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Legal Aid in Canada: Resources and Caseload Statistics 1997-98



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Legal Aid in Canada: Resource and Caseload Statistics 1997-98

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HIGHLIGHTS

- Canada's provincial and territorial legal aid plans spent \$454.6 million in 1997-98, a 15% decrease from 1996-97. This is the third year in a row that legal aid spending has decreased.
- Expressed in per capita terms, legal aid plans spent on average \$14.97 per Canadian in 1997-98, down from \$17.84 in 1996-97.
- Driving the decline in expenditures was a \$63.3 million decrease in spending on legal aid in Ontario. Ontario accounted for 78% of the decreased spending on legal aid in Canada in 1997-98.
- Direct legal service expenditures amounted to \$383.9 million in 1997-98. This represents 84% of total expenditures for the year.
- Governments continue to be the major source of revenue for legal aid plans, contributing 93% of total revenues. The remainder of the revenue came from client contributions and cost recoveries (3%), legal profession contributions (2%), and other sources (3%).
- In 1997-98, there were 801,904 applications submitted for legal aid assistance, a 3% drop from 1996-97. This number marks a five-year downward trend in total applications.
- The number of approved applications also continues to decline. In 1997-98, there were 482,204 applications approved for legal aid, 5% less than in 1996-97.

INTRODUCTION

Access to justice in Canada is a concern for policy-makers, law professionals, and all Canadians requiring a lawyer. Equality of access to justice is an important quality of an effective justice system. This implies that among other things, an effective justice system should provide equal access to legal assistance to those who require it. Not all Canadians are able to finance legal services from their own resources. 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 responsibility, the organizational structure, eligibility requirements, and application of the legal aid plans differ in each province and territory. Considering these fundamental differences in the structure and the accompanying organizational differences, **caution must be used when making inter-jurisdictional comparisons of legal aid plans in Canada.**

This 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, 1997-98* (catalogue no. 85F0028). These data tables include the complete 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, Ontario¹ and Alberta are the only provinces which operate judicare systems.

A **staff system** directly employs lawyers to provide legal aid services. Newfoundland², Prince Edward Island, Nova Scotia and Saskatchewan have adopted this approach. Even in staff systems, the private bar is used when circumstances warrant, such as conflict of interest, or unavailability of a staff lawyer.

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

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.

¹ 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.

² 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.

What kinds of cases are 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/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. Generally, in Canada, the coverage of summary conviction offences 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 imprisonment³. 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 jurisdictions⁴.

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 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 judgment, award or settlement) amounted to \$14.5 million nationally in 1997-98.

In Manitoba and Alberta, application fees (\$25 and \$10 respectively) have been instituted. However, these fees are waived if the client is unable to afford the expense. In 1997-98, these and other sources of income accounted for 3% of total revenue.

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 \$43 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 the case, and the level of court in which proceedings will take place. General preparation fees are also covered in the tariffs, and are often specified by the jurisdictions.

Staffing

The staffing of legal aid plans depends on the delivery system adopted by the province or territory. Table 1 illustrates that provinces with judicare systems employ proportionately fewer lawyers than do the provinces operating staff systems. Overall, lawyers account for 35% of the staff, a reasonably stable proportion since the data series began in 1983-84. 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 highest proportion of legal aid

³ 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.

⁴ Readers are invited to consult *Legal Aid in Canada: Description of Operations* (catalogue no. 85-217-XDB/XIB), where a fuller description of legal aid coverage is provided for each province and territory.

Table 1
Legal Aid Personnel Resources by Province/Territory, 1997-98

Jurisdiction	Total Staff	Lawyers	Per-centage of total staff	Non-Lawyers	Per-centage of total staff	Direct Legal Service Staff ¹					Others ²				
						Total	Lawyers	Per-centage	Non-Lawyers	Per-centage	Total	Lawyers	Per-centage	Non-Lawyers	Per-centage
			%		%			%		%			%		%
Primarily Judicare															
New Brunswick	35	9	26	26	74	21	9	43	12	57	14	-	-	14	100
Ontario ³	958	308	32	650	68	336	224	67	112	33	622	84	14	538	86
Alberta	121	23	19	98	81	20	20	100	...	...	101	3	3	98	97
Primarily Staff															
Newfoundland	102	40	39	62	61	62	40	65	22	35	40	-	-	40	100
Prince Edward Island	7	4	57	3	43	4	4	100	-	-	3	-	-	3	100
Nova Scotia	119	66	55	53	45	65	65	100	-	-	54	1	2	53	98
Saskatchewan	132	61	46	71	54	81	60	74	21	26	51	1	2	50	98
Mixed															
Quebec	854	362	42	492	58	349	333	95	16	5	505	29	6	476	94
Manitoba	129	47	36	82	64	57	41	72	16	28	72	6	8	66	92
British Columbia	368	81	22	287	78	187	77	41	110	59	181	4	2	177	98
Northwest Territories	44	9	20	35	80	29	8	28	21	72	15	1	7	14	93
Yukon	9	5	56	4	44	6	4	67	2	33	3	1	33	2	67
Canada	2,878	1,015	35	1,863	65	1,217	885	73	332	27	1,661	130	8	1,531	92

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

- nil or zero.

