

# ILAG 2013 National Report – Canada

## I. Overview of Canada's Legal Aid Plans and their Operating Environment

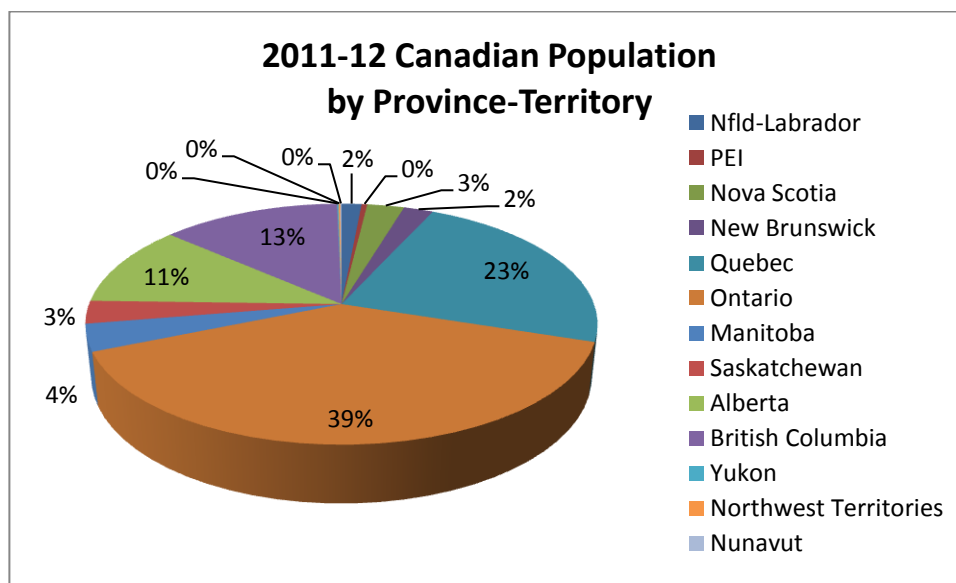
1. **Type of legal system:** With the exception of the Province of Quebec, Canada's civil law derives from the system of English common and statutory law. Quebec's Civil Code is derived from the French Code Napoleon. All of Canada's criminal law has its basis in common and statutory law. Aboriginal customs and traditions have been influential in developing alternative criminal justice approaches, such as healing and sentencing circles<sup>1</sup>.

The Canadian Constitution defines the nature and powers extended to the Parliament of Canada and provincial/territorial legislatures. It also contains the Canadian Charter of Rights and Freedoms which protects human rights across Canada. Aboriginal rights and treaty rights are recognized and protected under the Constitution.

Parliament can make laws for all Canada, where the matters are assigned to it under the Constitution. A provincial or territorial legislature can only make laws which apply within its borders and only, again, if the Constitution assigns those matters to it.<sup>2</sup>

## 2. Population of the jurisdiction: (Source: Statistics Canada, 2012)

Canada:	34,482,800
Largest province/territory:	13,373,800 (Ontario)
Smallest province/territory:	33,300 (Nunavut)
Median:	945,000
Mean:	4,926,000

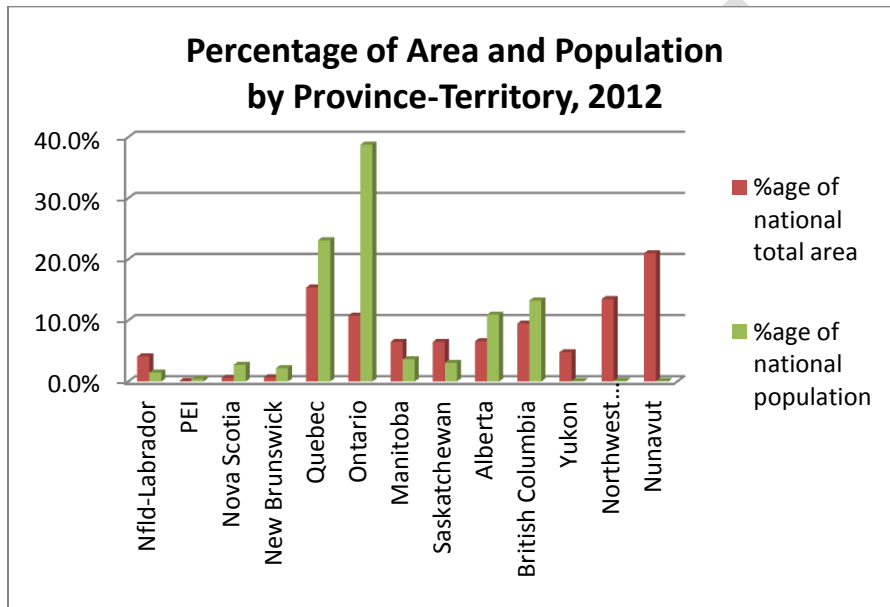


<sup>1</sup> <http://www.justice.gc.ca/eng/dept-min/pub/just/03.html>

<sup>2</sup> <http://www.justice.gc.ca/eng/dept-min/pub/just/05.html>

3. **Geographic area:** Canada has a small population given its geographic area. The distribution of the population can be a factor in the delivery of services and the methods of delivery used.

