

NEW BRUNSWICK LEGAL AID
SERVICES COMMISSION

2025

Legal Aid Service Delivery

Chapter 4

Volume 1: Performance Audit
Independent Assurance Report



Table of Contents

Chapter 4 Highlights	52
About the Audit	54
Background	56
Established Eligibility Criteria	57
Financial Eligibility Criteria Not Reviewed in a Timely Fashion	59
Timely Processing of Legal Aid Applications	59
Financial Appeals Process Lacks Consistent Application	60
Lack of Financial Analysis in Business Case	62
Appendix I: Recommendations and Responses	64
Appendix II: Audit Objective and Criteria	66
Appendix III: Independent Assurance Report	67

New Brunswick Legal Aid Services Commission

LEGAL AID SERVICE DELIVERY



Chapter 4 Highlights

Consistent and timely processing of legal aid applications	Inconsistent application of financial appeals process	Lack of quantitative analysis for service delivery model
Financial eligibility criteria have not been reviewed since 2017		

OVERALL CONCLUSIONS:

Our audit work concluded that the New Brunswick Legal Aid Services Commission has systems and practices in place to ensure the efficient and effective delivery of criminal and family legal aid to eligible recipients in New Brunswick; however, improvements can be made in ensuring:

- the financial eligibility criteria are updated in a timely fashion
- a formalized appeals process is consistently applied
- cost comparisons are considered when developing the service delivery model

Results at a Glance

LEGAL AID SERVICE DELIVERY

Established eligibility criteria are accurately applied, and applications are processed in a timely manner



FINDINGS	
	Financial eligibility criteria not updated since 2017
	Lack of formalized financial appeals process
	Business case to support service delivery model lacks quantitative factors

About the Audit

INTRODUCTION TO THE AUDIT

- 4.1 The New Brunswick Legal Aid Services Commission (NBLASC) was established in 2005 and tasked with continuing the mandate of Legal Aid New Brunswick (1971) to provide certain criminal and family legal aid services to low-income individuals.
- 4.2 NBLASC is a publicly funded and accountable institution operating at arm's length from government and obtains its power from the *Legal Aid Act* and its General Regulation. It is governed by a board of directors and reports to the Legislature through the Department of Justice and Public Safety.

WHY WE CHOSE THIS TOPIC

- 4.3 Legal aid plays a vital role in ensuring low-income individuals are provided fair and equitable access to justice.
- 4.4 The provision of timely legal aid service delivery is an important component of the justice system. NBLASC reported providing full legal representation on 5,727 criminal and family cases in fiscal 2023-2024.

AUDITEE

- 4.5 Our auditee was the New Brunswick Legal Aid Services Commission.

AUDIT SCOPE

- 4.6 We examined the delivery of legal aid services in New Brunswick, focusing on eligibility criteria for full-service representation, timeliness, and whether services were provided with due regard to economy.
- 4.7 The audit covered the period from April 1, 2023, to December 31, 2024. Information outside of this period was also collected and examined as deemed necessary. As part of our work, we conducted interviews, reviewed relevant policy, legislation, annual reports, NBLASC intake application data, and conducted a jurisdictional scan of similar organizations.
- 4.8 More details on the audit objectives, criteria, scope, and approach we used in completing our audit can be found in Appendix II and Appendix III.

AUDIT OBJECTIVE

- 4.9** Our audit objective was to determine if the New Brunswick Legal Aid Services Commission has systems and practices in place to ensure the efficient and effective delivery of criminal and family legal aid to eligible recipients in New Brunswick.

CONCLUSION

- 4.10** Our audit work concluded that the New Brunswick Legal Aid Services Commission has systems and practices in place to ensure the efficient and effective delivery of criminal and family legal aid to eligible recipients in New Brunswick; however, improvements can be made in ensuring the financial eligibility criteria are aligned with NBLASC's overall mandate to serve low-income individuals, and legal aid services are provided with due regard to economy.

