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# uristat

Canadian Centre for Justice Statistics



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## LEGAL AID IN CANADA : 1996-97

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### HIGHLIGHTS

- Total expenditures on legal aid in Canada were \$536.1 million in 1996-97, a 14% decrease from 1995-96. Expressed in per capita terms, legal aid spending dropped to \$17.90 per Canadian in 1996-97, compared to \$21.00 in 1995-96. This marks the second year in a row that expenditures decreased, ending a period of generally increased expenditures between 1986-87 and 1994-95 (with the exception of 1993-94, when a slight decrease was experienced).
- Of the \$465.1 million spent on direct legal services in 1996-97, 68% was paid to private lawyers, and the other 32% went to salaried professionals.
- Governments continue to be the major source of revenue for legal aid plans, contributing 90% of total revenues. The remainder of the revenue came from client contributions and cost recoveries (4%), legal profession contributions (2%), and other sources (3%).
- In 1996-97, there were 824,451 applications submitted for legal aid assistance, a 15% drop from 1995-96. This is even lower than the 835,270 filed in 1988-89, before the legal aid system experienced higher volumes of applications in the early nineties, with a peak of 1,171,095 applications in 1992-93.
- There were also fewer applications approved, totalling 510,914 in 1996-97, 21% less than the previous year. Approved applications constituted 62% of total applications received.
- The recent declines in approved applications can be largely accounted for in Ontario, where the government has reduced funding. This has resulted in tightened eligibility criteria for legal aid in Ontario.
- Although all but two jurisdictions approve more applications for criminal cases than for civil, at the national level, slightly over half of all approved applications (53%) are civil cases.



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## Introduction

It is entrenched in Section 10(b) of the Canadian Charter of Rights and Freedoms (1982) that all Canadians have the “right to retain counsel without delay” for criminal cases. Legal aid plans have been established in all provinces and territories, with the common goal of assisting low-income Canadians who require professional legal counsel.

Ontario enacted the first legal aid act in 1967. The remaining jurisdictions soon followed suit with the last legal aid act being enacted in 1979 by Yukon. Prior to legislation, legal aid was administered primarily on an informal basis with lawyers volunteering their services. This differs from present-day services in both the extent and philosophy of assistance. In the past, legal aid was viewed as an expression of the legal profession’s social responsibility; however it more recently has come to be viewed as both an aspect of social welfare and an important component of an effective justice system.

Legal aid plans in Canada provide legal representation, advice, referrals and information services. Because the administration of justice is a provincial responsibility, the organizational structure, eligibility requirements, and application of the legal aid plans differ in each province and territory. Considering these fundamental differences in the structure and the accompanying organizational differences, **caution must be used when making inter-jurisdictional comparisons of legal aid plans in Canada.**

This *Juristat* provides information on the organization and costs of legal aid in Canada. It includes information on legal aid delivery systems, revenues and expenditures, and applications for legal aid. In addition, it describes how cost-cutting measures have had an impact on application approval rates and delivery of legal aid services.

## Legal Aid Delivery Systems in Canada

Three basic models have been adopted to deliver legal aid services. **Judicare**, a fee-for-service system, uses private lawyers who bill the legal aid plan for their services. The client may retain any lawyer who is willing to accept the case. New Brunswick, Ontario<sup>1</sup> and Alberta are the only provinces which operate judicare systems.

A **staff system** (sometimes referred to as a public defender model), directly employs lawyers to provide legal aid services. Newfoundland<sup>2</sup>, Prince Edward Island, Nova Scotia and Saskatchewan have adopted this approach. Even in staff systems, the private bar is used when circumstances warrant, such as conflict of interest, or unavailability of a staff lawyer.

A combination of the judicare and staff systems, a **mixed system** utilizes both private and staff lawyers in the provision of legal services. The remaining five jurisdictions (Quebec, Manitoba, British Columbia, Northwest Territories, and Yukon) operate mixed systems of legal aid. In most of these jurisdictions the client has the right to choose counsel, either staff or private, from a “panel” of lawyers providing legal aid services.

<sup>1</sup> Although the Ontario Legal Aid Plan considers its delivery system a ‘mixed’ model of service, Ontario is presented here as a ‘primarily’ judicare model, since such a high proportion of direct legal expenditures is utilized by private lawyers in the provision of legal aid services.

<sup>2</sup> Although Newfoundland Legal Aid Commission considers its delivery system a ‘mixed’ model of service, Newfoundland is presented here as a ‘primarily’ staff model, since such a high proportion of direct legal expenditures is utilized by staff lawyers in the provision of legal aid services.

**Box 1**

**YOUNG OFFENDERS ACT AND LEGAL AID**

If circumstances warrant, youths also have the right to legal aid. The federal/provincial/territorial cost sharing agreements stipulate that all legal aid cases involving the *Young Offenders Act* are eligible for cost sharing between Justice Canada and the provinces and territories. In most jurisdictions, young persons between the ages of 12 and 17 may apply for legal aid when they have been charged with a federal indictable offence. In most jurisdictions, the assessment of financial eligibility is often based on parents' income; though, in most instances, if parents are unwilling to contribute to their child's legal aid expenses, legal aid coverage will not be denied.

