

# ***Civil Legal Aid and Women***

**Working paper**

**Spring 2007**

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*“Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care or education. The well being of our justice system – and the public’s confidence in it – depends on it.”*

- Beverley McLachlin, Chief Justice, Supreme Court of Canada,  
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The New Brunswick Advisory Council on the Status of Women is a body created by provincial legislation to study and advise on issues of concern to women and to bring these before the public and the government. The Council is composed of 13 women appointed by government who meet at least four times per year to determine priorities for action on women's issues.

Spring 2007

Ce document est disponible en français. Demandez *L'aide juridique en matière civile et les femmes*.

Note : Le présent document ne doit pas être considéré comme un avis juridique ni une forme d'interprétation juridique. Le rôle de l'auteure a été de faire la recherche et d'identifier les orientations possibles recommandées par les intervenants et les experts du domaine. Les sources de référence sont clairement incluses dans les notes de bas de page.

## **Mandate**

The purpose of this paper is to identify options for extending access to legal aid in civil cases (family law and poverty law) for women and children in New Brunswick.

**Objective 1:** identify options for expansion of access to civil legal aid (family law and poverty law) for women and children in N.B.

**Objective 2:** Identify promising pathways to generate discussion and exchanges on orientations that will gradually broaden service coverage for legal aid

The resource people who were consulted during the writing of this report provided confirmation and further details on the themes addressed here. Their comments and opinions were added to the document, and we thank them for making such valuable contributions.

On certain subjects, especially in the area of family law, the research and literature are rather scant. Some references date from several years ago.

This discussion paper is primarily based on a review of the literature on the subject. A number of limitations were encountered during the writing process:

- The paper is limited to key documents available at the time;
- Certain documents were not available;
- There is not a great deal of empirical data on family legal aid;
- Data on the subject of family legal aid and women's needs are rather limited;
- There was not sufficient time to gauge the progress of some projects for which information dates from a few years ago;
- There was not sufficient time to take the consultation process to a deeper level.

Despite its limitations, the document provides interesting orientations and options for a more in-depth process of exploration and consultation. Clearly, any reorientation in service coverage and delivery designed to make the civil justice system more accessible will require further reflection and planning.

## **An Emerging Consensus**

A general consensus seems to be emerging on the following themes that relate to legal aid:

### **Eligibility**

1. There is a huge gulf between those who are eligible to receive a range of services and those who are not eligible for any services or receive only partial coverage.
2. Low-income people who are not victims of violence should benefit from a broader range of legal aid services.
3. Given that some victims of violence do have somewhat higher incomes, the possibility of setting financial eligibility criteria for this group should be studied in order to benefit very poor women who are not victims of violence.
4. Given the motivation to extend service coverage to a greater number of individuals, eligibility criteria should be reviewed.

### **Violence**

1. Low-income people who are not victims of violence should benefit from a broader range of legal aid services.
2. As women sometimes refuse to admit that their relationships are violent, either from fear of reprisal or because they are ashamed to call themselves victims of violence, some options must be found. These women often have no other alternatives in terms of services.
3. Priority should be given to services that maintain the stability of the family – custody, access and support. Families in which there has been violence should be given priority.

### **Options and service delivery**

1. Other service options, such as legal clinics, should be considered.
2. The option of contributions should be considered for women who have a somewhat higher source of income but would not otherwise be considered eligible for legal aid.
3. The planning of new service options should be based on the existing legal aid structure, at least during the initial phase.
4. Experimentation should be a gradual process; for example, starting with one or more pilot projects so that successes and challenges can be measured.
5. The complex mixed model is highly regarded as a basis for expanding services using new options for service delivery. New Brunswick is using the mixed model, a platform that is conducive to integrating new service options that are part of the complex mixed model concept.
6. Early intervention is helpful to avoid letting cases degenerate to the point where further conflicts or problems of a criminal nature complicate matters. Early intervention makes it possible to settle cases more quickly and save both time and money.

**Funding legal aid**

1. There is a lack of funding for legal aid in civil matters in New Brunswick.
2. The complex mixed model is highly regarded as a basis for expanding services as economically as possible.
3. The implementation of new service options as part of the legal aid program requires additional human and financial resources.
4. It is important to demonstrate the benefits of new service options and the savings (at least in the medium term) that will make it possible to serve a greater number of individuals.

## **Methodology**

The methodology on which this paper was based primarily involved a review, summary and analysis of relevant documents. The second stage involved consulting a number of resource people who work in legal aid and women's issues to determine the orientation of the paper.

It should be noted that due to time constraints, we consulted a limited number of individuals.<sup>1</sup> Generally speaking, their opinions coincided with the literature, and the consensus around the themes was clear.

The consultation process was in part intended to elicit further details in addition to the information in the literature on needs, service delivery and approaches to the provision of legal aid services in family law cases, based on the needs of women and children.

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## **1. Overview of legal aid**

### **1.1 History**

Significant developments in the history of legal aid in New Brunswick

1972

The legal aid system is set up under the auspices of the provincial government and the Law Society of New Brunswick, with funding from the government and the New Brunswick Law Foundation.

The Law Society oversees civil and criminal programs. Clients applying for legal aid are assessed according to financial eligibility criteria. If eligible, they may retain the services of a lawyer of their choice from the private sector.

1988

Civic Legal Aid is eliminated and replaced by a new program, Domestic Legal Aid, exclusively intended for victims of family violence. The ceiling on cases is \$1,000.

1992

A study by the Department of Justice and the Law Society of New Brunswick shows that coverage is inadequate and program costs unmanageable. The service delivery model is changed to include lawyers on contract (Department of Justice and the Law Society of New Brunswick).

1993

The Domestic Legal Aid program as conceived in 1988 is now part of Family Support Services, and a new component is set up, Social Work, which was already functioning in the Family Division of the court system. Social workers are already trained to determine whether conjugal violence has occurred. They are also qualified to act as paralegals along with lawyers on contract and to provide mediation services for clients who are not victims of violence. Legal Aid New Brunswick continues to provide guardianship and support services.

2001

In April 2001, New Brunswick Legal Aid Services takes over the Domestic Legal Aid program from the Law Society of New Brunswick. All components are managed by the Department of Justice. New Brunswick Legal Aid Services assumes responsibility for the delivery of legal services within the framework of the Domestic Legal Aid program that was previously provided by the Justice department's Court Services division. New Brunswick Legal Aid Services now has responsibility for providing domestic legal aid, as well as administering the budget for these services.<sup>2</sup>

2005

The New Brunswick Legal Aid Services Commission is set up, reporting to the Legislative Assembly through the Minister of Justice. The commission is independent of the Minister of Justice and the Attorney General and subject to an annual audit by the Auditor General of New Brunswick. The domestic legal aid application procedure remains unchanged.<sup>3</sup>

2006

The government decides to replace the legal aid certificate system of service delivery with a mixed model using a combination of staff lawyers and legal aid certificates. The new system gives Legal Aid New Brunswick the flexibility to provide legal aid services through its own staff and private-sector lawyers. The family law service delivery model remains unchanged; it is still a mixed model.

## **1.2 Civil legal aid in Canada**

Canada has separate legal aid plans for each province and territory. Management and delivery of legal aid services are the responsibility of the provinces and territories.

The legal aid programs are composed of two main branches: criminal and civil. The main areas that may be included in the civil branch are family law, poverty law, immigration law and labour law.

The most important sphere of the civil branch in most provinces and territories is family law, including support and custody and access. New Brunswick's civil branch offers mainly family law services.

Coverage and delivery of services are different in each province or territory, as are eligibility criteria. Despite some similarities, the many differences make it difficult to compare plans. Authors call for, among other things, greater uniformity in the management of data at the national level so that a realistic evaluation can be made.

## **1.3 Types of service offered by civil legal aid in Canada**

Depending on the coverage provided in each province or territory, services offered may include:

- advice on procedure and strategy;
- referrals to other appropriate services in the community; and
- legal representation and general information.

Another category of services often provided by community clinics includes such services as:

- toll-free, 24-hour telephone access to a lawyer;
- advocacy programs;
- community education projects; and
- legal research services.

The diversity of legal aid plans means that there is no standard coverage across the country. Some authors suggest that legal aid protection for families is uneven due to variations in funding for family law and differing priorities.<sup>4</sup>

For example, in New Brunswick, legal aid in family law cases is offered primarily to women who have been victims of conjugal violence. Services for those who have not been victims of violence are more limited.

The table<sup>5</sup> in Appendix II shows legal aid services across Canada. The table below shows family law legal aid services available in Canada:

**Table 1: Volume of Family Law Legal Aid Services in Canada, by Applications, Approvals for Full Service and Refusals, Most Recent Year Available**

Province/ Territory	Year	Access/ Custody		Maintenan e		Property Division		Separation		Divorce		Variations		Family Violence		Child Welfare		Adoption		Other <sup>3</sup>		Total	
		n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
P.E.I. <sup>2</sup>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
N.S. <sup>3</sup>	1999/ 2000	1,566	27.7	1,019	18.0	74	1.3	543	9.6	488	8.6	955	16.9	-	-	627	11.1	-	-	384	6.8	5,656	100
N.B.	2000/ 2001	389	9.2	1,162	27.5	56	1.3	29	0.7	9	0.2	235	5.6	79	1.9	-	0.0	-	-	2,269	53.7	4,228	100
Quebec	2000/ 2001	24,586	28.5	15,245	17.7	-	-	3,845	4.5	9,802	11.4	-	-	-	-	26,809	31.1	359	0.4	5,544	6.4	86,190	100
Ontario	2000/ 2001	-	-	-	-	-	-	-	-	567	1.7	6,973	21.3	-	-	6,240	19.0	-	-	19,007	58.0	32,787	100
Man.	2000/ 2001	-	-	23	0.3	-	-	2,107	26.2	1,444	17.9	1,413	17.6	-	-	888	11.0	67	0.8	2,104	26.1	8,046	100
Sask. <sup>4</sup>	2000/ 2001	913	36.9	603	24.3	-	-	109	4.4	507	20.5	-	-	6		259	10.5	29	1.2	51	2.1	2,477	100
Alberta	2000/ 2001	488	5.8	1,868	22.2	80	1.0	11	0.1	2,594	30.9	-	-	184	0.2	3,170	37.7	12	0.14	-	0.0	8,407	100
B.C.	2000/ 2001	10,100	35.9	9,080	32.3	2,523	9.0	-	-	-	-	-	-	2,844	2.2	3,437	12.2	-	-	127	0.5	28,111	100
Yukon <sup>5</sup>	2000/ 2001	160	68.7	9	3.9	-	-	-	-	-	-	-	-	-	10.1	60	25.8	1	0.4	3	1.3	233	100
NWT <sup>6</sup>	2000/ 2001	239	63.1	76	20.1	4	1.1	-	-	1	0.3	-	-	-	-	54	14.2	-	-	5	1.3	379	100
Nunavut	as of Aug. 13/01	31	41.9	24	32.4	2	2.7	-	-	12	16.2	3	4.1	-	-	2	2.7	-	-	-	-	74	100

Source of Data: A profile of legal aid services in family law matters in Canada, Table 3. Unless otherwise noted, data were provided by the legal aid service in each jurisdiction. Data for Newfoundland were not provided by that jurisdiction.

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

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<sup>1</sup> "Maintenance" includes child support, spousal support, and maintenance enforcement.

<sup>2</sup> "Family Violence" includes restraining orders.

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

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

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

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

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

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

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

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

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

## **1.4 New Brunswick's Domestic Legal Aid program**

New Brunswick's Domestic Legal Aid program gives priority to cases of family violence. For those who are not victims of violence, services are limited mainly to support and changes to support agreements and orders. Support enforcement respondents and respondents in child protection matters are also eligible for legal aid services in the Domestic Legal Aid program.

### **1.4.1 Services for victims of family violence**

Intake is the first phase. Social workers from the Court Services Division of the Department of Justice evaluate clients' eligibility and needs. They direct clients to mediation, if appropriate, or to legal aid lawyers if they are victims of violence, or to other community services. The court social workers provide the mediation service and also offer counselling.

If clients are assessed as victims of family violence, they may be referred to Legal Aid Services Commission for legal services for these issues:

- support
- custody and/or access, as well as marital property (related to possession of the marital home or division of marital property in cases where the equity does not exceed \$20,000);
- restraining orders;
- interim relief orders;
- variations of existing orders; and
- divorce as a respondent or, if there is an urgent need, as a petitioner.

### **1.4.2 Services for those who are not victims of violence**

These services are available:

- mediation related to issues such as support, custody and/or access, and basic marital property (in which equity does not exceed \$20,000)
- variations; and
- Domestic Legal Aid representation for all clients who are beneficiaries of support when mediation fails in support applications, support variations, or support enforcements.

Payers who are found to be unable to pay support are eligible to apply for legal aid certificates in order to have a lawyer to help them with an application to vary their support order. This referral is offered only if the client has already tried to resolve the difference through mediation, which is provided free of charge by social workers from the Court Services Division of the Department of Justice.

Legal aid is also available for defendants in applications submitted by the New Brunswick Department of Family and Community Services concerning custody or guardianship of children.

### **1.4.3 Family Support Services<sup>6</sup>**

In addition to the court social workers attached to the Court Services Division of the New Brunswick Department of Justice who provide information, counselling and mediation services, and referrals to legal aid, the Department of Justice also provides the Family Support Orders Services (FSOS), the For the Sake of the Children parent education program and the Court-Ordered Evaluations Support Program (C-OESP)

The FSOS enforces support orders and ensures that parents or spouses fulfill their legal obligation to provide support to their spouse and children.

For the Sake of the Children is an information program for separated parents. Its mission is to make parents aware of the social, economic, emotional and legal effects of separation, as well as to explain the impact on children according to age and stage of development. The program teaches parents to communicate with children and with each other as parents. The goal is to reduce the impact of the separation on the children.

The Court-Ordered Evaluations Support Program provides financial assistance to parents unable to agree on custody and access issues, and who have been ordered by the court to undergo a custody evaluation for the purpose of helping the court determine the best plan. Such evaluations, which are usually done by mental health professionals such as psychologists, can be very expensive, and C-OESP can help with the costs.

#### ***1.4.4. Lack of criteria for financial eligibility in family law in New Brunswick***

In general, there are no criteria for financial eligibility for domestic legal aid in New Brunswick. Only two circumstances call for a financial evaluation: respondents in child protection matters, and payers of support who have been found unable to pay in accordance with their legal obligation and have also not been able to obtain a resolution through use of the Domestic Legal Aid mediation services.

## **2. The legal context**

The Canadian Bar Association states that legal aid is a fundamental right in our democratic society, a service that is now an integral part of our justice system. In principle, legal aid should provide access to the system for our most vulnerable citizens, thereby promoting the perception of fairness in society.

### **2.1 The right to material equality**

Any legal aid reform should incorporate the principles enshrined in the *Canadian Charter of Rights and Freedoms* (the *Charter*), including the fundamental principle of the right to material equality.<sup>7</sup> In fact, that principle is derived from the courts' interpretation of subsection 15(1) of the *Charter*. The Supreme Court of Canada has acknowledged that the objective of equality is to protect disadvantaged groups from discrimination and inequality in discriminatory attitudes and rules.<sup>8</sup>

The fact that legal aid is only accessible for certain legal problems in the civil domain, compared to the greater accessibility that prevails in the criminal sphere, could be deemed discriminatory to women under sections 7 and 15 of the *Charter*.<sup>9</sup>

Nonetheless, the courts still maintain that they should not infringe upon governments' responsibilities for administering and delivering social programs. The concept of including the rights to health care, shelter, employment insurance and social assistance in section 7 of the *Charter* remains a dead issue.<sup>10</sup>

Certain authors also note that section 36 of the *Constitution Act of 1982* further entrenches in the Constitution equality of opportunity for all Canadians, the economic development to ensure that equality, and public services for all citizens. Lack of access to legal services is a violation of this section.<sup>11</sup>

Brewin<sup>12</sup> notes that the *Charter* is part of our Constitution, and that there is no declaration stipulating that the government must respect the *Charter* only when the courts order it to do so. The principles of the *Charter* maintain that governments must promote equality of the sexes, while ensuring that the basic needs of all Canadian citizens are met.<sup>13</sup>

### **2.2 Priority of criminal law: the public domain**

It is important to distinguish between criminal law and family law. The risk of imprisonment for the accused is one of the eligibility criteria for criminal legal aid. In this situation, the failure to offer legal aid would be contrary to the fundamental principles of the Canadian justice system, since everyone has the right to a fair trial. This principle is even more vital when the person's liberty is threatened; therefore, legal representation is mandatory in criminal matters.<sup>14</sup> Certain elements of civil law are mandatory, such as access to legal aid when the government apprehends children.

#### **Private versus public law**

Family law is considered a "private" area of the law in which the government should not necessarily intervene. That rationale arises from the fact that family law is based on personal conflicts in the private domain, such as separation, divorce, division of property and child-care agreements.<sup>15</sup> As Brewin points out, however, we cannot close our eyes to the fact that discrimination against women in the private domain is a product of government legislation.<sup>16</sup>

Thus, the government plays an important role in family law when a family breaks up. The government creates legislation and policies governing family law; it has a responsibility when those policies limit women's access to justice. The fact that women have recourse to family law more often than men and that access to family-law legal aid is limited may be seen as discriminatory to women.<sup>17</sup>

### **2.3 Access to Justice and Women's Economic Security**

Constraints in civil legal aid have a serious impact on women's financial and economic security.<sup>18</sup> Women's capacity to protect their children from abusive family situations is also greatly diminished. In some cases, the situation degenerates to the point where the government is obliged to apprehend the children.<sup>19</sup> The lack of legal aid may thus cause women to remain in abusive situations or turn to the government for financial assistance.

