



ANNUAL REPORT

LEGAL AID OFFICE

Fiscal period
2013-2019



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Legal Aid Office

GOVERNMENT OF BERMUDA MINISTRY OF LEGAL AFFAIRS

The Hon. Kathy Simmons, JP MP, Attorney General and Minister of Legal Affairs and Constitutional Reform

Global House

43 Church Street, Hamilton HM 12

1st November, 2020

Dear Minister,

We are pleased to submit the Legal Aid Office's Annual report for the fiscal period 1st April 2013 to 31st March, 2020.

The Legal Aid Office ("the Office") continues to make steady progress despite the continuing challenges posed by limited staffing and financial resources. Work is ongoing with respect to putting systems in place to create greater efficiency in the day to day administration of the Legal Aid Act 1980.

We would like to thank the Legal Aid Committee for their contributions to the administration of the Legal Aid Scheme ("the Scheme"). Committee members are volunteers who give of their time and experience at the weekly meetings to carry out their mandate under the Act. Their hard work and dedication is greatly appreciated. Appreciation is also extended to the staff of the Legal Aid Office and to Counsel who have participated in the Scheme over the period under review. Their contributions are vital to the Scheme's success.

Respectfully submitted,


William A. Francis, Chairman of the Legal Aid Committee

1. OVERVIEW

MISSION STATEMENT: The Legal Aid Office is committed to providing the residents of Bermuda with an accessible, confidential, safe and professional service in a timely and efficient manner.

THE LEGAL AID OFFICE'S PURPOSE IS: To ensure that legal advice and representation is readily available to those who need it most, and who, because of limited financial means, would otherwise be unable to secure access to justice.

THE LEGAL AID COMMITTEE: The Legal Aid Scheme ("the Scheme") is administered by the Legal Aid Committee ("the Committee") and its duties are set out in section 4 and the First Schedule of the Legal Aid Act 1980 ("the Act"). The Committee meets once a week to consider new applications and correspondence relating to ongoing matters. It consists of a Chairman and four Committee members.

2. CHAIRMAN'S REPORT

CHAIRMAN'S REPORT

In accordance with the requirements of Section 18 of the Legal Aid Act 1980 ("Act") as amended and with the concurrence of the Legal Aid Committee ("the Committee"), We submit the Annual Reports of the Committee for the years ending **1st April 2013 through to 31st March 2020.**

Committee members: The Committee has retained its full complement during the period under review. It has functioned as a cohesive unit and interacted well with the Legal Aid staff.

The Committee currently consists of the following members:

- Mr. William Francis (Senior Magistrate-Retired)
- Mr. Edward Kelly (Social Worker-Retired)
- Ms. Elizabeth Christopher (Acting Senior Legal Aid Counsel)
- Mrs. Simone Smith-Bean (Legal Counsel)
- Mr. Tyrone Quinn (Legal Counsel)
- Mrs. Darlene Davis (Accountant)
- Mrs. Angela Julio (Office Manager/Secretary to the Committee)

Prior to these recent appointments, Mr. Charles Richardson was Acting Senior Legal Aid Counsel for the period February 2017 to February 2020 and Ms. Linda Simons was the Office Manager/Secretary to the Committee up until February 2019.

Legal Matters: Although the volume of legal aid certificates sought and granted has declined, the volume of work related to the weekly Committee meetings has increased steadily over the periods under review. The complexity of cases as well as the number of multiple and youthful defendant trials resulted in an increase in counsel submissions, opinions, requests for specialist reports and, at the early stages covered by this report, the services of Queen's Counsel. These matters had significant implications not only for applicants' access to justice and the administration of justice but also for the development of Bermudian jurisprudence in the areas of murder and other serious crime as well as the treatment of youthful offenders and other civil litigation concerning children where the landscape has changed significantly over the period.

