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LEGAL AID IN CANADA

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6 August 2004

PARLIAMENTARY INFORMATION AND RESEARCH SERVICE
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LEGAL AID IN CANADA

INTRODUCTION

The delivery of legal aid services to low-income Canadians does not receive the same levels of media attention as other social programs such as health care and education. It is, however, an important issue – particularly for poor people, the judiciary, and members of the legal profession.

While many different programs are run under the ambit of legal aid, it is perhaps best defined as a system which provides individuals with access to the legal system (and, more specifically, to legal representation) who otherwise might not have had the means to do so.(1) According to some legal scholars, ideally a recipient of legal aid would receive representation "similar to that which a client would receive."(2)

This paper examines the current state of legal aid in Canada. In particular, it focuses on state funding and the delivery models instituted by each of the country's provinces and territories. Comparisons are drawn across jurisdictions and over time. It also discusses the legislative framework behind the provision of legal aid. Finally, it documents some of the calls for reform, reviewing the arguments both for and against expanding legal aid programs.

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(1) Department of Justice Canada, "Legal Aid," Ottawa, 2003; available at: http://www.justice.gc.ca/en/ps/pb/legal_aid.html.

(2) Mary Jane Mossman and Patricia Hughes, *Re-Thinking Access to Criminal Justice in Canada: A Critical Review of Needs, Responses and Restorative Justice in Canada*, Research and Statistics Division, Department of Justice, Ottawa, 2001, p. 91.

HISTORY OF LEGAL AID IN CANADA

Legal aid's history dates back to the middle of the 20th century. Before 1951, legal aid did not exist as such; instead, it was synonymous with charity or pro bono work.(3) Some lawyers would voluntarily provide individuals with free legal services. However, there was no legislative basis for legal aid, nor was there any mechanism to ensure that Canadians' legal aid needs were met. While religious groups and organizations such as the Canadian Bar Association became involved in providing legal services to criminal defendants in the 1910s and 1920s, they saw legal aid "as the responsibility of the government" and, as time passed, their lobbying efforts increasingly reflected this assumption.(4)

One of the first country-wide legal aid programs supported by government was established during World War II. Supported by a grant from the Department of National Defence, the Canadian Bar Association started a Legal Aid Programme for members of the Canadian Armed Forces and, later, their dependents. Nevertheless, only a couple of years after the war ended, the Canadian Bar Association suspended the Legal Aid Programme, believing it to be a "temporary war-time measure" rather than an important program that should be expanded to help non-service men and women.(5)

One commentator, however, argues that the war-time Legal Aid Programme planted some of the initial seeds for the development of more comprehensive provincial legal aid programs. After the war ended, the Ontario legal profession began debating the merits of such a program. Its lobbying efforts no doubt influenced the Ontario government's decision to adopt legislation establishing Canada's first institutionalized legal aid program in 1951.(6) At that time, the province entered into an agreement with the Law Society of Upper Canada to jointly provide legal aid services: the Law Society would administer the program while the government would

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(3) For an early history of the discussions surrounding legal aid, see Mary P. Reilly, "The Origins and Development of Legal Aid in Ontario," *Windsor Yearbook of Access to Justice*, Vol. 8, 1988, pp. 81-104. See also Frederick H. Zemans and Lewis T. Smith, "Can Ontario Sustain Cadillac Legal Services?" *Maryland Journal of Contemporary Legal Issues*, Vol. 5, No. 2, 1994, pp. 277-282.

(4) Dieter Hoehne, *Legal Aid in Canada*, Edwin Mellon Press, Queenston, Ontario, 1989, pp. 19-22.

(5) Hoehne (1989), pp. 49-57, and Reilly (1988), pp. 95-96.

(6) Reilly (1988), pp. 101-102, and Canadian Centre for Justice Statistics, *Legal Aid in Canada: Description of Operations*, Statistics Canada, Ottawa, 2001.

help pay for it. With the passage of the *Law Society Amendment Act*,[7] Ontario also became the first province to fund an institutionalized legal aid system; however, it paid lawyers only for their expenses and other administrative costs. Legal aid thus remained a voluntary activity of lawyers.[8] It was only in 1967, after the Attorney General of Ontario tabled the *Report of the Joint Committee on Legal Aid*, that the province gave eligible clients[9] a statutory right to legal aid under the *Legal Aid Act*. The Act also allowed lawyers to claim counsel fees, which, up until that point, had been denied to them.[10]

Similar programs were set up in the other provinces over the course of the 1960s and 1970s.[11] At that time (and even today), the provinces' coverage and eligibility requirements varied significantly. For example, low-income people in the Atlantic provinces were much less able to obtain legal aid services than their Western Canadian counterparts.[12]

At the federal level, legal aid was not a popular topic of discussion until somewhat later. In fact, it is said that Parliament only really began discussing legal aid after the enactment of the Canadian Bill of Rights in 1960.[13] Most of the debate in the House of Commons centred on whether legal aid (a) was part of the administration of justice (and thus fell under the ambit of the provinces) or (b) formed part of the welfare state, and was thus a federal responsibility. These debates were mirrored at the Cabinet table, with the Minister of Justice and the Minister of Health and Welfare debating under whose jurisdiction legal aid fell.[14]

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(7) S.O., 1951, c. 45.

(8) Lisa Addario, National Association of Women and the Law, *Getting A Foot in the Door: Women, Civil Legal Aid and Access to Justice*, Policy Research, Status of Women Canada, Ottawa, 1998, p. 3.

(9) Candidates for legal aid certificates had to be financially eligible. Legal aid certificates were issued "in a wide range of circumstances." Ontario Legal Aid Review, *A Blueprint for Publicly Funded Legal Services: A Report of the Ontario Legal Aid Review*, Vol. 1, Toronto, 1997, p. 13.

(10) *Ibid*., pp. 10-13.

(11) Canadian Centre for Justice Statistics (2001).

(12) Addario (1998), p. 3.

(13) The legal profession first began discussing the possibility of a public defender system in the early 1920s, while debates in the House of Commons about legal aid policy date back to the 1950s. Hoehne (1989), pp. 153-155.

(14) *Ibid*., pp. 90, 113.

