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# Legal Aid in Canada: Resources and Caseload Statistics 1999-2000



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# Legal Aid in Canada: Resource and Caseload Statistics 1999-2000

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## HIGHLIGHTS

- Total spending on Canada's legal aid plans reached \$483 million in 1999/2000, representing a decrease of 6% from 1998/1999. This marks a return to the previous downward trend that took place prior to 1998/1999.
- Expenditures on direct legal services rose to \$402.8 million in 1999/2000 and accounted for 83% of total expenditures for the year. The remaining 17% was spent on central administration and other programs.
- Governments continue to be the major source of revenue for legal aid plans, contributing 90% of total revenues. The remainder of the revenue came from client contributions and cost recoveries (3%), legal profession contributions (1%), and other sources (6%).
- In the 1999/2000 fiscal year, 827,653 applications were submitted for legal aid assistance, a decrease of 1% from the previous year.
- After years of decline, the number of approved legal aid applications rose. In 1999/2000, there were 503,074 applications approved, 2% more than the previous year.

## INTRODUCTION

Access to justice in Canada is a concern for policy-makers, legal professionals, and all Canadians requiring a lawyer. Accessibility is an important quality of an effective justice system. Legal aid plans have been established in all provinces and territories, with the common goal of assisting low-income Canadians who require professional legal counsel.

Legal aid plans in Canada provide legal representation, advice, referrals and information services. Because the administration of justice is a provincial/ territorial responsibility, the organizational structure, eligibility requirements, and application of the legal aid plans vary from one jurisdiction to the next. Considering these fundamental differences in the structure and the accompanying organizational differences, **caution must be used when making inter-jurisdictional comparisons of legal aid plans in Canada.**

This report provides information on the organization and costs of legal aid in Canada. It includes information on legal aid delivery systems, revenues and expenditures, and applications for legal aid.

For complete data collected from the Legal Aid Survey, conducted annually by the Canadian Centre for Justice Statistics, please see the related product entitled *Legal Aid in Canada: Resource and Caseload Data Tables, 1999/2000* (catalogue no. 85F0028). These data tables include a five-year time series on revenues, expenditures, caseloads and personnel of legal aid plans in Canada.

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

## Overview of Legal Aid in Canada

### Legal aid delivery systems

Canada provides legal aid through separate legal aid plans in each of the provinces and territories. Though each provincial/territorial government has developed its own legal aid scheme, three general models have been adopted to deliver legal aid services in Canada. **Judicare**, a fee-for-service system, uses private lawyers who bill the legal aid plan for their services. The client may retain any lawyer who is willing to accept the case. New Brunswick, Ontario<sup>1</sup> and Alberta are the only provinces which operate judicare systems.

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

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

<sup>1</sup> Although the Ontario Legal Aid Plan considers its delivery system a 'mixed' model of service, Ontario is presented here as a 'primarily' judicare model, since such a high proportion of direct legal expenditures is directed to private lawyers who provide legal aid services. Ontario's staff-administered community legal clinics supplement the judicare system, in such areas as housing, social assistance, pensions, workers' compensation, employment insurance, immigration and employment rights.

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

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

## Cases covered by legal aid

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

Criminal legal aid coverage is, in part, established under federal, provincial and territorial cost-sharing agreements. These agreements set standards for minimum legal aid coverage for criminal matters throughout Canada. In most jurisdictions, coverage is available for those charged with indictable offences.<sup>3</sup> Generally, in Canada, the coverage of summary conviction offences<sup>4</sup> is limited to cases where there is a likelihood of imprisonment or a danger of loss of livelihood. However, in Ontario and British Columbia, both indictable and summary conviction criminal cases are covered only when there is a threat of imprisonment.<sup>5</sup> British Columbia will also consider cases where there is a risk of loss of livelihood.

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

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

## Determination of eligibility

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

## Legal aid is not necessarily free legal assistance

As mentioned, financial eligibility guidelines are used to assess the applicant's ability to afford legal counsel. Clients may be requested to contribute to the cost of services according to their ability to pay. An agreement between the client and the plan specifies the amount and how it is to be paid. Client contributions and cost recoveries (includes monies recovered from a judgement, award or settlement) amounted to \$16.4 million nationally in 1999/2000.

In Manitoba and Alberta, application fees (\$25 and \$10 respectively) were in place during 1999-2000, although in Alberta, these fees were waived if the client was unable to afford the expense. Application fees were abolished in Alberta on March 31, 2000).

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

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

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

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

## Staffing

The staffing of legal aid plans depends on the delivery system adopted by the province or territory. Table 1 illustrates that provinces with judicare systems employ proportionately fewer lawyers than do the provinces operating staff systems. Overall, lawyers account for 35% of the staff, a proportion relatively unchanged since the data series began in 1983/1984. There are other personnel who ensure the accessibility and productivity of the legal aid plans. They include administrative staff, law students, accountants, research staff, librarians and others. Non-lawyers account for the greatest proportion of legal aid personnel (65%). Legal aid organizations range in staff size from 7 members, as in the case of Prince Edward Island, to 1,045 personnel in Ontario. The total number of personnel in legal aid offices in Canada increased steadily from 1983/1984 to 1994/95, but has decreased slightly in each of the last five years.

