

REPORT ON COSTS OF LEGAL AID IN OTHER COUNTRIES

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EXECUTIVE SUMMARY

This report provides a review of legal aid costs in a number of legal jurisdictions. Its primary focus is to examine the ways in which both legal costs (and the legal aid services they relate to) differ between England and other countries and provide an analysis of the factors behind such differences.

The delivery of legal aid falls into two main categories, the “mutual interest” approach (based on a whole range of activities to meet perceived needs) and the “purchaser-supplier” approach (based on a funding agency purchasing a set of services). In recent years, the key move internationally (even in countries with a strong welfarist tradition such as Sweden and the Netherlands) has been that from the mutual-interest model to that of purchaser-supplier aiming to improve targeting and save funds.

While there is no universally agreed typology of legal aid funding, a useful general distinction has been made between (a) the “contribution” approach where applicants are required to contribute towards costs; (b) the “legal expenses” approach where access to the legal system is facilitated by various kinds of insurance; and (c) the “loan” approach where contributions operate as loans to be repaid within a fixed period. Beyond such general typologies, a direct comparison between legal aid spending and legal aid services is problematic. It is not possible to obtain data for entirely comparable periods and there is no consistency in the recording and collating of legal aid information from one country to another. Also, there are significant differences between civil legal aid and criminal legal aid (notably, criminal legal aid tends not to be limited by “merits” testing or eligibility criteria).

The concept of applicant eligibility is fundamental to a country's approach to legal aid. Focussing on civil legal aid, we found that in most countries the provision of legal aid in civil matters is subject to tests, either “means” or “merits” or both. There are, however, wide variations across countries on the eligibility of persons for legal aid and advice: tests for means and/or merits can be very complex in some countries (eg, they can include a consideration of the applicant's motives), the availability of legal expenses insurance varies, there may or may not be an obligation to repay monies granted.

Generally, most countries target their legal aid towards the poorer section of the population but in criminal matters the targeting is less strict than in civil matters. The main component of legal aid expenditure in many countries is criminal defence (although the average cost per criminal legal aid case is usually lower than for civil and family matters, there is a greater number of criminal legal aid cases, primarily petty crimes etc). The number of grants in family law has been declining along with overall expenditure though family matters continue to consume a high proportion of legal aid expenditure and those matters that do receive grants involve a growing and high average cost per case. Generally, civil law expenditure has fluctuated but appears to be stabilising although the number of grants is declining. In contrast, all other legal aid costs appear to be increasing in most jurisdictions.

In civil legal aid cases, the concept of eligibility is well recognised though there are differences in the sophistication and application of eligibility criteria. Linked with the concept of eligibility is the question of what is available to non eligible applicants. Non state-funded alternatives have emerged to fill gaps in the provision of legal aid, such as legal advice centres, legal expenses insurance, pro bono work and self help services. Online services and other kinds of self-help services certainly appear to be capable of serving a wide constituency, especially those who fall outside normal eligibility guidelines.

In terms of public resources allocated to the provision of legal aid, England is far in excess of any other country, eg, its per capital expenditure is 17 times that of the US and four times that of the Netherlands. Most countries have addressed the problem of the ever increasing demands of legal aid. In some countries, (eg Italy and Greece) there is no tradition or expectation of widely available legal aid. Other initiatives, such as using public defenders as opposed to private law firms as the point of delivery of legal aid services have also been commented on (eg, in Scotland). In the family area early targeting of resources in some cases, especially those involving child abuse, appears to have both speeded up the process and saved money (as evidenced by trial programmes involving the family court in Australia). In general, legal aid funds allocation can benefit from a detailed analysis of the main headings of expenditure (criminal v civil, petty/standard matters v complex/novel matters) and an examination of international initiatives in respect of each such heading of expenditure. While no country has resolved the issue of increasing legal aid demands, there are promising attempts to tackle specific areas and develop both our understanding of what legal aid services are required and at what cost.

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COSTS OF LEGAL AID IN OTHER COUNTRIES

1. INTRODUCTION

The costs of legal aid vary considerably across countries. There are also differing means of delivery of legal aid. Three brute facts stand out, however: the costs of legal aid are rising and so are the numbers of cases being legally aided. Both are rising fast. And the UK spends vastly more on legal aid per capita than any other country as the following table vividly demonstrates.

Comparative Civil Legal Service Investments

(Nations ranked by relative share of GNP invested in publicly-funded civil legal services—lowest to highest. Source: www.equaljusticelibrary.org)

NATION (or political subdivision of nation, e.g., province, state)	THIS NATION'S TOTAL GOVT INVESTMENT IN CIVIL LEGAL SERVICES (in U.S. DOLLARS) [In U.S. includes Federal, State, local govts, & IOLTA expenditures]	GOVT'S PER CAPITA CIVIL LEGAL SERVICES INVESTMENT (in U.S. DOLLARS)	GOVT'S CIVIL LEGAL SERVICES INVESTMENT PER \$10,000 of GNP (in U.S. DOLLARS)	TOTAL U.S. CIVIL LEGAL SERVICES INVESTMENT IF U.S. INVESTED AS MUCH OF ITS GNP AS THIS NATION DOES IN CIVIL LEGAL SERVICES	HOW MANY TIMES GREATER IS THIS NATION'S CIVIL LEGAL SERVICES INVESTMENT THAN THE U.S. INVESTMENT [as % of GNP]
UNITED STATES (FY 1998)	\$600 million [pop=270 million]	\$2.25	\$0.70 [=70 cents]	\$0.6 BILLION [e.g., 600 million]	//////////////////////////////////// ////////////////////////////////////
GERMANY (1996)	\$390 million [pop=80million]	\$4.86	\$1.90	\$1.6 BILLION	2.5 times
FRANCE (1994)	\$270 million [pop=59 million]	\$4.50	\$1.90	\$1.6 BILLION	2.5 times
AUSTRALIA (FY 1998-99)	//////////////////////////////////// ////////////////////////////////////	//////////////////////////////////// ////////////////////////////////////	[Each State has its own program]	//////////////////////////////////// ////////////////////////////////////	//////////////////////////////////// ////////////////////////////////////
-New South Wales	\$31 Million [pop=6 million]	\$5.12	\$2.75	\$2.3 BILLION	4 times
CANADA (FY 1998-99)	//////////////////////////////////// ////////////////////////////////////	//////////////////////////////////// ////////////////////////////////////	[Each Province has its own program]	//////////////////////////////////// ////////////////////////////////////	//////////////////////////////////// ////////////////////////////////////
-Quebec	\$52 Million [pop=7.3 million]	\$7.07	\$3.50	\$3.0 BILLION	5 times
-Ontario	\$82 Million [pop=11.5million]	\$7.06	\$3.60	\$3.0 BILLION	5 times
-British Columbia	\$32 Million [pop=4 million]	\$7.80	\$4.00	\$3.34 BILLION	5.8 times
NETHERLANDS (1998)	\$150 Million [pop=15.5million]	\$9.70	\$4.20	\$3.5 BILLION	6 times
NEW ZEALAND (FY 1998-99)	\$27 Million [pop=3.8 million]	\$7.10	\$5.10	\$4.25 BILLION	7 times
ENGLAND (1999)	\$2 BILLION \$1.35 BILLION [pop=53 million]	\$39.00 \$26.00	Gross=\$17.00 Net = \$12.00	\$14.2 BILLION \$10.1 BILLION	23.5 times 17 times

Clearly, England is far in excess of any other country on the table; its per capital expenditure is, at the extremes, 17 times that of the US and four times that of the Netherlands.¹ The other countries in the table are mature, developed economies and societies that are not averse to spending on welfare. Nevertheless the UK has a serious problem with legal aid and advice expenditure that, on present trends, will get significantly worse. The CEPEJ report paints a similar picture in 2004 showing a total expenditure on criminal and civil legal aid in England and Wales of 2,800,000,000 euros (£1.9bn) with Germany reporting the next highest total with 462,000,000 euros (£319m).² There is one other feature which marks out the UK from other jurisdictions, the numbers of cases granted legal aid. For England and Wales 1,640,000 criminal cases and 1,017,000 civil cases receive legal aid. For France, the comparable figures are criminal—290,395 and civil—398,252; and Germany funds 495,686 civil cases. No other country comes close to the UK in amounts of expenditure on or numbers of cases funded by legal aid.

This report aims to examine some of the differences and variations by using a non-random sample of countries.³ To assist in understanding these data and the differences in countries' outlooks and approaches to legal aid, a literature review outlines some of the pertinent distinctions.

The data presented within this report, it should be noted, have to be viewed with caution. It is not possible to obtain data for entirely comparable periods. Rather than omit potentially illuminating data, they are presented using present day exchange rates, which should mean they are at least indicative if not fully dispositive. Moreover, not all legal aid agencies or ministries of justice present all their data in a form that enables comparison: often they omit the very statistics the researcher needs. And some do not publish any useful data in relation to costs. Our data come from official government websites, documentary sources including journal articles and conference reports, NGO reports and websites, lawyers' associations, and answers from the Fundamental Legal Aid Review (FLAR) questionnaire,⁴ and the CEPEJ report. The FLAR answers are used in the text but not specifically referenced. The tables appended after the text also represent data that have been collated from these above sources.

The report is structured to present an overview of the problem that is followed by an examination of eligibility, alternatives, and the costs of legal aid. It concludes with a series of suggestions on why these differences exist, some strategies that could be adopted within the UK to refine legal aid policies, and some future directions for research. The text is derived from a mixture of quantitative data as seen in the appended tables and documentary sources mentioned earlier.

¹ Although the data are a few years old, their relevance is not diminished

² Eshuis. R. 2004. *European Judicial Systems 2002: Report on the CEPEJ Evaluation Scheme*. CEPEJ at p 15

³ The report will not deal with legal aid in the UK although it will occasionally refer to it

⁴ In August 2004 the DCA FLAR team sent out a series of questionnaires to a number of British embassies in order to gather information on legal aid in other countries

2. BACKGROUND

Article 6 of the European Convention on Human Rights, “Right to a Fair Trial”, contains the provision: “3. Everyone charged with a criminal offence has the following minimum rights:...(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;” No similar requirement exists for civil legal assistance within the convention, but the European Court on Human Rights has suggested otherwise. In *Airey v. Ireland* (Series A no. 32, 1979) the court held that Article 6, para. 1 may compel states to provide legal assistance when it is indispensable for effective access to the courts, either because legal representation is mandatory under domestic law or because of the complexity of procedure or the case. Thus access to justice is a necessary condition for a democratic society. Most governments have found that expenditures on legal aid have the potential to be ungovernable and ways are being explored that will allow commitments to access to justice to be combined with the need to constrain growth in costs. In both criminal and civil legal aid different models are emerging that attempt to grapple with these problems.

It will help understanding of some of the issues if the process of disputing is outlined. Most lawyers and analysts of disputes tend to take them as a given, not realising that each has its own trajectory. The main point is that the vast majority of disputes never cross the threshold of the court. The second key point is that the most common method of dispute resolution is “lumping it”, ie, doing nothing.⁵ Between lumping it and the court is an array of possibilities that theoretically can be expressed as “naming, blaming and claiming”.⁶ These are the steps that people typically, but not always, undergo when something that is potentially injurious happens to them. Once someone understands that the event they experienced was injurious—eg, inhaling asbestos did cause asbestosis even though it was long ago—they are in a position to take action. They have successfully “named” what occurred as injurious. Not all are able to so recognise events. Having named the event, the victim is able to begin to see if someone is liable or blameworthy. For example, if a worker was sent out without appropriate protective clothing by his company when extracting asbestos from walls, he might well feel the company is to blame for his present condition, ie, he has “blamed” the culprit. Finally, realising his predicament is serious to the extent it is life threatening, he may want to claim something from the malefactor. The kind of claim can vary: an apology may be all that is required, or it may be more substantial with damages as the prime component. The naming, blaming, claiming trajectory describes an idealised process. In real life, those on the trajectory may not take all three steps. They can fall out of the process at any stage. It may be sufficient to know what the trouble is or it may be enough to know who is responsible. Or perhaps who is responsible is no longer extant or the victim has died before a claim could be instigated. Or perhaps there is a lack of

⁵ There may indeed be times when this is an appropriate response especially if it is accompanied by some kind of “cooling off”. It suggests that not all justiciable events are worth disputing

⁶ Felstiner. W., Abel. R., Sarat. A. 1980. “The emergence and transformation of disputes: naming, blaming and claiming...” *Law & Society Review* vol 15, p 631

funds or knowledge on how to bring a claim. The process is unstable and inchoate. While this process ideally describes the civil arena, it can also apply to the criminal.

Legal advice and aid normally become an active part of this process between the blaming and claiming stages. And it is this latter stage that can create significant costs for legal aid schemes. The process also raises interesting questions about what may be the most effective entry points for legal aid and advice: should it be early or late? For example, the Magellan project concerning abused children in the Australian Family Court (referred to later in the report at p 17) indicates that an intensive front-loaded expenditure can prevent delay, confusion and court and lawyers' time thereby ultimately saving money.⁷

3. Models of Legal Aid

The delivery of legal aid falls into two main categories. In addition, there are three main types of funding of legal aid.

i. Delivery:

1. The "mutual interest" approach which depends on commonality of view and a collective range of activities, typified by the post second world war welfare approach of England and Wales
2. The "purchaser-supplier" approach where a funding agency purchases a set of services, exemplified by the current British approach and Australia.⁸

ii. Funding:

1. The "contribution" approach where applicants are required to contribute towards costs—eg, UK, Netherlands
2. The "legal expenses" approach where various kinds of insurance, house or motoring, provide access to the legal system—eg, Sweden
3. The "loan" approach where contributions are granted as loans to be repaid within a fixed period—eg, Germany.⁹

Again, the above points refer primarily to civil legal aid. In the criminal field the modes of delivery are dominated by the mutual interest approach or state-supplied systems involving public defenders.

Another thesis suggests that the funding/personnel approach to legal aid is inadequate to analyse legal aid schemes.¹⁰ This alternative approach proposes that legal aid be viewed through the "lens" of the welfare state. Three models of welfare state are suggested: Social Democratic, Corporatist,

⁷ Brown. T. et al. 2001. *Resolving Family Violence to Children* Monash University

⁸ Fleming. D. 2002. "Research Report: The Purchaser-Supplier Approach in Legal Aid"
<<http://canada.justice.gc.ca/en/ps/rs/rep/rr03lars-6.html>>

⁹ Van Zeeland. C. & Barendrecht. J. 2003. "Legal Aid Systems Compared"
<<http://www.minjust.nl:8080/b-organ/wodc/publications/ewb03gefe.pdf>>

¹⁰ Regan. F. 1998. "Are There 'Mean' and 'Generous' Legal Aid Schemes? A Comparison of Legal Aid in Australia and Sweden"
<<http://www.ssn.flinders.edu.au/scanlink/nornotes/vol12/articles/regan.html>>

and Liberal.¹¹ It is argued that each has a different commitment to the welfare state with Social Democratic being the most generous and Liberal being the meanest. In this scheme, Sweden's legal aid scheme was seen as comprehensive and supportive (Social Democratic) while Australia's was narrow and exclusionary (Liberal). This approach has been criticised for being wrong because it has been shown that countries with comparable expenditures on welfare can spend different amounts on legal aid. According to Blankenburg the Dutch government spends 14 times more in per capita subsidy on legal advice than the German government despite similar welfare state development.¹²

It is worth bearing in mind that NGOs and legal clinics are found to be delivering legal aid-type solutions, which supplement the state-provided system. Over the years lawyers in many jurisdictions have offered their services *pro bono publico*, except where such activities are prohibited by law, eg, Germany and Greece.

In order to explore the issues, we examined statistics and descriptive information from a number of jurisdictions. Appendix 1, at p 23, shows how legal aid and advice functions in the criminal field and Appendix 2, at p 32, shows the civil side.

4. Eligibility For Legal Aid and Advice

First, we present information on *eligibility* for legal aid and advice. See Appendix 3, at p 37, on civil and criminal eligibility for legal aid and advice for full details. The text below will explore the main differences that arise.

i. Criminal:

1. In many countries the granting of legal aid in criminal matters is given without recourse to tests, financial or merits.
2. There are distinctions in granting legal aid depending on whether the case is a minor or serious one. In some countries minor cases do not receive legal aid.
3. The former is often dealt with by the services of a duty lawyer in court assigned on the day (eg, Ontario).
4. In serious cases, when lawyers' fees can be substantial, legal aid may be granted on a contributory basis (eg, New South Wales) or some charge may be imposed post hoc (eg, France), or, if convicted, the defendant must pay all the costs, (eg, Hungary).
5. Serious offences may also not require a merits test, eg, "the interests of justice" test in Eire.
6. There is a range of countries that have primitive forms of legal aid or virtually none. Although schemes may have a *de jure* existence, they

¹¹ Esping-Andersen. G. 1990. *The Three Worlds of Welfare Capitalism* (Polity, Cambridge)

¹² Blankenburg. E. 1992. "Comparing Legal Aid Schemes in Europe" *Civil Justice Quarterly* vol 11, p 106

have no *de facto* substance. These are mainly found within the former communist bloc, eg, Bulgaria and the Czech Republic.¹³

7. Many countries restrict delivery of free legal advice.

ii. Civil:

1. In most countries the provision of legal aid in civil matters is subject to tests, either “means” or “merits” or both.
2. Some jurisdictions only apply income tests, excluding assets, eg, France, Greece, and Italy.
3. Some countries take both income and capital into account when determining eligibility, eg, Canada, Eire, and Sweden.
4. Merits’ tests in conjunction with means’ tests—often interpreted as “having a good chance of winning”—may be applied in all cases, eg, Eire.
5. Multiple merits’ tests may be applied, eg, Australia where the tests incorporate prospects of success, whether a prudent self-funding litigant would risk the proceedings, and whether the applicant or community would benefit from the expenditure.
6. The applicant’s motives may be taken into account in deciding whether to award legal aid, eg, Germany will exclude applicants if they are found to be acting “spitefully”.
7. Some countries may exclude merits’ tests in certain categories, eg, France which excludes defendants in civil cases, persons whom a court may find civilly responsible for another’s loss, and witnesses who need help in order to testify (eg, non-French speakers).
8. Where a person has, or should have had, legal expenses insurance, legal aid will be denied until this is used first, eg, Sweden.

It is clear there are wide variations across countries on the eligibility of persons for legal aid and advice: the use or otherwise of tests for means and/or merits of applicants including their motives, the availability of legal expenses insurance, the obligation or otherwise to repay monies granted, eg, in Finland the loser pays the winner’s costs, the seriousness of the offence charged, and finally whether provision for legal aid exists *de jure* or *de facto*.¹⁴ It is also apparent that most countries target their legal aid towards the poorer section of the population, thus eligibility tests keep the proportion of potential legal aid users low. In criminal matters the targeting is somewhat less strict than in civil, but most of the funds are directed at serious cases and minor ones are not aided.

5. Alternatives to Legal Aid

Second, over time, usually because of the deficiencies of state-funded legal aid, alternatives have emerged to fill gaps in the provision of legal aid. In Appendix 4, at p 53, we highlight some alternatives to legal aid and explore a

¹³ See note 2, Table 4. According to the CEPEJ report Bulgaria spent 1.2 m euros on all legal aid, the fourth smallest budget in the CEPEJ survey. Bulgaria has no merit tests, income or asset tests for eligibility: this only strengthens the conclusion about legal aid in Bulgaria.

