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Legal Aid in Canada: Resources and Caseload Statistics 2000-01



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Legal Aid in Canada: Resource and Caseload Statistics 2000/01

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HIGHLIGHTS

- Total legal aid expenditures at the national level reached \$512 million dollars in 2000/2001, representing an increase of 5% from 1999/2000.
- Expenditures on direct legal services rose 5% to \$423 million in 2000/2001 and accounted for 83% of total expenditures for the year. The remaining 17% was spent on central administration and other programs.
- Governments continue to be the major source of revenue for legal aid plans, contributing 87% of total revenues. The remainder of the revenue came from client contributions and cost recoveries (3%), legal profession contributions (1%), and other sources (9%).
- In the 2000/2001 fiscal year, 839,000 applications were submitted for legal aid assistance, an increase of 1% from the previous year.
- In 2000/2001, the number of approved legal aid applications rose. There were 518,000 applications approved, 3% more than the previous year.

INTRODUCTION

Access to justice in Canada is a concern for policy-makers, legal professionals, and all Canadians requiring a lawyer. Accessibility is an important quality of an effective justice system. 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.

Legal aid plans in Canada provide legal representation, advice, referrals and information services. Because the administration of justice is a provincial/ territorial responsibility, the organizational structure, eligibility requirements, and application of the legal aid plans vary from one jurisdiction to the next. 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 report 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.

For complete data collected from the Legal Aid Survey, conducted annually by the Canadian Centre for Justice Statistics, please see the related product entitled *Legal Aid in Canada: Resource and Caseload Data Tables, 2000/2001* (catalogue no. 85F0028). These data tables include a five-year time series on revenues, expenditures, caseloads and personnel of legal aid plans in Canada.

For specific information related to the administration of legal aid in each province and territory, please see the report entitled *Legal Aid in Canada: Description of Operations, March 2001* (catalogue no. 85-217-XDB on diskette, or 85-217-XIB on the Internet).

Overview of Legal Aid in Canada

Legal aid delivery systems

Canada provides legal aid through separate legal aid plans in each of the provinces and territories. Though each provincial/territorial government has developed its own legal aid scheme, three general models have been adopted to deliver legal aid services in Canada. **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, Ontario¹ and Alberta are the only provinces which operate judicare systems.

A **staff system** directly employs lawyers to provide legal aid services. Newfoundland and Labrador², 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 jurisdictions (Quebec, Manitoba, British Columbia, Northwest Territories, Nunavut and Yukon) operate mixed systems of legal aid. In most of these jurisdictions the client has the right to change counsel, either staff or private, from a 'panel' of lawyers providing legal aid services.

¹ Although Legal Aid Ontario 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 directed to private lawyers who provide legal aid services. Ontario's staff-administered community legal clinics supplement the judicare system, in such areas as housing, social assistance, pensions, workers' compensation, employment insurance, immigration and employment rights.

² Although the Newfoundland Legal Aid Commission considers its delivery system a 'mixed' model of service, Newfoundland and Labrador is presented here as a 'primarily' staff model, since such a high proportion of direct legal expenditures is directed to staff lawyers in the provision of legal aid services.

For presentation and analytical purposes, the provincial/territorial data in this report have been categorized by type of system, as indicated above. In many cases, this will allow the reader to recognize the basis for some trends in the jurisdictions.

Cases covered by legal aid

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, established under federal, provincial and 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.³ Generally, in Canada, the coverage of summary conviction offences⁴ is limited to cases where there is a likelihood of imprisonment or a danger of loss of livelihood. However, in Ontario and British Columbia, both indictable and summary conviction criminal cases are covered only when there is a threat of imprisonment.⁵ British Columbia will also consider cases where there is a risk of loss of livelihood.

Civil cases are eligible for legal aid coverage everywhere in Canada. In practice, many of the civil cases handled by legal aid are family matters, especially in Prince Edward Island, Nova Scotia, Saskatchewan and Yukon. In New Brunswick, they are exclusively family matters. Other jurisdictions extend coverage to a broader range of civil matters. Refugee cases and cases involving the various provincial and territorial Mental Health Acts are also eligible under legal aid plans in most jurisdictions.⁶

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.

Determination of financial eligibility

While there are inter-jurisdictional differences in legal aid eligibility criteria, 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 the jurisdiction. The exception is New Brunswick, where no guidelines have been set. These guidelines are often applied with some flexibility and are considered in combination with other factors.

Legal aid is not necessarily free legal assistance

As mentioned, 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 judgement, award or settlement) amounted to \$16.3 million nationally in 2000/2001.

In Manitoba, \$25 application fees were in place during 2000-2001. Alberta had in place application fees of \$10 up until March 31, 2000, when they were completely abolished.

³ *Indictable offences are more serious offences and most carry a maximum sentence of five years in prison. However, some offences carry a maximum term of life imprisonment without eligibility for parole for 25 years, and still others have prescribed minimum sentences.*

⁴ *Summary offences are the least serious offences in the Criminal Code. Generally the penalty associated with these offences is a fine of not more than \$2,000 or imprisonment of not more than six months.*

⁵ *Those who do not qualify for full legal aid representation may receive assistance through other programs such as duty counsel, student legal clinics or community legal clinics.*

⁶ *Readers are invited to consult *Legal Aid in Canada: Description of Operations* (catalogue no. 85-217-XDB/XIB), where a more complete description of legal aid coverage is provided for each province and territory.*

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 35% of the staff, a proportion relatively unchanged since the data series began in 1983/1984. 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. Non-lawyers account for the greatest proportion of legal aid personnel (65%). Legal aid organizations range in staff size from 7 members, as in the case of Prince Edward Island, to 1,135 members in Ontario. The total number of personnel in legal aid offices in Canada increased steadily from 1983/1984 to 1994/95, decreased slightly in each of the next five years, and increased again in 2000/2001.

