



LEGAL AID
RESEARCH SERIES

A PROFILE OF LEGAL AID
SERVICES IN FAMILY LAW
MATTERS IN CANADA



A PROFILE OF LEGAL AID SERVICES IN FAMILY LAW MATTERS IN CANADA

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*The views expressed in this report are those of the
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Executive Summary

This report describes service delivery models, coverage and financial eligibility provisions, as well as case volumes and expenditures. It also presents information on innovative approaches to service delivery including non-litigation legal aid services such as mediation and summary advice that are offered by some jurisdictions.

Methodology

The information for this study was gathered from legal aid plans over the summer of 2001. In addition, information was also gathered from published documents such as annual reports, brochures, and evaluation reports that were provided. The published literature on family legal aid in Canada was also reviewed in the study.

A Gender Issue

The report emphasizes that the availability of family legal aid is an important issue for women. Women make up at least 70 percent of clients in family legal aid cases in all jurisdictions.

Coverage

The coverage policies for family legal aid result in unequal levels of service across Canada. While legal aid plans list a fairly consistent range of legal matters that may be covered, in practice, coverage policies in several jurisdictions give priority to matters in which domestic violence is a factor, and to child apprehensions. The real differences from one jurisdiction to the next are in the amount of family legal aid provided.

Accessibility

The accessibility of legal aid in family matters, as measured by per capita approved applications, varies considerably from one jurisdiction to the next. The rate of approved applications ranges from a low of 175 per 100,000 population to 1170 per 100,000. This is nearly a seven-fold difference from the lowest to the highest level of accepted applications.

Expenditures

Provinces spend widely varying amounts on family legal aid. The variations in levels of per capita expenditure on family legal aid are similar to the differences in per capita approved applications. Per capita expenditures in the provinces ranged from \$1.47 to \$5.82. This represents a four-fold difference in spending on family legal aid among these jurisdictions.

There are also significant differences in the average cost per case for delivering family legal aid. The overall cost per case for family legal aid in the provinces ranged from \$405 to \$1,536.

Financial Eligibility

The financial eligibility guidelines that apply to family law applicants vary considerably. Legal aid plans use different approaches to determining financial eligibility. Some use needs tests that take into account income, assets and expenses. Others rely more on income cut-offs. Annual income cut-offs for a single person vary widely across jurisdictions, from a low of \$4,716 to a high of \$14,176. Generally speaking, individuals receiving social assistance are automatically eligible for legal aid coverage. In addition, individuals who do not meet the criteria for free legal aid coverage may still be eligible for contributory legal aid, in which clients pay some portion of legal aid costs.

The literature highlights concerns that eligibility criteria for legal aid tend to be at or near social assistance income levels. As a result, individuals who are “working poor” or have very limited means may be ineligible for legal aid, and may be forced to represent themselves, or simply be unable to seek relief in the justice system.

Innovations

Pilot projects are under way in several legal aid plans to examine the cost-effectiveness of staff lawyer delivery compared with judicare. As well, several legal aid plans are developing non-litigation strategies such as mediation and other forms of out-of-court dispute resolution methods to resolve family law matters.



1.0 Introduction

1.1 Background

The purpose of legal aid in Canada is to ensure that low-income individuals have access to competent legal representation and fair access to the justice system. Legal aid services in Canada are provided in two main areas of law: criminal, including youth court; and civil, including immigration, family law, and poverty/social benefits law, which encompasses landlord and tenant matters, eligibility for social assistance and a range of other poverty law issues.

Each province and territory in Canada has its own legal aid plan. The major sources of funding for legal aid are the federal and provincial/territorial governments. Other sources of revenue are cost recoveries from clients and contributions from the legal profession. With the termination of the Canada Assistance Plan and the adoption of the Canada Health and Social Transfer on April 1, 1996, the federal government contribution to civil legal aid is now part of a block grant to the provinces/territories and there is no longer any specific earmarking of funds for civil legal aid cases (Johnstone and Thomas, 1998). The determination of how these funds are spent is made by the provinces and territories. Many professionals who work in Canada's justice system believe that the amount of funding available for family legal aid is less than is required to ensure adequate coverage for individuals who require this assistance. However, to date, little comparable data on family legal aid volumes and expenditures across provinces and territories has been collected.

In all jurisdictions except Prince Edward Island, an independent organization, usually affiliated with the Law Society, has direct responsibility for the administration of legal aid services. This ensures the appearance of independence in making decisions about funding for individual cases, which is important, as many individuals receiving legal aid services are involved in litigation against the state, for example, in criminal or child protection proceedings.

Three models of legal aid service delivery are currently in use in Canada. In the staff lawyer model, lawyers are employed directly by legal aid plans to work exclusively on legal aid cases. In jurisdictions with a staff lawyer model, private lawyers are still used in cases where issues such as conflict of interest require it. In the judicare model, legal aid services are provided by lawyers in private practice, who are paid by the legal aid plan on a contract, or tariff, basis. Most jurisdictions employ a mixed model of legal aid service delivery, which means that they use a combination of staff and private lawyers to provide legal aid services.

1.2 Purpose of This Research Project

Department of Justice Canada contracted with the Canadian Research Institute for Law and the Family (CRILF) to conduct a project that would provide a comparative profile of family legal aid services across all jurisdictions in Canada. This report provides the findings of this project.

The purpose of the present project was to collect information from all provinces and territories in Canada concerning the provision of legal aid services in family law cases. In addition to collecting descriptive material concerning the model for delivery of family legal aid, coverage provisions, and financial eligibility in each jurisdiction, the project also attempted to collect comparable information regarding the volume of family legal aid cases, as well as expenditures on family legal aid in each province and territory. Specifically, the following information was requested from all jurisdictions:

- A description of the legal aid system for family law cases.
- For the most recent year available, the volume of family legal services delivered by type of family law matter, by delivery mode (i.e., tariff, staff lawyers, etc.), and by each stage of the civil justice process.
- For the most recent year available, aggregate expenditures and cost per case of family legal aid services.
- If available, data on non-litigation legal aid services such as mediation and summary advice.
- If available, information on referrals to other agencies.

For the most recent year available, the number of applications, approvals, refusals and actual deliveries by type of legal issue.

- For a five-year period, data on overall trends in expenditures and volumes of family legal aid services.

1.3 Methodology

In order to collect information relevant to the project from all provinces and territories, a memorandum was sent to the director of each legal aid service on June 27, 2001. Several follow-up requests were made to the jurisdictions that did not respond to the initial request for information. As responses were received from each jurisdiction, they were logged according to whether information on each question posed was available. Given the scope of this study, it was not possible to conduct personal interviews with key informants.

The format in which the information was received varied across jurisdictions. In some cases, the requested information was supplied in a letter, or in tables produced specifically for this project. In other cases, published documents were provided, such as annual reports, brochures, and evaluation reports.



In addition, the Web sites of all legal aid services were examined to determine if any additional information was available. The authors also reviewed available literature, though there is not a great deal of published material on family legal aid in Canada. Data from these sources were collated and summarized and are also presented in this report.¹

1.4 Limitations

Several limitations to the data presented in this report should be noted. First, the information available from each jurisdiction varied widely in terms of both the amount of information and the level of detail. While some jurisdictions had data that addressed many of the questions posed, others were able to provide relatively little data. Given that the administration of legal aid in Canada is the responsibility of the individual provinces and territories, it is not surprising that different jurisdictions collect data on their systems in different ways; however, this fact makes cross-jurisdictional comparisons difficult.

A second limitation to be noted is that data addressing the same issue from different jurisdictions are not necessarily directly comparable. For example, when providing data on expenditures on legal aid, some jurisdictions were able to break these costs down for family legal aid, while others could only provide these data for all civil legal aid cases. The type of data presented is clearly indicated in all tables; however, this also has affected the ability to draw comparisons across jurisdictions.

A third limitation is that not all jurisdictions were able to provide data for the same time period. Jurisdictions were asked to provide data for the most recent year available, as well as trend data for a five-year period. In some cases the years compared are not identical.

This report relies on information provided by the individual jurisdictions, and, as already noted, this information varies considerably. In some cases, provinces and territories identified issues that were particular to their jurisdiction. These have been included in Section 2. Not all jurisdictions identified specific issues, and it may be the case that some issues are relevant to other jurisdictions as well.

Finally, the specific family law issues that are dealt with under the umbrella term of “family legal aid” differ across jurisdictions. This should be kept in mind when attempting to draw comparisons across provinces/territories. Moreover, not only are legal issues classified differently, the types of services that are included within family legal aid also differ across

¹ As a response was not received from the Director of Legal Aid in Newfoundland, information on this jurisdiction has been collected from other sources such as Web sites and published articles. The information on this jurisdiction is more limited than that from other provinces and territories.

jurisdictions. For example, in some jurisdictions, services provided by professionals such as mediators, parent educators and paralegals may be included as a family legal aid service, in addition to those of traditional legal counsel.



2.0 Description of Family Law Legal Aid Services in Canada

2.1 Newfoundland²

2.1.1 Delivery of Services

The Newfoundland *Legal Aid Act* of 1976 established the Legal Aid Commission as the body responsible for administration of legal aid in the province. This agency has established 10 regional offices around the province that have responsibility for delivering legal aid.

Newfoundland uses both staff lawyers and members of the private bar to deliver legal aid, although, according to Doucette (2001), the vast majority (98 percent) of both criminal and family legal aid cases are handled by staff lawyers.

2.1.2 Coverage Provisions

Legal aid in Newfoundland is available for a range of family law issues, including divorce, custody, access, child protection, and child wardship. In addition, support cases, restraining orders, matrimonial property, and adoption cases are covered under certain circumstances. For example, support cases may be covered by legal aid if one party has a private lawyer; restraining order cases may qualify depending on the hardship of the case; and matrimonial property cases may be eligible depending on merit (Doucette 2001).

2.1.3 Financial Eligibility

The *Legal Aid Act* does not provide specific income cut-offs for determining financial eligibility for legal aid in Newfoundland; however, general financial guidelines are given in the accompanying Regulations. The general intent is that applicants should receive legal aid coverage if they cannot pay for a private lawyer without having to dispose of assets necessary to their livelihood, or without adversely affecting the ability to support themselves and their dependents in terms of food, clothing and shelter. Also, individuals who need immediate legal advice to protect their rights and do not have any funds are eligible for legal aid assistance. Finally, individuals who are receiving social assistance are automatically eligible for legal aid coverage.

With respect to an individual's contribution for legal aid coverage, the level of contribution, if any, is determined by a number of factors including household income, assets and liabilities, expenses, and dependants. Examples of the net annual income guidelines are: single person – \$4,716; single person and one dependant – \$5,808; single person and two dependants – \$6,324; couple – \$6,492; couple and one dependant – \$6,960; and couple and two dependants – \$7,416.

² This section was prepared on the basis of publicly available material. No response was received to the researchers' request for information from the Director of Legal Aid for the Province of Newfoundland and Labrador.

2.2 Prince Edward Island

2.2.1 Delivery of Services

Prince Edward Island is the only jurisdiction in Canada in which responsibility for the administration of legal aid falls under the direction of a government department, the office of the Attorney General.

Prince Edward Island has a legal aid system that utilizes a combination of staff lawyers and private counsel paid by a tariff. The tariff is \$60 per hour, regardless of the years of experience of a private lawyer, up to a maximum of \$1,200 per case. There is a ceiling on the number of preparatory hours that may be spent, depending on the type of case, but no limit on the number of hours spent on court time. Preparation time is negotiated at the time of authorization.

There is no panel of private legal aid lawyers in Prince Edward Island, and in 2000/01 a total of 20 private lawyers worked on legal aid files. A minority of legal aid cases are handled by private lawyers: in 2000/01, 22 percent of legal aid cases were handled by private lawyers working on tariff. The staff legal aid office in Prince Edward Island currently consists of one senior manager, four staff lawyers, and three secretaries.

2.2.2 Coverage Provisions

Full legal aid coverage for family law matters in Prince Edward Island is restricted to cases of domestic violence, which is broadly defined in terms of both physical and emotional abuse, and to parents in cases of apprehension of children by the Children's Aid Society.