¹⁴ A number of countries engage in fee shifting (loser pays winner’s costs), which can be perceived to have a deterrent effect on the pursuit of actions. See also note 2, CEPEJ report, Table 7

number of them in this section. We explore some of them in this section, namely, legal expenses insurance, legal advice centres, *pro bono* work, and self-help services.

i. Legal Expenses Insurance:

Insurance for legal purposes has been gaining in popularity for some time. The largest market for legal expenses insurance (LEI) is in Germany. It appears to thrive due to two features, namely, the existence of scale fees ensuring calculability and a large risk pool that has built up over 75 years.¹⁵ LEI is not the same as prepaid legal services plans as found in the US, which mainly enable clients to receive a fixed number of hours of advice with occasionally some representation.¹⁶ LEI has flourished in Germany despite the fact that this type of insurance cannot be “bolted on” to other types of insurance, eg, household contents or automobile.

According to Kilian and Regan, 44% of all households in Germany are covered by LEI with insurance offered by 50 insurance companies which funds 3.6 million cases a year.¹⁷ The breakdown of types of cases shows:

- 22.6% penal law—mostly traffic law
- 20.0% tort law
- 19.0% contract/property law
- 15.0% employment law
- 13.3% landlord & tenant law
- 3.7% family law/law of succession
- 2.7% social security law¹⁸

Moreover, LEI is generally taken out by higher income groups.

Sweden’s LEI started as a gap filler to its legal aid system. Since the welfare cuts of the 1980s and 1990s including the 1997 legal services reforms, LEI has come to play a major role in providing access to justice and 97% of the population carries it.¹⁹ The 1997 reforms reduced the number of legally aided cases from 60,000 in 1994/5 to 14,200 in 2000, and LEI cases rose from 10,775 in 1997 to 14,000 in 2000.²⁰ Furthermore, LEI cases appear to be less generously funded than legally aided cases.

ii. Legal Advice Centres:

Within a number of countries legal advice centres have developed to serve local needs. The US Legal Services Corporation (LSC) funds a series of advice centres throughout the states. A full-bodied example is the Legal Assistance Foundation of Metropolitan Chicago (LAFMC), which receives about 54% of its budget from the LSC with the remainder coming from

¹⁵ Kilian. M. 2003. “Alternatives to Public Provision: The Role of Legal Expenses Insurance in Broadening Access to Justice: The German Experience” *Journal of Law and Society* vol 30, p 31

¹⁶ Killian. M. & Regan. F. 2003. “Legal Aid And Legal Expenses Insurance—Two Sides Of The Same Coin?” ILAG Harvard 2003

¹⁷ See note 13, p 6

¹⁸ See note 13, p 7

¹⁹ See note 13, pp 14-15, see also note 4

²⁰ See note 13, p 16

charitable funds, IOLTA funds,²¹ and other government sources.²² It has been established over 30 years and the range of services provided by the LAFMC covers legal advice and representation in court for individuals, community projects, and legal education, which it operates through six offices in Chicago. It also runs a series of special projects on matters such as consumer law for the elderly, legal services for immigrants, and HIV/AIDS. The LAFMC budget is approximately \$12 million (£6.6m) a year. Current federal government policies are geared towards reducing the grant of the LSC and thereby its contributions to its constituency. In the 1980s the LSC was told to insist that every grant recipient must spend 12.5% of its budget on private attorney involvement. In 1995 there were 325 LSC funded programmes in the US; in 2003 there were 160.²³

Since legal advice centres depend on staff lawyers, their recruitment and retention is vital to their service delivery. Budget cuts therefore impinge heavily on staffing. One way of reducing their impact has been the development of loan repayment assistance programmes that enable law graduates to offset some or all of their law school debt by undertaking law centre work for a number of years. While this is now an established feature in the US, it has yet to gain a foothold elsewhere.²⁴

Other countries that have established locally based legal advice centres include Eire, which has at least two legal advice centres in Dublin and Cork that give free legal advice and provide some representation at employment tribunals. In Germany, the three city-states of Berlin, Bremen, and Hamburg offer free legal advice. And New Zealand has community law centres that focus on advice with some representation.

There are other types of centre such as the Japan Legal Aid Foundation developed by the Japan Federation of Bar Associations which has about 50 offices throughout Japan.²⁵ The main demand is for legal advice and aid (trial representation) in bankruptcy, followed by family matters. These centres are not staffed by centre lawyers but use the services of private lawyers.

iii. Pro Bono Work:

Part of the professional ideology of lawyers is built around the conception of public service. This expresses itself in *pro bono* activity where lawyers in private practice give their services for free or at greatly reduced rates to the

²¹ IOLTA is interest on lawyers' trust accounts, ie, money held on behalf of clients in interest bearing accounts. This is used to fund legal aid in a number of countries. See, eg, the American Bar Association Commission on Interest on Lawyers' Trust Accounts <<http://www.abanet.org/legalservices/iolta/home.html>>

²² See <<http://www.lafchicago.org/>>. Illinois is a large Midwestern state with a population of over 12,600,000 and a poverty population of 1,291,958. By law the LSC has to use means' tests to determine eligibility for services. These figures are calculated by the US Department of Health and Human Services

²³ Houseman. A. 2003. "Civil Legal Aid in the United States: Recent Developments and Long-Term Directions" ILAG Harvard 2003. For ILAG see <<http://www.ilagnet.org>>

²⁴ In the US cumulative law school debt is approximately \$80,000 (£44,000)

²⁵ Watson. A. 2000. "Legal Aid: A Time of Change in Japan" *Justice of the Peace and Local Government Law* vol 164, no 34, p 657

poor. In the United States, for example, there are estimated to be over 600 *pro bono* programmes and 15,000 attorneys are registered to participate in *pro bono* activities promoted and funded by the Legal Services Corporation. The American Bar Association is prominent in promoting the delivery of *pro bono* services.²⁶

Japan has begun to develop a *pro bono* system for assistance in criminal cases. This is mainly used at the advice stage, but the implementation is hazardous owing to the lack of rules on lawyers' right of access to clients and the ease with which police can generally extend detention for questioning. And rarely does a criminal case go to trial unless a confession has been obtained first, which means conviction rates are about 99%.²⁷

Essentially, *pro bono* will always be a gap filler.

iv. Self-Help Services:

As more people are excluded by means' tests from participating in legal aid and yet unable to afford private lawyers' fees, they are turning to representing themselves. While the tradition of self-help or *pro se* representation has a long history, it can be antithetical to the efficiency of the justice system. The McDonalds libel case, where the defendants represented themselves against McDonalds, is one exemplar of this tendency. This case became the longest running trial in the UK at two and a half years.²⁸ In the UK the Citizens' Advice Bureaux play a big role in assisting *pro se* litigants. The state of California has had to respond to a growing number of *pro se* litigants in family cases. The courts are finding that *pro se* litigants are often confused about procedures and take up vast amounts of court clerks' time.²⁹ In order to facilitate an efficient use of court capacity, California introduced a series of family law facilitators who would advise *pro se* litigants on procedures without compromising the court's neutrality. The 2001 state budget included \$832,000 (£461,000) for pilot self-help centres and an online self-help centre. The online centre recorded over 2 million hits and 130,000 user sessions in 2003.

The internet has provided one of the more fast expanding sources of legal advice, or more correctly legal information. In the UK freelawyer.co.uk, part of judicium.com, pioneered the provision of free legal information tied into a back up service provided by a panel of solicitors. One problem encountered with this service was the inability of English solicitors to give a quick response to email requests. Within the United States online services have proliferated giving information on divorce, bankruptcy, wills, company incorporations

²⁶ See <<http://www.abanet.org/legalservices/probono/home.html>>

²⁷ Namazugoshi. I. 1998. "Legal Advice and Legal Aid in Criminal Cases in Japan" *Hitotsubashi Journal of Law and Politics* vol 26, p 35

²⁸ *Steel and Morris v McDonalds*: see <<http://www.mcspotlight.org/case/>>. The case is now before the European Court of Human Rights where the McDonalds' defendants are claiming breach of Article 6 (right to a fair trial). See p 7 above

²⁹ Hough. B. 2003. "Description of California Courts' Programs for Self-Represented Litigants" ILAG Harvard 2003

among others.³⁰ Even the US government is offering free online legal advice to small businesses at BusinessLaw.gov.³¹

The description of the alternatives presented here indicates that there is a trend towards legal advice and legal aid being privatised through the reduction of state participation.

6. Comparing Costs of Legal Advice and Aid

Third, we compare across a number of countries the costs involved in legal advice and aid. See Appendix 5, at p 60, for the full results. The figures presented here must be treated with caution as both time periods and exchange rates vary. Exchange rates used are present day one. Furthermore, not all the countries previously discussed provided details of expenditure on legal aid, therefore we present what data were freely available.

The main component of legal aid expenditure in many countries is criminal defence. However, when viewed from an average cost per case criminal is usually lower than civil and family matters reflecting the great numbers of petty crimes that find their way into the criminal justice system. There is the exception of serious offences that incur higher average costs per case than most other types of case.

i. New Zealand

For example, in New Zealand (population >4 million) criminal legal aid costs have increased year on year: in 2000/01 expenditure totalled NZ\$31m (£11.5m); in 2001/02 it was NZ\$33m (£12m); and in 2002/03 it was NZ\$35m (£13m), although the number of criminal legal aid grants had dropped from over 44,000 in the earlier two years to 40,000 signifying that cases are costing more. Criminal has consumed from 39% of the legal aid budget in 2000/01 to 43% in 2002/03.

In contrast in family law, the number of grants has been declining along with expenditure from over 19,000 grants at NZ\$34m (£12.6m) in 2000/02 to over 18,000 grants at NZ\$27m (£10m) in 2002/03. Civil law expenditure has fluctuated but appears to be stabilising although the number of grants is declining.

The average costs of cases in 2001/02 were:

- criminal NZ\$747 (£277)
- family NZ\$1,450 (£537)
- civil NZ\$2,782 (£1,031)

which also shows that while civil cases were the most expensive, they had a lower rate of grant issuances. Civil also includes refugee and immigration cases. Note that serious criminal cases produce higher average figures: murder cases cost in the region of NZ\$34,000 (£12,600) per grant in 2002.³²

³⁰ Granat. R. 2003. "Online Legal Services for Low and Moderate Income Clients: Private Market Solutions to Meeting Legal Needs" ILAG Harvard 2003

³¹ See <<http://usgovinfo.about.com/library/weekly/blsbalaw.htm>>

³² Hamill. J., Blyth. F. & Nicholas. R. 2003. "New Zealand Country Report" ILAG Harvard 2003

According to Hamill et al there has been a 62% increase in legal aid expenditures from 1992/93 to 2001/02. They peaked in 1989/90 and have flattened since.³³ Until 2000 when the Legal Services Agency took over the management of grants, the issuance of grants was determined by court registrars in crime and local committees of lawyers in civil, which produced many variations in numbers. Those grant recipients who are successful in their cases have to repay the legal aid costs. Finally, the New Zealand government hopes to coordinate legal aid with welfare services in order to employ government resources in the most efficient and effective manner.

ii. Ontario, Canada

The next example is Ontario, Canada (population >12 million) where in 2002 Legal Aid Ontario assisted more than three million clients.³⁴ Ontario runs a number of programmes including certificate programmes which grant legal aid, duty counsel schemes, and community law centres. The biggest of the three is the certificate programme which, it appears, takes up 50% of the legal aid budget consistently year on year: from CN\$111.6m (£48.5m) in 1999/2000 to CN\$150m (£65m) in 2001/02. Duty counsel schemes absorb only between 7% and 9% of the budget each year: from CN\$16m (£7m) to CN\$25.5m (£11m) in 2001/02. The clinic programme uses around 17% to 18% of the budget: from CN\$38m (£16.5m) in 1999/2000 to CN\$53m (£23m) in 2001/02.

In Ontario criminal legal aid outstripped resources devoted to civil with criminal legal consuming between 55% and 60% of the budget. But the costs of the certificates show a fluctuation, with a possible downward trend, over the years: in 1999/2000 criminal costs were CN\$62m (£27m); in 2000/01 they were CN\$65m (£28m); 2001/02 they were CN\$63m (£27.5). Family also fluctuates with 1999/2000 showing CN\$30m (£30m); 2000/01 showing CN\$32m (£14m); and 2001/02 showing CN\$29.6m (£12.6). The other-civil category again fluctuates with 1999/2000 showing CN\$6.6m (£3m); 2000/01 showing CN\$8m (£3.5m); and 2001/02 showing CN\$7.4m (£3.2m). The steady increase comes in immigration with 1999/2000 showing CN\$8.7m (£3.8m); 2000/01 showing CN\$11.5m (£5m); and 2001/02 showing CN\$13.7m (£6m).

And under the certificate program average case costs in 2001/02 were:

- criminal CN\$1,359 (£591)
- family CN\$1,650 (£717.5)
- civil-other CN\$ 843 (£367)
- immigration CN\$1,735 (£755)

iii. Queensland, Australia

In Queensland, Australia the legal aid agency uses in-house staff lawyers, community legal clinics, and private practitioners.³⁵ The latter now work within

³³ Seen note 24, p 6

³⁴ Biggar. G. 2003. "Ontario's Family Law Experiments" ILAG Harvard 2003

³⁵ Legal Aid Queensland. 2003. Annual Report 2002-2003

<<http://www.legalaid.qld.gov.au/gateway.asp?c=publications>>

a preferred supplier scheme. In all areas of law, private lawyers do more cases than in-house lawyers.³⁶

Area of law	In-house lawyer	Private solicitor	% In-house lawyer
Civil	875	2,322	27
Criminal	6,406	12,433	34
Family	2,396	6,734	26
Total	9,667	21,489	31

In all areas except civil legal aid costs appear to be increasing. Payments to private lawyers in 2001/02 and 2002/03 were as follows:³⁷

Area of law	Amount Aus\$ million		% change	Average Aus\$ per case		%change
	2001/02	2002/03		2001/02	2002/03	
Civil	2.4 (£950k)	2.3 (£911k)	-8	996 (£394)	896 (£355)	-10
Criminal	12.5 (£5m)	13 (£5.1m)	3	1,002 (£397)	1,000 (£396)	-0.2
Family	11 (£4.4m)	11.5 (£4.5m)	6	1,660 (£657)	1,713 (£678)	3

As we can see family consumes a high proportion of the expenditure with a growing and high average cost per case. Civil is the only category that is consistently declining.

Within the commonwealth of Australia legal aid funding has been on a decline, in part because of the switch to a purchaser-supplier model. The funding figures are:

1996/97 \$millions	1997/98 \$millions	1998/99 \$millions	2003/04 \$millions
128.3 (£51m)	109.68 (£43m)	102.84 (£41m)	126.48 (£59m)

Finally, if we look at the US Legal Services Corporation caseload distribution, we see that in 1999 36% of the caseload was devoted to family, with housing at 23%, and income maintenance at 14%.

We can draw no obvious conclusions from these data, but two conjectures begin to emerge. Family matters have the potential to consume many resources and immigration/refugee matters are appearing to become a growth area. Cousins has suggested that growth in family law matters may be associated with Roman Catholicism.³⁸ He points out that legal aid has been slow to develop in Catholic as compared to Protestant countries. Its rise appears to be linked to a breakdown in family cohesion and marriage. Certainly in Ireland legal aid has grown by 70% from 1999 to 2004 since the

³⁶ See note 27, p 72

³⁷ See note 27, p 73

³⁸ Cousins. M. 1999. "Legal Aid Reform in France and the Republic of Ireland in the 1990s" in Regan. F. et al (eds) *The Transformation of Legal Aid* (Oxford University Press: Oxford)

legalisation of divorce; and, of the 18.4 million euro civil legal aid budget, family law matters consume 90%.³⁹ This suggests that other strategies and tactics will be needed to tackle these areas.

7. Examples of Strategies

Strategies are evolving to cope with the increasing demands of legal aid. The simplest is to do nothing. For example, although both Italy and Greece (where a new legal aid law was passed in June 2004⁴⁰) have clear legal aid rules in place, there is virtually no legal aid available to the public. Although, according to the CEPEJ report, Italy has a legal aid budget of almost 45m euros (£31m), it only spends 78 cents (54p) per capita, one of the lowest amounts in the CEPEJ survey, compared to England and Wales' expenditure of 53.8 euros (£37) per capita.⁴¹ According to some lawyers from these countries, the situation is unlikely to change in the future. Leaving aside this as an unrealistic approach, other strategies have included the following.

Research on Scottish public defenders indicates that adversarialism was reduced by their use as opposed to the normal "judicare" method of using private lawyers.⁴² Goriely suggests that overall costs were reduced as defendants tended to plead guilty earlier in the process with public defenders. Under judicare there were monetary incentives for lawyers not to plead guilty early in the case. Conviction rates also were higher. This is reinforced by evidence from the United States where after the Supreme Court decision in *Gideon v. Wainwright* (372 U.S. 335 (1963)), indigent defendants won the right to counsel at state expense, many US counties instituted public defender programmes to avoid the expense of private lawyers' costs. Within the US criminal law sphere public defenders are de rigueur.

In the family area early targeting of resources in some cases, especially those involving child abuse, has both speeded up the process and saved money.⁴³ The family court in Australia trialled a programme (the Magellan Project) that offered a rapid and coordinated response involving multiple agencies. The initial costs were higher but there were savings later in the process: eg, the number of court hearings was reduced by half, the time taken to deal with cases was cut by half, and legal aid costs were also cut by half. The programme was premised on the fact that enormous amounts of child abuse occur during marital breakdown, which has deleterious consequences for the

³⁹ Sonia Shah Kazemi's work on Muslim divorce also suggests that states must take into account religious interests when planning changes in family law and be prepared to meet the costs. See "Cross-Cultural Mediation: A Critical View Of The Dynamics Of Culture In Family Disputes" *International Journal of Law, Policy and the Family* vol. 14, No. 3, December 2000

⁴⁰ The minimum fee schedules prepared by the Greek Ministry of Justice are on file with the authors, but note they are only in Greek.

⁴¹ See note 2, table 1

⁴² Goriely. T. 2003. "Evaluating the Scottish Public Defence Solicitors' Office" *Journal of Law & Society* vol 30, p 84. See also Goriely. T. et al. 2001. *The Public Defence Solicitors' Office in Edinburgh: An Independent Evaluation*

⁴³ Brown. T. et al. 2001. *Resolving Family Violence to Children* Monash University. See also Hunter. R. 2003. "Adversarial Mythologies: Policy Assumptions and Research Evidence in Family Law" *Journal of Law & Society* vol 30, p 156. A copy of the Magellan Project report is enclosed with this report

children as well as others. These cases were led by a judge who explained to all participants how the cases would be handled during the first court events. The child protection service would then investigate and report within five weeks with a second court event in seven weeks if the matter had not been resolved. Two more court events were permitted within a maximum time of around 20 weeks (compared to the UK 40 week span). Children were given legal representatives at the first court event. The initial costs were higher than in “normal” child case trajectories, but considerable savings were made when cases were resolved earlier than usual. The authority of a judge was necessary to commit people to the process and command adherence, especially when issues of inter-organisation difference arose. New Zealand is also advancing a policy of coordination between welfare services and legal aid, which is something not done in the UK.