... figures not applicable or appropriate.

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

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

³ Includes community clinic staff.

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

Table 2
Bar Involvement in Legal Aid Service Delivery, 1997-98

Jurisdiction	Total Bar Member Count	Lawyers Providing Legal Aid Services	Percentage	Private Lawyers Providing Legal Aid Services	Legal Aid Plan Lawyers
			%		
Primarily Judicare					
New Brunswick	1,239	386	31	377 ^e	9
Ontario	26,405	5,319	20	5,011	308
Alberta	7,270	1,395	19	1,372	23
Staff					
Newfoundland	576	55	10	15	40
Prince Edward Island	190	36	19	32	4
Nova Scotia	1,796	380	21	314	66
Saskatchewan	1,420	230	16	169	61
Mixed					
Quebec	20,584	3,744	18	3,382	362
Manitoba	2,112	541	26	494	47
British Columbia	8,361	1,743	21	1,662	81
Northwest Territories	380	64	17	55	9
Yukon	192	29	15	24	5
Canada	70,525	13,922	20	12,907	1,015

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

^e estimates.

personnel (65%). Legal aid organizations range in staff size from 7 members, as in the case of Prince Edward Island, to 958 personnel in Ontario. The total number of personnel in legal aid offices in Canada steadily increased from 1983-84 to 1993-94, but seems to have plateaued, with fairly stable personnel numbers since 1993-94.

Lawyers are responsible for providing most direct legal services (e.g., advice and representation) to clients. In Canada, in 1997-98, 73% of direct legal service staff were lawyers. The remaining 27% of staff providing direct legal services were other staff, such as para-legals and law students.

Participation of Lawyers in the Delivery of Legal Aid Services

In 1997-98, there were 70,525 lawyers registered as practising members of the provincial and territorial bars. Approximately 20% of these lawyers provided legal aid assistance in 1997-98. Of the 1,015 legal aid plan (staff) lawyers in 1997-98, 885 (or 87%) provided direct legal services. Private lawyers providing some type of legal aid assistance numbered 12,907 in 1997-98.

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 persons⁵, 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.

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

In some jurisdictions, duty counsel services may exceed the traditional duties of the duty counsel. For instance, legal aid plans in New Brunswick⁷, Ontario, Manitoba, Alberta, Northwest Territories, and Yukon provide what are known as 'full duty counsel' services⁸. 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), including speak-to-sentence. 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, reducing some of the financial and caseload levels on the legal aid plans.

⁵ 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.

⁶ 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.

⁷ Duty counsel also provide weekend telephone remand services in New Brunswick.

⁸ 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

Legal aid plans receive funding from three main sources: government contributions, client contributions and cost recoveries, and contributions from the legal profession. Government contributions include monies from both the federal and provincial/territorial governments. Figure 1 shows that overall government funding climbed steadily from 1987-88 to 1992-93, and then levelled off. In the 1997-98 fiscal year, total government contributions amounted to \$498.4 million, a slight increase from the 1996-97 government contributions of \$496.6 million.

