



**LEGAL AID PROGRAM
EVALUATION
Final Report**

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EXECUTIVE SUMMARY

1. Introduction

The Department of Justice's (Justice) Legal Aid Program (LAP) manages the federal contribution to legal aid in Canada. The LAP has five key components: base funding for adult and youth criminal legal aid services in the provinces, and criminal and civil legal aid services in the territories; funding for immigration and refugee (I&R) legal aid services; funding for Court-Ordered Counsel in Federal Prosecutions (COCFP); funding for legal aid in Public Security and Anti-Terrorism (PSAT) cases; and secretariat and funding support for the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (FPT PWG), which brings together representatives from provincial/territorial governments, legal aid plans, and legal aid delivery entities¹ with federal LAP officials for policy, research, and information sharing activities. The LAP's goal is to "enable the provinces and territories and their legal aid plans to deliver criminal legal aid (and criminal and civil legal aid in the territories) to economically disadvantaged persons facing the likelihood of incarceration, and for youth pursuant to the *Youth Criminal Justice Act*, through the provision of contribution funding" (Department of Justice Canada, 2007).

The evaluation of the LAP was conducted between September 2010 and April 2011. In accordance with the Treasury Board Policy on Evaluation, the evaluation of the LAP addresses the core issues of the relevance and performance of the LAP.

2. Methodology

The evaluation methodology consisted of document and file review, key informant interviews (n=36), and four site visits that included interviews (n=22) and a data review. Triangulation was used to verify and validate the findings obtained through these methods and to arrive at the overall evaluation findings.

¹ The legal aid system consists of provincial legal aid plans and territorial legal aid delivery entities. For brevity's sake, they will be referred to collectively as "legal aid plans" for the remainder of the report.

3. Findings and Conclusions

3.1. Relevance

Do the LAP components continue to serve the public interest and need?

The LAP components address a demonstrable need. Demand for legal aid has continued to grow over time.

In addition, legal aid clients tend to be among the more marginalized and vulnerable members of the population. At the same time, the law, court system and legal processes are becoming increasingly complex. The combination of these factors has caused those working in the system (judges, Crown prosecutors, defence counsel) to believe that many criminal accused cannot represent themselves effectively. In this situation, legal aid services strive to preserve the fairness and accessibility of the criminal justice system.

Canadian opinion, as assessed through recent surveys, reflects continued public support for legal aid. Survey results show that Canadians value access to justice, and their confidence in the legal system is linked to the existence of legal aid.

Is there an appropriate and necessary role for the Department of Justice in the areas of the LAP?

The federal role, as carried out by Justice in the provision of legal aid funding is necessary based on constitutional and *Canadian Charter of Rights and Freedoms* obligations. The LAP's structure is intentionally designed to fit within the constitutional role of the federal government, which is shared jurisdiction in criminal justice, I&R matters, and civil law in the territories.

For COCFP, the federal obligation is clear, as it involves situations where the court has ordered that counsel be provided in a federal prosecution. For PSAT cases, the federal government explicitly created a role for the Department to provide legal aid in recognition that the cost of defending against PSAT-related charges would be substantial and should not be borne by legal aid plans out of their existing federal funding.

Do the priorities and objectives of the LAP align with the priorities of the federal government and the Department of Justice?

The LAP's objective of promoting access to justice through its components aligns with government priorities. The federal government's criminal justice agenda, stated in the 2010 Speech from the Throne, refers to "a justice system that delivers justice". This commitment has been reinforced by Canada becoming a signatory on international instruments that promote legal aid in instances where accused cannot afford counsel.

The LAP's objective also directly supports Justice's strategic outcome of a "fair, relevant, and accessible justice system". Legal aid plans contribute to the effective functioning of the criminal justice system by upholding Canada's commitment to fairness and the rule of law.

3.2. Effectiveness

How well do the LAP components contribute to the availability of legal aid services in Canada?

Base funding. LAP has contributed to the expected outcome of enhanced capacity of the provinces and territories and their legal aid plans to deliver criminal legal aid (and civil in the territories), as without the federal support, legal aid services would likely be reduced.

Given rising costs of and demand for legal aid, the evaluation evidence presented a picture of pressures on the legal aid system. The financial eligibility guidelines of legal aid plans have not kept pace with various economic indicators over time, such as the Low Income Cut-off and the consumer price index. This indicates that the capacity to meet the demand for criminal legal aid has lessened.

Criminal justice professionals interviewed as part of the evaluation indicated that a consequence of the unchanging financial eligibility guidelines is the increasing proportion of unrepresented accused in the criminal justice system. According to key informants and criminal justice professionals, unrepresented accused cannot effectively present their case, an opinion that is corroborated by recent studies, showing unrepresented accused are less likely than accused with counsel to be granted interim release, be acquitted, receive a stay of proceedings, or have charges withdrawn or dismissed.

I&R legal aid. The ability to forecast demand is hampered by the fluctuation in I&R applications from year to year. The funding formula may contribute to the difficulty in planning as it relies on

past volumes, which does not allow for unanticipated arrivals or other spikes in demand. The inclusion of I&R legal aid in the criminal legal aid agreements was questioned by most key informants, as it is not a criminal matter. As an alternative, it was suggested that the provinces and the federal government could consider creating a separate agreement for I&R legal aid.

COCFP. This component was found to be working well. Plans are reimbursed for fees and disbursements and receive an administrative payment, and the level of federal funding was considered adequate. Although the costs of COCFP cases are rising and exceed the amounts budgeted for some years, the LAP has covered these additional costs. Data on COCFP cases is limited, as evidenced by the lack of data available at site visit jurisdictions. The existence of the component provides evidence of enhanced accessibility to legal aid, as it funds cases where the accused does not qualify for legal aid. Additionally, there are no known stays due to lack of funding for court-ordered counsel.

PSAT. Federal funding in PSAT cases is fundamental in ensuring access to justice for criminal defendants facing public security and anti-terrorism-related charges. Leaving legal aid plans to fund the mounting of defences to PSAT cases could have significant implications on the plans' ability to deliver their other services. This component's success can be measured by the fact that there have been no known instances of an unrepresented defendant in a terrorism-related case.

To what extent does the FPT PWG facilitate collaboration between the federal government and the provinces and territories?

The FPT PWG appears to satisfy several of its mandated activities, including its active role in undertaking and supporting research, and obtaining and disseminating information on legislation and policies affecting legal aid.

The FPT PWG has experienced a renewal since the last LAP evaluation in 2005-06, where the forum received criticism. FPT PWG members considered the group to be a useful forum for networking and sharing information. The co-chairs were credited with fostering a collegial relationship among the parties.

There is a view among members that the FPT PWG's mandate has not been fully met. There was a desire for more discussions of implications for legal aid of certain policies under consideration and of operational issues.

The desire to strengthen the governance structure of the FPT PWG and for clearer instructions or sense of direction/support to the FPT PWG was expressed by some key informants.

3.3. Efficiency and economy

Are there more efficient ways of achieving the objectives of the LAP?

The delivery costs of the LAP are equivalent to less than one percent of the federal funding contribution. Key informants could not suggest alternative delivery methods that would be more efficient. Legal aid plans have undertaken a variety of measures to increase efficiency at the operational level, including greater use of duty counsel and enhanced duty counsel. Some steps were also taken to reduce costs (e.g., closing offices, reducing staff, and cutting service) and may represent a reduction in accessibility rather than an improvement in efficiency.

A recurring theme raised by key informants was the impact of external factors on the demand for legal aid. Policing practices, prosecutorial discretion, changes in legislation, rules of court, and ultimately, the efficiency of the system as a whole have an impact on the costs borne by legal aid. For that reason, more collaboration among criminal justice stakeholders was proposed by key informants in order to understand better the drivers of demand for legal aid.

Does the cost of resources used to deliver the LAP components approximate the minimum resources needed to achieve the expected outcomes?

Whether the LAP is economical in achieving its outcomes related to enhancing the capacity of legal aid is not clear. Enhanced capacity was found to the extent that the number of applications submitted and approved has increased. Meanwhile, the total cost per application has increased.

The relatively unchanging level of the financial eligibility guidelines of legal aid plans, compared with relevant economic indicators, is considered to be a contributing factor to the increasing number of unrepresented accused in the criminal justice system. Legal aid is perceived as more economical than allowing accused to proceed unrepresented.

Legal aid is likely more economical than private counsel. A comparison of tariff levels in four provinces to private bar charges for similar services demonstrates that legal aid services are provided at much lower rates.

Certain LAP components would likely not be provided by jurisdictions and their legal aid plans without federal funding (i.e., I&R and COCFP). In this case, the federal government would be required to create alternative structures or forego legal aid. Creating a federal legal aid structure to provide these legal aid services would mean duplicating administrative functions available through legal aid plans, which would not be an economical alternative.

1. INTRODUCTION

The Department of Justice's (Justice) Legal Aid Program (LAP) manages the federal contribution to legal aid in Canada. The LAP has five key components: base funding for adult and youth criminal legal aid services in the provinces, and criminal and civil legal aid services in the territories; funding for immigration and refugee (I&R) legal aid services; funding for Court-Ordered Counsel in Federal Prosecutions (COCFP); funding for legal aid in Public Security and Anti-Terrorism (PSAT) cases; and secretariat and funding support for the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (FPT PWG), which brings together representatives from provincial/territorial (P/T) governments, legal aid plans, and legal aid delivery entities with federal LAP officials for policy, research, and information sharing activities.² The LAP's goal is to "enable the provinces and territories and their legal aid plans to deliver criminal legal aid (and criminal and civil legal aid in the territories) to economically disadvantaged persons facing the likelihood of incarceration, and for youth pursuant to the *Youth Criminal Justice Act*, through the provision of contribution funding" (Department of Justice Canada, 2007).

1.1. Context of the Evaluation

The federal contribution to legal aid in Canada has been the subject of previous evaluations in 2001 and 2006. However, neither evaluation considered the impact of the LAP. To support an evaluation of the impact of the LAP, Justice developed an Accountability, Risk and Audit Framework (ARAF) in 2007 and commissioned an Impact Evaluation Design in 2009.

The evaluation of the LAP was conducted between September 2010 and April 2011. In accordance with the Treasury Board Policy on Evaluation, the evaluation of the LAP addresses the core issues of relevance and performance.

The evaluation covers the time period of 2006-07 to 2010-11, as the previous evaluation was completed in 2005-06. Since the fiscal year 2007-08 marked a new mandate for the LAP, the

² The legal aid system consists of provincial legal aid plans and territorial legal aid delivery entities. For brevity's sake, they will be referred to collectively as "legal aid plans" for the remainder of the report.

focus of the evaluation was the program impact over the years 2007-08 to 2010-11. However, this scope does not provide a sufficient time period in which to assess trends. For that reason, 2006-07 was used to represent a baseline for data, and in some instances, 2005-06 data or earlier is used as a reference, which is outside the scope of this evaluation but allows us to see trends over time.

1.2. Structure of Report

This report contains five sections, including the introduction. Section 2 provides an overview of the LAP, Section 3 describes the methodology for the evaluation, Section 4 summarizes the key findings, Section 5 presents the conclusions, and Section 6 presents the recommendations and management response. References are provided, as well as a glossary of key terms to aid the reader.

2. DESCRIPTION OF THE LEGAL AID PROGRAM

This section provides an overview of the LAP and its policy context.

2.1. Background

Federal funding of legal aid in Canada began in 1971 in partnership with the provincial and territorial governments (Department of Justice Canada, 2010a). This approach to legal aid funding reflects the shared responsibility for criminal justice: the federal government is responsible for criminal law and the provinces/territories are responsible for the administration of justice. Given these interconnected responsibilities, the two orders of government rely on one another for the effective functioning of the criminal justice system; as a result, each shares in the costs of criminal legal aid.

Civil legal aid is handled differently. The federal government is responsible for civil law in the territories, while provincial governments have constitutional authority for property and civil matters. Responding to this division of authority, the federal government directly funds civil legal aid in the territories. For the provinces, the federal government supports civil legal aid through the Canada Social Transfer (CST).³

In both cases—criminal and civil legal aid—the federal government provides funding but is not involved in the delivery of legal aid. Criminal legal aid in the provinces and criminal and civil legal aid in the territories continue to be the core funding areas of the LAP, and the other components—funding for I&R legal aid services, COCFP, PSAT, and the FPT PWG—have been added over time. The five components of the LAP are described in detail in Section 2.2.

³ As it is the Department of Finance that is responsible for the CST, civil legal aid in the provinces is outside the scope of this evaluation.

2.2. Overview of the Legal Aid Program

As outlined in the ARAF, the components of the LAP are designed to achieve four key objectives:

- “to promote access to justice and protect rights under the *Canadian Charter of Rights and Freedoms* by contributing to the delivery of criminal legal aid for economically disadvantaged persons facing the likelihood of incarceration, and for youth pursuant to the *Youth Criminal Justice Act*, and by contributing to the delivery of immigration and refugee legal aid for economically disadvantaged immigrants and refugees;
- to promote access to justice by enabling provinces and territories to manage Court-Ordered Counsel in Federal Prosecutions cases (e.g., offences under the *Controlled Drugs and Substances Act*);
- to promote access to justice by enabling provinces and territories to provide legal aid to economically disadvantaged accused in Public Security and Anti-terrorism (PSAT) cases; and
- to promote public confidence in the criminal justice system (access to justice).” (Department of Justice Canada, 2007)

The following sections describe the five LAP components.⁴

2.2.1. Base Funding for Criminal Legal Aid

2.2.1.1 Base Funding to Provinces

Under the LAP, the federal government provides funding to the provinces to support the provision of criminal legal aid to economically disadvantaged persons facing serious or complex charges that could lead to incarceration, as well as to youth charged under the *Youth Criminal Justice Act*.

The federal contribution to base funding is drawn from two envelopes. Funding for each jurisdiction from the first envelope is determined based on historical funding and population, whereas funding from the second envelope is calculated as a function of the number of rural communities, the Aboriginal population, the number of persons charged with *Criminal Code* and *Controlled Drugs and Substances Act* (CDSA) offences, and the provincial contributions to legal

⁴ This section is largely based on the LAP description in the ARAF (Department of Justice Canada, 2007).

aid costs. Under the terms of the contribution agreements with provinces, the federal funding for criminal and youth criminal legal aid cannot exceed 70% of the province's total eligible expenditures. In addition, to encourage the maintenance of provincial funding levels the provinces must maintain their 2005-06 eligible expenditure levels in order to receive their full portion of funding under the second envelope.

2.2.1.2 Base Funding to Territories

Under the LAP, federal funding support for the provision of criminal and civil legal aid services in the territories is provided through Access to Justice Services Agreements (AJA). The AJAs also include funding for the Aboriginal Courtwork Program and Public Legal Education and Information services.⁵ The AJAs combine what had previously been three separate funding agreements into a single agreement with each territory; this approach is designed “to ensure accountability while delivering flexibility for the territories to use the federal contribution to develop and deliver the justice-related programs required by their communities” (Department of Justice Canada, 2010).

2.2.2. Immigration and Refugee Legal Aid Services

I&R legal aid assists individuals involved in the immigration and refugee determination system under the provisions of the *Immigration and Refugee Protection Act (IRPA)*. It covers the provision of legal advice, assistance and representation for immigration or refugee proceedings before the Immigration and Refugee Board (IRB) of Canada, the Federal Court of Canada (FCC), or Citizenship and Immigration Canada (CIC) officials on post-determination actions.

The federal government currently allocates funding through the criminal legal aid agreements to six provinces⁶ that provide I&R legal aid services (Alberta, Quebec, Manitoba, British Columbia, Ontario, and Newfoundland and Labrador). The level of I&R legal aid funding allocated to each jurisdiction in a given year is based upon its share of demand for I&R legal services in the preceding fiscal year and is calculated based on seven variables. These variables correspond to types of legal services and are weighted according to the amount of work each type of service generally requires. To calculate the federal contribution, data from the IRB and the FCC are

⁵ This evaluation covers only the legal aid portion of AJAs. The Aboriginal Courtwork Program, the Public Legal Education and Information services, and the agreements themselves are evaluated separately.

⁶ It should be noted that non-participating jurisdictions are free to formally “opt-in” to the delivery of I&R legal aid services and are eligible to receive a share of federal support in the year following the provision of written notice to the federal government (Department of Justice Canada, 2007).

used. Participating jurisdictions report the number of certificates/referrals issued each year according to the seven variables and their annual expenditures on I&R legal aid.

2.2.3. Management of Court-Ordered Counsel in Federal Prosecutions

In federal prosecutions that involve complex legal issues, serious charges, and a strong likelihood of incarceration if convicted, the court can order the Attorney General of Canada to fund counsel for unrepresented individuals who do not qualify for legal aid. The court can make this order if it determines that the accused's right to a fair trial under sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* would be impaired if counsel were not appointed. COCFP primarily applies to federal CDSA prosecutions. When counsel is ordered, the court will enter a stay of proceedings until counsel is obtained.

The provinces and territories access funds for COCFP cases through the criminal legal aid agreements. The LAP covers 100% of the fees and disbursements and provides an additional 15% administration fee. The legal aid plans manage the cases under the COCFP, using their legal aid tariff structure. COCFP is based on constitutional requirements, which means that counsel must be provided for the case to proceed. Therefore, if a legal aid plan does not agree to manage a COCFP case, Justice will directly administer and manage the provision of legal counsel.

2.2.4. Public Security and Anti-Terrorism Legal Aid

In response to the events of September 11, 2001, the Government of Canada announced the PSAT Initiative, which funded activities to enhance the government's efforts in public safety, border security, and anti-terrorism. As part of this initiative, Justice received funding to respond to an expected increase in demand for legal services, of which one area was legal aid for the economically disadvantaged accused affected by public safety and anti-terrorism initiatives. The federal government provides funds separately from the criminal legal aid agreements to cover the costs of PSAT-related legal aid services to respond to the complexity and anticipated cost of mounting a defence in these cases.

The provision of PSAT legal aid is managed by the jurisdictions through case-by-case contribution agreements under which legal aid plans are fully reimbursed for legal aid costs related to:

- charges laid under the *Anti-terrorism Act* or such other public security and anti-terrorism legislation that may be enacted by Parliament;

- security certificates issued under the IRPA; and
- proceedings under the *Extradition Act* where the requesting state alleges the commission of a terrorist act.

2.2.5. Federal-Provincial-Territorial Permanent Working Group on Legal Aid

The 1996–2001 criminal legal aid agreements established the FPT PWG on Legal Aid to provide “a forum for negotiations of contribution agreements, as well as policy and legal discussions related to legal aid” (Department of Justice Canada, 2010c). Under the terms of the contribution agreements, the FPT PWG has a wide-ranging mandate that includes:

- serving as a resource on legal aid legislation, policies, programs, and issues;
- providing advice on legal aid cost-sharing issues;
- advising on the potential impact of legislative or policy proposals on legal aid, legal aid clients, and disadvantaged persons generally;
- developing possible approaches and undertaking research to support the provision of legal aid;
- identifying ways to improve the quality, cost or delivery of legal aid by reforming areas of law, justice policy, or legal aid itself;
- establishing working relationships at various levels to disseminate information and advice about matters under consideration by the FPT PWG or initiatives that would improve the quality or reduce the cost of legal aid; and
- involving non-governmental organization representatives in consultation on initiatives that involve or could affect legal aid.

The FPT PWG includes representatives from the federal, provincial and territorial governments, as well as representatives from those bodies delivering legal aid services in each jurisdiction, and is chaired jointly by a Justice representative and a P/T representative. The federal LAP provides secretariat support for the FPT PWG and undertakes research and policy development activities that complement the policy discussions of the FPT PWG, which is ultimately accountable to the FPT Deputy Ministers Responsible for Justice.

2.3. Program Logic

The logic model on the following page (Table 1) shows the activities of each component of the LAP. These produce a range of outputs that are largely the responsibility of the federal government, although some require the input and agreement of the provinces and territories (e.g., contribution agreements). Immediate outcomes primarily focus on the enhanced capacity to deliver legal aid services that federal funding is expected to provide. Intermediate outcomes focus on the federal role in contributing to the availability of legal aid. The ultimate outcome links the LAP to Justice’s second strategic outcome: “Canada-wide legal systems that are efficient, fair, relevant and accessible, and that promote public confidence in access to justice”. This evaluation focuses on the extent to which activities and outputs have supported the achievement of the LAP’s intended outcomes.