This raises questions about the role of government departments in the production of laws and regulations that have financial consequences in future legal aid expenditure. It is something that requires careful monitoring because of the demands made on government resources when new law is introduced. For example, the Australian Senate Legal and Constitutional References Committee, in its report on access to justice and legal aid, insisted that state and territory governments should “pay specific attention to the impact on legal aid demand when developing proposed legislation.” The committee then gave a graphic example of why this should be done: “The Legal Services Commission of South Australia explained in evidence that the recent law and order campaign in that state, which manifested itself in the form of stricter criminal trespass legislation, has led to a steady increase in demand for legal aid. Our hypothesis is that as the law and order campaign takes effect and new legislation is brought in for serious criminal trespass, which has elevated the penalties imposed by the courts on people trespassing on peoples property when they are present the number of matters going to the district court has increased significantly, they are being contested hard and, because the emphasis is on longer sentencing, the sentencing submissions are being fought much harder. Our statistics have borne that out. We are getting the Office of Crime Statistics and Research to validate the research we have done. At the rate we are going, we have had to ask the government for \$1 million more in the next financial year just to maintain the rate at which we are currently expending funds in the criminal jurisdiction.”⁴⁴

Online services and other kinds of self-help services are clearly capable of serving a wider constituency, especially those who fall outside normal eligibility guidelines. These are low-cost alternatives that can easily be promoted, such as Community Legal Service Direct,⁴⁵ and can be effective in delivering legal information. At some stage this kind of service will need to be independently evaluated just as NHS Direct has been.

The key moves in recent years have been from the mutual-interest model to that of purchaser-supplier. This model seems to be able to improve targeting

⁴⁴ Australian Senate Legal & Constitutional References Committee *Legal Aid and Access to Justice: Fourth Report*, June 2004 pp 28-29. A copy of the report is enclosed with this report

⁴⁵ See <<http://www.clsdirect.org.uk>>

and save considerable amounts of money. This is also occurring in countries previously thought social democratic (welfarist) in nature, such as Sweden and the Netherlands. Determining which institutions should be primarily responsible for legal aid decision making has changed from local agencies, eg, court officials and legal services boards, to more centralised institutions that can monitor delivery and consistency of service and benefit more effectively.⁴⁶ It does appear that where courts are responsible for granting legal aid, in either criminal or civil, the issuance of grants for legal aid is higher than if an administrative body makes the decision.

In civil legal aid more services could be outsourced to legal expenses insurance and conditional fees cases, especially personal injury and medical negligence, could be extended to other types of dispute but perhaps with caps on liability in order not to deter necessary activities. In criminal cases it would seem changes in procedure such as dealing with minor cases in less formal environments and without the threat of custodial sentences could remove the need for legal aid from a significant area.

8. Trying to Understand Differences and Potential Research Areas

This report essentially raises more questions than it answers. This is not a surprise given the patchy nature of the data available and the range of means used to tackle the problem of rising legal aid costs. We conclude that there is a necessity for further research. One area that is of crucial interest is the difference that the type of legal system may have on the justice process. For example, with Belgium there is anecdotal evidence to suggest that an important factor in keeping down demand for legal aid is the slowness of the Belgian legal system, which is a constant theme in Belgium as every government vows to speed up the system.⁴⁷ We could ask if the progress of “justiciable events”, to rework Genn’s terminology,⁴⁸ are treated differently in inquisitorial (civil code jurisdictions) to adversarial (common law jurisdictions). Does the inclusion of the investigating magistrate alter the course of a case or its disposition and therefore expenditure on legal aid? A comparison could be made, for example, between the trajectory of a criminal case in England with one in Sweden. Certainly the data in the CEPEJ report indicate that courts and their officials do quite different tasks in different countries and that we cannot make easy assumptions about comparability across jurisdictions.⁴⁹

Tata attempts to elucidate differences in legal aid spending by looking at Scotland, Netherlands, and England and Wales.⁵⁰ He notes that the Dutch do

⁴⁶ New Zealand has achieved a decline in its legal aid budget overall by using such a strategy. Ontario also has adopted it.

⁴⁷ British Embassy in Brussels response to DCA/FLAR questionnaire on legal aid 2004. Also Finland deters applicants by requiring losers to pay winners’ costs in legally aided cases

⁴⁸ Genn. H. 1999. *Paths to Justice* (Hart: Oxford)

⁴⁹ See note 2 at p 12

⁵⁰ Tata. C. 1999. “Comparing Legal Aid Spending: The Promise and Perils of a Jurisdiction-Centred Approach to (International) Legal Aid Research” in Regan. F. et al (eds) *The Transformation of Legal Aid* (Oxford University Press: Oxford). But note there have been

not have jury trials, which reduces expenditure on representation in lengthy cases, but most of Scotland's criminal cases are handled without juries (use of jury determined by Procurator Fiscal) yet Scotland spends, in 1992 terms, seven times per capita than the Netherlands. Tata puts forward several reasons why the Dutch spend less on legal aid. First, it is normal Dutch prosecution practice to aggregate cases into a single charge sheet so that all cases against a defendant are dealt with in a single court appearance. Second, Dutch courts are far more informal than British courts, which appears to negate the need for defence lawyers. Nor it seems is it necessary for the defendant to appear in person. Dutch equivalents of magistrates' courts do not give custodial sentences, so if the accused is not present, the need for a defence lawyer also disappears. The key reason appears to lie in prosecutorial discretion: Dutch prosecutors bring far fewer cases to court than do their UK equivalents. Even though Dutch and Scottish prosecutors have roughly the same powers, they use them differently. In the Netherlands prosecutors bring around a third of their cases to court, in Scotland the proportion is a half, and in England and Wales it is four-fifths. All of this produces lower spending on legal aid in the Netherlands, and as Tata puts it, "the Dutch system costs less because serious cases are dealt with more cheaply and less serious cases are not legally aided".⁵¹ But Tata argues that the differences cannot be solely explained by distinguishing inquisitorial from adversarial. It therefore remains an open question for research.

Tata's approach is suggestive of a way of understanding, from a comparative perspective, why these differences may exist in the way they do between civil code/inquisitorial and common law/adversarial systems. The variable to focus on is the relationship of the legal profession (which for argument's sake will include the judiciary) with the state. An early social historian of law, Max Weber, argued that for "capitalism" to succeed it would need to be supported by a formally rational legal system, something which the civil code style exemplifies.⁵² The deficiency in his argument was that countries, like England, that were committed to the less than formal, piecemeal, ad hoc, common law system, became capitalist before others such as France and Germany. England's common law style with lawyers trained through apprenticeship rather than academic routes meant that lawyers were not enthralled to the state but separate from it. Separation gave them the opportunity to seek market solutions to legal problems, solutions that were crafted by lawyers in contracts and court decisions rather than in statutes. The state oversaw and monitored these developments without interfering too much.

According to Regan, lawyers in continental countries were absorbed and integrated into the state apparatus at a fairly early stage: they became part of

changes to the system since Tata did his research, eg, a move from actual case costs to fixed fee for "typical" case.

⁵¹ See note 33 at p 147. This accords with the situation in Germany where only serious criminal cases receive legal aid and there is no provision for legal advice in police stations. British Columbia follows a similar pattern.

⁵² Weber. M. 1978. *Economy and Society* (University of California Press: Berkeley). Weber was writing at the end of the 19th century and was engaged in a debate with Marx's mono-causal idea of social and historical change.

the state.⁵³ The result, she argues, of these moves is that civil code lawyers developed answers to legal questions within state structures whereas common lawyers often looked outside the state evolving institutions such as advice bureaux, self-help kits, and alternative dispute resolution techniques. Legal advice therefore became an important element for common law systems in answering perceived legal problems. Civil code systems looked to solutions within the confines of the courtroom. Thus within the common law system, the potential for the “market” expansion of legal aid and advice was without limit if left within the remit of lawyers; within civil code systems the state was always able to rein in any moves towards expansion by lawyers and maintain a tighter control on legal aid expenditures.

One conclusion we can draw is that it is feasible to be somewhat generous with “in-court” legal aid if the state is able to control who enters the courtroom, how often they enter, and for how long they remain. The Dutch example is in this case instructive, but the thesis put forward here requires more research to test its limits.

9. Concluding Remarks

Although this report is not about legal aid in the UK, we can derive some lessons for the UK from the legal aid activities in other countries. In the global picture, the UK is an odd, outlying case radically different from every other country: it spends far more in total and greater amounts per capita. Even if we control for such variables as religion, type of case, or size of population, the UK still remains extreme. From one perspective it may appear that the UK celebrates the virtues of access to justice for all above most others; from another it may seem that the UK is acutely profligate in its spending on legal aid, not necessarily achieving value or satisfaction for money.

Part of the reason can be explained through historical reasons. Legal aid in the UK has normally been within the remit of the legal profession which has seen opportunities to market its services to the state as paymaster. In the continental European countries, the legal profession has generally been characterised as part of the state and therefore has functioned within its remit and not seized the economic opportunities created by legal aid.

The UK has also created opportunities for the exploitation of legal aid at every step of the legal process. Instead of reducing the formality of many judicial and quasi-judicial proceedings, it has intensified it thereby creating opportunities. In the Netherlands we see that defendants in many instances do not have to appear in court; in the UK we insist on attendance with the concomitant use of lawyers. The Netherlands has effectively reduced the need for lawyers to be involved. According to Richard Abel for many years the British Bar received approximately 50% of its earnings from the state via legal

⁵³ Regan. F. 1999. “Why Do Legal Aid Services Vary Between Societies? Re-examining the Impact of Welfare States and Legal Families” in Regan. F. et al (eds) *The Transformation of Legal Aid* (Oxford University Press: Oxford). See also Rueschmeyer. D. 1973. *Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and the United States* (Cambridge, MA: Harvard University Press)

aid payments.⁵⁴ This made it one of the most subsidised professions in the country. The United States has countered this tendency by relying extensively on institutions such as the public defender system. But even where state outsourcing is the norm, control is exercised more heavily and the use of discretion is circumscribed. And given that courts and the legal profession stem from similar circumstances, the removal of court control over legal aid appears to have resulted in dramatic decreases in its use.

In the civil sphere one of the most successful means of reducing legal aid expenditure has been to shift the burden of financing legal claims to the private sector through the medium of legal expenses insurance as evidenced in Germany and Sweden in particular. These moves have mostly affected the middle classes who are generally able to afford and who purchase insurance. Basic coverage is retained for those on low incomes.

Ultimately, we arrive at government's role in the development of legal aid by the promotion of law and order campaigns that result in the proliferation of legislation creating a new raft of rights, crimes, penalties, etc. As much as lawyers may exploit market opportunities, it is often government that creates them.

⁵⁴ Abel. R. 2003. *English Lawyers Between Market and State: The Politics of Professionalism*. Oxford: Oxford University Press)

Appendix 1: Criminal Legal Aid and Advice

Country	What is Legal Aid & Advice?	Who Can Apply?	Where to Apply	Aid & Advice Covered
EU				
Ireland		(1) Irish Citizens (2) Citizens of Council of Europe states habitually resident in Ireland (3) Applicants attempting to enforce international conventions concerning custody of children	Legal aid for criminal defence work is granted by the court in which the applicant will be tried. Applicants or their solicitors may apply in writing or in person to the clerk or registrar of the court concerned.	<i>Exclusions:</i> LA is not available for cases against the Irish Government raised before the European Commission or Court of Human Rights.

Finland	See Civil Legal Aid Table	See Civil Legal Aid Table	See Civil Legal Aid Table	<p>The suspect of a criminal offence has the right to a defence counsel under certain circumstances for purposes of the pre-trial investigation and the trial. A defense counsel will be appointed: on request to a person suspected of aggravated offence and to a person who is arrested or detained because of the offence; by the court on its own initiative to a person who is under 18 years old, unless this is clearly unnecessary, or to a person who is incapable of seeing to his or her own defense.</p> <p>The defense counsel will be appointed regardless of the financial circumstances of the person. The fee of the defender will be paid by the state. However, if the person is convicted of the offence, he or she must compensate the state for the defender's fee, unless his or her means qualify him or her for legal aid. The amount of the compensation is determined in accordance with the rules on legal aid. The fees and other expenses of defense counsel are paid by the state in accordance with the rules on legal aid.</p> <p>The court may appoint an attorney or a support person for: the victim of a sex offence for purposes of the pre-trial investigation and the trial and for the victim of a serious offence relating to violence. If the victim wishes to make claims in the trial, the court will appoint an attorney. If the victim has no claims, a support person may be appointed. The attorney and the support person may be appointed regardless of the income of the victim. Their fees and other expenses are paid by the state in accordance with the rules on legal aid.</p> <p>The state does not provide free legal advice to people at police stations.</p>
France				

Germany	There is no public defender system the system is conducted by qualified lawyers.	<p>Foreign nationals are entitled to legal aid irrespective of whether they have a residence in Germany, without any requirement of reciprocity.</p> <p>When certain conditions are met, victims of a criminal offence may have a lawyer appointed through legal aid, particularly when they are involved in the criminal proceedings as the intervening party or when they wish to have the obligation on the prosecutor's office to commit a case for trial noted in particular judicial proceedings. This holds for victims both of particularly serious attacks on individual rights, and offences which typically entail a particular need to protect the victim, such as defamation (MJU-23 (2000) 11).</p>	Decisions for grants are made by the court.	<p>In criminal cases only advice is given. Under the Legal Advice Scheme coverage does not therefore include (extra-judicial) representation or defence.</p> <p>No assistance with court costs is given to the accused in criminal court proceedings.</p> <p>No assistance with court costs is given to the accused in criminal court proceedings.</p> <p>The rules on court-appointed defence counsels contain special provisions covering criminal proceedings.</p> <p>There is no facility for legal advice to be provided inside police stations. Advice can be provided once someone is charged under the way the scheme operates normally, i.e., a public defender is appointed.</p>
Greece	There is a public defender system.		Decisions for grant are made on the basis of the lawyer's proposals.	Legal aid is available before all criminal courts.
Italy	There is no public defender system.		Decisions for grant are made by the presiding judge.	In the case of a civil action brought in connection with criminal proceedings, the costs of the proceedings are governed by Section 108 of the Consolidated Text. Eligibility for legal aid, however, gives the recipient, broadly speaking, the same entitlements as those covered by the general rules.

Netherlands	Legal aid and advice is available.	Legal advice and aid for victims of crime is confined to crimes committed in the Dutch Sphere, nationality and residency criteria do not apply.		
Spain		Legal aid advice is available for subjects in custody before charges are laid.	Decisions for grant are made by the State.	Legal aid, when granted, is for the full case.

Sweden	<p>The Swedish Public Defence Counsel Scheme offers legal aid in criminal cases, as does the Victims of Crime Legal Aid Scheme (neither scheme was altered by the 1997 reforms to Swedish legal services policy).</p>	<p>Public Defence Counsel is offered free of charge to all Swedes for all serious cases. The court assesses whether a person needs a public defence counsel. If a person is suspected of committing a less serious offence public defence counsel is available only if there is special reason. Normally a public defence counsel is not appointed if the offence is such that the penalty is usually a fine, e.g., road traffic offences.</p> <p>An aggrieved party counsel is available to victims of crime (aggrieved party) and, for example, the issue involves a sexual offence. Counsel is also available, e.g., in cases of assault, unlawful deprivation of liberty and robbery or other offences under the Penal Code for which imprisonment may be imposed.</p> <p>Legal aid advice or assistance is not available for subjects in custody before charges are laid.</p>	<p>Decisions for grant are made by the court which hears the case, therefore the court always appoints public defence counsel.</p> <p>The court appoints aggrieved party counsel but can only do this when the preliminary investigation has been initiated.</p>	<p>In criminal cases one can obtain a public defence counsel if suspected of committing a serious offence. The counsel will assist in everything concerning the criminal case and also attends the main hearing at court.</p> <p>Victims of crime may obtain a "counsel for injured parties" / "aggrieved party counsel" appointed for them (Counsel for Injured Parties Act 1998: 609). One of the tasks of the counsel for injured parties is to help them to bring a civil action in connection the crime, e.g., a claim for damages. If counsel for injured parties has been appointed the victim cannot also be granted legal aid.</p>
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USA	There are public defender systems.		Decisions for grant are made by the Public Defender.	Legal aid, when granted, is for the full case but not for appeal as of right.
California				
Illinois				
New York				
Texas	NB: There is no state public defender system but criminal defence services are funded county by county to such extent that they are funded at all.			
Canada				
British Columbia	<p>Legal aid is where the Law Services Society (LSS) of British Columbia pays for a legal aid lawyer for applicants with legal problem(s) who cannot afford a lawyer.</p> <p>People on low incomes who do not qualify for legal representation or advice services can still get legal information. The LSS provides this information over the phone, in print, and on the Internet. All regional centres, several local agent offices, and all government agents provide clients with computer access to legal information on the Internet.</p>	<p>The people of British Columbia who cannot afford a lawyer and are eligible for legal aid under legal aid guidelines.</p> <p>Legal aid advice or assistance for subjects in custody before charges are laid is available through a telephone service.</p>	<p>Application is made in person to the local legal aid office. A staff person at the office completes the legal aid application with the client. If there is no legal aid office in the locale, or the client is otherwise unable to apply in person, application for aid may be made over the phone to the Legal Services Society Call Centre. This service was established in the fiscal year 2002/03 and is the first province-wide toll-free call centre in Canada.</p> <p>Private lawyers who take legal aid cases or staff lawyers who work for Legal Services Society (LSS) British Columbia handle, <i>inter alia</i>, criminal matters.</p>	<p>Legal aid will cover a criminal case if the applicant will, if convicted:</p> <ol style="list-style-type: none"> (1) go to jail (2) face a conditional sentence that would severely limit his/her liberty (3) lose his/her way of earning a living or (4) face an immigration proceeding that could lead to deportation from Canada <p>Applicants also get legal aid if they</p> <ol style="list-style-type: none"> (5) have a mental or emotional illness that makes it impossible for them to represent themselves, or (6) are Aboriginal and the case affects their ability to follow a traditional livelihood of hunting and fishing. <p>If the applicant is a young person charged with a federal offence, s/he is entitled to legal aid.</p>

Ontario		<p>Legal aid advice is available for subjects in custody before charges are laid.</p>	<p>To apply for a legal aid certificate for a criminal matter, a client must visit a legal aid office to complete an application and a financial test.</p> <p>Legal aid in Ontario is a mixed-delivery service. Services are provided by <i>inter alia</i>, duty counsel assisting unrepresented accused in the criminal and family courts.</p>	<p>For criminal matters a legal aid certificate may be issued if an offence would likely result in jail time, e.g., impaired driving causing bodily harm, welfare fraud, break and enter, assault with a weapon, sexual assault, robbery and trafficking in narcotics.</p> <p>Legal Aid Ontario funds a telephone duty counsel hotline service (called the Brydges hotline, or Lawline). This service is available 24 hours a day, seven days a week, all year long and it is offered free of charge to its users. The system operates as a call-back service: if an accused wishes to use the service after being informed of its availability, the police call the toll-free number to request the service and a duty counsel returns the call to the accused within 45 minutes.</p> <p>The Lawline service offers legal advice to all accused persons who are detained by the police, as well as to young persons seeking information about alternative measures or diversion programs under the Youth Criminal Justice Act.</p>
Australia				
New South Wales	<p>Legal aid when granted is for the full conduct of the case. But separate grants are required for committal, trial and appeal.</p>	<p>Legal aid advice or assistance are not available for subjects in custody before charges are laid.</p>	<p>The Legal Aid Commissions generally make grants of aid for criminal law matters.</p> <p>There is a public defender system and defendants do not have a choice of lawyer.</p>	<p>The criminal law program of Legal Aid NSW involves:</p> <ol style="list-style-type: none"> (1) Criminal law case representation (2) Duty appearances at Local Court (3) Criminal law legal advice and minor assistance (4) General criminal law information (5) An under 18s Hotline (6) Adult and Youth Court Drug Court Programs (7) Community Legal Education;

