



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

Consultation Paper
Meeting the Challenges of Delivering
Refugee Legal Aid Services

October 25, 2012

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1. Introduction

LAO is mandated by the *Legal Aid Services Act* (LASA) to consistently provide high quality legal aid services in a cost-effective and efficient manner to low-income individuals in Ontario. LAO is also statutorily mandated to encourage and facilitate flexibility and innovation in the provision of legal aid services.

On June 28, 2012, Bill C-31, *Protecting Canada's Immigration System Act* (PCISA), received Royal Assent. The Act, along with the *Balanced Refugee Reform Act* (BRRA), brings significant reform to the refugee determination system in Canada, including faster time lines and a new appellate procedure. Most of the measures are expected to come into force later this year, at a date to be determined by the Federal Government; December 15 is the anticipated coming into force date.

The new legislation comes at a time of significant challenge and change for legal aid in Ontario. The legislation – coupled with rising costs, reduced funding, and the ongoing need for greater cost-effectiveness – has compelled LAO to reassess some of the basic assumptions about how refugee legal aid services are provided in Ontario.

This consultation paper summarizes LAO's analysis of these challenges. The paper also proposes a provisional model for providing refugee legal aid services in this new environment. Finally, the paper seeks comments and advice on LAO's analysis and provisional service model. LAO's approach to refugee services is consistent with LAO's modernization strategy in other areas of law, including criminal and family legal aid services.

Over the next several months, LAO will be meeting with stakeholders and will post this paper on its website. LAO will seek submissions and advice from a broad range of stakeholders and individuals in the refugee determination system. LAO will consider all of the comments and suggestions when designing its new service delivery model.

LAO is also developing an interim plan for delivering refugee legal aid services during the transition that will follow the coming into force of Bill C-31.

Details regarding the transition and the consultation process are set out at the end of the paper.

2. The Importance of Legal Aid for Refugees

It is important that LAO provide legal aid services to refugee claimants. Many refugees who have recently arrived in the country will not have the funds or necessary supports to pay for representation before the IRB, nor will they be able to advance their case without legal assistance. Legal aid assistance can make the difference in ensuring that the rights of refugees are protected. The 1996 Ontario Legal Aid Review, *A Blueprint for Publicly Funded Legal Services*, stated that “refugee claimants risk return to a country where they could face imprisonment, torture or death because of who they are or what they believe.”

3. The New Federal Legislation

The *Protecting Canada’s Immigration System Act* and the *Balanced Refugee Reform Act* represent a marked departure from the current refugee determination system in Canada. For example, the new legislation includes faster time lines, a more streamlined process, and a new appellate procedure. The process also streams applicants according to the country of origin, historical patterns, and the nature of the claim. The legislation gives the Minister the authority to create a list of designated countries of origin (DCOs), comprised of countries with a history of very low acceptance rates and/or high abandonment rates.

Other notable features of the new legislation include:

Basis of Claim

A Basis of Claim (BOC) form will replace the current Personal Information Form (PIF). People who make a refugee claim at an office in Canada will submit their completed BOC during their eligibility interview. Those who make a refugee claim at a port of entry will have to submit their BOC to the IRB no later than 15 days after referral of their claim to the IRB.

RPD Hearing

Hearings will be held at the independent Immigration and Refugee Board of Canada (IRB) by public servant decision-makers rather than people appointed by the Governor in Council (GIC), as in the current system.

Hearings will be held for most claimants no later than 60 days after the refugee claim is referred to the IRB. For claimants from DCO countries, hearings will be held no later than 45 days after referral to the IRB for those who make a refugee claim at a port of entry, and no later than 30 days after referral for those who make a claim at an inland CIC or Canada Border Services Agency (CBSA) office.

RAD Appeal

The legislation allows a right of appeal to the new Refugee Appeal Division (RAD) for a limited class of claimants. A broad class of failed refugee claimants are *not* eligible to appeal to the Refugee Appeal Division.¹

The Refugee Appeal Division will give most claimants a chance to prove that the Refugee Protection Division decision was wrong in fact or law or both, and allow new evidence to be introduced that was not reasonably available at the time of the RPD hearing.

Most appeals will be paper-based with oral hearings only in exceptional cases. The appeal must be filed and perfected within 15 working days. The appeal will be conducted by Governor in Council (GIC) appointees.

Judicial Review Applications

There is no change from the current process, which allows all failed claimants to bring a judicial review application to the Federal Court to review a negative decision.

However, the ability of failed claimants from DCOs to review a negative RPD decision may be hampered by the fact that there is no automatic stay of removal once a judicial review application has been launched, and the applicant would have to seek a judicial stay in order to prevent a removal.

¹ Claims by individuals from a DCO; manifestly unfounded claims; claims with no credible basis; claimants who are subject to an exception to the Safe Third Country Agreement; claims referred to the IRB before coming into force, and re-hearings of these claims as a result of judicial review; individuals who arrive as part of a designated irregular arrival; individuals who withdrew or abandoned their refugee claims; claimants whose refugee protection has been vacated or ceased upon application by the Minister; claims deemed rejected because of an order of surrender under the *Extradition Act*; claimants with decisions on PRRA applications.

4. LAO's Refugee Law Services

Service Model

LAO's current method of delivering refugee legal aid services is primarily through LAO's certificate program. Approximately 95% of LAO's expenditures on refugee services are for certificates issued to the private bar. The Refugee Law Office (RLO) also accepts certificates where the client is willing to be represented by that office. Some refugee and immigration services are provided by a small number of clinics, primarily in the Toronto region and Ottawa.

Traditionally, LAO has issued two types of certificates for refugee cases: 1) an opinion certificate, followed by a full certificate where merit has been established, or 2) a full certificate issued upfront, without seeking an assessment as to merit. The type of certificate issued would depend on the applicant's country of origin.

The basic structure of refugee legal aid services in Ontario has remained static for approximately 20 years. Indeed, the last significant reform to refugee legal aid in Ontario was the establishment of the RLO in 1994. By way of contrast, criminal and family legal aid services have seen many significant reforms during this period, including the significant expansion of staff and per diem duty counsel, the Big Case Management program, block fees, the Complex Case Rate, web-based information and advice lawyers. LAO has also developed proposals for expanding case management to a broad range of criminal and family matters, and is currently involved in consultations on these initiatives.

