

INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND

NATIONAL REPORT: CANADA

Background

Civil and criminal legal aid in Canada are delivered by thirteen agencies, one in each of the provinces and territories. The legal aid organizations are created by provincial or territorial statute but, in all cases except one, are independent bodies governed by boards of directors. Under Section 92 of the Canadian Constitution, the provinces have the responsibility for the administration of justice, civil and property rights.¹ Therefore, legal aid "Plans" as they are commonly known in Canada, are provincial or territorial responsibilities.

Most legal aid plans in Canada have existed since the early 1970's. Prior to that time very limited legal aid services were provided by Law Societies on a *pro bono* basis. The Province of Ontario established a provincially funded legal aid system since the mid-1960's. The development of a federal program administered by the Department of Justice for contributing to the costs of provincial criminal legal aid programs in 1972, and a few years later a program administered by the Department of National Health and Welfare for contributing to the costs of civil legal aid in the provinces, led to the development of legal aid plans funded mainly by government in all provinces and territories.

Expenditures

In 2007-2008 Canada spent a total of \$671 million on legal aid. This represents a per capita expenditure of \$20.35. Over the most recent five-year period total legal aid expenditures increased by 11.4%, from \$603 million in 2003-2004. In constant 2002 dollars legal aid spending increased by a more modest 2.7% from \$586 million in 2002-2003 to \$602 million in 2007-2008 in inflation-adjusted dollars.

Slightly more than one half of total expenditures, 52.4%, were for criminal legal. In 2007-2008 Canada spent approximately \$352.1 million on criminal legal aid and \$319.3 on civil legal aid. The ratio of criminal legal to civil legal aid spending has declined over the past five years. In 2003-2004 about \$1.04 was spent on civil legal aid for every

¹ Under Section 91 of the Constitution the federal government has the criminal law making power.

dollar spent on criminal legal aid. In 2007-2008 about 91 cents was spent on civil legal aid for every dollar spent on the criminal side. In 2007-2008 Ontario and Quebec were the only two jurisdictions to spend more on civil legal aid than on criminal.

Funding

Legal aid is primarily funded by governments. On average 84% of all funds for legal aid were from provincial and federal governments in 2007-2008. This varied among the provinces and territories from a low of 70% to a high of 99%. Client contributions, cost recoveries, contributions from the legal profession, interest on accounts and Law Foundation grants make up the non-government sources of revenue.

In 2006-2007 the federal government contributed \$111.4 million to criminal legal aid services provided by provinces and territories through a dedicated funding program administered by the Department of Justice. This amounted to approximately 32% of expenditures on a national basis. Provincial governments provide all funding for civil legal aid.² The federal government contributes to both criminal and civil legal aid in the three northern territories.

Level of Service

In total, there were 263,982 approved applications for criminal legal aid services in 2007-2008. This represents 8 approved applications per 1000 population. The number of approved applications has declined by 7.9% during the past five years. In addition, 1,165,872 duty counsel services were provided in criminal matters in 2007-2008. All provinces and territories also provide advice by telephone for persons detained at police stations.

In 2007-2008 legal aid plans approved 208,239 applications for civil legal aid, representing about 6 approved applications per 1000 population. This includes both family law and other civil matters. The number of approved applications for civil legal aid has declined by 8.1% since 2003-2004. In addition to services provided as a result of an approved written application for service, legal aid plans provided 34,157 duty counsel services in family law civil matters and 152,889

² Direct federal funding for civil legal aid was discontinued in 1995-1996, when a federal program that had been administered by Health Canada since the early 1970's was absorbed into a general federal transfer fund to support provincial health and social services programs.

summary services in 2007-2008. Summary services include advice, information or other types of brief services provided in a formal setting.

Refused Applications

The number of refused applications increased by 3.2% over the past five years, rising from 107,990 in 2003-2004 to 111,532 in 2007-2008. About one half, 52%, were because applicants failed to meet financial eligibility guidelines.

Private Bar and Staff Lawyer Delivery

Legal aid delivery models in the provinces and territories have varying mixes of private bar and staff lawyer delivery. In 2007-2008, 73% of all criminal legal aid service was provided on a fee-for-service basis by the private bar, with 27% being provided by salaried staff lawyers. The staff lawyer-private bar mix varied from 100% to 1% staff lawyer delivery among the thirteen legal aid plans. In civil legal aid, 45% of all service was provided by staff lawyers and 55% by private bar lawyers on a national basis. Between 100% and 5% of services were delivered by staff lawyers depending on the particular legal aid plan.

The number of private bar lawyers participating in legal aid delivery has been declining steadily. Since 2003-2004 the number of lawyers in private practice accepting legal aid certificates declined by 14.5% from 12,889 in 2003-2004 to 11,022 in 2007-2008. In 2007-2008 approximately 26% of the 41,888 insured practising lawyers in Canada were providing legal aid services.

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