



Department of Justice
Canada

Ministère de la Justice
Canada

Evaluation of the Legal Aid Program

December 2016

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ISBN 978-0-660-07442-9
Cat. No. J2-439/2017E-PDF

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ACRONYMS

AJA	Access to Justice Services Agreements
AOJO	Administration of Justice Offences
CCJS	Canadian Centre for Justice Statistics
CPI	Consumer Price Index
COCFP	Court-Ordered Counsel in Federal Prosecutions
DTC	Drug Treatment Court
EDC	Expanded Duty Counsel
FPT	Federal-Provincial-Territorial
FEGs	Financial Eligibility Guidelines
IRB	Immigration and Refugee Board of Canada
I&R	Immigration and Refugee
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	<i>Immigration and Refugee Protection Act</i>
LAD	Legal Aid Directorate
LAO	Legal Aid Ontario
LFA	Linear File Assignment
LICO	Low Income Cut-offs
LSB	Legal Services Board
LSS	Legal Services Society
PID	Policy Implementation Directorate
PLEI	Public Legal Education and Information
PSAT	Public Security and Anti-terrorism

PWG	Federal-Provincial-Territorial Permanent Working Group on Legal Aid
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
YCDO	Youth Criminal Defence Office
YCJA	<i>Youth Criminal Justice Act</i>

EXECUTIVE SUMMARY

1. Introduction

This document constitutes the final report for the evaluation of the Legal Aid Program (the Program). In accordance with the Treasury Board Secretariat's 2009 *Policy on Evaluation*, the evaluation addresses both the relevance and the performance of the Program. The evaluation covers the period from 2012-13 to 2015-16.

2. Description of the Program

The Program manages the federal contribution to legal aid in Canada through its five components: 1) funding for adult and youth criminal legal aid services in the provinces and territories, and civil legal aid services in the territories; 2) funding for immigration and refugee (I&R) legal aid services; 3) funding for Court-Ordered Counsel in Federal Prosecutions (COCFP); 4) funding for legal aid services in Public Security and Anti-terrorism (PSAT) cases; and 5) secretariat and funding support for the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG), which is composed of representatives from provincial and territorial governments, legal aid plans, and federal Program officials. The Program's objectives are to promote access to justice through the provision of legal aid funding in the component areas and to promote public confidence in the criminal justice system.

3. Methodology

In order to address the questions included in the evaluation matrix, the evaluation included the following methodological approaches: document, file, data, and literature review; key informant interviews; interviews with justice professionals; interviews with legal aid clients; and 10 case studies to highlight innovations or promising practices in the delivery of legal aid.

4. Findings

Relevance

The Program meets an ongoing need and is in the public interest

The evaluation evidence supports the continued need for the Program. Key informants unanimously believe that legal aid serves the public interest and need, citing Canada's constitutional, statutory and international obligations to support access to justice and a fair legal process. Without legal aid, it is believed that the justice system would be brought into disrepute. Legal aid balances the power of the state by providing legal assistance to some of the most vulnerable populations of society and reduces the possibility of miscarriages of justice. In addition, when the laws or the operation of the criminal justice system disproportionately impact marginalized or vulnerable populations, legal aid plans may be involved in legal challenges to those laws and practices. Legal aid plans are also one of the main tools to bring the criminal defence perspective to discussions when justice system reforms are being considered.

Many key informants also noted that legal aid assists the criminal justice system by contributing to its efficiency. By providing representation, legal aid reduces the number of unrepresented accused who are considered to create delays, additional appearances, and other inefficiencies in the justice system. Legal aid plans' budgets are limited and attempt to control costs, which benefits the justice system as they work to ensure that cases are handled as expeditiously and cost effectively as possible.

The Program aligns with federal priorities and departmental strategic outcomes

The Program's objectives of promoting access to justice and public confidence in the justice system align with federal priorities and the Department of Justice Canada's (the Department) strategic outcomes. Recent Speeches from the Throne emphasize the federal commitment to fundamental rights, such as fairness and the rule of law, which legal aid supports. The Program's objectives also directly support the Department's strategic outcome of "a fair, relevant and accessible Canadian justice system". Through its contribution funding, the Program facilitates access to justice for economically disadvantaged individuals who are either facing a serious criminal charge, seeking a determination under the I&R system, or experiencing a civil law issue and reside in the territories.

The federal government has a necessary role in legal aid

The basis for the federal government's role in legal aid is found in Canada's foundational documents, key statutes that define Canadian federalism, and international commitments made by the Government of Canada. The federal responsibility to provide funding for criminal and I&R legal aid is based on constitutional and *Canadian Charter of Rights and Freedoms* obligations, while the responsibility for civil legal aid in the territories comes from the authority for civil law retained by the federal government under the territorial acts. The federal government has also made international commitments that address the right to a fair hearing, equal treatment under the law, and publicly funded counsel, particularly the United Nations' *International Covenant on Civil and Political Rights*, which requires signatories to provide legal counsel to individuals facing criminal charges who cannot afford counsel. Canada's support for I&R legal aid also flows from its international obligation based in the 1951 *Convention Relating to the Status of Refugees*, Article 16, which states that refugee claimants enjoy the same treatment as nationals in matters pertaining to access to the courts, including legal assistance.

Effectiveness

Assessing the effectiveness of the Program in achieving its outcomes needs to be considered in context. The Program is not directly involved in the delivery of legal aid; the provinces and territories, through their legal aid plans, are the delivery agents. Consequently, the evaluation of the federal Program is not intended to evaluate the legal aid plans, and yet the Program's outcomes of enhancing capacity to deliver legal aid and effective provision of legal aid require a consideration of legal aid plan activities. The evaluation's perspective on these activities is to demonstrate the types of activities being supported in part by federal funding. The immediate and intermediate outcomes are linked, as both consider the contribution of federal funding to the provision of legal aid: the immediate outcome looks at the federal funding's role in enhancing capacity, and the intermediate outcome considers how the federal funding contributes to the effective provision of legal aid.

The 2012 Legal Aid Program evaluation noted that the Program would benefit from improved performance measures that are agreed to by the PWG and the Legal Aid Directorate (LAD) and that are consistently tracked. This remains an area for improvement for the Program. Although the current evaluation attempted to provide additional evidence of effectiveness through case studies and interviews with clients, the Program would benefit from outcomes that are more clearly defined and have performance measures that are being consistently recorded and tracked.

The Program contributes to increasing the capacity of provinces and territories and legal aid plans to provide and deliver legal aid in areas receiving federal funding

The federal funding contribution is intended to enhance the capacity of provinces and territories and their legal aid plans to deliver legal aid in the areas that receive federal funding. The total shareable expenditures for criminal legal aid in provinces and criminal and civil legal aid in the territories rose by approximately 5% between fiscal years 2010-11 and 2013-14. With the federal funding level remaining at \$112.39 million during this time period, the federal contribution provided approximately 28% of the funds used to support the delivery of criminal legal aid in the provinces and criminal and civil legal aid in the territories. For I&R legal aid, the federal contribution accounts for between 32% and 38% of shareable expenditures.

The federal contribution is considered important to maintaining the current levels of services. If federal funding were withdrawn or substantially reduced, most key informants believe that access to justice would be adversely affected, as services would be cut or — in the case of I&R legal aid, where the legislation and enforcement are federally directed — some jurisdictions might discontinue offering I&R legal aid. The federal contribution to these legal aid areas has enabled plans to meet their current demand, as reflected in the proportion of approved legal aid applications. Although the number of applications is not a complete picture of the demand for legal aid, it is the only nationally available measure of demand.

The funding of COCFP is a federal responsibility. Consequently, the federal contribution does not enhance legal aid plans' capacity as much as it fulfills the federal responsibility to fund the defences for these federal prosecutions where the court has ordered counsel in the interest of justice and a fair trial. If the totality of the expenses of providing court-ordered counsel were not covered by the Program, cases would be stayed. In the event that provinces and territories and their legal aid plans cease to manage cases on the federal government's behalf, the federal government would be required to develop its own legal aid system to provide COCFP directly.

For PSAT, key informants emphasized the importance of federal funding. Defending one of these anti-terrorism cases, given their complexity, could consume a significant and disproportionate amount of a plan's criminal legal aid budget and affect the plan's ability to assist other clients who need legal aid services. By totally funding these cases, the federal government contributes to the capacity of legal aid plans by ensuring these cases do not adversely affect their ability to serve their other clients.

The PWG's mandate includes activities that enhance the capacity of legal aid plans by negotiating cost-sharing agreements, serving as a resource to the Federal-Provincial-Territorial (FPT) Deputy Ministers Responsible for Justice and Public Safety on identified priority areas, and providing a forum for policy and legal discussions among its members on topics relevant to legal aid. In the last two evaluation cycles, the PWG is thought to have had a significant focus on reviewing the contribution agreements and funding formulae for legal aid, which has detracted from the time available to focus on its other priorities. As a result, the PWG's mandate was not entirely fulfilled. The evaluation found that the Working Group is beginning to realign its focus toward facilitating discussion to other legal aid program and policy matters, such as performance measurement and information sharing. Key informants generally supported these new directions of the PWG. They offered other suggestions that they thought would help enhance the capacity of legal aid, including funding more research and exploring issues related to the impact of legislative changes on legal aid.

Federal funding contributes to the effective provision of legal aid to eligible persons in the areas receiving federal funding

The evaluation considered the extent to which the federal contribution supported effective provision of legal aid from a few dimensions.

The evaluation considered whether there is effective provision of legal aid in that low-income Canadians who cannot afford counsel have access to lawyers in the areas that receive federal funding. This goes beyond approving applications for legal aid and considers potential unmet need by measuring the difference between financial eligibility guidelines (FEGs) and economic measures such as the consumer price index (CPI), minimum wage, and the low income cut-offs (LICOs) over time. The evaluation found that the FEGs of some legal aid plans for which data are available have kept pace with various economic indicators since 2010, such as the CPI and the minimum wage, which is a more positive result than the 2012 evaluation of the Program. In addition, although most plans for which data are available have financial guidelines above the LICOs, meaning that Canadians living in poverty are eligible for legal aid, the differences between the FEGs and the LICOs have been reduced since 2010 for some plans. These findings provide a more positive picture related to the provision of legal aid compared to the 2012 evaluation.

In addition to the capacity of some plans to increase their FEGs, thereby expanding the population of clients they can serve and increasing access to legal aid, all plans have undertaken a variety of approaches to enhance access to justice and/or increase the efficiency of legal aid service delivery. By conducting case studies of best or promising practices, the evaluation gathered evidence of

increasing accessibility to legal aid while controlling costs and/or contributing to justice system efficiencies through measures such as expanded duty counsel, presumed eligibility, participation in more holistic approaches with interdisciplinary teams (specialized legal aid offices, specialized courts), and services that result in earlier resolution, more continuity of service, and more streamlined approaches. The adoption of these innovations and promising practices to enhance the provision of legal aid services are, in part, supported by the federal contribution.

The effective provision of legal aid is also found in the impact of legal aid on addressing the access to justice needs of clients. Through interviews with justice professionals and clients, the evaluation found that legal aid clients are often not equipped to represent themselves due to the complexity of the justice system and their personal circumstances that make self-representation difficult (e.g., education levels, addictions, mental health issues, and past trauma). The potential effects for clients when they proceed without counsel are pleading guilty to charges when they might not otherwise do so, receiving harsher sentences, or for I&R legal aid clients, being deported back to their home country where they are at risk of persecution or torture.

Efficiency and economy

Economic delivery of the Program

The evaluation found that the Program expended its resources related to the contribution agreements largely as planned. Where there were variances (COCFP and PSAT cases), the results were expected, given the complex nature and the uncertainty about the number of new cases that will arise each fiscal year.

In terms of spending on program administration (salaries and operations and maintenance), the Program lapsed funds in some years. This was also the case even when the costs of COCFP cases managed by the LAD were taken into account¹. It is important to note that there were a number of government-wide cost containment measures put in place during the years examined through this evaluation, including a Strategic and Operating Review, the Deficit Reduction Action Plan, travel caps, and budget and staffing freezes.

¹ The Program uses its operations and maintenance funding to cover COCFP expenditures that are in excess of the budget for COCFP cases managed by LAD.

Efficiency of the Program

The delivery costs of the Program are equivalent to 0.8% of the federal funding contribution. This result is similar to the 2012 evaluation of the Program and other contribution programs of the Department. Based on this finding, the Program is seen to be operating efficiently.

The evaluation results also indicate that the resources used to achieve the Program's outcomes are reasonable. The level of Program expenditures (administrative and contribution funding) remained at roughly \$130 million during the period covered by the evaluation. During that time, legal aid plans were able to maintain their capacity to respond to demand while managing a challenging environment. As the evaluation findings show, the efficiency of legal aid service delivery is not solely within the control of legal aid plans. Many of the cost drivers that affect legal aid are created by external factors, such as policing practices, charging policies, changes in legislation, system reforms, rules of court, case complexity, and the efficiency of the justice system as a whole.

In response to upward cost pressures and the increasing complexity of cases, legal aid plans have undertaken a variety of approaches to improve the efficiency of their services and to maintain access to legal aid. The case studies provided examples of these promising practices, which have focused on increasing accessibility, more effectively addressing client needs that include multiple barriers and non-legal issues, adopting approaches to improve the efficiency of service delivery, and enhancing opportunities for early resolution. These promising practices have the dual purpose of increasing efficiencies and improving the effectiveness of service for clients.

A comparison of tariff levels in Ontario to private bar charges for similar services demonstrates that legal aid services are provided at much lower rates. This finding shows that the legal aid system is cost efficient from the perspective of legal fees.

Legal aid also contributes to efficiencies for the justice system, which benefits other stakeholders. As justice professionals pointed out, individuals who proceed without counsel require more resources of the justice system, as their cases are likely to result in more appearances, more adjournments, and more time to resolve the matter.

1. INTRODUCTION

The Legal Aid Program (the Program) manages the federal contribution to legal aid in Canada through its five components:

- funding for adult and youth criminal legal aid services in the provinces, and criminal and civil legal aid services in the territories²;
- funding for immigration and refugee (I&R) legal aid services;
- funding for Court-Ordered Counsel in Federal Prosecutions (COCFP);
- funding for legal aid in Public Security and Anti-terrorism (PSAT) cases; and
- secretariat and funding support for the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG), which is composed of representatives from provincial and territorial governments, legal aid plans, and federal Program officials.

The Program's primary objective is to "enable the provinces and territories and their legal aid plans to deliver criminal legal aid (and criminal and civil legal aid in the territories) to economically disadvantaged persons facing the likelihood of incarceration, and for youth pursuant to the *Youth Criminal Justice Act*, through the provision of contribution funding" (Department of Justice Canada, 2007).

This document constitutes the final report for the evaluation of the federal Legal Aid Program.

² Federal contributions to the territories are managed through the integrated Access to Justice Services Agreements, which include criminal and civil legal aid, Indigenous courtwork, and Public Legal Education and Information services. The federal contributions to criminal and civil legal aid in the territories are included in the current evaluation. A separate evaluation was conducted of the Access to Justice Services Agreements entitled *Access to Justice Services Agreements Evaluation*. Retrieved from <http://www.justice.gc.ca/eng/rp-pr/cp-pm> in 2012. Department of Justice Canada (2012, October). /eval/rep-rap/12/ajs-sja/ajs-sja.pdf.

1.1. Scope and Objectives of the Evaluation

This evaluation was completed in accordance with the Treasury Board Secretariat's 2009 *Policy on Evaluation*, which requires departments to evaluate all direct program spending on a five-year cycle.³ The evaluation covers the relevance of the Program in terms of whether there is a continued need for the Program, its alignment with federal priorities and departmental strategic outcomes, and its alignment with federal roles and responsibilities. The Program evaluation also addresses the impact and value of the federal investment in legal aid.

The scope of the evaluation includes activities undertaken by the Program between fiscal years 2012-13 and 2015-16.

The evaluation was conducted between October 2015 and June 2016. The Evaluation Division of the Department of Justice Canada (the Department) directed the evaluation, with the support of an Evaluation Advisory Group composed of representatives from the Legal Aid Directorate (LAD), a representative from the Policy Implementation Directorate (PID), and representatives from the PWG.

1.2. Structure of the Report

This report contains five sections, including this introduction. Section 2 provides a description of the Legal Aid Program. Section 3 describes the methodology used to address the set of evaluation issues and questions. Section 4 summarizes the key findings that have emerged from the data collection process, and Section 5 provides the overall evaluation conclusions.

³ Treasury Board of Canada. (2009). *Policy on Evaluation*, Ottawa, s. 6.1.8 a).

2. PROFILE OF THE LEGAL AID PROGRAM

2.1. Overview

The federal involvement in legal aid is through the Legal Aid Program, which provides contribution funding for legal aid to the provinces and territories through funding agreements. The federal government is not responsible for the delivery of legal aid, which is provided by the provinces and territories through their legal aid plans.

Through the criminal legal aid contribution agreements, the federal government contributes funding to the provinces for criminal and youth criminal justice legal aid. Since 2001, it has been providing interim funding to the six provinces that provide I&R legal services (British Columbia, Alberta, Manitoba, Ontario, Quebec and Newfoundland and Labrador). Federal contributions to the territories for access to justice services (which include criminal and civil legal aid, Indigenous courtwork, and Public Legal Education and Information [PLEI] services) are provided through the integrated Access to Justice Services Agreements (AJAs).

The Program's objectives are:

- to promote access to justice and protect rights under the *Canadian Charter of Rights and Freedoms* (the Charter) by contributing to the delivery of criminal legal aid for economically disadvantaged persons facing the likelihood of incarceration, and for youth pursuant to the *Youth Criminal Justice Act* (YCJA), and by contributing to the delivery of I&R legal aid for economically disadvantaged immigrants and refugees;
- to promote access to justice by enabling provinces and territories to manage COCFP cases;
- to promote access to justice by enabling provinces and territories to provide legal aid to economically disadvantaged accused in PSAT cases; and
- to promote public confidence in the criminal justice system.

To support these objectives, which focus on promoting access to justice and, thereby, building public confidence in the criminal justice system, the Program has identified three core outcomes, which apply to each of its components:

- enhanced capacity of provinces and territories and their legal aid plans to deliver legal aid in the areas receiving federal funding (immediate outcome);
- effective provision of legal aid to eligible persons in the areas receiving federal funding (intermediate outcome); and
- a Canada-wide justice system that is efficient, fair, relevant and accessible, and that promotes public confidence in the justice system (ultimate outcome).

Achievement of these outcomes would demonstrate the fulfillment of the Program's objectives. Access to justice is promoted by the federal government's legal aid funding contribution, which helps support provinces and territories and their legal aid plans' capacity to deliver legal aid and further supports the effective provision of legal aid in the areas receiving federal funding. Achievement of the immediate and intermediate outcomes will support the ultimate outcome of an efficient, fair, relevant and accessible justice system. A detailed description of the Program's logic model is included in Appendix A.

2.2. Program Components

2.2.1. Funding for criminal legal aid in the provinces and criminal and civil legal aid in the territories

The federal government contributes funding to the provinces and territories for criminal and youth criminal justice legal aid for economically disadvantaged people accused of serious and/or complex criminal offences and facing the likelihood of incarceration, and to youths charged under the YCJA. The federal government also contributes funding for civil legal aid in the territories, based on the eligibility criteria established by the territories⁴.

⁴ For the provinces, the federal government supports civil legal aid through the Canada Social Transfer, although funds are not earmarked for that purpose. The Department of Finance is responsible for the Canada Social Transfer.

Federal contributions to the provinces for the costs of providing criminal and youth criminal justice legal aid services are managed by the LAD through contribution agreements respecting criminal and youth criminal justice legal aid⁵. These contributions are drawn from two funding envelopes. Funding for each jurisdiction from the first envelope is determined based on historical funding and population. The second envelope is calculated as a function of the number of rural communities, the Indigenous population, the number of persons charged with *Criminal Code* and *Controlled Drugs and Substances Act* offences, and provincial contributions to legal aid costs. Under the terms of the contribution agreements with the provinces, the federal funding for criminal legal aid for both adults and youth cannot exceed 70% of the province's total eligible expenditures. In addition, to encourage the maintenance of provincial funding levels and to receive their full portion of funding under the second envelope, the provinces must maintain their 2005-06 eligible expenditure levels.

Federal contributions to the territories are managed by the PID through the AJAs, which integrate federal funding support for legal aid (criminal, youth criminal justice, and civil), the Indigenous courtwork program, and PLEI services through a single agreement with each territory. In keeping with the integrated nature of the AJAs — provided the minimum levels of service have been met — the territories have the flexibility to re-allocate federal contributions for access to justice services in order to provide financial support for legal aid (in criminal, youth criminal justice, and civil matters), Indigenous courtwork, and PLEI services. The federal contribution to a territory for access to justice services shall not exceed 70% of the territory's combined annual total eligible expenditures (legal aid, Indigenous courtwork, and PLEI).

2.2.2. Immigration and refugee legal aid

Since 2001, the LAD has been managing contributions for I&R legal aid funding to six provinces (Alberta, Quebec, Manitoba, British Columbia, Ontario, and Newfoundland and Labrador) that provide I&R legal aid services⁶. I&R legal aid assists individuals involved in the I&R determination system by providing legal representation at hearings, explaining processes, assisting

⁵ The contribution agreements also cover immigration and refugee legal aid services; see Section 2.2.2.

⁶ A non-participating province or territory for funding of immigration and refugee legal aid may become one following three months written notification to Canada of its intent to implement an Immigration and Refugee Legal Aid Service effective April 1 of the next fiscal year. The maximum federal contribution for I&R to the participating jurisdictions for the fiscal year following notice, and thereafter, shall be recalculated to reflect the new eligible recipient's delivery of immigration and refugee legal aid.

with document preparation, and addressing the unique circumstances, such as the need for an interpreter.

The federal contributions to the provinces for costs in providing I&R legal aid services are managed by the LAD through the contribution agreements that cover I&R legal aid, as well as criminal legal aid for adults and youth (see Section 2.2.1). The level of I&R legal aid funding allocated to each jurisdiction is calculated annually based on statistics received from the Immigration and Refugee Board of Canada (IRB), Immigration, Refugees and Citizenship Canada (IRCC), and the Federal Court for 10 variables, which reflect processes in the I&R determination system identified by the PWG as legal aid cost drivers⁷. I&R legal aid funding is allocated based upon a jurisdiction's share of demand for these services (i.e. the variables) in the preceding fiscal year, with each variable weighted according to the amount of work generally required by legal aid plans. Participating jurisdictions report on the number of I&R legal aid certificates/referrals issued each year according to the 10 variables and their related annual I&R legal aid expenditures, as part of their annual reporting to the LAD through their final claim submission.

2.2.3. Court-Ordered Counsel in Federal Prosecutions

COCFP relates to instances where a court orders the Attorney General of Canada to provide funded defence counsel. This is pursuant to Sections 7 (right to life, liberty and security of the person) and 11(d) (right to a fair trial) of the Charter, which have been held by the courts to mean that an indigent person has a right to counsel in cases where the criminal charge is serious, involves complex legal issues, and there is a likelihood of incarceration upon conviction. Where counsel is necessary to ensure a fair trial, a stay of proceedings will be entered until the appropriate authority provides counsel for the accused at its own expense (*R. v. Rowbotham*, 1988). The majority of COCFP matters relate to *Controlled Drugs and Substances Act* prosecutions.

Since the federal Crown is the prosecuting authority in these matters, the court order is against the federal Crown, and the cost of providing funded defence counsel is the responsibility of the federal government. Federal contributions for COCFP cover the totality of the legal service costs (fees and disbursements) of defence counsel, plus a 15% management fee to the provinces and territories or legal aid plans that agree to manage and administer these cases on behalf of the federal

⁷ Until the 2013-14 contribution agreements, the funding formula was based on seven variables. This was expanded to include new areas of service expended to require legal aid services after the refugee reforms in December 2012 (i.e. appeal to the Refugee Appeal Division, Pre-Removal Risk Assessment Applications, and stay of removal requests).

government. In instances where jurisdictions or their legal aid plans do not accept management of funded defence counsel for a COCFP case, the Program directly manages the provision of funded defence counsel.

2.2.4. Public Security and Anti-Terrorism

The federal government also provides contribution funding to jurisdictions or their legal aid plans, on a case-by-case basis, through separate contribution agreements for legal aid costs relating to PSAT cases (i.e. (i) charges laid under the *Anti-terrorism Act* (C-36) or other PSAT legislation enacted by Parliament; (ii) security certificates issued under the *Immigration and Refugee Protection Act* (IRPA); and (iii) proceedings under the *Extradition Act* where the requesting state alleges the commission of a terrorist act).

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

As part of the 1996–2001 criminal legal aid agreements, the PWG was created as a forum for, among other things, joint policy development in matters of shared interest. The PWG comprises representatives from each provincial and territorial government and from the legal aid plans responsible for the delivery of legal aid services in each jurisdiction. The PWG is accountable for its activities to the FPT Deputy Ministers Responsible for Justice and Public Safety. Under the terms of the contribution agreements respecting legal aid, the PWG has a wide-ranging mandate that includes:

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

- involving non-governmental organization representatives in consultation on initiatives that involve or could affect legal aid.

2.2.6. Governance

Overall responsibility for the Program lies with the Department's Programs Branch, where the LAD has overall responsibility for the delivery of the Program to the provinces. The LAD coordinates policy input into the Program, communicates with justice stakeholders and other departments about the Program, keeps abreast of issues that may affect the Program, and allocates resources to eligible recipients (provinces and legal aid plans). The PID is responsible for the AJAs with the territories. The LAD and a representative from the PID meet regularly to discuss legal aid program and policy issues, including risks. Information with regard to risk, including the likelihood of occurrence and potential impacts, is compiled to identify any existing or potential risks as well as mitigation measures.

2.3. Resources

Resources for the Program include \$112.39 million annually in ongoing funding for criminal legal aid in the provinces and criminal and civil legal aid in the territories.

The other components have been renewed and/or have received additional resources:

- Budget 2012 extended temporary funding for I&R legal aid (\$11.5 million), COCFP (\$1.65 million), and a portion of the Program's operating budget (\$1.276 million) for two years (2012-13 and 2013-14).
- Budget 2014 confirmed the renewal of temporary funding for I&R legal aid at \$11.5 million annually for another three years (2014-15 to 2016-17), and made funding for COCFP (\$1.65 million) and the remainder of the Program's operating budget (\$1.276 million) permanent.
- Following the amendments to the IRPA, additional temporary funding of \$500,000 annually for a three-year period starting in 2013-14 was provided for I&R legal aid to cover the expected increase in demand related to cessation/vacation applications.
- In addition to the ongoing \$2 million annual funding for the provision of legal aid in PSAT cases, temporary dedicated funding was provided for IRPA Division 9 cases (\$0.88 million from 2012-13 to 2014-15 and \$0.5 million for 2015-16).

Table 1 shows the Legal Aid Program resources for 2012-13 to 2015-16, which is the time period covered by the evaluation.

Table 1: Resources for federal Legal Aid Program (in millions of \$)

	2012-13	2013-14	2014-15	2015-16
Funding components (contributions)				
Criminal legal aid in provinces and criminal and civil legal aid in the territories	112.39	112.39	112.39	112.39
I&R	11.50	12.00	12.00	12.00
COCFP (to legal aid plans)	1.65	1.65	1.65	1.65
PSAT (including IRPA Division 9 cases)	2.88	2.88	2.88	2.50
Total – Contributions funding	128.42	128.92	128.92	128.54
Program administration				
Salary and benefits	1.01	1.01	1.01	1.01
Operations and maintenance	0.63	0.63	0.63	0.63
Accommodation	0.11	0.11	0.11	0.11
Total – Administration	1.74	1.74	1.74	1.74
Grand total – Contributions and administration	130.16	130.66	130.66	130.28

Source: Department of Justice financial data.

Note: Numbers are rounded; as a result, the sum of program administration funding does not match the total. The costs to the Department of COCFP cases managed by LAD are included in operations and maintenance.

Under the terms of the five-year contribution agreement (2012-13 to 2016-17), the allocation of the federal contribution by province and territory for criminal legal aid for 2012-13 to 2015-16 is set out in Table 2 and Table 3. Funding allocations for 2016-17 are currently being negotiated.

Table 2: Annual allocation of the federal contribution for criminal legal aid to the provinces (in millions of \$)

Provinces	Federal allocation
Newfoundland and Labrador	2.04
Prince Edward Island	0.44
Nova Scotia	3.61
New Brunswick	2.45
Quebec	23.40
Ontario	43.31
Manitoba	4.74
Saskatchewan	4.20
Alberta	10.42
British Columbia	13.70
Total contribution	108.33

Note: The federal allocation for each province is rounded.

Table 3: Annual allocation of the federal contribution for civil and criminal legal aid to the territories (in millions of \$)

Territories	Federal allocation
Yukon	0.86
Northwest Territories	1.70
Nunavut	1.49
Total contribution	4.06

Note: The federal allocation for each territory is rounded.

Through Budget 2016, the federal government announced a funding increase for criminal legal aid in the provinces and criminal and civil legal aid in the territories of \$88 million over five years starting in 2016-17. This amount includes a staged increase for criminal legal aid and \$2 million annually to support innovations. Effective 2021-22, the federal government has committed to continuing the \$30 million increase in criminal legal aid for an ongoing annual total of \$142.4 million for criminal legal aid in the provinces and criminal and civil legal aid in the territories. Although the increased funding is outside the time period covered by this evaluation, the decision to increase the federal contribution is important context for the evaluation.

Table 4: Federal contribution for criminal legal aid funding in the provinces and criminal and civil legal aid funding in the territories (in millions of \$)

	2016-17	2017-18	2018-19	2019-20	2020-21	5-year total increase	2021-22 ongoing
Current base	112.39	112.39	112.39	112.39	112.39	112.39	112.39
Innovations	2.00	2.00	2.00	2.00	2.00	10.00	--
Criminal	7.00	10.00	13.00	18.00	30.00	78.00	30.00
Total funding	121.39	124.39	127.39	132.39	144.39	200.39	142.39

3. METHODOLOGY

The evaluation made use of multiple lines of evidence in order to support robust findings. The methodology included five lines of evidence: a document, file, data and literature review; key informant interviews; interviews with justice professionals; interviews with clients; and case studies.

The design of the methodology began with a facilitated session with the Evaluation Advisory Group, which included representatives of three areas within the Department: the LAD, the PID, and the Evaluation Division; one provincial representative and three legal aid plan representatives of the PWG also participated. The facilitated session occurred in October 2015 and focused on the evaluation's approach to outcomes, efficiency and economy.

After the facilitated session, the evaluation matrix (which links the evaluation questions, indicators and lines of evidence) and the data collection instruments were developed with the input of the Evaluation Advisory Group. The evaluation matrix is included in Appendix B and the data collection instruments are in Appendix C.

Each of the evaluation methods is described more fully below. This section also includes a brief discussion of methodological limitations.

3.1. Document, File, Data and Literature Review

Internal program documents were reviewed (e.g., terms and conditions and contribution agreements for the Program and for the AJAs, business plans, final claims, evaluation/research studies) as well as publicly available information, such as the budget speeches, Speeches from the Throne, departmental performance reports, and reports on plans and priorities. The Evaluation Advisory Group also identified relevant documents to be included in this review.

3.2. Key Informant Interviews

The key informant interviews conducted for this evaluation addressed the majority of evaluation questions, and were an important line of evidence in gathering information on the need for the Program, as well as its effectiveness. A list of potential key informants was prepared, and interview guides tailored to each key informant group were developed in consultation with the Evaluation Advisory Group. The evaluation conducted 25 interviews with 47 participants, which include written submissions from the IRB and some legal aid plans. The specific categories of key informants are included in Table 5.

Table 5: Key informant interviews

Category	Number of key informants	Number of interviews/ written responses
LAD and PID	8	1
Follow-up interviews with the LAD and PID on individual Program components	*	3
Members of the PWG representing provinces and territories and legal aid plans	27	22
Representatives of other federal departments and agencies (IRCC, IRB and Public Prosecution Service of Canada)	8	6
Legal aid plan or provincial representatives managing COCFP/PSAT	4	4
TOTAL	47	36

**Three members of the LAD and a representative of the PID participated in these additional interviews on specific Program components in which they are involved.*

The following scale has been applied to report on the interview findings:



3.3. Interviews with justice professionals

To incorporate the experience of those who work in the court room, the evaluation included interviews with 34 criminal justice professionals and a focus group/interviews with six lawyers who handle I&R legal aid cases:

- provincial/territorial court judges (n = 4);
- Crown counsel (n = 5);

- Legal aid staff and private bar lawyers who act as duty counsel and/or handle legal aid certificates (n = 25)⁸; and
- I&R lawyers (one group interview with four lawyers and two individual interviews).

3.4. Interviews with Clients

To ensure that the evaluation included the voices of legal aid clients, the evaluation had a target of interviewing 40 legal aid clients. The choice of location was based on the availability of legal aid clients for interviews, and the mode (in-person or telephone) was based on evaluation travel budget considerations. The interview guide was the same for both in-person and telephone interviews. A total of 38 individuals who had applied for legal aid were interviewed as part of the evaluation.

The clients interviewed included:

- in-person interviews with five Legal Aid Commission clients in Yellowknife, Northwest Territories;
- in-person interviews with six Legal Aid Ontario (LAO) clients in Ottawa; and
- telephone interviews with 27 clients of Legal Aid Saskatchewan.

Of the 38 clients, 31 of the clients had criminal law matters; four clients had I&R matters; two had family law issues; and one had both family and criminal law issues⁹.

In addition, the Program provided information on interviews conducted with 15 legal aid clients of Aboriginal Legal Services in Toronto.

The interviews focused on obtaining information about experiences with legal aid so most of these were with legal aid clients. Some interviews were conducted with individuals who applied but were not eligible for legal aid in order to gather information on how individuals who do not have legal aid handle their matters¹⁰.

⁸ This category includes some lawyers who handle civil legal aid in the territories.

⁹ The clients with family law issues were from the territories, where the federal government provides funding for civil and criminal legal aid.

¹⁰ The interviewers let interviewees indicate whether or not they received legal aid. Their responses did not always match legal aid plan data on whether their most recent application for legal aid was accepted. The differences

3.5. Case Studies

Ten case studies were conducted to highlight a variety of legal aid service delivery methods, including those considered to be innovations or promising practices. The case studies were chosen in consultation with the legal aid plans. The case studies included a review of relevant documents, as well as interviews with legal aid plan staff/lawyers involved in the service delivery highlighted, other relevant stakeholders, and where possible, clients. Across the case studies, 68 stakeholders and two clients were interviewed. A brief description of the case studies is provided below. More detailed descriptions are included in Appendix D.