Brewin<sup>20</sup> bases her arguments on the *Canadian Charter of Rights and Freedoms*. She points out that, while the *Charter* includes the right to freedom and a fair trial, it also includes the right to life, liberty and security of person. Section 15 is particularly relevant:

*"Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."*<sup>21</sup>

The fundamental rights enshrined in the *Charter* apply equally to men and women, under section 28. Moreover, under our human rights legislation, it is discriminatory to deny any right to a person because of his or her sex.<sup>22</sup> Therefore the formal approach to equality, which maintains that the government has no obligation to provide funding in the private domain of family law, is not consistent with the ideal of access to justice.<sup>23</sup>

The Supreme Court of Canada has been clear on the concept of substantive equality (equality that recognizes a pre-existing disadvantage in society), stating that substantive equality should be the defining principle. In fact, the Supreme Court of Canada maintains that the government, being subject to the *Charter*, should not be able to choose whether to protect disadvantaged groups.<sup>24</sup>

In terms of sexual discrimination<sup>25</sup>, substantive equality means that the government should always consider what effects its policies may have on women. The difference between men and women is illustrated by the fact that it is mainly women who apply for civil legal aid and men who use criminal legal aid. Men's and women's different interactions in society also show that they have different needs that should be addressed by our justice system.<sup>26</sup>



### **3. The price paid for service not adapted to women's needs**

The scarcity of statistical data makes it difficult to evaluate the impact of cutbacks in services and access to legal aid. Nevertheless, the CBA-O believes that a lack of legal representation ultimately detracts from the administration of justice.<sup>27</sup>

#### **3.1 Women remain in poverty**

Cutbacks and constraints in civil legal aid have a serious impact on women's financial and economic security. Women's capacity to protect their children from abusive family situations is also greatly diminished. In some cases, the situation degenerates to the point where the government is obliged to apprehend the children. The lack of legal aid may thus cause women to remain in abusive situations or turn to the government for financial assistance.<sup>28</sup>

The link between poverty and access to justice has long been recognized as a key factor by Health Canada. People who are economically better off have better access to justice and are in better health than poor people.<sup>29</sup> In fact, studies show that those who are better off encounter fewer problems that require going to court than do people who are living in poverty.<sup>30</sup> Therefore, the most vulnerable members of society are the most likely to face legal problems. Research<sup>31</sup> shows that even if the problems are "resolved" within two years, a large number of clients feel that the outcome was unfair to them. This perception of inequity affects the fabric of society, according to Currie, who cites Breton et al. (2004, 33):

*"The sense of being treated fairly, of being given a fair chance, does much to determine the degree of attachment to the institutions, the communities, and the society in which people live their lives. Fair treatment nourishes loyalty to the society and makes people more willing to contribute to its functioning. In contrast, unfairness is socially destructive."<sup>32</sup>*

#### **3.2 More tangible costs**

Apart from the public confidence that is shaken when some inequity or inequality arises owing to a lack of legal aid services, there are clearly more tangible costs. For example, a growing number of clients are forced to represent themselves, slowing down the process, which would often only take a few hours if adequate legal aid were available. Effective legal aid spells financial security and stability.

Buckley<sup>33</sup> notes that gaps in legal aid mean that there are costs that must be absorbed by society, including:

- the costs incurred when the government apprehends children in situations that could have been settled in another way;
- the costs of ensuring the protection and well-being of women who do not have access to legal aid to protect them from a violent ex-spouse; and
- the costs of supporting single parents (the majority of whom are women) who do not receive any financial support from their ex-spouse.

Cutbacks in legal aid programs have coincided with cuts in other social programs. Access to legal aid is becoming even more fundamental, because when access to government services is reduced, the need to have access to legal recourse becomes more important for people who must rely on the public system to meet their basic needs. Settling these types of problems frequently requires having recourse to the courts.<sup>34</sup>

The lack of human resources in some regions means that there are waiting lists and the wait time before a meeting with a lawyer can be months<sup>35</sup>. This situation can be harmful as the case often has time to degenerate, e.g. in situations where the spouse has sold or destroyed goods belonging to the spouse while awaiting the evaluation, kidnaps the children, assaults the client, and so on. This situation makes cases more complex and consequently adds to the costs of settling such matters.<sup>36</sup> The Canadian Bar Association recommends the approach of early intervention to improve relations and favour a quick resolution.<sup>37</sup>

## **4. What are women's legal needs?**

According to Buckley, it is difficult to pinpoint legal needs that are not met. Some needs are never expressed, e.g. if the client does not go to legal aid to file an application. Moreover, some women don't know that there is a legal aid service.<sup>38</sup>

In New Brunswick, a qualitative study showed that women consider that the order of priority for essential services are child custody including their stability and well-being, and division of property.<sup>39</sup> According to one intervenor consulted for this document, the division of property is the "eternal problem" that prevents women from reaching full autonomy. Interveners are continually meeting with this obstacle, which limits the plan of action to support the client's autonomy.

The lack of statistical data is a significant impediment to determining how many needs go unmet.<sup>40</sup> However, the Canadian Bar Association estimates that the need for legal aid has increased, due mostly to cuts in legal aid services.<sup>41</sup>

Whenever legal aid no longer offers coverage in a given domain, new legal needs arise.

Currie<sup>42</sup> notes that a rather large number of applications are rejected in certain jurisdictions. He suggests that it would be important to find out whether the level of financial eligibility and the coverage of legal aid services are appropriate in that number of rejected applications. It would be wise to check whether a high number of people are excluded who should, in principle, be able to gain access to legal aid services.<sup>43</sup>

This dilemma was the subject of discussion in British Columbia. Following drastic cuts in family legal aid, the province saw applications decline by nearly 13% from 1992 to 1999.<sup>44</sup> The number of people in the community who did not apply is unknown. It appears that many did not apply, knowing that there had been cutbacks and presuming that they would be turned down if they applied.<sup>45</sup>

In civil matters, legal needs are determined by a number of factors outside the justice system, such as personal life and social factors. Several governments have conducted experiments in this regard, including British Columbia, which has developed a fairly viable formula for pinpointing legal needs that are not addressed.<sup>46</sup> Community consultations in Ontario have also proved successful in ascertaining the legal needs of the population.

In the United States, a survey of legal needs in civil law that were not covered resulted in an action plan to extend access to legal aid.<sup>47</sup> The study concluded that there was such great demand for legal aid it was obvious that the legal profession alone could not solve the problem.

Buckley recommends that public debate on the future of legal aid be carried out with a view to the impact on the lives of those whose legal needs are not addressed.<sup>48</sup> She notes that we have a great deal to learn from anecdotes and qualitative data. In addition, administrators and lawyers who have experienced the decline in legal aid and the impact on citizens can provide vital input.<sup>49</sup>

### **4.1 Impact on women who are not eligible for legal aid**

Generally speaking, family-law legal aid receives the lowest funding of all areas of legal aid across Canada. The largest number of rejected applications for legal aid is in this area. Those legal services are also the area that has seen the highest number of cutbacks. There is some concern over the trend to prioritize certain legal aid services.<sup>50</sup> Legal aid should be provided

according to the needs and circumstances of each individual and should not, for instance, exclude applicants who do not have children.

It is the most disadvantaged members of society who suffer when cutbacks are made in legal aid coverage and accessibility. And even low and middle-income earners are often not eligible because the income threshold is so low.<sup>51</sup>

Cutbacks to legal aid in civil cases have a greater impact on women because they are the primary users of this service.<sup>52</sup> In concrete terms, this means that it is easier for a man accused of assaulting his spouse to gain access to criminal legal aid than it is for a woman who has been the victim of violence to gain access to legal aid in a family case. Even though the woman's situation jeopardizes her "security of the person" as stipulated in the *Charter*, she cannot benefit from this protection in a civil matter on the same footing as a man does in a criminal matter.<sup>53</sup>

Lack of access to the justice system can contribute to keeping women in poverty. Interveners working directly with women are in agreement on this point. One intervenor estimates that 80% of women return to a violent husband instead of living in abject poverty with children.<sup>54</sup> Lack of access to the justice system affects women's right to food and shelter and to protect their children, and consequently affects their human dignity.<sup>55</sup>

It is extremely difficult to evaluate the impact of cutbacks or lack of services on Canadian women. There are no data to explain the rejection of applications, the specific reason for the rejection, how many of the turned-down applications were made by women, or the impact being turned down has on their lives.<sup>56</sup>

#### **4.2 An approach that does not answer women's needs**

A Manitoba study<sup>57</sup> showed that disparities in service coverage, overly rigid criteria and lack of funding reduce women to two choices: abandoning their rights (which could mean no child support or custody) or representing themselves through the complex court process, which can destroy their dignity and confidence. Here are some anecdotal examples that demonstrate how gaps in access to justice affect Canadian women.

- The compartmentalization of problems sometimes creates unusual situations. For example, a female victim of violence living in a halfway house received legal aid to help her get access to her children, but the legal aid lawyer was not authorized to help her get child support. It was therefore impossible for the lawyer to include a single line about child support in a letter regarding access to the children.<sup>58</sup>
- In certain jurisdictions, women are often financially eligible for civil legal aid, but cannot pass the "serious risk" test, which requires that a woman must have been the victim of extreme violence.<sup>59</sup>
- When there is a fixed number of hours per case, the legal aid lawyer must often withdraw halfway through the management of the case, leaving the client on her own with her legal needs unresolved. Women are frustrated and disappointed by the few mandated hours of service, and lawyers are unable to represent their clients properly. Consequently, some lawyers will simply refuse to take on this kind of work.<sup>60</sup>

#### **4.3 The link between health and access to justice**

The gap between poor people and those who are better off, despite public health care services, is regularly demonstrated.<sup>61</sup> People who are economically better off enjoy better access to justice and are in better health than poor people.<sup>62</sup>

So strong is the conviction that access to justice plays a key role in enjoying good health that the predecessor of Health Canada, Health and Welfare, provided start-up funds for a community justice centre.<sup>63</sup>

Addario also maintains that access to justice is known to be a determining factor in health and she, too, believes that community clinics are an alternative suited to women's needs.<sup>64</sup> Martin explains the concept:<sup>65</sup> *The "health" approach is an obvious one when it is health benefits that are at issue. However, assessing the effectiveness of other strategies - from housing to consumer rights to social assistance in terms of the short and long term impacts on health has much to commend it.*

#### **4.4 Lessons from the past**

##### **Cuts in British Columbia**

In 2002, British Columbia made drastic cuts in its civil legal aid program. The cuts shut out women who had not been victims of violence and put an end to legal aid for poverty law cases. As a result, women find it far more difficult to obtain custody of and access to their children.<sup>66</sup>

##### **Mediation and violence**

The trend to refer female victims of violence for mediation or other conflict-resolution services can have a devastating effect on women. In Nova Scotia, it has been shown that mediation and conciliation can leave women in a situation where they are intimidated by the ex-spouse. In addition, if the woman has not disclosed the abuse beforehand, the situation is worse. Mediators must be trained to detect the presence of abuse.<sup>67</sup>

##### **Difficulty finding a lawyer can be an obstacle to services**

Women have more and more difficulty finding an experienced lawyer practicing in family law.<sup>68</sup> Women with a bit of money to hire a lawyer also have difficulty finding a lawyer to take their case. In New Brunswick, intervenors say it is not realistic to refer women to a lawyer in private practice.<sup>69</sup> This situation can be an obstacle to the choice of service delivery model. For example, after Newfoundland changed to a model based on private lawyers, it had to revert back to the use of salaried lawyers because private lawyers were not available.

##### **No children, no legal aid**

In Prince Edward Island and British Columbia, women who do not have children or are not on social assistance do not have access to legal aid services. As a result, most women do not qualify, including older women and working poor women.<sup>70</sup>

##### **Inequality for women**

Newfoundland has also identified gender-based inequalities. Research reveals that women are only eligible to get legal aid for support and custody if the other party has retained a private lawyer. It is interesting to note that legal aid is available for access to the children, a service that is frequently used by men but for which most women are not eligible. The study concludes that women often surrender child custody to the fathers because they lack the resources to protect their rights.<sup>71</sup> Civil legal aid considers the marital home an asset that must be sold to cover the cost of a private lawyer. However, criminal legal aid clients, primarily men, do not have to sell their homes to have access to a lawyer. Another failing that has been identified is that the majority of female participants interviewed for the study reported having been screened by the receptionist at the legal aid office.<sup>72</sup>

## **5. Service coverage and civil legal aid eligibility**

### **5.1 Access to legal aid services**

One of the basic foundations of legal aid is that access be provided in a fair and uniform way across the country. Achieving that objective depends to a large extent on coverage of services.

Accessibility consists of four factors: knowledge that the service exists, availability, location and accessibility to communities.<sup>73</sup> People need to be aware of the existence of legal aid services, and the services need to be accessible.

To achieve accessibility, it is necessary not only to be physically present in the communities but to take a non-intimidating approach. In Manitoba, it was noted that when the service is accessible in a community, the rate of requests for services doubles, compared to regions that only have satellite offices.<sup>74</sup>

### **5.2 Prioritizing services in legal aid coverage**

Canadian civil legal aid gives priority to cases of conjugal violence and child protection. The stability of the family and children is a priority for everyone. However, priorities are not perceived in the same way in all jurisdictions.

Coverage must be extended on the basis of women's needs. Some authors deplore the fact that priorities are based exclusively on financial considerations.<sup>75</sup>

### **5.3 Financial eligibility for legal aid**

Eligibility criteria are an integral component of service coverage. The strictness of the criteria determines who is eligible and how many applicants will be accepted.<sup>76</sup>

New Brunswick does not base eligibility for family legal aid on income. Where administrations base eligibility for family legal aid on income, different methods may be used.<sup>77</sup> Some jurisdictions, such as Yukon, use a sliding scale of annual income thresholds determined by the number of people in the family. The following provinces use precise income thresholds: Newfoundland, Prince Edward Island, Nova Scotia, Quebec, Manitoba, Alberta and British Columbia. Ontario uses an exemption scale based on net annual income and conducts a more in-depth evaluation in cases where the person's annual income is higher than the figure on the scale.

The income threshold may vary widely from one jurisdiction to another. For example, the cut-off in Prince Edward Island is \$14,885, and in Newfoundland \$4,716.<sup>78</sup> The following chart shows the provinces' eligibility thresholds for a single person.

**Table 2**

<b>Provinces and territories</b>	<b>Eligibility criteria: income cut-offs for single people</b>
<b>New Brunswick</b>	<b>No financial criteria</b>
Newfoundland	393/month (net) 2001
Prince Edward Island	14,885 (gross)
Nova Scotia	1,067/month (gross)
Quebec	10,504 (gross)
Ontario	7,212 (net)
Manitoba	14,000 (gross)
Saskatchewan	9,420 (net)
Alberta	14,300 (gross)
British Columbia	16,188 (net)
Yukon	16,800 (net)
Northwest Territories	n/a
Nunavut	16,800 (net)

Source: Websites of each province and territory. Income cut-offs are not available on some websites. The figure for Prince Edward Island is based on figures from the *Manitoba Legal Aid Review 2004*, page 89.

#### **5.4 Women’s financial eligibility**

An analysis of women’s rights from the point of view of substantive equality by the *Manitoba Association of Women and the Law*<sup>79</sup> offers recommendations concerning means tests. The financial eligibility test should be:

“Does the person have the resources to retain a lawyer without incurring serious financial problems?”

They also recommend that the financial eligibility cut-off should be high enough to include all Canadians who live below the national poverty line. Innovative approaches to financial aid should be found, including interest-free loans.<sup>80</sup>

A British Columbia study<sup>81</sup> showed that caution must be exercised with assessment methods in a climate of budgetary cutbacks. For example, women in violent and abusive situations are sometimes excluded due to eligibility criteria. If women are financially eligible but do not mention violence during the evaluation, they may not be given appropriate services.

Another criticism of British Columbia’s approach is that, in the evaluation phase, program administrators determine what constitutes an attack on the physical and psychological health of an applicant. This results in many women being turned down.<sup>82</sup>

It is important for staff who evaluate client eligibility to be trained and be aware of inequities encountered by women in the system.<sup>83</sup>

#### **5.5 Low-income Levels According to Statistics Canada**

According to Statistics Canada, there is no political consensus on the definition of poverty. Statistics Canada publishes guidelines known as “low income cut-offs,” which are set using a

logical methodology that provides results for those who “*are substantially worse off than the average. Of course, being significantly worse off than the average does not necessarily mean that one is poor.*”<sup>84</sup>

Our society needs to define what constitutes poverty. How much income is necessary to provide the basic necessities of life — food, clothing and shelter, among other things?<sup>85</sup>

Given the lack of social consensus on what it means to be “poor,” Statistics Canada’s low-income threshold is often used as a definition of poverty.

## **5.6 Income threshold for eligibility**

Some plans use Statistics Canada’s low-income threshold, while others use the amount of social assistance payments as the threshold for legal aid eligibility.<sup>86</sup> A great deal of discretion is exercised in applying the guidelines in each jurisdiction.<sup>87</sup>

Some deplore the fact that the income thresholds for legal aid eligibility are sometimes based on the social assistance eligibility thresholds. The result is that low-income workers or those living above the social assistance threshold (but still living in poverty) are not eligible for legal aid services because of overly strict thresholds. In Ontario, it was noted that women who do not qualify for services do not have the money to hire a lawyer.<sup>88</sup>

The fact that two-thirds or three-quarters of legal aid clients in family matters are women leads to the logical conclusion that women are specifically disadvantaged in such situations.<sup>89</sup>

Of the provinces that use gross income as a criterion, Prince Edward Island has the highest threshold, at \$14,885 for a one-person family, entitling the client to full coverage. Manitoba comes second, with a threshold of \$14,000 for a family of two or three.<sup>90</sup>

The poverty line revised in 2003 was \$19,795 for one person, \$24,745 for a family of two persons (an adult and a child) and \$37,353 for a family with four children.<sup>91</sup>

The Canadian Council on Social Development compared eligibility criteria for each province with the Statistics Canada poverty line, which is commonly accepted by researchers.<sup>92</sup> That comparative study revealed that, generally speaking, the thresholds set for financial eligibility for legal aid were below the Statistics Canada poverty line. In concrete terms, this means that a significant number of families living below the Statistics Canada poverty line are still not eligible for legal aid. For example, only 18% of extremely poor families are eligible for full service coverage in Newfoundland (2004). Nova Scotia included 80% of poor families, who became eligible for full service coverage.<sup>93</sup>

Eligibility for legal aid is not homogeneous. A two-person family with an income of \$16,000 may be eligible in British Columbia but not in Saskatchewan. That disparity illustrates the dilemma of equal access to justice in Canada.

The fact that only the poorest have access to full coverage has motivated regimes to examine their criteria and consider extended eligibility programs that involve contributions made by clients according to their means to pay.

## **5.7 Extended eligibility through contributions**

Some legal aid plans offer a contribution program for clients who are deemed not to be eligible after undergoing the initial part of the evaluation. Applicants whose financial status exceeds the established income thresholds may be eligible in return for making a contribution.



In jurisdictions with a contribution plan, the applicant's ability to afford a lawyer is assessed according to certain criteria. Applicants who are not eligible for free services may become eligible in return for paying part or all of the lawyer's fees.<sup>94</sup>

## **5.8 Contributions and cost recoveries from clients**

In most provinces that do not offer the contribution option, the alternative for clients who are not eligible is to represent themselves or give up their rights. Generally, contributions are not adapted to women's needs.

Provinces with expanded admission criteria have seen a significant increase in the number of families using the service, including an increase in 18 to 35 year olds.