In 1996, a special program was established, with funding from the Law Foundation to provide *limited* legal aid coverage by lawyers in private practice, for other domestic matters that do not fall under the full coverage provisions. This funding is separate from the legal aid budget, and potential clients do not apply directly to legal aid for coverage. Instead, application for coverage is made by the potential client's lawyer directly to the Law Foundation. The Law Foundation is operated by the provincial Law Society and receives revenue from the interest on lawyers' trust accounts.

2.2.3 Financial Eligibility

A sliding scale, based on the number of family members, is used in Prince Edward Island to determine financial eligibility for family legal aid. The scale was increased in 2001, and the annual income cut-offs currently are: single person – \$14,176; family of two – \$17,720; family of three – \$22,037; family of four – \$26,677.

2.2.4 Issues

The bar in Prince Edward Island has expressed concern over the lack of legal aid funds available for family law issues. A recent report commissioned by the government of Prince Edward Island (Ross 1999) reviewed the provision of family law services and made several recommendations



for their improvement. One major recommendation of the report was the establishment of a Family Justice Centre that would use a triage model to allocate legal and other professional services to eligible family law clients. Within this Centre, legal aid for all family law issues would be available for all low-income families. The emphasis in this Centre would be on non-adversarial methods of dispute resolution, such as mediation, in family law cases. The government of Prince Edward Island is planning to implement several recommendations from the Ross (1999) report, and plans are in progress for the establishment of a Family Justice Centre.

2.3 Nova Scotia

2.3.1 Delivery of Services

In 1971, Nova Scotia passed the *Legal Aid Planning Act*, which established legal aid in the province, to be delivered by staff lawyers located in staff offices throughout the province. Responsibility for administering legal aid rested with the Nova Scotia Barristers' Society and, at that time, legal aid was available to individuals whose income placed them at or below the poverty level.

The present *Legal Aid Act* was passed in 1977 and transferred control for legal aid from the Barristers' Society to the Nova Scotia Legal Aid Commission. The model used in Nova Scotia remains a staff lawyer one, except in cases of conflict of interest or criminal choice of counsel in cases where the penalty for a criminal charge is mandatory life imprisonment. In such cases, a private lawyer on tariff is retained. The current tariff for family law matters in Nova Scotia is \$50 per hour.

As of March 31, 2000, there were 64 staff lawyers. The Legal Aid Commission also provides partial funding to the Dalhousie Legal Aid service in Halifax-Dartmouth, in which law students, under the supervision of practising lawyers, provide legal services.

2.3.2 Coverage Provisions

The highest priority for legal aid coverage in Nova Scotia is reserved for criminal matters. Child protection proceedings are also considered high priority. Family law matters where there is a threat of family violence or where child custody is involved are also a high priority. Other family law matters are a lower priority. Family law issues that are excluded from legal aid coverage are: (1) uncontested adoption proceedings; (2) change of name (unless part of a divorce proceeding); and (3) delayed birth registrations.

2.3.3 Financial Eligibility

Individuals are considered eligible for legal aid in Nova Scotia if they are on social assistance or if their income is equivalent to someone on social assistance. Financial eligibility for family legal aid in Nova Scotia is based on a needs test, which is based primarily on income, but may also include expenses, debt load, and assets. Examples of the current gross annual income cut-offs are: one adult – \$12,804; two adults – \$17,088; one adult and one child – \$16,992; two

adults and one child – \$20,496; one adult and two children – \$20,400; two adults and two children – \$23,184; one adult and three children – \$23,088; and two adults and three children – \$25,872.

2.3.4 Issues

The number of divorce cases accepted for legal aid coverage has dropped dramatically over the past several years: in 1987/88, 1067 divorce cases were completed by legal aid; this number had dropped to 1026 in 1994/95 and 417 in 1999/2000. According to the Executive Director of the Nova Scotia Legal Aid Commission, this dramatic reduction has been due, in part, to a shortage of staff resources – because of a lack of funding and also because of the increasing complexity of documentation and court procedures in divorce cases, which means that a larger amount of staff time is required for each case.

Another major change in recent years in legal aid in Nova Scotia has been a dramatic rise in the costs devoted to child protection cases. In 1991, approximately \$500,000 of the legal aid budget was devoted to child protection proceedings; by 1999/2000 this amount had risen to \$1,231,800. This dramatic increase in spending for these cases has also necessitated a decrease in resources available for other family law cases.

2.4 New Brunswick

2.4.1 Delivery of Services

In 1972, Legal Aid New Brunswick was established as a joint responsibility of the provincial government and the New Brunswick Law Society, and with funding from the government and the Law Foundation. At the time of its establishment, the services of Legal Aid New Brunswick were administered by the Law Society, and this organization was responsible for providing access to legal assistance for both criminal and civil law matters. Legal aid clients applied for certificates issued on the basis of financial eligibility, and could then access the services of lawyers in private practice.

Civil legal aid in New Brunswick was abolished in 1988 and was replaced with Domestic Legal Aid, which was available only to spouses who were victims of domestic violence. A ceiling of \$1,000 was placed on the amount that any domestic legal aid case could cost. A review of Domestic Legal Aid, conducted in 1992 jointly by the Department of Justice and the Law Society of New Brunswick, found that services and coverage were seriously deficient, with costs becoming unmanageable, and the Department of Justice proposed the creation of a new Domestic Legal Aid service that would be staffed by contracted lawyers (Department of Justice and Legal Aid New Brunswick 2001). In 1993, a portion of Domestic Legal Aid became part of the Family Support Services provided by the Court Services Division of the Department of Justice, and would include, for the first time, the services of Court Social Workers trained to screen for domestic abuse, provide paralegal support for the contract lawyers, and offer mediation to clients who were not victims of abuse. Legal Aid New Brunswick continued to provide legal services in guardianship and child support cases.



As of April 1, 2001, Legal Aid New Brunswick assumed responsibility for all legal services of Domestic Legal Aid. The current model for family legal aid services in New Brunswick is primarily staff; however, both contracted lawyers and members of the private bar on tariff provide legal services. The Court Services Division of the Department of Justice maintains responsibility for managing the intake, information, counselling, mediation, and settlement services provided by the Court Social Workers

2.4.2 Coverage Provisions

Domestic Legal Aid in New Brunswick provides a wider range of legal representation to individuals who are victims of family violence than to individuals who are not victims. At intake, the Court Social Workers meet with clients who seek assistance with separation and divorce-related matters, including clients who may require legal services to resolve these matters. Court Social Workers serve as the referral agents for the legal component of Domestic Legal Aid. Victims of spousal violence who are eligible for legal aid coverage can receive assistance with the following issues: support; custody and/or access; marital property (related to possession of the marital home or division of marital property in cases where the equity does not exceed \$20,000); restraining orders; interim relief orders; variations of existing orders; and divorce as a respondent or, if there is an urgent need, as a petitioner.

Legal aid services are more restricted when the applicant is not a victim of family violence, and are limited to issues involving support. In these cases, the provision of services is determined by the Court Social Worker, and is limited to: mediation related to issues such as support, custody and/or access, and basic marital property (in which equity does not exceed \$20,000); variations; and providing a referral to a Domestic Legal Aid family lawyer who will provide representation whenever necessary (i.e., if mediation fails or is not an option) for all clients who are or would be beneficiaries of support in support applications, support variations, or support enforcements.

In addition, payers of support who have been found unable to pay in accordance with their support obligation are eligible to apply for legal aid certificates, in order to have a private lawyer help them with an application to vary the support obligation. However, they must first have attempted to use the Domestic Legal Aid program's free mediation services. As well, respondents to applications by the Ministry of Family and Community Services for child custody or guardianship are entitled to apply for legal aid coverage.

2.4.3 Financial Eligibility

There are no financial eligibility criteria associated with the Domestic Legal Aid program except in the following two instances: respondents in child guardianship matters, and payers of support who have been found unable to pay in accordance with their legal obligation and have also not been able to obtain a resolution through use of the Domestic Legal Aid mediation services. Such respondents may apply to Legal Aid New Brunswick for certificates, which are issued on the basis of the financial eligibility criteria established by Legal Aid New Brunswick.

2.5 Québec

2.5.1 Delivery of Services

Legal aid in Québec is administered by the *Commission des services juridiques*. The coverage model used for family matters in Québec is a combination of staff lawyers and the *judicare* model. An individual who is financially eligible for legal aid coverage receives the services of a staff lawyer or may choose a private lawyer who agrees to take on the case. Individuals wishing to apply for legal aid in Québec must do so in person at the legal aid office closest to their residence.

2.5.2 Coverage Provisions

Legal services covered by legal aid in Québec are specified in legislation and include family matters, child protection, representation for young offenders, criminal charges, benefit claims in relation to income support or employment assistance, vehicle insurance, employment insurance, and worker's compensation. No restrictions are placed on the type of family law matters that may be covered.

2.5.3 Financial Eligibility

In Québec, recipients of social assistance are eligible for legal aid without any obligation of contribution (known as “gratuitous legal aid”). Other individuals may be eligible for legal aid if they meet certain financial criteria. To determine these criteria, Québec uses a complex formula consisting of income, value of property, and liquid assets. Individuals who do not meet the criteria for gratuitous legal aid coverage may still be eligible for legal aid in combination with a contribution of their own funds.

In terms of annual income, the cut-offs for eligibility for legal aid are: single person – \$8,870; adult plus one child – \$12,500; adult plus two children – \$15,000; spouses without children – \$12,500; spouses and one child – \$15,000; and spouses and two children – \$17,500. The cut-offs for property values are \$90,000 in cases where the applicant or spouse is the owner of the residence, or \$47,500 when neither the applicant nor the spouse is the owner of the residence. Cut-offs for liquid assets are \$2,500 for a single person or \$5,000 for a family. If an applicant is below the cut-off on each index, they are eligible for gratuitous legal aid. If individuals are entitled to gratuitous legal aid, there is no administrative fee. If individuals are eligible for legal aid involving a contribution, there is a \$50 administrative fee that is considered to be part of the contribution.

If a person is above the cut-off on one or more criteria, his/her “reputed income” is calculated to determine if he/she might be eligible for legal aid with a contribution. Reputed income is calculated by summing 100 percent of the income in excess of the cut-off, 10 percent of property in excess of the cut-off, and 100 percent of liquid assets in excess of the cut-off. The resulting reputed income is then compared to table values to determine the contribution that is required of the individual before legal aid will cover the remainder of the legal fees.



2.6 Ontario

2.6.1 Delivery of Services

An organized legal aid plan was first established in Ontario in 1951. The Ontario Legal Aid Plan was formally instituted by legislation in 1967, operating under a primarily *judicare* model (Law Society of Upper Canada 1999). Eligible applicants are allowed to choose their own private lawyer. In 1999, pilot project family law clinics were established in Ottawa, Toronto and Thunder Bay to provide representation by a staff lawyer for some legal aid clients.

In 1994, the Legal Aid Plan signed a Memorandum of Understanding with the Ontario government that capped the total legal aid budget, and, in 1996, the family law area became a major focus for cost-cutting measures. This meant that only the most serious cases in the family area would receive legal aid coverage. However, as of April 1, 1997, coverage was expanded to include more family law cases, and the number of hours that a lawyer could spend on a family law case was increased.

In 1999, the Board of Legal Aid Ontario approved a number of service improvements in an attempt to enhance accessibility to legal aid in the province. These improvements are outlined in *LAO Service Improvement, 1999/2000*, a report that is available on the Ontario Legal Aid Plan's Web site (www.legalaid.on.ca). Specifically, with respect to family law legal aid coverage, the Board approved initiatives to develop and improve services for victims of violence; the issuance of certificates for access applications by extended family members; and enhanced duty counsel services.

Proposed initiatives to improve services for victims of violence include: enhanced education and training for Legal Aid Ontario staff and service providers; improved consultation and outreach; development of protocols for victims of violence; and development of specific programs for victims of violence.

There are duty counsel available to provide some assistance to those appearing in Family Court, though they will not conduct trials. Duty counsel can “give advice, prepare and review documents, represent clients in some motions and hearings and assist with settlement negotiations” (Legal Aid Ontario 2001). In 2000/01, the number of staff duty counsel was increased. Staff duty counsel act as supervisors of services provided on a *per diem* basis.