Table 1: Legal Aid Program Logic Model

Components	Activities	Outputs	Immediate outcomes (capacity)	Intermediate outcomes (implementation)	Ultimate outcomes (benefits)
Base funding	<ul style="list-style-type: none"> • Policy development • Collaboration • Negotiation • Claims processing • Payments • Monitoring • Research 	<ul style="list-style-type: none"> • Agreements • Claims • Payments • Statistics and findings • Research plan • Meetings 	Enhanced capacity of provinces/territories (PTs) and their legal aid plans to deliver criminal legal aid services to eligible persons and civil legal aid services in the territories	PTs provide legal aid to eligible persons respecting the rule of law	Canada-wide legal systems that are efficient, fair, relevant and accessible, and that promote public confidence in access to justice
Immigration and Refugee (I&R) legal aid	<ul style="list-style-type: none"> • Collaboration • Negotiation • Claims processing • Payments • Monitoring • Research 	<ul style="list-style-type: none"> • Agreements with I&R provisions • Claims • Payments • Statistics and findings 	Enhanced capacity of provinces and their legal aid plans with I&R agreements to deliver I&R legal aid services to eligible persons	PTs provide I&R legal aid to eligible persons; cost avoidance for Justice and CIC	
Court-Ordered Counsel in Federal Prosecutions (COCFP)	<ul style="list-style-type: none"> • Policy development • Collaboration • Negotiation • Claims processing • Payments • Monitoring 	<ul style="list-style-type: none"> • Agreements for COCFP cases • COCFP cases managed • Payments 	Enhanced capacity to provide funded counsel in federal prosecutions, pursuant to court orders, through PT legal aid entities	PTs provide counsel to defendants; cases proceed; cost avoidance for Justice; Justice manages legal counsel	
Public Security and Anti-terrorism (PSAT) legal aid	<ul style="list-style-type: none"> • Policy development • Negotiation • Claims processing • Payments • Monitoring 	<ul style="list-style-type: none"> • PSAT agreements • PSAT cases managed • Payments 	Enhanced capacity to provide funded counsel in federal prosecutions, through PT legal aid entities, for PSAT cases	PTs provide counsel to persons affected by PSAT initiatives; cases proceed; integrity of prosecutions is maintained	
Federal-Provincial-Territorial Permanent Working Group (FPT PWG)	<ul style="list-style-type: none"> • Secretariat services • Coordination of meetings and follow-up activities • Research • Policy development 	<ul style="list-style-type: none"> • FPT PWG meetings and teleconferences • Conference documents • Policy papers • Business case 	More information sharing and networking enabled among all jurisdictions and the federal government	Collaborative federal policy development related to legal aid matters that is reflective of PT considerations	

Source: Department of Justice Canada (2007), with modifications to include civil legal aid in the territories.

2.4. Program Resources

This section describes the current funding for the LAP and places the federal role in funding legal aid in its larger policy context.

In 1972-73, the federal government introduced cost-sharing for delivery of criminal legal aid through the *Federal-Provincial Agreement on Legal Aid in Criminal Matters*. From 1972-73 to 1990, the federal government contributed approximately half of the cost of delivering criminal legal aid in each jurisdiction. In the early 1990s, as part of government-wide efforts to reduce the Canadian budget deficit, cost containment measures were instituted, which saw the federal contribution to legal aid level off, then decline (Department of Justice Canada, 2001).

In 2000, the federal government introduced the two-year Legal Aid Project consisting of two components: \$10 million in annual interim funding; and a research program, which funded projects aimed at improving understanding of legal aid needs. The initiative was designed to relieve financial pressures on legal aid plans and to increase understanding of unmet needs in various areas of legal aid (Department of Justice Canada, 2006). Citing “significant cost increases” (Department of Finance Canada, 2003) in the delivery of legal aid, Budget 2003 announced additional funding for legal aid through the Legal Aid Renewal Strategy, the development of which had been informed by research findings from the Legal Aid Project (Department of Justice Canada, 2006). Running from 2003-04 to 2006-07,⁷ the objective of the Legal Aid Renewal Strategy was to work with the provinces and territories to “improve access to legal aid services, promote innovative approaches to address unmet legal aid needs, and to support policy development in the area of legal aid” (Department of Justice Canada, 2006).

Budget 2007 stabilized federal support for legal aid by permanently adding \$30 million to annual base funding for adult and youth criminal legal aid in the provinces, and criminal and civil legal aid in the territories (Department of Justice Canada, 2007). These resources include \$10 million provided as interim funding since fiscal year 2001-02, as well as \$20 million provided through the Legal Aid Renewal Strategy since 2003-04. This decision stabilized what had been considered temporary resources, and represented an increase in permanent funding. As a result, the overall federal contribution to legal aid has remained at \$111.9 million since 2003-04. In 2007-08, the provinces and territories signed two-year, rather than five-year, agreements. Since then, the agreements, which expired on March 31, 2009, have been extended by one-year increments.

⁷ The Strategy was originally funded for a three-year period from fiscal years 2003-04 to 2005-06, but funding was extended to an additional fiscal year (i.e., 2006-07) (Department of Justice Canada, 2006).

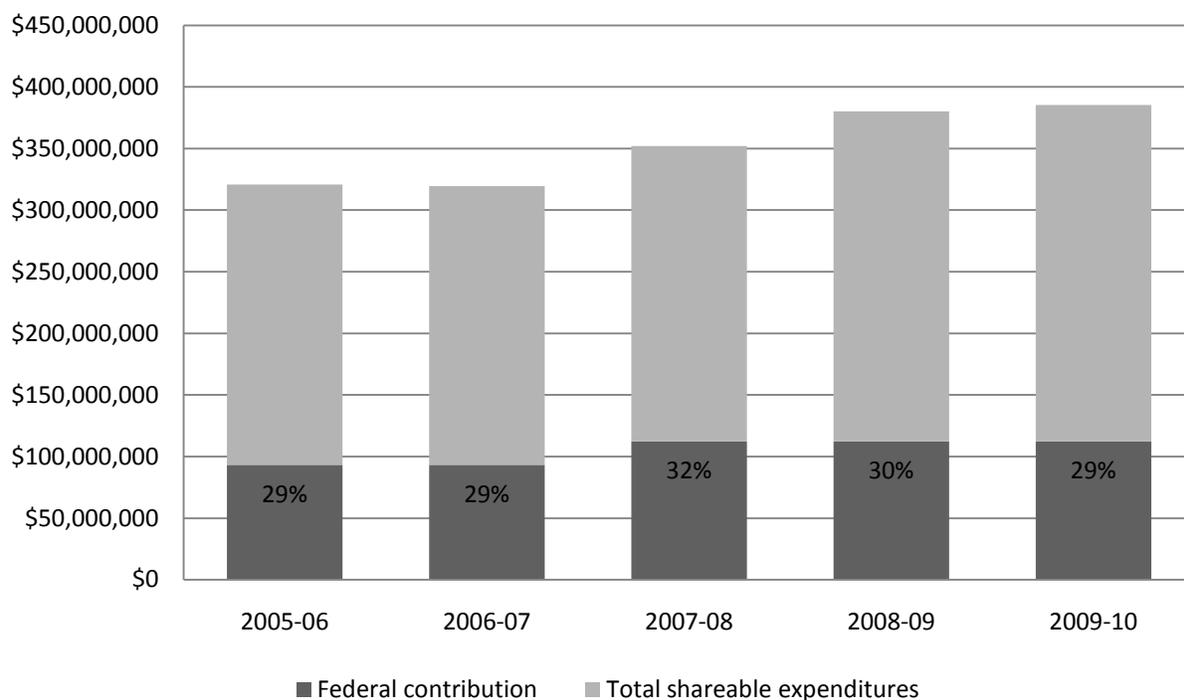
Table 2 shows the resources for the LAP for the period covered by the evaluation (2006-07 to 2010-11). For fiscal years 2009-10 and 2010-11, additional I&R funds were provided in response to a rapid influx of refugee claimants.

Table 2: Resources for federal Legal Aid Program (in millions of \$)

Funding components	2006-07	2007-08	2008-09	2009-10	2010-11
Base funding	81.90	111.90	111.90	111.90	111.90
• Criminal legal aid base	10.00	Previously interim funding, these resources were added to the base funding component.			
• Investment fund	20.00				
I&R	11.50	11.50	11.50	11.50	11.50
• Additional	0	0	0	6.00	4.75
COCFP (to legal aid plans)	1.65	1.65	1.65	1.65	1.65
PSAT	2.00	2.00	2.00	2.00	2.00
Total – Vote 5 (Contributions)	127.05	127.05	127.05	133.05	131.8
Policy development	0.75	0.75	0.75	0.75	0.75
Research	0.26	0.26	0.26	0.26	0.26
COCFP (for federal administration)	0.10	0.10	0.10	0.10	0.10
Total – Vote 1 (Operations and maintenance)	1.11	1.11	1.11	1.11	1.11
Grand total (Vote 1 and 5)	128.16	128.16	128.16	134.16	132.91

The total shareable expenditures for criminal legal aid in the provinces and territories and civil legal aid in the territories were \$385.3 million in 2009-10. As Figure 1 demonstrates, even with the consolidation of the interim funds into the base in 2007-08, over time, the federal contribution as a proportion of total shareable expenditures has been relatively stable since 2005-06.

Figure 1: Federal contribution as a percentage of total shareable expenditures



Source: Operations Directorate / Program Branch data

The allocation of the federal contribution by province and territory under the terms of the current contribution agreements is set out in Table 3 and Table 4.

Table 3: Annual base funding allocation of the federal contribution for criminal legal aid to the provinces (in millions of \$)

Provinces	Federal allocation
Newfoundland and Labrador	2.04
Prince Edward Island	0.44
Nova Scotia	3.61
New Brunswick	2.45
Quebec	23.40
Ontario	43.31
Manitoba	4.74
Saskatchewan	4.20
Alberta	10.42
British Columbia	13.70
Total Contribution	108.31

Table 4: Annual base funding allocation of the federal contribution for civil and criminal legal aid to the territories (in millions of \$)

Territories	Federal allocation
Yukon	0.86
Northwest Territories	1.70
Nunavut	1.02
Total Contribution	3.58

Note: An additional \$0.47 M in funding for new program costs when Nunavut was created is included in the Nunavut allocation. This funding is not provided through the LAP.

3. METHODOLOGY

This section of the report describes the methodology used to conduct the evaluation of the LAP.

3.1. Evaluation Framework

The evaluation framework was based on the 2009 Legal Aid Program Impact Evaluation Design and the 2007 ARAF for the LAP. The approach was developed in consultation with an Evaluation Advisory Committee consisting of federal and provincial representatives that served as a technical reference group for the evaluation.

3.2. Data Collection Methods

The evaluation methodology consisted of a document and file review, key informant interviews, and site visits with four jurisdictions. Data collection instruments used for the evaluation are included in Appendix A. Triangulation was used to verify and validate the findings obtained through these methods and to arrive at the overall evaluation findings.

3.2.1. Document and File Review

The document and file review provided contextual information on the LAP and responded to the evaluation questions on relevance, effectiveness, and efficiency and economy. The review began with a scan of documents on the LAP, legal aid in Canada, and the legal aid plans. The evaluation benefitted from the availability of administrative data, such as data found in annual reports of the legal aid plans as well as secondary sources. An on-site review of FPT PWG and LAP files was conducted early in the evaluation. The document and file review included the following categories of documents:

- federal program documents, including FPT PWG files from 2006-07 to 2010-11, LAP terms and conditions, and contribution agreements/access to justice agreements;
- documents from legal aid plans, such as annual reports, business plans, and evaluations/research studies;

- Justice research and evaluation reports; and
- statistics from secondary sources from 2005-06 to 2009-10, including the Canadian Centre for Justice Statistics' (CCJS) Legal Aid Survey, the Uniform Crime Reporting Survey, and the Integrated Criminal Court Survey.

3.2.2. Key Informant Interviews

In-depth key informant interviews provided insights into evaluation questions on the relevance of the LAP and its performance, particularly its effectiveness and efficiency in achieving its intended outcomes of enhanced capacity to provide legal aid. For this evaluation, interviews were the main line of evidence and were used to obtain the opinions of those directly involved in the components of the LAP and other relevant stakeholders on the relevance and performance of the LAP, as well as context for understanding the quantitative data on legal aid.

A total of 36 individuals were interviewed, including:

- P/T representatives on the FPT PWG (n=7);
- Legal aid plan representatives on the FPT PWG (n=10);
- Justice representatives, including members of the Legal Aid Directorate and Programs Branch (n=12); and
- Other federal representatives: CIC (n=5), IRB (n=1), and Public Prosecution Service of Canada (PPSC) (n=1).

The interviews were conducted using semi-structured interview guides that included pre-determined, open-ended questions. The guides are attached in Appendix A. Key informants received the interview questions in advance, so they could provide considered responses. All members of the FPT PWG were interviewed either as a key informant or during the site visits (see Section 3.4).

Most key informants could not respond to questions concerning all five components of the LAP; for example, only the jurisdictions/legal aid plans that provide I&R legal aid or have had experience with PSAT cases could respond to those questions. Across the key informants, all components were covered.

The Legal Aid Directorate identified an initial list of potential interviewees. All individuals on the list received an initial communication from the Directorate that explained the purpose of the

evaluation and invited them to participate in an interview. The interviews were conducted by telephone in the preferred official language of interviewees.

To respect the anonymity of respondents, interview results are usually reported in aggregate rather than by category of respondent.

3.2.3. Site Visits

The evaluation included site visits in Alberta, Manitoba, Ontario and Nova Scotia. From these visits, additional information on these legal aid plans was collected, thereby enabling the evaluation to provide examples using legal aid plan data for some key evaluation indicators. The site visits also included in-person interviews, additional to those described in Section 3.3, which provided information on the relevance of the LAP and its performance, particularly its effectiveness and efficiency in achieving its intended outcomes of enhanced capacity to provide legal aid.

The site visit locations were chosen based on the consent of the participating legal aid plans and provincial representatives and in consultation with Justice's Legal Aid Directorate. The sites provide geographic representation by including two eastern and two western jurisdictions as well as both large and smaller legal aid plans. They also represent a variety of delivery models: Alberta uses mostly a judicare model, where legal aid is provided by private lawyers on a certificate; Manitoba is a mixed system, with both judicare and staff lawyers; Ontario uses private lawyers as well as a legal aid clinic model; and Nova Scotia uses mostly staff lawyers.

Each site visit included interviews and a data review and lasted one to two days. To minimize the burden on legal aid plans, the data review involved discussing a list of potential data needs based on indicators in the evaluation matrix. The plans then provided information in the format most convenient for them. Interviews were held with representatives of legal aid plans and the provincial government, including the FPT PWG members from that jurisdiction. FPT PWG members were asked to identify additional legal aid plan and provincial representatives for interviews. Some formal interviews were conducted, as well as informal consultations on data availability and access. The distribution of interviews is listed below:

- Management staff of legal aid plans (including FPT PWG members, for a total of n=17); and
- Provincial representatives (including FPT PWG members, for a total of n=5).

The interviews were conducted using the same semi-structured guides that were developed for the key informant interviews. For those interviewees who could only address data needs, interviews were less formal and focused on issues related to data availability. For reporting purposes, the results of site visit and key informant interviews are combined.

3.2.4. Interviews with Criminal Justice Professionals

The evaluation also included interviews with criminal justice professionals (Provincial Court judges, prosecutors and defence counsel) in the four site visit jurisdictions. Interviews with criminal justice professionals were conducted to obtain information from those directly involved in criminal cases on whether there have been changes in the proportion of unrepresented accused, the causes for any changes, and the impact of unrepresented accused on the criminal justice system. The interviews gathered qualitative information on the role of legal aid funding in the accessibility of legal aid, which is a key outcome measure for the LAP.

The evaluation targeted four individuals for each category, for a total of 48 interviews. In one jurisdiction, Provincial Court judges declined to participate, while a fifth defence counsel interview was conducted in another jurisdiction. As a result, 45 interviews with justice professionals were completed as part of the evaluation. Table 5 presents the distribution of the completed interviews.

Table 5: Interviews with criminal justice professionals

Category	Province A	Province B	Province C	Province D	Total
Judges	4	Declined	4	4	12
Crown	4	4	4	4	16
Defence counsel	4	4	5	4	17
Total	12	8	13	12	45

Protocols were developed for each group and included an initial letter from the Legal Aid Directorate describing the study and seeking any necessary permission. Chief Judges identified Provincial Court colleagues willing to be interviewed, provincial justice ministries and/or Head Crowns identified prosecutors, and legal aid plans identified defence counsel. The interviews were conducted by telephone and used the semi-structured interview guides that are in Appendix A. Interviews held with criminal justice professionals are reported separately from site visit and key informant interviews.

3.3. Limitations

The evaluation faced some methodological limitations. These are listed below, including any mitigation strategies undertaken.

Few lines of evidence were available. The evaluation relies on findings from available documents and the interviews. The possibility of obtaining legal aid plan and court data to support comparison of costs and outcomes of criminal cases with a legal aid certificate versus criminal cases, for which applicants have been denied a certificate based on financial ineligibility, was explored but was not feasible within the budget and timelines of the evaluation. As a result, qualitative evidence remains the primary source of information on legal aid outcomes.

To mitigate this limitation, although still qualitative data, the evaluation incorporated interviews with criminal justice professionals (judges, Crown prosecutors and defence counsel) to provide information on frontline experience with unrepresented accused. In addition, the evaluation conducted a comprehensive review of legal aid annual reports and the national compilation of legal aid data, incorporating this quantitative information where relevant.

Consistent national legal aid data are not available. The data in the national Legal Aid Survey compiled by Statistics Canada have several limitations. Most significantly, jurisdictions report on some information using different measures, and others cannot support the data collection necessary for inclusion in the national reports.

The site visits included efforts to obtain additional information that would be comparable across the site visit legal aid plans. However, it was beyond the scope of the evaluation to require plans to produce information that was not readily available. As a result, the information obtained was not entirely consistent between sites. Given the variety in the delivery methods across the country, consistent legal aid data may not be possible in every circumstance, but some issues could be addressed by developing agreed upon performance measures that can be tracked over time. This related but separate issue is addressed next.

Performance data are not being consistently recorded and some indicators are not well defined. In the 2007 ARAF, Justice concluded that “improved performance reporting is necessary to enable a better assessment of the outcomes of the legal aid program and the adequacy of the federal resources allocated to it.” Steps identified in the ARAF for improving performance measurement included developing performance measures agreed to by the FPT

PWG, and federal funding to support ongoing data collection and analysis. These steps should enable future evaluations to have more consistent and available quantitative data.

Currently, the identified performance measures seem fairly straightforward (e.g., number of people served) but can be complicated by different methods of measuring service. For example, some plans track number of individuals served, while others track units of service, which may mean that one individual receives multiple units of service. Other measures are not defined or are unclear, such as “cost avoidance”, “quality of agreements”, or capacity to deliver. Some measures are not well aligned with the intended outcomes. For example, an intermediate outcome that legal aid is provided to eligible persons includes indicators related to satisfaction and quality of service. These indicators go beyond the basic provision of legal aid and would mean evaluating the legal aid plans’ service delivery, which is outside the scope of this evaluation.

Finally, potentially useful measures that could provide a more complete picture of whether the federal contribution is enhancing service capacity were not readily available at the time of the evaluation, such as the complexity of legal aid cases or the effects of federal legislation on the demand for and cost of legal aid. Making these measures available would benefit future evaluations, and any review of the LAP performance measurement strategy should be mindful of this limitation.

Identifying provincial contacts beyond the FPT PWG members. The interviews relied extensively on FPT PWG members, which limited the range of opinion to stakeholders with a direct interest in the evaluation findings. The site visits were the mitigating strategy to obtain feedback from additional individuals with knowledge of legal aid in their jurisdiction. Although these visits were successful in obtaining information from additional contacts within legal aid plans, additional provincial representatives with sufficient knowledge to address the evaluation questions could not be identified. Therefore, the range of opinion for key informant interviews is potentially limited.

4. FINDINGS

This section of the report summarizes the findings from all data collection activities completed as part of the evaluation. The structure aligns with the Treasury Board core evaluation issues of relevance and performance.

4.1. Relevance

The evaluation considered the relevance of the LAP with respect to the alignment of the LAP with federal and departmental priorities, the role of the federal government in the provision of legal aid, and the ongoing need for legal aid.

4.1.1. Continued Need for the LAP

The evaluation evidence confirms that the LAP components address a demonstrable need and are responsive to the needs of Canadians. The most obvious measure of need is the continued demand for legal aid, as measured by the number of applications. For most of the LAP components, the demand has increased or remained at consistent levels since 2005-06.

As the rationale for federal contribution funding for legal aid is based on constitutional and Charter obligations, the LAP continues to serve the public interest and need as long as there are economically disadvantaged accused facing the likelihood of incarceration. The increasing demand for legal aid provides evidence of this continued need. In addition, legal aid is seen as assisting many individuals who are economically and socially marginalized, vulnerable and less likely to be able to navigate the criminal justice system, such as homeless people, Aboriginal people, individuals with mental illness, and immigrants and refugees. Available data demonstrate that many of these individuals are disproportionately represented in the criminal justice system (Novac, Hermer, Paradis & Kellen, 2009; Perreault, 2009; Sinha, 2009).

Base Funding

The number of applications for criminal legal aid increased by approximately 6% between 2005-06 and 2009-10, from 320,647 to 338,593 (Statistics Canada, 2011a).