In the late 1960s, the federal government began to change its attitude to legal aid: it began to see legal aid as part of its "overall reform strategy," geared towards addressing the problems of poverty, crime, and disorder.(15) In 1972, the federal government agreed to share the cost of criminal legal aid with the provinces. The Federal-Provincial Agreement on Legal Aid in Criminal Matters, signed in December 1972, established a cost-sharing arrangement between the federal government and the provinces. Under the agreement, the federal government would contribute up to 50 cents per person per province for criminal legal aid. Civil legal aid would also be funded, through the Canada Assistance Plan.(16) The administration of the legal aid programs would remain a provincial responsibility; however, defendants who faced at least 10 years' imprisonment (or death) would be able to choose their own lawyer.(17) This framework largely remains in place today.

LEGAL AID PROGRAMS IN CANADA

A. Financing of Legal Aid by the Federal Government

1. Criminal Legal Aid

The Government of Canada contributes to the provinces' and territories' legal aid programs in two ways: through direct payments by the Department of Justice; and through the Canadian Social Transfer (CST).

Legal aid for criminal matters is funded by the Department of Justice. This financing is governed by a series of contribution agreements with each of the provinces and territories. As Table 1 demonstrates, federal contributions to criminal legal aid programs (in constant dollars) decreased between the 1997-1998 and 2000-2001 fiscal years.

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(15) *Ibid.*, pp. 98-99.

(16) As discussed later in the paper, the Canada Assistance Plan was later replaced by the Canada Health and Social Transfer, which in turn was later separated into the Canada Social Transfer and the Canada Health Transfer.

(17) Hoehne (1989), pp. 153-155.

Table 1

Department of Justice Funding of Criminal Legal Aid Programs(18)

Fiscal Year	Funding in 1992 Constant Dollars	
	Total $000	**Per Capita**
1997-1998	79,217	2.64
1998-1999	75,634	2.50
1999-2000	73,892	2.42
2000-2001	72,079	2.34
2001-2002	79,063	2.54

However, in 2001-2002, funding returned to approximately the same level as in 1997-1998. This sharp increase was due to a one-time funding agreement between the federal, provincial, and territorial governments under which the Government of Canada would provide an additional $20 million for the 2001-2002 and 2002-2003 fiscal years. The federal government agreed to provide this additional funding "in order to help alleviate some of the pressures these jurisdictions are currently facing."(19) In 2001-2002, approximately $2.50 was spent on criminal legal aid for each Canadian.

This increase in funding will continue until at least 2005-2006. In October 2003, at the Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice, the Ministers of Justice agreed to a three-year Legal Aid Renewal Strategy for the 2003-2004 to 2005-2006 fiscal years. Under this Renewal Strategy, the federal Department of Justice will increase its funding for criminal legal aid from $82 to $92 million per year. The Department of Justice will also create a new Investment Fund that will provide funding for emerging areas of need involving criminal matters. Some provinces have indicated that they expect to use the investment to fund cases in the areas of immigration and refugee law.(20)

(18) Jennifer Tufts and Mark Sudworth, *Legal Aid in Canada: Resource and Caseload Statistics*, Canadian Centre for Justice Statistics, Statistics Canada, Ottawa, 2003, p. 25.

(19) Department of Justice Canada (2003).

(20) Department of Justice and Solicitor General Canada, News Release, "Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice," La Malbaie, 1 October 2003.

2. Civil Legal Aid

Before the 1995-1996 fiscal year, the Government of Canada funded civil legal aid programs through the Canada Assistance Plan (CAP), which was administered by the then Department of Health and Welfare. In 1996, however, civil legal aid funding (along with the rest of the programs financed by CAP) was absorbed into the Canada Health and Social Transfer (CHST), which was then separated in April 2004 into the Canada Social Transfer (CST) and the Canada Health Transfer. The CST is a federal transfer payment that provides the provinces and territories with support for post-secondary education, social assistance, and social services. Because the individual provinces and territories are responsible for determining how much of their CST transfer will be allocated to civil legal aid, exact data on the federal government's contribution to this type of legal aid are no longer available.(21)

B. Funding and Administration of Legal Aid Programs by the Provincial and Territorial Governments

The delivery of legal aid services in Canada is best described as a patchwork quilt. The Constitution allocates jurisdiction over the administration of justice to the provinces and territories;(22) accordingly, legal aid is considered to be a provincial and territorial responsibility.

Each province and territory has its own legal aid system. While the actual mechanics of these systems vary widely, they generally follow one of three models: (1) judicare; (2) a staff lawyer model; and (3) a mixed model. Under the judicare system (currently in place in Alberta and Ontario),(23) private lawyers are paid an hourly tariff to provide their services. With a staff system, the legal aid program employs lawyers to provide clients with legal representation. A number of provinces have adopted this model; it is currently operating in Newfoundland and Labrador, Prince Edward Island, Nova Scotia, and Saskatchewan. However,

(21) Tufts and Sudworth (2003), p. 8.

(22) *Constitution Act, 1867*, ss. 92(14).

(23) Statistics Canada considers the legal aid programs in both Alberta and Ontario as judicare programs "since such a high proportion of direct legal expenditures is directed to private lawyers who provide legal aid services." However, the two provinces also employ some clinic-based alternative legal service delivery programs. See Tufts and Sudworth (2003), p. 5.

in extraordinary circumstances, private lawyers will be retained; for example, in cases where there is a conflict of interest or where a staff lawyer is unable to provide the necessary service. Under a mixed system, the legal aid program both employs its own lawyers and has a fee-for-service program. Generally, clients are able to choose their own lawyer from a "panel" of staff and private lawyers. The remaining provinces and territories (New Brunswick, Northwest Territories, Nunavut, Quebec, Manitoba, British Columbia, and Yukon Territory) employ some variation of this model.(24)

As demonstrated by Table 2, the provincial and territorial governments (supported by the federal government) are the largest supporters of legal aid, contributing between 77% of the cost (in Alberta) and 100% (in the Northwest Territories). In some of the provinces and territories, additional resources are gleaned from client contributions and cost recoveries (where the legal aid programs collect money from the client, judgment, settlement or award) and from levies collected by the province's or territory's law society/bar association.

(24) *Ibid*., pp. 5-6.