- Three case studies considered specialized courts that are supported by legal aid plans primarily through the provision of duty counsel services for the accused person. The case studies included the Drug Treatment Courts in Edmonton and Calgary, Alberta; the Mental Health Court in Montréal, Quebec; and the First Nations Court in Kamloops, British Columbia¹¹. The duty counsel services provided go beyond the traditional role of duty counsel as the level of interaction with the accused person is more intensive. The assignment of duty counsel to the specialized court creates more continuity of service for clients.
- The case study of the Youth Criminal Defence Office in Edmonton and Calgary considered service delivery by a specialized office of staff lawyers that provide legal aid services and other supports for youth charged under the YCJA.
- Three case studies considered methods used by legal aid plans to expand the coverage or scope of services. In the Northwest Territories and Nunavut, presumed eligibility is used so that accused persons have early access to a lawyer for preliminary or straightforward matters without the need to apply for legal aid. Once the accused person has entered a not guilty plea, they must apply for legal aid. In Nunavut, presumed eligibility is also used outside of the criminal law setting; it applies in child protection matters where the child has been removed from the home and for child applicants in civil and family matters. Expanded criminal duty counsel for out-of-custody accused persons in Nova Scotia provide services to assist with early resolution or to help move the matter forward without requiring a legal aid application. In

between the plan data and the interviewees' responses may be due to a few reasons. The interviewees may want to discuss a different encounter with legal aid than their most recent one. They also may not recognize when a lawyer is provided to them through legal aid. Some interviewees indicated they did not apply for legal aid at all. For the latter two groups, the difficulty understanding the process of applying for and receiving legal aid demonstrates the many challenges this client group faces in accessing services and is an indication of their ability to navigate the court process without assistance.

¹¹ The case studies are based on the indicated court locations. Each type of specialized court has other locations in Canada, but they are not included in the case studies for the evaluation.

Ontario, the legal aid plan has expanded services to first-time accused persons with mental health issues, regardless of whether they face possible incarceration; the case study considered this approach as it relates to senior citizens facing criminal charges.

- Two case studies considered legal aid plan approaches to increase efficiency in service provision. In Nunavut, the legal aid plan has instituted linear file assignment, which is a case management approach that assigns legal aid lawyers to specific criminal legal aid files. Linear file assignment provides greater continuity of counsel, particularly for circuit court cases. In Saskatchewan, the legal aid plan has worked with the other criminal justice stakeholders involved in custody docket court to develop processes to streamline the custody docket court process and reduce the number of individuals held in the remand centre.
- One case study considered the provision of I&R legal aid. This case study looked at how the legal aid plan in British Columbia responded, both by modifying its own practices and working with other stakeholders to manage an unprecedented large influx of refugees.

3.6. Limitations

The evaluation faced a few methodological limitations. These are listed below by line of evidence.

Review of documents and data. The Evaluation Division and the LAD explored whether court data could be made available to show the impact of unrepresented accused on the justice system and the system efficiencies provided by having counsel. Although the LAD explored the possibility of accessing court data, the ability to obtain the necessary permissions was not possible during the timelines of the evaluation. In addition, court data may provide a record of whether an accused person had representation at certain points in his criminal case, but not whether the accused person was a legal aid client. The ability of court data to demonstrate outcomes for legal aid clients is a complex issue and access to court data requires sufficient lead time. The Department should consider the use of court data well in advance of the next evaluation in order for it to be available for the evaluation.

Interviews with key informants and case study stakeholders. Interview findings are potentially affected by self-reported response bias and strategic response bias. Self-reported response bias occurs when individuals are reporting on their own activities and so may want to portray themselves in the best light. Strategic response bias occurs when the participants answer questions with the desire to affect outcomes.

Interviews with clients. The evaluation came close to meeting its target of 40 client interviews (38 clients were interviewed), but many of the clients had ongoing legal matters, which limited their ability to respond to evaluation questions. Recruiting legal aid clients for the in-person interviews was very time intensive for the legal aid plans.

Performance data are not being consistently recorded and some outcomes/indicators are not well defined. This remains a limitation from the last evaluation, which noted that the Program needed to improve performance measurement by developing performance measures agreed to by the PWG, and potentially provide federal funding to support ongoing data collection and analysis. As discussed in this report, the PWG is working on determining key performance metrics for which the jurisdictions will collect comparable data. These measures will hopefully minimize this issue for the next evaluation.

Mitigation strategy. Two mitigation strategies were used for the above methodological limitations:

- The first mitigation strategy which applied to all identified limitations was to use multiple lines of evidence from different stakeholder groups, as well as different types of evidence in general. For example, the evaluation gathered information from a variety of stakeholder groups. In addition, the evaluation used both quantitative and qualitative data, where possible, to respond to evaluation questions. By triangulating the findings from these different sources, the evaluation was able to strengthen its conclusions despite the limitations.
- The second mitigation strategy was the use of case studies to address the limited data related to performance. Beyond the Legal Aid Survey conducted by the Canadian Centre for Justice Statistics (CCJS) of Statistics Canada, there are no national data on legal aid. In addition, assessing the performance of the Program is challenging because its primary function is to provide funding to the provinces and territories for their legal aid plans. The Program is not directly involved in the delivery of legal aid, nor is it indirectly involved by determining how legal aid is delivered. The provinces and territories, through their legal aid plans, are the delivery agents, and the plans determine what services they offer, how they are offered, and what guidelines are used to determine eligibility. Consequently, the evaluation of the federal Program is not intended to evaluate the legal aid plans, and yet the Program's outcomes of enhancing capacity to deliver legal aid and effective provision of legal aid require a consideration of legal aid plan activities. The case studies are intended to provide information on Program outcomes by demonstrating how legal aid plans are working to address legal needs and provide access to justice. The evaluation lens on these activities of legal aid plans is not to

evaluate their effectiveness, but to show the types of activities being supported in part by federal funding and how they contribute to the effectiveness of the Program.

4. FINDINGS

4.1. Relevance

The core issues concerning relevance consider the following:

- the continued need for the Program;
- the alignment of Program objectives with government and departmental priorities; and
- the roles and responsibilities of the federal government to deliver the Program.

4.1.1. Continued need for the Program

The Program continues to serve the public interest and need as legal aid is considered central to maintaining the integrity of the justice system, ensuring its fairness, and providing access to justice for economically disadvantaged Canadians, including vulnerable populations.

Key informants fully believe that legal aid serves the public interest and provided a variety of reasons for their opinions. Some of the most common ones mirror what key informants said was the basis of the federal role and responsibility for legal aid; namely, the federal government has constitutional, statutory and international obligations to support access to justice and a fair legal process. The other key features of how the Program continues to serve the public interest and need are discussed below.

Maintaining the integrity of the Canadian system of justice. Almost all key informants mentioned the importance of legal aid to the criminal justice system. Without legal aid, they believe the Canadian criminal justice system will be brought into disrepute as miscarriages of justice are more likely when people proceed without counsel. Unrepresented accused persons typically do not know what their defenses might be or how to present their evidence. According to these key informants, legal aid creates balance between the power and resources of the state in pursuing criminal charges and the individual accused person. This is especially important given the profile of most legal aid clients who are poor, usually less educated, disproportionately Indigenous, and typically

experiencing mental illnesses, substance abuse, childhood trauma, or other personal situations that impact their ability to respond to the criminal charges against them.

Supporting access to justice for a vulnerable or marginalized client population. Legal aid funds legal services for socioeconomically disadvantaged individuals who are experiencing legal issues in one or more of the areas covered by legal aid. Available data also demonstrate that individuals who come into contact with the criminal justice system are more likely than the general population to have barriers or vulnerabilities that make it difficult for them to navigate the justice system. For example, among individuals coming into contact with the police, those with mental health or substance use disorders are four times more likely to report being arrested (Statistics Canada, 2015a). A larger proportion of inmates in federal correctional facilities have mental health or substance use disorders than is found in the general population of Canada (Correctional Service of Canada, 2014). Indigenous people, who have experienced historical and ongoing trauma, are overrepresented in the criminal justice system. In 2014-15, Indigenous people represented 3% of the adult population of Canada, but comprised 25% of admissions into correctional facilities (Statistics Canada, 2016a).

According to the defence counsel interviewed, criminal legal aid clients often face multiple barriers, such as mental health issues, substance use disorders, fetal alcohol spectrum disorder, past trauma, low literacy or learning disabilities, socioeconomic challenges (homelessness, lack of personal supports, lack of child care), that make it more difficult for them to assist in their own cases, not to mention handle legal matters in court unassisted. For clients in the territories or remote areas of the provinces, the lack of social services to help address their non-legal issues is considered by defence counsel interviewed to exacerbate their criminal or family legal issues.

Key informants who addressed the public interest in the provision of I&R legal aid emphasized that immigrants and refugees, particularly the latter, are by definition highly vulnerable people. They may not speak the language or understand the culture and institutions of the Canadian justice system. Refugees are individuals who are seeking protection from persecution in their home countries. Key informants believe that the Canadian interest in fairness and accessibility to justice places the provision of I&R legal aid in the public interest.

Providing a check and balance on justice issues. Some PWG key informants representing legal aid plans pointed out that these plans are one of the main tools to bring the perspective and interests of clients to discussions of criminal laws and the administration of justice. They noted that the other stakeholders (e.g., court, Crown, police) bring their institutional perspectives to the

discussion, which may not consider a criminal defence perspective. Legal aid plans can bring those concerns to discussions of broader justice system issues that may impact criminal defendants.

In addition, when the laws or the operation of the criminal justice system disproportionately impact marginalized or vulnerable populations, not only do legal aid plans feel the effect on the demand for their services as these groups constitute their client base, they may also be involved in legal challenges to these laws or practices. In situations where legislation is thought to disproportionately impact the vulnerable groups that legal aid serves or otherwise violate Charter rights, one of legal aid's roles is to challenge the legislation. In this way, legal aid is serving the public interest by acting as a check on the power of the state when its clients, who would otherwise not have the resources to challenge the legislation, are affected.

Contributing to the efficiency of the justice system. Many key informants also noted that legal aid assists the criminal justice system by contributing to its efficiency. Legal aid plans' budgets are limited and attempt to control costs, which benefits the justice system as they work to ensure that cases are handled as expeditiously and cost effectively as possible. Some key informants pointed to the "false economy" of reducing legal aid funding to save costs in the criminal justice system. There is a view that reducing legal aid simply redirects those cost "savings" to other parts of the system through wrongful convictions, overly harsh sentences, or longer time to resolve cases that add costs to correctional services or appeals.

Serving both client and broader social interests. Some PWG key informants representing legal aid plans also pointed to the client interest in avoiding the consequences of a criminal record. They noted the wide-ranging potential economic and social consequences to individuals who receive a criminal record, which can affect current and future employment, educational opportunities, the ability to receive housing assistance, and family stability, among other things. These key informants consider legal aid's role in avoiding criminal records for accused persons who dispute the allegations against them, or whose activity does not justify a criminal record, to serve the public interest. Without a criminal record, these individuals can continue to become productive members of society, rather than enter what is sometimes called the "revolving door" of justice.

Reflecting core Canadian values. The 2012 Program evaluation reported on the most recent national public opinion survey on legal aid and access to justice. The survey results showed that Canadians strongly support access to justice, as over 90% said that it is very or somewhat important that people charged with a crime have legal representation. Over 80% of those surveyed reported feeling more confident in the justice system knowing that legal aid is available, and almost 80% of respondents supported public spending on legal aid (Department of Justice Canada, 2008).

Another national survey has not been conducted, but the enduring public support for legal aid is found in the results of a survey conducted in 2014 by the Legal Services Society of British Columbia. Over 90% of British Columbians supported legal aid services, once those services were explained to them, with 61% saying they strongly support legal aid. Moreover, just over 90% of respondents believe that criminal legal aid services are very or somewhat important to ensuring fairness in the justice system, and 82% of respondents believe that I&R legal aid services are very or somewhat important to ensuring fairness of the system. In addition, 86% of respondents believe in universal access to the justice system, and 80% believe that legal aid funding should be prioritized just like other social services, such as health care, education, welfare and child protection (Legal Services Society, 2014).

4.1.2. Alignment with federal government priorities and departmental strategic outcomes

Federal government priorities

Federal government statements (e.g., Speeches from the Throne and federal Budgets) demonstrate that the Program aligns with government policy priorities. Recent Speeches from the Throne emphasize the federal commitment to fundamental rights, such as fairness and the rule of law, which legal aid supports as discussed in Section 4.1.3.

- In the 2015 Speech from the Throne, the federal government committed to working “to keep all Canadians safe, while at the same time protecting our cherished rights and freedoms” (Governor General of Canada, 2015).
- The 2013 Speech from the Throne links the 150th anniversary of Confederation to a legacy of upholding “the rule of law, and the institutions to protect it; respect for human dignity and diversity”. Additionally, the Speech from the Throne focusses on supporting victims (particularly children) and the justice system’s role in protecting law-abiding citizens and communities and in assigning penalties that match the severity of crimes committed (Governor General of Canada, 2013). Legal aid enables the federal government to pursue an agenda of holding offenders accountable while meeting its constitutional, statutory and international obligations to respect fundamental rights.

Legal aid also contributes to Canada’s commitment to be a country that opens its doors to immigrants and refugees while upholding the commitment to Canadians to protect the borders from terrorists and other public safety concerns without compromising rights and freedoms. The federal government’s priority, as described in the 2015 Speech from the Throne, includes making

it easier for immigrants to Canada to “build successful lives in Canada, reunite their families, and contribute to the economic success of all Canadians” (Governor General of Canada, 2015). I&R legal aid supports this commitment by ensuring I&R applicants have access to counsel as they navigate the reformed I&R determination system.

Budget 2016 further reflects the federal government’s priorities regarding access to justice. The Budget describes criminal legal aid as part of ensuring a fair and efficient Canadian justice system, particularly for economically disadvantaged persons. Funding for ensuring access to justice provided by Budget 2016 includes \$88 million in additional funding over five years, starting in 2016-17, followed by \$30 million a year in additional funding beginning in 2021-22. The funding is intended to support the provision of criminal legal aid in Canada and to promote innovation in legal aid (Government of Canada, 2016).

Departmental strategic outcomes

The Program also aligns with the Department’s first strategic outcome of “a fair, relevant, and accessible justice system that reflects Canadian values” (Department of Justice Canada, 2015). Through its contribution funding, the Program facilitates access to justice for economically disadvantaged individuals who are facing serious criminal charges seeking a determination under the I&R system, or who are experiencing a civil law issue and live in the territories. The Program, through the PWG, also facilitates collaboration among the federal government and the provincial and territorial governments, which is aligned with the departmental interest in a sustainable justice system (Department of Justice Canada, 2016a). Through its cost-sharing and FPT collaboration, the Program is considered part of the Department’s “stewardship of the Canadian legal framework” (Department of Justice Canada, 2015).

4.1.3. Alignment with federal roles and responsibilities

The evaluation findings confirm that the federal government has an appropriate and necessary role in providing legal aid funding in each of the areas covered by the Program.

Criminal legal aid in the provinces and criminal and civil legal aid in the territories

The basis for the federal role and responsibilities related to criminal legal aid in the provinces and criminal and civil legal aid in the territories is found in Canada’s foundational documents and in key statutes that define Canadian federalism. The following legislation is considered by PWG key informants to have created a federal obligation to provide legal aid funding.

- The *Constitution Act, 1867* established shared jurisdiction between the federal government and provinces and territories in the area of criminal justice. The federal government has authority for criminal law-making and criminal procedure (Section 91), and the provinces and territories are responsible for the administration of justice (Section 92).
- The *Canadian Charter of Rights and Freedoms* also contains provisions that support the federal role in funding legal aid. Sections 7, 10(b) and 11(d) of the Charter, which codify Canada's commitment to principles of fundamental justice before depriving someone of their liberty, the right to a fair trial, and the right upon arrest to retain counsel, have been interpreted by the courts to establish a limited right to counsel in criminal matters.
- The federal role in the provision of funding for civil legal aid in the territories is based on the authority for civil law that the federal government retains under the territorial acts (the *Yukon Act*, the *Northwest Territories Act*, and the *Nunavut Act*).

The federal government has also made international commitments that address the right to a fair hearing, equal treatment under the law, and publicly funded counsel. More particularly, the United Nations' *International Covenant on Civil and Political Rights* requires signatories to provide legal counsel to individuals facing criminal charges who cannot afford counsel, and the United Nations' *Principles and Guidelines for Access to Legal Aid in Criminal Justice Systems* reiterates this commitment to providing legal aid and sets out guidelines for its provision.

The federal government's commitment to legal aid is also longstanding, with over four decades of FPT legal aid agreements¹². These shared commitments to the funding and provision of legal aid were affirmed in the 2010 FPT Ministers' Statement on Criminal Legal Aid, whereby the Ministers committed to continued collaboration in the provision of criminal legal aid¹³.

PWG key informants provided additional reasons for the federal role and responsibilities. According to key informants, the federal government has an obligation to provide legal aid funding as its actions can affect the cost, demand for, and delivery of legal aid. For instance, when the federal government passes new criminal legislation, it directly impacts the justice system, including legal aid. In the view of key informants, this creates a federal imperative to help balance the power of the state and ensure that socioeconomically disadvantaged individuals have access to

¹² The federal funding for I&R legal aid is more recent, but dates back to 2001.

¹³ The Federal-Provincial-Territorial Ministers' Statement on Criminal Legal Aid was reaffirmed in 2012.

legal representation. According to key informants, the federal role is essential to ensuring access to justice.

In addition, several of the PWG key informants consider the federal role in funding criminal legal aid as helping to ensure its consistent standard across the country. Although the federal government does not dictate how funds are used, by providing funding based on set criteria to all jurisdictions, it promotes a standard for the provision of criminal legal aid.

A few PWG key informants pointed to the federal role in legal aid as part of fulfilling its responsibility to address and rectify past trauma and harm inflicted on Indigenous people, who are overrepresented in the criminal justice system. The federal government has recognized its role and responsibility in addressing this larger social issue by establishing the Truth and Reconciliation Commission of Canada, and by its current efforts to establish a commission on the issue of missing and murdered Indigenous women.

Immigration and refugee legal aid

Three factors underpin the federal role in funding I&R legal aid:

- Immigration is an area of shared responsibility between the federal and provincial governments under the *Constitution Act, 1867*, although federal authority prevails in the case of conflict (Section 95). In operation, I&R is primarily a federal responsibility with the federal government establishing laws related to these matters, determining the volume of immigrants and refugees, and handling enforcement. The provinces determine access to benefits, such as social assistance and other services, to immigrants and refugees. As a result, key informants consider I&R to be primarily a federal responsibility: the federal government is not only the legislator (as it is in criminal law) but also is responsible for the administration of I&R laws (unlike in criminal law, where the provinces and territories are responsible for administration).
- The Charter also protects all individuals in Canada, which means that its principles of equality and freedom from discrimination (Section 15) and fundamental justice (Section 7) apply to immigrants and refugees¹⁴.

¹⁴ In April 1985, the Supreme Court of Canada ruled that the *Canadian Charter of Rights and Freedoms* protects the right of refugee claimants in Canada to life, liberty and security, and that claimants are therefore entitled to an oral hearing in accordance with principles of fundamental justice and international law. *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177, 1985 CanLII 65 (SCC).

- As a signatory to the United Nations' *Convention Relating to the Status of Refugees* (1951), the *Protocol Relating to the Status of Refugees* (1967), the *International Covenant on Civil and Political Rights* (1966), and the *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* (1984), Canada has assumed obligations to protect persons at risk of persecution or torture if they were to be returned to their home country. These obligations include providing refugees the same access to the courts and to legal assistance as citizens. Although none of these international conventions and protocols is legally enforceable, they reflect Canada's acceptance of the principles of justice they embody.

The other components of the Program also have clear constitutional and/or statutory bases for the federal role.

Court-Ordered Counsel in Federal Prosecutions

For COCFP, the courts have found a Charter right to counsel if it is necessary for a fair trial, whereby the court can order federally funded defence counsel in situations where an accused cannot afford counsel but is not eligible for legal aid, and where the proceedings are complex and there is a likelihood of imprisonment (*R. v. Rowbotham*). In addition to the constitutional basis for the federal role, there are also statutory forms of COCFP (*Criminal Code of Canada*, Sections 486.3, 672.24, 684, and 694). Courts are also using their inherent jurisdiction to order appointment of *amicus curiae*, who are lawyers that assist the court by serving as an independent counsel to provide legal advice. *Amicus curiae* are often appointed in proceedings involving Sections 37 (public interest) and 38 (national security) of the *Canada Evidence Act*. These proceedings allow appointed counsel to review top secret documents and provide the court with legal arguments on whether these documents should be disclosed, or whether they are of such a sensitive and potentially injurious nature that they should not be disclosed. Key informants involved with COCFP noted that the nature of the proceedings provides a clear rationale for the federal role. Federal interests are at stake and, should counsel not be provided, the public interest in a fair trial would not be upheld and the criminal justice system would be brought into disrepute.

Public Security and Anti-terrorism legal aid

PSAT legal aid funding is considered one of the areas where the federal government recognized the potential impact, including costs, of legislation on the criminal justice system, including legal aid plans. Key informants involved with PSAT cases pointed out that these cases receive a high level of attention both nationally and internationally, so it is critical for Canada to demonstrate its commitment to access to justice and fairness in its criminal justice system.

4.2. Performance - Achievement of Expected Outcomes (Effectiveness)

This section considers the effectiveness of the Program in achieving its outcomes.

4.2.1. Enhanced capacity of provinces and territories and their legal aid plans to deliver legal aid in the areas receiving federal funding

The federal funding contribution is intended to enhance the capacity of provinces and territories and their legal aid plans to deliver legal aid in the areas that receive federal funding. The extent to which the federal contribution has supported this outcome is based on whether legal aid plans have maintained their ability to meet the demand. This section first considers the available evidence on the capacity of the provinces and territories and their legal aid plans to meet the demand for legal aid services in the areas that receive federal funding, and then considers the role of the federal government's funding contribution in supporting that capacity.

Meeting demand for legal aid in areas that receive federal funding

Overall, based on available measures, legal aid plans have been able to address demand as reflected in the proportion of approved legal aid applications, although, as will be discussed below, approved applications do not provide a complete picture of the actual or potential demand for legal aid services¹⁵.

Criminal legal aid

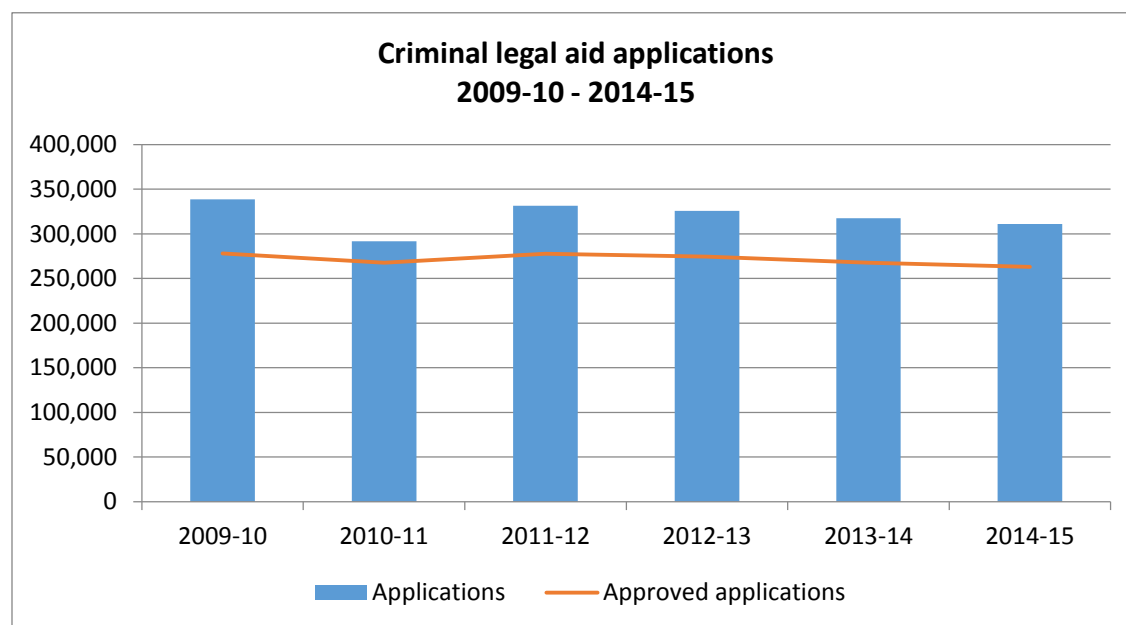
Based on data reported to the CCJS, demand for criminal legal aid has been relatively stable between 2012-13 and 2014-15, but with jurisdictional variations. Some jurisdictions have seen lower demand in terms of legal aid applications made during the period of time covered by the evaluation (Newfoundland and Labrador, Prince Edward Island, Quebec, Ontario, Manitoba, Saskatchewan, British Columbia, Northwest Territories, Yukon). Other jurisdictions reported an increase in the demand for criminal legal aid (Alberta, Nunavut) or their demand fluctuated during the time period covered by the evaluation (Nova Scotia, New Brunswick, British Columbia). According to key informants, the differences in the jurisdictions were reflected partially in the crime rates, and the rates for specific types of crimes either increasing or decreasing, but also were due to unique economic factors. Alberta, in particular, pointed to the economic stresses it is experiencing. The shift in its economic situation has meant a fairly rapid increase in

¹⁵ The issue of potential unmet demand/need for legal aid is addressed in Section 4.2.2.

unemployment, which can lead to both higher crimes rates and more people qualifying for legal aid.

The available data for the period covered by the evaluation (2015-16 data are not yet available) show a decline of 4% from 325,667 criminal legal aid applications in 2012-13 to 311,158 in 2014-15¹⁶. Individuals whose applications are approved are provided legal representation by counsel. The number of approved criminal legal aid applications similarly decreased by 4% from 274,287 in 2012-13 to 262,998 in 2014-15 (Statistics Canada, 2015b). As a measure of meeting demand, the proportion of applications approved for legal aid coverage remained fairly constant at about 84% between 2012-13 and 2014-15 (Statistics Canada, 2015b, 2016b). The number of approved applications are below the Department's performance target of 280,000 (2013-14) and 270,000 (2014-15) approved applications for criminal legal aid in provinces, the aim of which is to demonstrate "enhanced capacity of provinces and their legal aid plans to deliver criminal legal aid services to eligible economically disadvantaged persons"¹⁷.

Figure 1: Criminal legal aid applications 2009-10 - 2014-15



Source: Statistics Canada. (2016). CANSIM - 258-0009 - Legal aid applications, by type of matter and CANSIM - 258-0010 - Approved legal aid applications, by staff and private lawyers and type of matter.

¹⁶ Figure 1 includes fiscal years 2009-10 to 2011-12 to provide a longer time horizon for comparison and to include fiscal years that were not available to be reported on in the 2012 evaluation of the Program.

¹⁷ This performance target did not exist until 2013-14.

It is important to note that the number of applications is not a complete picture of the demand for legal aid. It does not consider individuals who are pre-screened by legal aid plans for eligibility and do not submit an application, or individuals who receive legal aid services under presumed eligibility¹⁸. It also does not consider those who may believe, given the posted financial eligibility guidelines (FEGs), that they are not eligible and do not apply. The reduction in the number of applications could also be due to an increase in other types of services that address client's needs (e.g., duty counsel services, including expanded duty counsel (EDC) services, to resolve matters sooner, summary legal aid advice available through duty counsel, and legal advice lines).

Data on duty counsel assists demonstrate that a large number of clients receive services through this method, where lawyers provide brief services to unrepresented people typically in first appearance or plea court. The overall number of reported assists declined between 2012-13 and 2014-15, although this is driven by a large decline (-12%) in the number of assists by LAO. Conversely, Legal Aid Alberta has experienced a large increase (15%). If these two provinces are removed, the increase is 2% for the other provinces reporting duty counsel assists¹⁹. Over the period covered by the evaluation for which there are data (2012-13 to 2014-15), the average annual number of duty counsel assists by legal aid plans combined was 1,056,709 (Statistics Canada, n.d.).

Civil legal aid in the territories

Overall, the demand in the territories for civil legal aid (family law, child protection, civil law²⁰, poverty law), as measured by the number of applications, has declined by 6% during the period covered by the evaluation for which there are data (2011-12 to 2014-15), but there are jurisdictional variations²¹. The proportion of approved applications has increased from 71% to 93% during that time period, which is an indication that legal aid plans in the territories are keeping pace with

¹⁸ In the Northwest Territories and Nunavut, individuals with criminal charges are presumed eligible for legal aid at court appearances up until the point of entering a not guilty plea. Presumed eligibility does not require any legal aid intake process or assessment of financial eligibility. If a client decides to enter a not guilty plea, he is then required to apply for legal aid to determine his eligibility for ongoing legal representation.

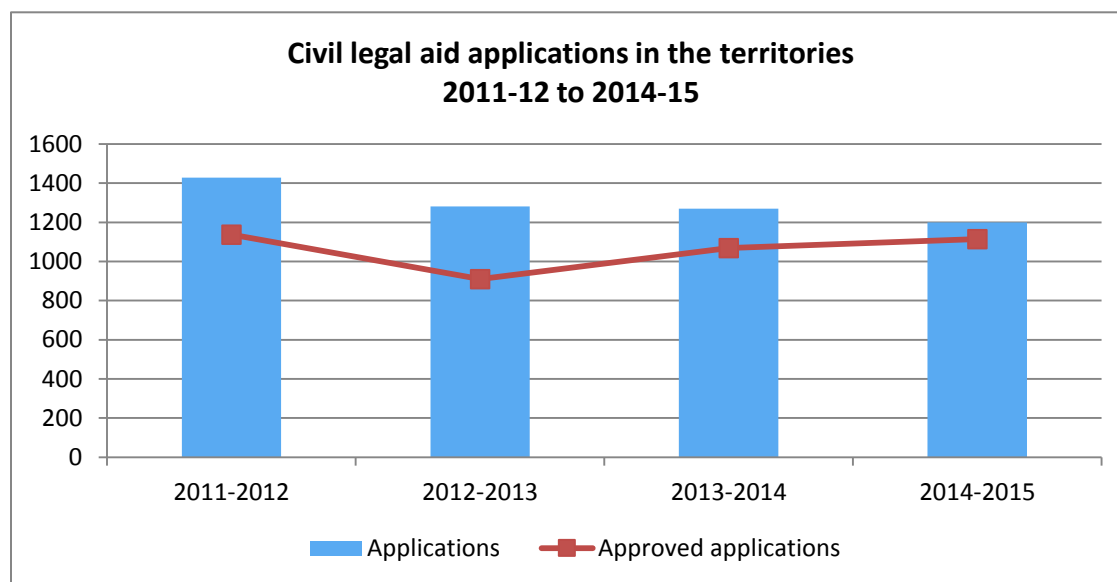
¹⁹ Prince Edward Island and Quebec do not report duty counsel assists. Prince Edward Island Legal Aid does not use the term "duty counsel" except for Brydges after-hours telephone duty counsel which was introduced April 1, 2010. The duty counsel statistics gathered for the Legal Aid Survey do not include Brydges duty counsel.

²⁰ Civil law areas covered include human rights, employment law, residential tenancies, and civil remedies for alleged excessive use of force by police.

²¹ Yukon has seen an increase in civil legal aid applications, Northwest Territories has seen a decrease, and Nunavut has experienced a fluctuation in the number of these applications.

demand for civil legal aid based on this measure. However, as noted earlier, the proportion of approved applications does not provide a complete picture of demand.

Figure 2: Civil legal aid applications in the territories 2011-12 to 2014-15



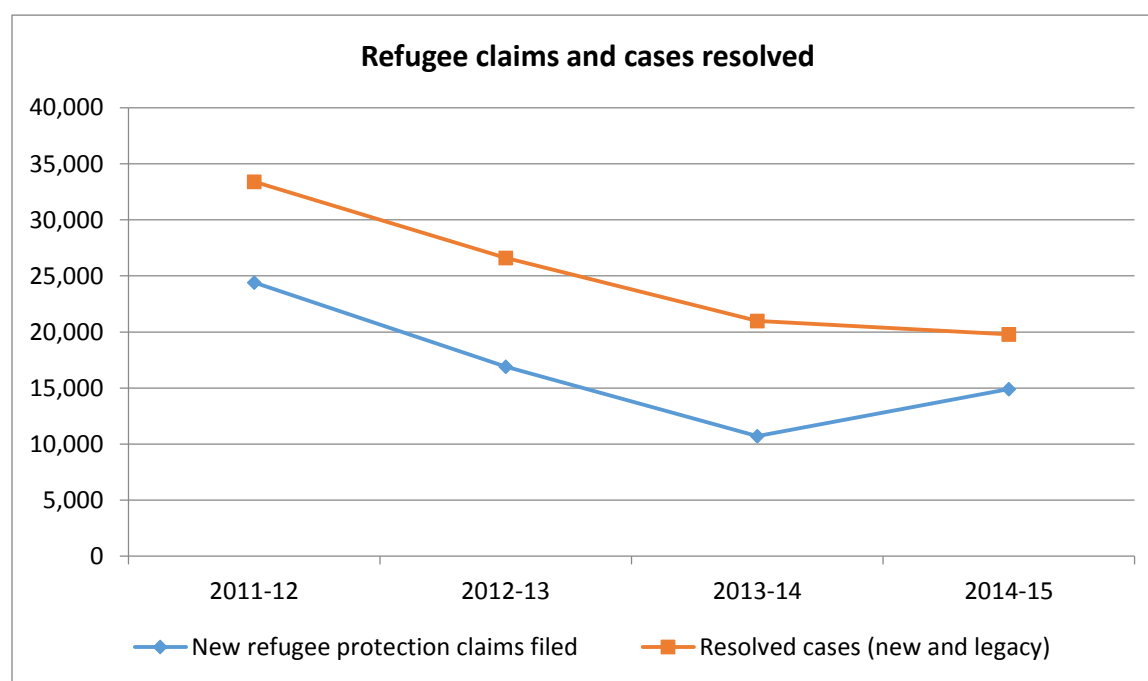
Source: Statistics Canada. (2016). CANSIM - 258-0009 - Legal aid applications, by type of matter and CANSIM - 258-0010 - Approved legal aid applications, by staff and private lawyers and type of matter.