**Table 1**  
**Legal Aid Personnel Resources by Province/Territory, 1999-00**

Jurisdiction	Total Staff	Lawyers	Per-centage of total staff	Non-Lawyers	Per-centage of total staff	Direct Legal Service Staff <sup>1</sup>					Others Staff <sup>2</sup>				
						Total	Lawyers	Per-centage	Non-Lawyers	Per-centage	Total	Lawyers	Per-centage	Non-Lawyers	Per-centage
			%		%			%		%			%		%
<b>Primarily Judicare</b>															
New Brunswick	38	9	24	29	76	8	8	100	-	-	30	1	3	29	97
Ontario <sup>3</sup>	1,045	326	31	719	69	359	238	66	121	34	686	88	13	598	87
Alberta	136	28	21	108	79	25	25	100	...	...	111	3	3	108	97
<b>Primarily Staff</b>															
Newfoundland	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Prince Edward Island	7	4	57	3	43	4	4	100	-	-	3	-	-	3	100
Nova Scotia	121	67	55	54	45	65	65	100	-	-	56	2	4	54	96
Saskatchewan	130	62	48	68	52	80	61	76	19	24	50	1	2	49	98
<b>Mixed</b>															
Quebec	785	337	43	448	57	331	310	94	21	6	454	27	6	427	94
Manitoba	142	53	37	89	63	68	45	66	23	34	74	8	11	66	89
British Columbia	315	73	23	242	77	96	66	69	30	31	219	7	3	212	97
Northwest Territories <sup>4</sup>	45	9	20	36	80	32	9	28	23	72	13	-	-	13	100
Yukon	8	4	50	4	50	5	3	60	2	40	3	1	33	2	67
Nunavut <sup>5</sup>	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
<b>Canada</b>	<b>2,772</b>	<b>972</b>	<b>35</b>	<b>1,800</b>	<b>65</b>	<b>1,073</b>	<b>834</b>	<b>78</b>	<b>239</b>	<b>22</b>	<b>1,699</b>	<b>138</b>	<b>8</b>	<b>1,561</b>	<b>92</b>

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

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

<sup>3</sup> Includes community clinic staff.

<sup>4</sup> Includes clinic staff for the Keewatin Legal Services Centre for Maliiganik Tukisiiniakvik, Mackenzie Court Workers, Kitikmeot Law Center, and Beaufort Delta Legal Services.

<sup>5</sup> Personnel resources are not available separately and are include with figures reported for NWT.

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

Lawyers are responsible for providing most direct legal services (e.g., advice and representation) to clients. In Canada, in 1999/2000, 78% of direct legal service staff were lawyers. The remaining 22% of staff providing direct legal services include staff such as para-legals and law students.

### Participation of Lawyers in the Delivery of Legal Aid Services

In 1999/2000 there were 51,893 lawyers registered as practising members of the provincial and territorial bars (Table 2). Twenty-four percent of these lawyers provided legal aid assistance in 1999/2000. Over the past ten years, this percentage has remained relatively stable, fluctuating between 25% and 32%. Legal aid plan (staff) lawyers numbered 972 in 1999/2000, of which 834 (86%) provided direct legal services. However, the majority of lawyers providing legal aid assistance were private lawyers totalling 11,690 in 1999/2000. The participation of private lawyers in legal aid assistance decreased 4% from 1998/1999.



**Table 2**  
**Bar Involvement in Legal Aid Service Delivery, 1999-00**

Jurisdiction	Total Bar Member Count <sup>1</sup>	Lawyers who Provided Legal Aid Services	Percentage	Private Lawyers who Provided Legal Aid Services	Legal Aid Plan Lawyers
			%		
<b>Primarily Judicare</b>					
New Brunswick	1,008	229	23	220	9
Ontario	17,576	5,101	29	4,775	326
Alberta	5,333	1,167	22	1,139	28
<b>Primarily Staff</b>					
Newfoundland	447	..	..	..	..
Prince Edward Island	153	25	16	21	4
Nova Scotia	1,605	345	21	278	67
Saskatchewan	1,451	293	20	231	62
<b>Mixed</b>					
Quebec	15,356	3,351	22	3,014	337
Manitoba	1,492	490	33	437	53
British Columbia	7,040	1,593	23	1,520	73
Northwest Territories	251	52	21	43	9
Yukon	181	16	9	12	4
Nunavut <sup>1</sup>	..	..	..	..	..
<b>Canada</b>	<b>51,893</b>	<b>12,652</b>	<b>24</b>	<b>11,690</b>	<b>972</b>

<sup>1</sup> For fiscal 1999/2000, Nunavut's legal bar involvement figures are included with NWT.