Socio-economic factors in the territories were seen as driving the need for civil legal aid. However, assessing trends in the expenditures and number of applications for civil legal aid in the territories was difficult due to data availability and given the small number of files handled by each territory, statistics can skew fairly quickly and significantly.

CCJS data on the number of civil legal aid applications in the territories indicated that applications in the Northwest Territories decreased 7% between 2005-06 and 2009-10. The number of applications in Yukon remained relatively steady from 2006-07 to 2008-09, and experienced a 19% decrease between 2008-09 and 2009-10. The Yukon Legal Services Society continues to monitor whether this reduction was a statistical anomaly. Reliable applications data from Nunavut were not consistently available during the time period studied (Statistics Canada, 2011a).

To put these figures into a broader context, some key informants noted that when available resources do not cover legal aid costs, civil legal aid is affected first due to the constitutional requirements with respect to criminal legal aid. This possibility is supported by the increasing proportion of territorial legal aid costs directed to criminal matters between 2005-06 and 2009-10 (Statistics Canada, 2011a).

I&R Legal Aid

Demand for I&R legal aid was reported to be unpredictable from year to year, but has generally increased based on available data. This was reflected in the jurisdictions that provided this data⁸. Key informants indicated that demand for I&R legal aid fluctuates from year to year, making it difficult to predict the level of resources required. Demand is affected by international events (wars, natural disasters) that bring more immigrants and refugees to Canada, as well as federal government actions (e.g., visa impositions, management of marine arrivals).

In Alberta, the number of applications for I&R legal aid rose from 835 in 2005-06 to 1,625 in 2009-10, an increase of over 90%. Similarly, British Columbia saw applications increase over 90% from 1,034 in 2005-06 to 2,024 in 2009-10. Manitoba experienced a 76% increase from 97 applications in 2005-06 to 171 in 2009-10. Applications in Quebec rose 47% from 5,256 in 2005-06 to 7,724 in 2009-10. Ontario experienced relatively modest increase in applications of 15% from 12,576 applications in 2005-06 to 14,502 applications in 2009-10. Figure 2 shows the percentage change in the number of I&R applications from year to year, which demonstrates the

⁸ I&R legal aid data were not available for Newfoundland and Labrador.

volatility of demand, while Figure 3 shows the number of applications by each fiscal year and reflects the overall increase in demand since 2005-06.

Figure 2: Annual percentage change in I&R legal aid applications

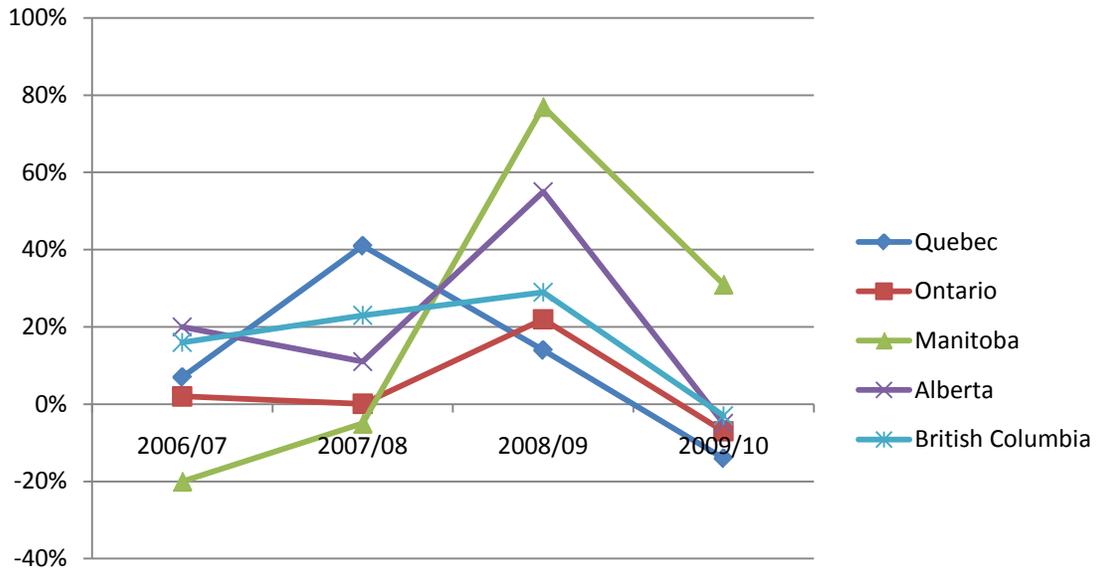
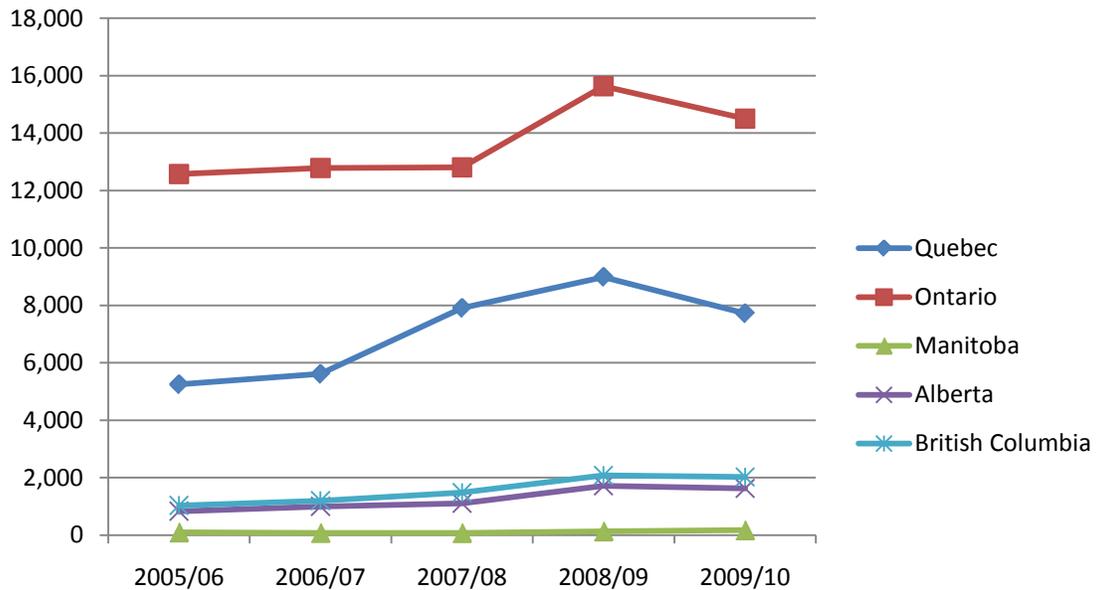


Figure 3: Number of I&R legal aid applications 2005-06 to 2009-10



Source: Legal aid plan data

COCFP and PSAT

The number of COCFP and PSAT cases is relatively small in comparison to the other LAP components. However, the number of cases receiving federal funds has increased during the 2005-06 to 2009-10 period, from 15 to 39 for COCFP and from 6 to 18 for PSAT.

Continued Public Support for Legal Aid

Legal aid is also responsive to the needs of Canadians, as recent public opinion surveys confirm Canadians' continued support for legal aid:

- Canadians strongly support access to justice (93% in 2008 and 97% in 2011 said it is very or somewhat important that people charged with a crime have legal representation) and believe that legal representation is necessary for a fair trial (over 90% in 2008 and 2011 strongly or somewhat agree).
- Canadians' confidence in the justice system is linked to the existence of legal aid (82% in 2008 and 86% in 2011 feel more confidence in the system knowing that legal aid is available).
- Canadians support public spending on legal aid, and the level of support has increased between 2008 and 2011 (almost 80% in 2008 and 88% in 2011 said it is very or somewhat important) (Department of Justice Canada, 2008a; Department of Justice Canada, 2011).

4.1.2. The Role of the Federal Government in the Provision of Legal Aid

Base Funding

The basis for the federal role in the provision of legal aid is found in Canada's foundational documents. Under the *Constitution Act*, criminal justice is an area of shared responsibility between the federal, provincial and territorial governments. The federal government has authority for criminal law-making, criminal procedure and penitentiaries, while the provinces and territories are responsible for the administration of justice and reformatories. The federal government respects this division of authority by contributing to the funding for criminal legal aid while leaving its delivery to the provinces and territories.

The federal government provides funding through the LAP for criminal legal aid in the provinces and criminal and civil legal aid in the territories. Through this cost-sharing approach, the federal

government recognizes the role its legislation plays in affecting demand for and cost of legal aid services.

The federal involvement in legal aid promotes equitable access to the justice system by providing funding for legal representation for individuals who are economically disadvantaged. Equitable access to justice is a core value of Canada as reflected in the *Canadian Charter of Rights and Freedoms*. In particular, sections 7, 10(b) and 11(d) of the Charter have been interpreted by the courts to establish a limited right to counsel in criminal matters. Although these provisions do not create a constitutional requirement that the government provide criminal legal aid in all cases, they do link legal representation to the notion of fairness.

I&R Legal Aid

The role of the federal government in I&R matters is defined in section 95 of the *Constitution Act, 1867*. Although jurisdiction over these matters is constitutionally shared between the federal government and provinces/territories, in the case of conflict, federal laws prevail.

Under this division of responsibilities, enforcement of I&R matters is conducted by federal authorities, namely CIC, and adjudication occurs through the federal IRB. In contrast to criminal law, where the federal government is responsible for law-making and the provinces/territories are responsible for the administration of justice, in I&R matters, the federal government is responsible for both law-making and the administration of justice (Frecker et al., 2002). Consequently, the federal government has a shared responsibility with respect to providing funding for I&R legal aid services.

COCFP

The Ontario Court of Appeal, in *R. v. Rowbotham*, found that sections 7 and 11(d) of the Charter create a right to counsel if necessary for a fair trial, and that in federally prosecuted cases the court can order federally funded counsel in situations where an accused cannot afford counsel but is not eligible for legal aid, and where the proceedings are complex and there is a likelihood of imprisonment. This decision has been cited and applied in every jurisdiction in Canada. The COCFP mechanism is used to address these funding orders and represents a federal role in these cases.

4.1.3. Alignment of the LAP with Federal and Departmental Priorities

The evaluation found alignment among the stated legal aid priorities of federal, provincial, and territorial governments, as well as legal aid plans. All interviewees described access to justice as the core objective for legal aid.

Alignment with Government Priorities

Legal aid also contributes to the effective functioning of the criminal justice system by upholding Canada's commitment to fairness and the rule of law. This supports the federal government's criminal justice agenda, as stated in the 2010 Speech from the Throne: "Our communities are built on rule of law", and while those who commit crimes must be held accountable, "Canadians want a justice system that delivers justice. We know we can protect ourselves without compromising the values that define our country" (Governor General of Canada, 2010).

Moreover, Canada has demonstrated its view of the importance of legal aid to democratic values by signing the *International Covenant on Civil and Political Rights*, which requires signatories to provide legal counsel to individuals facing criminal charges who cannot afford their own counsel. Agreements such as this are evidence of the federal commitment to legal aid.

Alignment with Departmental Priorities

For criminal legal aid, that priority is a necessity, given Charter obligations and international commitments, and Justice makes that priority explicit with its strategic outcome of a "fair, relevant, and accessible justice system that reflects Canadian values" (Department of Justice Canada, 2010c).

4.2. Performance – Effectiveness

This section addresses the effectiveness of each component of the LAP in achieving the expected outcomes identified in the logic model. Each component of the LAP is considered separately.

4.2.1. Base Funding

The LAP has identified the expected outcomes for the base funding as the enhanced capacity of provinces and territories and their legal aid plans to deliver criminal legal aid (and civil legal aid in the territories), and the provision of legal aid to eligible persons. These outcomes are supported by the terms and conditions of the contribution agreements, which state that provinces

and territories are to ensure that all reasonable efforts are undertaken to make counsel available to eligible persons, including young persons, who exercise their right to counsel on arrest or detention.

Priority areas for coverage include offences where there is reasonable likelihood that, if convicted, there would be a sentence of open or closed custody or imprisonment. For civil legal aid in the territories, there is a similar commitment to ensure that civil legal aid is provided to eligible persons. The evaluation evidence shows continued availability of criminal legal aid in the provinces and territories and civil legal aid in the territories, although all lines of evidence also indicate several stressors on the legal aid system that affect its accessibility.

4.2.1.1 Enhanced Capacity of P/Ts and their Legal Aid Plans to Deliver Legal Aid

Without the federal contribution to total shareable expenditures, the capacity of the provinces and territories to deliver criminal legal aid in the provinces and criminal and civil legal aid in the territories would be significantly affected. Key informants from the jurisdictions acknowledged the importance of the base funding component to supporting legal aid.

In general, the smallest jurisdictions were more positive about the level of base funding meeting the priorities of legal aid because for them, the base funding represents a higher proportion of total funding. For a few jurisdictions, the federal contribution represents over 50% of their shareable expenditures, while for most, one-third to one-quarter of their expenditures are shared by the federal government.

4.2.1.2 Provision of Legal Aid to Eligible Persons Respecting the Rule of Law

Legal aid plans have continued to provide legal aid to eligible persons and have responded to increased demand for their services.

Number of Approved Applications

An indication of the increase in the provision of legal aid is the 8% increase in the number of applications approved for full service certificates between 2005-06 and 2009-10 (Statistics Canada, 2011a). However, full service certificates are only one type of service provided by most legal aid plans.

Many legal aid plans are expanding service delivery in other areas, such as duty counsel and brief services, in order to address client needs better and provide more cost-efficient services. To

gauge the demand for legal aid more accurately, data was gathered from the four site visit jurisdictions on the number of clients assisted between 2005-06 and 2009-10. The percentage increases during this period generally demonstrate that duty counsel services constitute a large and growing proportion of legal aid plan service in criminal law. Details are provided below and in Appendix B. The data show some fluctuations in demand, but an overall increase in client assists for the four legal aid plans where site visits were conducted.

- Legal Aid Ontario has had a 22% increase in client assists overall. The number of full service applications approved has fluctuated, but in 2009-10 was 4% lower than 2005-06 levels; duty counsel units of service have increased by 24%, including Brydges⁹ duty counsel.
- Legal Aid Manitoba has had an overall increase of 6% in client assists. The number of certificates and duty counsel assists has fluctuated during the time period with certificates increasing by 22% between 2005-06 and 2009-10, and duty counsel assists declining by less than 1%.
- Legal Aid Alberta has had a 36% increase in client assists overall. There was a 5% increase in full service certificates and a 44% increase in duty counsel services, including Brydges duty counsel; the number of law line assists and opinion certificates declined.
- Nova Scotia Legal Aid Commission has had a 50% overall increase, including a 37% increase in full and summary service certificates and a 63% increase in duty counsel services, including Brydges duty counsel.¹⁰

Nationally, there has been approximately a 10% increase in duty counsel services between 2006-07 and 2009-10, the years for which data are available (Statistics Canada, 2011a).¹¹

The above data show that legal aid plans have been able to address the rising demand over the last five years, which is a measure of enhanced capacity and demonstrates the provision of legal aid to eligible people—the immediate and intermediate outcomes of LAP, respectively.

Key informants credited legal aid plan efforts to provide more cost-effective services through duty counsel and expanded duty counsel. However, there have been signs of strain. For example, British Columbia has had to shut offices and lay off staff. In addition, it stopped providing

⁹ See Glossary of Legal Terms.

¹⁰ Nova Scotia counts assists in terms of the number of people receiving service as opposed to the number of units of service provided.

¹¹ Quebec and Prince Edward Island have not reported their volume of duty counsel services to Statistics Canada. Data for Nunavut are not available for 2007-08 and 2009-10. Data for Manitoba are not available for 2005-06.

assistance for administrative offences for a period of time, but this assistance has recently been restored.

Key informants believe that as provincial and territorial governments become less able to absorb the increased costs for legal aid, the plans may have to reduce services in the coming years. Factors identified as affecting the cost of and demand for legal aid are discussed below in subsection 4.2.1.3, Challenges.

Level of Financial Eligibility Guidelines Relative to Other Economic Measures

The financial eligibility guidelines establish the financial levels for assessing whether an individual is eligible for legal aid. Each legal aid plan has its own guidelines, which usually include maximum levels of income and assets for legal aid eligibility. For purposes of comparison between the financial eligibility guidelines and other economic indicators, the income levels were used. The comparison shows whether the income levels are keeping pace with increases in the consumer price index, wages, and Low Income Cut-offs (LICOs) as a way to demonstrate whether legal aid plan financial eligibility requirements are responding to the economic environment.

This comparison allows for an assessment of the achievement of one of the LAP's intended outcomes: enhanced capacity of P/Ts and their legal aid plans to deliver criminal legal aid services to eligible persons.

The evaluation found that many legal aid plans have been unable to adjust their financial eligibility guidelines. Although this reduces the pressure of increasing demand on legal aid plans, it also restricts the accessibility of legal aid. Earlier studies suggest that relatively low financial eligibility guidelines, such that many low-income individuals facing the likelihood of imprisonment can neither afford lawyers nor qualify for legal aid, can impact accessibility of legal aid.¹²

Comparing the financial eligibility guidelines to other economic measures places them in perspective. Figures 4 and 5 below compare the guidelines for family sizes of one and four to other economic measures between 2001 and 2010 for nine provinces and one territory.¹³ The two

¹² Earlier studies addressed the issue of financial eligibility guidelines, and their role in limiting accessibility to legal aid (Buckley, 2000, 2010; Department of Justice Canada, 2003; Trebilcock, 2008).

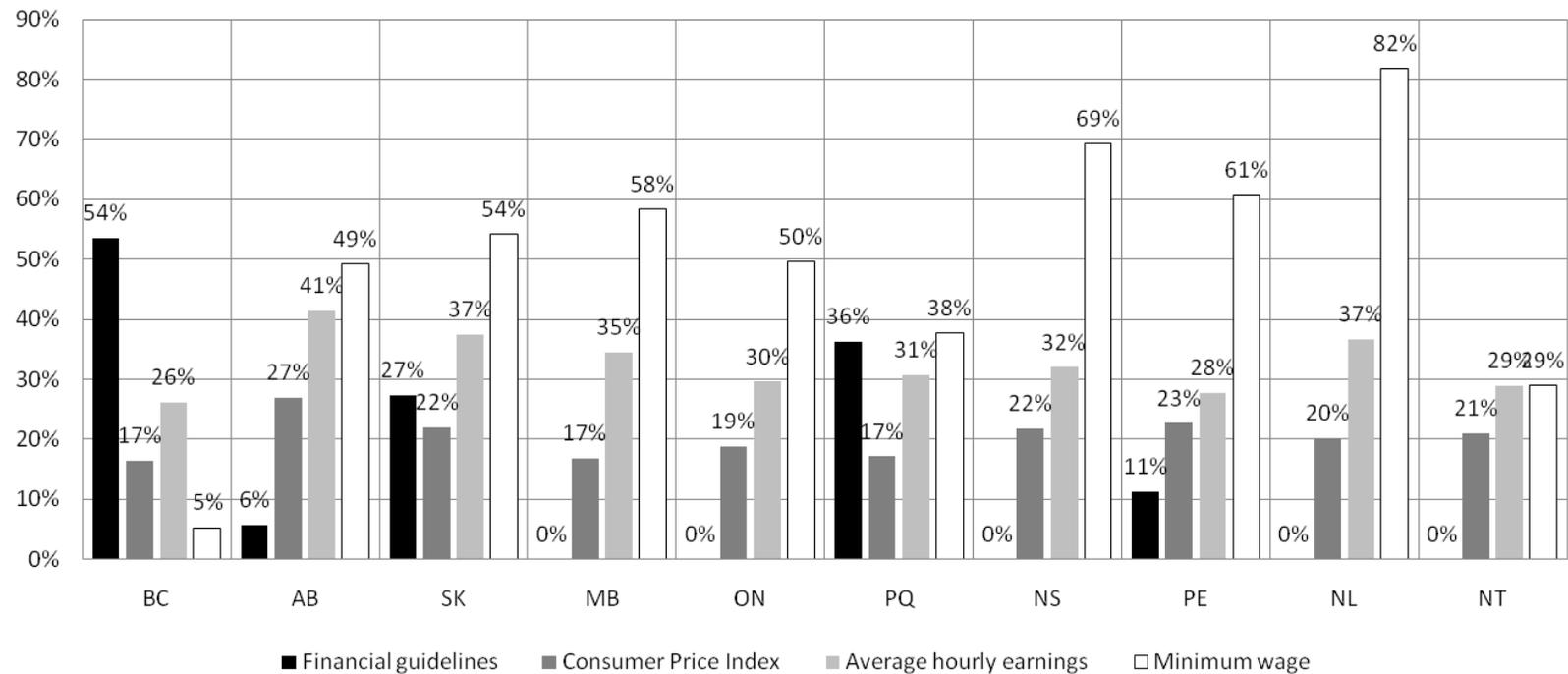
¹³ The financial eligibility guidelines were not available for New Brunswick and Nunavut. For Yukon, they were only available for 2010.

figures are presented to show how the differences are affected by family size, as legal aid financial eligibility guidelines are scaled based on family size. The main findings are:

- British Columbia is the only jurisdiction in which eligibility guidelines kept pace with or exceeded the provincial consumer price index and wage levels as measured by the minimum wage and fixed-weighted hourly earnings, often called real wages for family sizes of both one and four.
- Two provinces present more of a mixed picture. Eligibility guidelines in Quebec kept pace with consumer price index and wages for family size of one but not for family size of four. In contrast, Saskatchewan's guidelines for a family of four have kept pace with consumer price index and wages; however, for a single person, the guidelines have increased faster than the consumer price index, but not as fast as wages.
- Alberta and Prince Edward Island's guidelines have increased between 2001 and 2010, but not as fast as consumer price indexes and wages for family size of both one and four. Alberta increased its guidelines by 30% in 2008, only to reverse the increase in 2010 due to fiscal pressures. Recent provincial increases in the legal aid budget have enabled Alberta to recover 10% of the original 2008 increase, which is expected to have taken effect in the summer of 2011.
- Ontario, Manitoba, Nova Scotia, Newfoundland and Labrador, and the Northwest Territories have not increased their legal aid financial guidelines since 2001.