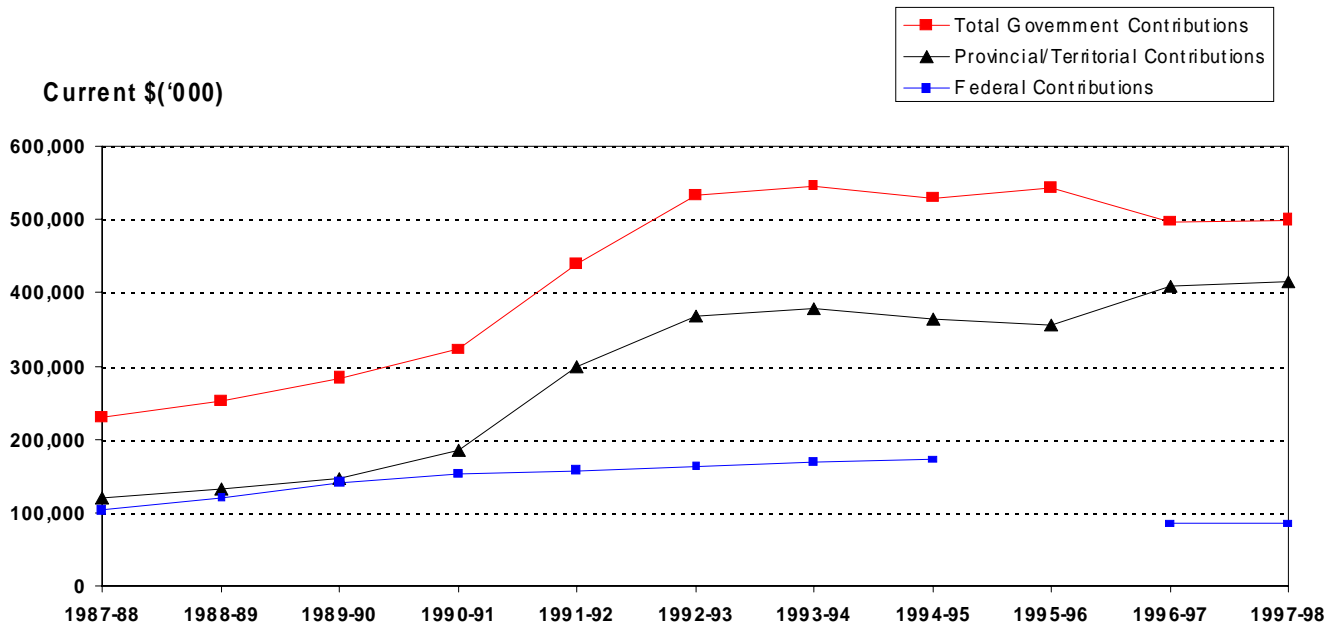
Government funding accounted for 93% of the total legal aid revenue in 1997-98, continuing as the major revenue source for legal aid in all jurisdictions. There are differences in the proportion of government funding received by the jurisdictions. In Prince Edward Island and the Northwest Territories, government funding covers 100% of legal aid plan expenditures. In contrast, government funding accounts for 85% of Manitoba's and Alberta's legal aid funding.

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 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 1997-98 was unchanged from 1996-97, at \$85.0 million.

In 1980, Health and Welfare (now Human Resources Development Canada) 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), in essence replaced the Canada Assistance Plan, still 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.

Figure 1 **Government Contributions¹ to Legal Aid in Canada, 1987-88 to 1997-98**



Source: Legal Aid Survey, Canadian Centre for Justice Statistics

Note: Federal Contributions for 1995-96 are missing, due to the fact that no claim was made by British Columbia for civil legal aid, thus causing a break in the series.

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

Table 3 **Provincial and Territorial Government Contributions to Legal Aid Plans, 1993-94 to 1997-98**

Jurisdiction	1993-94	Per-centage change From previous year	1994-95	Per-centage change from previous year	1995-96	Per-centage change from previous year	1996-97	Per-centage change from previous year	1997-98	Per-centage change from previous year
	\$'000	%	\$'000	%	\$'000	%	\$'000	%	\$'000	%
Primarily Judicare										
New Brunswick ¹	1,824	28	2,863	57	2,420	-15	3,228	33	3,278	2
Ontario	203,400	-1	195,000	-4	187,900	-4	191,096	2	191,130	--
Alberta	19,375	-3	16,875	-13	16,375	-3	16,140	-1	16,056	-1
Primarily Staff										
Newfoundland	2,548	-4	2,595	2	2,579	-1	3,698	43	3,971	7
Prince Edward Island	290	2	294	1	332	13	364	10	484	33
Nova Scotia	5,285	27	5,318	1	4,919	-8	7,406	51	7,566	2
Saskatchewan	5,984	59	3,020	-50	3,996	32	5,321	33	6,912	30
Mixed										
Quebec	65,378	1	66,124	1	66,437	--	96,791	46	98,515	2
Manitoba	7,001	2	7,984	14	7,698	-4	9,154	19	9,801	7
British Columbia	62,600	12	59,000	-6	58,400	-1	72,500 ^f	24	72,900	1
Northwest Territories	3,140	21	3,423	9	3,431	--	3,467	1	3,358	-3
Yukon	898	55	647	-28	492 ^f	-24	476 ^f	-3	429	-10
Canada	377,723	3	363,143	-4	354,979^f	-2	409,641^f	15	414,400	1

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

- nil or zero.
 -- amount too small to be expressed.
^f revised figures.

¹ The contribution of the Government of New Brunswick for 1996-97 and 1997-98 includes all expenditures for domestic legal aid, which is administered by the Department of Justice. Domestic legal aid costs were not reflected in the figures for 1993-94, when the Justice Department began administering domestic legal aid, and were understated in 1994-95 and 1995-96.

Increased provincial and territorial funding

In total, provincial and territorial government contributions amounted to \$414.4 million in 1997-98, increasing only slightly (1%) from the previous year (Table 3). Figure 1 shows that the total provincial/territorial government funding trend follows the same general pattern as the total government contributions trend, until 1996-97, when the provincial/territorial contributions rose significantly.