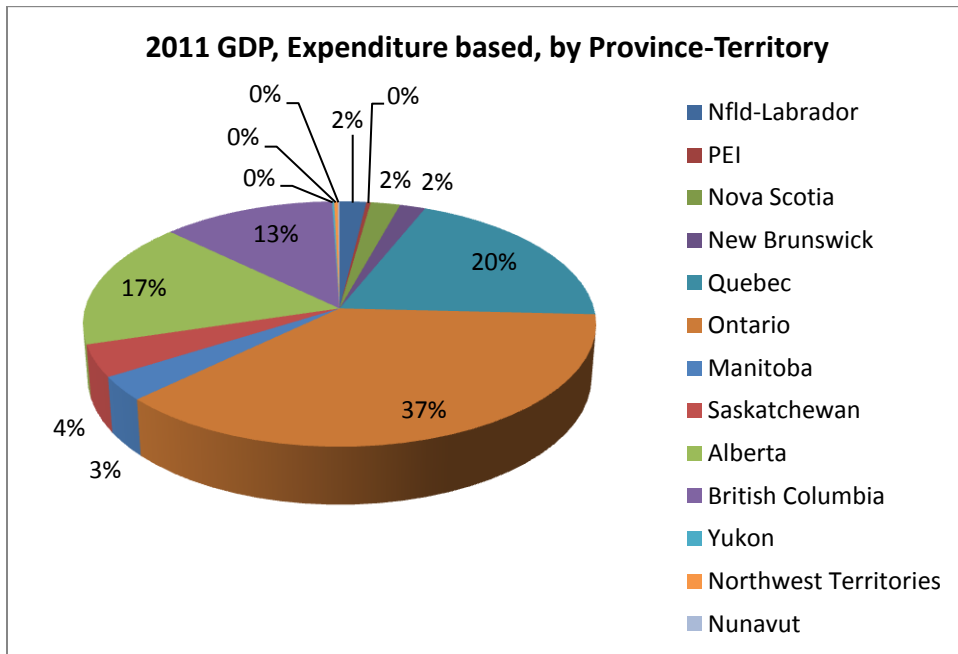
	<i>Area</i>	<i>%age of total area</i>	<i>%age of population</i>
Canada:	9,984,670 sq. km.	100%	100%
Largest area:	2,093,190 (Nunavut)	21%	0.1% (smallest population)
Smallest area:	5,660 (PEI)	0.1%	0.4%
Largest pop'n:	1,076,395 (Ontario)	10.8%	38.8%



4. **GDP:** (Source: Statistics Canada, 2011)

*Expenditure-based*

Canada:	\$1.762 trillion
Highest province/territory:	\$654,561 million (Ontario)
Lowest province/territory:	\$1,964 million (Nunavut)
Median:	\$37,015 million (Nova Scotia)
Mean:	\$135,538 million



5. **Average Annual Salary (Full time work):** (Source: Statistics Canada, 2010)

	<i>Women</i>	<i>Men</i>
Canada:	\$47,300	\$64,200

6. **Kinds of organizations that operate legal aid:** The Canadian Constitution provides the provinces with the responsibility for the administration of justice, civil and property rights. Accordingly each Province and Territory in Canada has one sole purpose organization, which is given the mandate and the majority of core funding from the provincial government, to provide civil and criminal legal aid services throughout that Province or Territory. All but two jurisdictions have legislation which establishes their legal aid plans: Alberta, where the legal aid plan (a non-profit society) operates under a governance agreement with the Province; and Prince Edward Island, where it is run as a government program through the Department of Justice and Public Safety.

For the remaining 11 plans which are established by legislation: six are non-profit societies or corporations (B.C., Manitoba, Northwest Territories, Nunavut, Ontario, Yukon); four are independent commissions (Newfoundland-Labrador, Nova Scotia, Quebec, Saskatchewan); and one is a program of the Law Society (New Brunswick).

Each Legal Aid Plan operates independently of the other plans within Canada. The Association of Legal Aid Plans of Canada (ALAP) has been formed as an umbrella group representing each of the provincial and territorial legal aid plans. The annual general meeting of ALAP has been an opportunity for plans to share best practices in the delivery of legal aid services but the emphasis of ALAP has been evolving recently such that it is now

positioning itself as a national voice on broader access to justice issues in addition to legal aid related matters. The development of this role is a necessary evolution in advancing understanding of the essential role carried out by legal aid plans in the access to justice dialogue. ALAP has assumed a coordinating role in access to justice-related research undertaken by member plans and recently issued its first national position statement on proposed amendments to the *Criminal Code* (Bill C-37) that would further marginalize the poor through a doubling of the victim surcharge and remove judicial discretion to waive the surcharge.

### 7. Different legal aid schemes

**Method of Delivery:** Most legal aid plans used a mix of private and staff lawyers to deliver services. In addition, increasingly legal aid plans are using non-lawyers to provide some legal services to clients – they may be called community legal workers, legal service officers or just legal aid workers. Some plans also use a more holistic approach, with staff social workers and resource workers supporting clients through their legal matter.

