



**REPORT OF THE DEPUTY MINISTER
ADVISORY PANEL
ON CRIMINAL LEGAL AID**

**Legal Aid Directorate
Department of Justice Canada**

2014



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DEPUTY MINISTER ADVISORY PANEL ON CRIMINAL LEGAL AID



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INTRODUCTION

Under Canada's federal system, responsibility for criminal justice is shared between the federal government, under its authority for criminal law-making and criminal procedure, and the provincial and territorial governments, under their authority for the administration of justice (criminal prosecutions in the territories are a federal responsibility). Given these respective constitutional authorities, both levels of government work together to ensure that Canada has an accessible, efficient and fair system of justice, and that public confidence in the justice system is maintained.

Criminal legal aid helps to ensure that the criminal justice system functions both effectively and efficiently for all participants, whether they be accused (i.e. by preventing wrongful convictions and supporting fair process), victims or witnesses (i.e. with timely justice, faster resolutions and reduced delays), police and prosecutors (i.e. by promoting early case resolution or case management, fair process and increased likelihood of case resolution), or courts (through speedier case resolution, fewer trials and reducing delays caused by self represented or unrepresented accused).

“Criminal legal aid is publicly-funded legal assistance for economically disadvantaged adults and youth who meet eligibility requirements, accused of serious criminal offences and at risk of incarceration. It is central to access to justice as it ensures equality before the law, right to counsel and the right to a fair trial.”

*Federal/Provincial/Territorial
Permanent Working Group on Legal Aid 2011*

Criminal legal aid supports Canada's international obligations respecting access to justice, particularly as it relates to economically disadvantaged and marginalized populations across the country, and reflects the values of Canadian society.¹ It helps to ensure that economically disadvantaged accused have access to a proportionate range of legal services, including information, advice and representation, regardless of where they live in Canada. Thus, programs must meet the distinct service delivery challenges that exist across Canada's northern, remote and rural regions. In such locations these challenges include significant language barriers,² lack of communications infrastructure, such as effective internet and telephone services and the fact that in many places, legal aid lawyers are the only source of legal support, as private bar lawyers

¹ In 1976, Canada became a Party to the *International Covenant on Civil and Political Rights* which demonstrated Canada's view of the importance of legal aid to democratic values. The *International Covenant on Civil and Political Rights* requires State Parties to provide legal counsel to individuals facing criminal charges who cannot afford their own counsel.

² For example, there are nine Aboriginal languages recognized and spoken in the Northwest Territories, two in Nunavut (with broad variations in dialect) and eight in Yukon. For many, English is a second language.

are limited. Meeting these challenges is complicated by the fact that many of the communities in remote and rural regions are accessible only by air.³

Increasing fiscal constraints for federal, provincial and territorial governments, combined with growing public demand for improved transparency and accountability with respect to government spending, have led to both levels of government reviewing their respective programs and services with a view to creating efficiencies, reducing costs and improving services to better meet the needs of clients. As noted by the federal Treasury Board Minister following the release of the Auditor General's 2013 Spring Report: "[the] Government is committed to providing effective and efficient programs and services to Canadians. We share the Auditor General's commitment to sound, accountable management of tax dollars and we will continue to take action to improve services and the quality of life for all Canadians."

In light of stable federal funding levels for certain initiatives, like criminal legal aid, and a government-wide focus to increase efficiencies, reduce costs and improve services to better meet the needs of Canadians, several federal government initiatives have been undertaken to address issues related to the need for stable housing and wrap-around services for homeless persons with mental health problems, and the need for effective and efficient delivery of police services. These and other related initiatives are of direct relevance to the delivery of criminal legal aid.

It is in this context that the Department of Justice Canada launched the federal criminal legal aid study. This report, prepared on behalf of the Deputy Minister Advisory Panel on Criminal Legal Aid for the Department of Justice Canada's Deputy Minister, reflects the Panel discussions and advice with respect to further progress on the federal criminal legal aid study.

³ Of the 33 communities in the Northwest Territories, only 10 are accessible by all-weather roads. In Nunavut, all 26 communities are accessible only by air.

FEDERAL CRIMINAL LEGAL AID STUDY

In October 2013, the Department of Justice Canada launched the federal criminal legal aid study. The objective of this study was to explore and identify innovations, best practices and efficiencies in criminal legal aid which could contribute to maximizing the federal investment in criminal legal aid and help to ensure that Canada's justice system remains accessible, efficient and fair, particularly for economically disadvantaged Canadians.

In this first phase of the federal study, two key components were identified: the research and the establishment of a Deputy Minister Advisory Panel on Criminal Legal Aid.

Research

As a first step towards identifying innovations, best practices and efficiencies in criminal legal aid, and to identify baseline information and inform subsequent discussions, the Department undertook an environmental scan of criminal legal aid services, both domestically and internationally. The research was conducted by an independent research company and consisted of an initial literature review, supplemented by key informant interviews. This literature review enabled the Department to gather existing information about criminal legal aid services generally and innovations, best practices, and efficiencies, more specifically, as provided by legal aid plans in Canada and legal aid service providers internationally.

“Regarding the research on innovations and best practices, there is great value in the exercise of collecting and sharing information.”

Mr. Allan Seckel

Deputy Minister Advisory Panel on Criminal Legal Aid

The Deputy Minister Advisory Panel on Criminal Legal Aid (the Panel) was established with the mandate to advise the federal Deputy Minister of Justice on innovations, best practices and efficiencies that would contribute to maximizing the federal investment in criminal legal aid. Established in October 2013, the Panel consisted of a cross-section of six eminent experts across the health, economic and justice sectors (see Annex 1). Each member of the Panel contributed unique experiences and, as a result, an eclectic perspective to the discussions unfolded.

From October 2013 to May 2014, the Panel participated in five meetings including one full-day meeting.⁴ While the primary objective of the Panel was to provide the Deputy Minister with advice and input respecting innovations, best practices, and efficiencies in criminal legal aid that could contribute to maximizing the federal investment, the Panel also contributed to the analyses and assessment of the research findings.

⁴ Panel meetings were held via teleconference in November, and December 2013 and February 2014. A full day Panel meeting was held in April 2014, and a final teleconference meeting was held in May 2014.

MOVING FORWARD

Context

The Panel deliberated and developed advice for the Deputy Minister that would contribute towards a departmental strategy for maximizing the federal investment in criminal legal aid within the following context:

- Momentum is building for justice system reform, both at the federal and provincial/territorial levels, in order to address the lack of system coordination and to increase efficiencies.
- There is an increasing and significant focus on access to justice, at the federal level (e.g. Public Safety Canada's economics of policing initiative) and nationally (e.g. Canadian Bar Association's Reaching Equal Justice report and the work of the National Action Committee on Access to Justice in Civil and Family Matters). A common theme across these initiatives is improving access to justice through justice system efficiencies.
- Legal aid needs must be understood as part of a larger network of services (i.e. comprising a mix of approaches to assistance) available to Canadians and therefore has a limited and targeted role in providing access to justice (i.e. legal representation assistance when required).
- As innovations are explored, it is important to consider whether there is sufficient capacity and momentum in the current legal aid system to encourage innovation.
- The legal aid discourse needs to change focus. It must shift from 'more funding is required' to 'what can we do to improve the legal aid system'?
- Is there sufficient momentum in the criminal legal aid system to make significant changes for the future 10 years (i.e. to sustain legal aid systems)?
- As the Federal Government returns to balanced budgets, there is mounting pressure to examine ways in which the Federal Government will spend surplus dollars. It, therefore, can be expected that momentum will continue to build in terms of accessing any potential surplus resources.
- The level of legal aid funding will continue to be debated. As the Federal Government moves towards renewal of federal funding for criminal legal aid, there is a need to explore ways that momentum can be built.