Table 2

Legal Aid Revenues for Each Province and Territory (2001-2002) by Source of Revenue[25]

Province or Territory	Total Revenue	Provincial/ Territorial Government Contributions		Client Contributions and Cost Recoveries		Contributions of the Legal Profession		Other[26]	
	$000	$000	%	$000	%	$000	%	$000	%
Alberta	35,529	27,242	77	2,674	8	–	–	5,613	16
British Columbia	93,718	88,776	95	231	0	3,389	4	1,322	1
Manitoba	19,348	15,446	80	1,711	9	2,089	11	102	1
New Brunswick	4,729	3,873	82	122	3	150	3	583	12
Newfoundland and Labrador	–	–	–	–	–	–	–	–	–
Northwest Territories	3,747	3,747	100	–	–	–	–	–	–
Nova Scotia	13,070	12,526	96	3	0	–	–	541	4
Nunavut	3,603	3,390	94	1	0	–	–	212	
Ontario	288,316	246,695	86	15,001	5	0	0	26,620	9
Prince Edward Island	777	702	90	–	–	–	–	75	10
Quebec	120,958	119,087	98	1,511	1	–	–	360	0
Saskatchewan	11,744	11,415	97	39	0	–	–	290	2
Yukon Territory	1,429	1,389	97	24	2	–	–	16	1

While government contributions are the programs' largest source of revenue, the governments' per capita expenditure on legal aid, as shown in Table 3, fluctuates significantly across each of the provinces and territories. For example, New Brunswick spent $7.18 per person on legal aid in the 2001-2002 fiscal year. In contrast, Manitoba spent more than double that – $16.99 per person.

(25) Because information is not available about the level of civil legal aid funding provided by the federal government for each of the provinces/territories, this table does not include that source of revenue. *Ibid*., pp. 22-23. "–" denotes that data are not available.

(26) According to the authors, "[t]he other category may include, among others, revenue from investments, research sales, and general interest earnings." *Ibid*., p. 23.

Table 3

Legal Aid Expenditures in 2001-2002 by Province and Territory(27)

Province or Territory	Total Expenditure ($000)	Per Capita Expenditure ($)
Alberta	32,438	10.59
British Columbia	89,966	21.96
Manitoba	19,534	16.99
New Brunswick	5,437	7.18
Newfoundland and Labrador	–	–
Northwest Territories	3,747	91.61
Nova Scotia	12,993	13.78
Nunavut	3,499	124.08
Ontario	293,516	24.72
Prince Edward Island	777	5.61
Quebec	118,196	15.95
Saskatchewan	11,904	11.72
Yukon Territory	1,111	37.16

Researchers at Statistics Canada suggest that the discrepancy in per capita spending may be the result of several factors. Along with budget size, differences in funding levels may be attributed to "variations in the nature of the legal aid plans, including the types of legal cases covered, financial eligibility [criteria], and mode of service delivery." Other general factors may include "the socio-economic characteristics of the region and the crime rate." It is important to note too that the high level of per capita legal aid funding in the territories may be due to the costs involved with administering any type of justice program in "remote, sparsely populated regions."(28)

The differences in spending levels may help to explain why legal aid service delivery is so inconsistent. Some commentators have noted a wide variation in client eligibility, accessibility of legal services (e.g., physical accessibility), and services offered.(29) For instance, because the cost of living varies significantly across the country, the federal/provincial/territorial cost-sharing agreement for criminal legal aid provides the provinces and territories with some

(27) *Ibid*., pp. 28-29. "–" denotes that data are not available.

(28) *Ibid*., p. 11.

(29) Albert Currie, *A Brief Review of Criminal Legal Aid Financial Eligibility Guidelines*, Research, Statistics and Evaluation Directorate, Statistics Canada, 1995. See also Manitoba Association of Women and the Law, *Women's Rights to Public Legal Representation in Canada and Manitoba*, Manitoba Association of Women and the Law, 2002; and Janice Tibbetts, "Legal Aid a Directionless

flexibility to determine who is financially eligible for legal aid services. Table 4 reviews the guidelines set by each province and territory for determining the financial eligibility of applicants. It is important to note, however, that these income cut-off points are only for complete legal aid coverage.

Table 4

Financial Eligibility Guidelines for One Adult, by Province and Territory(30)

Province or Territory	Annual Income of One Adult and Year
Alberta	$13,900 gross (in 2001)
British Columbia	$11,100 for criminal cases; $12,024 for all other cases (in 1995)
Manitoba	$14,000 (no date)
New Brunswick	No eligibility criteria available.
Newfoundland and Labrador	$4,716 net (no date)
Northwest Territories	No eligibility criteria available.
Nova Scotia	$12,804 gross (in 2001)
Nunavut	No eligibility criteria available.
Ontario	$9,192 net income; $14,604 net annual maximum allowance (in 1996-1997)(31)
Prince Edward Island	$14,172 gross (no date)
Quebec	$8,870 (no date)
Saskatchewan	$9,420 net (in 1999)
Yukon Territory	$10,260 net in Whitehorse; $15,720 net outside Whitehorse (in 1998)

Because each province and/or territory sets its own financial eligibility guidelines, some provinces/territories have lower cut-off rates than others. However, financial eligibility is not the only reason why an applicant may be refused legal aid. Many applicants are refused legal aid because of coverage restrictions.(32)

Program, Internal Justice Report Says: Federal Cuts Behind Disparity in Services Across Nation," *Ottawa Citizen*, 19 February 2002, p. A4.

(30) Canadian Centre for Justice Statistics (2001). This table includes the most recent information currently available.

(31) Ontario uses a "needs" test rather than an income test to determine eligibility for legal aid. If an applicant's net income exceeds $9,192, his or her assets, income and monthly living expenses are examined. Should the applicant exceed the maximum allowance of expenses ($14,604), he or she will either be denied legal aid or be required to contribute to the cost. *Ibid*., pp. 133-134.

(32) Currie (1995), pp. 1-2, 18-22.

Legal aid is generally available to individuals charged with any indictable offence. These offences typically carry a maximum sentence of five years' imprisonment; some of the most serious offences carry a minimum term of life imprisonment without eligibility for parole for 25 years. Individuals charged with summary conviction offences may also have access to legal aid services where a conviction would result in either imprisonment or endangerment of their livelihoods. The provinces' and territories' coverage of criminal matters is not uniform, however. While Alberta will sometimes provide legal aid under special circumstances (for example, due to mental health or language issues) and British Columbia will consider applications where there is the threat of deportation if convicted, Ontario will accept applications only from individuals who face the possibility of imprisonment.(33)

Limits on coverage are most marked in civil legal aid cases. Quebec, for example, offers the most comprehensive coverage of civil legal matters in the country. It accepts applications for legal aid in cases of "income security, auto and employment insurance, and workers compensation." In contrast, New Brunswick, Saskatchewan and the Yukon Territory offer civil legal aid only for cases that involve family matters.(34)

While there is necessarily some pre-screening of applicants by legal aid staff, it is nonetheless interesting to note the number of refusals for each of the provinces and territories. Many jurisdictions were also able to furnish Statistics Canada with the reasons why the applications were refused.