Certificates Issued and Costs

LAO is responsible for managing the number and costs of all legal aid services, including refugee legal aid. As will be discussed below, LAO is facing significant and urgent financial pressures that must be addressed promptly and comprehensively. As a result, LAO is obligated to confront the increase in the number of refugee certificates and the cost of refugee legal aid services. For example, the number of refugee and immigration certificates increased by 9% in 2011/12. By way of contrast, there has been an overall reduction in the number of family and criminal certificates in the past four years, driven mostly by significant decreases in family law certificates.

The following charts demonstrate the increase in the number of refugee certificates and their cost over the last five years.

Table 1
Legal Aid Ontario
Certificates Issued

	Criminal	Family	Immigratio n and Refugee	Other Civil	Total
2007/08	64,335	25,599	11,401	5,964	107,299
2008/09	68,453	30,107	12,706	5,903	117,169
2009/10	63,501	27,488	12,904	5,417	109,310
2010/11	58,670	24,614	12,453	4,650	100,387
2011/12	65,633	21,406	13,637	4,871	105,547
% Change 07/08 to 11/12	2%	-16%	20%	-18%	-2%

Reductions in certificate numbers in family and criminal law have been achieved in part by increased reliance on duty counsel and better triaging of cases to the appropriate legal aid service.

Table 2
Legal Aid Ontario
Refugee and Immigration
Certificates Issued

	Refugee Protection Division	Judicial Review/ Appeal to Federal Court	Appeals to Immigratio n Appeal Division	Other Immigratio n Matters	Total
2007-2008	9,163	1,174	363	706	11,406
2008-2009	10,184	1,306	350	870	12,710
2009-2010	10,024	1,808	357	723	12,912
2010-2011	9,508	2,031	243	672	12,454
2011-2012	10,059	2,718	187	647	13,611
% Change 07/08 to 11/12	10%	132%	-48%	-8%	19%

Table 2 demonstrates that the decline in certificates issued for other immigration matters has been offset by the increase in certificates issued for refugee protection matters, especially judicial review applications.

Table 3 shows the impact of the increased number of refugee certificates on LAO's expenditures.

**Table 3
Immigration and Refugee Expenditures (Millions)**

Fiscal	Total Expenditures			Constant Dollars April 2007 Tariff (Basic Rate \$73.87/hr)		
	Fees	Disb	Total	Fees	Disb	Total
2007-08	\$12.17	\$2.8	\$14.96	\$11.9	\$2.8	\$14.7
2008-09	\$14.56	\$3.0	\$17.55	\$14.0	\$3.0	\$17.0
2009-10	\$14.99	\$3.5	\$18.54	\$14.3	\$3.5	\$17.9
2010-11	\$15.65	\$3.7	\$19.37	\$14.3	\$3.7	\$18.1
2011-12	\$17.64	\$4.1	\$21.73	\$15.3	\$4.1	\$19.4
% Change 7/08 to 11/12	45%	46%	45%	29%	46%	32%

Table 3 demonstrates that a comparatively small fraction of the increase in LAO spending on refugee certificates is attributable to the recent tariff increases. The full impact of the tariff increase will be registered in future years. (This issue is discussed below.) LAO must account for this increase in its financial planning.

In response to these pressures, LAO recently announced several cost-reduction measures to its refugee legal aid services, including:

- Increased scrutiny of payments so lawyers receive compensation in accordance with legislative tariff rates of eight hours for an expedited interview/hearing.
- Financial reassessment and confirmation of financial eligibility of refugee claimants and immigration clients.
- Unbundling legal aid refugee services to better align them with clients' needs and the Immigration and Refugee Board's procedures. Currently, LAO issues one 16-

hour certificate for two separate services – PIF preparation and attendance at a hearing. Effective Sept. 6th 2012, LAO began issuing a certificate for PIF preparation that can be amended, as required, to a maximum of 16 hours for coverage of the RPD hearing.

- LAO has discontinued the practice of issuing certificates for opinions on the merits of potential applications for judicial review and will issue certificates for representation in such proceedings only where there is a reasonable likelihood of success. For meritorious applications, counsel will receive one certificate that provides retroactive authorization of up to four hours for compiling and submitting information to support a judicial review, plus up to 15 hours to perfect the application. Upon receipt of a Federal Court order granting leave, this certificate may be amended to authorize up to another 12 hours to prepare for the judicial review.

5. Other Jurisdictions

In other provinces, legal aid organizations may rely primarily on private bar lawyers or staff lawyers, or more likely a combination of both, for the delivery of refugee legal aid services. In British Columbia, most refugee legal aid services are delivered by the private bar acting pursuant to a certificate, although duty counsel will assist persons in detention. Alberta relies primarily on specialized staff offices to deliver refugee legal aid services, and will use the private bar only when staff counsel is not available. Quebec uses a block fee model for specific services covered by certificates issued to the private bar, with a limited use of staff lawyers in Montreal. Manitoba relies on private bar lawyers, while Newfoundland has one staff lawyer to handle the few refugee matters in that province. Appendix A is a summary of interprovincial comparisons.²

6. Assumptions and Context

LAO's analysis of the new legislation and existing refugee legal aid services is framed by a number of important assumptions and contextual factors.

a. LAO Is Committed to Providing High-Quality, Cost-Effective Legal Aid Services for Refugee Claimants.

² See also Showler, Peter, "Legal Aid for Refugee Claimants in Canada".

The *Legal Aid Services Act* commits LAO to providing high-quality, cost-effective legal aid services for refugee claimants.

Refugee claimants and communities depend on *high-quality* services to protect and advance their rights. All Ontarians depend on *cost-effective* services to ensure the system is accessible to as many low-income clients and communities as possible.