“Where legal aid plans can collaborate, good things can happen. We must look at a long-term process of a legal aid system that must be sustained through thick and thin... people may not like legal aid until it's gone.”

Mr. Bob Ward

Development of Advice by the Deputy Minister Advisory Panel on Criminal Legal Aid

The Panel was informed by research (the compendium of innovations, best practices and efficiencies in criminal legal aid both domestically and internationally), and by the expertise of

the respective Panel members. The results of the Panel deliberations are summarized under four broad categories: the need for greater performance information, promising practices, underlying challenges in the system, and similarities between the health care and criminal legal aid systems. These findings formulate the basis from which the Panel advised the Deputy Minister with respect to a path forward for maximizing the federal investment in criminal legal aid.

✓ ***Need for Greater Performance Information***

A recurring concern expressed during the Panel meetings, was the inherent need for more performance information to better understand the delivery of criminal legal aid in Canada, how federal resources are being spent, and the impact of criminal legal aid from an access to justice perspective. The Panel agreed that, particularly in light of increased accountabilities and the need for transparency in government spending, improved performance measurement and reporting in criminal legal aid (i.e. data/metrics, systematic measurement of outcomes, a common indicators of success) is critical not only to the renewal of funding for services but, as well, to identifying and addressing program gaps and needs.

“This isn’t just about criminal legal aid – this is about helping indigent persons take advantage of government services.”

Mr. John Wiersema

✓ ***Promising Practices***

As was evidenced by the research, legal aid plans are continually exploring ways to improve services and increase access to justice. The provision of criminal legal aid allows for optimum availability of resources for clients to ensure a good outcome. However, it was also noted that making innovation funding available (as was the case in the United States to promote pro bono services) was viewed as being extremely successful. Innovation funding requires significant collaboration with other parts of the system.

“The strategy in the US was to move away from discussion on the lack of resources to one on innovation.”

Mr. Richard Zorza

✓ ***Underlying Challenges in the System***

Considerable discussion among the Panel focused on the need for change and change management. It was remarked that there are essentially two types of change and change management, namely change to improve, and change to save money. Law offices, and legal aid offices alike, need to operate in a more efficient way to better address the needs of specific groups of clients. The challenge is to encourage people to affect change in a

fundamental way to ensure that they have appropriate assistance (“no wrong door”) to address their broader needs (e.g. need for mental health services, need for housing).

The Panel noted the need to focus on high users of the system and to design community specific responses to better address the particular needs of certain groups (accused with mental health issues, those with drug addiction problems, and Aboriginal people). Of particular importance was the need to be mindful about the unique differences in the delivery of criminal justice in the North (access to communities is often more difficult and costly, limited availability of other services, more costly delivery). Community dynamics differ based on demographic make-up, including accused with mental health issues, Aboriginal and visible minority populations. As a result there is a need to re-invent parts of the justice system to respond to the needs of these communities.

✓ ***Similarities between the Health Care and Criminal Legal Aid Systems***

An important consideration throughout the Panel discussions, which significantly influenced the Panel’s advice to the Deputy Minister, was the similarities between the health care and criminal legal aid systems. Panel discussions revealed that there were several commonalities between the health care and criminal legal aid systems including: strong stakeholders (doctors/lawyers); challenges associated with employing metrics; complexity of the delivery systems; and, the perception that government is an insurance company (health insurance/legal aid).

“As in health care, once you define what you are trying to improve performance in then you can define what it is you want – action plans, metrics, targets.”

Dr. Jack Kitts

With respect to moving forward in the area of criminal legal aid, the Panel agreed that:

- As in health care reform, leadership, goals, performance measurement, public reporting on a common set of performance metrics, and audit assurances must all be addressed.
- As legal aid and access to justice may not capture the public’s attention, it may be necessary to think about concrete problems (e.g. chronic offenders) and target communities with respect to innovation to generate public attention and support. Segmenting the community (e.g. chronic offenders, Aboriginal offenders, offenders with mental health problems, offenders from minority communities) to focus on particular needs may be a positive approach to take.
- As was demonstrated in health care reform, money is not always the answer. Cooperation and collaboration can offer promising synergies (e.g. diabetes care in the BC health care system has been successful due to the willingness of players to come together to resolve a problem).

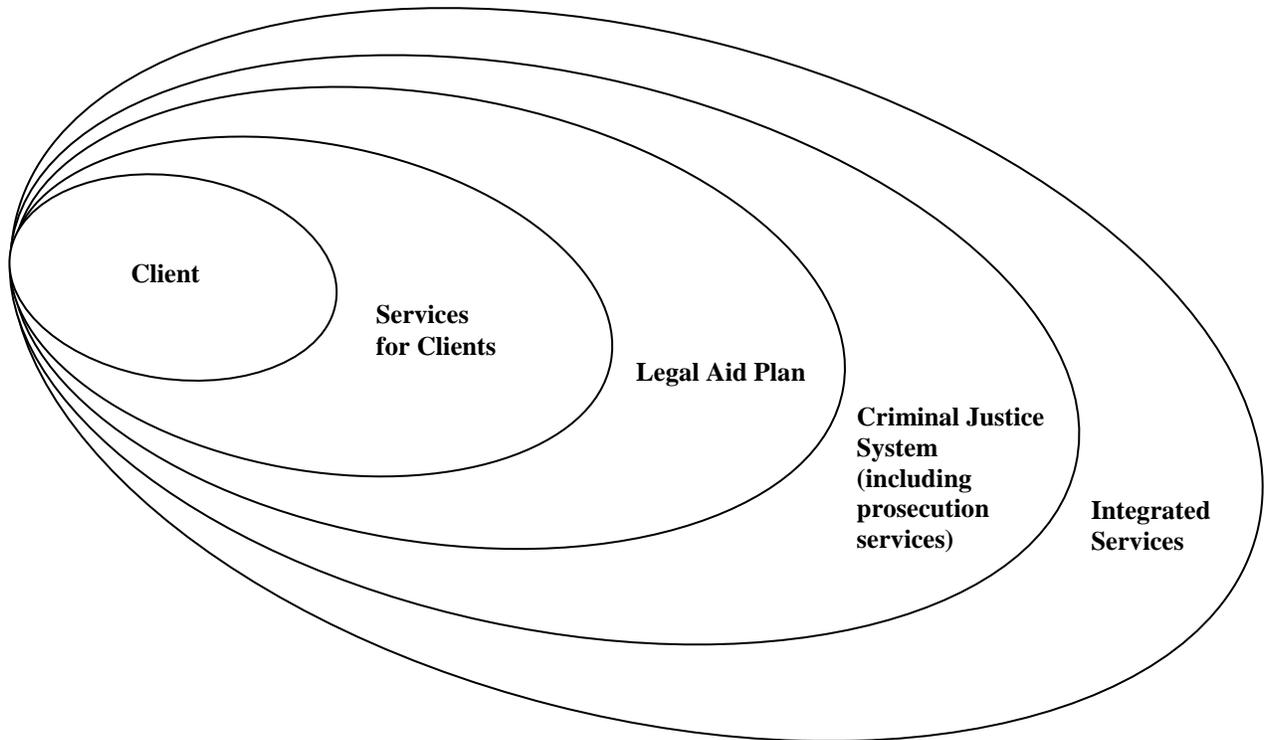
- While caution needs to be exercised, there are still good lessons to be learned from health care reform that can be applied to criminal legal aid (e.g. improvements in surgical wait times).