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In considering applications for QCs, the Committee took into consideration the nature of the offence, whether there is any point of law which has not yet been addressed in this jurisdiction, whether the law is unclear and whether it is in the public interest or the interest of justice that a QC be assigned. Initially defendants were co-represented by senior local counsel. In later years this transitioned and the Committee has encouraged the implementation of strategies developed with the Office to encourage experienced local counsel to undertake more complex matters and lengthy trials with the assistance of second counsel, a practice which not only facilitates the latter's professional development but also has a beneficial impact on the Office's budget. In instances where Legal Aid cases are to be heard by the Privy Council the Committee has permitted local counsel to attend so as to have the benefit of working with Queens' Counsel ("QCs") with respect to the preparation and conduct of the hearing. This has been beneficial to their growth and development as advocates at the top end and, by extension, raises the skill level of the Bermuda Bar as a whole. The consequence has been significant growth in the development of the local Bar such that more senior local counsel are requested in the most serious cases. The Legal Aid Committee has not approved overseas QCs for serious criminal cases for some years.

The issue of maintaining timely processing and payment of counsel fees remained one of the Office's major challenges during the period under review, given the difficulty of maintaining a consistent staffing resource in this area. The Office was therefore unable to always maintain its 30 working day commitment to process counsel fee bills made to the Bermuda Bar Association in November 2005 with any consistency. The problem of addressing outstanding bills was addressed by a two-pronged strategy. Counsel were requested to submit bills which they felt were outstanding whenever convenient so that a reconciliation could be done with respect to Legal Aid records to initiate payments where necessary or for counsel to send in copies of bills which were not received. Simultaneously, efforts were made to ensure that current bills received were taxed within the 30-day period. The reforms to the Scheme highlighted in the Legal Aid Amendment Act 2018, which have led to an increase in the number of matters handled in house by Legal Aid Counsel, have ameliorated this issue.

Conclusion: Committee members are volunteers who give of their time and experience at the weekly meetings to carry out their mandate under the Act. Their hard work and dedication is greatly appreciated. Their commitment has contributed towards a better delivery of service while achieving some cost saving.

Appreciation is also extended to Legal Aid staff and to counsel who have participated in the Scheme over the period under review. Their contributions are critical to the Scheme's success

Yours sincerely,

William Francis (Chairman)



3. THE LEGAL AID SCHEME

THE LEGAL AID SCHEME: The Scheme was established by the Act essentially to ensure that legal advice and representation is readily available without charge (subject to minor exceptions) to those who need it most and who because of limited financial means can least afford it. The Act is administered by the Committee.

- Under the Scheme applicants are subjected to a means test, the threshold qualification and calculation for which is provided for in the Act and its appendices as amended. However generally speaking it is available to those with a net income of up to \$18,000.00 per annum. Provided that an applicant qualifies for the grant of legal aid the Committee has the discretion to require the applicant to pay a contribution toward his/her legal representation if his/her income or assets fall within the upper level of the means test. The level of contribution is fixed by the Regulations. No contribution is required of applicants granted legal aid in criminal cases.
- One primary aim of the Scheme is to ensure that persons who qualify under the means test, and who are charged with serious criminal offences or offences carrying a sentence of five years or more are granted legal assistance as of right. This ensures that such applicants are made aware of their rights and have a level of access to justice that might not otherwise be available to them without legal representation. To this end prior, to entering a plea, Magistrates are required to inform any unrepresented person appearing before them in Plea Court charged with such offences that they have the right to obtain legal advice from Legal Aid duty counsel present in court.
- All other qualifying applicants are granted legal aid at the discretion of the Committee. The Committee's discretion has been enlarged to include the grant of legal aid to applicants without consideration of their disposable income as a consequence of the 2004 amendments to the Act. As with any discretion, the Committee acts judicially in its determinations, the only statutory guideline being that the Committee "considers whether it is in the interests of justice to grant legal aid", (section 10 (3) of the Legal Aid Act 1980).

