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ACCESS TO JUSTICE

PART 2: LEGAL AID

Report of the Standing Committee on Justice and Human Rights

Anthony Housefather
Chair

OCTOBER 2017

42nd PARLIAMENT, FIRST SESSION

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THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

has the honour to present its

SIXTEENTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied Legal Aid and has agreed to report the following:

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INTRODUCTION

On 23 February 2016, the House of Commons Standing Committee on Justice and Human Rights (the Committee) decided to undertake a study on access to justice by proceeding in several phases, the first consisting of reviewing the Court Challenges Program. The Committee tabled its report on the Court Challenges Program in September 2016. The second phase of the study on access to justice entailed a review of legal aid.[1] From December 2016 to May 2017, the Committee held seven meetings at which it heard testimony from representatives of the Department of Justice, experts and organizations involved in the delivery of legal aid services.[2]

Throughout the study, witnesses informed the Committee that legal aid is no longer simply about providing full legal representation services to those who qualify. Given the cost of such services and the number of people who do not qualify for free representation yet also cannot afford legal services, legal aid plans[3] and governments have had to think creatively about how to address the legal needs of the population and have expanded their programs into other forms of legal assistance, such as public legal education initiatives.

Witnesses were concerned that Canada has a patchwork of services of varying reach depending on the jurisdiction since the delivery and administration of legal aid is a provincial/territorial responsibility. A number of witnesses outlined the important role of legal aid in ensuring that everyone has access to the courts regardless of their financial situation, which is necessary in order to respect the foundational democratic principle of the rule of law.[4] They also explained the importance of legal aid in protecting minority rights. In addition to the benefits to Canadian democracy, a number of witnesses noted the significant return on investment from adequate contributions to legal aid systems – from saving court time by reducing the number of self-represented litigants to social assistance and healthcare savings. Witnesses stated that up to $6-7 dollars could be saved for every dollar spent on legal aid.[5]

This report starts by explaining the federal role in legal aid and its role in funding provincial and territorial legal aid plans. It then outlines a number of measures that could

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1 The third phase of the Committee's access to justice study will focus on court delays, followed by a study of section 4.1 of the *Department of Justice Act*, dealing with the assessment of government bills by the Department of Justice in light of the *Canadian Charter of Rights and Freedoms*.

2 A list of witnesses who appeared before the Committee is set out in Appendix A and a list of briefs submitted to the Committee, in Appendix B of this report.

3 Note that witnesses used the terms "legal aid programs," "legal aid systems," and "legal aid plans" interchangeably throughout the study. The Committee understands these terms to be equivalent.

4 House of Commons, Standing Committee on Justice and Human Rights (JUST), *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Richard Fowler, Representative, British Columbia, Canadian Council of Criminal Defence Lawyers) and (Avvy Yao-Yao Go, Clinic Director, Metro Toronto Chinese and Southeast Asian Legal Clinic).

5 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016, (Doug Ferguson, Member, Access to Justice Committee, Canadian Bar Association) and (Richard Fowler). Mr. Fowler stated that every dollar invested in legal aid can save between two and seven dollars in other services.

increase access to legal assistance to maximize the impact of existing funding, and finishes by examining ways to improve data and research on legal aid. In developing its observations and recommendations, the Committee remained cognizant of the division of powers, focusing on areas where the federal government could make a difference and improve the network of legal aid systems across the country, while respecting provincial and territorial jurisdiction.

FEDERAL CONTRIBUTION TO LEGAL AID SERVICES

Canada does not have one legal aid system. As Mr. Mark Benton from the Legal Services Society noted in his testimony: "What we have is a series of 13 provincial and territorial legal aid programs, with very little consistency among them."[6] Each jurisdiction determines its own financial eligibility guidelines for legal aid and the areas of the law that are covered.[7]

The federal role vis-à-vis legal aid essentially consists of providing funding to provinces and territories to support their legal aid plans. Federal funding for legal aid has been provided to provinces and territories for more than 40 years. As explained by Mr. Donald Piragoff from the Department of Justice, "federal involvement started with the initiation of legal aid pilot projects by the then-Department of Health and Welfare in 1972."[8] As discussed below, this approach to legal aid reflects Canada's constitutional division of powers where the provinces have jurisdiction over the administration of justice, including legal aid services.

A. Jurisdiction over Legal Aid

Pursuant to sections 91 and 92 of the *Constitution Act, 1867,* "responsibility for criminal justice is shared between the federal Parliament, under its authority to enact criminal laws and law related to criminal procedure, and the provincial governments, under their authority for the administration of justice."[9] As a result, provinces (and territories due to the powers delegated to them[10]) are responsible for the administration and delivery of legal aid services within their borders. The federal government is not involved in the delivery of legal aid services.

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6 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 May 2017 (Mark Benton, Chief Executive Officer, Legal Services Society).

7 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska, Director, Legal Aid Directorate, Programs Branch, Policy Sector, Department of Justice). Note, however, that Mr. Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector at the Department of Justice, told the Committee that there are conditions on federal funding and "we [the federal Department of Justice] attempt to influence the provinces in exercizing their constitutional decisions with respect to the administration of justice. However, we cannot do it directly because it is their constitutional responsibility to administer justice in the province."

8 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector, Department of Justice).

9 Ibid.

10 The delegation of powers similar to the provinces from the federal government to territorial governments is done through agreements with the territories. More information about the difference between Canadian provinces and territories is available on the Intergovernmental Affairs Website.

While the federal contribution to criminal legal aid services operates in the same manner in all provinces and territories, civil legal aid is treated differently. As Mr. Piragoff explained, "[i]n the territories, the federal Parliament has constitutional responsibility for both civil and criminal law."[11] In contrast, civil law is exclusively under provincial jurisdiction.

The federal government is also responsible for immigration and refugee laws, including immigration tribunals and the federal court system. As Mr. Piragoff noted in his testimony before the Committee:

> Immigration and refugee legal aid supports the federal *Immigration and Refugee Protection Act* in ensuring that eligible individuals receive fair and timely process in the determination of their immigration and refugee claims. It assists in addressing the unique circumstances of refugee claimants….[12]

B. Structure of the Federal Funding Contribution to Legal Aid

Federal funding of legal aid plans is currently provided in two ways: through direct payments by the Department of Justice under the Legal Aid Program (LAP) and through the Canada Social Transfer (CST), which is administered by the Department of Finance Canada. Each of these will be addressed in turn below.

1. The Legal Aid Program

The Justice Department LAP has five components. As noted in the Department of Justice's 2012 legal aid evaluation report, the "LAP's structure is intentionally designed to fit within the constitutional role of the federal government, which is shared jurisdiction in criminal justice, [immigration and refugee] matters, and civil law in the territories."[13]

The first component of the LAP provides contribution funding for the delivery of criminal legal aid services to youth facing prosecution under the *Youth Criminal Justice Act* and to economically disadvantaged adults accused of serious and/or complex criminal offences in the provinces and territories,[14] as well as for the delivery of civil legal aid in the territories. The distribution of funds to provincial governments is in accordance with individual contribution agreements signed with provinces. In the territories, the funds are allocated in accordance with the Access to Justice Services Agreements (AJA).[15] In addition to providing funding for criminal and civil legal aid in the territories, the AJAs contain funding for the Indigenous Courtwork Program and Public Legal Education and

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11 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

12 Ibid.

13 Department of Justice, *Legal Aid Program Evaluation – Final Report*, 2012, p. 53.

14 Ibid., p. ii.

15 The Access to Justice Service Agreements are a consolidated fund for each territory that replaced previous individual agreements for the delivery of legal aid (both civil and criminal), Aboriginal Courtwork Services and Public Legal Education and Information. See Department of Justice, *Legal Aid Program Evaluation – Final Report*, 2012.

Information Services.[16] In 2017-2018, the LAP will provide $119.73 million to the provinces for the delivery of criminal legal aid services and $4.66 million to the territories for the delivery of criminal and civil legal aid services.[17]

The second component of the LAP offers funding for the delivery of immigration and refugee legal aid services in participating provinces. Since 2001, when the federal government began contributing to this area of legal aid, the LAP has provided annual contributions to the following six provinces: British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland and Labrador. In 2017-2018, the LAP will provide $14.20 million to the participating provinces for the delivery of immigration and refugee legal aid services.[18] The Committee also learned that jurisdictions that currently do not provide legal aid representation in immigration and refugee matters can join this component of the LAP and request federal funds. As explained by Ms. Hana Hruska from the Department of Justice:

> Provinces and territories are able to access the immigration and refugee legal aid funding upon giving notice to us. They will then share in the pot. That funding is up for renewal next fiscal year, so depending on the level of funding, more provinces may decide to join into the funding. Of course, if provinces start offering immigration and refugee legal aid services, they will see the demand and there may be pressures on provincial funding for that as well, so that may be a consideration.[19]

The third component of the LAP involves cases where the court has ordered that counsel be provided in a federal prosecution (also referred to as *Rowbotham* orders)[20]. As noted by Mr. Piragoff, funding for court-ordered counsel in federal prosecutions "relates to instances where a court orders the Attorney General of Canada to provide counsel for persons accused of serious offences who neither have the resources to pay for a lawyer, nor have been found eligible for criminal legal aid under a provincial or territorial plan."[21] Although the Constitution does not offer an automatic right to free legal representation, not providing government-funded counsel could be considered a breach of the accused's constitutional rights in certain circumstances.[22]

The fourth component of the LAP affords funding for the delivery of legal aid for economically disadvantaged individuals that are subject to terrorism prosecutions, security

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16 The Indigenous Courtwork Program (formerly the Aboriginal Courtwork Program) provides funding to assist Indigenous people involved in the criminal justice system. Public Legal Education and Information Services seek to provide "members of the public with the legal information they need to make informed decisions and participate effectively in the justice system." Department of Justice, *2014-2015 Report on Plans and Priorities (RPP) Supplementary Information Tables*.

17 Department of Justice, information provided to the Committee, October 2017.

18 Ibid.

19 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

20 *R. v. Rowbotham*, 1988 CanLII 147 (ON CA).