Legal Aid Ontario will continue to ensure the provision of high quality services for refugee claimants through panel standards, high quality professional development, and research support.

b. LAO is Committed to Continuous Improvement and Transformation

Public services in Ontario are being evaluated with unprecedented scrutiny and held to exacting new standards. The Government of Ontario is committed to “revisiting and scrutinizing existing assumptions and traditional public service delivery models...[and to]... act based on evidence of what delivery model provides the best and most cost-effective results.”³ The government has further stated that “[I]f programs are not achieving the desired results and ensuring the best use of taxpayer dollars, they need to be transformed.”⁴

Over the last several years, LAO has been transforming its administration and services to adapt to these new realities. A list of LAO’s modernization activities is included in Appendix B. LAO’s transformation has been a difficult – yet necessary – process to improve and expand legal aid services, improve cost-effectiveness, leverage technology, and build the organizational capacities to move forward during these challenging times.

c. LAO Is Facing Significant Budget Pressures and Cannot Expect More Financial Resources From Its Funders

LAO has been facing significant budget pressures in the last several years and will continue to do so for the foreseeable future.

The economic downturn has had a significant impact on LAO revenues, particularly from the Law Foundation of Ontario (LFO). The LFO is LAO’s second largest funder

³ Budget 2012 at Chapter 1.

⁴ Budget 2012 at Chapter 1.

after the provincial government. In 2009/10, LAO's revenues from the LFO declined by more than \$50M, a reduction of more than 90%.⁵

Since 2009/10, LAO has been aggressively addressing the LFO shortfall through a series of measures across all service areas and provincial administration. As of September 2012, LAO is still experiencing a structural deficit.

LAO is also forecasting significant financial challenges in the years ahead:

First, LAO is facing a funding shortfall for future hourly tariff increases mandated by the January 2010 Memorandum of Understanding (MOU) signed by LAO, the Ministry of the Attorney General, and the Criminal Lawyers' Association. The MOU commits LAO to seven scheduled increases in the hourly tariff paid to private certificate and duty counsel lawyers. By 2015/16, LAO's hourly rates are scheduled to increase by between 41% and 66%, depending on the category of case.

The provincial government has committed to funding the first four tariff increases. There is no funding commitment beyond 2013/14. As a result, LAO is forecasting a \$7M tariff-related cost pressure beginning in 2014/15. Absent new funding or corrective actions, current projections suggest that these pressures could rise significantly in the coming years.

Second, LAO is committed to studying how to improve financial eligibility for LAO services. The financial eligibility guidelines for LAO services -- including all certificate, duty counsel and clinic services -- have not risen since the 1990's. As a result, a smaller percentage of Ontarians are financially-eligible for legal aid services. LAO is committed to exploring how financial accessibility can be improved for the benefit of low-income Ontarians.

LAO is assuming that the financial resources for legal aid services are constrained and likely to remain so for several years. The primary funder of the legal aid system, the Government of Ontario, has already made substantial, multiyear investments in legal aid.⁶ Under the present economic circumstances, it is unrealistic to expect significant new provincial resources in the next several years.

⁵ LFO revenues are dependent on economic activity and interest rates. In 2008/09, LAO received \$56.4M in LFO revenues. In 2009/10, LFO revenues declined to \$4.8M. Interest rates are likely to remain low for the next several years, resulting in consistent but lower LFO revenues.

⁶ In September 2009, the provincial government announced that it was investing an additional \$150 million over four years in Legal Aid Ontario.

Nor is LAO assuming there will be additional federal funding for refugee legal aid services in the foreseeable future. In 2011/12, the federal government contributed \$6.7M for refugee legal aid cases in Ontario, a reduction of \$2.65M (28%) from the previous year.

Failure to address LAO's budget pressures forthrightly and thoughtfully will likely result in more serious consequences for clients and client services in the future.

d. LAO Cannot Simply Rely on Reduced Demand

Unlike criminal or family law, demand for refugee legal aid is subject to wide variations. An unexpected down-turn in demand in one or two years can be followed by significant new demands in subsequent years. As a result, LAO cannot address the fiscal challenges in refugee legal aid by simply hoping for decreased demand. More importantly, LAO has an overarching, continuous obligation to analyze and improve all legal aid services – including refugee legal aid – irrespective of the overall demand for services.

e. The Options for Delivering Refugee Legal Aid Services Are Expanding

Historically, the great majority of refugee legal aid services have been delivered through the certificate program by private lawyers practising as small or sole practitioners. This is not the only service option available. A short list of alternative service options would include:

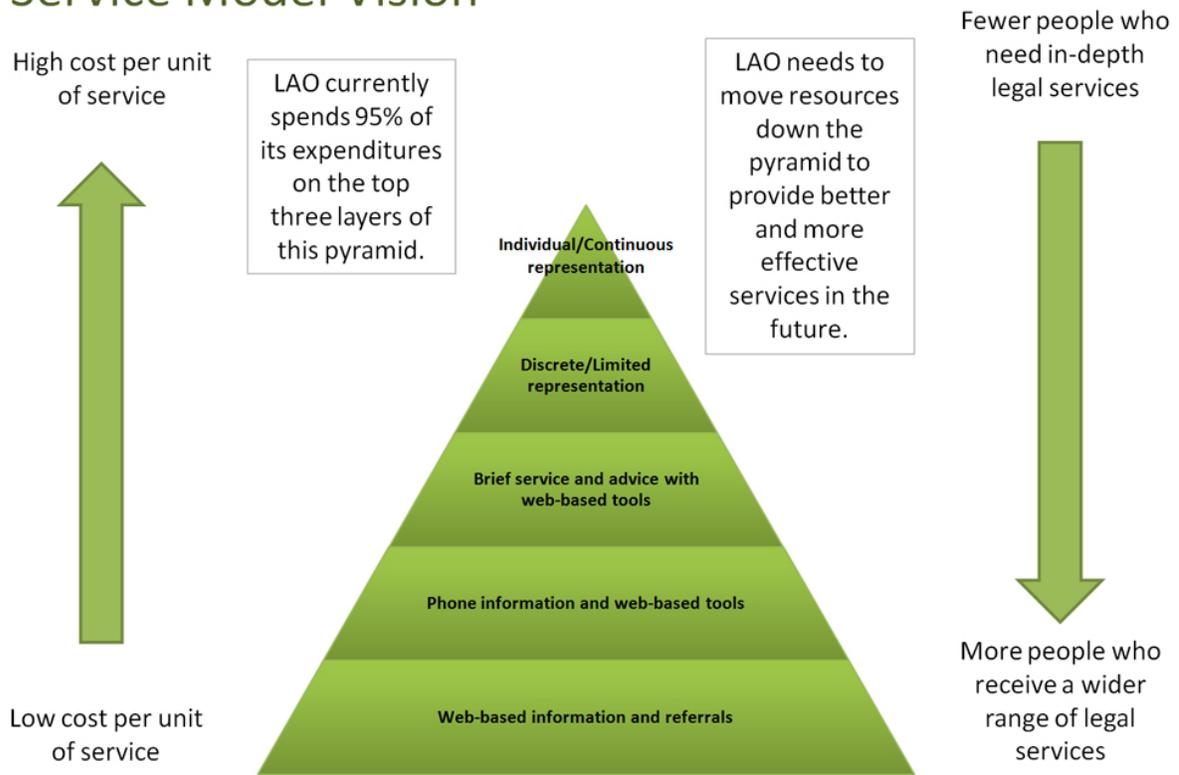
- The Refugee Law Office. The RLO has delivered high-quality refugee services for almost 20 years.
- Duty counsel. LAO relies heavily on staff and per diem duty counsel to deliver important criminal and family law services across Ontario.
- Clinics. Many clinics are a point of contact for refugee clients.
- Paralegals. The Law Society of Upper Canada has recently begun licensing paralegals. In March 2011, the federal government amended the *Immigration and Refugee Protection Act* (IRPA) to permit paralegals licensed by the LSUC to provide representation at any proceeding before the IRB.