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CLE REQUIREMENTS FOR COUNSEL PARTICIPATING IN THE LEGAL AID SCHEME: An agreement between the Bermuda Bar Association and the Legal Aid Office is in place to ensure that counsel participating in the Scheme will be trained to have a full understanding of the Legal Aid policies, procedures and general expectations of counsel undertaking legal matters. Existing counsel who wish to undertake legal work must attend one (1) mandatory continuing education training session per year hosted by the Association in order to remain on the Legal Aid Roster. Additionally, those counsel who undertake a certain amount of legal aid work per year are granted a discount on the fees payable for practicing certificates.

4. ADMINISTRATION OF THE SCHEME

The Scheme is administered by the Committee; however the day to day management of the Scheme and the Office is carried out by the Senior Legal Aid Counsel, Mrs. Susan Moore-Williams, who joined the Office on 10 March 2003; and is currently on secondment to the Bermuda Post Office. The Acting Senior Legal Aid Counsel, currently Ms. Elizabeth Christopher is responsible for attending court on behalf of clients, implementing policy directives, and providing legal advice and representation where necessary. She also provides technical advice and support to the Committee at its weekly meetings on new applications and ongoing matters.

At present the Legal Aid Office is comprised of three (3) administrative posts and three (3) legal posts. The three (3) administrative posts are the Office Manager, Accounts Officer, and an Administrative Assistant.

In 2018 a number of sweeping reforms took place to the Legal Aid Scheme resulting in passage of the Legal Aid Amendment Act 2018 and other measures. That Act replaced the existing legal services delivery model of external and internal counsel, with a primarily internal counsel model. Incidental to this was also the removal of clients' right to counsel of choice once approved for legal aid. The overarching policy objectives were to allow for the containment of the historical cost volatility and overrun of the Legal Aid Office, and to enhance the feasibility of targeted fiscal planning.

The new legal services delivery model was predicated upon maximizing in-house representation to the extent that internal resources and the practice of law permits, provisions for which were made in the Act. Whereas, previously applicants granted assistance had the right to select counsel of their choice from the Legal Aid Roster. The Amendment Act made provisions to remove this right by amending section 12 of the primary Act. Instead, and to the extent feasible, in-house counsel is now assigned by the Senior Legal Aid Counsel (SLAC) by direction of the Legal Aid Committee in the first instance. Alternatively assisted persons have limited permission to choose counsel from the Legal Aid Roster. Where it is not feasible to give effect to this choice of counsel, reassignment of counsel by the SLAC may likewise take place under the 2018 Amendment Act's provisions.

In spite of those changes, a considerable portion of cases for which legal assistance is ordinarily provided annually (estimated at 60% overall), would not be able to have in-house representation primarily due to conflict of interest. Therefore, the Amendment Act preserved applicants' choice of counsel in those instances, notwithstanding the removal of the right to choice of counsel otherwise.

The Amendment Act also provided that where counsel is assigned or reassigned by the SLAC, consideration is given to ensuring that work is evenly distributed between external counsels. These provisions were intended to ensure the minimization of the perception of bias in choosing

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counsel for clients. Consultations had previously taken place with stakeholders at the time, including the Bermuda Bar Association, to ensure the preservation of the integrity of the administration of justice.

Subsequent to passage of the 2018 Act efforts have been underway to fully implement the reform model. Currently, the two (2) filled in-house legal posts are Senior Legal Aid Counsel, and Paralegal. In the coming months to fully operationalize the model, more staff will be added to this compliment consisting of one (1) Legal Aid Counsel and (1) Junior Legal Aid Counsel (bringing the eventual number to three). These three counsel will attend court and represent clients at a reduced cost to the public purse since they will be on salary as opposed to drawing an hourly fee rate. We expect to see appreciable savings using this model.