Advice To The Deputy Minister by the Advisory Panel on Criminal Legal Aid

A Strategic Framework for Maximizing the Federal Investment in Criminal Legal Aid

GOAL:

More fair, effective and efficient justice system for economically disadvantaged Canadians



STRATEGY:

Improve the Client & Provider Experience and the Quality of Service

- ✓ Triage (where & when)
- ✓ Early identification of needs
- ✓ Increase service provider capacity

Measure and Manage Performance

- ✓ Information & data
- ✓ Standards

Enhance Leadership & Innovation

- ✓ Federal-provincial-territorial affairs
- ✓ Incentives to collaborate
- ✓ Technology infrastructure
- ✓ Laboratories (i.e. research/pilot projects)

Measures of Success

1. Accessibility
2. Accountability
3. Effectiveness
4. Efficiency

Inspired by the health care reform experience, based on the research findings, and drawing upon the results of the Panel discussions, the advice to the Deputy Minister consisted of the development of a strategy that responded to the goal of a “*more fair, effective and efficient justice system for economically disadvantaged Canadians*”.

Panel members determined that the strategy should focus on three key elements: Improve client and provider experience and quality of service; Measure and manage performance; and Enhance leadership and innovation. It was further determined that the four pillars – accessibility, efficiency, effectiveness and accountability should serve as the tools by which to measure success.

Improve the client and provider experience and the quality of service

The criminal justice system deals with individuals whose problems may never be resolved (e.g. chronic drug addicts). There is a tendency not to triage those individuals resulting in everyone being put into the same costly system. Triage identifies the most appropriate actions to be taken given the individual and their specific circumstances.

Through legal aid lawyers, more training and information can be provided with the goal of delivering a better client service experience. The legal aid lawyer must have the capacity to deliver services to clients in the best possible way. At the same time, a conversation needs to be had with regards to meeting the client’s other needs in a more holistic manner (mental health, substance abuse, poverty, homelessness).

While the research on innovations, best practices and efficiencies in legal aid demonstrates an increasing trend towards a more client-centered approach to legal aid service delivery (e.g. partnership in therapeutic courts, holistic defence, identification of unique client needs through specialized services), there is still room for improvement. Central to access to justice, is the need to identify the needs of clients early in the process in order to meet client and public safety expectations. Indeed, there may be times when early triage into appropriate services may avoid the criminal justice process entirely, with better results for both public safety and the offender. The service provider (i.e. the legal aid lawyer) is critical to improving the client experience and the quality of service provided.

Measure and manage performance

There is minimal hard data available (e.g. management information) on criminal legal aid.

The Panel remarked that because legal aid funds used to financially compensate lawyers for services provided are “public funds”, it is critical to convey the value of these funds so that there is public accountability and interest in how funds are expended.

While the Panel acknowledged the availability of aggregate metrics (e.g. those provided through the annual Statistics Canada Legal Aid Survey), they noted such data is difficult to understand and does not necessarily tell a story that will resonate with either the public

or government officials. A more compelling story is often the story of victims and families and the impact that the criminal justice system has on them.

The research found that while some legal aid plans are further along with respect to performance measurement and evaluation to determine effectiveness and efficiency, there remains little performance data. The research cited many reasons, notably struggles with:

- how to measure work within their own system (e.g. counting legal aid certificates versus legal cases)
- recording accurate data (e.g. quantifying duty counsel assists)
- resource restraints which limit analyses and reporting
- justice system data, while important for measuring outcomes, are often not available or are of variable quality
- the absence of integrated measures across legal aid and the criminal justice system to enable broader system-wide understanding of how performances intersect.

In identifying the need to focus on performance management and measurement, the Panel highlighted the importance of investing in information systems and identifying metrics.

Enhance leadership and innovation

The Panel discussed the need for both cultural change and creating a culture of innovation. There was considerable discussion with regards to approaches to changing the existing culture and to supporting innovation in the criminal justice system. The following approaches were explored:

- **Collaboration training** – It cannot be assumed that everyone knows how to collaborate. People need appropriate training if specific objectives are expected.
- **Corporate ownership** – It is important to create a sense of ownership and think about how cultural change can occur in the organization.
- **Creating a culture of commitment to innovation** – There is no dispute that everyone cares about the individual client as well as how legal aid services fits into the context of the larger criminal justice system. Communicating with service providers supports and builds on cultural change (e.g. the development of databases like those used in the Neighborhood Defender Service of Harlem⁵, makes information transparent and accessible to all players in the system: Judges; Crown; defence; police).
- **Increased use of technology** – Opportunities exist to use the increasing availability of technology (e.g. mapping software). It may be easier to innovate through new technology than through other areas. Technology can be used to

⁵ Neighborhood Defender Service of Harlem <http://www.ndsny.org/>

enhance quality and, if well deployed, can provide criminal justice system players with the right tools (e.g. providing defence counsel with the necessary information can improve the quality of defence services for clients). Legal aid plans can provide technological platforms by making available all the information defence counsel need to build a strong defence.

The Panel remarked that the criminal justice and legal aid systems are incredibly conservative institutions and therefore the challenge is to create a culture of innovation in which risk-taking is promoted; failure is not punished; and, incentives for innovation are real and permanent and not short-term.

The Panel acknowledged that modernization and reform of criminal legal aid to better respond to the needs of clients requires leadership. Given the shared responsibility for criminal legal aid, it was agreed that both the federal and provincial/territorial governments need to continue collaborating on the way forward.

The Panel noted that most systems innovate under pressure. This may be the result of looking for standards rather than best practices. Systemic innovation is important. Innovation is very helpful across legal aid plans and there is great value in the collection and subsequent sharing of information (e.g. the compendium of innovations and best practices in criminal legal aid that has been prepared).

It was agreed that focusing on innovation in criminal legal aid would be a solid approach to advancing discussions with stakeholders from those that are centered on the lack of resources to innovations themselves. The Panel agreed that critical to this is the need to engage front-line stakeholders to support the development of innovations. The basis for this engagement relies on the fact that quality of services can improve and costs can be lowered.