There are Family Law Information Centre workers, at most Family Courts in Ontario, who provide information to unrepresented individuals and assistance with completion of court forms. This program is funded by the Ontario Ministry of the Attorney General. Advice services are available from lawyers in Unified Family Courts in all Ontario Court of Justice courthouses across the province, as well as in many locations in the community. They are funded by Legal Aid Ontario.

In late 1999 and early 2000, pilot projects offering expanded duty counsel services for family law were opened in Hamilton, London, and Oshawa. These projects are intended to assist unrepresented clients with advice, document preparation, and representation on motions and

hearings. Expanded duty counsel services include support staff services, allowing for file continuity and improved capacity for resolution of issues.

In 2001, Legal Aid Ontario introduced a Family Case Management Program in an attempt to control costs. A case management meeting is held early in the proceedings to establish a plan and target for resolution of the case. It is anticipated that the case management meetings will allow Legal Aid Ontario to predict more accurately the progress and costs of family law certificates.

In another effort to control costs, in July 2001, Legal Aid Ontario required duty counsel to take a more active role for assisting family law litigants with simple support and access variations.

2.6.2 Coverage Provisions

Legal Aid Ontario covers all family law matters except division of property and support where the client is in receipt of government benefits and has assigned any support order to the government. Duty counsel will assist to vary or collect child support orders.

The guiding principles for legal aid coverage of family law issues in Ontario are to give priority to cases that involve the safety of a spouse or child(ren) who are at risk and to child protection cases. Depending on the merits of a case, legal aid coverage is provided for family law cases involving adoption, custody and access, restraining orders, support, and property.

Where a legal aid certificate has been issued to one party in a dispute, a certificate would also generally be issued to the other party, providing they are financially eligible and the case has merit.

2.6.3 Financial Eligibility

Financial eligibility for legal aid coverage in Ontario is determined by looking at individual circumstances. This “needs” test approach considers income, liabilities, and the seriousness of the legal matter. Living expenses are allowed up to predetermined maximums in the categories of: food, clothing, transportation, shelter and debt. In 1996/97, for example, the net annual maximum expense allowance was \$14,604 for a single person, \$23,127 for a family of two, \$26,424 for a family of three, and \$30,036 for a family of four (Statistics Canada 1999). If an applicant’s net income (i.e., gross income minus non-voluntary deductions) is above a pre-determined amount, detailed needs testing is required. In 1996/97, the net annual income waiver for a single person was \$9,192. The amounts for families were: two members – \$16,452; three members – \$17,400; and four or more members – \$19,608 (Statistics Canada 1999). Based on the outcome of the financial assessment, an individual may receive free legal aid, may receive legal aid but be required to make a contribution, or be denied legal aid.



2.6.4 Issues

There continue to be significant concerns in Ontario about the effects of underfunding on accessibility to legal aid for family law clients (Ferguson 2001). The financial eligibility criteria have been criticized for excluding many of the working poor. The tariff rate paid to lawyers is \$57 per hour for duty counsel and, depending on experience, ranges from \$67 per hour to \$84 per hour for case work. Fewer lawyers in private practice are willing to take on family law legal aid clients, resulting in delays in obtaining counsel. Notwithstanding 1998 increases, the hourly caps on family law cases are considered inadequate by many lawyers (Ferguson 2001).

2.7 Manitoba

2.7.1 Delivery of Services

The legal aid system in Manitoba is a combination of staff lawyers and the *judicare* model. Legal Aid Manitoba comprises five administrative areas – in Winnipeg, Brandon, Dauphin, Thompson, and The Pas. The largest of these, Winnipeg, has six community law offices and a public interest law centre. One of the community law offices is a family law office that focuses on domestic and administrative law. The service is provided by both lawyers and paralegals.

Once applicants are given a legal aid certificate, they have the option of choosing any lawyer on the legal aid panel, which includes both staff lawyers of Manitoba Legal Aid and members of the private bar. The legal aid program in Manitoba is funded by Manitoba Justice and the Manitoba Law Foundation, with some funding from other sources such as the federal government, and contributions from individuals awarded certificates.

2.7.2 Coverage Provisions

Following an analysis of the applicant's financial situation, a legal aid certificate is issued if the case is deemed to have merit. Family law issues that may be covered by legal aid in Manitoba are: divorce, separation, custody/access, maintenance and enforcement, child protection, adoption, parentage proceedings, *amicus*, and private guardianship.

Applicants may be granted either complete coverage or partial coverage, in which case they are required to make a financial contribution. In 1988/89, Legal Aid Manitoba made arrangements with the provincial and federal governments to fund a pilot project called the "Expanded Eligibility Program." This program allows applicants for legal aid who are somewhat above the income eligibility cut-offs to obtain legal aid on the condition that they will repay the full amount of costs to the plan. Since fees for lawyers are considerably lower through legal aid, this program allows individuals to obtain legal services at a much lower rate than they would otherwise pay. This program is intended for the working poor and has now become a permanent component of Legal Aid Manitoba.

2.7.3 Financial Eligibility

Family income, including that of the applicant's spouse, and family size are used when determining eligibility for legal aid in Manitoba. The gross annual income cut-offs used for determining eligibility are determined by the Board of Legal Aid Manitoba. Examples of the 2000/01 eligibility guidelines are: single person – \$14,000 (fully eligible); \$16,000 (partial contribution required), \$23,000 (full contribution required); two persons in family – \$18,000 (fully eligible), \$20,000 (partial contribution required), \$27,000 (full contribution required); three persons in family – \$23,000 (fully eligible), \$25,000 (partial contribution required), \$31,000 (full contribution required); and four persons in family – \$27,000 (fully eligible), \$29,000 (partial contribution required), \$34,000 (full contribution required).

When making a determination of eligibility for legal aid, factors other than income may be taken into account. These factors include whether they would be able to obtain counsel without having to sell their principal residence or assets necessary for their work; current assets and liabilities; merit and amount of the claim; cost of the proceedings; and whether or not a reasonable person who could pay a lawyer would do so in the case.

2.7.4 Issues

Manitoba has introduced full service duty counsel for child protection matters. As a result, it is expected that the number of cases referred to the private bar will decrease, with a subsequent saving to legal aid.

It should be noted that the number of *amicus* certificates issued to the private bar has decreased since the Board of Directors made a decision in April 2001 to discontinue coverage where the *amicus* was a result of a court appointment.

2.8 Saskatchewan

2.8.1 Delivery of Services

The legislative mandate for the Saskatchewan Legal Aid Commission is provided under the *Legal Aid Act* and *Legal Aid Regulations*. The Saskatchewan Plan uses a staff delivery model, with 14 offices located throughout the province. Private practice lawyers are also used where the Chief Executive Officer of the Commission believes it would better serve the client. The current private bar tariff was increased in 2000 to \$60 per hour.

The *Legal Aid Act* allows the Commission to require a financial contribution from clients who are able to contribute to the costs of the legal services. Further, a portion of any costs awarded to a client may be required to be paid to the Commission. Applicants who are denied legal services in family law with respect to financial eligibility may appeal the decision to the Appeal Committee, whose decision is final.



2.8.2 Coverage Provisions

In Saskatchewan, most legal services in civil law are restricted to family law matters. Service to clients who are financially eligible may be provided for divorce (contested or uncontested), custody, access, maintenance, child protection, restraining orders, and adoption.

In addition to financial eligibility, cases must also be deemed to have professional merit. To decide professional merit, as stated in the brochure, *Facts About Legal Aid* (Saskatchewan Legal Aid Commission 2000), the following questions are considered:

- Is this case one that a reasonable person of modest means would commence or defend?
- Are the legal costs of commencing or defending an action reasonable compared with the relief asked for?
- What is the seriousness of the legal or economic outcome?
- What are the potential benefits to the client?
- Is there a possible defence to a charge?
- Is there a reasonable likelihood of success?
- Has the client been co-operative, by keeping appointments, keeping in touch with the office after a move, etc?
- Has the client accepted reasonable professional advice from the assigned lawyer?

Anyone may be provided with summary advice and information about criminal and family law, regardless of financial eligibility, if the questions only involve a brief interview or telephone call.

2.8.3 Financial Eligibility

Applicants in Saskatchewan are financially eligible for legal aid if: (1) they are supported by a social assistance program; (2) their financial resources are not above the social assistance program's level; or (3) the cost of legal services from private lawyers would reduce their financial resources to the social assistance level. Applicants who do not receive social assistance may be asked to contribute to the costs of legal services.

Applicants are not eligible for legal aid if they have liquid assets (other than their home and assets reasonably necessary to earn a living) greater than \$1,500 for an applicant who is single, \$3,000 for an applicant with one dependent, and \$3,500 for an applicant with more than one dependent. Applicants would also not be eligible if they (or a member of their family unit) had assets other than their home or assets reasonably necessary to earn a living that the Committee felt could be disposed of, mortgaged, or otherwise encumbered without causing undue financial hardship.

2.9 Alberta

2.9.1 Delivery of Services

Legal aid in Alberta is provided through the Legal Aid Society of Alberta, which has several sources of revenue. The majority of funding is provided by the Minister of Justice, Government of Alberta, with partial reimbursement from the Government of Canada. The Alberta Law Foundation also provides an annual grant to the Legal Aid Society in the amount of 25 percent of the interest earned on lawyers' trust accounts. Contributions and recoveries from clients are also a source of revenue.

The judicare model of service delivery is predominantly used in Alberta, and a roster is maintained of lawyers willing to act for legal aid recipients. They are paid according to a tariff, which is based on a combination of block fees and hourly payment. Due to the low number of lawyers in the Red Deer region willing to accept legal aid certificates, a staff lawyer was hired in Red Deer in March 1999 to provide legal services in civil matters. A Family Law Office Pilot Project is also underway (see Section 2.9.4). Two staff lawyer positions in Edmonton and Calgary, which handled mainly civil files, were subsumed by the Family Law project.

The Provincial Office of the Legal Aid Society of Alberta is located in Edmonton, and the province is divided into Northern and Southern districts, with a total of eleven regions. Staff from the regional offices travel on circuits to some surrounding communities.

Approved applicants are expected to contribute to the cost of legal aid services by repaying funds expended on their behalf, where repayment will not cause undue hardship. No interest is charged to clients on outstanding accounts.

Applicants who are refused legal aid are notified in writing of the refusal and the reason for the refusal, and may appeal the decision to a Regional Committee. Decisions of the Regional Committee may be further appealed by the applicant to the Northern/Southern Appeals Committee, whose decision is final.

2.9.2 Coverage Provisions

Considerations for civil coverage are outlined in the Legal Aid Rules:

1. The Legal Aid Society may provide legal aid to a resident Albertan who is a financially eligible applicant in respect of any civil matter where
 - (1) the matter is subject to the jurisdiction of the courts,
 - (2) a reasonable person of modest means would commence or defend the action, and



- (3) in the opinion of the Legal Aid Society
 - (a) the legal cost of commencing or defending the action is reasonable when compared to the relief sought, and
 - (b) the matter has merit or a likelihood of success, or both, and
 - (c) where circumstances, at the time of the application, warrant coverage.

The Legal Aid Society may refuse legal aid where there is: “(1) a reasonable payment into court, offer of judgment or offer to settle; (2) a reasonable likelihood of settlement; or (3) unreasonable failure of the client to follow the advice of the counsel appointed by the Legal Aid Society.” There are also provisions for “special disbursements only” coverage, coverage for non-resident Albertans, and coverage for appeals of court decisions.

Civil matters that are categorized as family law matters include access, child welfare, divorce, maintenance, matrimonial property, and restraining orders.

2.9.3 Financial Eligibility

An applicant’s gross family income, together with a valuation of accumulated assets, is used to determine financial eligibility. Gross income figures are compared to a fixed scale of financial guidelines, broken down by family size. For example, for eligibility, the maximum gross family annual income for a family of one is \$13,000; for a family of two, \$16,800; for a family of three, \$22,600; and for a family of four, \$25,200. Applicants whose incomes slightly exceed the guidelines may be extended coverage on a contributing basis, meaning that the client is required to make monthly payments as a condition of receiving legal aid. A \$10 application fee for adults applying for legal aid services was eliminated in April 2000.