Certain authors warn however that contributions may place too heavy a financial burden on female clients<sup>95</sup>. In addition, when the threshold for eligibility is too low, the rejected client may not have the money to hire a lawyer.<sup>96</sup>

### **Success according to the Canadian Council on Social Development**

In 1991, an evaluation<sup>97</sup> of the Manitoba unique contribution plan that extends access for low-income groups and those living close to the poverty line, concluded that it was a success and met the needs of low-income workers. The National Council of Welfare recognized the plan as superior.<sup>98</sup>

### **In Manitoba, 60% of poor families are eligible**

That same study showed that Manitoba's financial evaluation criteria result in a better-than-average eligibility rate. Statistics Canada's low income cut-off (LICO)<sup>99</sup> is used to calculate the proportion of poor families who qualify for legal aid in each province. In fact, 60% of poor families qualified for Manitoba's expanded eligibility plan.<sup>100</sup>

### **Some say the poverty line is an acceptable threshold for women**

A Manitoba study, among others, confirms that it is acceptable from a social justice perspective to base the eligibility threshold on Statistics Canada's low-income cut-off (LICO). Many researchers in the field accept the threshold based on the LICO as the poverty line.<sup>101</sup> As noted above, the national poverty line was accepted by a Manitoba study focusing on women's needs.<sup>102</sup>

One person who was consulted on the subject stressed that administrative fees might cancel out any net gain in revenue. Contributions from clients generated up to 23% of expenses for civil cases in one administration.<sup>103</sup>

Canada's National Council of Welfare has taken a stand on extended eligibility plans. The Council believes that the most effective way to provide legal aid for low-income clients is to adopt a transparent, clear approach, with no discretionary power.<sup>104</sup> It should be noted that this discretionary power had been recommended as a means of offsetting the deterrent effect of contributions on legal aid applications.<sup>105</sup>

## **5.9 Application fees**

Another option is to impose an application fee. Manitoba and Quebec charge application fees of \$25 and \$50 respectively to cover administrative costs. It should be noted that some people, e.g. social assistance recipients, do not have to pay the fee<sup>106</sup>.

Application fees have been virulently criticized in studies of women's needs. According to one study,<sup>107</sup> application fees do not bring in much money – less than 1% of total expenses.

In 1978-1979, the only empirical study was done by Manitoba, where application fees are charged. The study demonstrated the deterrent effect of such fees,<sup>108</sup> and the Legal Aid Services Society of Manitoba reported the same findings in 1996. In Alberta, duty counsel lawyers estimate that about 10% of clients they meet have not applied for aid because of the application fees.<sup>109</sup>

### **Demand Increases When Application Fees Are Abolished**

In Ontario, a rise in legal aid applications was seen in the same month that application fees were eliminated in 1998. Applications rose by 8.8% over those made in February of the same year<sup>110</sup> and by 51% over March 1997.<sup>111</sup> However, the author emphasizes that other influences were operating at the same time; for example, media coverage made the public aware of the existence of the services. Currie suggests that, despite the other factors, the rise in applications can be attributed in part to the elimination of application fees.

In British Columbia, where “hybrid” fees are charged, it was observed that the higher the contribution level, the greater the decrease in the number of applications.<sup>112</sup> Here again, the author stressed that other factors may also have contributed to the decline in applications; still, it seems that the fees were a deterrent. A 1998 New Brunswick study also reported the same correlation: 25% of applicants withdrew their requests because of the fee. Again, other influences must also be considered.<sup>113</sup>

Despite the effects of other influences, the combination of factors leads to the logical conclusion that application fees and hybrid fees may deter clients.<sup>114</sup>

### **Application Fees Should Not Be An Attempt To Deter Frivolous Cases**

Some argue that application fees discourage frivolous applications. The risk here is that there is no way to know if the request is frivolous before it is presented to legal aid. Currie believes it would be wiser to let those in charge assess applications and eliminate frivolous applications at that stage.<sup>115</sup> He also recommends a more extensive study of reasons for application withdrawals, to assess the true deterrent effect of contributions.

## **6. The reality of civil legal aid services**

The choice of delivery model has been shown to determine the cost of legal aid services.<sup>116</sup> These costs cannot be discussed without considering the model. We will examine the question more closely in the section dealing with service delivery models.

Three principal factors determine the cost of legal aid:

1. the number of people who are eligible, and consequently the criteria;
2. the choice of services offered (as opposed to services not offered); and
3. the cost of services offered (time commitment, complexity of files, etc.)

It is important to note that family law and criminal law are studied in different ways. What is economical for criminal law is not necessarily economical for family law.

The situation regarding approved applications and case categories is shown in the table in section 1.3, titled Volume of Family Law Legal Aid Services in Canada, by Applications, Approvals for Full Service, and Refusals for the Most Recent Year Available.<sup>117</sup>

### **6.1 Rejected civil legal aid applications**

A type of pre-selection often takes place when a client contacts legal aid for the first time. Clients who believe they are likely to be turned down will not make an official application. These cases are not reflected in the New Brunswick statistics.

In Canada, the number of applications in 2005 was higher than the previous year, when applications had fallen to a 10-year low. Refused applications were up in five jurisdictions, including New Brunswick (56%).

Many provinces and territories keep data on reasons for rejection of applications. The means test and enforceability are the most often cited, at 46% and 24% respectively in 2004-2005.

Applications may be refused because it is deemed that there is insufficient need, because they fail to meet criteria or because of abuse. Other reasons, such as withdrawal of the application and elimination of coverage, constitute only 16% of rejections. The table below<sup>118</sup> shows rejected family-law related legal aid cases. New Brunswick does not keep figures for these cases; this makes it difficult to estimate the unmet needs of women. It would be useful to have a breakdown of applications by gender.

**TABLE 3**

Volume of Family Law Legal Aid Services in Canada, by Applications, Approvals for Full Service, and Refusals for the Most Recent Year Available								
Province/ Territory	Year	Population <sup>1</sup>	Applications		Approvals		Refusals	
			n	n	% of Applications	Rate per 100,000	n	%
P.E.I. <sup>2</sup>	1999/2000	137,980	-	241	-	175	-	-
N.S. <sup>3</sup>	1999/2000	939,791	7,663	5,395	70.4	574	1,138	14.9
N.B.	2000/2001	756,598	-	4,228	-	559	-	-
Quebec	2000/2001	7,372,448	-	86,190	-	1,169	-	-
Ontario	2000/2001	11,669,344	-	32,787	-	281	-	-
Manitoba	2000/2001	1,147,880	-	8,046	-	701	-	-
Sask. <sup>4</sup>	2000/2001	1,023,636	6,631	6,095	91.9	595	536	8.1
Alberta	2000/2001	2,997,236	13,811	8,407	60.9	280	5,404	39.1
B.C.	2000/2001	4,063,760	25,217	15,526	61.1	382	9,691	38.4
Yukon <sup>5</sup>	2000/2001	30,663	329	204	62.0	665	78	23.7
Northwest Territories <sup>6</sup>	2000/2001	42,083	669	379	56.7	901	273	40.8
Nunavut	Current as of Aug. 13/01	27,692	80	-	-	-	-	-

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

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

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

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

<sup>4</sup> Approvals for Saskatchewan equals cases opened and incoming reciprocals.

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

<sup>6</sup> Additional statistics for Northwest Territories: Pending = 17 (2.5%).

## 6.2 General expenditures, including criminal and civil legal aid

In 2004-2005, \$497 million was spent across Canada on legal aid, specifically on legal services. Of this amount, 52% went to civil legal aid (including family law).

Some facts and figures for jurisdictions where the data was available:<sup>119</sup>

- Nova Scotia: 40% of budget allocated to family law legal aid
- Saskatchewan: 33.3% of budget goes to civil legal aid
- Prince Edward Island: family law legal aid cases account for 29% of budget
- Alberta: 23% of budget goes to family law legal aid cases
- Manitoba: 23% of budget goes to family law legal aid cases.

Legal aid costs relative to total population size, for jurisdictions where the data was available:<sup>120</sup>

- Prince Edward Island spends \$1.47 per person
- Nova Scotia: \$4.96 per person
- British Columbia: \$5.82 per person
- Yukon: \$7.60 per person
- Northwest Territories: \$12.82 per person

The provinces that allocate the lowest percentage of their budget to family-law legal aid are Alberta and Manitoba,<sup>121 122</sup> at 23%. Since the Manitoba contribution program has been recognized by the National Council of Welfare as a superior program and since that province dedicates the smallest portion of its budget to family-law related legal aid compared to other provinces, further study of that program is of interest.

The provinces that spend the highest proportion of their budgets to family law legal aid are Nova Scotia (40%), Saskatchewan (33.3%), and Prince Edward Island (29%).<sup>123</sup> Expenditures for New Brunswick's Domestic Legal Aid Program were \$1.56 million in 2004-2005. The province New Brunswick contributed \$1.36 million.<sup>124</sup>

## 6.3 Revenue sources for legal aid

Canadian legal aid revenues (including the criminal branch) came to \$599 million in 2004-2005.<sup>125</sup> Criminal and civil legal aid funding comes primarily from governments, client contributions and cost recoveries, and contributions from the legal profession.<sup>126</sup>

In April 1996, the Canada Assistance Plan (CAP) was replaced by Canada Health and Social Transfer (CHST). Civil legal aid funding is now integrated into the same budget as health care, higher education, social assistance and social services. It is no longer possible to determine how much funding the federal government is providing.

According to some researchers<sup>127</sup>, the lack of family law funding is the greatest challenge faced by the jurisdictions. A link is believed to exist between budget cutbacks and the decline in the number of approved applications. In British Columbia, services had to be reduced in 1997-1998; eligibility criteria were modified, fewer services were covered and lawyers' fees were reduced by 5% in family law.

## 6.4 Sources of revenue for legal aid in New Brunswick

The annual report of the New Brunswick Department of Justice and Attorney General<sup>128</sup> shows that the province contributed \$1.36 million to the legal aid program (criminal and civil). The New Brunswick Law Foundation provided a subsidy of \$150,000. Other revenues came from client contributions, recoveries, interest, etc. The New Brunswick Domestic Legal Aid program receives no funding from the federal government.

## 6.5 Average costs of family law cases

Table 4 shows average costs of family law cases. The author advises caution in interpreting the data due to certain limitations in the research.<sup>129</sup> The figures vary from province to province. Note that New Brunswick has the lowest average cost, \$405 per case, and the highest, Ontario and British Columbia at \$1,500.<sup>130</sup>

A cost analysis of basic delivery models, whether Judicare or staff lawyers, has not shown either one to be more economical in family law cases<sup>131</sup>. Costs have risen in some provinces using Judicare, while they have fallen in others on the same system. Caution must be used in considering the data, since several factors<sup>132</sup> could have an impact on the results. Further research is needed on this subject.<sup>133</sup>

**Table 4**

A Profile of Legal Aid Services in Family Law Matters in Canada

TABLE 5

Province/Territory	Year	Population <sup>2</sup>	Number of Cases	Total Cost of Legal Aid \$	Cost of Family Law Legal Aid		Cost/Case \$	
					\$	% of Total per capita		
Prince Edward Island	1999/2000	137,990	241	695,318	203,000	29	1.47	642
Nova Scotia <sup>3</sup>	1999/2000	939,791	5,653	11,117,320	4,656,213	42	4.96	824
New Brunswick <sup>4</sup>	2000/2001	756,598	4,228	-	1,712,800	-	0.67	405
Quebec	2000/2001	7,372,448	86,190	103,207,782	-	-	-	-
Ontario <sup>5</sup>	2000/2001	11,669,344	32,787	-	41,268,677	-	3.54	1,536
Manitoba <sup>6</sup>	2000/2001	1,147,680	7,365	18,094,546	4,079,609	23	3.55	554
Saskatchewan <sup>7</sup>	2000/2001	1,023,636	5,256	11,609,742	3,446,642	30	3.37	656
Alberta	2000/2001	2,997,236	8,407	27,215,150	6,120,000	23	2.04	726
British Columbia <sup>8</sup>	2000/2001	4,063,760	15,526	50,499,027	23,658,700	47	5.82	1,524
Yukon	2000/2001	30,663	230	-	232,990	-	7.60	1,013
Northwest Territories <sup>9</sup>	2000/2001	42,083	541	-	593,549	-	12.82	1,097

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

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

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

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

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

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

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

<sup>7</sup> Cost figures include civil and provincial legal aid, based on cost sharing

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

<sup>9</sup> Number of cases includes ongoing cases from previous

## **6.6 Funding problems and impact on service delivery**

The problem of funding for legal aid is a national one; insufficient funding has a serious effect on service delivery. Budget considerations are what determine the extent of coverage, not the needs of the population in legal aid matters. According to a 1998 study,<sup>134</sup> Prince Edward Island and British Columbia confirmed that service coverage had declined because of the lack of funding. British Columbia tightened eligibility criteria in 1997-1998 due to budget constraints.<sup>135</sup> The conclusion is that further research is needed on service costs of delivery models, whether Judicare or family law staff lawyers. The research on criminal legal aid cannot be applied to family law because the issues are not comparable.<sup>136</sup>

## **6.7 Number of applications for civil legal aid**

### **6.7.1 Informal pre-selection**

The number of rejected applications does not correspond to the total for all legal aid applications from the community. A client who receives information on legal aid eligibility may decide not to make an official application.<sup>137</sup> Therefore, the provincial tally of applications only provides an estimate of how many applications have been turned down.

A qualitative study<sup>138</sup> was done in New Brunswick on obstacles preventing female victims of violence from obtaining legal aid. It showed that some women decided not to apply because of the bad experiences of other women in the community or because they had received false information. These applications are not recorded, but it is clear that services for female victims of violence are still needed.

Most civil legal aid applications are family law cases. Here are the figures for 2004-2005:<sup>139</sup>

- 63% of applications in Quebec;
- 100% of applications in New Brunswick;
- 100% of applications in Manitoba; and
- 100% of applications in Saskatchewan.

The situation is different in Ontario. Of all applications for civil legal aid, 84% related to poverty law and immigration. Most applications were made to community legal aid clinics.<sup>140</sup>

### **6.7.2 Imbalance in accepted applications**

Women's chances of receiving the services they need are probably reduced by the fact that the majority of criminal legal aid clients are men and that women are the main beneficiaries of civil legal aid, and by the imbalance in approved applications. The criminal cases eat up the lion's share of funding, some of which could be channelled into innovative service options for women.<sup>141</sup>

In 2004-2005, criminal cases represented 53% of approved applications for full service in Canada according to Statistics Canada.<sup>142</sup> In the same year, New Brunswick approved over 80% of applications for full service in criminal cases. New Brunswick had the highest percentage of refused legal aid applications (56%) in 2004-2005. Reasons for the refusals are not known.

There is a better balance in Quebec and Ontario. Civil cases accounted for 57% of approvals in Quebec and 50% in Ontario.<sup>143</sup>

These discrepancies may be explained by factors such as the different eligibility criteria in each jurisdiction. And Quebec handles a larger variety of civil cases (income security, employment insurance, workers' compensation, etc.) than other jurisdictions.

## **7. Poverty law: an “impoverished” branch of the law**

Poverty law is inextricably linked to the individual's income and social programs. The problem is often access to a source of revenue. A civil servant may decide to terminate a client's benefits. The client must then seek legal recourse to exercise his or her right to appeal the decision.<sup>144</sup>

The poor are at the mercy of legislation, rules and regulations and bureaucracies for the basic necessities of life.<sup>145</sup> They face serious difficulties in their dealings with social assistance, employment insurance and other agencies they must turn to for benefits.<sup>146</sup>

Over the past 30 years, the industrial world has undergone a process of privatization and restructuring. The government has progressively downloaded the funding of social programs onto private-sector charitable organizations and the citizens themselves, hoping that social program recipients would gain greater autonomy.<sup>147</sup> The gulf between rich and poor has only widened. We are seeing record numbers of homeless people and poor children, and a decline in health among the most vulnerable members of society.<sup>148</sup>

The literature on poverty recognizes that access to legal aid affects the client's health. Statistics show that about 48% of the low or moderate-income population have at least one legal problem in a three-year reporting period. Compared with single people and couples, single-parent families (in which the parent is usually a woman) were two to three times more likely to have legal difficulties, while the unemployed were two to four times more likely to experience the same problems.<sup>149</sup>

In 1995, the National Council of Welfare noted that the mere presence of a legal clinic can have an effect on a community.<sup>150</sup> Welfare officers are more respectful of claimants' rights, collection agencies consider clients' rights more carefully before proceeding to seize their personal property, landlords renovate more promptly and child welfare workers study cases more carefully before removing a child from the home. One mother on social assistance reported that she “felt like a human being”<sup>151</sup> since legal aid had moved into the community.

### **7.1 Women and poverty law**

The majority of poor people in Canada are women – 20% of Canadian women live in poverty.<sup>152</sup> In New Brunswick, there are 40,000 women living in poverty.<sup>153</sup> The annual salary of women who hold jobs in New Brunswick is 79% of the salary earned by men.

We know that for many women, the slide into poverty starts with divorce.<sup>154</sup> Research shows that whether women are poor all too often depends on whether there is a man in their lives.<sup>155</sup> A woman who loses a wage earner in her family is four times more likely to become poor than a woman who has a male partner.

Older women are poorer than older men: 22% of women 65 and over live in poverty, compared with 6% of men in the same age group. The average salary of a woman with children under 18 is \$9,000.<sup>156</sup>

This financial disadvantage means that women are less able to afford legal services. At the same time, cuts in other social services increase their risk of running into difficulties that will require legal help in the areas of landlord/tenant relations, consumer rights, discrimination in the workplace and child apprehension. Criminal problems may also arise.<sup>157</sup>

Women in the traditional role of unpaid caregivers are among the most disadvantaged groups in Canada. Their situation is fraught with legal difficulties.<sup>158</sup>



Research shows that the poor are more likely to experience legal problems than those who are better off. The facts are conclusive:<sup>159</sup>

*“Almost 48 per cent (47.7 %) of the low to moderate income population in Canada experienced one or more law-related problems during the three-year reference period ... Single parents were 2.3 times more likely than all others to report problems (p=.0001) compared with singles who were only 0.8 times (p=.0001) and couples who were 0.6 times (p=.0001) as likely to report experiencing problems... The unemployed were 2.4 times more likely than others to report at least one problem (p=.0001).”*

Addario<sup>160</sup> states that no serious consideration has been given to women’s legal needs. The issue of the best legal service delivery model has dominated the debate, while women’s needs have not really been addressed. A study of their requirements should include such factors as culture, age, sexual orientation and immigration status.