The data suggest that total refusal rates are much higher in some provinces/territories than in others. Both Alberta and British Columbia have overall refusal rates of approximately 25%; in comparison, Nova Scotia and Ontario refuse only about 10% of applicants. The reasons for refusal also varied. For example, out of the 257 applications that were refused by the Legal Services Board in the Northwest Territories in 2001-2002, 52 applicants (20%) were deemed financially ineligible and 105 (41%) were refused because of non-compliance or abuse of the program. The Quebec Legal Services Commission, on the other hand, turned down 24,349 applicants (61% of 40,132 total applications) because their incomes exceeded the eligibility thresholds; only 46 (less than 1%) were refused because of previous non-compliance or abuse of the program.

(33) Tufts and Sudworth (2003), p. 6. More generally, see Canadian Centre for Justice Statistics (2001).

(34) Tufts and Sudworth (2003), pp. 6, 13.

Table 5

Refused Legal Aid Applications by Province/Territory and Reason for Refusal (2001-2002)[35]

Province or Territory	Total Applications	Total Refusals		Reason for Refusal									
				Financial Eligibility		Coverage Restrictions		Lack of Merit		Non-Compliance or Abuse		Other Reasons[36]	
	#	#	%	#	%	#	%	#	%	#	%	#	%
Alberta	48,185	11,765	24	3,623	31	2,211	19	1,132	10	566	5	4,233	36
British Columbia	92,232	22,786	25	6,690	31	9,237	41	0	0	–	–	6,589	29
Manitoba	21,509	2,952	14	338	11	85	3	464	16	27	2	2,063	70
New Brunswick	2,468	810	33	–	–	–	–	503	62	–	–	307	38
Newfoundland and Labrador	–	–	–	–	–	–	–	–	–	–	–	–	–
Northwest Territories	1,147	257	22	52	20	14	5	84	33	105	41	2	1
Nova Scotia	25,946	2,518	10	1,072	43	43	2	356	14	71	3	3	39
Nunavut	831	64	8	13	20	22	34	4	6	25	39	39	0
Ontario	358,376	35,521	10	7,907	22	8,131	20	1,565	4	46	0	0	50
Prince Edward Island	–	–	–	–	–	–	–	–	–	–	–	–	–
Quebec	264,270	40,132	15	24,349	61	8,131	20	1,565	4	46	0	0	15
Saskatchewan	22,213	1,536	7	1,194	78	188	12	71	5	27	2	2	4
Yukon Territory	1,384	150	11	53	35	51	34	6	4	40	27	27	0

(35) *Ibid*., pp. 54-55. "–" denotes that data are not available. Any percentage less than 1% is given the value 0.

(36) According to Statistics Canada, "[o]ther reasons for refusal may include, among others, client cancelled/abandoned, coverage cancelled, or duplicate application." *Ibid*., p. 55.

LEGAL AID, PARLIAMENT, AND THE COURTS

A. Legislative Basis for Legal Aid in Canada

1. Federal and International Legislation

There is very little legislation that requires the federal government to provide legal aid services to Canadians. Moreover, the legislation that is in effect only sets out rules governing the provision of legal counsel in criminal matters. Sections 684 and 694.1 of the *Criminal Code*(37) stipulate that judges at the Court of Appeal or the Supreme Court of Canada can assign state-funded counsel to an accused; however, two criteria must be met. First, the judge must deem legal representation "desirable in the interests of justice." Second, the accused must demonstrate that he or she is unable to afford the costs of private counsel. The *Youth Criminal Justice Act*(38) extends the right to counsel for youth appearing before the lower courts. Section 25(4) requires the youth justice court to refer an accused to the province's legal aid program, should he or she desire legal representation but be unable to afford it. In cases where the accused is unable to obtain legal assistance under that program, the youth justice court can direct the Attorney General to appoint state-funded counsel for the youth.

At the international level, Canada is a state party to the *International Covenant on Civil and Political Rights*. Under Article 14(d), an individual charged with a criminal offence is entitled:

> … to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of that right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.(39)

(37) R.S.C. 1985, c. C-46.

(38) S.C. 2002, c. 1.

(39) *International Covenant on Civil and Political Rights*, United Nations, 1976; available at: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

While legislation guiding the supply of legal aid services is limited, the Department of Justice has nonetheless stated that the Government of Canada "recognizes it has a shared responsibility for criminal legal aid." According to the Department of Justice, this sense of responsibility derives from the fact that the federal government exercises constitutional responsibility for the development of criminal law and "because of its responsibility under the *Charter of Rights and Freedoms* to ensure legal representation in criminal matters." There is no similar declaration for the delivery of legal aid in civil law cases.(40)

2. Provincial and Territorial Legislation and Regulation

A variety of statutes provide authority for the provinces' and territories' legal aid systems. As Table 6 shows, the legislative and regulatory backdrops for legal aid are much more extensive in some jurisdictions than in others.

Table 6

Legislation and Regulations by Province and Territory(41)

Province/Territory	Legislation	Regulations
Alberta	*Legal Profession Act*, Statutes of Alberta, 1990, c. L-9.1 (SS. R, 7(2)(I))	The *Legal Aid Society of Alberta Rules* – June 12, 1993.
British Columbia	*Legal Services Commission Act*, S.B.C. 1975, c. 36 *Legal Services Society Act*, R.S.B.C. 1979, c. 227 *Legal Services Society Act*, R.S.B.C. 1996, c. 256	
Manitoba	*The Legal Aid Services Society of Manitoba Act*, R.S.M. 1987, c. L105	Regulations under *The Legal Aid Services Society of Manitoba Act*: 225/91, 59/92, 106/92, 64/93, 34/94, 105/94, 160/94, 2/98, 113/99, 103/2000

(40) Department of Justice Canada (2003).

(41) This table includes the most current information available (amendments to the legislation are not included). Canadian Centre for Justice Statistics (2001).