- 4.11** Overall findings are as follows:

- NBLASC has established eligibility criteria that are clearly communicated and consistently applied by intake staff in a timely manner
- financial eligibility criteria have not been reviewed since 2017
- the financial appeals process is informal and inconsistently applied
- the business case to support the current service delivery model did not include financial analysis

Background

- 4.12** The New Brunswick government established the Legal Aid Plan in 1971 signaling the beginning of legal aid services in the province. In 2005, the *Legal Aid Act* was amended to establish the New Brunswick Legal Aid Services Commission (NBLASC), which was tasked with continuing the delivery of legal aid services in New Brunswick.
- 4.13** NBLASC's mandate is to provide legal assistance to low-income individuals for certain criminal and family matters. Approval for legal aid services is based on two sets of eligibility criteria: scope-of-service, and financial need.
- 4.14** The provincial government is NBLASC's primary funder; however, it also receives funds from the federal government for criminal legal aid services and grants from the New Brunswick Law Foundation. For fiscal 2023-2024, NBLASC's budget was approximately \$14.2 million, of which \$13 million was provided by the province.
- 4.15** NBLASC operates within the framework of the *Legal Aid Act* and its General Regulation to determine scope of services and financial eligibility requirements for legal aid services within the province.
- 4.16** NBLASC employs a mixed model of staff and private counsel to deliver legal aid services throughout its eight regional offices in New Brunswick. Private counsel is paid in accordance with a schedule of fees contained in the General Regulation.
- 4.17** Legal aid applications are reviewed by NBLASC intake officers, who conduct a scope-of-service eligibility assessment, followed by a financial eligibility grid test.
- 4.18** NBLASC's scope of full-service representation includes:

Criminal Law Services	<ul style="list-style-type: none">• includes charges that impose a likelihood of incarceration
Family Law Services	<ul style="list-style-type: none">• child protection proceedings• child support• parenting orders (custody & access)• spousal support• divorce in some circumstances• some emergency protection and emergency intervention orders

Source: Created by AGNB based on information from NBLASC

- 4.19** Financial eligibility is determined based on an income grid, which defines income brackets by household size. Depending on the applicant’s income and household size, if deemed eligible, the individual may be required to pay a contribution to their legal costs of either \$150 or \$250.

Established Eligibility Criteria

Criminal Legal Aid

- 4.20** Criminal legal aid is generally provided to individuals whose charges impose a likelihood of incarceration.
- 4.21** NBLASC does not consider likelihood of incarceration or financial information for young persons (including parental income). To be considered a “young person,” the individual would have had to have been 19 years of age or younger at their first court appearance, pursuant to the *Youth Criminal Justice Act*.
- 4.22** Coverage is not extended to:
- individuals charged under the *Motor Vehicle Act* (unless there is a likelihood of incarceration or significant loss of livelihood)
 - any charges for driving while impaired
 - summary charges (less serious crimes); however, there are exceptions, such as if someone is charged with theft or fraud from an employer, assault on a police officer, assault on a domestic partner or children, and sexual assault

Family Legal Aid

- 4.23** Family legal aid is generally provided to individuals for all decision-making responsibility and parenting time (custody and access), child support, and spousal support, and emergency orders. Divorce is covered in cases where division of marital property is not at issue.

SCOPE OF SERVICE ACCURATELY APPLIED

- 4.24** We reviewed 68 cases to determine if the criminal legal aid and family legal aid eligibility criteria were appropriately applied. We found, in all cases, intake officers correctly applied the scope-of-service criteria.

FINANCIAL ELIGIBILITY GRID ACCURATELY APPLIED

- 4.25** NBLASC uses a tiered financial eligibility grid. This grid is included in the *Legal Aid Act* General Regulation and considers gross income, allowable deductions, and household size.
- 4.26** For example, an applicant with a household size of three and gross annual income of \$25,000 would qualify as Tier 2 and would be required to contribute \$150 toward the cost of their legal aid services.

**Eligibility and Contribution Based on Gross Annual Income
(after allowable deductions)**

Household Size	Tier 1 No Contribution	Tier 2 \$150	Tier 3 \$250	Tier 4 Not eligible
1	\$0 – 14,400	\$14,401 – 22,800	\$22,801 – 31,200	\$31,201+
2	\$0 – 21,600	\$21,601 – 33,600	\$33,601 – 45,600	\$45,601+
3	\$0 – 22,800	\$22,801 – 34,800	\$34,801 – 46,800	\$46,801+
4	\$0 – 24,000	\$24,001 – 37,200	\$37,201 – 50,400	\$50,401+
5	\$0 – 25,200	\$25,201 – 39,600	\$39,601 – 54,000	\$54,001+
6+	\$0 – 27,600	\$27,601 – 42,000	\$42,001 – 56,400	\$56,401+

Source: General Regulation – Legal Aid Act

- 4.27** We reviewed 68 cases to determine if the financial eligibility grid was appropriately applied. We found, in all cases, intake officers correctly applied the established financial eligibility grid.