Victoria			<p>Applications for grants of legal assistance are made using a standard form and are usually lodged with Victoria Legal Aid by solicitors on behalf of the applicant. The grants division are responsible for assessing all legal aid applications and for administering the resulting grants of assistance.</p> <p>Since 2002 a new simplified grants assessment process, in the areas of summary crime and family law, has been implemented. The process is designed to reduce the cost, in time and administration, of obtaining a grant of assistance. It allows practitioners to recommend that assistance be granted and to certify to VLA that all necessary court and financial information is on file.</p>	<p>Victoria Legal Aid Criminal Law Division is the largest criminal law practice in the state and provides comprehensive legal representation through:</p> <p>(1) Legal advice to members of the public, with an emphasis on people in custody. (2) Duty lawyer services in four categories of criminal courts at the Melbourne Magistrate's Courts. (3) Casework services in the Magistrates', County, Supreme and Appeal Courts. (4) Advocacy, by way of duty lawyers, to specialist Magistrates' and Superior courts.</p>
New Zealand	<p>If an applicant has been charged with an offence but can't afford a lawyer, legal fees may be paid through criminal legal aid.</p>	<p>Criminal legal aid is available to anyone who has been charged with a criminal offence. It is also available to people appearing before the New Zealand Parole Board. The applicant doesn't have to be a New Zealand citizen or live in New Zealand permanently.</p> <p>Legal aid is not available for criminal matters not considered serious (e.g. no risk of imprisonment), unless it is in the interests of justice to grant aid.</p>	<p>Aid is granted/refused by the LSA (the government agency that administers legal aid and other schemes). The work of the grants division of the agency is carried out in 11 offices throughout New Zealand. All 11 offices have responsibility for making decisions in relation to criminal legal aid.</p> <p>Criminal legal aid lawyers may offer advice on completing an application for aid as can the Duty Solicitor/criminal registrar at the court or other court staff; community law centres or CAB etc.</p> <p>The lawyer must have a contract with the LSA to do the type of work covered by the applicant's case.</p>	<p>Aid covers all the lawyer's fees and other fees and expenses of the court case, though an applicant may have to pay some of it back.</p> <p>It covers criminal offences where there is a risk of imprisonment, e.g. drug use and dealing, serious traffic charges, theft, fraud, arson, sexual offences, manslaughter, fisheries offences etc.</p>

<p>Israel</p>	<p>The mission is to provide high-quality, zealous defence in criminal proceedings and to reduce the number of unrepresented defendants and detainees in criminal proceedings.</p>		<p>Criminal legal aid is dispensed by the National Public Defense Organisation, which operates autonomously within the confines of the Justice Ministry (legal aid is a unit in the Ministry of Justice) The country is divided into districts. Each district has a district public defender whose status is parallel to the district attorney for the prosecution. The District Public Defender selects private bar attorneys and assigns them cases. Thus there is a mixed delivery system; a mixture of internal staff lawyers and private bar attorneys operate under the supervision of the internal staff lawyers.</p>	
<p>Japan</p>			<p>The Criminal Procedure Law stipulates a court-appointed lawyer system; thus criminal legal aid is administered by courts, through state-appointed lawyers.</p>	<p>Aid is only offered after suspects are charged (or indicted). Thus, at the stage of detention before the charge is laid (or indictment), which may extend up to 23 days at police stations or detention centres, such criminal legal aid is not covered by the state-appointed lawyer system. However, to render legal aid to suspects who are detained at such facilities, the Japan Legal Aid Association (JLAA), in cooperation with the Japan Bar Association (JFBA), offers legal aid services (aid in defence of suspects in criminal cases), using non-governmental funds, mainly contributed by the bar associations.</p>

Appendix 2: Civil Legal Aid and Advice

Country	What is Legal Aid & Advice?	Who Can Apply?	Where to Apply	Aid & Advice Covered
EU				
Belgium	<p>Legal Aid in Belgium is divided into two categories:</p> <p>Premiere Ligne (type one) this includes practical information, legal information, a first legal opinion or referral to a specialised organisation. This type of legal aid is free for everyone</p> <p>Seconde Ligne (type two) covers the cost of a lawyer either for advice or representation. The cost of this type of legal aid may be totally or partially covered.</p>	See Eligibility table.	<p>The legal aid system is organised on language grounds, French and Dutch. These two lawyers associations administer legal aid. They have 15 days after receiving a request for legal aid to make a decision. If it is positive, they allocate the lawyers, though it is possible to ask for a particular lawyer. The associations compile a list annually of lawyers wishing to take on legal aid work. Attempts are made to assign lawyers who speak the language of the person requiring legal aid, though interpreters are used if this is not possible. Except in emergency cases, a lawyer who has given type one legal aid cannot give type two legal aid in the same case. If the association rejects the request for legal aid, an appeal can be made within one month.</p> <p>Premiere Ligne help is offered by the local Palais de Justice/Justitiehuis, various organisations (which are similar to Citizens' Advice Bureaux) and some not-for-profit organisations. Seconde Ligne is organised by a Legal Aid Bureau in each Legal District.</p>	

<p>Ireland</p>	<p>Legal Aid: means representation by a solicitor or barrister in civil proceedings in the District, Circuit, High and Supreme Courts. This means the client has engaged the Legal Aid Board to act on his/her behalf in the proceedings, including sending correspondence on the client's behalf, drafting court documents, giving advice, representation in court and all the background preparatory work required.</p> <p>Legal Advice: is any written or oral advice given, by a solicitor of the LA Board or by a solicitor or barrister engaged by the Board, on the application of Irish law to any particular circumstances that have arisen in relation to the person seeking legal services.</p> <p>The purpose of legal aid is to facilitate access to justice through the operation of professional, efficient and cost-effective criminal legal aid schemes In relation to civil legal aid its purpose is to provide the best possible service to clients within the resources available.</p>	<p>Persons who satisfy the requirements of the Civil Legal Aid Act 1995 and the 1996 Regs:</p> <p>(1) Irish Citizens (2) Citizens of Council of Europe states habitually resident in Ireland (3) Applicants attempting to enforce international conventions concerning custody of children</p>	<p>The Irish Legal Aid Board employs salaried lawyers in urban legal aid centres across Ireland (Civil legal advice is available from 89 salaried lawyers employed by the Irish LA Board in 30 LA centres). Applications for:</p> <p>Legal Advice: are made at one of the LA Board's Law Centres. The solicitor dealing with the case is responsible for deciding on the eligibility of the applicant by reference to the criteria specified in the Civil Legal Aid Act 1995 and for determining and collecting the appropriate advice contribution payable.</p> <p>Legal Aid: invariably follow applications for advice and are made at the same Law Centre. The solicitor concerned forwards the application to the Board together with particulars of the nature of the case, an opinion as to whether legal aid should be granted and a provisional assessment of the applicant's means. LA centres also handle requests for legal aid in court proceedings. The Law Centre usually assigns a lawyer (a limited choice/change of lawyer may be available).</p>	<p>(1) All Irish civil law matters at all civil courts (mainly: judicial separation, divorce, maintenance, domestic violence, custody of and access to children, problems relation to hire-purchase agreements, landlord and tenant disputes (except where the dispute concerns ownership of land) and contract disputes). (2) Advice and assistance for persons contemplating taking proceedings before any tribunal (3) Some foreign civil law matters The LAB is prohibited from providing advice or aid in the following categories of cases:</p> <p>Exclusions:</p> <p>(1) Civil matters covered by the small claims procedure, claims less than £1r.150 (2) Debt Collection (3) Breach of promise of marriage (4) Defamation (5) Proceedings before tribunal (including social welfare or unemployment appeals tribunals but excepting for the purposes of asylum cases) (6) Land transfers and certain land disputes (7) Generally not available to victims of crime seeking compensation (except rape victims) (8) Election petitions (9) Publicans' licenses (10) Claims made in a representative, fiduciary or official capacity. (11) Test cases (12) Class actions (13) Cases against the Irish Government raised before the European Commission or Court of Human Rights.</p> <p>Refusal: Legal Aid may be refused if applicants could get the help they needed from an alternative source without undue hardship to themselves or their dependents.</p>
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<p>Finland</p>	<p>Legal aid is governed by the Legal Aid Act, the Law on the State Legal Aid Offices, and three Government degrees: one on legal aid, one on legal aid fee criteria and one on the State Legal Aid Offices.</p> <p>By definition legal aid is the granting of state-funded assistance needed by people who are financially unable to meet the costs involved in a legal matter.</p>	<p>Legal aid is given to any natural person who has to bring a case or is involved in a court case in Finland. In other matters legal aid is given to persons, who are resident in Finland. To other people legal aid is given for special reasons.</p> <p>Legal aid is not given to companies or corporations. However, a private person pursuing a business may be given legal aid for a court case pertaining to the business; for other matters pertaining to a business, legal aid can be given only for special reasons.</p>	<p>The legal aid unit of the Ministry of Justice runs legal aid. The Ministry of Social Affairs and Health leads in relation to family cases. Aid is administered by State Legal Aid Offices and by decisions of the Courts.</p> <p>Legal aid is provided by private lawyers and by public legal aid attorneys. Private lawyers are advocates or other private lawyers. An advocate is a lawyer who is a member of the Finnish Bar Association and whose activities are supervised by the Bar Association and the Chancellor of Justice. Other private lawyers are lawyers who are not under any public supervision. Public legal aid attorney is a lawyer working at a state legal aid office. The activities of public legal aid attorneys are supervised in the same manner as those of advocates. Half of public legal aid attorneys are members of the Bar.</p> <p>In most cases, the applicants first contact with the lawyer of his/her choice, who then draws up the application for legal aid. The recipient of legal aid has a choice of attorney in any court case.</p> <p>In matters that are not to be brought before a court (e.g., advice or drawing up of a document), legal aid is given only by public legal aid attorneys. In these situations the recipient of legal aid cannot choose a private lawyer, unless there is a special reason for it (e.g., the legal aid office has a conflict in the matter or the matter requires special knowledge that the public legal aid attorneys of the office do not have).</p>	<p>There are no restrictions on what type of cases are available for legal aid. Legal aid generally covers all kinds of legal matters and all the needed actions, such as assistance in court proceedings in civil and criminal matters, assistance in proceedings at administrative courts, document drafting and advice. In relation to family cases, legal aid is available for all custody and visitation cases.</p> <p>Legal aid covers the fees of an attorney wholly or against deductible according to the financial situation of the recipient of legal aid. The court charges and other similar payments as well as necessary costs of interpretation and translation are waived for a recipient of legal aid.</p> <p>If the case is to be handled abroad, legal aid only covers general advice. However, the Ministry of Justice may grant more extensive legal aid if strong human interests are involved, such as child abduction or rape.</p>
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<p>France</p>	<p>The current legal aid scheme is governed by the Legal Aid Act (No 91-647 of 10 July 1991) and Decree No 91-1266 of 18 December 1991. It covers:</p> <p>Legal aid proper: financial aid for court proceedings and out-of-court settlement proceedings;</p> <p>Aid towards advocates' fees in criminal proceedings that are available as an alternative to questioning, and for disciplinary proceedings in prisons; and</p> <p>Access to the law (information, guidance, free legal consultation). Legal aid entitles the recipient to free assistance from an advocate or other legal practitioner and to exemption from court costs.</p>	<p>Applicants are entitled to legal aid if they satisfy the following requirements:</p> <p>Nationality: (1) French nationals or (2) Citizens of the EU or a (3) Foreign national habitually lawfully residing in France (4) A foreign national not residing in France, but is a national of a State that has an international or bilateral agreement with France giving entitlement to legal aid.</p> <p>Residence: Apart from the cases above, habitual and lawful residence in France is required as a matter of principle. Exceptionally residence is not compulsory where the claimant's action is particularly worthy of interest given its subject matter and the likely cost. Legal aid is also given without a residence requirement to foreign nationals who are minors, witnesses, placed under formal examination, charged, accused, convicted or have joined a civil action to a criminal prosecution, or where the action concerns entry and residence in France.</p> <p>Admissibility: Applicants are normally entitled to LA (if they satisfy the resources/means test) provided that their case is not obviously without foundation (see eligibility table)</p> <p>Resources: Applicants must also satisfy the resources test (see eligibility table)</p>	<p>Legal aid is given by the Legal Aid Bureau at the Regional Court subject to requirements as to resources, nationality, residence and admissibility.</p> <p>Legal aid application forms are obtained from the Regional Court or the District Court for the place where you are habitually resident or where the case will be brought.</p> <p>There is a single Legal Aid Bureau at each Regional Court, which handles applications for legal aid for cases in that court itself and in other courts in its area: District Courts, Administrative Courts, Industrial Relations Tribunals, Court of Appeal and Administrative Court of Appeal.</p> <p>The exception from this single bureau rule is that there is a bureau attached to each of the following: (1) Court of Cassation (2) Conseil d'Etat (the Supreme Administrative Court) (3) Refugees Appeal Board</p>	<p>Legal aid is given to claimants and defendants in contentious and non-contentious matters in all courts.</p> <p>It can be given for all or part of the proceeding and to assist in coming to a settlement before the action comes to trial.</p> <p>Legal aid can also be given for the purposes of seeking enforcement of a judgment or other enforceable document.</p>
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Germany	<p>There is a distinction between:</p> <p>(1) Legal Advice Aid (Beratungshilfe) assistance for legal advice and representation outside court proceedings for persons in need in accordance with the Act on Legal Advice Aid and Representation for Citizens on a Low Income (Legal Advice Act). <i>Assistance under the Legal Advice Scheme:</i> The Legal Advice Scheme Act provides for people on low incomes to receive assistance with the cost of advice and representation outside the courtroom.</p> <p>(2) Legal Aid while court proceedings are being implemented (Prozesskostenhilfe), persons in need receive legal aid in accordance with the provisions applying to legal aid. <i>Assistance with court costs:</i> Persons in need receive assistance with the conduct of court proceedings under the rules on assistance with court costs.</p>	<p>By Federal law, anyone lawfully present in Germany can ask for legal aid. This includes refugees, stateless persons and those with dual, i.e., including German, nationality (see the Basic Law (Grundgesetz) article 31.1; Civil Procedure Ordinance (ZPO) §114 and the 1980 Law on Legal Advice (BerHG) §1). This may change as Germany reconsiders the policies to be adopted towards various classes of non-EU immigrant (see the Treaty on European Union article K.1).</p>	<p>Forms for applying for assistance under the Legal Advice Scheme and assistance with court costs can be obtained from local courts and lawyers.</p> <p>The application for assistance under the Legal Advice Scheme is submitted to the local court, in the district where the applicant is resident (domicile). Where the applicant has no domicile in Germany, responsibility lies with the local court where the need for assistance under the Legal Advice Schemes arises.</p> <p>It is also possible to contact a lawyer directly for assistance under the legal advice scheme. The application must then be submitted to the court afterwards. The lawyer providing legal advice is entitled to claim €10 fee from the applicant, which may be waived depending on the party's circumstances. Other agreements regarding remuneration have no value in law. The lawyer receives the rest of the remuneration from public funds.</p> <p>In 13 of the 16 German States Beratungshilfe is provided by certain lawyers in private practice. In theory a lawyer can charge each client DM20, but this is often waived. DM35 is payable to the Land government which finances this service. Fees are chargeable according to the work done for the client, since Beratungshilfe covers not only advice but may include practical assistance e.g. in writing letters on a client's behalf, for which the charge is DM90, or DM110 if the help given results in settling a dispute out of court.</p> <p>Applications for assistance with court costs must be submitted to the court where the proceedings in question are being or are to be conducted. The court (not a welfare body) examines the application and decides whether the conditions for giving assistance with court costs are satisfied.</p>	<p>Assistance under the Legal Advice Scheme (advice and, where necessary, representation) is given in civil cases including employment, administrative, constitutional and social cases. In criminal cases and case involving administrative offences, only advice is given. In cases where the laws of other States must be applied, assistance under the Legal Advice Scheme is given if there is a German connection. No assistance under the Legal Advice Scheme is granted in connection with tax cases. Assistance with court costs is given for all types of civil cases, cases involving voluntary jurisdiction and cases brought before industrial tribunals, administrative courts, social courts and tax courts. No assistance with court costs is given to the accused in criminal court proceedings and debtors in bankruptcy proceedings. In bankruptcy proceedings, debtors are given time to pay the procedural costs.</p> <p>Where assistance with court costs is given, all the applicant's procedural costs are covered apart from costs not related to the presentation of the case. There are no further costs for the party in need (court costs are quite high and include any experts' and witnesses' expenses; and contributions to lawyers' fees).</p> <p>Summary: The extent of advice available varies between the States. All of them provide it on civil, criminal and public law matters; some add employment and social welfare law, and one (Bavaria, Bayern) extends it to tax law. Exceptions: (1) advice will not be given on foreign law matters which have no connection with Germany and (2) the advice given does not include proceedings before the court.</p>
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Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Belgium	<p>The threshold to qualify depends on family circumstances e.g.</p> <p>A single person earning less than €750 per month or a couple earning less than €965 per month would qualify for full legal aid.</p> <p>Pensioners, those receiving invalidity benefit, most mentally-ill people and minors also qualify for full aid, as do asylum seekers and foreigners trying to regularise their residency or contesting an order to leave the country.</p> <p>To qualify for partial aid the earning thresholds are higher: €965 per month for a single person. The thresholds will be increased annually in line with the retail price index - the base being November 2003.</p>	

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Ireland	<p>The Legal Aid Board provides legal advice and legal aid in civil cases to persons who satisfy the requirements of the Civil Legal Aid Act, 1995, principally a person's means must be below a certain limit and there must be merit to the case.</p> <p>Legal Aid: The LAB will grant a certificate of legal aid if of the opinion that:</p> <ol style="list-style-type: none"> (1) Applicants have passed the merits and means test. (2) As a matter of law applicants have reasonable grounds for instituting, defending or being a party to the proceedings for which legal aid is sought. (3) Applicants are reasonably likely to be successful in the proceedings. (4) The proceedings for which legal aid is sought are the most satisfactory means of achieving the result sought. (5) Having regard to all the circumstances (including the probably cost to the Board, measured against the likely benefit to the applicant), it is reasonable to grant the application. (6) the case does not fall within the excluded areas. <p>Factors (3) & (5) don't apply to proceedings concerning the welfare of children including custody and access.</p> <p>The certifying committee of the Legal Aid Board (LAB) grants or refuses LA according to the outcome of the means and merits tests. In order to qualify for legal aid and/or legal advice applicants must pass both tests:</p> <p><i>Merits:</i> A person cannot receive legal aid unless the LAB is of the opinion that a reasonably prudent person who could afford to engage such services would be likely to do so and where a solicitor or barrister would be likely to advise such a person to obtain such services at his or her expense. Applicants must show that:</p> <ol style="list-style-type: none"> (1) they have good reason for being a part to the case (2) they have a reasonable chance of winning (3) going to court is the only way the problem can be resolved (i.e. alternatives to court proceedings, such as mediation or negotiation of a settlement, are unavailable) (4) their case comes within 'the general purposes' of the LA Board's scheme, which includes satisfying the means test and aiding only those cases which a lawyer would advise an unaided client to pursue or defend. <p>Means</p> <p>The applicable criteria for assessing financial eligibility are contained in S.29 of the Civil Legal Aid Act 1995 and in Part 5 of the Civil Legal Aid Regulations 1996 (as amended by the Civil Legal Aid Regs 2002). Applicants will satisfy the means test if their disposable income is under a figure prescribed by the Minister of Justice, Equality and Law Reform with the consent of the Minister of Finance. Disposable income is the applicant's gross income from all sources less various allowances.</p>	<p>The court in which the applicant will be tried must be satisfied the applicant on the grounds of merits and means.</p> <p>Merits: applicants must show they deserve legal aid because it is necessary "in the interests of justice", i.e., required by the nature of the charge, the effect the conviction may have on the applicants life, and special personal circumstance (e.g., poor education or similar social handicap). However, if the offence charged is very serious (eg murder, or the applicant is making a final appeal to the Supreme Court), there is no merits test.</p> <p>Means: Applicant must be eligible on the grounds of lack of means but there is no specific test equivalent to that for civil legal aid. Persons who are in receipt of social welfare payments or whose earnings are < judge 20,316 are eligible to receive assistance under the scheme, at the discretion of the Court/ judge.</p> <p>The criminal legal aid scheme grants legal aid for free, i.e., applicants granted criminal legal aid do not have to pay contributions.</p>