“Responsibility for legal aid is shared by federal, provincial and territorial governments. Consequently, the strong leadership we require should also be a shared responsibility. While we can disagree on the funding levels, when it comes to the need to support innovation and find better ways to deliver legal aid services, there can be no disagreement.”

Mr. Gerald Tegart

Conclusion

This report concludes the work of the Deputy Minister Advisory Panel on Criminal Legal Aid. Over eight months, the Panel deliberations, supported by the research, made a significant and rich contribution to the Department of Justice Canada's work on how to maximize the federal investment in criminal legal aid through innovations, best practices and efficiencies.

Most notably, the work of the Panel has highlighted the importance of criminal legal aid as a public service and, as such, the need for services to be client focused and for results to be measureable.

The Department will proceed to consult internally and externally on the Panel's advice and continue to develop a more detailed framework that is in keeping with federal priorities. The research findings, the Panel deliberations, and the advice of the Panel will be used by the Department of Justice Canada to further inform the next steps of the federal study including identifying research gaps, consultations, and concrete actions which may be undertaken.

Federal Legal Aid Program

Federal Funding

Federal funding support for criminal legal aid began in the 1970s as a contribution to the provincial and territorial governments to support the establishment and delivery of criminal legal aid in the provinces and criminal and civil legal aid in the territories. Under this collaborative partnership, provinces and territories deliver legal aid services through their legal aid systems, and the federal government shares in the costs of delivery.

Federal funding to the provinces for criminal legal aid and to the territories for criminal and civil legal aid is provided through the Department of Justice Canada's Legal Aid Program and constitutes the Department's second largest transfer payment (\$112.4 million annually⁶). Under the Legal Aid Program, the federal government provides funding to the provinces and the territories to support the provision of criminal legal aid to economically disadvantaged persons facing serious or complex charges that could lead to incarceration, as well as to youth charged under the *Youth Criminal Justice Act*.

The federal contribution to criminal legal aid in the provinces and criminal and civil legal aid in the territories is allocated on the basis of separate funding formulas.⁷ These allocations are calculated based on historical allocations as well as other variables (e.g. the number of rural communities, Aboriginal population, the number of persons charged with *Criminal Code* and *Controlled Drugs and Substances Act* offences persons charged under the *Criminal Code* and *Drug* offences).

Historically, the federal government has increased its investment in criminal legal aid to improve access to legal aid services, promote innovative approaches to address unmet legal aid needs, and to support policy development in the area of legal aid. For example, in 2001-2003, recognizing the financial pressures on legal aid plans throughout the country and the importance of learning more about unmet legal aid needs, the federal government implemented interim measures covering fiscal years 2001-2002 and 2002-2003 (the Legal Aid Project⁸). Increased temporary federal resources (\$10 million) were provided to address criminal legal aid pressures in the provinces and criminal and civil legal aid pressures in the territories. In addition, in 2003-2007, under the Investment Fund, increased temporary funding (\$20 million) was provided to provinces and territories to support the development, implementation and monitoring of legal aid innovations addressing unmet legal aid needs in the provinces for criminal legal aid and in the territories for both criminal and civil legal aid. Under this fund, priority was given to innovations addressing the needs of Aboriginal people, members of official language minority

⁶ The amount of \$112.4M includes an increase of \$473K, related to additional program costs associated with the creation of Nunavut as a territory, which was added to the permanent base funding for the territories in fiscal year 2000-2001. The amount of \$111.9M, that may sometimes be reported, does not capture this increase.

⁷ Funding to the provinces is provided through the contribution agreements respecting legal aid in criminal, youth justice and immigration and refugee matters. Funding to the territories is provided through the Access to Justice Services Agreements which combine funding for Criminal and Civil legal aid, Aboriginal Courtwork and Public Legal Education and Information.

⁸ The second component of the Project consisted of a joint research program, the Legal Aid Project, initiated by the Federal-Provincial-Territorial Ministers Responsible for Justice to examine long-term legal aid needs in Canada.

groups, members of visible minority groups, those with special needs; and innovations targeting service diversification – activities which support the provision of legal aid services (e.g. duty counsel) that focus on the needs of people at the “front end” of the criminal justice system.

Under Budget 2007, these temporary resources, totalling \$30 million, were rolled into the on-going base funding for criminal legal aid. This, in turn, increased the total federal investment in criminal aid from \$82.4 million to \$112.4 million.

In light of the important role that criminal legal aid plays with respect to access to justice, and despite fiscal restraints, the federal government has continued to provide stable funding for criminal legal aid over the past ten years. The table below reflects federal funding allocations for criminal legal aid in the provinces and territories in 2013-2014.

Table 1: 2013-2014 Federal Criminal Legal Aid Allocations

Jurisdictions	Federal Allocations⁹
Newfoundland and Labrador	2,042,872
Prince Edward Island	444,873
Nova Scotia	3,612,436
New Brunswick	2,452,811
Quebec	23,400,463
Ontario	43,312,631
Manitoba	4,740,754
Saskatchewan	4,202,560
Alberta	10,419,922
British Columbia	13,698,185
Yukon	864,119
Northwest Territories	1,704,154
Nunavut	1,489,683
Total	\$112,385,463

Legal Aid Program Evaluation Results

In accordance with the Treasury Board Policy on Transfer Payments, the Department of Justice Canada conducted an evaluation of its Legal Aid Program between September 2010 and April 2011. The evaluation addressed the relevance and performance of the Legal Aid Program for fiscal years 2006-2007 to 2010-2011.¹⁰

⁹ Department of Justice Canada, Legal Aid Directorate

¹⁰ As fiscal year 2007-2008 marked a new mandate for the Legal Aid Program, the focus of the evaluation was on the program impact over fiscal years 2007-2008 to 2010-2011.

“The cost of administering and monitoring the Legal Aid Program is minimal; it is equivalent to less than one percent of the federal funding contribution.”

*Department of Justice Canada
Legal Aid Program Evaluation 2012*

It is noteworthy that the issues identified in the evaluation findings were also explored by the Panel throughout their deliberations and are reflected in their advice to the Deputy Minister. The evaluation highlighted the following findings:

Relevance

- The Legal Aid Program’s objective of promoting access to justice continues to align with federal government priorities and directly supports the Department of Justice’s strategic outcome of a “fair, relevant, and accessible justice system”. Legal aid plans contribute to the effective functioning of the criminal justice system by upholding Canada’s commitment to fairness and the rule of law.
- Federal funding support for criminal legal aid is necessary based on constitutional and *Canadian Charter of Rights and Freedoms* obligations.
- Federal legal aid funding addresses a demonstrable need as demand for legal aid has continued to grow over time and legal aid clients tend to be among the marginalized and vulnerable members of the population. Legal aid services strive to preserve the fairness and accessibility of the criminal justice system.

Effectiveness

- The Legal Aid Program has contributed to the expected outcome of enhanced capacity of the provinces and territories and their legal aid plans to deliver criminal legal aid (and civil legal aid in the territories), as without the federal support, legal aid services would likely be reduced.