Although total provincial/territorial funding expressed as a proportion of total government contributions has fluctuated since the time series began in 1983-84, 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 1987-88 to 1990-91. From 1991-92 to 1995-96, this proportion increased to 70%. More recently, provincial/territorial contributions accounted for 83% of total government funding for legal aid in 1996-97 and 1997-98, the highest proportions ever.⁹

In Newfoundland, Nova Scotia, Quebec, Manitoba, Saskatchewan and British Columbia the recent increase in provincial/territorial funding can be explained in part by the replacement of funding under CAP with the CHST. Eight provinces¹⁰ received funding under CAP over the duration of its existence. Commencing 1996-97, monies received as a result of the new CHST are included in provincial/territorial contributions, however they cannot be separately identified from other provincial dollars.

Other sources of revenue

In 1997-98, client contributions and cost recoveries accounted for 3% of the total legal aid revenue. Client contributions refer to monies received from the individuals receiving legal aid, and cost recovery money consists of the monies recovered from a judgment, award, or settlement. As a proportion of total revenue, client contributions and cost recoveries have remained stable at 3 to 4% since the data series began in 1983-84.

Historically, contributions from the legal profession have accounted for 2 to 4% of the overall legal aid revenue. In 1997-98, it was 2% of total revenue, the same proportion since 1992-93.

Other income sources include interest from provincial law foundations, publication sales, and federal/provincial/territorial grants. As previously mentioned, Manitoba and Alberta have instituted application fees. In 1997-98, these and other sources of income accounted for 3% of total revenue.

Expenditures

Legal aid plan expenditures amounted to \$454.6 million in 1997-98. In all jurisdictions most of the money (\$383.9 million, or 84% overall) was spent on direct legal expenditures, which includes payments made to private lawyers as well as the costs of legal service delivery by legal aid plan staff (i.e., monies spent on the provision of: legal advice; information; referrals to other agencies such as transition homes and rehabilitation programs; and representation, not including central administrative expenses of the legal aid plans). The other \$70.7 million (16%) in expenditures incurred by legal aid plans were for: other program expenditures, which includes monies spent on legal research activities, public legal education and grants to other agencies; and central administrative expenditures, which include monies spent on head office functions and on offices that do not employ staff to advise and represent clients.

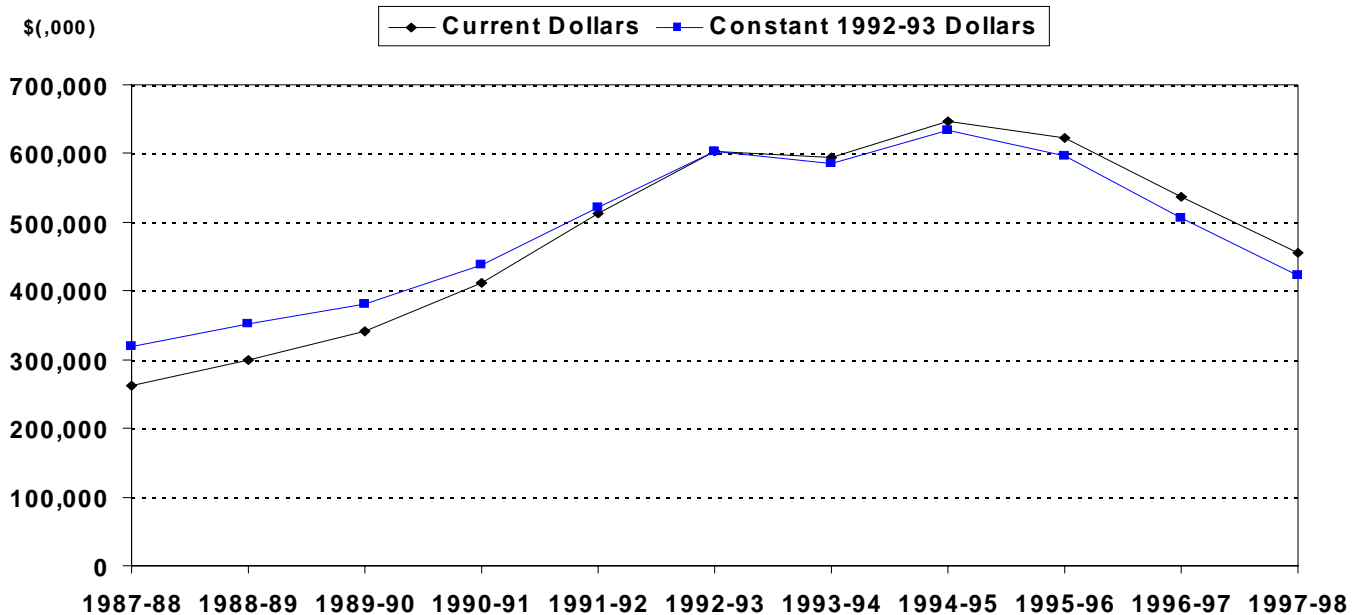
The 1997-98 fiscal year marks the third consecutive decrease of legal aid expenditures at the national level, dropping 15% over 1996-97 (Figure 2). Expressed in constant (1992-93) dollars, 1997-98 spending on legal aid amounted to \$423.7 million. This represents a 33% decrease since the recent peak of \$634.4 million (constant 1992-93 dollars) in 1994-95.