Table 1
Legal Aid Personnel Resources by Province/Territory, 2000/2001

Jurisdiction	Total					Direct Legal Service Staff ¹					Others Staff ²				
	Total Staff	Lawyers	Percentage of total staff	Non-Lawyers	Percentage of total staff	Total	Lawyers	Percentage	Non-Lawyers	Percentage	Total	Lawyers	Percentage	Non-Lawyers	Percentage
			%		%			%		%			%		%
Primarily Judicare															
New Brunswick	41	10	24	31	76	8	8	100	-	-	33	2	6	31	94
Ontario ³	1,135	349	31	786	69	369	252	68	117	32	766	97	13	669	87
Alberta	132	28	21	104	79	25	25	100	...	...	107	3	3	104	97
Primarily Staff															
Newfoundland and Labrador	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Prince Edward Island	7	4	57	3	43	4	4	100	-	-	3	-	-	3	100
Nova Scotia	125	67	54	58	46	65	65	100	-	-	60	2	3	58	97
Saskatchewan	135	65	48	70	52	84	64	76	20	24	51	1	2	50	98
Mixed															
Quebec	836	347	42	489	58	354	319	90	35	10	482	29	6	454	94
Manitoba	141	51	36	90	64	70	47	67	23	33	71	4	6	67	94
British Columbia	325	81	25	244	75	97	69	71	28	29	228	12	5	216	95
Northwest Territories	25	6	24	19	76	19	5	26	14	74	6	1	17	5	83
Yukon	10	5	50	5	50	6	4	67	2	33	4	1	25	3	75
Nunavut	32	17	53	15	47	18	7	39	11	61	14	10	71	4	29
Canada	2,943	1,029	35	1,914	65	1,119	869	78	250	22	1,824	161	9	1,664	91

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

² 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).

³ Includes community clinic staff.

Source: Legal Aid Survey, Canadian Centre for Justice Statistics

Lawyers are responsible for providing most direct legal services (e.g., advice and representation) to clients. In Canada, in 2000/2001, 78% of direct legal service staff were lawyers. The remaining 22% of staff providing direct legal services include staff such as para-legals and law students.

Participation of Lawyers in the Delivery of Legal Aid Services

In 2000/2001 there were 50,920 lawyers registered as practising members of the provincial and territorial bars (Table 2). Twenty-four percent of these lawyers provided legal aid assistance in 2000/2001. Over the past ten years, this percentage has fluctuated between 24% and 32%. Legal aid plan (staff) lawyers numbered 1,029 in 2000/2001, of which 869 (84%) provided direct legal services. However, the majority of lawyers providing legal aid assistance were private lawyers totalling 11,389 in 2000/2001. The number of private lawyers in legal aid assistance decreased 3% from 1999/2000.

Table 2
Bar Involvement in Legal Aid Service Delivery, 2000/2001

Jurisdiction	Total Bar Member Count ¹	Lawyers who Provided Legal Aid Services	Percentage	Private Lawyers who Provided Legal Aid Services	Legal Aid Plan Lawyers
%					
Primarily Judicare					
New Brunswick	892	218	24	208	10
Ontario	17,219	4,960	29	4,611	349
Alberta	5,017	1,378	27	1,350	28
Primarily Staff					
Newfoundland and Labrador	441	..	..	..	..
Prince Edward Island	138	24	17	20	4
Nova Scotia	1,522	327	21	260	67
Saskatchewan	1,349	249	18	184	65
Mixed					
Quebec	16,147	3,270	20	2,923	347
Manitoba	1,403	459	33	408	51
British Columbia	6,667	1,450	22	1,369	81
Northwest Territories	67	43	64	38	5
Yukon	58	13	22	8	5
Nunavut	..	27	..	10	17
Canada	50,920	12,418	24	11,389	1,029

Source: Legal Aid Survey, Canadian Centre for Justice Statistics

Legal Aid Provides Duty Counsel Services

In addition to legal aid services, most jurisdictions have a duty counsel system administered by the legal aid plans. Duty counsel lawyers advise detained persons⁷, and persons appearing in court without counsel. They may guide them in obtaining legal services, and give on-the-spot representation if needed, providing immediate advice at arrest and detention. 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.

Prince Edward Island does not have duty counsel systems per se. Staff lawyers working for the legal aid plans may advise or even represent accused persons on-the-spot, if necessary.⁸

In some jurisdictions, duty counsel services may exceed the traditional duties of the duty counsel. For instance, legal aid plans in New Brunswick⁹, Ontario, Manitoba, Alberta, Northwest Territories, and Yukon provide what are known as 'full duty counsel' services.¹⁰ Where full services are available, duty counsel offer the same services as traditional duty counsel, but additionally may provide full representation up to and including the determination of guilt or non-guilt (in criminal cases), and representation at sentencing. In some jurisdictions the same lawyer may provide all services to the client, allowing for a complete solicitor-client service, which typically means better quality assistance. In these cases, duty counsel essentially provides the same services that legal aid lawyers would provide on approved applications.