Data specific to legal aid for youths are not available; however it is known that the youth crime rate and the rate of court cases involving youths are on the decline. The crime rate for youth has been on a downward trend since 1991, dropping from 6,229 youths charged per 100,000 in 1991 to 4,874 per 100,000 in 1996 (a 22% decrease over the course of five years)<sup>3</sup>. Similarly, the rate of youth court cases has dropped from 4,974 per 100,000 in 1992-93 to 4,553 per 100,000 in 1996-97, a decrease of 8.5%.<sup>4</sup>

<sup>3</sup> Source: *Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics.*

<sup>4</sup> Source: *Youth Court Survey, Canadian Centre for Justice Statistics.*

**Legal aid for both civil and criminal cases**

An important factor in the decision to grant legal aid is the nature of the case. Both criminal and civil cases are covered by all legal aid plans; however the extent of coverage varies.

Criminal legal aid coverage is, in part, determined under federal/provincial/territorial cost-sharing agreements. These agreements set standards for minimum legal aid coverage for criminal matters throughout Canada. In most jurisdictions, coverage is available for those charged with indictable offences. However, in Ontario and British Columbia, both indictable and summary conviction criminal cases are covered only when there is a threat of imprisonment. British Columbia will also consider cases where there is a risk of loss of livelihood. Generally, the coverage of summary conviction offences is limited to cases where there is a likelihood of imprisonment or a danger of loss of livelihood.

Civil cases are eligible for legal aid coverage everywhere in Canada. In practice, many of the civil cases handled are family matters, especially in Prince Edward Island, Nova Scotia, Saskatchewan, Yukon and New Brunswick. In the first four jurisdictions, limited coverage for non-family matters is provided. Other jurisdictions extend coverage to a broader range of civil matters. Refugee cases and cases involving the *Mental Health Act* are also eligible under legal aid plans in most jurisdictions.<sup>5</sup>

In addition to the type of case, legal aid plans typically assess legal merit and urgency, the nature of the service applied for, the cost of the proceedings, the chance of successfully winning the case, and the client's history. Also taken into consideration is whether or not a reasonable person who had to pay a lawyer would spend the money to advance the case.

<sup>5</sup> Readers are invited to consult *Legal Aid in Canada: Description of Operations* (catalogue no. 85-217XDB), where a fuller description of legal aid coverage is provided for each province and territory.

**Determination of eligibility**

While there are jurisdictional differences in legal aid eligibility requirements, common to all plans is an assessment of the financial situation of each applicant. This assessment often takes into consideration the individual's income, assets, and family size, which are compared to a set of financial guidelines that have been established by all jurisdictions except New Brunswick, where no set guidelines have been set. These guidelines are considered in combination with other case factors.

**Not necessarily free legal assistance**

Financial eligibility guidelines are used to assess the applicant's ability to afford legal counsel. Clients may be requested to contribute to the cost of services according to their ability to pay. An agreement between the client and the plan specifies the amount and how it is to be paid. Client contributions and cost recoveries (includes monies recovered from a judgment, award or settlement) amounted to \$22.2 million nationally in 1996-97.

Tariffs have been established in all jurisdictions, providing private lawyers with payment for their legal aid cases. The tariff may provide for an hourly rate (which currently ranges from \$45 to \$102), or block fees (i.e., a flat fee prescribed for certain types of cases and/or services). In several jurisdictions, the tariff may also depend on the lawyer's years of experience, the type of case, and the level of court in which proceedings will take place. General preparation fees are also covered in the tariffs, and are often specified by the jurisdictions.

**Staffing**

The staffing of legal aid plans depends on the delivery system adopted by the province or territory. Table 1 illustrates that provinces with judicare systems employ proportionately fewer lawyers than do the provinces operating staff systems. Overall, lawyers account for 36% of the staff, a reasonably stable proportion since the data series began in 1983-84. Lawyers are responsible for providing most direct legal services (e.g., advice and representation) to clients, although other staff may assist in this work. In Canada in 1996-97, 69% of direct legal service staff were lawyers. The remaining 31% of staff providing direct legal services were other staff, such as para-legals and law students.

There are other personnel who ensure the accessibility and productivity of the legal aid plans. They include administrative staff, law students, accountants, research staff, librarians and others. Table 1 shows that non-lawyers account for the highest proportion of legal aid personnel. Legal aid organizations range in staff size from 7 members, as in the case of Prince Edward Island and Yukon, to 963 personnel in Quebec. The total number of personnel in legal aid offices in Canada steadily increased from 1983-84 to 1993-94, but seems to have plateaued, with fairly stable personnel numbers since 1993-94.

Table 1



## Legal Aid Personnel Resources by Province/Territory, 1996-97

Jurisdiction	Total Staff	Lawyers	% of total staff	Non-Lawyers	% of total staff	Direct Legal Service Staff <sup>1</sup>					Other <sup>2</sup>				
						Total	Lawyers	%	Non-Lawyers	%	Total	Lawyers	%	Non-Lawyers	%
<b>Primarily Judicare</b>															
New Brunswick	35	9	26	26	74	23	8	35	15	65	12	1	8	11	92
Ontario	949	302	32	647	68	329	213	65	116	35	620	89	14	531	86
Alberta	107	24	22	83	78	21	21	100	...	...	86	3	3	83	97
<b>Primarily Staff</b>															
Newfoundland	96	45	47	51	53	96	45	47	51	53	-	-	-	-	-
Prince Edward Island	7	4	57	3	43	4	4	100	-	-	3	-	-	3	3
Nova Scotia	124	63	51	61	49	62	62	100	-	-	62	1	2	61	98
Saskatchewan	131	61	47	70	53	82	60	73	22	27	49	1	2	48	98
<b>Mixed</b>															
Quebec	963	389	40	574	60	402	363	90	39	10	561	26	5	535	95
Manitoba	120	47	39	73	61	55	42	76	13	24	65	5	8	60	92
British Columbia	344	84	24	260	76	198	65	33	133	67	146	19	13	127	87
Northwest Territories	41	8	20	33	80	26	7	27	19	73	15	1	7	14	93
Yukon	7	4	57	3	43	4	3	75	1	25	3	1	33	2	67
<b>Canada</b>	<b>2,924</b>	<b>1,040</b>	<b>36</b>	<b>1,884</b>	<b>64</b>	<b>1,302</b>	<b>893</b>	<b>69</b>	<b>409</b>	<b>31</b>	<b>1,622</b>	<b>147</b>	<b>9</b>	<b>1,475</b>	<b>91</b>

Source: Legal Aid Survey, Canadian Centre for Justice Statistics.