The methods used and assumptions made for the calculations appear in Appendix C.

Figure 4: Comparison of provincial/territorial financial eligibility guidelines to other economic measures - 2001 to 2010 percentage increase - family size of 1



Note: Provincial financial guidelines used for comparison are contribution amounts for family size = 1.

Note: Percentage change in the minimum wage was calculated as of its value on January 1, 2001 and December 31, 2010.

Note: The Statistics Canada Consumer Price Index for NT is for Yellowknife only.

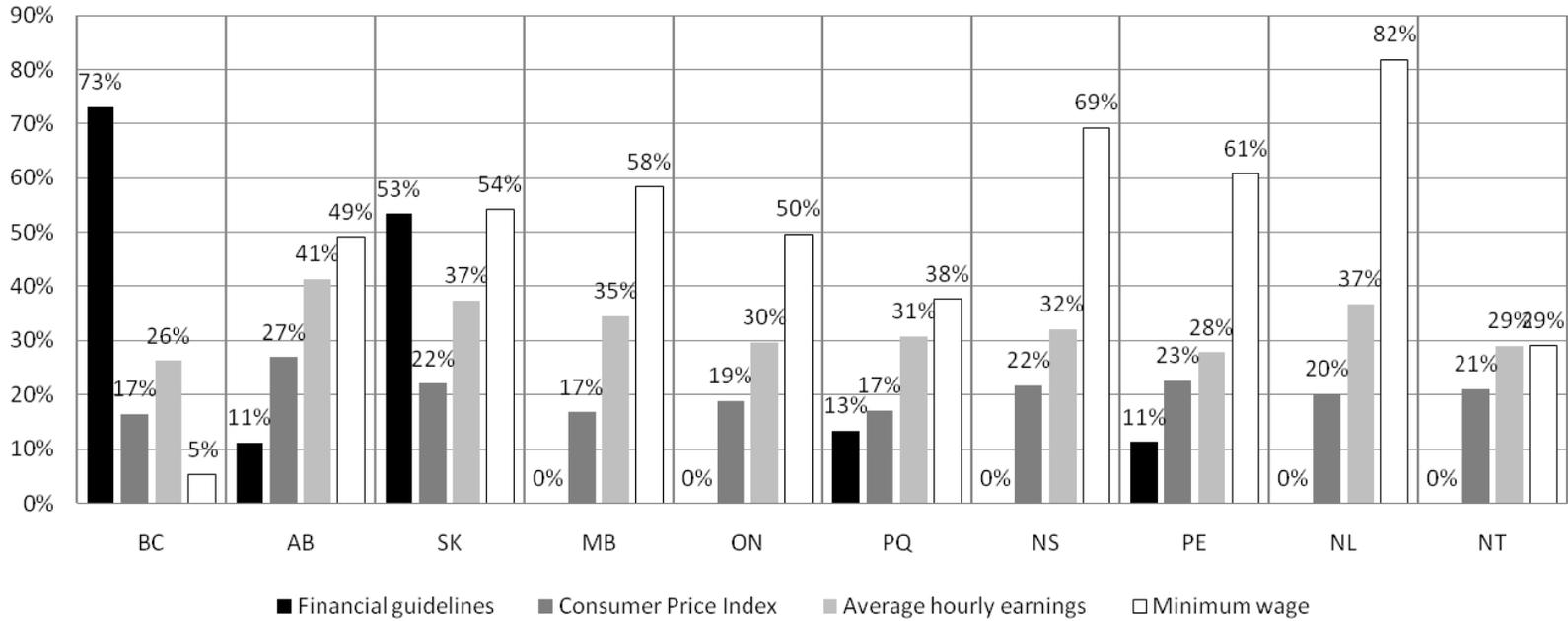
Note: The Statistics Canada average hourly earnings for NT includes NU and is only collected up to 2007.

Sources: Consumer Price Index: Statistics Canada. (2011b). Cansim II, Table 3260020

Fixed weighted average hourly earnings: Statistics Canada. (2011c). Cansim II, Table 2810039

Minimum wage: Human Resources and Skills Development Canada. (2009). Adult minimum wages in Canada. Retrieved April 21, 2011 from <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx?dec=5>

Figure 5: Comparison of provincial/territorial financial eligibility guidelines to other economic measures - 2001 to 2010 percentage increase - family size of 4



Note: Provincial financial guidelines used for comparison are contribution amounts for family size = 4.

Note: Percentage change in the minimum wage was calculated as of its value on January 1, 2001 and December 31, 2010.

Note: The Statistics Canada Consumer Price Index for NT is for Yellowknife only.

Note: The Statistics Canada average hourly earnings for NT includes NU and is only collected up to 2007.

Sources: Consumer Price Index: Statistics Canada. (2011b). Cansim II, Table 3260020

Fixed weighted average hourly earnings: Statistics Canada. (2011c). Cansim II, Table 2810039

Minimum wage: Human Resources and Skills Development Canada. (2009). Adult minimum wages in Canada. Retrieved April 21, 2011 from <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx?dec=5>

Another measure of the responsiveness of plans' financial eligibility guidelines to the economic situations of lower-income people is a comparison to the LICOs developed by Statistics Canada. According to Statistics Canada, "a LICO is an income threshold below which a family will likely devote a larger share [20% more] of its income to the necessities of food, shelter, and clothing than the average family." (Statistics Canada, Income Statistics Division, 2007). LICOs are based on the rationale that a family spending 20 percentage points more than the average would be in "straightened circumstances".

Table 6 compares the provincial legal aid financial eligibility guidelines to the 2001 and 2010 before tax LICOs. LICO measures are calculated based on year, family size and population. For each province and territory represented in Table 6, the guidelines are compared to the LICOs for all family sizes for the population of the largest city in the respective province.¹⁴

The percentages in Table 6 are the percentage difference between the financial eligibility guidelines and the LICOs. A negative percentage means that the financial eligibility guidelines are below the LICO by that percent. Conversely, a positive percentage means that the financial eligibility guidelines are above the LICO by that percent. If the percentage difference between the eligibility guidelines and the LICO becomes smaller between 2001 and 2010, the financial eligibility guidelines grew closer to the LICO and if the difference becomes larger, the financial eligibility guidelines grew further from the LICO. If the percentage difference shifts between 2001 and 2010 from negative to positive, the financial eligibility guidelines have changed from being below the LICO to above it.

The data show that some legal aid plans have reduced the difference between the LICOs and their financial eligibility guidelines, meaning that more families living under the LICO levels are eligible for legal aid. Over time, in British Columbia, Alberta, Saskatchewan and Quebec, the gap between the eligibility guidelines for most family sizes and the LICO levels has been reduced. For example: in 2001, a family of four in British Columbia had to have a household income 28% below the LICO level to be eligible for legal aid, while in 2010, to be eligible, the same family's income could be 5% above the LICO level; and in Saskatchewan in 2001, a family of four had to have a household income 50% below the LICO level to be eligible for legal aid, which in 2010 had been reduced to 35% below the LICO level.

¹⁴ For example, Alberta's guidelines are compared to the LICOs for populations of 500,000 people or more because Calgary and Edmonton both have estimated populations above 1 million people, whereas Saskatchewan's guidelines are compared to the LICOs for populations between 100,000 and 499,999 people because Saskatchewan's largest city (Saskatoon) has an estimated population of 265,000 people (City Population, 2011).

In Ontario, Manitoba, Nova Scotia and Newfoundland and Labrador, the eligibility guidelines are falling further behind the LICO levels, since the guidelines have not increased in those provinces between 2001 and 2010. Prince Edward Island increased its financial eligibility guidelines in 2008, but they were further below LICO levels than they were in 2001.

The financial eligibility guidelines for the Northwest Territories and Yukon are above LICO levels, with the exception of families of six or more in Yukon.

A comparison of the provincial guidelines to all relevant LICO population measures is presented in Appendix D.

Table 6: Percentage difference between provincial financial guidelines and LICOs* (1992 base)

Year		2001											
Pop.		500,000+					100,000-499,999		30,000-99,999		<30,000		
Prov.		BC	AB ²	MB	ON ³	PQ ⁴	SK ⁵	NS ⁶	PE ⁷	NL ⁸	NT ⁹	YK	
Family size	1	-29.5%	-26.9%	-26.3%	-43.2%	-43.7%	-40.2%	-21.8%	-12.8%	-70.1%	82.2%	-	
	2	-13.1%	-29.0%	-23.9%	-21.0%	-34.8%	-40.5%	-16.1%	-12.5%	-66.1%	77.3%	-	
	3	-18.5%	-22.3%	-20.9%	-26.8%	-37.2%	-48.5%	-18.2%	-11.5%	-70.8%	79.6%	-	
	4	-27.8%	-28.6%	-23.5%	-31.8%	-41.2%	-49.6%	-23.8%	-11.7%	-75.1%	58.8%	-	
	5	-30.1%	-27.8%	-22.6%	-33.3%	-	-47.8%	-25.0%	-	-76.6%	63.0%	-	
	6	-31.5%	-30.3%	-24.7%	-	-	-45.7%	-26.6%	-	-77.8%	55.7%	-	
	7+	-33.3%	-31.0%	-26.4%	-	-	-44.1%	-27.9%	-	-78.2%	59.0%	-	
	Year		2010 ¹										
		1	-9.1%	-21.6%	-38.1%	-52.3%	-35.5%	-36.0%	-34.3%	-18.5%	-74.9%	53.0%	19.7%
		2	4.1%	-20.3%	-36.1%	-33.7%	-26.3%	-	-29.6%	-18.2%	-71.6%	48.9%	26.4%
		3	7.2%	-8.9%	-33.6%	-38.5%	-33.8%	-	-31.3%	-17.3%	-75.5%	50.8%	24.1%
		4	4.9%	-21.0%	-35.8%	-42.8%	-44.1%	-35.1%	-36.0%	-17.5%	-79.1%	33.4%	13.0%
		5	8.8%	-25.5%	-35.0%	-44.0%	-	-	-37.0%	-18.0%	-80.4%	36.9%	7.2%
		6	13.4%	-28.1%	-36.8%	-	-	-	-38.3%	-	-81.3%	30.8%	-2.5%
	7+	17.1%	-	-38.2%	-	-	-	-39.4%	-	-81.7%	33.6%	-10.4%	

Note: Percentages calculated as [(Highest contribution level for size of family – LICO) / LICO] * 100

* BC, SK, QC, NL, NWT and YK were compared to after tax LICOs; MB, ON, NS, PE were compared to before tax LICOs; AB was compared to before tax LICOs in 2001 and to after tax LICOs in 2010, reflecting the changes in its financial eligibility requirements.

¹LICOs for 2010 were not available and were therefore calculated as $LICO_{2010} = LICO_{1992} \times CPI_{2010} / CPI_{1992}$ (Source: Statistics Canada. [2010]. Low income cut-offs. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

²For 2010, financial eligibility guidelines ranged from 1 to a family size of 6+.

³For 2001, financial eligibility guidelines ranged from 1 to a family size of 5+. For 2010, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴Quebec separates its eligibility guidelines by single and two parent families. The higher financial guideline was chosen for each calculation, which was the two parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵For 2001, guidelines were provided for families with number of children, where family was defined as one or two parent household. Family with 2 children was chosen for calculation. Ranged from single to family with 8 children. Only family sizes of 1 and 4 were provided for 2010.

⁶Nova Scotia separates its eligibility guidelines by single and two parent families. The higher financial guideline was chosen for each calculation, which was the two parent family guideline for each applicable family size.

⁷Financial eligibility guidelines ranged from 1 to a family size of 4.

⁸Newfoundland and Labrador separates its eligibility guidelines by single and two parent families. The higher financial guideline was chosen for each calculation, which was the two parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 6 children or more.

⁹The Northwest Territories separates its financial eligibility guidelines by zone in the territory. The middle level was chosen (Zone 5).

¹⁰Yukon separates its eligibility guidelines by single and two parent families. The higher financial guideline was chosen for each calculation, which was the two parent family guideline for each applicable family size. Financial eligibility guidelines for 2001 were not available for Yukon.

Source for LICOs: Statistics 2010 - Low income cut-offs (1992 base) before tax. Retrieved February 24, 2011 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm>

The effect of the level of the financial eligibility guidelines on the provision of criminal legal aid is difficult to assess. Even though many provinces have a growing gap between the legal aid financial eligibility guidelines and LICO levels, the percentage of criminal legal aid applications rejected for financial ineligibility between 2005-06 and 2009-10 remained relatively constant at about 8%.¹⁵ However, legal aid plans often pre-screen individuals who may have come to apply but are clearly outside of the eligibility guidelines, and other individuals do not approach legal aid because they know they are outside of the financial eligibility guidelines. Therefore, the number and proportion of applications rejected for financial ineligibility may not indicate the full extent of unmet demand among low-income Canadians.

To assess the effect of the financial eligibility guidelines, information was requested from the site visit jurisdictions on the number of criminal applications rejected for financial ineligibility that were within 10% of the guidelines. Only one jurisdiction, Nova Scotia, was able to provide this information, and the results demonstrate how close many of those who apply are to meeting the income guidelines. In 2009-10, 24% of the applications that were outside of the financial eligibility guidelines were within 10% of the guidelines.¹⁶ This information indicates that a substantial percentage of individuals who are not financially eligible for legal aid are close to the legal aid income levels, which demonstrates how the inability of legal aid plans to increase financial eligibility guidelines has meant that a significant percentage of current applicants are not financially eligible.

Although the legal aid plans have enhanced capacity by responding to increased demand, the inability of most plans to raise financial eligibility guideline levels indicates that there are challenges to fully addressing the demand for legal aid.

A potential effect of unchanging eligibility criteria for legal aid would be an increase in the number of unrepresented accused. Although there are reports of unrepresented accused increasing in Canada, these are largely anecdotal. There are no time series studies that would demonstrate any trends in the proportion of unrepresented accused.¹⁷

¹⁵ This number is calculated using the CCJS Legal Aid Survey data supplemented with data provided by Legal Aid Ontario. Data were not available for Prince Edward Island. Data for New Brunswick, Northwest Territories and Nunavut were missing for some of the years under study.

¹⁶ Nova Scotia Legal Aid has discretion in applying its guidelines and can accept individuals who fall outside of the financial guidelines. As a result, in 2009-10, almost all individuals (164 of 181) whose income was 10% or less above the guidelines were provided legal aid coverage.

¹⁷ In fact, data on the number of unrepresented accused is only recently becoming available through the Integrated Criminal Court Survey, and even then few jurisdictions report on this systematically, as it is not a mandatory

Key informants and criminal justice professionals, when asked about unrepresented accused in the criminal justice system, expressed the opinion that the proportion of unrepresented accused has increased. Some key informants pointed to the increase in the number of court-ordered counsel in provincial prosecutions as evidence that the proportion of unrepresented accused has increased.

Most key informants and criminal justice professionals interviewed believe that increases in unrepresented accused can be linked to the financial eligibility guidelines for legal aid. Funding levels also restrict legal aid coverage to those offences where there is a strong likelihood of incarceration. Several key informants and criminal justice professionals noted that this excludes cases that have serious consequences for accused that fall short of imprisonment; they pointed out that accused in these cases are less likely to plead guilty but are ineligible for legal aid, leaving them to “go it alone.”

Proceeding unrepresented has impacts for both the accused and the criminal justice system. Interviewees as well as studies provide evidence that unrepresented accused are not as capable of handling their legal matters and experience more serious consequences than accused who have counsel (Department of Justice Canada, 2004; Doust, 2011; Hann, Meredith, Nuffield, & Svoboda, 2002a, 2002b).

4.2.1.3 Challenges

The evaluation evidence points to several key factors that affect the demand for and cost of criminal legal aid, many of which are outside the control of legal aid plans. The continued accessibility of legal aid to eligible Canadians will depend on the ability of legal aid plans to continue to meet demand while responding to external factors impacting the cost of and demand for legal aid services.

Case Complexity

Most frequently mentioned was the increasing complexity of cases, as represented by an increased number of appearances, time for resolution, and cost to legal aid of providing representation. In particular, more cases involve co-accused, multiple charges, conspiracy charges and violent crimes. These cases are costly and create resource stresses on legal aid plans

field. The study found that 13% of accused are not represented at any appearances and about half are represented at all appearances (Department of Justice Canada, 2008b). Recently, a provincial court tracked, on a monthly basis over a six-month period, the number of unrepresented accused who were setting matters for trial and found that unrepresented accused represent between 9–16% of matters set for trial.

because they often involve substantial disclosure (due, for example, to wiretaps) and are more likely to create conflict issues because of the number of co-accused, which results in legal aid having to retain multiple lawyers to handle one matter. Evidentiary issues are also becoming more complex with DNA and other forensic evidence that require expert testimony.

As an example of the increasing complexity of cases, Nova Scotia Legal Aid reported that the average cost of a homicide case increased by 67% from \$12,908 in 2005-06 to \$21,534 in 2009-10.¹⁸ Although the number of legal aid homicide cases in Nova Scotia is relatively small, they can consume substantial resources. For Nova Scotia Legal Aid, the 27 homicide cases completed in 2009-10 represented 0.2% of cases, but they consumed \$581,428, or 5% of the total cost of the cases completed that year.

Other Factors

Key informants indicated that changes in the criminal justice system that increased the likelihood of incarceration and the seriousness of other consequences could increase demand for legal aid. Changes in law enforcement practices have led to an increase in the number of charges for administrative offences. Defending accused who have received these non-violent charges, which often carry with them the likelihood of incarceration, has begun to represent a significant cost for some legal aid plans. For example, Nova Scotia Legal Aid reported that 30% of approved applications in 2009-10 consisted of breach of probation matters, and that there was an 83% increase in the number of breach of probation matters between 2005-06 and 2009-10.

Several key informants commented on how the ability of legal aid plans to control costs and maintain capacity to provide services is limited by the actions of other criminal justice system stakeholders. These key informants believed there is a need for more recognition of this interdependent nature of the criminal justice system. Ontario's Justice on Target was cited as an example of an initiative that takes this multi-stakeholder approach to address challenges faced by the criminal justice system. Justice on Target involves the judiciary, Crown prosecutors, criminal defence bar (including legal aid), and police collaborating to adopt new processes and practices to reduce the provincial average of days and court appearances to complete a criminal case by 30% (Ontario Ministry of the Attorney General, 2008).

Legal aid clients often have needs related to substance abuse, mental health issues and poverty-related issues, such as housing. These non-legal needs often increase legal aid costs by making

¹⁸ These figures are for the total cost of the case and are presented by the year in which the case was closed/completed.

the resolution of the client's legal issues more difficult and protracted. Key informants with legal aid plans also noted that specialized courts and procedures for those with substance abuse issues or mental health disorders tend to be more intensive and require more counsel time, translating into higher costs for legal aid.

Other issues that affect the demand for and cost of criminal legal aid mentioned by key informants included:

- the shortage of lawyers and the need to hire counsel from outside the jurisdiction (this is primarily an issue for the territories);
- the need for bilingual services;
- the increased need for interpreters;¹⁹ and
- the need to ensure fees/salaries for lawyers are more competitive with private rates.

4.2.2. I&R Legal Aid

The LAP has identified the expected outcomes for I&R legal aid as the enhanced capacity of provinces and their legal aid plans with I&R agreements to deliver I&R legal aid services to eligible persons; and the provision of I&R legal aid to eligible persons.