Source: Legal Aid Survey, Canadian Centre for Justice Statistics

### **Legal Aid Provides Duty Counsel Services**

In addition to legal aid services, most jurisdictions have a duty counsel system administered by the legal aid plans. Duty counsel lawyers advise detained persons<sup>7</sup>, and persons appearing in court without counsel. They may guide them in obtaining legal services, and provide on-the-spot representation, if needed. Duty counsel services are provided by staff lawyers in some jurisdictions, and by private lawyers in others. The provision of duty counsel services does not bar the recipient from subsequent application for legal aid services.

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

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

In some jurisdictions, duty counsel services may exceed the traditional duties of the duty counsel. For instance, legal aid plans in New Brunswick<sup>9</sup>, Ontario, Manitoba, Alberta, Northwest Territories, and Yukon provide what are known as 'full duty counsel' services.<sup>10</sup> Where full services are available, duty counsel offer the same services as traditional duty counsel, but additionally may provide full representation up to and including the determination of guilt or non-guilt (in criminal cases), and representation at sentencing. In some jurisdictions the same lawyer may provide all services to the client, allowing for a complete solicitor-client service, which typically means better quality assistance. In these cases, duty counsel essentially provides the same services that legal aid lawyers would provide on approved applications.

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

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

<sup>9</sup> Duty counsel also provide weekend telephone remand services in New Brunswick.

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

## Sources of Revenue

Funding is received by legal aid plans from three main sources: government contributions, client contributions and cost recoveries, and contributions from the legal profession. Government contributions include monies from both the federal and provincial/territorial governments. Figure 1 shows that overall government funding climbed steadily from 1988/1989 to 1992/1993, and then levelled off. In the 1999/2000 fiscal year, total government contributions amounted to \$482.7 million, a decrease of 6% from the previous year.

Government funding accounted for 89% of the total legal aid revenue in 1999/2000, continuing as the major revenue source for legal aid in all jurisdictions. There were differences in the proportion of government funding received by the jurisdictions. In Nunavut, government funding covers 100% of legal aid plan expenditures. In contrast, government funding levels were lowest for Manitoba at 81%, and Alberta at 75%.

## Federal contributions to legal aid

Agreements exist between the federal and provincial/territorial governments for the cost-sharing of criminal legal aid matters, including legal aid proceedings under the *Young Offenders Act* (YOA). Provincial statute matters such as violations under liquor and traffic laws are not cost-shared. The federal contribution to criminal legal aid by Justice Canada in 1999/2000 decreased (2.7%) from 1998/1999 to \$82.9 million.

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

## Provincial and territorial funding

In total, provincial and territorial government contributions to legal aid plans amounted to \$410.5 million in 1999/2000, a 5% decrease from the previous year that is primarily attributable to Quebec's 22% reduction (Table 3). In Quebec, in 1998/1999, the expenses were unusually high due to the inception of an early retirement program. There was \$20 million dollars that was to cover the pay-outs for retiring employees. This expense in 1998/1999 enabled the reduction of the annual cost of salaries in subsequent years. Figure 1 shows that the total provincial/territorial government legal aid funding trend follows the same general pattern as the total government contributions trend, until 1996/1997. At that time, provincial/territorial contributions rose significantly, as the funding mechanism for civil legal aid was changed from CAP to CHST.

Although total provincial/territorial legal aid funding expressed as a proportion of total government contributions has fluctuated since 1983/1984, the trend towards increased provincial/territorial responsibility for legal aid is evident in Figure 1. Funding from provincial/territorial governments accounted for, on average, 53% of total government contributions from 1987/1988 to 1990/1991. From 1991/1992 to 1995/1996, this proportion increased to 70%, and then moved to 83% in 1996/1997 and 1997/1998<sup>11</sup> and 84% in 1998/1999. In 1999/2000, provincial/territorial contributions were at 84%.

## Other sources of revenue

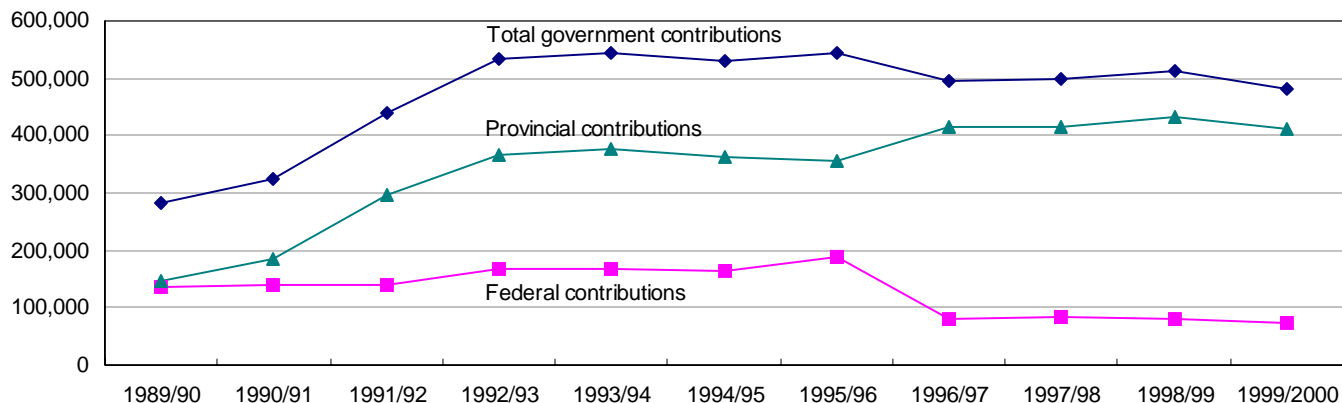
In 1999/2000, client contributions and cost recoveries accounted for 3% of total legal aid revenue. Client contributions refer to monies received from individuals receiving legal aid services, while cost recoveries consist of the monies recovered from a judgement, award, or settlement. As a proportion of total revenue, client contributions and cost recoveries have remained stable at 3% to 4% since the data series began in 1983/1984.

