

Risk level determination and risk management for community legal clinics and student legal services organizations



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LAO is required by the Legal Aid Services Rules (“Rules”) established under the *Legal Aid Services Act, 2020* (“LASA 2020”) to determine the risk level of an entity service provider before entering into a new service agreement with the entity service provider.

The purpose of the risk level determination is to assess how likely the entity service provider is to provide the entity services in accordance with LASA 2020, the Rules, and their service agreement.

It is in both LAO’s and the clinics/SLSOs interests to work together to manage risks that could impact the clinics/SLSOs’ ability to provide entity services and LAO commits to doing so. As such, this policy also sets out a framework for managing risk, including LAO oversight of risk management, which is based on the principle of proportionality.

This Risk Level Determination Policy applies in respect of entity service providers that are community legal clinics (“clinics”) and student legal services organizations (“SLSOs”).

Definitions

In this policy,

- “impact” is the outcome of an event affecting objectives. It can have positive or negative effects on objectives;
- “likelihood” is the probability or frequency of the identified risk occurring over a given time period;
- “residual risk” means the uncertainty that remains once a clinic/SLSO’s existing control structures/mechanisms are taken into consideration; and
- “risk” means the potential negative effect of uncertainty on a clinic/SLSO’s ability to deliver entity services and refers to residual risk above and beyond the usual risks associated with providing entity services.

Timing of risk level determination

LAO will determine the risk level of a clinic/SLSO before entering into a new service agreement with the clinic/SLSO.

If, at any time during the term of a service agreement, LAO identifies a risk that may impact the risk level of a clinic/SLSO, LAO will notify the clinic/SLSO as soon as reasonably practicable.

Likewise, if, during the term of a service agreement, a clinic/SLSO identifies a risk that they reasonably believe could impact their risk level, or if an existing risk becomes more likely or more likely to have a negative impact, the clinic/SLSO shall notify LAO as soon as reasonably practicable.

Clinics/SLSOs shall establish procedures and strategies for identifying, monitoring and addressing, in a timely manner, risks to the successful provision of entity services. Prior to changing the risk level determination of any clinic/SLSO, LAO will allow a reasonable period of time, for clinics/SLSOs to establish these procedures and strategies, and LAO will work with clinics/SLSOs to assist in the development of such procedures and strategies. (See the Appendix for a list of the relevant types and categories of risk).

LAO will determine the risk level of a clinic/SLSO before providing notice of LAO's desire to enter into a new service agreement with the clinic/SLSO in accordance with subsection 81(1) of the Rules. However, LAO reserves the right to change a clinic/SLSO's risk level determination at any time. LAO will provide notice and confirmation to the clinic/SLSO of LAO's risk level determination no more than two months before the end of the term of their current service agreement.

Risk assessment

Risk assessment is the process of analyzing, evaluating, and prioritizing risk. It answers the questions: 1) what is the likelihood that the risk will occur, and 2) what impact will the risk have on achieving the objective(s)?

A clinic/SLSO's risk level will be determined based on an ongoing risk assessment of the likelihood and impact of identified risks on the clinic/SLSO's provision of entity services in accordance with the Act, the Rules and their service agreement.

This ongoing risk assessment will be conducted in accordance with the following tables:

How to Assess Likelihood

Assessment	Level	Description	Probability
Rare	1	Risk is very unlikely to occur in most circumstances.	< 10%
Unlikely	2	Risk is unlikely to occur in normal circumstances.	11% - 30%
Possible	3	Risk may occur in certain circumstances.	31% - 50%
Likely	4	Risk is likely to occur in most circumstances.	51% - 90%
Almost certain	5	Risk will occur in normal circumstances.	> 91%

Note: An assessment of likelihood should consider the timeframe for achieving the objectives.

How to Assess Impact

Assessment	Level	Description
Insignificant	1	A risk that, if it occurs, will have a little or no impact on achieving objectives.
Minor	2	A risk that, if it occurs, will have a negligible/inconsequential impact on achieving desired results, to the extent that one or more stated objectives will fall below goals but well above minimum acceptable levels.
Moderate	3	A risk that, if it occurs, will have limited impact on achieving desired results, to the extent that one or more stated objectives will fall well below goals but above minimum acceptable levels.
Major	4	A risk that, if it occurs, will have an extensive impact on achieving desired results, to the extent that one or more stated objectives will fall below acceptable levels.
Critical	5	A risk that, if it occurs, will have an excessive impact on achieving desired results, to the extent that one or more stated objectives will not be achieved.