## 7.2 Poverty law services

Canada provides a variety of poverty law services, including public legal education and legal representation.

New Brunswick is one of four provinces, along with Prince Edward Island, Saskatchewan and British Columbia,<sup>161</sup> that do not offer this service as part of their legal aid programs. Community agencies do their best to provide some kind of support.

One New Brunswick agency offers general and legal advice. Staff members provide legal advice, in consultation with private sector lawyers. However, this support is limited, because it is private-sector lawyers who volunteer service, and there is a clinic in only one region of the province.<sup>162</sup> Clients may obtain some help from certain agencies such as the Office of the Rentalsman and the Department of Justice, which puts out some legal education documents. However, this support does not constitute what could be called a “service” at either the formal or community level.

In Canada, legal representation is the major service area; all provinces and territories offer this service. Alberta and Newfoundland do not have a full-service plan for poverty law legal aid, but they offer legal representation, as shown in the table below<sup>163</sup>:

**Table 5: Summary of Available Poverty Law Services by Jurisdiction**

Type of Service	Jurisdiction						
	Alta.	Man.	Ont.	Que.	N.S.	Nfld.	N.W.T.
General advice/ assistance	No	Yes.	Yes	Yes	Yes	No	Yes
Legal advice/ assistance	No	Yes.	Yes	Yes	Yes	No	Yes
Legal advice/ assistance	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Legal advice/ assistance	No	No	Yes	No	??	No	Some

From: An Analysis of Poverty Law Services in Canada

The chart below gives a breakdown of the available data on poverty law cases by individual legal issue.

**Table 6: Number of Poverty Law Cases by Legal Issue\***

Jurisdiction	Income Assistance	Landlord/Tenant, housing	Debtor/Creditor	WCB	EI	C(Q)PP/OAS
B.C.	1,816	713	440	250	192	224
Alberta				30	1	
Manitoba <sup>§</sup>	120	9		15		
Ontario	1,563	3,459				
Quebec <sup>#</sup>	13,744	6,284		3,856	953	849
N.S.						
N.W.T. <sup>%</sup>	4	7		1		
TOTAL	17,247	10,472	440	4,152	1,146	1,073

From: An Analysis of Poverty Law Services in Canada

\* The figures in this chart are for the number of cases by individual legal issue. Case counts for individual legal issues are not available in some provinces because the types of poverty law issues included in the chart are amalgamated into one or more categories. Data have been included wherever possible on numbers of cases, but, given data limitations, the information in this chart should not be taken as accurately representative of the volume of cases on any given matter. All data are for the 2000-2001 fiscal year except Ontario's, which is for the 2000 calendar year.

<sup>§</sup> Data for Manitoba do not include certificate-equivalent cases. The 12 poverty law certificate-equivalent cases in 2000-2001 are not broken down by separate legal issue.

<sup>#</sup> Data for Quebec refer to the number of applications received, not the number of cases granted coverage.

<sup>%</sup> Data for the N.W.T. do not include Native Court worker or presumed eligibility cases.

Ontario and Quebec are the only provinces that offer full poverty law programs.<sup>164</sup>

### High-use services

In most provinces, income and housing are the areas where there is the greatest demand for services, while in Alberta, accident compensation tops the list.<sup>165</sup>

### 7.3 The different faces of poverty law

Poverty law is structured differently from province to province. Here are some examples:<sup>166</sup>

- Winnipeg and Manitoba have specialized offices that provide advice on poverty law;
- Nova Scotia and Halifax have a staff lawyer to advise clients;
- The Northwest Territories have aboriginal paralegals to advise people in remote areas; and
- Ontario also has paralegals located in remote areas to counsel clients.

#### Two levels of service

In the community sector, there are usually two levels of poverty law services.<sup>167</sup>

The first level is a basic service. Preliminary information or referral to another agency is offered during a brief consultation by telephone or in person. There are no eligibility requirements for this level of service, and the advice is general rather than personalized.

The second level is personalized and provides such services as client representation, telephone calls on the client's behalf, drafting of letters, research, accompanying the client to meetings and self-help support.

Some plans limit the number of hours of help a client can receive. In Ontario, a client can receive only two hours' worth of services. Some provinces also apply eligibility criteria for access to more complete services.<sup>168</sup> Appendix II gives more details on eligibility procedures.

#### Who provides services?

With the exception of the Northwest Territories, legal aid staff serve clients. Some provinces, such as Manitoba and Nova Scotia, have staff lawyers, and some have other professionals, such as legal technicians and community justice workers. In Ontario, staff lawyers are supported by paralegals who provide legal advice.

The Northwest Territories issue legal aid certificates to private sector lawyers for legal counsel.

In Alberta, where there is no official program to provide legal advice, it is possible to receive limited advice from private-sector lawyers in the preliminary stages of a case, conditional on the client's eligibility. This poverty law service is not an official division of legal aid, and is offered on a case-by-case basis.

Nova Scotia has one staff lawyer specializing in poverty law. The strategy is to target test cases so that the majority of people will benefit despite the scarcity of human resources.<sup>169</sup>

### 7.4 Cost of poverty law legal aid services

The following information is taken from *An Analysis of Poverty Law Services*.<sup>170</sup> The authors note that differences in how the data are grouped make it difficult to draw conclusions, so caution is advised in comparing plans.

- Manitoba: Twelve poverty law cases handled with the equivalent of a certificate cost \$5,219.
- Ontario: Total expenses for legal aid clinics are the only figures available: \$38,259,000, or 17.3% for 1999-2000.

- In Nova Scotia, 15 cases for clients receiving full poverty law service cost an average of \$17,069.
- British Columbia: Before the cessation of the poverty law program, legal representation accounted for 92% (\$8,550,381) of the poverty law budget (\$9,335,000).

### **7.5 Some successful experiments**

The main challenges in most areas are funding and incomplete service coverage. Demand for services is rising as funding falls.

Alberta and Quebec consider their service coverage to be reasonably comprehensive. Still, the client must be proven to be eligible by a means test and the case must be well founded in the law.<sup>171</sup> Quebec considers its geographical distribution a success.

The community orientation of programs has had positive results for the provinces and territories. The community clinic formula is an effective way to reach such objectives as community development. Professionals consulted in Ontario to analyze poverty law believe that it would be helpful to expand the community clinic network. The community's capacity to respond to specific needs and provide all necessary legal advice is viewed as important. The personalized approach offered by community agencies is beneficial.<sup>172</sup> Community employees' experience in poverty law is vital, according to one expert.<sup>173</sup> In Ontario, the community legal clinic network is seen as providing service access to a greater number of people.<sup>174</sup>

It is noteworthy that British Columbia has had no program in poverty law legal aid since the government eliminated it. The province had had one of the most comprehensive networks of legal aid services in poverty law,<sup>175</sup> with regional, community and aboriginal offices, information services, referrals to other services, legal advice and legal representation. It would be interesting to study this program in greater depth as a model of service delivery.

## **8. Legal aid: suggested strategies and options**

### **8.1 Debate surrounding the best service delivery model**

One strategy for countering the legal aid crisis is to rally public opinion and create political motivation. For that, a new vision for legal aid is needed – a vision with the prime objective of providing access to justice. New ideas and an openness to new ways of doing things is needed. It is equally important to provide more funding for legal aid in parallel with that reform.<sup>176</sup>

Finding efficient and economical ways to achieve the objective of access to justice has been a subject of intense debate in this country for 20 years.<sup>177</sup> Essentially, it involves an ideological clash between the different service delivery models. The outcome of the ongoing debate, though never really settled, has resulted in the realization that it may be possible to fashion a service delivery model that would include the best of both worlds – a complex mixed model. It is composed of two traditional models plus some innovative options for service delivery.

The new discourse revolves around the search for customized options built on the constitutional and policy requirements for an equitable program<sup>178</sup>.

### **8.2 The Canadian Bar Association position**

The Canadian Bar Association has launched a number of initiatives designed to boost public awareness and make governments more aware of the consequences of cutting budgets for access to justice in Canada. Here is a sampling.<sup>179</sup>

- Data published by the Institute on Family Violence in British Columbia;
- The second phase of the Prince Edward Island social justice project;
- A June 2002 report by the Manitoba Association of Women and the Law on women's rights to legal representation;
- An invitation to other groups working in the sphere of legal aid to team up with the Canadian Bar Association to circulate information to the media on the impact of legal aid cutbacks;
- Compiling anecdotes as part of a test case strategy. The case launched in June 2005, which was based on extended access to legal aid for the poor, was rejected. The Canadian Bar Association is appealing the decision.<sup>180</sup>

The Canadian Bar Association believes that legal aid is in crisis and that it is high time to reform the system. The CBA has put forward constructive solutions designed to deal with the crisis, reiterating the need to inject more funding into the program. Specifically, the CBA recommends that consideration be given to more economical and efficient forms of service delivery, based on the following philosophy:<sup>181</sup>

1. A client-centered approach;
2. A more flexible approach;
3. The complex mixed model for service delivery;
4. A commitment to accept new approaches to service delivery.

### **The complex mixed model and graduated levels of services**

The complex mixed model leads to “graduated levels of services” in the early stages of legal matters. Some legal problems do not require legal representation and are not adversarial.<sup>182</sup> Such graduated services might include phone calls, letters, some summary advice or information, assistance in filling out a form or court document, a referral to a non-legal service provider,

support in bringing together a group to solve a common legal problem, law reform initiatives designed to help low-income people, and assisted self-representation.<sup>183</sup>

Even in litigious matters, complementary levels of service can always be offered, such as internal investigators, paralegals and community legal workers.<sup>184</sup> Many problems can be settled in just a few hours; however, options need to be judiciously identified depending on the complexity of the situation.<sup>185</sup>

### 8.3 The various models for service delivery in Canada

As noted above, the debate on how to provide access to justice in an efficient and economical manner has been a refrain in Canada for the past 20 years. The major models on which the debate has been based fall under three headings:

1. **the Judicare system:** this primarily involves private practice lawyers who are remunerated at a rate negotiated with legal aid. Legal aid certificates are issued or paid for through service contracts. Clinics are an extension of this model.
2. **the duty counsel or staff lawyer system:** this involves full-time staff lawyers who are hired by legal aid to work in the areas of the law served by each regime. Private practice lawyers may be retained as needed, for example in cases where there is some conflict of interest.
3. **the mixed system:** this is a combination of the two systems. The complex mixed model (see below) is the model that is emerging and evolving.

Initially, community legal clinics serve as an extension of the legal aid model, but they are sometimes considered to constitute a fourth category. As discussed above in the poverty law section, there are various possible structures. Clinics are independent, non-profit bodies, funded by the legal aid regime that provides services, primarily in poverty law in Canada (welfare or income support, landlord-tenant disputes, workplace accidents, compensation for victims of criminal acts, and matters related to refugee status and immigration).

The model that emerges from the debate on the best model for service delivery is the **complex mixed model**. The mixed model continues to evolve. Community clinics are considered an option that can be built into the complex mixed model.

### 8.4 Debate about the “best model” and what women need

The debate on the best model for service delivery that has continued over the past 20 years in this country has not reflected women’s needs. Legal aid has been analyzed from a uniform perspective that meets men’s needs more by making criminal law the priority.

Such factors as heterogeneous clientele, culture, age, mental capacity and geographic location have yet to be fully integrated into the analysis of legal aid.<sup>186</sup> These factors interact in women’s lives, creating both legal and social problems. Addario points out that eligibility factors should reflect women’s needs. We should consider how vulnerable women are in these situations with their experience, often as victims of discrimination, due to their age, culture and citizenship.<sup>187</sup>

According to Buckley<sup>188</sup>, the best delivery model for extending service coverage and improving accessibility is the complex mixed model. As we will see, innovative options for service delivery, such as public education, extended duty counsel, supervised paralegals and community legal clinics, can be built into that model. This table illustrates the various models:<sup>189</sup>

Table 7

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<b>Province/Territory</b>	<b>Primary delivery model<sup>1</sup></b>
Newfoundland	Staff
P.E.I.	Mixed – Judicare
Nova Scotia	Mixed – Staff
New Brunswick	Mixed – Staff
Quebec	
Mixed	
Ontario <sup>3</sup>	Judicare
Manitoba	Mixed – Judicare
Saskatchewan	Staff
Alberta	
Judicare	
British Columbia	Mixed – Judicare
Yukon	Mixed – Staff
N.W.T.	Mixed – Judicare
Nunavut	Mixed – Staff

Excerpt from *A Profile of Legal Aid Services in Family Law Cases in Canada*.

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

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

In 2002, Alberta was in the process of setting up a pilot project for family law offices, with 12 lawyers offering legal aid services for family law matters in Edmonton and Calgary.<sup>190</sup>

Options for innovative service delivery have been studied in many jurisdictions. The objective is to make legal aid more accessible to vulnerable individuals, while preserving a good cost-effectiveness ratio. We will take a further look at these options in section 8.10, *Innovative options to be built into the complex mixed model*.

## **8.5 The complex mixed model: a goal to aim for**

The complex mixed model concept has emerged as the preferred model. As noted above, although the debate is not yet settled, we are seeing the emergence of this concept to unanimously positive reviews.

The literature shows that there is a consensus in favour of this more flexible, client-centered approach, and the inclusion of a multidisciplinary philosophy, which holds that service delivery should offer a range of options adapted to legal and non-legal problems.<sup>191</sup> The addition of service options to the mixed model turns it into a “complex” mixed model, with the goal of adding as many options as possible to create a more sophisticated and complete model.

### **8.5.1 Complex mixed model for service delivery to extend service coverage**

The complex mixed model for service delivery appears to be the best way of expanding service coverage.<sup>192</sup> In concrete terms, extending service coverage means extending mechanisms for service delivery, such as public education, extended duty counsel, supervised paralegals and

community legal clinics, and so on. This approach may help to shrink the gap between clients who have access to service and clients who have no access to legal aid and no other alternative.<sup>193</sup>

Currie describes the complex mixed model as follows:

*“The traditional concept is a simple mixed model, as distinguished from what may be termed the complex mixed model. A complex mixed model is an integrated set of delivery modes (staff lawyers, private bar lawyers..., expanded duty counsel) and structures (clinics) that are targeted at specific service delivery problems. The components of a complex mixed model will vary from one jurisdiction to the next depending on the circumstances specific to that place. The specific components that are employed are essentially incidental. The essential element to the complex mixed model concept is the utilization of a range of delivery modes matched to specific delivery problems.”*<sup>194</sup>

The Canadian Bar Association calls this concept “a client-centered approach to legal services delivery,” describing it as a panoply of services that can be offered other than being represented in court. Sometimes other professionals can provide such services as mediation to settle a dispute, educating the public on legal matters, or paralegal services. Paralegals can help clients by decoding legal documents and explaining the legal process, with a lawyer providing the necessary legal advice.<sup>195</sup>

The Ontario Legal Aid Review<sup>196</sup> lists what should be included in a complex mixed model:

1. continued significant reliance upon Judicare;
2. the development of a series of staff offices;
3. expanded duty counsel services;
4. increased use of non-lawyer professionals and public education materials;
5. a sophisticated intake and case-assessment function;
6. effective coordination with other services; and
7. a case-management and quality-control program for services provided by both staff and private bar.

British Columbia set up a similar model, known as the *Family Case Management Program*, in 1994.<sup>197</sup> The province is regarded as an example, since “...legal aid services are tailored to meet clients’ needs, rather than clients fitting into existing services and approaches.”<sup>198</sup>

In fact, B.C.’s *Family Case Management Program* approach involves regular file evaluations and filling both legal and non-legal needs. Clients may be redirected to other departments at any stage in the process, e.g. for counselling or mediation. Since setting up the program, British Columbia has cut staff and made changes to the family law services offered.<sup>199</sup> It would be interesting to take a closer look at how the cutbacks have affected the program in practice.

Alberta, which used to have a service delivery model primarily consisting of private-practice lawyers, is moving towards a mixed model and now uses duty counsel for family law cases.<sup>200</sup>

Manitoba, which operates under the duty counsel model, has encountered obstacles in the shift from the complex mixed model, such as a shortage of private-practice lawyers, union contracts that set limits at this level, and provincial labour legislation that also imposes limits.<sup>201</sup>

Ontario conducted an intensive experiment with the complex mixed model through 15 pilot projects in 1996.<sup>202</sup> The experiments took place in the areas of family, criminal, young offender and immigration law. Services included in family law legal aid during the project were: the addition of internal law offices, extended duty counsel and separate service provision.<sup>203</sup>

## **8.6 Integrated reform to the justice system**



Buckley notes the importance of studying how best to integrate legal aid models into the justice system. She cites the conclusions of the legal aid evaluation in Nova Scotia, which also recommended that legal aid policies be developed based on a philosophy of integrating reform into the justice system. Improving communication between the various components of the system and legal aid would make the justice system more efficient, Currie feels.<sup>204</sup>

This recommendation is in line with the conclusion reached by the Ontario Legal Aid Review that “*legal aid reform divorced from larger issues of justice reform is doomed to failure.*”<sup>205</sup>

It is becoming increasingly important for legal reform to be part of a continuum and for the impact of this reform to be properly studied prior to implementation.<sup>206</sup> A concrete example of lack of vision in the reform of the justice system is the implementation of support guidelines by the federal government. The guidelines were intended to reduce litigation, standardize cases and reduce the cost of delays. However, the lack of vision in the reform meant that parents in many jurisdictions are not eligible for legal aid and cannot benefit from it as a result.<sup>207</sup>

The lack of vision and continuity in legal reform has also had a major impact on the confidence of people who are dealing with the justice system.

### **8.7 Guiding principles for improving the management of resources**

The following principles, which were developed while researching a document called *From Crisis to Reform: A New Legal Aid Plan for Ontario*,<sup>208</sup> meet the Ontario government’s objective of improving management of financial resources.

When cutbacks involve program evaluations in response to various legal requirements, it is crucial that service delivery be well organized, in accordance with the following principles.<sup>209</sup>

- **Delivery models tailored to clients’ needs:**

The service delivery model must be designed to be flexible and have the capacity to respond to a range of needs and priorities in terms of services. The concept of early intervention must be applied in service delivery.

- **All services must be delivered as efficiently and economically as possible:**

The cost-effectiveness ratio must be a priority where there is a budget ceiling.<sup>210</sup> Savings in some sectors may be used to improve services in other sectors.

To maximize the cost-effectiveness ratio, some services can be redirected to suppliers that are less costly and equally efficient. This principle requires a sound assessment of services that can be redirected to test cases, or adopting reforms from the justice system or other measures that can have an impact on groups of individuals.

