/hour. This observation is supported through our review of historical billing data.

### 7.4.25 Data insights

1. We reviewed the lawyer billing data to determine extensive use and weighting of non-lawyer hours to lawyer hours. For the purposes of our analysis we reviewed all certificates where the non-lawyer hours accounted for 33% or more of total time billed to the certificate.
2. We identified 169 certificates, with a total of \$60,477.20 in payments, where non-lawyer hours accounted for 33% or more of total time billed to the certificate.
3. There were two areas of additional observations:
  - a) The non-lawyer hourly bill rate fluctuates between two narrow ranges:
    - i) \$69.00 - \$75.90, and
    - ii) \$122.49 - \$138.00
  - b) We identified 113 certificates where the proportion of non-lawyer hours versus lawyer hours billed to a certificate are greater than 50%. We observed one certificate where 97% of the time billed to a certificate was attributed to non-lawyer time:

Proportion of non-lawyer hours versus lawyer hours billed to a certificate	Number of certificates
50% +	73
75% +	27
85% +	8
90% +	5

4. In the most extreme case, we observed one certificate where 97% of the time billed to a certificate was attributed to non-lawyer time. However, overall, there were very few instances of this type of activity observed in LAO's data.
5. While the apparent financial impact of this activity is low, the existence of this type of billing behaviour should be examined further by LAO.



#### **7.4.26 Lawyer billing risks: Billing of acceptance fees with no subsequent delivery of service**

#### **7.4.27 Introduction**

1. LAO identified a potentially improper billing behaviour where a lawyer accepts a certificate and closes it prior to rendering any services to a client and collects the acceptance fee.

#### **7.4.28 Data insights**

1. We identified 449 accounts, valued at \$22,212.66, were the final account amount equated to the value of an acceptance fee (at an assumed acceptance fee of \$46.17).
2. LAO should consider the implementation of system based validation check that will challenge the entry of an acceptance fee as the final account, to ensure that services have been provided to the lawyers' client.

#### **7.4.29 General observations and conclusions**

1. One of the benefits of conducting an analytic review on 100% of the available LAO transactions is that we remove the risk of extrapolation errors, which is associated to sampling, in addition to providing a management with a detailed list of those transactions flagged by the tests identified above.
2. We have not conducted a review of the supporting documentation associated to each of the accounts flagged as potential anomolous. It may be prudent to conduct a documentation review to determine what is driving the anomolous activities identified. This practical exercise would also be beneficial to determine if any of the prescribed assumptions used in our tests require adjustments.
3. When considering the acceptance of 311,663 certificates, by 4,912 lawyers for a total value of \$441,652,648.24 over the period of our review, in comparison to our findings to determine potential anomolous billing practices described the financial amounts may considered as minimal financial exposure. However, it is important to balance financial risk with reputational risk, where the essence or substance of the behaviour may be such that necessates disciplinary action, irrespective of the amount.
4. It appears that a minority of lawyers are identified in our testing through their submission of accounts which were triggered by our analytical tests. This suggests that eduction and online billing training could be focused on this group to limit future repetation of anomolous behaviour, which may be based on their lack of understanding current policies and procedures.

## 7.5 LAO identified billing breaches

1. We analyzed billing breaches previously identified by LAO through its post-payment examination review process. As detailed in Section **Error! Reference source not found.** of this report, only a small portion of LAO's breach tests could be executed using the data provided by LAO, due to the lack of key data fields currently available within the billing portal. The majority of LAO breach tests rely on a review of source documentation (such as lawyer dockets and court records).
2. It is important to note that billing 'breaches' as defined by LAO do not necessarily represent billing behaviour potentially indicative of fraud or lawyer malfeasance. They rather reflect billing activity occurring outside of established billing rules, for which acceptable exceptions may or may not apply. These breaches are evaluated by LAO's Post Payments Examination group during the course of their billing reviews.

### 7.5.1 LAO Billing Breach #6 - Services Completed more than 30 days prior to effective date of the certificate

1. We identified 4,001 lawyers providing services at least 30 days before the certificate effective date.
2. Of these lawyers, 425 both started and completed services at least 30 days before the effective date of the certificate for a total billing value of \$1,350,429.10.
3. The following table describes the distribution of occurrences and dollars paid by type of law:

Type of Law	Dollars paid for accounts with a start and end date prior to 30 days before the effective date of the certificate
Criminal	\$1,088,179.42
Civil	\$43,890.09
Family	\$122,190.54
Immigration	\$96,169.05

### 7.5.2 LAO Billing Breach #7 - Services completed after the cancellation of the certificate

1. We looked at all accounts submitted where the service start date on an account was after the cancellation or end date of a certificate.
2. We identified 4,634 instances, for an account value of \$14,977,057.07, where 1,261 lawyers provided services after the certificate end or cancellation date. LAO does have a policy in place that allows for services to be rendered after a certificate end date, however, the certificate must be reopened before accounts can be applied.

Type of Law	Services completed after the cancellation or end of the certificate
Criminal	\$5,021,070.71
Civil	\$1,174,477.86
Family	\$8,475,042.99
Immigration	\$283,815.73

### 7.5.3 LAO Breach #8 - Billed same services more than once

1. We examined all accounts submitted where the two or more accounts were paid to the same lawyer with the same service start and end dates for the same certificate, and for the same number of hours.
2. We identified 191 certificates, for an account value of \$184,679.86, where 167 lawyers submitted at least two identical fees for the same account.

Type of Law	Dollars paid on accounts for the same services more than once
Criminal	\$97,988.06
Civil	\$5,119.39
Family	\$64,913.48
Immigration	\$16,658.93

### 7.5.4 LAO Breach #15 - Billed for more than one (bail, judicial pre-trial, charter motion, DNA) enhancement per trial

1. We examined all accounts submitted where more than 5 enhancers were submitted per trial item, or more than 10 enhancers were submitted per trial item where there was a co-defendant.
2. We did not identify any instances where there were more enhancers billed than the absolute number allowable based on the number of trial items contained on the certificate.