Risk assessments will be conducted on the basis of materials and information that LAO receives from or about the clinic/SLSO, including but not limited to:

- Annual service proposals;
- Financial and statistical reports;
- Information from the public and the community the clinic/SLSO serves; and
- Interactions between the clinic/SLSO and LAO, including communications, site visits, meetings and/or phone calls.

Risk management

Risk management is a systematic approach to setting the best course of action under uncertainty by identifying, assessing, understanding, acting on, monitoring and communicating risk.

LAO and clinic/SLSO's will work together to proactively identify, assess and manage risks that are likely to occur and likely to negatively impact the provision of clinic/SLSO services. The goal is to identify risks early and collectively and to problem solve together, not to find fault. It will be a collaborative process and will support the joint objectives of LAO and clinics/SLSOs. LAO will be actively engaged with clinics/SLSOs before making any risk level determination.

If either LAO or a clinic/SLSO identifies a risk that may impact the risk level of a clinic/SLSO and provides notice to the other of the risk, the clinic/SLSO may be required to develop and implement, in consultation with LAO, a Risk Management Plan. The Risk Management Plan will set out the proposed mitigation measures and steps that the clinic/SLSO will take to address or ameliorate the risk.

The Risk Management Plan must be approved by LAO and, if approved, may be sufficient to ensure that the clinic/SLSO will not be moved to a higher risk level.

LAO will monitor the clinic/SLSO's implementation of its Risk Management Plan and may request additional materials from the clinic/SLSO for this purpose. The level of oversight will be proportional to the level of risk identified.

For clarity, nothing in this policy affects LAO's authority to take remedial measures under sections 95 and 96 of the Rules.

Reassessment of high, and medium-high risk clinics/SLSOs

A clinic/SLSO with a risk level that is determined to be medium-high or high may be reassessed at a lower risk level at any time during the term of their service agreement, if the following conditions are met:

1. The clinic/SLSO has a Risk Management Plan that has been developed in conjunction with and approved by LAO;
2. The clinic/SLSO has demonstrated that they are implementing the Risk Management Plan; and
3. The clinic/SLSO has demonstrated that the Risk Management Plan is helping to ameliorate or mitigate the identified risks and that the likelihood and impact of the identified risks has been reduced.

Risk levels

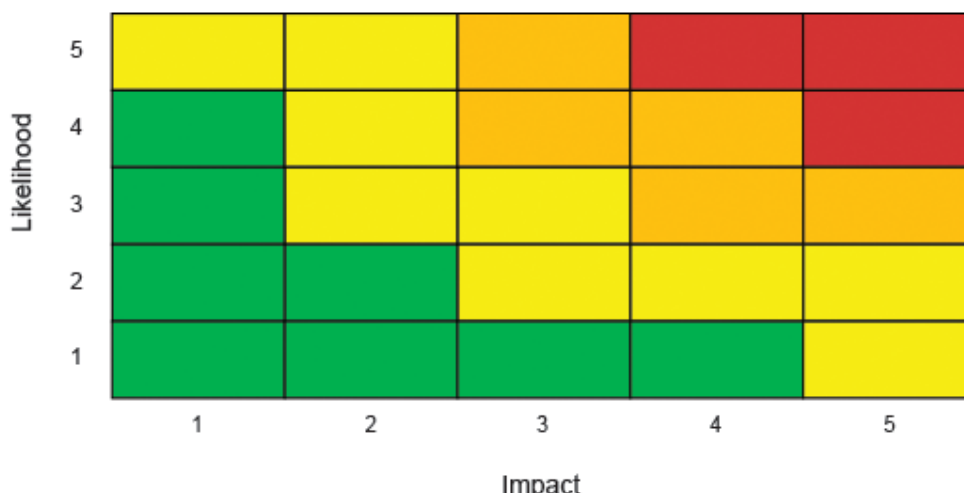
Before entering into a new service agreement with a clinic/SLSO, LAO will determine the likelihood that the clinic/SLSO will not be able to provide the entity services in accordance with the Act, the Rules or the service agreement, as well as the impact of any risks.

A clinic/SLSO's risk level will be determined based on the likelihood and impact of identified risks in accordance with the chart and matrix set out below. In most cases, the likelihood of an event occurring will be weighted more heavily in a determination of risk level than the potential impact, however this will ultimately depend on the nature of the risk.