⁷ This type of duty counsel is referred to as "Brydges" duty counsel, based on the 1989 Supreme Court of Canada decision, which ruled that a detainee should be informed of the existence and availability of duty counsel and legal aid in the jurisdiction, so that the detainee has a full understanding of the right to retain and instruct counsel.

⁸ The reader is invited to refer to the publication *Legal Aid in Canada: Description of Operations*, catalogue no. 85-217-XDB, for more detailed information pertaining to legal aid coverage and duty counsel in each jurisdiction.

⁹ Duty counsel also provide weekend telephone remand services in New Brunswick.

¹⁰ The concept of full duty counsel is fairly new in Ontario and Manitoba, compared with the other jurisdictions that offer such services.

Sources of Revenue

Funding is received by legal aid plans 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 1988/1989 to 1992/1993, and then levelled off. In the 2000/2001 fiscal year, total government contributions amounted to \$462 million, a decrease of 5% from the previous year.

Government funding accounted for 87% of the total legal aid revenue in 2000/2001, continuing as the major revenue source for legal aid in all jurisdictions. There were differences in the proportion of government funding received by the jurisdictions. In Nunavut, government funding covers 100% of legal aid plan expenditures. In contrast, government funding levels were lowest for Alberta at 76%, and Manitoba and Ontario at 81% each.

Federal contributions to legal aid

Agreements exist between the federal and provincial/territorial governments for the cost-sharing of criminal legal aid matters, including legal aid proceedings under the *Young Offenders Act* (YOA). Provincial statute matters such as violations under liquor and traffic laws are not cost-shared. The federal contribution to criminal legal aid by Justice Canada in 2000/2001 slightly increased (0.3%) from 1999/2000 to \$82.4 million.

In 1980, Health and Welfare (part of which later became Human Resources Development Canada (HRDC)) formally began sharing the cost of civil legal aid with the provinces and territories under the Canada Assistance Plan (CAP). On April 1, 1996, the Canada Health and Social Transfer (CHST) absorbed the Canada Assistance Plan, but continued providing federal funding for a number of social programs, including civil legal aid. Since the provinces are now responsible for the allocation of monies received from the federal government under the CHST, they now have more flexibility in their own funding priorities.

Provincial and territorial funding

In total, provincial and territorial government contributions to legal aid plans (criminal and civil) amounted to \$397 million in 2000/2001, a 3% decrease from the previous year (Table 3). Figure 1 shows that the total provincial/territorial government legal aid funding trend follows the same general pattern as the total government contributions trend, until 1996/1997. At that time, provincial/territorial contributions rose significantly, as the funding mechanism for civil legal aid was changed from CAP to CHST.

Although total provincial/territorial legal aid funding expressed as a proportion of total government contributions has fluctuated since 1983/1984, the trend towards increased provincial/territorial responsibility for legal aid is evident in Figure 1. Funding from provincial/territorial governments accounted for, on average, 53% of total government contributions from 1987/1988 to 1990/1991. From 1991/1992 to 1995/1996, this proportion increased to 70%. Between the years 1996/1997 and 1999/2000, it varied between 83% and 85%¹¹. In 2000/2001, provincial/territorial contributions were at 86%.

Other sources of revenue

In 2000/2001, client contributions and cost recoveries accounted for 3% of total legal aid revenue. Client contributions refer to monies received from individuals receiving legal aid services, while cost recoveries consist of the monies recovered from a judgement, award, or settlement. As a proportion of total revenue, client contributions and cost recoveries have remained stable at 3% to 4% since the data series began in 1983/1984.

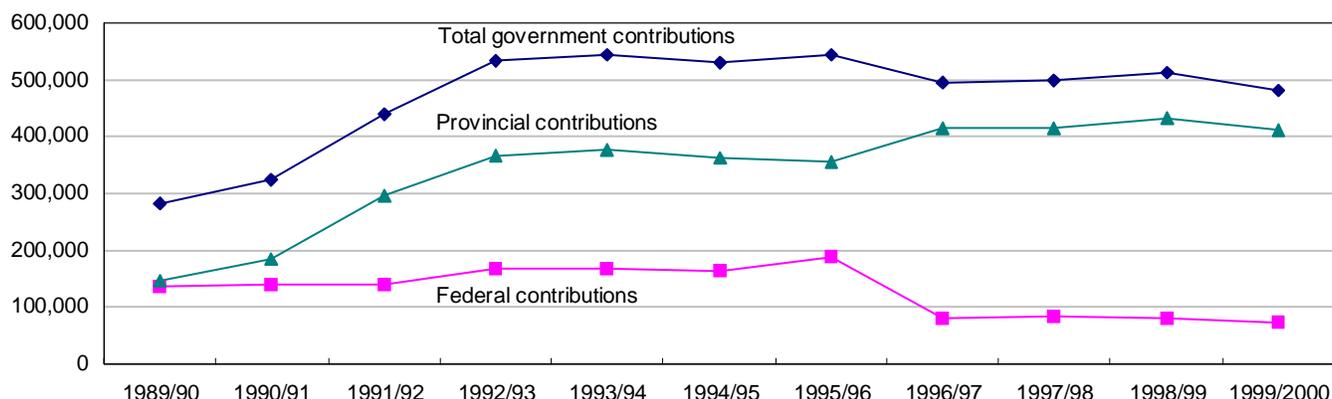
Historically, contributions from the legal profession have accounted for 1% to 4% of overall legal aid revenue. In both 1999/2000 and 2000/2001, these contributions were 1% of total revenue. This drop in funding by the legal profession can be accounted for by changes to legal aid in Ontario. In April 1999 the Law Society of Upper Canada relinquished

¹¹ As noted in Figure 1, when summed the provincial/territorial contributions plus federal contributions may not equal the government contributions figure. Thus the provincial contributions expressed as a proportion of total government have been derived, based on adjusted government contributions figures. For further details on how these figures were derived, please contact the Canadian Centre for Justice Statistics.