# 8 Discussion of Legal Aid Online system based controls

## 8.1 Introduction

1. Throughout the lawyer payment process review and quantification of potential dollars at risk there are a numerous references to risk exposures that LAO faces in its lawyer billing review and payment processes that may be mitigated through the implementation of certain system features.
2. These features fall into two major categories: data capture, and validation of business logic. We address each of these areas at a high level below, and put forward recommendations on how LAO could enhance the integrity and efficiency of the billing process through the implementation of additional system functionality.

## 8.2 Data Capture

1. There were a number of areas within the LAO billing portal that we identified where the capture of additional data through the portal could contribute significantly to the enhancement of the integrity of the billing process:

### 8.2.1 Court dates

1. Currently court appearance dates and times are not captured in the lawyer billing portal. This poses a number of separate risks:
  - a) Lawyers are able to enter the number of court appearances and preparation time; however, there is not reconciled to actual court appearances through Ontario Court.
  - b) Where lawyers have appeared in court on a single occasion to have multiple cases heard, the single appearance can be double billed as the system does not validate whether the court visits were consecutive or concurrent.
  - c) Billings for court appearances on public holidays, weekends, and at other times when such an appearance would be unlikely, is not automatically detected without adequate date and time data capture.
2. During the entry of accounts, the LAO billing portal should capture attendance to court which includes both the dates and times of attendance. As we discuss below, there are additional opportunities to tighten controls through the reconciliation of court data to Ontario Court records.

### 8.2.2 Court case number

1. In addition to court dates, court case file numbers should be required from the lawyer. LAO should be able to reconcile court case results as documented by Ontario Courts to lawyer accounts to ensure agreement with specific reference to:
  - a) Court date appearances and times
  - b) Type of election (summary conviction, proceeding by indictment)
  - c) Trial outcomes

### **8.2.3 Solicitor list**

1. LAO's solicitor list should be updated regularly. Until this list is updated, the Area Offices are able to assign certificates to lawyers no longer on the lawyer panel. Our observation of the portal identified at least one lawyer who used two different solicitor numbers for various certificates, allowing the solicitor to substantially exceed the tariff hard cap.
2. Lawyers who are suspended, disbarred or retired from the Law Society are communicated monthly via an Excel spreadsheet, however, it can take significantly longer before the update is made in the Legal Aid Online portal.

### **8.2.4 Costs / Settlements Awarded**

1. In civil cases, a judgment in favour of the LAO client requires that any costs awarded by the judge be remitted to LAO. This however remains the lawyer's obligation to disclose and remit.
2. Costs and settlements awarded to the benefit of LAO are not currently set as mandatory fields in the portal, and the amounts entered are at the discretion of the lawyer. LAO should ensure that costs and settlements are required as mandatory fields. While costs or a settlement may not be awarded in a case, a lawyer should be obligated to explicitly indicate that costs and settlements were not awarded.

### **8.2.5 Dockets**

1. As detailed in the process review section (LS&P, Operations), a facility for the entry of comprehensive dockets should be created in the portal billing environment, which should be linked to specific certificates, and at a minimum include:
  - a) Date of services provided
  - b) Hours incurred (differentiated by trial, preparation for trial, conferences, general)
  - c) Description of services provided, in relation to specific charges

### **8.2.6 Recording of non-lawyer hours**

1. While many law firms and private practices leverage law students and clerks rotating through the legal community, currently the billing of student and law clerk hours are largely anonymous. LAO should require that at the very least a structured name is required in the entry of non-lawyer hours.

### **8.2.7 Yes / No fields**

1. During account entry there is an absence of 'required' fields with respect to questions posed on the applicability of certain items. For example, in calculating the tariff maximum the question of 'Was there a co-accused' is answerable by selecting a 'Yes' or 'No' radio button. The user is able to leave this blank, and this will result in a NULL entry in the data, neither a "Yes" nor "No" answer.
2. Lawyers should be explicitly required to answer all questions posed in the account entry screen, indicating that they have read and understood the question and have provided a definitive answer.

### 8.2.8 Access to Ontario Court data

1. In order to perform more comprehensive matching and validation of accounts submitted to LAO, we understand a regular submission of court case numbers and dates could be submitted to LAO from the Integrated Courts Offences Network (ICON).
2. This submission could be as simple as a two column table, containing the ICON case number, and a date/time indicating when a proceeding related to that case was heard. This could be implemented as a reference table into Legal Aid Online, where the lawyer, through a dropdown menu would select the appropriate date he/she attended court. Once selected, this date would no longer be available for selection on this or other certificates ensuring that double billing does not occur.

## 8.3 Validation of business logic

1. During our review of the billing portal environment and analysis of the underlying data, we identified and confirmed with LAO a number of application control enhancement opportunities. We have identified the major findings below:

### 8.3.1 Enhancers

1. Enhancers reflect a particular legal activity linked to a criminal proceeding available to a lawyer when submitting an account online. There are five main types: Bail hearings, Pre-trial hearings, and Pre-trial hearings before a Superior Court judge, Charter Motions, and DNA applications. The selection of an enhancer serves to increase the tariff maximum by 2 hours per enhancer, and is permitted under the tariff.
2. As stated on the billing portal, "The number of these tariff items cannot be higher than the number of separate trials or proceedings entered above. For each separate trial, one is allowed by the tariff and only once it has been completed."
3. The billing portal, however, does not rely on specific business logic with reference to the selection of enhancers for specific charges. For example, the selection of a 'DNA application' enhancer would not be typical for charges such as 'Theft under...', however the system currently allows this selection, and any other like it.
4. While not all potential applications and frequency of enhancer usage can be anticipated by LAO, a framework of business rules should be developed and implemented in Legal Aid Online that prevents the use of specific enhancers, and places a cap on the number of enhancers selected:
  - a) individually per account issued
  - b) collectively for a given certificate

### 8.3.2 Tariff hard cap

1. Through discussions with LAO is it our understanding that individual lawyers are limited to billing a total of 2,350 hours (or \$ 228,000) per year. This is stated as policy by LAO.
2. During our analysis, we identified instances where lawyers did in fact exceed the hard cap and were paid by LAO. LAO should confirm the effectiveness of this application control.