Province/Territory	Legislation	Regulations
New Brunswick	*Legal Aid Act*, R.N.B.C., 1971, c. 11	N.B.R. 84/112, 90/7, 90/13, 90/22, 94/37
Newfoundland and Labrador	*Legal Aid Act*, R.S.N.L. 1990, c. L-11	
Northwest Territories	*Legal Services Act*, R.S.N.W.T. 1988, c. L-4 *Financial Administration Act*, R.S.N.W.T. 1988, c. F-4	*Legal Services Regulations*, R.R.N.W.T. 1990, c. L-8
Nova Scotia	*Legal Aid Act*, R.S.N.S.L. 1989, c. 252	N.S. Regulation 77/77, 128/82, 86/85, 90/83, 169/89, 102/90
Nunavut	*Legal Services Act (Nunavut)*, R.S.N.W.T. 1988, c. L-4 *Financial Administration Act*, R.S.N.W.T. 1988, c. F-4	*Consolidation of Legal Services Regulations*, R.R.N.W.T. 1990, c. L-8
Ontario	*Legal Aid Act*, R.S.O. 1990, c. L9 *Legal Aid Services Act*, S.O. 1998, c. 26	R.R.O. 1990 Regulation 710: 657/92, 729/92, 421/93, 273/94, 68/95, 536/95, 130/96, 131/96, 410/98
Prince Edward Island	None	
Quebec	*Legal Aid Act*, R.S.Q., c. A-14	
Saskatchewan	*Legal Aid Act*, S.S. 1983, c. L-9.1	
Yukon Territory	*Legal Services Society Act*, R.S.Y. 1986, c. 101	*Legal Services Society Act*, O.I.C. 1987/70

B. Legal Aid and the Courts

In the early 1990s, the Supreme Court of Canada ruled that there is no constitutional right to legal aid. Nevertheless, it has also stated that individuals have a right to free legal counsel under certain specific circumstances.(42)

This part of the paper first reviews the limits placed by the Court on any Charter-based claim for the mandatory provision of legal aid. It then goes on to consider the circumstances under which legal aid must be provided, in both criminal and civil cases.(43)

(42) Vicky Schmolka, "Making the Case," in *Making the Case: The Right to Publicly-Funded Legal Representation in Canada*, Canadian Bar Association, Ottawa, 2002, p. 2E.

(43) This section reviews only those cases which legal academics cite as precedent-setting. Material is drawn from Schmolka (2002).

1. *R.* v. *Prosper* (1994)[44] and *R.* v. *Matheson* (1994)[45]

Defence counsel, anti-poverty groups and organizations such as the Canadian Bar Association have recently looked to the courts to improve access to legal aid programs. In 1994, the Supreme Court of Canada reviewed two criminal cases that raised the question of whether the *Canadian Charter of Rights and Freedoms* compelled the state to provide defendants with publicly funded legal counsel.[46]

In the first case, *R.* v. *Prosper*, the defendant Prosper was arrested for impaired driving. At the time of his arrest, the police read to him the following caution:

> … you have the right to retain and instruct counsel without delay. You may call any lawyer you wish. You have the right to apply for legal assistance without charge through the Provincial Legal Aid Program.

The officer also informed him that a list of legal aid lawyers would be provided to him upon request. Upon arriving at the station, Mr. Prosper telephoned approximately 15 of the legal aid lawyers on the list provided by the police. However, he was unable to secure the services of duty counsel; at the time, legal aid lawyers working in the Halifax/Dartmouth area were not accepting calls after regular business hours, except one. When asked by the police whether he would like to secure the services of a private lawyer, the defendant stated that he could not afford one. Mr. Prosper then agreed to take the breathalyser test. His blood alcohol ratio was above the legal limit.

The facts of the second case are similar. In *R.* v. *Matheson*, the defendant was charged with impaired driving and refusing to comply with a demand for a breathalyser test. The police found Mr. Matheson in his car on the side of the road. While the keys were in the ignition, and the car was running, he was asleep at the wheel. Mr. Matheson showed indications of impairment and the police arrested him. Before demanding a breath sample, an officer gave him the following caution:

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(44) *R.* v. *Prosper* [1994] 3 S.C.R. 236.

(45) *R.* v. *Matheson* [1994] 3 S.C.R. 328.

(46) Additional decisions addressing the scope of the state's obligations towards duty counsel services were handed down at the same time as *R.* v. *Prosper* and *R.* v. *Matheson*. They are: *R.* v. *Battle* [1994] 3 S.C.R. 173, *R.* v. *Pozniak* [1994] 3 S.C.R. 310, and *R.* v. *Harper* [1994] 3 S.C.R. 343.

> … I am arresting you for impaired driving. You have the right to retain and instruct counsel without delay. You may call any lawyer you wish. You have the right to apply for legal assistance without charge through the Provincial Legal Aid Program, do you understand…?

Matheson stated that he understood the caution and did not require the services of a lawyer. At the time of Mr. Matheson's arrest, Prince Edward Island did not have a duty counsel service available to individuals upon their arrest. He refused to take the breathalyser test.

At issue in both cases was whether s. 10(*b*) of the *Canadian Charter of Rights and Freedoms* places a constitutional obligation upon governments to provide individuals with "free and immediate legal advice" upon arrest or detention.(47) Specifically, s. 10(*b*) of the Charter states that: "Everyone has the right on arrest or detention … *b*) to retain and instruct counsel without delay and to be informed of that right."

In both decisions, the Court found that s. 10(*b*) of the Charter does not require that duty counsel services be made available to detainees who request it, irrespective of their financial means. In particular, while recognizing the significance of these programs, in terms of both their "fairness and administrative convenience," the Court unanimously agreed that the Charter does not place an obligation upon governments to provide duty counsel services.(48) Lamer C.J., speaking for the majority, stated that "it is neither appropriate nor necessary" for the Supreme Court to find that an accused's Charter rights guarantee access to free and immediate duty counsel.(49)

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(47) *R.* v. *Prosper* (1994), p. 247. In an earlier case, *R.* v. *Brydges* [1990] 1 S.C.R. 190, the Court found that the defendant's s. 10(*b*) rights had been violated when the police did not inform him about the existence of legal aid or duty counsel. As a result, most provinces issued caution cards to police officers, which are to be read to individuals upon arrest or detention. However, Lamer J., speaking for the majority of the Court, stated that:

> I wish to also point out that the issue of whether there is a constitutional right to have assistance or representation of counsel is not before the Court. This issue normally arises when an accused cannot bring himself [or herself] within the provincial Legal Aid plan and duty counsel cannot, as they usually cannot, furnish a full defence. A consideration of this issue goes beyond an examination of s. 10 of the Charter to ss. 7 and 11(*d*). That matter will have to be decided when the facts of the case raise the issue and the matter is fully argued before the Court (p. 217).