Efficiency and economy

- The cost of administering and monitoring the Legal Aid Program is minimal; it is equivalent to less than one percent of the federal funding contribution.
- More collaboration among criminal justice stakeholders is required. A recurring theme in the evaluation was the impact of external factors on the demand for legal aid (e.g. prosecutorial discretion, changes in legislation, and efficiency of the system as a whole).
- Given legal aid pressures (e.g. rising costs, increasing demands, fiscal constraints) there is a need to identify and implement efficient and economical practices and means to relieve these pressures. While legal aid plans have undertaken a variety of measures to increase the efficiency/economy of their service delivery, some of these approaches may represent a reduction in accessibility rather than an improvement in efficiency.
- Improved data availability is required to assess the effectiveness, efficiency and economy of the federal contribution to legal aid. Due to the shared responsibility for legal aid, it is

important to determine what legal aid data is relevant to the Legal Aid Program and should be collected by provinces, territories and legal aid plans.

LEGAL AID BY THE NUMBERS

While information exists on legal aid revenues and expenditures relative to criminal justice spending, it is recognized that there is minimal hard data available within existing legal aid management information systems regarding outputs and outcomes. Accordingly, the Panel emphasized the need for evidence-based data to support change and, as well, noted the challenges associated with articulating justice and its ultimate outcome.

Legal Aid Revenues

According to Statistics Canada, and as illustrated in the table below, an estimated 93% of legal aid revenues (for both criminal and civil legal aid) are from federal and provincial-territorial governments. Client contributions and cost recoveries, contributions from the legal professions (e.g. law foundations) and other revenues account for the remaining 7% of funds.

Table 2: Legal Aid Plan Revenues (2012-2013)
(dollars x 1,000)

Jurisdictions	Total Revenues ¹¹	Government Contributions ¹²	Client Contributions and Cost Recoveries ¹³	Contributions of the Legal Profession ¹⁴	Other Revenues ¹⁵
Newfoundland and Labrador	14,418	13,980	97	n/a	341
Prince Edward Island	1,822	1,735	n/a	n/a	87
Nova Scotia	22,089	21,910	10	n/a	169
New Brunswick	8,905	8,201	224	182	298
Quebec	172,320	169,607	2,474	n/a	239
Ontario	383,426	347,549	12,069	n/a	23,808
Manitoba	32,723	29,914	1,615	1,194	0
Saskatchewan	22,513	22,369	10	n/a	134
Alberta	76,303	65,810	4,474	n/a	6,019
British Columbia	83,543	78,414	0	3,807	1,322
Yukon	1,852	1,833	13	n/a	6
Northwest Territories	5,309	5,263	46	n/a	0
Nunavut	9,288	9,286	2	n/a	0
Total	834,511	775,871	21,034	5,183	32,423

¹¹ Revenues refer to all monies received by the legal aid plan for assistance in the provision of legal aid services. The sum of the sub-components of total legal aid plan revenues may not add to the total due to rounding.

¹² Government contributions refer to both federal and provincial/territorial monies allocated to the legal aid plan through the provincial or territorial government.

¹³ Client contributions refer to monies collected from individuals receiving legal aid services, while cost recoveries consist of the monies recovered from a judgment, award or settlement.

¹⁴ Contributions of the legal profession include all monies received from the law profession other than trust account interest amounts.

¹⁵ Other revenues may include, among others, revenue from investments, research sales and general interest earnings.

Legal Aid Expenditures Relative to Criminal Justice Spending

A 2008 Department of Justice Canada report¹⁶ demonstrated that, on a national basis, over a five-year period (2002-2003 to 2006-2007), direct service expenditures for criminal legal aid increased by 24.4% (from \$221M in 2002-2003 to \$275.4M in 2006-2007).¹⁷

An analysis of the patterns of change comparing expenditures for criminal legal aid with expenditures for other key components of the criminal justice system, such as courts, prosecutions and corrections, yields mixed results. The limited data available relating to courts, corrections and prosecutions costs restricts the comparisons that can be made with criminal legal aid expenditures. However, data relating to policing costs for the provinces and territories was more complete and hence, more reliable.¹⁸ A comparison of court expenditures data with legal aid expenditures data in six jurisdictions¹⁹ shows that the increase in court costs (21.9%) was marginally lower than the increase in criminal legal aid spending (24.4%). Notably, court costs compared with legal aid costs were lower in Manitoba and Saskatchewan and higher in Alberta.

A review of prosecutions expenditures²⁰ with criminal legal aid expenditures for 2003-2004 to 2006-2007 demonstrated that costs for prosecutions when compared with criminal legal aid were higher in some jurisdictions but lower in others. Generally, the data showed that the average increase in prosecutions costs was slightly less (23.5%) than the average increase in direct criminal legal aid expenditures (24.4%). Only in the province of Alberta was the increase in prosecution costs (50%) greater than the increase in criminal legal aid expenditures (27.6%).

In comparing adult corrections expenditures²¹ with criminal legal aid expenditures, spending on adult corrections is higher than that for criminal legal aid in some jurisdictions. More specifically, it reveals that although spending on adult corrections was lower than that on criminal legal aid in Manitoba and Saskatchewan, spending on adult corrections was higher than expenditures in criminal legal aid in Alberta. The average increase in adult court corrections for 2002-03 to 2006-07 was 19.2% while for criminal legal aid the average increase was 43.2%.

Finally, an analysis of expenditure patterns for criminal legal aid and policing over a four-year period is based on more complete data and permits more definitive conclusions. The data²² demonstrates that, on a national basis, the percentage increase in the costs of criminal legal aid (14%) have been less than the percentage increase for policing costs (18.7%) during the same period (2003-2004 and 2006-2007). Further, the data shows that the percentage increase for

¹⁶ *5-Year Trends in Direct Service Criminal Legal Aid Expenditures Compared with other Justice System Expenditures; 2002-03 to 2006-07*; Research & Statistics Section, Department of Justice Canada, January 2008.

¹⁷ For the period 2005-2006 to 2006-2007 criminal legal aid expenditures declined by 4.9% largely as a result of an increase in expenditures reported by Ontario for 2005-2006 which reflected an accounting action rather than an actual increase in expenditures. As a result, a one-time cost of \$33.3M was added to the CCJS annual report. This adjustment altered the national total for criminal legal aid expenditures for 2005-2006.

¹⁸ *5-Year Trends in Direct Service Criminal Legal Aid Expenditures Compared with other Justice System Expenditures; 2002-03 to 2006-07*; Research & Statistics Section, Department of Justice Canada, January 2008.

¹⁹ Newfoundland & Labrador, Manitoba, Saskatchewan, Alberta, Northwest Territories and Nunavut

²⁰ Prosecutions expenditures data from, Newfoundland & Labrador, Manitoba, Saskatchewan and Alberta were used. Criminal legal aid expenditures data was available for Manitoba, Saskatchewan and Alberta.

²¹ Data on court, prosecution and corrections costs were provided through the PWG and reflect provincial costs.