It is important for managers to have access to empirical data on the costs, quality, operations and impact of alternative service delivery, and to conduct research designed to elicit such data on an ongoing basis. Experimenting with alternative services is also worthwhile.<sup>211</sup>

A preoccupation that one lawyer consulted in the writing of this document shared concerned the quality of service and the risk of creating a two-tiered system. When low-income clients are directed to alternative type of services, do they have less access to legal counsel from a lawyer?

### **8.8 Choosing innovative options to include in the complex mixed model**

Several provinces are studying innovative approaches to bridge the gaps that exist in service delivery. These methods are designed to extend coverage of legal aid services to a greater

number of people. Most of the options presented below are recommended by the Canadian Bar Association. We will note how certain options do not meet women's needs.

### **8.8.1 Global funding for legal aid cases (block contracting)**

This program provides global funding for a fixed number of cases through a bidding process.<sup>212</sup> The law firms that are chosen take on a fixed number of cases for a fixed fee. According to the Canadian Bar Association, the main advantages of this approach are reduced administrative costs for legal aid and a more predictable caseload. Canadian experience shows that this method can save money.<sup>213</sup>

Some authors have concerns about the efficiency of this alternative. In the United States,<sup>214</sup> experience has shown that contract lawyers put less effort into cases, run fewer jury trials, present guilty pleas more often, and do not use investigators or expert witnesses. Less time is also spent per case.<sup>215</sup>

Administrative costs for the program are also higher than initially anticipated and the program is more complex. In addition, with fewer firms than expected bidding for the contracts, prices for legal aid services have actually risen rather than declined.<sup>216</sup> Given that certain regions of New Brunswick have problems getting access to private practice lawyers for family law cases generally, this will have to be taken into account in the selection of a delivery model.

### **The Canadian experience**

This approach was first introduced in Manitoba in 1992. The project, Portage Legal Services, was a success in terms of cost-effectiveness, especially for services in rural areas or sparsely populated areas. The project has continued, and administrators believe that there have been considerable savings, although no formal evaluation has taken place.<sup>217</sup>

#### **British Columbia**

The young offender and adult criminal legal aid divisions currently follow this model in British Columbia. Savings of 19% have been achieved compared to the traditional model of private bar delivery. One noteworthy fact: there were no problems with attracting experienced lawyers to deliver quality service in B.C. compared to other regions.<sup>218</sup>

### **8.8.2 Expanded duty counsel services<sup>219</sup>**

Traditionally, duty counsel are available for clients who do not have a lawyer on the day of their first appearance in court. Duty counsel advise clients and help them to understand legal proceedings, serving 30 to 40 clients a day.

The new approach is intended to "expand" this service. The role of the lawyer has changed, with new tasks including intervention for eligible clients from the start of proceedings, not just the first day in court. The objective is to settle out of court and avoid trials where appropriate. The number of lawyers playing this role has also risen.

Currie believes that this method is a money-saver.<sup>220</sup> However, cases to be handled in this way cannot be too complicated, and the principle of early intervention must be applied. Duty counsel can settle relatively simple cases in a week or two. Cost savings for this efficient option are comparable to savings for the certificate system.

When we look at this option from the perspective of women's needs, it is important to note that there are some risks. Limited legal representation can lead to the compartmentalization of problems, which, as discussed above, can mean that not all of the women's legal needs are addressed and they often find themselves in an intractable dispute. Women's economic security is frequently compromised when, for example, division of property is not considered an urgent situation.<sup>221</sup> Will the case be transferred to another legal aid lawyer for unresolved issues?

Some authors have noted that lawyers are increasingly reluctant to offer limited services since they feel that they are not representing the client properly and there is a risk of being sued for not fulfilling their responsibilities.<sup>222</sup>

## **Manitoba**

The Manitoba experience since 1994 involves duty counsel playing an “expanded” role by handling fairly straightforward criminal cases. If the matter goes to trial, it is transferred to a regular staff lawyer or a private bar lawyer. If the outcome is a guilty plea or stay of proceedings, the matter is handled entirely by duty counsel.<sup>223</sup>

### **8.8.3 Early intervention strategies<sup>224</sup>**

This strategy involves providing legal aid from the start of legal proceedings with the objective of reducing complications due to delays or sluggishness in the system, thereby promoting the resolution of problems from the beginning of the trial.

The Canadian Bar Association concludes that providing representation right from the start promotes out-of-court settlements and improved relations.<sup>225</sup>

Most new initiatives in legal aid service delivery are based on the principle of early intervention to avoid the deterioration of relationships, which makes cases more difficult to settle.<sup>226</sup>

It is also generally agreed that when it takes too long to settle a case, there is some risk of the situation deteriorating badly. For example, there have been situations where children have been kidnapped, the ex-spouse’s property destroyed, child support payments stopped, or a parent has refused to return the children’s toys and personal effects.

According to one intervener who works with women, the wait time gives violent men power. Often, the woman victim of violence becomes increasingly worn out, stressed and poor and feels guilty that she has placed the children in a situation of poverty and emotional distress. They often come to question their decision to leave and even to change their mind.<sup>227</sup> On the other hand, early intervention has the effect of empowering vulnerable women. The power imbalance is somewhat corrected by recognition of the importance of the woman’s rights.

Early intervention has proven to be extremely effective in Holland. The Dutch model places the emphasis on early identification of appropriate service options to foster swift and efficient settlements. Considered probably the best system in the world, the Dutch legal aid scheme spends only \$4 per capita on legal aid compared to the rate in Ontario, which spends \$11 per capita.<sup>228</sup>

### **8.8.4 Service links<sup>229</sup>**

The Canadian Bar Association notes that “this model addresses the lack of access to justice that some citizens face because of a lack of access to services to meet their basic needs.”<sup>230</sup> Referral to social services, such as recreational activities and employment counselling, may help to prevent youth crime, for instance.

This model also offers counselling and mental health assessments to assist with underlying personal problems that may be at the root of legal problems.<sup>231</sup> The need to offer such services was mentioned by resource people consulted in the writing of this paper.

This option addresses a recommendation made in a New Brunswick study on obstacles to legal aid for women victims of violence. The unanimous conclusion was that women need support, particularly with counselling and service coordination.<sup>232</sup> Violence is known to cause victims temporary confusion, so that they may have trouble understanding and following court

proceedings. Women's mental status is frequently compromised by violence, but the situation is generally temporary.

### **Alberta**

This experiment took place in Alberta under the Youth Staff Lawyers Offices program in Calgary and Edmonton, which offered support services to youth who were scheduled to appear in court, such as childcare and public transit passes to get to the courthouse.<sup>233</sup>

#### **8.8.5 Assisted self-representation**

The Canadian Bar Association describes this option as follows: *"This model combines public legal information services with summary legal advice. For instance, an eligible client might be loaned a videotape to screen and given print materials to read and then could see a lawyer for a limited time to get advice. For example, to review a child support and custody agreement."*<sup>234</sup>

This option is considered an alternative for those who are not eligible for legal aid, since legal aid cutbacks have disqualified more and more people from access to legal aid.<sup>235</sup>

One study showed that most of the people who chose this alternative were men. Women seem to be more easily intimidated by the justice system,<sup>236</sup> Women have two options: to go back to live in an abusive situation and maintain an acceptable standard of living for their children, or leave and live in poverty, giving up their rights<sup>237</sup> to division of property or child support.

Family law is increasingly complex, and more difficult to follow for women who have not had the opportunity to pursue their education. A New Brunswick study revealed that one obstacle to legal aid for women who were victims of violence was the lack of application forms in straightforward language.<sup>238</sup> If a large majority of women are unable to understand the vocabulary used on application forms, we can deduce that similar obstacles will arise in the self-representation process. Most intervenors consulted in the writing of this document recommended against this option. One intervenor said she could not think of one of her clients who would be able to defend herself in court.

Another obstacle vulnerable women are likely to encounter is being obliged to request a review of a custody or access order because a violent ex-spouse is using the order or agreement to continue to control and harass her.<sup>239</sup> A B.C. study on the impact of legal aid cutbacks found that judges are increasingly demanding when it comes to presentation of evidence and that orders and reviews must be formulated in a specific way to be enforceable.<sup>240</sup> This makes self-representation an even more unrealistic choice for some women.

### **British Columbia**

The self-representation model in British Columbia<sup>241</sup> involves distributing booklets informing clients who are not eligible for legal aid how to defend themselves against a criminal charge. The results of the experiment showed that the material did not effectively prepare clients to defend themselves, but the material was useful in other ways, such as alerting clients to the seriousness of their situation.

### **Ontario**

A pilot project in Ontario<sup>242</sup> includes an "Unbundled" Family Law Services Project. Applicants are offered a few hours of services to get advice and support in drafting documents and learning how to represent themselves.

Here again, women are having to deal with the compartmentalization of problems, since not all legal needs can be addressed in two or three hours of legal advice. As a result, women's financial security is jeopardized if the issue of property is not settled through legal aid.<sup>243</sup>

## **8.9 Experiments with innovative community-based options**

### **Prince Edward Island**

The establishment of a Family Justice Centre was recommended in the Ross Report (1999), based on the assumption that legal aid would be available for all low-income families for family law issues.<sup>244</sup> The triage model was chosen for family law service delivery, along with non-adversarial methods of dispute resolution. The government ratified the project after changes were made, but the report has yet to be implemented.<sup>245</sup>

### **Alberta**

A pilot project was implemented in Alberta to establish two family law offices, with staff lawyers to improve access to justice in a cost-effective way. The philosophy was to practice law in a holistic way, working with community organizations to help clients obtain non-legal assistance. Each office also has a social worker and support staff.<sup>246</sup> A New Brunswick study addressing women's needs and legal aid also recommended that there be a social worker for each region to support women victims of violence who have legal problems.<sup>247</sup>

### **Nunavut**

Nunavut has concluded that a non-court based system is the best way to address family law issues, based on a community approach.<sup>248</sup> The Nunavut Department of Justice, with the support of the federal government, is training mediators to work on family law issues in accordance with Inuit principles, recognizing the social and cultural uniqueness of Nunavut.

### **British Columbia**

British Columbia is testing the issuance of limited referrals to provide up to three hours of legal service for family law clients. Staff lawyers in four communities provide services, and a family law website provides legal information, guidance on how to complete forms, training tools discussion groups, and community resource lists.<sup>249</sup>

## **9. Cost-effectiveness of service delivery models**

### **Lack of data in family legal aid**

It is difficult to evaluate the cost-effectiveness of each model in family legal aid, primarily due to the lack of data in this domain.<sup>250</sup> Certain authors state that the complex mixed model can be the most economical and efficient one if a system of monitoring quality and volume of cases is put in place.<sup>251</sup>

The data that do exist regarding costs and benefits of each model are in the sphere of criminal law. Since family law is very different from criminal law, we do not yet know to what extent these data can be applied to family law.<sup>252</sup> When children are involved in a conflict, the legal problem takes on an emotional dimension that frequently influences judgment and actions. The relationship needs to continue because there are children, and various questions must be settled, such as custody, support, the matrimonial home and the division of assets. The combination of legal and emotional dimensions makes the settlement process slow and complicated.<sup>253</sup>

A summary of annual reports prepared by administrators for legal aid programs in Canada revealed that the choice of model does not necessarily provide any guarantee of balance in the provision of family legal aid services.<sup>254</sup> The analysis showed that in Ontario in 1997, only 6% of approved cases were in the area of family law and social law. In Quebec in the year 2000, a better balance was achieved, with 19% of cases in civil law and 29% in family law.

### **Cost of services**

Factors that influence the cost of delivery of legal aid services are essentially the growing population, other demographic changes that affect the number of applications, inflation, the availability of lawyers, legislative changes and changes in legal procedures. Factors may be classified as socio-economic factors, factors related to the justice system, and factors related to legal aid.<sup>255</sup>

#### **9.1 Controlling the cost of services**

Where rising costs for legal aid can be explained by the cost of service delivery, cost-reduction strategies are recommended, such as broadening the role played by paralegals, the use of conflict resolution methods, and global funding for court cases.<sup>256</sup> Cost control measures can also focus on criteria for eligibility and service coverage.

With the rising cost of legal aid in Canada, major sponsors, i.e. governments, have adopted budget containment measures. Legal aid budgets are no longer determined by the needs of the population; instead, demand is limited to a scrupulously contained budget.<sup>257</sup>

Priorities are set for service delivery, and criminal law takes priority, at the expense of family law. Methods that include shrinking service coverage, setting up new and more rigid eligibility criteria, reducing lawyers' fees, and seeking other sources may be adopted. The discussion is increasingly focusing on delivering services to the greatest possible number of people. Consequently, we must address the issues of clients' needs, service coverage, service quality and strategic use of limited resources.<sup>258</sup>

The choice of delivery model has been shown to be a key factor in the choice of legal aid services.<sup>259</sup> Currie concludes that the duty counsel model is the most economical way to provide legal aid services in criminal cases. However, he notes that for other areas of the law, such as family legal aid, the reality is very different:

*“The conclusion that staff lawyer delivery of criminal legal aid can be less expensive, and with no compromise to quality of service is well established. Other areas of service delivery are different from criminal legal aid, however. For example, family law cases are not so structured as are criminal cases. The issues in a family law dispute may be more complex and emotionally charged. Family law cases may be more protracted as disputes evolve over time. Legal matters in other areas of civil law would also be different from criminal law matters. The conclusions from the research in criminal legal aid delivery may not be generalizable to other areas, or at least all aspects of those types of service.”<sup>260</sup>*

The results of an evaluation in five provinces using lawyers from the public sector as well as duty counsel showed the use of duty counsel to be less expensive than referrals to lawyers from the private sector.<sup>261</sup>

Currie concludes that it is important to proceed with further research comparing the cost-effectiveness of the duty counsel vs. Judicare delivery in areas other than criminal law. In fact, the results of evaluations in the criminal law sector cannot be transposed directly to family law.<sup>262</sup>

### **Controlling the costs and risks for women**

The rationalization approach to cutting the cost of legal aid may work to the detriment of women. Financial eligibility criteria may be so rigid that only the poorest of the poor are eligible. Rigid criteria are frequently due to budget cutbacks, as was observed in British Columbia.<sup>263</sup> For example, a woman with children who works half-time and receives some child support from her ex-husband would not be eligible, as her income would be considered “too high.” Another example comes from Manitoba, where a woman with a low-income job was turned down as her income was deemed to be “too high.”<sup>264</sup> Most of the time, these women do not have the means to retain a lawyer in private practice.

## **9.2 The most economical model for family law**

Most authors<sup>265</sup> consider that the most economical model for family legal aid would be a Judicare service delivery model. Currie tends to agree but recommends further research and highlights the problem of availability of a sufficient number of private practice lawyers.<sup>266</sup>

Newfoundland and Labrador met with this problem<sup>267</sup>. After having implemented a mixed model, they had to change to a model with internal lawyers only because of not having access to a sufficient number of private lawyers.<sup>268</sup>

Does this situation mean that, from the perspective of women’s needs, the duty counsel model is currently the most appropriate model? Currie says yes.<sup>269</sup> A New Brunswick study showed that women have a great deal of difficulty finding a private practice lawyer who is willing to take a family law case.<sup>270</sup> The availability of private practice lawyers for family law will continue to be an obstacle until the situation is righted.

We noted that a summary of annual reports prepared by administrators for legal aid programs in Canada revealed that the type of model is not a guarantee of balance in the provision of family legal aid services<sup>271</sup>

The inclusion of duty counsel in the complex mixed model is an important factor in controlling costs. Costs are more predictable in the segment of the model that uses duty counsel compared to a model based solely on Judicare. In addition, permanent staff can play a role in monitoring services, as their presence is stable and they have developed some expertise in handling legal aid cases.<sup>272</sup>

Some authors note that using the Judicare model exclusively may create a situation in which there are no other alternatives for service delivery when problems arise. The fact that the two models are competing on the market may also have a stabilizing effect on costs.<sup>273</sup>

Another factor to consider is flexibility in case management. For example, when duty counsel are overloaded, there is always the option of calling in lawyers from the private sector.<sup>274</sup>

Modified service delivery implies judicious management of specialized legal services so that specialists are assigned to appropriate cases and are available.<sup>275</sup> It is essential that to make the best possible use of costs and resources, the complex mixed model be accompanied with methods of monitoring both quality and quantity.<sup>276</sup>

### **An integrative approach**

Certain authors remind us that even if the service delivery model were the most efficient, the justice system and legal aid must be seen as a whole.<sup>277</sup> Procedures and policies for the operation of the justice system must be developed in consultation with legal aid in order to identify the impact and costs of changes.<sup>278</sup> An examination of legal aid in Nova Scotia found the same phenomenon. An integrative approach is recommended.<sup>279</sup>

### **9.3 A vision for New Brunswick: a hypothetical model for discussion**

In New Brunswick, the delivery model for family legal aid and criminal cases is a mixed model. The mixed model is a combination of two basic models, duty counsel and private practice lawyers. New Brunswick, which uses the mixed model, has a platform that is conducive to integrating innovative options that typify the complex mixed model. As noted above, the complex mixed model may be the ideal for extending service coverage.<sup>280</sup>