Immigration and refugee legal aid

The capacity of legal aid plans to meet the demand for I&R legal aid must be placed in the context of the reforms to the refugee determination system, which took effect on December 15, 2012. Although not the only area of immigration law in which legal aid plans provide services, refugee protection claims constitute most of the I&R legal aid expenditures. The refugee system reforms were intended to address a large backlog of unresolved refugee protection claims and increase the efficiency of the system. To accomplish this, the federal government made numerous changes to the refugee determination system. Some of the more significant changes included the shortened timelines for scheduling hearings before the Refugee Protection Division (RPD), the creation of the Refugee Appeal Division (RAD), and changes to the rules so that claimants can be deported while their judicial review before the Federal Court is pending. Justice professionals working in the I&R area also reported changes to the system that affected the demand for legal aid, such as greater use of detention of refugee claimants by the federal government, and more stages to claims (admissibility hearings at the Immigration Division, the hearing of the refugee claim before the RPD, then the potential appeal to the RAD and/or judicial review to the Federal Court).

Data from the IRB demonstrate that the new refugee determination process has affected the number of new refugee protection claims. After the reforms took effect on December 15, 2012, the number of new claims dropped (IRB, 2014, 2015). According to PWG key informants from jurisdictions who receive I&R legal aid funding, as well as I&R justice professionals, the drop in new claims was to be expected. Any time there are major changes to the refugee determination system, there is a drop in new claims as individuals wait to see how the new process will operate. However, the expectation is that the number of new claims will likely begin to increase and over time will return to past levels. The increase in the number of new claims has begun, as in 2014-15 the number of claims increased by 39% (see Figure 3). The IRB forecasts that the number of referrals²² (i.e. levels of primary intakes) will increase by 3,000 in 2015-16²³ and by another 1,000 in 2016-17 (IRB, 2016).

Figure 3: Refugee claims and cases resolved



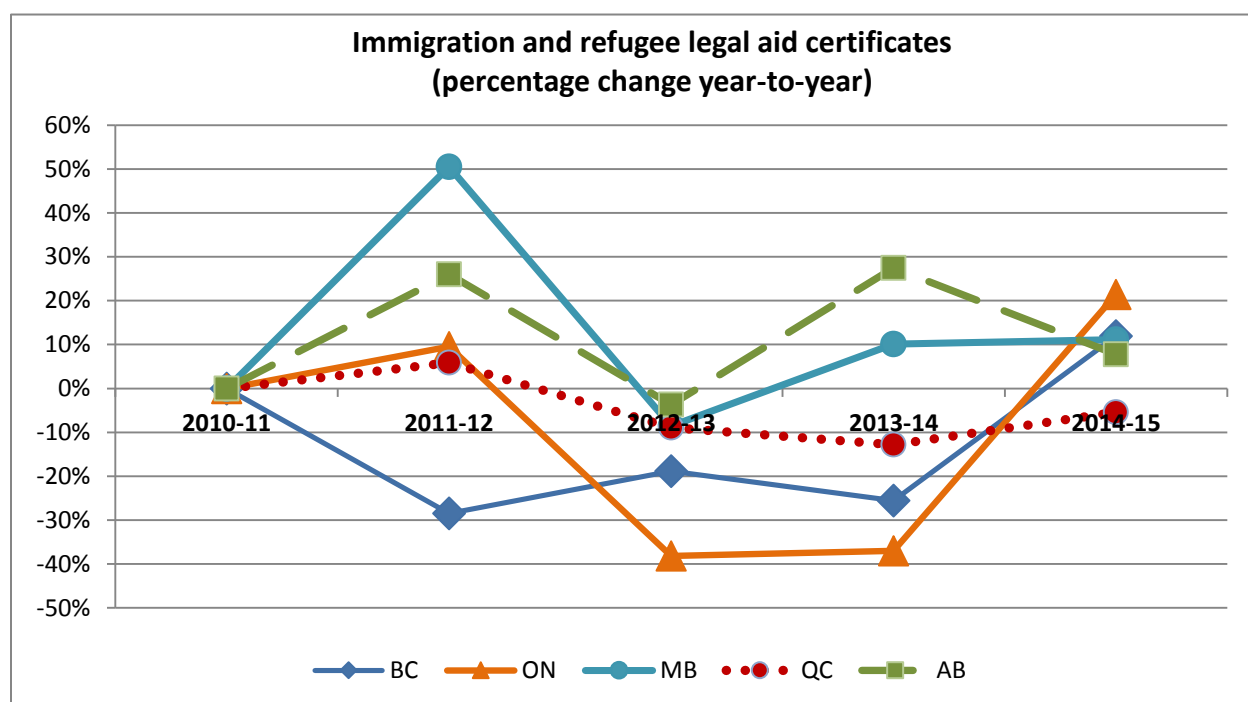
Source: IRB. (2015). *Departmental Performance Report 2014-15*. Retrieved June 14, 2016, from http://www.irb-cisr.gc.ca/Eng/BoaCom/pubs/Documents/DprRmr1415_e.pdf and IRB. (2014). *Departmental Performance Report 2013-14*. Retrieved from http://www.irb-cisr.gc.ca/Eng/BoaCom/pubs/Documents/DprRmr1314_e.pdf

²² Data do not include PRRA applications and finalizations

²³ 13,500 cases were referred in 2014-15

Demand for I&R legal aid has been affected by the refugee reforms and the drop in the number of new refugee protection claims. However, the effect is not uniform across the jurisdictions receiving federal I&R legal aid funding, and within the jurisdictions demand has fluctuated throughout the evaluation period. As shown in Figure 4, for all jurisdictions there was a decrease in the number of I&R legal aid certificates between 2011-12 and 2012-13²⁴. Figure 4 also reflects key informant and IRB expectations that the number of new refugee protection claims will rise after the initial decline. For fiscal year 2014-15, most provinces receiving federal I&R contributions experienced a rise in refugee claims over the previous year with the exception of Quebec, which had a 5% decline in I&R certificates.

Figure 4: Immigration and refugee legal aid certificates (percentage change year-to-year)



Source: Data from legal aid plans

Available data indicate for 2010–11 to 2014–15 that the legal aid plans were able to respond to demand for I&R legal aid, with most applicants receiving coverage. For example, Alberta, British

²⁴ For British Columbia, the sharp decline in the number of I&R legal aid certificates that preceded the reforms to the refugee determination system was due to the very high number of certificates issued in 2010-11 as a result of the Sun Sea arrival in August 2010. The Sun Sea was a ship that arrived off the coast of British Columbia with 492 Sri Lankan refugees. See the case study description in Section 4.2.2 and Appendix D.

Columbia, Manitoba and Quebec had experienced increases in the proportion of applications receiving legal aid coverage (72% in 2011-12 to 91% in 2014-15 for Alberta, 64% to 73% for British Columbia, 85% to 91% for Manitoba, and 86% to 89% for Quebec). The proportion of I&R legal aid applications had declined in Ontario and remained at more than four-fifths of applications (94% in 2011-12 to 84% in 2014-15). Key informants noted that as demand increases, legal aid plans' ability to provide coverage will be challenged.

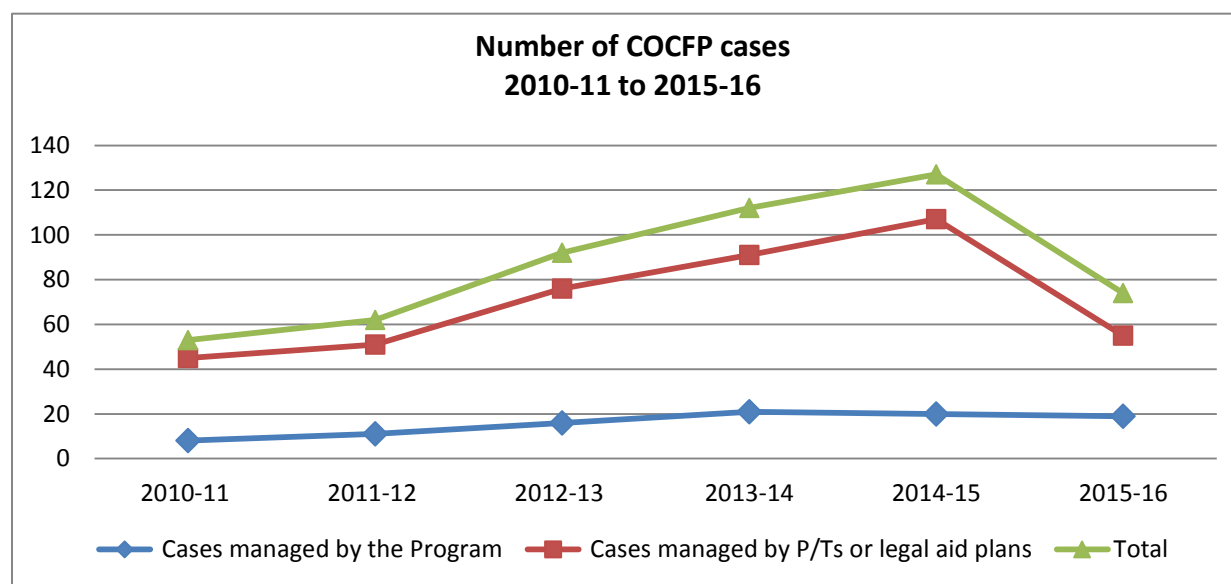
Court-Ordered Counsel in Federal Prosecutions

As described in Section 2.2.3, the majority of COCFP cases involve a court order that requires the Attorney General of Canada to provide funded defence counsel for an unrepresented accused person who does not qualify for legal aid²⁵. This is pursuant to Sections 7 and 11(b) of the Charter, which provide that an indigent person's rights to a fair trial are infringed upon if the criminal charge is serious, involves complex legal issues, and there is a likelihood of incarceration upon conviction.

COCFP cases are managed either by the provinces and territories, or their legal aid plans, on behalf of the federal government or directly by the Program. In cases that are managed by the provinces and territories or their legal aid plans, the federal government covers the totality of the legal service costs (fees and disbursements) of defence counsel, plus a 15% management fee. Key informants with COCFP experience commented that the management fee was sufficient for these cases.

COCFP cases have increased, although 2015-16 shows a marked decline in cases managed by the provinces and territories or their legal aid plans on behalf of the federal government. The proportion of COCFP cases that are managed directly by the Program has remained at approximately one-sixth until 2015-16; however, that increase is due to the decline in the number of cases managed by provinces and territories or legal aid plans, rather than any increase in the number of cases managed by the Program.

²⁵ There are other instances where counsel is appointed pursuant to legislation, such as s. 684(1) of the *Criminal Code*, or the inherent jurisdiction of the court (e.g., *amicus curiae*).

Figure 5: Number of COCFP cases 2010-11 to 2015-16

Source: Department of Justice data

Public Security and Anti-terrorism legal aid

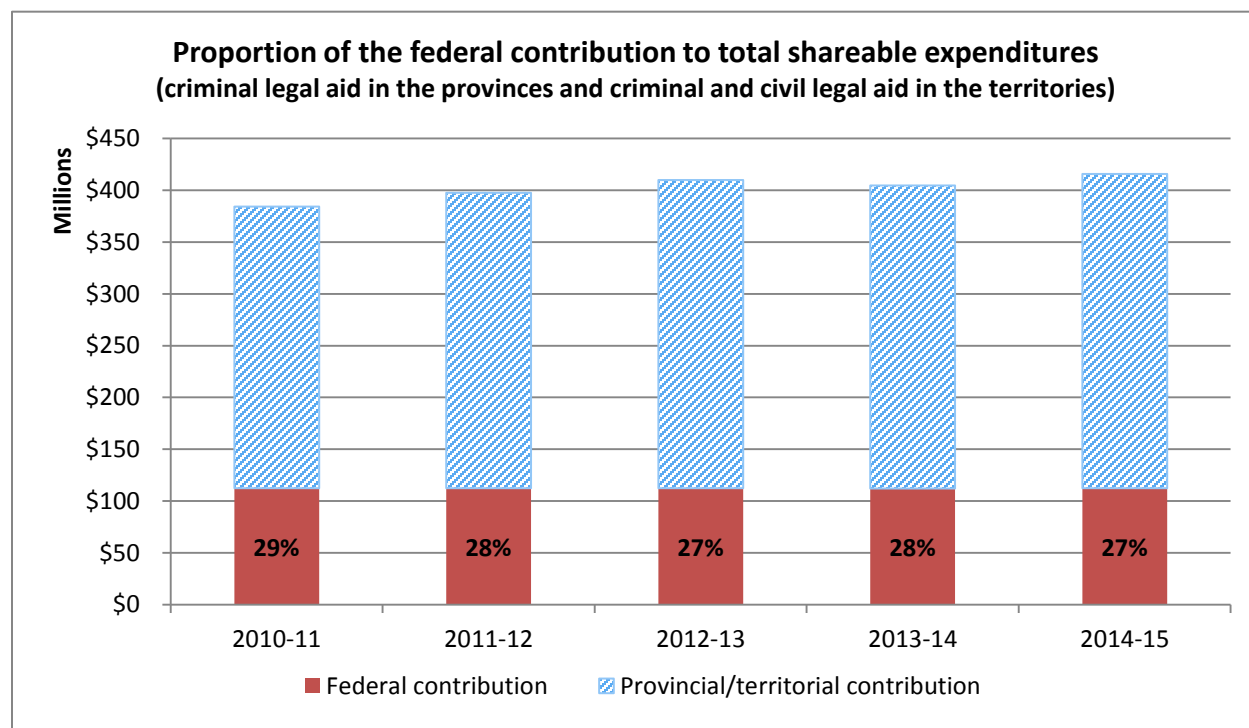
Prosecution for terrorism-related offences was acknowledged to be complex and costly, which means that defending individuals charged for these crimes is also complex and costly. As a result, when defendants are eligible for legal aid, the federal government provides funds to cover their legal aid costs. During the period covered by the evaluation (2012-13 to 2015-16), the number of cases that received funding each fiscal year ranged from 11 to 18 (including IRPA Division 9 cases), and the total costs of these cases ranged from \$2.8 million to \$1.3 million per fiscal year.

Effect of the federal funding contribution on capacity of legal aid plans

Criminal legal aid in provinces and criminal and civil legal aid in the territories

The total shareable expenditures for criminal legal aid in provinces and criminal and civil legal aid in the territories rose by approximately 8%, from \$384.4 million in 2010-11 to \$415.7 million in 2014-15; the federal contribution remained at \$112.39 million for criminal legal aid in provinces and criminal and civil legal aid in the territories during this period of time. As Figure 6 shows, federal funding, as a proportion of total shareable expenditures, remained fairly stable during the time period covered by the evaluation and contributed about 27–28% of the funds used to support the delivery of criminal legal aid in the provinces and criminal and civil legal aid in the territories.

Figure 6: Proportion of the federal contribution to total shareable expenditures



Source: Department of Justice data

Note: Quebec shareable expenditures are unaudited for 2014-15.

The announcement in Budget 2016 of \$88 million over five years beginning in 2016-17 occurred after the PWG key informant interviews were completed. Therefore, key informant opinions on the effectiveness of the federal contribution to increasing the capacity of legal aid plans do not include PWG representatives' reactions to the increase in the federal contribution. With that context in mind, PWG key informant opinions pointed to the lack of any increases since 2003-04 in the federal contribution to criminal legal aid in provinces and criminal and civil legal aid in the territories. This has meant that the federal government has been funding an increasingly smaller percentage of shareable expenditures over time, as provinces and territories increase their funding. Many of the PWG key informants viewed this as a reduction in the federal commitment to support legal aid given the funding levels as of 2015-16.

Most PWG key informants desired a greater federal commitment to legal aid, but they also commented that the federal contribution of \$112.39 million was important to maintaining current levels of service. Without the federal contribution, most PWG key informants believe that access to justice would be adversely affected as services would have to be cut. Because of the

constitutional responsibilities attached to criminal legal aid, the services most likely to be affected would be in the areas of family or civil law.

Key informants (PWG and criminal justice professionals) pointed out that although the demand for criminal and civil legal aid as measured by legal aid applications may not have increased, the costs of providing services have, which makes maintaining (at a minimum) federal funding levels critical for legal aid plans. The reasons for rising costs will be discussed further in Section 4.3.2. In addition, inflation has eroded the value of the federal contribution. Since 2003, the average annual inflation rate has been 1.77%, which means that the federal investment would need to have grown in order to keep pace with inflation²⁶.

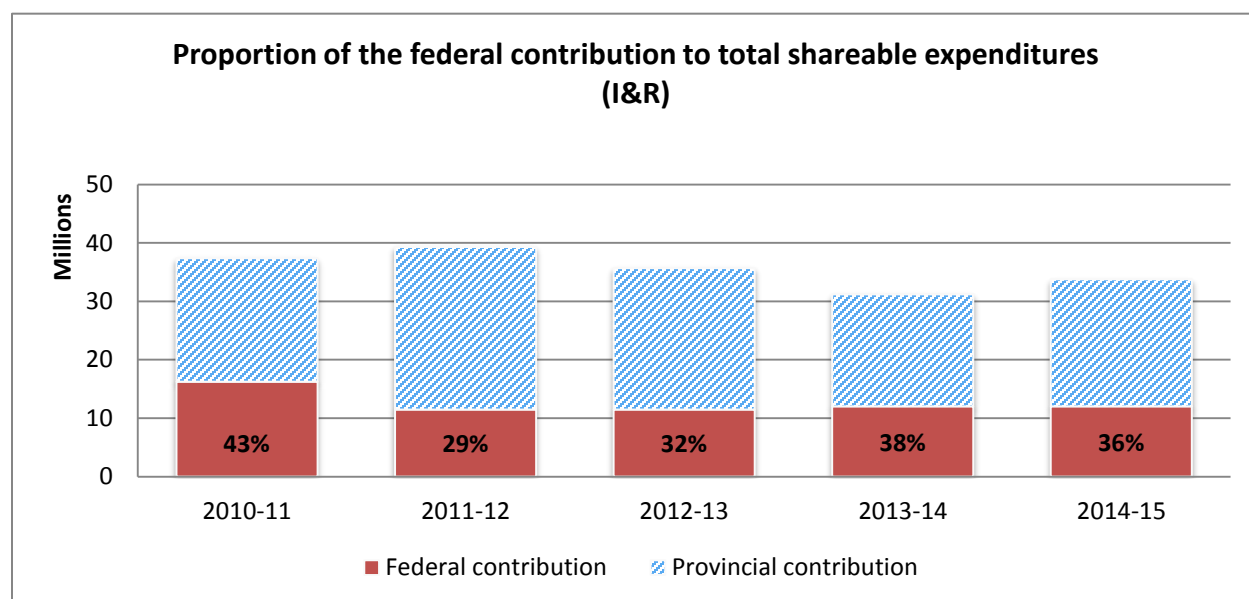
Immigration and refugee legal aid

The shareable expenditures for I&R legal aid have declined by 10% between 2010-11 and 2014-15. As a result, the proportion of the federal contribution has varied by the level of shareable expenditures. In 2014-15, the federal government contributed 36% of the funding for I&R legal aid²⁷. The federal contribution increased by \$500,000 from 2013-14 to 2015-16 to address expected increased demand for I&R services related to cessation/vacation applications.

²⁶ Calculation of annual inflation rate and effect on federal investment conducted using Bank of Canada information calculator. <http://www.bankofcanada.ca/rates/related/inflation-calculator/>.

²⁷ The higher proportion of contributions in 2010-11 is explained by the additional federal funds provided to handle the larger than normal influx of refugees that year.

Figure 7: Proportion of the federal contribution to total shareable expenditures (I&R)



Source: Department of Justice data

Note: Quebec shareable expenditures are unaudited for 2014-15.

The federal contribution to I&R legal aid is considered essential to maintaining these legal aid services. PWG key informants pointed out that I&R legislation and enforcement are federally directed and can have significant effects on the cost and delivery of I&R legal aid. As a consequence, most PWG key informants believe that the federal government should bear more responsibility (i.e. more of the cost) for I&R legal aid than it does currently. This is particularly the case given the consequences of refugee reform legislation.

If federal funding were withdrawn or substantially reduced, key informants believe that some jurisdictions would likely cease funding I&R legal aid, and consequently, more unrepresented people would appear before the IRB. Key informants (PWG and I&R lawyers) expect that the increased complexity of handling I&R legal aid cases with the recovering (increasing) volume will lead to strains in the I&R legal aid system.

Court-Ordered Counsel in Federal Prosecutions

As discussed in Section 4.1.3, funding counsel for COCFP cases is a federal responsibility. Consequently, the federal contribution does not enhance legal aid plans' capacity as much as it

fulfills the federal responsibility to fund the defences to these federal prosecutions where the court has ordered counsel in the interest of justice and a fair trial.

Key informants noted that if the expenses of providing court-ordered counsel were not covered by the Program, the provinces and territories could withdraw service, which would result in stays and require the federal government to develop its own legal aid system to provide COCFP.

The evaluation findings indicate effective provision of COCFP services by the Program. No stays of proceedings were reported in these cases, which meets the departmental performance standard set for COCFP and indicates a well-managed system that responds to court orders in a timely fashion. The major change to the delivery of the COCFP since the 2012 evaluation is the development of an umbrella agreement so that legal aid plans or provinces and territories that are managing COCFP cases do not have to create individual agreements to manage each case. Key informants considered the umbrella agreement to be a positive development.

Public Security and Anti-terrorism legal aid

For PSAT, key informants emphasized the importance of federal funding. Defending one of these anti-terrorism cases, given their complexity, could consume a significant and disproportionate amount of a plan's criminal legal aid budget and affect the plan's ability to assist other clients who need legal aid services.

Contribution of the Federal-Provincial-Territorial Permanent Working Group on Legal Aid to increasing capacity of legal aid plans

As described in Section 2.2.5, the PWG has a wide-ranging mandate that includes serving as a resource to the FPT Deputy Ministers Responsible for Justice and Public Safety on identified priority areas and providing a forum for policy and legal discussions among its members on topics relevant to legal aid. The previous two evaluations of the Program found that negotiating cost-sharing agreements and constructing a business case for legal aid have consumed the efforts of the PWG and limited its ability to fully pursue all aspects of its mandate.

Similar to the previous two evaluation periods, there continued to be a significant focus on reviewing the contribution agreements and the funding formulae for legal aid. As a result, some PWG key informants suggested that the Working Group needs to revisit its terms of reference or mandate to better define its role. This suggestion is consistent with the previous evaluation's finding that the PWG would benefit from the establishment of clearer priorities or a sense of stronger direction/support from a senior level to the PWG.

There is evidence that the PWG is beginning to realign its focus toward facilitating discussion to other legal aid program and policy matters beyond funding and distribution formulae. This shift is evident from documentation on meetings and conferences that took place during the later years of the evaluation period. The more recent meetings have included discussions related to innovations and best practices as well as performance metrics and consistent data collection through the Legal Aid Survey conducted by the CCJS. The Program also funded a Canada-wide study on “*Maximizing the Federal Investment in Criminal Legal Aid*” (PRA Inc., 2014) to support work undertaken by the Deputy Minister Advisory Panel on Criminal Legal Aid, which issued its reports in 2014 (Department of Justice Canada, 2014).

This shift in focus is supported by the PWG key informants, who supported moving beyond the funding formulae to other issues, like performance measurement. Based on interviews, there is substantial support for working on performance metrics and consistent data collection across jurisdictions. Information sharing on best practices and innovations also received positive feedback, although the provincial-territorial members of the PWG were more positive about the potential for this sharing to be beneficial than were the representatives of the legal aid plans. Several plans view the PWG role in information sharing of best practices and innovations as secondary to that of the Association of Legal Aid Plans.

PWG key informants provided several suggestions for improvement:

- explore issues related to the impact of legislative changes on legal aid (this was also a finding in the last evaluation);
- connect with other relevant FPT working groups to bring a broader focus to PWG discussions;
- have more action-oriented discussions of issues;
- fund more research (key informants noted that the PWG used to have more of a research agenda); and
- consider more in-person meetings and not always in Ottawa, as the travel time can be onerous for individuals in Western Canada.

4.2.2. Effective provision of legal aid to eligible persons in the areas receiving federal funding

The previous section looked at the capacity to provide legal aid in the areas of federal funding by considering the extent to which the federal contribution supported the ability to meet the current

demand for legal aid. This section considers the intermediate outcome of whether the Program has been able to demonstrate effective provision of legal aid to eligible persons in the areas receiving federal funding. Effective provision of legal aid is difficult to define for the Program. The federal evaluation of the Program is not intended to evaluate the effectiveness of the delivery of legal aid by the provinces and territories and their legal aid plans. Instead, the evaluation is to consider how the federal contribution may or may not have supported effective provision.

The analysis will consider effective provision from a few dimensions: first, the ability to provide legal aid to low-income Canadians by considering whether there might be unmet need; second, the adoption of innovations and promising practices to enhance provision of legal aid, which are, in part, supported by the federal contribution; and third, the ability to meet the access to justice needs of legal aid clients by considering legal aid service delivery and the potential consequences to clients if there is not effective provision of legal aid.

Potential unmet needs

Section 4.2.1 considered the capacity to address demand within legal aid plans' current FEGs, which establish the financial levels for assessing whether an individual is eligible for legal aid. That analysis does not consider potential unmet demand created by the level of the guidelines. PWG key informants as well as justice professionals have commented upon the inability of many plans to set their FEGs in order to keep pace with economic circumstances. These key informants believe that this situation has led to a growing proportion of individuals who would be classified as low income and cannot afford a lawyer but who are ineligible for legal aid.

Each legal aid plan has its own FEGs, which usually include maximum levels of income and assets for legal aid eligibility. For purposes of the comparison between the guidelines and other economic indicators, the income levels were used. The comparison shows whether the income levels are keeping pace with inflation, increases in wages, and low income cut-offs (LICOs) as a way to demonstrate whether legal aid plan financial eligibility requirements are responding to the economic environment²⁸. If FEGs are not keeping pace with increases in these indicators over time, fewer economically disadvantaged people will qualify for legal aid.

²⁸ Statistics Canada has developed a method of estimating income levels (LICOs) at which families spend 20% points more than the average family on necessities like food, shelter and clothing. This level is considered to indicate families that are in "straitened circumstances". Statistics Canada. (2015). *Low Income Cut-offs*. Retrieved on August 4, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2009002/s2-eng.htm>

The evaluation found that the ability of legal aid plans to adjust their FEGs varies across jurisdictions. Those who cannot adjust their guidelines are restricting the accessibility of legal aid, although this is also a way to manage demand for services and, therefore, expenditures. Those who can adjust their guidelines are increasing access to justice. The belief is that the FEGs for most plans are now set so low that many low-income individuals facing the likelihood of imprisonment can neither afford lawyers nor qualify for legal aid. This was considered to be the case even in jurisdictions where provincial-territorial funding had increased, although there are clear improvements for several of the provinces.

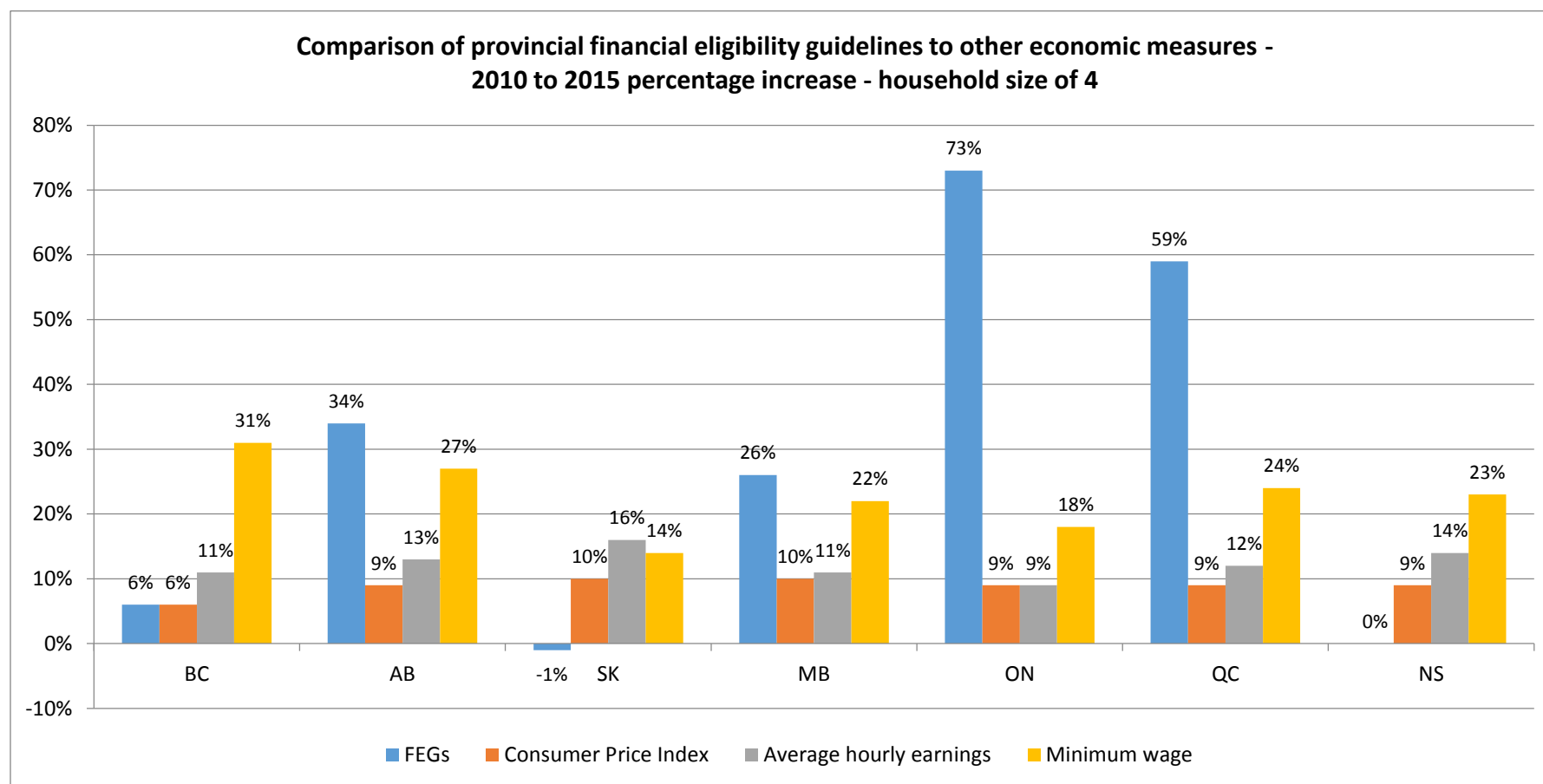
Comparing the FEGs to other economic measures places them in perspective. Figures 8 and 9 below compare the guidelines for family sizes of between one and four to other economic measures, between 2010 and 2015, for seven provinces: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and Nova Scotia²⁹. The two figures are presented to show how the differences are affected by family size, as legal aid FEGs are scaled based on family size. The main findings are the following:

- Three provinces (Manitoba, Ontario and Quebec) have increased their FEGs well above any of the economic measures used.
- Alberta has increased its guidelines above the economic measures, but to a lesser extent than the three provinces noted above.
- One province, British Columbia, has been able to increase FEGs to keep pace with inflation (as measured by provincial CPIs), but the increase is less than the increase in wages (as measured by the minimum wage and fixed-weighted hourly earnings, often called real wages).
- Nova Scotia has not increased its legal aid financial guidelines since 1998, so its FEGs have not kept pace with increases in inflation, average hourly earnings, or the minimum wage.
- Saskatchewan's legal aid FEGs both for a single person and a family of four have decreased slightly between 2010 and 2015, while inflation and wages have increased during this time period.

²⁹ The remaining three Atlantic Provinces (New Brunswick, Prince Edward Island, Newfoundland and Labrador) and the three territories were not included in the comparison because specific financial eligibility guideline amounts for these provinces and territories could not be determined for 2010 and/or 2015 as they either do not use strict financial dollar amounts to determine legal aid eligibility or the information could not be found online or in annual reports.

The methods used and assumptions made for the calculations in Figure 8 and Figure 9 appear in Appendix E.

Figure 8: Comparison of provincial financial eligibility guidelines to other economic measures - 2010 to 2015 percentage increase - household size of 4



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

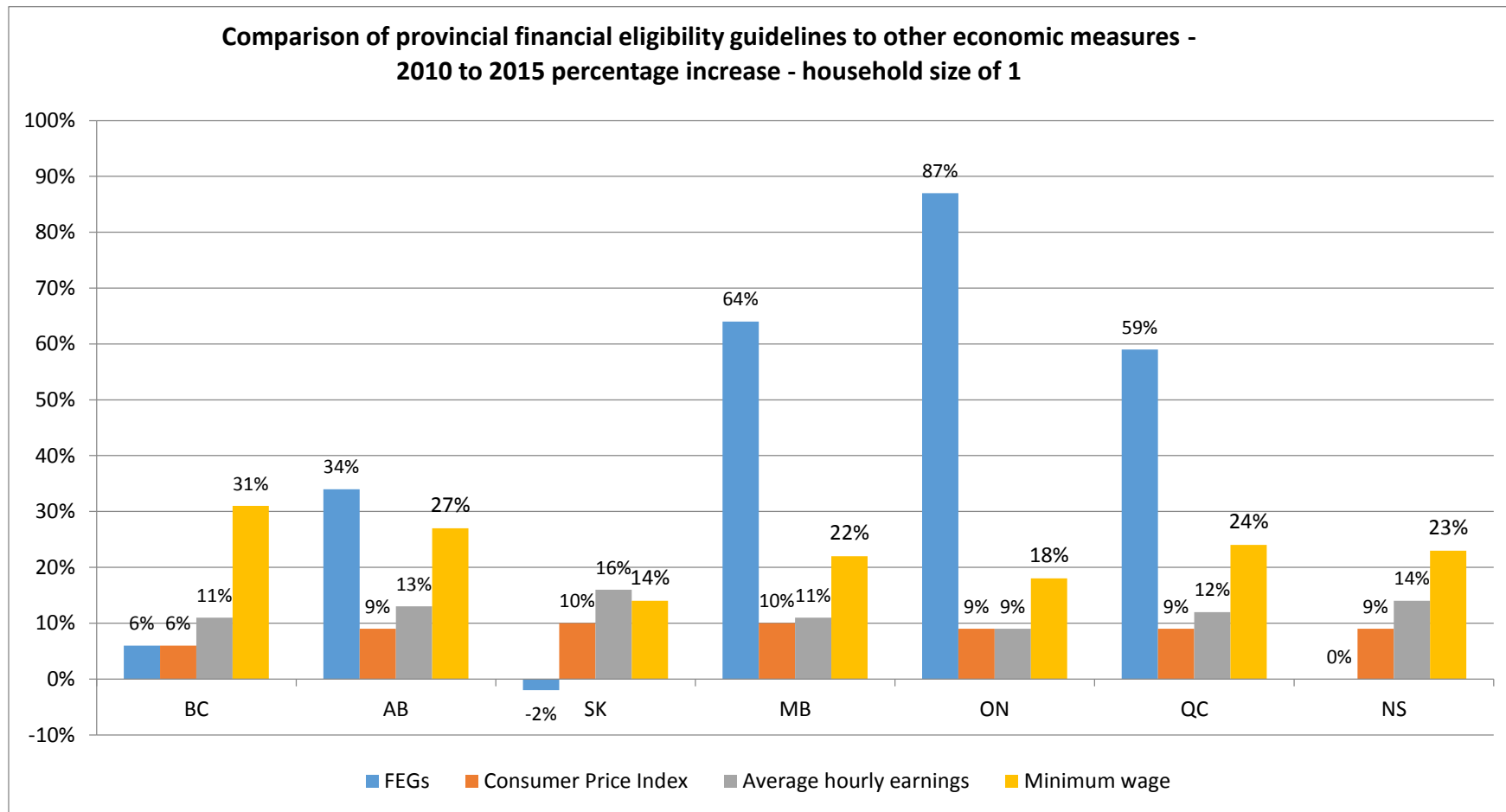
Note: For Saskatchewan, household size = 6 was used for the financial guideline because household size = 4 was not available online or in annual reports.