While some plans focus almost exclusively on full representation services for court or tribunal, others provide a continuum of services to tailor legal services to the client’s need and abilities and to try to help clients to prevent or reduce the need for further legal services and/or full-blown litigation.

Given Canada’s vast size and dispersed population, services are delivered through a variety of means. In larger urban centres, in-person services can be augmented by telephone or web-based access. In other areas, video-conferencing and the use of other technologies can provide services across large distances.

Examples of some of these different service delivery approaches can be found in Section II, Current Issues, Innovations in Delivery Methods beginning at page 12 of this Report.

**Scope of legal aid schemes:** The following table compares areas of legal services across the 13 plans. It should be noted that most plans that provide services beyond advice and brief services, in civil and family law, require that the matter have merit or a likelihood of success.

Plan	Coverage			
	Criminal	Family	Other Non-family Civil	Duty Counsel Criminal or Family
Alberta	Serious criminal matters where law requires legal representation; other matters if likelihood of incarceration or loss of livelihood; all youth matters; Correctional Institute hearings ; court	Child Welfare proceedings; family matters if there is merit or likelihood of success; exceptions: uncontested divorce or only property claim less than \$50,000	Landlord-tenant, income support, employment, debt, refugee claims, limited immigration, adult guardianship and trusteeship	Criminal and Youth throughout the Province; Family Court and Queen’s Bench (Edmonton, Calgary only); Mental Health Review Panels; Brydges Duty Counsel <sup>3</sup>

<sup>3</sup> Brydges Duty Counsel is a telephone-based service which addresses the right of an accused, under the Canadian Charter of Rights and Freedoms, to retain and instruct counsel without delay upon arrest or detention.

Plan	Coverage			
	Criminal	Family	Other Non-family Civil	Duty Counsel Criminal or Family
	ordered counsel			
<b>British Columbia</b>	Similar to Alberta; where conviction could result in immigration issues; where client has defence based on Aboriginal rights; cannot represent self because of mental/physical disability	Child Welfare proceedings; limited representation in serious family matters where safety of child at issue or highly contested matters	Refugee claims, immigration issues that could lead to removal from Canada; Mental Health Review panels	Criminal; Brydges Duty Counsel
<b>Manitoba</b>	Similar to Alberta	Similar to Alberta; Collaborative Law	Workers Compensation, pension and welfare appeals; housing; Public interest groups	Criminal – expanded; Child and Family Services Court; Immigration; Brydges Duty Counsel
<b>New Brunswick</b>	Indictable and minimal, if likelihood of incarceration	victims of spousal abuse, child/spousal support; Child Welfare	None	Criminal, Youth, Mental Health Court, Family
<b>Nfld-Lab.</b>	Similar to Alberta	Similar to Alberta	Social Assistance, Pension benefits, Immigration- Refugee claims, Mental Health Review Board	Criminal and Youth; Brydges Duty Counsel
<b>NWT</b>	Similar to Alberta	Similar to Alberta, emergency restraining orders	Some problems with government services or wrongful dismissal	Criminal
<b>Nova Scotia</b>	Similar to Alberta	Similar to Alberta	Poverty administrative law services	Criminal; Brydges Duty Counsel
<b>Nunavut</b>	Criminal law, those appearing before the court for the first time	Child welfare, some family law plus family law information line	Some civil law plus civil/poverty information line	After hours Brydges Duty Counsel
<b>Ontario</b>	Indictable and summary only if likelihood of incarceration; Gladue related services; all Youth offences	Similar to Alberta, domestic violence	Some civil and Immigration- Refugee Claims; Legal Clinics deal with Poverty Law issues	If financially qualified; Criminal, Family, Mental health and Tenant in some areas; Brydges Duty Counsel
<b>P.E.I.</b>	Serious criminal matters where law requires legal representation, some summary offences	Child welfare, domestic violence, custody, access financial support	Housing	Criminal
<b>Quebec</b>	Similar to Alberta	Similar to Alberta	Income support, employment, auto insurance claims, WCB, immigration	Criminal, Family and Youth; Brydges Duty Counsel
<b>Saskatchewan</b>	Similar to Alberta	Child Welfare proceedings; some family matters; restraining orders	None	Criminal for in custody individuals only; Brydges Duty Counsel
<b>Yukon</b>	Where likelihood of jail; all youth matters	Child Protection; interim family matters if children are involved	Mental health Act	Criminal

**Financial eligibility limits for each scheme:** Most plans do not require clients to meet financial eligibility for legal information, referrals or duty counsel services. Some have

more generous levels for advice, brief services or early resolution services (eg. Alberta, B.C., Ontario). The table contains financial eligibility limits for full representation services:

PROVINCE	FINANCIAL ELIGIBILITY (FEG)	ASSETS
<b>Alberta</b>	Net income and family size, up to: 1 \$21,000 2 \$26,000 3 \$37,000 4 \$40,000 5 \$43,000 6+ \$46,000	Yes; may not get full representation service if specific types of assets above allowed level; some property exempt
<b>British Columbia</b>	Net income and family size, up to: 1 \$17,640 2 \$24,600 3 \$31,680 4 \$38,760 5 \$45,720 6 \$52,800 7+\$59,880	Similar to Alberta
<b>Manitoba</b>	Gross income and family size, up to: 1 \$23,000 (free up to \$14,000) 2 \$27,000 (\$18,000) 3 \$31,000 (\$23,000) 4 \$34,000 (\$27,000) 5 \$37,000 (\$31,000) 6 \$40,000 (\$34,000) 7+ \$43,000 (\$37,000)	Considered
<b>New Brunswick</b>	Does not have FEGs; case by case determination	Considered
<b>Nfld.-Lab.</b>	Does not have FEGs; case by case determination	
<b>NWT</b>	Net income range by geographic area and family size, up to: 1 \$32,682 to \$45,724 (free up to \$25,140 to \$35,172) 2 \$40,451 to \$56,566 (\$31,116 to \$43,512) 3 \$57,626 to \$80,480 (\$44,328 to \$61,908) 4 \$62,400 to \$87,282 (\$48,000 to 67,140) 5 \$66,971 to \$93,678 (\$51,104 to \$72,060) 6 \$71,635 to \$100,214 (\$55,104 to \$77,088)	Considered
<b>Nova Scotia</b>	Based on Social Assistance levels	Considered
<b>Nunavut</b>	Gross income and family size, up to: 1 \$50,400 2 \$62,400 3 \$88,800 4 \$96,000 5 \$103,200 6 \$110,400 7 \$117,600 8 \$124,800 9 \$132,000 10+ \$139,200	
<b>Ontario</b>	Gross income and family size, up to: Single boarders \$8,200 (free up to \$7,100) 1 \$12,500 (\$10,800) 2 \$22,500 (\$18,684) 3 \$26,220 (\$21,299) 4 \$30,120 (\$24,067) 5+ \$33,960 (\$26,714)	Considered
<b>Quebec</b>	Gross income: Single: \$8,870-\$12,640	Considered

PROVINCE	FINANCIAL ELIGIBILITY (FEG)	ASSETS
	Adult, 1 child: \$12,500-17,813 Adult, 2 child: \$15,500-21,375 Spouse, no child: \$12,500-\$17,813 Spouse, 1 child: \$ 15,000-21,375 Spouse, 2 child: \$17,500-\$24,938	
P.E.I.	Net income on case by case basis; guideline for family size: 1 \$14,178 2 \$17,720 3 \$22,037 4 \$26,677	Considered (case by case)
Saskatchewan	Net income and family size, up to: Single - \$11,820 Couple - \$13,800 Family & 1 child - \$14,700 Family & 2 children - \$17,000 Family & 3 children - \$20,100, increases to Family & 8 children - \$32,820	Considered
Yukon	Net income and family size, up to: 1 \$19,200 2 \$22,800 to \$24,000 depending on number of children and adults 3 \$26,400 to \$27,600 4 \$30,000 to \$31,200 5 \$34,800 6+ add \$3,600 to \$5,400 per person	Considered

***Balance between expenditures for private lawyers and lawyers in law centres/clinics and/or staff lawyers:*** (Source: Statistics Canada, 2012)

	<i>Private</i>		<i>Staff</i>		<i>Private:Staff</i>
	<i>\$million</i>	<i>%age</i>	<i>\$million</i>	<i>%</i>	
Canada:	388.4	60%	256.9	40%	1.5 to 1
Highest \$ (Ont):	212.2	72%	83.7	28%	2.5 to 1
Lowest \$ (Yukon):	0.19	11%	1.5	89%	0.13 to 1
High - % Private (BC):	62.2	92%	1.5	8%	--
Low - % Private (Nfld):	.027	2%	11.6	98%	--
Median:	3.3	--	12.1	--	--
Mean:	32.4	--	21.4	--	--

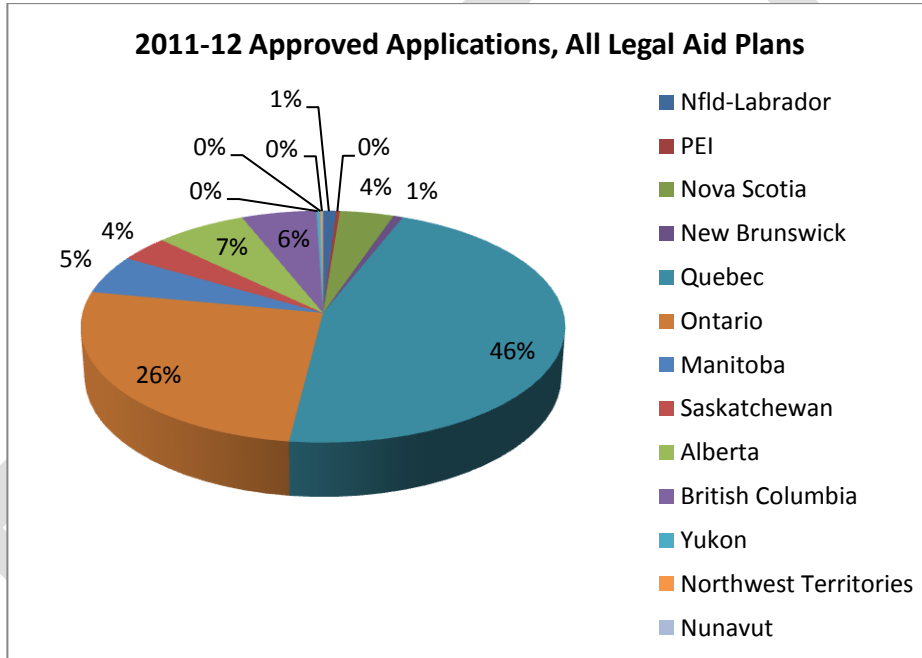
	<i>Private(#)</i>		<i>Staff (#)</i>	<i>Ratio Private:Staff</i>
Canada:	8,992		1,464	6.1 to 1
Highest province/territory:	4,606 (Ontario)		599 (Ontario)	6.7 to 1
Lowest province/territory:	6 (Yukon)		8 (Yukon)	0.7 to 1
Median (numbers):	200		124	--
Highest ratio – B.C.:	977		15	65.1 to 1
Lowest ratio – Nfld./Lab.:	25		63	0.4 to 1
Median ratio:	--		--	1.97 to 1

