

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



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This Policy sets out the principles, steps and timelines related to risk management and risk level determination for community legal clinics (“clinics”) and student legal services organizations (“SLSOs”). This Policy applies to clinics/SLSOs that are entity service providers within the meaning of section 75 of the [Legal Aid Services Rules](#) (“the Rules”).

Managing risk plays an important role in ensuring that clinics/SLSOs are able to provide entity services in accordance with their individual mandates and with the *Legal Aid Services Act, 2020* (“LASA 2020” or “the Act”), the Rules, and the clinics’/SLSOs’ individual service agreements with LAO.

It is in both LAO’s and clinics’/SLSOs’ interests to work together to manage risks that could impact clinics’/SLSOs’ ability to provide entity services. LAO and clinics/SLSOs will work collaboratively to manage risks, with an emphasis on supporting the shared objectives and obligations of LAO and clinics/SLSOs and on providing high quality legal services to low-income Ontarians in accordance with clinics’/SLSOs’ individual mandates and service agreements with LAO.

Under this Policy, risk management and risk level determination consist of three main elements: identification of risks, implementation of controls or mitigation measures to address risks, and determination of clinics’/SLSOs’ risk level. More specifically, the risk management process involves identifying risks and taking steps to mitigate those risks and is a continuous process throughout the life of a clinic’s/SLSO’s service agreement. Risk management and mitigation measures already in place or put in place following identification of risks will be taken into consideration as part of the risk level determination and may be sufficient to avoid any change in risk level. LAO will engage with and support clinics/SLSOs throughout these processes, including assisting clinics/SLSOs to identify appropriate controls and mitigation measures and approving measures that clinics/SLSOs have already identified.

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 an identified risk occurring over a given time period;
- “residual risk” means the uncertainty that remains once a clinic’s/SLSO’s existing control structures/mechanisms are taken into consideration;
- “risk” means the potential negative effect of uncertainty on a clinic’s/SLSO’s ability to deliver entity services and refers to residual risk above and beyond the usual risks associated with providing entity services;
- “risk level” has the meaning given to it in section 75 of the Rules.

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.

Pursuant to this Policy, LAO and clinics/SLSOs 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 entity services. The goal is to identify risks early and to work together to mitigate and manage the risks, not to find fault.

Clinics/SLSOs are required under section 83 of the Rules to establish procedures and strategies for identifying, monitoring and addressing, in a timely manner, risks to the successful provision of entity services. LAO will work with clinics/SLSOs to assist in the development of such procedures and strategies.

Risk Identification

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

Likewise, 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.

Risk Management Plan

If either LAO or a clinic/SLSO identifies a risk that may impact the risk level of a clinic/SLSO, 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's/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 nature of the risk identified. 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.

Risk Level Determination

LAO is required under subsection 78(3) of the Rules to determine the risk level of an entity service provider before entering into a new service agreement with the entity service provider.

Timing of risk level determination

Before providing notice to a clinic/SLSO that LAO wishes to enter into a new service agreement with the clinic/SLSO pursuant to subsection 81(1) of the Rules, LAO will make an initial risk level determination for the clinic/SLSO. LAO will advise the clinic/SLSO of this initial determination and the basis for the determination.

LAO will provide confirmation to clinics/SLSOs of LAO's risk level determination at least three months before the end of the term of their service agreement. Whenever possible, LAO will endeavour to provide earlier confirmation of the risk level to clinics/SLSOs, but in accordance with the Rules, monitoring and managing risks is an ongoing process and a risk level determination may be made or changed at any time before entering into a new service agreement.

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

Basis of risk level determination: 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?
2. What impact will the risk have on achieving the clinic's/SLSO's and LAO's objective(s)?

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

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

- Annual service proposals;
- Financial and statistical reports, including the clinic's/SLSO's self-assessment of risk;
- Information from the public and the community that the clinic/SLSO serves; and
- Interactions between the clinic/SLSO and LAO, including communications, site visits, meetings and phone calls.

LAO will share with clinics/SLSOs any relevant information that LAO receives and uses to assess a clinic's/SLSO's risk level if that information directly impacts the risk level assigned to the clinic/SLSO.

This ongoing risk assessment will be conducted in accordance with the following tables and with regard to the different types and categories of risk set out in the Appendix (see pgs. 9-10):

How to Assess Likelihood		
Assessment	Description	Probability
Rare	Risk is very unlikely to occur in most circumstances.	< 10%
Unlikely	Risk is unlikely to occur in normal circumstances.	11% - 30%
Possible	Risk may occur in certain circumstances.	31% - 50%
Likely	Risk is likely to occur in most circumstances.	51% - 90%
Almost certain	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	Description
Insignificant	A risk that, if it occurs, will have a little or no impact on achieving stated objectives.
Minor	A risk that, if it occurs, will have a negligible or inconsequential impact on achieving expected results, to the extent that one or more stated objectives will fall below goals but well above minimum acceptable levels.
Moderate	A risk that, if it occurs, will have limited impact on achieving expected results, to the extent that one or more stated objectives will fall well below goals but above minimum acceptable levels.
Major	A risk that, if it occurs, will have an extensive impact on achieving expected results, to the extent that one or more stated objectives will fall below acceptable levels.
Critical	A risk that, if it occurs, will have an excessive impact on achieving expected results, to the extent that one or more stated objectives will not be achieved.