It is this issue that the cases *R.* v. *Prosper* and *R.* v. *Matheson* explore.

(48) *R.* v. *Prosper* (1994), p. 265.

(49) *Ibid*., p. 266.

Among the reasons given for its conclusion, the Court recognized that the Charter does not explicitly provide individuals with a right to free and immediate legal counsel after arrest. In fact, when reviewing the *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, the Court found that Parliament considered and rejected an additional clause under s. 10 that would have given individuals the right "without sufficient means to pay for counsel and if the interests of justice so require, to be provided with counsel." Consequently, the Court was hesitant to interpret s. 10(*b*) in a way that would have required governments to provide a service that they had unequivocally rejected as a Charter right. Lamer C.J. wrote that:

> In my opinion, it would be imprudent for this Court not to attribute any significance to the fact that [the] clause was not adopted. In light of the language of s. 10 of the *Charter*, which on its face does not guarantee any substantive right to legal advice, and the legislative history of s. 10, which reveals that the framers of the *Charter* decided not to incorporate into s. 10 even a relatively limited substantive right to legal assistance (i.e., for those "without sufficient means" and "if the interests of justice so require"), it would be a very big step for this Court to interpret the *Charter* in a manner which imposes a positive *constitutional* obligation on governments. The fact that such an obligation would almost certainly interfere with governments' allocation of limited resources by requiring them to expend public funds on the provision of a service is, I might add, a further consideration which weighs against this interpretation [emphasis in original].(50)

In a concurring judgement, L'Heureux-Dubé J. said that the "living tree" theory was never meant "to transform completely a document or add a provision which was specifically rejected at the outset. It would be strange, and even dangerous, if courts could so alter the constitution of a country."(51) Moreover, according to L'Heureux-Dubé J., elected representatives ought to have jurisdiction over government spending: "… the scope of services available through Legal Aid is generally not, in my opinion, for the courts to decide."(52)

(50) *Ibid*., p. 267.

(51) *Ibid*., p. 287.

(52) *Ibid*., p. 288.

While *R.* v. *Prosper* and *R.* v. *Matheson* deal only with the provision of preliminary legal advice upon arrest, and not with legal representation at trial or on appeal, most commentators agree that these decisions severely limit any claim to "a general right to state-funded counsel even in the criminal law context."(53)

2. Legal Aid in Criminal Law Cases

As we have seen, the Constitution and the *Canadian Charter of Rights and Freedoms* do not provide a constitutionally guaranteed right to legal aid. The courts, however, have found that, under certain circumstances, publicly funded legal counsel must be given to a defendant charged with a criminal offence.

Even before the Charter came into effect, some judges appointed state-funded counsel for defendants in cases where a lack of representation could have threatened the defendant's right to a fair trial. For instance, in *R.* v. *White*,(54) McDonald J. held that when deciding whether to appoint defence counsel, a judge ought to consider: (1) whether the accused can afford his or her own counsel; (2) whether legal aid is available under the circumstances; (3) whether the ability of the accused and/or the complexity of the trial would limit the accused's ability to participate in his or her own defence; and (4) whether a guilty verdict would lead to the imprisonment of the accused.

Post-Charter, the lead case on legal representation for criminal defendants is widely acknowledged to be *R. v. Rowbotham*.(55) In this case, Laura Kononow was charged with conspiracy to traffic hashish and marijuana. She was unrepresented by counsel during her portion of a large conspiracy trial involving 11 other accused. Her defence was limited – Ms. Kononow made an opening address to the jury and called one witness to testify about her employment situation. She did not testify herself. During the trial, an application was made to the judge to appoint counsel for Ms. Kononow. The Law Society of Upper Canada, which administered the province's legal aid program at the time, claimed that Ms. Kononow did not qualify for legal aid because of her income (which was at that time approximately $24,000 a year). Counsel for Ms. Kononow stated that while she may have been able to cover the costs of

(53) Margaret McCallum, "Is There a Constitutionally-Protected Right to Legal Aid in Canada?" in Canadian Bar Association (2002), p. 136E. Other articles in the same volume are also relevant.

(54) *R.* v. *White* [1976] 32 C.C.C. (2d) 478 (Alta Q.B.), pp. 37-44. A similar line of questioning was listed by Seaton J.A. in *R.* v. *Ewing* [1974] 18 C.C.C. (2d) 356 (B.C.C.A.), p. 45.

(55) *R.* v. *Rowbotham* [1988] 41 C.C.C. (3d) 1.

a typical one- to two-week trial, she would not be able to afford the legal costs associated with a trial that was expected to last at least four months (in the end, the trial took nearly a year). While the trial judge expressed concern over Ms. Kononow's ability to adequately represent herself, he ultimately dismissed her application, not convinced that she could not afford private legal counsel.

The issue before the Ontario Court of Appeal was whether Laura Kononow had a constitutional right to legal representation under ss. 10(*b*), 7, and 11(*d*) of the *Canadian Charter of Rights and Freedoms*. The Court stated that s. 10(*b*) does not give a criminal defendant the automatic right to state-funded legal counsel:

> The right to retain counsel, constitutionally secured by s. 10(b) of the Charter, and the right to have counsel provided at the expense of the state are not the same thing. The Charter does not *in terms* constitutionalize the right of an indigent accused to be provided with funded counsel [emphasis in original].(56)

It was the opinion of the Court that the framers of the Charter likely chose not to codify the right to legal counsel because they believed that the provincial legal aid programs were in and of themselves enough to ensure that individuals charged with serious crimes would have legal representation, irrespective of their income.

The Court, however, found that ss. 7 and 11(*d*) of the Charter give criminal defendants the right to counsel if legal representation is necessary to ensure that the accused obtains a fair trial. In light of the circumstances of this particular case, the Court found that Ms. Kononow did not have the financial resources to secure legal counsel for the duration of the trial. Since the case was to be re-tried, the Court recommended that a pre-trial hearing be set up between the accused and legal aid officials about Ms. Kononow's need for legal assistance.(57)

The Court also concluded that judges have the right to appoint counsel for a criminal defendant in cases where a lack of representation would compromise the defendant's right to a fair trial – even if he or she has been denied legal aid.(58) In these "exceptional" cases, a judge can stay the trial's proceedings until state-funded counsel is found. The judge can also "direct [a provincial legal aid program] or the appropriate Attorney-General to pay the fees of counsel."(59)

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(56) *Ibid.*, pp. 65-66.