- Nil or zero.

... Figures not applicable or appropriate.

<sup>1</sup> Includes persons who delivered legal advice and/or legal representation directly to clients.

<sup>2</sup> Includes persons who did not provide legal advice and/or representation directly to clients (e.g., accountants, librarians, research staff, law students and clerical staff).

### Box 2

#### PARTICIPATION OF LAWYERS IN LEGAL AID

In 1996-97 there were 67,038 lawyers registered as practising members of the provincial and territorial bars. Approximately 24% of these lawyers provided legal aid assistance in 1996-97. This percentage has remained relatively stable over the past 10 years, fluctuating between 23% and 26%, meaning that nearly one in four practising lawyers provides legal aid services every year. Legal aid plan (staff) lawyers numbered 1,040 in 1996-97, barely changing from the 1995-96 total of 1,037. Clearly the 14,925 private lawyers who provided some type of legal aid assistance in 1996-97, represent the majority of all lawyers providing legal aid services.

### Sources of Revenue

Legal aid plans receive funding from three main sources: government contributions, client contributions and cost recoveries, and contributions from the legal profession. Government contributions include monies from both the federal and provincial/territorial governments. Figure 1 shows that overall government funding climbed steadily from 1986-87 to 1992-93, and then levelled off. However, in the 1996-97 fiscal year, total government contributions amounted to \$496.6 million, a 9% drop from 1995-96.

Despite the drop in total actual dollar contributions from governments in 1996-97 (but an increase in provincial/territorial funding), government funding accounted for 90% of the total legal aid revenue, continuing as the major revenue source for legal aid in all jurisdictions. There are differences

### Box 3

#### LEGAL AID PROVIDES DUTY COUNSEL SERVICES

The majority of legal aid services consists of providing advice, representing clients in court proceedings, representing clients in administrative matters, drawing up legal documents, and negotiating settlements. The extent of these services, especially in civil matters, differs by jurisdiction.

In addition to the basic legal aid services, most jurisdictions have a duty counsel system to advise detained persons and persons appearing in court without counsel, to guide them in obtaining legal services, and to provide on-the-spot representation, if needed. Duty counsel services are provided by staff lawyers in some jurisdictions, and by private lawyers in others. The provision of duty counsel services does not bar the recipient from subsequent application for legal aid services.

Lawyers who provide duty counsel services may be located in provincial/territorial criminal, family and youth courts. However, the extent to which they are present in these courts differs by jurisdiction.

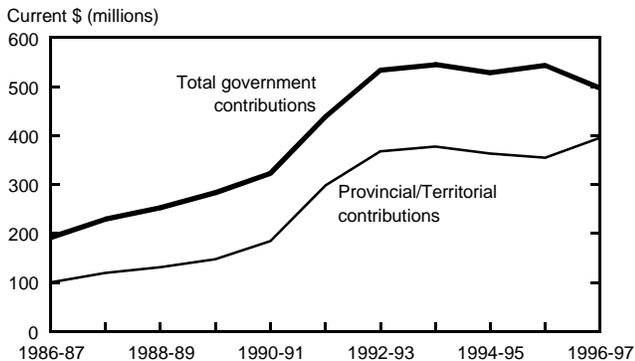
Nova Scotia and Prince Edward Island do not have duty counsel systems as such. Staff lawyers working for the legal aid plans may advise or even represent accused persons on the spot, if necessary.<sup>6</sup>

<sup>6</sup> The reader is invited to refer to the publication *Legal Aid in Canada: Description of Operations*, catalogue no. 85-217XDB, available in electronic format only, for more detailed information pertaining to legal aid coverage and duty counsel in each jurisdiction.

in the proportion of government funding received by the jurisdictions. In Prince Edward Island and the Northwest Territories, government funding covers 100% of legal aid plan expenditures. In contrast, government funding accounts for 82% of Alberta's legal aid funding.

Figure 1

**Government contributions to legal aid in Canada, 1986-87 to 1996-97**



Source: Legal Aid Survey, Canadian Centre for Justice Statistics.

**Changes in provincial and territorial funding**

In total, provincial and territorial government contributions for 1996-97 amounted to \$395.5 million, an 11% increase from the previous year. This follows a period of relatively little change since 1992-93. Figure 1 shows that the total provincial/territorial government funding trend generally follows the same general pattern as the total government contributions trend, until 1996-97. Although total provincial/territorial funding expressed as a proportion of total government contributions has fluctuated since 1983-84, the trend towards increased provincial/territorial responsibility for legal aid is evident. Funding from provincial/territorial governments accounted for, on average, 48% of total government contributions from 1983-84 to 1989-90. From 1990-91 to 1996-97, this proportion increased to 59%. More specifically, in 1996-97, provincial/territorial contributions accounted for 72% of total government funding for legal aid, the highest proportion ever.