### 8.3.3 Over tariff maximum notification

1. Legal Aid Online performs a calculation with reference to the tariff maximum at the time that accounts are submitted to LAO for payment. The tariff maximum is calculated by summing the total hours permitted for:
  - a) the most serious charge on the certificate;
  - b) acknowledging receipt of the certificate;
  - c) each use of a tariff enhancer;



- d) charges heard separately;
  - e) trial elections (summary conviction versus an indictment);
  - f) court dates and preparation time, and,
  - g) the presence of a co-accused.
2. The Legal Aid Online billing portal should clearly articulate the tariff maximum calculated per the above tariff modifiers, and should provide the lawyer with a summary of accounts issued to date and the room remaining in the certificate. In addition to increased transparency, this accomplishes a number of things which will assist LAO in managing the lawyer billing process more efficiently:
    - a) Match exceptions will only be flagged in instances where the lawyer is aware that he or she will be exceeding the tariff maximum based on the work performed.
    - b) There would likely be a higher instance of accounts issued to LAO with match exceptions that are also supported by requests for discretionary increases reducing manual follow up required.

#### **8.3.4 Over tariff maximum with no discretion request**

1. Accounts that are over the tariff maximum but for which the lawyer did not request a discretionary increase are flagged for exception and must be reviewed by an Adjustor. We understand that currently, there is a backlog of approximately 9,000 such accounts (which include 13,000 vouchers) that need to be reviewed by Adjustors before being paid.
2. LAO should implement a validation check in Legal Aid Online that prompts the user prior to the submission of an account that is over the tariff maximum to confirm submission in the absence of a request for discretionary payment, if such a request is not attached.

#### **8.3.5 Minor charge election**

1. LAO should consider tracking metrics within Legal Aid Online around the types of charges that normally proceed by summary conviction versus an indictment.
2. In instances where a lawyer indicates that a charge proceeded by indictment where the majority of cases relating to this charge proceed by summary conviction, a pop up dialog should be presented asking the lawyer to confirm the election.

#### **8.3.6 Minor billings**

1. LAO's policy that billings must be at least \$500 or more in value is not currently enforced. Where an account issued to LAO is not final, a system control should hold the account for submission until additional hours are recorded against the account originating from additional work performed by the lawyer.
2. This prevents a significant number of small value account triggering match exceptions, overloading the Adjustors, and creating process inefficiencies.

#### **8.3.7 Adjustor approvals**

1. Adjustors are authorized to approve up to 15 hours for discretionary billings on any one certificate, but there are no system controls to ensure compliance to the policy.
2. LAO should implement a system based approval through a role based security scheme that parks accounts with billed hours in excess of 15 hours of the tariff maximum for staff lawyer review and approval. The staff lawyers should have release capabilities to approve the accounts once reviewed.



# 9 Implementation plan

## 9.1 Recommendation ratings

1. Our recommendations to address areas identified for improvement were ranked according to the following risk legend:

Definition	
High	High priority recommendations address unacceptable levels of exposure to LAO or will provide the greatest opportunity to improve the efficiency or effectiveness of the lawyer billing monitoring and compliance processes.
Moderate	Moderate priority recommendations address levels of exposure to LAO that if not addressed may become unacceptable or will provide a significant opportunity to improve the efficiency or effectiveness of the lawyer billing monitoring and compliance processes.
Low	Low priority recommendations should be implemented to address control weaknesses or gaps and to in the overall efficiency and/or effectiveness of the lawyer billing monitoring and compliance processes.

2. The following implementation plan was developed to prioritize LAO's activities so that limited resources are allocated to value-added activities. In some cases moderate and low priority recommendations are staged before higher priority recommendations. This is required because some recommendations set the foundation for other recommendations. For example, the skills need to perform data analytics needs to be obtained in the PPE group before data analytics can be an integrated part of their approach to monitoring lawyer billing compliance.

## Implementation plan

	1 - 3 months	4 - 6 months	6 + months
Compliance Function	Develop LAO Compliance Management Program		
	Create standing meeting for the compliance & monitoring functions		
		Develop reports to summarize compliance activities and results	
Lawyer Services & Payments		Develop Adjustor competency profile	
		Complete skill assessment in LS&P group	
		Develop performance metrics for Adjustors	
		Execute Adjustor quality assurance program	
	Require supporting documentation with bills submitted		
	Implement business logic controls in Legal Aid Online		
	Implement mandatory data capture in Legal Aid Online		
	Pay to tariff max. if discretionary increase not requested		
	Confirm that the solicitor master file is current		
PPE	Align PPE objectives with the Compliance Mgmt. Program		
		Develop Examiner competency profile	
		Complete skill assessment in PPE group	
		Develop performance metrics for Examiners	
		Execute Examiner quality assurance program	
		Implement data analytic techniques & risk based sampling	
	Implement post payment reviews at the certificate level		
	Track metrics on the lawyer's billing performance		
		Report risk indicators related to the LAO compliance activities	
Investigations	Align Investigations objectives with the Compliance Mgmt. Prg.		
		Develop Investigations competency profile	
		Complete skill assessment in Investigations group	
		Develop performance metrics for Investigators	
			Implement a whistle blower program
		Evaluate the success of pilot project with Ministry of Attn. Gen.	
Internal Audit			Perform lawyer billing operations reviews of mgmt.'s controls