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Ireland (contd.)	<p><i>Disposable Capital.</i> If it becomes necessary to go to court, the value of the applicant's capital resources, (e.g., house, land, money in the bank, car) are also taken into account and a capital contribution may be payable. Other assets (e.g. savings) up to £1r.2,000 is ignored, but between that amount and £1r.2000,000 an applicant must contribute, above that amount an applicant is ineligible. Disposable capital excludes the first £1r.45,000 of the value of the family home. Disposable capital cannot exceed €320,000. If it does the applicant must complete a statement of means (capital) form. This form requires information on an applicant's total capital of every nature, whether in the form of property, car, cash in hand, in the bank, investments or other resources. It also requires information on debts. An allowance may be given for certain debts that may be offset against capital for the purposes of arriving at disposable capital, e.g. mortgage, credit union loans, etc.</p> <p>Contribution Civil legal aid and advice is not free. All applicants who qualify for civil legal aid / advice will have to make some contributions to the overall costs of the proceedings (S.29(1) Civil Legal Aid Act 1995 provides that a person shall not qualify for legal aid or advice unless s/he pays a contribution), except in cases of extreme hardship. This contribution is determined by a financial assessment based on the information provided by the applicant in their <i>Statement of Means and Capital</i>, i.e., the actual amount will depend on an applicant's disposable income.</p> <p>The minimum contribution of €6 for legal advice and €35 for legal aid is payable if disposable income is <€8,300 or if the only income is a social welfare payment (an applicant solely dependant on social welfare payments, will qualify at the minimum rate, provided that the criteria laid down in the act are satisfied). The maximum contribution for legal advice is €100 and for legal aid is €1,210. If disposable income is between €8,300 and €13,000, the contribution will be calculated thus for: Legal aid—€35 plus one quarter of the difference between €8,300 and disposable income. If disposable capital is >€3,200 the applicant may have to pay a capital contribution. Legal advice—one tenth of the difference between €8,300 and disposable income, subject to a minimum contribution of €6 and a maximum of €100. A capital contribution is not payable for legal advice. The maximum contribution that may be required is €740.26</p> <p>Legal assistance is provided without application of means test eligibility criteria in Court proceedings instituted under the Child Abduction and Enforcement of Custody Orders Act 1991 and under the Maintenance Orders Act 1994.</p> <p>Costs Covered:</p>	

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice

Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
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<p>Finland</p>	<p>There are no restrictions as to what type of civil cases are eligible for legal aid. In 2002 the access to legal aid was expanded so that approximately 75% of the households are covered by at least partial legal aid as compared with 44% before the reforms of 1998 (whereby the municipal legal aid offices were transferred to the State). Legal aid can be free of charge or the recipient has to pay a percentage on the fee. This depends on the recipient's income, expenses, possessions and maintenance liability. The legal aid office calculates the applicants monthly available means as follows:</p> <p>Income consists of wages, pension and per diems, as well as child allowances, maintenance support and capital income. Also the income of the spouse, domestic partner or registered partner of the applicant are taken into account, unless that person is the opposing party in the case at hand. Taxes shall be deducted from the gross monthly income. When the total amount of housing costs, day-care charges, maintenance support payments and the scheduled payments in enforcement or debt adjustment proceedings exceeds €250, the excess part of the total amount shall be deducted. A deduction of €250 shall be made for each child under the age of majority, 18 years.</p> <p>If the applicant has possessions with a taxation value exceeding €25,000 (entrepreneurs €33,000), one percent of the excess part is added to the monthly income. Liabilities are deducted from assets. A permanent home and a car that is necessary to the work of the applicant are, however, omitted from the calculation. The bank deposits and other easily liquidated assets, if these exceed €5,000 are not taken into calculation of monthly available means, but they increase the liability of the recipient of legal aid (see below).</p> <p>When the monthly available means exceed €1,400 for a single person and €2,400 for spouses, legal aid will not be granted.</p> <p>Contributions Legal aid can be free of charge or the recipient of legal aid may have to pay a percentage of the fee of the attorney (basic deductible). Whether he/she has to pay, and the percentage, depends on the monthly available means of the applicant as follows:</p> <table border="1" data-bbox="718 1859 1356 2206"> <thead> <tr> <th data-bbox="718 1859 986 1904">Single person</th> <th data-bbox="986 1859 1356 1904">Spouses</th> </tr> </thead> <tbody> <tr> <td data-bbox="718 1904 986 1948">up to € 650</td> <td data-bbox="986 1904 1356 1948">0% up to € 1,100</td> </tr> <tr> <td data-bbox="718 1948 986 1993">up to € 850</td> <td data-bbox="986 1948 1356 1993">20% up to € 1,300</td> </tr> <tr> <td data-bbox="718 1993 986 2038">up to € 1,000</td> <td data-bbox="986 1993 1356 2038">30% up to € 1,600</td> </tr> <tr> <td data-bbox="718 2038 986 2083">up to € 1,200</td> <td data-bbox="986 2038 1356 2083">40% up to € 2,000</td> </tr> <tr> <td data-bbox="718 2083 986 2128">up to € 1,300</td> <td data-bbox="986 2083 1356 2128">55% up to € 2,200</td> </tr> <tr> <td data-bbox="718 2128 986 2206">up to € 1,400</td> <td data-bbox="986 2128 1356 2206">75% up to € 2,400</td> </tr> </tbody> </table>	Single person	Spouses	up to € 650	0% up to € 1,100	up to € 850	20% up to € 1,300	up to € 1,000	30% up to € 1,600	up to € 1,200	40% up to € 2,000	up to € 1,300	55% up to € 2,200	up to € 1,400	75% up to € 2,400	<p>A person who is suspected of an offence of which a sentence of at least four months imprisonment is prescribed or a person who is arrested or detained has the right to a public defender. The court may on its own motion appoint a public defender to a person who is under 18 years old or incapable of seeing to his own defence. A person who is sentenced can be ordered to pay the fee of the public defender or a part of it.</p> <p>Legal aid is restricted in simple criminal cases sanctioned with a fine or other simple criminal cases such as drunken driving. However, an attorney is assigned if the interests of justice so require, e.g., because of large claims for damages.</p>
Single person	Spouses															
up to € 650	0% up to € 1,100															
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Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
France	<p>Admissibility (Merits) Legal aid is given if the action is not manifestly inadmissible or devoid of substance. This test is not applied if the applicant is: A defendant in a civil case A person whom a court may find civilly responsible for another's loss A witness who needs help in order to testify (e.g. a non-French speaker) Charged or accused of an offence A convicted person (e.g. who wishes to appeal)</p> <p>In cassation case, legal aid will be refused if the applicant cannot show good grounds for cassation. Where LA has been refused on this basis but the court upholds the appellant's claim, the appellant is eligible for reimbursement of the various costs and fees incurred by him up to the amount of the legal aid to which his resources entitled him.</p> <p>Resources (Means) An applicant may receive legal aid if his/her average combined resources for the preceding calendar year (excluding family allowances and certain welfare benefits) does not exceed the statutory threshold set annually. From 1st Jan 2004 the monthly resources limit for (1) full legal aid is €330 for a single person and (2) €1244 for partial legal aid. In both cases, the limit is raised by €149 for the first two dependant persons and by €94 from the third dependant person.</p> <p><i>Full LA</i> will cover all the costs of the proceedings, including the fees paid direct to the advocate or other practitioners (e.g. bailiff, notary etc.). These fees are calculated on a fixed scale depending on the type of procedure.</p> <p><i>Partial aid</i> may be granted at one of six rates depending on an applicant's resources (85%, 70%, 55%, 40%, 25% or 15%), borne by the state. Applicants will have to pay a supplementary fee, not on a fixed scale but agreed between the applicant and the advocate, reviewable by the president of the bar. If in receipt of partial legal aid an applicant will not have to pay any other costs of the proceedings, as in the course of full LA.</p> <p>An applicant whose resources exceed the limits, may still be able to receive legal aid exceptionally if his/her action is particularly worthy of interest given its subject matter and the likely cost (S.6 Legal Aid Act 1991). A resources statement is not required if an applicant is entitled to benefits from the National Solidarity Fund or to the Occupational Integration Minimum Income, or if s/he is entitled to a war veteran's or victim's pension.</p>	<p>In criminal proceedings the State bears the costs of justice. People convicted of an offence must pay a fixed charge for the proceedings, based on the seriousness of the offence.</p>

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Germany	<p>Eligibility criteria applicable to both the Legal Advice Scheme and Assistance with Court Costs</p> <p>(1) Applicants personal and economic circumstances must be such that he cannot raise the necessary funds and has no other reasonable possibility of obtaining assistance (e.g. legal protection insurance). Thus eligibility based on means is the same for legal information and advice as it is for legal aid in court—if the welfare of the applicant’s family would suffer substantially if the applicant had to go to court without legal aid, legal aid will be granted in full or in part. The assessment is as follows: Disposable monthly income: DM850 (≤£340) for a person without dependants DM1,300 (≤£525) for someone with one dependant; rising to DM1,575 (≤£635), then DM1,850 (≤£745) and upwards in steps of DM275 (≤£110) for each additional dependant.</p> <p>(2) The intended exercise of rights is neither wilful nor malicious. For civil cases, there is a double test for merits</p> <ul style="list-style-type: none"> • That the applicant has a good claim or defence which s/he has a fair chance of persuading the court to accept; and • That in all the circumstances, it is reasonable for the applicant to bring or defend an action (e.g. by reference to the claim involved, or that the applicant is not merely acting spitefully) <p>For Assistance with Court Costs The planned prosecution or defence must also have a reasonable chance of success. The court that rules on the application for assistance with court costs must consider, on the basis of the applicant’s representation of the facts and the available documentation, that the legal viewpoint is correct or at least justifiable and be convinced that it is possible to present a case.</p>	<p>Only serious criminal cases are covered, i.e., those which are handled at the higher regional courts or above. Aid is available for both the defendant and other parties.</p> <p>The merits tests do not apply to LA application for criminal defence and financial eligibility limits are not set in criminal matters, i.e., eligibility is not subject to income, there are no restrictions on who qualifies.</p> <p>Those found innocent have to make no contributions. Those convicted are required to pay back the legal aid they have received, subject to ability.</p>

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Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Greece	<p>Legal aid is available if, as a result of payment of the cost of the case, the applicant may not be able to maintain himself or his family. As evidence of his circumstances the applicant must submit:</p> <p>(1) an attestation from the mayor or president of his municipality stating his financial and family circumstances and occupation, and certifying that he is unable to pay without risk to himself and his family; in the case of a non-profit-making corporate body, it must be shown that the accomplishment of its aims would be made impossible or difficult, and in the case of a partnership or association that the partnership or association cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance;</p> <p>(2) an attestation from his local tax office certifying that in the three years the applicant has submitted an income-tax return and a return for any other tax due and that the returns have been checked by the tax office;</p> <p>(3) in the case of a foreign national, an attestation from the Ministry of justice certifying that there are reciprocal arrangements.</p>	
Italy	<p>In civil proceedings and cases of non-contentious business (e.g., separation, custody of children or rulings regarding parental responsibility), defendants with insufficient means are entitled to legal aid, as long as their reasons are not manifestly unfounded.</p> <p>Anyone with a taxable income not exceeding €9269.22, as shown on his or her latest tax return, is entitled to legal aid. The income threshold is adjusted every two years by order of the Ministry of Justice to take account of variations in ISTAT's consumer price index.</p> <p>Where the party concerned lives with a spouse or other members of the family, the total family income, including that of the applicant, is taken as the income. When the income is assessed, account is taken of legally tax-exempt income.</p> <p>Only personal income is taken into account where personal rights are being challenged or in trials where the applicant's interests are in conflict with those of the other members of the nuclear family with which s/he is living.</p>	

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Netherlands	<p>Legal Aid Boards make independent assessment of whether claims for legal aid are allowable. A litigant must obtain a <i>Certificate of Financial Capacity</i> and pay a personal contribution to legal aid determined by scale. Once a client passes the "means test" to determine real need, they are required to pay little or none of the fee themselves. The assets limit for single people is €7,500 and for married or cohabiting couples and one parent families is €10,500.</p> <table border="0"> <thead> <tr> <th>Income Limit (Singles) Required</th> <th>Contribution Income Limit (Married, Cohabiting, one parent)</th> </tr> </thead> <tbody> <tr><td>€000-818</td><td>€89</td></tr> <tr><td>€000-1147</td><td></td></tr> <tr><td>€819</td><td>€40</td></tr> <tr><td>€1148-1245</td><td></td></tr> <tr><td>€887-934</td><td>€206</td></tr> <tr><td>€1246-1314</td><td></td></tr> <tr><td>€935-972</td><td>€272</td></tr> <tr><td>€1315-1368</td><td></td></tr> <tr><td>€973-1019</td><td>€336</td></tr> <tr><td>€1369-1435</td><td></td></tr> <tr><td>€1020-1063</td><td>€392</td></tr> <tr><td>€1436-1497</td><td></td></tr> <tr><td>€1064-1103</td><td>€453</td></tr> <tr><td>€1498-1555</td><td></td></tr> <tr><td>€1104-1148</td><td>€511</td></tr> <tr><td>€1556-1619</td><td></td></tr> <tr><td>€1149-1195</td><td>€576</td></tr> <tr><td>€1620-1687</td><td></td></tr> <tr><td>€1196-1239</td><td>€626</td></tr> <tr><td>€1688-1749</td><td></td></tr> <tr><td>€1240-1281</td><td>€696</td></tr> <tr><td>€1750-1809</td><td></td></tr> <tr><td>€1282-1503</td><td>€761</td></tr> <tr><td>€1810-2113</td><td></td></tr> </tbody> </table> <p>Other Criteria: the case must (1) concern a problem for which legal aid is available (2) be one that an applicant cannot solve him or herself (3) be one in which the judge has jurisdiction (4) generally be worth a minimum of €180 (5) have a good chance of success</p>	Income Limit (Singles) Required	Contribution Income Limit (Married, Cohabiting, one parent)	€000-818	€89	€000-1147		€819	€40	€1148-1245		€887-934	€206	€1246-1314		€935-972	€272	€1315-1368		€973-1019	€336	€1369-1435		€1020-1063	€392	€1436-1497		€1064-1103	€453	€1498-1555		€1104-1148	€511	€1556-1619		€1149-1195	€576	€1620-1687		€1196-1239	€626	€1688-1749		€1240-1281	€696	€1750-1809		€1282-1503	€761	€1810-2113		<p>To be eligible for legal aid the offence must be a serious criminal offence.</p> <p>Everyone remanded in custody automatically receives a <i>pro bono</i> lawyer. Aid for a defendant not held in custody is income-related.</p> <p>Legal aid only covers counsel's fees. Court and other fees are not included. A person eligible for legal aid, can apply for a reduction in court fees.</p>
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Spain	<p>Legal aid is a right for members of the public who cannot afford the costs of a trial. To qualify as having insufficient means, the total monthly income of the applicant and his/her family unit must not be more than twice the National Minimum wage—"salario minimo interprofesional"—set annually by the Government. In 2002 the minimum wage was €443.20 per month.</p> <p>If monthly income is more than twice, but less than four times the National Minimum Wage, the Legal Aid Commission may exceptionally grant legal aid in view of the applicant's personal and family circumstances.</p> <p>In such cases, the Commission itself decides exactly which costs are to be covered. The trial costs not covered will have to be met by the applicant, pending the court's ruling on who to award the costs to. If the ruling goes against the other party, it is from him or her that the applicant will recoup any trial costs s/he has had to meet personally.</p>	<p>There are no financial eligibility limits for criminal legal aid, neither are there any non-financial criteria.</p>
Sweden	<p>To qualify for legal aid an applicant:</p> <p>(1) must have received at least an hour's legal advice (all applicants are expected to demonstrate that they have tried to resolve their problem in an advice interview prior to applying for assistance in court. The government has extended the maximum time for a legal advice interview to two hours. Advice costs approx. €120 an hour or a quarter of that for 15 minutes);</p> <p>(2) have income that does not exceed a financial threshold of approximately €27,375. When an applicant's income is estimated, his/her economic situation as a whole is taken into account, e.g., any child maintenance expenses, property or debts (an applicant with an income of €2,202 contributes 2.5% to the cost of their case)</p> <p>(3) must need the help of a lawyer over and above the legal advice provided and it must not be possible to meet in any other way; Depending on the nature and significance of the case, the value of the object in dispute and the overall circumstances, it may also be considered reasonable for the state to contribute to the costs.</p> <p>If an applicant has, or should have had, legal protection insurance this will be used first (see alternatives table).</p>	<p>Financial eligibility limits do not apply.</p> <p>if a person is suspected of committing a serious crime a Public Defence Counsel is made available according to rules in the Code of Judicial Procedure. In the case of less serious offences, a public defence counsel is only available if there are special reasons, e.g., there are difficulties regarding decisions as to punishment.</p> <p>The state pays the fee to the attorney. If the user is convicted, he is normally liable to pay the costs to the state – though not an amount greater than he would have had to pay as a charge for legal aid according to the Legal Aid Act. Sometimes, under special circumstances, a person who is convicted does not have to pay any part of the costs. CF. Aggrieved party counsel is paid by the state; the victim pays nothing.</p>

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
USA	<p>The Legal Services Corporation (LSC) funds local legal services programs to provide civil legal assistance. Eligibility for services is determined on a case-by-case basis pursuant to grantee eligibility criteria established under parameters set forth in LSC regulations. Each grantee establishes a maximum income eligibility level, not to exceed 125% of the current official Federal Poverty Income Guidelines.</p> <p>Legal assistance can be provided if:</p> <p>(1) the client is financially and otherwise eligible to receive assistance under the LSC Act, regulations, and other applicable law; the client's case is within program priorities (or is an emergency case accepted under the program's emergency case acceptance procedures); the legal services program has actually accepted the client for service through its intake system or another established procedure for ensuring client eligibility;</p> <p>(2) the type of legal assistance provided to the client is not prohibited by the LSC Act, regulations, or other applicable law (e.g., a class action);</p> <p>(3) the legal problem(s) of a client are not of a type prohibited by the LSC Act, regulations, or other applicable law (e.g., an abortion case).</p> <p>The non-financial criteria for support are case merit and program resources (often sufficient only to meet 20% of demand.</p>	<p>LSC-funded programs do not handle criminal cases there are public defender systems. Financial eligibility limits vary from state to state.</p> <p>Non-financial criteria are: juveniles are usually represented and adults where imprisonment is possible.</p>
California		
Illinois		
New York		
Texas		
Canada		