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

Figure 1

**Government Contributions<sup>1</sup> to Legal Aid in Canada, 1989/90 to 1999/2000**

Current \$('000)



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

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

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

**Table 3  
Provincial and Territorial Government Contributions to Legal Aid Plans in Current Dollars, 1995-96 to 1999-00**

Jurisdiction	1995-96	Percentage change from previous year	1996-97	Percentage change from previous year	1997-98	Percentage change from previous year	1998-99	Percentage change from previous year	1999-00	Percentage change from previous year
	\$'000	%	\$'000	%	\$'000	%	\$'000	%	\$'000	%
<b>Primarily Judicare</b>										
New Brunswick <sup>1</sup>	2,420	-15	3,228	33	3,278	2	3,524	8	3,607	2
Ontario	187,900	-4	191,096	2	191,130	--	194,500	2	194,792	--
Alberta	16,375	-3	16,140	-1	16,056	-1	16,131	--	14,198	-12
<b>Primarily Staff</b>										
Newfoundland	2,579	-1	3,698	43	3,971	7	4,467	12	3,809	-15
Prince Edward Island <sup>2</sup>	304	3	369	21	306	-17	313	2	456	46
Nova Scotia	4,919	-8	7,406	51	7,566	2	7,878	4	8,776	11
Saskatchewan	3,996	32	5,321	33	6,912	30	7,360	6	8,084	10
<b>Mixed</b>										
Quebec	66,437	--	96,791	46	98,515	-4	111,873	14	87,340	-22
Manitoba	7,698	-4	9,154	19	9,801	7	9,850	--	11,044	12
British Columbia <sup>4</sup>	58,400	-1	72,500	24	72,900	1 <sup>r</sup>	73,600	1	74,100	1
Northwest Territories	3,431	--	3,467	1	3,358	-3	3,124	-7	3,521	13
Yukon	492	-24	476	-3	426	-11 <sup>r</sup>	503	17	822	63
Nunavut <sup>5</sup>	...	...	...	...	...	...	...	...	...	...
<b>Canada</b>	<b>354,979</b>	<b>-2</b>	<b>409,641</b>	<b>15<sup>3</sup></b>	<b>414,400</b>	<b>1</b>	<b>433,380</b>	<b>5</b>	<b>410,549</b>	<b>-5</b>

<sup>1</sup> The contribution of the Government of New Brunswick for 1996-97 and 1997-98 includes all expenditures for domestic legal aid, which is administered by the Department of Justice. Domestic legal aid costs were understated in 1995-96.

<sup>2</sup> Due to an error in previous calculation methods, the figures for total revenues, government contributions and expenditures are revised for Prince Edward Island.

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

<sup>4</sup> The figures for British Columbia do not include fees and disbursements on large legal aid cases and Rowbothams funded directly by the provincial government.

<sup>5</sup> For fiscal 1999/2000, Nunavut's Legal Aid expenditures are included in NWT's figures.

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

Historically, contributions from the legal profession have accounted for 2% to 4% of overall legal aid revenue. In 1999/2000, these contributions were 1% of total revenue. This drop in funding by the legal profession can be accounted for by changes to legal aid in Ontario. In April 1999 the Law Society of Upper Canada relinquished control and the administration of legal aid.<sup>12</sup> In addition, funding by its members to legal aid was eliminated. In 1998/1999 contributions by the Law Society of Upper Canada accounted for 50% of the total contributions of the legal professions in Canada. The elimination of Ontario's contribution explains almost all of the 57% decrease from 1998/1999 to 1999/2000 in contributions of the legal profession.

Other income sources include interest from provincial law foundations, publication sales, and federal/provincial/territorial grants. As previously mentioned, Manitoba and Alberta instituted application fees for the year in question. In 1999/2000, the total from other sources of income accounted for 6% of total revenue.