# 10 Appendix A - Scope of data testing

## 10.1 Risk based tests

Risk ID	Risk Category	Risk	Testing Approach
1	Timing	Lawyer billing accounts opened and billed within very close proximity to the end of a certificate, or prior to final billing on a certificate (topping up)	<p>Calculate the time difference between certificate's expiry date and accounts receive date and review all accounts which fall close to the expiry date. Rank lawyers from high to low for the number of accounts submitted close to the end date.</p> <p>Calculate the time difference between accounts receive dates for each certificate. Isolate the 5%-10% of account pairs with the longest time span between receipts.</p> <p>Using the list above, for each law firm/lawyer, count the number of times that they appear on this list.</p>
2	Timing	Lawyer issues a high number of accounts which accumulate to fill the certificate allotment prior to certificate expiration.	<p>Produce a list of all lawyers and number of times they issued accounts within the final 1-2 months of the certificate life. The list will be sorted in descending order.</p> <p>Produce a second list that has the number of accounts normalized by the number of certificates, per lawyer.</p>
3	Timing	Lawyer issued final account is a top up of hours allotted to the certificate, i.e. accepting account submissions for fees less than \$500 and disbursements less than \$50	<p>Produce a list of all lawyers and number of times they were paid for fees less than \$500 and disbursements less than \$50 in the final account for a certificate</p> <p>Produce a second list that has the number of accounts normalized by the number of certificates, per lawyer.</p>
4	Enhancers	<p>Lawyers use multiple enhancers to increase the tariff maximum (2 hrs per enhancer):</p> <ul style="list-style-type: none"> <li>- Bail Hearing</li> <li>- Pre Trial Before Judge</li> <li>- Pre-Trial Before Supreme Court Judge</li> <li>- Charter Motion</li> <li>- DNA Application</li> </ul>	<p>For each lawyer, calculate the number of enhancers used and produce a list in descending order.</p> <p>Produce a second list that has the number of enhancers normalized by the number of certificates.</p> <p>Calculate enhancer period by totaling number of enhancers used in each month for each certificate over the 36 month life cycle. Produce a list of certificates and lawyers who are outside of the enhancer period.</p>
5	Tariff Manipulator	Lawyer billing demonstrates a heavy weighting of student charges to an account. (Student hours = 1/3 lawyer hours. The true bill rate for student time is \$96/hr versus the top lawyer bill rate of \$120)	<p>For each lawyer, calculate the number of student hours. Generate a list in descending order.</p> <p>Produce a second list that has the number of student hours normalized by the number of certificates.</p>
6	Tariff Manipulator	Lawyer indicates that a trial proceeded by indictment, for a minor charge, where this is normally a summary conviction, increasing the tariff limit on the certificate (i.e. theft under x limit is typically dealt with as a summary conviction)	<p>Calculate the outcome probability (of an indictment) on a charge basis from the entire data set. Compare this value to the actual outcomes on a charge basis for each lawyer.</p> <p>Create a list, at a lawyer/charge perspective, of the greatest differences between actual outcome and outcome based on the average of the entire data set.</p> <p>Summarize at the lawyer level: count the number of occurrences where each lawyer has exceeded the historical average.</p>
7	Tariff Manipulator	Lawyer can artificially indicate that there is no co-accused in the matter;	Produce a list of lawyers where 2 or more certificate start date is less than 14 days apart and the charges/amount



Risk ID	Risk Category	Risk	Testing Approach
		this automatically reduces the tariff maximum by 40%. Two full tariffs as opposed to one.	billed for those certificate are very similar Produce a list of lawyers who show inconsistency over multiple accounts having co-accused vs. no co-accused in the same certificate.
8	Overpayment	LAO approves lawyer billings that have flagged match exceptions, and pays the billed amount.	Produce a list of all lawyers who flagged match exception, number of time they were flagged and the total amount paid to these accounts. Create two lists, ranking lawyers in descending order with match exception and dollar amount paid for those accounts
9	Overpayment	LAO fails to appropriately update the solicitor list (approved vendor) and pays amounts to vendors no longer providing actual services	Cannot perform data analytic test: The LAO Vendor (solicitor) master data doesn't have vendor's last service date. The vendor's last service date is required in order to test if the payments were made while the solicitor was active.
10	Overpayment	LAO pays lawyers more than they have billed the system	Produce a list of accounts where total amount paid by LOA is greater than amount billed by an account, in descending order of amount paid.
11	Overpayment	Billings do not represent services rendered: - Lawyers bill for trial / court time on public holidays - Lawyers bill for trial / court time on a Sunday	Cannot perform data analytic test: a test would require an audit of the case file. The LAO Accounts data doesn't contain trial or court date.
12	Overpayment	Lawyers accept certificates and close them, prior to rendering services and simply collect the acceptance fee.	Produce a list of lawyers who have just collected the acceptance fee and then close the certificate. Rank lawyers in descending order by the number of times they have collected the acceptance fee.
13	Others - Disbursements	Lawyer indicates a value in the "Disbursements Authorized Prior to Legal Aid Ontario" field for disbursements not incurred.	Do not have data on 'disbursements not incurred'
14	Others – Multiple Vendor records	Lawyers have multiple vendor records in PeopleSoft allowing them to circumvent the annuals 2350 hour billing cap.	In order to check for multiple vendor entries, we need to do name and address matching, which is not possible with the data provided.  However, we can perform the following test: Sum up hours for all certificates for each lawyer and produce a list of all lawyers who were paid more than 2350 hours/year.
15	Others – Manipulating Billing Cap	Lawyer indicates an incorrect tier level to manipulate billing cap on the certificate.	Cannot perform data analytic test: The LAO Vendor (solicitor) master data doesn't have tier change date.
16	Others- Insiders	Consistent approval of accounts hitting match exceptions from a single solicitor, by a claims administrator could indicate collusion	Create a list of matches between approver and solicitor where there has been a match exception, and rank the list in descending order.
17	Others – Fail to disclose	Lawyer fails to disclose costs in the Funds Received section of the Account. Costs awarded are the property of LAO and should be remitted to LAO post award.	Cannot perform data analytic test: Currently, the funds received data is entered by lawyers at the moment of account submission and the lawyers fail to disclose cost in funds received section can only verify by comparing lawyers entered data to Ontario Court's central database.
18	Disbursements	Lawyers bill too many disbursements in relation to the cert amount	Photocopies – not preauthorized; can just bill this. Transcripts/Experts – need this preauthorized