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- Immigration consultants. In June 2011, the federal government designated a new regulatory body for immigration consultants, the Immigration Consultants of Canada Regulatory Council (ICCRC). Immigration consultants must be members in good standing of this body in order to act on behalf of claimants before the IRB.
 - Telephone advice, brief services, expanded duty counsel, etc. In recent years, LAO has been making greater use of alternative services such as telephone advice, brief services, expanded duty counsel services, document preparation by non-lawyers and advice counsel.
 - Unbundling. The Law Society of Upper Canada has amended its Rules of Professional Conduct and the Paralegal Rules of Conduct to allow limited scope retainers, also known as unbundled legal services. Unbundled legal services allow lawyers and paralegals to provide representation to a client on part of a legal matter, but not the entire matter. The new rules of the Refugee Protection Division anticipate that legal services may be unbundled, and provide that counsel may notify the Division that he or she is on a limited retainer. Counsel will be counsel of record only to the extent of the limited retainer.
 - Self-help materials. There has been a move toward greater reliance on self-help materials in most areas of law. These materials are written in plain language, are posted on a website and are available to anyone with internet access. For refugee clients, materials could be translated in the most common languages used by the majority of LAO's clients.
 - Alternative fee arrangements. LAO has begun exploring a range of alternative fee arrangements with the private bar, including service agreements, contracting, retainers, etc.

7. Legal Aid Reform and LAO Modernization

In recent years, LAO has developed a continuum of services that matches services to client needs at each stage of their legal matter. The purpose of the continuum is to help LAO maximize the use of its resources and to improve access to justice. LAO is applying the continuum model to both criminal law and family law services. LAO believes that the continuum should also inform the discussion about refugee legal aid services.

Service Model Vision



This continuum allows LAO to identify a client’s need at intake and throughout his or her relationship with LAO. In other words, this model commits LAO to identifying the client’s legal needs at each stage of a matter and to provide the most cost-effective service to meet those needs. The continuum is based on an assumption that legal resources can and should be used strategically. In this manner, LAO is able to target legal resources most effectively and to improve access to justice.

This model is a bold departure from the traditional premise that all clients require a full certificate.

In this model, certificates and/or other expensive services are targeted to the greatest legal needs, the most complex cases, and to proceedings where representation is likely to benefit the client the most. At the other end of the spectrum are cases where the client may not qualify for legal aid services but may benefit from basic legal information to assist in self-representation. In between these two levels are various types of services that range from telephone information, summary legal advice, assistance with document preparation, and/or limited representation by duty counsel or staff lawyers.

Service levels may change as the client progresses through the legal system and if circumstances require.

The continuum is not rigid or formulaic. When determining the appropriate level of service for a client LAO will also consider statutory and/or constitutional requirements, factors specific to the case (such as legal complexity), and factors specific to the client (such as age, mental health issues, etc).

An important example of LAO's new approach is the development of telephone summary legal advice. Summary legal advice is provided over the telephone by lawyers in LAO's Client Service Centre (CSC) in the areas of criminal, family and, more recently, refugee law. Basic legal information is provided on court procedures and what documentation should be brought with them on their first court appearance.⁷ For specific cases, clients are given opinions as to the best legal options for their case, including options for resolution of the case. CSC services are accessible in over 200 languages.

8. Assessing LAO's Refugee Services

Section 14(1) of the *Legal Aid Services Act* states that LAO shall:

provide legal aid services by any method that it considers appropriate, having regard to the needs of low-income individuals and of disadvantaged communities, the need to achieve an effective balance among the different methods of providing legal aid services, the costs of providing such services and LAO's financial resources.

The Act gives LAO the authority to provide services by way of:

- Certificates
- Service agreements with lawyers

⁷ Other examples of CSC services include: Brief services – assistance with forms (family), court procedural advice, preparation and referral to mediation and duty counsel (family), advice on how to prepare for meeting with duty counsel and how charges could be dealt with outside of court (criminal), assistance with bail and selection of sureties (criminal), coaching for self-help, summary legal advice, referral to web services and public legal information.

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- Certificates issued to service providers to provide legal aid services other than legal services to individuals or groups of individuals
 - Clinics
 - Staff offices
 - Student legal aid societies
 - Aboriginal legal services corporations
 - Duty counsel
 - Public legal education
 - Assistance to individuals representing themselves, including summary advice, document preparation and information packages
 - Alternative dispute resolution services

The current system for refugee legal aid assumes that private bar lawyers are required for every client at every stage of the refugee determination process. In this respect, the refugee legal aid system is remarkably one-dimensional. Over the years there has been little experimentation or innovation with alternative service models. This approach contradicts LAO's continuum model and discourages innovations that might improve access or cost-effectiveness.

The current system is also a poor match for the faster, stream-lined system that will be implemented by Bill C-31. For example, the tight time frames require a fast and efficient way of merit screening that cannot be provided by the traditional method of issuing opinion certificates. The short time period in which to prepare and file the Basis of Claim also presents a challenge for clients to find a lawyer. Similarly, the scheduling of the RPD hearing by the federal immigration officer will make it difficult for clients to find lawyers who are available at that time.