Decreased spending in 8 jurisdictions contributed to the overall decline in expenditures in 1997-98. Ontario's expenditures decreased most markedly, dropping 25% over 1996-97, the result of tightened eligibility criteria, reductions on the types of cases covered, and a reduction in the tariff paid to lawyers. The other jurisdictions experiencing decreased expenditures were British Columbia (-12%), Prince Edward Island (-11%), Alberta (-9%), Nova Scotia (-5%), Quebec (-5%), New Brunswick (-2%), and Yukon (-1%).

⁹ 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.

¹⁰ New Brunswick and Ontario are the other two provinces which received funding under CAP in the past. In 1995-96, New Brunswick did not receive CAP funding for civil legal aid (though it did in previous years). Similarly, in 1996-97 and 1997-98, New Brunswick did not receive funding under the new CHST program.

Figure 2

Total Legal Aid Expenditures, Canada, 1987-88 to 1997-98


Source: Legal Aid Survey, Canadian Centre for Justice Statistics

In 1997-98, legal aid spending increased in Saskatchewan (7%), Manitoba (5%) and Northwest Territories (5%). Newfoundland's expenditures remained stable.

On a per capita basis, provincial/territorial expenditures vary greatly, as evident in Table 4. Clearly, the two territories have the highest per capita expenditure figures¹¹. 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 the variations in per capita spending are: the nature of the 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, 1997-98

Jurisdiction	Total Legal Aid Expenditures	Percentage change from previous year	Per capita Expenditure
	\$'000	%	\$
Primarily Judicare			
New Brunswick	3,551	-2	4.67
Ontario	186,861	-25	16.29
Alberta	22,342	-9	7.81
Primarily Staff			
Newfoundland	5,524	--	9.88
Prince Edward Island	527	-11	3.84
Nova Scotia	10,111	-5	10.68
Saskatchewan	9,560	7	9.36
Mixed			
Quebec	108,856	-5	14.63
Manitoba	15,747	5	13.79
British Columbia	85,270	-12	21.64
Northwest Territories	5,397	5	80.07
Yukon	881	-1	28.06
Canada	454,627	-15	14.97

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

¹¹ Expenditures for the Northwest Territories include Aboriginal Courtworker services and public legal education and information.

More money allocated to civil than criminal cases

In 1997-98, civil cases represented slightly more than half (52%) of direct legal expenditures, and just under half (48%) was spent on criminal cases. The proportionate expenditure on criminal versus civil matters varies considerably by jurisdiction, as Table 5 shows. This earmarking of expenditures by type of case is representative of provincial priorities. For example, Nova Scotia splits their expenditures fairly equally between criminal and civil cases; Quebec spent an estimated 63% of their resources on civil cases, and the other 37% on criminal cases; whereas criminal cases accounted for 75% of legal aid expenditures in Prince Edward Island. Naturally, the priorities placed on the type of case have consequences for who receives legal aid.

Table 5
Direct Legal Expenditures, by Province/Territory, 1997-98

Jurisdiction	Staff Lawyers	Per- centage of total	Private Lawyers	Per- centage of total	Total	Criminal Cases	Per- centage of total	Civil Cases	Per- centage of total
	\$'000	%	\$'000	%	\$'000	\$'000	%	\$'000	%
Primarily Judicare									
New Brunswick	1,034	34	1,992	66	3,026	1,680	56	1,346	44
Ontario	33,092	22	115,198	78	148,290	78,875	53	69,415	47
Alberta	1,690	9	17,739	91	19,429	12,457	64	6,972	36
Primarily Staff									
Newfoundland	5,264	95	260	5	5,524	3,363	61	2,161	39
Prince Edward Island	426	81	101	19	527	396	75	131	25
Nova Scotia	7,571	80	1,864	20	9,435	4,809	51	4,626	49
Saskatchewan	8,001	91	746	9	8,747	5,395	62	3,352	38
Mixed									
Quebec	55,039	57	41,186	43	96,225	35,382 ^e	37	60,843 ^e	63
Manitoba	6,107	48	6,743	52	12,850	6,725	52	6,125	48
British Columbia	24,002	31	52,749	69	76,751	31,611	41	45,140	59
Northwest Territories ¹	..	..	..	..	2,390	1,551	65	839	35
Yukon	421	62	259	38	680	484	71	196	29
Canada	..	..	..	..	383,874	182,728	48	201,146	52

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

.. figures not available.

^e estimates.