## 10.2 Previously identified billing breaches

Breach Test ID	LAO Breach #	Breach Description	Testing Approach
1	1	Failure to provide dockets on request (lawyers usually provide)	Cannot perform data analytic test: Information on docket requests is not provided.
2	2	Total hours were less than billed on summary account	Cannot perform data analytic test: This can only be verified through an audit of the docket.
3	3	Failed to disclose private retainer received	Cannot perform data analytic test: This can only be verified by the client.
4	4	Private retainer account included services completed after effective date	Cannot perform data analytic test: This can only be verified by the client.
5	5	Services completed outside billing deadlines	Create a list of all lawyers where service start and service end is outside the certificate start and end date.
6	6	Services completed more than 30 days prior to effective date of the certificate	Create a list of all lawyers who have provided service 30 days before the certificate effective date.
7	7	Services completed after the cancellation of the certificate	Create a list of all lawyers who have provided service after the certificate end or cancellation date.
8	11	Billed same services and/or disbursements more than once ( i.e. overlapping hours, duplicate payments)	Create a list of all lawyers who have submitted duplicate fees or disbursements for certificates and accounts
9	19	Billed for unauthorized services	Cannot perform data analytic test: Data indicating unauthorized services is not provided.
10	20	Trial days were inaccurately summarized (overpayment)	Cannot perform data analytic test: This can only be verified through an audit of the docket.
11	21	Summarized Prep time as Court time or Court time as Prep time	Cannot perform data analytic test: This can only be verified through an audit of the docket.
12	22	Billed for unauthorized disbursements	Cannot perform data analytic test: Data indicating unauthorized disbursements is not provided.
13	23	Election Type was incorrectly stated in summary account.	Tested through risk test listed previously.
13	24	Outcome (plea/trial/withdrawal) incorrectly stated in summary account. i.e. selecting contested trial, when a plea was entered	Cannot perform data analytic test: This can only be verified through an audit of the docket.
14	26	Billed multiple trial days for trials held on the same day	Cannot perform data analytic test: This can only be verified through an audit of the docket.
15	27	Billed for more than one (bail, judicial pre-trial, charter motion, DNA) enhancement per trial	Create a list of lawyers who have billed for more enhancers than trial items for each certificate.
16	29	Failure to provide invoices for disbursements	Cannot perform data analytic test: This can only be verified through an audit of the docket.
17	30	Billed for enhancement item to which not entitled	Similar analysis in Risk test, risk id: 4
18	33	Incorrect service dates on summary account for service outside the billing deadline	Create a list of all lawyers who have provided services after the billing deadline
19	N1	Subsequent conferences incorrectly summarized (overpayment), i.e. Entering more subsequent pre-trial conferences, trial or hearing days than actually attended.	Cannot perform data analytic test: This can only be verified through an audit of the docket.
20	N2	Flagging authorized charges to bill charges which are not authorized	Cannot perform data analytic test: This can only be verified through an audit of the docket.
21	N3	Indicating an indictable contested proceeding went for greater than 10 days where it was less than 10 days	Cannot perform data analytic test: This can only be verified through an audit of the docket or court record.
22	N4	Entering additional court days/times to	Cannot perform data analytic test: This can only be



Breach Test ID	LAO Breach #	Breach Description	Testing Approach
		which not entitled	verified through an audit of the docket or court record.
23	N5	Selecting charges proceeded by way of indictment where charges proceeded by way of summary conviction	Similar analysis in Risk tests.
24	N6	Selecting charges proceeding separately when they proceeded concurrently	Cannot perform data analytic test: This can only be verified through an audit of the docket or court record.
25	N7	Billing under suspension	Create a list of all lawyers who have submitted accounts for a suspended certificate and have received payments.
26	N8	Double billing of GST on disbursements	n/a: GST is calculated by the PeopleSoft system

# 11 Appendix B – General compliance management program framework

## 11.1 General compliance management program framework

There is no universal template, framework or solution that exists regarding the most effective compliance management program. Each organization is different and subject to various internal and external factors that may affect its susceptibility to having an external inappropriate activity perpetrated against it and / or its ability to address such inappropriate activity.

In regard to LAO, an effective strategy to combat inappropriate activities, waste and abuse cannot be detached from other strategies needed to ensure the proper management and governance of the organization. Effective controls are needed, while keeping to a minimum any increased bureaucracy that might have a negative effect on LAO's relationships with lawyers, clients, employees and the general public. LAO must ensure that providing service and deterring, detecting and preventing inappropriate activities are complementary. The LAO can protect the public dollars for which it is responsible against inappropriate activities through diligent, ongoing and directed efforts.

With the above in mind, several leading examples of effective compliance management program frameworks have been identified, including those presented by the Institute of Internal Auditors, the American Institute of Certified Public Accountants, the Association of Certified Fraud Examiners, the Committee of Sponsoring Organizations and the United Kingdom's National Audit Office and HM Treasury. While leading programs are structured differently, they have common key elements and objectives.

The framework described below is one presented by the National Audit Office and HM Treasury in the United Kingdom that addresses leading practices in combating external inappropriate activities in the public sector.<sup>7</sup> The key elements and activities of the National Audit Office and HM Treasury framework are summarized in the following chart.