21 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

22 In the provincial context, a right to state-funded counsel for parents has also been recognized under section 7 (right to life, liberty, and security) where the state seeks custody of a child. *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 SCR 46.

certificates issued under the *Immigration and Refugee Protection Act,* and proceedings under the *Extradition Act* where the commission of a terrorist act is alleged. This component recognizes that "the cost of defending against [public security and terrorism] related charges would be substantial [for provinces and territories] and should not be borne by legal aid plans out of their existing federal funding."[23] In 2017-2018, the LAP will provide $4.15 million to all state-funded counsel, which includes the third and fourth components of the program.[24]

Lastly, the fifth component of the LAP provides secretariat support for the Federal-Provincial-Territorial Permanent Working Group on Legal Aid (FTP Working Group).[25] The FTP Working Group is "comprised of representatives of the federal, provincial and territorial governments and representatives from each provincial and territorial legal aid delivery agency."[26] It reports directly to the FPT Deputy Ministers Responsible for Justice and Public Safety. The group acts as a forum for national information sharing, research and joint policy development on matters of shared interest respecting legal aid services. As explained by Mr. Piragoff:

> The permanent working group, among other things, provides advice on legal aid cost-sharing issues, on the potential impact of legislative or policy proposals on legal aid services and their clients, and develops approaches to support the provision of accessible, efficient, and high-quality legal aid.... [This group] is also engaged in a discussion on performance measurement and innovation in legal aid.[27]

During the study, the Committee was informed that the FTP Working Group was "developing and negotiating a new distribution formula for federal legal aid monies."[28]

2. Canada Social Transfer

The federal contribution to civil legal aid in the provinces is made through the CST.[29] The CST, which is administred by the Department of Finance Canada, is a block transfer to provinces and territories in support of a series of social services, including post-secondary education, social assistance and, in the case of the provinces, civil legal aid. As explained by Ms. Hruska, CST funding is not earmarked, so "it is up to the jurisdictions to define how much they set aside for civil legal aid."[30] The Committee heard that the current funding structure does not provide a reporting mechanism enabling the identification of the amounts taken from the CST for legal aid to ensure accountability.

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23 Department of Justice, *Legal Aid Program Evaluation – Final Report*, 2012, p. ii.

24 Department of Justice, information provided to the Committee, October 2017.

25 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

26 Department of Justice, Legal Aid Program.

27 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

28 Ibid.

29 Civil legal aid in the provinces was originally funded through the Canada Assistance Plan, which was replaced by the Canada Health and Social Transfer, which was later separated into the Canada Social Transfer and the Canada Health Transfer.

30 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

During the course of the study, a number of witnesses recommended either earmarking the funds in the CST for the delivery of civil legal aid or creating a new dedicated transfer for civil legal aid to ensure greater transparency and accountability.[31] As noted by Ms. Kasari Govender from the West Coast Women's Legal Education and Action Fund (West Coast LEAF), a similar recommendation was put forward by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its 2016 observations on Canada.[32]

The Committee agrees with witnesses that removing funding for civil legal aid services in the provinces from the CST is necessary to increase transparency and accountability. The Committee also sees benefits in having all federal funding managed by one federal department instead of two. This would help in providing a complete picture of legal aid services and establishing a more rigorous mechanism for monitoring legal aid services across the country.

In light of these considerations:

RECOMMENDATION 1

The Committee recommends that the federal government remove the legal aid funds currently included in the Canada Social Transfer in favour of a specific, earmarked civil legal aid fund for provinces administered under the Department of Justice Canada Legal Aid Program.

RECOMMENDATION 2

To increase transparency and accountability, the Committee recommends that the legal aid agreements signed with the provinces and territories include a clause requiring them to report to the Department of Justice Canada on an annual basis on the performance of their legal aid plans, including information about how federal funding has been spent and any resulting improvements and changes to the plans. This report should be made public.

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31 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David Field, President and Chief Executive Officer, Legal Aid Ontario), (David McKillop, Vice-President, Legal Aid Ontario) and (Kasari Govender, Executive Director, West Coast Women's Legal Education and Action Fund) as well as JUST, 1st Session, 42nd Parliament, The Canadian Bar Association, *Study on Access to the Justice System – Legal Aid*, Brief, December 2016, p. 2.

32 More precisely, the CEDAW recommended that Canada, "[i]ncrease funding for civil legal aid, and specifically earmark funds for civil law legal aid in the Canada Social Transfer in order to ensure that women have access to adequate legal aid in all jurisdictions, in particular women victims of violence, indigenous women and women with disabilities". United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, 25 November 2016, paras. 14-15.

LEGAL AID AS A SOUND INVESTMENT

The Committee discovered that there is strong support for legal aid spending in Canada. Many witnesses argued that spending money on legal aid is a sound investment. As explained, for example, by Mr. Doug Ferguson from the Canadian Bar Association:

> [S]tudies in the U.S., the United Kingdom, and Australia show that on average for each dollar invested in legal aid, the social return on investment is six dollars, so a 6:1 ratio. Much of that six dollars is comprised of government spending in other areas such as decreased income benefits, increases in tax revenues, or decreased court costs.[33]

According to Mr. Richard Fowler from the Canadian Council of Criminal Defence Lawyers "[s]tudies have consistently shown … that for every dollar invested in legal aid, there are economic benefits of between two to seven dollars."[34]

The Committee also heard throughout the study that underfunding legal aid can be costly.[35] As suggested by a number of witnesses, self-represented litigants often clog up the court system and contribute to court delays. Mr. Ferguson noted the following regarding the area of family law:

> For many years in Ontario, if you made the minimum wage you made too much money to qualify for legal aid. You were deemed capable of paying thousands of dollars to a lawyer to represent you. Family law is an area that is suffering greatly. In Ontario, and I believe it's the same in other provinces, anywhere from 50% to 70% of parties in the family courts do not have representation. These people are seeking child support, or they're seeking custody of or access to their children, and they can't navigate the system. It's too complicated, and because they don't have help and don't understand the family court rules, self-represented litigates clog up the court system. Cases are delayed, costs rise, and justice is not done.[36]

Many witnesses reminded the Committee that the law is complex. One witness said that, "[u]nless individuals can get a lawyer at the front end to assist them in managing their way through the justice system, it does not take long for things to go sideways."[37]

As noted by Ms. Govender:

> [A]t the Rise Women's Legal Centre we've had clients come in with literally suitcases full of documents from over a decade of not having a lawyer. That means that while their family law issues could have been resolved fairly simply at the front end if they had been able to access even summary advice at the beginning, let alone have some minimal representation, now no private lawyer will touch those suitcases of documents. They're a complete disaster, and it's costing either the public purse or the non-profit community

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33 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Doug Ferguson).

34 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Richard Fowler).

35 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender); *Evidence*, 7 February 2017 (Ryan Fritsch, as an Individual).

36 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Doug Ferguson).

37 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Richard Fowler).

> much more to try to resolve that one case than it would to be able to move things through quickly because of the level of complexity.
>
> It also means that spousal violence can escalate. I had a case cross my desk recently – and again, we don't provide direct service in my office, but still we hear from the most desperate cases. A woman's file passed through my hands. She is desperately seeking protection from her abusive spouse. She has received legal aid. She has received extended services under legal aid, but all she's gotten are temporary restraining orders, protection orders, that keep expiring. She has now gone back to say, please give me more money so I can apply for a permanent care order. She is receiving death threats. The police have been involved. Her safety and that of her children are very seriously at risk, and she's being denied legal aid because she has used up all of her hours.[38]

As this example demonstrates, when women are unable to access legal assistance at an early stage, the impact for them and their children can be significant.

Ms. Govender also informed the Committee of research suggesting that the impact of underfunding legal aid could be significant for society as a whole:

> The research that's been done on the cost of underfunding legal aid goes both from within the court system all the way out to missed work hours, to housing and social assistance costs, to meeting the needs of people who are now unemployed. It sounds maybe far-fetched, but in fact there is significant economic research that shows that these costs are very real.[39]

Those costs are also referred to in the 2014 report entitled *Maximizing the Federal Investment in Criminal Legal Aid*, commissioned by the Department of Justice, which states that "evidence indicates that investments in legal aid can save money in areas of government spending such as health and social assistance."[40] As the Committee was reminded by Mr. Antoine Aylwin from the Barreau du Québec, there is also a risk of individuals pleading guilty despite having a defence because of a lack of legal representation.[41]

In the context of immigration and refugee law matters, the cost of underfunding can also be considerable for the federal government as explained by Mr. Mitchell J. Goldberg of the Canadian Association of Refugee Lawyers: "[T]here are many people who are held longer in detention and who might have been able to get out had they had proper representation. That has costs for the federal government, because detention is federal jurisdiction. It's a huge cost, because detention is extremely expensive."[42]

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38 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender).

39 Ibid.

40 Prairie Research Associates, *Maximizing the Federal Investment in Criminal Legal Aid*, Legal Aid Directorate, Department of Justice Canada, 2014, p. 6. Mr. Ryan Fritsch also referred to the findings of this report in his testimony, see JUST, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017 (Ryan Fritsch).

41 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Antoine Aylwin, Vice-President, Barreau du Québec).

42 JUST, *Evidence*, 1st Session, 42nd Parliament, 9 February 2017 (Mitchell J. Goldberg, President, Canadian Association of Refugee Lawyers).

The Committee agrees that the impact of legal aid funding must be evaluated in a broader context, taking into account savings in the criminal justice system, as well as other areas. Viewed in this light, such funding may become a higher priority for governments given the cost-savings that should result in light of the foregoing evidence.

CONCERNS ABOUT UNDERFUNDING

Many witnesses expressed concerns about insufficient funding for legal aid.[43] As outlined by Mr. Yvan Clermont from the Canadian Centre for Justice Statistics, provincial and territorial legal aid plans receive funding from a variety of sources. For the purposes of criminal and civil legal aid, in 2014-2015, legal aid plans reported their funding figures to the national *Legal Aid Survey*[44] for a total of $856 million, of which 92% came from governments. During that year, $666 million of this amount was provided by the provincial and territorial governments. "The remaining 8% of funding was received from client contributions, cost recoveries from legal settlements, and contributions from the legal aid profession and other sources."[45]

In his testimony, Mr. Piragoff provided details regarding federal funding contributions to legal aid:

- "The ongoing federal allocation for adult and youth criminal legal aid services in the provinces and criminal and civil legal aid services in the territories was maintained at $112.4 million annually from 2003 until 2015-16. Budget 2016, however, supplemented this ongoing annual allocation by $88 million over five years, from 2016-17 to 2020-21, and thereafter, $30 million a year in additional ongoing funds starting in 2021-22."[46]

- Regarding the delivery of immigration and refugee legal aid services, the LAP has provided an annual contribution of $11.5 million to six participating provinces since 2001. Budget 2017 proposes to provide $62.9 million over five years, starting in 2017-2018, and $11.5 million per year thereafter, to improve the delivery of immigration and refugee legal aid services.[47]

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43 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Kerri Froc, Legislation and Law Reform, Canadian Bar Association) and (Avvy Yao-Yao Go); *Evidence*, 16 May 2017 (Julie Chamagne, Executive Director, Halifax Refugee Clinic).