How to Calculate Risk Level		
Level	Score	Legend
High	20+	Risk management requires significant attention from decision makers: clinic/SLSO leadership, including clinic board of directors, and LAO. Mitigating actions should be tracked and monitored frequently and reported to clinic/SLSO leadership and LAO.
Medium-high	11-19	Risk management requires attention from clinic/SLSO leadership, including clinic board of directors, and LAO. Mitigating actions should be tracked and monitored and reported to clinic/SLSO leadership and LAO.

How to Calculate Risk Level		
Level	Score	Legend
Medium-low	5-10	Risk can be managed by clinic/SLSO leadership, including clinic board of directors. Controls should be reviewed to determine whether additional action should be taken.
Low	1-4	Risk can be managed using controls already in place. Minimal or no mitigation efforts required.

Risk Level Matrix



A clinic/SLSO’s risk level will be determined by the Vice President, Clinic Law Services.

Term of service agreement

The term of a clinic/SLSO’s service agreement will be set according to the clinic/SLSO’s risk level determination, as follows:

- **Low or medium-low risk:** the term of the service agreement will be three years
- **Medium-high or high risk:** the term of the service agreement will be between one and three years at the discretion of the Vice President, Clinic Law Services

LAO’s Board of Directors will be informed before any change to the risk level determination of a clinic is made, as well as before any change to the length of a future clinic/SLSO’s service agreement is made by the Vice President, Clinic Law Services. The term of a clinic/SLSO’s service agreement will not be altered during the term of the agreement. However, if a clinic/SLSO does not take steps to address or ameliorate identified risks before the end of the term of a service agreement, it could result in a change to the term of any new service agreement and/or in additional oversight under any new service agreement.

APPENDIX: Risk categories and types of risk

In assessing risk and determining risk level, the Vice President, Clinic Law Services will have regard to the types of risk and risk categories set out below.

Types of risk

In accordance with section 78 of the Rules, LAO will consider the following types of risk:

Risks related to services

- Nature and quality of the services and clients and community benefitting from the services
- Funding amount the recipient receives for the services

Risks related to recipient

- Recipient's capacity, including governance and control structures
- Recipient's history of funding received from the Ontario government and past performance of transfer payment activities
- Public perception of the recipient, especially among the community it serves. This may include any complaints received by LAO about the recipient.

Risk categories

Strategic

- Risk related to of annual and long term strategic planning
- Risk related to assessment of community needs
- Risk of failure to meet expectations of the public/community/stakeholders to deliver community-responsive services in an effective and efficient manner
- Risk that LAO funds are not used for purposes consistent with LASA 2020

Accountability and governance¹

- Risk that the organizational (e.g., management or cultural) structure, accountabilities, or responsibilities are not defined, designed, communicated or implemented to meet the clinic/SLSO's mission
- Risks that composition of board membership does not meet statutory requirements and/or clinic/SLSO's by-laws or does not reflect diversity of community
- Risk related to board member competency, onboarding and orientation, board member

¹ LAO acknowledges that certain types of risk listed may already be covered by LAO centrally such as some forms of insurance coverage or IT support.

tenure

- Risks related to reliability, integrity and timeliness of submission of reports to LAO
- Risk of conflict of interest for board members; ethics/codes of conduct; definition of roles and responsibilities
- Risk of failure to comply with applicable statutory requirements, the Rules, service agreement or LAO policies
- Risk related to lack of familiarity with insurance coverage
- Risk related to governance policies and processes, including terms of reference, meeting minutes and record keeping
- Risk related to clinic/SLSO membership (e.g. size, reflects community)
- Risk related to clinic/SLSO's policies and processes

Services

- Risk related to meeting community needs (e.g. changing community demographics; environmental and statutory changes result in change in public demand for services)
- Risks related to service quality, practice management
- Risks related to community and client satisfaction, including claims against the clinic/SLSO and complaints by clients
- Risks related to staff reflecting diversity of community/ability to meet community language needs

Operations

- The risk that services and activities information/data is not captured/recorded
- Risks related to infrastructure (e.g. facilities, IT)
- Risks related to workforce competency and stability
- Risks related to compliance with clinic/SLSO's policies and processes

Financial

- Risks related to financial planning and budget management (e.g. projected or actual deficit, deficit in multiple fiscal years, significant unspent funds, proportion of funding spent on single budget line)
- Risk of non-compliance with LAO directives regarding spending, purchasing and transparency (e.g. Travel Meal Hospitality Directive, Clinic Procurement Directive)