4.2.2.1 Enhanced Capacity of Provinces and Legal Aid Plans to Deliver I&R Legal Aid Services

The federal government recognized the need to address the significant increase in refugee claimants (up from 28,500 in 2007 to 37,000 in 2008, according to CIC data), which resulted in increased demand for I&R legal aid services. This increase primarily affected British Columbia, Ontario and Quebec, where 97% of refugee claims in Canada are made according to IRB data. In March 2009, Justice and CIC agreed that a joint effort was required to respond to this pressure. As a result, additional funds were provided to legal aid plans. CIC and Justice provided I&R legal aid “top up” funding for 2009-10 and 2010-11.

The funding formula is based on the demand for I&R legal services the previous fiscal year using IRB and FCC data, to which a weighting formula is applied. Given the volatility of I&R legal aid demand, calculating the federal contribution on the basis of the previous years' demand was

¹⁹ Key informants in one jurisdiction that uses the harmonized sales tax pointed to the application of the tax to interpreter services as an additional cost.

considered by some to be too rigid. The formula does not allow for unanticipated arrivals, leading to the situation where Justice has had to find “emergency” funds to deal with a crisis. Additionally, using IRB and FCC data was questioned as this approach takes into account overall numbers of I&R claimants rather than the number of those who are receiving legal aid.

The inclusion of I&R legal aid in the criminal legal aid agreements was questioned by many, as it is not a criminal matter. As an alternative, it was suggested that the provinces and the federal government could consider creating a separate agreement for I&R legal aid.

4.2.2.2 Provision of I&R Legal Aid to Eligible Persons

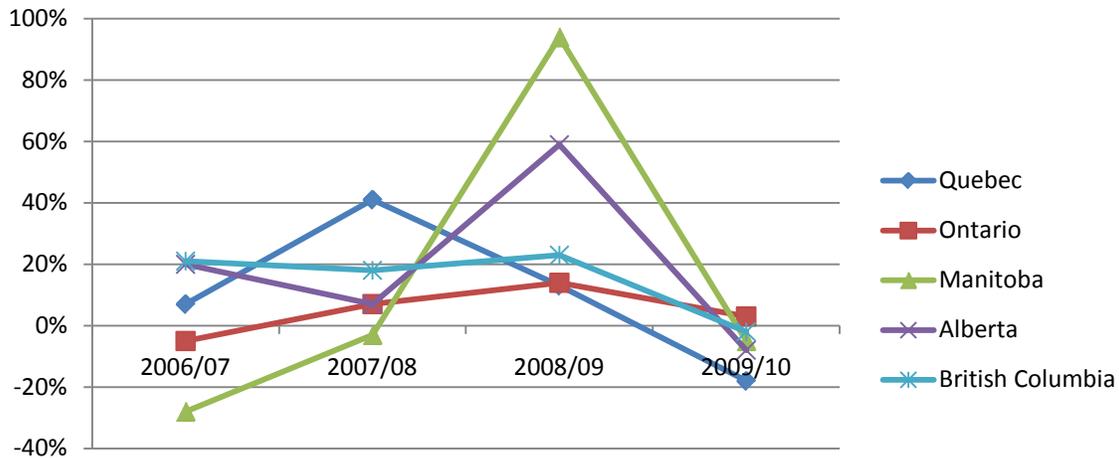
The main trend in I&R legal aid identified by key informants is the fluctuation of demand. When sudden influxes of refugee claimants occur, they can cause an increase in the demand for legal aid. The available data also shows an overall increase in the provision of I&R legal aid over time.²⁰

- Quebec had a 40% increase (4,998 to 6,996) in client assists (granted applications) between 2005-06 and 2009-10.
- Ontario has experienced a 19% increase in full service I&R certificates from 11,126 to 13,242 between 2005-06 and 2009-10.
- In Manitoba, client assists rose 69% from 90 to 152 between 2005-06 and 2009-10.
- In Alberta, client assists (full service certificates and opinions) rose 87% from 749 to 1,403 between 2005-06 and 2009-10.
- British Columbia has reported that its I&R duty counsel assists have increased by 51% from 989 to 1,460 between 2005-06 and 2009-10. In 2009-10, there was a 41% increase in duty counsel assists.

In Section 4.1.1 of the report, Figures 2 and 3 showed the fluctuations in applications for I&R legal aid as a measure of the continued need for I&R legal aid. Though they are similar in appearance, Figure 6 shows the percentage change from year to year in approved I&R applications and Figure 7 presents the change in the number of approved I&R applications, as measures of the effectiveness of the I&R legal aid component in achieving its intended outcome of providing I&R legal aid to eligible persons. Complete tables are found in Appendix E.

²⁰ I&R legal aid data were not available for Newfoundland and Labrador.

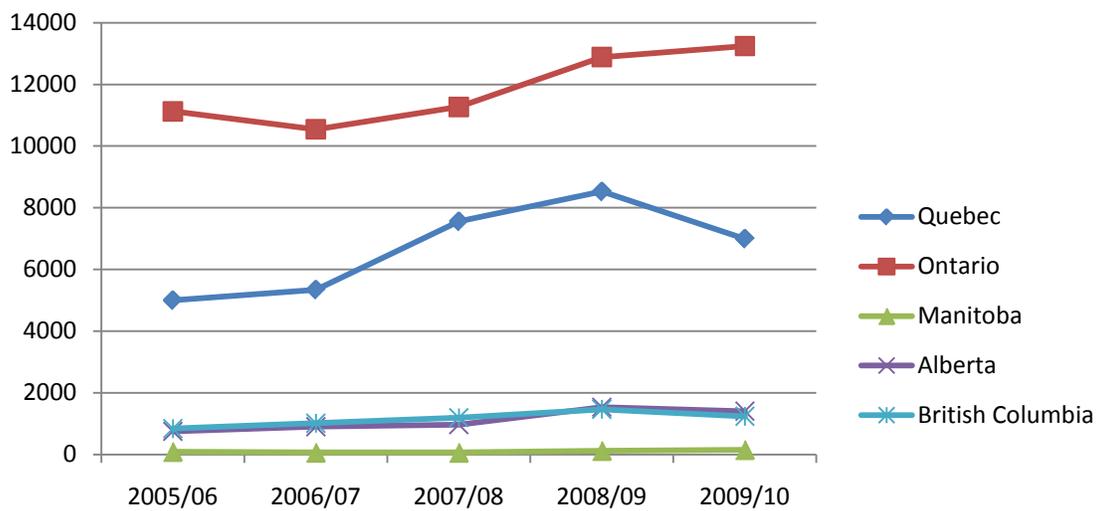
Figure 6: Annual percentage change in approved I&R applications



Source: Legal aid plan data

Note: Figures include approved I&R applications, which include certificates, referrals or any other authorization for legal aid service. Alberta percentages include full service certificates and opinions.

Figure 7: Number of approved I&R applications - 2005-06 to 2009-10



Source: Legal aid plan data

Note: Figures include approved I&R applications, which include certificates or referrals to counsel. Alberta percentages include full service certificates and opinions.

4.2.2.3 Challenges

Previous backlogs with the IRB are being addressed, and responding to this demand could create an additional challenge for legal aid plans, according to representatives of plans that offer I&R legal aid.

Some key informants expressed interest in increasing consultations at the FPT PWG with CIC so that the effects of upcoming legislation and regulations on demand for I&R legal aid can be considered. An example of this type of legislation is the *Balanced Refugee Reform Act*, which will come into effect in early 2012. As regulations have not yet been drafted, legal aid plan key informants were unclear as to precisely how service delivery will need to change in order to respond to the legislation.

4.2.3. COCFP

The LAP has identified the expected outcomes for COCFP as the enhanced capacity to provide funded counsel in federal prosecutions, pursuant to court orders, through legal aid plans; and the provision of counsel to defendants.

4.2.3.1 Enhanced Capacity to Provide Funded Counsel

The legal aid contribution agreements cover court-ordered counsel in CDSA cases; however, the parties can also enter into separate agreements where the legal aid plans manage court-ordered counsel in non-CDSA matters. In these cases, the court is faced with an accused who is not eligible for legal aid, but who is without counsel in a matter that involves complex legal issues and serious charges with a strong likelihood of incarceration if convicted. In the interests of justice and to protect the accused's right to a fair trial, the court can order a stay of proceedings until the federal prosecuting authority has provided publicly funded counsel for the accused.

In COCFP cases, the federal government has retained prosecuting authority and the accused is ineligible for legal aid. As a result, the matters are considered solely a federal responsibility. If counsel is not provided in these cases, the result would be stays in the proceedings and cases could be dismissed.

Although most jurisdictions reported having limited experience with COCFP, those with experience generally reported that the mechanism for providing funding worked reasonably well. The PPSC coordinates COCFP. The PPSC regional offices provide headquarters with early notifications of applications for court-ordered counsel, which are then relayed to Justice. The

system is intended to ensure that PPSC and Justice respond quickly once the order is made to minimize any delays that could impact the prosecution. It was noted that the type of orders increasingly include orders to fund an expert witness or to help with an aspect of a case where counsel is considered necessary. Consequently, the terms and conditions of the COCFP component of the LAP may need to be reviewed to accommodate these types of orders.

4.2.3.2 Provision of Funded Counsel

As evidence that the COCFP component of the LAP is achieving its intended outcome of the provision of counsel to defendants, there have been no known stays for lack of funding for court-ordered counsel in these cases.

Table 7 presents the financial information for COCFP cases managed by the jurisdictions or legal aid plans (Vote 5) and those managed by Justice because the jurisdictions and plans chose not to manage counsel (Vote 1). The number of cases has risen between 2005-06 and 2010-11, while expenditures have fluctuated. Recent years' expenditures for Vote 5 have exceeded the budget for COCFP. One site visit jurisdiction that provided data reported that the average cost per COCFP certificate was \$6,780 in 2009-10, reflecting the expensive nature of these prosecutions, which often involve conspiracies and therefore have multiple accused, multiple charges, and voluminous disclosure.

Table 7: COCFP – Cases managed by jurisdictions or legal aid plans (Vote 5) and cases managed by Justice (Vote 1) (in \$)

Year	Vote 5				Vote 1			
	# of cases	Budget	Expenditures	Unused/ (Exceeded)	# of cases	Budget	Expenditures	Unused/ (Exceeded)
2005-06	18	1,178,000	199,880	978,120	6	100,000	123,992	(23,992)
2006-07	23	1,650,000	1,181,508	468,492	7	100,000	456,556	(356,556)
2007-08	38	1,650,000	2,918,169	(1,268,169)	5	100,000	203,113	(103,113)
2008-09	29	1,650,000	3,113,390	(1,463,390)	5	100,000	83,864*	16,136
2009-10	39	1,650,000	1,795,743	(145,743)	5	100,000	68,838*	31,162

Source: Legal Aid Directorate.

Note: The number of cases are those cases receiving funds for that fiscal year.

* Committed amount; actual expenditures may vary on file closure.

4.2.4. PSAT Legal Aid

The LAP has identified the expected outcomes for PSAT legal aid as the enhanced capacity to provide funded counsel in federal prosecutions, through legal aid plans, for PSAT cases; and the provision of counsel to persons affected by PSAT initiatives.

4.2.4.1 Enhanced Capacity to Provide Funded Counsel

The federal government established a separate component for funding legal aid for cases that fall under the PSAT Initiative's legislative framework. PSAT-related investigations are extraordinarily complex, producing large amounts of disclosure and sophisticated forensic evidence. In addition, the cases often involve multiple accused, multiple charges and Charter challenges, all of which makes mounting a defence in a PSAT case very costly.

Most legal aid plans and P/T representatives have had little or no direct experience with PSAT legal aid. Those that had experience unanimously said that the process for handling PSAT legal aid, whereby Justice enters into a separate contribution agreement with jurisdictions on a case-by-case basis, has worked well. For PSAT legal aid, Justice pays for 100% of fees and disbursements. The relationship between Justice, the jurisdictions and the legal aid plans was described as collegial, with the jurisdictions notifying Justice about cases, which assists with planning.

The nature of PSAT charges invariably means that the accused person faces the likelihood of incarceration if convicted, so legal aid plans would have to provide coverage to any eligible economically disadvantaged person. If jurisdictions were required to fund PSAT defences, it would have a negative effect upon the legal aid plans' other services, which would have to be cut or reduced in order for the plans to absorb the additional costs. This potential is demonstrated by the experience of one legal aid plan, where in 2009-10, almost \$2.7 million was spent on PSAT cases, which represented about 1% of the total expenditures that year for the plan's criminal certificate program. Although the percentage is small, so are the number of PSAT cases in that jurisdiction (n=17 in a jurisdiction that approves approximately 65,000 criminal legal aid applications each fiscal year). If this cost was not covered separately, the legal aid system would have to make adjustments and reduce costs elsewhere.

By funding PSAT legal aid cases, the federal government is protecting the legal aid system and ensuring access to justice for economically disadvantaged persons who are charged with offences under public security and anti-terrorism legislation.

4.2.4.2 Provision of Funded Counsel

The PSAT funding ensures that there will be no stays of prosecution due to lack of defence counsel. The Summative Evaluation of the Justice component of the PSAT Initiative (2007) found that PSAT legal aid ensured access to justice: no known instances were reported of an unrepresented defendant in a terrorism-related case, although whether all defendants have had representation at their initial appearances was not known.

As shown in Table 8, the number of cases funded has remained fairly constant in three of the last four years, with 2007-08 being the exception. The costs of PSAT cases have increased over time as the prosecutions have progressed. The amount committed to PSAT exceeded the budgeted \$2 million in 2008-09 and 2009-10.

Table 8: PSAT legal aid – Cases funded by the LAP (in \$)

Year	Number of cases	Budget	Committed	Unused/ (Exceeded)
2005-06	6	500,000	260,717	239,283
2006-07	19	2,000,000	748,223	1,251,777
2007-08	24	2,000,000	1,704,033	295,967
2008-09	19	2,000,000	4,172,303	(2,172,303)
2009-10	18	2,000,000	3,834,159	(1,834,159)

Source: Legal Aid Directorate.

Note: The number of cases are those cases receiving funds for that fiscal year.

4.2.5. FPT PWG on Legal Aid

The LAP has identified the expected outcomes for the FPT PWG as increased information sharing and networking among jurisdictions and the federal government; and collaborative federal policy development related to legal aid matters and reflective of P/T considerations. As described in Section 2.2.5, the FPT PWG has a wide-ranging mandate that includes activities intended to support these expected outcomes.

During the period covered by this evaluation, the FPT PWG was engaged in negotiations, as in 2007-08, the jurisdictions agreed to a two-year rather than five-year agreement. As a result the FPT PWG has experienced some constraints, and some key informants noted that the FPT PWG mandate remains partly unmet.

4.2.5.1 Information Sharing and Networking

Almost all key informants believe that the FPT PWG is a useful forum for building relationships and sharing information, ideas and best practices. Discussions are perceived to be open and respectful. Legal aid plans and the P/T representatives praised the co-chairs, who are credited with improving the FPT relationship and, therefore, the effectiveness and responsiveness of the forum.

Representatives from the legal aid plans report that in spite of the collegial nature of the FPT PWG, little has been achieved to assist the plans in dealing with their pressures. Some consider the forum to focus on jurisdictional concerns of the provinces/territories and the federal government around the responsibility and level of funding for legal aid, which leaves less time to discuss operational legal aid issues such as the possible effects of new legislation on legal aid and best practices.

4.2.5.2 Collaborative Policy Development

Few representatives from the provinces and territories think there is sufficient policy discussion at the FPT PWG. One shared view is that without the federal government's willingness to increase funding or to work out a new five-year agreement, there is little interest in policy development and planning by the provinces and territories; another view is that policy development takes time and resources, both of which are limited.

A significant undertaking of the FPT PWG has been the development of a business case on legal aid, which has consumed a considerable amount of the group's time. The business case was recognized as an important endeavour to all FPT PWG participants, though some key informants did not identify this work as being within the purview of policy development. Some key informants across the spectrum of interviewees pointed to the FPT PWG's active role in undertaking and supporting research, and obtaining and disseminating information on legislation and policies affecting legal aid as evidence that the expected outcome of collaborative policy development was being met.

Some key informants suggested improvements to information sharing and policy development, including more resources for research and development, more discussion on policy issues that focus on such areas as service delivery and linkage between legal aid and justice efficiencies, and more use of technology that would facilitate video-conferencing and reduce the travel requirements.

4.2.5.3 Challenges

Among some key informants, there is the desire to strengthen the governance structure of the FPT PWG. Officially, the FPT PWG reports to the FPT Deputy Ministers of Justice, and ultimately to the Ministers of Justice. There is a desire on the part of some key informants for clearer instructions or sense of direction/support to the FPT PWG. In addition, there is the perception that the FPT PWG secretariat and federal co-chair are not always kept apprised of policies under consideration within Justice or other federal departments/agencies that could affect legal aid. Members of the FPT PWG believe that bringing these issues forward and discussing their implications should be an important function of the forum.

4.3. Performance – Efficiency and Economy

The Treasury Board's 2009 *Policy on Evaluation* defines efficiency as production of “a greater level of output ... with the same level of input or, a lower level of input with the same level of output”, and economy as the achievement of expected outcomes using the minimum amount of resources required.

Applying these definitions to the LAP, efficiency considers the cost of delivering federal legal aid monies to the provinces and territories, and economy concerns the cost of achieving the expected outcomes, which are enhancing the capacity to deliver the components of the LAP. This section of the report considers both the efficiency and the economy of the LAP.

4.3.1. Efficiency

As stated in its objectives, the LAP's focus is to promote access to justice by: contributing financially to the delivery of criminal legal aid in the provinces, criminal and civil legal aid in the territories, and I&R legal aid; providing funding to cover the costs of COCFP and PSAT cases; and supporting policy and legal discussions of legal aid through the FPT PWG.

The LAP's logic model reflects this focus, as its main outputs concern having agreements in place with the jurisdictions, receiving claims, and making payments. The LAP's costs in negotiating, monitoring and administering the legal aid agreements and supporting the FPT PWG are the key indicators of its efficiency.

From 2007-08 to 2009-10, total delivery costs of the LAP equalled 0.8% of the total base funding, I&R, COCFP and PSAT components. In other words, for every \$1,000 in federal funding distributed to the jurisdictions, \$8 was spent on administering the program. It is difficult

to assess whether LAP is being handled efficiently, as there is no comparator. This finding can serve as a benchmark for future evaluations of the LAP.

Legal aid plan representatives indicated that they have undertaken several measures to improve the efficiency and/or economy of their service. Key informants provided examples of the types of changes that have been made:

- Greater use of duty counsel and expanded duty counsel (efficiency);
- Administrative efficiencies through enhanced website and call centre, which reduce the cost of the application process (economy/efficiency); and
- Provision of legal advice through law lines/legal call centres (efficiency).

It is beyond the scope of this evaluation to assess the effectiveness of these measures, as they are within provincial and territorial jurisdiction. However, they appear to indicate improved efficiency with respect to the achievement of the LAP's intended outcomes.

Although key informants did not offer any more efficient alternatives in delivering legal aid, several made a variety of suggestions for how to improve the efficiency and effectiveness of the legal aid system, including:

- Working more closely with health services, agencies that provide addictions assistance, and other organizations that address underlying issues (e.g., addictions, mental health) that contribute to criminal activity.
- Relying more on duty counsel, particularly expanded duty counsel who will assist beyond plea court.
- Considering how to use non-legal assistance such as court workers, outreach workers, and information lines. For example, outreach workers and law lines can refer people to other services, help accused navigate through the system and connect them with lawyers, and provide basic legal information.
- Involving other stakeholders, such as Crown, courts and police, in improving efficiencies, as the legal aid system is just one component of the criminal justice system and cannot achieve real efficiency without the cooperation of other stakeholders whose actions affect the demand for and cost of legal aid.

4.3.2. Economy

4.3.2.1 Costs per Application

The expected outcome for the LAP is enhanced capacity to deliver all of the components. Using the number of approved criminal legal aid applications as an indicator of capacity, there has been an increase in capacity. However, the total shareable expenditures for criminal legal aid in the provinces and civil and criminal legal aid in the territories have increased between 2005-06 and 2009-10; the amount expended per application has increased from approximately \$995 to \$1,134 per application and \$1,231 to \$1,373 per approved application. This increase is attributed to many factors such as greater complexity of cases; increases in tariff/salaries of lawyers to remain competitive; and the consequences of legislation and policing and prosecutorial practices. These are some of the causes reported to increase the amount of time it takes to resolve matters.

4.3.2.2 Unrepresented Accused

As discussed earlier, key informants and criminal justice professionals see the unchanging level of plans' financial eligibility guidelines as a contributing factor to the increasing number of unrepresented accused.

Criminal justice professionals interviewed as part of the evaluation were unanimous in emphasizing the notion that providing legal aid is more economical than allowing accused to proceed unrepresented. Although no quantitative or tracking data are available to demonstrate this, criminal justice professionals interviewed indicated that matters take longer if the accused is unrepresented; there are more remands; the judge, court administrator and Crown all devote additional time to assisting unrepresented individuals; and there are more appearances required in court.