44 The *Legal Aid Survey* is financed by the Justice Canada Legal Aid Directorate. More information about the survey is available on the Statistics Canada website.

45 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Yvan Clermont, Director, Canadian Centre for Justice Statistics, Statistics Canada). The following details were added by Ms. Hruska of the Department of Justice: "It had been at $112 million for a certain period of time. This year it increased by $9 million. Next year, it's increasing by $12 million, and then by $15 million, $20 million, and $32 million over that original amount." See JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

46 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

47 Government of Canada, *Budget 2017: Building a Strong Middle Class*, 22 March 2017, p. 184.

- The federal government also "allocates $1.65 million annually toward orders for court-ordered counsel in federal prosecutions and $2 million annually toward legal aid in national security cases."[48]

As noted above, information about the amounts of federal assistance for civil legal aid in the provinces is not publicly available.

The testimony and briefs provided to the Committee revealed the need to increase funding for legal aid to promote access to justice. Indeed, the evidence heard was consistent on one point: the demand is greater than what can be supplied with current resources. The Committee was told that costs are also on the rise. During his appearance, Mr. Fowler provided one example that illustrated these changes by stating that, "[w]hen [he] started in 1994-95, parking at the courthouse in Vancouver cost $3.50; it now costs $16. But, legal aid rates haven't changed."[49]

Another issue raised by a number of witnesses is that the federal contribution to legal aid has not increased in line with provincial increases.[50] Mr. Clermont noted that the federal government contribution for criminal legal aid (and civil legal aid in the territories) between 2004–2005 and 2014–2015 "increased by $20 million to $112 million, representing an increase of 22% over the 10-year period. During that same period, the provincial and territorial contribution increased steadily from $430 million to $666 million, representing an increase of 55% over that 10-year period."[51] Some witnesses recommended adjusting this imbalance by increasing the federal contribution significantly.

In her brief, Ms. Avvy Yao-Yao Go from the Metro Toronto Chinese and Southeast Asian Legal Clinic, noted that:

> Notwithstanding the recent increase to legal aid funding in Ontario, access to justice for many vulnerable individuals, including members of racialized communities, immigrants and refugees, remains woefully inadequate in Ontario. This is particularly true in family law and civil law areas, as opposed to criminal law, where access to legal representation is constitutionally protected.[52]

Ms. Go also stated that Ontario's legal aid plan is facing "a funding crisis due to the deficit for refugee law certificates." She further explained that, "[a]lthough legal aid expenses in refugee law cases have gone up from $17.6 million in 2013 to $22 million last year, the federal contribution has stayed the same at $7 million."[53] This lack of adequate funding has concrete consequences. Due to insufficient funding (a 40% shortfall), in May

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48 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

49 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Richard Fowler).

50 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David Field); *Evidence*, 7 February 2017 (Josh Paterson, Executive Director, British Columbia Civil Liberties Association).

51 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Yvan Clermont).

52 JUST, 1st Session, 42nd Parliament, Metro Toronto Chinese and Southeast Asian Legal Clinic, *Submissions to the Standing Committee on Justice and Human Rights Regarding Access to Justice and Accessibility of Legal Aid*, Brief, December 2016, p. 7.

53 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Avvy Yao-Yao Go).

2017, Legal Aid Ontario announced that they would be suspending some services for refugees as of 1 July 2017. However, after consultations with stakeholders, they announced on 26 June 2017 that services would continue as they work with the federal government to find a solution.[54] Also on 26 June, the Legal Services Society of B.C. announced that, as of 1 August 2017, B.C. lawyers would not receive money for the delivery of immigration and refugee legal aid services due to a lack of funds for that purpose.[55] After that announcement was made, financing was secured until November.[56]

The Committee learned that the federal government is currently renegotiating the agreement on criminal legal aid funding with the provinces and the territories. As explained by the officials from the Department of Justice:

> We [the FTP Working Group on Legal Aid] are right now in the midst of negotiating a new distribution formula for criminal legal aid, we are developing a distribution formula that will increasingly take into account demand factors such as demographics of the population in that jurisdiction for the distribution of legal aid monies. For example, we're looking at the percentage of people below the LIM–low-income measure – the percentage of aboriginal population, crime rate, the percentage of males aged 12 to 35.[57]

The Committee welcomes the recent increase in federal funding for legal aid. However, too many Canadians who do not qualify for legal aid still cannot afford legal representation. The Committee is very concerned by this reality. Since "an adequately funded legal aid program remains the key solution to promoting access to justice,"[58] and given that certain aspects of the federal contribution are currently being renegotiated:

RECOMMENDATION 3

The Committee recommends that the federal government further increase its funding contribution to the provinces and territories for the delivery of legal aid services.

ISSUES RELATED TO ELIGIBILITY CRITERIA

Along with funding, the differences in the types of cases that are covered and individuals who qualify for legal aid in each province or territory have significant impacts on access to justice according to witnesses. Rates paid to lawyers may also affect the quality of services.[59] Mr. Ferguson, for example, stated that

> Canadians have the right to equality under the law, but under our current legal aid system, they don't get it.… Financial eligibility differs from province to province, and

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54 Legal Aid Ontario, "All LAO immigration and refugee services will continue after July 1, 2017," *News Release*, 26 June 2017.

55 Ian Mulgrew, "Legal aid for refugees in B.C. being cut Aug.1," *The Vancouver Sun*, 26 June 2017.

56 Katie Derosa, "Legal aid for immigrants, refugees saved by last-minute cash," *Times Colonist* (Victoria), 25 juillet 2017.

57 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

58 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Avvy Yao-Yao Go).

59 JUST, *Evidence*, 1st Session, 42nd Parliament, 9 February 2017 (Mitchell J. Goldberg).

> coverage varies too. What is covered in one province may not be covered in another. For example, a tenant threatened with eviction and perhaps homelessness by a landlord may get legal aid representation in Quebec, but not in Ontario. Someone charged with shoplifting may obtain legal aid in Alberta, but not in British Columbia.[60]

A. Coverage

Significant variations in legal aid coverage across Canadian jurisdictions were discussed by a number of witnesses. The Committee was told that legal aid plans do not deal with all types of law and, within an accepted area of law, not all issues are covered. In addition, coverage appears to have been reduced over time in a number of jurisdictions.[61]

Criminal law is the area of law that grants the strongest right to state-funded counsel and, thus, receives the greatest coverage. While section 10(b) of the Charter, which protects the right to counsel, does not guarantee a right to *state-funded* counsel, section 11(d) has been interpreted by the courts to require the government to provide funding for counsel in situations where legal aid is required to ensure a fair trial due to the inability to pay for a lawyer, the length and complexity of the proceedings and the abilities of the accused to participate and defend themselves, as noted above.[62]

However, even in this area of law, not all types of charges are covered by legal aid. The focus is generally on more serious offences, often requiring the risk of incarceration.[63] These restrictions are not without consequence, as explained by Mr. Ferguson:

> Here's my concern. If someone has been charged for shoplifting, that will affect their whole life. They may have a defence, they may not, but they should be aware of their rights and dealt with accordingly. If they have a defence, they should be entitled to it and they should use it. These issues that come up are so important to a person's life. They need the ability to deal with it in a knowledgeable manner.[64]

Family law is the area where witnesses were most critical of limited legal aid coverage. While a right to state-funded counsel for parents has been recognized under section 7 of the Charter where the state seeks custody of a child, other areas of family law do not generally benefit from such a right.[65] Nonetheless, family law matters can affect the interests of the parties as much as criminal cases, particularly where children are involved.

Ms. Govender spoke about the experience in British Columbia, which has very little family law coverage beyond cases of family violence. She also noted that, even where

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60 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Doug Ferguson).

61 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender); *Evidence*, 16 May 2017 (Antoine Aylwin).

62 *R. v. Rowbotham*, 1988 CanLII 147 (ON CA). Section 11(d) protects the right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

63 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

64 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Doug Ferguson).

65 *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 SCR 46.

there is coverage, there is generally a maximum of 25 hours of service included, which is enough to get a protection order but not address other issues such as custody or access, for example. In a situation of domestic violence, this limitation is particularly problematic as the other party can simply run out the time with various applications, a practice known as litigation harassment.[66]

Mr. David McKillop from LAO explained why family law coverage is so limited:

> Many of the criminal law services are constitutionally protected, so when legal aid plans are looking to save money or cut back services, they naturally go to their family programs because there's very little in that sphere, beyond the child protection services, that is […] constitutionally protected.[67]

This reality has particular impacts on women, who make up 70% of applicants in family law.[68]

Provincial and territorial legal aid plans also vary with respect to which private law matters are covered besides family law (often referred to as "poverty law," such as landlord-tenant law or issues regarding social assistance and other benefits).[69]

Finally, for immigration and refugee matters, as noted above, only six provinces currently provide coverage and some have announced that they will be without funds for this area of law as of November 2017. In other jurisdictions, individuals are left to seek out pro bono representation or the assistance of non-governmental organizations where they exist.[70] This is despite the liberty and security interests that are engaged in this area of law because of the risk of immigration detention and deportation.

Like many witnesses, the Committee is concerned by the limited coverage for various types of legal issues. However, given the many challenges outlined above in the core legal aid areas, namely criminal, family, and immigration and refugee law, the focus must first be on ensuring the availability of adequate legal assistance in these areas of law. The practical reality is that funding is limited and, before recommending expanding legal aid plans to other areas of law, challenges with these essential elements of the system must be addressed by the various legal aid plans. That being said, the Committee recognizes the limited role of the federal government in deciding priorities at this level.

B. Financial Eligibility

In addition to having a legal problem that fits within the areas of law that are covered, applicants for legal aid must also meet financial eligibility requirements. The Committee heard repeatedly about the many people who are unable to afford a

66 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender).