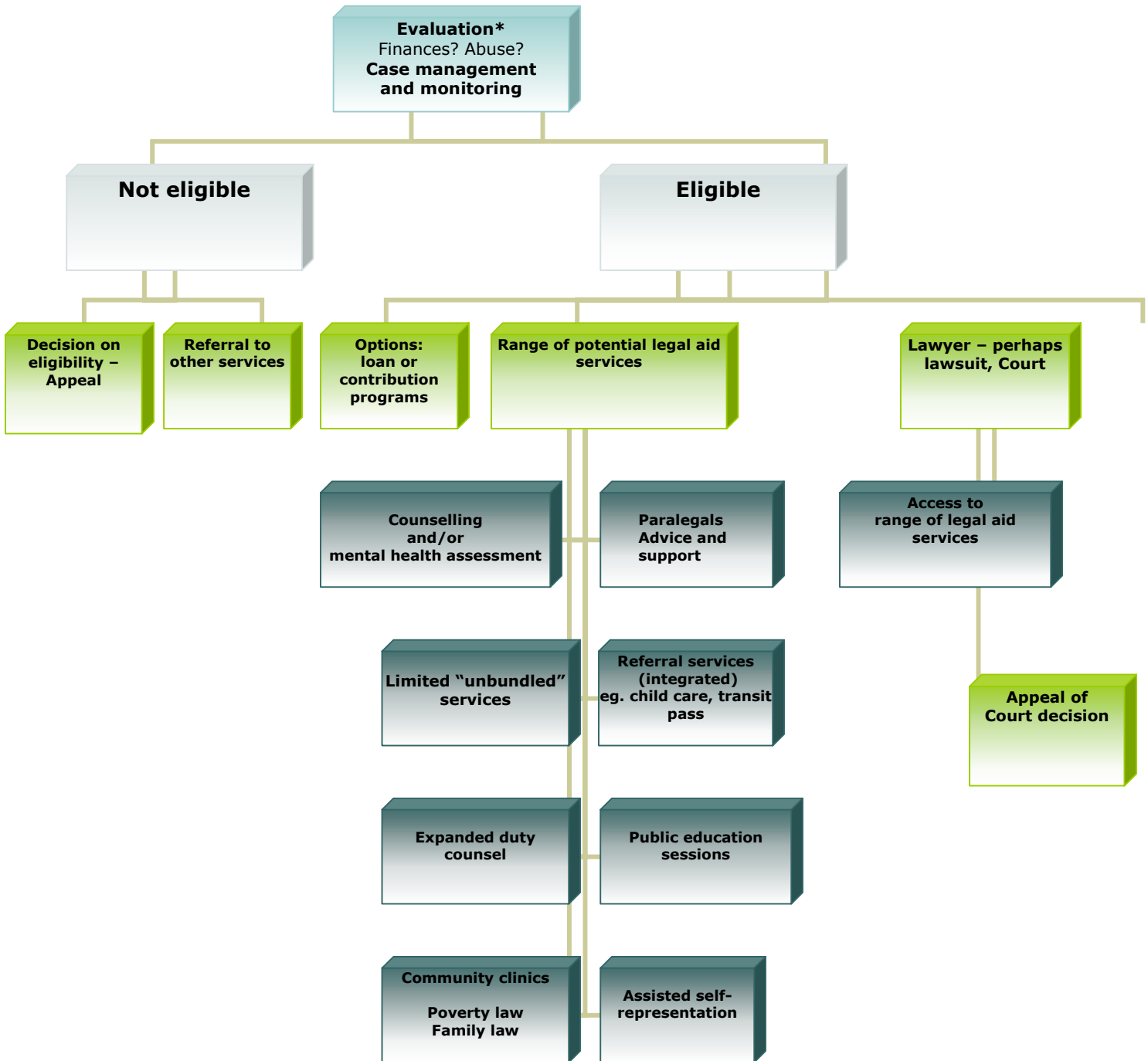
In studying the structure, it is important to ensure that new integrated service options complement existing services. We must avoid any duplication. A process of reflection, consultation and planning is crucial if we hope to achieve an integrated system adapted to the current structure.<sup>281</sup>

Among the strengths of the complex mixed model is the variety of service providers clients have at their disposal. However, assessing clients' legal and non-legal needs is a painstaking process, and must be re-evaluated along the way to ensure that the right service has been recommended to ensure an effective and appropriate outcome for the case.<sup>282</sup>

A hypothetical structure has been designed, based on existing services in New Brunswick, to stimulate discussion. We present the structure here with the goal of making it easier to visualize the concept of the complex mixed model integrated into an existing structure.



## Discussion tool Hypothetical delivery model - Complex mixed model



\* A resource person who was consulted in the writing of this document said there is a need for more than one point of entry for evaluation of eligibility: one for evaluation of eligibility because of the presence of violence and one for income assessment.

Examples of important questions to consider in the evaluation of eligibility and needs:

1. Is this person a victim of violence?
2. Does this client meet the financial eligibility criteria?
3. Is the victim eligible for a contribution plan?
4. Is there some chance of conflict resolution, such as mediation and conciliation, short of a lawsuit?
5. Is the case sufficiently complicated that it requires an experienced lawyer or expertise?
6. Is the case a routine, uncomplicated matter that could be handled by a junior lawyer?
7. Would it be more efficient to enlist the help of a paralegal?
8. Does the client need a mental health assessment or counselling before or during the resolution process?
9. Does the client need support, e.g. transit passes or child care, to appear in Court?
10. Could this problem become a test case?
11. Is there any possibility of referral to other services in the community?
12. Could the client benefit from group sessions on certain subjects, e.g. legal training, parenting skills?

It is important to apply the concept of the *Family Case Management Program*. Files should be reviewed on a regular basis to assess legal and non-legal needs. Clients may be redirected to other services, such as counselling or mediation, at any stage. The key is for services to be wisely chosen based on the complexity of the case and effective resolution. British Columbia applies this concept.

#### **9.4 Tools and questions to be considered in the choice of options**

The development of certain tools should be considered in order to facilitate the implementation of new mechanisms, including the following:<sup>283</sup>

- Tools for evaluating legal and non-legal needs
- Tools for analyzing statistics and findings
- Best-practice tools
- Guidelines that spell out steps to be taken and mandates for each staff member.

#### **Relevant questions relative to the Judicare structure of the complex mixed model**

First of all, the following decisions must be made in terms of the Judicare structure that is an integral part of the complex mixed model:

Will the case be billed by the hour or at a fixed rate for handling the file? What is the maximum number of hours per file? Do the rates reflect the complexity of the file, e.g. if specialization and expertise are required? Is a global funding method in place, or is there a bidding system for individual files at a fixed rate for private-practice lawyers?

#### **Relevant questions relative to the internal lawyer structure of the complex mixed model**

Some thought must also be given to the duty counsel part of the complex mixed model. The foundation must be laid, e.g. balancing the composition of the team. How many lawyers, paralegals and support staff are required? In terms of authority, who supervises whom in the chosen structure? Are staff hired directly by the Legal Aid Commission or is there a community clinic formula, managed by an independent Board of Directors elected by the community?<sup>284</sup> Does the community clinic offer general or specialized services?

The concept of a complex mixed model for service delivery requires good planning and important choices that go beyond the mandate of this paper.

The ultimate goal is to find the ideal combination of service options from the complex mixed model in order to ensure the best possible formula that meets the client's needs.

## Conclusion

To address the crisis in legal aid, we need to promote a new vision of legal aid, one where improving access to justice is the main criterion. We must be open to new ways of doing things. That does not reduce the need for better funding for civil legal aid.

## Recommendations

1. That the coverage provided by legal aid be extended to include more family law cases (such as support and custody issues) and poverty law issues. To this end, it is recommended that:
  - that innovative service options that are adapted to women's needs be introduced: community clinics, early intervention, referral to counseling, mental health assessment, employment counseling, etc.);
  - that a financial test based on the poverty line be considered with the goal of providing more legal aid services to more low and middle income persons;
  - that innovative financial options be developed, such as payment of a reasonable contribution to the legal aid cost, once appropriate tools have been adopted to evaluate ability to pay, with the goal of making legal aid services accessible to persons who have income above the poverty line but for whom hiring a lawyer would represent a financial hardship.
2. While priority should still be given to persons who are victims of violence, that civil legal aid services be provided to other groups in need.
3. That resource persons and intervenors who work with women in the community be consulted when developing and implementing new service options.
4. That additional human resources be allotted and that training be provided on the multidimensional aspects of women's problems, particularly women in violent situations.
5. That the coordination of services, the monitoring of case progress and the evaluation and monitoring of the quality of services be part of the administration of civil legal aid, and that statistics on requests approved, the reasons for refusal and the needs of clients be kept.

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## **APPENDIX I - ELIGIBILITY BY PROVINCE**

Excerpted from *Legal Aid Eligibility and Coverage in Canada*. Ottawa (Ontario), Department of Justice Canada, 2002.

**Legal Aid - Selected Indicators**

Province	Income definition	Family definition	Asset Test	Maximum income levels \$ (full and automatic eligibility)	Client Contributions	Expanded Eligibility	Administration fee	
	Net or gross		Personal exemption	1 person	2 people	3 people	Y/N	max \$ amount payable
(Criteria last updated)			Y	11,100	16,656	19,440	Yes	None.
British Columbia (2000)	Child tax benefit, family bonus, tuition and book fees, day care expenses, child support payments and alimony payments, court fines, medications, interpreter if need for court case	Family size	No set guidelines. But, if they can liquidate assets, they will be asked to do so	13,900	16,800	22,600	Yes	None.
Alberta (2001)	Gross income	Family size	No set guidelines. But, if they can liquidate assets, they will be asked to do so	13,900	16,800	22,600	Yes	None.
Contribution				21,500	27,300	29,400	Yes	None.
Saskatchewan (1997)	Child tax benefit, Sask Child benefit and Sask employment supplement	Family size (Their use of "family" can mean either a single or two-person family)	<\$1,500 for 1 person to a max of \$3,500 for families with 1 to 8 children	9420 (Unofficially: limits are interpreted liberally in N. Sask)	11,400	12,300 to 15,000	Yes	None
Manitoba (2000)	Child tax benefit	family size	All assets are assessed. Overall, Not more \$5,000 in liquid assets, \$10,000 for a car and \$35,000 equity in a home.	14,000	18,000	23,000	Yes	\$25
Partial contribution				16,000	27,300	29,400	Yes	Partial contributions are negotiated. Expanded eligibility requires full contribution.
Full contribution				23,000	27,000	31,000	Yes	
Ontario (1996)	CPP, EI, day care costs, support paid, Child tax benefit	Family size	Single person \$1,100 to \$2,500 for 3 people	7,212	12,900	13,644	Yes	None
Maximum limit				13,068	21,82	25,440	No.	None



Province (criteria last updated)	Income definition		Family definition	Asset Test		Maximum income levels \$ (full and automatic eligibility)			Client Contributions		Expanded Eligibility		Administration fee
	Net or gross	deductions		Y/N	Personal exemption	1 person	2 people	3 people	Y/N	Circumstances	Y/N	max \$ amount payable	
Quebec (1996)	Gross income	Child tax benefit, children's special allowances, family assistance, GST/PST tax credit, tax credit for care of elderly, Parental wage assistance benefits, social housing benefits	Family type. Consolidates the number of children to 2+.	Y	Two scales. Property: Applicant/spouse owner of residence \$90,000; not owner of residence \$47,500. Liquid assets: single person: \$2,500 and family: \$5,000	8,870	12,500	15,000	No	Not if below the first set of guidelines.	Yes	Fixed amounts between \$100 to \$800.	\$50 is charged to those who are eligible under a contribution. It is deducted from the amount owing in the end.
<i>Contribution</i>													
NB	Gross income	Child tax benefit	Family size						Yes	Case by case basis depending on whether the applicant has enough disposable income. They are "worked out" arrangements	No.		none
Nova Scotia (1998)	Gross income	Child tax benefit	Family type	Y	Case by case basis. Income is the primary factor in eligibility	12,804	16,992 to 17,088	20,400 to 20,496	Yes	The Commission can, if they feel that the applicant can contribute some amount.	No.		None.
PEI (2001)	Gross income		Family size	N	Can be asked to liquidate if needed.	14,176	17,720	22,037	Maybe	Case by case basis	No.		None
Newfoundland (1997)	Net income	CPP, EI and group insurance and pension. "Take home pay"	Family type and size	Y	Case by case basis.	4,716	5,808 to 6,492	6,324 to 6,960	Yes	When the area director determines the applicant can pay some part, they can enter into an agreement.	No.		None

## **APPENDIX II - LEGAL AID COVERAGE BY PROVINCE**

<b>Table 1: Legal Aid Plan Coverage</b>				
	<b>British Columbia</b>	<b>Alberta</b>	<b>Saskatchewan</b>	<b>Manitoba</b>
<b>Method of service delivery to general public</b>	<p>Mixed judicare, staff system.</p> <p>Structure and services: Staff offices and community law offices supplement services provided through the private bar. 44 offices throughout BC (branches, community law offices, Native law offices). Use of lawyers and paralegals. Community and Native law offices are independent of LSS. Duty counsel: available in most criminal courts. Some duty counsel for apprehension of children cases. Not generally available in family court. Precourt duty counsel for those in detention.</p> <p>Special services: Judicial Appeals, Native services, prisoners services, legal information services.</p> <p>Policies and procedures:</p> <p>Coverage: Coverage of both criminal and civil matters. Applications assessed by Area Director re: eligibility. (14 communities).</p> <p>Criminal: Likelihood of imprisonment, loss of livelihood, deportation. When an offence has</p>	<p>Primarily judicare services.</p> <p>Structure and services: Legal aid is provided through the Legal Aid Society of Alberta, under agreement with the Alberta Government and the Law Society of Alberta. No legal aid legislation. Provincial Office and 11 regional offices under the Northern and Southern Directors. Each regional office serves additional circuit points. Criminal Duty Counsel program in all locations (56). Duty counsel services in Edmonton and Calgary are provided through staff lawyers. Coverage is predominantly through judicare via certificate. Clients choose lawyer or Plan has a rotating roster. Two offices have staff lawyer.</p> <p>Policies and procedures:</p> <p>Coverage: Financial eligibility; federal indictable offences; summary offences where</p>	<p>Operates on staff-based model.</p> <p>Structure and services: Central office and 13 area offices. Commission reports to Minister of Justice. Pilot project duty counsel in Regina and Saskatoon. Brydges services through contract with private lawyer. No specialized programming.</p> <p>Policies and procedures:</p> <p>Coverage: Services provided in all matters only if case has merit.</p> <p>Criminal: All indictable charges; summary only if likelihood of imprisonment or loss of livelihood; coverage for all Crown-initiated appeals; coverage of other appeals if merit.</p> <p>Civil: Family matters: divorce, custody, access, child protection, maintenance, restraining orders, adoption. Appeals</p>	<p>Structure and services: Staff, duty counsel, private bar. Duty counsel services for criminal and civil matters provided by both staff and private bar. Staff lawyers provide legal advice and representation to individuals and organizations serving low-income people at community law offices; provide services to prisoners in penitentiaries through these offices. Other specialized offices, including Aboriginal Law Centre.</p> <p>Policies and procedures:</p> <p>Coverage: Criminal: Indictable offences; summary; provincial only if likelihood of imprisonment or loss of livelihood; appeals by Crown covered, appeals by person only case has merit and accused received prison term.</p> <p>Family law: Cost-benefit</p>

	<p>a mandatory prison term, person must select private bar lawyer. Victims and witnesses named in disclosure are covered if they need legal representation (in situations where counsel wants to see their personal records – counselling for example). Immigration issues covered.</p> <p>Eligibility: Financial and type of case. Repayments agreements for all or part of legal aid costs are possible.</p>	<p>conviction is likely to lead to imprisonment or loss of livelihood. Crown-initiated appeals of decisions in indictable matters mean automatic coverage for financially eligible.</p> <p>Accused-initiated appeals: coverage based on merit.</p> <p>Family and civil law: financial eligibility; case must be within jurisdiction of court, have merit or likelihood of success.</p> <p>Repayment agreements required if applicant's income falls within contribution range.</p>	<p>on family law matters are covered if the applicant remains financially eligible and there is professional merit to the appeal.</p> <p>Eligibility: If on social assistance, if financial resources equal to or less than what would be on social assistance, if private counsel would reduce financial resources to level of social assistance; if not receiving social assistance, may be asked to provide some of the costs.</p>	<p>analysis first, then if case has merit. Divorce, custody, access, child protection, restraining orders, maintenance and adoption, amicus services for children at request court. Other civil matters: Limited coverage if case has merit – motor vehicle, property, landlord-tenant, workers compensation, damage actions, wrongful dismissal, personal injury, social assistance, unemployment insurance. Refugee groups can get legal aid: matter stems from common concern, matter of public interest.</p> <p>Eligibility: Family income and family size under guidelines; considers both people's incomes/assets where spouse defined as two people living together in relationship of mutual financial support and dependency, regardless of the marital status. If person does not meet financial standards, can still obtain legal aid if retaining lawyer would mean having to dispose of principal</p>
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				residence or assets required to live. \$25 application fee for processing although some people will be exempted (social assistance). Where indicated, Legal Aid will provide service to those slightly above financial guidelines, with some or all repayment.
<b>Process for decision-making regarding service eligibility</b>	<p>Financial eligibility assessed.</p> <p>Merit: If application for Judicial Review received, senior inhouse counsel assess the application to determine whether it has merit. Only applications with merit are given coverage (in effect since July 1996).</p>	<p>Application received; financial eligibility determined; if financially eligible, legal opinion re strength and merit of case is obtained; decision made based on legal opinion (usually follows legal opinion). If lawyer is ambiguous, usually refused. If case has little merit but is serious, often grant coverage.</p> <p>Appeals: Two levels of appeal – first to regional committee then to appeals committee of the Board of Directors.</p>		<p>Financial and case eligibility is assessed by the Area Director. If the case is accepted, a certificate is provided to the lawyer. If the case is not accepted, the applicant can appeal to the Executive Director. The Executive Director examines the case and reasons for appeal. If rejected, the applicant can appeal to the Board of Directors.</p>

	<b>Ontario</b>	<b>Quebec</b>	<b>New Brunswick</b>	<b>Nova Scotia</b>
<b>Method of service delivery to general public</b>	<p>Structure and services: Predominantly judicare, with some clinics. Director of Services, Area Director (51 areas in province). Clinics funded through legal aid but independent, with own boards – include lawyers and paralegals. Some experimentation with clinic services in other areas (immigration, family). Application taken, financial eligibility testing included in assessment of eligibility for aid, case details assessed, decision re: granting aid.</p> <p>Services: Judicare certificates, clinics, duty counsel, advice lawyers, student legal aid services. Doing pilot projects re. expanded duty counsel in family law, staff offices etc. Duty counsel in every criminal court – advise re: rights, bail hearings, guilty pleas, sentencing on guilty pleas. Duty counsel – two in family courts on motions days – allow representation both sides.</p> <p>Duty counsel accompany circuit courts in remote areas and attend immigration hearings in Toronto and Mississauga. 24-hour telephone advice service for adults/kids in custody. Legal</p>	<p>Structure and services: Mixed judicare-staff service provision – if client wants private lawyer, can. If doesn't have one, usually staff lawyer appointed. Staff offices use private bar in some cases to expand expertise for specific cases or if too busy, conflict of interest.</p> <p>Structure: Legal Aid Commission, 11 regional and two local centres. Each centre has its own Board of Directors appointed by Commission. Regional centres establish local legal aid offices within catchment area. Receive applications at local offices. Services provided by staff lawyers of offices in 128 offices in 106 cities in Québec. Non-lawyers aren't usually used to provide services. Staff lawyers provide duty counsel services in criminal, civil, and administrative courts.</p> <p>Policies and procedures:</p>	<p>Structure and services: Mixed model of service delivery. . Legal Aid New Brunswick provincial office and eight regional offices, legal aid panels and duty counsel. Domestic legal aid run through Legal Aid New Brunswick / Department of Justice using staff lawyers—court social worker is first contact, screened to mediation, legal services or external service. Family solicitors under contract with Legal Aid New Brunswick engaged to provide services. Criminal coverage where jail term likely, loss of livelihood or other extenuating circumstances, provincial offences can be included, municipal by-laws are not. Duty counsel can be used. Provided in all criminal courts.</p> <p>Policies and procedures:</p> <p>Appeals eligibility requires lawyer's opinion letter re: likelihood of success and copy of order being</p>	<p>Structure and services: Staff model with private bar hired on certificate to provide services in situations of conflict or criminal counsel choice (only in cases where possible sentence is mandatory life imprisonment); administrative office and 13 regional offices, three sub-offices.</p> <p>Duty counsel: A formal Cells Duty Counsel Program is offered to all persons in custody at the criminal intake court in Halifax and Dartmouth only. After-hours duty counsel for detained people. Partial funding to Dalhousie Legal Aid Service.</p> <p>Policies and procedures:</p> <p>Coverage: Criminal and civil, criminal takes priority, indictable covered, summary where likelihood imprisonment, appeals by Crown and accused. No civil matters</p>