Meeting these challenges may require more creative ways of using new – or more – service providers such as paralegals, duty counsel or staff lawyers. LAO is looking for ways to maximize its use of paralegals and supervised non-licensurees. Many BOCs, for example, could be completed by non-lawyers. Summary advice could also be given by non-lawyers. Perhaps the challenges with short time frames – particularly for scheduling RPD hearings – could be mitigated through greater reliance on duty counsel, particularly for claimants from countries with high success rates.

Several of these alternative services have been successfully used in criminal and family law, and LAO will explore their application as part of a reformed refugee services delivery model.

Questions for Discussion/Provisional Service Model

Thus far, the paper has discussed the issues and context influencing refugee legal aid reform. The paper now turns to some important questions and provisional ideas for a new model or structure for delivering refugee legal aid services in Ontario. The issues and questions set out below are not an exclusive list. Readers are encouraged to provide comments on any issue they believe is important to this process.

9. Federal Contributions and the Level of Refugee Legal Aid Funding

As noted above, LAO is facing both current and future budget pressures. LAO has also begun to take steps in all areas of legal aid practice and administration to reduce costs. The goal of this process is to ensure that LAO is able to live within its budget allocations and preserve if not enhance client services. Failure to address LAO's budget pressures forthrightly and thoughtfully will likely result in more serious consequences for clients and client services in the future.

In the area of refugee legal aid, questions about budget expenditures are often linked to the level of federal funding. The level of federal funding for refugee legal aid has been a matter of controversy for several years. Moreover, refugee law and decision-making processes fall exclusively within federal jurisdiction. Criminal and family law are areas of joint federal/provincial jurisdiction. In 2011/12, the federal contribution represented only 31% of the current cost of refugee legal aid services. Historically, refugee services were funded on a 50/50 basis between the federal and provincial governments.

It is not enough to state that LAO should simply increase funding for refugee legal aid services. LAO operates on a fixed budget and provides services across many areas of law that are vital to low-income Ontarians. Increased funding for refugee services would have to be matched by *reductions* in funding for other services/legal needs.

For Discussion

- What relationship should the level of federal funding have to LAO's budget for refugee services?

10. Provisional Service Model

LAO has developed some provisional ideas for a new model or structure for delivering refugee legal aid services in Ontario. LAO believes that this model is better-suited to meeting the challenges identified above while ensuring that refugee claimants continue to receive high-quality legal aid services.

LAO's provisional model is consistent with LAO's current delivery system in many, if not most, significant respects. The private bar and certificates would remain although they would not be a near-exclusive means of delivering services. In the new model, private bar certificate services could be supplemented by LAO staff lawyer services. The new model would also use duty counsel, paralegals and non-licensees working under the supervision of lawyers and paralegals, where it was appropriate to do so.

The organizing feature of the proposed model is its attempt to closely match the level and type of service to the level and type of legal need. This approach is consistent with the way LAO provides services in criminal and family law.

What follows below is an outline of LAO's provisional refugee service model. LAO is presenting this model in order to generate discussion and constructive commentary on the future of refugee legal aid services in Ontario. Each section below includes questions for readers to consider and comment upon.

a. Intake

A crucial feature of the new legislation is the expedited timelines, particularly at the front end of the process. This situation places a premium on early identification and triage of claimant's legal needs. As a result, LAO has provisionally concluded that clients should be triaged at intake by LAO staff and then directed to specific services based on level or nature of their legal needs. Triaging at intake will enable LAO to move clients quickly into the proper service stream without delay.

b. Matching Services to Legal Needs

As noted above, the organizing feature of LAO's provisional model is its attempt to closely match the level and type of service to the level and type of legal need. Applying this analysis to the new refugee legislation, LAO has developed the following provisional structure and service response for refugee legal aid services.

c. Countries with Greater than 90% Acceptance Rate

Clients from countries with a history of greater than 90% acceptance rate arguably require less legal advocacy to advance their cases. In these cases, full certificate coverage for legal representation may not be necessary because the majority of these matters would be likely to succeed. For the majority of claimants from these countries, legal assistance in preparation of the BOC could be sufficient if combined with summary legal advice, self-help materials and perhaps brief service by duty counsel prior to the RPD hearing. Representation at the RPD hearing could be reserved for clients with special needs or unaccompanied minors.

In sum, the legal needs of claimants from countries with a greater than 90% acceptance rate could be addressed using:

- Referral to website materials
- Summary legal advice
- Document preparation – BOC
- Duty counsel services prior to RPD hearing
- Representation at hearing for clients with special needs or unaccompanied minors.

For Discussion

- How should LAO prioritize claimants from countries with a greater than 90% acceptance rate?
- Is representation always necessary in these matters or should resources be targeted to other legal needs?
- Are there other legal services that would be needed by clients in this group?
- Are there alternative means of meeting the legal needs of this client group?

d. Countries with 25%-90% Acceptance Rate

For countries with acceptance rates between 25% and 90%, success at the IRB is more likely to depend on the skill and advocacy of representation to ensure a fair result. For example, these hearings are more likely to be adversarial or have contested evidence. LAO believes that the legal needs of claimants from these countries are a high priority for representation and comprehensive legal aid services.

That said, LAO believes that there may be opportunities for economies of scale, specialization or alternative fee arrangements where LAO has many clients from a particular country. Service contracts or specialty panels for service providers who handle the bulk of cases from these countries may be able to improve both the quality and efficiency of client services.

These opportunities may not be present for countries where LAO has fewer clients. In these matters, there are less likely to be specialists for particular countries and their conditions.

LAO is considering the benefits of developing an internal database of country conditions that would be available to service-providers representing clients from these countries. This database would be maintained and kept up-to-date by LAO staff. Having a centralized database would eliminate the repetition of the same research and would result in savings from not having to pay for the research when the final account is billed.

Consideration should be given to launching a pilot project for alternative fee arrangements. A block fees pilot project is already underway at LAO for criminal law services, with monetary values assigned to the different processes of a basic criminal law case. The new refugee determination system might allow the breakdown of a case into its parts – the BOC, the RPD hearing – with fees assigned to each part.