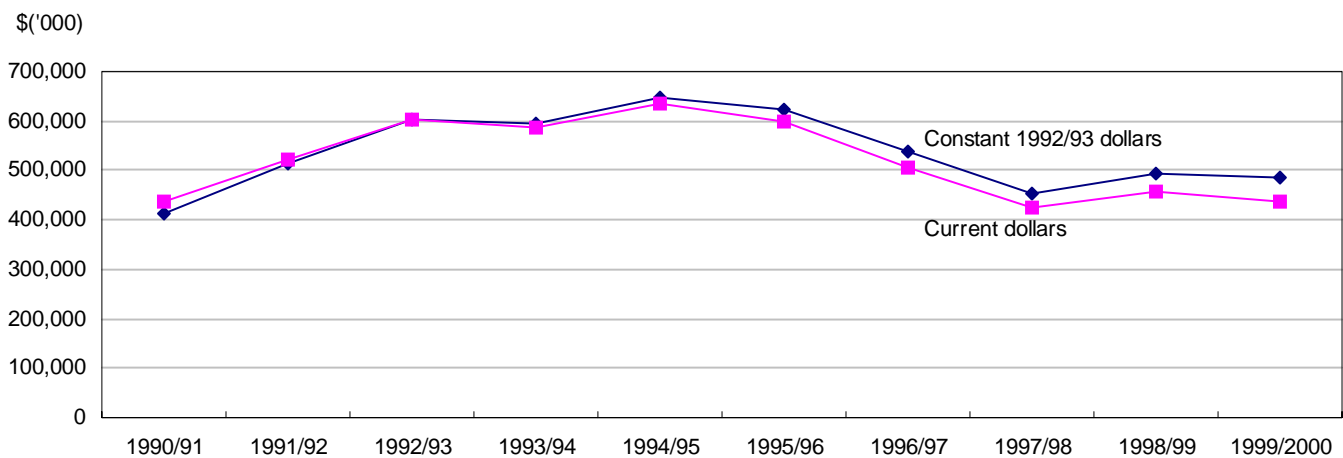
## Expenditures

In current dollars, legal aid plan expenditures amounted to \$487 million in 1999/2000. In all jurisdictions, most of the budget (\$402.8 million, or 83% overall) was spent on direct legal expenditures, which include payments made to private lawyers as well as the costs of legal service delivery by legal aid plan staff (i.e., monies spent on the provision of: legal advice; information; referrals to other agencies such as transition homes and rehabilitation programs; and representation, not including central administrative expenses of the legal aid plans). The remaining \$84 million (17%) of expenditures incurred by legal aid plans were for: other program expenditures, including money spent on legal research activities, public legal education and grants to other agencies; and central administrative expenditures, which include monies spent on head office functions and on offices that do not employ staff to advise and represent clients.

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

Figure 2

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



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

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

At the national level, the 1999/2000 fiscal year showed a decrease in legal aid expenditures (1%) over 1998/1999 (Figure 2). Expressed in constant (1992/1993) dollars, 1999/2000 spending on legal aid amounted to \$438 million using the All-items Consumer Price Index (CPI) for Canada. This represents a 31% decrease from the peak of \$634 million spent in 1994/1995.

Expenditures in P.E.I. increased 17% from 1998/1999 to 1999/2000. This stems from a rent increase following the relocation of the Charlottetown office, salary and pension increases, and revised accounting procedures. 1998/1999 data was low, since there was a time lag in finalizing the Federal criminal claims. In the Yukon, expenditures increased by 21% from 1998/1999 to 1999/2000. This is due to the territorial government providing deficit financing to eliminate an operational deficit that was being carried from year to year.

In 1999/2000 legal aid spending decreased 16% in Quebec, the only jurisdiction to show a decline. This decrease appears to be due to a drop in expenditure for Central Administrative expenses, now returning to pre-1998 levels. Northwest Territories' Legal Aid delivered services to Nunavut from April 1, 1999 to June 30, 2000.<sup>13</sup> Nunavut reimbursed the Northwest Territories for these service expenditures. As a result, there is a break in the data for the Northwest Territories. Therefore, the percentage change in legal aid spending from 1998/1999 and 1999/2000 for the Northwest Territories cannot be made for this time period.

On a per capita basis, provincial/territorial expenditures vary greatly, from a low of \$5 in PEI to a high of \$96 in Nunavut (Table 4). Clearly, the three territories have the highest per capita expenditure figures<sup>14</sup>. This in part reflects the high costs associated with providing services in remote, sparsely populated areas. In addition to budget size and the priority placed on legal aid in the jurisdictions, some of the factors related to variations in per capita spending are: the nature of service delivery; the types of cases covered; the socio-economic characteristics of the region; the crime rate; and population density.