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

Applications for legal aid

The demand or need for legal aid in Canada is evident, in part, by the number of applications that the provinces and territories receive. The number of applications, however, does not reflect all requests for legal aid assistance, since applicants are screened to some degree before an application is filed. Applications also do not entirely reflect demand or need since some people may not even apply for aid, despite the need. Also, coverage and eligibility requirements change over time, often further imposing restrictions on the types of cases taken on by the legal aid plans. As noted earlier, several factors are taken into consideration when assessing legal aid applications: applicants must 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.¹² Summary services include the provision of legal advice, information, or any other type of minimal legal service granted to an individual during a formal interview. Full services, on the other hand, constitute more extensive legal assistance. An applicant receiving full service is granted a legal aid certificate or other authorization denoting entitlement to legal services, which may include court representation, in addition to information and advice.

In 1997-98, 801,904 applications¹³ were submitted for legal aid assistance, a 3% decrease compared to 1996-97 (Table 6). Figure 3 shows that between 1987-88 and 1992-93, the number of applications submitted to legal aid plans in Canada had been steadily increasing, but in 1993-94 a downward trend began. A number of factors specific to the

¹² Total and refused application counts presented here, include both summary and full service applications, whereas approved applications refer to full service applications only.

¹³ All total application figures mentioned in this report do not include Prince Edward Island, since only counts of approved applications are maintained.

plans themselves may account for this recent decline, such as: application fees; pre-screening procedures; further restrictions to 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 provided by private lawyers. These factors and others could contribute to the downward trend in the number of applications for legal aid.

Table 6
Applications for Legal Aid, by Province/Territory, 1997-98

Jurisdiction	Total Applications	Criminal	Percentage	Civil	Percentage
			%		%
Primarily Judicare					
New Brunswick ¹	5,454	2,436	45	3,018	55
Ontario	311,502	..	..	..	..
Alberta	35,713	24,802	69	10,911	31
Staff					
Newfoundland	15,648	9,069	58	6,579	42
Prince Edward Island	..	..	..	..	..
Nova Scotia	20,684	11,499	56	9,185	44
Saskatchewan	23,618	17,662	75	5,956	25
Mixed					
Quebec	261,269	96,917	37	164,352	63
Manitoba	22,308	11,429	51	10,879	49
British Columbia	102,336	41,697	41	60,639	59
Northwest Territories ²	2,196	1,167	53	1,029	47
Yukon ³	1,176	739	63	437	37
Canada	801,904	..	..	..	..

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

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

.. figures not available.

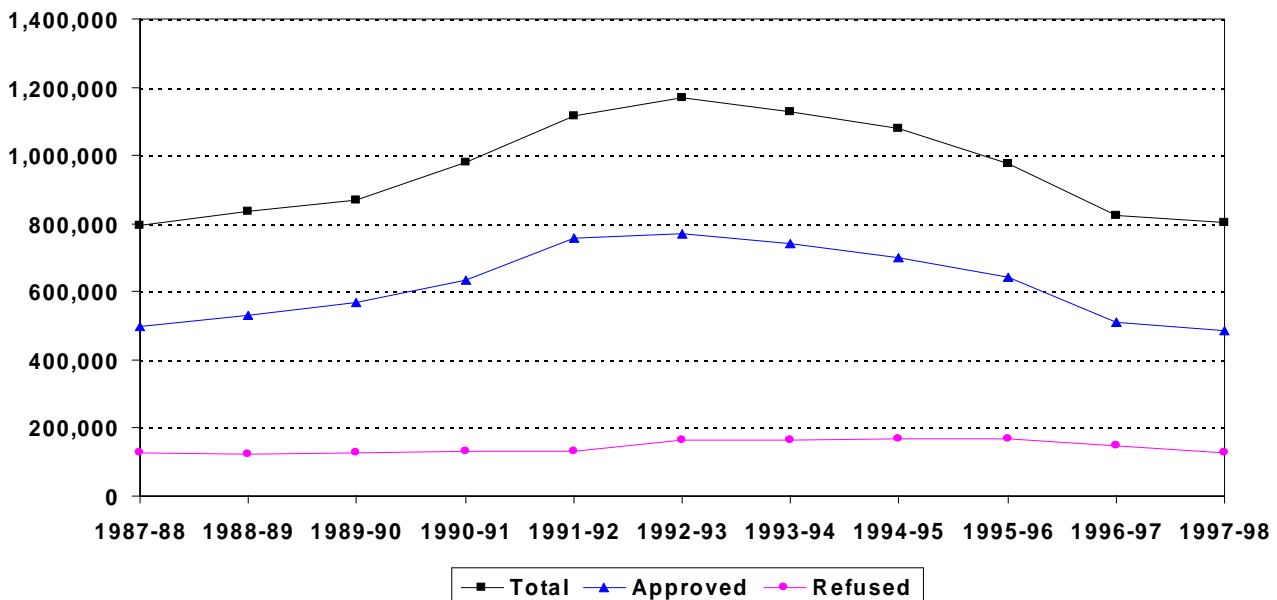
¹ Since the Domestic Legal Aid Program administered by New Brunswick Justice does not require applications, the civil applications figure for New Brunswick represents the number of domestic legal aid cases screened-in (or "accepted") by New Brunswick Justice, plus the applications for domestic cases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

² 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.