When the jurisdictions are examined on an individual basis, changes in the levels of contributions are evident. Table 2 shows that between 1995-96 and 1996-97, significant increases in provincial funding were experienced in Nova Scotia (51%), Quebec (46%), Newfoundland (43%), New Brunswick (33%), Saskatchewan (33%), Manitoba (19%) and Prince Edward Island (10%). With the exception of New Brunswick and Prince Edward Island<sup>7</sup>, the increased provincial funding in these provinces is due in large part to the termination of the Canada Assistance Plan (CAP), a federal/provincial/territorial cost-sharing agreement in existence from 1980 to March 31, 1996. The Canada Assistance Plan covered various social programs, including civil legal aid in eight provinces.<sup>8</sup> On April 1, 1996, this program was replaced by the Canada Health and Social Transfer (CHST), a block transfer program, which allows the jurisdictions more flexibility in determining funding priorities.<sup>9</sup> Commencing 1996-97, monies received as a result of the new CHST are included in provincial/territorial contributions, however they cannot be delineated from other provincial dollars.

In contrast, Yukon experienced a minor drop in territorial funding (3%) from the previous fiscal year. Provincial/territorial funding in Ontario, Alberta, British Columbia and the Northwest Territories remained relatively stable from 1995-96.

Many governments have initiated cost-cutting measures that have resulted in the freezing or reduction in the allocation of monies to legal aid. For example, Ontario's legal aid plan has recently tightened eligibility requirements and further limited the types of cases that receive legal aid coverage.

**Federal contributions to legal aid**

Agreements are in place between the federal and provincial/territorial governments for the cost-sharing of criminal legal aid matters, and for legal aid proceedings under the YOA. Provincial statute matters such as violations under liquor and traffic laws are not cost-shared.

The federal contribution by Justice Canada to criminal legal aid in 1996-97 was \$85.0 million, a 2% decrease over 1995-96. This contribution has been stable since 1989-90, when a period of several years of increases came to end.

Since the termination of the Canada Assistance Plan and the inception of the Canada Health and Social Transfer (April 1, 1996), the federal government no longer directly contributes to civil legal aid. As previously mentioned, under this new block transfer program, the provinces are now responsible for their own social program funding priorities.

**Other sources of revenue**

Client contributions and cost recoveries account for 4% of the total legal aid revenue. Client contributions refer to monies received from the individuals receiving legal aid and cost recovery money consists of the monies recovered from a judgment, award, or settlement. As a proportion of total revenue, client contributions have remained stable at 3 to 4% since the data series began in 1983-84.

Historically, contributions from the legal profession have accounted for 2 to 4% of the overall legal aid revenue. In 1996-97, it was 2% of total revenue, the same proportion since 1992-93.

Other income sources include interest from provincial law foundations, publication sales, and federal/provincial/territorial grants. In Ontario, Manitoba and Alberta, application fees ranging from \$10 to \$25 have also been instituted. However, these fees are waived if the client is unable to afford the

<sup>7</sup> In 1995-96, New Brunswick did not receive CAP funding for civil legal aid (though it did in previous years). Similarly, in 1996-97, New Brunswick did not receive funding under the new CHST program. Prince Edward Island Legal Aid did not receive CAP funding, and similarly does not receive funding under CHST.

<sup>8</sup> Ontario and British Columbia also received federal funding for civil legal aid under the Canada Assistance Plan. Commencing 1989-90 in both provinces, a 5% ceiling for all programs entitled to assistance under the program was imposed.

<sup>9</sup> For further information on federal contributions to civil legal aid, see *Legal Aid in Canada: Resource and Caseload Statistics 1996-97* (catalogue no. 85F0015XPB).

Table 2

**Provincial and Territorial Government Contributions to Legal Aid Plans, 1992-93 to 1996-97**

Jurisdiction	1992-93	% change from previous year	1993-94	% change from previous year	1994-95	% change from previous year	1995-96	% change from previous year	1996-97	% change from previous year
Current \$(,000)										
<b>Primarily Judicare</b>										
New Brunswick	1,423	-45	1,824	28	2,863	57	2,420	-15	3,228	33
Ontario	205,100	25	203,400	-1	195,000	-4	187,900	-4	191,096	2
Alberta	20,000	48	19,375	-3	16,875	-13	16,375	-3	16,140	-1
<b>Primarily Staff</b>										
Newfoundland	2,649	176	2,548	-4	2,595	2	2,579	-1	3,698	43
Prince Edward Island	284	-1	290	2	294	1	332	13	364	10
Nova Scotia	4,164	-	5,285	27	5,318	1	4,919	-8	7,406	51
Saskatchewan	3,771	-13	5,984	59	3,020	-50	3,996	32	5,321	33
<b>Mixed</b>										
Quebec	64,486	5	65,378	1	66,124	1	66,437	-	96,791	46
Manitoba	6,877	12	7,001	2	7,984	14	7,698	-4	9,154	19
British Columbia	55,800	51	62,600	12	59,000	-6	58,400	-1	58,400	-
Northwest Territories	2,592	-11	3,140	21	3,423	9	3,431	-	3,467	1
Yukon	579	14	898	55	647	-28	466	-28	454	-3
<b>Canada</b>	<b>367,725</b>	<b>23</b>	<b>377,723</b>	<b>3</b>	<b>363,143</b>	<b>-4</b>	<b>354,953</b>	<b>-2</b>	<b>395,457</b>	<b>11</b>

Source: Legal Aid Survey, Canadian Centre for Justice Statistics.  
 - Nil or zero.  
 - Amount too small to be expressed.

expense. In 1996-97, these and other sources of income accounted for 3% of total revenue.