²² Federal policing costs are not available prior to 2003 and therefore comparisons were possible from 2003 to 2006.

direct criminal legal aid expenditures was greater than for policing costs in six jurisdictions (Nova Scotia, New Brunswick, Quebec, Saskatchewan, Yukon and Nunavut).²³

Despite the limitations in data, it is clear that there are variations in expenditure patterns between criminal legal aid spending and spending in other areas of the criminal justice system.

Legal Aid Expenditures in Fiscal Year 2012-2013

In fiscal year 2012-2013, legal aid plans spent \$813 million providing criminal and civil legal aid services. Consistent with previous years, most legal aid plans spent more on criminal matters than on civil matters. In fiscal year 2012-2013, Quebec (46%), Prince Edward Island (47%) and Ontario (47%) allocated a smaller proportion of direct expenditures to criminal matters. In the other ten reporting jurisdictions, the proportion spent on criminal matters ranged from 55% for New Brunswick to 75% for Manitoba and Saskatchewan (Statistics Canada 2014).²⁴

Table 3: Legal Aid Plan Expenditures (fiscal year 2012-2013)
(dollars x 1,000)

Jurisdictions	Total Expenditures²⁵	Direct Criminal Legal Aid Expenditures²⁶	Central Administrative Expenditures²⁷	Other Expenditures²⁸
Newfoundland and Labrador	12,635	6,741	991	n/a
Prince Edward Island	1,822	851	n/a	n/a
Nova Scotia	23,093	12,331	1,625	76
New Brunswick	8,607	3,876	721	787
Quebec	162,624	67,372	14,655	1,726
Ontario	374,244	139,681	56,215	23,199
Manitoba	33,573	19,198	6,563	1,290
Saskatchewan	22,477	15,482	1,415	377
Alberta	73,521	40,308	6,774	2,002
British Columbia	83,940	44,238	9,515	4,270
Yukon	2,014	1,184	325	n/a
Northwest Territories	5,263	2,046	1,463	912
Nunavut	9,300	3,753	1,773	2,350
Total	813,113	357,061	102,035	36,989

²³ “5-Year Trends in Direct Service Criminal Legal Aid Expenditures Compared with other Justice System Expenditures; 2002-03 to 2006-07”; Research & Statistics Section, Department of Justice Canada, January 2008.

²⁴ In Canada, legal aid data is collected by Statistics Canada, Canadian Centre for Justice Statistics through a national Legal Aid Survey. This survey annually collects legal aid data from the 13 legal aid plans across the country. Data is collected on a lag year basis (i.e. one year behind).

²⁵ Expenditures refer to the actual gross dollars expended by the legal aid plan in a given fiscal year. Expenditures on behalf of the plan by other agencies are not included. The sum of the sub-components of total legal aid plan expenditures may not add to the total due to rounding.

²⁶ Direct Criminal Legal Aid Expenditures are the sum of payments made to private law firms and the costs of legal service delivery by legal aid plan staff. These expenditures include monies spent on the provision of legal advice and representation services to clients including special target groups. All law office and contracted community clinic expenses are included (for example, staff salaries, benefits and overhead expenses).

²⁷ Central Administrative Expenditures include monies spent on legal aid head office functions and on offices that do not employ staff to advise and represent clients.

²⁸ Other Expenditures refer to other monies expended by the legal aid plan and may include capital expenditures.

Financial Eligibility Levels

The Legal Aid Program evaluation (2012) noted that financial eligibility guidelines of legal aid plans have not kept pace with various economic indicators over time, such as Low Income Cut-Off and the consumer price index and that this has implications for accessibility to legal aid. For most plans, financial eligibility levels are now set so low that many low-income individuals facing the likelihood of imprisonment can neither afford lawyers nor qualify for legal aid.

Legal aid financial eligibility guidelines are updated periodically, however, not on a regular basis to keep pace with changes in economic indicators. Financial eligibility levels have remained relatively unchanged over the past 10 years²⁹. The table below shows financial eligibility levels for legal aid plans across the country as of 2014.

Table 4: Legal Aid Financial Eligibility³⁰

Jurisdiction	Financial Eligibility Income Levels
Newfoundland and Labrador	See below ³¹
Prince Edward Island	\$15,778
Nova Scotia	\$12,804
New Brunswick	See below ³²
Quebec	\$16,306
Ontario	\$10,800
Manitoba	\$14,000
Saskatchewan	\$11,820
Alberta	\$16,176
British Columbia	\$17,040
Yukon	\$19,200
Northwest Territories	\$25,140 – \$35,172 ³³
Nunavut	See below ³⁴

Note: These levels reflect income thresholds for a single person.

While multiple factors are considered in determining eligibility for criminal legal aid (i.e. merit, scope), financial eligibility continues to be a key factor and an important determinant of access to legal aid and by default access to justice.

²⁹In 2014, to provide increased access to legal aid, Quebec raised its legal aid eligibility guidelines.

³⁰ For purposes of identifying current levels of financial availability, data was gathered from legal aid plan and provincial/territorial government websites.

³¹ There is no specific level of income at which an applicant will automatically qualify for Legal Aid. Instead, an Intake Worker will consider the applicant's assets, income, debts and expenses to determine if the applicant has the ability to pay for a lawyer without going into heavy debt. The Intake Worker will also consider the assets, income, debts, and expenses of the applicant's spouse and any dependents.

³² No amount established available. Legal Aid determines who is eligible for legal representation taking into consideration income, expenses, assets, any liabilities, family situation and type of legal services required.

³³ These amounts reflect a range among 6 geographical zones.

³⁴ *The Legal Services Regulations* set out principles for financial eligibility whereby an applicant is eligible to receive legal aid (a) where the applicant receives all or most of his or her income from social assistance; and (b) where the legal fees for services rendered outside the plan would reduce the applicant's income to a level whereby he or she would become eligible for social assistance, in which case, he or she may be required to contribute towards the payment of the costs."

SOCIO-ECONOMIC, HEALTH AND LEGAL IMPACT OF CRIMINAL LEGAL AID

Research suggests that members of poor and vulnerable groups are particularly prone to legal problems and experience more legal problems than higher income earners and more secure groups. Research on the Legal Problems of Everyday Life (Department of Justice Canada, 2007) demonstrates that individual problems may multiply from one legal problem leading to other socio-economic and health problems. Legal aid is an integral part of the criminal justice system. Evidence suggests that criminal legal aid has the potential to produce a wide range of benefits – from broad benefits to the legal system as a whole to economic, social and health benefits for society and individuals (Prairie Research Associates, 2014).

Studies show that economically-disadvantaged persons who are accused of criminal offences are among the more marginalized and vulnerable members of the population, and often suffer from other issues, such as low literacy, low education, mental health issues, or addictions. These issues prevent these litigants from being able to effectively advocate for themselves, and many are incarcerated as a result of not being represented by legal counsel (Buckley, 2010; Department of Justice Canada, 2012; Matthews, 2012).

As well, legal aid is integral to fulfilling obligations under the *Canadian Charter of Rights and Freedoms* --- including the right to a fair trial (section 11(d)); to life, liberty, and security (section 7); and to equal protection and equal benefit of the law (section 15) (Canadian Bar Association, 2014).