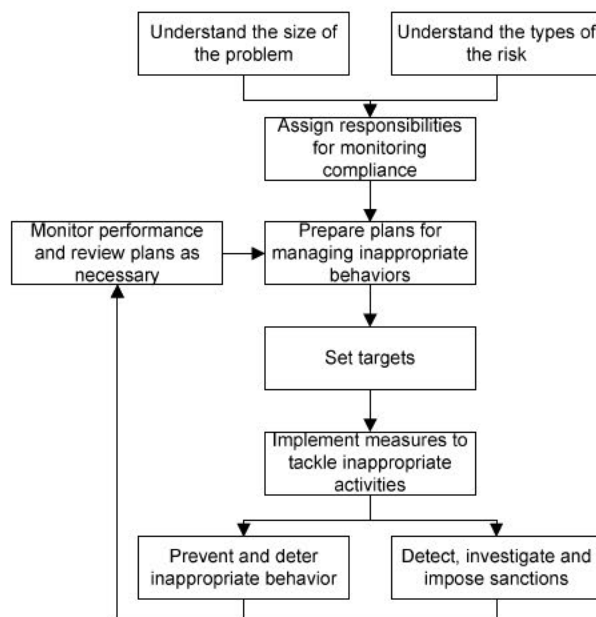
Key elements	Key activities
Understanding and Managing the Risks of Inappropriate Behaviours	<ul style="list-style-type: none"><li>• Take a strategic approach to tackling inappropriate Behaviours</li><li>• Understand the risks that the organization faces and assess the scale of those risks</li><li>• Focus existing resources on the most effective counter inappropriate behaviours</li><li>• Set targets and monitor performance</li><li>• Assign responsibilities to deter, prevent and detect fraud</li></ul>
Deterring and Preventing Inappropriate Behaviours	<ul style="list-style-type: none"><li>• Change the public's attitude towards inappropriate behaviours</li><li>• Foster a culture within the organization that does not accept inappropriate behaviour</li><li>• Programs and policies that deter inappropriate behaviour</li></ul>

<sup>7</sup> National Audit Office and HM Treasury, "Good Practice in Tackling External Fraud," June 2008 ([http://www.nao.org.uk/guidance/tackling\\_external\\_fraud.pdf](http://www.nao.org.uk/guidance/tackling_external_fraud.pdf)). Please note that this framework and the concepts therein are presented throughout the remainder of this section. Unless a direct quote or illustration from this document is used, additional footnote references to the information extracted from it are not included. Any other information sources used to provide examples of leading practices are specifically referenced by footnote.



	<ul style="list-style-type: none"> <li>Comply with and strengthen existing controls to prevent inappropriate behaviour</li> </ul>
Detecting and Investigating Inappropriate Behaviours and Imposing Sanctions	<ul style="list-style-type: none"> <li>Detect inappropriate activities using various methods</li> <li>Investigate known cases of inappropriate activities</li> <li>Impose sanctions, recover monies obtained through inappropriate activities and measure the effectiveness of sanctions</li> <li>Work with others to effectively tackle inappropriate activities</li> </ul>

It is important to note that effective and efficient compliance management is an ongoing activity; the success of the program relies upon the success of each interrelated activity, participation from the persons accountable for deterring, preventing and detecting fraud and regular monitoring and updating of the program. The graphic below illustrates the interconnectedness of an effective strategic approach.



Understanding and managing the risks related to inappropriate billing is critically important. Failure to acknowledge and review the risks that are most prevalent to an organization could lead to an unfocused and ineffective approach to compliance management. Key activities to understanding and managing the risks include:

- Take a strategic approach to tackling inappropriate activities:  
An effective compliance management program must be based on a thoughtfully developed strategy that fits into the overall structure and governance of the organization and it must be supported by the senior management team. Due to the fine line between an error and fraud, the strategy should be transparent, comprehensive and coordinated across all areas within the program. Benefits of an effective strategy include the ability to identify and focus resources on the highest risk areas, thereby increasing returns and ensuring the integrity of LAO's billing system.
- Understand the risks that the organization faces and assess the scale of those risks:  
A key element of any effective compliance management strategy is to understand the risks faced by an organization and to assess the scale of those risks. Risk assessment tools should be used on a regular basis to ensure that the organization is proactively identifying and managing risks and appropriately allocating resources to address them.

It is also important to measure the scale of potential loss from inappropriate activities using an estimating process such as statistical modeling, statistical sampling or survey tools. The desired precision of any such estimate(s) will need to be measured against the cost of producing the estimate. The estimate can be used as a baseline for measuring the success of the compliance strategy over time. If estimating the rate of loss due to fraud is not cost-effective or feasible, another means by which to measure the success of a fraud management program is to benchmark recoveries against total fraud management program expenditures and total health program costs; however, such

measurements only track detection efforts but do not quantify the reduction of overall losses due to successful deterrence and prevention.

- Focus existing resources on the most effective compliance measures:

There are many potential controls that can be put into place to prevent and detect fraud, so it is important that a targeted and structured approach is used to identify the controls that deliver the most benefit for the cost of resources being implemented. The overall objective is to have the benefit of controls exceed their cost. Potential savings that could be achieved through targeting resources in more efficient ways include:

- The direct effects from recovering amounts inappropriately billed
- The preventive effect, through improved future compliance from those previously detected committing inappropriate billings
- The deterrent effects on others who become more compliant as they learn of the greater efforts being taken to counter inappropriate activities

The first step in targeting resources toward the most effective compliance activities is the performance of a risk assessment and through the modification of existing controls (or implementation of new controls) to address areas determined to be high risk.

- Set targets and monitor performance:

Setting targets and monitoring performance against those targets can be an effective means by which the success of controls can be measured and resources can be refocused, if necessary. Below are examples of target statements that can be used:

- Reduce overall billing errors
  - Reduce the amount of inappropriate billings detected as a percentage of compliance management program expenditures and / or as a percentage of overall LAO expenditures
  - Increase the amount and rate of recovery of inappropriate billings
  - Increase the number of deterrent messages provided to the public
- Assign responsibilities to deter, prevent and detect inappropriate activities

The responsibility for deterrence of inappropriate behaviour, prevention and detection must come from the top of the organization. Roles and responsibilities of management and employees must be established and accountabilities assigned. At LAO, this responsibility is decentralized across the compliance functions that must coordinate with other stakeholders both inside and outside of the program.

