

2.5.2 Legal aid

For many years the provision of legal services to persons unable to afford the fees normally charged by a lawyer was viewed as a responsibility to be assumed by individual lawyers on a voluntary basis as a form of charity. In more recent times most of the provincial governments have moved to establish publicly funded legal aid programs under which persons of limited means are able to obtain the services of a lawyer in a number of criminal and civil matters at either no cost or modest cost to themselves depending upon the client's financial circumstances. The lawyers who act for clients in matters covered by a provincial legal aid program are then paid by the government, usually at a reduced rate, on a fee for services basis or as a salary depending upon the type of legal aid program operated in the province. The provincial legal aid programs vary considerably in terms of formalities, scope of coverage and methods of providing the legal services. Some are established by legislative enactment while others exist and operate by way of informal agreements between the provincial government and the law society. Some programs provide for fairly comprehensive coverage in both criminal and civil matters while others at present encompass only criminal offences. Again, some plans operate on a fee for services basis whereas others rely partially or mainly on the services of state salaried lawyers. In some provinces a mixed system is in operation.

In 1971 the federal government entered the field and concluded an agreement with the government of the Northwest Territories for sharing the costs of providing legal aid in both criminal and civil matters for persons in the Territories financially unable to retain the services of a lawyer. This comprehensive legal aid program was implemented on August 17, 1971. In the Yukon Territory the legal aid program is at present a service operated by the territorial bar with the government paying the fees to lawyers who act for legal aid clients charged with criminal offences.

In August 1972, the federal government announced that it was prepared to enter agreements with the provincial governments under which federal funds would be paid to the provinces to assist them in developing or expanding their legal aid programs in matters related to criminal law. Agreements have now been concluded with the governments of British Columbia, Alberta, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. Under the agreements, the federal government will contribute up to 50 cents per capita of the provincial population toward the costs of providing lawyers' services to eligible persons subject to criminal charges or proceedings under federal laws. These federal-provincial agreements enable the provincial governments to determine the method or methods by which legal services will be provided to persons who qualify for assistance, but in cases where an individual is charged with a criminal offence carrying a penalty of capital punishment or life imprisonment that person is entitled to retain a lawyer of his or her own choice. The agreements also ensure that a person otherwise eligible to receive legal aid will not be disqualified as a recipient only because he or she is not a resident of the province in which the criminal proceedings take place.

2.6 The federal Department of Justice

The Department of Justice of the Government of Canada is divided, for administrative and functional purposes, into a number of sections. Lawyers working for the Department are assigned to the sections, or as legal advisers to other government departments, or to the regional offices in Vancouver, Edmonton, Winnipeg, Toronto, Montreal and Halifax. The sections within the Department, each headed by a director, are described below.

Advisory and international law. The lawyers in this section deal with work in the areas of public and private international law. Canada became a member of the Hague Conference on Private International Law in 1968 and the Department is responsible for Canadian participation in the Conference. This section co-ordinates Canadian activities in relation to the Conference, which meets every other year, and it has a similar role with regard to Unidroit, the International Institute for the Unification of Private Law. In both public and private international law this section has a particular interest in matters concerning the countries of the British Commonwealth.

Civil law. This section conducts litigation and provides legal advice for the government on all matters of a non-criminal nature arising in the province of Quebec.