Note: Percentage change in the minimum wage was calculated as of its value on January 1, 2010 and December 31, 2015.

Sources: Consumer Price Index: Statistics Canada. (2016). Cansim, Table 326-0020

Fixed-weighted index of average hourly earnings for all employees: Statistics Canada. (2016). Cansim, Table 281-0039

Minimum wage: Government of Canada. (2015). Hourly Minimum Wages in Canada for Adult Workers. Retrieved March 29, 2016 from <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx?lang=eng&dec=5> and <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx?lang=eng&dec=6>

Figure 9: Comparison of provincial financial eligibility guidelines to other economic measures - 2010 to 2015 percentage increase - household size of 1

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

Note: Percentage change in the minimum wage was calculated as of its value on January 1, 2010 and December 31, 2015.

Sources: Consumer Price Index: Statistics Canada. (2016). Cansim, Table 326-0020

Fixed-weighted index of average hourly earnings for all employees: Statistics Canada. (2016). Cansim, Table 281-0039

Minimum wage: Government of Canada. (2015). Hourly Minimum Wages in Canada for Adult Workers. Retrieved March 29, 2016 from <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx?lang=eng&dec=5> and <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt2.aspx?lang=eng&dec=6>

Another measure of the responsiveness of provincial-territorial FEGs to the economic situations of lower-income people is a comparison to the LICOs. Statistics Canada has developed a method of estimating income levels (LICOs) at which families spend 20 percentage points more than the average family on necessities like food, shelter and clothing. This level is considered to indicate families that are in “straitened circumstances.”³⁰ To provide some examples of the income levels at issue, the legal aid plans in Ontario and Manitoba base their FEGs on before tax income, which for a single person is \$20,225 and \$23,000, respectively. The before tax LICO in 2015 for a single person living in a city with a population of 500,000 or more (e.g., Toronto or Winnipeg) was \$24,593. In Saskatchewan, where the FEGs are based on after tax incomes, the after tax LICO for a single person living in Saskatoon or Regina was \$17,236 in 2015 and the FEG was \$11,820.

Table 6 compares the FEGs to the before and after tax LICOs for 2010 and 2015 to show changes in FEGs to LICO over time. LICO measures are calculated based on year, family size, and population. The percentages in Table 6 represent the percentage of difference between the FEGs and the LICOs. A negative percentage means that the guidelines are below the LICO by that percentage, which indicates that some individuals whose income is below the LICO do not qualify for legal aid (i.e. they are low-income, but not low-income enough). Conversely, a positive percentage means that the FEGs are above the LICO by that percentage. The change in FEGs to the LICO between 2010 and 2015 is based on comparing the percentage figures in Table 6. If the percentage difference becomes smaller between 2010 and 2015, the FEGs are closer to the LICO, and if the difference becomes larger, the guidelines are further from the LICO. If the percentage difference shifts between 2010 and 2015 from negative to positive, the FEGs have changed from being below the LICO to above it.

The data show that some legal aid plans (Alberta, Manitoba, Ontario and Quebec) have reduced the difference between the LICOs and their FEGs, meaning that more families living under the LICO levels are eligible for legal aid. For example, in 2010, a family of four in Ontario had to have a household income 43% below the LICO level to be eligible for legal aid, while in 2015 that gap has been reduced to 9%. British Columbia’s FEGs are above the LICO levels in 2010 and 2015; however, the gap has become smaller over those six years. In Saskatchewan and Nova

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Statistics Canada, Income Statistics Division. (2007). *Low Income Cut-offs for 2006 and Low Income Measures for 2005* at p. 7. Retrieved on November 17, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/75f0002m2007004-eng.pdf>

Scotia, the guidelines are falling further behind the LICO levels, since the guidelines have decreased in Saskatchewan and have remained unchanged in Nova Scotia between 2010 and 2015.

For each province represented in Table 6, the guidelines are compared to the LICOs for all family sizes for the population of the largest city in each respective province³¹. Comparison of the provincial guidelines to all relevant LICO population measures are presented in Appendix F.

Table 6: Percentage difference between provincial financial eligibility guidelines and low income cut-offs* (1992 base)

	2010							
	Year	500,000+					100,000-499,999	
	Population							
	Province	BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶
Family size	1	-9.2%	-21.6%	-38.2%	-52.3%	-35.5%	-24.4%	-34.3%
	2	4.1%	-20.3%	-36.1%	-33.7%	-26.3%	-	-29.6%
	3	7.2%	-8.9%	-33.6%	-38.5%	-33.8%	-	-31.3%
	4	4.9%	-21.1%	-35.8%	-42.8%	-44.1%	-	-36.0%
	5	8.7%	-25.5%	-35.0%	-44.0%	-	-	-37.0%
	6	13.3%	-28.1%	-36.8%	-	-	-39.3%	-38.4%
	7+	17.1%	-	-38.2%	-	-	-	-39.4%
	Year	2015 ¹						
	1	-11.7%	-3.6%	-6.5%	-17.8%	-21.9%	-31.4%	-39.5%
	2	1.6%	-1.9%	-11.8%	-0.9%	-12.7%	-34.2%	-35.2%
	3	4.9%	12.1%	-17.6%	-7.5%	-20.6%	-29.3%	-36.8%
	4	2.5%	-2.9%	-25.6%	-9.0%	-31.1%	-37.8%	-41.1%
	5	6.4%	-8.3%	-28.6%	-6.8%	-	-42.3%	-42.0%
	6	10.7%	-11.5%	-31.6%	-	-	-44.6%	-43.3%
	7+	14.3%	-	-33.9%	-	-	-43.6%	-44.2%

Note: Percentages calculated as $[(\text{Highest contribution level for size of family} - \text{LICO}) / \text{LICO}] * 100$

* BC, AB, and SK were compared to after-tax LICOs; MB, ON, and NS were compared to before tax-LICOs; QC was compared to after-tax LICOs in 2010 and to before-tax LICOs in 2015.

¹ LICOs for 2015 were not available and were therefore calculated as $\text{LICO}_{2015} = \text{LICO}_{1992} \times \text{CPI}_{2015} / \text{CPI}_{1992}$ (Source: Statistics Canada. [2015]. Low income cut-offs. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

² For 2010 and 2015, FEGs ranged from 1 to a family size of 6+.

³ For 2010 and 2015, FEGs ranged from 1 to a family size of 5+.

³¹ For example, Alberta's guidelines are compared to the LICOs for populations of 500,000 people or more because Calgary and Edmonton both have estimated populations above one million people, whereas Saskatchewan's guidelines are compared to the LICOs for populations between 100,000 and 499,999 people because Saskatchewan's largest city (Saskatoon) has an estimated population of 265,000 people (City Population, 2011).

⁴ For 2010 and 2015, Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. It ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵ Saskatchewan guidelines are provided for families with number of children, where family was defined as one or two-parent household. For this table, two parents are assumed, so the eligibility criterion for a family of four is equivalent to a family with two children. Only family sizes of one adult and no children and family with four children were available for 2010.

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

Source for LICOs:

Statistics Canada. (2015). Low income cut-offs (1992 base) after tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl01-eng.htm>

Statistics Canada. (2015). Low income cut-offs (1992 base) before tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>

The levels of the FEGs compared to the LICOs confirm key informants' beliefs that there are low-income individuals who cannot afford private bar counsel, and who also do not qualify for legal aid. These individuals are not necessarily reflected in the data on legal aid applications refused for financial ineligibility: some legal aid plans pre-screen individuals, so those who clearly are not financially eligible will not apply; and potential clients may determine, using the FEGs posted online, that they are not eligible given their annual income and the value of their assets.

The situation of low-income Canadians who are financially ineligible for legal aid, coupled with the rising cost of private bar counsel, provides a further indication of the unmet need for legal aid. The *Canadian Lawyer* magazine's annual survey of legal fees shows the high cost of retaining private bar counsel. The average cost of legal representation for a bail hearing has increased by 77% from 2012 to 2015. For a one-day trial for a criminal offence, the average cost of legal fees has increased by 70% (see Table 7). In 2015, guidelines for legal aid ranged from an annual gross income of \$11,820 to \$23,000 for a household of one, and from \$21,420 to \$41,573 for a family of four (excluding Nunavut). A comparison of FEGs to the cost of private bar counsel demonstrates the continued need for legal aid, as well as the potential unmet need.

Table 7: National fee ranges of private bar counsel for types of matters covered by legal aid

Types of matters	2012 (\$)			2015 (\$)		
	Minimum	Maximum	Average	Minimum	Maximum	Average
Summary criminal offence (one-day trial)	3,385	6,144	3,736	3,256	14,792	5,334
Bail hearing	684	2,164	989	1,181	4,772	1,750
Criminal offence (one-day trial)	2,991	7,524	4,115	4,820	30,957	6,992
Child custody and support agreement	1,353	6,628	2,227	2,033	1,295	7,788
Refugee protection claim	N/A	N/A	N/A	3,468	6,474	4,262

Sources: *Canadian Lawyer* (2012 and 2015). *The Going Rate*.

Innovations and promising practices to enhance legal aid services

In addition to some plans being able to increase their FEGs, thereby expanding the population of clients they can serve and increasing access to legal aid, all plans have undertaken a variety of approaches to enhance access to justice and/or increase the efficiency of legal aid service delivery. The 2014 study conducted by the Program entitled *Maximizing the Federal Investment in Criminal Legal Aid*, developed an inventory of promising or best practices of legal aid plans across Canada. The current evaluation conducted 10 case studies to provide more in-depth information about promising practices or innovations of legal aid plans. This section considers the results of the 2014 study and the case studies. The federal government supports these activities through its funding contribution.

The innovations or promising practices cover a number of the key challenges that legal aid experiences in Canada.

Increasing accessibility. The *Maximizing the Federal Investment in Criminal Legal Aid* report identified several ways that legal aid plans are increasing accessibility while trying to control legal aid costs. As described above, plans can increase accessibility by increasing their FEGs, but this comes with the cost of then providing full representation to the increased numbers of accused persons who would qualify for legal aid.

To increase accessibility without the substantial cost increase that would occur upon raising FEGs, legal aid plans have undertaken a variety of methods to provide some level of service to those who do not qualify for full representation services. For example, some legal aid plans have introduced mechanisms to provide all individuals who contact legal aid with some level of service. Examples are telephone “law line” services offered by some plans where clients may qualify for summary

legal advice, such as information on bail processes and first appearance procedures³². As noted in the *Maximizing the Federal Investment in Criminal Legal Aid* report, benefits include connecting clients with a lawyer sooner and providing clients with at least some level of legal services.

Case studies which are discussed below highlighted other methods of increasing accessibility.

- **Expanded duty counsel:** Many legal aid plans provide duty counsel services, but several offer expanded duty counsel (EDC), which can include providing services not only to in-custody but also out-of-custody accused persons and more extended services to help resolve matters sooner. Nova Scotia Legal Aid has instituted EDC for both in- and out-of-custody accused persons. Clients are provided duty counsel services even if they are not financially eligible for legal aid or there is not a likelihood of incarceration. EDC was developed to help accused persons who are appearing in court for the first time navigate the process and understand their legal options. According to key informants, prior to the EDC, lawyers informally would assist unrepresented accused; however, this was an unreliable practice that left service gaps. The EDC has increased client assists by approximately 20% between 2012-13 and 2014-15, and about one-quarter to one-third of those individuals assisted would not have previously been eligible for legal aid, which demonstrates the effect of this innovation on increasing accessibility to legal aid and access to justice.
- **Presumed eligibility:** The Northwest Territories Legal Aid Commission and the Legal Services Board of Nunavut use presumed eligibility for criminal matters (the Legal Services Board also uses it for child welfare cases and in a few other types of civil and family matters, see Section 3.5). Presumed eligibility does not require the accused persons to apply for legal aid unless they want to plead not guilty. Avoidance of the legal aid application process benefits accused persons in the Northwest Territories and Nunavut, many of whom find gathering the needed documentation for applications challenging. Presumed eligibility provides the accused with immediate access to a lawyer at their first appearance, thereby avoiding adjournments and delays in the court process. It also provides an opportunity for early case resolution. Delays can be magnified for accused living in small, remote locations with no access to a legal aid office and where circuit court only comes to their community once every six weeks or more. As well, many of the accused face language and/or cultural barriers in understanding the Canadian justice system and the legal aid application process. Others are experiencing mental health or addictions issues, which also pose comprehension barriers. Key informants said that immediate legal assistance provides clients with the opportunity to have a voice, to gain a

³² LAO's Client Service Centre is an example of this type of service.

greater understanding of their legal issue, to learn of their options, and to plan a strategy with their lawyer to manage their legal matter.

- **Preventative approach to expand coverage to assist particularly vulnerable groups:** As part of the LAO's Mental Health Strategy, this approach has expanded coverage to first-time accused to take a more proactive approach and provide services to individuals who may experience other significant consequences, besides incarceration. One such expansion is providing coverage to senior citizens who have mental health issues (including Alzheimer's and dementia-related illnesses) and/or substance use disorders and have been accused of a crime. This innovation increases access to legal aid as the risk of incarceration is not a requirement for coverage. Providing coverage to this client group is based on the recognition that a criminal record can have devastating consequences to senior citizens, such as loss of a range of benefits they receive such as housing (e.g., in long-term care facilities), disability or other income support, or other social services.

Addressing the needs of clients who have multiple barriers and non-legal issues. PWG and justice professionals emphasized the multiple barriers faced by legal aid clients, such as low education levels, alcohol and other substance misuse, past trauma, and mental health issues. According to many of the interviewees, these barriers and non-legal issues make it difficult for legal aid clients to navigate the legal system without assistance, often cause counsel to expend hours beyond what will be compensated under the legal aid tariff in order to assist them, and lead to high rates of recidivism. The justice system and legal aid have responded through a variety of mechanisms. The case studies provided several examples, as follows:

- **Specialized or problem-solving courts with multi-disciplinary teams:** The Mental Health Court in Montréal, the Drug Treatment Courts (DTCs) in Calgary and Edmonton, and the Cknúcwentn First Nations Court in Kamloops are all examples of specialized courts where legal aid plans work with other justice stakeholders to provide a more holistic approach to handling criminal cases that involve court-ordered treatment rather than incarceration. Specialized courts are one of the more intensively studied criminal justice innovations, and these studies indicate success in reducing recidivism³³. A recent evaluation of the Drug Treatment Court Funding Program, which included the DTCs in Calgary and Edmonton, found lower rates of recidivism among DTC graduates (Department of Justice Canada, 2015b).

³³ Aos, Miller, & Drake, 2006; Downey & Roman, 2010; Gutierrez & Bourgon, 2009; Koehler, Humphreys, Akoensi, Ribera, & Lösel, 2013; Latimer, Morton-Bourgon, & Chrétien, 2006; Mitchell, Wilson, Eggers, & MacKenzie, 2012; Mitchell, Wilson, & MacKenzie, 2006; Shaffer, 2006, 2011

The case studies also provided qualitative evidence that these courts are reducing both the number of individuals incarcerated and rates of recidivism, as well as increasing compliance with court orders. The courts also provide a better alignment of services to meet the offender's needs. For example, the Cknúcwentn First Nations Court involves Elders in working with the offender to develop a healing plan and in monitoring the offender's progress, which is more aligned with the traditional Indigenous approach to justice.

Legal aid plans support these courts largely by funding the duty counsel or defence counsel involved with the courts. For legal aid, participation in these courts requires more resources per client as the time spent on each client is more than in the traditional court process. In addition, for some of these courts, the charges are not necessarily those that would be covered by legal aid plans. Therefore, these innovations/promising practices reflect the comments made by some members of the PWG, that participation in innovations often requires additional resources.

- **Specialized legal aid offices that offer interdisciplinary teams:** The Youth Criminal Defence Office (YCDO) of Legal Aid Alberta provides services to youth using a multi-disciplinary team of staff lawyers and youth workers. The YCDO offers assistance with non-legal supports, such as accessing treatment or finding housing or education programs. Interviewees believed that by representing and supporting youth in a holistic manner, the Office assists them with changing their lives by addressing the root causes of their criminal behavior. They credit the YCDO with reducing the number of incarcerated youth in Alberta.

Undertaking more integrated and coordinated approaches with other stakeholders. The importance of system-wide, cross-sectoral responses to address issues in the justice system and improve efficiencies was highlighted in the *Maximizing the Federal Investment in Criminal Legal Aid* report. As noted by key informants, the actions taken by one stakeholder in the system can affect others. By taking a coordinated approach, inefficiencies or challenges within the system can be better addressed. The case studies provided several examples of these approaches.

- The Lean initiative in Saskatchewan involved consultations to develop a coordinated response to improve the efficiency of the custody docket process and reduce the number of individuals being held at the remand centre. As discussed in Section 4.1.1, there is a high number of individuals in remand and they are disproportionately Indigenous people, many of whom are likely legal aid clients. Interviewees (legal aid duty counsel, Crown, and the judiciary) believe that the approach has increased early resolutions and created efficiencies in the process through greater use of video court appearances and a reorganized court schedule. However, early results

that reduced the number of remands were not sustainable due to human resource limitations experienced by the Legal Aid Commission³⁴.

- One case study involved I&R legal aid and demonstrated how the different stakeholders in the refugee determination process could work together to manage an unprecedented influx of refugees. The large number of refugees could have resulted in a backlog of claims and numerous inefficiencies (e.g., adjournments) if the Legal Services Society of British Columbia and other stakeholders did not take steps to address potential points for logjams. The case study interviewees emphasized the importance of communication and advance notification among the IRB, relevant federal departments and agencies, and the Legal Services Society so that they could prepare or know if a hearing would not proceed. In addition, the Society developed new processes to ensure a proactive and coordinated approach. Refugees were not required to apply for legal aid prior to receiving service, so that they were provided legal advice early in the process (i.e. at their detention hearing). The Legal Services Society also adopted a file management approach where counsel made notes in hard copy individual client files; this approach ensured continuity of service for clients and allowed the legal aid plan to have more oversight over the work. Finally, the Society coordinated with immigrant-serving organizations, so that individuals being released were connected with housing or other forms of assistance.
- As mentioned above, specialized courts involve stakeholders within the justice system (judiciary, Crown, legal aid/defence counsel, probation) as well as outside the justice system (e.g., social service providers, supportive community members such as Elders).

Continuity of service delivery. Several case studies included a best practice of continuity of service. Continuity of service can be achieved through continuity of counsel and/or continuity of service through the use of well-documented files. Using either approach, the concept is that continuity of service delivery impacts the efficiency of the justice system and the cost effectiveness of legal aid.

³⁴ One early feature of the initiative was legal aid lawyers and Crown counsel meeting on Sundays to review the cases that would appear in remand court on Mondays. Interviewees agreed that these meetings were very effective. One respondent noted that the Crown and legal aid had developed plans of action for 50–60% of the individuals that had been remanded over the weekends; over the course of seven court days during those two weeks, about 53 remands were avoided. This feature did not continue after two weekends due to human resource issues experienced by Legal Aid Saskatchewan.

- The EDC and Cknúcwentn First Nations Court, which assign counsel to the same court on an ongoing basis so they can assist the same client on more than one appearance, are two examples of continuity of counsel.
- Presumed eligibility also facilitates continuity of counsel by assigning files to counsel early in the process.
- In Nunavut, the legal aid plan has also begun to assign counsel to files in what is termed “linear file assignment”. The challenge in Nunavut is the long distances to travel for circuit court, which means that some communities will not have circuit court for weeks. As a result, different counsel would often appear for consecutive court sittings. According to key informants, the changes in counsel could lead to more adjournments and a lengthening of the criminal justice process. Legal aid lawyers confirmed having a sense of file ownership, which made them feel responsible for ensuring that the case is ready to proceed. Lawyers also reported that having the same client each time can lead to a better client-lawyer relationship through improved trust, and to the lawyers learning how to communicate effectively with their clients — some of whom have cognitive difficulties or particularly challenging personalities.

Enhancing opportunities for early resolution. EDC and presumed eligibility are two of the case study innovations that are intended to facilitate early resolution.

- Presumed eligibility enhances early resolution by providing counsel to clients starting at their first court appearance; under the traditional duty counsel services that existed prior to presumed eligibility, matters were often adjourned to allow the accused person to apply for legal aid. This step, coupled with the challenges accused individuals often had in providing needed documentation to show they financially qualified for legal aid, created delays and hampered the court process.
- EDC also enhances early resolution by providing services starting at the first court appearance. The EDC program has been able to resolve 15% of the charges facing clients.

One remaining challenge for legal aid and the justice system more generally is that few of these innovations/promising practices are studied to determine if their anticipated outcomes in terms of improved client service and/or system efficiencies are achieved. Some of the projects are not currently tracking their own clients, and court data or other information on client results is often difficult or costly to obtain. As a result, legal aid and the justice system do not consistently engage in evidence-based decision making and improvements. This finding is consistent with the conclusions of the Deputy Minister Advisory Panel on Criminal Legal Aid, which pointed to the

need for more performance information on the delivery of criminal legal aid (Legal Aid Directorate, 2014).

Addressing access to justice needs of legal aid clients

The evaluation explored access to justice needs of legal aid clients by interviewing legal aid clients and justice professionals who work with these clients. This section considers legal aid service delivery from the clients' perspective and the potential consequences to clients if there is no effective provision of legal aid, based on interviews with justice professionals.

Criminal legal aid in the provinces and criminal and civil legal aid in the territories

Justice professionals (defence counsel and PWG members) interviewed for the evaluation confirm the literature that accused persons experience difficulties when handling their own legal matters and experience more serious consequences than accused who have counsel³⁵.

The majority of defence counsel interviewed pointed to a number of challenges and barriers faced by legal aid clients that limit their ability to represent themselves, such as low education levels, alcohol and other substance misuse, mental health issues, and past trauma. In addition, their personal situations (e.g., poor housing, unemployment, homelessness) make it challenging for them to assist their counsel in preparing their defence or to demonstrate the stability necessary to be granted bail or to receive alternatives to incarceration, such as conditional sentences, probation or alternative measures.

Justice professionals emphasized the complexity of the justice system and the fact that unrepresented accused persons often cannot effectively represent themselves. They noted various common legal consequences that are experienced by unrepresented accused persons, including not being aware of available defences, as well as not understanding, and therefore not presenting relevant information for their defence. Many of the justice professionals believe the unrepresented accused persons are more likely to plead guilty simply because they want the matter resolved and may not fully understand the consequences of a criminal record.

The evaluation also explored the unique access to justice needs of legal aid clients in the territories. Key informants emphasized that the availability of legal aid is essential for reasons unique to the territories. Although clients in the territories face many of the same challenges experienced by other legal aid clients (e.g., socioeconomic disadvantages, mental health issues, alcohol and other

³⁵ Department of Justice Canada, 2004; Daoust, 2011; Hann, Meredith, Nuffield & Svoboda, 2002a, 2002b.

substance misuse, trauma), these challenges are compounded by the relative lack of other social services and legal resources available. The legal aid plans, through the integrated AJAs, provide legal representation as well as assistance from the Aboriginal courtworkers and public legal education. According to key informants, the integrated nature of the agreements allows legal aid plans to respond to community needs in a more holistic way. The legal aid plans can determine how best to utilize Aboriginal courtworkers and what public legal education is necessary, so that resources can be shifted accordingly. The structure of the AJAs was considered by these key informants to facilitate the ability of legal aid plans to address access to justice needs in the territories.

Client interviews confirmed many of the points raised by criminal justice professionals. Of the legal aid clients with criminal law issues, many said that if they had not received assistance from legal aid, they would have pleaded guilty to the charges, and the others thought their only option would be trying to represent themselves. However, many clients cited a lack of knowledge about the legal system as a reason for not being able to handle their legal issue without the assistance of counsel. They mentioned that they did not have enough education or feel comfortable speaking for themselves, which would have made it difficult for them to represent themselves. None reported that they had the financial ability to hire counsel, and many did not believe they had the ability to even borrow funds. Some respondents reported that they would have needed to sell assets to afford counsel.

Clients were positive about the services they received from legal aid. Many clients commented that the legal aid services they received helped them to navigate the court system and that counsel explained their legal options. Almost all clients considered their experiences with legal aid to be somewhat or mostly positive and indicated that they were treated with respect, the information/advice they received was helpful, counsel understood their situation and provided them with options on how to handle their legal issues. Although all respondents thought that their experiences with legal aid were positive, some noted that they would have preferred to have more and earlier contact with their lawyer before their court appearance.

I&R legal aid

Key informants (PWG and I&R counsel) mentioned that the complexity of the refugee determination system coupled with other factors — such as potential language barriers, claimant experience of trauma/emotional/psychological distress, and mistrust of government institutions — are reasons why refugees and immigrants need the assistance of counsel. I&R counsel in particular noted that the initial interviews with claimants conducted by the IRCC are substantive, and answers

provided by the claimants can be used against them in the later IRB hearing. This makes having counsel at the earliest stages important for the client's case. In addition, I&R counsel said that the tight timelines of the new system create pressures on the claimants. They have found that clients deteriorate emotionally or mentally while preparing for the hearing, which can make the hearing not go well, even with counsel present. They also commented that the tight timelines make it very difficult to address clients' psychological and mental health needs, so that they can present better in the hearing room. At the very least, counsel can ensure that the evidence to support the claim is presented as clearly as possible.

I&R counsel and PWG key informants gave several reasons about the importance of immigrants and refugees having access to legal counsel:

- When they proceed without counsel, they typically do not provide a coherent narrative.
- The Basis of Claim form used for refugee claims is complex, so even a high functioning English speaker who is not in crisis would have difficulty navigating it.
- Refugees do not know what should be included in the narrative, as they do not know what is needed to show that they are a refugee protected under the UN *Convention on Refugees*. They usually include irrelevant information and omit relevant information.
- Immigrants and refugees need counsel to help them gather the appropriate kind of corroborating evidence.
- Documentation to assist refugees with preparing their claim, such as the online country-specific information linked to the IRB National Documentation Packages, is mainly available in English.
- Counsel help them prepare for the hearing, which is important given the vulnerabilities of this client group.
- The potential impact for refugees of an adverse decision includes deportation, which could place them at personal risk of persecution or torture if they were to be returned to their home country.

There were early concerns that legal aid plans would have difficulties responding to the accelerated timelines for scheduling RPD hearings that are part of the new refugee determination system. These new timelines were thought to potentially make it more difficult for lawyers to be in place for refugees at their RPD hearing. RPD data on representation generally demonstrate that the ability of the larger justice system (including legal aid) to meet representation needs is reflected in

the high rate of refugee claimants with counsel. As seen in Table 8, the proportion of unrepresented RPD finalized claims went down from 13% in 2011 to 8% in 2015.

Table 8: Rate of representation in the Refugee Protection Division finalized cases (by calendar year)

Counsel representation	2011		2012		2013		2014		2015	
	Finalized Cases	%	Finalized Cases	%	Finalized Cases	%	Finalized Cases	%	Finalized Cases	%
Represented	28,878	87%	24,715	87%	17,557	87%	17,118	89%	14,571	92%
Unrepresented	4,406	13%	3,630	13%	2,547	13%	2,061	11%	1,185	8%
Grand total	33,284		28,345		20,104		19,179		15,756	

Source: Data supplied by the IRB.

Although representation rates have increased, some I&R justice professionals expressed concerns that without an increase in the tariff, the quality of the representation will deteriorate as more junior counsel will handle I&R legal aid cases, and gaps will be filled by non-governmental organizations and community organizations with little to no legal training. I&R justice professionals said that this can sometimes be detrimental to the person's claim, as errors can be made in completing the forms (e.g., omitting relevant information).

I&R counsel strongly believe that without the benefit of legal representation, more negative decisions would result.

In the client interviews, the I&R legal aid clients all reported that they would not have been able to afford counsel as they did not have a job or any funds to pay for counsel. They believe that they would have had to proceed without representation and expressed concern about how the process would have been without legal aid. They reported that they did not understand the system or how to present their case. All of the interviewed I&R legal aid clients felt treated with courtesy and respect by their counsel.

4.3. Performance - Demonstration of Efficiency and Economy

The Treasury Board Secretariat's 2009 *Policy on Evaluation* defines efficiency as production of "a greater level of output ... with the same level of input or a lower level of input with the same level of output", and economy as the achievement of expected outcomes using the minimum amount of resources required (Treasury Board of Canada Secretariat, 2009). Applying these definitions to the Program, an analysis of its efficiency and economy considers the ability of the

Program to effectively manage its resources and the degree to which the legal services provided are efficient.

4.3.1. Economy

A primary focus of the Program is ensuring that funding under the contribution agreements with the provinces and territories is provided according to the terms of the agreement in a timely fashion. As shown in Table 9, a comparison of planned-to-actual contribution expenditures shows that the Program is meeting that goal. The major areas where there are variances are in COCFP and PSAT cases, which is expected. It is difficult to estimate what costs may be incurred for these cases in advance, given their complex nature and the uncertainty about the number of new cases that will arise each fiscal year. In the context of these cases, lapsed funds or the reverse (expenditures that exceed budgets) do not reflect on the management of the Program, but are indicative of the unpredictable and high cost nature of these cases.

In terms of spending on program administration (salaries and operations and maintenance), the Program lapsed funds in some years. This was also the case even when the costs of COCFP cases managed by the LAD were taken into account³⁶. It is important to note that there were a number of government-wide cost containment measures put in place during the years examined through this evaluation, including a Strategic Operating Review, the Deficit Reduction Action Plan, travel caps, and budget and staffing freezes.

³⁶ The Program uses its operations and maintenance funding to cover COCFP expenditures that are in excess of the budget for COCFP cases managed by LAD.

Table 9: Legal Aid Program: Budget and actual expenditures (in millions of \$)

	2012-13			2013-14			2014-15			2015-16		
	Budget	Actual	Variance	Budget	Actual	Variance	Budget	Actual	Variance	Budget	Actual	Variance
Funding components (contributions)												
• Criminal legal aid in provinces and criminal and civil legal aid in the territories	112.39	112.39	0	112.39	112.39	0	112.39	112.39	0	112.39	112.39*	0
• I&R	11.50	11.50	0	12.00	12.00	0	12.00	12.00	0	12.00	12.00	0
• COCFP	1.65	2.90	(1.25)	1.65	1.65	0	1.65	2.51	(0.86)	1.65	1.57	0.08
• PSAT (including IRPA Division 9 cases)	2.88	1.81	1.07	2.88	1.28	1.60	2.88	1.98	0.90	2.50	1.58	0.92
Total – Contributions funding	128.42	128.60	(0.18)	128.92	127.32	1.60	128.92	128.88	0.04	128.54	127.54	1.0
Program administration**												
• Salary	0.79	0.70	0.09	0.81	0.82	(0.01)	0.84	0.82	0.02	0.80	0.77	0.03
• Operations and maintenance***	0.38	0.14	0.24	0.43	0.19	0.24	0.42	0.18	0.24	0.46	0.20	0.26
Sub-total	1.17	0.84	0.33	1.24	1.01	0.23	1.26	1.00	0.26	1.26	0.97	0.29
• COCFP (cases managed by LAD)****	0.10	0.35	(0.25)	0.10	0.44	(0.34)	0.10	0.12	(0.02)	0.10	N/A	N/A
Total – Program administration	1.27	1.30	(0.03)	1.34	1.25	0.09	1.36	1.09	0.27	1.36	1.19	0.17
Grand total	129.79	129.79	0	130.36	128.77	1.59	130.38	130.02	0.36	130.0	N/A	N/A

Sources: Final claims and the Departmental Financial System (provided by the Program).

* For FY 2015-16, the actual contributions are estimated, as the final claims have not been submitted yet for that fiscal year.

** Accommodation and benefits are not included.

***The Program uses its operations and maintenance funding to cover COCFP expenditures that are in excess of the budget for COCFP cases managed by LAD.

**** For COCFP (cases managed by LAD), the actual expenditures shown are the net amounts paid by the Department after it has recovered costs from other government departments.

4.3.2. Efficiency

Operational efficiency

Operational efficiency considers how well inputs are being used and converted into outputs. For the Program, this means the proportion of the Program resources used for administration. From 2012-13 to 2015-16, administrative expenses equaled 0.8% of the total contributions funding (criminal legal aid in the provinces, criminal and civil legal aid in the territories, I&R, COCFP and PSAT). In other words, for every \$1 in federal funding distributed to the jurisdictions, less than one (1) cent was spent on administering the Program. This result matches the 2012 evaluation of the Program (0.8%) and is similar to other contributions programs managed by the Department³⁷. It is beyond the scope of this evaluation to conduct a comparison of operational efficiency of the Department's contribution programs, as this would require a detailed analysis of the levels of administrative support required by the different programs. What the evaluation of the Program can conclude is that the 0.8% efficiency ratio (salary and operations and maintenance costs as a portion of contribution dollars awarded) appears to be reasonable.

Allocative efficiency

Allocative efficiency of the Program considers whether the resources used to achieve outcomes were reasonable. To understand the efficiency of the Program, the context in which it operates is important in order to appreciate the cost drivers of legal aid.

Legal aid cost drivers. Key informants emphasized that the cost of both criminal and I&R legal aid is not just a function of demand. This is evident in the rising costs of legal aid despite its generally flat or even declining demand. Key informants provided several reasons for this.