(57) *Ibid.*, pp. 66-68.

(58) However, the Court also said that decisions by provincial legal aid programs are "entitled to great respect." *Ibid.*, p. 67.

(59) *Ibid.*, pp. 69-70.

Since *R.* v. *White*, *R.* v. *Ewing*, and *R.* v. *Rowbotham*, judges have begun to rely on a particular test when making decisions about whether an accused needs legal counsel to satisfy his or her ss. 7 and 11(*d*) rights. First, the defendant must demonstrate financial need. Second, the trial proceedings must be complex and, oftentimes, the accused must be facing the possibility of imprisonment. Finally, there must be some evidence that the defendant, left without legal counsel, would not be able to properly defend himself or herself at trial. Typical questions that judges would ask themselves include:

> How articulate is the accused? What is the accused's level of education? Does the accused understand what to prove as defence to the Crown's evidence? Will the accused be able to cross-examine witnesses? Can the accused present evidence and make arguments?

However, it is up to the accused to raise the issue of his or her lack of legal representation.(60)

3. Legal Aid in Civil Law Cases

A more recent Supreme Court of Canada decision dealt with whether an individual involved in a civil law case had the right to legal aid under the Charter. In *New Brunswick (Minister of Health and Community Services)* v. *G. (J.)*,(61) the Government of New Brunswick sought a judicial order against the appellant G. J. in order to suspend custody of her three children. G. J.'s children were placed under the care of the Minister of Health and Community Services of New Brunswick in the fall of 1993. In the fall of 1994, the Ministry gave notice to the appellant that it was seeking to extend its custody of the children for an additional six months. G. J. decided to contest the temporary custody application and requested a full hearing.

The appellant applied to Legal Aid New Brunswick for legal assistance with the hearing. Even though G. J. was on social assistance, Legal Aid New Brunswick denied her a legal aid certificate, on the grounds that the program did not cover cases involving custody applications. The issue before the Supreme Court of Canada was whether parents have a constitutional right, under s. 7 of the Charter, to be supplied with state-funded counsel in cases where the government seeks a judicial order suspending custody of their children.

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(60) Schmolka (2002), pp. 5E-6E.

(61) *New Brunswick (Minister of Health and Community Services)* v. *G. (J.)* [1999] 3 S.C.R. 46.

According to Lamer C.J., who wrote for the majority, a fair hearing requires that parents be able to effectively participate in it. This participation is essential because it ensures that the best interests of the child are met. If a parent cannot adequately present his or her case, the judge may not be able to determine what is in the child's best interests. Indeed, "[t]here is a risk that the parent will lose custody of the child when in actual fact it might have been in the child's best interests to remain in his or her care."(62)

Consequently, the Court found that "*[i]n the circumstances of this case*, the Government of New Brunswick did […] have a constitutional obligation to provide G. J. with state-funded counsel."(63) The appellant's right to a fair hearing required that she be supplied with legal representation. This decision, Lamer C.J. argued, was based on three factors: "the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the appellant."(64)

First, the Court found that the Ministry's application to suspend custody threatened both the appellant's and her children's right to security of the person (s. 7). According to Lamer C.J., "[t]he interests at stake in the custody hearing are unquestionably of the highest order."(65) Second, the court stated that while there is no consensus over whether child custody hearings are "adversarial or administrative in nature," they place a considerable number of demands on each of the parties. A parent involved in such a hearing would have to present evidence, cross-examine witnesses, and perform other duties typically carried out by counsel.(66) While some parents would be able to represent themselves adequately, their ability to do so very much depends on their "intelligence or education, communication skills, composure, and familiarity with the legal system…"(67) In the case of G. J., the Court was not convinced that the appellant would be able to represent herself effectively. Her lack of legal counsel, therefore, threatened both her and her children's s. 7 right to security of the person.

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(62) *Ibid*., p. 73.

(63) *Ibid*., p. 75 (emphasis in original).

(64) *Ibid.*

(65) *Ibid*., p. 76. In a concurring opinion, L'Heureux-Dubé J., writing for Gonthier and McLachlin J.J., stated that a lack of legal representation in child custody hearings also raises issues of equality, as set out in ss. 15 and 28 of the Charter. In particular, she argued that "[t]his case raises issues of gender equality because women, and especially single mothers, are disproportionately and particularly affected by child protection hearings…" *Ibid*., p. 115.

(66) *Ibid*., p. 79.

(67) *Ibid*, p. 80.

Lamer C.J. went on to say that the breach of G. J.'s s. 7 right could not be saved under s. 1 of the Charter. While Lamer C.J. noted that the Court's decision would likely increase legal aid expenditures, he wrote "the deleterious effects of the policy far outweigh the salutary effects of any potential budgetary savings."(68) However, the Court made clear that it was not requiring Legal Aid New Brunswick to expand its coverage to include child custody hearings. According to Lamer C.J., there are many ways in which the government can fulfill its constitutional obligation. However, he stated that judges who confront similar cases in the future face one of two choices: ordering the government to provide the parent with legal representation or issuing a stay in the proceedings.(69)

New Brunswick (Minister of Health and Community Services) v. *G. (J.)* is considered by many to be a "landmark case" because, for the first time, the Supreme Court of Canada extended the right to government-funded legal representation to civil law cases.(70) However, given the explicit caveat set out by the Court that its decision reflects the specific circumstances of the case before it, the decision does not give Canadians the absolute right to legal aid. Moreover, most commentators have suggested that *G.(J.)* would not apply to civil law cases between private parties:(71) government obligation to provide legal representation seems to arise only when "government action triggers a hearing."(72)

DEBATE SURROUNDING THE PROVISION OF LEGAL AID IN CANADA

As discussed at the beginning of this paper, legal aid has not received nearly as much attention as other government-funded social services such as health care and education. Given the ongoing push to lower taxes, pay down the debt, and maintain current funding commitments, it is perhaps not surprising that legal aid programs are not a top priority.

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(68) *Ibid*., p. 98.

(69) *Ibid*., pp. 92 and 101.

(70) Schmolka (2002), p. 6E.