4.3.2.3 Provision of COCFP and I&R Legal Aid Funding

For components that are largely federal responsibilities, federal funding is seen as essential to maintaining capacity.

I&R legal aid is delivered through legal aid plans. The current delivery mechanism for I&R legal aid is considered economical, as without federal funding, some participating jurisdictions would likely cease funding these cases, which would strain the capacity of other organizations (ex. immigrant settlement societies) that would handle the volume of cases. The effectiveness of legal assistance to immigrants and refugees could also be adversely affected.

If the current system for COCFP was not in place, the provinces would not fill the gap and the federal government would have to find another mechanism by which to provide court-ordered counsel. This would involve an increase in the administrative costs for COCFP; the current delivery mechanism is therefore more economical than the alternative.

4.3.2.4 Economy of Legal Aid Tariffs

The level of legal aid tariffs is likely more economical than private bar rates. National comparisons of legal aid tariffs and private bar rates are difficult because the legal aid tariff structures vary substantially across jurisdictions, and national information on private bar rates is not extensively available. *Canadian Lawyer* is the only publicly available resource on private bar rates and has its limitations, as its survey is based on those lawyers who subscribe to the magazine and responded to the survey. The sample sizes are small, so results should be interpreted with caution.

As an example, the site visit jurisdictions provided estimates using their tariffs or other calculations, as required. As Table 9 shows, the cost of using legal aid rates is approximately one-half to one-fifth of the private bar rates.

Table 9: Comparison of average rates between legal aid tariffs and private bar (in \$)

Description	Nova Scotia		Ontario		Manitoba		Alberta	
	Private bar	Legal aid						
Summary criminal offence (one-day trial)	1,847	815	3,812	1,179	3,094	1,410	3,094	909
Bail hearing	664	105	1,205	224	883	390	883	252
Criminal offence (one-day trial)	3,017	2,084	4,476	1,684	3,785	2,790	3,785	1,912

Source: Legal aid plans provided comparison based on their tariff structures.

For the private bar rate, the results of the 2010 *Canadian Lawyer* survey were used. The average rate was used for the comparison. The fee ranges used were Atlantic Region for Nova Scotia, and Western Region for Manitoba and Alberta. Ontario has its own fee range in the survey. The sample sizes for each region are Atlantic (n=69), Western (n=242), and Ontario (n=312). Source: Todd, 2010.

Assumptions used to provide comparison:

Nova Scotia Legal Aid (NSLA) does not have a fee structure that mirrors the categories in the table. NSLA calculated average costs based on best available data. For summary offence one-day trial, NSLA calculated the average cost (staff and certificate) for assault matters. For bail hearings, the estimated average cost is based on the two urban site locations. For criminal offence one-day trial, NSLA used the cost of staff representation for all indictable matters (trial/no trial); this average amount includes disbursements.

For Legal Aid Ontario, the rate chosen for comparison was the Tier 3 rate, as about 70% of legal aid work is conducted by Tier 3 lawyers. The tariff rate effective April 1, 2011 was used.

For Legal Aid Manitoba, Category C offences were used for the summary criminal offence one-day trial. Estimate for bail hearing assumes an uncontested bail hearing (an additional 2 hours or \$160 can be requested for contested bail hearings). For criminal offence one-day trial, Category A offences are included in the table. Category B offences are estimated to cost \$2,120.

For Legal Aid Alberta, the summary criminal offence one-day trial is based on level 1 offence rates and includes preparation and trial fee; the criminal offence one-day trial is based on average for level 2 and level 3 offences and includes preparation and trial fee.

5. CONCLUSIONS

This section of the report presents conclusions based on the findings presented in the previous sections. The information is structured along the main evaluation issues and questions.

5.1. Relevance

Do the LAP components continue to serve the public interest and need?

The LAP components address a demonstrable need. Demand for legal aid has continued to grow over time.

In addition, legal aid clients tend to be among the more marginalized and vulnerable members of the population. At the same time, the law, court system and legal processes are becoming increasingly complex. The combination of these factors has caused those working in the system (judges, Crown prosecutors, defence counsel) to believe that many criminal accused cannot effectively represent themselves. In this situation, legal aid services strive to reserve the fairness and accessibility of the criminal justice system.

Canadian opinion, as assessed through recent surveys, reflects continued public support for legal aid. Survey results show that Canadians value access to justice, and their confidence in the legal system is linked to the existence of legal aid.

Is there an appropriate and necessary role for the Department of Justice in the areas of the LAP?

The federal role, as carried out by Justice in the provision of legal aid funding, is necessary based on constitutional and Charter obligations. The LAP's structure is intentionally designed to fit within the constitutional role of the federal government, which is shared jurisdiction in criminal justice, I&R matters, and civil law in the territories.

For COCFP, the federal obligation is clear, as it involves situations where the court has ordered that counsel be provided in a federal prosecution. For PSAT cases, the federal government

explicitly created a role for the Department to provide legal aid in recognition that the cost of defending against PSAT-related charges would be substantial and should not be borne by legal aid plans out of their existing federal funding.

Do the priorities and objectives of the LAP align with the priorities of the federal government and the Department of Justice?

The LAP's objective of promoting access to justice through its components aligns with government priorities. The federal government's criminal justice agenda, stated in the 2010 Speech from the Throne, refers to "a justice system that delivers justice". This commitment has been reinforced by Canada becoming a signatory on international instruments that promote legal aid in instances where accused cannot afford counsel.

The LAP's objective also directly supports Justice's strategic outcome of a "fair, relevant, and accessible justice system". Legal aid plans contribute to the effective functioning of the criminal justice system by upholding Canada's commitment to fairness and the rule of law.

5.2. Effectiveness

How well do the LAP components contribute to the availability of legal aid services in Canada?

Base Funding. The LAP has contributed to the expected outcome of enhanced capacity of the provinces and territories and their legal aid plans to deliver criminal legal aid (and civil in the territories), as without the federal support, legal aid services would likely be reduced.

Given rising costs of and demand for legal aid, the evaluation evidence presented a picture of pressures on the legal aid system. The financial eligibility guidelines of most legal aid plans have not kept pace with various economic indicators over time, such as LICO and the consumer price index. This indicates the capacity to meet the demand for criminal legal aid has lessened.

Criminal justice professionals interviewed as part of the evaluation indicated that a consequence of the unchanging financial eligibility guidelines is the increasing proportion of unrepresented accused in the criminal justice system. According to key informants and criminal justice professionals, unrepresented accused cannot effectively present their case, an opinion that is corroborated by recent studies, showing that unrepresented accused are less likely than accused with counsel to be granted interim release, be acquitted, receive a stay of proceedings, or have charges withdrawn or dismissed.

I&R Legal Aid. The ability to forecast demand is hampered by the fluctuation in I&R applications from year to year. The funding formula may contribute to the difficulty in planning as it relies on past volumes, which does not allow for unanticipated arrivals or other spikes in demand. The inclusion of I&R legal aid in the criminal legal aid agreements was questioned by most key informants, as it is not a criminal matter. As an alternative, it was suggested that the provinces and the federal government could consider creating a separate agreement for I&R legal aid.

COCFP. This component was found to be working well. Plans are reimbursed for fees and disbursements and receive an administrative payment, and the level of federal funding was considered adequate. Although the costs of COCFP cases are rising and exceed the amounts budgeted for some years, the LAP has covered these additional costs. Data on COCFP cases is limited, as evidenced by the lack of data on these cases available at site visit jurisdictions. The existence of the component provides evidence of enhanced accessibility to legal services, as it funds cases where the accused does not qualify for legal aid. Additionally, there are no known stays for lack of funding for court-ordered counsel.

PSAT. Federal funding in PSAT cases is fundamental in ensuring access to justice for criminal defendants facing PSAT-related charges. Leaving legal aid plans to fund the mounting of defences to PSAT cases could have significant implications on the plan's ability to deliver its other services. This component's success can be measured by the fact that there have been no known instances of an unrepresented defendant in a terrorism-related case.

To what extent does the FPT PWG facilitate collaboration between the federal government and the provinces and territories?

The FPT PWG appears to satisfy several of its mandated activities, including its active role in undertaking and supporting research, as well as obtaining and disseminating information on legislation and policies affecting legal aid.

The FPT PWG has experienced a renewal since the last LAP evaluation in 2005-06, where the forum received criticism. FPT PWG members considered the group to be a useful forum for networking and sharing information. The co-chairs were credited with fostering a collegial relationship among the parties.

There is a view among key informants that the FPT PWG's mandate has not been fully met. There was a desire for more discussions of implications for legal aid of certain policies under consideration and for more discussion of operational issues.

The desire to strengthen the governance structure of the FPT PWG and for clearer instructions or sense of direction/support to the FPT PWG was expressed by some key informants.

5.3. Efficiency and Economy

Are there more efficient ways of achieving the objectives of the LAP?

The delivery costs of the LAP are equivalent to less than one percent of the federal funding contribution. Key informants could not suggest alternative delivery methods that would be more efficient.

Legal aid plans have undertaken a variety of measures to increase efficiency at the operational level, including greater use of duty counsel and enhanced duty counsel. Some steps were also taken to reduce costs (e.g., closing offices, reducing staff, and cutting service) and may represent a reduction in accessibility rather than an improvement in efficiency.

A recurring theme raised by key informants was the impact of external factors on the demand for legal aid. Policing practices, prosecutorial discretion, changes in legislation, rules of court, and ultimately the efficiency of the system as a whole have an impact on the costs borne by legal aid. For that reason, more collaboration among criminal justice stakeholders was proposed by key informants in order to understand better the drivers of demand for legal aid.

Does the cost of resources used to deliver the components approximate the minimum resources needed to achieve the expected outcomes?

Whether the LAP is economical in achieving its outcomes related to enhancing the capacity of legal aid is not clear. Enhanced capacity was found to the extent that the number of applications submitted and approved has increased, which could be due to provinces responding to these increasing demands with additional funding and to the plans' adoption of efficiency measures. Meanwhile, the cost per application has increased.

The relatively unchanging level of the financial eligibility guidelines of legal aid plans, compared with relevant economic indicators, is considered to be a contributing factor to the

increasing number of unrepresented accused in the criminal justice system. Providing legal aid is perceived as more economical than allowing accused to proceed unrepresented.

Legal aid is likely more economical than private counsel. A comparison of tariff levels in four provinces to private bar charges for similar services demonstrates that legal aid services are provided at much lower rates.

Certain LAP components would likely not be provided by jurisdictions and their legal aid plans without federal funding (i.e., I&R and COCFP). In this case, the federal government would be required to create alternative structures or forego legal aid. Creating a federal legal aid structure to provide these legal services would mean duplicating administrative functions available through legal aid plans, which would not be an economical alternative.

6. RECOMMENDATIONS AND MANAGEMENT RESPONSE

Issue 1: Role of the FPT PWG

Almost all key informants believe that the FPT PWG is a useful forum for building relationships and sharing information, ideas and best practices. However, the need to review the group's role and governance structure was expressed by some key informants.

A significant undertaking of the FPT PWG over the period covered by the evaluation was the development of an FPT business case on criminal legal aid, which, in addition to negotiating agreements, consumed a considerable amount of the group's time. Few representatives from the provinces and territories think there is sufficient policy discussion at the FPT PWG.

Some key informants pointed to the need for more consultation with the FPT PWG regarding the potential impacts of new legislation or regulations on the demand for legal aid. The federal government's criminal justice reforms were cited by several key informants as a cost driver for the legal aid plans. Members of the FPT PWG believe that bringing forward issues that drive costs and discussing their implications should be an important function of the FPT PWG.

In addition, interview results indicate that members of the FPT PWG consider the working group to be an appropriate forum through which operational discussions could be held and challenges addressed with respect to the delivery of legal aid across the country. Representatives from the legal aid plans report that little has been achieved by the FPT PWG to assist the plans in dealing with their pressures and in discussing best practices.

Consequently, there is a need to re-examine and clarify the role and responsibilities of the FPT PWG with respect to supporting the Deputy Ministers Responsible for Justice. At the same time, it will be important to examine if there are means by which all members of the FPT PWG can benefit more fully from their participation in the working group. Substantive changes to the FPT PWG terms of reference will require the approval of the Deputy Ministers Responsible for Justice.

Recommendation 1: Clarify the role and responsibilities of the FPT PWG.

Management Response:

Agreed.

The terms of reference for the FPT PWG are contained in the criminal and I&R legal aid contribution agreements with each province and territory, and explain the PWG's role and responsibilities, as approved by FPT Ministers Responsible for Justice. The LAP will ensure that the terms of reference will be reviewed with the FPT PWG to identify necessary changes, and that any agreed upon additions or changes will be presented to the FPT Deputy Ministers and then to FPT Ministers for approval as part of new funding agreements. As well, the LAP will ensure that FPT PWG activities continue to involve a range of FPT operational and policy discussions. This includes time for discussing broader justice policy issues affecting legal aid identified in collaboration with the P/T Co-chair.

Issue 2: Challenges to maximizing the efficiency and economy of the federal LAP

The rising cost of legal aid, the increasing demand, and the concerns expressed about whether provinces and territories can continue to increase their contributions were cited in the evaluation as findings indicating that the legal aid system faces serious pressures. There is a need to identify and implement efficient and economical practices as a means of relieving these pressures.

Legal aid plan representatives indicated that they have undertaken several measures to improve the efficiency and/or economy of their legal aid service delivery, including greater use of duty counsel and enhanced duty counsel. It would be beneficial to explore these measures further.

Whether the LAP is economical in achieving its outcomes related to enhancing the capacity of legal aid is not clear. Enhanced capacity was found to the extent that the number of applications submitted and approved has increased. Meanwhile, the total cost per application has increased.

Recommendation 2: Initiate discussions on operational efficiency with provincial, territorial and legal aid plan partners, in order to ensure that the federal legal aid contribution is allocated such that efficiency and economy are a priority.

Management Response:

Agreed.

The LAP funding for criminal legal aid currently represents about 29% of total national shareable criminal legal aid expenditures, and this percentage is expected to decrease as the federal contribution remains level and criminal legal aid costs continue to increase. Within the context of the static federal contribution to criminal legal aid costs, the LAP will review options with respect to exploring how the federal investment can maximize the effectiveness and efficiency of criminal legal aid while minimizing federal costs. This work will involve discussions with all provinces and territories.

Issue 3: Challenges to determining levels of I&R legal aid

Demand for I&R legal aid was reported to be unpredictable from year to year, but has generally increased based on available data. Currently, funding for I&R legal aid does not allow for unanticipated arrivals or other spikes in demand. The current funding formula is based on the demand for I&R legal services in the previous fiscal year, determined by using IRB and FCC data to which a weighting formula is applied. Given the volatility of I&R legal aid demand, calculating the federal contribution on the basis of the previous year's demand was considered by some key informants to be too rigid, as it makes it difficult for jurisdictions to manage unexpected increases in the year in which the costs are incurred.

Recommendation 3: Review the funding formula for I&R legal aid and give consideration to methods of increasing its flexibility.

Management Response:

Agreed.

The approach used to distribute federal I&R legal aid resources was developed in consultation with the I&R Sub-Committee of the PWG (which has representatives from each of the six participating jurisdictions), and was approved by FPT Deputy Ministers and FPT Ministers, as indicated in the signed contribution agreements. The approach is based on statistics for the preceding year from reliable federal sources (the IRB and the FCC), related to seven weighted variables that reflect the various stages of the current refugee status determination process. Although these statistics cannot currently be provided in advance of, or during, a given fiscal year (which would be required in order to calculate quarterly payments), possible options to address this concern will be explored. Given the upcoming changes to the refugee system under the *Balanced Refugee Reform Act*, the LAP and CIC will review and revise the I&R funding

approach, in collaboration with the PWG, for approval by FPT Deputy Ministers and FPT Ministers.

Issue 4: Challenges to data availability

There is a need to review what data is required to assess the effectiveness, efficiency and economy of the federal contribution to legal aid. Due to the shared responsibility of the federal, provincial and territorial governments with respect to legal aid, it is important to determine what legal aid data is relevant to the federal LAP and should be collected from provinces, territories and legal aid plans. Data that appropriately assesses the effectiveness of the federal LAP in achieving its intended outcomes, and on the cost efficiency and economy of the federal contribution to legal aid spending, should be collected.

Recommendation 4: Identify indicators appropriate for measuring the efficiency and economy of the federal LAP, and collect relevant data from provinces, territories and legal aid plans on the effectiveness, efficiency and economy of the LAP to assist future evaluations.

Management Response:

Agreed.

The LAP collects detailed statistical and financial data related to the criminal and I&R legal aid contribution agreements through the audited final claims packages submitted by provinces and territories annually. The information contained in the final claims packages relates specifically to the activities funded under the criminal and I&R legal aid agreements. As well, through a memorandum of understanding, the LAP provides resources to Statistics Canada in support of the national Legal Aid Survey conducted by the CCJS. Through this survey, the CCJS collects aggregate legal aid data annually directly from provinces and territories. Further, provinces and territories each have their respective information management approaches designed to meet their specific needs. Any changes to these provincial-territorial approaches would have to consider financial implications for provincial-territorial governments. With these factors in mind, the LAP will work with provinces and territories and with the CCJS, in consultation with the Department's Evaluation Division and Research Division, to ascertain what additional and/or different data, if any, can be provided on a sufficiently consistent basis so as to support the LAP's work and assist future departmental evaluations of the LAP.

Appendix A:
Data Collection Instruments

**Legal Aid Program Evaluation
Key Informant Interview Guide
Provincial/Territorial Justice Representatives**

Introduction

The Department of Justice Canada (DOJ) is required to conduct an impact evaluation of the Federal Legal Aid Program (LAP) as part of its reporting requirement to the Treasury Board Secretariat. The evaluation is focused on the LAP and not the provincial and territorial delivery of legal aid. The evaluation covers the five components of the LAP: 1) Base Funding (federal contribution funding for criminal and youth criminal justice legal aid in the provinces / criminal, youth criminal justice and civil legal aid in the territories); 2) immigration and refugee (I&R) legal aid funding; 3) Public Security and Anti-terrorism (PSAT) legal aid funding; 4) funded counsel for court-ordered counsel in federal prosecutions (COCFP); and 5) secretariat for the Federal/Provincial/Territorial Permanent Working Group (FPT PWG) on Legal Aid.

The intent of the impact evaluation is primarily to assess the following:

- Alignment of the LAP's objectives with the DOJ, the federal government, priorities of the FPT PWG, and the public's interest.
- Contribution of the LAP to the availability of criminal, I&R and PSAT legal aid services (and civil legal aid in the territories) and funded counsel in COCFP cases – and long-term outcomes.
- Effectiveness of collaboration between the federal government and the provinces and territories.
- Efficiency and effectiveness of the LAP.

We are asking various groups of stakeholders to participate in the impact evaluation, including representatives of the DOJ and other federal departments, provincial and territorial governments, legal aid plans, and other justice professionals (judges, Crown prosecutors and defence counsel). The information we gather will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department of Justice's Evaluation Division.

Relevance

1. From your perspective, what are the current priorities of legal aid? Have legal aid priorities changed over the past five years for:
 - the provinces and territories?
 - the legal aid plans?
 - the federal government?
2. To what extent do the five components of the LAP address these priorities?

Criminal Legal Aid

3. Have the nature or type of criminal legal aid needs of eligible clients changed over the past five years? (*If yes*) How have the legal aid needs changed and what factors do you think are responsible?
4. Over the past five years, have you noticed a difference in the proportion of accused who are eligible for criminal legal aid? (*If yes*) Can you explain what these differences are? And can you explain why they are occurring?
5. Over the past five years, has there been a change in the proportion of unrepresented accused? (*If yes*) Is there evidence of these changes and, if so, what evidence?
6. How does the federal government's actions (e.g., through new legislation, regulations, etc.) affect the demand for and cost of criminal legal aid? What other factors also affect the demand and cost of criminal legal aid services?
7. In your opinion, to what extent does the level of the federal contribution affect availability of criminal legal aid and legal aid services in general? What effect does this have on the provinces and territories?

Civil Legal Aid

For territories only

8. Have the nature or type of civil legal aid needs of eligible clients changed over the past five years? *(If yes)* How have the legal aid needs changed and what factors do you think are responsible?
9. How does the federal government's actions (e.g., through new legislation, regulations) affect the demand for and cost of civil legal aid? What other factors also affect the demand for and cost of civil legal aid services?
10. In your opinion, to what extent does the level of the federal contribution affect availability of civil legal aid and legal aid services in general? What effect does this have on the territories?
11. Over the past five years, have you noticed a difference in the ability to find lawyers willing to handle civil legal aid cases? *(If yes)* Can you explain what these differences are? And can you explain why they are occurring?

Immigration and Refugee Legal Aid

For jurisdictions that provide legal aid representation for I&R matters

12. Over the past five years, what trends in demand for I&R legal aid have occurred in your jurisdiction? Have the legal needs of eligible clients changed? If so, how have needs changed and what factors do you think are responsible?
13. What challenges are there to providing I&R legal aid in this jurisdiction? Please explain.
14. If the I&R component of the LAP did not exist, how would economically disadvantaged individuals in I&R cases be handled?