Figure 1

Government Contributions¹ to Legal Aid in Canada, 1989/90 to 1999/2000

Current \$('000)



Note: The drop in federal contributions for 1995-96 is due in part by the termination of the Canada Assistance Plan, and that no claim was made by British Columbia for civil legal aid.

¹ When summed, provincial/territorial contributions plus federal contributions may not equal total government contributions for the following reasons: (i) the total government contributions figure is provided by the legal aid plans, representing the total provincial grant, which includes federal contributions, whereas the provincial/territorial and federal contributions figures are obtained from the appropriate government department; (ii) any difference in accounting methods (i.e. cash versus accrual) will cause differences in which fiscal period contributions are accounted for; (iii) legal aid plans may have submitted back claims to the federal government in one year to cover expenditures that were already made and accounted for in the total government contributions figure for a previous year.

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

**Table 3
Provincial and Territorial Government Contributions to Legal Aid Plans in Current Dollars, 1996/97 to 2000/01**

Jurisdiction	1996/97	Percentage change from previous year	1997/98	Percentage change from previous year	1998/99	Percentage change from previous year	1998/00	Percentage change from previous year	2000/01	Percentage change from previous year
	\$'000	%	\$'000	%	\$'000	%	\$'000	%	\$'000	%
Primarily Judicare										
New Brunswick ¹	3,228	33	3,278	2	3,524	8	3,607	2	3,913	8
Ontario	191,096	2	191,130	--	194,500	2	194,792	--	171,126	-12
Alberta	16,140	-1	16,056	-1	16,100 ^f	--	14,198	-12	15,912	12
Primarily Staff										
Newfoundland and Labrador	3,698	43	3,971	7	4,467	12	4,432 ^f	-1	4,447	--
Prince Edward Island	369 ^f	21	306 ^f	-17	313 ^f	2	456	46	391	-14
Nova Scotia	7,406	51	7,566	2	7,878	4	8,776	11	9,349	7
Saskatchewan	5,321	33	6,912	30	7,360	6	8,084	10	8,407	4
Mixed										
Quebec	102,959	55	98,515	-4	111,873	14	87,340	-22	89,415	2
Manitoba	9,154	19	9,801	7	9,850	--	11,044	12	11,522	4
British Columbia ²	72,500	24	72,900	1	73,600	1	74,100	1	75,123	1
Northwest Territories	3,467	1	3,358	-3	3,124	-7	3,521	13	3,511	--
Yukon	476 ^f	-3	429	-10	504 ^f	17	828 ^f	64	929	12
Nunavut	...	...	...	...	...	...	..	..	3,347	..
Canada	415,814	17³	414,222	--	433,093^f	5	411,178^f	-5	397,392	-3

¹ The contribution of the Government of New Brunswick for 1996-97 and 1997-98 includes all expenditures for domestic legal aid, which is administered by the Department of Justice.

² The figures for British Columbia do not include fees and disbursements on large legal aid cases and Rowbothams funded directly by the provincial government.

³ In 1996/1997 the funding mechanism changed from Canada Assistance Plan to the Canadian Health and Social Transfer.

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

control and the administration of legal aid.¹² In addition, funding by its members to legal aid was eliminated. In 1998/1999 contributions by the Law Society of Upper Canada accounted for 50% of the total contributions of the legal professions in Canada. The elimination of Ontario's contribution explains almost all of the 57% decrease from 1998/1999 to 1999/2000 in contributions of the legal profession.

Other income sources include interest from provincial law foundations, publication sales, and federal/provincial/territorial grants. As previously mentioned, Manitoba maintained application fees for the year in question. In 2000/2001, the Canada total from other sources of income accounted for 9% of total revenue.