2.9.4 Issues

The Legal Aid Society, the Law Society, and Alberta Justice are currently implementing a Family Law Office Pilot Project. The pilot project involves the establishment of two Family Law offices, one in Edmonton (opened July 2001) and one in Calgary (opened October 2001). The overall objective of the Family Law Office is to improve access to justice for legal aid clients in a cost-effective way. Each office will be staffed with up to 12 lawyers with a range of experience, as well as support staff and a social worker. An Assistant Senior Counsel, who will report to the project’s Senior Counsel based in Edmonton, will manage each office. It is anticipated that the Family Law offices will handle all family law matters currently dealt with by the private bar in Calgary and Edmonton on legal aid certificates, except in cases where there is a conflict because the Family Law Office is already representing one party or where there is a long-standing solicitor-client relationship. In those cases where the Family Law Office is unable to act, the party will be referred to the private bar.

2.10 British Columbia³

2.10.1 Delivery of Services

British Columbia uses a combination of staff lawyers and the judicare model for the delivery of legal aid, with private lawyers on a tariff handling the majority of legal aid cases. The current family law tariff is \$72 per hour (\$80 minus the current 10 percent holdback for family case billings). Legal aid is administered by the Legal Services Society, which also has the mandate for public legal education in the province.

At the time of application for legal aid coverage for a family law issue, the intake worker may divert the case to other services, as appropriate, such as the Family Maintenance Enforcement Program, Family Justice Services, parent education programs, or local counselling services or advocacy groups. Family Justice Services offers alternative dispute resolution and mediation through Family Justice Counsellors. A referral to this program is deemed appropriate for applicants who are eligible for legal aid if there is no history of abuse, if interim orders are not urgently required for the safety of the applicant or their children, and if the applicant agrees to mediation. The applicant's consent to mediation is not required in cases where the only issue is obtaining an initial maintenance order.

In 1994, the Legal Services Society implemented a Family Case Management Program (FCMP). The purpose of this program is to ensure that clients are treated fairly and receive the appropriate level of service for their case, and to direct necessary resources to clients who are most likely to benefit immediately from them. The FCMP allows the Legal Services Society to regularly assess cases following the initial referral to ensure that the actions taken or proposed are reasonable, and that the case continues to meet eligibility guidelines (British Columbia Legal Services Society 2001). FCMP applies to *Family Relations Act* and *Divorce Act* matters, but not to *Child, Family, and Community Service Act (CFCSA)* matters.

2.10.2 Coverage Provisions

The Legal Services Society of British Columbia provides family legal aid services to individuals who meet the financial eligibility guidelines in the following cases:

- Where there are serious family problems, such as cases where the applicant or children are in danger of abuse or there is a danger that the applicant will lose contact with the children.
- Where the applicant may be imprisoned or confined through a civil proceeding such as for non-payment of maintenance.
- Where the applicant has legal problems that may affect his/her ability to earn a living or protect and support his/her family.

³ This report deals with service provision prior to the restructuring of the Legal Services Society in the summer and fall of 2002. The Society currently has a significantly different service delivery model that focuses on core services for family and other legal matters.



- Where the applicant has legal problems that threaten his/her family's physical or mental health and safety.
- Where the applicant needs assistance in starting maintenance payments or coping with initial custody or access orders and there is no other help available.
- Where the legal problem deals with the removal or perceived threat of removal of a child from the home by Children's Services under the *Child, Family and Community Service Act*, or deals with custody and access issues related to a child in the care of the Ministry for Children and Families.
- Variations are only covered in cases where there are applications for changes to maintenance orders when the respondent faces the prospect of going to prison or where the client is likely to benefit by at least \$100 per month. Variations are also covered for changes to custody and access orders in cases where the variation is necessary to reduce risk of harm to the child(ren); the applicant requires a restraining order and changes to custody or access are necessary to accomplish this; and where the existing relationship between a parent and child is in jeopardy.
- Legal aid does not cover cases where division of property is the sole issue unless the property is the matrimonial home and the applicant is not legally married to the respondent, is not registered on the property title, and has an interest in the property of greater than \$5,000.

The Legal Services Society is piloting the issuance of limited referrals to provide up to three hours of legal services for family clients. This project is being tested by staff lawyers in four communities, and will be expanded in conjunction with information on a family law Web site being developed with funding from the Law Foundation of BC. This is a four-year project designed to provide current plain-language information on family law to the public – including guides on how to complete forms and links to referral services – and to provide training tools, closed discussion groups, and resource lists for legal staff and other advocates.

2.10.3 Financial Eligibility

Financial eligibility for legal aid in British Columbia is determined largely on the basis of net monthly income plus a personal property exemption. The income cut-offs are lower for criminal cases than for other types of cases, including family law matters. Examples of the net annual income cut-offs for family legal aid coverage as of April 1, 2000 are: single person – \$12,024 (personal property exemption – \$2,000); two persons in household – \$18,048 (personal property exemption – \$4,000); three persons in household – \$21,060 (personal property exemption – \$4,500); and four persons in household – \$23,292 (personal property exemption – \$5,000).

An applicant whose income is below the appropriate cut-off is allowed to possess some assets in addition to the personal property exemption (e.g., savings accounts, RRSPs, furniture, jewellery, etc.) without being disqualified from coverage. A summary of these assets includes:

- **Family home.** If the family home is considered disposable and there is sufficient equity in it after a reasonable exemption has been deducted, the applicant will be deemed ineligible. However, the family home is usually viewed as non-disposable and thus is not grounds for exclusion.
- **Real property.** If the applicant owns a share of real estate other than the family home in excess of \$10,000, he or she will be ineligible.
- **Vehicles.** An applicant will be ineligible for legal aid coverage if his/her equity in vehicle(s) exceeds \$5,000.
- **Business assets.** Any equity in business assets is grounds for disqualification for coverage.

Effective July 1, 1998, applicants whose household income exceeded the maximum by up to \$150 are still eligible for limited legal aid if they face one or more emergency problems or they require coverage for a child protection proceeding.

2.10.4 Issues

Like several other Canadian jurisdictions, British Columbia has been faced with shortages in funding for legal aid in recent years. This situation led the Legal Services Commission to cut services in several areas in 1997/98. The cuts that specifically affected the delivery of family legal aid included:

- Changing eligibility levels, although these changes were different for criminal and other types of matters, in an attempt to reduce the impact on family cases.
- Eliminating the income “flex test” for family cases. This test allowed an exemption of an additional \$200 per month of income in cases where the legal situation was deemed an emergency.
- Eliminating coverage for changes to maintenance orders.
- Restricting coverage for changes to custody or access orders to cases where a claim of potential harm to the applicant or child(ren) is supported by a mental health professional.
- Eliminating funding for the Law Students Legal Advice program for the Do-Your-Own-Divorce program.
- Reducing the tariff fees to lawyers by five percent.



Some of the reductions in coverage resulting from these changes were alleviated in July 1998 and April 2000 with changes to financial eligibility guidelines that allowed more applicants to be eligible for legal aid coverage for family law matters.

2.11 Yukon

2.11.1 Delivery of Services

Family legal aid in the Yukon is provided by the Yukon Legal Services Society, which has five staff lawyers in two separate clinics, as well as access to several private lawyers. Applicants are asked to schedule an appointment for an interview with the Legal Aid Clerk, and are requested to bring the following information to the interview:

- Any documents related to the case (e.g., court orders, agreements, served papers).
- Proof of current household income (e.g., three to four recent pay stubs, social assistance budget sheet, Employment Income statements, current financial statements if self-employed).
- Proof of any child support paid or received.
- Proof of unusual expenses (e.g., medical/dental costs).

Approved applicants are assigned counsel, usually within one or two days. If an application for legal aid is refused, the decision may be appealed to the Yukon Legal Services Society's Board of Directors.

2.11.2 Coverage Provisions

According to the Yukon Legal Services Society, family matters that are covered for eligible persons include the following:

1. All child protection proceedings.
2. Interim proceedings in cases of family breakdown where children are involved and resulting in issues of custody, access, child support, restraining orders and exclusive possession of the matrimonial home and where:
 - a) there are no pre-existing orders of the court or other lawfully binding resolution, or
 - b) where the health or safety of a child or parent, or an established parent/child relationship is at risk.

An independent assessment of merits may be required by the Executive Director prior to extending or continuing legal aid coverage in any of these matters. Although some of these matters may be commenced by the filing of a Petition for Divorce, assigned counsel are not authorized to complete the divorce proceedings.

2.11.3 Financial Eligibility

In general, clients are eligible for legal aid if they have no income, receive social assistance benefits, or if their net take-home pay is comparable to social assistance benefits. Decisions are based on the total household income and the number of people in the household, but specific financial guidelines are confidential. The Executive Director of the Yukon Legal Services Society Legal Aid has discretion to add to, vary, or waive any income guidelines or financial eligibility requirements where they would cause, in the opinion of the Executive Director or the Board, undue financial hardship to an applicant. In cases where the applicant's net household income is slightly above guideline amounts, the Executive Director may find the applicant to be eligible if the applicant agrees to contribute to the cost of legal assistance as a condition of legal aid.

The Yukon Legal Services Society endeavours to recover the fees and disbursements paid to provide legal aid to a client, except in cases where the Executive Director thinks repayment would cause undue financial hardship. Repayment of costs incurred may be secured by taking a promissory note from a legal aid client, taking an assignment of any proceeds of settlement, cash bail, judgment or legal costs to which the legal aid client is entitled, or such other method as considered appropriate by the Executive Director or the Board.

2.11.4 Issues

There have been no significant policy changes regarding legal aid in the Yukon in the last five years. The Yukon Legal Services Society recently reviewed its coverage policy for clients requiring civil/family representation. As a result of this review, the Yukon Legal Services Society expanded its coverage to include: (1) maintenance variation applications; and (2) custody trials (reviewed on a case-by-case basis). In addition, it is in the process of expanding coverage to include *Family Violence Prevention Act* representation.

2.12 Northwest Territories

2.12.1 Delivery of Services

The Legal Services Board, an independent arm's length body, whose funding comes via the *Access to Justice Act* through the Northwest Territories Department of Justice, uses a mixed model of service delivery, utilizing both private and staff lawyers to provide family legal aid services. The Board has a family law staff lawyer in Yellowknife, and another in Inuvik. The head office of the Board is located in Yellowknife, and applications for family legal aid are approved by its Executive Director or his/her designate. If an applicant is denied coverage, the person may appeal the decision to the Executive Director and, if unsuccessful, to the Board of Directors of the Legal Services Board.



A panel of lawyers is established under the *Legal Services Act*, and lawyers are assigned to eligible applicants on a rotational basis (Statistics Canada 1999). The Legal Aid Plan sometimes moves away from the rotation, per section 37, *Legal Services Act*.

2.12.2 Coverage Provisions

The Legal Services Board seeks a legal opinion as to merits from assigned counsel prior to authorizing a case to proceed.

Family law matters covered by legal aid in the Northwest Territories include divorce, custody, access, child/spousal support, restraining orders, possession of matrimonial home, division of property, and child welfare cases. It is policy in the Northwest Territories that, except in exceptional circumstances, legal aid coverage is not provided for divorce and/or division of property when there are no associated issues of child or spousal support, custody, or access.

It should also be noted that the Legal Services Board will fund mediation for legal aid clients and provide coverage for a client to enter into a collaborative law process to resolve disputes. Further, the Board provides support to the territorial government's Parenting after Separation and Divorce program by referring clients and assisting with their registration in the program.

2.12.3 Financial eligibility

Financial eligibility for family legal aid services is determined by the household's net income, expenses, assets, liabilities and the requirements of the applicant, spouse and dependants. Income includes benefits and allowances received from government agencies and other sources on a regular basis. Expenses include basic living allowances (e.g., food, clothing, shelter), utility costs, transportation costs necessary for earning a living or enabling an applicant's children to attend school, medical costs, installment payments on debts incurred prior to the application for legal aid, and any other expenses allowed by the Board or the Executive Director (*Legal Services Regulations*, section 20). In general, legal aid is approved as a matter of course, subject to the merits of the claim, if all or most of an applicant's income is from social assistance, or if the payment of legal fees would reduce an applicant's income such that he or she would become eligible for social assistance.

