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NOTICE TO THE PROFESSION

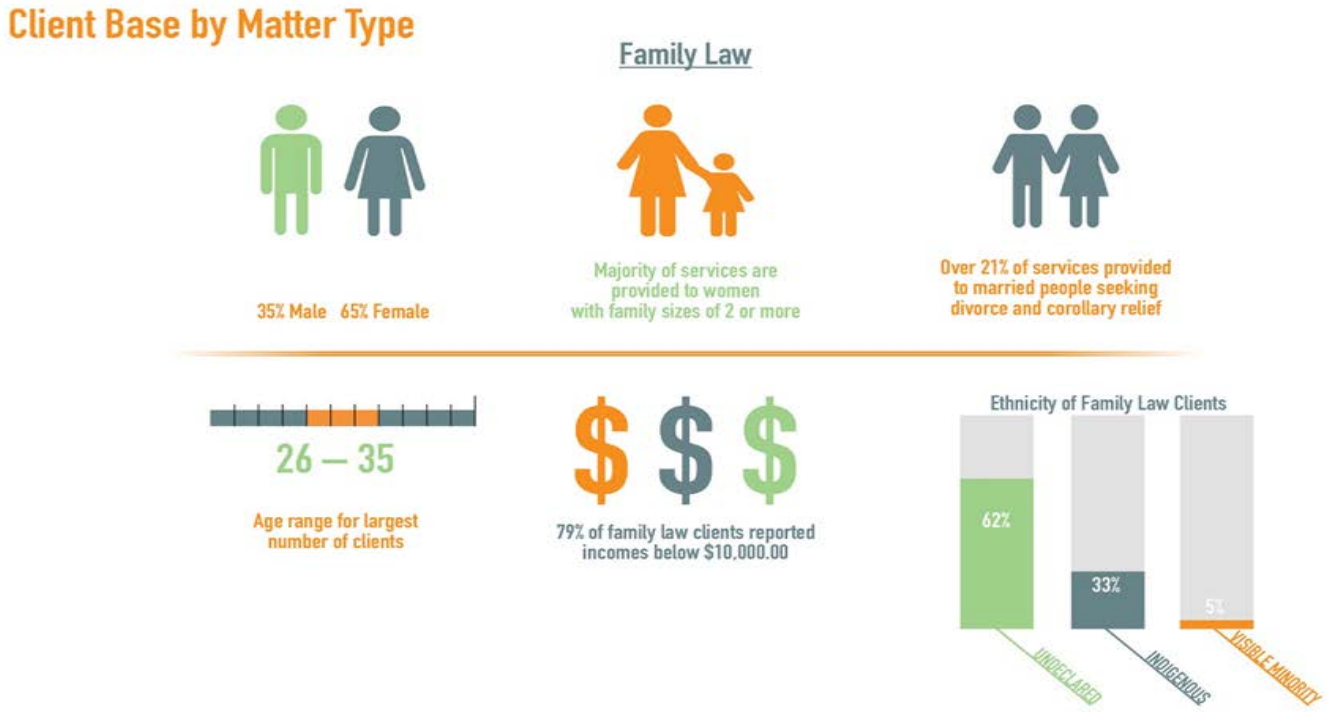
Delivery of Family Law Services

The notions of "fairness" and "efficiency" in the justice system are core Canadian values and constitutional principles that inform and guide the administration of justice in Manitoba. Legal Aid Manitoba's delivery of legal advice and representation services to nearly 100,000 Manitobans each year contributes to the efficient delivery of access to justice and a fair and balanced justice system.

Who We Serve

4,740

NON-CP FAMILY MATTERS ISSUED IN 2017/18
3,361 or 71% OF FILES ISSUED IN WINNIPEG



- Family law case filings in Manitoba Court of Queen's Bench (Family Division) range from 3,000-5,000 cases per year.
- Legal Aid Manitoba delivers representation services in more than 4,700 family law cases each year.
- We are the largest provider of family law representation services in Manitoba.
- The majority of the clients we serve are impoverished, unmarried women with children, many of whom self-identify as being of Indigenous ancestry.
- Approvals to proceed to exams for discovery, cross-exams on affidavits and/or trials are case managed by Legal Aid Manitoba.
- Year over year, less than 1% of legally aided family law matters proceed to trial.