Expenditures

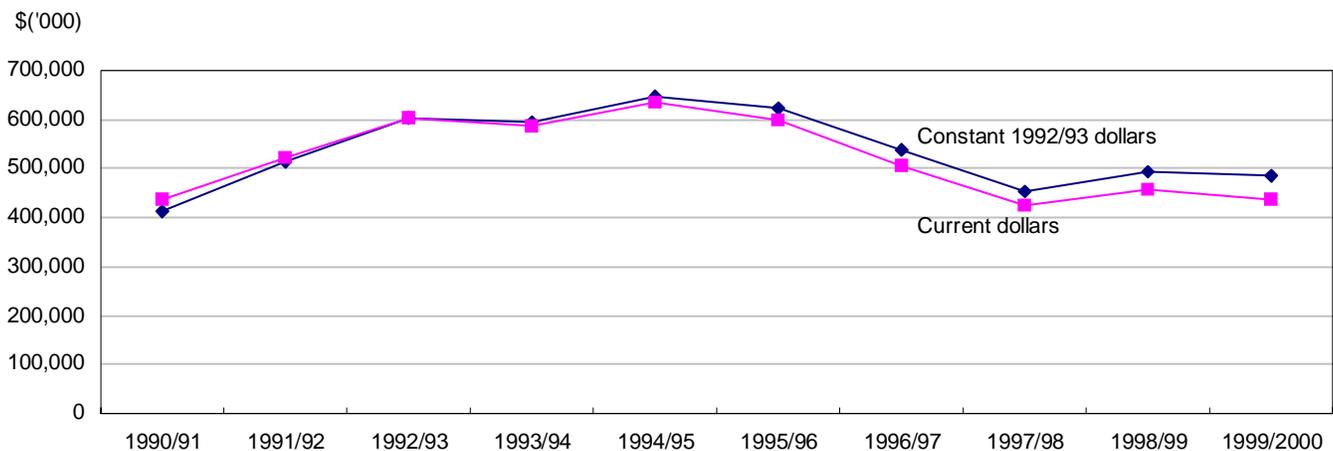
In current dollars, legal aid plan expenditures amounted to \$512 million in 2000/2001. In all jurisdictions, most of the budget (\$423 million, or 83% overall) was spent on direct legal expenditures, which include payments made to private lawyers as well as the costs of legal service delivery by legal aid plan staff (i.e., monies spent on the provision of: legal advice; information; referrals to other agencies such as transition homes and rehabilitation programs; and representation). The remaining \$89 million (17%) of expenditures incurred by legal aid plans were for: other program expenditures, including money 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.

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.

At the national level, the 2000/2001 fiscal year showed an increase in legal aid expenditures (5%) over 1999/2000 (Figure 2). Expressed in constant (1992/1993) dollars, 2000/2001 spending on legal aid amounted to \$448 million¹³. This represents a 29% decrease from the peak of \$634 million spent in 1994/1995.

Figure 2

Total Legal Aid Expenditures, Canada, 1990-91 to 1999-2000



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

¹² The Ontario Government passed legislation replacing the Legal Aid Act. The new Legal Aid Services Act, 1998 created an arms length agency as of April 1, 1999 that is called Legal Aid Ontario (LAO). LAO replaced the Law Society of Upper Canada as the governor of legal aid. It operates independently from the Government of Ontario but is accountable to the government for the expenditure of public funds.

¹³ To adjust for the effect of inflation, constant 1992/1993 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. The last update of the CPI official time base was 1992/1993.

On a per capita basis, provincial/territorial expenditures vary greatly, from a low of \$5 in Prince Edward Island and New Brunswick to a high of \$104 in Nunavut (Table 4). Clearly, the three territories have the highest per capita expenditure figures¹⁴. This in part reflects the high costs associated with providing services in remote, sparsely populated areas. In addition to budget size and the priority placed on legal aid in the jurisdictions, some of the factors related to variations in per capita spending are: the nature of service delivery; the types of cases covered; the socio-economic characteristics of the region; the crime rate; and population density.

Table 4
Total and Per Capita Legal Aid Spending by Province/Territory, 2000/01

Jurisdiction	Total Legal Aid Expenditures (Current Dollars)	Percentage change from previous year	Per capita expenditure
	\$'000	%	\$
Primarily Judicare			
New Brunswick	4,104	--	5.43
Ontario	241,835	8	20.70
Alberta	27,215	4	9.04
Primarily Staff			
Newfoundland and Labrador	..	..	..
Prince Edward Island	736	6	5.33
Nova Scotia	11,031	-1	11.72
Saskatchewan	10,989	4	10.75
Mixed			
Quebec	103,208	1	13.99
Manitoba	18,095	3	15.79
British Columbia	87,515	5	21.56
Northwest Territories	3,511	-5	85.84
Yukon	1,032	-17	33.73
Nunavut	2,836	7	103.50
Canada	512,107	5	16.64

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

More money spent on civil than criminal cases

In 2000/2001, civil cases accounted for more than half (55%) of direct national legal expenditures, while the remaining 45% was spent on criminal cases. The proportionate expenditure on criminal versus civil matters varies considerably by jurisdiction, reflecting, to some extent, the differences in criminal and civil case volumes across jurisdictions (Table 5). As well, the allocation of expenditures by type of case is representative of provincial/territorial priorities. For example, Quebec spent an estimated 64% of their resources on civil cases, and the other 36% on criminal cases. In contrast, criminal cases accounted for 84% of legal aid expenditures in Nunavut, and 80% in Prince Edward Island.

Applications for legal aid

The demand or need for legal aid in Canada is indicated, to a great extent, 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. As well, coverage and eligibility requirements change over time, often imposing further 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 show that they meet certain financial eligibility requirements; the matter must meet coverage provisions; and in some cases, the matter must have legal merit. An applicant may be approved for either summary or full services.¹⁵

¹⁴ Expenditures for the Northwest Territories include Aboriginal Courtworker services and public legal education and information.

¹⁵ Total and refused application counts presented here, include both summary and full service applications, whereas approved applications refer to full service applications only.