67 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David McKillop).

68 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Doug Ferguson).

69 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender); *Evidence*, 7 February 2017 (Joshua Paterson).

70 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

lawyer but who are not eligible for legal aid representation. This issue was raised in the 2016 report of the UN Committee on the Elimination of Discrimination Against Women on Canada: "Income tests for eligibility limit civil legal aid to women living well below the poverty line, consequently denying low-income women access to legal representation and services."[71]

As noted above, each provincial or territorial legal aid plan determines its own financial eligibility guidelines.[72] Mr. Clermont told the Committee that in 2014–2015, across the country, 35% of legal aid applications for full services were refused, with slightly more than half of these being refused because the applicant did not meet the financial eligibility requirements and approximately 25% due to coverage restrictions.[73] The various eligibility requirements and coverage restrictions of the provincial and territorial legal aid plans are set out in Appendix C of this report.

Mr. David Field from Legal Aid Ontario (LAO) told the Committee that fewer low-income Ontarians were eligible for a legal aid certificate in 2011 as compared to 1996. He noted the following:

> [A] study commissioned by LAO established that one million fewer low-income Ontarians were eligible for a legal aid certificate in 2011 than had been eligible in 1996. The gap population of low-income Ontarians was found to be more likely made up of families, children, the working poor, indigenous people, and members of visible minority groups.[74]

Mr. Josh Paterson from the British Colombia Civil Liberties Association suggested that individuals who are members of the "working poor" and who do not qualify for free legal aid should have the possibility of making a contribution based on income to qualify for legal aid representation. Such a system would expand access to legal aid services. Contributions are currently permitted, for example, in Ontario, but not in British Columbia. Ms. Go suggested that expanding this system to include the middle class may also increase public support for legal aid:

> I think partly it's because the public does not see the value of legal aid, unless they're relying on it. How to expand legal aid to the middle class is maybe with contribution agreements and other kinds of programs, so that more Canadians understand the value of this kind of program, so there will be more buy-in, and so the government will put in more money at the end of the day.[75]

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71 UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined eighth and ninth periodic reports of Canada*, 25 November 2016, para. 14.

72 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

73 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Yvan Clermont). Other reasons included lack of merit (6%), non-compliance or abuse (2%) and "other reasons" (15%). Note that these statistics do not include individuals who cannot afford a lawyer but who did not apply for legal aid because they knew they would not qualify.

74 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David Field).

75 JUST, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017 (Joshua Paterson); *Evidence*, 13 December 2016 (Richard Fowler), (Avvy Yao-Yao Go) and (Doug Ferguson).

The Committee sees value in exploring the possibility of increasing access to legal aid through greater use of contributions from clients, with amounts being tied to income levels.

In light of these considerations:

RECOMMENDATION 4

The Committee recommends that the Department of Justice Canada work with the provinces and territories to enhance the number of individuals eligible for legal aid by examining how to better use client contributions on a sliding scale based on income to maximize access to justice.

MAXIMIZING THE IMPACT OF FEDERAL LEGAL AID FUNDING

Given the challenges outlined above regarding funding, coverage and eligibility, the adoption of additional measures to create efficiencies and expand access to legal assistance is critical. The Committee recognizes that the federal role in implementing innovations in the provision of legal aid is limited as legal aid programs are within provincial and territorial jurisdiction. However, the federal government can play an important role in promoting innovation and sharing best practices. In fact, it is already involved in this work as demonstrated, for example, by the publication *Maximizing the Federal Investment in Criminal Legal Aid* mentioned above and the *Report of the Deputy Minister Advisory Panel on Criminal Legal Aid*, both of which examined best practices and ways to create efficiencies in legal aid plans nationwide.[76]

The following section outlines innovations being developed to better serve legal needs. The federal government may wish to consider the points below in deciding how the $2 million announced for the next five years for legal aid innovations is allocated.[77] It is also important to note that some variability in services to adapt to local realities may be required. Not all innovations or best practices will necessarily be transferable to all jurisdictions or circumstances.

A. The Need to Provide Varied and Coordinated Services

The Committee heard repeatedly that a holistic approach is needed to address the complex needs of legal aid clients.[78] This is the case, for example, for "individuals with mental health issues, who are constantly at risk of facing eviction and being harassed by

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76 Prairie Research Associates, *Maximizing the Federal Investment in Criminal Legal Aid*, a report presented to the Department of Justice Canada Legal Aid Directorate, 2014; Legal Aid Directorate, *Report of the Deputy Minister Advisory Panel on Criminal Legal Aid*, Department of Justice Canada, 2014.

77 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

78 See, for example, JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Richard Fowler) and (Kerri Froc); JUST, 1st Session, 42nd Parliament, Metro Toronto Chinese and Southeast Asian Legal Clinic, *Submissions to the Standing Committee on Justice and Human Rights Regarding Access to Justice and Accessibility of Legal Aid*, Brief, December 2016, p. 4.

law enforcement agencies" [79] or "immigrant and refugee women living in or fleeing from domestic violence situations, whose immigration status and income support are often tied to or dependent on their maintaining a relationship with their abusive spouse."[80] Ms. Kerri Froc from the Canadian Bar Association emphasized the need for better coordination of legal aid with other types of services, such as health and social services.[81] Mr. Albert Currie from the Canadian Forum on Civil Justice discussed two concrete projects to bring services together:

> The Legal Health Check-up Project involves developing partnerships between the legal clinic and community organizations, social services, community health clinics and others. The community organizations carry out a standard legal health check with users or clients of their services and refer people to the legal clinic. The relationships between the clinics and the community organizations are "pathways" to legal help.
>
> Secondary Legal Consultation: In this project the legal clinic provides professional advice to service providers in other agencies who, in turn, are able to better assist their own clients. An example might be a case worker at the Canadian Mental Health Association who is attempting to assist a client with a CPP-D [Canada Pension Plan Disability Benefit] application. In this way the individual is more competently assisted by the trained service provider with a small amount of assistance from a clinic lawyer without being referred to the legal clinic.[82]

In addition, the Committee was told that a variety of services and points of entry to legal aid services are required.[83] A number of witnesses cautioned against thinking of legal aid as being limited to full legal representation throughout a case. Mr. Piragoff, for example, stated that

> [L]egal aid is no longer simply about providing access to a lawyer for an indigent accused or a party to a court case. Legal aid now takes many forms, from public legal education initiatives, such as online portals that can provide specialized guidance, to specialized outreach services for under-serviced populations.[84]

Individuals with legal issues have varied needs and capacities to self-advocate and not everyone needs the more expensive full representation.

By providing legal aid services through various means, provincial and territorial legal aid plans can assist not only those who qualify for legal aid representation, but also provide some services to others who cannot afford legal representation but do not qualify

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79 JUST, 1st Session, 42nd Parliament, Metro Toronto Chinese and Southeast Asian Legal Clinic, Brief.

80 Ibid.

81 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Kerri Froc).

82 JUST, 1st Session, 42nd Parliament, Albert Currie, Senior Research Fellow, Canadian Forum on Civil Justice, Speaking Notes, 2 February 2017.

83 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Kerri Froc).

84 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

for legal aid representation.[85] According to Mr. Thomas, "a thoughtful legal aid program in fact offers a little bit of services for everybody."[86]

Public legal education, for example, is crucial for individuals to know their rights and recourses. It can be offered in a variety of formats, from online portals to in-person outreach services.[87] One model that was recommended was MyLawBC. Summary advice telephone lines for all, regardless of income, are also being developed to provide assistance to more people.[88]

Mr. Piragoff outlined the benefit of an initiative ensuring that a client keeps the same duty counsel for multiple appearances (more people may qualify for assistance from duty counsel than full representation):

> British Columbia has a pilot project that provides an accused with consistent access to the same duty counsel lawyer. This has reduced the number of court appearances, from eight to two in some cases. Of course, this saves costs for the taxpayer, and it also reduces court delay.[89]

Some witnesses also mentioned that law school clinics could be used to better effect in appropriate situations. For example, West Coast LEAF set up a new legal clinic, the Rise Women's Legal Centre, in partnership with the University of British Columbia's law school. The clinic has staff lawyers who supervise students' work in family law, child protection law and the drafting of wills. The clinic has a double mandate of providing access to justice, while also teaching new lawyers about the legal needs of the community, family law practice and gender issues including gender-based violence.[90] Such clinics benefit from students working for school credit at lower wages than a lawyer, thus keeping costs down. Ms. Julie Chamagne of the Halifax Refugee Clinic also noted the importance of providing federal funding for work opportunities for students in clinics such as hers.[91]

At the same time, some clients will still need full legal representation by experienced lawyers. Paying higher rates for experienced counsel to take complex cases and investing in proper training and mentoring for junior counsel and paralegals can be a wise investment. Mr. Fowler argued that, in some instances, efficiencies can result from the reallocation of funds:

> I think the answer to many of the problems in the criminal justice system with delays and inefficient trials is actually a proper allocation of funds, so that senior counsel can now

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85 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

86 JUST, *Evidence*, 1st Session, 42nd Parliament, 9 February 2017 (Aneurin Thomas, Executive Director, Law Commission of Ontario).

87 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

88 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Hana Hruska).

89 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

90 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender); Rise Women's Legal Centre, "Our Services."

91 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Julie Chamagne).

> train junior counsel, so that those junior counsel become the best possible lawyers, to make the best possible decisions about whether a case should go to trial, and when you're in trial, to make the best possible decisions about whether to argue this issue or not argue this issue. That's how you get efficiency. It's by making sure that criminal lawyers are as well trained as they can be.[92]

In addition, Mr. Goldberg noted the importance of test case funding to establish precedents and to avoid the cost of having many cases on a systemic issue being dealt with separately.[93]

One specific innovation is the use of specialized clinics, such as the South Asian Legal Clinic of Ontario, the Metro Toronto Chinese and Southeast Asian Legal Clinic, the Centre for Spanish Speaking Peoples and the Aboriginal Legal Services of Toronto. Such clinics are able to address the unique needs of particular client groups, and were seen by witnesses as crucial in ensuring access to justice for the communities they serve. As noted by Mr. Aylwin, it is important that services are provided by "people who understand the reality these individuals [racialized and marginalized client groups] face, not just people who can deliver the service."[94] Ms. Chamagne also noted how important such clinics are for increasing access to justice due to linguistic and cultural knowledge, which allows clients to feel comfortable enough to seek their assistance.[95] A number of such specialized clinics are funded by legal aid, while others rely on private funding (as is the case for the Halifax Refugee Clinic, for example).[96]

According to Mr. Aylwin, the federal government has a role to play in supporting specialized clinics:

> Turning now to specialized clinics, I would point out that such clinics exist in the health sector and are tailored to the specific cultural needs of patients. Adopting a similar approach in the legal sector would only have positive effects. It would take into account Canada's multicultural and indigenous reality. Increased federal funding for legal aid should be geared towards communities that are often marginalized. Private specialized clinics require a commitment by the federal government. The purpose of these specialized centres is to provide representation to specific groups, with experts helping not just poor, but also marginalized, clients.[97]

Also in relation to cultural competency and assisting marginalized groups to navigate the legal system, Mr. Benton stated:

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92 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Richard Fowler).