**Table 4**  
**Total and Per Capita Legal Aid Spending by Province/Territory, 1999-00**

Jurisdiction	Total Legal Aid Expenditures (Current dollars)	Percentage change from previous year	Per capita Expenditure
	\$'000	%	\$
<b>Primarily Judicare</b>			
New Brunswick	4,087	1	5.41
Ontario	223,608	3	19.53
Alberta	26,142	14	8.82
<b>Primarily Staff</b>			
Newfoundland	..	..	..
Prince Edward Island <sup>1</sup>	695	17	5.04
Nova Scotia	11,117	1	11.83
Saskatchewan	10,616	5	10.33
<b>Mixed</b>			
Quebec	101,943	-16	13.88
Manitoba	17,637	16	15.42
British Columbia	83,650	4	20.79
Northwest Territories	3,714	...	54.14
Yukon	1,245	21	40.69
Nunavut	2,651	...	95.7
<b>Canada</b>	<b>487,105</b>	<b>-1</b>	<b>15.93</b>

<sup>1</sup> Due to an error in previous calculation methods, the figures for total revenues, government contributions and expenditures are revised for Prince Edward Island.

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

<sup>13</sup> Nunavut became Canada's newest territory on April 1, 1999.

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

## More money allocated to civil than criminal cases

In 1999/2000, civil cases accounted for more than half (55%) of direct national legal expenditures, while the remaining 45% was spent on criminal cases. The proportionate expenditure on criminal versus civil matters varies considerably by jurisdiction, reflecting, to some extent, the differences in criminal and civil case volumes across jurisdictions (Table 5). As well, the allocation of expenditures by type of case is representative of provincial/territorial priorities. For example, Quebec spent an estimated 65% of their resources on civil cases, and the other 35% on criminal cases. In contrast, criminal cases accounted for 81% of legal aid expenditures in P.E.I.

**Table 5**  
**Direct Legal Expenditures, by Province/Territory, 1999-00**

	Staff Lawyers	Per- centage of total	Private Lawyers	Per- centage of total	Total	Criminal Cases	Per- centage of total	Civil Cases	Per- centage of total
	\$'000	%	\$'000	%	\$'000	\$'000	%	\$'000	%
<b>Primarily Judicare</b>									
New Brunswick	1,068	32	2,294	68	<b>3,362</b>	1,992	59	1,370	41
Ontario <sup>3</sup>	36,963	21	136,592	79	<b>173,555</b>	82,881	48	90,674	52
Alberta	2,090	9	20,829	91	<b>22,919</b>	13,911	61	9,008	39
<b>Primarily Staff</b>									
Newfoundland	..	..	..	..	<b>..</b>	..	..	..	..
Prince Edward Island	516	85	94	15	<b>610</b>	492	81	118	19
Nova Scotia	8,292	81	1,930	19	<b>10,222</b>	5,454	53	4,768	47
Saskatchewan	8,832	91	877	9	<b>9,709</b>	6,294	65	3,415	35
<b>Mixed</b>									
Quebec	54,611	59	37,407	41	<b>92,018</b>	32,326	35	59,692	65
Manitoba	6,760	49	6,929	51	<b>13,689</b>	6,346	46	7,343	54
British Columbia	25,670	34	49,042	66	<b>74,712</b>	31,434	42	43,278	58
Northwest Territories <sup>1</sup>	..	..	..	..	<b>1,112</b>	472	42	640	58
Yukon	484	51	457	49	<b>941</b>	718	76	223	24
Nunavut <sup>2</sup>	..	..	..	..	<b>..</b>	..	..	..	..
<b>Canada</b>	<b>..</b>	<b>..</b>	<b>..</b>	<b>..</b>	<b>402,849</b>	<b>182,320</b>	<b>45</b>	<b>220,529</b>	<b>55</b>

<sup>1</sup> Expenditures for the Northwest Territories include Aboriginal Courtworker services and public legal education and information.

<sup>2</sup> For fiscal 1999/2000, Nunavut's Legal Aid expenditures are included in NWT's figures.

<sup>3</sup> Expenditures for civil legal aid in Ontario include \$34,263 in services provided by the clinic system

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

## Applications for legal aid

The demand or need for legal aid in Canada is indicated, to a great extent, by the number of applications that the provinces and territories receive. The number of applications, however, does not reflect all requests for legal aid assistance, since applicants are screened, to some degree, before an application is filed. As well, coverage and eligibility requirements change over time, often imposing further restrictions on the types of cases taken on by the legal aid plans.

As noted earlier, several factors are taken into consideration when assessing legal aid applications: applicants must show that they meet certain financial eligibility requirements; the matter must meet coverage provisions; and in some cases, the matter must have legal merit. An applicant may be approved for either summary or full services.<sup>15</sup> Summary services include the provision of legal advice, information, or any other type of minimal legal service granted to an individual during a formal interview. Full services, on the other hand, constitute more extensive legal assistance. An applicant receiving full service is granted a legal aid certificate or other authorization denoting entitlement to legal services, which may include court representation, in addition to information and advice.