Table 5
Direct Legal Expenditures, by Province/Territory, 2000/01

	Staff Lawyers	Per- centage of Total	Private Lawyers	Per- centage of Total	Total	Criminal Cases	Per- centage of Total	Civil Cases	Per- centage of Total
	\$'000	%	\$'000	%	\$'000	\$'000	%	\$'000	%
Primarily Judicare									
New Brunswick	1,299	37	2,203	63	3,502	1,884	54	1,619	46
Ontario ¹	45,720	24	142,173	76	187,893	84,254	45	103,639	55
Alberta	2,580	11	21,283	89	23,863	15,510	65	8,353	35
Primarily Staff									
Newfoundland and Labrador	..	..	..	..	..	..	..	..	..
Prince Edward Island	543	83	112	17	655	525	80	130	20
Nova Scotia	8,351	83	1,769	17	10,120	5,491	54	4,629	46
Saskatchewan	9,126	93	690	7	9,816	6,497	66	3,319	34
Mixed									
Quebec	55,831	60	37,072	40	92,903^e	33,179 ^e	36	59,724 ^e	64
Manitoba	6,734	47	7,454	53	14,188	8,961	63	5,227	37
British Columbia	27,586	35	50,334	65	77,920	32,113	41	45,807	59
Northwest Territories ²	..	..	..	..	1,110	479	43	631	57
Yukon	468	60	317	40	785	624	79	161	21
Nunavut	..	..	..	..	213	178	84	35	16
Canada	..	..	..	..	422,968	189,695	45	233,273	55

¹ Expenditures for civil legal aid in Ontario include \$42,598 in services provided by the clinic system.

² Expenditures for the Northwest Territories include Aboriginal Courtworker services and public legal education and information.

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

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 the 2000/2001 fiscal year, 838,618 applications¹⁶ were submitted for legal aid assistance, a 1% increase compared to 1999/2000 (Figure 3). Between 1989/1990 and 1992/1993, the number of applications submitted to legal aid plans in Canada had been steadily increasing, but in 1993/1994 a downward trend began that ended with an increase for 1998/1999. A number of factors specific to the plans themselves may have contributed to this recent decline, such as: pre-screening procedures; further restrictions on the types of cases that receive legal aid coverage; stricter eligibility requirements implemented in certain jurisdictions; increased use of duty counsel; application fees (in those jurisdictions where they exist); and possibly increased *pro bono* (services without charge) services provided by private lawyers.

Increase in refused applications¹⁷

The number of refused legal aid applications increased (1%) in 2000/2001, totalling 110,683 compared to 109,780 in 1999/2000¹⁸. Pre-screening lowers the numbers of both the total and refused applications because individuals are refused legal aid before formally applying for legal assistance.

Approval Rates for Legal Aid

The survey does not calculate an approval "rate" for legal aid applications because approved and/or refused applications carried over from one year to another and those delayed in processing cannot be separated from current fiscal year applications.

¹⁶ All total application figures mentioned in this report do not include Prince Edward Island, since only counts of approved applications are maintained. Newfoundland and Labrador is also not included in this report. Data were not available in 2000/2001.

¹⁷ Newfoundland has been excluded from all calculations made in regards to refused applications. Data were not available in 2000/2001.

¹⁸ Refused application counts exclude Prince Edward Island since only counts of approved applications are maintained.

Table 6
Applications for Legal Aid, by Province/Territory, 2000/01

	Total Applications	Criminal	Percentage	Civil	Percentage
			%		%
Primarily Judicare					
New Brunswick ¹	5,278	1,883	36	3,395	64
Ontario	365,077	..	..	..	..
Alberta	45,386	30,594	67	14,792	33
Primarily Staff					
Newfoundland and Labrador	..	..	..	..	..
Prince Edward Island	..	..	..	..	..
Nova Scotia	24,087	15,739	65	8,348	35
Saskatchewan	23,530	17,513	74	6,017	26
Mixed					
Quebec	253,326	96,363	38	156,963	62
Manitoba	21,705	11,451	53	10,254	47
British Columbia	96,880	35,713	37	61,167	63
Northwest Territories	1,273	547	43	726	57
Yukon ²	1,291	918	71	373	29
Nunavut	785	439	56	346	44
Canada	838,618	..	..	..	..

¹ Since the Domestic Legal Aid Program administered by New Brunswick Justice does not require applications, the civil applications figure for New Brunswick represents the number of domestic legal aid cases screened-in (or "accepted") by New Brunswick Justice, plus the applications for domestic cases made with Legal Aid New Brunswick. This fact should also be considered when reviewing the total applications data.

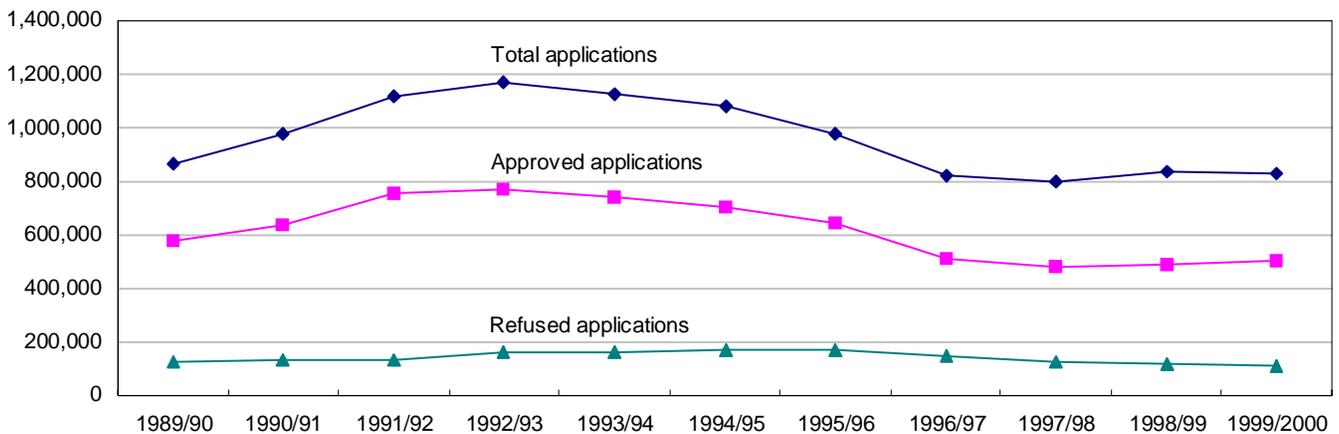
² Data exclude circuit court matters, but includes full duty counsel services.