	<p>Advice Lawyer: Summary advice, assistance and review of legal documents, 83 communities 1-3 times per week, 2-3 hours/session.</p> <p>Legal clinics: 70 clinics plus specialized clinics. Six student clinics. For example, lawyers and students at the Correctional Law Project offer both advice and representation.</p> <p>Policies and Procedures: Guidelines for eligibility set by AG.</p> <p>Eligibility: Application, assess financial eligibility, assess case using guidelines. Local committees (mainly lawyers on committee) hear appeals of decisions; appeals of appeal cases go to provincial level. Coverage of appeals in criminal and civil depends on reasonableness of proceeding and probability of success. Usually give certificate to respond to Crown appeals. Appeals by person only if merit. Immigration coverage priority to refugee claims. Family law priority to cases where safety of child/spouse at risk and where threatened child removed from parent. Custody, access, support, property, child protection, restraining orders, wife assault may be covered.</p>	<p>Can appeal decision to Review Committee (members not Commission or centre employees) re: granting legal aid within 15 days of decision.</p> <p>Eligibility: Always granted, if financially eligible, for family, youth protection, young offenders, indictable offences, applications involving automobile insurance, workers compensation, unemployment insurance, income security.</p> <p>Other civil and summary conviction cases at discretion of legal aid (likelihood of imprisonment, loss of livelihood, interests of justice to provide). Appeals by crown covered. Appeals by defendant at discretion of legal aid.</p> <p>Coverage: total or partial with repayment.</p>	<p>appealed, area staff consider it reasonable to appeal, application submitted to area committee, area committee approves. Family law: Only coverage is permanent guardianship and variation applications for payers found unable to pay. Department of Justice provides a staff lawyer covering victims of spousal abuse, mediation services, and legal services for beneficiaries of support. No financial means tests for these services.</p> <p>Financial eligibility: means test administered, flexibility in test, assets, liabilities, income, expenses, spouse, dependents. Spouse is not defined but generally taken to mean relationship of significant duration with couple still cohabiting. Also consider merit of case, complexity of case, total amount of legal aid the applicant has received from legal aid, urgency of situation, whether reasonable person who has similar case would pay</p>	<p>expressly excluded from legal aid. Family: divorce, spousal assault, custody, access, support, child protection, marital property. Priorities: indictable, summary where imprisonment; domestic violence, custody, child welfare, maintenance; situations where livelihood may be problem.</p> <p>Eligibility: Financial needs test: income, expenses, debt, assets; take into account spouse: person living with the applicant and contributing financially to home. Repayment of all or part of the costs is possible</p>
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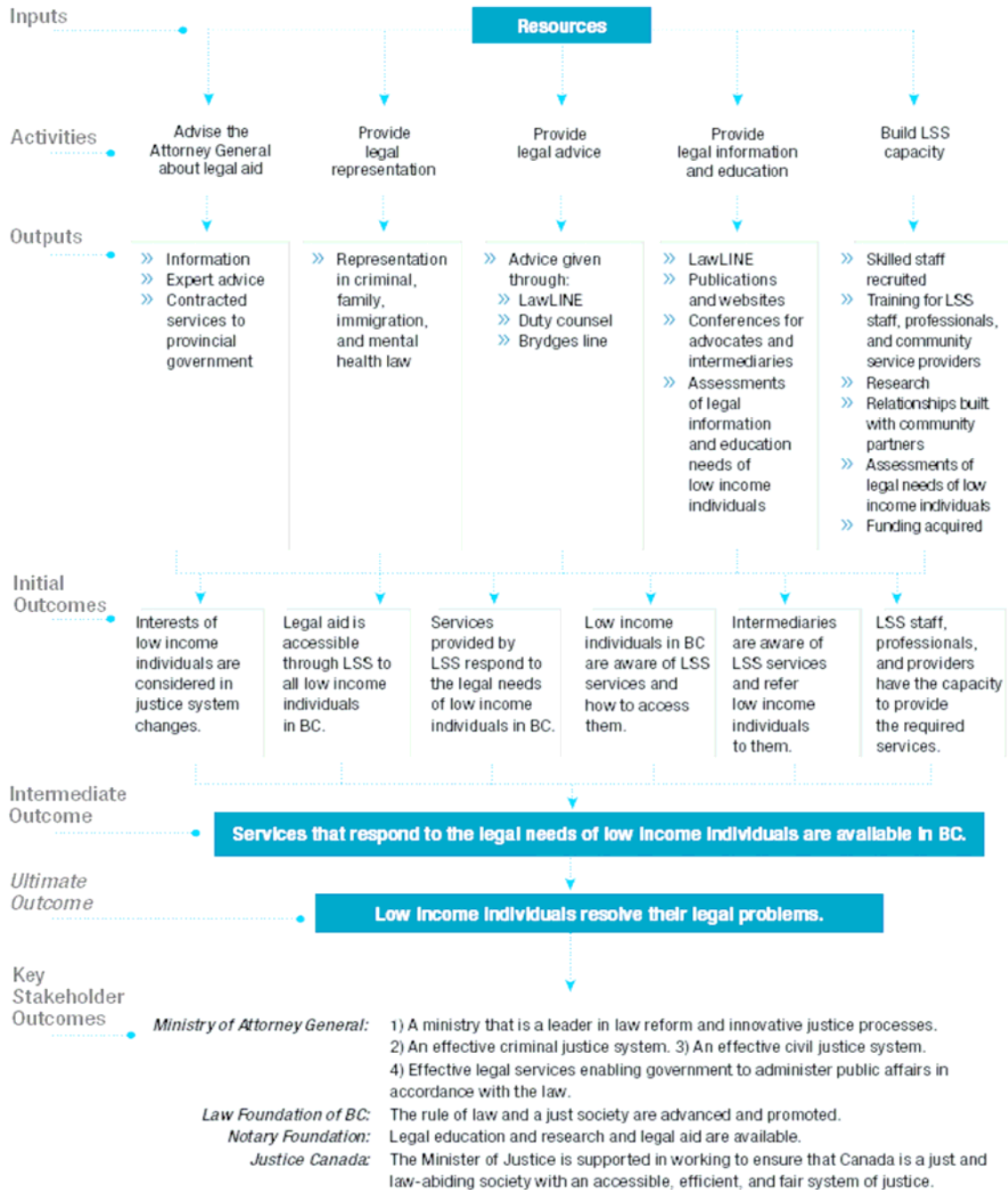
	<p>Civil: Civil sexual assault, mental health, income maintenance, landlord-tenant, worker's compensation, unemployment appeals, prison appeals in sexual assault cases may be covered.</p> <p>Eligibility: Needs test including income and assets, person and spouse (three years living together continuously, any with kids living together). Flexibility in test. Includes liabilities, extenuating circumstances, seriousness of case. Repayment of all or part of the costs is possible.</p>		<p>for lawyer for it. Repayment of all or part of the costs is possible.</p>	
<p><b>Process for decision-making regarding service eligibility</b></p>	<p>Decision-making is the responsibility of the Area Director. If accepted, a certificate is provided to the counsel of choice. If rejected, the applicant can appeal to the Director.</p>	<p>The eligibility criteria are the same for offenders as for the general public.</p>	<p>Decision-making is the responsibility of the Area Manager. If eligible, the client is provided with a staff lawyer. If ineligible, the applicant can appeal the decision.</p>	<p>Decision-making is the responsibility of the Area Manager. If eligible, the client is provided with a staff lawyer. If ineligible, the applicant can appeal the decision.</p>



## **APPENDIX III - SAMPLE TOOLS FROM BRITISH COLUMBIA**

- Logic Model
- Service Plan Overview

LSS Logic Model



## Appendix 1: LSS Service Plan Overview

### Mission

To assist low income individuals to resolve their legal problems by providing a spectrum of services that promotes their effective participation in the justice system.

### Vision

An innovative, collaborative legal aid system responding to the needs of low income people throughout British Columbia.

### Goals

- 1** There is broad-based support for legal aid.
- 2** People with low incomes can access appropriate and effective legal information and application services.
- 3** Low income clients receive quality legal advice and representation services that are proportionate to their needs.
- 4** Strategic and sustainable management of staff capacity and LSS services to meet the legal needs of people with low incomes.
- 5** Effective management of LSS funds.

### Objectives

- 1**
  - Ensure public perceptions of legal aid are positive
  - Create a favourable environment for funding LSS
- 2**
  - Strengthen the capacity of community service partners to provide information and application services
  - Increase the accessibility of legal information services for people with low incomes
  - Increase the accessibility and cost-effectiveness of the LSS application process
- 3**
  - Identify gaps in service
  - Increase lawyers' involvement and engagement in the delivery of legal aid
  - Increase the accessibility of advice services for people with low incomes
- 4**
  - Establish a strategically aligned policy and planning framework
  - Improve resource capacity management
- 5**
  - Strengthen policy compliance
  - Use technology to streamline processes
  - Improve financial forecasting

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## Notes

- <sup>1</sup> Lawyers, social workers and organizers who work with women in the community.
- <sup>2</sup> Annual report 2004-2005, Justice and Attorney General, Province of New Brunswick.
- <sup>3</sup> Press release, December 2005, Justice and Attorney General (2005). N.B. Legal Aid Services Commission to begin work. Fredericton, N.B.
- <sup>4</sup> Bertrand, L., Paetsch, J., Hornick. (2002). Canadian Research Institute for Law and the Family and Bala, N. Faculty of Law, Queen's University. A profile of legal aid services in family law matters in Canada. Ottawa (Ontario) Justice Canada, p. 52.
- <sup>5</sup> *Ibid.* Table 3. Unless otherwise indicated, the information was provided by the legal aid services of each jurisdiction as of 2002. Data for Newfoundland was not provided.
- <sup>6</sup> *Supra*, note 2.
- <sup>7</sup> Addario, L. (1998). Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice, Ottawa, Status of Women Canada, p. 34.
- <sup>8</sup> *Ibid.*
- <sup>9</sup> MAWL (Manitoba Association of Women and the Law) assisted by Woodward, L., Piper, P., Kipp, C., Tosso, A-M. (2002). *Women's Rights to Public Legal Representation in Canada and Manitoba*, (Executive Summary) Manitoba, Canada, refer to section 'Legal Aid and the Charter of Rights and Freedoms'.
- <sup>10</sup> Addario, L. *Civil Legal Aid*. (2003). The Women's Legal Education and Action Fund, Report of the May 13, 2002 Conference, Toronto, p. 21.
- <sup>11</sup> *Supra*, note 9.
- <sup>12</sup> Brewin, A. (2004). Stephens, L. *Legal Aid Denied, Women and the Cuts to Legal Services in BC*. Canadian Center for Policy Alternatives, Vancouver, British Columbia, Office, West Coast Leaf, Vancouver, British Columbia, p. 8.
- <sup>13</sup> *Ibid.*
- <sup>14</sup> *Ibid.*
- <sup>15</sup> *Supra*, note 12, p. 11-12.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> *Ibid.*
- <sup>18</sup> Opinion of several interveners consulted in the writing of this document.
- <sup>19</sup> Bain, P., Chrest, S., Morrow, M. (2000). *Access to Justice Denied: Women and Legal Aid in BC*. British Columbia, p. 14.
- <sup>20</sup> *Supra*, note 12, p. 10.
- <sup>21</sup> *Ibid*, in reference to article 15 of the *Charter*.
- <sup>22</sup> *Supra*, note 19.
- <sup>23</sup> *Supra*, note 12 in reference to the work of Kasari Govender. (2004). Standing on the Fringe: Legal Aid Advocacy in the Context of the Fight for Economic Rights, West Coast LEAF [unpublished] Gwen Brodsky and Shelagh Day. (2001). Poverty is a Human Rights Violation, The Poverty and Human Rights Project.
- <sup>24</sup> *Supra*, note 12, p. 12.
- <sup>25</sup> *Supra*, note 12, p. 12.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> Buckley, M. (2000). The Legal Aid Crisis: Time for Action. Canadian Bar Association, Ottawa, Ontario, p. 28.

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<sup>28</sup> MAWL (Manitoba Association of Women and the Law) assisted by Woodward, L., Piper, P., Kipp, C., Tosso, A-M. (2002). Women's Rights to Public Legal Representation in Canada and Manitoba, Manitoba, Canada, p. 77.

<sup>29</sup> Martin, D.L. (2001). A Seamless Approach To Service Delivery In Legal Aid: Fulfilling A Promise Or Maintaining A Myth? Ottawa, Ontario, Justice Canada, section 3.3, Seamless Services and Measured Outcomes, note 101: "The significance of broader determinants of health to the health status of populations is now widely recognized (see e.g., National Forum on Health and accompanying background papers). A number of Canadian writers, feminists in particular, have begun to examine privatization and its effects on women both generally and with specific reference to social assistance and health care. See, for example: Patricia and Hugh Armstrong, *Wasting Away: The Undermining of Canadian Health Care* (Toronto, Oxford U. Press, 1996); Issa Bakker, *Rethinking Restructuring: Gender and Change in Canada* (Toronto, U. Toronto Press, 1996); J. Brodie (ed) *Women and Canadian Public Policy* (Harcourt Brace, 1996, Toronto)."

<sup>30</sup> NCW (National Council of Welfare) (1995). *Legal Aid and the Poor. A Report by the National Council of Welfare*, note 32.

<sup>31</sup> Currie, A. *Legal Problems and Vulnerable Groups in Canada*, Just Research no. 13.

<sup>32</sup> Ibid. in reference to Breton, R., N. J. Hartmann, J. L. Lennards et P. Reed. 2004. *A fragile social fabric? Fairness, trust and commitment in Canada*. Kingston : McGill-Queens University Press, cited in Currie, article in Just Research no. 13.

<sup>33</sup> Buckley, M. (2000). *The Legal Aid Crisis: Time for Action*. Canadian Bar Association, Ottawa, Ontario. Online at [www.cba.org/cba/Advocacy/PDFfiles/Paper.pdf](http://www.cba.org/cba/Advocacy/PDFfiles/Paper.pdf), p. 28 as well as consulted interveners.

<sup>34</sup> Ibid.

<sup>35</sup> Forum provincial de concertation en matière de violence. (2004). *Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick*. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p.9.

<sup>36</sup> Information received from interveners consulted in the writing of this paper.

<sup>37</sup> Canadian Bar Association (2006). *Legal aid, The position of the CBA*. Ottawa, Ontario.

<sup>38</sup> Supra note 35, p. 10.

<sup>39</sup> Forum provincial de concertation en matière de violence. (2004). *Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick*. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 14.

<sup>40</sup> Supra, note 33, p. 34.

<sup>41</sup> Ibid. p. 39.

<sup>42</sup> Currie, A. (1998). *Application Fees And Client Contributions In Legal Aid: A Framework For Discussion*. Ottawa Ontario: Justice Canada.

<sup>43</sup> Ibid.

<sup>44</sup> Trerise, V. (2000). *Where the Axe Falls: the real cost of government cutbacks to legal aid*. Final Report to the Access to Justice Committee, Vancouver British Columbia, p. 35.

<sup>45</sup> Ibid.

<sup>46</sup> Supra, note 33, p. 35 in reference to A. Currie. (1999). *Approaches to Determining the Needs of Legal Aid Client*. Justice Canada, Ottawa.

<sup>47</sup> Supra, note 33, p. 36 in reference To American Bar Association. (1996). *Agenda for access: The American People and Civil Justice*. (Final Report on the Implications of the Comprehensive Legal Needs Study).

<sup>48</sup> Supra, note 33, p. 40.

<sup>49</sup> Ibid.

<sup>50</sup> Doucette, M. (2001). *Family Legal Aid: A Comparative Study*. Charlottetown (PEI.), Women's Network PEI, p. 5.

<sup>51</sup> Supra, note 33, p. 40.

<sup>52</sup> Supra, note 33 p. 44; several studies note the same fact.

<sup>53</sup> Supra, note 7, p. 42.

<sup>54</sup> Forum provincial de concertation en matière de violence. (2004). Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 11.

<sup>55</sup> Supra, note 7, p. 42.

<sup>56</sup> Addario, L. Civil Legal Aid. (2003). The Women's Legal Education and Action Fund, Report of the May 13, 2002 Conference, Toronto, p. 4.

<sup>57</sup> Supra, note 9.

<sup>58</sup> Supra, note 33, p. 42 in reference to Women's Access to Legal Services Coalition (WALS). (1998). The Impact of the Cuts to Legal Aid on Women in B.C. Legal Services Society, British Columbia.

<sup>59</sup> Ibid.

<sup>60</sup> Supra, note 33, p. 44 in reference to Toronto Region Family Courts Committee. (1997). Report of the Working Group on Unrepresented Litigants, Toronto, p. 16.

<sup>61</sup> Supra, note 29, reference to note 101: "The significance of broader determinants of health to the health status of populations is now widely recognized (see e.g., National Forum on Health and accompanying background papers). A number of Canadian writers, feminists in particular, have begun to examine privatization and its effects on women both generally and with specific reference to social assistance and health care. See, for example: Patricia and Hugh Armstrong, *Wasting Away: The Undermining of Canadian Health Care* (Toronto, Oxford U. Press, 1996); Issa Bakker, *Rethinking Restructuring: Gender and Change in Canada* (Toronto, U. Toronto Press, 1996); J. Brodie (ed) *Women and Canadian Public Policy* (Harcourt Brace, 1996, Toronto)."

<sup>62</sup> Ibid.

<sup>63</sup> Supra, note 61. See notes 4 and 102: "In Canada projects like Osgoode Hall Law School's Intensive Programme on Poverty Law led to the formation of community based legal clinics such as Parkdale Community Legal Services. The history, and approach to poverty and poverty law developed by Parkdale Community Legal Services is set out in Part III Infra. Much of it may be found in a 1997 Osgoode Hall Law Journal Special edition: "Parkdale Community Legal Services: Twenty-Five Years of Poverty Law". In particular, see: Shelley A.M. Gavigan, "Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience", (1997) 35 Osgoode Hall Law Journal 443-474; Frederick H. Zemans, "The Dream is Still Alive: Twenty-five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law"(1997) 35 Osgoode Hall Law Journal 499-534".

