

Legal services

2.5

The legal profession

2.5.1

The adjective "fused" is sometimes used to describe the legal profession in common law Canada since practising lawyers are both called as barristers and admitted as solicitors. Admission to practise is a provincial matter. Statutes setting out the powers and responsibilities of the provincial organizations are: (Alberta) The Legal Profession Act RSA 1970, c.203; (British Columbia) The Legal Professions Act RSBC 1960, c.214; (Manitoba) The Law Society Act RSM 1970, c.L-100; (New Brunswick) The Barristers' Society Act, 1973, SNB 1973, c.80; (Newfoundland) The Law Society Act RSN 1970, c.201; (Nova Scotia) Barristers and Solicitors Act RSNS 1967, c.18; (Ontario) The Law Society Act RSO 1970, c.238; (Prince Edward Island) The Law Society and Legal Profession Act RSPEI 1974, c.L-9; (Saskatchewan) The Legal Profession Act RSS 1965, c.301; (Northwest Territories) The Legal Profession Ordinance RONWT 1956, c.57; (Yukon) The Legal Profession Ordinance ROY 1971, c.L-4. In Quebec the legal profession is divided into the separate branches of advocate and notary and their statutes are the Bar Act, SQ 1966/67, c.77 and the Notarial Act, SQ 1968, c.70.

Legal aid

2.5.2

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 all provincial governments have moved to establish publicly funded legal aid programs under which persons of limited means may 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 by 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 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. 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 program was implemented on August 17, 1971. In the Yukon Territory the legal aid program is a service operated by the territorial bar with the government paying 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 into 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 since been concluded with all provincial governments. Amendments to these agreements provided that the federal government would contribute the lesser of 75 cents per capita of the provincial population or 90% of the program expenditures 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 mandatory 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.