- **Changes in legislation and/or actions taken by other justice stakeholders that affect the cost of legal aid.** For criminal legal aid, recent criminal justice legislation has increased the number of people falling within legal aid guidelines (likelihood of loss of liberty) and reduced the willingness of defendants to plead guilty and negotiate matters with the Crown, which has caused more matters to go to trial. In particular, key informants pointed to legislation that results in more serious sentences — such as mandatory minimum penalties, the reduced access

³⁷ For example, the Youth Justice Services Funding Program and the Intensive Rehabilitative Custody and Supervision Program of the Youth Justice Initiative had administrative costs of less than 1% of total expenditures (Department of Justice Canada, 2016b).

to conditional sentences, and the sex offender registry — as types of legislation that make it more likely that accused will want to go to trial. The new legislation has also increased costs because to properly represent its clients, legal aid is funding appeals to challenge the legislation.

The activities of other justice stakeholders also have an effect on legal aid costs, such as:

- the increased use of dangerous offender applications that legal aid plans have to address for their clients;
 - the increased use of breaches and administrative offences that create more demand for legal aid representation³⁸;
 - changes in police investigation practices, such as greater use of informants, wiretaps, etc. which increase the cost for mounting a defence due to the amount of disclosure, the complexity of the legal issues and the length of trials when these investigative techniques are used;
 - changes in Crown or police charging practices where more charges per information are being laid; and
 - increased resources for police and Crown, without considering what resource needs this will create for legal aid.
- **Increasing case complexity.** This is related to the changes in legislation and actions of other justice stakeholders, but the complexity of cases is seen as increasing the cost per certificate. The types of increased complexity most often mentioned were the volume of disclosure and the number of pre-trial motions and charges.
 - **Legal aid plans' attempts to respond to economic realities.** Some plans have not increased their FEGs or their tariff rates for many years; for some, there have not been increases for close to a decade. Although some plans have increased their FEGs, all plans are under pressure to keep their guidelines reasonable so that there are not large numbers of low-income individuals who are ineligible for legal aid and who cannot afford counsel. In addition, plans are under

³⁸ *The Justice System Costs of Administration of Justice Offences in Canada, 2009* (Department of Justice Canada, 2013) discusses the overall criminal justice system costs of Administration of Justice Offences (AOJOs) in Canada and estimates the costs associated with police, court, prosecution, legal aid, and corrections from AOJOs committed by both adults and youth. The dollar amounts stated in the report are determined using data from the CCJS and are an estimate of the criminal justice system costs of AOJOs in Canada in 2009. The report found that the expenditures associated for AOJOs that were incurred by the criminal justice system totaled \$729,440,541; of that \$49,169,468 were costs estimated to be incurred by legal aid.

pressure to increase their tariff rates, so lawyers do not increasingly refuse to handle legal aid certificates.

- **Justice system innovations.** Several key informants noted that innovations like specialized courts, while being a positive development, take more time per client.
- **Disbursements.** The costs for expert witnesses, translators and travel costs have increased substantially over the last few years. The increase in travel costs particularly affects legal aid plans that have circuit locations located in remote fly-in communities.

Clients can also contribute to the cost of providing legal aid services. This is particularly the case for clients who have multiple barriers that affect their ability to participate in their defence (e.g., alcohol and other substance abuse, trauma, mental health issues, homelessness). Although legal aid plan expenditures might not be affected, the cost of these clients is borne by counsel who have to spend more time with these clients in order to effectively represent them.

Indigenous clients also have unique needs, given the effects of residential schools and other features of colonialism. The Supreme Court of Canada, in *R. v. Gladue*, [1999] 1 S.C.R. 688, found that lower courts must consider an Indigenous offender's background in sentencing. As a result, courts now accept *Gladue* reports, which outline mitigating factors to be considered in sentencing Indigenous offenders. Funding *Gladue* reports is an additional cost for legal aid plans. Based on key informant and case study interviews, legal aid plans cannot fund reports in all situations where they are relevant. Although some plans provide additional funding for *Gladue* reports — Ontario's legal aid plan has *Gladue* block fees to provide additional funding to lawyers who have Indigenous clients — other plans do not have additional funding or are finding it insufficient to meet their needs. For example, British Columbia's legal aid plan had a *Gladue* report disbursement pilot project that provided funding to pay for an expert to write a *Gladue* report. However, this funding is reportedly limited and not sufficient to meet the need for *Gladue* reports.

For I&R legal aid, the trends are similar to criminal legal aid.

- **Legislative changes.** Key informants commented on the legislative changes adding cost and complexity. Several examples were given:
 - New legislation can give rise to Charter challenges, which are typically very costly cases to pursue. The reform of the refugee determination process has led to Charter challenges, and some of these cases were funded by legal aid plans.

- The new refugee determination system includes a new appeal division for cases (Refugee Appeal Division, or RAD). This addition has increased the cost to legal aid, not only because of the additional level of decision making possible with the RAD, but also because of the need to engage in litigation to clarify the RAD's role (e.g., to determine the standard of review to be used by the RAD in reviewing cases). In addition, the court decisions on the standard of review for the RAD mean that submissions can now include new evidence, which adds to the complexity and level of effort required by counsel.
- Claims often proceed through multiple stages of the refugee determination system, such as admissibility hearings at the Immigration Division, hearings of the refugee claim before the RPD, and the potential of claims going to the RAD or to the Federal Court for judicial review.
- The shorter timelines under the new system are challenging for counsel, as there is less time to gather the documentation needed to support the claim.
- **Actions of other stakeholders.** Legal aid is a reactive system as it has to respond to the actions of other justice system stakeholders and has limited ways to influence what is done, despite the cost implications for legal aid.
 - Under the current refugee determination system, IRCC (formerly Citizenship and Immigration Canada) has intervened more frequently in claims before the RPD, which has made these claims more complex and adversarial.
 - The expectations of the RPD are considered to have increased in terms of the type of evidence necessary to support a claim. As a result, claimants are expected to have more documentary evidence available (and translated), in addition to witnesses or witness statements from the refugee's country of origin. Key informants (PWG and I&R lawyers) commented that it can be very challenging to gather this information under the shorter timelines of the new process.
 - The federal government has pursued appeals to the RAD and there are more judicial reviews than under the previous system, which translates into increased costs for legal aid.
- **Complexity of cases.** PWG and I&R lawyers believe the complexity of cases has increased, in part due to the legislation and the actions of other stakeholders, as well as the demographic of the refugees. Some I&R lawyers noted that there are more refugee-producing countries, which means that cases are more diverse and require counsel to become knowledgeable about the situations in more countries.

- **Legal aid plans' attempts to respond to economic realities.** As with criminal legal aid, the FEGs and tariffs have been raised by some plans to try to respond to meeting the economic realities; however, I&R lawyers interviewed said that the tariff rates and block fees are simply not realistic for I&R legal aid in some of the provinces that offer I&R legal aid. For example, in British Columbia, the hourly rate of \$83 has been the same for more than a decade, and its erosion is reflected by market rates that are now between \$175–\$400 an hour for I&R lawyers. In addition, the time for preparation for one client is set at 16 hours, when the actual time to prepare was estimated as closer to 25 hours by some of the interviewed counsel. As a result, senior I&R lawyers will more often decline to take a legal aid case, according to key informants.
- **Disbursements.** The costs for translators and expert reports (e.g., psychological assessments) have increased substantially over the last few years, and the need for translators has increased due to the importance of documentary evidence to support the claims.
- **Clients less able to contribute to their cases.** Under the previous system, RPD hearings did not occur until the individual had been in Canada for close to a year. As a result, refugee claimants had more opportunities to gather financial resources to support their refugee claims. Refugee claimants were also better able to assist their counsel as their emotional state was improved and/or their cultural understanding and comfort level were greater.

Role of legal aid in creating efficiencies in the system

Despite the cost pressures, legal aid plans have continued to innovate to provide service to a greater number of individuals or to improve the efficiency of service delivery, as discussed in Section 4.2.2. PWG key informants and justice professionals believe that legal aid helps ensure the efficient functioning of the justice system; without it, more individuals would proceed without counsel. This would result in more adjournments, more appearances, longer time to resolve cases, and more cases going to trial because the Crown finds it difficult to negotiate with an unrepresented person. Judges and Crown are placed in a difficult position when unrepresented accused persons appear in court: they cannot assist the accused person with their defence, but at the same time they need to ensure a fair process. Justice professionals believe that without legal aid, the backlog in courts would increase.

I&R lawyers noted that counsel's role in providing a coherent narrative with all of the relevant information saves the IRB time. Otherwise, Board members would have to construct the narrative based on what they have been provided and would likely need to take time in the hearing to reframe the client's position in order to understand whether there was a legitimate claim. Given the stakes

for the claimant, it is important for the refugee determination system to be careful in assessing claims. Consequently, according to I&R lawyers, the involvement of counsel creates efficiencies for the IRB by shortening preparation time for hearings and hearing times.

A recent study conducted for the Legal Services Society of British Columbia considered the potential system efficiencies from enhanced duty counsel services; it can be used as an example of the types of avoided costs to the system that legal aid can contribute. “*Making Justice Work: Improving Access and Outcomes for British Columbians*” estimated that a 27% reduction in the number of appearances could provide \$158,000 in avoided court costs per 1,000 cases, and that a 70% reduction could avoid approximately \$420,000 in court costs (Legal Services Society, 2012, p. 27).

Economy of legal aid tariffs

Legal aid is cost effective based on a comparison of legal fee rates³⁹. For example, LAO’s average cost per criminal certificate was \$1,566 in 2012-13 and \$1,738 in 2014-15 (Legal Aid Ontario, 2013, p. 24, 2015, p. 19). This average would include not only the types of activities listed below, but also more expensive activities such as appeals. The only type of comparable matter in Table 10 is bail hearings, which would cost \$289 under LAO’s 2014-15 tariff rates (Legal Aid Ontario, 2007, pp. 2–5). LAO’s average cost per I&R certificate was \$2,088 in 2012-13 and \$2,640 in 2014-15, which is 38% less than the average cost of a refugee protection claim (Legal Aid Ontario, 2013, p. 24, 2015, p. 19).

Table 10: National fee ranges for types of matters covered by legal aid

Types of matters	2012 (\$)			2015 (\$)		
	Minimum	Maximum	Average	Minimum	Maximum	Average
Summary criminal offences (one-day trial)	3,385	6,144	3,736	3,256	14,792	5,334
Bail hearings	684	2,164	989	1,181	4,772	1,750
Criminal offences (one-day trial)	2,991	7,524	4,115	4,820	30,957	6,992
Refugee protection claims	N/A	N/A	N/A	3,468	6,474	4,262

Sources: *Canadian Lawyer* (2012 and 2015). *The Going Rate*.

³⁹ National comparisons of legal aid tariffs and private bar counsel rates are difficult because the legal aid tariff structures vary substantially across jurisdictions, and national information on private bar counsel rates is not extensively available. *Canadian Lawyer* is the only publicly available resource and has its limitations, as its survey is based on those lawyers who subscribe to the magazine and responded to the survey. The sample sizes are small, so results should be interpreted with caution.

5. CONCLUSIONS

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

5.1. Relevance

Does the Program continue to serve the public interest and need?

The evaluation evidence supports the continued need for the Program. Key informants unanimously believe that legal aid serves the public interest and need, citing Canada's constitutional, statutory and international obligations to support access to justice and a fair legal process. Without legal aid, it is believed that the justice system would be brought into disrepute. Legal aid balances the power of the state by providing legal assistance to some of the most vulnerable of society and reduces the possibility of miscarriages of justice. In addition, when the laws or the operation of the criminal justice system disproportionately impact marginalized or vulnerable populations, legal aid plans may be involved in legal challenges to those laws and practices. Legal aid plans are also one of the main tools to bring the criminal defense perspective to discussions when justice system reforms are being considered.

Many key informants also noted that legal aid assists the criminal justice system by contributing to its efficiency. By providing representation, legal aid reduces the number of unrepresented accused, who are considered to create delays, additional appearances, and other inefficiencies in the justice system. Legal aid plans' budgets are limited and attempt to control costs, which benefits the justice system as they work to ensure that cases are handled as expeditiously and cost effectively as possible.

To what extent do the Program's goals and objectives align with the federal priorities and departmental strategic outcomes?

The Program's objectives of promoting access to justice and public confidence in the justice system align with federal priorities and the Department's strategic outcomes. Recent Speeches from the Throne emphasize the federal commitment to fundamental rights, such as fairness and the rule of law, which legal aid supports. The Program's objectives also directly support the Department's strategic outcome of a "fair, relevant and accessible Canadian justice system". Through its contribution funding, the Program facilitates access to justice for economically disadvantaged individuals who are facing a serious criminal charge, seeking a determination under the I&R system, or experiencing a civil law issue and reside in the territories.

Is there an appropriate and necessary role for the federal government in the areas of the legal aid components?

The basis for the federal government's role in the areas of the legal aid components is found in Canada's foundational documents, key statutes that define Canadian federalism, and international commitments made by the Government of Canada. The federal responsibility to provide funding for criminal legal aid is based on constitutional and Charter obligations, while the responsibility for civil legal aid in the territories comes from the authority for civil law retained by the federal government under the territorial acts. The federal government has also made international commitments that address the right to a fair hearing, equal treatment under the law, and publicly funded counsel, particularly the United Nations' *International Covenant on Civil and Political Rights*, which requires signatories to provide legal counsel to individuals facing criminal charges who cannot afford counsel.

5.2. Performance – Achievement of Expected Outcomes (Effectiveness)

Assessing the effectiveness of the Program in achieving its outcomes needs to be considered in context. The Program is not directly involved in the delivery of legal aid; the provinces and territories, through their legal aid plans, are the delivery agents. Consequently, the evaluation of the federal Program is not intended to evaluate the legal aid plans, and yet the Program's outcomes of enhancing capacity to deliver legal aid and effective provision of legal aid require a consideration of legal aid plan activities. The evaluation's perspective on these activities is not to evaluate their effectiveness, but to show the types of activities being supported in part by federal funding. The immediate and intermediate outcomes are quite linked, as both consider the contribution of federal funding to the provision of legal aid: the immediate outcome looks at the

federal funding's role in enhancing capacity, and the intermediate outcome considers how the federal funding contributes to the effective provision of legal aid.

The 2012 Legal Aid Program evaluation noted that the Program would benefit from improved performance measures that are agreed to by the PWG and the LAD and that are consistently tracked. This remains an area for improvement for the Program. Although the current evaluation attempted to provide additional evidence of effectiveness through case studies and interviews with clients, the Program would benefit from outcomes that are more clearly defined and have performance measures that are being consistently recorded and tracked.

Recommendation 1:

The LAD (including the representative from PID responsible for AJAs), in consultation with the PWG, identify appropriate outcomes, performance measures and data sources to support an assessment of the impact, efficiency and economy of the Program. This will help to ensure that the required data is available to support future program evaluations.

Agreed. The LAD acknowledges that revisions to its current results and delivery strategy are necessary to ensure that relevant outcomes, performance measures and data sources are identified to support program evaluation and policy and program decision making.

The LAD is committed to working with the PWG to develop relevant outcomes, performance measures and data sources to support future evaluation activities.

To what extent has the Program made progress toward increasing capacity of the provinces and territories and their legal aid plans to provide and deliver legal aid in the areas receiving federal funding?

The federal funding contribution is intended to enhance the capacity of the provinces and territories and their legal aid plans to provide and deliver legal aid in the areas that receive federal funding. The total shareable expenditures for criminal legal aid in provinces and criminal and civil legal aid in the territories rose by approximately 5% between fiscal years 2010-11 and 2013-14. With the federal funding level remaining at \$112.39 million during this time period, the federal contribution provided approximately 28% of the funds used to support the delivery of criminal legal aid in the provinces and criminal and civil legal aid in the territories. For I&R legal aid, the federal contribution accounts for between 32% and 38% of shareable expenditures.

The federal contribution is considered important to maintaining the current levels of services. If federal funding were withdrawn or substantially reduced, most key informants believe that access to justice would be adversely affected, as services would be cut or — in the case of I&R legal aid, where the legislation and enforcement are federally directed — some jurisdictions might discontinue offering I&R legal aid. The federal contribution to these legal aid areas has enabled plans to meet their current demand, as reflected in the proportion of approved legal aid applications. Although the number of applications is not a complete picture of the demand for legal aid, it is the only nationally available measure of demand.

The funding of COCFP is a federal responsibility. Consequently, the federal contribution does not enhance legal aid plans' capacity as much as it fulfills the federal responsibility to fund the defences to these federal prosecutions, where the court has ordered counsel in the interest of justice and a fair trial. If the totality of the expenses of providing court-ordered counsel were not covered by the Program, cases would be stayed. In the event that provinces and territories and their legal aid plans ceased to manage cases on the federal government's behalf, it would be required to develop its own legal aid system to provide COCFP directly.

For PSAT, key informants emphasized the importance of federal funding. Defending one of these anti-terrorism cases, given their complexity, could consume a significant and disproportionate amount of a plan's criminal legal aid budget and affect the plan's ability to assist other clients who need legal aid services. By totally funding these cases, the federal government contributes to the capacity of legal aid plans by ensuring these cases do not adversely affect their ability to serve their other clients.

The PWG's mandate includes activities that enhance the capacity of legal aid by negotiating cost-sharing agreements, but also serving as a resource to the FPT Deputy Ministers Responsible for Justice and Public Safety on identified priority areas and providing a forum for policy and legal discussions among its members on topics relevant to legal aid. In the last two evaluation cycles, the PWG is considered to have had a significant focus on reviewing the contribution agreements and funding formulae for legal aid and, as a result, its mandate was not entirely fulfilled. The evaluation found that the PWG is beginning to realign its focus toward facilitating discussion to other legal aid program and policy matters, such as performance measurement and information sharing. Key informants generally supported these new directions of the PWG. They offered other suggestions that they thought would help enhance the capacity of legal aid, including funding more research and exploring issues related to the impact of legislative changes on legal aid.

Recommendation 2:

The LAD consider how best to align the PWG's activities with its mandate and facilitate coordination, collaboration, and sharing of information on operational and policy issues that affect legal aid.

Agreed. The LAD will continue to work with the PWG to ensure that opportunities are identified to discuss issues of mutual interest which may impact legal aid, share best practices and discuss research ideas. It is expected that the LAD, in collaboration with the PWG, will identify a short list of research ideas to focus on over the next five-year period.

The Canadian Centre for Justice Statistics and the LAD have been collaborating with the PWG on the re-design of the national Legal Aid Survey. Legal aid representatives of the PWG have been instrumental in re-designing the survey.

The LAD has had initial discussions with the PWG on revisions to the Final Claim document. A sub-committee was established and will be engaged to provide further input.

To what extent has federal funding contributed to the effective provision of legal aid to eligible persons in the areas receiving federal funding?

The evaluation considered the extent to which the federal contribution supported the effective provision of legal aid from a few dimensions.

The evaluation questioned whether there is effective provision of legal aid in situations where low-income Canadians who cannot afford counsel have access to lawyers in the areas receiving federal funding. This goes beyond approving applications for legal aid, and considers potential unmet need by measuring the difference between FEGs and economic measures such as the CPI, minimum wage, and the low income cut-offs (LICOs) over time. The evaluation found that the guidelines of some legal aid plans for which data are available have kept pace with various economic indicators since 2010, such as the CPI and the minimum wage, which is a more positive result than the 2012 evaluation of the Program. In addition, although most plans for which data are available have financial guidelines above the LICOs, meaning that Canadians living in poverty are eligible for legal aid, the differences between the FEGs and the LICOs have been reduced since 2010 for some plans. These findings provide a more positive picture related to the provision of legal aid compared to the 2012 evaluation.

In addition to some plans being able to increase their financial eligibility guidelines, thereby expanding the population of clients they can serve and increasing access to legal aid, all plans have undertaken a variety of approaches to enhance access to justice and/or increase the efficiency of legal aid service delivery. By conducting case studies of best or promising practices, the evaluation gathered evidence of increasing accessibility to legal aid while controlling costs and/or contributing to justice system efficiencies through measures such as EDC, presumed eligibility, participation in more holistic approaches with interdisciplinary teams (specialized legal aid offices, specialized courts), and services that result in earlier resolution, more continuity of service, and more streamlined approaches. The adoption of these innovations and promising practices to enhance the provision of legal aid are, in part, supported by the federal contribution.

The effective provision of legal aid is also found in the impact of legal aid on addressing the access to justice needs of clients. Through interviews with justice professionals and clients, the evaluation found that legal aid clients are often not equipped to represent themselves due to the complexity of the justice system and their personal circumstances that make self-representation difficult (e.g., education levels, addictions, mental health issues, and past trauma). The potential effects for clients when they proceed without counsel are pleading guilty to charges when they might not otherwise do so, receiving harsher sentences, or for I&R legal aid clients, being deported back to their home country, where they may be at risk of persecution or torture if they were to be returned to their home country.

5.3. Performance – Demonstration of Efficiency and Economy

Were Program resources expended as planned?

The evaluation found that the Program expended its resources related to the contribution agreements largely as planned. Where there were variances (COCFP and PSAT cases), the results were expected, given the complex nature of these cases and the uncertainty about the number of new cases that will arise each fiscal year.

In terms of spending on program administration (salaries and operations and maintenance), the Program lapsed funds in some years. This was also the case even when the costs of COCFP cases managed by the LAD were taken into account.⁴⁰ It is important to note that there were a number

⁴⁰ The Program uses its operations and maintenance funding to cover COCFP expenditures that are in excess of the budget for COCFP cases managed by LAD.

of government-wide cost containment measures put in place during the years examined through this evaluation, including a Strategic Operating Review, the Deficit Reduction Action Plan, travel caps, and budget and staffing freezes.

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

The delivery costs of the Program are equivalent to 0.8% of the federal funding contribution. This result is similar to the 2012 evaluation of the Program and other contribution programs of the Department. Based on this finding, the Program is operating efficiently.

The evaluation results also indicate that the resources used to achieve the Program's outcomes are reasonable. The level of Program expenditures (administrative and contribution funding) remained at roughly \$130 million during the period covered by the evaluation. During that time, legal aid plans were able to maintain their capacity to respond to demand while managing a challenging environment. As the evaluation findings showed, the efficiency of legal aid service delivery is not solely within the control of legal aid plans. Many of the cost drivers that affect legal aid are created by external factors, such as policing practices, charging policies, changes in legislation, system reforms, rules of court, case complexity, and the efficiency of the justice system as a whole.

In response to upward cost pressures and the increasing complexity of cases, legal aid plans have undertaken a variety of approaches to improve the efficiency of their services and to maintain access to legal aid. The case studies provided examples of these promising practices, which have focused on increasing accessibility, more effectively addressing client needs that include multiple barriers and non-legal issues, adopting approaches to improve the efficiency of service delivery, and enhancing opportunities for early resolution. These promising practices have the dual purpose of increasing efficiencies and improving the effectiveness of service for clients.

A comparison of tariff levels in Ontario to private bar charges for similar services demonstrates that legal aid services are provided at much lower rates. This finding shows that the legal aid system is cost efficient from the perspective of legal fees.

Legal aid also contributes to efficiencies for the justice system, which benefit other stakeholders. As justice professionals pointed out, individuals who proceed without counsel require more resources of the justice system, as their cases are likely to result in more appearances, more adjournments, and more time to resolve the matter.

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Appendix A:

Logic Model

Logic Model

The logic model for the Legal Aid Program, illustrating the expected activities, outputs and outcomes of the Program and their relationships to each other, is presented graphically in Table 2.

The Department of Justice (the Department) defined Program results and indicators in consultation with departmental staff, including the Evaluation Division, and with representatives from all the provinces and territories, in order to develop the logic model.

The logic model identifies five Program components (lines of business) that fall under two main areas – 1) administering contributions funding, and 2) secretariat support for the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG) (research and policy development). These areas address both the assurance that eligible and relevant activities are funded in efficient ways, according to Treasury Board guidelines, and that the results of the funded activities and research and policy activities related to legal aid are clearly communicated to key stakeholders for potential take-up in policy development.

Activities

The Program logic model includes the following five activities:

1. Criminal Legal Aid Base Funding

In the provinces, the federal government contributes to the costs of delivering legal aid services to economically disadvantaged people accused of serious and/or complex criminal offences and facing the likelihood of incarceration, and to youths charged pursuant to the *Youth Criminal Justice Act* (YCJA). In the territories, the consolidated Access to Justice Services Agreements are used for Canada's contribution towards criminal and civil legal aid costs.

2. Immigration and Refugee (I&R) Legal Aid

Through the legal aid contribution agreements, the federal government contributes funding to the provinces and territories for I&R legal aid services. Currently, six jurisdictions provide I&R legal aid: Alberta, Quebec, Manitoba, British Columbia, Ontario, and Newfoundland and Labrador. This funding supports these participating jurisdictions in their role to assist and represent immigrant and refugee claimants through the refugee determination process, according to the legislative provisions of the *Immigration and Refugee Protection Act*.

3. Court-Ordered Counsel in Federal Prosecution (COCFP)

The Program's COCFP component addresses instances where the federal Crown is required by the courts to provide funded defence counsel to an individual who does not otherwise qualify for legal aid and is involved in a proceeding brought pursuant to a federal prosecution such as under the *Controlled Drugs and Substances Act*. Under the current legal aid agreements, jurisdictions agree to manage these cases on behalf of the federal government and, in return, the Department reimburses all expenditures and pays a 15% management fee. If a province/territory or plan does not agree to manage the case, the Program must administer the costs directly.

4. Public Security and Anti-terrorism (PSAT)

The federal government provides contribution funding, on a case-by-case basis, to jurisdictions or their legal aid plans to reimburse their legal aid costs relating to (i) charges laid under the *Anti-terrorism Act* (C-36) or such other public security and anti-terrorism legislation that may be enacted by Parliament; (ii) Security Certificates issued under the *Immigration and Refugee Protection Act*; and (iii) proceedings under the *Extradition Act* where the requesting state alleges the commission of a terrorist act.

5. Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG)

The Program provides secretariat support for the PWG and undertakes research and policy development activities that support policy discussions of the group. The PWG was created as a forum for, among other things, joint policy development in matters of shared interest. The resultant collaboration promotes the effective and efficient development and implementation of legal aid policy in Canada. The PWG comprises representatives from each provincial and territorial government, as well as representatives from the legal aid plans that deliver legal aid services.

Outputs

Funding for criminal legal aid – Department of Justice staff undertake extensive negotiations with their provincial and territorial counterparts to establish contribution agreements in support of criminal legal aid services.

Funding for I&R legal aid – The criminal legal aid agreements also provide for the distribution of federal funds available for I&R legal aid.

COCFP cases are funded – COCFP cases are funded as specified in Schedule B of the contribution agreements with provinces and territories. As a result of this funding, the provinces and territories agree to manage cases involving court-ordered counsel in federal prosecutions.

PSAT cases are funded – The contribution agreements respecting criminal legal aid provide for funding of legal aid in Public Security and Anti-terrorism (PSAT) cases under separate funding agreements which cover the costs of providing legal aid in such cases.

PWG Meetings – The PWG and its subcommittees meet, as required, to negotiate and draft contribution agreements, determine an acceptable funding distribution formula, share information, discuss policy issues, and identify relevant research and policy development activities.

Immediate Outcomes

Enhanced capacity to provide legal aid – The federal contributions (i.e. Criminal A-Base, I&R legal aid, COCFP and PSAT) enhance the capacity of provinces and territories to pay the costs associated with providing legal aid services.

PWG work is facilitated – Meetings of the PWG are attended by all jurisdictions, information sharing and networking is enabled, working groups are formed to address priority issues and related meetings, and relevant research and policy documents are prepared and reviewed with a view to establishing policy directions for consideration by FPT Deputy Ministers of Justice.

Intermediate Outcomes

Provision of legal aid services – The federal contribution enables the sustained delivery of criminal and youth criminal justice legal aid services by the provinces and territories for economically disadvantaged people accused of serious criminal offences and facing the likelihood of incarceration. As well, the federal contribution enables the sustained delivery of I&R legal aid services by the provinces and territories, and avoids the need and added cost of the federal government developing a parallel federal legal aid program.

Provision of funded counsel in COCFP and PSAT cases – The federal contribution enables jurisdictions to manage COCFP on behalf of the federal government, as well as the legal aid costs in PSAT cases on a case-by-case basis. Further, this funding enables such cases to proceed (avoids stays of proceedings) and avoids the costs that would be incurred by the Department if it were required to manage these cases directly. In instances where jurisdictions or their legal aid delivery

entities do not accept to manage funded defence counsel for a COCFP, Justice directly administers and manages the provision of funded defence counsel using Vote 1 resources exclusively.

Collaborative federal policy development related to legal aid – The information obtained through PWG discussions, policy discussions and research helps establish policy direction for legal aid. This information contributes to building the governments’ capacity to respond to issues and address unmet needs for legal aid services, and to anticipate the implications of changing demands on the legal aid systems. The nature and range of variations in the policies and practices among jurisdictions are key considerations that guide the development of federal policy objectives and funding commitments. Understanding the differences in policies and practices will contribute significantly to the Department efforts in developing federal policy that is reflective of provincial and territorial considerations.

Ultimate Outcome

Canada-wide legal systems that are efficient, fair, relevant and accessible, and that promote public confidence in the access to justice system – The ultimate objective of the LAP is to ensure that economically disadvantaged Canadians have access to the legal aid services they require, thereby helping to ensure that Canada’s justice system is efficient, fair, relevant and accessible throughout Canada. From the public’s perspective, legal aid is synonymous with access to justice as it is perceived to promote and protect the rights of an accused person to a fair trial. The extent to which the public perceives that the criminal justice system is operating effectively and efficiently determines their level of confidence in the system. The objective is to ensure that the public has confidence that the justice system operates fairly in terms of providing necessary representation for economically disadvantaged people who face serious and/or complex criminal charges, and for young people charged pursuant to the YCJA. Public confidence will be measured by a variety of means, including consultations with stakeholders such as the Canadian Bar Association, monitoring media coverage of justice issues, and possible use of opinion surveys or key informant interviews with representatives from jurisdictions across the country.

Link to Departmental Strategic Outcome

Departmental programs are developed and implemented in response to identified needs and gaps and are integrated with governmental priorities and commitments.

The ultimate outcome of the Legal Aid Program is to enable the ongoing operation of Canada-wide legal systems that are efficient, fair, relevant and accessible, and that promote public

confidence in the justice system. This ultimate outcome relates to the Department's Program Activity Architecture strategic outcome of ensuring a fair, relevant and accessible justice system that reflects Canadian values. The Legal Aid Program contributes to the Department's strategic outcome of a "fair, relevant and accessible justice system that reflects Canadian values".

Legal Aid Program Logic Model

The logic model for the Legal Aid Program is provided below.