**Expenditures**

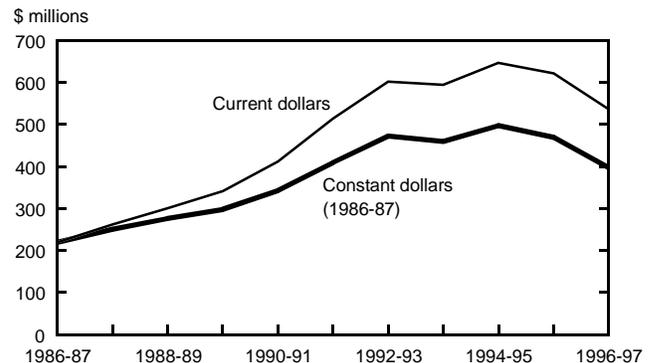
Legal aid plan expenditures amounted to \$536.1 million in 1996-97. In all jurisdictions, most of the money (\$465.1 million, or 87% overall) was spent on direct legal expenditures, which includes payments made to private lawyers as well as the costs of legal service delivery by legal aid plan staff (i.e., monies spent on the provision of legal advice, information, representation and referrals, not including central administrative expenses of the legal aid plans). The other \$71.0 million (13%) in expenditures incurred by legal aid plans were for: other program expenditures, which includes monies spent on legal research activities, public legal education and grants to other agencies; and central administrative expenditures, which include monies spent on head office functions and on offices that do not employ staff to advise and represent clients. Total expenditures steadily increased from \$219.5 million in 1986-87 to \$646.4 million (\$497.6 million in constant 1986-87 dollars) in 1994-95, (with a temporary drop in 1993-94). However, 1996-97 marks the second consecutive decrease of legal aid expenditures at the national level, dropping 14% over 1995-96 (see Figure 2). Expressed in constant (1986-87) dollars, 1996-97 spending on legal aid amounted to \$397.4 million. This represents an 81% increase over 1986-87 spending, but a 20% decrease since 1994-95 (in constant dollars).

The overall decline in expenditures from 1995-96 was the result of reduced spending in seven jurisdictions. Among those reporting decreases, Ontario experienced the largest at 24%, the result of capped government funding through to 1998-99. The most marked increases in expenditures in 1996-

97 occurred in the other two provinces employing the judicare model (New Brunswick and Alberta, with increases of 21% and 17% respectively).

Figure 2

**Total legal aid expenditures, Canada, 1986-87 to 1996-97**



Source: Legal Aid Survey, Canadian Centre for Justice Statistics.

Provincial/territorial per capita expenditures vary greatly, as evident in Table 3 below. Some of the factors accounting for the variations in per capita spending are: the nature of service delivery; the socio-economic characteristics of the region; the crime rate; and population density. Servicing sparsely populated areas is a significant cost factor in the delivery of legal aid in the Northwest Territories<sup>10</sup> and Yukon.

<sup>10</sup> Expenditures for the Northwest Territories include Aboriginal Courtworker services and public legal education and information.

Table 3

### Per Capita Spending by Province/Territory, 1996-97

Jurisdiction	Per capita Expenditure	% change from previous year
<b>Primarily Judicare</b>		
New Brunswick	\$4.74	21
Ontario	\$22.19	-25
Alberta	\$8.77	15
<b>Primarily Staff</b>		
Newfoundland	\$9.73	-2
Prince Edward Island	\$4.34	8
Nova Scotia	\$11.26	-5
Saskatchewan	\$8.76	-
<b>Mixed</b>		
Quebec	\$15.44	-6
Manitoba	\$13.24	-
British Columbia	\$25.23	-7
Northwest Territories	\$76.68	-8
Yukon	\$28.25	-21
<b>Canada</b>	<b>\$17.90</b>	<b>-15</b>

Source: Legal Aid Survey, Canadian Centre for Justice Statistics  
 - Amount too small to be expressed.

### More money allocated to civil than criminal cases

In 1996-97, 57% of direct legal aid expenditures were for civil cases, and 43% for criminal (excluding the Northwest Territories, since this breakdown is not available). The proportionate allocation of revenues to criminal versus civil matters varies considerably by jurisdiction, as Table 4 shows. The proportion of expenditures allocated to each type of case is representative of provincial priorities. For example, in Nova Scotia, the criminal-civil expenditure proportions are essentially equal; whereas in Quebec, 67% of its expenditures are allocated to civil cases, and the remaining 33% to criminal cases. The priorities placed on the type of case have implications for who receives legal aid.

Table 4

### Direct Legal Expenditures, by Province/Territory, 1996-97

Jurisdiction	Staff Lawyers	% of total	Private Lawyers	% of total	Total	Criminal Cases	% of total	Civil Cases	% of total
	\$(,000)		\$(,000)			\$(,000)	\$(,000)	\$(,000)	
<b>Primarily Judicare</b>									
New Brunswick	630	20	2,460	80	3,090	1,779	58	1,311	42
Ontario	33,016	16	175,370	84	208,386	91,636	44	116,750	56
Alberta	1,715	8	19,906	92	21,621	14,116	65	7,505	35
<b>Primarily Staff</b>									
Newfoundland	4,949	89	596	11	5,545	3,247	59	2,298	41
Prince Edward Island	438	74	155	26	593	464	78	129	22
Nova Scotia	7,993	80	1,993	20	9,986	5,030	50	4,956	50
Saskatchewan	7,787	94	493	6	8,280	5,263	64	3,017	36
<b>Mixed</b>									
Quebec	58,566	56	45,474	44	104,040	34,541	33	69,499	67
Manitoba	5,841	46	6,765	54	12,606	5,662	45	6,944	55
British Columbia	24,985	29	62,426	71	87,411	36,657	42	50,754	58
Northwest Territories	676	23	2,256	77	2,932	..	..	..	..
Yukon	289	44	368	56	657	501	76	156	24
<b>Canada</b>	<b>146,866</b>	<b>32</b>	<b>318,216</b>	<b>68</b>	<b>465,082</b>	<b>..</b>	<b>43</b>	<b>..</b>	<b>57</b>

Source: Legal Aid Survey, Canadian Centre for Justice Statistics

Note: The percentage of criminal versus civil cases for Canada as a whole excludes the Northwest Territories, as this breakdown is unavailable.