Amendments to Manitoba Court of Queen's Bench Rules (Family)

The amendments to the Manitoba Court of Queen's Bench Rules (Family) (MBQB) will require, (among other things) that litigants satisfy a number of prerequisite conditions prior to matters proceeding before the Court, including:

- confirmation that parties have engaged in 4-way resolution meetings or other alternative dispute resolution and that there still remains issues to be determined by the Court;
- a certificate of attendance from the "For the Sake of the Children" program; and
- financial disclosure, if support and/or property is at issue.

The MBQB's presentations to the Profession regarding the *"New Model for Scheduling and Case Flow Management"* can be accessed here.

The amended MBQB Rule 70 can be accessed here.

In September, 2018, Notice to the Profession 35-2018 was distributed to legal aid panel lawyers and stakeholders. The Notice advises the profession of significant changes made to our processes to ensure that applicants, clients and lawyers are aware of their responsibilities resulting from the amendments to the MBQB Rules. A sample of the changes made to our initial retainer letter (received by clients in family matters) can be accessed here.

Trial Approval

The amendments to the MBQB Rules (Family) regarding the setting of trial/hearing dates require that:

- following satisfaction of prerequisites and an appearance at Triage Court, where a matter cannot be resolved, a case conference (and in some cases, a prioritized motion) will be set within 30 days of the Triage Court:
- trial/hearing dates will be set at the first case conference;
- trial dates are to be set no later than 12 to 15 months after first case conference; and
- no trial adjournments will be granted without leave of Chief Justice Joyal.

Legal Aid Manitoba issues certificates (retainer agreements) to counsel on all legal aid matters that receive coverage. Counsel are required to acknowledge acceptance of the certificate by electronically signing it. Each certificate issued on all matter types contain the same 11 conditions. Condition number 6 on all Legal Aid certificates reads as follows:

No Trial without Authorization: On all Domestic Tariff Legal Matters, counsel must provide a written opinion to the Area Director, and receive Area Director approval, prior to setting a matter for trial.

This condition emphasizes the obligation imposed by *The Legal Aid Regulation* Tariff of Fees, (Part 4, Fees in Domestic Matters, Item 4) that trials are only be compensated when the proper approval is received.

Legal Aid Manitoba's policy manual regarding issuance and coverage is the Area Directors' Manual (ADM) and is publicly available on Legal Aid Manitoba's website www.legalaid.mb.ca. Sections 5.1.3 - 5.1.8 of the ADM outline our policy respecting such authorizations in family and child protection proceedings.

Briefly stated, case management of trial authorizations requires that Legal Aid Manitoba determine whether the matter is "significant enough that a reasonable person of modest means would pay a lawyer to represent them" by considering the following factors:

- the reasonable likelihood of success and the potential benefit to the client;
- if the cost of providing coverage is justified in light of the current resources available to Legal Aid Manitoba;
- an assessment as to the merit of the request through a review of the nature of the matter as disclosed in pleadings, summaries, reports, or opinion letters submitted on behalf of the client or disclosed by reasonable investigation; and
- the availability of other forms of assistance, as well as the ability of an unrepresented client to meaningfully participate and represent themselves at trial.

To further remind counsel of Legal Aid Manitoba's case management requirements in family matters, further changes to our processes were introduced in December, 2018: each time a lawyer accesses their family file electronically in either PBOnline or LAMAS, the following notice banner is displayed on their screen:

"No Trial Without Authorization: On all Domestic Tariff Legal Matters, counsel must provide a written opinion to the Area Director, and receive Area Director approval, prior to setting a matter for trial."

Video Tutorials and an online manual providing step by step instructions on how to make requests for trial authorizations electronically are available on our website, and can be accessed here.

The legal services provided by Legal Aid Manitoba are fundamental to a fair and balanced justice system. We remain committed to delivering advice and representation services to Manitobans accessing the family justice system.