It should also be noted that the hourly tariff paid to private bar lawyers who do legal aid work varies considerably across the country. The lowest rates, currently, are paid to private bar lawyers with less than five years' experience and vary from a high of

\$98.99/hour in Ontario to a low of \$45/hour in Newfoundland-Labrador. The highest hourly tariff rates are paid for complex criminal matters, and range from \$141.75 an hour in Ontario to a low of \$60 in Newfoundland-Labrador. A few plans do not have tiered rates, for example Alberta, where the hourly tariff for all private bar lawyers is \$84/hour.

**Statistics for the number of legal aid cases (approved applications only):** (Source: Statistics Canada, 2012)

	Total	Criminal	Civil
Canada:	487,738	277,802	209,936
Highest:	224,246 (Quebec)	111,184 (Quebec)	113,062 (Quebec)
Lowest:	0 (NWT)	0 (NWT)	135 (Nunavut)
Median:	17,871	14,067	3,503
Mean:	37,518	23,150	16,149



Approved applications refer to the provision of primarily full legal representation at court or tribunal. It should be noted that using the number of approved applications is a somewhat out of date (and misleading) way to determine the volume and type of work done by legal aid plans. Increasingly, as noted above, legal aid plans are providing a wide range of services for clients, in addition to preventative services such as PLEI materials and sessions, plus high volume services such as duty counsel.

For example, Alberta Legal Aid provided legal services on 254,300 matters in 2011-12. However, only 31,400 or 12.4% of those matters received services that would be captured by “approved applications” – limited scope and full representation services. Duty Counsel services were provided for 137,200 or 53.95% of matters in criminal, youth,



family, emergency protection orders (domestic violence), mental health review and other areas. Depending upon the venue, duty counsel services ranged from legal advice to hearing representation for otherwise unrepresented persons. Legal advice and brief services were provided through Legal Services Centres in 15,800 or 6.2% of matters. And, early resolution services in criminal and family were provided in 3,700 or 1.5% of matters. The resolution of legal matters through advice, brief services and early resolution means that fewer full representation services need to be approved.

**8. Expenditures on legal assistance and legal aid**

**Revenue:** (Source: Statistics Canada, 2012)

Canada:	\$776.6 million
Highest province/territory:	\$371.7 million (Ontario)
Lowest province/territory:	\$1.9 million (Yukon)
Median:	\$22.2 million
Mean:	\$59.7 million

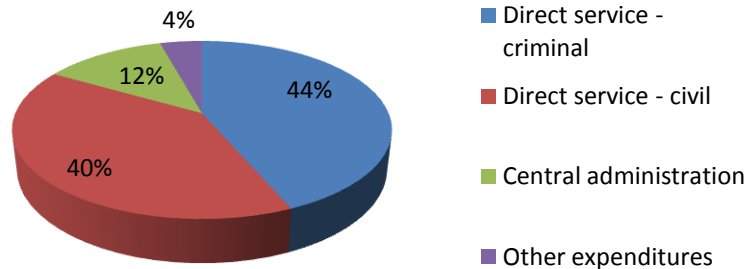
**Expenditures:** (Source: Statistics Canada, 2012)

Canada:	\$779.9 million
Highest province/territory:	\$372.9 million (Ontario)
Lowest province/territory:	\$1.9 million (Yukon)
Median:	\$22.9 million
Mean:	\$59.9 million

**Breakdown of expenditures for Canada overall:** (Source: Statistics Canada, 2012)

	\$\$	%age
Direct service expenditures, criminal	337.1 million	43%
Direct service expenditures, civil	308.2 million	40%
Central administrative expenditures	96.2 million	12%
Other legal aid plan expenditures	33.1 million	4%
Total	779.9 million	100%
Per capita legal aid plan expenditures	\$22.6/person	