In sum, the legal needs of claimant's from countries with a 25%-90% acceptance rate could be addressed by:

- Referral to website materials
- Summary legal advice
- Document preparation - BOC
- Representation at the RPD hearing

For Discussion

- How should LAO prioritize claimants from countries with a 25%-90% acceptance rate?
- Is representation necessary in these circumstances or should these resources be targeted to other legal needs?
- Are there any legal services that would be needed by clients in this group?
- Are there alternative means of meeting the legal needs of this client group?

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- Are there opportunities for economies of scale, specialization, and/or alternative fee arrangements to improve the quality or efficiencies of these matters?

e. Countries on Federal Designated Country List

Claimants from countries on the federal Designated Country List might be considered a lower priority client group because their claims are much less likely to be successful, even with full or partial representation. Comparatively little *additional* benefit might be obtained from representation in these matters, particularly when balanced against the potential benefit of those same resources in the 25%-90% category. Consideration could be given to providing assistance with preparation of the BOC.

There will undoubtedly be exceptional cases with this category where the nature of the client's claim is such that there is a very real possibility of success. In these circumstances the intake and triage system should be flexible enough to identify these clients and ensure they receive the full range of services needed to properly advance their claims.

In sum, the legal needs of claimant's from countries on the Federal Designated Country List could be addressed by:

- Referral to website materials
- Summary legal advice
- Document preparation – BOC
- Full or partial representation in exceptional circumstances.

For Discussion

- How should LAO prioritize claimants from countries on the Federal Designated Country List?
- Is full or partial representation necessary in these circumstances or should these resources be targeted to other legal needs?
- Are there other legal services that would be needed by clients in this group?
- Are there alternative means of meeting the legal needs of this client group?

f. The RAD Appeal

The introduction of a new level of appeal raises issues as to how to provide this new service. For applicants who are not from countries on the DCO list, the RAD appeal will

be the first means by which a negative RPD decision can be reviewed. Unlike judicial review, however, the RAD appeal is, with few exceptions, conducted with written submissions only and is subject to very tight time limits for filing and perfecting materials. Clients appealing negative RAD decisions would need legal assistance to perfect their appeals and prepare appropriate written materials. RAD appeals could be screened for merit based on the reasons given at the RPD hearing, the BOC, and jurisprudence that is developed by the RAD.

For Discussion

- How should LAO prioritize RAD appeals?
- Given the short time frame in which to file and perfect an appeal, what is the optimum way to meet the needs of these clients?

g. Judicial Review

LAO expects there will be fewer judicial reviews because of the RAD appeal for applicants from countries that are not on the federal government DCO list. Applicants who are unsuccessful at the RAD can seek judicial review.

For applicants who are on the DCO list, judicial review will be the only way to seek the reversal of a negative RPD decision.

Because there is no automatic stay of removal, unsuccessful claimants will also have to bring an interim application in the Federal Court in order to stay the implementation of the removal order.

The client needs at this stage will be more demanding and complex than at the earlier proceedings. This is a court proceeding, and only lawyers will be able to act for the applicant. Because of the more costly nature of this proceeding, only those cases where there is a reasonable likelihood of success should be funded.

Judicial review applications will be screened for merit by the Director of Appeals or the area committee, based on the decisions of the RPD and the RAD.

In sum, the legal needs of claimants seeking judicial review could be addressed by:

- Preparation of and filing of interim application to stay removal order
- Representation at hearing of stay application
- Preparation of and filing of notice of application for leave to seek judicial review

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- Representation at hearing of leave application
 - Preparation and filing of judicial review application
 - Representation at hearing of judicial review application

For Discussion

- How should LAO prioritize applications for judicial review?
- Are there other legal services that would be needed by clients in this group?
- Are there alternative means of meeting the needs of this client group?

11. Alternative Intake and Service Approaches

The provisional model outlined above is based on a triage model using the country of origin and the historical acceptance rates of the IRB. There may be other options and alternative models for streaming clients or providing services.

For Discussion

- Are there alternatives or other models available that would address the legal needs of refugee claimants in contemporary circumstances?
- What relative priority should be given to the legal needs identified in this paper and what is the best way of ensuring high-quality, cost-effective legal aid services?

12. Alternative Delivery and Payment Approaches

As noted above, LAO has the authority to use a wide range of service providers to provide services. Included in that range of service providers are paralegals, who are now authorized to appear before the IRB on behalf of refugee clients. LAO is looking for ways to maximize its use of paralegals in all areas where they are licensed to practise.

LAO also has broad authority to use alternative fee arrangements, service agreements, etc. to fund service providers.

LAO is considering the potential for expanding the use of alternative delivery models in refugee legal aid. LAO believes that client services, innovation, and cost-effectiveness

would be improved by expanding the “mix” of existing service providers. LAO also believes that there is considerable potential in piloting or developing alternative fee arrangements for private lawyers, such as block fees and contract tendering.

For Discussion

- What alternative fee arrangements could be piloted for private lawyers providing refugee legal aid services?

13. Implementation and Transition Planning

The new refugee legislation is expected to come into force before the end of the year, most likely on December 15. The tight deadline for preparation means that the development of a new service delivery model for refugee services will be very much a work in progress when the legislation is proclaimed.

LAO needs to develop a plan that will effectively provide a smooth transition from the current regime to the new model. There will be a need for some transformation in December to respond to the significant process changes that will result. LAO, for instance, will need a more effective intake and triage system to meet the demands of clients and the IRB related to shorter time frames for filing the BOC and attending at the hearing.

The transition plan will also include a communications strategy for all stakeholders. LAO will develop a training and communication plan that will effectively provide a smooth transition from the current regime to the new model.

At the same time, there will be a need to respond to continuing change that will likely occur as the new refugee determination system begins to operate beyond the December coming into force date.

Although it may seem on December 15 that not much has changed, and that where a PIF certificate was issued, a BOC certificate will now be issued, LAO believes that the reform of the delivery of its services in refugee law is required. LAO’s commitment to consultation means that only limited changes will take place in December. But in the upcoming months after December 15, LAO will be making the necessary changes that will help in the transition and that will ultimately move it toward its goal of reform.