³ Data exclude circuit court matters, but includes full duty counsel services.

Figure 3

Legal Aid Applications^{(1), (2)}, Approved and Refused, Canada, 1987-88 to 1997-98



Source: Legal Aid Survey, Canadian Centre for Justice Statistics

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

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

Fewer applications approved

The effects of fiscal restraint are certainly reflected in the number of approved applications. Fewer people are applying for legal aid, and even fewer applications are being approved for full service. In 1997-98, there were 482,204 applications approved for full legal aid services in Canada (Table 7). This number reflects a 5% drop from the previous year and marks a continuation of a downward trend in approval numbers and rates. Since 1993-94, the number of applications approved for full legal aid services has decreased by 35%.

The most marked example of the fiscal restraint on approved applications can be seen in Ontario, where the number of approved full service applications in 1997-98 was less than half that of the number approved in 1993-94. However, in 1997-98, Ontario's caseload actually increased slightly (3%) over 1996-97. Along with Ontario, approved applications increased in Prince Edward Island (5%), Saskatchewan (2%), and slightly in Alberta (1%).

In 1997-98, the number of applications approved for full service also declined in Quebec (-11%), Newfoundland (-10%), Manitoba (-7%), British Columbia (-7%), and Nova Scotia (-5%).

Comparable caseload data are not available for New Brunswick, the Northwest Territories, and Yukon. The number of applications approved for full service in New Brunswick in 1997-98 cannot be accurately compared with 1996-97 due to incomplete domestic legal aid data prior to 1997-98. 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. Prior to 1997-98 in Yukon, approved applications included duty counsel services for Judicial Interim Release Hearings, and are therefore not comparable to subsequent years.

Table 7
Approved Applications for Legal Aid, by Province/Territory, 1997-98

Jurisdiction	Total Approved Applications		Percentage change from previous year	1997-98			
	1996-97	1997-98		Criminal	Percentage	Civil	Percentage
			%		%		%
Primarily Judicare							
New Brunswick ¹	1,629	3,932	141	1,400	36	2,532	64
Ontario	111,889	115,620	3	54,890	47	60,730	53
Alberta	28,014	28,316	1	20,646	73	7,670	27
Staff							
Newfoundland ²	10,880	9,838	-10	7,173	73	2,665	27
Prince Edward Island	1,210	1,274	5	1,193	94	81	6
Nova Scotia	16,529	15,744	-5	9,718	62	6,026	38
Saskatchewan	21,484 ^r	21,980	2	16,550	75	5,430	25
Mixed							
Quebec ³	240,178 ^r	214,254	-11	77,071	36	137,183	64
Manitoba	18,349	17,009	-7	7,959	47	9,050	53
British Columbia	56,018	51,871	-7	28,702	55	23,169	45
Northwest Territories ⁴	2,007	1,321	-34	870	66	451	34
Yukon ⁵	1,372	1,045	-24	693	66	352	34
Canada	509,559^r	482,204	-5	226,865	47	255,339	53

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

¹ Data do not include domestic legal aid for 1996-97 and 1997-98. Applications figures for 1996-97 are incomplete and should not be compared with 1997-98 data.

² Approved applications figures (total, criminal and civil) have been derived by subtracting the number of refused applications from the total applications for the fiscal year.

³ Approved applications include summary services in Quebec.

⁴ 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.

⁵ Data include full service duty counsel. Also included in 1996-97, are approved applications for Judicial Interim Release hearings: therefore, approved application data for 1996-97 are not comparable with 1997-98.

Overall more civil applications are approved

Civil cases account for slightly over half (53%) of approved cases at the Canada level, as seen in Table 7. In 1997-98, New Brunswick, Quebec, Ontario¹⁴ and Manitoba accepted more applications for civil cases than criminal cases. The other jurisdictions approved more criminal applications than civil.

¹⁴ 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.

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 evident in Table 7, which indicates that in Quebec, 64% of approved applications are civil cases, as opposed to 6% in Prince Edward Island. These proportions clearly indicate that the legal aid plans in each province and territory have different priorities and demands.

Fewer applications refused

The number of refused applications also decreased in 1997-98, totalling 126,452 compared to 149,598 in 1996-97. This constitutes a 15% drop in the number of refused applications¹⁵. However, it is important when evaluating the numbers of total and refused applications to consider the effects that pre-screening may have on the numbers of applications for legal aid services. Pre-screening lowers the numbers of both the total and refused applications because individuals are refused legal aid before formally applying for legal assistance.