93 JUST, *Evidence*, 1st Session, 42nd Parliament, 9 February 2017 (Mitchell J. Goldberg).

94 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Avvy Yao-Yao Go); *Evidence*, 16 May 2017 (Antoine Aylwin).

95 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Julie Chamagne).

96 Private funding may be less certain than public funding. Ms. Chamagne noted that the Halifax Refugee Clinic is confronted with "unstable and insufficient funding, which necessitates staff fundraising alongside our direct-service provision to just sustain our programming. This is our reality. It is not unique to us but is the norm for many non-profits like ours across the country."; see also JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (Kasari Govender).

97 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Antoine Aylwin).

> There needs to be funding to establish and operate a network of community advocates to support people using the justice system. These are not lawyers; they may not even be court workers. They are people in the community who know what's happening. In health care there are navigators, and an analogue to that is needed in justice.[98]

He explained the need for such a role as follows:

> [W]e discovered that, notwithstanding the cultural sensitivity training and all the other pieces that we do to try to build effective bridges into those communities, our services were found to be unfriendly, inaccessible, and simply not communicated in an effective way. That's because legal aid plans tend to be run by lawyers. They tend to be administered by lawyers. They tend to be focused on justice system values rather than the importance of what people want when they appear in front of us. This isn't peculiar to indigenous communities; it's just extreme in indigenous communities.[99]

In light of these considerations:

RECOMMENDATION 5

The Committee recommends that the Department of Justice Canada facilitate greater information sharing between provinces and territories regarding best practices for the administration and delivery of legal aid services, with particular attention to expanding the role of law school and specialized clinics to increase access to justice.

B. Use of Technology

Witnesses told the Committee that the use of technology can create various types of efficiencies for legal aid plans, freeing up resources to assist greater numbers of clients. As B.C. lawyer Thomas Spraggs summarized in a written submission to the Committee:

> Enabling access to justice requires money, but it also requires us to think differently about what the barriers truly are, and how we can address them. Leveraging technology to increase the efficiency of lawyers will help free up time otherwise spent on low-value activities, stretching limited legal aid budgets. It will also allow lawyers to embrace unbundling of services without compromising the financial viability of the firms they work for. Using videoconferencing and other collaboration technologies has the potential to revolutionize the delivery of pro-bono services, encouraging lawyers to contribute their time in ways that are more sustainable for them as well as better for the people they are helping. Incorporating videoconferencing, chat, mobile scheduling and payment into client-lawyer relationships will address many of the non-financial barriers to accessing justice, as will accelerating the adoption of virtual courtrooms. Technology will dramatically improve access to justice in Canada; but this potential can only be realized through focused, coordinated actions by governments, regulators, firms, and individual lawyers.[100]

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98 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 May 2017 (Mark Benton).

99 Ibid.

100 JUST, 1st Session, 42nd Parliament, Thomas Spraggs, *Enabling Access to Justice through Technology*, Brief, 31 May 2017, p. 3.

During his appearance, Mr. Piragoff noted an example from Ontario where, "online applications had reduced average application processing times by 62%."[101] Other suggestions included creating electronic worksheets to facilitate the work of duty counsel and improving online information resources.[102]

Mr. Aylwin argued that technology can be used to make the system more efficient and reduce the amount of paper involved in legal proceedings.[103] Similarly, Ms. Chamagne noted that real cost savings in printing and postage could be gained if court rules were more flexible and allowed for increased use of electronic documentation.[104] That being said, since marginalized individuals requiring legal aid often lack access to technology, Mr. Aylwin and Ms. Chamagne both cautioned that this must always be taken into account in how technology is used.[105]

Throughout the study, witnesses outlined concrete ways to improve the system and decrease costs through the use of technology that should be seriously considered. While change can be difficult, the Committee believes that justice system actors must be open to adapting the way they work to benefit from innovation.

In light of these considerations:

RECOMMENDATION 6

The Committee recommends that the Department of Justice Canada work with the provinces and territories to support the use of technology to improve access to legal aid services and maximize the impact of available funding.

C. Services for Official Language Minority Communities

Obligations to provide services to members of official language minority communities vary by jurisdictions in Canada. For example, the Committee heard from witnesses from Ontario and Nova Scotia about the challenges for individuals with French as a mother tongue who sought legal services in their language in those jurisdictions. A lack of sufficient bilingual court personnel and judges increases costs and delays for such litigants. In addition, the Committee was told that legal aid certificates are granted for

101 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Donald Piragoff).

102 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David Field).

103 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Antoine Aylwin); JUST, 1st Session, 42nd Parliament, Barreau du Québec, *Appearance of the Barreau du Québec before the Standing Committee on Justice and Human Rights, May 16, 2017 – additional information,* 26 May 2017, p. 2.

104 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Julie Chamagne).

105 Ibid., (also see Antoine Aylwin); JUST, 1st Session, 42nd Parliament, Barreau du Québec, *Appearance of the Barreau du Québec before the Standing Committee on Justice and Human Rights, May 16, 2017 – additional information,* 26 May 2017, p. 2.

French-language services in Nova Scotia only for criminal cases, meaning that other proceedings may have to proceed in English.[106]

Although Mr. Field told the Committee that all legal aid services must be available in French in Ontario under the *French Language Services Act*, he noted a couple of challenges in that jurisdiction as well. These include personnel that can speak French but not necessarily at the level required to provide legal services and the challenge of ensuring French services in smaller communities.[107] In addition, most legal tools, such as precedents for wills, are available in English only in common law jurisdictions in Canada. This requires clients to choose between paying for translation or having important documents that are not in their mother tongue. As explained by Ms. Andrée-Anne Martel from the Association des juristes d'expession française de l'Ontario (AJEFO):

> I highlight that access to justice remains a real issue for all Canadians. However, francophones living in linguistic minority communities face the added challenge of obtaining equal access to justice in French. Statistics demonstrate that marginalized and middle class Canadians often do not have adequate access to justice. This challenge is exacerbated when clients must choose between proceeding in French, increasing delays and consequent additional costs, or proceeding in English.[108]

To make up for the lack of sufficient French-language services in Ontario, AJEFO provides legal information in both official languages through its Ottawa Legal Information Centre and maintains a French web portal for the public with information about legal rights and obligations, as well as another website to provide legal professionals with tools and precedents in French.[109]

In light of these considerations:

RECOMMENDATION 7

The Committee recommends that the Department of Justice Canada work with the provinces and territories to ensure that official language minority communities have access to legal aid services in their language, including representation and public legal information; and that tools and precedents are available in both languages.

IMPROVING DATA COLLECTION

The Canadian Centre for Justice Statistics has been collecting aggregated legal aid data on an annual basis since 1983–1984 through an electronic survey questionnaire –

106 JUST, *Evidence*, 1st Session, 42nd Parliament, 16 May 2017 (Réjean Aucoin, president, Association des juristes d'expression française de la Nouvelle-Écosse).

107 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David Field).

108 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 May 2017 (Andrée-Anne Martel, Executive Director, Association des juristes d'expession française de l'Ontario).

109 Ibid.

the *Legal Aid Survey*[110] – that is completed by the various provincial and territorial legal aid plans. As explained by Mr. Clermont during his testimony, the survey offers aggregated information on revenues, expenditures, personnel, and caseload statistics (e.g., total, approved and refused applications). Unfortunately, the *Legal Aid Survey* does not collect demographic information (e.g., gender, race, linguistic profile) regarding the clientele of legal aid services, nor does it include information regarding federal funding for civil legal aid in the provinces.[111]

According to the most recent *Legal Aid Survey*, approximately 718,000 applications for legal aid were submitted in Canada in 2014–2015. Criminal matters accounted for 42% of the total applications received, followed by family matters (23%), other civil matters (33%) and provincial or territorial offences (2%).[112]

Throughout the Committee's study, a number of witnesses voiced concerns about the lack of adequate nationwide data. For example, Mr. Field stressed the need to improve data collection regarding the delivery of legal aid services:

> I think we need to do a better job in gathering data about the service delivery in the area of criminal law, family law, and how those are affected by the diversity in the province. I think we really have some work to do in that area.[113]

Since good data is essential to identify how to improve services, he recommended that the federal government take action to improve nationwide data:

> Another opportunity of federal government support lies in the areas of data collection and outcomes reporting. Legal aid plans across Canada are just starting to develop capacity in this area. Because LAO has an aboriginal self-identification question, we now know that 15% of legal aid certificates in Ontario are issued to clients who self-identify as Aboriginal. Knowing more information about our clients enables us to improve our services.[114]

The Committee recognizes the need to improve data collection on legal aid in order to facilitate research in this area as well as to monitor and assess the progress and effectiveness of the programs.

The Committee was told by Mr. Clermont that the Canadian Centre for Justice Statistics is undertaking a remodelling of the *Legal Aid Survey* to provide a more complete and improved portrait of the administration and delivery of legal aid services across the country. A number of improvements to the survey are being considered, for example compiling socio-demographic data about the clientele, and adding questions regarding the types of legal aid services provided, the number of paralegals and law students employed

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110 The *Legal Aid Survey* is financed by the Justice Canada Legal Aid Directorate. More information about the survey is available on the Statistics Canada website.

111 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Yvan Clermont).