Logic Model – Justice Canada – Legal Aid Program

Components (lines of business)	Activities	Outputs	Immediate Outcomes (Capacity)	Intermediate Outcomes (Implementation)	Ultimate Outcome (Benefits)
1. Criminal Legal Aid	Policy development, collaboration, negotiations; claims processing; monitoring; and research	Agreements; claims; payments; statistics and findings, research plan; meetings	Enhanced capacity of provinces and territories and their legal aid plans to deliver criminal legal aid services to eligible persons	Provinces and territories provide legal aid to eligible persons (i.e. economically disadvantaged persons) respecting the rule of law	Canada-wide legal systems that are efficient, fair, relevant and accessible, and that promote public confidence in access to justice
2. Immigration and Refugee Legal Aid	Collaboration, negotiations; claims processing; payments; monitoring; and research	Agreements with immigration and refugee provisions; claims; payments; statistics and findings	Enhanced capacity of provinces and their legal aid plans, with immigration and refugee agreements, to deliver immigration and refugee legal aid services to eligible persons	Provinces and territories provide immigration and refugee legal aid to eligible persons; cost avoidance for Justice and Citizenship and Immigration Canada	
3. Court-Ordered Counsel in Federal Prosecutions (COCFP)	Collaboration, negotiations; claims processing; payments; monitoring; policy development	Agreements for COCFP cases; COCFP cases managed; payments	Enhanced capacity to provide funded counsel in federal prosecutions, pursuant to court orders, through provincial and territorial legal aid entities	Provinces and territories provide counsel to defendants; cases proceed; cost avoidance for Justice; Justice manages legal counsel; cases proceed	
4. Public Security and Anti-terrorism (PSAT)	Negotiations; claims processing; payments; monitoring; policy development	PSAT Agreements; PSAT cases managed; payments	Enhanced capacity to provide funded counsel, pursuant to court orders, through provincial and territorial legal aid entities, for PSAT cases	Provinces and territories provide counsel to persons affected by PSAT initiatives; cases proceed; integrity of prosecutions is maintained	
5. Permanent Working Group (PWG)	Secretariat services for the PWG; coordination of meetings and follow-up activities; research; policy development	PWG meetings and teleconferences; conference documents; policy papers; business case	More information sharing and networking enabled among all jurisdictions and the federal government	Collaborative federal policy development related to legal aid matters that is reflective of provincial and territorial considerations	

Appendix B:

Evaluation Matrix

Draft Evaluation Matrix for Legal Aid Program Evaluation

Evaluation Questions	Potential Indicators	Data Sources
Relevance		
Issue 1: Continued need for the Program		
1. Does the Program continue to serve the public interest and need?	<p>Trends in demand overall and by province/territory for Program components:</p> <ul style="list-style-type: none"> • Number of applications for criminal legal aid • Number of refugee claims • Number of applications for I&R legal aid • Number of court orders for funded defence counsel in federal prosecutions (COCFP) • Number of Public Security and Anti-terrorism (PSAT) cases • Number of applications for civil legal aid in the territories <p>Profile of who is being served by legal aid (base funding [adult and youth], Immigration and Refugee [I&R], PSAT and COCFP) and Access to Justice Services Agreements (AJAs) legal aid component</p> <ul style="list-style-type: none"> • Available demographic information • Stakeholder opinion on challenges faced by legal aid clients in those areas covered by federal funding <p>Crime rates, incarceration rates, and socio-economic indicators by province/territory, and for marginalized or at-risk groups (e.g., individuals with mental health issues, Indigenous peoples)</p> <p>Opinions of stakeholders on changing demand for criminal legal aid and civil legal aid in the territories (legal aid trends, policy gaps, emerging issues)</p> <p>Trends in case complexity and factors that contribute to complexity (criminal legal aid, civil legal aid in the territories, I&R, COCFP, PSAT)</p> <p>Stakeholder opinions on the public interest and need (individual, system) addressed by the availability of legal aid for each Program component, and any regional/jurisdictional factors that affect the level or type of need</p>	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Interviews with clients • Case studies • Review of documents, files, data, and literature
Issue 2: Alignment with government priorities		
2. To what extent do the Program's goals and objectives align with the	Comparison of federal priorities and departmental strategic outcomes with the goals/objectives of the criminal, I&R, COCFP and PSAT legal aid components of the Program and the AJAs legal aid component	<ul style="list-style-type: none"> • Key informant interviews (LAD only) • Review of documents, files, data and literature

Evaluation Questions	Potential Indicators	Data Sources
federal priorities and departmental strategic outcomes?		
Issue 3: Alignment with federal roles and responsibilities		
3. Is there an appropriate and necessary role for the federal government in the areas of the legal aid components?	Federal/departmental role based on federal jurisdiction Federal role based on international agreements Opinions of stakeholders regarding federal/departmental role	<ul style="list-style-type: none"> • Key informant interviews • Document review
Performance (effectiveness, efficiency and economy)		
Issue 4: Achievement of expected outcomes — Immediate outcome (enhance capacity by making legal aid available)		
4. To what extent has the Program made progress toward increasing capacity of the provinces and territories and their legal aid plans to provide and deliver legal aid in the areas receiving federal funding?	Trends in number and proportion of applicants receiving criminal legal aid over time (overall, by province/territory, and by type of service) Information on stays due to lack of defence counsel in cases under the PSAT and COCFP components Amount and proportion of provincial/territorial legal aid budgets for criminal and I&R legal aid that comes from the Program versus other sources, and changes over time Amount of funding for COCFP and PSAT legal aid reported by province/territory and legal aid plans Opinions of stakeholders on the level of the federal contribution and its effect on the availability of criminal legal aid services (and civil legal aid in the territories) Stakeholders opinions of consequences for provincial and territorial capacity to serve economically disadvantaged individuals, if the component (criminal, civil in the territories, I&R, COCFP, and PSAT) of the Program did not exist Evidence of enhancing capacity through work at the national level, as demonstrated by: <ul style="list-style-type: none"> • information sharing and collaboration efforts, i.e. through the PWG • research undertaken and distributed • policy papers developed and distributed 	<ul style="list-style-type: none"> • Key informant interviews • Document and file review
Issue 4: Achievement of expected outcomes — Intermediate outcome (support effective implementation and delivery of legal aid)		
5. To what extent has federal funding contributed to the effective provision of legal aid to eligible persons in the areas receiving federal funding?	For base funding: Trends over time showing changes in criminal legal aid services with respect to: <ul style="list-style-type: none"> • eligibility criteria by province/territory • types/levels of service provided by provincial and territorial plans (duty counsel, certificates, summary advice, etc.), including trends in number and percentage of individuals receiving each type/level of service Response of provincial and territorial plans to federal funding level over time, i.e.: <ul style="list-style-type: none"> • changes in eligibility criteria for criminal legal aid • changes in criminal legal aid service delivery 	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Interviews with clients • Case studies • Review of documents, files, data, and literature

Evaluation Questions	Potential Indicators	Data Sources
	<ul style="list-style-type: none"> • changes to other legal aid service delivery (i.e. family/civil) <p>Comparison of the financial eligibility guidelines to other economic measures (e.g., low income cut-offs, consumer price index, minimum wage, average hourly earnings)</p> <p>Comparison of court data for legal aid clients with those who applied but were not financially eligible for criminal legal aid (if possible) or comparison of court data for legal aid clients with non-legal aid clients charged with similar offences. The court data might look at:</p> <ul style="list-style-type: none"> • type of resolution • length of time between first appearance and resolution • number of appearances <p>Stakeholder opinion on trends in number and percentage of criminal accused who are unrepresented, and reasons for their lack of representation</p> <p>Trends in number of Rowbotham orders (provincial/territorial and federal)</p> <p>Client experience with legal aid and potential consequences if they had not received legal aid</p> <p>Stakeholder opinions of consequences to individuals and the justice system of access/lack of access to legal aid</p>	
	<p>For I&R:</p> <p>Amount and proportion of provincial and territorial I&R legal aid budgets that come from the Program versus other sources, and changes over time</p> <p>Trends in number of individuals served by I&R legal aid (overall and by province/territory)</p> <p>Current coverage of provincial and territorial I&R legal aid services, i.e.:</p> <ul style="list-style-type: none"> • eligibility criteria by province/territory • types/levels of service provided by provincial and territorial plans <p>Opinions of stakeholders on changing nature of the demand for I&R legal aid</p> <p>Opinions of stakeholders on effects of the new refugee determination process on the delivery of I&R legal aid</p> <p>Opinions of stakeholders on the level of the federal contribution and its effect on the availability of I&R legal aid services</p> <p>Client experience with legal aid and potential consequences if they had not received legal aid</p> <p>Stakeholder opinions of consequences to individuals and the justice system of access/lack of access to I&R legal aid</p>	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Review of documents, files, data and literature
	<p>For COCFP:</p> <p>Costs expended for COCFP cases and changes over time</p>	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Review of documents, files, data

Evaluation Questions	Potential Indicators	Data Sources
	<p>Trends in number of court orders for funded defence counsel in federal prosecutions (COCFP)</p> <p>Information on stays due to lack of funded defence counsel in COCFP</p> <p>Trends in the number of COCFP cases and percentage of total federal prosecutions over time</p> <p>Opinions of stakeholders on the administrative requirements for the COCFP</p> <p>Stakeholder opinions of consequences to individuals and the justice system of access/lack of access to COCFP</p>	
	<p>For PSAT:</p> <p>Costs expended for PSAT and changes over time</p> <p>Information on stays due to the absence of legal aid in PSAT cases</p> <p>Trends in number of PSAT legal aid cases</p> <p>Information on stays due to lack of federally funded defence counsel in PSAT</p> <p>Trends in number of cases receiving legal aid in PSAT and percentage of total PSAT cases over time</p> <p>Stakeholder opinions of consequences to individuals and the justice system of access/lack of access to PSAT legal aid</p>	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Review of documents and files
	<p>For AJAs:</p> <p>Trends in the number of individuals receiving legal aid services over time</p> <p>Client experience with legal aid and potential consequences if they had not received legal aid</p> <p>Stakeholder opinions of how well the AJAs address the unique access to justice needs of individuals living in the territories</p>	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Interviews with clients • Case studies • Review of documents and files
	<p>For PWG:</p> <p>Evidence of knowledge application by provincial and territorial legal aid plans (e.g., evidence of uptake and application of knowledge produced by PWG research projects and policy papers)</p> <p>Opinions/perceptions of stakeholders on the extent to which the PWG supports networking and information sharing and policy development</p>	<ul style="list-style-type: none"> • Key informant interviews • Review of documents and files
Issue 4: Achievement of expected outcomes — Ultimate outcome (benefits)		
<p>6. To what extent has federal funding of legal aid contributed to a Canada-wide justice system that is efficient, fair, relevant and accessible, and that promotes public confidence in the justice system?</p>	<p>Evidence from immediate and intermediate outcomes</p>	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Interviews with clients • Case studies • Review of documents, files, data and literature

Evaluation Questions	Potential Indicators	Data Sources
Issue 5: Demonstration of efficiency and economy		
Economy		
7. Were Program resources expended as planned?	Planned-to-actual resource use/spending (budget versus expenditures) for the Program and explanation of variance	<ul style="list-style-type: none"> • Review of documents, files, data
Operational efficiency		
8. What are the costs of delivering legal aid? What are these costs relative to outputs and outcomes?	Overall cost to deliver the components of the Program (including AJA legal aid) Administrative costs of the Program over time	<ul style="list-style-type: none"> • Review of documents, files, data (Integrated Financial and Material System) • Key informant interviews
Allocative efficiency		
9. Are there more efficient ways of achieving the objectives of the components of the Program (criminal, I&R, PSAT, and COCFP, and legal aid component of AJAs)?	Estimated cost savings resulting from delivery of criminal, I&R, and PSAT legal aid through existing legal aid program (based on rates for COCFP) Estimated cost of private bar legal representation in criminal, I&R, COCFP and PSAT cases Trends in cost per application (with inflation factor) Trends in cost per client served (with inflation factor) Opinions of stakeholders on the cost drivers of legal aid and their impact on the legal aid system Opinions/perceptions of stakeholders regarding potential efficiencies/alternatives	<ul style="list-style-type: none"> • Key informant interviews • Document review • File review
10. To what extent were federal resources used reasonably for the outcomes achieved?	Opinions/perceptions of stakeholders on benefits of federal legal aid funding for clients and the justice system Potential savings identified through court data analysis (e.g., reduction in number of appearances, trials, length of time between first appearance and resolution) Opinions/perceptions of stakeholders on potential effects of higher or lower levels of legal aid funding for clients and the justice system	<ul style="list-style-type: none"> • Key informant interviews • Interviews with justice professionals • Interviews with clients • Case studies • Data review
Best practices/lessons learned		
11. Are there any best practices or lessons learned in the delivery of federally funded legal aid?	Examples from case studies of best practices and lessons learned Opinions/perceptions of stakeholders regarding best practices/lessons learned in terms of governance, policies and program delivery	<ul style="list-style-type: none"> • Key informant interviews • Case studies

Appendix C:

Data Collection Instruments

**Legal Aid Program Evaluation
Key Informant Interview Guide
Federal-Provincial-Territorial Permanent Working Group Representatives**

The Department of Justice Canada (the Department) is conducting an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements (AJAs). The evaluation covers:

- federal contribution funding for criminal and youth criminal justice legal aid in the provinces;
- criminal, youth criminal justice, and civil legal aid in the territories under the AJAs;
- immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NL);
- Public security and anti-terrorism (PSAT) legal aid funding in relevant provinces and territories;
- funded counsel for court-ordered counsel in federal prosecutions (COCFP) in relevant provinces and territories; and
- the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG).

PRA Inc. is working with the Department to conduct the evaluation. We are asking various groups of stakeholders, including representatives of the Department and other federal departments, provincial and territorial governments, legal aid plans, justice professionals and clients to participate in the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

Relevance

For Questions 1-3 below, unless otherwise indicated, please consider each Program component in your response: criminal legal aid in the provinces; criminal and civil legal aid in the territories; I&R; PSAT; and COCFP.

1. Since fiscal year 2012-13, what are the trends that you have observed in your province or territory with respect to the demand for and cost of legal aid in the areas that receive federal

funding? What factors have influenced demand and cost? (*Probes: legislative changes/reforms; client characteristics; legal and non-legal needs of clients; case complexity.*)

2. In your opinion, to what extent does federal legal aid funding serve the public interest? Please consider this from the perspective of legal aid clients, the justice system and Canadian values.
3. What is the rationale or basis for the federal role in providing funding for legal aid?

Effectiveness

For Questions 4-6 below, unless otherwise indicated, please consider each Program component in your response: criminal legal aid in the provinces; criminal and civil legal aid in the territories; I&R; PSAT; and COCFP.

4. To what extent has the federal contribution to legal aid contributed to the ability of the provinces and territories to deliver appropriate and responsive legal aid services? To what extent has the federal contribution to legal aid promoted access to justice in the provinces and territories?
5. How has your provincial or territorial legal aid plan responded to federal funding levels since fiscal year 2012-13? In particular, please consider in your response any changes to eligibility criteria, types/levels/methods of service delivery in areas of federal funding, as well as changes to other legal aid areas (i.e. family/civil in the provinces).
6. In your opinion, if federal legal aid funding were withdrawn, what would be the consequences to the ability of your province or territory to provide legal aid in the areas that receive federal funding? How might it affect other areas of legal aid currently funded by your province or territory?

Criminal Legal Aid

7. In your opinion, what are the recent trends (*increasing, decreasing, staying the same*) for the following in your province or territory:
 - a. the proportion of accused persons who are ineligible for criminal legal aid for financial reasons;
 - b. the proportion of unrepresented accused; and

- c. the number of Rowbotham orders (provincial/territorial and federal).

To what do you attribute any observed trends?

- 8. What have been the most common impacts of criminal legal aid services for individuals and the justice system? What are the most common consequences to individuals and the justice system of lack of access to criminal legal aid?

Immigration and Refugee Legal Aid

- 9. *(Only jurisdictions that provide I&R legal aid)* What has been the effect of the new refugee determination process on the nature of the demand and the delivery of I&R legal aid?
- 10. *(Only jurisdictions that provide I&R legal aid)* What challenges has your province or territory experienced in providing I&R legal aid?
- 11. *(Only jurisdictions that provide I&R legal aid)* What have been the most common impacts of I&R legal aid services for individuals and the I&R process? What are the most common consequences to individuals and the I&R process of lack of access to I&R legal aid?
- 12. *(All jurisdictions)* Should federal I&R legal aid funding be managed differently by the LAP? *(If yes)* Please explain what changes you think are necessary, and why.

COCFP

- 13. How are COCFP cases managed (on behalf of Justice Canada) in your province or territory? Please describe any challenges that you are aware of in managing COCFP cases.
- 14. What have been the most common impacts of COCFP for individuals and the justice system?

PSAT

- 15. How are PSAT legal aid matters managed in your province or territory? Please describe any challenges that you are aware of in managing PSAT legal aid services. In your response, please consider the characteristics of PSAT cases that make them more or less difficult to manage. *(Probes: complexity; national security matters)*
- 16. What have been the most common impacts of PSAT legal aid services for individuals and the justice system?

AJAs (territorial representatives only)

17. What are the unique access-to-justice needs of individuals living in the territories? To what extent do consolidated AJA agreements address the unique access to justice needs and circumstances of Canadians living in the territories? (*Probe: how does having all three components in the consolidated agreements [i.e. legal aid, Indigenous courtwork, and Public Legal Education and Information] address northern needs?*)
18. What have been the most common impacts of the legal aid component of the AJAs for individuals and the justice system? What are the most common consequences to individuals and the justice system in the territories of lack of access to justice services?

PWG

19. In your opinion, how does the work of the PWG support increasing the capacity of legal aid plans to provide legal aid in the areas receiving federal funds? Please give specific examples of how the PWG has contributed by its:
 - information sharing and collaboration efforts;
 - research undertaken and distributed; and
 - policy papers developed and distributed.]
20. In your opinion, is there sufficient information sharing, policy development and networking opportunities among the federal government, the provinces and territories, and the legal aid plans? How is this facilitated? What problems exist? How can information sharing, policy development and networking be improved?
21. Please describe any evidence of benefits resulting from the existence of the PWG in terms of governance, policy and service delivery. Can you describe any limitations and, if so, what changes would you suggest?

Efficiency and Economy

22. What are the main factors that affect the cost of providing legal aid in the areas that receive federal funding?
23. Can you suggest more efficient ways of achieving the objectives of the Legal Aid Program?

24. What would be the potential effects of lower or higher levels of federal legal aid funding for clients and the justice system?

Thank you for your participation.

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

The Department of Justice Canada (the Department) is conducting an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements (AJAs). The evaluation covers:

- federal contribution funding for criminal and youth criminal justice legal aid in the provinces;
- criminal, youth criminal justice, and civil legal aid in the territories under the AJAs;
- immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NL);
- Public security and anti-terrorism (PSAT) legal aid funding in relevant provinces and territories;
- funded counsel for court-ordered counsel in federal prosecutions (COCFP) in relevant provinces and territories; and
- the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG).

PRA Inc. is working with the Department to conduct the evaluation. We are asking various groups of stakeholders, including representatives of the Department and other federal departments, provincial and territorial governments, legal aid plans, justice professionals and clients to participate in the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

Relevance

For Questions 1-6 below, unless otherwise indicated, please consider each Program component in your response: criminal legal aid in the provinces; criminal and civil legal aid in the territories; I&R; PSAT; and COCFP.

Continued need

1. Since fiscal year 2012-13, what are the trends that you have observed in the demand for and cost of legal aid in the areas that receive federal funding? What factors have influenced demand and cost? (*Probes: legislative changes/reforms; client characteristics; legal and non-legal needs of clients; case complexity.*)
2. To what extent does federal legal aid funding serve the public interest? Please consider this from the perspective of legal aid clients, the justice system and Canadian values.

Federal Role and Alignment with Priorities

3. What is the rationale or basis for the federal role in providing funding for legal aid?
4. To what extent do the Program's goals and objectives align with federal priorities? To what extent do they align with the departmental strategic outcomes?

Effectiveness

For Questions 7-11 below, unless otherwise indicated, please consider each Program component in your response: criminal legal aid in the provinces; criminal and civil legal aid in the territories; I&R; PSAT; and COCFP.

5. To what extent has the federal contribution to legal aid contributed to the ability of the provinces and territories to deliver appropriate and responsive legal aid services? To what extent has the federal contribution to legal aid promoted access to justice in the provinces and territories?
6. How have the provincial and territorial legal aid plans responded to federal funding levels since fiscal year 2012-13? In particular, please consider in your response any changes to eligibility criteria, types/levels/methods of service delivery in areas of federal funding, as well as changes to other legal aid areas (i.e. family/civil in the provinces).
7. In your opinion, if federal legal aid funding were withdrawn, what would be the consequences to the ability of the provinces and territories to provide legal aid in the areas that receive federal funding? How might it affect other areas of legal aid currently funded by the provinces and territories?

Criminal Legal Aid

8. In your opinion, what are the recent trends (*increasing, decreasing, staying the same*) for the following:
- a. the proportion of accused persons who are ineligible for criminal legal aid for financial reasons;
 - b. the proportion of unrepresented accused; and
 - c. the number of Rowbotham orders (provincial/territorial and federal);

To what do you attribute any observed trends?

9. What have been the most common impacts of criminal legal aid services for individuals and the justice system? What are the most common consequences of lack of access to criminal legal aid to individuals and the justice system?

Immigration and Refugee Legal Aid

10. What has been the effect of the new refugee determination process on the nature of the demand and the delivery of I&R legal aid?
11. What challenges have experienced the jurisdictions that provide I&R legal aid? Why have some jurisdictions opted not to provide I&R legal aid? Please explain.
12. Should federal I&R legal aid funding be managed differently by the Legal Aid Program? (*If yes*) Please explain what changes you think are necessary, and why.
13. What have been the most common impacts of I&R legal aid services for individuals and the I&R system? What are the most common consequences to individuals and the I&R system of lack of access to I&R legal aid?

COCFP

14. How are COCFP cases managed by the jurisdictions? Please describe any challenges that you are aware of that jurisdictions are having in managing COCFP cases.
15. What have been the most common impacts of COCFP for individuals and the justice system?

PSAT

16. How are PSAT legal aid cases managed by the jurisdictions? Please describe any challenges that you are aware of that jurisdictions are having in managing PSAT legal aid services.
17. What have been the most common impacts of PSAT legal aid services for individuals, the justice system and legal aid plans?

AJAs

18. What are the unique access-to-justice needs of individuals living in the territories? To what extent do consolidated AJA agreements address the unique access to justice needs and circumstances of Canadians living in the territories? (*Probe: how does having all three components in the consolidated agreements [i.e. legal aid, Indigenous courtwork, and Public Legal Education and Information] address northern needs?*)
19. What have been the most common impacts of the legal aid component of the AJAs for individuals and the justice system? What are the most common consequences to individuals and the justice system in the territories of lack of access to justice services?

PWG

20. In your opinion, how does the work of the PWG support increasing the capacity of legal aid plans to provide legal aid in the areas receiving federal funds? Please give specific examples of how the PWG has contributed by its:
 - information sharing and collaboration efforts;
 - research undertaken and distributed; and
 - policy papers developed and distributed.
21. In your opinion, is there sufficient information sharing, policy development and networking opportunities among the federal government, the provinces and territories, and the legal aid plans? How is this facilitated? What problems exist? How can information sharing, policy development and networking be improved?

22. Please describe any evidence of benefits resulting from the existence of the PWG in terms of governance, policy and service delivery. Can you describe any limitations and, if so, what changes would you suggest?

Efficiency and Economy

23. What are the main factors that affect the cost of providing legal aid in the areas that receive federal funding?
24. Can you suggest more efficient ways of achieving the objectives of the Legal Aid Program?
25. What would be the potential effects of lower or higher levels of federal legal aid funding for clients and the justice system?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Immigration and Refugee Legal Aid
Representatives of Immigration, Refugees and Citizenship Canada**

The Department of Justice Canada (the Department) is conducting an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements. In addition to the other Legal Aid Program components, the evaluation will be considering the immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NL).

PRA Inc. is working with the Department to conduct the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

Relevance

1. How has the I&R process changed over the past five years? To what extent have the types of claims changed in the last five years? (*Probe: complexity of claims.*)
 - a. In your opinion, do these changes have any effect on whether I&R claimants are able to handle their claims without representation?
 - b. In your opinion, do these changes have any effect on how legal aid plans have approached the provision of legal aid to I&R claimants? If so, please explain.
2. Based on your experience, what are the common challenges/barriers faced by claimants, which might affect their ability to pursue their claims? To what extent, if at all, do these challenges/barriers make it difficult for them to handle their own claims or, even if they have counsel, to assist with their own claims? (*Probes: client characteristics; legal and non-legal needs of clients.*) Are there any differences in the challenges or barriers faced by refugees compared to immigrants?
3. In your opinion, to what extent does I&R legal aid funding serve the public interest? Please consider this from the perspective of legal aid clients, the I&R determination system, the justice system (from an access to justice perspective), and Canadian values.

4. In your opinion, what is the rationale or basis for the federal role in providing funding for I&R legal aid?

Effectiveness

5. Over the past five years, has the proportion of unrepresented refugee claimants increased, decreased, or stayed the same? Unrepresented immigrants?
 - a. *(If applicable)* In your opinion, what are the primary reasons for any change? (*Probes: cost of legal counsel; financial eligibility criteria for legal aid; legal aid coverage; legislative changes to the immigration or refugee process.*) Please explain the basis for your opinion.
6. Are there certain points in the immigration or refugee process when claimants are most likely to be unrepresented? Are there certain points when they are most likely to have counsel? Please consider the entire process from the preparation and submission of the Basis of Claim and other forms to appeals of an Immigration and Refugee Board of Canada decision.
 - a. *(If applicable)* Please explain why immigrants or refugees are more likely to be unrepresented at different points in the process. What are the common effects on the claimants for being unrepresented at these different points?
7. What are the benefits of access to legal aid for immigrants and refugees? To the refugee and immigration process?
8. Based on your experiences, what are the most common consequences of lack of access to legal aid to immigrants and refugees?
9. Based on your experiences, what are the most common consequences to the I&R system when immigrants and refugees lack access to legal aid?
10. What has been the effect of the new refugee determination process on the nature of the demand and the delivery of I&R legal aid? (*Probes: system complexity; processing times.*)
11. In your opinion, what challenges have provinces experienced in providing I&R legal aid under the new refugee determination process?
12. What are the most common impacts of I&R legal aid for individuals who receive I&R legal aid? Please be as specific as you can about what the impacts are for individuals.

13. To what extent does I&R legal aid funding affect the effectiveness and/or efficiency of the processes for handling I&R cases? Please be as specific as you can about what the impacts of I&R legal aid funding are on the effectiveness and/or efficiency of the processes for handling immigration and refugee cases.]

Efficiency and Economy

14. Can you suggest more efficient ways of achieving the objectives of the federal Legal Aid Program with respect to I&R legal aid?
15. What would be the potential effects of lower or higher levels of I&R federal legal aid funding for clients and for the processes of handling immigration and refugee cases?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Court-Ordered Counsel in Federal Prosecutions
(Lawyers)**

The Department of Justice Canada (the Department) is conducting an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements (AJAs). The evaluation covers:

- federal contribution funding for criminal and youth criminal justice legal aid in the provinces;
- criminal, youth criminal justice, and civil legal aid in the territories under the AJAs;
- immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NF);
- Public security and anti-terrorism (PSAT) legal aid funding in relevant provinces and territories;
- funded counsel for court-ordered counsel in federal prosecutions (COCFP) in relevant provinces and territories; and
- the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG).

PRA Inc. is working with the Department to conduct the evaluation. We are asking various groups of stakeholders, including representatives of the Department and other federal departments, provincial and territorial governments, legal aid plans, justice professionals and clients to participate in the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

1. On how many court-ordered counsel cases involving the federal government have you served as counsel since fiscal year 2012-13? What were the types of orders? (*Probes: amicus curiae; order for court-ordered counsel in a national security certificate case; Robotham order*).
2. Based on your experience, what factors, if any, make COCFP cases unique compared to other criminal prosecutions? (*Probes: complexity of case; number of defendants; types of evidence;*

Charter issues, etc.; see if factors differ by type of orders identified in Q1 if they have handled multiple types.)

3. In the case(s) that you have been involved in, were there any characteristics of the defendants (e.g., language issues, income level) that would have affected their ability to respond to the charges against them?
4. To what extent does COCFP serve the public interest? Please consider this from the perspective of defendants, the justice system, and Canadian values.
5. To your knowledge, has a federal prosecution been stayed due to lack of funding for court-ordered counsel?
6. If the COCFP component of the Program did not exist, what do you think would have been the impact on the case(s) in which you were involved? In your response, please consider any impacts for the client(s) and the justice system, including the court and the prosecutor.
7. Based on your experience, how do the costs of defending COCFP cases compare to the costs of defending other similar cases in your practice? What are the main factors that contribute to the cost of defending COCFP cases?
8. In general, what would be the main impacts if federal funding for COCFP cases did not exist? In your response, please consider any impacts for the client(s) and the justice system, including the court, the prosecutor, and the legal aid plan.
9. What are the main benefits, if any, of federal funding for COCFP for clients and the justice system?
10. How was the COCFP case(s) in which you were involved administratively managed (i.e. by province or territory, by provincial/territorial legal aid plan, by Justice Canada)? Please describe any challenges that you experienced with the administrative management of the COCFP cases(s).
11. Do you have any suggestions for improving the mechanism for providing federal funding for COCFP cases? Are there any more efficient or effective ways to provide COCFP?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Court-Ordered Counsel in Federal Prosecutions
Public Prosecution Service of Canada**

The Department of Justice Canada (the Department) is conducting an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements (AJAs). The evaluation covers:

- federal contribution funding for criminal and youth criminal justice legal aid in the provinces;
- criminal, youth criminal justice, and civil legal aid in the territories under the AJAs;
- immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NL);
- Public Security and Anti-terrorism (PSAT) legal aid funding in relevant provinces and territories;
- funded counsel for court-ordered counsel in federal prosecutions (COCFP) in relevant provinces and territories; and
- the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG).

PRA Inc. is working with the Department to conduct the evaluation. We are asking various groups of stakeholders, including representatives of the Department and other federal departments, provincial and territorial governments, legal aid plans, justice professionals and clients to participate in the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

1. To what extent does the COCFP component of the Program address federal priorities?
2. Since fiscal year 2012-13, has there been a change in the proportion of unrepresented accused in federal prosecutions which affects the need for court orders for federally funded counsel? *(If yes)* Is there evidence of these changes and, if so, what evidence?

3. Since fiscal year 2012-13, have you noticed an increase or decrease in the number of COCFP? *(If yes) Can you explain why there has been a change? (Probe: have legal aid eligibility requirements had any effect?) And can you explain why they are occurring?*
4. Based on your experience, what factors, if any, make COCFP cases unique compared to other criminal prosecutions? *(Probes: complexity of case; number of defendants; types of evidence; Charter issues, etc.)*
5. In the case(s) that you have been involved in, were there any characteristics of the defendants (e.g., language issues, income level) that would have affected their ability to respond to the charges against them?
6. To what extent does COCFP serve the public interest? Please consider this from the perspective of defendants, the justice system, and Canadian values.
7. To your knowledge, has a federal prosecution been stayed due to lack of funding for court-ordered counsel?
8. How are COCFP cases managed by the jurisdictions? Please describe any challenges that you are aware of that the jurisdictions experience in managing COCFP cases.
9. If the COCFP component of the Program did not exist, how would economically disadvantaged individuals in federal prosecutions obtain the necessary legal assistance?
10. What would be the impact on the Public Prosecution Service of Canada if COCFP funding did not exist?
11. Do you have any suggestions for improving the mechanism for providing federal funding for COCFP cases? Are there any more efficient or effective ways to provide COCFP?
12. What are the main benefits, if any, of federal funding for COCFP for clients and the justice system?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Immigration and Refugee Legal Aid
Representatives of the Immigration and Refugee Board of Canada**

The Department of Justice Canada (the Department) is conducting an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements. In addition to the other Legal Aid Program components, the evaluation will be considering the immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NL).

PRA Inc. is working with the Department to conduct the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

Relevance

Trends

1. How has the I&R process changed over the past five years? To what extent have the types of cases changed in the last five years? (*Probe: complexity of cases.*)

Response:

2. In your opinion, do these changes have any effect on whether persons who appear before the Immigration and Refugee Board of Canada (IRB) are able to handle their cases without representation?

Response:

3. Based on your experience, what are the common challenges/barriers faced by persons who appear before the IRB, which might affect their ability to pursue their cases?

Response:

4. To what extent, if at all, do these challenges/barriers make it difficult for them to handle their own cases or, even if they have counsel, to assist with their own cases?

Response:

5. Are there any differences in the challenges or barriers faced by refugees compared to immigrants?

Response:

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Public Security and Anti-Terrorism**

The Department of Justice Canada (the Department) is conducting an evaluation of the Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. The evaluation will assess the Program's relevance and performance (effectiveness, efficiency and economy), and will focus on the federal investment in legal aid through the Legal Aid Program and the Access to Justice Services Agreements (AJAS). The evaluation covers:

- federal contribution funding for criminal and youth criminal justice legal aid in the provinces;
- criminal, youth criminal justice, and civil legal aid in the territories under the (AJAs);
- immigration and refugee (I&R) legal aid funding in six provinces (BC, AB, MB, ON, QC, NF);
- Public security and anti-terrorism (PSAT) legal aid funding in relevant provinces and territories ;
- funded counsel for court-ordered counsel in federal prosecutions in relevant provinces and territories; and
- the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (PWG).

PRA Inc. is working with the Department to conduct the evaluation. We are asking various groups of stakeholders, including representatives of the Department and other federal departments, provincial and territorial governments, legal aid plans, justice professionals and clients to participate in the evaluation. The information we gather from the interviews will be summarized in aggregate form. Interview notes will not be shared outside of PRA Inc. and the Department's Evaluation Division.

1. How many PSAT cases that have received legal aid funding since fiscal year 2012-13 have you handled? Have you handled other types of criminal cases for legal aid plans?
2. Based on your experience, what factors, if any, make defending PSAT cases unique compared to defending other criminal cases? (*Probes: complexity of case; number of defendants; types of evidence; Charter issues, etc.*)

3. To what extent does federal legal aid funding for PSAT cases serve the public interest? Please consider this from the perspective of defendants, the justice system, and Canadian values.
4. To your knowledge, has a PSAT prosecution been stayed due to lack of federally funded defence counsel?
5. If federal legal aid PSAT funding did not exist, what do you think would have been the impact on the case(s) in which you were involved? In your response, please consider any impacts for the client(s) and the justice system, including the court, the prosecutor, and the legal aid plan.]
6. Based on your experience, how do the costs of defending PSAT prosecutions compare to the costs of defending other criminal cases, particularly other criminal cases that have received legal aid coverage? What are the main factors that contribute to the cost of defending PSAT cases?
7. In general, what would be the main impacts if federal legal aid funding for PSAT cases did not exist? In your response, please consider any impacts for the client(s) and the justice system, including the court, the prosecutor, and the legal aid plan.
8. What are the main benefits, if any, of federal legal aid PSAT funding for clients and the justice system?
9. Do you have any suggestions for improving the mechanism for providing legal aid funding in PSAT cases? Are there any more efficient or effective ways to provide legal aid in PSAT cases?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Justice Professionals**

The Department of Justice Canada (the Department) is required to conduct an evaluation of the federal Legal Aid Program every five years as part of its reporting requirements. The purpose of the evaluation is to better understand the challenges facing legal aid clients and the benefits of legal aid. We also want to ask you about the issue of unrepresented accused in the criminal justice system. We are interviewing approximately 40 judges, Crown prosecutors, and criminal defence and duty counsel across Canada to provide the perspectives of criminal justice professionals.

The interview will be conducted by telephone and is expected to take approximately 20-30 minutes to complete. PRA Inc. is working with the Department to conduct the evaluation. We will treat your responses as confidential and will report on them only in aggregate form. At the conclusion of the study, the Department's Evaluation Division will receive the interview notes with all identifying information removed.

1. *(Defence and duty counsel only)* Have the nature or types of criminal legal aid cases changed over the past five years? *(Probes: changes due to legislative changes/reforms; client characteristics; legal and non-legal needs of clients; case complexity)* *(If yes)* Please describe any changes and the factors you think are responsible.
2. *(Defence and duty counsel only)* Based on your experience with legal aid clients, what are the common challenges/barriers that these clients face?
3. *(Defence and duty counsel only)* What have been the most common impacts of criminal legal aid services for individuals and the justice system? In your answer, please consider legal aid certificates, duty counsel services, and other services.
4. *(Defence and duty counsel only)* What are the main factors that contribute to the cost of providing criminal legal aid?
5. *(Justice professionals working in the territories)* What are the unique access-to-justice needs of individuals living in the territories? Given these unique needs, to what extent does legal aid in the territories support access to justice?
6. Over the past five years, has the proportion of unrepresented accused increased, decreased, or stayed the same? If applicable:

- a. In your opinion, what are the primary reasons for any change? (*Probes: cost of legal counsel; financial eligibility criteria for legal aid; legal aid coverage; more accused do not want lawyer/think they can handle themselves; duty counsel are/are not available.*) Please explain the basis for your opinion.
7. Over the past five years, has the number of Rowbotham applications in your jurisdiction increased, decreased, or stayed the same? If applicable:
 - a. To what do you attribute that change?
8. Over the course of a criminal case, are there certain points in the criminal justice process when accused are most likely to be unrepresented? Are there certain points when they are most likely to have counsel? (*Probes for each question: bail at time of plea; first appearance; subsequent appearances; trial or final appearance.*)
 - a. (*If applicable*) Please explain why accused are more likely to be unrepresented at different points in the criminal justice process.
 - b. Based on your experience, approximately what percentage of accused are unrepresented at all of their appearances?
9. What are the most common negative or positive effects of unrepresented accused on the functioning of the criminal justice system? Please answer based on your experience and explain your response.

(Interviewer: probe on below areas only after giving them time to respond. Do unrepresented accused tend to affect the...)