.. Figures not available

### Applications

The demand for legal aid in Canada is evident, in part, by the number of applications that the provinces and territories receive. The number of applications, however, does not reflect all requests for legal aid assistance, since applicants are screened to some degree before an application is filed. Applications also do not entirely reflect demand or need since some people may not even apply for aid, despite the need. Also, coverage and eligibility requirements change over time, often further imposing restrictions on the types of cases taken on by the legal aid plans.

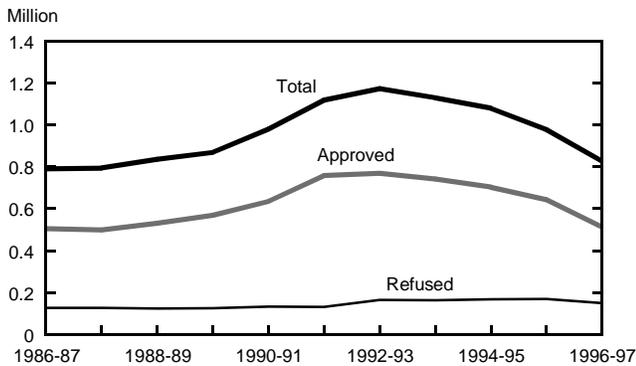
As noted earlier, several factors are taken into consideration when assessing legal aid applications. Applicants must prove that they meet certain financial eligibility requirements, the matter meets coverage provisions, and in some cases, has legal merit. An applicant may be approved for either summary or full services.<sup>11</sup> Summary services include the provision of legal advice, information, or any other type of minimal legal service granted to an individual during a formal interview. Full services, on the other hand, constitute more extensive legal assistance. An applicant receiving full service is granted a legal aid certificate or other authorization denoting entitlement to legal services, which may include court representation, in addition to information and advice.

In 1996-97, 824,451 applications were submitted for legal aid assistance, a 15% decrease compared to 1995-96. This is even lower than the 835,270 filed in 1988-89, before the higher volumes of applications in the early nineties, with a peak of 1,171,095 applications in 1992-93. Figure 3 shows that between 1986-87 and 1992-93, the number of

<sup>11</sup> Total and refused application counts presented here, include both summary and full service applications, whereas approved applications refer to full service applications only.

Figure 3

**Legal aid applications<sup>1, 2</sup>, approved and refused, Canada, 1986-87 to 1996-97**



<sup>1</sup> Total applications and refused applications figures do not include Prince Edward Island, since only records of approved applications are kept.

<sup>2</sup> The sum of approved and refused applications may not equal the total applications count for two reasons: (i) a decision to accept or reject an application may not occur in the time period the application is made; (ii) approved applications include full service applications only, whereas the total application counts is the sum of applications approved for service, including full and summary service, and refused applications.

Source: Legal Aid Survey, Canadian Centre for Justice Statistics.

applications submitted to legal aid plans in Canada<sup>12</sup> had been steadily increasing, but in 1993-94 a downward trend began. A number of factors specific to the plans themselves may account for this recent decline, such as: application fees; pre-screening procedures and further restrictions to the types of cases that receive legal aid coverage; and stricter

eligibility requirements implemented in certain jurisdictions. These factors and others could contribute to the downward trend in the number of applications for legal aid.

**Budget cuts mean fewer applications are approved**

Fewer people are applying for legal aid, and even fewer applications are being approved for full service. In 1996-97, there were 510,914 applications approved for legal aid in Canada. This number reflects a 21% drop from the previous year and marks a four-year downward trend in approval numbers and rates. Overall, 62% of total legal aid applications were approved for full service. Table 5 indicates that Saskatchewan and Yukon had the highest approval rates, both approving 93% of total applications in 1996-97.

Recent cost-cutting measures introduced in some jurisdictions have left legal aid plans with smaller budgets, often necessitating cuts to the number of approved legal aid applications. For example, Nova Scotia is in its final year of a four-year budget reduction program that included cutting the number of approved cases. The Northwest Territories has reduced coverage for family and other civil cases.

**More civil applications approved overall**

Table 5 indicates that civil cases account for slightly over half of approved cases at the Canada level. This is due to the fact that the two largest provinces, Ontario<sup>13</sup> and Quebec,

<sup>12</sup> Total application figures do not include Prince Edward Island since only counts of approved applications are maintained.

<sup>13</sup> It should be noted that the higher proportion of approved civil cases in Ontario is due to the fact that applications for services from community clinics have been included. These clinics handle strictly civil cases.