Looking ahead in Ontario

In Ontario, on December 18, 1998, Bill O-68 1998 received royal ascent. The new act introduces legislation (Legal Aid Services Act), which incorporates a new body of legal aid administration and services to be known as Legal Aid Ontario (formally 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 will no longer be administered by the Law Society of Upper Canada. Legal Aid Ontario will function as an independent corporation, but will be accountable to the government of Ontario as set out in the Act.

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

The community clinics will now report to the corporation of Legal Aid Ontario, rather than the Law Society. 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.

¹⁵ Refused application counts exclude Prince Edward Island since only counts of approved applications are maintained.

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

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

To adjust for the effect of inflation, constant 1992-93 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.

Per capita figures are based on October 1st population estimates released in Statistics Canada's *Quarterly Demographics Statistics*, catalogue no. 91-002 (Vol. 11 No. 4). The 1993 to 1995 population data are final postcensal estimates and the 1996 and 1997 data are updated postcensal estimates.

GLOSSARY

Active bar members include the total number of lawyers certified and insured to practise in the jurisdiction.

Adult refers to persons 18 years of age and older.

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.

Approved application for full service refers to an application for legal assistance which is granted legal aid as described in a certificate, referral, or any other authorization denoting that the applicant is entitled to legal services. Once an application is approved for full service, it is not subsequently counted as a summary service although in some cases, relatively little service may be required to fulfil the request. 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 services.

Approved application for summary services 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. No file (dossier) is opened for the client provided summary services. This count excludes the application which requested extensive legal assistance (full service) but received summary service upon refusal. Also excluded are the applications originally approved for full service but subsequently rendered summary services. Verbal requests for assistance are excluded from this count. The count measures the number of units of service provided rather than the number of persons assisted, and is mutually exclusive of both the approved full service application and duty counsel counts.

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

Civil contributions refer to monies provided by Human Resources Development Canada as part of the cost-sharing agreement for legal services in civil legal aid matters under the Canada Assistance Plan (CAP), which terminated on March 31, 1996. The federal government no longer directly funds civil legal aid; instead it allows the provinces more flexibility in their own funding priorities through the new Canada Health and Social Transfer (CHST).

Civil duty counsel refers to services in civil matters that may additionally be provided at locations other than a court or place of detention (e.g. psychiatric hospital, senior citizens’ home).

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.

Coverage restrictions refer to applications refused on the grounds that the legal matter is not covered by the Legal Aid Plan.

Criminal adult contributions refer to monies provided by Justice Canada as part of the criminal adult cost-sharing agreement.

Criminal duty counsel refers to services in criminal matters that are generally provided at a court or place of detention.

Direct legal service expenditures are the sum payments made to private law firms and the costs of legal service delivery by Plan staff. These expenditures include monies spent on the provision of legal advice and representation services to clients including special target groups. All law office and contracted community clinic expenses are included (i.e., staff salaries, benefits and overhead expenses). Central administrative expenses and other expenses of the Plan are excluded.

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 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.

Federal matters refer to those criminal offences designated as a federal statutory responsibility.

Federal government contribution to Criminal Legal Aid refers to monies contributed by Justice Canada.

Financial ineligibility refers to a refusal for legal aid based on some financial information disclosed by the applicant pertaining to his/her income, assets and liabilities.

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.

Lack of merit refers to applications refused because the nature of the case or the seriousness of the matter does not warrant legal assistance.

Legal research staff refers to persons working within a specific program area conducting research related to legal matters. This excludes persons maintaining Plan libraries.

The **March 31st count** refers to the actual number of both full-time and part-time staff employed by the Plan at one particular point in time: March 31, the final day of the fiscal year.

Net Cost-Shared Expenditures - Represents provincial and territorial claims for costs incurred by each legal aid plan on matters specified in the federal/provincial/territorial cost-sharing agreements for criminal legal aid. It covers both legal service costs and associated administrative expenses. Such an amount is the net of all contributions and recoveries received from clients. Net cost-shared expenditures are calculated on a province-by-province and territorial basis; therefore, caution must be exercised when making inter-provincial and territorial comparisons.

Non-compliance/abuse refers to a refusal for legal aid based on either an applicant's prior or current experience with the Plan. These refusals include applications where similar services were already rendered; services applied for are abusive of the legal process; or failure to cooperate with the legal aid lawyer.

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

Other staff refers to persons not in public legal education or legal research programs and whose primary function does not involve the provision of legal advice and/or representation directly to clients; for example, lawyers performing primarily administrative functions, accountants, librarians, law students and clerical staff.

Personnel resources refer to the actual number of staff employed by the Plan, as of March 31st. These data are broken down in two ways: by type of service provided and by type of personnel. The type of personnel on staff with the Plans are divided into: lawyer and non-lawyer counts. Staff lawyers refer to lawyers who are hired by the Legal Aid Plan to work from the legal aid office. Salaries are paid by the Plan.