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

In the 1999/2000 fiscal year, 827,653 applications<sup>16</sup> were submitted for legal aid assistance, a 1% decrease compared to 1998/1999 (Figure 3). Between 1989/1990 and 1992/1993, the number of applications submitted to legal aid plans in Canada had been steadily increasing, but in 1993/1994 a downward trend began that ended with the increase for 1998/1999. A number of factors specific to the plans themselves may have contributed to this recent decline, such as: application fees; pre-screening procedures; further restrictions on the types of cases that receive legal aid coverage; stricter eligibility requirements implemented in certain jurisdictions; increased use of duty counsel; and possibly increased *pro bono* (services without charge) services provided by private lawyers.

## Decrease in refused applications<sup>17</sup>

The number of refused legal aid applications also decreased (-9%) in 1999/2000, totalling 109,768 compared to 120,917 in 1998/1999<sup>18</sup>. Pre-screening lowers the numbers of both the total and refused applications because individuals are refused legal aid before formally applying for legal assistance.

**Table 6**  
**Applications for Legal Aid, by Province/Territory, 1999-00**

	Total Applications	Criminal	Percentage	Civil	Percentage
			%		%
<b>Primarily Judicare</b>					
New Brunswick <sup>1</sup>	5,186	2,026	39	3,160	61
Ontario	350,658	..	..	..	..
Alberta	42,365	29,019	68	13,346	32
<b>Primarily Staff</b>					
Newfoundland	..	..	..	..	..
Prince Edward Island	..	..	..	..	..
Nova Scotia	24,003	15,653	65	8,350	35
Saskatchewan	24,469	17,858	73	6,611	27
<b>Mixed</b>					
Quebec	257,673	95,625	37	162,048	63
Manitoba	22,042	11,838	54	10,204	46
British Columbia	98,535	38,409	39	60,126	61
Northwest Territories <sup>2</sup>	1,707	862	50	845	50
Yukon <sup>3</sup>	1,015	774	76	241	24
Nunavut <sup>4</sup>	..	..	..	..	..
<b>Canada</b>	<b>827,653</b>	..	..	..	..

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

<sup>2</sup> In 1997-98, the Northwest Territories began a practice known as "presumed eligibility", whereby persons appearing unrepresented at court are not required to apply for legal services. Since counts of presumed eligibility cases are not available, data for 1997-98 cannot be compared to previous years. In 1998-99, a total of 4,456 persons appeared unrepresented (presumed eligibility) at court. This explains the decrease in the number of legal aid applications.

<sup>3</sup> Data exclude circuit court matters, but includes full duty counsel services.

<sup>4</sup> For fiscal 1999/2000, Nunavut's Legal Aid applications are included in NWT's figures.

**Note:** The total applications figure for Canada does not include Prince Edward Island, since only records of approved applications are kept. Data not available for Newfoundland in 1999/2000.

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

### Approval Rates for Legal Aid

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

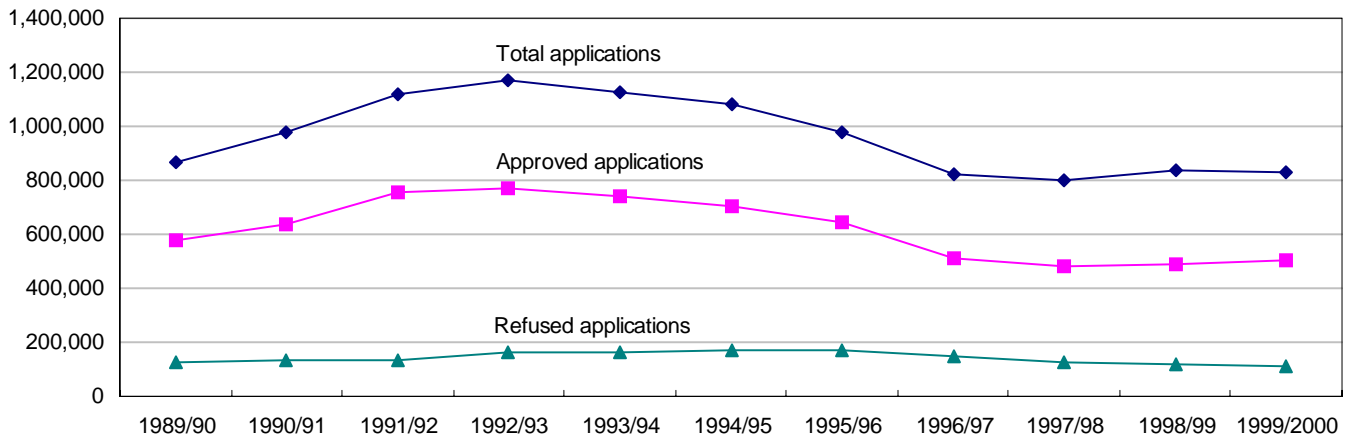
<sup>16</sup> All total application figures mentioned in this report do not include Prince Edward Island, since only counts of approved applications are maintained. Newfoundland is also not included in this report. Data were not available in 1999/2000.

<sup>17</sup> Newfoundland has been excluded from all calculations made in regards to refused applications. Data were not available in 1999/2000.