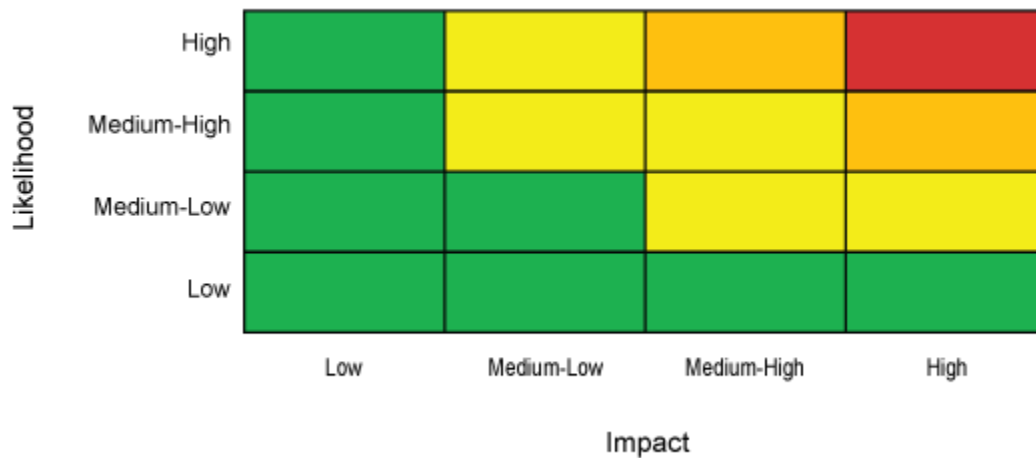
Risk levels

A clinic's/SLSO's risk level will be determined based on the likelihood and impact of identified residual 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 than the potential impact in a determination of risk level, however this will ultimately depend on the nature of the risk.

How to Calculate Risk Level	
Level	Legend
High	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	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	Legend
Medium-Low	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	Risk can be managed using controls already in place. No mitigation efforts required.

Risk Level Matrix



Term of service agreement

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

- **Low or medium-low risk:** three years, in accordance with subsection 79(3) of the Rules
- **Medium-high or high risk:** 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 is made to the risk level determination of a clinic/SLSO, as well as before any change is made by the Vice President, Clinic Law Services to the length of a clinic’s/SLSO’s future service agreement.

LAO will not alter the term of a clinic’s/SLSO’s service agreement 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 their service agreement, it could result in a change to the term of any new service agreement or in additional oversight under any new service agreement.

Reassessment of risk level

LAO may reassess a clinic's/SLSO's risk level at any time during the term of the clinic's/SLSO's service agreement. If LAO intends to reassess a clinic's/SLSO's risk level during the term of the clinic's/SLSO's service agreement, whether to raise or lower the level of risk, LAO will notify the clinic/SLSO and give the clinic/SLSO a reasonable period of time to respond before LAO makes a new risk level determination. LAO will continue to work with the clinic/SLSO to identify and manage risks throughout this process.

A clinic/SLSO that has been assigned a medium-high or high risk level 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 ameliorating or mitigating the identified risks and that the likelihood and impact of the identified risks has been reduced.

Interplay between Risk Management and Remedial Measures

Sections 95 and 96 of the Rules set out LAO's authority to take remedial measures when a default has occurred or is occurring. Remedial measures are a series of actions that LAO may take to manage events or issues after the fact, that is, those that have already occurred or are occurring. Those events or issues must have caused a default as defined in subsection 95(1) of the Rules.

This policy, on the other hand, sets out a process to assess and manage potential events or issues that may or may not occur. This process is distinct from the authority and measures outlined in sections 95 and 96 of the Rules.

Although risk management and remedial measures are independent processes, the two are connected. A default that results in remedial measures will likely mean that a clinic/SLSO will be assessed as high risk. However, if a clinic/SLSO is assessed as high risk, it does not necessarily mean that there has been a default that triggered remedial measures.

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 in the community it serves. This may include any complaints received by LAO from community members about the recipient.

Risk categories

- **Strategic**
 - Risk related to 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 governance**
 - 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
 - Risk that composition of board membership does not meet statutory requirements or clinic's/SLSO's by-laws or does not reflect diversity of community

- Risk related to board member competency, onboarding and orientation, board member tenure
- Risk related to reliability, integrity and timeliness of submission of reports to LAO
- Risk of conflict of interest for board members; ethics or 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's/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)
 - Risk related to service quality, practice management
 - Risk related to community and client satisfaction, including claims against the clinic/SLSO and complaints by clients
 - Risk related to staff reflecting diversity of community or ability to meet community language needs
- **Operations**
 - The risk that information or data related to services and activities is not captured or recorded
 - Risk related to infrastructure (e.g. facilities, information technology)
 - Risk related to workforce competency and stability
 - Risk related to compliance with clinic's/SLSO's policies and processes
- **Financial**
 - Risk 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)