

assist the prosecutors in Yukon and Northwest Territories.

Directors of regional offices oversee federal criminal litigation and provide prosecution services in their geographic areas.

In provinces with federal department of justice offices the Crown is represented in indictable appeals by regular staff prosecutors. Where there is no such office, the agent who appeared at trial will represent the Crown on appeal.

In appeals to the Supreme Court of Canada, a member of the Ottawa office staff or the member of the office who handled the appeal in the prior court will represent the attorney general of Canada.

### 20.3.3 Legal aid

Before its institutionalization in law and in federal-provincial cost-sharing schemes, legal aid was based on charity and differed from present-day services, not just in the amount of assistance but also in philosophy. Legal aid is now seen as a component of an effective judicial system rather than as a facet of social welfare.

All provinces and territories provide legal aid in criminal cases to eligible persons who might be imprisoned or lose their livelihood if convicted. Varying amounts of help are given for civil matters in all jurisdictions. Eligibility is established according to financial circumstances, the basic aim being to assist those who would be unable to retain counsel or would suffer serious hardship if they had to obtain legal services on their own.

**History.** Before the advent of organized legal aid, lawyers sometimes provided free legal services to people who could not pay. Or they charged reduced fees depending on a client's financial circumstances. An early arrangement for providing legal help was to appoint a lawyer when an indigent person was charged with a serious crime. The appointment may have been made by a judge or on a judge's request, depending on the jurisdiction. The provincial or territorial department concerned with justice usually looked after the cost, at least for more serious and time-consuming cases. But the government did not always pay the lawyer who was appointed.

In the development of legal aid plans, there were basically three different patterns. In Newfoundland, Nova Scotia, Quebec, Manitoba and British Columbia, the provincial law society first developed legal aid clinics. The efforts of the law societies led in due course to the development of government funded legal aid. In Ontario and Alberta the law society and the provincial government went through a developmental period which culminated in the current plans in both provinces now mostly funded by the government. In Prince Edward Island and New Brunswick, the provincial governments introduced the present legal aid plans. Saskatchewan introduced at first a *judicare* plan, based on an agreement between

the law society and the province and a few years later the present plan, which provides for legal services, as a rule, through salaried lawyers.

In Yukon and Northwest Territories, the federal department of justice administered a criminal legal aid plan for a number of years until 1971. At that time the administration of justice functions including the provision of legal aid were transferred to the territories.

**Agreements with the federal government.** The federal department of justice started cost sharing legal aid with respect to the criminal law in 1972. Quebec and British Columbia signed by December of that year, the four Atlantic provinces, Ontario, Manitoba and Alberta signed in 1973, and Saskatchewan in 1974.

Initially the federal share was the lesser of 50 cents per capita of provincial population or 90% of provincial expenditures for criminal legal aid. It was increased to the lesser of 75 cents or 90% for 1976-77, the lesser of 82 cents or 90% for 1977-78, and the lesser of 92 cents or 90% for 1978-79. The 1978-79 agreement continued in effect as the basis of cost sharing, subject to renegotiation and redefining of terms for a new agreement expected in 1984.

The federal and provincial government agreement is subject to a number of conditions including eligibility of persons charged with offences, choice of lawyers, appeals to higher courts by the Crown, and fee schedules.

Civil coverage of legal aid matters was initiated in July 1980 with federal amendments to the Canada Assistance Plan Act, 1966-67. Under the auspices of Health and Welfare Canada, the federal and provincial governments agreed to cost share civil legal aid on a 50/50 basis. These agreements allow for retroactive payments of civil legal aid expenditure, subject to provincial social assistance legislation.

Cost sharing with the territories extends to both criminal and civil matters. Agreements were signed with Northwest Territories in 1971 and 1979 and with Yukon in 1977. With the territories, the formula calls for a 50% federal contribution, with specified maximums.

**Duty counsel.** Most jurisdictions have a duty counsel system to advise detained persons and persons appearing in court without counsel, to guide them in obtaining legal services, and to provide on-the-spot representation if needed.

Duty counsel is provided through private practice lawyers in New Brunswick, Alberta and the two territories, which have *judicare* type legal aid. It is furnished mainly by staff lawyers in Quebec, but by both private practice and staff lawyers in all other provinces with duty counsel service: Newfoundland, Ontario, Manitoba and British Columbia. Ontario is different in that duty counsel service is provided by staff lawyers in Toronto but by private practice lawyers elsewhere.