<sup>64</sup> Supra, note 10, p. 6.

<sup>65</sup> Martin, D.L. (2001). A Seamless Approach To Service Delivery In Legal Aid: Fulfilling A Promise Or Maintaining A Myth? Ottawa, Ontario, Justice Canada, section 3.3, 'Seamless' Services and Measured Outcomes.

<sup>66</sup> Supra, note 10, p. 6.

<sup>67</sup> Ibid. p. 8, in reference to Transition House of Nova Scotia. (2000). Abused Women in Family Mediation: A Nova Scotia Snapshot, Nova Scotia.

<sup>68</sup> Supra, note 7, p. 12.

<sup>69</sup> Forum provincial de concertation en matière de violence. (2004). Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 12.

<sup>70</sup> Supra, note 10, p. 12

<sup>71</sup> Ibid. p. 14.

<sup>72</sup> Ibid.

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- <sup>73</sup> Brantingham, P.J. (2002). Canadian Legal Aid Evaluations: Cost Efficiency and Cost Effectiveness Lessons. The International Centre for Criminal Law Reform and Criminal Justice Policy. Breaking New Ground. A Collection of Papers in the International Centre's Canada-China Cooperation Programme, p.349.
- <sup>74</sup> Ibid., p. 150.
- <sup>75</sup> Canadian Bar Association. (2002). Legal Aid : Make the Case. Ottawa, Ontario, p. 117E.
- <sup>76</sup> Skinnider, E. (2002). Legal Aid Systems in Selected Jurisdictions. The International Centre for Criminal Law Reform and Criminal Justice Policy. Breaking New Ground. A Collection of Papers in the International Centre's Canada-China Cooperation Programme, p. 298.
- <sup>77</sup> Bertrand, L., Paetsch, J., Hornick. (2002). Canadian Research Institute for Law and the Family and Bala, N. Faculty of Law, Queen's University. A profile of legal aid services in family law matters in Canada. Ottawa (Ontario) Justice Canada, p. 61.
- <sup>78</sup> Department of Justice, Manitoba. (2004). Legal Aid Manitoba Review, Justice Manitoba, p. 89.
- <sup>79</sup> Supra, note 9, see recommendation 8.
- <sup>80</sup> Ibid. see recommendation 9.
- <sup>81</sup> Supra, note 44, p. 61.
- <sup>82</sup> Supra, note 75, p. 116E.
- <sup>83</sup> Supra, note 7, p. 47.
- <sup>84</sup> Fellegi, I. P. (1997). *On Poverty and Low Income*, Statistics Canada, Ottawa. Cat. No. 13F0027 XIE.
- <sup>85</sup> Ibid. for more in-depth discussion.
- <sup>86</sup> Department of Justice, Manitoba. (2004). Legal Aid Manitoba Review, Justice Manitoba, pp. 90-91.
- <sup>87</sup> Ibid., p. 91.
- <sup>88</sup> Supra, note 10, p. 11.
- <sup>89</sup> Supra, note 77, p.51.
- <sup>90</sup> Supra, note 87, p. 21.
- <sup>91</sup> Barr, K., Fraser, D., Fenske, A. Scharfe, S., Thurmeier, S. (2006). Twenty Years Later. Has the Charter Made a Difference to Manitoba Women? Manitoba Association of Women and the Law Inc., Manitoba, p. 152.
- <sup>92</sup> Supra, note 87, pp. 92-93.
- <sup>93</sup> Data analysis based on *Income and Survey of Labour and Income Dynamics (SLID) 1998*. Note also that due to technical limitations, the analysis is based on the situation in 1998.
- <sup>94</sup> *Statistics Canada. (2006). Legal Aid. The Daily, 2004-2005*. Ottawa, Ontario, p. 8.
- <sup>95</sup> Currie, A. (1998). Application Fees And Client Contributions In Legal Aid: A Framework For Discussion. Ottawa Ontario: Justice Canada, and supra note 7, pp. 14-15.
- <sup>96</sup> Supra, note 7, p. 14-15.
- <sup>97</sup> Supra, note 87, p. 21.
- <sup>98</sup> Ibid. p. 22.
- <sup>99</sup> Supra, note 87, p. 22. The Low Income Cut-Offs (LICO) is determined on the basis of Statistics Canada data on family spending, with families spending a larger share of income on necessities, i.e. food, shelter and clothing, than the average family.
- <sup>100</sup> Ibid. p. 22.
- <sup>101</sup> Ibid.
- <sup>102</sup> Supra, note 9, see recommendation 8.
- <sup>103</sup> Currie, A. (1998). Application Fees And Client Contributions In Legal Aid: A Framework For Discussion. Ottawa Ontario: Justice Canada.

<sup>104</sup> *Supra*, note 29.

<sup>105</sup> *Supra*, note 103.

<sup>106</sup> Statistics Canada. (2006). *Legal Aid in Canada: Resources and Caseload Statistics 2004-2005*. Ottawa, Ontario, p.8.

<sup>107</sup> Currie, A. (1998). *Application Fees And Client Contributions In Legal Aid: A Framework For Discussion*. Ottawa Ontario: Justice Canada.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.* p. 5.

<sup>116</sup> Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*, Ottawa, Ontario, Justice Canada, p. 1; referring to *Patterns in Legal Aid II*, Dept. of Justice 1995 and *Predicting Legal Aid Costs, 1993*, by Brantingham and Easton.

<sup>117</sup> *Supra*, note 77, Table 3.

<sup>118</sup> *Supra*, note 77, p. 35.

<sup>119</sup> *Supra*, note 77, p. 52.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Supra*, note 19.

<sup>122</sup> See also Statistics Canada. (2006). *Legal Aid in Canada: Resources and Caseload Statistics 2004-2005*. Ottawa, Ontario. [www.statcan.ca/english/freepub/85F0015XIE/0000585F0012XIE.pdf](http://www.statcan.ca/english/freepub/85F0015XIE/0000585F0012XIE.pdf)

<sup>123</sup> *Ibid.*

<sup>124</sup> *Supra*, note 2, p.23.

<sup>125</sup> Statistics Canada (2006). *Legal Aid in Canada: Resources and Caseload Statistics 2004-2005*. Ottawa, Ontario, p. 5. Data do not include figures for Newfoundland and Labrador, which was unable to provide information in 2004-2005.

<sup>126</sup> *Ibid.* p. 9.

<sup>127</sup> *Supra*, note 77, pp. 52-53.

<sup>128</sup> Department of Justice and Attorney General. (2004-2005). *Annual report*. Fredericton, New Brunswick.

<sup>129</sup> *Supra*, note 77, p. 5.

<sup>130</sup> *Ibid.* p. 44.

<sup>131</sup> *Ibid.* p. 44.

<sup>132</sup> *Ibid.* p. 5.

<sup>133</sup> *Supra*, note 77, p.50 in reference to Currie, A. (1998). *Application Fees And Client Contributions In Legal Aid: A Framework For Discussion*. Ottawa, Ontario: Justice Canada.

<sup>134</sup> *Supra*, note 77, pp. 52-53.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Supra*, note 103.

<sup>137</sup> *Supra*, note 44, p. 35.

<sup>138</sup> Forum provincial de concertation en matière de violence. (2004). *Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick*. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 8.



<sup>139</sup> Supra, note 125, p. 15.

<sup>140</sup> Ibid.

<sup>141</sup> Supra, note 29, p. 1.

<sup>142</sup> Supra, note 151, p. 16.

<sup>143</sup> Ibid.

<sup>144</sup> Supra, note 12, p. 13.

<sup>145</sup> Supra, note 29, p. 32.

<sup>146</sup> Ibid.

<sup>147</sup> Supra, note 145, in the Introduction.

<sup>148</sup> Ibid.

<sup>149</sup> Currie, A. Legal Problems and Vulnerable Groups in Canada, Just Research no. 13, note at bottom of p. 2.

<sup>150</sup> Supra, note 29, note at bottom of p. 37.

<sup>151</sup> Ibid, note at bottom of p. 38.

<sup>152</sup> Statistics Canada. *Income Trends in Canada, 1980-1999*.

<sup>153</sup> Statistics Canada. *Income Trends in Canada, 1980-1999*, p. 11.

<sup>154</sup> Lochhead, C. et Scott K. (2000). The Dynamics of Women's Poverty in Canada, Canadian Council on Social Development, funded by Status of Women Canada, p. 20.

<sup>155</sup> Ibid. p. 47.

<sup>156</sup> Supra, note 10, p. 17.

<sup>157</sup> Ibid. p. 13.

<sup>158</sup> Supra, note 7 p. 13 and supra, note 27, p. III.

<sup>159</sup> Supra, note 31.

<sup>160</sup> Supra, note 10, p. 19.

<sup>161</sup> British Columbia was said to have a complete poverty law program before the 2002 cuts.

<sup>162</sup> Justice Canada. (2002) An Analysis of Poverty Law Services in Canada. Ottawa, Ontario, Justice Canada, pp. 143-164

<sup>163</sup> Ibid. Note that the following tables were taken from an analysis of poverty law in Canada. British Columbia no longer offers such services. We have updated the tables accordingly See Analysis of Poverty Law.

<sup>164</sup> Supra, note 162, p. 144.

<sup>165</sup> Ibid. p. 144.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid. p. 146.

<sup>168</sup> Ibid. p. 147.

<sup>169</sup> Ibid. p. 150.

<sup>170</sup> Ibid. p. 150.

<sup>171</sup> Ibid. p. 162.

<sup>172</sup> Ibid. p. 164.

<sup>173</sup> Poor, 163

<sup>174</sup> Ibid. p. 163.

<sup>175</sup> Ibid. p. 19.

<sup>176</sup> Supra, note 33, p. 69.

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<sup>177</sup> For a description of the history of the ongoing debate in Canada, see Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*. Ottawa, Ontario. Justice Canada.

<sup>178</sup> Canadian Bar Association. (2006). *CBA Position on Legal Aid, Constructive Solutions to the Legal Aid Crisis*, Ottawa, Ontario.

<sup>179</sup> Canadian Bar Association (2005), *CBA Launches Test Case to Challenge Constitutional Right to Civil Legal Aid*.

<sup>180</sup> In a press release dated October 2006, the Canadian Bar Association announced that the test case argued that it was unreasonable for poor people to be unfairly evicted from their homes, and that people risked losing custody if they did not have access to legal aid. The CBA is appealing the decision rendered on September 5, 2006, by the Supreme Court of British Columbia, which turned down the test case brought by the CBA. [www.cba.org/CBA/News/2005\\_Releases/2005-06-20\\_legalaid.aspx](http://www.cba.org/CBA/News/2005_Releases/2005-06-20_legalaid.aspx)

<sup>181</sup> *Supra*, note 37.

<sup>182</sup> *Supra*, note 33, p. 73-74.

<sup>183</sup> *Ibid.* p. 74.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.* in reference to a document by the Attorney General (1997). *Ontario Legal Aid Review - A Blueprint for Publicly Funded Legal Services*, Toronto, Ontario.

<sup>186</sup> *Supra*, note 7, p. 7.

<sup>187</sup> *Supra*, note 7, p. 7.

<sup>188</sup> *Supra*, note 33, p. 74.

<sup>189</sup> *Supra*, note 77, p. 31, Table 1.

<sup>190</sup> *Ibid.* p. 20.

<sup>191</sup> *Supra*, note 33, p. 72.

<sup>192</sup> *Ibid.* p. 74.

<sup>193</sup> *Ibid.*

<sup>194</sup> Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*, Ottawa, Ontario, Justice Canada.

<sup>195</sup> *Supra*, note 37.

<sup>196</sup> *Supra*, note 33, pp. 75-76 in reference to the *Legal Aid Manitoba Review*.

<sup>197</sup> *Supra*, note 33, p. 76.

<sup>198</sup> *Ibid.* p. 73.

<sup>199</sup> *Supra*, note 87, p. 41.

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.* p. 42.

<sup>202</sup> Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*, Ottawa, Ontario, Justice Canada, p. 19.

<sup>203</sup> (Unbundled family law services)

<sup>204</sup> *Supra*, note 33, p. 80.

<sup>205</sup> *Ibid.*

<sup>206</sup> *Supra*, note 7, see recommendation 14, p. 47; *Supra*, note 33, p. 25 and Skinnider, E. (2002). *Legal Aid Systems in Selected Jurisdictions*. The International Centre for Criminal Law Reform and Criminal Justice Policy. *Breaking New Ground*. A Collection of Papers in the International Centre's Canada-China Cooperation Programme.

<sup>207</sup> *Supra*, note 33, p. 25.

<sup>208</sup> *Supra*, not 87, p. 42-43.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid. p. 43.

<sup>211</sup> Ibid.

<sup>212</sup> Supra, note 37.

<sup>213</sup> Supra, note 33. p. 77.

<sup>214</sup> Supra, note 33, p. 77.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> Supra, note 116, p. 10.

<sup>218</sup> Supra, note 33, p. 77.

<sup>219</sup> *Supra*, note 37.

<sup>220</sup> Supra, note 217, p. 20 and Supra, note 33, p. 78.

<sup>221</sup> Supra, note 75, p. 120E.

<sup>222</sup> Coughlan, S.H. *The Future of the Legal Profession: The Challenge of Change*. Canadian Bar Association. Ottawa, Ontario: 2000, p. 77.

<sup>223</sup> Supra, note 33, p. 78.

<sup>224</sup> Supra, note 37.

<sup>225</sup> Supra, note 33, p. 2.

<sup>226</sup> Ibid. p. 80.

<sup>227</sup> Forum provincial de concertation en matière de violence. (2004). Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 9.

<sup>228</sup> Supra, note 226.

<sup>229</sup> "Integrated staff lawyer offices."

<sup>230</sup> Supra, note 37.

<sup>231</sup> Ibid.

<sup>232</sup> Forum provincial de concertation en matière de violence. (2004). Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 11.

<sup>233</sup> Supra, note 33, p. 80.

<sup>234</sup> Supra, note 37.

<sup>235</sup> Supra, note 217, p. 23.

<sup>236</sup> Supra, note 44, p. 35.

<sup>237</sup> Supra, note 44.

<sup>238</sup> Forum provincial de concertation en matière de violence. (2004). Obstacles to Seeking Legal and Encountered by Francophone Women in New Brunswick. In collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, p. 9-10.

<sup>239</sup> Supra, note 44, p. 29.

<sup>240</sup> Ibid.

<sup>241</sup> Supra, note 33, p. 79 in reference to A.Currie and C.McEown, (1998). *Assisted Self-Representation in Criminal Legal Aid : An Experiment in Limited Service Delivery*. Justice Canada. Ottawa, Ontario.

<sup>242</sup> Supra, note 33, p. 79.

<sup>243</sup> Supra, note 75, p. 120<sup>E</sup>, referring to Lisa Addario.

<sup>244</sup> Supra, note 77, à la p. 49, in reference to the Ross Report (1999) from PEI.

<sup>245</sup> Ibid. p. 49.

<sup>246</sup> Ibid.

<sup>247</sup> Supra, note 39, p. 11.

<sup>248</sup> Supra, note 77, p. 30 and p. 50.

<sup>249</sup> Supra, note 77, p. 49.

<sup>250</sup> Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*, Ottawa, Ontario, Justice Canada ; and supra, note 77, p. 50 in reference to Currie.

<sup>251</sup> See for example Brantingham, P.J. (2002). *Canadian Legal Aid Evaluations: Cost Efficiency and Cost Effectiveness Lessons*. The International Centre for Criminal Law Reform and Criminal Justice Policy. *Breaking New Ground. A Collection of Papers in the International Centre's Canada-China Cooperation Programme*, p. 348.

<sup>252</sup> Supra, note 44, p. 30.

<sup>253</sup> Ibid.

<sup>254</sup> Supra, note 75, p. 119E.

<sup>255</sup> Skinnider, E. (2002). *Legal Aid Systems in Selected Jurisdictions*. The International Centre for Criminal Law Reform and Criminal Justice Policy. *Breaking New Ground. A Collection of Papers in the International Centre's Canada-China Cooperation Programme*, p. 307.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid. p. 307-308.

<sup>259</sup> Supra, note 116, p. 1.

<sup>260</sup> Ibid. p. 25.

<sup>261</sup> Brantingham, P.J. (2002). *Canadian Legal Aid Evaluations: Cost Efficiency and Cost Effectiveness Lessons*. The International Centre for Criminal Law Reform and Criminal Justice Policy. *Breaking New Ground. A Collection of Papers in the International Centre's Canada-China Cooperation Programme*, p. 358. Currie notes the same fact in supra, note 259.

<sup>262</sup> Supra, note 116.

<sup>263</sup> Supra, note 44, p. 28.

<sup>264</sup> Ibid.

<sup>265</sup> Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*, Ottawa, Ontario, Justice Canada.

<sup>266</sup> Ibid.

<sup>267</sup> Supra, note 78, p. 44.

<sup>268</sup> Ibid.

<sup>269</sup> Supra, note 265.

<sup>270</sup> Supra, note 39, p. 12.

<sup>271</sup> Supra, note 75, p. 119E.

<sup>272</sup> Currie, A., (1999). *Legal Aid Delivery Models in Canada Past Experiences and Future Developments*, Ottawa, Ontario, Justice Canada.

<sup>273</sup> Supra, note 87, p. 56.

<sup>274</sup> Ibid.

<sup>275</sup> Supra, note 33, p. 74.

<sup>276</sup> See for example Brantingham, P.J. (2002). *Canadian Legal Aid Evaluations: Cost Efficiency and Cost Effectiveness Lessons*. The International Centre for Criminal Law Reform and Criminal Justice Policy. *Breaking New Ground. A Collection of Papers in the International Centre's Canada-China Cooperation Programme*, p. 348.

<sup>277</sup> Supra, note 87, p. 74.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid and Supra, note 33, p. 80.

<sup>280</sup> Supra, note 33, p. 74.

<sup>281</sup> Scottish Executive. (2004). Strategic Review on the Delivery of Legal Aid, Advice and Information. Report to Ministers and the Scottish Legal Aid Board, Edinburgh (Scotland, UK), p. 20.

<sup>282</sup> Ibid. p. 21 in Achieving a 'planned complex model', paragraphs 3.25 to 3.27.

<sup>283</sup> Supra, note 281, statement 5.75.

<sup>284</sup> Some clinics are not run by independent Boards of Directors.