Note: The total applications figure for Canada does not include Prince Edward Island, since only records of approved applications are kept. Data not available for Newfoundland in 2000/01.

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

Figure 3

Legal Aid Applications ^{1,2}, Approved and Refused, Canada, 1989/90 to 1999/2000



¹ Total applications and refused applications figures do not include Prince Edward Island, since only records of approved applications are kept. Newfoundland has been excluded from all approved and refused applications to ensure comparability. Data were not available in 1999-2000.

² 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.

Approved applications on the rise¹⁹

The year 1992/1993 marked a plateau in approved legal aid applications, which numbered 758,620, after which a consistent decline occurred until 1998/1999, when a small increase was observed. Ontario serves as a particular example of this trend of reduction, where even though more applications were approved in 1998/1999, they still represented a 50% reduction over 1992/1993. The same trend applies to most jurisdictions, but to a lesser degree.

In 2000/2001, there were 518,194 applications approved for full legal aid services in Canada (Table 7). Nationally, this number reflects a 3% increase from the previous year, but a 32% decrease from the peak in 1992/1993. In 2000/2001, New Brunswick's approved caseload decreased considerably (15%), however this followed a 17% increase between 1998/1999 and 1999/2000. Approved applications also decreased to a large extent in the Yukon (20%) and Northwest Territories (19%). Ontario had the largest increase in approved legal aid applications (13%).

Prior to 1997/1998, the number of applications approved for full service in New Brunswick cannot be accurately compared to earlier years due to incomplete domestic legal aid data. In 1997/1998, the Northwest Territories began a practice known as "presumed eligibility", whereby persons appearing unrepresented at court are not required to apply for legal aid services. In 1998/1999, 4,456 persons appeared unrepresented at court, accounting for fewer approved applications. Prior to 1997/1998, approved applications in Yukon included duty counsel services for Judicial Interim Release Hearings, and are therefore not comparable to subsequent years.

Table 7
Approved Applications for Full Service Legal Aid, by Province/Territory, 2000/01

	Total Approved Applications			2000/01			
	1999/00	2000/01	Percentage change from previous year	Criminal	Percentage	Civil	Percentage
			%		%		%
Primarily Judicare							
New Brunswick	4,637	3,935	-15	1,226	31	2,709	69
Ontario	140,903	159,338	13	65,279	41	94,059	59
Alberta	32,051	33,799	5	24,429	72	9,370	28
Primarily Staff							
Newfoundland and Labrador	..	..	..	..	..	..	..
Prince Edward Island	1,209	1,185	-2	1,083	91	102	9
Nova Scotia	15,481	15,150	-2	9,551	63	5,599	37
Saskatchewan	21,891	22,057	1	16,585	75	5,472	25
Mixed							
Quebec ¹	215,991	212,192	-2	78,951	37	133,241	63
Manitoba	17,374	17,627	1	9,028	51	8,599	49
British Columbia	51,534	50,513	-2	25,845	51	24,668	49
Northwest Territories	1,000	813	-19	445	55	368	45
Yukon ²	1,003	800	-20	554	69	246	31
Nunavut ³	...	785	...	439	56	346	44
Canada	503,074	518,194	3	233,415	45	284,779	55

¹ Approved applications include summary services in Quebec.

² Data include full service duty counsel.

³ For fiscal 1999/00, Nunavut's Legal Aid figures are included with NWT.

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

¹⁹ Newfoundland and Labrador has been excluded from all calculations made in regards to approved applications. Data were not available in 2000/2001.

Overall more civil applications are approved compared to criminal applications

Civil cases account for slightly over half (55%) of approved cases at the national level, as seen in Table 7. In 2000/2001, New Brunswick, Quebec, and Ontario²⁰ approved more civil cases than criminal cases. The other jurisdictions approved more criminal applications than civil.

These differences are explained by the coverage requirements that each jurisdiction adopts in its legal aid plan. 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 benefits. Prince Edward Island, on the other hand, extends coverage to few civil cases. This variation is illustrated in Table 7, which indicates that in Quebec, 63% of approved applications are civil cases, as opposed to 9% in Prince Edward Island.

Recent change in Ontario

In Ontario, Bill O-68 received royal assent on December 18, 1998. The new Bill introduced the Legal Aid Services Act, which incorporated a new body to be known as Legal Aid Ontario (formerly known as the Ontario Legal Aid Plan). An important feature of this act is the change in administration of legal aid. In February 1998, the Law Society of Upper Canada voted overwhelmingly to end 31 years of control over the province's legal aid plan. Commencing April 1, 1999, Legal Aid Ontario was no longer administered by the Law Society of Upper Canada, but began functioning as an independent corporation, accountable to the government of Ontario, as set out in the Act.

Legal Aid Ontario is governed and managed by its own board of directors, the majority not being lawyers.