Table 5

**Applications for Legal Aid, by Province/Territory, 1996-97**

Jurisdiction	Total Applications	Approved Applications	% Approved	Approved Applications			
				Criminal	%	Civil	%
<b>Primarily Judicare</b>							
New Brunswick	2,522	1,629	65	1,487	91	142	9
Ontario <sup>1</sup>	307,315	111,889	36	51,347	46	60,542	54
Alberta	35,659	28,014	79	20,853	74	7,161	26
<b>Staff</b>							
Newfoundland	18,097	10,880	60	7,823	72	3,057	28
Prince Edward Island	..	1,210	...	1,134	94	76	6
Nova Scotia	21,661	16,529	76	9,737	59	6,792	41
Saskatchewan	23,027	21,339	93	15,520	73	5,819	27
<b>Mixed</b>							
Quebec <sup>2</sup>	284,537	241,678	85	86,776	36	154,902	64
Manitoba	23,867	18,349	77	9,283	51	9,066	49
British Columbia	103,406	56,018	54	31,226	56	24,792	44
Northwest Territories	2,889	2,007	69	1,595	79	412	21
Yukon	1,471	1,372	93	1,079	79	293	21
<b>Canada</b>	<b>824,451</b>	<b>510,914</b>	<b>62</b>	<b>237,860</b>	<b>47</b>	<b>273,054</b>	<b>53</b>

Source: Legal Aid Survey, Canadian Centre for Justice Statistics.

Note: The total applications figure for Canada does not include Prince Edward Island, since only records of approved applications are kept.

<sup>1</sup> In 1996-97, Ontario received 110,628 applications for full service, of which 74,792 (68%) were approved.

<sup>2</sup> Approved applications include summary services in Quebec.

... Figures not available.

... Figures not appropriate or not applicable.

approve more applications for civil cases than criminal cases. The other jurisdictions approved more criminal applications than civil, except in Manitoba where the civil-criminal split was fairly even.

These differences can be explained by the coverage requirements that each jurisdiction adopts in their legal aid plans. For example, Quebec provides for much broader coverage of civil cases than most of the other jurisdictions. This coverage includes applications for income security, auto and employment insurance, and workers compensation. Prince Edward Island, on the other hand, extends coverage to few civil cases. Table 5 indicates that in Quebec, 64% of approved applications are civil cases, as opposed to 6% in Prince Edward Island. These proportions clearly indicate that the legal aid plans in each province and territory have different priorities and demands.

### Fewer applications refused

The number of refused applications also decreased in 1996-97, totalling 149,598 compared to 170,023 in 1995-96. This constitutes a 12% drop in the number of refused applications.<sup>14</sup> However, it is important when evaluating the numbers of total and refused applications to consider the effects that pre-screening may have on the numbers of applications for legal aid services. Pre-screening often lowers the numbers of both the total and refused applications because individuals are refused legal aid before formally applying for legal assistance.

### Reduced Need for Legal Aid?

Declining rates in legal aid applications certainly reflect reduced budgets. However, to what extent do they suggest a reduced need for aid? Since the legal aid survey does not measure "need", it is not possible to answer the question directly. Many factors likely influence the decision of potential legal aid clients to seek assistance - knowledge that legal aid exists, their perception of success in obtaining it, and its availability in their community, for example. Because a significant portion of legal aid expenditures is spent on criminal matters, broader criminal justice indicators such as decreasing crime rates and court caseloads may suggest a reduced demand for service, everything else being equal. Similarly, since legal aid is targeted at low-income Canadians, economic indicators such as levels of unemployment or income levels may be useful to examine.

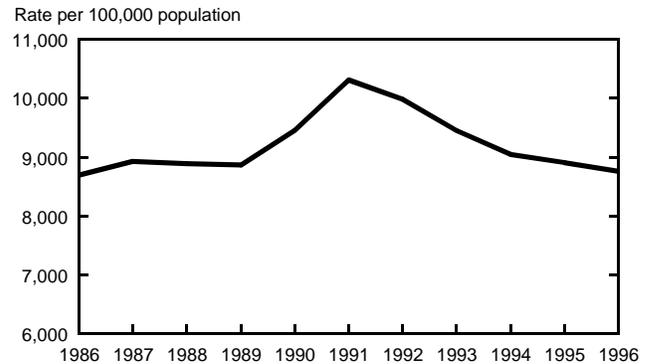
Such complex analysis is outside the scope of this report. However, some of these justice and economic indicators are presented as background information. Some of the trends are consistent with the notion of decreased need. For example, as seen in Figure 4, crime rates (for adults and youths) have decreased in recent years. There has also been a decline in the criminal court cases for youths and adults.<sup>15</sup> Also, the unemployment rate has generally declined since 1992, as shown in Figure 5.

However, other trends are consistent with an increased need for legal aid. Data from the 1996 Survey of Consumer Finances indicate that between 1988 and 1995, the average

Figure 4



### Rates of Criminal Code incidents<sup>1</sup>, Canada, 1986-1996



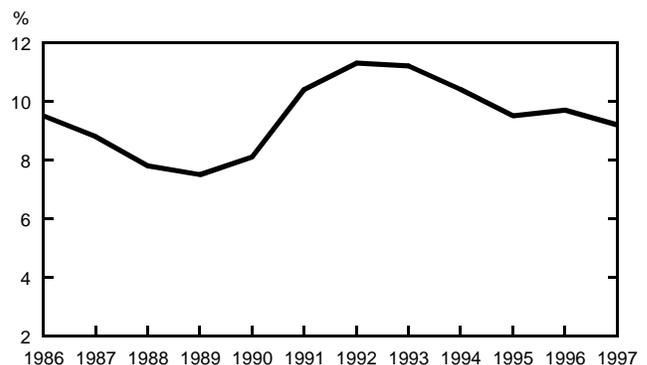
<sup>1</sup> Rates include both youth and adult incidents.