Criminal legal aid helps to eliminate inefficiencies within the court and justice system. The effects of self-represented individuals on the justice system are many and include: an increase in delays; a reduction in the possibility of early resolution; and increased potential for unjust results (e.g. higher rates of remand, harsher sentences, inappropriate guilty pleas, and wrongful convictions), all of which increases costs to the court system and corrections. In addition, police officers and social workers can become tied up in court delays, contributing to inefficiencies in the use of these resources (Matthews, 2012).

Studies show that legal aid programs produce a variety of socio-economic, health and legal benefits. The links between poverty, legal, and social issues have long been established in legal aid literature. Studies show that poverty generates specific legal and social problems, and that restricted access to justice can have a variety of negative outcomes --- from reduced health to increased social isolation and conflict (Martin, 2002). Evidence indicates that investments in legal aid can save money in areas of government spending, such as health and social assistance (Matthews, 2012).

ACCESS TO JUSTICE RELATED INITIATIVES

A broad range of initiatives have been undertaken, at both the national and federal levels, which have an access to justice and a legal aid link. Some of these initiatives are discussed below.

Canadian Bar Association's Reaching Equal Justice Report

The *Reaching Equal Justice* report, released in December 2013 by the Canadian Bar Association, offers a national strategic framework for change. This includes a vision of an inclusive justice system that can be achieved through work by all members of the justice community on 31 targets, with milestones to mark progress and actions to begin immediately. It encourages a national conversation to develop a common vision of what needs to be done to achieve a system that provides equal justice for everyone.

The Canadian Bar Association notes that the key to providing a seamless continuum of legal and non-legal services, and ensuring that representation is available when needed is to have meaningful access to justice. The concept of 'legal health checks' are introduced, whereby legal aid providers have the capacity to follow-up with clients on a routine basis to prevent/minimize frequent legal problems. These individual and systemic health checks are targeted to become a routine feature of the justice system by 2020.

With regards to publicly-funded legal services, the report identifies three main components needed to regenerate legal aid:

- national legal aid benchmarks with a commitment to their progressive implementation, monitored through an open, transparent process;
- reasonable eligibility policies that give priority to people of low and modest means but provide graduated access to all residents of Canada who are unable to retain private counsel (including through contributory schemes); and,
- effective legal service delivery approaches and mechanisms designed to meet community needs and the meaningful access to justice standard.

The report identifies federal, provincial and territorial governments in establishing a national working group to develop national benchmarks. The Canadian Bar Association states that the Association of Legal Aid Plans could consult with the Federal-Provincial-Territorial Permanent Working Group on Legal Aid on an action plan to initiate work on these national legal aid benchmarks.

While the *Reaching Equal Justice Report* is largely focused on the need to improve access to justice in the civil justice system, the report suggests that because there is no hard and fast dividing line between criminal and non-criminal matters, the report, and some of its proposals for change, are also relevant to the criminal justice system, including criminal legal aid. For this reason, this report, and the continuing work of the Canadian Bar Association, will be used to further inform the work of the Department of Justice Canada in its development of a strategy for maximizing the federal investment in criminal legal aid.

National Action Committee on Access to Justice in Civil and Family Matters Final Report – A Roadmap for Change

In 2008, the National Action Committee on Access to Justice in Civil and Family Matters, chaired by the Supreme Court of Canada's Justice Thomas Cromwell, was established to increase the public's accessibility to the civil justice system. The Committee envisioned:

A society in which the public has the knowledge, resources and services to effectively deal with civil and family matters by: prevention of disputes and early management of legal issues, through negotiation and informal dispute resolution processes, and where necessary, through formal dispute resolution by tribunals and courts.

The Committee's work culminated in a final report that identifies a national roadmap for improved access to justice in Canada. As well, the Committee identified the following guiding principles for change in moving forward:

1. ***Put the Public First*** – focus on the people who need to use the system, especially vulnerable populations and remember that the system exists to serve the public.
2. ***Collaborate and Coordinate*** – improve collaboration, coordination and integration of services within jurisdictions, across and within all sectors and aspects of the justice system, and with other social service sectors and providers.
3. ***Prevent and Educate*** – focus on both prevention and resolution of disputes and provide adequate information for people to deal effectively and efficiently with disputes.
4. ***Simplify, Make Coherent, Proportional and Sustainable*** – need to concentrate on simplicity, coherence, proportionality and sustainability at every stage of the process.
5. ***Solutions need to be timely, fair and cost-effective*** – procedures must be simple and proportional for the entire system to be sustainable.
6. ***Take Action*** – need concrete action and to move beyond wise words and bridge the implementation gap to make a meaningful difference in the lives of people who rely on the justice system.
7. ***Focus on Outcomes*** – a shift in focus from process to outcomes. Providing justice, not just in the form of fair and just process but also in the form of fair and just outcomes, must be our primary concern.

Although the work of this Committee focused largely on improving access to justice in civil and family matters, many of the Committee's findings are applicable to improving access to justice in the criminal justice system. As such, these findings are particularly relevant to the work being undertaken in the context of the federal criminal legal aid study.

Economics of Policing

The economics of policing is a wide-ranging issue related to the efficiency and effectiveness of policing and of public safety more broadly. Like legal aid, it has become increasingly relevant as all levels of governments grapple with demonstrating the value of increasingly costly public services at a time of fiscal constraints.

In 2012, under the leadership of Public Safety Canada, an economics of policing initiative was launched with the expected goals to: increase the efficiency and effectiveness of policing in Canada; encourage learning, innovation, and the application of best practices; and contribute to improved public safety outcomes and social well-being through partnership and integrated approaches.

In response, all federal, provincial and territorial Ministers responsible for justice and public safety agreed to convene a Summit (January 2013) on the economics of policing; to share information across jurisdictions on policies and practices targeted at improvements on the efficiency and effectiveness of policing (ongoing – an index was released in August 2013)³⁵; and, to develop a shared forward agenda or strategy for policing and public safety in Canada. The main principles behind the Shared Forward Agenda are to cooperate collectively in those areas where it makes sense to do so, while respecting jurisdictional responsibilities and adopt a comprehensive and holistic approach to public safety.

While there are obvious differences between the delivery of police services and legal aid, there are also many parallels that can be drawn:

- Both policing and legal aid are key to the effective and efficient functioning of the criminal justice system
- Policing, like legal aid, is experiencing service delivery challenges, the need to respond to vulnerable groups (changing nature of crime, need to deliver services in rural and remote communities)/pressures (i.e. increasing costs). Both policing and legal aid costs have been on the rise
- Policing and legal aid fall under the constitutional administration of justice which resides with the provinces
- The federal government contributes to the costs of policing and legal aid services.

In developing a strategy towards maximizing the federal investment in criminal legal aid, and in light of these similarities between policing and legal aid, it may be helpful to examine the work undertaken by Public Safety Canada with respect to the economics of policing to determine what lessons learned could be applied to the federal criminal legal aid study.