An applicant may be required to contribute or fully repay legal fees if he or she is not in receipt of social assistance. The ability of an applicant to contribute toward the cost of legal services is determined by reference to his or her assets and liabilities, income and expenses, as well as those of his or her spouse and dependants (*Legal Services Regulations*, section 20).

2.13 Nunavut

2.13.1 Delivery of services

The Legal Services Board of Nunavut began operation on July 1, 2000, and uses a mixed model of service delivery. The following steps are taken when a legal aid application regarding a family matter is received:

- (1) The application is entered manually into the incoming mail log and is given a case number from the family client ledger.
- (2) The application is reviewed by the Criminal/Civil Statute Administrator, who assesses whether the client is financially eligible.
- (3) If the client is financially eligible, the client is approved for an opinion only. Counsel is assigned and has a maximum of three hours to interview the client and provide the Legal Services Board with an opinion letter setting out the relief sought, the applicable law, and the overall merit of proceeding.
- (4) The opinion letter is reviewed by the Office Manager/Senior Statute Administrator, who decides whether to approve the client for assignment of counsel to proceed as per the tariff. The Executive Director makes the final decision in difficult cases.
- (5) Unless there is a conflict, upon approval, the lawyer who did the opinion letter will be assigned the case, to follow it through to completion.

Currently, Nunavut has four staff lawyers whose sole responsibility is family law. In addition, approximately 10 private lawyers from the Northwest Territories (licensed to practice in Nunavut) are on the legal aid panel to do family law on a part-time basis in Nunavut.

2.13.2 Coverage provisions

The family law matters covered by legal aid in Nunavut include custody, child support cases including variation of maintenance applications, DNA testing if required in child support matters, division of property and issues relating to the possession of the matrimonial home where other issues such as custody or child/spousal support are involved, spousal assault, and access issues. Divorce is covered only if there are also issues of custody, access, or child/spousal support involved. As mentioned above, a legal opinion indicating merit is required in all civil and family matters before the case is authorized to proceed.



2.13.3 Financial eligibility

Financial eligibility is set out in Schedule C of the *Legal Services Regulations*. According to section 4:

An applicant is eligible where he/she received all or most of his/her income from social assistance or 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.

Assessment of financial eligibility is determined by the applicant's monthly income minus monthly expenses. Applicants for legal aid are required to submit copies of pay stubs and receipts or statements for all expenses claimed, with the exceptions of food, clothing, transportation and telephone. The amounts allocated for these items are as follows: food – an amount according to the Social Assistance Table used in the community of residence and based on the number in the household; clothing – \$40 per household per month; transportation – \$75 per month; and telephone – \$40 per month.

The Legal Services Board of Nunavut has “presumed eligibility” in criminal matters, which means that all persons in criminal matters shall be presumed to be financially eligible for circuit and duty counsel services. Clients proceeding to trial must apply for legal aid in order to be represented through the Plan. As well, if the case is determined by duty counsel to be overly complex or sentencing may be lengthy or complex, then the client will be asked to fill out a legal aid application. This affects family law when there are matters that also involve child protection proceedings, as these matters may be dealt with by duty counsel while on circuit.

2.13.4 Issues

There are unique challenges in Nunavut regarding the delivery of legal aid services. In a recent report outlining the state of family law in Nunavut, Gallagher-Mackay (*Report on Family Law Research in Nunavut*, draft) outlines several factors that impact on the development and application of family law in Nunavut:

- (1) Political context: The Territory of Nunavut was established as an integral part of the formal resolution of outstanding Aboriginal claims of the Inuit in the eastern Arctic. The settlement of the land claim and the creation of Nunavut on April 1, 1999 was the result of “an intense, long-standing, broadly based Inuit struggle to achieve self-determination” (p. 7). While the laws and regulations of Nunavut were “grand-fathered” from the Northwest Territories, there is a commitment on the part of the Government of Nunavut that Inuit traditional knowledge will underlie the development of all social policy and institutions in the territory.
- (2) Geography: Nunavut covers two million square kilometres, or roughly one fifth of Canada's land mass. The majority of the population lives in 28 small communities that are extremely isolated, and can be reached only by air, boat, or arduous overland travel.

This remoteness decreases the availability of services, and raises the costs of service delivery.

- (3) **Population:** The vast majority of Nunavut's population is Inuit (83 percent in 1996). There is widespread use of indigenous languages – Inuktitut and Innuinaqtun – and close to 15 percent of the population do not speak English or French. This has a significant impact on the court system and the development of social services. Nunavut also has one of the youngest populations in Canada, with almost one half (48 percent) under the age of 15.
- (4) **Social indicators:** Nunavut has serious problems with poverty, low health status, housing shortages, family breakdown, and domestic violence. Unemployment is higher than anywhere else in Canada, and the suicide rate is six times the national average.
- (5) **Justice system:** Nunavut has a unified court structure, and the Nunavut Court of Justice operates on a fly-in basis as a circuit court. Criminal law is the major justice priority in Nunavut, resulting in a lack of access to justice in the family law area. In addition, there is an acute shortage of family lawyers. According to Gallagher-Mackay (*Report on Family Law Research in Nunavut*, draft), in 2001 there was only one full-time family lawyer and one part-time family lawyer in Nunavut, both of whom were employed by Legal Services Clinics.

A strong conclusion in the *Report on Family Law Research in Nunavut* is that there is a need to work towards a non-court based system, accessible at the community level, to address family law issues. The Nunavut Department of Justice, with support of the federal government, has committed itself to training mediators, which will be done in accordance with Inuit principles, on the basis of a collaborative approach between southern-trained mediators and respected community members.

2.14 Summary

The descriptive information dealing with service delivery models and financial eligibility contained in this chapter is summarized in Table 1. Most jurisdictions use a mixed model to deliver family legal aid services. Jurisdictions using primarily a staff model include Newfoundland, Nova Scotia, New Brunswick, Saskatchewan, Yukon and Nunavut. A primarily judicare model is used in Prince Edward Island, Ontario, Manitoba, Alberta, British Columbia, and the Northwest Territories.

Table 1 also contains the annual income cut-off for financial eligibility for family legal aid for a single person. Caution should be used in interpreting these amounts since some jurisdictions use additional financial criteria. However, with the exceptions of Newfoundland and Québec, which have very low income cut-offs, the cut-offs are comparable for jurisdictions where this information was available.

A comparison of family law matters dealt with by each jurisdiction is provided in Section 3.0, Table 3.



TABLE 1

Summary of Primary Delivery Model and Annual Income Cut-offs for Single Persons

Province/Territory	Primary Delivery Model¹	Annual Income Cut-offs for Single Person² \$
Newfoundland	Staff	4,716
Prince Edward Island	Mixed - Judicare	14,176
Nova Scotia	Mixed - Staff	12,804
New Brunswick	Mixed - Staff	-
Quebec	Mixed	8,870
Ontario ³	Judicare	9,192
Manitoba	Mixed - Judicare	14,000
Saskatchewan	Staff	9,420
Alberta	Judicare	13,000
British Columbia	Mixed - Judicare	12,024
Yukon	Mixed - Staff	confidential
Northwest Territories	Mixed - Judicare	-
Nunavut	Mixed - Staff	-

Source of data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Income information for Ontario and Newfoundland was obtained from Statistics Canada (1999).

¹ Three models of legal aid service are currently in use in Canada. In the staff lawyer model, lawyers are employed directly by legal aid plans; however, private Bar lawyers are still used in cases in which this is required – such as conflict of interest. In the judicare model, legal services are provided by lawyers in private practice, who are paid by the legal aid plan contract, or tariff, basis. Most jurisdictions employ a mixed model of legal aid service delivery, which means that they use a combination of staff and private lawyers to provide legal services. For jurisdictions that use a mixed model, this table indicates whether the majority of cases are dealt with by staff or private lawyers.

² In some jurisdictions, income is only one of several criteria used in determining eligibility for legal aid. These other criteria are discussed in the text.

³ Rather than an income cut-off, Ontario uses a net annual income waiver, which is the income above which a detailed needs test is required.



3.0 Comparisons of Family Law Legal Aid Services in Canada

This section of the report presents the data received regarding the volume and cost of family legal aid cases for the most recent year for which data are available, as well as information on trends in volumes and cost of family legal aid over the past five years. It is important to note that the amount and type of information available varied widely across jurisdictions and, thus, for many issues, data were simply not available from all provinces and territories. Where appropriate, this has been indicated clearly in all tables.

Further, given that similar types of information are presented quite differently in different jurisdictions, the comparability of data may be limited. In some cases we have attempted to calculate figures based on information that was received in order to enhance comparability. However, all comparative data should be treated with caution. Given the substantial differences in populations and income levels across the provinces and territories, it is not appropriate to directly compare the raw numbers of legal aid cases or the gross expenditures on family legal aid.

3.1 Volume of Family Law Legal Aid Services

3.1.1 Applications, Approvals and Refusals

Table 2 presents the number of family legal aid applications received in the most recent year available by jurisdiction. Where available, the number of applications approved, the rate of approvals per 100,000 population, and the number of refusals are also presented. Some jurisdictions only collect data on the number of approvals for family legal aid and, thus, it is not possible to calculate a *rate* of approval out of the total number of applications. Nova Scotia, Saskatchewan, Alberta, British Columbia, the Yukon, and the Northwest Territories were able to provide data on each of applications, approvals and refusals.

For jurisdictions providing data on the number of family legal aid applications, differences in volumes reflect population differences, with the largest volume of applications being in British Columbia, with 25,217 in 2000/01, while Nunavut had the lowest volume, with 80. In terms of the number of applications for family legal aid that were approved, Saskatchewan had the highest proportion of approved cases (91.9 percent), followed by Nova Scotia (70.4 percent), the Yukon (62 percent), and British Columbia (61.6 percent). It is possible that these differences may reflect different levels of pre-screening of potential clients prior to submitting an actual application, as well as other factors such as the types of family law issues covered and service delivery policies.

The rate of approvals per 100,000 population varies considerably across jurisdictions. The lowest rate of approvals (i.e., 175) is found in Prince Edward Island. Québec has the highest rate of approvals at 1169 per 100,000 population. The refusal rates were highest in the Northwest Territories (40.8 percent), Alberta (39.1 percent), and British Columbia (38.4 percent).



TABLE 2

**Volume of Family Law Legal Aid Services in Canada, by Applications, Approvals for Full Service,
and Refusals for the Most Recent Year Available**

Province/Territory	Year	Population ¹	Applications n	Approvals			Refusals	
				n	% of Applications	Rate per 100,000	n	%
Prince Edward Island ²	1999/2000	137,980	-	241	-	175	-	-
Nova Scotia ³	1999/2000	939,791	7,663	5,395	70.4	574	1,138	14.9
New Brunswick	2000/2001	756,598	-	4,228	-	559	-	-
Quebec	2000/2001	7,372,448	-	86,190	-	1,169	-	-
Ontario	2000/2001	11,669,344	-	32,787	-	281	-	-
Manitoba	2000/2001	1,147,880	-	8,046	-	701	-	-
Saskatchewan ⁴	2000/2001	1,023,636	6,631	6,095	91.9	595	536	8.1
Alberta	2000/2001	2,997,236	13,811	8,407	60.9	280	5,404	39.1
British Columbia	2000/2001	4,063,760	25,217	15,526	61.6	382	9,691	38.4
Yukon ⁵	2000/2001	30,663	329	204	62.0	665	78	23.7
Northwest Territories ⁶	2000/2001	42,083	669	379	56.7	901	273	40.8
Nunavut	Current as of Aug. 13/01	27,692	80	-	-	-	-	-

Source of Data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were not provided by that jurisdiction.

¹ Total population as of July 1, 1999 for jurisdictions with fiscal year of 1999/2000 (Statistics Canada, 2000), and as of July 1, 2000 for jurisdictions with fiscal year 2000/2001 (Statistics Canada, 2001). Nunavut's population is as of July 1, 2000 (Statistics Canada, 2001).

² Full legal aid coverage in Prince Edward Island is restricted to cases involving domestic violence. Number of approvals includes 165 cases under the Law Foundation Program, which is not restricted to cases involving domestic violence.