For jurisdictions that do not provide legal aid representation in I&R matters

15. What are the reasons your plan does not currently provide legal aid representation in I&R matters?
16. In your view, is there a need for I&R legal aid in this jurisdiction? *(If yes)* What evidence is there of this need?

For all jurisdictions

17. Do you think I&R legal aid services ought to be handled differently? Should federal I&R legal aid funding be handled differently by the LAP? (*If yes*) Please explain what changes you think are necessary, and why.

COCFP and PSAT

18. How are COCFP and PSAT matters handled by this jurisdiction? Please describe any challenges that you are aware of in providing these services.

19. If the COCFP and PSAT components of the LAP did not exist, how would economically disadvantaged individuals in COCFP and PSAT cases be handled?

Efficiency and Economy

20. Can you suggest any changes in the legal aid system that would improve the efficiency of legal aid representation in criminal cases and (for the territories) in civil cases? In I&R cases? In COCFP and PSAT cases?

21. Given the current level of federal financial support, what changes (if any) have been made by the provinces and territories to maintain services to clients?

Role of FPT PWG

22. In your opinion, is there sufficient information sharing and policy development among the federal government, the provinces and territories, and the legal aid plans? (*If yes*) How is this process facilitated? (*If no*) What problems exist? How could information sharing and policy development be improved?

23. Please describe any evidence of benefits resulting from the existence of the FPT PWG. Can you describe any limitations and, if so, what changes would you suggest?

Thank you for your participation.

Legal Aid Program Impact Evaluation Key Informant Interview Guide Legal Aid Plans

Introduction

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- Contribution of the LAP to the availability of criminal, I&R and PSAT legal aid services (and civil legal aid in the territories) and funded counsel in COCFP cases – and long-term outcomes.
- Effectiveness of collaboration between the federal government and the provinces and territories.
- Efficiency and effectiveness of the LAP.

We are asking various groups of stakeholders to participate in the impact evaluation, including representatives of the DOJ and other federal departments, provincial and territorial governments, legal aid plans, and other justice professionals (judges, Crown prosecutors and defence counsel). The information we gather will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department of Justice's Evaluation Division.

Relevance

1. From your perspective, what are the current priorities of legal aid? Have legal aid priorities changed over the past five years for:
 - the legal aid plans?
 - the provinces and territories?
 - the federal government?
2. To what extent do the five components of the LAP address these priorities?

Criminal Legal Aid

3. Have the nature or type of criminal legal aid needs of eligible clients changed over the past five years? (*If yes*) How have the needs changed and what factors do you think are responsible?
4. Over the past five years, have you noticed a difference in the proportion of accused who are eligible for criminal legal aid? (*If yes*) Can you explain what these differences are? And can you explain why they are occurring?
5. Over the past five years, has there been a change in the proportion of unrepresented accused? (*If yes*) Is there evidence of these changes and, if so, what evidence?
6. How do the federal government's actions (e.g., through new legislation, regulations, etc.) affect the demand for and cost of criminal legal aid? What other factors also affect the demand and cost of criminal legal aid services?
7. In your opinion, to what extent does the level of the federal contribution affect availability of criminal legal aid and legal aid services in general?

Civil Legal Aid

For territories only

8. Have the nature or type of civil legal aid needs of eligible clients changed over the past five years? (*If yes*) How have the legal aid needs changed and what factors do you think are responsible?

9. How does the federal government's actions (e.g., through new legislation, regulations) affect the demand for and cost of civil legal aid? What other factors also affect the demand for and cost of civil legal aid services?
10. In your opinion, to what extent does the level of the federal contribution affect availability of civil legal aid and legal aid services in general? What effect does this have on the territories?
11. Over the past five years, have you noticed a difference in the ability to find lawyers willing to handle civil legal aid cases? *(If yes)* Can you explain what these differences are? And can you explain why they are occurring?

Immigration and Refugee Legal Aid

For plans that provide legal aid representation for I&R matters

12. Over the past five years, what trends in demand for I&R legal aid have occurred in your jurisdiction? Have the legal needs of eligible clients changed? If so, how have needs changed and what factors do you think are responsible?
13. What challenges are there to providing I&R legal aid in this jurisdiction? Please explain.
14. If the I&R component of the LAP did not exist, how would economically disadvantaged individuals in I&R cases be handled?

For plans that do not provide legal aid representation in I&R matters

15. What are the reasons your plan does not currently provide legal aid representation in I&R matters?
16. In your view, is there a need for I&R legal aid in this jurisdiction? *(If yes)* What evidence is there of this need?

For all plans

17. Do you think I&R legal aid services ought to be handled differently? Should federal I&R legal aid funding be handled differently by the LAP? *(If yes)* Please explain what changes you think are necessary, and why.

COCFP and PSAT

18. How are COCFP and PSAT matters handled in this jurisdiction, if at all? Please describe any challenges to providing these services.
19. If the COCFP and PSAT components of the LAP did not exist, how would economically disadvantaged individuals in COCFP and PSAT cases be handled?

Efficiency and Economy

20. Can you suggest any changes in the legal aid system that would improve the efficiency of legal aid representation in criminal cases and (for the territories) in civil cases? In I&R cases? In COCFP and PSAT cases?
21. Given the current level of federal financial support, what changes (if any) have been made to maintain services to clients?

Role of FPT PWG

22. In your opinion, is there sufficient information sharing and policy development among the federal government, the provinces and territories, and the legal aid plans? (*If yes*) How is this process facilitated? (*If no*) What problems exist? How could information sharing and policy development be improved?
23. Please describe any evidence of benefits resulting from the existence of the FPT PWG. Can you describe any limitations and, if so, what changes would you suggest?

Thank you for your participation.

Legal Aid Program Impact Evaluation Key Informant Interview Guide Department of Justice Representatives

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4. Over the past five years, have you noticed a difference in the proportion of accused who are eligible for criminal legal aid? (*If yes*) Can you explain what these differences are? And can you explain why they are occurring?
5. Over the past five years, has there been a change in the proportion of unrepresented accused? (*If yes*) Is there evidence of these changes and, if so, what evidence?
6. How does the federal government's actions (e.g., through new legislation, regulations, etc.) affect the demand for and cost of criminal legal aid? What other factors also affect the demand and cost of criminal legal aid services?
7. In your opinion, to what extent does the level of the federal contribution affect availability of criminal legal aid and legal aid services in general?

Civil Legal Aid

Please consider the provision of civil legal aid in the territories in answering these questions

8. Have the nature or type of civil legal aid needs of eligible clients changed over the past five years? (*If yes*) How have the legal aid needs changed and what factors do you think are responsible?

9. How does the federal government's actions (e.g., through new legislation, regulations) affect the demand for and cost of civil legal aid? What other factors also affect the demand for and cost of civil legal aid services?
10. In your opinion, to what extent does the level of the federal contribution affect availability of civil legal aid and legal aid services in general? What effect does this have on the territories?
11. Over the past five years, have you noticed a difference in the ability to find lawyers willing to handle civil legal aid cases? *(If yes)* Can you explain what these differences are? And can you explain why they are occurring?

Immigration and Refugee Legal Aid

12. Over the past five years, what trends in demand for I&R legal aid have occurred? Have the legal needs of eligible clients changed? If so, how have needs changed and what factors do you think are responsible?
13. What challenges are there to providing I&R legal aid? Why have some jurisdictions opted not to provide I&R legal aid? Please explain.
14. If the I&R component of the LAP did not exist, how would economically disadvantaged individuals in I&R cases be handled?
15. Do you think I&R services ought to be handled differently? Should federal I&R legal aid funding be handled differently by the LAP? *(If yes)* Please explain what changes you think are necessary, and why.

COCFP and PSAT

16. How are COCFP and PSAT matters handled by the jurisdictions? Please describe any challenges that you are aware of in providing these services.
17. If the COCFP and PSAT components of the LAP did not exist, how would economically disadvantaged individuals in COCFP and PSAT cases be handled?

Efficiency and Economy

18. Can you suggest any changes in the legal aid system that would improve the efficiency of legal aid representation in criminal cases and (for the territories) in civil cases? In I&R cases? In COCFP and PSAT cases?
19. Given the current level of federal financial support, what changes (if any) have been made by the legal aid plans to maintain services to clients?

Role of FPT PWG

20. In your opinion, is there sufficient information sharing and policy development among the federal government, the provinces and territories, and the legal aid plans? (*If yes*) How is this process facilitated? (*If no*) What problems exist? How could information sharing and policy development be improved?
21. Please describe any evidence of benefits resulting from the existence of the FPT PWG. Can you describe any limitations and, if so, what changes would you suggest?

Thank you for your participation.

Legal Aid Program Impact Evaluation Key Informant Interview Guide Justice Professionals

Introduction

The Department of Justice Canada is required to conduct an impact evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. As part of the evaluation, we would like to better understand the issue of unrepresented accused in the criminal justice system. We are interviewing approximately 50 judges, Crown prosecutors and criminal defence counsel across Canada to provide the perspective of criminal justice professionals.

The interview will be conducted by telephone and is expected to take approximately 30 minutes to complete. PRA Inc. will treat your responses as confidential and will report on them only in aggregate form. At the conclusion of the study, the Evaluation Division will receive the interview notes with all identifying information removed.

1. Over the past five years, has the proportion of unrepresented accused increased, decreased, or stayed the same? (*If applicable*) In your opinion, what are the primary reasons for any change? Please explain the basis for your opinion.
2. Over the past five years, has the number of *Rowbotham* applications in your jurisdiction increased, decreased, or stayed the same? (*If applicable*) To what do you attribute that change?
3. Over the course of a criminal case, are there certain points when accused are most likely to be unrepresented? Are there certain points when they are most likely to have counsel?
 - a. (*If applicable*) Please explain why accused are more likely to be unrepresented at different points in the criminal justice process.
 - b. Based on your experience, approximately what percentage of accused are unrepresented at all of their appearances?
4. (*Defence counsel only*) Have the nature or type of criminal legal aid needs of eligible clients changed over the past five years? (*If yes*) How have the needs changed and what factors do you think are responsible?

5. What are the most common legal consequences that accused experience when they are not represented by counsel? Please consider from the time of arrest to sentencing and explain your response.
6. What are the most common negative or positive effects of unrepresented accused on the functioning of the criminal justice system? Please answer based on your experience and explain your response.
7. What suggestions do you have for addressing the issue of unrepresented accused?

Thank you for your participation.

Appendix B:
Site Visit Data on Client Assists for Criminal Legal Aid

Site Visit Data on Client Assists for Criminal Legal Aid

Table 1: Nova Scotia criminal legal aid – client assists

	Full service and summary approved applications		Duty counsel (including Brydges)		Total	
	Number	Percentage*	Number	Percentage*	Number	Percentage*
2005-06	10,742	NA	10,733	NA	21,475	NA
2006-07	11,562	8%	12,273	14%	23,835	11%
2007-08	12,471	8%	14,435	18%	26,906	13%
2008-09	12,961	4%	14,837	3%	27,798	3%
2009-10	14,683	13%	17,458	18%	32,141	16%

Source: Legal aid plan data.

* Percentage change from prior year

Table 2: Ontario criminal legal aid – client assists

	Approved applications		Duty counsel		Brydges duty counsel		Total	
	Number	Percentage*	Number	Percentage*	Number	Percentage*	Number	Percentage*
2005-06	66,380	NA	738,722	NA	47,392	NA	852,494	NA
2006-07	66,733	0.5%	844,420	14%	51,480	9%	962,633	13%
2007-08	65,250	(2%)	882,539	5%	54,651	6%	1,002,440	4%
2008-09	69,142	6%	915,385	4%	56,057	3%	1,040,584	4%
2009-10	63,806	(8%)	918,460	0.3%	57,079	2%	1,039,345	(0.1%)

Source: Legal aid plan data.

The number of approved applications does not include summary services but does include clinic advice/briefs.

* Percentage change from prior year

Table 3: Manitoba criminal legal aid – client assists

	Approved applications		Duty counsel		Total	
	Number	Percentage*	Number	Percentage*	Number	Percentage*
2005-06	16,958	NA	38,803	NA	55,761	NA
2006-07	14,762	(13%)	41,126	6%	55,888	0.2%
2007-08	16,197	10%	42,491	3%	58,688	5%
2008-09	15,120	(7%)	39,979	(6%)	55,099	(6%)
2009-10	20,715	37%	38,664	(3%)	59,379	8%

Source: Legal aid plan data.

* Percentage change from prior year

Table 4: Alberta criminal legal aid – client assists

	Approved applications		Opinion		Duty counsel		Brydges duty counsel		Law Line		Total	
	#	%*	#	%*	#	%*	#	%*	#	%*	#	%*
2005-06	27,825	NA	518	NA	76,756	NA	15,920	NA	1,772	NA	122,791	NA
2006-07	27,927	0.4%	389	(25%)	78,861	3%	16,776	5%	1,863	5%	125,816	2%
2007-08	28,405	2%	386	(0.8%)	88,830	13%	18,717	12%	2,094	12%	138,432	10%
2008-09	31,773	12%	331	(14%)	102,619	16%	27,494	47%	2,560	22%	164,777	19%
2009-10	29,302	(8%)	327	(1%)	109,352	7%	24,475	(11%)	3,378	32%	166,834	1%

Source: Legal aid plan data.

Approved applications include full service certificates.

An opinion certificate only requires the lawyer to provide a legal opinion on the merits of the case.

Law Line provides free legal information, referrals and advice over the telephone.

** Percentage change from prior year*

Appendix C:
Method for Comparison of Financial Eligibility Guidelines with
Economic Indicators

Method for Comparison of Financial Eligibility Guidelines (FEG) with Economic Indicators

The following method was used to calculate the legal aid financial eligibility guidelines percentage change between 2001 and 2010 for each available province:

- Eligibility guidelines for a family size of four were used.
- Calculated as: $[(FEG_{2010} - FEG_{2001}) / FEG_{2001}] * 100$, where FEG_{2001} = the respective province's financial eligibility guideline in 2001 for a family of four and FEG_{2010} = the respective province's financial eligibility guideline in 2010 for a family of four.

Although many provincial financial eligibility guidelines were provided as family sizes ranging from one to seven or more, some guidelines were provided differently. Below is a list of decisions for the guidelines that were presented differently:

- British Columbia 2001 – provided separate guidelines for criminal cases and all other cases. Guidelines for the criminal cases were used for the calculation.
- Saskatchewan 2001 – provided guidelines based on family with number of children where family could include a single- or two-parent family. Family with two children was used for the family size of four.
- Ontario 2001 – provided a family size range from one to four+. Four+ was used for the calculation.
- Quebec, Nova Scotia, and Newfoundland and Labrador – provided guidelines separated by number of adults and number of children. Therefore, two values would be provided for a family of four: one for a single parent with three children and one for a two-parent family with two children. In each case, the higher of the two guidelines was selected, which in all cases ended up being the two parent with two children values.

The inflation rate for each province was calculated as follows:

- Inflation rate = $[(CICP_{2010} - CICP_{2001}) / CICP_{2001}] * 100$

Where $CICP_{2001}$ = the average 2001 CICP for the respective province and $CICP_{2010}$ = the average 2010 CICP for the respective province.

The percentage change in the real wage for each province was calculated as follows:

- $\Delta RWAGE = [(RWAGE_{2010} - RWAGE_{2001}) / RWAGE_{2001}] * 100$

Where $\Delta RWAGE$ = the percentage change in the real wage for the respective province, $RWAGE_{2001}$ = the average 2001 real wage for the respective province, and $RWAGE_{2010}$ = the average 2010 real wage for the respective province.

The percentage change in the minimum wage for each province was calculated as follows:

- $\Delta MWAGE = [(MWAGE_{2010} - MWAGE_{2001}) / MWAGE_{2001}] * 100$

Where $\Delta MWAGE$ = the percentage change in the minimum wage for the respective province, $MWAGE_{2001}$ = the minimum wage for the respective province as of January 1, 2001, and $MWAGE_{2010}$ = the minimum wage for the respective province as of December 31, 2010.

Appendix D:
Difference between Financial Guidelines and Low Income Cut-Offs

Table 1: Percentage difference between provincial financial guidelines and LICOs* (1992 base) (Population: rural areas)

Year		2001										
Province		BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶	PE ⁷	NL ⁸	NT ⁹	YK ¹⁰
Family size	1	7.7%	6.3%	7.0%	-17.4%	-13.9%	-8.6%	-2.1%	8.4%	-54.2%	108.5%	-
	2	32.8%	3.2%	10.5%	14.7%	-0.3%	-9.1%	4.9%	8.8%	-48.2%	102.9%	-
	3	24.5%	12.9%	14.9%	6.4%	-3.9%	-21.2%	2.4%	10.1%	-55.4%	105.5%	-
	4	10.4%	3.7%	11.1%	-1.0%	-10.2%	-23.0%	-4.6%	9.7%	-61.9%	81.8%	-
	5	6.9%	4.8%	12.4%	-3.1%	-	-20.2%	-6.2%	-	-64.3%	86.5%	-
	6	4.7%	1.3%	9.3%	-	-	-17.1%	-8.2%	-	-66.0%	78.2%	-
	7+	1.9%	0.2%	6.9%	-	-	-14.5%	-9.7%	-	-66.6%	82.0%	-
	Year	2010 ¹										
	1	38.9%	19.8%	-10.1%	-30.7%	-1.4%	-2.2%	-17.8%	1.3%	-61.6%	75.1%	36.9%
	2	59.1%	21.9%	-7.2%	-3.7%	12.7%	-	-11.9%	1.7%	-56.5%	70.4%	44.7%
	3	63.9%	39.3%	-3.5%	-10.7%	1.3%	-	-14.0%	2.9%	-62.6%	72.6%	42.0%
	4	60.4%	20.7%	-6.7%	-16.9%	-14.5%	-0.8%	-19.9%	2.5%	-68.0%	52.6%	29.3%
	5	66.3%	14.0%	-5.6%	-18.6%	-	-	-21.2%	2.0%	-70.0%	56.7%	22.7%
	6	73.3%	9.9%	-8.2%	-	-	-	-22.9%	-	-71.4%	49.6%	11.6%
7+	79.0%	-	-10.3%	-	-	-	-24.2%	-	-72.0%	52.9%	2.6%	

Note: Percentages calculated as [(highest contribution level for size of family – LICO) / LICO] * 100

* BC, SK, QC, NL, NWT and YK were compared to after tax LICOs; MB, ON, NS, PE were compared to before tax LICOs; AB was compared to before tax LICOs in 2001 and to after tax LICOs in 2010.

¹LICOs for 2010 were not available and were therefore calculated as $LICO_{2010} = LICO_{1992} \times CPI_{2010} / CPI_{1992}$ (Source: Statistics Canada. [2010]. Low income cut-offs. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

²For 2010, financial eligibility guidelines ranged from 1 to a family size of 6+.

³For 2001, financial eligibility guidelines ranged from 1 to a family size of 5+. For 2010, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵For 2001, guidelines were provided for families with number of children, where family was defined as one or two-parent household. Family with 2 children was chosen for calculation. Ranged from single to family with 8 children. Only family sizes of 1 and 4 were provided for 2010.

⁶Nova Scotia separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size.

⁷Financial eligibility guidelines ranged from 1 to a family size of 4 in 2001 and 1 to a family size of 5 in 2010.

⁸Newfoundland and Labrador separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 6 children or more.

⁹The Northwest Territories separates its financial eligibility guidelines by zone in the territory. The middle level was chosen (Zone 5).

¹⁰Yukon separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Financial eligibility guidelines for 2001 were not available for Yukon.