There is still much that is unknown about how the IRB will be able to respond to the challenges posed by the new legislation and the fast turnaround times for holding hearings and rendering decisions. The IRB will likely develop policy guidelines that will address such issues as adjournments and delays due to the unavailability of counsel. These guidelines may have an impact on the way in which LAO can provide services to refugee clients.

There are also many unknowns about the RAD and whether it will provide significant review of the lower tribunal decisions. If not, LAO may wish to re-evaluate whether it should be expending limited resources on this procedure.

We should also anticipate government initiatives and external events that may have an impact on demand for refugee legal aid services. The service model should have built into it the flexibility to respond to sudden surges in demand.

There may be later opportunities to consider the use of immigration consultants. Whether to go this route will depend on the effectiveness of the new governing body of immigration consultants, the ICCRC, in ensuring that quality and ethical concerns are met and addressed. LAO may want to monitor this situation before making a decision as to the future of immigration consultants as potential service providers.

14. Consultation Process

LAO strongly encourages organizational stakeholders and individuals to consider the issues and options outlined in this paper and to make recommendations about how best to respond to Bill C-31 and LAO's current environment.

LAO welcomes commentary as to appropriateness and/or feasibility of its provisional model and will consider alternative ideas that will help LAO meet the needs of refugee clients through high quality and cost-effective services.

LAO expects that the consultation process will take place between October 29 and December 17, 2012. LAO will use several consultation techniques, including:

- (1) Written submissions. LAO will distribute this paper widely and will specifically invite several organizations and individuals to provide written submissions;
- (2) In-person group consultation sessions. LAO will organize focus-groups or group consultations with interested organizations and individuals;
- (3) One-on-one consultation sessions with targeted organizations;

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- (4) Live webcast consultation sessions with stakeholders across the province;
 - (5) Online video interactive presentations.

15. Contact Information

Questions can be sent to:

Jawad Kassab, Director Corporate Services, Planning & Strategic Initiatives,
kassabja@lao.on.ca

Maureen Hastings, Director, Administration, Civil and Immigration Law Services (GTA
Region) hastinma@lao.on.ca

Written submissions may be sent to: Nye Thomas, Director General, Policy and
Strategic Research, thomasa@lao.on.ca

Appendix A: Other Canadian Provinces Refugee Legal Aid Services

British Columbia

The following information regarding British Columbia and their legal aid services comes from various sources including the Legal Services Society Annual Service Plan Report, Statistics Canada and published journal articles that examine the refugee process through out Canada.

In 2009 LSS released a service and operational change notice which stated that they will introduce merit screening to ensure they keep costs down despite the increase in demand. Figure 1 demonstrates the increase in hearing coverage refusal rate for LSS over a 4 year period.

Figure 1

Refugee Hearing Coverage at the LSS

Year	Refused	Granted	Total	Hearing Coverage Refusal Rate %
<i>2006-2007</i>	81	870	951	8.5%
<i>2007-2008</i>	135	1,077	1,212	11.1%
<i>2008-2009</i>	400	1,372	1,772	22.6%
<i>2009-2010</i>	564	1,017	1,581	35.7%
Total	1,180	4,336	5,516	21.4%

Contributions and Costs

The federal government contributes up to \$900,000 each year for immigration tariff expenditures. Additionally they receive up to \$650,000 for large federally prosecuted cases.

Comparison between figure 2 and figure 3 shows that immigration costs decreased \$1.2 million due to a decrease in demand.

Figure 2

Immigration Services						
	2008/2009	2009/2010	2010/2011		2011/2012	
				Actual	Budget	
<i>Tariff payments to lawyers</i>	\$ 1,760,108	\$ 1,328,666	\$ 1,750,614	\$ 1,372,918	\$ 1,350,000	
<i>Duty counsel</i>	\$ 133,072	\$ 139,378	\$ 765,035	\$ 144,682	\$ 150,000	
<i>Application processing</i>	\$ 228,822	\$ 371,817	\$ 690,791	\$ 498,253	\$ 480,000	
<i>Tariff processing</i>	\$ 104,059	\$ 95,455	\$ 114,613	\$ 64,987	\$ 65,000	
<i>Total immigration services</i>	\$ 2,226,061	\$ 1,935,316	\$ 3,321,053	\$ 2,080,840	\$ 2,045,000	

Figure 3

Demand for Legal Representation						
	2009/2010		2010/2011		2011/2012	
	Applications	Referrals	Applications	Referrals	Applications	Referrals
<i>Criminal</i>	26,761	19,113	27,878	20,244	26,594	20,117
<i>Family</i>	9,136	4,059	9,131	4,063	9,332	4,086
<i>CFCSA</i>	2,811	2,211	2,675	2,117	2,721	2,174
<i>Immigration</i>	2,024	1,237	2,417	1,476	1,653	1,056
<i>Total</i>	40,732	26,620	42,101	27,900	40,290	27,433

Figure 4

Legal Advice Services

<i>Service</i>	Number of client visits/cals handled		
	2009/2010	2010/2011	2011/2012
<i>Criminal Duty Counsel</i>	86,111	84,627	74,724
<i>Immigration Duty Counsel</i>	1,460	4,718	1,196
<i>Family duty counsel and advice lawyers</i>	30,039	32,880	36,473
<i>Brydges Line</i>	26,584	28,835	23,887
<i>Aboriginal advice services</i>	N/A	N/A	319
<i>Family LawLINE</i>	N/A	707	2,675

In their annual report LSS identifies that long term funding for immigration / refugee legal aid continues to be a concern for the society as immigration volumes pressures fluctuate. Provincial and federal funding of \$1.7 million was available in 2011/2012, and this funding commitment has been extended for another two years.

Alberta

Alberta relies heavily on the specialized staff offices for providing immigration coverage. They do rely on the private bar when staff counsel is not available.

Based on the Legal Aid Alberta (LAA) 2011 Annual Report, the federal government contributed \$0.6 million in 2010 for immigration and refugee matters.

Figure 5

Refugee Hearing Coverage at the LAA

Year	Refused	Granted	Total	Hearing Coverage Refusal Rate %
2006	51	277	328	15.5%
2007	53	314	367	14.4%
2008	122	628	750	16.3%
2009	94	671	765	12.3%
Total	320	1,890	2,210	14.5%

Immigration Services Program

As part of their staff service delivery model LAA operates a LAA program based out of Calgary which stretches beyond just the basic legal representation.