³⁵ As part of federal, provincial and territorial Ministers' commitment to improve the sharing of information, governments and police services have worked together in compiling a database of innovative initiatives and approaches that contribute to police efficiency and effectiveness while helping keep communities safe. The result is the [Index of Policing Initiatives](#), an evergreen, online search engine and the first police information-sharing tool of its kind in Canada.

Mental Health Commission of Canada's National At Home/Chez Soi Final Report

In 2008, and with federal funding (\$110M), the Mental Health Commission of Canada and groups of stakeholders in five cities (Vancouver, Winnipeg, Toronto, Montreal and Moncton), implemented a pragmatic, randomised controlled two-year field trial of the Housing First (HF) initiative³⁶ referred to as At Home/Chez Soi.³⁷

Results of the study show:

- The HF intervention produces more appropriate community-based service use and better responsiveness to the needs of participants, all of whom were experiencing homelessness and living with mental illness.
- Providing permanent housing and wrap-around services to high risk and moderate risk homeless persons living with mental illness and other problems, results in a cost-savings to other sectors in the system (e.g. reduced police intervention, reduced hospital emergency room visits).
- Supportive housing programs can reduce the costs associated with health care and the justice system. One study found that investing in supportive housing costs \$13,000 to \$18,000 per year; in comparison, to traditional institutional responses like prisons and psychiatric hospitals which cost \$66,000 to \$120,000 per year.

The study cautions, however, that an investment in HF does not necessarily mean a reduction in the investment in other services. Rather, these services can be made available to others in need.

In developing a strategy for maximizing the federal investment in criminal legal aid, studies like this one, provide a rich level of information that contributes to an improved understanding about the impact that innovations, such as supportive housing and wrap around services, have upon individual lives and justice system costs.

International Innovations in Public Sector External Service Delivery

Undertaken by the Treasury Board of Canada Secretariat, this study examined notable innovations in the external delivery of services that can inform Canada's thinking about the next generation of service delivery initiatives. The study results are presented in three parts: Part I examines the "what" of service delivery by examining service innovations in several areas (e.g. access, personalization); Part II focuses on the "how" of service delivery by considering practices in service management, including performance measurement and service policies and strategies; and, Part III contains recommendations for action.

³⁶ Housing First (HF) is an evidenced-based intervention model (based in New York City), which is in direct contrast to the traditional "treatment then housing" approaches, and involves providing immediate and permanent housing and wrap-around supports to individuals who are homeless and living with serious mental ill.

³⁷ The study objective was to identify what works, at what cost, for whom and in which environments. A total of 2,148 individuals participated in the study, with 1158 if these receiving the HF intervention. Upon entry to HF average costs per person annually was \$22,257 for high needs participants and \$14,177 for moderate needs participants. Two years after entry in the study, the costs dropped by \$9.60 for high needs participants and \$3.42 for moderate needs participants.

Although the study results are intended to inform the federal government as it moves forward in delivering cost-effective and efficient services, several sections of this report may be particularly relevant to the federal criminal legal aid study including those sections of the report focused on: Collaborative and Integrated Service Delivery, Inter-jurisdictional Partnerships; Inter-Sector Partnerships, Personalized Service Delivery; and Measuring Service Delivery Performance.

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

In December 2012, the United Nations General Assembly formally adopted the *United Nations (UN) Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. These UN Principles and Guidelines reflect the collaborative efforts of 40 member states, including Canada, and outline the core principles that countries should follow to provide effective access to criminal legal aid, particularly with respect to the most vulnerable in society.

The endorsement of these non-binding Principles and Guidelines by the UN General Assembly represents a positive and constructive step forward for access to justice and legal aid, both in Canada and abroad, signifying the importance of access to justice and the ongoing provision of legal aid in criminal justice systems. Extracts of these Principles and Guidelines include:

- Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law.
- States should consider the provision of legal aid their duty and responsibility.
- States should recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid.
- States should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

An underlying notion of the UN Principles and Guidelines suggest that member states, where appropriate, undertake measures to “maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a proper functioning criminal justice system and on access to justice”. Results of the federal criminal legal aid study will be an opportunity for the Department of Justice Canada to demonstrate, both internationally and domestically, its longstanding commitment to access to justice, through legal aid, and to helping to ensure the effective functioning of the criminal justice system.

LEGAL AID RESEARCH FINDINGS

The Panel identified four themes to categorize the research findings with respect to criminal legal aid innovations and best practices: *accessibility, effectiveness, efficiency, and accountability*.

“A good innovation addresses all four pillars: accessibility, effectiveness, efficiency, and accountability.”

Mr. Richard Zorza

Accessibility

The innovations relating to accessibility of legal aid fall into the following three categories:

- Multiple entry points and channels (in person, telephone, online, video applications)
- Streamlining processes (e.g. improved & flexible eligibility guidelines, simplified application processes, on-line lawyer acknowledgement)
- Client-centered approach (e.g. holistic delivery, working with community organizations, reduced legal aid wait times)

Effectiveness

Innovations in the effectiveness of legal aid and improvements to service delivery include:

- Integrated service delivery (e.g. community outreach, legal aid defence counsel in specialized courts, specialized services for targeted groups (e.g. youth, persons with mental health/ addictions, Aboriginal people))
- Appropriate and proportionate service delivery (triage, information and short advice services, (Expanded) Duty counsel)
- Collaboration (e.g. systems approach to change – increased collaboration between key players; opportunities to share information/tools/ resources across legal aid plans (e.g. Association of Legal Aid Plans of Canada))

Efficiency

Efficiency considers methods to promote or increase cost-effectiveness of legal aid, including:

- Increased use of technology (call centres, enhanced information sharing approaches - i.e. between legal aid and staff or private bar lawyers, Crown disclosure; video bail hearings)
- Accelerated processes (improved application processing, earlier service provision, streamlined billing processes)
- Managing system delays (continuity of counsel - e.g. expanded duty counsel, full service duty counsel, legal aid counsel in Drug Treatment Courts, Mental Health Courts; reduced choice of counsel, improved information sharing)
- Balanced delivery approaches (paralegals, law students, other professionals; staff model, private bar model, mixed model)

Accountability

With respect to accountability, the research focuses on examining the various factors influencing the development of innovative legal aid approaches, including:

- Change management (systematic program reviews, organizational structural changes, sustainability, cultural shift, pilot projects, communication with stakeholders, leadership)
- Drivers of innovation (limited resources, mandated services, business approach, proactive response to needs – e.g. Big-case management)
- Performance measurement (evidence-based delivery, operational requirements - i.e. audits, evaluations; tools to monitor/forecast demand, quality of service and delivery).

The Federal Role in Criminal Legal Aid

The research examined various innovations and best practices that legal aid plans are using. As well, it explored the federal role in supporting the development and implementation of innovations and best practices particularly with respect to sustaining accessible, efficient, and cost-effective criminal legal aid services within current federal funding levels.

While funding levels continue to be a primary concern, key informants identified the following other roles for the federal government in supporting legal aid:

- Having a vision
- Promoting a culture of measurement
- Serving an advocacy/leadership role
- Encouraging an interdisciplinary approach to legal aid
- Conducting research
- Facilitating information sharing
- Considering the effects of policy and legislation on legal aid.

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