112 Ibid.

113 JUST, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017 (David Field).

114 Ibid.

by legal aid services and information concerning child protection orders and immigration and refugee legal aid services.[115]

The Committee welcomes these potential improvements and considers the remodelling of the *Legal Aid Survey* to be an opportunity to highlight the importance of compiling information that would allow gender-based analysis plus (GBA+) of legal aid services.[116] As explained by some witnesses, it is essential to recognize that there are gendered and other demographic aspects to poverty, and thus, to legal aid access. For example, certain types of legal issues tend to arise more for individuals of a certain gender, such as men facing more criminal charges than women. Unfortunately, the full impact of the legal aid plans' choices regarding coverage and eligibility for different groups does not seem to be fully understood. During her testimony, Ms. Go suggested requiring both race and gender impact analysis of legal aid plans, including funding distribution.[117] Ms. Elizabeth Hendy from the Department of Justice noted that this information would be useful to the Department:

> It's part of the information that we would like to receive, that we don't necessarily receive now. That's why we're working with our colleagues at the Canadian Centre for Justice Statistics to have a more robust survey coming in with better outcome data so we can actually figure out who are the clients who are being served.[118]

Such data and analysis would also be beneficial for provincial and territorial legal aid plans in developing priorities and better meeting the needs of a diverse client base. The federal government already promotes the concept of GBA+ within government.

Given the importance of understanding the intersections between various identity factors and the fact that such an approach would strengthen decision-making regarding legal aid priorities and services:

RECOMMENDATION 8

The Committee recommends that the Department of Justice Canada work with the provinces and territories, in collaboration with the Canadian Centre for Justice Statistics, to improve national data collection on the administration and delivery of legal aid in Canada, and to recommend amendments to the *Legal Aid Survey*.

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115 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Yvan Clermont).

116 Status of Women Canada explains GBA+ as follows: "*GBA+ is an analytical tool used to assess how diverse groups of women, men and gender-diverse people may experience policies, programs and initiatives. The "plus" in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. We all have multiple identity factors that intersect to make us who we are; GBA+ also considers many other identity factors, like race, ethnicity, religion, age, and mental or physical disability.*" Status of Women Canada, *What is GBA+?*

117 JUST, *Evidence*, 1st Session, 42nd Parliament, 13 December 2016 (Avvy Yao-Yao Go).

118 JUST, *Evidence*, 1st Session, 42nd Parliament, 8 December 2016 (Elizabeth Hendy, Director General, Programs Branch, Department of Justice).

RECOMMENDATION 9

The Committee recommends that the Minister of Justice and Attorney General of Canada strongly encourage the Canadian Centre for Justice Statistics to improve the *Legal Aid Survey* and to ensure that it include all variables necessary to conduct gender-based analysis plus (GBA+) of legal aid services.

RECOMMENDATION 10

The Committee recommends that the Department of Justice Canada conduct gender-based analysis plus (GBA+) of the administration and the delivery of legal aid services in Canada on a regular basis to assess differential impacts of policy and funding choices on various client groups including women, individuals with mental illness, minority language community members, Indigenous persons and members of racialized communities. The results of the analysis should be made public.

CONCLUSION

Legal aid plans across the country are facing significant challenges as they attempt to meet increasingly complex legal needs with the funding available. Judging from the evidence presented to the Committee, more funding is needed, as are a number of initiatives to address specific needs, such as those of official language minority communities. At the same time, stakeholders at all levels must make better use of available funds by leveraging the use of technology and taking other measures to improve efficiencies. Ensuring access to justice is a common goal. Collaboration is the key.

The federal government can make concrete changes that will make a difference, such as taking civil legal aid funding out of the CST, improving data collection, undertaking GBA+, and improve reporting mechanisms. Implementation of the recommendations in this report can go a long way to increase accountability and transparency and promote better informed public debate about legal aid. The Committee is convinced that making investments in legal aid will pay off elsewhere, in decreased court delays and overall costs to the justice system and in reduced use of other services such as healthcare and social assistance.

As the Committee heard repeatedly from witnesses, action is needed now.

LIST OF RECOMMENDATIONS

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Justice	2016/12/08	39
Donald K. Piragoff, Senior Assistant Deputy Minister Policy Sector		
Elizabeth Hendy, Director General Programs Branch, Policy Sector		
Hana Hruska, Director Legal Aid Directorate, Programs Branch, Policy Sector		
Statistics Canada		
Yvan Clermont, Director Canadian Centre for Justice Statistics		
Josée Savoie, Chief Canadian Centre for Justice Statistics		
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Doug Ferguson, Member Access to Justice Committee		
Kerri Froc, Lawyer Legislation and Law Reform		
Canadian Council of Criminal Defence Lawyers		
Richard Fowler, Representative British Columbia		
Metro Toronto Chinese and Southeast Asian Legal Clinic		
Avvy Yao-Yao Go, Clinic Director		
Canadian Forum on Civil Justice	2017/02/02	42
Albert Currie, Senior Research Fellow		
Legal Aid Ontario		
David Field, President and Chief Executive Officer		
David McKillop, Vice-President		
West Coast Women's Legal Education and Action Fund		
Kasari Govender, Executive Director		
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Ryan Fritsch		
British Columbia Civil Liberties Association		
Joshua Paterson, Executive Director		

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Paul Faribault		
Canadian Association of Refugee Lawyers		
Mitchell J. Goldberg, President		
Stéphanie Valois, Executive Member		
Law Commission of Ontario		
Aneurin Thomas, Executive Director		
Association des juristes d'expression française de l'Ontario	2017/05/02	54
Andrée-Anne Martel, Executive Director		
Legal Services Society		
Mark Benton, Chief Executive Officer		
Association des juristes d'expression française de la Nouvelle-Écosse	2017/05/16	57
Réjean Aucoin, President		
Barreau du Québec		
Antoine Aylwin, Vice-President		
Marc Sauvé, Senior Advisor Research and Legislation Services		
Halifax Refugee Clinic		
Julie Chamagne, Executive Director		

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals

Canadian Bar Association

Legal Aid Ontario

Metro Toronto Chinese and Southeast Asian Legal Clinic

Spraggs, Thomas L.

APPENDIX C
LEGAL AID PLANS – ELIGIBILITY GUIDELINES AND SCOPE OF COVERAGE

Department of Justice Legal Aid Program – Eligibility Guidelines and Scope of Coverage

	Types of matters covered			Client contributions	Administration / Application Fee	Financial Eligibility	Financial Thresholds	Scope of Coverage – Criminal Legal Aid	Scope of Coverage – Immigration and Refugee Legal Aid												Scope of Coverage – Civil Legal Aid*
	Criminal	Immigration and Refugee	Other Civil Matters*						Basis of Claim	Refugee Protection Division Hearing	Detention Review	Admissibility Hearing	Refugee Appeal Division	Immigration Appeal	Pre-Removal Risk Assessment	Humanitarian and Compassionate	Judicial Review	Stay of Removal	Danger Submission	Cessation / Vacation	
British Columbia	Yes	Yes	Yes	No	No	Financial eligibility for full representation services is based on the applicant's income and assets. The Legal Services Society (LSS) will assess the applicant's net monthly income and their share of equity in disposable assets. The applicant's net monthly income (by household size) must be below the financial thresholds. Applicants receiving income or disability assistance are not subject to an asset test. LSS duty counsel provide information and advice services for criminal (including detention phone services), immigration, and civil (family and child protection, including a family phone advice service) matters. Applicants for civil duty counsel must meet an income test (based on household size). LSS provides a wide range of public legal information and education services, including publications, community outreach, websites (family law and Aboriginal legal aid), and MyLawBC.	The following are LSS's financial eligibility guidelines for full representation services. **Household size** / **Net monthly income** 1 – $1,550 2 – $2,160 3 – $2,780 4 – $3,400 5 – $4,020 6 – $4,640 7 or more – $5,250 The following are LSS's financial eligibility guidelines for civil duty counsel services. **Household size** / **Net monthly income** 1 - 4 – $3,400 5 – $4,030 6 – $4,670 7 or more – $5,280	LSS provides coverage for administrative, summary and indictable offences where an applicant faces (a) a risk of jail, (b) loss of livelihood (c) or possible deportation. LSS may also cover an applicant who is unable to self-represent due to a mental or physical disability. LSS also provides coverage for Aboriginal hunting and fishing rights without a risk of jail. LSS also provides coverage for youth who are facing criminal charges; youth do not have to meet the financial eligibility guidelines or face a risk of jail.	X	X	X	X	X	X	X	X	X	X	X	X		
Alberta	Yes	Yes	-	Yes	-	The Legal Aid Society of Alberta considers the applicant's income and an appraisal of his/her assets. A person may be eligible for legal representation and to have a lawyer appointed if their allowed income falls within the financial thresholds. Repayment will be discussed if a lawyer is appointed.	Alberta's financial eligibility guidelines are as follows: **Family size** / **Monthly income** / **Annual income** 1 – $1,638 – $19,653 2 – $2,027 – $24,333 3 – $2,885 – $34,627 4 – $3,120 – $37,434 5 – $3,354 – $40,242 6 or more – $3,587 – $43,050	Indictable offence; likelihood of imprisonment or a loss of livelihood; possible deportation.		X	X		X	X				X				