³ Additional statistics for Nova Scotia: Pending = 188 (2.5%) and Summary Approvals = 942 (12.3%).

⁴ Approvals for Saskatchewan equals cases opened and incoming reciprocals.

⁵ Additional statistics for Yukon: Pending = 14 (4.3%) and Other = 46 (14.0%).

⁶ Additional statistics for Northwest Territories: Pending = 17 (2.5%).

3.1.2 Demographic Profile of Family Legal Aid Clients

There is very little demographic information available on the users of family legal aid services in Canada. Provinces and territories are not required to keep data on usage of legal aid by gender (Addario 1998). In a report prepared for the Status of Women Canada, however, Addario (1998, p. 1) states that “approximately two thirds of civil legal aid certificates are given to women, primarily for family law matters.” According to the Law Society of Upper Canada (1999), 74 percent of legally aided clients in family law matters in Ontario are female, compared to only 18 percent of legally aided clients for criminal matters.

Gender is seen as a crucial factor in the delivery of family legal aid services because of the significant power and financial imbalances that often exist between the parties in family law disputes. As explained by Cossman and Rogerson (1997), women with few financial resources of their own may be confronted with husbands who have the means to hire private lawyers to vigorously defend their interests in family law. This problem may be compounded by the disempowerment experienced by women in abusive relationships. A women may also be disadvantaged if her family legal aid coverage is limited, and her partner has retained a private lawyer with no restrictions.

While Cossman and Rogerson (1997, p. 818) argue that “a legal aid system committed to principles of equality must ensure that women’s distinctive legal needs are given as much consideration as men’s,” they recognize that low-income men may also face problems in particular areas of family law. Examples given are: defending support enforcement proceedings in cases where their economic situation has worsened; in varying previous support orders; and in maintaining relationships with their children.

Québec, Nova Scotia, and British Columbia are the only jurisdictions for which we received a breakdown of family legal aid clients by gender.⁴ While the gender breakdown for all legal aid services in Québec in 2000 was 55 percent male and 45 percent female, the gender breakdown for family legal aid services is very different. Over two thirds (69 percent) of family legal aid clients were female, and only 31 percent were male. In Nova Scotia in 1999/2000, 38 percent of applicants for all legal aid services were female, compared to 70 percent of applicants for family legal aid. Similarly, in British Columbia in 2000/01, 62 percent of all legal aid recipients were male, while 38 percent were female. However, 71 percent of legal aid recipients for family matters were female, and only 29 percent were male.

Québec and Nova Scotia also maintain statistics by age of client. In Québec in 2000, three quarters of family legal aid clients were aged 26 to 55 (76 percent). The 18-to-25 age group comprised 17 percent of the family law clients, 4 percent of clients were aged 56 and over, and 3 percent were under the age of 18. A similar pattern exists in Nova Scotia. In 1999/2000, 74 percent of family law applicants were aged 26 to 55, 20 percent were aged 18 to 25, 3 percent were aged 56 and over, and 3 percent were under the age of 18.

⁴ Saskatchewan does collect demographic data from legal aid applicants, however these data are not routinely reported and thus were not available for this report.



3.1.3 Type of Family Law Matter

Provinces and territories were also asked to provide a breakdown of the volume of family legal aid approvals by type of family law matter for the most recent year available. The information provided to us by the provinces and territories is presented in Table 3. It should be noted that the categories that are used for family law matters vary considerably across jurisdictions, thus making direct comparisons very difficult. Also, in British Columbia, cases can be classified by more than one issue, thus making the total number of issue types higher than the total number of referrals.

In several jurisdictions, custody and/or access were the issues that were most likely to be dealt with in a family legal aid case. In the Yukon, 68.7 percent of all family law cases dealt with custody/access, followed by 63.1 percent of cases in the Northwest Territories, 41.9 percent of cases in Nunavut, 36.9 percent of cases in Saskatchewan, and 27.7 percent of cases in Nova Scotia. In British Columbia, 35.9 percent of the issues in family law cases dealt with custody/access. In the other jurisdictions, the issues most frequently dealt with were maintenance (New Brunswick – 27.5 percent of cases) and child welfare (Québec – 31.1 percent of cases; Alberta – 37.7 percent of cases). In Ontario, the most frequent type of family law matter dealt with was “other” (58 percent), which includes a general category called “Family Law/Children’s Law Reform.” Issues that were relatively infrequently dealt with in family legal aid cases in most jurisdictions were property division, separations, and adoptions.

3.1.4 Delivery Mode

As shown in Table 1, most jurisdictions in Canada, with the exceptions of Newfoundland, Ontario, Alberta and Saskatchewan, use a combination of staff lawyers and private lawyers working on a tariff to deliver family legal aid services. Jurisdictions were also asked to provide, where available, a breakdown of their volume of family legal aid approvals by proportion of staff and private lawyers for the most recent year available. This information is presented in Table 4.

For the most recent year for which data were available, the following provinces/territories had most of their family legal aid cases dealt with by staff lawyers: Saskatchewan (93.5 percent); New Brunswick (88.9 percent); Nova Scotia (71.9 percent); Yukon (69.1 percent); and Québec (56.6 percent). While figures were not available for the breakdown of staff and private lawyers in Nunavut, Nunavut is in the process of working towards a staff delivery model.

Six jurisdictions using both staff and judicare delivery modes for family legal aid cases had the majority of their cases dealt with by private lawyers working on tariff: Alberta (97.8 percent); Ontario (97.6 percent); British Columbia (90.4 percent); Manitoba (69.4 percent); Prince Edward Island (68.5 percent); and the Northwest Territories (60.4 percent). In 2000/01, the majority of family legal aid cases in Alberta were dealt with by private lawyers; however, Alberta is currently implementing the Family Law Office Pilot Project, which will employ a staff delivery model in Edmonton and Calgary.

TABLE 3
Volume of Family Law Legal Aid Approvals in Canada, by Type of Family Law Matter*
for the Most Recent Year Available

Province/ Territory	Year	Access/ Custody		Mainten- ance ¹		Property Division		Separation		Divorce		Variations		Family Violence ²		Child Welfare		Adoption		Other ³		Total	
		n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Prince Edward Island ⁴	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nova Scotia ⁵	1999/2000	1566	27.7	1019	18.0	74	1.3	543	9.6	488	8.6	955	16.9	-	-	627	11.1	-	-	384	6.8	5656	100
New Brunswick ⁶	2000/2001	389	9.2	1162	27.5	56	1.3	29	0.7	9	0.2	235	5.6	79	1.9	-	0.0	-	-	2269	53.7	4228	100
Quebec	2000/2001	24586	28.5	15245	17.7	-	-	3845	4.5	9802	11.4	-	-	-	-	26809	31.1	359	0.4	5544	6.4	86190	100
Ontario ⁷	2000/2001	-	-	-	-	-	-	-	-	567	1.7	6973	21.3	-	-	6240	19.0	-	-	19007	58.0	32787	100
Manitoba ⁸	2000/2001	-	-	23	0.3	-	-	2107	26.2	1444	17.9	1413	17.6	-	-	888	11.0	67	0.8	2104	26.1	8046	100
Saskatchewan ⁹	2000/2001	913	36.9	603	24.3	-	-	109	4.4	507	20.5	-	-	6	0.2	259	10.5	29	1.2	51	2.1	2477	100
Alberta	2000/2001	488	5.8	1868	22.2	80	1.0	11	0.1	2594	30.9	-	-	184	2.2	3170	37.7	12	0.14	-	0.0	8407	100
British Columbia ¹⁰	2000/2001	10100	35.9	9080	32.3	2523	9.0	-	-	-	-	-	-	2844	10.1	3437	12.2	-	-	127	0.5	28111	181
Yukon	2000/2001	160	68.7	9	3.9	-	-	-	-	-	-	-	-	-	-	60	25.8	1	0.4	3	1.3	233	100
Northwest Territories	2000/2001	239	63.1	76	20.1	4	1.1	-	-	1	0.3	-	-	-	-	54	14.2	-	-	5	1.3	379	100
Nunavut ¹¹	Current as of Aug. 13/01	31	41.9	24	32.4	2	2.7	-	-	12	16.2	3	4.1	-	-	2	2.7	-	-	-	-	74	100

Source of Data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were not provided by that jurisdiction.

* Note that provinces/territories classify family law matters differently. For example, some jurisdictions do not use the general categories of "divorce," "separation," or variations," but rather classify by the primary family law matter dealt with. Also, some jurisdictions do not specify what is included in "Other," and it may be that some of the categories listed separately on this table are included in a jurisdiction's "Other" category.

¹ "Maintenance" includes child support, spousal support, and maintenance enforcement.

² "Family Violence" includes restraining orders.

³ "Other" includes, for example, appeals, paternity, filiation, and, for New Brunswick, court appearances and consent orders. For Manitoba, "Other" includes parentage proceedings, private guardianship, *amicus*, and other family.

⁴ Full legal aid coverage in Prince Edward Island is restricted to cases involving domestic violence.

⁵ For Nova Scotia, based on full service matters based on a two-year average.

⁶ Certificates for guardianship and motions to vary support where payer is the applicant are not included in these totals; they remain with the Law Society of NB.

⁷ In Ontario, a general category called "Family Law/Children's Law Reform" is included under "Other."

⁸ In Manitoba, applications for "Access/Custody" and "Maintenance" are included under the category of "Separation." The cases included under "Maintenance" are for enforcement only.

⁹ The total number of Saskatchewan cases is considerably lower than the number of cases approved due primarily to the 2,440 cases that are abandoned.

¹⁰ British Columbia classifies cases by each family law matter dealt with; therefore the percentage is based on the total number of issues rather than cases.

¹¹ "Access/Custody" includes 9 cases that also requested support; "Property Division" includes 2 cases seeking property and spousal support.



TABLE 4
Volume of Family Law Legal Aid Services in Canada, by Delivery Mode
for the Most Recent Year Available

Province/Territory	Year	Cases Handled by Staff Lawyers		Cases Handled by Private Lawyers		Total	
		n	%	n	%	n	%
Prince Edward Island ¹	1999/2000	76	31.5	165	68.5	241	100.0
Nova Scotia ²	1999/2000	4,067	71.9	1,494	26.4	5,653	100.0
New Brunswick	2000/2001	3,758	88.9	470	11.1	4,228	100.0
Quebec	2000/2001	48,795	56.6	37,395	43.4	86,190	100.0
Ontario	2000/2001	802	2.4	31,985	97.6	32,787	100.0
Manitoba	2000/2001	2,460	30.6	5,586	69.4	8,046	100.0
Saskatchewan ³	2000/2001	4,913	93.5	343	6.5	5,256	100.0
Alberta	2000/2001	188	2.2	8,219	97.8	8,407	100.0
British Columbia	2000/2001	1,491	9.6	14,035	90.4	15,526	100.0
Yukon	2000/2001	159	69.1	71	30.9	230	100.0
Northwest Territories	2000/2001	150	39.6	229	60.4	379	100.0
Nunavut	Current as of Aug. 13/01	-	-	-	-	74	100.0

Source of Data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were not provided by that jurisdiction.

¹ Number of cases handled by private lawyers are Law Foundation cases. It should also be noted that some cases handled by staff lawyers were referred to the private sector due to conflict and staff shortage.

² In addition, 92 cases (1.6%) were delivered by Dalhousie Legal Aid (see Section 2.3.1). Numbers for private lawyers and Dalhousie Legal Aid are based on a two-year average for 1998/2000 for full services matters completed.

³ For cases completed and closed in time period.

3.1.5 Non-litigation Legal Aid Services

Most jurisdictions in Canada were not able to provide data regarding non-litigation family law legal aid services.

Only New Brunswick had data on the number of cases referred to mediation services in 2000/01. One third of the family law cases were referred to mediation: 32 percent voluntary, and 1.6 percent court-ordered. Some jurisdictions specified that they did not provide mediation services. Manitoba, for example, does not provide mediation services directly.

In Nova Scotia, a trial project to provide mediation services a few years ago was deemed unsuccessful due to being connected to legal aid. It was found that the party who was not being represented by legal aid felt the mediator, who was provided by the legal aid office, was biased in favour of the legal aid client. Further, the Family Division of the Supreme Court (a unified family court model) exists in two areas of the province, and in-house mediation is offered to family litigants. Since mediation in Nova Scotia is court-based in these areas, it is not seen as a legal aid service.