# 12 Appendix C – Sample competency profiles

## 12.1 Sample Examiner competency profile

Competency	PPE Examiner
Core knowledge & application	<b>Audit background</b> Ability to demonstrate ability to complete detailed and objective reviews of source documents
	<b>Knowledge of lawyer billing requirements</b> Demonstrates a strong technical understanding of lawyer billing requirements and related LAO policies. Is able to apply technical knowledge of relevant lawyer billing requirements to effectively review lawyer invoices are in compliance with LAO billing policies and processes.
	<b>Knowledge of IT applications</b> Knowledge of basic Word and Excel applications and standard level of typing skills. Ability to complete data analytics and analyze generated reports generated from the PeopleSoft billing system.
Decision making	<b>Service delivery</b> Ability to make effective decisions related to executing targeted examinations based on a documented audit program. Meets specified standards for processing of service orders and related productivity measures.
	<b>Managing own work</b> Ability to prioritize own work to ensure that targeted reviews are processed in a timely manner (e.g. ability to prioritize reviews and work activities)
Team & leadership	<b>Team skills</b> Works effectively in a team environment by demonstrating support and flexibility for both the PPE as well as cross-functional teams (e.g. liaison with Investigation). Is respected by co-workers and management.
Interpersonal	<b>Communication skills</b> Exhibits strong communications skills in dealing with internal and external clients. Is able to communicate effectively to obtain the necessary information required to complete an assessment. Through effective communication is able to manage expectations of management and resolve issues. Understands the importance of timely communication and focuses on using measures to ensure that status of reviews and results are acted upon and communicated in a timely manner.



## 12.2 Sample Adjustor competency profile

Competency	Lawyer Services & Payments Adjustor
Core knowledge & application	<b>Knowledge of the Legal System</b> Demonstrates a general understanding of the legal system (e.g. paralegal)
	<b>Knowledge of lawyer billing requirements</b> Demonstrates a strong technical understanding of lawyer billing requirements, tariff regulations and related LAO policies.
	Is able to apply technical knowledge of the legal system and billing requirements to effectively make appropriate judgments regarding discretionary requests.
Information technology	<b>Knowledge of IT applications</b> Knowledge of basic Word and Excel applications and standard level of typing skills.
Decision making	<b>Service delivery</b> Ability to make effective decisions related to discretionary requests based on LAO policies.
	Meets specified standards for processing of discretionary requests and related productivity measures.
	<b>Managing own work</b> Ability to prioritize own work to ensure that discretionary requests are processed in a timely manner.
Team & leadership	<b>Team skills</b> Works effectively in a team environment by demonstrating support and flexibility for both the Lawyer Payments group as well as cross-functional teams (e.g. liaison with Investigation/PPE). Is respected by co-workers and management.
Interpersonal	<b>Communication skills</b> Exhibits strong communications skills in dealing with internal and external clients. Is able to communicate effectively to obtain the necessary information required to complete an assessment. Through effective communication is able to manage expectations of management and resolve issues. Understands the importance of timely communication of issues (i.e. unusual billing activity).

# 13 Appendix D – Skills assessment framework

Rate employees against the future state competencies using the Organization Capabilities Scale. Ratings for each role/level were then averaged to determine placement on the Gap Analysis Scale

Ratings from the Gap Analysis Scale were determined based on the Org. Capabilities ratings, as follows:

- **"Gap"** – exists where the talent **"Does Not Display"** the capability
- **"Potential"** – exists where the talent can **"Develop"** the capability
- **"Displays"** – exists where the talent **"Displays"** the capability
- **"Strength"** – exists where the talent shows **"Strength"** in the capability

**Organization Capabilities Scale**

Does Not Display	Developing	Displays	Strength
Incumbent talent does not possess or does not exhibit proficiency in this area. There are currently no signs of development; the incumbent talent either does not recognize a need for improving capabilities in this area, or does not know how to make improvements.	The incumbent talent's abilities in this area are below performance standards, but they do display some capability. The incumbent talent is working to improve this competency, and with normal development will likely "Display" competency in the future.	The incumbent talent meets expectations for proficiency; abilities are similar to most. If everyone performed this well, the organization would be competent and successful.	The incumbent talent has strength in this area; abilities are better than most. You might select the incumbent talent for a team just for this special talent.

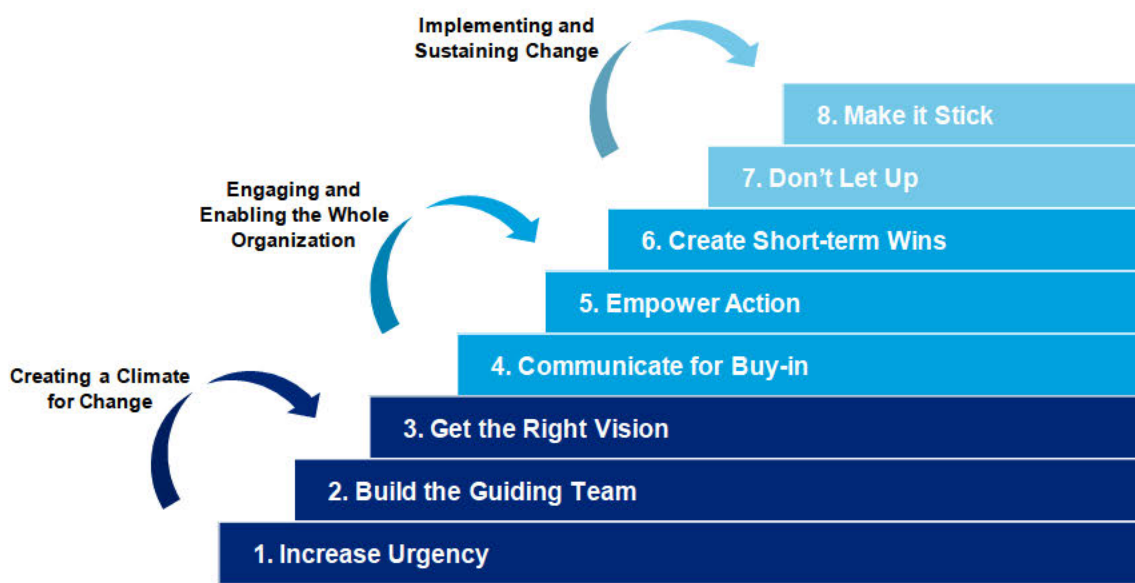
**Gap Analysis Scale**

Gap	Potential	Displays	Strength
Does not demonstrate appropriate capabilities or potential to demonstrate these capabilities in 3 years.	Has the potential to demonstrate these capabilities in 3 years.	Demonstrates the appropriate capabilities.	Demonstrates capabilities above and beyond requirements.