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	Criminal	Immigration and Refugee	Other Civil Matters*						Basis of Claim	Refugee Protection Division Hearing	Detention Review	Admissibility Hearing	Refugee Appeal Division	Immigration Appeal	Pre-Removal Risk Assessment	Humanitarian and Compassionate	Judicial Review	Stay of Removal	Danger Submission	Cessation / Vacation	
Saskatchewan	Yes	No	-	Yes	No	Legal Aid Saskatchewan conducts a financial test, including an asset test and an income test, to determine whether an applicant qualifies for legal aid. LAS considers whether the applicant receives social assistance or band assistance; whether the applicant's income is at social assistance levels; or whether the cost of a private lawyer would reduce the applicant's financial capacity to social assistance levels. Case merit is also considered.	The following are Legal Aid Saskatchewan's financial guidelines to receive free legal aid. Legal Aid may be offered to an applicant whose family income exceeds these guidelines by 10% if the applicant makes a $40 contribution to the cost of providing legal services. **Household Size** / **Monthly Income** / **Annual Income** Single Person: $985 / $11,820 Single Senior (65 years): $1,525 / $18,300 Couple with no children: $1,150 / $13,800 Family, 1 child: $1,540 / $18,480 Family, 2 children: $1,690 / $20,280 Family, 3 children: $1,785 / $21,420 Family, 4 children: $1,900 / $22,800 Family, 5 children: $2,125 / $25,500 Family, 6 children: $2,350 / $28,200 Family, 7 children: $2,525 / $30,300 Family, 8 children: $2,735 / $32,820	Indictable offence, likelihood of imprisonment or a loss of livelihood.													Child protection matters; divorce; custody; access; child support; spousal support; variation of existing child and support orders.
Manitoba	Yes	Yes	Yes	Yes	Yes	Financial eligibility is determined by considering the annual family income, and takes into account the number of family members. A person will qualify for full representation services in the areas of criminal defence, child protection, family, immigration and refugee, poverty and public interest law, free of charge if their annual gross family income falls within the "free" legal aid eligibility threshold.	The thresholds below are used to determine eligibility for full representation services. Lawyers providing "full representation" criminal defence representation services are authorized to conduct their clients' defence without restrictions on proceeding to contested hearings such as preliminary inquiries and/or trials. LAM also provides full representation services to individuals on family, child protection, immigration and refugee, poverty and public interest law cases. Applicants who do not qualify for full representation services as above in the areas of criminal defence, child protection, and poverty law, may access free	All indictable offences (statutory or by election); non-indictable offences where a likelihood of imprisonment or a loss of livelihood exists; possible deportation; terrorism and national security-related offences; preventative		X	X	X	X	X	X	X	X	X		X	Family Law, Child Protection (where an Agency has apprehended or has advised that they will apprehend a child), Poverty Law (Residential Tenancies, Mental Health, Government Benefits, Appellate Review, Public Interest Law, Complaints made to the Law Enforcement

Department of Justice Legal Aid Program – Eligibility Guidelines and Scope of Coverage

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						Applicants on social assistance are presumptively financially eligible for legal aid. If the applicant owns property, the property may be subject to a lien. An asset test may apply. If the family income exceeds the guidelines for free legal aid, but LAM determines that the individual can afford to pay all of the cost for a lawyer, (at LAM rates) the individual may qualify for full representation services through the Agreement to Pay program. People in the Agreement to Pay eligibility threshold range may be eligible to receive full representation services but will be expected to pay back all of their fees and disbursements (at LAM rates) plus a 25% program fee. A merit test applies (see scope of coverage herein).	Duty Counsel services, no matter what their financial situation is. Duty counsel services include: • meeting with unrepresented persons at court/tribunals to provide urgent advice and assistance as needed, remands from time to time to conclude non-plea agreements; • remanding matters from time to time for the appointment or retention of counsel; • assisting with negotiated settlements and entry of guilty pleas and sentencing with Crown/Agency counsel where a remand for counsel would significantly prejudice the interests of the individual, or where a Judge directs that assistance be provided for the instant sitting of the court. LAM also provides Brydges on-call telephone assistance 24 hours a day 7 days a week, to every Manitoban detained or arrested, free of charge and regardless of their financial circumstances. **Family Size** / **Free legal aid** / **Agreement to Pay** 1 / $ 23 000 / $23 000 - $35 000 2 / $ 27 000 / $27 000 - $45 000 3 / $ 31 000 / $31 000 - $50 000 4 / $ 34 000 / $34 000 - $54 000 5 / $ 37 000 / $37 000 - $57 000 6 / $ 40 000 / $40 000 - $60 000 6+ / $ 43 000 / $43 000 - $60 000	detention under the dangerous offender provision of the Criminal Code; Crown Appeals of any of the above noted matters; defence appeals on any of the above noted matters or for conviction/sentence; Criminal Code Mental Disorder Review Board; Highway Traffic offences through our University of Manitoba Law Clinic; and institutional disciplinary hearings.												Review Agency alleging police misconduct, Small Claims cases that involve consumer problems and individual disputes with Manitoba Public Insurance (through our University of Manitoba Law Clinic), other cases are accepted on a discretionary basis
Ontario	Yes	Yes	Yes	Yes	No	Financial eligibility is determined by considering the annual family income, and takes into account the number of family members. A person will qualify for legal aid if their annual gross family income is lower than the certificate eligibility threshold. If the family income is between the first and second columns, a monthly payment may be required (contribution agreement). Legal Aid Ontario also considers whether the applicant receives social assistance. A test considers the expenses and liabilities of the applicant.	The following table indicates Legal Aid Ontario's financial eligibility thresholds for a legal aid certificate, for legal aid provided with a contribution agreement, and for legal aid to victims of domestic violence. **Family size** / **Eligible for Certificate** / **Contribution Agreement** / **Enhanced Eligibility - Victims of domestic violence** 1 / $13,635 / $15,781 / $22,270 2 / $23,588 / $28,406 / $32,131 3 / $26,889 / $33,102 / $39,137 4 / $30,384 / $38,026 / $45,440	Offence that involves likelihood of imprisonment if convicted.	X	X	X	X	X	X	X	X	X	X	X	X	X	Family law (custody, access, support), child protection, mental health (civil and criminal), poverty law through funded clinics (landlord and tenant, social assistance, workplace safety and insurance, employment, criminal injuries compensation, human rights), prison law.

Department of Justice Legal Aid Program – Eligibility Guidelines and Scope of Coverage

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	Criminal	Immigration and Refugee	Other Civil Matters*						Basis of Claim	Refugee Protection Division Hearing	Detention Review	Admissibility Hearing	Refugee Appeal Division	Immigration Appeal	Pre-Removal Risk Assessment	Humanitarian and Compassionate	Judicial Review	Stay of Removal	Danger Submission	Cessation / Vacation	
							5+ $33,726 $42,874 $50,803 Single boarders $8,964 $10,352 N.A.														
Quebec	Yes	Yes	Yes	Yes	Yes	Admissibility criteria for legal aid includes: annual income, family situation, value of certain assets and liquid assets. Any person who receives a benefit under a last resort financial assistance program provided for by the *Individual and Family Assistance Act* or any member of a family receiving such a benefit is deemed financially eligible for a gratuitous legal aid. Some people who are not eligible for free legal aid may still be eligible if they agree to make a contribution of $100 to $800 toward the cost of services.	The financial eligibility scale for free legal aid is as follows: **Adults / Youths / Annual Income (Gross)** 1 / 0 / $20,475 1 / 1 / $25,050 1 / 2+ / $26,742 2 / 0 / $28,494 2 / 1 / $31,881 2 / 2+ / $33,574 The financial eligibility scale for contributory legal aid is as follows: **Adults / Youths / Annual Income (Gross)** 1 / 0 / $20,476 - $28,599 1 / 1 / $25,051 - $34,984 1 / 2+ / $26,743 - $37,348 2 / 0 / $28,495 - $39,801 2 / 1 / $31,882 - $44,529 2 / 2+ / $33,575 - $46,894 For some remote regions, the amounts in the tables above are increased by 20%.	Offences under the *Criminal code* and the *Youth Criminal Justice Act*. For other offences, services may be covered if there is a likelihood of imprisonment, if the applicant is at risk of losing his or her livelihood, or if it is in the interests of justice that legal aid be granted. Everyone who is under arrest or being held in custody has the right to a free telephone consultation regardless of his or her income.	X	X	X	X	X	X	X	X	X	X	X	X	Youth law matters involving the *Youth Protection Act*, Family law matters (separation, divorce, custody and supports payments, etc.) and matters involving the law of persons (protective supervision of persons of full age, mandates given in anticipation of incapacity, etc.). Services are also covered for the purpose of obtaining a judgment in respect of an agreement made in a joint application for a review of a custody judgment or for child support only or for child support and for spouse or former spouse, regardless of the person's income. In administrative law matters, the services are covered for reviews of, and court rulings on decisions rendered with respect to benefits provided for under certain legislation designated by regulation such as the *Act respecting occupational health and safety*, the

Department of Justice Legal Aid Program – Eligibility Guidelines and Scope of Coverage

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	Criminal	Immigration and Refugee	Other Civil Matters*						Basis of Claim	Refugee Protection Division Hearing	Detention Review	Admissibility Hearing	Refugee Appeal Division	Immigration Appeal	Pre-Removal Risk Assessment	Humanitarian and Compassionate	Judicial Review	Stay of Removal	Danger Submission	Cessation / Vacation	
																					Automobile Insurance Act and the *Act respecting the Québec pension plan*, etc. Services are covered in other administrative and civil and matters if the plaintiff's physical or psychological security is at stake, if the plaintiff's basic needs or means of livelihood are involved, or if the freedom of the plaintiff is or is likely to be seriously restricted due to the possibility of committal to custody or detention, particularly.
New Brunswick	Yes	No	Yes	Yes	No	The New Brunswick Legal Aid Services Commission conducts a financial assessment based on three factors: income, allowable deductions and household size. Generally, people with low income, those on social assistance and youth qualify for free representation. Income includes salary, wages, commissions, boarder income, other income, pension, allowances, and any other benefits received. Sources of income not included are Child Tax Benefit or Canada Child Benefit; GST Rebates; Income Tax Refunds; Bursaries or grants received from an educational institution or student loans; and income of applicable dependents. Income earned by the spouse/common-law partner who resides in the applicant's household, and income of applicable dependents, are also included in the calculation. Allowable deductions	The eligibility based on gross monthly income (after allowable deductions are subtracted) is as follows: **Family Size** / **No Contribution** / **$150 - $250 Contribution** 1 / $1,200 / $1,201 - $2,600 2 / $1,800 / $1,801 - $3,800 3 / $1,900 / $1,901 - $3,900 4 / $2,000 / $2,001 - $4,200 5 / $2,100 / $2,101 - $4,500 6+ / $2,300 / $2,301 - $4,700 The eligibility based on gross annual income (after allowable deductions are subtracted) is as follows: **Family Size** / **No Contribution** / **$150 - $250 Contribution** 1 / $14,400 / $14,401 - $31,200 2 / $21,600 / $21,601 - $45,600 3 / $22,800 / $22,801 - $46,800	Legal representation is available in criminal cases to individuals who meet the financial eligibility criteria and who who have been charged with an offence that would likely result in jail time if convicted.													Family Legal Aid offers representation to financially eligible clients for custody, access and child support under the Family Services Act. Determination of spousal support under the Family Services Act is also provided to all persons who are eligible to receive spousal support. Legal representation is also provided to custodial parents in child protection proceedings initiated by the Minister of Social Development relating to supervisory orders, custody or permanent

Department of Justice Legal Aid Program – Eligibility Guidelines and Scope of Coverage