Community clinics were introduced in Ontario to provide legal services in areas of law which particularly affect low-income individuals or disadvantaged communities, including housing and shelter, social assistance, pensions, workers' compensation, employment insurance, immigration and employment rights. These clinics now report to Legal Aid Ontario.

²⁰ 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.

METHODOLOGY

Data in the report *Legal Aid in Canada: Resource and Caseload Statistics* (Catalogue no. 85F0015) and the related data tables *Legal Aid in Canada: Resource and Caseload Data Tables* (Catalogue no. 85F0028) are obtained from the Legal Aid Survey, conducted annually since 1983/1984, by the Courts Program, Canadian Centre for Justice Statistics. This survey provides the justice community, academics and the public with information on 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 thirteen legal aid plans in Canada. Data on provincial/territorial government financial contributions are obtained from the appropriate department responsible for justice matters. Justice Canada provides the figures for federal contributions for criminal legal aid. In earlier years, during the existence of the Canada Assistance Plan, figures for federal contributions for civil legal aid were obtained from Health Canada and then later from Human Resources Development Canada. Data on provincial and territorial Bar membership are requested from the Federation of Law Societies of Canada.

To adjust for the effect of inflation, constant 1992/1993 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. The last update of the CPI official time base was 1992/1993.

Per capita figures are based on July 1st population estimates released in Statistics Canada's *Annual Demographics Statistics*, catalogue no. 91-213. The 1994 and 1995 population data are final intercensal estimates, final postcensal estimate for 1996 and updated postcensal estimates for 1997-2000.

GLOSSARY

An **application** refers to a formal request, evidenced in writing, whereby a person applies to a legal aid office for assistance. When aggregated, the total number of applications reflects the number of individual requests for summary and full service assistance, rather than the total number of persons seeking assistance. Formal requests for assistance are recorded on the intake document used by the legal aid office. Related legal matters enumerated at the time of contact with the office are included on one application, regardless of the requirement for a court appearance. If a matter related to that on the original application arises at a later date (other than appeal), a new application is not filed. Separate applications are counted for criminal and civil matters. The total number of applications reported for the fiscal year include all such applications filed during that time, irrespective of when the application was approved or rejected. The count excludes requests for duty counsel services.

Central administrative expenditures include monies spent on head office functions and on offices that do not employ staff to advise and represent clients.

Client contributions refer to monies received from the aided person for legal assistance; flat user fees are included.

Contributions of the legal profession refer to monies received from the law profession.

Cost recoveries refer to the party costs ordered or agreed to be recovered in the case. Includes monies recovered from a judgement, award or settlement.

Direct legal service staff refers to persons whose primary function is to deliver legal assistance and/or legal representation directly to clients. Notaries are included in the staff lawyer count. Paralegals are included in the non-lawyer count.

Duty counsel services refer to legal services provided by a lawyer at a location other than a legal aid office, where the person assisted had not previously applied in writing for services to be rendered. This count measures the number of units of service (process based) provided rather than the number of persons assisted, and is mutually exclusive of both the summary service and approved application counts. Cases coming before a circuit court are typically provided duty counsel services. Consequently, circuit court cases are included in the duty counsel service count rather than in the approved application count. Only circuit court matters granted a delay are included in the approved application count. The provision of duty counsel services does not bar the recipient from subsequent application for legal aid services.

Expenditures refer to the actual gross dollars expended by the Plan in a given fiscal year (i.e. accounts payable are excluded). Expenditures made on behalf of the Plan by other agencies are not included. Total expenditure is the sum of expenditures on direct legal service, other program expenditures, central administrative expenditures and any other expenditure.

Government contributions refer to federal, provincial and territorial monies allocated to the Plan through the provincial or territorial government. Federal contributions made through the separate federal/provincial or territorial cost-sharing agreements for criminal and young offender legal aid, as well as contributions to civil legal aid made through the Canada Assistance Plan prior to April 1, 1996, are not recorded separately since monies are generally directed to the consolidated revenue fund of the province and not to the Plans directly.

Other program expenditures includes monies spent on legal research activities, public legal education and grants to other agencies.

Refused applications refer to all formal requests for legal aid evidenced in writing that have been denied legal services. This total includes applications for which no services have been approved, as well as those applications denied for full service that subsequently receive summary service. An application can be refused, appealed and still refused. Only the initial refusal is counted. Reasons for refusal are a product of legislative and policy restrictions.

Revenue refers to all monies received directly by the Legal Aid Plan during a given fiscal year. Funds received for specific projects from agencies external to the Plan are not included as revenue. Accounts receivable are excluded.

Summary service refers to the provision of legal advice, information, or any other type of minimal legal service to an individual during a formal interview. It can include simple legal tasks such as making a telephone call or drafting a letter on behalf of a client. Excluded are inquiries made at the “front desk” of the legal aid office, or telephone (“hot line”) inquiries. Summary services are provided to individuals in two circumstances: a written request has been submitted at the office, or a verbal request has been made. Only written requests are included in the count. A **written request** refers to a request of assistance as evidenced by the completion of a legal aid application. A **verbal request** refers to a request by a non-applicant made in-person at a legal aid office or by telephone to a direct legal service professional. Summary services may be provided to fulfil the request itself or follow the refusal of a written request for more extensive legal service (full- service). Once an application is approved for full service, it is not subsequently included in a summary service count although relatively little service may be provided. Also, no file (dossier) is opened for the client provided summary services. Summary service counts measure the number of units of service provided rather than the number of persons assisted, and are mutually exclusive of both the approved full service application and duty counsel counts.