In British Columbia, an evaluation of the Family Justice Worker Division Project, which diverts appropriate family law cases to mediation, found that fewer than half of those clients returned to legal aid for further assistance (Focus Consultants 2001). Of those who did receive a subsequent referral, the average cost per case was \$1,145 – some \$379 less than the average cost for other family files. Cases are considered appropriate for referral to the program if there is no history of abuse, there are no immediate safety concerns for the applicant and/or children, and the applicant agrees to enter the program.

Several jurisdictions kept figures on referrals for summary advice, and the data vary considerably. In Québec, in 2000/01, 9 percent of the applications received for legal aid were referred for consultation only. Nova Scotia approved 15 percent of the accepted applications for summary service in 1999/2000. New Brunswick in 2000/01 referred 31 percent of its applications for information/advice/counselling only. In British Columbia in 2000/01, 20 percent of family law legal aid applicants received information/summary advice, but no referral (applicants referred to a lawyer may also receive information/summary advice services). Some applicants with family law problems not covered by the family tariff are provided legal information, summary advice, a referral, or other assistance under poverty law services (167 cases) or summary advice through intake case services (4370).

3.2 Costs of family law legal aid services

3.2.1 Total Expenditures for Family Law Legal Aid Services

A comparison of the costs of family law legal aid services in Canada is presented in Table 5. Where data are available, the costs of family law legal aid services are presented as a proportion of the jurisdiction's total legal aid expenditures. Nova Scotia spends approximately two fifths of its total legal aid budget on family law services, Saskatchewan spends almost one third of its legal aid budget on civil legal aid, and Prince Edward Island spends 29 percent of its total legal



aid budget on family law matters. The jurisdictions that spend the smallest proportion of their budgets on family law legal aid, of the jurisdictions with these data, are Alberta and Manitoba, at 23 percent.

Per capita costs are also presented to give an indication of family legal aid costs relative to total population size. For the jurisdictions for which this information is available, Prince Edward Island spends the least amount on family legal aid services, at \$1.47 per person, and the Northwest Territories spends the most, at \$12.82 per person. The Yukon (\$7.60), British Columbia (\$5.82), and Nova Scotia (\$4.96) also have relatively high per capita costs.

**Costs of Family Law Legal Aid Services in Canada
for the Most Recent Year Available¹**

Province/Territory	Year	Population ²	Number of Cases	Total Cost of Legal Aid \$	Cost of Family Law Legal Aid			Cost/Case \$
					\$	% of Total	per capita	
Prince Edward Island	1999/2000	137,980	241	695,318	203,000	29	1.47	842
Nova Scotia ³	1999/2000	939,791	5,653	11,117,320	4,658,213	42	4.96	824
New Brunswick ⁴	2000/2001	756,598	4,228	-	1,712,800	-	0.67	405
Quebec	2000/2001	7,372,448	86,190	103,207,782	-	-	-	-
Ontario ⁵	2000/2001	11,669,344	32,787	-	41,258,677	-	3.54	1,536
Manitoba ⁶	2000/2001	1,147,880	7,365	18,094,546	4,079,809	23	3.55	554
Saskatchewan ⁷	2000/2001	1,023,636	5,256	11,609,742	3,446,642	30	3.37	656
Alberta	2000/2001	2,997,236	8,407	27,215,150	6,120,000	23	2.04	728
British Columbia ⁸	2000/2001	4,063,760	15,526	50,499,027	23,658,700	47	5.82	1,524
Yukon	2000/2001	30,663	230	-	232,990	-	7.60	1,013
Northwest Territories ⁹	2000/2001	42,083	541	-	593,549	-	12.82	1,097

Source of Data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were provided by that jurisdiction, and Nunavut did not have the resources available to produce the requested

¹ Since many family legal aid cases span more than one fiscal year, some cases in the table would have been commenced prior to year stated and completed during the year, and others may be approved but not completed in the year

² Total population as of July 1, 1999 for jurisdictions with fiscal year of 1999/2000, and as of July 1, 2000 for jurisdictions with fiscal year

³ Additional statistics for Nova Scotia on costs per case by delivery mode: private lawyers = \$591; staff lawyers = \$893; Dalhousie Aid = \$1,559. Data for private lawyers and Dalhousie Legal Aid are based on a two-year average for

⁴ Additional statistics for New Brunswick on costs per case by delivery mode: private lawyers = \$177; staff lawyers =

⁵ Cost/case is the average cost of completed cases in the fiscal year for private lawyers

⁶ Additional statistics for Manitoba on costs per case by delivery mode: private lawyers = \$585; staff lawyers =

⁷ Cost figures include civil and provincial legal aid, based on cost sharing

⁸ The cost per case figure is a rough indicator only. This is because a number of tariff payments in 2000-2001 were for cases and reported in previous years, but completed in 2000-2001. Also, a number of cases referred in 2000-2001 will not be completed and paid until 2001-2002 or later. The "Cost of Family Law Legal Aid" for 2000-2001 in this table includes actual private bar tariff and budgeted family staff lawyer costs for this year; it excludes legal information/summary advice service costs and transcript

⁹ Number of cases includes ongoing cases from previous



3.2.2 Cost/case for family law legal aid services

The average cost/case for family law legal aid services in Canada is also contained in Table 5. While these data need to be interpreted with caution (see Section 1.4 Limitations), it is evident that the costs of delivering family law legal aid vary widely across Canada. For provinces/territories for which we have information, costs range from \$405 per case in New Brunswick to over \$1,500 per case in Ontario and British Columbia.

The differences in cost/case do not seem to be related to whether the jurisdiction uses primarily a staff or judicare delivery model. Three provinces were able to provide additional data by delivery mode. In New Brunswick in 2000/01, cases completed by staff lawyers cost an average of \$113, while cases completed by private lawyers averaged \$177 per case. Similarly, in Manitoba, the cost/case for private lawyers in 2000/01 was \$585, compared to \$494 for staff lawyers. Conversely, in Nova Scotia in 1999/2000, cases completed by private lawyers had the lowest cost/case at \$591, compared to \$893 for cases completed by staff lawyers, and \$1,559 for cases completed by Dalhousie Legal Aid.

3.3 Trends in volumes and expenditures of family law legal aid services

3.3.1 Trends in volume of family law legal aid services

Table 6 presents data on the number of approved family law legal aid applications in Canada over five years and the percentage change from year to year. There is a general downward trend in the number of approved applications for Nova Scotia and Saskatchewan, and a general upward trend for Ontario, Alberta, Prince Edward Island, and the Yukon. New Brunswick experienced an increase in the number of approved applications from 1997/98 to 1999/2000, but then saw a sharp decline to close to 1997/98 numbers. In Manitoba, the number of approved applications decreased from 1996/97 to 1997/98, increased to 1999/2000, and then decreased in 2000/01. Approved applications in British Columbia dropped from 1996/97 to 1998/99, and then increased to 2000/01. In Québec, it is interesting that the trends in volume for family law cases have shown decreases, while the volume of child protection cases has increased.

It is important to note that, even though the number of approved applications may be decreasing, this does not mean that there is a reduced need for family law legal aid services. Rather, it is likely that the number of approved applications is related to trends in expenditures.

3.3.2 Trends in expenditures for family law legal aid services

Trends in expenditures for family law legal aid services in Canada and the percentage change from year to year are presented in Table 7. Nova Scotia, Québec, and British Columbia are the only jurisdictions for which data are available that show a downward trend in expenditures, and Ontario, Alberta and Saskatchewan are the only jurisdictions that show an upward trend in expenditures. British Columbia, the Yukon, and New Brunswick all experienced decreased expenditures from 1998/99 to 1999/2000, followed by increased expenditures in 2000/01. The trends in expenditures for Nova Scotia, Québec, Manitoba, British Columbia, the Northwest Territories and the Yukon mirror the trends in volume of approved family law legal aid

applications (see Table 6). However, the trends for New Brunswick do not, particularly for 2001/2002, when a decreased caseload is associated with higher expenditures.



TABLE 6

**Trends in Volume of Approved Family Law Legal Aid Services in Canada
and Percentage Change from Year to Year**

Province/Territory	1995/1996	1996/1997	% Change	1997/1998	% Change	1998/1999	% Change	1999/2000	% Change	2000/2001	% Change
Prince Edward Island ¹	75	198	164.0	197	-0.5	180	-8.6	241	33.9	-	-
Nova Scotia	7,691	6,932	-9.9	6,592	-4.9	5,695	-13.6	5,395	-5.3	-	-
New Brunswick	-	-	-	4,117	-	4,358	5.9	4,864	11.6	4,228	-13.1
Quebec ²	-	-	-	85,612	-	87,887	2.7	90,081	2.5	86,190	-4.3
Ontario	-	-	-	18,951	-	28,138	48.5	30,138	7.1	32,787	8.8
Manitoba	-	8,560	-	6,967	-18.6	8,084	16.0	9,494	17.4	7,365	-22.4
Saskatchewan ³	5,930	6,498	9.6	6,353	-2.2	5,711	-10.1	5,027	-12.0	5,256	4.6
Alberta	-	6,106	-	6,595	8.0	6,947	5.3	7,672	10.4	8,407	9.6
British Columbia	-	16,409	-	13,532	-17.5	13,177	-2.6	13,828	4.9	15,526	12.3
Yukon ⁴	-	300	-	339	13.0	362	6.8	293	-19.1	329	12.3
Northwest Territories ⁵	-	529	-	567	7.2	480	-15.3	576	20.0	541	-6.1
Nunavut ⁶	Not applicable	Not applicable		Not applicable		Not applicable		Not applicable		80	-

Source of Data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were not provided by that jurisdiction.

¹ Note that the Law Foundation Program started in 1996.

² Numbers include family law and youth protection cases; however, when the two areas are looked at separately, the trend in volume for family law cases has been decreasing, while the trend in volume of youth protection cases has been increasing.

³ Numbers are for cases completed and closed in time period.

⁴ Data are available for applications only.

⁵ Numbers include cases opened during the fiscal year, as well as ongoing cases from previous years.

⁶ The Legal Services Board of Nunavut began operations on July 1, 2000. Figure given for 2000/2001 is the number of applications for family legal aid up to August 13, 2001.

TABLE 7

**Trends in Expenditures for Family Law Legal Aid Services in Canada
and Percentage Change from Year to Year**

Province/Territory	1995/1996 \$	1996/1997 \$	% Change	1997/1998 \$	% Change	1998/1999 \$	% Change	1999/2000 \$	% Change	2000/2001 \$	% Change
Prince Edward Island	-	-	-	-	-	-	-	203,000	-	-	-
Nova Scotia ¹	5,524,446	5,251,534	-4.9	4,919,969	-6.3	5,281,418	7.3	5,177,961	-2.0	-	-
New Brunswick	-	446,156	-	409,192	-8.3	471,721	15.3	462,415	-2.0	508,437	10.0
Quebec	-	43,385,000	-	37,190,000	-14.3	36,765,000	-1.1	38,470,000	4.6	-	-
Ontario	-	-	-	27,060,000	-	31,660,000	17.0	38,420,000	21.4	39,550,000	2.9
Manitoba	-	4,419,939	-	3,683,639	-16.7	4,372,433	18.7	5,076,820	16.1	4,079,809	-19.6
Saskatchewan ²	2,681,353	3,024,194	12.8	3,445,234	13.9	3,552,024	3.1	3,497,362	-1.5	3,446,642	-1.5
Alberta	4,228,000	4,969,000	17.5	4,599,000	-7.4	4,510,000	-1.9	5,773,000	28.0	6,120,000	6.0
British Columbia ³	-	28,752,358	-	24,749,593	-13.9	20,411,083	-17.5	19,923,649	-2.4	20,755,415	4.2
Yukon ⁴	-	-	-	-	-	160,444	-	147,114	-8.3	206,623	40.5
Northwest Territories ⁵	-	571,792	-	588,336	2.9	547,134	-7.0	663,949	21.4	593,549	-10.6
Nunavut	Not applicable	Not applicable		Not applicable		Not applicable		Not applicable		-	

Source of Data: Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were not provided by that jurisdiction.