TRAINING AND DEVELOPMENT: The Legal Aid Office has as one of its primary objectives to be focused not only on present service provision but also development of the quality of the advocates who appear in court on behalf of our clients. To this end the research and library facilities at the Legal Aid Office are being revamped and in November 2019 we purchased the Westlaw (UK) research tool and the Clio software. This is necessary to support the litigation that is now being carried on out in the Office, because for the first time Legal Aid Counsel is not simply managing the Scheme on an administrative level, they also have conduct of serious cases in Supreme Court such as murders and firearms matters. This broadening of the scope of the work done by Legal Aid Counsel will provide ripe opportunities for rapid growth and the acquisition of valuable experience. Training on the Office's case management system Legal Files was also recently conducted for all staff to develop their competency on the system as well as to keep them abreast of updates. The Legal Files System is the database which is used to track client information, case disposition, classification, and the cost of each case handled internally.

The diversity of legal work in the Legal Aid Office makes it an attractive option for pupils, law students and summer students. It is integral to facilitating the Ministry's thrust to train and retain competent and qualified Bermudians. At present there is a roster which allows pupils to spend time working in all of the relevant government legal environments on rotation, at the end of which they will be able to draw on a wide base of knowledge and eventually choose a specialization area and settle into practice.

- **SWOT analysis:** The SWOT analysis has been included to assess the Legal Aid Office current environment's strengths and weaknesses (internal) and opportunities and threats (external). We believe that that business strengths that have been identified can help maximize opportunities and minimize threats; and the weaknesses can slow the company's ability to capitalize on the opportunities; and how the business' weaknesses could expose it to threats.

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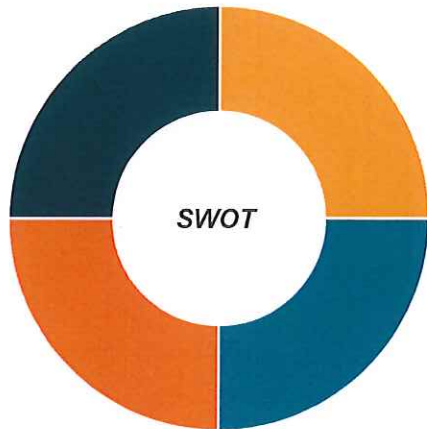
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STRENGTHS

- Qualified Counsel
- Utilizing In-House Counsel and limiting external Counsel
- Professional Customer Service/support
- Efficiency
- Integrity
- Providing valuable service to clients

OPPORTUNITIES

- Expand our Services
- New Law Research Systems
- Improve our Client Database
- Implement Means Assessment



WEAKNESSES

- Lack of strategic planning
- Lack of Training opportunities
- Dependence on past operating practices
- Lack of permanent staff
- Limited access to justice for those who do not qualify

THREATS

- Damaged reputation
- Accelerated expectations vs capacity
- Inconsistencies in keeping up funding levels and priorities
- Stagnant economy

5. OPERATIONAL STATISTICS FOR THE PERIOD 2013 TO 2019

The Committee grants certificates to applicants who qualify as of right for criminal trials and appeals in the Supreme Court, Court of Appeal and, exceptionally, before the Privy Council in England. In the exercise of its discretion the Committee considers and assigns legal aid certificates to applicants charged with criminal offences of a less serious nature in the Magistrates' Court where it is in the interest of justice to do so.

Certificates are also granted for civil proceedings especially where there are vulnerable parties such as landlord and tenant matters in the Magistrates' Court; affiliation and enforcement matters in the Family Court such as paternity testing, child maintenance and care proceedings; and appeals from these courts to the Supreme Court. In the Supreme Court certificates are granted for matters such as claims for damages arising out negligence; divorce and child custody matters; care and access applications between parents and sometimes involving the Department of Child and Family Services; and all such appeals to the Court of Appeal. On the rare occasion where a matter of great public importance is in question a certificate may be granted for an appeal to the Privy Council in England.

The Committee is required to maintain rosters of qualified counsel who are willing to assist legally aided persons in the areas of defending against criminal prosecutions, and instituting matrimonial proceedings or instituting or defending civil claims. A further roster is maintained of counsel willing to attend the Magistrates' Court Plea Court sessions to advise unrepresented persons charged with serious criminal offences, or who, in the opinion of the Magistrate and in the interest of justice require such assistance.