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British Columbia	<p>Applicants are entitled to legal aid if:</p> <p>(1) they have a legal problem which is covered by legal aid rules</p> <p>(2) their income and the value of their property falls below a certain limit and (2) they have no other way of getting legal help</p> <p>Applicants are eligible if their net household income and assets are at, or below, the following LSS guidelines:</p> <table border="0"> <tr> <td colspan="2">Income</td> </tr> <tr> <td>Household size</td> <td>Immigration Cases</td> </tr> <tr> <td>Family Cases.....</td> <td>Personal property exemption (see criminal legal aid)</td> </tr> <tr> <td>1</td> <td>\$1,002</td> </tr> <tr> <td>\$1,152</td> <td></td> </tr> <tr> <td>2</td> <td>\$1,504</td> </tr> <tr> <td>\$1,654</td> <td></td> </tr> <tr> <td>3</td> <td>\$1,755</td> </tr> <tr> <td>\$1,905</td> <td></td> </tr> <tr> <td>4</td> <td>\$1,941</td> </tr> <tr> <td>\$2,091</td> <td></td> </tr> <tr> <td>5</td> <td>\$2,140</td> </tr> <tr> <td>\$2,290</td> <td></td> </tr> <tr> <td>6</td> <td>\$2,326</td> </tr> <tr> <td>\$2,476</td> <td></td> </tr> <tr> <td>7+</td> <td>\$2,486</td> </tr> <tr> <td>\$2,636</td> <td></td> </tr> </table> <p>Monthly income includes net income from all sources within the family. It includes money from foster care, student loans, and maintenance payments. It doesn't include the Child Tax Benefit, the BC Family Bonus, GST payments, or tuition or book fees under federal or provincial student loans.</p> <p>An intake worker from the legal aid office calculates an applicant's net income by adding income from all relevant sources, then subtracting deductions. Allowable deductions include: day-care expenses, child or spousal maintenance payments, court fines, certain medication payments and the cost of any necessary interpretation services.</p> <p>Assets (see criminal legal aid)</p> <p>There are five different asset categories: family home, real property (except the family home), vehicles, business assets and personal property. Each category has different limits, but generally applicants may have some personal property (e.g., modest household furnishings), a small amount of liquid assets and equity of \$5,000 or less in vehicle(s), and still be eligible for legal aid. In general assets will be considered as disposable unless the applicant:</p> <p>(1) can't sell the asset in a reasonable time or get a loan or credit using the asset as security</p> <p>(2) can't use his/her share of an asset because it's included in a marriage dispute, or</p> <p>(3) has received a court order preventing sale of the assets</p> <p>Financial Eligibility Test for Legal Advice</p> <p>A separate eligibility test was adopted in 2003/04 for most LSS legal advice services. The test is also used for brief legal services</p>	Income		Household size	Immigration Cases	Family Cases.....	Personal property exemption (see criminal legal aid)	1	\$1,002	\$1,152		2	\$1,504	\$1,654		3	\$1,755	\$1,905		4	\$1,941	\$2,091		5	\$2,140	\$2,290		6	\$2,326	\$2,476		7+	\$2,486	\$2,636		<p>As for civil legal aid:</p> <table border="0"> <tr> <td colspan="2">Income</td> </tr> <tr> <td>Household size</td> <td>Criminal Cases</td> </tr> <tr> <td colspan="2">(effective 1st March 2004 to March 31st 2005)</td> </tr> <tr> <td>1</td> <td>\$1,154</td> </tr> <tr> <td>2</td> <td>\$1,558</td> </tr> <tr> <td>3</td> <td>\$1,962</td> </tr> <tr> <td>4</td> <td>\$2,366</td> </tr> <tr> <td>5</td> <td>\$2,712</td> </tr> <tr> <td>6</td> <td>\$3,058</td> </tr> <tr> <td>7+</td> <td>\$3,404</td> </tr> </table> <p>Assets (see civil legal aid)</p> <table border="0"> <tr> <td>Household size</td> <td>Personal Property</td> </tr> <tr> <td colspan="2">Exemption</td> </tr> <tr> <td colspan="2">(all cases, effective 1st April 2000)</td> </tr> <tr> <td>1</td> <td>\$2,000</td> </tr> <tr> <td>2</td> <td>\$4,000</td> </tr> <tr> <td>3</td> <td>\$4,500</td> </tr> <tr> <td>4</td> <td>\$5,000</td> </tr> <tr> <td>5</td> <td>\$5,500</td> </tr> <tr> <td>6</td> <td>\$6,000</td> </tr> <tr> <td>7+</td> <td>\$6,000</td> </tr> </table>	Income		Household size	Criminal Cases	(effective 1 st March 2004 to March 31 st 2005)		1	\$1,154	2	\$1,558	3	\$1,962	4	\$2,366	5	\$2,712	6	\$3,058	7+	\$3,404	Household size	Personal Property	Exemption		(all cases, effective 1 st April 2000)		1	\$2,000	2	\$4,000	3	\$4,500	4	\$5,000	5	\$5,500	6	\$6,000	7+	\$6,000
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Ontario	<p>Legal aid will pay for a lawyer if:</p> <p>(1) The legal problem is one that legal aid covers and</p> <p>(2) The client has little or no money left after paying for basic necessities.</p> <p>Financial Eligibility The financial test is covers for the client, his/her spouse, common-law partners or same-sex partners and any dependent children.</p> <p>The test has two parts: the asset test and the income test. Legal Aid staff determine whether a client has enough money/assets available to pay a lawyer without Legal Aid's help. Staff then look at monthly income an expenses to determine if the client has any money left over that could be used to pay legal fees.</p> <p>The Asset Test Legal aid looks at clients' assets, such as cash, bank accounts, stocks, bonds, and RRSPs to see if they pay for all their legal fees. Anything that clients can sell or easily convert into cash will be included. Depending on the clients situation they may be expected to use some of their assets to help pay for legal fees. Assets, such as, houses and property are considered. Normally if clients own a house or property they are expected to borrow against it to pay for legal fees. If they cannot borrow against it, Legal Aid will ask the client to agree to sign a lien against the property.</p> <p>The Income Test Legal aid asks clients to give information about all their sources of income, for dependent children, spouses, common-law spouses and same-sex partners. Income includes worker's compensation, employment income, employment insurance, pensions, social assistance, commissions, self-employed earnings, child tax benefits, rental income, etc. To determine net income Legal Aid conduct any payroll deductions, day care costs and child support payments from gross income. Clients on social assistance, are usually eligible for legal aid, depending on available assets. Clients may be eligible for legal aid without a detailed test if net income is: Family size = 1 \$601 monthly or \$7,212 yearly Family size = 2 \$1,075 or \$12,900 Family size = 3 \$1,137 or \$13,644 Family size = 4 \$1,281 or \$15,372 Family size = 5+ \$1,281 or \$15,372 If the client's income is more than these amounts, they will need to complete a more detailed test. The result may be qualification for legal aid, request for contribution towards aid or refusal of aid.</p> <p>Legal aid allows a set amount of money for monthly expenses based on the size of the</p>	<p>Financial eligibility limits are similar to those for civil cases. Non-financial criteria are merits, likelihood of success and personal situation.</p> <p>The test currently in use for certificate coverage is the "liberty" test, which limits coverage to cases with a probability of incarceration on conviction.</p> <p>Users of criminal legal aid may be asked to contribute if they qualify for coverage but do not fit within the financial eligibility guidelines.</p> <p>They are asked to enter into a contribution agreement with Legal Aid Ontario (LAO), in which the amount and method of their repayment is set out, i.e., monthly payment or lump sum payment.</p> <p>Applicants whose income qualifies them for legal aid but who own a house or other real property will generally be asked to enter into a lien agreement in favour of LAO.</p> <p>In 2003-04, 8% of certificates issued were contributory.</p>

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Australia	<p>The commonwealth Priorities and Guidelines are set out in the legal aid funding agreements between the Commonwealth and each State and Territory. The Commonwealth "<i>Priorities</i>" outline the broad areas, which should be given priority in using Commonwealth funds (and are contained in Schd. 2 of the funding agreements). The "<i>Guidelines</i>" are the tests that are to be applied by Legal Aid Commissions when assessing legal aid applicants for Commonwealth related matters (contained in Schd. 3 of the funding agreement). They are made up of four parts. Part 1 contains the 'means' and 'merits' tests and parts 2-4 identify the type of family, criminal and civil matters for which Commonwealth funds may be granted.</p> <p>Merits The merits test comprises three elements: (1) <i>A Legal and Factual Merits Test</i>, which looks at whether the applicant has a reasonable prospect of success. (2) <i>A Prudent Self Litigant Test</i>, which is met if the Commission considers that a prudent self funding litigant would risk their own funds in the proceedings (3) An appropriateness of spending limited public funds test, looks at whether the Commission considers the costs involved are warranted by the likely benefit to the applicant or the community.</p> <p>Means The 'means test' assesses an applicant's assessable <i>income</i> (those eligible for legal aid earn <\$25,000 p.a. after tax) and <i>assets</i> (includes the value of the principle home). Applicants must qualify on both aspects, i.e., income and assets, but if either is exceeded, a grant may be made if the applicant makes a contribution. There are two types of means tests that can be used in assessing applicants for legal aid the <i>National Legal Aid Means Test</i> and the <i>Simplified Legal Aid Means Test</i>. The two tests have the same assets test component, but assess income in a different way. The Simplified Legal Aid Means Test varies from the National Legal Aid Means Test in that it uses a formula that takes into account the number of dependent persons in the applicant's household as well as the employment status of the applicant and partner (if applicable). Currently, all Legal Aid Commissions, except Queensland and Tasmania, use the National Means Test. Under the National Means Test the various jurisdictions are allowed to set different monetary limits to items allowed under the test. This is to cater for both inter and intra-jurisdictional differences in economic conditions.</p>	<p>Applications are subject to means and merits testing, and the availability of funds for the purpose.</p> <p>Aid will usually be available for trial if the applicant has a reasonable prospect of acquittal, and conviction would be likely to have a significant detrimental effect on the applicant's livelihood or employment, actual or prospective; or the applicant has a disability or disadvantage which would prevent self-representation; or conviction would be likely to result in a term of imprisonment, including a suspended term, being imposed.</p> <p>Aid will usually be available for a guilty plea if, because of complexity or other aggravating circumstance, the Commission determines that the matter should not be dealt with by a duty lawyer service.</p> <p>Aid may be available from some Legal Aid Commissions in other circumstances, for example, minor traffic matters where large fines or issues of civil liability might attach. Reference should be had to individual Commissions.</p> <p>Even where a grant of legal aid is available, the client may have to pay a contribution towards the costs of legal services. This may be a small amount or up to the total cost of the matter if the applicant has the capacity to pay it by reason, e.g., of recovery of money.</p>

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
New South Wales	<p>Financial eligibility limits in general are that an applicant must have a net weekly income of less than \$190 after deductions (tax, housing (\$230 for Sydney residents and \$175 for other residents), child care (\$110) and \$60 per dependent). Contributions are based on applicant's net income and assets. If the contribution exceeds the estimated cost of the proceedings no aid is available. Help is provided subject to a contribution proportionate to means (figures as at 2002, Soar 2002: 16)</p> <p>With regard to the means test in NSW a person's equity in his/her own home is disregarded up to \$195,200. In non-criminal matters the NSW Legal Services Commission is given the discretion to disregard a person's home equity, however, for criminal matters there is no such discretion.</p> <p>The non financial criteria for support are whether it is reasonable in all the circumstances to grant support. Reasonable prospect of success and cost/benefit considerations are taken into account.</p>	See civil legal aid but note that for criminal matters the Commission has no discretion which enables it to disregard the value of the applicant's home. Non-financial criteria are as per civil legal aid.
Victoria	<p>The central criteria for the provision of legal assistance are:</p> <ol style="list-style-type: none"> (1) Financial means (2) Merit (3) Cost / benefit (4) The applicability of guidelines for assistance—VLA grants assistance to people in a range of State and Commonwealth law areas. The department of the Commonwealth Attorney-General determines the guidelines and priorities for assistance in matters arising under Commonwealth law. The board of VLA determines guidelines for assistance in matters arising under state law. <p>Financial eligibility (except in war veteran matters) is assessed according to the national means test (see above) to determine whether an applicant is required to repay part or all of the costs of his/her legal representation. Applicants who have the ability to contribute to the cost of their case are required to make interim payments or to provide VLA with security over their home or other real estate. Information regarding the contribution an assisted person may be required to pay is available to that person on request on a case by case basis.</p>	See civil legal aid criteria.

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
New Zealand	<p>The Legal Services Agency decides whether a person qualifies for legal aid. They will consider the finances of the applicant and the merit of the case:</p> <p>Finances:</p> <p>(1) The Agency will consider whether the applicant can afford a lawyer. It will look at post tax income over the last 12 months (i.e. net income and some living expenses are taken into account) and how much money could be raised by selling property (but not a person's first house, car, furniture, or tools of trade).</p> <p>(2) If the applicant has a partner (married or de facto, including same-sex), the Agency will take into account the partner's finances (unless the dispute is between partners). <i>To be eligible for civil legal aid on financial grounds, a person and their partner's disposable income cannot usually exceed \$2,000 per year.</i></p> <p>Merit:</p> <p>(1) The Agency will consider the chances of winning the case. An application must be refused if there are no reasonable grounds for taking / defending the case and may be refused if the case is unlikely to succeed</p> <p>(2) The Agency will consider the cost of case weighed against the possible benefit, e.g. suing someone of limited funds, though chances of success might be good, the cost of case might outweigh the amount that could be won, i.e., the cost may be greater than the award could ever be.</p> <p>(3) the applicant must have reasonable grounds for taking or defending a case.</p> <p>Contribution</p> <p>Applicants must make an initial contribution of \$50 to the cost of legal aid (no payment is required in domestic violence cases), which is paid at the time of application but refunded if legal aid is refused. An applicant may have to pay a "further contribution" towards legal aid. This is owed as a debt to the LSA satisfied through a repayment arrangement (lump sum, instalments, a charge on the applicant's property (e.g. house car or other valuable asset) if the applicant owes >\$300; the proceeds of the case).</p>	<p>The LSA decides whether a person qualifies for legal aid, it takes into account:</p> <p>Finances: whether the applicant can afford a lawyer. The financial test is based on whether "it appears to the Agency that the applicant does not have sufficient means to enable him or her to obtain legal assistance." The LSA will look at how much the applicant earns (after tax and some living expenses are taken into account) and how much money s/he could raise by selling property (not a first house, car, furniture or tools of trade). An applicant on benefit will probably qualify for legal aid</p> <p>Merit: The LSA will look at whether</p> <p>(1) it is considered desirable in the interests of justice that a person receive legal aid</p> <p>(2) how serious the charge is; offences punishable by imprisonment generally qualify. Usually legal aid can't be obtained for less serious offences, e.g. most traffic offences and "summary offence"</p> <p>(3) any special circumstances, e.g. previous convictions, which may mean that the sentence is likely to be prison and special barriers or disabilities like mental illness or reading/writing difficulties.</p> <p>Applicants may have to pay a "contribution" towards their legal aid, depending on their income and assets, but this is not common. If the applicant is a beneficiary with no assets, it's unlikely s/he will be required to make a contribution. If there is some money to pay, this will be a debt the applicant owes to the LSA. It may have to be settled by a lump sum, or by instalments. The LSA can only put a "charge" on the applicants' property if they agree to it, unlike civil/family legal aid.</p>

Appendix 3: Civil and Criminal Eligibility for Legal Aid and Advice		
Country	Civil Legal Aid Eligibility	Criminal Legal Aid Eligibility
Israel	<p>There are three rules for claiming civil legal aid:</p> <ol style="list-style-type: none"> (1) The request is in an area in which legal aid is provided (2) Financial eligibility, i.e. income not more than 2/3 of the average salary, and property not worth more than 3 times the average salary. (3) There is a legal chance to the request <p>Users of legal aid need to pay a requestors fee (28 to 108 shekels). This amount changes in regard to the requestors' income).</p>	<p>The following are eligible for criminal legal aid:</p> <p>Criminal: indigent detainees in bail hearings, suspects in cases where there is a special procedure for pre-trial testimony, all defendants charged with crimes carrying a maximum penalty of at least ten years incarceration, all defendants for whom the prosecution requests the denial of bail until the end of the trial, all juvenile detainees and defendants, convicted defendants requesting post-conviction retrials, indigent defendants charged with crimes carrying a maximum penalty of five years to ten years, defendants for whom the court appoints council in the interests of justice, defendants in extradition proceedings, regardless of means, all defendants and detainees facing the possibility of involuntary commitment for mental examination or for compulsory treatment.</p> <p>There is a small charge for certain categories of defendants. The majority of clients receive the services free of charge. Presently, the charge must be paid up front, but the court has jurisdiction to cancel the charge. There is a new reform initiative by the Ministry of Finance designed to curtail the judicial authority to waive the charge.</p>
Japan	<p>There are two tests applicable for qualification for legal aid; the means test and the merits test.</p> <p>Means: The criteria for funding targets clients in the lowest 20% income bracket. Thus aid recipients are restricted to low-income earners who cannot afford the legal costs for the preparation and execution of their cases, in order to defend their rights, or people who will face significant difficulties in their daily life because of the payment of such legal costs.</p> <p>Merits: The criterion is the possibility of winning the case.</p> <p>Reimbursement: All the payments for the legal costs, which the Japan Legal Aid Association paid in advance on behalf of the aid recipient, should be reimbursed in principle. This even applies where recipients, are on welfare support and/or where their litigation or procedures result in no payments or damages payable to them. However, where the recipients are on welfare or are still financially restricted three years after the settlement of the case, they may be exempted from making the remaining repayment.</p>	

Appendix 4: Alternatives to Legal Aid

Country	Free Legal Advice Centres /Contingency Legal Aid Funds / Self-help Legal Services	Legal Expenses Insurance	Pro Bono Work
EU			
Ireland	In each of the two largest cities, Dublin and Cork, there is a voluntary Free Legal Advice Centre (FLAC). Advice is free, and much of it concerns social welfare law; help is also given with legal representation in employment law case. The state provides judge €94,000. Contingency/Conditional fee agreements do exist but not to any great extent.	There is a very small market for LEI and one for which there are no detailed figures available. The 2002 report of the Irish Insurance Federation says "Other classes of non-life business, including marine, aviation and transit (MAT), credit and suretyship, other financial loss covers and legal expenses insurance were worth over €274 m in 2002"	The Irish government does not promote <i>pro bono</i> work
Finland	Contingency fees are not used. The main form of Alternative Dispute Resolution is Mediation	70-75% of households have LEI cover. It is usually attached to home insurance but may also be included in, e.g., a labour union policy or a farming policy. Generally, legal aid is not given, if the person has legal expenses insurance that covers the matter in question. However, legal aid can be granted so as to cover the excess on an insurance policy, provided that the applicant's income and assets are such that he or she would qualify for legal aid free of charge.	Pro bono only has a minor role in legal services
France		LEI is recognised and growing in France. One clear advantage is that a policy can cover fees, which under the state scheme of partial LA, the applicant would have to pay himself.	