Source: Kong, Rebecca. "Canadian Crime Statistics, 1996," *Juristat* Vol. 17 No. 8, Statistics Canada.

Figure 5



### Labour force statistics, unemployment rate<sup>1</sup>, Canada, 1986-1997



<sup>1</sup> The unemployment rate is expressed as a percentage of the labour force for both sexes, 15 years and over.

Source: Labour Force Survey, Household Surveys Division.

income of Canadians (in constant 1995 dollars) decreased. More specifically, between these years, the average after-tax income for the 20% of the population in the lowest income group has decreased 3%. Although data are not available to support a trend, it has been suggested by legal professionals in Ontario, that the number of persons appearing in courtrooms without legal representation is increasing, further suggesting a growing need for legal aid services.<sup>16</sup>

<sup>14</sup> Refused applications counts exclude Prince Edward Island since only counts of approved applications are maintained.

<sup>15</sup> Information on civil cases is unavailable.

<sup>16</sup> Judge Lynn King, Ontario Court, Provincial Division in "Legal aid austerity has lawyerless clogging Ontario courts", by Kirk Makin, *The Globe and Mail*, January 10, 1997 and Rosemary Hnatiuk, spokeswoman for the Law Society of Upper Canada in "The dilemma for legal aid", by Salem Alaton, *The Globe and Mail*, August 27, 1996.

Other factors not examined here, such as population growth, changes in family structure, changes in the population receiving social assistance, the rapid growth of immigration, the availability of affordable housing, and so on, may also play a role in the need for legal aid. Establishing a connection between these factors and the need for legal aid would be very complex. As a result, it is not currently possible to determine the need for legal aid and how it may or may not be changing over time.

## Methodology

Data from this *Juristat* are obtained from the Legal Aid Survey, conducted annually since 1983-84, by the Courts Program, Canadian Centre for Justice Statistics. The objective of this census survey is to provide revenue, expenditure, personnel, and caseload statistics associated with the delivery and administration of legal aid in Canada. Data are collected and presented at the aggregate provincial/territorial level.

Data collection for all but a few data elements is administered through a survey questionnaire to the twelve legal aid plans in Canada. Data on provincial/territorial government financial contributions are obtained from the appropriate department responsible for justice matters (i.e., the provincial/territorial department of justice or attorney general). Justice Canada provides the federal contributions for criminal legal aid figures. In earlier years, during the existence of the Canada Assistance Plan, figures for federal contributions for civil legal aid were obtained from Human Resources Development Canada. Data on provincial and territorial Bar membership are requested from the Federation of Law Societies of Canada.

Two annual reports are produced from the Legal Aid Survey. **Legal Aid in Canada: Resource and Caseload Statistics**, (catalogue no. 85F0015XPB), contains five-year time-series data on: revenue, by source of funding; provincial/territorial and federal contributions; legal aid expenditures; payments to private law firms, or fees paid for private lawyers' services; direct legal service expenditures, by type of legal matter, by staff or private lawyers; personnel resources, by type of staff; duty counsel services; and civil and criminal caseload characteristics (total, approved and refused applications) by type of legal matter.

The qualitative report, **Legal Aid in Canada: Description of Operations** (catalogue no. 85-217XDB), describes the structure and administration of provincial/territorial legal aid services in Canada. It also includes information on legislation, organization, coverage, eligibility, duty counsel and tariffs. Lists of resource persons and legal aid office locations are also provided. This report is available in electronic format only, as a .pdf (Acrobat) file.

**Note:** To adjust for the effect of inflation, constant 1986-87 dollar figures have been calculated using the indexed changes in year-to-year revenues and expenditures for goods and services as reported by Statistics Canada's *The Consumer Price Index*, Catalogue No. 62-001.

## References

Alaton, Salem. "The dilemma for legal aid," in *The Globe and Mail*. August 27, 1996.

*Employment, Earnings and Hours, 1996*. Catalogue no. 72-002-XPB. Ottawa: Statistics Canada.

*Historical Labour Force Statistics*. Catalogue no. 71-201-XPB, 1997 edition. Ottawa: Statistics Canada.

*Income After Tax, Distribution by Size in Canada, 1995*. Catalogue 13-210-XPB. Ottawa: Statistics Canada.

Kong, Rebecca. "Canadian Crime Statistics, 1996," *Juristat Vol. 17 No. 8*. Ottawa: Statistics Canada.

*The Labour Force*. Catalogue no. 71-001-XPB, December 1996 edition. Ottawa: Statistics Canada.

*Legal Aid in Canada: Resource and Caseload Statistics 1996-97*. Catalogue No. 85F0015XPB. Ottawa: Statistics Canada.

*Legal Aid in Canada: Description of Operations, March 1997*. Catalogue No. 85-217XDB. Ottawa: Statistics Canada.

Makin, Kirk. "Legal aid austerity has lawyerless clogging Ontario courts," in *The Globe and Mail*, January 10, 1997.

*Youth Court Statistics 1996-97*. Catalogue no. 85-522-XPB. Ottawa: Statistics Canada.

## Canadian Centre for Justice Statistics

For further information, please contact the Canadian Centre for Justice Statistics, 19th floor, R.H. Coats Building, Ottawa, Ontario K1A 0T6 at (613) 951-9023 or call toll-free 1 800 387-2231. To order a publication, you may telephone (613) 951-7277 or fax (613) 951-1584 or internet: [order@statcan.ca](mailto:order@statcan.ca). You may also call 1 800 267-6677 (Canada and United States) toll-free. If you order by telephone, written confirmation is not required.

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