The recoveries in civil matters are always subject to the nature of the cases funded as they represent repayment of expenditures in concluded cases where the legally aided client has received a monetary award in settlement of their claim. Civil cases may take years to reach resolution for a myriad of reasons, consequently there is usually a delay in payment.

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The statistics for the period 2013 to 2019 are as follows:

Year	Total Applications Considered	Approved	Denied	Criminal	Civil	Matrimony & Domestic
2013	434	237	197	278	88	103
2014	388	191	197	249	94	92
2015	245	118	127	174	63	55
2016	281	161	120	181	85	48
2017	243	138	105	165	77	34
2018	216	154	62	134	62	38
2019	212	135	77	146	52	51

OUTPUT MEASURES: The Legal Aid Office retains the ability to process applications for legal aid certificates within fourteen (14) working days. However, achieving this objective is dependent on whether applicants have submitted the required information in a timely manner. One of the primary areas of delay was a lack of information from applicants as to the precise nature of the assistance that they were seeking. The application process has been modified to address this concern. The Legal Aid Office continues to process applications for Temporary Certificates, commonly known as emergency certificates, within three (3) working days. This is feasible once all relevant financial information is submitted at the time of application, and applications for emergency certificates can be approved, provided they are capped below a certain amount and are ratified by the Committee within 28 days.

6. FUNDING OF THE SCHEME

The Legal Aid Scheme, which is administered by the Legal Aid Committee under the authority of the Legal Aid Act 1980, is allocated an annual budget to cover Legal Services under Cost Center 97030.5325.

The largest area of expenditure within the Legal Aid budget remains legal fees, which is in keeping with historical trends. The Office was able to contain spending within its budget each period, through prudent management, coupled with the cost reduction and budget control initiatives outlined in the previous budget. The transition to the reformed Legal Aid model commenced in June 2018 and continues underway. To date counsel have been employed to decrease previously outsourced work by handling the majority of the cases in-house. Although full staff is not yet in place, from the period June 1, 2019 to December 31, 2019 legal fees paid to external counsel tremendously decreased; as outlined in the figures below. It is anticipated that cost will continue to trend downward in tandem with full implementation of the reformed model. Accordingly, the periods 2018/2019 and 2019/2020 reflect the salaries of in-house counsel in addition to the cost of external fees.

YEAR	AMOUNT
2012 / 2013	\$ 2,665,344.94
2013 / 2014	\$ 3,619,358.84
2014 / 2015	\$ 3,747,450.09
2015 / 2016	\$ 2,436,432.49
2016 / 2017	\$ 2,138,729.99
2017 / 2018	\$ 1,932,956.14
2018 / 2019	\$ 1,766,157.47
2019 / 2020	\$ 1,323,142.16

7. CONCLUSION

The Legal Aid Office continues to experience a period of growth and development as systems are put in place to create greater efficiency.

Staff have successfully met the challenges that increased workload and project commitments imposes on a small team and have maintained a high level of service to members of the public. They remain committed to ensuring that those who have limited means can receive assistance and have access to justice in a timely manner.

Furthermore, benefits of the 2018 reforms are already discernable in the data dating back to 2013. Statistics for the period 2013 to 2019 show a considerable reduction in the number of applications year over year. Implementation of the predominantly in-house counsel model has also seen a significant trend downward of overall annual cost. The difference between the 2014/15 and the 2018/19 figure was as much as 53% less, from \$3,747,450 to \$1,766,157 respectively. By 2019/20 that difference was even greater at a reduction of 65% from the peak 2014/15 cost. It is therefore anticipated that full implementation of the new model will continue to reap cost savings and sustainability benefits without compromising the quality of legal representation and access to justice.

Commented [A1]: It might be helpful to include the actual number of applications here since this is a question that is likely to arise when tabled for Cabinet consideration.