### 2011-12 Breakdown of All Legal Aid Plan Expenditures

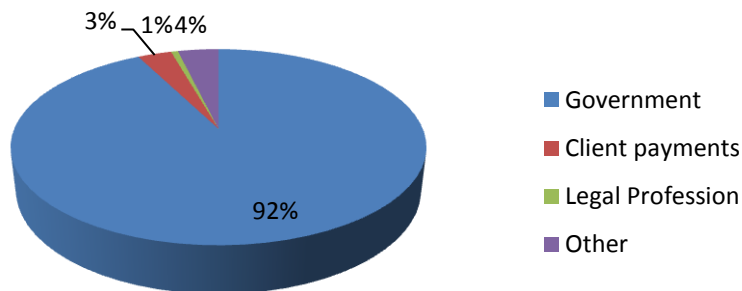


**Sources of funding:**

**Breakdown of revenue for Canada overall:** (Source: Statistics Canada, 2012)

	\$\$	%age
Government contributions	717.7 million	92%
Client contributions/cost recovery	24.5 million	3%
Contributions of the legal profession	4.9 million	1%
Other legal aid plan revenues	29.4 million	4%
Total	776.6 million	100%

### 2011-12 Breakdown of all Legal Aid Plan Revenue



**Client payments (contributions):** (Source: Statistics Canada, 2012)

Canada:	\$24.5 million
Highest province/territory:	\$15.4 million (Ontario)
Lowest province/territory:	\$0 (British Columbia, Prince Edward Island, Nunavut)
Median:	\$0.087 million

Mean: \$2.2 million

Most plans collect very little from their clients. Ontario and Alberta collect the highest dollar amounts.

**9. Existence of an advice sector or alternative providers of legal help:** Across Canada, a variety of alternative legal service providers attempt to fill gaps in service – whether to assist persons who do not qualify financially or whose matters are not among those for which their legal aid plan provides service. (Only a few jurisdictions, such as Nunavut, do not have alternative service providers.) As well, some alternative legal service providers target specific communities or support services for those involved in the justice system. A few select examples of alternative legal service providers include:

- **Pro bono organizations:** Provincial pro bono organizations are often sponsored by law societies and sometimes receive funding from legal aid plans (eg. Pro Bono Law Ontario). These organizations promote pro bono service to the private bar, sponsor or incubate new services and address access to justice needs for non-profit organizations and persons whose incomes are above legal aid eligibility guidelines.
- **Community advocates and not-for-profit legal services providers:** Community advocates may be on staff at organizations such as food banks or may have their own stand-alone services such as B.C.'s Tenant Resource and Advisory Centre in Vancouver and Ontario's Citizen Advocacy centre for seniors in Windsor. Not-for-profit legal services often use a mix of paid staff and volunteers to provide services. Examples include the Edmonton Community Legal Centre in Alberta.
- **Court Workers:** Organizations such as the John Howard Society, Elizabeth Fry and Native Court Workers provide assistance to accused persons in the courts.
- **Student legal services:** Law schools across the country provide legal services through student run voluntary organizations, through more formal clinic type services often funded or supported by legal aid plans (eg. Dalhousie Legal Aid Clinic in Nova Scotia) or in conjunction with Pro Bono Students Canada.
- **Courts and Courthouse Libraries:** In B.C., the Libraries have created Clicklaw, an online legal information website.<sup>4</sup> In Alberta and B.C., the Courts have staffed legal information centres where people can get legal information, self-help material and assistance completing forms. In PEI and Newfoundland-Labrador, the courts provide workshops for separating parents.
- **PLEI providers:** A number of provincial law societies provide Dial-a-Law services where people can call a toll-free number to access recorded legal information on a wide range of topics. Most provinces also have a sole purpose public legal education organization which may develop and distribute PLEI materials, holds workshops and conferences, or develop collaborations with legal, medical or community partners to address specific socio-legal issues.

<sup>4</sup> Canadian Bar Association, Future directions for Legal Aid Delivery (CBA: 2013, Ottawa), p. 17, accessed at <http://www.cba.org/CBA/Access/main/project.aspx>.

## II. Current Issues

1. **Innovations in delivery methods:** Historically, most legal aid plans offered one service – brokering legal representation services for court or tribunal hearings from lawyers who agreed to charge the plans reduced fees. A move away from this “one size fits all”, reactive model of service delivery is well on its way. Many plans now offer a continuum of services, both preventive and reactive, with some plans ensuring the services are tailored to the specific needs and abilities of the client – and the client’s legal issues. A sample of service delivery innovations follow:

a. **Use of Technology:** The Internet and new technology have allowed legal aid plans to provide services in new ways. Call centres, whether stand-alone or as part of a range of services, have been increasingly effective with the introduction of Voice Over Internet Protocol phone services and automated case management systems. Public legal information and resources can be made available to clients as they need them through a plan’s website. Video-conferencing can be used where the client and/or their representative cannot meet in person – it can improve both the client interview and court experience. Examples of the use of technology by legal aid plans include:

**In preventative services:**

- B.C.’s online family law site, with resources in 13 languages<sup>5</sup>;
- Nova Scotia: NSfamilylaw.ca is an online resource offered jointly by Nova Scotia Legal Aid, the provincial government and other agencies<sup>6</sup>.
- Ontario’s online PLEI resources, LawFacts in criminal law and Family Law Information Program, for family law matters<sup>7</sup>.