Germany	<p>In the three City States of Berlin, Bremen and Hamburg, free legal advice is provided by salaried legal staff in Land-funded agencies. In Berlin this free service is offered alongside that provided by lawyers in private practice.</p> <p>German federal legislation imposes restrictions on the setting up of advice centre in which suitable persons provide legal advice free of charge. Under the provisions of the Law on legal advice of 13 December 1935 the act of dealing with another's legal affairs on a commercial basis is limited, in principle, to members of professions providing legal advice, especially lawyers and notaries.</p> <p>No use is made of contingency/conditional fee agreements.</p>	<p>Germany has the largest LEI market of any EU country. Cover for certain forms of legal liability, e.g. for the payment of fines (or administrative penalties) for minor offences is also available.</p> <p>LEI (is usually in the form of After the Event insurance) is not available for family law or criminal law. The average German LEI policy does not cover all areas of law, but follows a modular concept with the policy holder free to 'mix' her policy according to personal needs. So, for example, a policy may cover employment law, property law, and contract law. There is no comprehensive policy available that would cover 'everything' and even if a policy covers a certain area of law, some risks cannot be insured, e.g., costs arising from wilful crimes. Policies also do not cover abstract legal advice; coverage is strictly limited to once an insured event has occurred. Also there is a standard three-month exclusion period from the date the insurance contract is signed (although some exceptions exist, most notably for liability in tort)</p>	<p>The Legal Profession Act (<i>Bundesrechtsanwaltsordnung—BRAO</i>) requires lawyers to charge minimum fees for their services (BRAO s.49b I) according to the scale of fees for all work in court proceedings. This statutory obligation makes <i>pro bono</i> work more or less impossible in practice. Fees can only be rescinded after the lawyer-client relationship has ended. The only formal exemption relates to services for family members and employees.</p> <p>There is due to be some liberalisation of this from 1006. But at present it is forbidden to set fees at zero as this is seen as potentially anti-competitive (there is no upper limit of fees which can be charged)</p>
Greece			
Italy			
Netherlands		<p>There has been a steady growth in the proportion of the population covered by LEI in the Netherlands. 1 in 5 Dutch citizens have legal aid insurance and it covers approx.3.5 million people. The price varies from approx €110 to €180 per annum.</p> <p>The amount of insurance policies for legal aid is 1.4 million. Legal aid insurance is almost 3 % of all property insurance</p>	<p>Only sometimes legal aid is granted on the basis of pro bono. Of all the lawyers connected to the Legal Aid council, only 49% gets involved in pro bono work, of which only 3.8% in legal aid cases. This work is mainly done by high-income lawyers</p>
Spain			

Sweden	<p>Legal aid for family matters was severely restricted by the 1997 legal aid reform. Which introduced 'co-operation talks' and alternative dispute resolution procedure, to facilitate decision-making and divert most of Sweden's family law disputes involving children out of the court and into the local social welfare office. Co-operation talks are offered to all Swedes <i>free of charge</i> and are <i>not means tested</i>.</p>	<p>LEI covers 95% of Swedes. Though strictly speaking, Swedes do not have 'LEI policies'. Instead, they have insurance cover for possible future legal expenses, which is automatically included in their household insurance policies. Thus LEI in Sweden cannot be purchased as separate stand-alone policies (Regan 2003: 50, 52). The Legal Aid Act (1996: 1619) effectively reversed the relationship between legal aid and LEI for most Swedes and for most legal problems. Most of the population must now initially call on their LEI policy and only when that entitlement is exhausted can they apply for legal aid.</p> <p>Claims on LEI require policy-holders to pay an upfront amount €110 fee, a 20% contribution towards the estimated cost of the case, and a ceiling of €11,007 on the amount that can be claimed on an LEI policy per annum.</p> <p>LEI policies specifically exclude uncontested divorce cases as well as litigation relation to divorce for a period of two years after the case.</p>	<p>When the Swedish government introduced sweeping reforms of its legal services policy in 1997 the Swedish Bar Association responded by establishing a basic <i>pro bono</i> scheme. The 'free first interview' scheme was widely offered to partially restore Swedes' access to basic legal advice. However, Bar members have had difficulty in maintaining the scheme in some parts of the country and the number of people receiving assistance has apparently declined as a result but there are no reliable figure on the number being assisted (Regan 2003: 64).</p>
USA			<p>The USA has not established a right to counsel in most civil cases and paid private lawyers have little involvement in the delivery of civil legal assistance to low-income persons. Instead the US places its reliance on pro bono attorneys to supplement the staff attorney system.</p> <p>There are a number of pro bono programs operated by civil legal aid providers, bar associations, or independent programs. There are estimated to be over 600 pro bono programs. Over 150,00 private attorneys are registered to participate in pro bono efforts with programs funded by the Legal Services Corporation and 45,000 are actually participating. Additionally there are over 155 major law firms with organized and staffed pro bono programs that provide service to low-income clients.</p>
California			<p>The state supreme court has recently launched an initiative to promote pro bono service.</p>
Illinois			
New York			
Texas			
Canada			

<p>British Columbia</p>	<p>The Legal Services Society of British Columbia is making greater use of technology to give clients immediate access to accurate legal information in easy-to-understand formats.</p> <p><i>Website Services</i> LSS manages three websites and supports PovNet. The <i>Electronic Law Library</i> provides basic links to reliable legal information sites for the general public, e.g., statute, court and government sites. The <i>Family Law in British Columbia</i> website is dedicated to helping people understand and use the law to resolve their family law problems. The site contains legal information publications on family law matters, self-help kits, a section on resolving family law problems, and links to other helpful organisations. The LSS website contains information about the society, how to apply for legal aid, LSS coverage and more. ProNet is a searchable website for people on welfare, advocates and community groups involved in anti-poverty work. It provides information on and links to resources for a variety of issues affecting the rights of people with low incomes.</p> <p><i>LINK</i> In the fiscal year 2002/03 the LSS, developed Legal Information Network Kiosks (LINKs), which are public access computers people can use to find legal information and self-help resources on the internet.</p> <p><i>Law Line</i> Law Line is a province wide toll-free service that provides legal information for people on low incomes. The service focuses on the areas of poverty, family, criminal, and immigration law for which LSS does not provide legal representation. Law Line staff can answer legal questions and direct people to other information or services that can help them solve their legal problems. They provide information about the law but cannot give legal advice.</p>		<p>There is an extensive pro bono program in British Columbia. There are also voluntary organisations which assist in a variety of ways and the universities of BC run student programs through their faculties of law.</p>
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Ontario	Up until the fall of 2002, contingency fee arrangements were only allowed in Ontario in class-action civil suits. Contingency or conditional fee arrangements may now be entered into in Ontario for all matters except family law and criminal or quasi-criminal matters.	<p>Where the service offered depends on the occurrence of a risk or peril, as is the case in LEI, then this is considered to be insurance in accordance with the <i>Insurance Act</i>. LEI is a distinct class of insurance in Ontario and is offered by several insurance companies. Only a licensed insurance agent can sell this product on behalf of these insurance companies (website of the Financial Services Commission of Ontario)</p> <p>It appears that this kind of insurance, although available to be purchased by individuals, is more often offered through employers and professional organizations (e.g. the Canadian Dental Association offers this insurance as part of the Canadian Dentists' Insurance program, to protect its members against actions arising out of their practice of dentistry – similar insurance is available to practising lawyers).</p>	<p>Pro Bono Law Ontario was established in 2002. Its objective is to foster the development of pro bono projects in Ontario for low and modest-income individuals and voluntary organizations. This includes creating and promoting opportunities for lawyers to provide free legal services, to foster pro bono projects and to act as a resource center for PBLO programs.</p> <p>Pro Bono Law Ontario is funded by Ontario's Trillium Foundation, Canadian Heritage, Legal Aid Ontario, the Law Foundation and by the Law Society of Upper Canada.</p> <p>The Trillium Foundation, an agency of the government of Ontario, makes charitable grants to organizations (including PBLO) out of government funding received through Ontario's charity casino initiative.</p>
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<p>Australia</p>	<p>Australian legal aid agencies are increasing their reliance on self-help legal services as part of their service delivery mix. Self-help services appear in a variety of forms, the main ones being <i>legal transaction kits</i> (consumers complete a legal transaction with the aid of an expertly prepared document kit), '<i>coaching</i>' (limited legal advice provided at key moments to enable the consumer to take steps or complete tasks in a legal transaction), and limited (or 'unbundled') legal representation. Variations on these may include combinations of two or all of these. The influential Federal Government report, <i>Access to Justice: An Action Plan</i>, produced in 1994 focused strongly on providing further information to the consumers of legal services (Giddings and Robertson 2003: 103).</p> <p>Extensive use has been made of video-conferencing by courts to develop 'virtual courtrooms' and by legal service providers to reach groups including geographically isolated communities and prisoners. Similarly audio-graphics conferencing (phone contact combined with shared computer and internet access) can be used to enhance access to legal services to isolated communities (Giddings and Robertson 2003: 103).</p> <p>Self-help legal services are becoming increasingly prominent in both the public and private sectors. The development of self help services has occurred principally in areas of civil law. Legal aid providers have developed a substantial catalogue of self-help kits focusing on family law, consumer issues, and small civil claims.</p> <p>Federal and state government agencies responsible for matters including taxation, environmental issues, transport, and consumer affairs have made extensive use of the internet to expand the law-related information they provide to members of the public.</p> <p>Some private practitioners offer contingency / conditional fee agreements for civil matters.</p>	<p>There is very little LEI in Australia; it's negligible. The limited number of schemes which exist tend to be organised through trade unions and industry associations and therefore the people in them are not people who are likely to qualify for legal aid.</p>	<p>The lack of legal aid in civil matters and the severe restrictions on the availability of legal aid generally has prompted the private legal profession, often with government support, to establish supplementary legal aid schemes or pro bono programmes. Such schemes are usually administered by Law Societies, bar associations, the courts or public interest organisations and private legal practitioners perform legal work for free. This type of work has always occurred within the legal profession, but in the last decade, there has been a growth in the number of organised schemes. As a consequence, the objective of cohesive and consistent provision of legal aid services across the states, managed by the legal aid commissions is lost. The proliferation of pro bono schemes raises concern about "fragmentation, lack of co-ordination and the difficult task citizens face when they try to find pro bono schemes when they need them"</p> <p>The demand for pro bono work has increased massively as a result of the Commonwealth government cuts to legal aid in 1997. In May 2001 the Attorney-General announced a budgetary commitment of \$1 million to establish a pro bono secretariat (Noone & Tomsen 2001:262).</p> <p>The Commonwealth Government provided seed funding to establish the Pro Bono Resource Centre. This is an independent, non-profit organisation that aims to support and promote pro bono legal services. It is understood that it is unlikely that funding will be recurrent.</p>
<p>New South Wales</p>	<p>Web-based and email services have made advice and other legal services more accessible to certain user groups (Law and Justice Foundation of NSW, <i>Email Law: A Planning Guide for the Delivery of free legal assistance via email</i> 2001)</p>	<p>.</p>	<p>.</p>

Victoria	The Victorian 'Law Aid' Scheme is a contingency legal aid fund. CLAFs provide financial assistance to civil litigants who cannot afford to obtain legal assistance but who do not qualify for legal aid. Successful litigants return a portion of their settlement to the fund.		
New Zealand	<p>Community law centres have lawyers and community workers who can give free legal advice and discuss options. Some law centre lawyers can represent a client in court. Trained CAB volunteers give general information about legal aid and some have a free legal advice service, but they cannot represent clients in court</p> <p>For some time there has been some level of ambiguity over whether lawyers are able to come to contingency/conditional fee agreements with their clients. The Law Practitioners Act 1982, which governs how law practitioners operate in New Zealand, makes no reference to contingency or conditional fee agreements, however common law rules against maintenance and champerty apply. However the Rules of Professional Conduct for Barristers and Solicitors was amended in 1991 to 'open the door cautiously' for contingency fee arrangements.</p> <p>There has been no real culture of contingency fee arrangements in New Zealand, one reason being the ambiguity as to whether lawyers can and should charge contingency fees. Another key reason is the fact that the personal injury suits are rare because of the existence of the Accident Compensation Corporation (ACC), which provides no-fault personal accident insurance cover that precludes people from suing for personal injury (other than for exemplary damages).</p>	Legal Expenses Insurance is not a very big industry in New Zealand. However, the Law Commission has suggested in their report 'Delivering Justice for All' (2004), that the expansion of legal insurance is an option that should be considered further. However New Zealand's heavy emphasis on family litigation and the absence of personal injury actions make insurance a less viable option than in other countries.	<p>There is not a lot of information available on the role and scale of <i>pro bono</i> work in New Zealand. Law Society research (1996) into <i>pro bono</i> work surveyed 670 lawyers and found:</p> <p>23% of lawyers did at least 2 hours of work on behalf of the profession per week (this may include writing submissions to Parliament for example)</p> <p>35% spent time several hours per week doing other voluntary legally related activities.</p> <p>1% did <i>pro bono</i> work of 12 hours plus per week.</p> <p>3% did at least 4hrs of community or charitable work per week.</p>
Israel			<p><i>Pro bono</i> work is offered by the Bar Association and includes mainly consultation, but also sometimes representation.</p> <p>The government has no direct links with <i>pro bono</i> work.</p>
Japan			

Appendix 5: Costs of Legal Aid and Advice

BELGIUM

(Source: Response by the British Embassy Brussels, to the Department for Constitutional Affairs' legal aid questionnaire)

The cost of the *premiere ligne* category of legal aid for 2004 is approximately €1.5m annually and the budget for 2004 for the *seconde ligne* category is €36m (Belgium has a population of 10m). This latter figure is up significantly from €21m only five years ago.

The legal aid system is organised on language grounds (French and Dutch) rather than by region (Flanders, Wallonia and Brussels). Two lawyers' associations administer the system and they divide up the cake at the end of the year according to the number of cases in different categories of difficulty. However there seems to be an implicit idea of appropriate fees. The associations managed to obtain an extra €2m from the Justice Minister in 2003, arguing that the work load had been exceptionally heavy. Because payments and administration are devolved, the Ministry of Justice does not keep centrally detailed statistics on the number of applications for legal aid or the number of cases approved.

FINLAND

(Source: Response by the Ministry of Justice, Finland, to the Department for Constitutional Affairs' legal aid questionnaire)

Funding of legal aid in Finland comes from the State budget via the Ministry of Justice. The sum total of legal aid costs amount to approximately €50 million per annum. This level of spending has not changed significantly over the past five years.

The Expenditure on Legal Aid and the Balance Between Private Lawyers and Legal Aid Offices

In the table below are listed the amounts paid from the state budget per year during the years 1998–2002. Besides the total amount spent on legal aid by the state separate amounts are noted for the operating costs of the state legal aid offices and the amounts paid to the private lawyers (including legal aid, defence counsel and a attorneys for victims of crime). The proportion of the costs between private lawyers and legal aid offices are 3:2.

Year	Private lawyers	Legal aid offices	Total
1998	23 mill. €	11 mill.€	33 mill €
1999	26 mill. €	19 mill. €	45 mill. €
2000	28 mill. €	20 mill.€	48 mill. €
2001	32 mill. €	21 mill.€	53 mill. €
2002	31 mill. €	22 mill.€	52 mill. €

Between 1990 and 2000 the expenses of private lawyers rose about 10% per year.

During the year 2002 around 70% of clients of the legal aid offices paid no contribution, 22% paid compensation and 8% paid full cost of the legal services they got. The last mentioned 8% were not entitled to legal aid, but had for special reasons received service, usually advise, at a legal aid office. These proportions have remained the same during last five years, but may change in the future because of the changes made to the means tests in 2002.

FRANCE

(Source: Response by the Ministry of Justice, to the Department for Constitutional Affairs' legal aid questionnaire)

Budgets:

The total legal aid budget envisaged for 2004 breaks down as follows:

Criminal Legal Aid	€76mill
Civil Legal Aid	€85mill
Family Legal Aid	€76mill
Asylum Seekers	€1mill

Legal aid expenditure has increased from €188mill in 2000 to €271mill in 2003. For 2004 expenditure is predicted to be €277mill representing a rise of 47% since the year 2000.

For 2004, the legal aid budget of €291mill represents 5.5% of the budget of Justice and 0.1% of the budget of the State.

GERMANY

(Source: Response by the Justice Ministry, to the Department for Constitutional Affairs' legal aid questionnaire)

The total amount the public treasury—mainly of the Lander—spent for legal aid cannot be stated exactly. Legal aid is to be funded by the Lander. Exact data, which take into account the reimbursements by instalment payments, the court fee waiver, and the cases ending with an early settlement, are not monitored in the Lander under a common standard. Legal aid in civil and family proceedings has been granted 490,000 times in 2002. 424,500 legal aid grants have been conferred in family law procedures, where 47% of the plaintiffs and 26% of the defendants are entitled to legal aid. 60,000 grants have been conferred in first instance civil proceedings, 5,500 in appeals proceedings.

In first instance proceedings approximately 25% of the legal aid applications are denied, in appeals proceedings approximately 45% of the applications are denied. 87% are granted without the obligation to reimburse the public treasury by instalment payments.

The total level of spending on legal aid can only be approximately estimated. The costs for all kinds of legal aid including the fees for court-appointed counsels in criminal cases amount to approximately €500 million. In the last three years the spending has increased by more than 15%.

IRELAND

(Source: Legal Aid Board Annual Reports 2000 and 2003)

- The total level of spending on criminal legal aid is €33.6 million
- The total level of spending on civil legal aid is €18.4 million—over 90% of which represented expenditure on family legal aid.
- Legal aid for asylum seekers is €9 million
- The State provides €94,000 to free legal advice centres in Dublin and Cork

Spending levels have changed over the past five years showing an increase of 70%. The growth in demand for legal aid can be explained by:

- The introduction of a range of family law legislation (e.g. on divorce)
- An increased awareness by the public of legal remedies
- The growth in asylum and immigration cases

Funding for Legal Aid

	2001 €	2002 €
Grant-in-aid funding	17.27	17.636
Funding for Refugee Legal Service and Refugee documentation centre	similar	9.6mill

Analysis of Applications Dealt With 1999-2001

	1999	2000	2001
No. of persons given legal advice only	9,299	9,411	9,151
No. Of persons given legal advice and representation (i.e., legal aid certificates)	5,149	4,971	5,063
Total no. of persons provided with legal services	14,448	14,382	14,214

Analysis of Applications Dealt with by the Refugee Legal Service

	1999	2000	2001
No. of persons given legal advice only	575	1,198	1,705
No. Of persons given legal advice and representation (i.e., legal aid certificates)	1,047	2,226	2,815
Total no. of persons provided with legal services	1,622	3,424	4,520

Analysis of Legal Aid Certificate by Court

Type of Case	District Court			Circuit Court			High Court			Supreme Court		
	1999	2000	2001	1999	2000	2001	1999	2000	2001	1999	2000	2001
Law Centres												
Family Law	1,432	1,257	1,469	2,640	2,493	2,000	139	111	60	6	2	0
Other	17	17	16	86	48	46	32	118	41	1	2	0
Private Practitioners	786	923	1,174	0	0	257	0	0	0	0	0	0
Total	2,245	2,197	2,659	2,726	2,541	2,303	171	229	101	7	4	0

	Totals		
	1999	2000	2001
Law Centres	4,217	3,863	3,529
Family Law	146	185	103
Other	786	923	1,431
Total	5,149	4,971	5,063

Cases in which Legal Aid is Provided

	2001	2002
Law Centres		13,600
Refugee Legal Services		5,700
Private Practitioner Scheme		1,700
Total	18,700	21,300

Note: figures have been rounded up.

SWEDEN

(Source: Regan, F. (2003) "The Swedish Legal Services Policy Remix: The Shift from Public Legal Aid to Private Legal Expense Insurance" 30:1 *Journal of law and Society* 49-65.
 Regan, F. (2000) "Retreat from Equal Justice? Assessing the Recent Swedish Legal Aid and Family Law Reforms" 19 (Apr) *Civil Justice Quarterly* 168-184)

Legal Aid Spending

For 2003 the total level of spending on civil (non family) legal aid was €6,674,300 (20% of this being VAT). In the same year the level of spending on family legal aid was €16,300,400 (20% of this being VAT); on public counsel was 73,340,000 Swedish crowns ((SK). VAT not included); on special representatives for children was 3,151,000 SK (VAT not included) and on distribution of matrimonial property was 634,000 SK (VAT not included). Over the past five years total spending has increased 26.4%.

With regard to criminal legal aid in 2003, spending on public defence counsel amounted to €86,953,700 (20% of this being VAT). Whilst spending on "counsel for the injured parties" amounted to €12,639,800 (20% of this being VAT)

(Source: Response by the British Embassy Stockholm, to the Department for Constitutional Affairs' legal aid questionnaire)

Legal Aid Reforms

In 1993 and 1994 legal aid expenditure was 870 Swedish crowns (SK) approximately €102 million. The reforms of the Legal Aid Commission, appointed in 1993, were designed to save 200 million SK per annum (€23.4 million) and primarily involved restricting eligibility for family law matters. The main reforms were introduced in the Legal Aid Act (1996: 1619), which came into effect on 1st December 1997.