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	Criminal	Immigration and Refugee	Other Civil Matters*						Basis of Claim	Refugee Protection Division Hearing	Detention Review	Admissibility Hearing	Refugee Appeal Division	Immigration Appeal	Pre-Removal Risk Assessment	Humanitarian and Compassionate	Judicial Review	Stay of Removal	Danger Submission	Cessation / Vacation	
						include child care payments (daycare, babysitter, etc.), child and spousal support payments, medical or dental expenses that are not covered by an insurance plan, if the annual expenses are $1,500 or more. If the Legal Aid intake worker finds that the applicant has the ability to contribute to a covered service, he/she will be required to make a monetary contribution. Where an applicant is unable or unwilling to pay the assessed one-time contribution and they are the registered owner of real property in New Brunswick, they may choose to sign a lien and defer payment. By deferring payment the applicant accepts they will be responsible to reimburse NBLASC for the full cost of services provided. Appeal processes are in place to address extenuating circumstances.	4 $24,000 $24,001 - $50,400 5 $25,200 $25,201 - $54,000 6+ $27,600 $27,601 - $56,400														guardianship of their child. The legal merit of the case is assessed on a continuous basis to ensure there is a reasonable likelihood of achieving the desired result. Legal Aid may prioritize cases such as when a victim of spousal abuse needs a family court order on an urgent basis.
Nova Scotia	Yes	No	Yes	Yes	No	Full-service legal aid may be granted to a person on Income Assistance, or in an equivalent financial position, or if paying for a lawyer would put the applicant at an Income Assistance level, where there is legal merit in providing legal assistance in certain areas of family/civil, criminal and social justice (income security and housing issues) law. NS Legal Aid gives legal information or advice to anyone without a financial eligibility requirement. A person is in a position of equivalent to that of someone on Income Assistance when the gross monthly income of the person and his/her spouse is less than the amount set out in the chart (Child Tax Credit is not counted in income), and the person's monthly expenses for shelter, food miscellaneous, transportation and the cost of the legal service requested is greater than the amount set out below. The Nova Scotia Legal Aid Commission	Nova Scotia applies the following financial eligibility guidelines for full-service legal aid: **Adults / Children / Gross Monthly Income** 1 0 $1,067 1 1 $1,416 1 2 $1,700 1 3 $1,924 1 4 $2,148 1 5 $2,372 1 6 $2,596 1 7 $2,820 2 0 $1,424 2 1 $1,708 2 2 $1,932 2 3 $2,156	Indictable offences and summary conviction offences where there is a likelihood of imprisonment or potential impact on employment or immigration.														

Department of Justice Legal Aid Program – Eligibility Guidelines and Scope of Coverage

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						also considers the debt load and assets of the applicant. A Contribution Agreement may be considered for full-service legal aid if the applicant is over the financial guidelines by more than 50%.	2 4 $2,380 2 5 $2,604 2 6 $2,828 2 7 $3,052														
Prince Edward Island	Yes	No	-	No	No	A financial eligibility scale based on income and family size is used as a guideline in determining eligibility. The scale is only one of several factors that must be considered in each case. Other factors relate to the urgency and seriousness of the applicant's legal needs; the coverage and resources of the legal aid program; and the applicant's ability to obtain legal assistance if legal aid is refused. PEI Legal Aid considers whether the applicant receives social assistance. The application is also subject to merit testing. The applicant's assets and liabilities and the complexity of the case are also considered.	PEI's Legal Aid Financial Eligibility Scale is as follows. **Family Size** / **Weekly (Gross)** / **Monthly (Gross)** / **Annually (Gross)** 1 $339 $1,469 $17,632 2 $473 $2,046 $24,554 3 $579 $2,506 $30,072 4 $668 $2,894 $34,725 5 $747 $3,235 $38,823 6 $819 $3,544 $42,529	Indictable and summary criminal matters are covered. Likelihood of imprisonment test applied on a discretionary basis to limit services in minor matters.															
Newfoundland and Labrador	Yes	Yes	Yes	Yes	-	An Intake Worker compares the applicant's assets and income with his/her debts and expenses to determine if they have the ability to pay for a lawyer on their own without going into heavy debt. The Intake Worker will also consider the assets, income, debts, and expenses of the applicant's spouse and of any dependent to have a full picture of the applicant's financial situation. The Intake Worker will determine the applicant's financial eligibility as well as whether the applicant's financial circumstances allow him or her to pay part of the cost of the legal services or if the legal services may be provided at no cost.	There is no specific level of income at which an applicant will automatically qualify for Legal Aid. When assessing the applicant's income, the Intake Worker will consider: • Salary or wages that you and your spouse receive from employment (or in the case of a youth the income of his/her parents) • Rental income • Investment income • Pension income • Workers' Compensation benefits • Employment Insurance benefits • Income from spousal support • Income from social assistance When assessing the applicant's expenses, the Intake Worker will consider things such as: • Basic living expenses for food, clothing, household supplies and personal items • Reasonable amounts for rent, mortgage, property taxes, insurance, and home maintenance	Indictable and summary criminal matters are covered if possible jail term or loss of means of livelihood. Limited coverage for provincial offences.	X	X	X		X	X			X					

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							• Utilities including fuel, hydro, water, and telephone • Necessary transportation expenses • Necessary medical, dental, and hospital expenses, including the cost of reasonable health insurance policies • Life insurance premiums • Regular payments made towards a reasonable amount of debts incurred before the application for Legal Aid was made.														
Yukon	Yes	No	Yes	Yes	No	In determining financial eligibility, the Yukon Legal Services Society (the "Society") may, in addition to considering the Financial Eligibility Table, consider the net assets possessed by the applicant and the liquidity or securability of those assets; the amount and nature of the indebtedness of the applicant; any other matter which the Executive Director or Yukon Legal Services Society Board of Directors considers relevant. The Society may secure from a client the repayment of all or part of the costs incurred in legal representation of that client.	Yukon's financial eligibility guidelines are as follows: **Adults** / **Youths** / **Monthly** / **Annual** 1 / 0 / $1,800 / $21,600 2 / 0 / $2,200 / $26,400 3* / 0 1 / 1 / $2,100 / $25,200 1 / 2 / $2,400 / $28,800 1 / 3 / $2,700 / $32,400 1 / 4* 2 / 1 / $2,500 / $30,000 2 / 2 / $2,800 / $33,600 2 / 3 / $3,100 / $37,200 2 / 4* *** Add to base for:** for every additional adult, add / $450 / $5,400 for every additional youth, add / $300 / $3,600	Offences under the *Criminal Code* and *Youth Criminal Justice Act*													Family Law, Child Protection
Northwest Territories	Yes	No	Yes			An application must be completed. Applicants are required to provide detailed financial information with backup documents, including a statement of income for the applicant and anyone living in the household. Commission employees review applications in detail to determine the applicant's financial eligibility. Eligible applicants are assigned duty counsel for criminal matters or go into a rotational	The financial thresholds take into account the household size as well as the community where the applicant resides. The range in the amounts below reflects the fact that eligibility threshold depends on the applicant's place of residence. Depending on the applicant's income and place of residence, he/she may be required to provide a contribution of $250 to $1,000.	Offences under the *Criminal Code* and *Youth Criminal Justice Act*													Child protection and Family Law where custody or support is in issue

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						assignment process for family and civil law matters. In some cases, using criteria set out in the Act and regulations, the staff determine that an applicant is in a position to make a contribution to the cost of their legal aid services. A conditional authorization for legal aid is given to the applicant requiring a contribution. Presumed Eligibility arises only in the context of criminal law. Clients who first appear in Territorial Court are presumed eligible for legal aid, and are provided assistance with preliminary or straightforward matters that duty counsel can deal with in a summary fashion, including guilty pleas and non-complex sentencing hearings. If the lawyer determines that the matter requires a preliminary inquiry, trial or a more complex sentencing, the client must apply for legal aid for a determination of their financial eligibility.	**Family size** / **Net monthly income (no contribution required)** / **Net monthly income (a contribution is required)** 1 $2,095 - 2,931 $2,305 - 3,810 2 $2,593 - 3,626 $2,852 - 4,714 3 $3,694 - 5,159 $4,063 - 6,707 4 $4,000 - 5,595 $4,400 - 7,274 5 $4,293 - 6,005 $4,722 - 7,807 6 $4,592 -6,424 $5,051 - 8,351 **Family size** / **Net annual income (no contribution required)** / **Net annual income (a contribution is required)** 1 $25,140 - 35,172 $27,654 - 45,724 2 $31,116 - 43,512 $34,228 - 56,566 3 $44,328 - 61,908 $48,761 - 80,480 4 $48,000 - 67,140 $52,800 - 87,282 5 $51,516 - 72,060 $56,668 - 93,678 6 $55,104 - 77,088 $60,614 - 100,214															
Nunavut	Yes	No	Yes	Yes		The Nunavut Legal Services Board provides legal aid services to financially eligible Nunavummiut, in the legal areas of coverage as set out by the Legal Services Act. This includes criminal defence representation, child representation, child protection and family law coverage, and civil/poverty representation in the areas of residential tenancy issues, employment/labour law, poverty-related issues, excessive use of force by police and human rights. Nunavut applies presumed eligibility in criminal matters, as well as in family matters (child representation and child protection) and civil matters (residential tenancy disputes).	Nunavut's eligibility thresholds are as follows: **Household Size** / **Annual Gross Income** 1 $50, 400 2 $62, 400 3 $88, 800 4 $96, 000 5 $103, 200 6 $110, 400 7 $117, 600 8 $124, 800 9 $132, 000 10+ $139, 200	Offences under the *Criminal Code* and *Youth Criminal Justice Act*													Family Law, Child Protection, Child representation, Poverty Law, Employment/Labour Law, Excessive use of force by Police, Human Rights

* The Legal Aid Program (Department of Justice Canada) provides funding for civil legal aid to Canada's three territories as part of the *Access to Justice Services Agreements.* The Legal Aid Program does not provide contribution funding for civil legal aid to the provinces for matters other than for immigration and refugee matters, nor does it systematically collect information on other civil legal aid provided by provinces. However, most provinces provide legal aid services for some civil matters.

Source: Department of Justice, October 2017.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 39, 40, 42-44, 54, 57, 60, 67 and 69) is tabled.

Respectfully submitted,

Anthony Housefather
Chair