“The Immigration Services Program assists clients, in the Calgary area, who need help navigating the refugee process and filing the detailed documentation required during that process. Services provided to clients and the private bar include: provision of legal information and advice relating to immigration and to collateral issues (family, income support and housing law), client intake and interviews, preparation and filing of documents, including the time-intensive Personal Information Form (PIF) and applications for work permits and permanent residency, translation services, referrals to other legal and non-legal services, advocacy of social assistance and housing agencies and representation at the Immigration and Refugee Board (selected cases). Finally, the Program takes a holistic view of the client’s needs. As a result, staff may also assist clients in identifying other needs and resources relating to their arrival in Canada as refugees. These may include help in accessing, furniture, clothing, English classes or schooling for minors.”

In FY2008-2009 the Immigration Services Program provided assistance to 950 clients.

Quebec

Based on data from 2009 Quebec has had the second largest volume of refugee claimants next to Ontario, 29.7%. The Quebec Legal Aid, the Commission des services juridiques (CSJ), has typically relied on a block fee model of service delivery with a very low refusal rate compared to the other provinces.

The CSJ does have the ability to refuse or withdraw service at any stage of the proceeding where “the applicant can not establish the probable existence of his right” or where “the case or remedy clearly has very little chance of succeeding”

Figure 6

Refugee Hearing Coverage at the CSJ

Year	Refused	Granted	Total	Hearing Coverage Refusal Rate %
<i>2006-2007</i>	82	3,701	3,784	2.2%
<i>2007-2008</i>	127	5,688	5,815	2.2%
<i>2008-2009</i>	139	5,899	6,038	2.3%
<i>2009-2010</i>	298	5,052	5,350	5.6%
Total	647	20,340	20,987	3.1%

Quebec Tariff⁸

IMMIGRATION

Notification of claim

T218.1. Preparation of the form and meeting with claimant, fees of: \$100

T218.2. Attendance at interview in the office of Immigration Canada, fees of: \$200

(A) Immigration and Refugee Board

T219. Preparation of the Personal Information Form:

(a) main claimant form: \$200

(b) form of each other member of the family in the same file: \$75

⁸ <http://www.csj.qc.ca/SiteComm/W2007English/Pdf/TarifAvo2008.htm>

Adjudication Division or Convention Refugee Determination Division

T220. (a) All the other services rendered up to and including a final decision before the Adjudication Division or the Convention Refugee Determination Division: \$330

Appeal Division of the Immigration And Refugee Board

(b) All the other services rendered up to and including a final division before the Appeal Division of the Immigration and Refugee Board: \$550

(c) If the recourse is terminated by discontinuance of appeal: \$285

Hearing concerning detention

(d) For services rendered during a hearing concerning detention before the Immigration and Refugee Board: \$200

Appendix B: LAO's Transformation

Over the past several years, LAO has been implementing a comprehensive corporate change process that is making the organization more efficient and responsive to the needs of clients and to the interests of taxpayers. LAO's Quantum planning exercise was the beginning of this process. To that end, LAO has developed a modernization strategy that responds to these needs.

The change process includes a fundamental review of how LAO functions within the justice sector in Ontario. In 2008/09, LAO started to review, modernize, and upgrade all aspects of its services and delivery model, improved its administration, and redefined its relationship with funders, clients, and service providers. Modernization continues to be an ongoing process and LAO will strive and achieve continuous improvement. The primary focus continues to be improving the quality of services LAO provides to more than 1 million clients each year.

LAO continues to face revenue shortfalls and has addressed these through efficiency gains and reductions in administrative costs. Reduced Bank of Canada rates have had a direct impact on reducing LAO revenues from the Law Foundation of Ontario (LFO). LAO revenues from the LFO decreased from a high of \$56 million in 2008/09 to \$4.8 million in 2009/10.

LAO's Modernization process is helping to limit the impact of decreased revenues while protecting and expanding access to services for clients. Between 2009/10 and 2010/11, LAO's modernization initiative has generated approximately \$40 million in savings, including \$20 million in administrative costs.

Modernization headlines:

Client Access

- Simplified the legal aid application process making it simpler and faster for clients to apply – 88 percent of applicants now receive a same day decision.
- Established a toll-free Client Service Centre which connects callers to a variety of services including, legal information, referrals, legal aid applications, and criminal and family summary legal advice from a lawyer in over 200 hundred languages. LAO expects to take between 280,000 and 300,000 calls in 2012/13.
- Opened 56 Courthouse offices – courthouse offices provide easy access to legal aid services including information, referrals, certificate applications and updates,

and legal advice from a lawyer – More than 60,000 clients have been served at a courthouse location since 2009.

- Increased web resources - LAO's website provides access to information about legal aid services and other online resources and information – In the past year, traffic on the LAO website increased by 15 percent to over 775,000 visitors.

New Family Services

- Opened 6 Family Law Services Centers across Ontario
- Expanded family mediation services to provide more options to low-income Ontarians.
- Introduced family summary legal advice over the phone
- Launched the Family Law Information Program – an online family information resource available to all Ontario residents

New Criminal Services

- Created a new Complex Case Rate and Panel to help legal aid clients with serious and complicated matters retain quality legal representation - new hourly rate - \$129.81 increasing to \$135 on 1 April 2012.
- Block Fees - Established a program to reduce red tape and make it simpler and faster for lawyers to get paid – more than 75 percent of all criminal matters are billed through the streamlined block fee system
- Introduced summary criminal legal advice over the phone
- Launched LawFacts – An online public legal information resource for people with matters before the criminal courts – the new site has been viewed more than 15,000 times since being launched in December 2011.
- Enhanced duty counsel services to include more fulsome service to assist clients to move their matters forward – in 2010/11 duty counsel lawyer provided 1,031,000 legal assists

New Poverty Law Services and Programs

- Introduced professional interpretation and translation services in over 200 languages for community legal clinics
- Established an innovation program to assist community clinics in developing and implementing new programming and service delivery channels that expand client access and provide more effective use of funding

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- Legal Aid Ontario has and will continue to transform legal aid service to ensure low-income people in Ontario continue to have access to quality legal aid services that represent an effective and efficient use of taxpayers' dollars.