**In direct client services:**

- Nunavut: the use of video conferencing technologies for court appearances and client interviews, as well as mass media public legal education techniques

**In unbundled services such as summary legal advice:**

- Alberta: The 11 Legal Service Centres can be accessed by clients in-person or through a toll free number. Clients receive legal information and, where appropriate, referrals. If they meet service and financial eligibility criteria, they may receive legal advice and brief services over the phone.
- Ontario: a call centre provides advice on criminal matters; a toll free number provides family law advice in 120 languages<sup>8</sup>. The Client Service Centre is a telephone hotline which provides legal advice and referrals, assistance to domestic violence victims, accepts applications and assists lawyers with billing enquiries. Service is provided in 200 languages<sup>9</sup>.

<sup>5</sup> Ibid., p. 17.

<sup>6</sup> Ibid, p. 18.

<sup>7</sup> Ibid, p. 17.

<sup>8</sup> Ibid, p. 17.

<sup>9</sup> Ibid., p. 20.

- Nunavut: Civil and family law advice is offered through toll free phone lines<sup>10</sup>.

**In community collaborations:**

- Alberta: A pilot project is exploring how the legal aid plan's automated case management system can be used to develop a common assessment and intake tool with other community agencies and non-profit legal services providers. This could also include the sharing of some data or setting up appointments for "hot" referrals.

**b. Multi-disciplinary or holistic approaches:**

**Court workers:**

- In B.C., aboriginal community legal workers and in Northwest Territories and Nunavut, Inuit court workers accompany clients to court in some locations<sup>11</sup>.

**Paralegals:**

- In Alberta, staff lawyers and non-lawyers provide services in Legal Services Centres, while social work and support services are provided in staff offices.
- In B.C., aboriginal community legal workers and outreach workers provide legal information, limited advice and brief services in some locations.
- In Manitoba, paralegals provide service in poverty law areas.
- In Newfoundland-Labrador, paralegals, social workers, family counselor and community workers provide services along with staff lawyers.
- In Nova Scotia and Ontario, paralegals provide family law services with staff lawyers<sup>12</sup>.

**Early dispute resolution:**

- Child Welfare: Alberta and Nova Scotia<sup>13</sup> are piloting child welfare services that streamed eligible matters away from the court process towards a case conferencing model, involving the clients, lawyers, social workers and government representatives.
- Criminal law: Alberta's Criminal Resolution Unit provides early resolution services for clients with lower-level criminal matters. Nova Scotia's Court Support Workers assist in obtaining disclosure and addressing root causes<sup>14</sup>.
- Family law: Alberta offers Family Settlement Services, provided by Facilitators who are experienced as both family law and dispute resolution practitioners; Nunavut offers in-house mediation services for suitable cases<sup>15</sup>.

**Partnerships with Law Schools:** A number of legal aid plans have partnered with law schools to provide clinical placement opportunities for which the students receive course credits. As well, other partnerships have resulted in: volunteer opportunities for students; the provision of supervision of students by legal aid staff; or the development of poverty law courses as part of the law school curricula.

<sup>10</sup> Ibid, p. 18.

<sup>11</sup> Ibid., p. 19.

<sup>12</sup> Ibid., p. 19.

<sup>13</sup> Ibid, p. 18.

<sup>14</sup> Ibid., p. 22 and 26.

<sup>15</sup> Ibid, p. 19.

**Partnerships with agencies:**

- Alberta: partnership with community agencies to develop common assessment and intake process in client centre where legal aid and other agencies have staff
- B.C.: medical-legal partnerships targeting pregnant women or mothers with drug or alcohol problems.

**c. Other service delivery innovations:****Assessment, Triage, Enhanced Access:**

- Alberta: In 2010, changed its service delivery philosophy and model and established 11 Legal Service Centres, staffed by non-lawyers (paralegals) and staff lawyers. Staff assesses the client's legal needs, by exploring the presenting issue, looking for what might have caused the issue to arise and identifying any other legal issues connected to it. Clients receive legal information and, where appropriate, referrals. If they meet service and financial eligibility criteria, are streamed to appropriate services, based on their legal need and abilities (eg. advice, brief services, early resolution, limited scope or full resolution services).
- B.C.: Legal Information Outreach Workers help people at courthouses with forms and explain proceedings<sup>16</sup>.

**Unbundling and limited scope services:** A number of plans have unbundled their delivery of legal services to clients. Advice and brief services are frequently provided through their own programs, after which it can be determined if the client needs or is eligible for further services. Brief services may include things like document preparation, issue or settlement advocacy, assistance with evidence gathering and preparation, and coaching for trial or hearing. Examples of legal aid plan initiatives include:

- Alberta: Advice and brief services offered through the Legal Services Centres; limited scope services in family and civil matters, particularly to finalize family settlement agreements.
- Nova Scotia: advice offered on site, at court, to unrepresented family law litigants who do not otherwise qualify for full representation<sup>17</sup>.