¹ Costs include all family/civil/provincial legal aid services.

² Cost figures include civil and provincial legal aid, based on cost sharing claims.

³ Amounts include tariff costs only.

⁴ Estimates based on percentage of approved applications in 2000/2001 x cost/case.

⁵ These figures only include fees and disbursements to private lawyers; the amounts do not include salaries and other expenses of staff lawyers.

4.0 Conclusions

The purpose of this project was to collect information from all provinces and territories in Canada concerning the provision of family legal aid services in their jurisdictions. Unfortunately, but not unexpectedly, the information available from the jurisdictions varied widely in terms of both the amount of information and the level of data. The conclusions presented below are based on this limited information and should be treated as preliminary considerations.

Provinces and territories should be encouraged to collect data that are comparable across jurisdictions, and further research using such data needs to be conducted in order to make informed policy decisions. For example, to help determine the level of need for family legal aid, it would be useful to know the number of applications as broken down by approvals and refusals. Data on the primary family law issue dealt with in each case, and the age and gender of the client, should be routinely collected. Data should also be routinely collected on the total cost of family legal aid services, as well as average cost per case. Some jurisdictions only collect these data for all civil cases. In jurisdictions using a mixed model of service delivery, it would be useful to have cost breakdowns by mode of delivery.

4.1 Family law legal aid services in Canada

As described in the Introduction, there are three basic models used in the delivery of legal aid services in family law cases in Canada: primarily staff; primarily judicare (private lawyers); and a mixed model of service delivery, which uses both staff and judicare. Jurisdictions that use primarily a staff model of service delivery include Newfoundland, Nova Scotia, Saskatchewan and the Yukon. Jurisdictions using primarily the judicare model include Ontario, Alberta, British Columbia and Prince Edward Island. It should be noted, however, that Alberta is currently implementing a Family Law Office Pilot Project, which would use the staff model to deliver family legal aid in Edmonton and Calgary. Nunavut currently uses a mixed model of service delivery, but is working toward a staff model. New Brunswick, Québec, Manitoba and the Northwest Territories use a mixed model of service delivery, utilizing both staff and private lawyers.

In an attempt to improve access to the justice system and provide low-income individuals with more cost-effective legal representation in family law matters, several jurisdictions are exploring alternate means of service delivery. A major recommendation in a report commissioned by the government of Prince Edward Island (Ross 1999) was the establishment of a Family Justice Centre that would use a triage model to allocate legal and other professional services to eligible family law clients. Legal aid for all family law issues would be available for all low-income families. The emphasis in the Family Justice Centre would be on non-adversarial methods of dispute resolution in family law cases. It should be noted, however, that this report has not yet been implemented and the current proposal for the Family Justice Centre is a scaled down version of the model recommended by Ross.

Alberta is currently implementing a pilot project that involves the establishment of two Family Law offices with staff lawyers in order to improve access to justice for legal aid clients in a cost-effective way. Each office will be staffed with lawyers, as well as support staff and a social worker. One of the goals of the pilot project is to address special client needs by practising law in a holistic manner, i.e., working with community organizations to help clients obtain non-legal assistance as well.

Similarly, a recent report outlining the state of family law in Nunavut (Gallagher-Mackay, *Report on Family Law Research in Nunavut*, draft) concludes that there is a need to work toward a non-court based system, accessible at the community level, to address family law issues. The Nunavut Department of Justice, with support of the federal government, has committed itself to training mediators. This will be done in accordance with Inuit principles, using a collaborative approach with community members to recognize the social and cultural uniqueness of Nunavut.

In British Columbia, the Legal Services Society is piloting the issuance of limited referrals to provide up to three hours of legal services for family law clients. This project is being tested by staff lawyers in four communities, and will be expanded in conjunction with information on a family law Web site being developed with funding from the Law Foundation of British Columbia. This is a four-year project designed to provide current plain language information on family law to the public – including guides on how to complete forms and links to referral services – and to provide training tools, closed discussion groups, and resource lists for legal staff and other advocates.

As jurisdictions consider revising their delivery models, issues of the relative cost-effectiveness and quality of service provided by each model inevitably arise. There has been some work done comparing the relative costs and benefits of the two service delivery models in the criminal law context. However, many of the service delivery issues are quite different in the family law context, and it is uncertain how applicable the information on the criminal context is to family law service delivery issues. According to Currie (1999), family law cases are not as structured as criminal cases. The issues dealt with in family law cases are often complex and emotionally charged, and cases may continue for long periods of time.

A controversial issue in the provision of legal aid services is whether clients have the right to choose a lawyer (Cossman and Rogerson 1997). This may be especially important in family law cases, where clients' most personal and intimate matters may be the subject of legal proceedings. In keeping with a shift toward a staff model of service delivery, many jurisdictions in Canada do not allow clients to choose their lawyer; rather, a staff lawyer is assigned to approved applicants. In Nova Scotia, for example, counsel is assigned, except in cases of conflict of interest or in criminal cases where the penalty for a criminal charge is mandatory life imprisonment. Counsel is assigned in the Yukon, the Northwest Territories, and Nunavut.

Under the Family Law Office Pilot Project in Alberta, although the question is still not fully resolved, it may be that clients will no longer have a choice of counsel. In cases where there is a conflict, because the Family Law Office is already representing one party, the second party will be referred to the private bar.



Some jurisdictions still allow family legal aid clients a choice of counsel. An individual in Québec or in British Columbia who is deemed eligible for legal aid coverage receives the services of a staff lawyer, or may choose a private lawyer who agrees to take the case. Approved applicants in Manitoba have the option of choosing any lawyer on the legal aid panel, which includes both staff lawyers of Manitoba Legal Aid and members of the private bar.

While, in general, all jurisdictions base financial eligibility on need and income, they vary in the specific method used to determine whether applicants are eligible for family legal aid services. Some jurisdictions use a sliding scale of annual income cut-offs depending on the number of family members. Newfoundland, Prince Edward Island, Nova Scotia, Québec, Manitoba, Alberta and British Columbia have specific income cut-offs. The Yukon uses a sliding scale, but its cut-offs are confidential. Ontario uses a net annual income waiver scale, and individuals with incomes above scale amounts require detailed needs testing. Annual income cut-offs for a single person vary from \$4,716 in Newfoundland to \$14,176 in Prince Edward Island.

There are concerns that eligibility criteria for legal aid are at or near social assistance income levels. As a result, individuals who are “working poor” or have very limited means may be ineligible for legal aid, and may be forced to represent themselves (Ferguson 2001) or simply be unable to seek relief in the justice system. As was discussed in Section 3.1.2, approximately two thirds to three quarters of family legal aid clients are female, meaning that women are particularly disadvantaged in terms of family legal aid coverage.

4.2 Volume of Family Law Legal Aid Services

Data on the number of applications for family legal aid were only available for seven jurisdictions, therefore comparisons were made using number of approved applications. The rate of approvals per 100,000 population varied considerably across jurisdictions. The lowest rate of approvals (i.e., 175) is found in Prince Edward Island. Québec has the highest rate of approvals at 1169 per 100,000 population. For jurisdictions that provided refusal rates, these rates were highest in the Northwest Territories (40.8 percent), Alberta (39.1 percent) and British Columbia (38.4 percent).

The family law matters covered by legal aid services also varied considerably across provinces and territories. The variation between jurisdictions may reflect both differences in total legal aid budgets and different demands and priorities for legal aid. Generally, priority is given to cases involving spousal abuse issues and child protection proceedings. There is significant variation across Canada in whether legal aid will cover support applications and custody or access cases that do not involve abuse issues.

In Prince Edward Island, full coverage for all aspects of a family law case is restricted to cases involving domestic violence. In New Brunswick, victims of family violence have access to coverage for a wide range of family law issues. Legal aid services are more restricted for applicants who are not victims of family violence, and are limited to issues involving support orders, custody and guardianship. In the Yukon, coverage is only allowed for cases in which children are involved, and while a matter may be commenced by the filing of a Petition for

Divorce, legal aid counsel are not authorized to complete the divorce proceedings. In Nunavut, coverage for divorce is allowed only if there are other issues such as custody, access, or support.

4.3 Costs of Family Law Legal Aid Services

Nova Scotia spends approximately two fifths of its total legal aid budget on family law services, Saskatchewan spends almost one third of its legal aid budget on civil legal aid, and Prince Edward Island spends 29 percent of its total legal aid budget on family law matters. The jurisdictions that spend the smallest proportion of their budgets on family law legal aid, of the jurisdictions with these data, are Alberta and Manitoba, at 23 percent.

Per capita costs are also presented to give an indication of family legal aid costs relative to total population size. Of the jurisdictions for which this information is available, PEI spends the least amount on family legal aid services at \$1.47 per person, and the Northwest Territories spends the most, at \$12.82 per person. The Yukon (\$7.60), British Columbia (\$5.82), and Nova Scotia (\$4.96) also have relatively high per capita costs.

Based on the materials provided by the provinces and territories, an overriding issue in every jurisdiction in Canada is a shortage of funding for the delivery of family law legal aid services. While several jurisdictions experienced decreases in the number of approved applications for family legal aid services in the late 1990s (e.g., Nova Scotia, Saskatchewan, New Brunswick and British Columbia), this cannot be equated with a reduced need for services. Rather, it appears that the number of approved applications is related to trends in expenditures. In British Columbia, for example, shortages for funding for legal aid led the Legal Services Commission to cut services in several areas in 1997/98. Eligibility levels were changed, coverage provisions were reduced, and tariff fees to lawyers were reduced by 5 percent (by increasing the holdback from 5 percent to 10 percent). It is not unlikely that, as awareness of cuts to legal aid funding spreads, individuals may be informally discouraged or screened before making a formal application.

In the materials provided by several jurisdictions, a lack of funding was identified as a significant policy change that may have affected service delivery (i.e., Prince Edward Island, Nova Scotia, Alberta, British Columbia, and Nunavut). Two provinces, Prince Edward Island (in the early 1990s) and British Columbia, specifically identified cutbacks in coverage provisions due to funding shortages.

Sufficient data are not available to compare the cost differences of the staff and judicare delivery models, and a comparison of quality of services in family law cases is clearly an important issue though beyond the scope of the present project. According to past Canadian research on criminal legal aid, the staff lawyer delivery model is less expensive than private bar delivery, and the quality of service provided by staff lawyers is equal to that provided by private lawyers (Currie 1999). However, the author notes that the issues in family law disputes may be more complex and emotionally charged than criminal law matters, and that family law cases may be more protracted, as disputes evolve over time. Therefore, the research on criminal legal aid delivery is not necessarily generally applicable to family law delivery models.



4.4 Trends in volumes and expenditures of family law legal aid services

There is a general downward trend in the number of approved applications for Nova Scotia and Saskatchewan, and a general upward trend for Ontario, Alberta, Prince Edward Island and the Yukon. New Brunswick experienced an increase in the number of approved applications from 1997/98 to 1999/2000, but then saw a sharp decline to numbers close to those of 1997/98. In Manitoba, the number of approved applications decreased from 1996/97 to 1997/98, increased to 1999/2000, and then decreased in 2000/01. Approved applications in British Columbia dropped from 1996/97 to 1998/99, and then increased to 2000/01. In Québec, it is interesting that the trends in volume for family law cases have shown decreases, while the volume of child protection cases has increased.

Nova Scotia, Québec and British Columbia are the only jurisdictions for which data are available that show a downward trend in expenditures, and Ontario, Alberta and Saskatchewan are the only jurisdictions that show an upward trend in expenditures. British Columbia, the Yukon and New Brunswick all experienced decreased expenditures from 1998/99 to 1999/2000, followed by increased expenditures in 2000/01. The trends in expenditures for Nova Scotia, Québec, Manitoba, British Columbia, the Northwest Territories and the Yukon mirror the trends in volume of approved family law legal aid applications.

While all jurisdictions in Canada are concerned with the state of family law legal aid services, there are some interesting developments taking place. The trend data on expenditures showed a fairly consistent decline during the latter 1990s. For most jurisdictions for which this information is available, however, expenditures in 2000/01 have increased. Some provinces and territories are in the process of expanding coverage provisions (i.e., the Yukon and British Columbia).



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