Source for LICOs: Statistics Canada. (2010). Low income cut-offs (1992 base) before tax. Retrieved February 24, 2011 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tb102-eng.htm>

Table 2: Percentage difference between provincial financial guidelines and LICOs* (1992 base) (Population of 30,000 or less)

Year		2001										
Province		BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶	PE ⁷	NL ⁸	NT ⁹	YK ¹⁰
Family size	1	-5.9%	-6.6%	-5.9%	-27.4%	-24.8%	-20.1%	-14.0%	-4.8%	-60.0%	82.2%	-
	2	16.1%	-9.3%	-2.8%	0.8%	-12.9%	-20.6%	-7.8%	-4.4%	-54.8%	77.3%	-
	3	8.8%	-0.8%	1.0%	-6.5%	-16.0%	-31.2%	-10.0%	-3.2%	-61.0%	79.6%	-
	4	-3.5%	-8.9%	-2.4%	-13.0%	-21.5%	-32.7%	-16.2%	-3.5%	-66.7%	58.8%	-
	5	-6.6%	-7.9%	-1.2%	-14.8%	-	-30.3%	-17.5%	-	-68.8%	63.0%	-
	6	-8.5%	-11.0%	-3.9%	-	-	-27.5%	-19.3%	-	-70.3%	55.7%	-
	7+	-11.0%	-11.9%	-6.1%	-	-	-25.3%	-20.7%	-	-70.9%	59.0%	-
	Year	2010 ¹										
	1	21.4%	4.7%	-21.0%	-39.1%	-13.9%	-14.5%	-27.8%	-11.0%	-66.4%	53.0%	19.7%
	2	39.0%	6.5%	-18.4%	-15.3%	-1.5%	-	-22.6%	-10.6%	-62.0%	48.9%	26.4%
	3	43.3%	21.7%	-15.2%	-21.5%	-11.5%	-	-24.4%	-9.6%	-67.3%	50.8%	24.1%
	4	40.1%	5.5%	-18.0%	-26.9%	-25.3%	-13.4%	-29.6%	-9.9%	-72.1%	33.4%	13.0%
	5	45.3%	-0.4%	-17.0%	-28.5%	-	-	-30.7%	-10.4%	-73.8%	36.9%	7.2%
	6	51.4%	-4.0%	-19.3%	-	-	-	-32.2%	-	-75.1%	30.8%	-2.5%
7+	56.4%	-	-21.1%	-	-	-	-33.4%	-	-75.5%	33.6%	-10.4%	

Note: Percentages calculated as [(highest contribution level for size of family – LICO) / LICO] * 100

* BC, SK, QC, NL, NWT and YK were compared to after tax LICOs; MB, ON, NS, PE were compared to before tax LICOs; AB was compared to before tax LICOs in 2001 and to after tax LICOs in 2010.

¹LICOs for 2010 were not available and were therefore calculated as $LICO_{2010} = LICO_{1992} \times CPI_{2010} / CPI_{1992}$ (Source: Statistics Canada. [2010]. Low income cut-offs. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

²For 2010, financial eligibility guidelines ranged from 1 to a family size of 6+.

³For 2001, financial eligibility guidelines ranged from 1 to a family size of 5+. For 2010, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵For 2001, guidelines were provided for families with number of children, where family was defined as one or two-parent household. Family with 2 children was chosen for calculation. Ranged from single to family with 8 children. Only family sizes of 1 and 4 were provided for 2010.

⁶Nova Scotia separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size.

⁷Financial eligibility guidelines ranged from 1 to a family size of 4 in 2001 and 1 to a family size of 5 in 2010.

⁸Newfoundland and Labrador separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 6 children or more.

⁹The Northwest Territories separates its financial eligibility guidelines by zone in the territory. The middle level was chosen (Zone 5).

¹⁰Yukon separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Financial eligibility guidelines for 2001 were not available for Yukon.

Source for LICOs: Statistics Canada. (2010). Low income cut-offs (1992 base) before tax. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm>

Table 3: Percentage difference between provincial financial guidelines and LICO* (1992 base) (Population of 30,000 to 99,999)

Year		2001										
Province	BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶	PE ⁷	NL ⁸	NT ⁹	YK ¹⁰	
Family size	1	-15.6%	-14.5%	-13.9%	-33.6%	-32.6%	-28.4%	-21.3%	-12.8%	-64.1%	63.3%	-
	2	4.0%	-17.0%	-11.1%	-7.7%	-21.9%	-28.8%	-15.6%	-12.5%	-59.4%	58.9%	-
	3	-2.5%	-9.2%	-7.6%	-14.4%	-24.7%	-38.3%	-17.7%	-11.5%	-65.1%	61.0%	-
	4	-13.5%	-16.6%	-10.7%	-20.4%	-29.6%	-39.7%	-23.3%	-11.7%	-70.2%	42.4%	-
	5	-16.3%	-15.7%	-9.6%	-	-	-37.5%	-24.5%	-	-72.0%	46.1%	-
	6	-18.0%	-18.5%	-12.1%	-	-	-35.0%	-26.1%	-	-73.4%	39.6%	-
	7+	-20.2%	-19.4%	-14.0%	-	-	-33.0%	-27.4%	-	-73.9%	42.6%	-
	Year	2010 ¹										
	1	8.8%	-6.1%	-27.7%	-44.2%	-22.8%	-23.4%	-33.9%	-18.5%	-69.9%	37.1%	7.3%
	2	24.6%	-4.5%	-25.4%	-22.5%	-11.7%	-	-29.1%	-18.2%	-65.9%	33.5%	13.3%
	3	28.4%	9.1%	-22.4%	-28.1%	-20.7%	-	-30.9%	-17.3%	-70.7%	35.2%	11.2%
	4	25.6%	-5.5%	-25.0%	-33.1%	-33.0%	-22.3%	-35.6%	-17.5%	-75.0%	19.5%	1.3%
	5	30.2%	-10.7%	-24.1%	-34.6%	-	-	-36.6%	-18.0%	-76.5%	22.7%	-3.9%
	6	35.7%	-13.9%	-26.2%	-	-	-	-38.0%	-	-77.6%	17.2%	-12.6%
7+	40.2%	-	-27.8%	-	-	-	-39.0%	-	-78.1%	19.7%	-19.7%	

Note: Percentages calculated as [(Highest contribution level for size of family – LICO) / LICO] * 100

* BC, SK, QC, NL, NWT and YK were compared to after tax LICOs; MB, ON, NS, PE were compared to before tax LICOs; AB was compared to before tax LICOs in 2001 and to after tax LICOs in 2010.

¹LICOs for 2010 were not available and were therefore calculated as $LICO_{2010} = LICO_{1992} \times CPI_{2010} / CPI_{1992}$ (Source: Statistics Canada. [2010]. Low income cut-offs. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

²For 2010, financial eligibility guidelines ranged from 1 to a family size of 6+.

³For 2001, financial eligibility guidelines ranged from 1 to a family size of 5+. For 2010, financial eligibility guidelines ranged from 1 to a family size of 5+.

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⁵For 2001, guidelines were provided for families with number of children, where family was defined as one or two-parent household. Family with 2 children was chosen for calculation. Ranged from single to family with 8 children. Only family sizes of 1 and 4 were provided for 2010.

⁶Nova Scotia separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size.

⁷Financial eligibility guidelines ranged from 1 to a family size of 4 in 2001 and 1 to a family size of 5 in 2010.

⁸Newfoundland and Labrador separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 6 children or more.

⁹The Northwest Territories separates its financial eligibility guidelines by zone in the territory. The middle level was chosen (Zone 5).

¹⁰Yukon separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Financial eligibility guidelines for 2001 were not available for Yukon.

Source for LICOs: Statistics Canada. (2010). Low income cut-offs (1992 base) before tax. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm>.

Table 4: Percentage difference between provincial financial guidelines and LICOs* (1992 base) (Population of 100,000 to 499,999)

Year		2001										
Province		BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶	PE ⁷	NL ⁸	NT ⁹	YK ¹⁰
Family size	1	-16.7%	-15.1%	-14.5%	-34.0%	-33.4%	-29.3%	-21.8%	-13.4%	-64.6%	61.3%	-
	2	2.8%	-17.5%	-11.7%	-8.3%	-22.9%	-29.7%	-16.1%	-13.0%	-59.9%	56.9%	-
	3	-3.7%	-9.8%	-8.2%	-15.0%	-25.7%	-39.1%	-18.2%	-12.0%	-65.5%	59.0%	-
	4	-14.6%	-17.1%	-11.2%	-20.9%	-30.5%	-40.4%	-23.8%	-12.3%	-70.5%	40.6%	-
	5	-17.3%	-16.2%	-10.1%	-22.5%	-	-38.3%	-25.0%	-	-72.4%	44.3%	-
	6	-19.0%	-19.0%	-12.6%	-	-	-35.8%	-26.6%	-	-73.7%	37.8%	-
	7+	-21.2%	-19.9%	-14.6%	-	-	-33.9%	-27.9%	-	-74.2%	40.8%	-
	Year	2010 ¹										
	1	7.4%	-7.3%	-28.2%	-44.6%	-23.8%	-24.3%	-34.3%	-19.0%	-70.3%	35.4%	5.9%
	2	23.1%	-5.7%	-25.8%	-23.0%	-12.8%	-	-29.6%	-18.7%	-66.4%	31.8%	11.9%
	3	26.8%	7.8%	-22.9%	-28.6%	-21.7%	-	-31.3%	-17.8%	-71.0%	33.5%	9.8%
	4	24.1%	-6.6%	-25.4%	-33.5%	-33.9%	-23.3%	-36.0%	-18.0%	-75.3%	18.0%	0.0%
	5	28.6%	-11.9%	-24.5%	-35.0%	-	-	-37.0%	-18.5%	-76.8%	21.2%	-5.1%
	6	34.0%	-15.0%	-26.6%	-	-	-	-38.3%	-	-77.9%	15.8%	-13.7%
7+	38.5%	-	-28.3%	-	-	-	-39.4%	-	-78.3%	18.2%	-20.7%	

Note: Percentages calculated as [(Highest contribution level for size of family – LICO) / LICO] * 100

* BC, SK, QC, NL, NWT and YK were compared to after tax LICOs; MB, ON, NS, PE were compared to before tax LICOs; AB was compared to before tax LICOs in 2001 and to after tax LICOs in 2010.

¹LICOs for 2010 were not available and were therefore calculated as $LICO_{2010} = LICO_{1992} \times CPI_{2010} / CPI_{1992}$ (Source: Statistics Canada. [2010]. Low income cut-offs. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

²For 2010, financial eligibility guidelines ranged from 1 to a family size of 6+.

³For 2001, financial eligibility guidelines ranged from 1 to a family size of 5+. For 2010, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵For 2001, guidelines were provided for families with number of children, where family was defined as one or two-parent household. Family with 2 children was chosen for calculation. Ranged from single to family with 8 children. Only family sizes of 1 and 4 were provided for 2010.

⁶Nova Scotia separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size.

⁷Financial eligibility guidelines ranged from 1 to a family size of 4 in 2001 and 1 to a family size of 5 in 2010.

⁸Newfoundland and Labrador separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 6 children or more.

⁹The Northwest Territories separates its financial eligibility guidelines by zone in the territory. The middle level was chosen (Zone 5).

¹⁰Yukon separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Financial eligibility guidelines for 2001 were not available for Yukon.

Source for LICOs: Statistics Canada. (2010). Low income cut-offs (1992 base) before tax. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm>

Table 5: Percentage difference between provincial financial guidelines and LICO* (1992 base) (Population of 500,000+)

Year		2001											
Province		BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶	PE ⁷	NL ⁸	NT ⁹	YK ¹⁰	
Family size	1	-29.5%	-26.9%	-26.3%	-43.2%	-43.7%	-40.2%	-32.6%	-25.4%	-70.1%	36.4%	-	
	2	-13.1%	-29.0%	-23.9%	-21.0%	-34.8%	-40.5%	-27.8%	-25.1%	-66.1%	32.7%	-	
	3	-18.5%	-22.3%	-20.9%	-26.8%	-37.2%	-48.5%	-29.5%	-24.2%	-70.8%	34.4%	-	
	4	-27.8%	-28.6%	-23.5%	-31.8%	-41.2%	-49.6%	-34.3%	-24.5%	-75.1%	18.9%	-	
	5	-30.1%	-27.8%	-22.6%	-33.3%	-	-47.8%	-35.4%	-	-76.6%	22.0%	-	
	6	-31.5%	-30.3%	-24.7%	-	-	-45.7%	-36.8%	-	-77.8%	16.6%	-	
	7+	-33.3%	-31.0%	-26.4%	-	-	-44.1%	-37.9%	-	-78.2%	19.1%	-	
		Year	2010 ¹										
		1	-9.1%	-21.6%	-38.1%	-52.3%	-35.5%	-36.0%	-43.4%	-30.3%	-74.9%	14.5%	-10.4%
		2	4.1%	-20.3%	-36.1%	-33.7%	-26.3%	-	-39.3%	-30.0%	-71.6%	11.5%	-5.4%
		3	7.2%	-8.9%	-33.6%	-38.5%	-33.8%	-	-40.8%	-29.2%	-75.5%	12.9%	-7.1%
		4	4.9%	-21.0%	-35.8%	-42.8%	-44.1%	-35.1%	-44.9%	-29.4%	-79.1%	-0.2%	-15.4%
		5	8.8%	-25.5%	-35.0%	-44.0%	-	-	-45.8%	-29.8%	-80.4%	2.5%	-19.8%
		6	13.4%	-28.1%	-36.8%	-	-	-	-46.9%	-	-81.3%	-2.1%	-27.0%
	7+	17.1%	-	-38.2%	-	-	-	-47.8%	-	-81.7%	0.0%	-32.9%	

Note: Percentages calculated as [(Highest contribution level for size of family – LICO) / LICO] * 100

* BC, SK, QC, NL, NWT and YK were compared to after tax LICOs; MB, ON, NS, PE were compared to before tax LICOs; AB was compared to before tax LICOs in 2001 and to after tax LICOs in 2010.

¹LICOs for 2010 were not available and were therefore calculated as $LICO_{2010} = LICO_{1992} \times CPI_{2010} / CPI_{1992}$ (Source: Statistics Canada. [2010]. Low income cut-offs. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

²For 2010, financial eligibility guidelines ranged from 1 to a family size of 6+.

³For 2001, financial eligibility guidelines ranged from 1 to a family size of 5+. For 2010, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵For 2001, guidelines were provided for families with number of children, where family was defined as one or two-parent household. Family with 2 children was chosen for calculation. Ranged from single to family with 8 children. Only family sizes of 1 and 4 were provided for 2010.

⁶Nova Scotia separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size.

⁷Financial eligibility guidelines ranged from 1 to a family size of 4 in 2001 and 1 to a family size of 5 in 2010.

⁸Newfoundland and Labrador separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 6 children or more.

⁹The Northwest Territories separates its financial eligibility guidelines by zone in the territory. The middle level was chosen (Zone 5).

¹⁰Yukon separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Financial eligibility guidelines for 2001 were not available for Yukon.

Source for LICOs: Statistics Canada. (2010). Low income cut-offs (1992 base) before tax. Retrieved February 24, 2011, from <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm>

Appendix E:
Data on Immigration and Refugee Legal Aid

Data on Immigration and Refugee Legal Aid

Table 1: Quebec I&R legal aid

	Applications		Approved applications	
	Number	Percentage*	Number	Percentage*
2005-06	5,256	NA	4,998	NA
2006-07	5,616	7%	5,342	7%
2007-08	7,911	41%	7,558	41%
2008-09	8,990	14%	8,528	13%
2009-10	7,724	(14%)	6,996	(18%)

Source: Legal aid plan data.

* Percentage change from prior year

Table 2: Ontario I&R legal aid

	Applications		Approved applications	
	Number	Percentage*	Number	Percentage*
2005-06	12,576	N/A	11,126	N/A
2006-07	12,788	2%	10,546	(5%)
2007-08	12,808	0.2%	11,269	7%
2008-09	15,632	22%	12,888	14%
2009-10	14,502	(7%)	13,242	3%

Source: Legal aid plan data.

* Percentage change from prior year

Table 3: Manitoba I&R legal aid

	Applications		Approved applications	
	Number	Percentage*	Number	Percentage*
2005-06	97	NA	90	NA
2006-07	78	(20%)	65	(28%)
2007-08	74	(5%)	63	(3%)
2008-09	131	77%	122	94%
2009-10	171	31%	152	(25%)

Source: Legal aid plan data.

* Percentage change from prior year

Table 4: Alberta I&R legal aid

	Applications		Approved applications	
	Number	Percentage*	Number	Percentage*
2005-06	835	NA	749	NA
2006-07	1,000	20%	899	20%
2007-08	1,110	11%	963	7%
2008-09	1,717	55%	1,535	59%
2009-10	1,625	(5%)	1,403	(9%)

Source: Legal aid plan data.

* Percentage change from prior year

Table 5: British Columbia I&R legal aid

	Applications		Referrals for counsel		Duty counsel	
	Number	Percentage*	Number	Percentage*	Number	Percentage*
2005-06	1,034	NA	837	NA	989	NA
2006-07	1,199	16%	1,012	21%	1,006	2%
2007-08	1,480	23%	1,192	18%	832	(17%)
2008-09	2,079	40%	1,464	23%	1,113	34%
2009-10	2,024	(3%)	1,237	(16%)	1,460	31%

Source: Legal aid plan data.

* Percentage change from prior year

I&R legal aid information for Newfoundland and Labrador was not available

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GLOSSARY OF LEGAL TERMS

Accused – a person charged with a crime.

Acquitted – a finding of “not guilty” in a criminal case.

Adjournment – postponement of a court hearing to another date.

Administrative offence – a non-criminal offence that regulates conduct in the public interest, such as securities regulations. Regulatory offences are often dealt with at administrative tribunals and not in a court setting.

Brydges duty counsel – any individual who has been arrested or detained has the right to be informed by the police of the availability of legal aid and duty counsel. A toll-free line is generally available for immediate advice.

Charge – a formal accusation of an offence as a preliminary step to prosecution.

Charge withdrawn/charge dismissed – withdrawal of a formal accusation of an offence.

Claimant – a person who brings a civil action in a court of law.

Clinic model – where an office is set up to provide free legal services to eligible applicants. Services may range from advice, summary/brief services, to full service.

Conditional sentence – Where a sentence of imprisonment of less than two years is given, the judge may order that the sentence be served in the community subject to conditions.

Conflict – Two opposing parties in a matter cannot be represented by the same lawyer or the same office. One of the parties must seek independent representation.

Counsel – a lawyer, especially in a court proceeding.

Crown attorney/prosecutor – a legal officer who represents the federal, provincial or municipal government in proceedings. In Canada, federal prosecutors handle immigration and drug-related charges; provincial prosecutors handle criminal cases and some provincial offences.

Dangerous offender applications – A person who is convicted of a serious personal injury offence, as provided in the Criminal Code of Canada, and who is, after an assessment, found by a court to be at high risk to reoffend and whose risk cannot be managed in the community. Dangerous offenders are sentenced to a detention in a federal prison for an indefinite period.

Defendant – a person accused in a criminal proceeding or sued in a civil proceeding.

Disbursements – out-of-pocket expenses paid out by legal aid for applications, affidavits, etc. on behalf of the client. Legal aid plans attempt to have these costs reimbursed by the client where possible.

Disclosure – making information and documents known and available to a party in a proceeding. There are disclosure requirements placed on parties by law or court rules.

Duty counsel – refers to legal services provided without charge by a lawyer, generally provided at court or place of detention. Most often, the services provided are brief, and pertain to provision of summary advice or representation at a first appearance or plea court.

Eligibility – Legal aid is available to low-income individuals who qualify for a certificate to assist with paying the cost of a lawyer. Applicants who apply for legal aid must disclose financial information pertaining to income and assets to ascertain whether they meet the low-income requirements. Other criteria are considered in addition to financial eligibility, such as possibility of incarceration and loss of employment.

Expanded duty counsel – provides the services of a regular duty counsel, but is also able to continue representing the accused in less serious matters until the case is resolved.

Full service – a legal aid certificate, referral, or other authorization for legal aid that contains the full range of legal services that could include preliminary stages of a criminal matter through to a trial.

Interim release – release of the accused between committal for trial and the trial's completion (bail).

Judicare model – This model provides eligible accused persons with a legal aid certificate that can be taken to a private lawyer who is willing to act on the basis of legal aid for that particular case. The lawyer is remunerated according to the tariff rate, and is subject to a cap on the number of hours that may be billed.

Law lines/legal call centre – a toll-free line for individuals requiring information about a legal matter.

Mandatory minimum sentences – offences under the Criminal Code for which a sentence of imprisonment must be imposed. Many of these offences have a compulsory period of time an offender must serve in prison.

Mixed system – This legal aid model provides for legal representation, which may be either assigned to a salaried in-house lawyer or referred to a private legal practitioner.

Plea court – The court where a declaration is made by a person accused of a crime as to whether he or she is guilty or not guilty of the charge.

Pro bono – legal services provided by a lawyer free of charge.

Probation – authorization for a person to be released into the community, subject to conditions listed in the order.

Recidivism – tendency to relapse into previous behaviour, especially a pattern of criminal behaviour.

Rowbotham – The Ontario Court of Appeal, in *R. v. Rowbotham*, found that sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* create a right to counsel if necessary for a fair trial, and that the court can order federally funded counsel in situations where an accused cannot afford counsel but is not eligible for legal aid, and where the proceedings are complex and there is a likelihood of imprisonment.

Stay of proceedings – an order suspending a legal proceeding.

Summary service/brief service – refers to the provision of legal advice, information, or any other type of minimal legal service to an individual, such as making a telephone call or drafting a letter on behalf of a client.

Tariff – a schedule of fees to be charged for various legal services.

Unit of service – This count measures the number of units of service rather than the number of persons assisted and is mutually exclusive of all summary service and duty counsel service.

Unrepresented accused (self-represented) – one who appears in court without legal representation.