**Targeted Duty Counsel programs:**

- Domestic violence victims: Alberta, Manitoba and New Brunswick.
- At facilities for people with substance abuse problems: B.C.<sup>18</sup>
- Individuals detained by Canada Border Services Agencies: BC<sup>19</sup>.
- Individuals with mental health issues: New Brunswick<sup>20</sup>.

2. **Delivering legal services in a time of austerity:** A variety of approaches are being used by legal aid plans to cope with restricted funding and other service constraints. Examples include:

<sup>16</sup> Ibid, p. 19.

<sup>17</sup> Ibid., p. 21.

<sup>18</sup> Ibid., p. 21.

<sup>19</sup> Ibid., p. 21.

<sup>20</sup> Ibid., p. 22.

- **Restriction and capping of service areas:** B.C. has a robust demand management program that links particular services to available funding. Before the resources allocated to a particular service are exhausted, this is identified and the services are restricted. Restricted services include representation services beyond interim relief in family matters; limited services for administration of justice offences in criminal matters; and restricting immigration matters based on countries of origin. (Ontario is also contemplating the latter restriction.) Alberta has placed an annual expenditure cap on immigration and refugee services, as well as some low-priority civil matters. For many plans, including Nova Scotia and B.C., service areas have been and remain restricted particularly in the areas of family, civil or poverty law.
- **Reduction and restriction of financial eligibility guidelines:** Financial eligibility guidelines have not kept pace with need. Often, only the poorest of the poor can access legal aid services. For instance, Alberta was recently forced to reduce their financial eligibility guidelines as an alternative to eliminating services wholesale in family and civil matters or duty counsel services. However, as a result, the guidelines are now so low that persons who receive Alberta's Assured Income for the Severely Handicapped (social assistance for the severely disabled) no longer qualify.

The impacts of these approaches include:

- **Inability to meet service demand:** From 2008-09 to 2011-12, Nova Scotia saw a 7.5% increase in demand for full representation services and a 40% increase for duty counsel services. However, staff resources increased by less than 1%. Alberta's Legal Service Centres receive more than 600 telephone calls daily (representing on average 484 individuals) on their toll-free line. However, staff are able to process a maximum of 450 calls per day. (This does not include in-person and institution-based clients.) The number of people receiving information and referrals has increased over 209% from 2010-11 to 2012-13. This has not been matched by significant staff increases.
- **Inability of persons in poverty to access services:** Persons living below the Low Income Cut-off, a standard commonly used to measure the poverty level, often do not qualify for legal aid services.
- **Increasing numbers of self-represented litigants:** Studies have shown an increase over the past five years in the number of self-represented litigants (SRLs) in both criminal and civil courts. In some courts (eg. Alberta Court of Queen's Bench), over 74% of hearings proceed with at least one unrepresented party. The increase in SRLs has been shown to lead to delay at every step of the court process which affects all court users, not just the SRLs. It can potentially result in miscarriages of justice, as well as increased costs to government. A recent Alberta family law study found that the most common reason for SRLs was the inability to afford a lawyer and ineligibility for legal aid.<sup>21</sup> The study suggests that SRLs have worse outcomes on average than those with legal representation and that settlement of cases where one

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<sup>21</sup> L. Bertrand, J. Paetsch, N. Bala and R. Birnbaum. **Self-represented Litigants in Family Law Disputes: Views of Alberta Lawyers.** (Canadian Research Institute for Law and the Family: Edmonton, 2012).

party is an SRL is less likely than when both sides have representation. Similar findings are beginning to emerge in the criminal justice sphere.

- **Increased demand and strain on resources of government resources and community agencies:** There is a good deal of research showing how one unresolved legal problem can trigger other social and legal problems, how they cluster together and how they can lead to negative health and other consequences. For instance, loss of employment due to incarceration, can lead to increased debt, loss of housing and/or loss of support for dependents. Failure to resolve a landlord-tenant problem can mean eviction and trigger any of the above results. In extreme cases, it could mean loss of custody of children to the other parent or to the Government. Any of these results mean more costs to government for: shelters; rent subsidies and social housing; health care; child welfare and social assistance. It could also mean reduced income taxes collected<sup>22</sup>. As was noted in a report published by the Canadian Bar Association,

“What is less well understood in British Columbia is the economic relationship between investing tax dollars in legal aid, other parts of the justice system and the economy as a whole; most notably health care spending and social safety net spending. That issue has been extensively studied in several western nations and the data shows that the savings exceed the expenditure in legal aid. There is no reason to believe it should be different in British Columbia.<sup>23</sup>”

And, we would suggest, throughout the rest of Canada.

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<sup>22</sup> See Canadian Forum on Civil Justice, **The Cost of Justice: Weighing the costs of Fair & Effective Resolution to Legal Problems**, (CFCJ: Edmonton, 2012) for an overview of the research issues relating to the cost of unresolved legal issues.

<sup>23</sup> Sharon Matthews, **Making the Case for the Economic Value of Legal Aid Briefing Note** (CBA, 2012), p. 5-6., p. 1.