(71) Patricia Hughes, "A Constitutional Right to Civil Legal Aid," in Canadian Bar Association (2002), p. 101E. See also Mary Jane Mossman with Cindy L. Baldassi, "A Constitutional Right to Civil Legal Aid in Canada?" in Canadian Bar Association (2002), pp. 154E-155E.

(72) *New Brunswick (Minister of Health and Community Services)* v. *G. (J.)* (1999), p. 2.

Nevertheless, in recent years, members of the judiciary, the legal profession, and anti-poverty groups have begun to draw attention to the need to reform the provision of legal aid in this country. For example, since 2000, several Supreme Court of Canada justices have called upon the federal and provincial/territorial governments to increase legal aid funding. In 2002, both Chief Justice Beverly McLachlin and Justice Louise Arbour said that governments, the public, and even the legal profession itself must recognize the importance of access to the legal system. Chief Justice McLachlin has said:

> Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care and education. …. It is not only the rich who need the law. Poor people need it, too.(73)

Recently retired Justice Arbour has described the situation in these words:

> There's certainly no perception in the public that legal assistance is in as much jeopardy as the health-care system, but we can't wait for that. There will never be a public outcry about public funding for legal assistance. But I think that in a society that more and more relies on very complex law to regulate social order, you cannot at the same time deprive people of legal assistance.(74)

The legal profession has also begun to take more "militant" action(75) against governments to draw attention to the current state of legal aid funding. In 2002, lawyers in Ontario engaged in "wildcat strikes," refusing to accept legal aid certificates because their tariff was too low.(76) In the spring of the same year, the British Columbia Law Society censured the provincial Attorney General Geoff Plant for cutting provincial support for legal aid. While this type of action has decreased in the past two years, the Canadian Bar Association has decided to pursue legal action in the hopes of forcing governments to increase legal aid coverage and funding.(77)

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(73) Janice Tibbetts, "Courts Awash in 'Lawyerless Litigants': Chief Justice Berates Lawyers, Governments over Focus on Bottom Line," *Ottawa Citizen*, 2 February 2002, p. A3.

(74) Kirk Makin, "Crisis in Legal Aid Dire, Arbour Warns," *The Globe and Mail*, 2 March 2002, p. A1.

(75) Kirk Makin, "Lawyers Reject Legal-Aid Cases," *The Globe and Mail*, 20 May 2002, p. A14.

(76) *Ibid.*

(77) Canadian Bar Association, news release, "CBA Continues to Press for Legal Aid Change," 15 January 2003; available at http://www.cba.org/CBA/News/2003_Releases/tibbetts.asp.

In 2002, the Canadian Bar Association (CBA) announced that it would launch a series of test cases against the federal, provincial and territorial governments in an effort to expand legal aid programs. According to former CBA president Daphne Dumont, the association has chosen to go to court because its lobbying efforts had not born fruit: "Our strategy was to sue the governments if we didn't succeed in our lobbying, and we deem ourselves to have not succeeded. There are other powerful people in this country – and they are called judges." The association hopes to establish precedents for legal aid funding by pursuing specific cases where it thinks the judge, for Charter reasons, would order the government to provide an individual with state-funded legal counsel.(78)

Most critics argue that the low rate of legal aid funding coupled with inconsistent coverage and eligibility criteria across the country are creating a crisis for poor people and in the courts. Individuals unable to qualify for legal aid will often represent themselves, not only causing backlogs in the courts but also risking the inherent "fairness of the proceeding."(79) Furthermore, most low-income individuals need legal representation and/or advice in the areas of social assistance, housing, workers' compensation, and family services – legal services that are not made available in all provinces. The National Council of Welfare argues that while criminal legal aid services are important, they "are of no use whatsoever to the vast majority of the poor."(80) The Council thus argues that it is important to extend coverage to legal problems that affect poor Canadians the most. Finally, some even argue that insufficient legal aid coverage puts the integrity of the legal system itself at risk. Sidney B. Linden, former Chief Justice of the Ontario Court of Justice and former chair of the board of directors of Legal Aid Ontario, wrote in 2002 that:

> Access to justice for everyone – regardless of income – is a fundamental principle of democracy and the rule of law. Equal access to justice and protection under the law require that individuals have legal representation when before the courts in serious matters …. We

(78) Kirk Makin, "Lawyers to Launch Test Cases in Fight over Legal-Aid Funding," *The Globe and Mail*, 12 August 2002, p. A4. See also Janice Tibbetts, "Lawyers Hope to Make Legal Aid a Charter Right," *National Post*, 7 March 2002, p. A9.

(79) Canadian Bar Association, "Canadian Bar Association's Position on Legal Aid," n.d.; available at http://www.cba.org/CBA/Advocacy/legalAid/.

(80) National Council of Welfare, *Legal Aid and the Poor*, Ministry of Supply and Services Canada, Ottawa, 1995, p. 9.

> must commit the time, effort and resources to ensure equal access to justice for all people. If we don't, our justice system, and the democratic principles upon which it is based, could end up paying a high price.(81)

Even the Department of Justice has acknowledged that more work needs to be done to ensure consistent legal aid coverage across the country. In an internal government evaluation of legal aid, the Department of Justice said that "A significant issue for Justice Canada and the provincial partners in legal aid is whether or not this level of coverage is consistent with objections for an accessible justice system." Moreover, it said that federal cutbacks were at least partly to blame for the growing disparity in legal aid coverage and eligibility among the provinces.(82)

While funding has increased in recent years and funds have been made available to establish new and innovative legal aid programs, the state of legal aid in Canada continues to face challenges. Consistent under-funding, too-low eligibility criteria, de-listed services and the resulting strain on the courts and social service organizations continue to hamper the delivery of legal services to Canadians and bring the administration of justice into disrepute. As provinces attempt to balance legal aid needs with other competing priorities, some have begun to revisit how legal aid is delivered and how limited funds may be used most wisely.(83) It remains to be seen whether these changes improve access to the legal system for those who often need it most.

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(81) Sidney B. Linden, "Why We Must Save Legal Aid," *The Globe and Mail*, 26 February 2002, p. A21.

(82) Janice Tibbetts, "Legal Aid a Directionless Program, Internal Justice Report Says: Federal Cuts Behind Disparity in Services Across Nation," *Ottawa Citizen*, 19 February 2002, p. A4.

(83) Jake Rupert, "The Public Defender Experiment," *Ottawa Citizen*, 2 July 2004, p. F1.