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

Figure 3

**Legal Aid Applications <sup>1,2</sup>, Approved and Refused, Canada, 1989/90 to 1999/2000**



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

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

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

**Approved applications on the rise<sup>19</sup>**

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

In 1999/2000, there were 503,074 applications approved for full legal aid services in Canada (Table 7). Nationally, this number reflects a 2% increase from the previous year, but a 34% decrease from the peak in 1992/1993. In 1999/2000, New Brunswick's approved caseload increased considerably (17%). Approved applications also increased in P.E.I. (10%).

In 1999/2000, the number of applications approved for full service declined in the Northwest Territories (12%), Saskatchewan (2%) and the Yukon (3%).

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

**Overall more civil applications are approved compared to criminal applications**

Civil cases account for slightly over half (54%) of approved cases at the national level, as seen in Table 7. In 1999/2000, New Brunswick, Quebec, and Ontario<sup>20</sup> approved more civil cases than criminal cases. The other jurisdictions approved more criminal applications than civil.

<sup>19</sup> Newfoundland has been excluded from all calculations made in regards to approved applications. Data were not available in 1999/2000.

<sup>20</sup> It should be noted that the higher proportion of approved civil cases in Ontario is due to the fact that applications for services from community clinics have been included. These clinics handle strictly civil cases.



**Table 7**  
**Approved Applications for Full Service Legal Aid, by Province/Territory, 1999-00**

	Total Approved Applications		Percentage change from previous year	1999-00			
	1998-99	1999-00		Criminal	Percentage	Civil	Percentage
			%		%		%
<b>Primarily Judicare</b>							
New Brunswick	3,965	4,637	17	1,285	28	3,352	72
Ontario	131,512	140,903	7	62,054	44	78,849	56
Alberta	30,294	32,051	6	23,378	73	8,673	27
<b>Primarily Staff</b>							
Newfoundland	..	..	..	..	..	..	..
Prince Edward Island	1,098	1,209	10	1,133	94	76	6
Nova Scotia	14,575	15,481	6	9,745	63	5,736	37
Saskatchewan	22,401	21,891	-2	16,419	75	5,472	25
<b>Mixed</b>							
Quebec <sup>1</sup>	216,790	215,991	--	77,525	36	138,466	64
Manitoba	17,306	17,374	-	8,871	51	8,503	49
British Columbia	50,738	51,534	2	27,479	53	24,055	47
Northwest Territories <sup>2</sup>	1,131	1,000	-12	659	66	341	34
Yukon <sup>3</sup>	1,032	1,003	-3	767	76	236	24
Nunavut <sup>4</sup>	..	..	..	..	..	..	..
<b>Canada</b>	<b>490,842</b>	<b>503,074</b>	<b>2</b>	<b>229,315</b>	<b>46</b>	<b>273,759</b>	<b>54</b>

<sup>1</sup> Approved applications include summary services in Quebec.

<sup>2</sup> In 1997-98, the Northwest Territories began a practice known as "presumed eligibility", whereby persons appearing unrepresented at court are not required to apply for legal services. In 1998-99, a total of 4,456 persons appeared unrepresented (presumed eligibility) at court.

<sup>3</sup> Data include full service duty counsel.

<sup>4</sup> For fiscal 1999/2000, Nunavut's Legal Aid figures are included with NWT.

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

These differences are explained by the coverage requirements that each jurisdiction adopts in its legal aid plan. For example, Quebec provides for much broader coverage of civil cases than most of the other jurisdictions. This coverage includes applications for income security, auto and employment insurance, and workers compensation benefits. Prince Edward Island, on the other hand, extends coverage to few civil cases. This variation is illustrated in Table 7, which indicates that in Quebec, 64% of approved applications are civil cases, as opposed to 6% in Prince Edward Island.

### Recent change in Ontario

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

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

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

## METHODOLOGY

Data in the report *Legal Aid in Canada: Resource and Caseload Statistics* (Catalogue no. 85F0015) and the related data tables *Legal Aid in Canada: Resource and Caseload Data Tables* (Catalogue no. 85F0028) are obtained from the Legal Aid Survey, conducted annually since 1983/1984, by the Courts Program, Canadian Centre for Justice Statistics. This survey provides the justice community, academics and the public with information on revenue, expenditure, personnel, and caseload statistics associated with the delivery and administration of legal aid in Canada. Data are collected and presented at the aggregate provincial/territorial level.

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

To adjust for the effect of inflation, constant 1992/1993 dollar figures have been calculated using the indexed changes in year-to-year revenues and expenditures for goods and services, as reported by Statistics Canada's *The Consumer Price Index*, Catalogue no. 62-001. The last update of the CPI official time base was 1992/1993.

Per capita figures are based on July 1<sup>st</sup> population estimates released in Statistics Canada's *Annual Demographics Statistics*, catalogue no. 91-213. The 1994 and 1995 population data are final intercensal estimates, final postcensal estimate for 1996 and updated postcensal estimates for 1997 and 1998.

## GLOSSARY

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

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

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

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

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

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

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

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

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

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

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

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

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