Financial Eligibility Criteria Not Reviewed in a Timely Fashion

- 4.28** NBLASC's mandate is to provide certain criminal and family legal aid services to low-income individuals. The *Legal Aid Act* also states under its Guiding Principles, at section 2(c), "*legal aid services should be accessible so that those in need of the services may make use of them with ease*".
- 4.29** The current financial eligibility grid was recommended by an NBLASC working group in 2014 and officially adopted in 2017 by an amendment to the *Legal Aid Act* General Regulation. There has been no formal review or update since that time.
- 4.30** Lack of timely review of the eligibility grid may contribute to the risk that NBLASC may not be fulfilling its mandate to serve low-income individuals as intended.

Recommendation

- 4.31** We recommend the New Brunswick Legal Aid Services Commission establish and implement a review process for the financial eligibility grid to ensure it's fulfilling its mandate as intended.

Timely Processing of Legal Aid Applications

- 4.32** The *Legal Aid Act* states, under its Guiding Principles, at section 2(f), "*legal aid services should be delivered in a timely fashion to allow for the early resolution of legal issues*."

- 4.33** We evaluated time from initial application to eligibility decision to determine if legal aid services were provided in a timely manner by NBLASC. We excluded time from lawyer assignment to case closed, as the schedule of court appearances is outside NBLASC's control.
- 4.34** In evaluating days to eligibility decision, we found NBLASC has operated in a timely manner with 84% approved or denied for full legal aid representation within a week. Additionally, 77% were assigned a lawyer within a week.

Financial Appeals Process Lacks Consistent Application

- 4.35** Financial ineligibility is the most common reason for denying an application, however, there is no policy or legislation that defines the financial appeals process. In addition, NBLASC has not developed a comprehensive appeals process policy and procedures document that would outline various factors to consider when an appeal is filed.
- 4.36** The *Legal Aid Act* :
- section 27(3.1) states, "... an employee may depart from the rules for determining financial eligibility with the prior approval of the Executive Director."
 - section 13.1(1) states, "*The Executive Director may delegate in writing his or her powers or duties under this Act or the regulations to an employee.*"
- 4.37** During our audit, we were informed that the Executive Director provided verbal delegation of authority to the director level to adopt an informal financial appeals process where an applicant with income of up to 10% more than the top of Tier 3 may be eligible for legal aid services.
- 4.38** We examined NBLASC's intake application data from April 2023 to December 2024 and found 498 of 8,717 applications (6%) were deemed financially ineligible by an intake officer.

4.39 Of the 498 denied applicants, 140 (28%) of these decisions were appealed. We found there was inconsistent application of the informal financial appeals process and noted:

- 14 applicants were approved with an income of more than 10% above the threshold
- 15 applicants were denied despite their income being within 10% of the threshold

4.40 Of the 358 applicants who were denied services based on financial eligibility, but did not appeal, 70 were within the 10% threshold. Had they appealed, they would have qualified for legal aid services under the informal appeals process.

4.41 Lack of formal policy and training may contribute to the risk of inconsistent treatment of applicants.

Recommendations

4.42 We recommend the New Brunswick Legal Aid Services Commission comply with the *Legal Aid Act* and ensure delegations from the Executive Director to employees are in writing.

4.43 We recommend the New Brunswick Legal Aid Services Commission formalize the financial appeals process and provide training to ensure fair and equitable access to legal aid services.

Lack of Financial Analysis in Business Case

4.44 NBLASC employs a mixed model of staff and private counsel to deliver legal aid services. Private counsel are paid in accordance with a schedule of fees, outlined in the *Legal Aid Act General Regulation*, which corresponds with their number of years of experience.

4.45 NBLASC's 2023-2024 annual report highlights the cost of service for staff counsel and private counsel. Based on NBLASC's data, we noted the hourly rates (including all fees from private counsel) to be as follows:

SERVICE	STAFF COUNSEL	PRIVATE COUNSEL
Criminal Defence Counsel	\$198	\$100
Major Criminal Cases	NA*	\$106
Family Legal Aid	\$296	\$83

*NBLASC uses exclusively private counsel for Major Criminal Cases
Source: Created by AGNB based on NBLASC annual report data

4.46 From our review of business cases prepared by NBLASC and our interviews with senior management, we determined the preferred staffing model is staff counsel over private counsel; however, the business cases did not include cost comparisons.