- number of stays? (*Probe: more/fewer/no change*)
- number of remands? (*Probe: more/fewer/no change*)
- length? (*Probe: shorter/longer/no change*) and number of appearances? (*Probe: more/fewer/no change*)
- length of time to resolve case? (*Probe: shorter/longer/no change*)
- length of trials? (*Probe: shorter/longer/no change*)
- court time used in assisting accused — both judge and administrative staff? (*Probe: more/less/no change*)

- the efficiency of the overall court process and administration?
- integrity of criminal justice process in terms of access and fairness? (*Probe: negative/positive/no effect*)
- other consequences?

10. (*If have not already answered in response to Q9*) What complications, if any, do unrepresented accused persons create for judges and Crown counsel? In your response, please consider any differences in effects or complications based on when during the criminal justice process the accused is unrepresented.

11. What are the most common legal consequences that accused experience when they are not represented by counsel? Please consider from the time of arrest to sentencing and explain your response.

(*Interviewer: Probe on below areas. Are unrepresented accused more likely to...*)

- a. be denied bail?
- b. receive stronger/more restrictive bail conditions?
- c. plead guilty?
- d. not engage in plea bargaining?
- e. not have potential legal arguments raised?
- f. not have relevant information presented?
- g. receive a custodial sentence?

12. What suggestions do you have for addressing the issue of unrepresented accused?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Immigration and Refugee Justice Professionals
(Focus Group Immigration and Refugee Lawyers)**

Introduction

Hello, everyone. Thank you for coming to our meeting. My name is (*name*), and I work for PRA Inc., an independent research company working with the Department of Justice Canada to conduct an evaluation of the federal Legal Aid Program. As part of the evaluation, we would like to better understand the challenges facing legal aid clients who are seeking assistance with their immigration or refugee claims, and the benefits of providing legal aid to immigration and refugee (I&R) claimants.

You were invited to participate in this focus group because we understand you provide services to legal aid clients who face immigration or refugee legal issues. Please be assured that we will not ask you to divulge any confidential information about your clients. We only want to ask about your experiences in providing services to clients who have immigration or refugee claims and how helpful legal aid services are to people with these issues. Your responses will be kept anonymous, and our report will not use your name or any information that might identify you.

Before we begin, I have some meeting guidelines I would like to review.

- There are no right or wrong answers, so please feel free to provide your honest opinions.
- If you have a cellphone, please make sure that it is turned off.
- Because we are audio taping our discussion, please try to speak up and talk one at a time. We audio-record the group in order to ensure that our notes accurately reflect what everyone says. After the report is complete, we destroy the tapes.
- Please try to speak one at a time, so the entire group can hear your comments.
- To ensure that everyone has an opportunity to speak, I may call on you to provide your opinion, or I may interrupt you, not because what you have to say is not important, but to allow others the opportunity to speak.
- As I mentioned, our report will not use your name or any information that might identify you. I'd like to ask that you consider anything shared here by others as confidential, and that you do not discuss any of the information outside of the group.

Does anyone have any questions?

To begin, let's go around the table and introduce ourselves. To let us know a bit about you, please just give your first name, the province in which you have primarily provided I&R services to legal aid clients, the length of time you have been practicing I&R law, and whether you primarily handle refugee claims for legal aid clients, immigration claims, or both.

1. Has the nature or type of I&R legal aid claims that you have handled changed over the past five years? *(If yes)* Please describe any changes and the factors you think are responsible. *(Probes: legislative changes/reforms, particularly the new refugee determination process; complexity of claims.)*
 - a. Do these changes have any effect on whether immigration or refugee claimants are able to handle their claims without representation?
 - b. Do these changes have any effect on how legal aid plans have approached the provision of I&R legal aid? If so, please explain.
 - c. What effects have these changes had on how you provide services to your legal aid clients who have I&R issues?
2. Based on your experience with legal aid clients who have immigration or refugee claims, what are the common challenges/barriers these clients face that make it difficult for them to handle their own claims or, even if they have counsel, to assist with their own claims? *(Probes: client characteristics; legal and non-legal needs of clients.)* Are there any differences in the challenges or barriers faced by refugees compared to immigrants?
3. Over the past five years, has the proportion of unrepresented refugee claimants increased, decreased, or stayed the same? Unrepresented immigrants? If applicable:
 - a. In your opinion, what are the primary reasons for any change? *(Probes: cost of legal counsel; financial eligibility criteria for legal aid; legal aid coverage; legislative changes to the immigration or refugee process.)* Please explain the basis for your opinion.
4. Are there certain points in the immigration or refugee process when claimants are most likely to be unrepresented? Are there certain points when they are most likely to have counsel? Please consider the entire process from the preparation and submission of the Basis of Claim and other forms to appeals of an Immigration and Refugee Board of Canada decision.

- a. *(If applicable)* Please explain why immigrants or refugees are more likely to be unrepresented at different points in the process. What are the common effects on the claimants for being unrepresented at these different points?
5. What are the benefits of access to I&R legal aid to claimants? To the I&R process?
6. Based on your experiences, what are the most common consequences to claimants of lack of access to I&R legal aid?
7. Based on your experiences, what are the most common consequences to the I&R system when claimants lack access to I&R legal aid?
8. What challenges, if any, have you experienced in providing services to I&R legal aid clients?
9. What challenges, if any, has the legal aid plan in your province experienced in providing I&R legal aid services?
10. What are the main factors that contribute to the cost of providing legal aid in I&R matters?
11. What suggestions do you have for improving I&R legal aid?

Thank you for your participation.

**Legal Aid Program Evaluation
Key Informant Interview Guide
Clients**

Hello, *(name)*. Thank you for agreeing to be interviewed. My name is *(name)*, and I work for PRA Inc., an independent research company working with the Department of Justice Canada to conduct a study of the federal Legal Aid Program. This program provides funding to the provinces and territories for the delivery of legal aid services.

We would like to ask you a few questions to better understand the challenges facing clients who are seeking legal aid assistance. We also want to learn about your experiences with applying for or using legal aid services. We are also interested in how the availability of legal aid might have affected your case.

The information you provide will be handled with care. No one outside of PRA will see your answers. They will be combined with the responses of others and reported all together, so you cannot be identified and your name will not be used in any report.

I want to emphasize that your participation is voluntary. You can decide not to participate at all or answer particular questions. You can end the survey at any time. Your decision whether or not to participate in the survey will not have any effect on current or future applications for legal aid services. No one outside of PRA will know whether or not you decided to participate in the survey.

With your permission, I'd like to audio-record the interview. The recording will be used only to ensure that my notes are accurate. It will be deleted after the research project is completed. Are you comfortable with being recorded?

Do you have any questions before we get started?

1. Since 2012, how many times have you applied for or used legal aid services? *(1, 2, 3, 4, 5, 6, 7, 8, 9, 10, more than 10; don't know; no response)*
2. I'm going to list types of legal matters; please tell me if you have tried to get legal aid assistance for any of these types of matters since 2012.
 - a. Criminal law
 - b. An immigration or refugee claim

c. Family law (e.g., child support/maintenance; custody; access; guardianship; child protection)

d. Did you go to legal aid for help with any other type of legal matter?

(NOTE TO INTERVIEWER: For clients in the provinces, you will want to let them know that we would like to focus only on their experiences using legal aid for criminal law or I&R legal aid. If the person does not say yes to 2a or 2b, you should end the interview.

3. Do you remember how you found out about legal aid? (*Probes, if necessary: family; friends; word of mouth; phone book; internet; lawyer; courthouse staff; previously received services from legal aid; community organization*)

4. Where did you go to get help from legal aid for your legal issue(s)? (*Probes: the courthouse; legal aid office; courtworker (territories only); website; other*)

5. (*Clients in provinces only*) Did you make an application for legal aid? Was it easy or difficult to apply for legal aid? What made it easy/difficult?

6. (*Clients in provinces only*) Was your application for legal aid accepted? If no, do you recall why your application was denied? (*Probes: financially ineligible; type of legal matter not covered.*)

Questions 7 – 13 are for clients who answer yes to Q6.

7. What help did you get from legal aid? (*Probes: duty counsel who would provide you with brief advice in court; legal aid lawyer to help you with your case/claim; information from a telephone advice service; online informational materials or pamphlets*) **If none**, do you recall why you did not get help from legal aid? (*Probes: hired own lawyer instead; decided to plead guilty without getting a lawyer; other; don't know*) *NOTE TO INTERVIEWER: If the person applied for legal aid, was accepted and then did not receive any help from legal aid, skip to Q17. **It will be very rare** for a person to respond that he did not get help from legal aid.*

8. Did the services you received from legal aid help you with your legal issue(s)? If yes, how did they help you? If no, why were they not helpful?

9. Overall, how would you describe your experiences resolving your legal issue(s)? *Mostly positive, somewhat positive, somewhat negative, mostly negative*

- a. What were the main things that made your experiences positive/negative?
10. How would you describe your experiences with the services you received from legal aid?
Mostly positive, somewhat positive, somewhat negative, mostly negative
- a. What were the main things that made your experiences positive/negative? (*NOTE TO INTERVIEWER: PLEASE ASK SPECIFICALLY ABOUT EACH OF THESE AFTER LETTING THEM PROVIDE A RESPONSE FIRST: I was treated with respect; information/advice was helpful; counsel understood my situation; counsel provided me with options for how to handle my legal issue(s).*)
11. What do you think you would have done had you not received help from legal aid? (*Multiple responses - Read response categories: plead guilty to charges; hired lawyer to represent you; represent yourself; other; don't know; no response*)
12. Do you think you could have handled your legal issue on your own without any legal help? If yes, tell me how you might have handled it on your own? If no, what would have made it difficult for you to handle it on your own? (*Probes: could they have hired counsel on their own? what would it have taken (e.g., loans from family, sell car) for them to be able to afford counsel?*)
13. What was the result of your case? (*Single response: Read response categories: Guilty plea; trial and finding of not guilty; trial and finding of guilty; case stayed; charges withdrawn; other; don't know; no response*) Do you think the result of your case would have been different if you had not received legal aid and tried to handle it on your own? Why or why not?

Questions 14 – 21 are for clients said no to Q6.

14. Did you receive any other type of help from legal aid?
- a. Did a duty counsel lawyer give you advice in the courthouse? This lawyer is not representing you on your case, but would help you by giving you some legal advice.
 - b. Did you get help through a legal aid telephone service that gives legal advice?
 - c. Did you use the legal aid website or brochures to find information about your legal issue(s) or the court process?

15. Did the services you received from legal aid help you with your legal issue(s)? If yes, how did they help you? If no, why were they not helpful?
16. Did you handle any part of your legal issue(s) on our own? If yes, how did that go? If no, why did you decide not to handle it on your own?
17. Did you hire counsel to help you with your legal issue? If yes, about how much have you paid? What has been the financial impact on you? (*Probe: what steps, if any, did you have to take to be able to afford counsel?*)
18. Did you receive any other type of assistance for your legal issue(s), such as from a community organization, a pro bono legal organization, a family member, or a friend?
19. Overall, how would you describe your experience resolving your legal issue(s)? *Mostly positive, somewhat positive, somewhat negative, mostly negative.*
20. What were the main things that made your experiences positive/negative?
21. What was the result of your case? (*Single response: Read response categories: Guilty plea; trial and finding of not guilty; trial and finding of guilty; case stayed; charges withdrawn; other; don't know; no response*) Do you think the result of your case would have been different if you had received legal aid? Why or why not?

Questions 22–31 are for all respondents.

22. If you could improve legal aid services, what would you change and why?
23. Do you have any other comments you would like to make about legal aid services?

I'd like to ask a few questions about you. These questions are to help us know whether we are reaching people who are representative of legal aid clients.

24. Could you please tell me what year you were born?

25. What is your marital status? Are you... (*read options*)

In a common-law relationship
Divorced
Married
Separated
Single
Widow or widower

26. What is your current employment status? Are you? (*read options; multiple response*)

Employed full time
Employed part time
Full-time student
Part-time student
Retired
Disabled
Unemployed
Other

27. Are you a member of a visible minority group? Yes, No, No response

28. Are you an Indigenous person? Yes, No, No response

29. What is the language that you speak at home?

30. How many people are in your household (one, two, three, four or more)

31. I am going to mention a number of broad income categories. When I come to the category that best describes your total annual household income, which is your total gross income before deductions, please stop me.

Under \$10,000
\$10,000 to less than \$20,000
\$20,000 to less than \$30,000
\$30,000 to less than \$40,000
\$40,000 to less than \$50,000
\$50,000 or more

Thank you for your participation.

Legal Aid Program Evaluation
Case Study Interview Guide
Client

Hello, *(name)*. Thank you for agreeing to be interviewed. My name is *(name)*, and I work for PRA Inc., an independent research company working with the Department of Justice Canada to conduct a study of the federal Legal Aid Program. This program provides funding to the provinces and territories for the delivery of legal aid services. As part of the study, we would like to better understand the challenges facing clients who are seeking legal aid assistance. We also want to learn about your experiences with using legal aid services. We would like to discuss your experience using *(name of service)* with you today.

We will not ask you anything personal about your legal issues. We only want to ask about your experiences with legal aid services and how helpful they were to you. Our report will not use your name or any information that might identify you.

With your permission, I'd like to audio-record the interview. The recording will be used only to ensure that my notes are accurate. It will be deleted after the research project is completed. Are you comfortable with being recorded?

Do you have any questions before we get started?

1. Do you remember how you found out about *(name of service)*? *(Probes, if necessary: family; friends; community organization.)*
2. What help did you get from *(name of service)*? Did you receive help from any other legal aid services? *(Note to interviewer: if they have, please let them know that we want them to only talk about the services they received from the service that is the focus of the case study.)*
3. Did the services you received from *(name of service)* help you with your legal issue(s)? If yes, how did they help you? If no, why were they not helpful?
4. How would you describe your experiences with the services you received from *(name of service)*? Were your experiences mainly positive or mainly negative?
 - a. What were the main things that made your experiences positive/negative? *(Probes for whether: I was treated with respect; information/advice was helpful; counsel understood my situation; counsel provided me with options for how to handle my legal issue(s).)*

5. Overall, how would you describe your experiences resolving your legal issue(s)? Were your experiences mainly positive or mainly negative?
 - a. What were the main things that made your experiences positive/negative?
 6. What do you think you would have done had you not received help from *(name of service)*?
 7. Do you think you could have handled your legal issue on your own without any legal help? If yes, tell me how you might have handled it on your own. If no, what would have made it difficult for you to handle it on your own? (*Probes: could they have hired counsel on their own? what would it have taken for them to be able to afford counsel, e.g., loans from family, sell car?*)
 8. What was the result of your case? Do you think the result of your case would have been different if you had not received help from *(name of service)* and tried to handle it on your own? Why or why not?
 9. If you could improve legal aid services, and/or the *(name of service received)*, what would you change and why?
 10. Do you have any other comments you would like to make about legal aid services?
- I'd like to ask a few questions about you. These questions are to help us know whether we are reaching people who are representative of legal aid clients.
11. Could you please tell me what year you were born?
 12. What is your marital status? Are you...*(read options)*

In a common-law relationship

Divorced

Married

Separated

Single

Widow or widower

13. What is your current employment status? Are you? (*read options; multiple response*)

Employed full time
Employed part time
Full-time student
Part-time student
Retired
Disabled
Unemployed
Other

14. Are you a member of a visible minority group? Yes, No, No response

15. Are you an Indigenous person? Yes, No, No response

16. What is the language that you speak at home?

17. I am going to mention a number of broad income categories. When I come to the category that best describes your total annual household income, which is your total gross income before deductions, please stop me.

Under \$10,000
\$10,000 to less than \$20,000
\$20,000 to less than \$30,000
\$30,000 to less than \$40,000
\$40,000 to less than \$50,000
\$50,000 or more

Thank you for your participation.

Legal Aid Program Evaluation Case Study Interview Guide Stakeholders

The Department of Justice Canada (the Department) is required to conduct an evaluation of the federal Legal Aid Program as part of its reporting requirement to the Treasury Board Secretariat. As part of the evaluation, we would like to better understand the challenges facing legal aid clients and the benefits of legal aid. The evaluation will include up to 10 case studies that focus on service delivery innovations and promising practices.

The interview is expected to take approximately 60 minutes to complete. PRA Inc. is working with the Department to conduct this evaluation. We will treat your responses as confidential and will report on them only in aggregate form. At the conclusion of this evaluation, the Department of Justice Canada Evaluation Division will receive the interview notes relating to this case study with all identifying information removed.

1. Please describe the service delivery innovation/promising practice. (*Probes, as applicable, what client group does it serve? what are the eligibility criteria?*)
2. What is your relationship to the service delivery innovation/promising practice (*e.g., staff or delivery agent; external stakeholder; other?*)?
3. What need or service gap was the service delivery innovation/promising practice intended to address?
4. What are the objectives of the service delivery innovation/promising practice? What are the outcomes that it hopes to achieve?
5. In your opinion, how effective has the service delivery innovation/promising practice been in fulfilling its objectives and achieving its outcomes?
6. What factors have facilitated or impeded its success?
7. (*For case studies that involve interviews with clients*) What other options for legal assistance and advice are available to this client group? (*Probes: how able would they be to pay for legal assistance?; what steps might they need to take, such as loans or selling personal assets, to be able to afford legal assistance?*)

8. What has been the impact of the service delivery innovation/promising practice for legal aid clients? What has been the impact for the justice system?
9. Are there any efficiencies for the legal aid plan and/or the broader justice system that you believe the service delivery innovation/promising practice has achieved?
10. What learnings from the service delivery innovation/promising practice would you like to share as either best practices or lessons learned?

Thank you for your participation.

Appendix D:

Case Studies

Case study: CKNÚCWENTN (“The place where help is given”) First Nations Court in Kamloops, British Columbia

Brief overview

The Cknúcwentn First Nations Court is a problem-solving or therapeutic court that considers the underlying factors and unique needs of individual offenders in order to provide a meaningful and appropriate response that will assist in rehabilitation. In its sentencing, the Court factors in cultural considerations as outlined in the *Gladue* decision and uses restorative justice principles. Participants in the Court include a judge, a dedicated Crown, a dedicated duty counsel, and Elders from the Aboriginal Community Justice Council.

To be eligible for the Cknúcwentn First Nations Court, the accused person must:

- self-identify as an Indigenous person;
- have pleaded guilty to the charges;
- be charged with an offence triable in provincial criminal court; and
- be willing to comply with the Court’s sentence and the healing plan.

The Cknúcwentn First Nations Court meets once a month and handles sentencing hearings and reviews the progress of individuals whom the Court has previously sentenced.

The Legal Services Society (LSS) of British Columbia supports the Cknúcwentn First Nations Court by funding the duty counsel services and by supporting the Aboriginal Community Justice Council through offering training to Elders on the court process. The Court benefits from an Indigenous duty counsel, who brings his knowledge of the community to his work. The support of LSS in funding the duty counsel is considered to be critical to the success of the Court, according to its founder.

Effectiveness

Although the Court has not measured its success, based on the reports of key informants, it has achieved many of its objectives.

- **Address underlying issues of criminal behavior** – The Court develops individualized healing plans that target these underlying issues, and is considered to do this with a greater

understanding and consideration of each individual's personal circumstances and cultural background.

- **Develop community-based sentence focused on a path of healing** – All offenders who proceed to sentencing receive a healing plan, which identifies and incorporates relevant community supports and targets community and individual healing.
- **Use alternatives to incarceration, restorative justice forums and sentencing circles** – None of the offenders in the Court receives incarceration. The Court operates like a sentencing circle with the involvement of Elders.
- **Integration of First Nations values, customs, and traditions** –The physical layout of the Court incorporates First Nations values, with all participants sitting around a single table (approximating a circle). The Court also begins each session with a smudge and prayer. The fundamental approach of the Court is based on First Nations values and includes bringing in the guidance of the Elders and emphasizes accountability and healing. The celebration of successful completion results in a traditional blanket ceremony.
- **Involve First Nations services and programs in developing the healing plan** – Each healing plan includes First Nations services and programs.
- **Increase accountability of participants** – The Cknúcwentn First Nations Court provides this through progress reporting, which is in addition to any probation reporting. Given this, the Court is unlike the mainstream system, where offenders do not reappear in Court unless they have violated probation or have been arrested on another charge. The Cknúcwentn First Nations Court meets with the offender to learn about progress, celebrate success, and discuss how to redirect offenders who are struggling to comply with their healing plans.
- **Increase compliance with court orders** – Currently data on whether participants in the Court are more likely to comply with court orders are not kept, but the perception of key informants is that compliance has increased.
- **Reduce recidivism rate and repeat court appearances** – As with increased compliance, this data is not tracked but the perception is that the Court is having these effects.

Impact on legal aid and justice system

The Cknúcwentn First Nations Court is an intensive process and requires more court time than the mainstream justice system does for each individual offender. As a result, the Court requires a greater commitment of both legal aid and justice system resources.

All stakeholders involved in the First Nations Court said they found their experience working in the Court to be uniquely fulfilling. For legal aid clients, the impact of the Court is found in the connection between the offender and the Court, which is not seen in mainstream court. The clients considered the Court to be accessible and were very satisfied with their experiences. They found the participation of Elders to be helpful. Both believed that the Cknúcwentn First Nations Court gave them more contact with their heritage and credited the Court with turning their lives around.

Case study: Immigration and refugee legal aid – Response of the Legal Services Society of British Columbia to the Ocean Lady and Sun Sea arrivals

Brief overview

Within less than one year of each other, the Ocean Lady and Sun Sea arrived off the coast of British Columbia. Each ship carried refugees from Sri Lanka, who claimed that they were fleeing the abuses of the Sri Lankan military that occurred in the aftermath of the decades-long civil war. The ships resulted in an unprecedented number of immigrants arriving at the same time and claiming refugee status (76 and 492, respectively)⁴¹. The Government of Canada expressed concern that some passengers were human smugglers and/or terrorists, and detained the passengers in BC correctional facilities upon their arrival until their status was determined.

The Legal Services Society (LSS) of British Columbia provides immigration and refugee (I&R) duty counsel services, whereby counsel will provide legal advice to individuals being held in custody as a result of immigration proceedings, and will represent them at their initial detention hearings. LSS also provides I&R legal aid representation to financially qualified applicants whose matters have a reasonable chance of success. The challenges for LSS posed by the Ocean Lady and Sun Sea arrivals was the volume of immigrant/refugee claimants, the tight statutory timelines under the refugee determination system, and the strong government response.

Effectiveness

The primary innovation of the approach used by LSS was actively managing the situation, as opposed to the more typical approach of handling each client's matter as it came to LSS. The approach also involved more coordination with other actors than typically occurs, to enable detention hearings and refugee claims to be addressed in an orderly and timely fashion.

Timely access to legal representation with well-resourced lawyers. LSS began providing services prior to the initial detention hearing. Timely access to legal aid services was considered critical, given the detentions and allegations of inadmissibility to Canada. LSS also undertook several steps to ensure that clients received comprehensive, high-quality legal services. In particular, LSS ensured continuity of service by creating individual paper files for each refugee claimant in which counsel noted activity in the file, so that any subsequent lawyer would know what had occurred.

⁴¹ Most of the information for this case study pertains to the Sun Sea, as the best practices arose primarily as a result of handling the detention hearings and refugee claims from that arrival.

This approach allowed LSS to have more oversight over the work, use multiple lawyers as duty counsel, and schedule duty counsel by date rather than client.

In addition, LSS provided counsel with more supports, such as the assistance of researchers and access to shared information on legal memoranda, IRB decisions, and legal strategies. This enabled LSS to provide clients with a consistent level of service and helped counsel work more efficiently and effectively.

Provision of non-legal supports. LSS coordinated with immigrant-serving organizations so that individuals being released were connected with the organizations, which provided them with housing assistance and other necessities.

Culturally responsive services. LSS engaged Tamil interpreters, as well as two Tamil lawyers (one from BC and one from Ontario).

Ability to process cases. LSS, the IRB and relevant government agencies worked together to make the process as efficient as possible, given the circumstances. For example, all parties were given notice of which detainees were set for detention hearings the next day, which helped ensure that hearings occurred in a timely and orderly manner.

Access to justice. The provision of legal information, advice and representation by LSS-funded counsel afforded the immigrants access to justice. The importance of providing access to justice through legal aid representation is reflected in the most recently available statistics on the status of the Sun Sea passengers. According to IRB statistics, as of July 22, 2015, 238 Sun Sea passengers had received refugee status, which is 63% of claims finalized. Thirty passengers were found inadmissible and ordered deported under the *Immigration and Refugee Protection Act*. Of those, 11 were inadmissible because of connections to the Tamil Tigers⁴².

Impact on legal aid and justice system

The most immediate result was the ability of LSS and other I&R stakeholders to manage the large influx of immigrants. Given the number of immigrants and the federal government concerns related to their admissibility, the I&R system could easily have become overloaded, compromising

⁴² Canadian Council for Refugees. (August 2015). *Sun Sea: Five years later*. Retrieved March 29, 2016 from <http://ccrweb.ca/sites/ccrweb.ca/files/sun-sea-five-years-later.pdf>.

the ability of LSS to provide comprehensive legal services, and the ability of the I&R system to process cases according to statutory timelines.

The existence of I&R duty counsel also has an impact on correctional system resources. Duty counsel can contact sureties as well as identify relatives or locate other places where the detainee can reside, which is necessary for an individual to be released from detention. If duty counsel can reduce the time in detention for individuals, that reduces the costs to the system⁴³.

⁴³ The cost of detention is approximately \$190 a day. Canadian Council for Refugees. (August 2015). *Sun Sea: Five years later*. Retrieved March 29, 2016 from <http://ccrweb.ca/sites/ccrweb.ca/files/sun-sea-five-years-later.pdf>

Case study: Drug Treatment Courts (Calgary and Edmonton)

Brief overview

Drug Treatment Courts (DTCs) are provincial courts that provide an alternative to incarceration by offering an offender the opportunity to participate in a court-monitored, community-based drug treatment process. They target adult, non-violent offenders who have been charged under the *Controlled Drugs and Substances Act* or the *Criminal Code* in cases where their drug addiction was a factor in the offence. Rather than incarceration, DTC participants receive a non-custodial sentence upon the completion of treatment.

Currently, there are two DTCs in Alberta: the Edmonton Drug Treatment Court Service ⁴⁴ was founded in 2005, and the Calgary Drug Treatment Court Service was founded in 2007.

Legal Aid Alberta provides duty counsel service to the DTCs through its Criminal Resolution Offices in Edmonton and Calgary. These duties are shared by four Legal Aid Alberta staff lawyers (two in each location) who provide duty counsel services on a daily basis throughout the week. Although most individuals have their own legal aid lawyer before entering the DTC program, once in the program the participants are considered clients of the duty counsel. The duty counsel help guide participants through the process and — as part of the DTC team — monitor participants' progress on a weekly basis and participate in meetings on policies or changes to the program. According to key informants, continuity of services plays an important role in duty counsel gaining the trust of DTC participants. Therefore, duty counsel at each location work as a team, keeping each other informed about participants' status, so either lawyer is able to effectively assist the participants at their next appearance. Key informants also noted that Edmonton duty counsel mainly operate out of the courthouse, while Calgary duty counsel also offer to meet with participants on weekends.

Effectiveness

Key informants reported that the DTCs have been effective in achieving their objectives and expected outcomes. They noted that the rate of recidivism among program graduates is low, with the majority not having any convictions post-graduation. Additionally, key informants indicated that participants must find stable housing, be gainfully employed or be in school to graduate from

⁴⁴ Formerly known as the Edmonton Drug Treatment and Community Restoration Court.

the program. This ensures that graduates can be reintegrated into the community and become contributing members to society.

Key informants indicated that several graduates have stayed connected with the program by supporting current DTC clients through alumni programming, whereby graduates act as role models, mentors and supporters to clients who are beginning the treatment program.

Evidence gathered from the Calgary Drug Treatment Court Service documents suggests that the program has resulted in a number of positive outcomes for participants and society as a whole. An evaluation of this Drug Treatment Court found that its graduates had stable housing upon graduation, and over half were employed over the course of the program. In addition, over a third of participants never relapsed while in the program, and almost 60% experienced periods of sobriety of six months or longer.

Both the Calgary and Edmonton Drug Treatment Court Services have had studies to review the pre- and post-convictions of graduates. Those studies showed that approximately two-thirds of graduates had not incurred any convictions post-graduation.

Impact on legal aid and the justice system

Key informants interviewed as part of this case study indicated that the presence of DTCs results in efficiencies for legal aid services, mainly through a reduction in the costs associated with providing legal assistance. DTC clients are at a high risk of reoffending and would recurrently use legal aid services. If participants are successful in the DTC, key informants noted that the program contributes to a reduction in recidivism, and ultimately results in a reduction in the costs associated with providing legal aid. Also, key informants indicated that the DTCs' current model, which includes two duty counsel assigned to each DTC who represent all clients in the program, is an efficient delivery model.

Findings from the review of program documents and key informant interviews suggest that the DTC program contributes to a reduction in costs across multiple areas, including jail costs; the cost of property stolen to support addiction; the cost and time required for police investigations; costs related to the treatment of mental and behavioral disorders resulting from addiction; child services costs; hospital and health care costs; community services costs; shelter costs; and employment-related benefits, such as taxes, turnover, and the use of income support.

Case study: Legal Aid Alberta's Youth Criminal Defence Office

Brief overview

With offices in Calgary and Edmonton, the Youth Criminal Defence Office (YCDO) provides holistic criminal defence services for youth facing criminal charges under the *Youth Criminal Justice Act*. The YCDO provides legal services and youth worker advocacy to youth inside and outside the youth court justice system. The YCDO team includes lawyers, youth workers, and administrative staff.

The Office offers a range of legal services, including the following:

- duty counsel advice;
- Brydges services (24-hour legal advice upon arrest);
- interim release applications;
- plea negotiations;
- trials;
- sentencing hearings; and
- appeals (including the Court of Queen's Bench, the Court of Appeal, and the Supreme Court of Canada).

Youth advocacy services are also provided by the YCDO. Specifically, youth workers will support youth through the following actions:

- identifying realized or potential risk factors;
- creating customized case/release plans;
- recommending or advocating for resources, interventions and/or support from Child and Family Services or other governmental ministries;
- providing transportation and support in accessing necessities of life or making positive lifestyle changes; and

- helping youth navigate and complete the Extrajudicial Sanctions Program⁴⁵.

Youth workers can also assist youth with finding housing, accessing treatment, education or work programs, and obtaining counselling. Their role is to work with the youth to address issues underlying their criminal behavior, in order to assist them with their rehabilitation.

According to program documents, the YCDO provided full representation through certificates to 1,900 clients in 2015, in addition to approximately 4,800 duty counsel assists and 3,000 Brydges calls and advice services.

Effectiveness

The YCDO is considered to be effective and efficient in representing youth in conflict with the law. By representing and supporting youth in a holistic manner, the Office assists them in changing their lives by addressing the root causes and issues of their criminal behavior. The YCDO is able to provide additional support services to its clients by incorporating social and youth workers.

The YCDO is also a centre of expertise in youth criminal law. One of the objectives of the YCDO was to provide an alternative to the tariff lawyer model by introducing the staff lawyer model. This allowed the YCDO to develop expertise in the area of youth criminal law.

Impact on legal aid and the justice system

The perception among stakeholders is that there has been a significant reduction in the number of youth incarcerations in Alberta in recent years, partly as a result of the work and activities of the YCDO.

⁴⁵ The Extrajudicial Sanctions Program provides for the use of extrajudicial (“outside of court”) sanctions in place of judicial proceedings. The objective of the program is to reduce the number of young people appearing before the court when their first charge involves a low-risk offence and, when such measures would be appropriate, take into consideration the needs of the young person and the interests of society. Alternatives include community service work, restitution, and/or victim-offender reconciliation.

Case study: Lean initiative – Saskatchewan

Brief overview

Lean is a management philosophy that focusses on process improvements that will create more value while using fewer resources. A Lean event was held in May 2015 in Saskatoon, Saskatchewan, to discuss ways to improve the efficiency of the custody docket court process and to reduce the number of individuals being held at the remand centre. The Lean event brought all of the parties involved in the custody docket court process together for a week (five days) of meetings to get an understanding of the entire process and to determine efficiencies that could be applied to the process. The main objective/outcome of the Lean initiative is to increase the efficiency of the custody docket court process from start to finish by reducing the average number of in-court appearances and the time to determine remand/release, creating better use of court time, and increasing the number of files that can be effectively dealt with.

A total of 30 ideas and possible solutions came forward out of the Lean event, as noted in the continuous improvement plan document. The following are some of the main ideas and solutions that came out of the event:

- **aligning legal aid and Crown lawyer schedules** so that the same legal aid and Crown lawyers are in court on alternating days; this facilitates discussions of possible resolutions by having continuity of both Crown and legal aid lawyers, as well as the same out-of-court days where counsel can consider files for the upcoming court day;
- **implementing an early resolution process** where the Crown lawyers identify clients that can be dealt with expeditiously before each court session begins; the legal aid lawyers would speak with their clients and get the files resolved that day;
- **increasing the use of video court appearances** over in-person appearances;
- **reorganizing court schedules** with earlier start times to increase the effective use of stakeholders' time; and
- **having a Crown and legal aid lawyer visit the police station on Sundays** to review the files of individuals that were remanded over the weekend and to develop plans of action.

Effectiveness

Increased use of video court appearances, the early resolution process, and the reorganized court schedule (including the earlier start time) have been fully implemented and have resulted in

efficiencies for the custody docket court process. In particular, based on reports by stakeholders, the number of in-court appearances has been reduced, the time to determine remand/release has been reduced, and court time has been better used.

A few of the Lean solutions were not fully implemented. When the Crown and legal aid lawyer have been able to align their schedules and adhere to the same lawyers appearing on alternating days, efficiencies are achieved for the courts and the clients. The alignment of schedules has not always been possible, due to limited legal aid resources. Similarly, the Sunday review of weekend remand files showed early signs of success, according to key informants, but could not be continued due to resource issues.

Impact on legal aid and the justice system

According to key informants, the initiatives that have been implemented since the Lean event have led to time and cost savings for all parties involved in the custody docket court process. The use of video court appearances, increased early resolutions, the revised court schedule, and the alignment of Crown prosecutor and legal aid counsel schedules when possible has resulted in the more efficient handling of files and less required court time overall.

The initiative also has an impact on legal aid clients. Remand times are usually a few days on average, but any time in remand can have negative impacts on accused persons, including the loss of their jobs or housing. Key informants believe that the changes resulting from the Lean initiative have increased the efficiency of the custody docket court process, helping people get released more quickly.