Roles	Specialty	Level	Gaps and Potential		Strengths	
			Behavioral	Technical	Behavioral	Technical
Program/Project Management	Program/Project Manager	P4		<ul style="list-style-type: none"> <li>– Business Process Testing</li> <li>– Systems Integration</li> </ul>	<ul style="list-style-type: none"> <li>– Customer Focus</li> </ul>	
Program/Project Management	Program/Project Manager	P5			<ul style="list-style-type: none"> <li>– Customer Focus</li> <li>– Planning</li> <li>– Process Mgmt.</li> </ul>	
Program/Project Management	Program/Project Manager	P6	<ul style="list-style-type: none"> <li>– Command Skills</li> <li>– Managing &amp; Measuring Work</li> </ul>	<ul style="list-style-type: none"> <li>– Project Mgmt.</li> <li>– Usability Evaluation</li> </ul>	<ul style="list-style-type: none"> <li>– Customer Focus</li> </ul>	

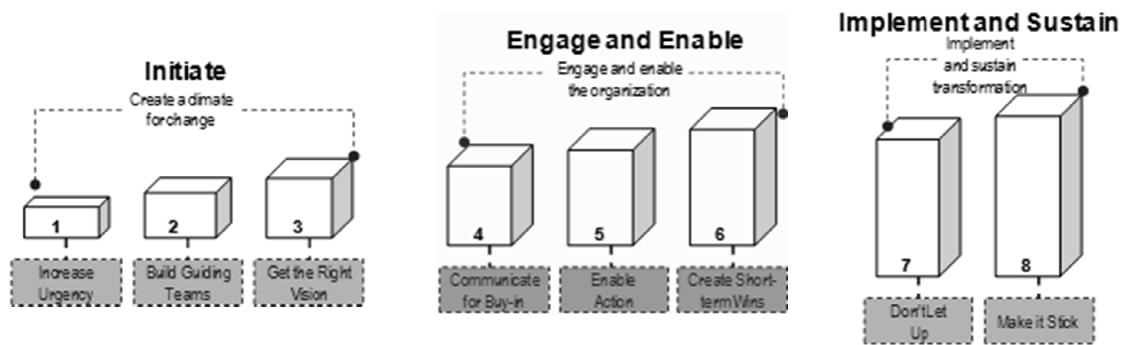
# 14 Appendix E - Change management

## ***The Heart of Change:*** Eight Steps to Successful Change



Kotter, John P. and Cohen, Dan S., *The Heart of Change*. Boston: Harvard Business School Press

HC Tech Adoption Playbook-100a



1	Leadership	A Clear and Common Vision	Organizational Barriers Removed	Coaching and Support Provided
		Leaders Aligned Around the Change		
2	Stakeholder Enrollment & Engagement	Change & Stakeholder Understanding Improved through Assessments		
		Justice Participant Resistance is Managed		
		Justice Participant Engagement, Commitment/Buy-in, Collaboration and Support is Improved		
3	Culture Development	New Culture Developed through Communicating, Assessing, and Rewarding Desired Norms & Behaviours		
		Resources Deployed Efficiently		
4	Learning	Necessary Capabilities Developed Among Staff		
		Productivity Increased		
		Improved Impact on Justice delivered		



# 15 Restrictions

1. This report has been prepared to provide the LAO with our findings related to those analytic procedures discussed within this report against LAO lawyer billing transactional data across various time periods dependent on the availability of data, but not preceding LAO's fiscal year 2007. We also report our observations of the LAO's organizational structure to determine what changes may be required to become more proactive in the detection and investigation of inappropriate ticket transactions, including, theft and fraud in relation to lawyer billing activities.
2. The information contained herein is based on analysis of data provided by various parties within the LAO. The procedures performed by Deloitte do not constitute a financial audit and should not be taken to supplant any additional inquiries and procedures that the LAO may consider to undertake in continuing to enhance LAO's lawyer billing monitoring capability, nor the investigation of specific cases of potential inappropriate activities that were identified within the LAO data. We make no representations regarding the sufficiency of the procedures performed and no representations regarding questions of legal interpretation.
3. Our work was not designed to identify circumstances of fraudulent activity within the LAO. We conducted specific tests to detect potential inappropriate billing behaviour as identified within this report. For the purposes of this report, save where we have been able to corroborate information, we have had to assume that the data disclosed to us is reliable and complete. Our review was heavily dependent on the completeness and validity of the data that we received and analyzed, subject to the data validity observations provided in the data audit results accompanying this report.
4. Where we have identified individual lawyers that have been flagged based on the results of the identified tests noted within this report, the reader is cautioned that this does not constitute or prove that a fraudulent activity has occurred.
5. This report is based on information in our possession as at the date of this report. We reserve the right to review all findings, calculations and conclusions included or referred to in our report and, if we consider it necessary, to revise our report if any information is provided subsequent to the date of our report.
6. Our review was heavily dependent on the completeness and validity of the data and documentation that we reviewed. Our report is confidential to the LAO. We do not assume any responsibility or liability for losses incurred by the LAO, its directors, officers, employees and lottery players or by any other parties, as a result of the circulation, publication, reproduction or use of this report.



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