4.47 NBLASC's business case for an all-staff model includes several qualitative components that outline reasons why staff counsel is preferred by NBLASC, including "*time to have meaningful discussions with the individuals charged*" and increased likelihood of settlement prior to court appearance; however, no business cases prepared by NBLASC contain a quantitative assessment of the economic impact of choosing staff counsel over private counsel.

4.48 Additionally, NBLASC has not monitored their stated qualitative benefits of using staff counsel to determine if such benefits were actually realized.

4.49 NBLASC has not established expected costs per type of case for either staff or private counsel. We compared private counsel fee structures across eight provincial jurisdictions (New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario, British Columbia, Alberta, Saskatchewan and Manitoba) and found New Brunswick is the only jurisdiction without an established cost per case type or maximum hours private counsel can be paid for legal services.

Recommendations

4.50 We recommend the New Brunswick Legal Aid Services Commission include financial analysis in the determination of a service delivery model.

4.51 We recommend the New Brunswick Legal Aid Services Commission monitor the achievement of expected qualitative benefits pertaining to the use of staff counsel.

4.52 We recommend the New Brunswick Legal Aid Services Commission develop an expected hours and associated cost per service to ensure value for money is achieved.

Appendix I:

RECOMMENDATIONS AND RESPONSES

Par. #	Recommendation	Entity's Response	Target Implementation Date
--------	----------------	-------------------	----------------------------

We recommend the Legal Aid Services Commission:

4.31	establish and implement a review process for the financial eligibility grid to ensure it's fulfilling its mandate as intended.	Agree Will require some time to provide proper analysis	Year 2
4.42	comply with the <i>Legal Aid Act</i> and ensure delegations from the Executive Director to employees are in writing.	Agree Completed – Delegation letters to both Director of Family Law Services and Criminal Law services sent April 16th 2025	completed
4.43	formalize the financial appeals process and provide training to ensure fair and equitable access to legal aid services.	Agree	Year 1
4.50	include financial analysis in the determination of a service delivery model.	Agree Will provide with all future service delivery model requests as discussed.	

Par. #	Recommendation	Entity's Response	Target Implementation Date
4.51	monitor the achievement of expected qualitative benefits pertaining to the use of staff counsel.	Agree We monitor resolution rates for staff lawyers in criminal matters related to our new service delivery model and report quarterly to the Board and we can implement a similar analysis for the child protection model and in private family law representations. However for the most part, family files will often have both staff counsel and private bar counsel on a same matter if two parties qualify for legal aid but are in a conflict and require separate counsel.	ongoing
4.52	develop an expected hours and associated cost per service to ensure value for money is achieved	Agree	By year 3

Appendix II:

Audit Objective and Criteria

The objective and criteria for our audit of the New Brunswick Legal Aid Services Commission (NBLASC) are presented below. The NBLASC and its senior management reviewed and agreed with the objective and associated criteria.

Objective	To determine if the New Brunswick Legal Aid Services Commission has systems and practices in place to ensure the efficient and effective delivery of criminal and family legal aid to eligible recipients in New Brunswick.
Criterion 1	NBLASC has established eligibility criteria that are clearly communicated, consistently applied, and are aligned with the overall mandate.
Criterion 2	NBLASC should ensure Legal Aid Services are provided in a timely manner.
Criterion 3	NBLASC should ensure Legal Aid Services are provided with due regard to economy.

Appendix III:

Independent Assurance Report

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick (AGNB) on the New Brunswick Legal Aid Services Commission (NBLASC) and its delivery of legal aid services. Our responsibility was to provide objective information, advice, and assurance to assist the Legislative Assembly in its scrutiny of the NBLASC with respect to legal aid services.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook – Assurance.

AGNB applies the Canadian Standard on Quality Management 1 – Quality Management for Firms That Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements. This standard requires our office to design, implement, and operate a system of quality management, including policies or procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of Chartered Professional Accountants of New Brunswick and the Code of Professional Conduct of the Office of the Auditor General of New Brunswick. Both the Rules of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management's responsibility for the subject under audit
- acknowledgement of the suitability of the criteria used in the audit
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided
- confirmation that the findings in this report are factually based

PERIOD COVERED BY THE AUDIT

The audit covered the period between April 1, 2023, to December 31, 2024. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters outside of this period as deemed necessary.

DATE OF THE REPORT

We obtained sufficient and appropriate audit evidence on which to base our conclusion on May 21, 2025 in Fredericton, New Brunswick.