Case study: Legal Aid Ontario's Mental Health Strategy and expansion of coverage to first-time accused who are senior citizens

Brief overview

In March 2016 Legal Aid Ontario (LAO) released its Mental Health Strategy, which demonstrates the organization's "long-term commitment to prioritizing, expanding, and sustaining mental health rights and advocacy within Ontario's legal system"⁴⁶. The Mental Health Strategy covers many issues, but one issue is the increasing number of seniors entering the criminal justice system. Examples of how senior citizens become involved with the criminal justice system include charges related to assault or sexual assault on another resident or staff in a care facility or assault on a spouse. This criminal activity can be due to medical issues such as dementia, Alzheimer's disease, or even reactions to medications.

Senior citizens may not qualify for legal aid, as their modest incomes may still be above the financial eligibility guidelines and/or as first-time offenders, they may be facing relatively minor charges. However, these accused may still face serious consequences as a result of these charges, including loss of a range of benefits they receive, such as housing (e.g., in long-term care facilities), disability or other income support, or other social services. As part of the Mental Health Strategy, LAO has expanded its coverage for full legal aid representation to first-time accused for seniors who have mental health and/or addictions issues. In addition, LAO has expanded its financial coverage; therefore, more seniors who would not have qualified financially for legal aid in the past are potentially eligible⁴⁷.

Effectiveness

The objectives for this initiative are to provide legal representation to financially eligible seniors with mental health and/or addiction issues and who are facing a potential first-time criminal charge, and to thereby increase access to justice for these clients. The provision of legal representation through the expanded coverage is expected to provide these seniors with lawyers who can not only provide them with legal services, but who can also advocate for them and provide alternative means of resolving the charges or maintaining their housing or other social supports.

⁴⁶ Legal Aid Ontario, March 11, 2016. The Mental Health Strategy for Legal Aid Ontario. P.4

⁴⁷ LAO increased the financial eligibility ceilings by 6% in each of three stages (November 1, 2014, April 1, 2015, and April 1, 2016). Retrieved from http://www.legalaid.on.ca/en/news/newsarchive/1503-31_eligibilityguidelinesdetails.asp

Furthermore, an independent legal advocate can also serve as a safeguard to ensure the practices and policies at long-term care facilities are in place to provide proper care to seniors.

LAO's new policy was only implemented in June 2015, and therefore has not been operational long enough to make any measures of, or statements on, its success in achieving objectives and outcomes.

Impact on legal aid and justice system

Since the expanded coverage has only recently been implemented, the impact on the legal aid and justice system is not yet known. However, this expanded coverage is expected to bring about fewer self-represented litigants, which in turn is expected to lead to increased efficiencies in the justice system. Legal representation can also provide accused seniors with a greater opportunity for gaining bail and less likelihood of being placed in remand for long periods of time.

Further, the legal advocacy provided by the lawyers is expected to lead to better legal outcomes for the accused, improved interventions, and less severe secondary consequences from loss of housing, income, other social supports and the like. Such steps to prevent deterioration in the seniors' living conditions are also expected to assist in reducing recidivism.

Case study: Montréal Mental Health Court Programme d'accompagnement justice-santé mentale (PAJ-SM)

Brief overview

Established in May 2008, the *Programme d'accompagnement justice-santé mentale* (PAJ-SM) provides an alternative to the mainstream court system for individuals who demonstrate signs of mental health problems and are facing minor criminal or penal charges before the Montréal Municipal Court, which is one of the municipal courts in Quebec that has jurisdiction over such offences. Individuals who elect to participate in the program are assessed psychologically in order to determine their level of dangerousness, among other things. As required, they are directed toward clinical resources and other applicable social services. These individuals also receive support during their hearings. Although each case is processed on its own merits, participants who successfully complete the program may see their charges withdrawn under conditions, as applicable.

The program involves a multidisciplinary team that includes Crown attorneys, one legal aid counsel, municipal court judges, a doctor, a criminologist, probation officers, and liaison officers. The multidisciplinary team, with the exception of municipal court judges, meets daily to review pending cases and to determine appropriate courses of action. Hearings are held every afternoon.

Even though other regions of the province are considering the implementation of such a program, the PAJ-SM, remains the only fully operational in Quebec.

Effectiveness

Ability to process cases: There are no official statistics on the number of cases heard through the PAJ-SM; however, stakeholders estimate that approximately 600 cases are dealt with on a yearly basis. As it relates more specifically the cases funded by the *Centre communautaire juridique de Montréal*, the most recent statistics indicate that the Centre approved 498 applications in 2014-15 and 405 applications in 2015-16. One of the key characteristics of the initiative is to ensure prompt follow-up once a charge has been laid. At this point, the program has proven capable of delivering this level of service.

Reduction in the number of individuals incarcerated: One of the primary goals of the initiative is to avoid the incarceration of individuals. At this point, according to stakeholders, practically all individuals who participate in the program are avoiding incarceration. Typically, charges are withdrawn or alternative measures, such as community work, are implemented.

Reducing recidivism: The other primary objective of the initiative is to provide assistance to participants in order to avoid repetitive offences, which often occur among offenders facing mental health problems. Again, although there are no official statistics, stakeholders indicated that very few individuals return to the court to face new charges once they have successfully completed the program.

Better alignment of services: Through ongoing communication, information sharing, and the work of liaison officers, the various stakeholders involved in providing services to individuals with mental health problems are capable of better aligning their interventions. Now that the initiative has been operating for some time, stakeholders pointed to a high level of coordination among all key stakeholders, including hospitals and healthcare community centres.

Impact on legal aid and the justice system

As a result of this initiative, the *Centre communautaire juridique de Montréal* has been enhancing its capacity to deal with clients suffering from mental health problems. The Centre assigned a full-time lawyer to the PAJ-SM. Having a legal counsel dedicated to the program has allowed other legal aid counsel to redirect clients who were showing signs of mental health problems in order for them to receive appropriate support. The efficiency gained by legal aid includes its enhanced ability to effectively deal with clients who are showing signs of mental health problems, in addition to reducing recidivism among program participants.

The justice system is gaining efficiency by addressing the root causes of criminal behaviors that typically lead individuals to commit ongoing offences. By better aligning social and health resources that may be challenging to access for program participants, the initiative is limiting the number of direct resources required by the justice system to deal with what are typically minor offences. This is also demonstrated by the fact that an increasing number of justice stakeholders are now aware of what the program can do and will more readily recommend participation in the program for those who appear to be having mental health issues. This is seen among police officers, other Crown prosecutors and defence counsel.

Case study: Nova Scotia Legal Aid's expanded duty counsel

Brief overview

Nova Scotia Legal Aid's expanded duty counsel (EDC) program began as a service available for accused persons in custody (cells duty counsel) and evolved to include non-custodial duty counsel available to everyone appearing in court unrepresented.

EDC lawyers are assigned to the same courthouse on a continuous basis so they are able to see the same client on more than one appearance. The duty counsel lawyer is able to work with the client at the early stages of the court process without an application for legal aid and the assignment of staff counsel or a private bar lawyer on a certificate. The services provided by the EDC are complementary to the more in-depth full representation service available to accused persons who are eligible — among other things, the EDC is meant to resolve cases before full representation is required and to facilitate the application process. In addition, for matters that do not achieve early resolution, the EDC will move the matter forward by accomplishing major steps such as bail applications, disclosure motions, applications for full service, and referrals to community resources.

Additionally, EDC services include courtworkers who assist with explaining processes and applying for full representation legal aid and other support services available in the community.

EDC services are available in all Provincial Court locations in Nova Scotia. The courthouses in Halifax, Dartmouth and Sydney have dedicated duty counsel available and rural areas (e.g., Bridgewater) have lawyers who are available for duty counsel on top of their criminal and family trial caseloads.

This case study addresses the non-custodial duty counsel component of the EDC program, which is the more recent development. Non-custodial EDC has been offered across the province for approximately three to four years and in Halifax Provincial Court for over six years.

Effectiveness

Access to justice: The EDC provides legal advice and assistance at arraignment court to all unrepresented accused persons. As a result, legal aid services are expanded to accused persons who do not meet the financial eligibility requirements, but also do not have the financial means to hire a lawyer. Documents indicate that between 2012-13 and 2014-15, between 24% and 32% of the clients who received non-custodial duty counsel services would likely not have qualified for

full service legal aid. Accused persons who appear in court because they are unable or do not want to hire a lawyer frequently experience diminished access to justice given their lack of familiarity with the complexities of the legal system.

Fewer unrepresented accused persons: The evidence from the documentation and key informant interviews indicates that the EDC program has been able to provide duty counsel services to all unrepresented accused persons who want representation in arraignment court.

Impact on legal aid and justice system

Key informants described the EDC program as creating efficiencies in the justice system. The EDC significantly limits the number of unrepresented accused persons navigating the court system. Key informants explained that self-represented accused persons slow down the court process in a number of ways and create additional burden for judges and the prosecution. In addition, since the lawyers who provide EDC services are dedicated to that service, they further create efficiencies by building effective working relationships with Crown attorneys and judges, which creates an environment of communication between all parties. For example, quick adjournments (e.g., to the next day) are common.

The EDC program also reduces the number of appearances made by an accused person while they apply for a legal aid lawyer. Specifically, the EDC courtworker will begin the legal aid application process and reduce the burden on the accused person for self-initiated follow-up. Key informants explained that prior to the introduction of the EDC program, the volume of unrepresented accused persons would cause arraignment sessions to exceed the scheduled time, more accused would appear multiple times, and more cases would go to trial. Key informants also reported that duty counsel will attempt to consolidate an accused's matters so they can be dealt with concurrently, which frees up dates for other court cases.

Similar to the efficiencies created for the justice system, Nova Scotia Legal Aid is able to more effectively use resources by providing EDC to accused persons who are appearing in court for the first time, which decreases the demand for full service legal aid. EDC achieves the following benefits for legal aid and its clients:

- early final resolutions where appropriate;
- quicker connection with full service offices when necessary;
- movement of issues (release, disclosure, information and advice); and

- referrals to community resources to help address root causes.

Based on internal evaluations of the EDC program, both legal aid and the justice system are able to achieve efficiencies through significant early stage service and early resolutions that reduce the burden individual accused persons have on available resources.

Case study: Legal Services Board of Nunavut – Linear file assignment

Brief overview

Implemented in mid-2011, linear file assignment (LFA) is a case management strategy for criminal law files that aims to keep the same lawyer with the same client as much as possible, from the beginning to the end of a case. This is done primarily to improve the lawyer-client relationship, but also to improve case efficiencies. LFA is part of an overall process the Legal Services Board (LSB) has undertaken to centralize and improve the coordination of legal aid cases in Nunavut⁴⁸.

The LFA process begins with the legal aid clinic's lead lawyer assessing each legal aid file and assigning the file to a lawyer. Each file is assessed to determine the likelihood of resolution and potential conflicts of interest. If the file is likely to resolve, the lead lawyer decides whether the file should be assigned to an in-house lawyer immediately or whether it should be assigned to one of LSB's panel lawyers⁴⁹. If the matter is likely to go to trial, the file is assigned⁵⁰ to a suitably experienced staff lawyer. Typically, junior lawyers are assigned summary matters, while senior lawyers are assigned more complex cases (such as homicide and sexual assault) or cases that involve lawyer-specific expertise (such as Charter issues). If the matter involves a number of other accused, those persons are assigned lawyers from other legal aid clinics or will be assigned to the circuit court's panel lawyer.

In circumstances where lawyer continuity is not possible or practical due to conflicting court schedules, vacations or sick leave, the file is reassigned to another lawyer, who is informed of the case history and the next steps to be taken in the matter.

Effectiveness

Improved client-lawyer relationship

The LSB intends that greater continuity in legal representation will lead to an improved relationship between client and counsel. A key feature of this improved relationship is the development of clients' trust in their legal aid lawyers and the justice system, which is considered

⁴⁸ This includes expanding staff capacity at Nunavut's three legal aid clinics, implementing new file management procedures, and designating a lead lawyer for each clinic to support the LFA process.

⁴⁹ Panel lawyers are private bar lawyers who work for the LSB via a legal aid contract. Typically, at least one panel lawyer travels with one or two staff lawyers who are assigned to circuit court.

⁵⁰ Legal aid clients are typically not allowed to choose their own legal aid lawyers, except under Section 40 of the *Legal Services Act*, which allows clients to choose their lawyers if the charges risk life imprisonment

to make it more likely for clients to provide their lawyers with the information needed to prepare for an appearance and, more generally, to more actively participate in their defence. Having a better client-lawyer relationship is also purported to benefit the lawyer by improving their sense of file ownership, which can lead to improved morale among staff lawyers, and a greater interest in their clients' desire to have their matters dealt with in an expedient manner.

Although LSB has not yet implemented a survey to assess client satisfaction with client-lawyer relationships and how this might relate to continuity of counsel, anecdotally, there are examples of clients demonstrating an improved relationship with their legal aid lawyers, ranging from clients knowing their lawyers by name to clients making specific requests for their legal aid lawyers in times of legal need or crisis.

LSB lawyers confirmed having a sense of file ownership and reported that having the same client each time can lead to a better client-lawyer relationship through improved trust, and to the lawyers learning how to communicate effectively with their clients — some of whom have cognitive difficulties or particularly challenging personalities. Having the same lawyer each time is considered to be a more respectful approach to client relations because it saves the clients from having to retell their story, which can be a deeply painful experience for them. That said, many individual-level factors feed into the client-lawyer relationships, so even under LFA these relationships can still vary by case.

Impact on legal aid and the justice system

LFA is intended to improve the cost effectiveness of legal aid and introduce efficiencies to the court process.

Legal aid cost effectiveness

LFA is intended to allow the LSB to use its resources more cost effectively. Ideally, a single lawyer is assigned a file and, by taking ownership of the file, is more prepared for court appearances, minimizing the number of appearances, and thus reducing the cost of legal representation.

Court efficiencies

LFA is intended to contribute to justice system efficiencies by reducing the number of appearances and unnecessary adjournments, and ensuring files move through court in a reasonable amount of time. This stems from clients having more trust in their lawyers and being more likely to provide them with the information needed to properly prepare for court appearances. Additionally, lawyers

have a greater sense of ownership of their files, which helps ensure counsel have taken the necessary steps to prepare for their appearances and are focused on minimizing the number of appearances and the potential for adjournment.

Enhanced credibility of LSB and the justice system

As a result of the improved relationship with legal aid lawyers and less time spent waiting for their cases to be handled by the justice system, clients are more likely to have greater confidence in LSB's legal services and the justice system overall.

Case study: Presumed eligibility in Northwest Territories and Nunavut

Brief overview

Experience has shown that many accused individuals in Northwest Territories and Nunavut experience challenges or barriers in applying for legal aid. Some struggle with obtaining needed documentation to show their financial eligibility for legal aid, and others live in small remote locations without easy access to a legal aid office. Others are experiencing mental health or addictions issues, which also pose comprehension barriers. As well, many of the accused face language and/or cultural barriers in understanding the Canadian justice system and the legal aid application process. Presumed eligibility avoids the necessity of making a legal aid application and provides accused with immediate access to a lawyer at their first appearance.

In Nunavut, individuals with criminal charges are presumed eligible for legal aid at court appearances up until the point of entering a not guilty plea. The Legal Aid Commission has duty counsel assigned at every point of entry; at every bail hearing or first appearance, accused persons have access to a lawyer to represent them. This access does not require any legal aid intake process or assessment of financial eligibility. If a client makes the decision to enter a not guilty plea, he is then required to apply for legal aid to determine his eligibility for ongoing legal representation. In Yellowknife, presumed eligibility also has lawyer continuity attached to a client. Once a duty counsel begins representing a client, that same lawyer will continue providing services up to the need for a legal aid application. Lawyer continuity is not possible in the communities outside Yellowknife that are served by circuit court, as different lawyers will rotate through the circuits.

According to the Legal Aid Commission's 2014-15 annual report, the majority of services provided by legal aid on circuit court is through presumed eligibility⁵¹. A total of 3,308 adults and 247 youth were provided presumed eligibility services in 2014-15 for all of the Northwest Territories⁵². In comparison, the Commission received 586 criminal-related legal aid applications that same year, of which 508 (87%) were approved⁵³.

Presumed eligibility in Nunavut operates much the same as in the Northwest Territories. However, unlike in the Northwest Territories where presumed eligibility is only available for criminal matters, in Nunavut presumed eligibility also applies to all child applicants, child welfare matters

⁵¹ Ibid, p.16.

⁵² Ibid, p.27. There may be some double counting of individuals in these statistics.

⁵³ Ibid, p.22 & 25.

where a child has been removed from his home⁵⁴, plus the Legal Services Board (LSB) provides some presumed eligibility coverage for family and civil matters that are of a summary nature. The LSB's most recent annual report cites that 2,848 criminal law files were opened in 2014-15; however, statistics on presumed eligibility are provided only for civil matters, with 346 presumed eligible summary matters⁵⁵. Although statistics on presumed eligibility are not kept for criminal matters, the number of opened criminal law files is considered by LSB to reflect the volume of cases benefiting from presumed eligibility.

Effectiveness

Access to justice. Presumed eligibility has reduced the barriers to obtaining legal assistance. By avoiding the need to apply for legal aid, accused individuals obtain immediate access to a lawyer, who will immediately begin working in their interests at their first appearance. The immediate legal assistance provides clients with the opportunity to have a voice, to gain a greater understanding of their legal issue, to learn of their options, and to plan a strategy with their lawyer to manage their legal matter. Duty counsel on circuit court will often strive to contact clients in advance of their court date, either by telephone, by traveling to the circuit court a day in advance to meet with clients, or by meeting with clients earlier on the day of court. In addition, the duty counsel on circuit court are provided disclosure in advance, which further facilitates the process of providing advice and information to the client. The ability of duty counsel to speak with the client either beforehand or on the day of court is viewed as not only providing some assurance to clients, but also as assisting in dealing with matters more efficiently on the day of court and in moving matters along.

Early resolution. Many clients' criminal matters are resolvable at the first appearance and, therefore, having access to duty counsel facilitates this resolution process for the client.

Reducing delays. The need to complete a legal aid application for legal assistance has created adjournments and delays in court while clients have tried to obtain the needed documents. The impact on clients is magnified when circuit court only comes to their community once every six weeks or more. As well, if the accused's conditions include such requirements as no contact with family members, this can create burdens and stress upon the client as well as the remaining family unit in small remote communities with long gaps between court visits. Delays in an accused's court

⁵⁴ Legal Services Board on Nunavut. Annual Report, 2012-13, p. 11. Retrieved from <http://nulas.ca/wp-content/uploads/2015/02/LSB-Annual-Report-2012-2013-FINAL.pdf>

⁵⁵ Legal Services Board on Nunavut. Annual Report, 2014-15. Retrieved from <http://nulas.ca/wp-content/uploads/2015/02/LSB-Annual-Report-14-15-FINAL.pdf>

process also can increase the likelihood they will breach their conditions and thereby face additional charges. Or, if a client is in custody, the need to apply for legal aid could lengthen his time in custody.

Impact on legal aid and justice system

Presumed eligibility reduces administrative burdens on the Legal Aid Commission and LSB. For example, most clients in the Northwest Territories are eligible for legal aid, making the requirement of applying for legal aid an unnecessary administrative process. In addition, many matters are resolved through a guilty plea, so the administrative cost of the application process is avoided in many cases.

Presumed eligibility is viewed as reducing court delays and adjournments, making more effective use of court time. Without the assistance provided by duty counsel through presumed eligibility, the court system would be significantly backed up. Furthermore, such delays would have a snowball effect, with delays in court at one location on the circuit affecting subsequent locations and/or requiring additional circuit visits and more justice system resources to make up the time.

The increased level of service that duty counsel are able to provide clients through presumed eligibility can also benefit other justice service providers. For example, where duty counsel are able to speak to clients in advance of court and take instruction, the lawyer can then contact the Crown prosecution on matters that need discussion. Similarly, the Crown prosecution can contact duty counsel regarding their discussion points, all of which help service providers prepare in advance and make more effective use of their and the court's time.

Furthermore, the reduced adjournments and delays can also reduce the number of court appearances required by complainants and victims of crime.

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

Method for Comparison of Financial Eligibility Guidelines with Economic Indicators

The following method was used to calculate the legal aid financial eligibility guidelines (FEGs) percentage change between 2010 and 2015 for each available province:

- Eligibility guidelines for a family size of four and one were used.
- Calculated as: $[(FEG_{2015} - FEG_{2010}) / FEG_{2010}] * 100$, where FEG_{2010} = the respective province's FEG in 2010 for a family of four or one and FEG_{2015} = the respective provinces FEG in 2015 for a family of four or one.

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

- Saskatchewan 2015 – provided guidelines based on a family with number of children where family could include a single or two-parent family. Only a family with four children was available for 2010, so a family size of six was used for the calculation in Figure 8, assuming a two-parent family.
- Ontario 2010 and 2015 – provided a family size range from 1 to 4+. 4+ was used for the family size of four calculation in Figure 9.
- Quebec and Nova Scotia – Provided guidelines separated by number of adults and number of children. Therefore, two values would be provided for a family of four: one for a single parent with three children and one for a two-parent family with two children. In each case, the higher of the two guidelines was selected, which in all cases ended up being the two parent with two children values.

The inflation rate for each province was calculated as follows:

- Inflation rate = $[(CICP_{2015} - CICP_{2010}) / CICP_{2010}] * 100$

Where $CICP_{2010}$ = the average 2010 CICP for the respective province and $CICP_{2015}$ = the average 2015 CICP for the respective province.

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

- $\Delta RWAGE = [(RWAGE_{2015} - RWAGE_{2010}) / RWAGE_{2010}] * 100$

Where $\Delta RWAGE$ = the percentage change in the real wage for the respective province, $RWAGE_{2010}$ = the average 2010 real wage for the respective province, and $RWAGE_{2015}$ = the average 2015 real wage for the respective province.

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

- $\Delta MWAGE = [(MWAGE_{2015} - MWAGE_{2010}) / MWAGE_{2010}] * 100$

Where $\Delta MWAGE$ = the percentage change in the minimum wage for the respective province, $MWAGE_{2010}$ = the minimum wage for the respective province as of January 1, 2010, and $MWAGE_{2015}$ = the minimum wage for the respective province as of December 31, 2015.

Appendix F:
Difference between Provincial Financial Eligibility Guidelines
and Low Income Cut-Offs

Table 11: Percentage difference between provincial financial eligibility guidelines and low income cut-offs* (1992 base) (Population: rural areas)

	Year	2010						
	Prov.	BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶
Family size	1	38.9%	19.8%	-10.2%	-30.7%	-1.5%	-2.2%	-17.8%
	2	59.1%	21.9%	-7.2%	-3.7%	12.7%	-	-11.9%
	3	63.9%	39.3%	-3.6%	-10.7%	1.2%	-	-14.1%
	4	60.3%	20.7%	-6.8%	-16.9%	-14.5%	-	-19.9%
	5	66.2%	13.9%	-5.6%	-18.7%	-	-	-21.2%
	6	73.2%	9.9%	-8.2%	-	-	-21.5%	-22.9%
	7+	79.0%	-	-10.3%	-	-	-	-24.2%
	Year	2015 ¹						
	1	35.0%	47.4%	35.9%	19.5%	13.4%	-11.3%	-24.4%
	2	55.3%	50.0%	28.1%	43.9%	26.8%	-15.0%	-18.9%
	3	60.4%	71.4%	19.6%	34.4%	15.4%	-8.5%	-20.9%
	4	56.6%	48.5%	8.1%	32.1%	0.1%	-19.5%	-26.3%
	5	62.6%	40.2%	3.7%	35.4%	-	-25.4%	-27.5%
	6	69.3%	35.2%	-0.6%	-	-	-28.4%	-29.0%
	7+	74.7%	-	-4.0%	-	-	-27.1%	-30.3%

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

* BC, AB, and SK were compared to after tax LICOs; MB, ON, and NS were compared to before tax LICOs; QC was compared to after tax LICOs in 2010 and to before tax LICOs in 2015.

¹ LICOs for 2015 were not available and were therefore calculated as $LICO_{2015} = LICO_{1992} \times CPI_{2015} / CPI_{1992}$ (Source: Statistics Canada. [2015]. Low income cut-offs. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

² For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 6+.

³ For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴ For 2010 and 2015, Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵ Saskatchewan guidelines are provided for families with a number of children, where family was defined as one or two-parent household. For this table, two parents are assumed so the eligibility criterion for a family of four is equivalent to a family with two children. Only family sizes of one adult and no children and family with four children were available for 2010.

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

Source for LICOs:

Statistics Canada. (2015). Low income cut-offs (1992 base) after tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl01-eng.htm>

Statistics Canada. (2015). Low income cut-offs (1992 base) before tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>

Table 12: Percentage difference between provincial financial eligibility guidelines and low income cut-offs* (1992 base) (Population of 30,000 or less)

	Year	2010						
		BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶
	Prov.							
Family size	1	21.3%	4.7%	-21.0%	-39.1%	-13.9%	-14.6%	-27.8%
	2	39.0%	6.5%	-18.4%	-15.3%	-1.6%		-22.6%
	3	43.2%	21.7%	-15.2%	-21.5%	-11.5%		-24.5%
	4	40.1%	5.4%	-18.0%	-26.9%	-25.3%		-29.6%
	5	45.3%	-0.5%	-17.0%	-28.5%			-30.8%
	6	51.4%	-4.0%	-19.3%			-31.4%	-32.2%
	7+	56.4%		-21.1%				-33.4%
	Year	2015 ¹						
	1	18.0%	28.8%	19.4%	5.0%	-0.3%	-22.5%	-33.5%
	2	35.7%	31.0%	12.6%	26.5%	11.4%	-25.7%	-28.7%
	3	40.1%	49.8%	5.2%	18.2%	1.4%	-20.1%	-30.5%
	4	36.9%	29.8%	-5.0%	16.2%	-12.0%	-29.7%	-35.2%
	5	42.1%	22.5%	-8.8%	19.0%		-34.8%	-36.3%
	6	47.9%	18.2%	-12.6%			-37.4%	-37.6%
	7+	52.6%		-15.6%			-36.3%	-38.7%

Note: Percentages calculated as $[(\text{Highest contribution level for size of family} - \text{LICO}) / \text{LICO}] * 100$

* BC, AB, and SK were compared to after tax LICOs; MB, ON, and NS were compared to before tax LICOs; QC was compared to after tax LICOs in 2010 and to before tax LICOs in 2015.

¹ LICOs for 2015 were not available and were therefore calculated as $\text{LICO}_{2015} = \text{LICO}_{1992} \times \text{CPI}_{2015} / \text{CPI}_{1992}$ (Source: Statistics Canada. [2015]. Low income cut-offs. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

² For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 6+.

³ For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴ For 2010 and 2015, Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵ Saskatchewan guidelines are provided for families with number of children, where family was defined as one or two-parent household. For this table, two parents are assumed so the eligibility criterion for a family of four is equivalent to a family with two children. Only family sizes of one adult and no children and family with four children were available for 2010.

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

Source for LICOs:

Statistics Canada. (2015). Low income cut-offs (1992 base) after tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl01-eng.htm>

Statistics Canada. (2015). Low income cut-offs (1992 base) before tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>

Table 13: Percentage difference between provincial financial eligibility guidelines and low income cut-offs* (1992 base) (Population of 30,000 to 99,999)

	Year	2010						
	Prov.	BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶
Family size	1	8.8%	-6.2%	-27.7%	-44.3%	-22.8%	-23.4%	-33.9%
	2	24.6%	-4.6%	-25.4%	-22.5%	-11.7%	-	-29.2%
	3	28.4%	9.1%	-22.4%	-28.2%	-20.7%	-	-30.9%
	4	25.6%	-5.5%	-25.0%	-33.2%	-33.1%	-	-35.6%
	5	30.2%	-10.8%	-24.1%	-34.6%	-	-	-36.6%
	6	35.7%	-13.9%	-26.2%	-	-	-38.5%	-38.0%
	7+	40.2%	-	-27.8%	-	-	-	-39.1%
	Year	2015 ¹						
	1	5.8%	15.5%	9.3%	-3.9%	-8.8%	-30.6%	-39.2%
	2	21.6%	17.5%	3.0%	15.8%	2.0%	-33.4%	-34.8%
	3	25.6%	34.2%	-3.8%	8.1%	-7.2%	-28.4%	-36.4%
	4	22.7%	16.3%	-13.1%	6.3%	-19.5%	-37.0%	-40.7%
	5	27.4%	9.8%	-16.6%	8.9%	-	-41.6%	-41.7%
	6	32.6%	5.9%	-20.1%	-	-	-43.9%	-42.9%
	7+	36.8%	-	-22.8%	-	-	-42.9%	-43.9%

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

* BC, AB, and SK were compared to after tax LICOs; MB, ON, and NS were compared to before tax LICOs; QC was compared to after tax LICOs in 2010 and to before tax LICOs in 2015.

¹ LICOs for 2015 were not available and were therefore calculated as $LICO_{2015} = LICO_{1992} \times CPI_{2015} / CPI_{1992}$ (Source: Statistics Canada. [2015]. Low income cut-offs. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

² For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 6+.

³ For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 5+.

⁴ For 2010 and 2015, Quebec separates its eligibility guidelines by single and two-parent families. The higher financial guideline was chosen for each calculation, which was the two-parent family guideline for each applicable family size. Ranged from 1 adult and 0 children to 2 adults and 2 children or more.

⁵ Saskatchewan guidelines are provided for families with number of children, where family was defined as one or two-parent household. For this table, two parents are assumed so the eligibility criterion for a family of four is equivalent to a family with two children. Only family sizes of one adult and no children and family with four children were available for 2010.

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

Source for LICOs:

Statistics Canada. (2015). Low income cut-offs (1992 base) after tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl01-eng.htm>

Statistics Canada. (2015). Low income cut-offs (1992 base) before tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>

Table 14: Percentage difference between provincial financial eligibility guidelines and low income cut-offs* (1992 base) (Population of 100,000 to 499,999)

	Year	2010						
		BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶
	Prov.							
Family size	1	7.4%	-7.3%	-28.2%	-44.6%	-23.8%	-24.4%	-34.3%
	2	23.1%	-5.7%	-25.8%	-23.0%	-12.8%	-	-29.6%
	3	26.8%	7.7%	-22.9%	-28.6%	-21.7%	-	-31.3%
	4	24.0%	-6.7%	-25.5%	-33.6%	-33.9%	-	-36.0%
	5	28.6%	-11.9%	-24.5%	-35.0%	-	-	-37.0%
	6	34.0%	-15.0%	-26.6%	-	-	-39.3%	-38.4%
	7+	38.4%	-	-28.3%	-	-	-	-39.4%
	Year	2015 ¹						
	1	4.4%	14.0%	8.6%	-4.5%	-9.3%	-31.4%	-39.5%
	2	20.1%	16.0%	2.4%	15.1%	1.3%	-34.2%	-35.2%
	3	24.0%	32.6%	-4.4%	7.5%	-7.8%	-29.3%	-36.8%
	4	21.1%	14.9%	-13.6%	5.6%	-20.0%	-37.8%	-41.1%
	5	25.8%	8.4%	-17.1%	8.2%	-	-42.3%	-42.0%
	6	30.9%	4.6%	-20.5%	-	-	-44.6%	-43.3%
	7+	35.1%	-	-23.3%	-	-	-43.6%	-44.2%

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

* BC, AB, and SK were compared to after tax LICOs; MB, ON, and NS were compared to before tax LICOs; QC was compared to after tax LICOs in 2010 and to before tax LICOs in 2015.

¹ LICOs for 2015 were not available and were therefore calculated as $LICO_{2015} = LICO_{1992} \times CPI_{2015} / CPI_{1992}$ (Source: Statistics Canada. [2015]. Low income cut-offs. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

² For 2010 and 2015, financial eligibility guidelines ranged from 1 to a family size of 6+.

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⁵ Saskatchewan guidelines are provided for families with number of children, where family was defined as one or two-parent household. For this table, two parents are assumed so the eligibility criterion for a family of four is equivalent to a family with two children. Only family sizes of one adult and no children and family with four children were available for 2010.

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

Source for LICOs:

Statistics Canada. (2015). Low income cut-offs (1992 base) after tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl01-eng.htm>

Statistics Canada. (2015). Low income cut-offs (1992 base) before tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>

Table 15: Percentage difference between provincial financial eligibility guidelines and low income cut-offs* (1992 base) (Population of 500,000+)

	Year	2010						
	Prov.	BC	AB ²	MB	ON ³	QC ⁴	SK ⁵	NS ⁶
Family size	1	-9.2%	-21.6%	-38.2%	-52.3%	-35.5%	-36.0%	-43.4%
	2	4.1%	-20.3%	-36.1%	-33.7%	-26.3%		-39.4%
	3	7.2%	-8.9%	-33.6%	-38.5%	-33.8%		-40.8%
	4	4.9%	-21.1%	-35.8%	-42.8%	-44.1%		-44.9%
	5	8.7%	-25.5%	-35.0%	-44.0%			-45.8%
	6	13.3%	-28.1%	-36.8%			-48.7%	-46.9%
	7+	17.1%		-38.2%				-47.8%
	Year	2015 ¹						
	1	-11.7%	-3.6%	-6.5%	-17.8%	-21.9%	-42.0%	-47.9%
	2	1.6%	-1.9%	-11.8%	-0.9%	-12.7%	-44.4%	-44.2%
	3	4.9%	12.1%	-17.6%	-7.5%	-20.6%	-40.2%	-45.5%
	4	2.5%	-2.9%	-25.6%	-9.0%	-31.1%	-47.4%	-49.3%
	5	6.4%	-8.3%	-28.6%	-6.8%		-51.2%	-50.1%
	6	10.7%	-11.5%	-31.6%			-53.1%	-51.1%
	7+	14.3%		-33.9%			-52.3%	-52.0%

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

* BC, AB, and SK were compared to after tax LICOs; MB, ON, and NS were compared to before tax LICOs; QC was compared to after tax LICOs in 2010 and to before tax LICOs in 2015.

¹ LICOs for 2015 were not available and were therefore calculated as $LICO_{2015} = LICO_{1992} \times CPI_{2015} / CPI_{1992}$ (Source: Statistics Canada. [2015]. Low income cut-offs. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2010005/lico-sfr-eng.htm>).

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⁵ Saskatchewan guidelines are provided for families with number of children, where family was defined as one or two-parent household. For this table, two parents are assumed so the eligibility criterion for a family of four is equivalent to a family with two children. Only family sizes of one adult and no children and family with four children were available for 2010.

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Statistics Canada. (2015). Low income cut-offs (1992 base) before tax. Retrieved March 29, 2016 from <http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>