The new relationship between legal aid and Legal Expenses Insurance (LEI) is a central feature of the reforms. The Act effectively reverses the relationship between legal aid and LEI for most Swedes and for most legal problems. Most of the population must now initially call on their LEI policy and only when that entitlement is exhausted can they apply for legal aid. Thus the legal aid reforms replace access to publicly funded lawyers with access to private lawyers via an insurance policy.

Rather than publicly funded legal aid, Swedes rely on a combination of a small legal aid scheme, private lawyers, Legal Expenses Insurance and local authorities for assistance with legal problems. Sweden has in effect established a new model for legal aid combining public and private provision to promote equal justice.

Impact of Legal Services Policy Remix on Legal Aid and LEI Expenditure and Number of Cases

Form of Legal Assistance	Year	Expenditure (€m)	No. of Cases
Legal Aid	1994/95	39.7	60,000
	2000	20.7	14,200
LEI Policy	1997	15.9	10,775
	2000	25.6	14,000

Comparison of Swedish Legal Aid and LEI before and after the 1997 Reforms

Feature	Legal Aid pre 01/12/97	Legal Aid post 01/12/97	LEI policies
Proportion of the population included	Quasi universal: 85% of Swedes qualified depending on cost of case	Mean: in general the deserving poor alone qualify but other can in special circumstances	97% of the population have LEI policies
Legal Advice: (1) Available	Yes: in all cases	Yes: in all cases, expanded to 2hrs	Not offered
(2) Fees Charged	Yes: but could be waived or reduced for low-income earners	Yes: flat fees fro all and no reductions/waivers allowed until 2000	Not applicable
Legal Aid for Litigation: (1) Coverage	Comprehensive: most types of case included	As before but most family cases excluded except in special circumstances.	Many cases excluded including divorce

(2) Fees Charged	Graduated fees linked to applicants' income	Yes: linked to applicants' income	Upfront fee €110, plus 20% of cost of case.
(3) Maximum expenditure per case	Yes	100 hours of advocates work	Ceiling of €11,007 per annum.

Criminal Legal Aid

Criminal legal aid was virtually left untouched by the reforms and retains the comprehensive and generous characteristics that are typical of most Swedish social policies. Thus while the number of civil aided cases has decreased the number of legally aided criminal cases has increased as did the public expenditure thereon. Between 1996 and 2000 the number of criminal legal aid cases increased by 1.9% from 52,136 to 53,139. Over the same period, the cost of government expenditure upon Public Defence Counsel increased by 29.7% from €4.8 million to €54.4 million.

For 2003 the total level of spending on public defence counsel was €86,953,700 (20% of this being VAT). In the same year the level of spending on: "Counsel for injured parties" was €12,639,800 (20% of this being VAT).

NEW ZEALAND LEGAL AID AND ADVICE EXPENDITURE/COSTS
 (Source The Legal Services' Agency's Third Annual Report 1st July 2002 to 30 June 2003
 www.lsa.govt.nz under publications)

National legal aid cash expenditure and volume of grants 1998 to 2003

	<i>Cash Expenditure*</i>					<i>Grant Volumes**</i>		
	1998/99 \$000	1999/2000 \$000	2000/01 \$000	2001/02 \$000	2002/03 \$000	2000/01	2001/02	2002/03
Criminal			31,069	33,845	35,192	44,404	44,702	40,109
Family			34,035	32,573	27,205	19,977	19,554	18,840
Civil			6,239	8,718	6,740	2,290	2,443	1,829
Waitangi			4,438	5,581	7,298	43	62	37
Sub total			75,781	80,717	76,435	66,714	66,761	60,815
Duty Solicitor			4,508	4,839	5,330			
Police detention legal assistance			565	521	518			
Total Expenditure	86,400	80,200	80,854	86,077	82,283			

*Refers to the claims approved for payment to providers (including disbursements) in the financial year.

**Shows the number of grants approved in each financial year. As grants may have claims paid out over a number of years, the volume of grants approved in any year does not relate to the expenditure incurred in that year.

National Legal Services Granting and Expenditure Information

	2000/2001		2001/2002		2002/2003	
	Grants	Exp \$000	Grants	Exp \$000	Grants	Exp \$000
Criminal	44,404	31,069	44,702	33,845	40,109	35,192
Family	19,977	34,035	19,554	32,573	18,840	27,205
Civil	2,290	6,239	2,443	8,718	1,829	6,740
Duty Solicitor		4,508		4,839		5,330
PDLA		565		521		518
Sub Total	66,671	76,416	66,699	80,496	60,778	74,985
Waitangi	43	4,438	62	5,581	37	7,298
Grand Total	66,714	80,854	66,761	86,077	60,815	82,283

Legal Aid For Asylum Seekers

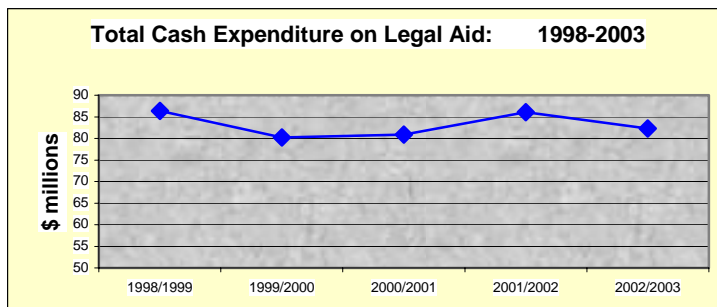
Spending on legal aid claims by refugees is as follows:

2000/2001 - \$946,119.00
 2001/2002 - \$2,014,911.00
 2002/2003 - \$1,443,983.00
 2003/2004 - \$1,562,920.00

Legal Aid Expenditure Defined

Legal aid expenditure is a function of the number of grants for which payments are approved, the hours worked and rate paid to legal providers for their services plus disbursements. The hourly rates paid to each category of legal providers have remained the same as the previous year. Therefore the movement in legal aid expenditure from the previous year largely reflects a change in the volume of grants for which a payment was made, the average amount of time spent on cases (either in preparation or appearances before a court) and any change in the category of providers engaged on cases.

Overall Cash Expenditure



Overall cash expenditure in legal aid peaked in 1998/1999 at \$86.4million. This followed a steady climb from the early 1990's. In 1999/2000 expenditure dropped to \$80.2 million, but increased over the next two years to \$80.9 million in 2000/2001 and \$86.1 million in 2001/2002. However, this expenditure included an estimated \$3 million of backlog claims arising from cases transferred to the Legal Services Agency on its establishment on 1 February 2001. Overall cash expenditure for legal aid and related schemes declined by \$3.8 million (4.4%) to \$82.3 million in 2002/2003. The average for the past five years is \$83.2 million.

Budget Allocations for Legal Aid (\$000): 2003-2006

	2003/2004	2004/2005	2005/2006
Civil (non family)	\$5,407	\$4,936	\$4,982
Civil - Family	\$25,135	\$24,531	\$25,146
Criminal	\$38,983	\$41,128	\$42,375

The legal aid cash expenditure has different characteristics depending on the law type, with the decline in 2002/2003 attributable to decreases in family and civil legal aid cases, offset by increases in criminal and Waitangi Tribunal cases.

Family Legal Aid

	2000/2001	2001/2002	2002/2003	2003/2004
Cost of all cases (open and closed)	\$1,191,850	\$1,531,697	\$1,304,562	\$1,384,486
Average case cost	\$2,041	\$2,196	\$2,219	\$2,085

The above table provides information on the cost of legal aid in cases when parents take legal action against the state to have their children returned to them, following applications that a child is in need of care and protection (which allows the state to intervene) made under the Child Young Persons and Their Families Act by the Child Youth and Family Service.

Cash expenditure on family cases has been decreasing over the last four years since 1998/1999. At the same time the number of grants approved in each year has also been declining. The decrease in expenditure in 2002/03 compared to 2001/02 of \$5.4 million or 16% is due to a range of factors. Family cases in particular can take several years to settle. Therefore expenditure in any one year is influenced by the volume of grants approved over previous years and the level of legal aid paid on active cases. The reduced expenditure in family can be mainly attributed to the declining number of cases on which payments were made and the decreasing amount being paid on cases that are in progress. Expenditure on cases is falling as a result of a shift in the experience level of providers, as well as a reduction in the number of hours being claims. The level of disbursements has also decreased compared to previous years.

The decline in volumes of grants has occurred predominantly in cases involving custody and access, domestic violence and property matters.

Criminal Legal Aid

Case expenditure on criminal legal aid shows continued increase. Following on from a significant reduction in 1999/2000, expenditure increased to reach the level of \$35.3 millions in 2002/03. That increase was against reduced volumes of grants approved (10%), meaning cases are being completed at higher costs. This is largely due to a change in the mix of cases, with growth being experienced in cases involving drugs and assaults. In addition there has been an increase in the number of large and complex homicide cases which resulted in a high legal aid cost. At the same time the number of law-cost cases, particularly cases where the defendant pleads guilty, are dropping as a proportion to the total number of case. In 2002/03, 88% of criminal legal aid applications were granted.

Civil Legal Aid

Civil legal aid cash expenditure has fluctuated over the past three years, from a comparatively stable level from 1997/98 to 1999/2000. The decrease in expenditure in 2000/01 was over the period of transition to the new Legal Services Agency, when there was a significant backlog of legal aid decisions. This was estimated by the Agency at \$2.5 million, which reversed in the following year as illustrated by the peak expenditure in 2001/02. The decrease in expenditure for 2002/03 of \$2.0 million or 23% is distorted by this movement and has brought civil legal aid expenditure back to a level, which at \$6.7 million, is less than the average civil expenditure over the past five years of \$7.6 million. The decrease is generally across all types of civil matters. The Agency granted 83% of applications in the year 200/03 and the average cost of completed civil legal aid cases in 2002/03 has not significantly changed from the previous year.

Waitangi Legal Aid

Legal aid is granted in this jurisdiction to provide funding for legal advice and representation in the preparation of claims going to the Waitangi Tribunal, Waitangi Tribunal hearings, settlement negotiations and associated legal processes. Prior to 1999/2000 information on Waitangi legal aid expenditure was not reported separately. Since 1999/2000 Waitangi legal aid has shown growth reaching \$7.3 million in 2002/03. Waitangi legal aid expenditure relates to proceedings, which often take a number of years to settle. The timing of expenditure is variable and will differ from one year another.

CANADA: ONTARIO LEGAL AID AND ADVICE EXPENDITURE/COSTS

(Source Legal Aid Ontario Third Annual Report for year ending 31st March 2003

Legal Aid Ontario First Annual Report for year ending 31st March 2000

www.legalaid.on.ca under publications)

Legal Aid Ontario: Expenses

	1999/2000	%	2000/2001	%	2001/2002	%	2002/2003
			\$000		\$000		
Certificate Programme	111,670	51	123,402	50	149,648	50	
Area Office Services	18,010	8	20,290	8	27,028	9	
Duty Counsel Programme	16,069	7	22,261	9	25,536	9	
Clinic Programme	38,259	17	44,017	18	52,749	18	
Alternative Programme	9,503	4	7,590	3	8,570	3	
Service Provider Support	3,243	2	2,296	1	2,010	1	
Administration	23,798	11	28,073	11	27,981	10	
Total	220,552		247,929		293,517		291.7m*

*For the fiscal year 2002/03, LAO had operating expenditures of over \$291.7 million. Source: Ministry of the Attorney General 4.02—Legal Aid Ontario (Follow-up to VFM Section 3.02, *2001 Annual Report*)

Legal Aid Ontario: Revenues

	1999/2000	%	2000/2001	%	2001/2002	%	2002/2003
			\$000		\$000		\$000
Province of Ontario	230,992	86	190,843	79	246,695	86	199.4m**
The Law Foundation*	21,496	8	30,964	13	19,944	7	
Client Contributions	10,807	4	8,399	4	14,234	5	
Judgements Costs and Settlements			1,392	1	768	0	
Investment and Miscellaneous Income	5,244	2	7,163	3	6,676	2	
Total			238,761		288,317		282.2m**

*Represents the interest that accumulates in lawyer's mixed trust accounts. The Law Foundation collects the interest in accordance with its statutory obligation to pay 75% of its revenues to Legal Aid Ontario.

** For the fiscal year 2002/03, LAO received funding of \$282.2 million. Of the total funding, contributions from the province of Ontario amounted to \$199.4 million. Source: Ministry of the Attorney General 4.02—Legal Aid Ontario (Follow-up to VFM Section 3.02, *2001 Annual Report*)

Legal Aid Ontario: People Assisted

	1999/2000	%	2000/2001	%	2001/2002	%	2002/2003	%
Certificates Issued	107,544	12	117,549	12	114,044	10	106,622	10
Duty Counsel Clients Assisted	615,028	68	675,813	68	801,808	73	714,264	70
Community Legal Clinics		20		20		17		20
Case Files (opened)	15,381		16,607		15,122		14,856	
Legal Advice/Brief Services	116,162		124,519		119,286		122,122	
Referrals by Clinics	54,209		59,408		57,872		63,854	
Total Number of Low Income Ontarians Assisted	908,324		993,896		1,108,132		1,021,718	

In 2000/01, Legal Aid Ontario (LAO) issued more than 117,000 legal aid certificates, the highest number issued since 1995/96. LAO concluded that it was unable to sustain this level of service within its existing resources. Consequently for 2001/02 LAO adopted a *Service Adjustment Program (SAP)*, which was designed to ensure that the certificate program stayed within its budget.

SAP identified ways to continue to serve clients through other service delivery programs, such as duty counsel. Therefore LAO was able to reduce the amount of certificates issued by assisting clients through other programs and services. Consequently, although the number of certificates issued in 2001/02 was reduced, more people were assisted by duty counsel and clinics.

In 2001/02 LAO issued just over 114,000 certificates, a reduction of approximately 3%. This reduction did not disrupt services to clients or service providers.

Legal Aid Ontario: Certificates Issued

	1998/1999 \$000 (total app. 140,663)	%	1999/2000 \$000 (total app. 137,601)	%	2000/2001 \$000 (total app. 148,735)	%	2001/2002 \$000 (total app. 150,288)	%
Criminal	61,250	60	62,054	58	65,279	55	63,203	55
Family	28,138	27	30,138	28	32,787	28	29,672	26
Immigration	7,075	7	8,731	8	11,470	10	13,732	12
Other Civil	5,684	6	6,621	6	8,013	7	7,437	7
Total	102,147		107,544		117,549		114,044	

Note: The Ontario legal aid application fee was discontinued on 2nd March 1998. During the month of March 1998, applications increased by 8.8% over the February total. In April 1998, the number of applications continued to increase by 16% over the March total. The total number of applications in April 1998 was 40% higher than the total for April 1997. However, these data are not conclusive. The discontinuation of the application fee was part of an overall \$33 million service enhancement package that included coverage changes and tariff increases. Thus the increase in applications cannot be attributed solely to the dropping of the application fee. Though increases in applications following the abandonment of the application fee suggests that the fee did indeed exert a deterrent effect.

(Source: Currie, A. (1998) *Application Fees and Client Contributions in Legal Aid: A Framework for Discussion* Technical Report Department of Justice Canada website <http://canada.justice.gc.ca> under publications).

Legal Aid Ontario: Certificates Refused

	1998/1999 \$000	%	1999/2000 \$000	%	2000/2001 \$000	%	2001/2002 \$000	%
Financially Ineligible	6,740	4.8	5,711	44.2	7,083	5	7,907	5
Service not Covered	10,862	7.7	7,514	5.5	7,122	5	9,790	7
Application Abandoned	20,914	7	16,832	12.2	16,981	11	17,824	12
Reason Unknown							723	0.5
Total	38,516		30,057		31,186		36,244	

150,288 people completed applications for legal aid in 2001/02 and 114,044 (76%) received a certificate, a 3% decrease from 2000/01 (117,547 received a certificate in 2000/01). Twelve per cent of applicants were refused because their did not meet financial eligibility criteria or the service was not covered, compared to 10% from 2000/01. Twelve per cent of the refusals occurred because the client abandoned the application, a change from 11% in 2000/01.

Legal Aid Ontario: Certificate Program—Average Case Cost

Average case costs are the total costs paid on certificates calculated at the end of the fiscal year (March 31st).

	1998/99* \$000	1999/00 \$000	2000/01 \$000	2001/02 \$000
Criminal	1,135	1,286	1,267	1,359
Family	1,612	1,569	1,536	1,650
Immigration**	1,727	1,725	1,675	1,735
Other Civil	1,411	1,202	747	843
Average all Certificates	1,294	1,379	1,339	1,426

*These figure were under the old tariff system

**In 1998/99 and 1999/00 this figure included refugee work

Legal Aid Ontario: Expenditure on Certificates for Fiscal Year 2003-04

Major Aid	Expenditures	%
Criminal	\$88,810,620	56.0%
Family	\$45,509,624	28.7%
Immigration	\$18,695,229	11.8%
CRDD Refugee Division Hearing	\$17,527,638	
Other Civil	\$5,688,519	3.6%
Total	\$158,703,992	100.0%

Legal Aid Ontario: Expenditure on Duty Counsel for Fiscal Year 2003-04

	Expenditures	%
Criminal	\$19,490,319	64.7%
Civil	\$10,651,478	35.3%
Total	\$30,141,797	100.0%

Legal Aid Ontario: Expenditure on Certificates

Major Aid	1999-00	2000-01	2001-02	2002-03	2003-04
Criminal	\$73,536,520	\$73,906,788	\$80,827,522	\$79,165,993	\$88,810,620
Family	\$38,531,615	\$39,568,953	\$42,800,042	\$40,904,489	\$45,509,624
Immigration	\$12,046,094	\$13,634,018	\$16,457,407	\$16,222,000	\$18,695,229
CRDD Refugee Division Hearing	\$10,989,694	\$12,502,978	\$15,311,184	\$15,287,727	\$17,527,638
Civil	\$4,747,375	\$4,658,151	\$5,417,922	\$5,200,858	\$5,688,519
Total	\$128,861,604	\$131,767,911	\$145,502,893	\$141,493,340	\$158,703,992

LAO: Expenditure for Per Diem Duty Counsel (Standard Form Only)

	1999/00	2000/01	2001/02	2002/03	2003/04
Criminal	\$8,748,700.60	\$9,744,727.07	\$10,864,881.05	\$12,467,635.78	\$14,677,297.63
Civil	\$5,348,493.68	\$7,048,543.98	\$7,301,236.86	\$7,915,904.70	\$9,129,365.93
Total	\$14,097,194.28	\$16,793,271.05	\$18,166,117.91	\$20,383,540.48	\$23,806,663.56

Note: Excludes 'Family Violence' and 'Special Duty Counsel'

Legal Aid Ontario: Expenditure by Minor/Major Aid for 2003-2004

Minor/ Major Aid	Fiscal Year 2002-03	Fiscal Year 2003-04	%
Homicide	\$ 11,926,137	\$ 13,990,577	17%
Sexual Assault	\$ 6,037,483	\$ 6,685,352	11%
Robbery	\$ 7,086,661	\$ 7,639,147	8%
Theft	\$ 6,202,039	\$ 6,847,996	10%
Impaired Driving	\$ 1,201,182	\$ 1,286,533	7%
Other Vehicle Offences	\$ 922,484	\$ 992,590	8%
Narcotics – Cocaine & Heroin	\$ 2,734,841	\$ 2,486,466	-9%
Assault	\$ 13,299,610	\$ 14,533,466	9%
Fraud	\$ 3,130,111	\$ 3,661,892	17%
Other	\$ 6,977,268	\$ 7,573,192	9%
Threatening Death/Bodily Harm	\$ 2,518,532	\$ 2,794,604	11%
Break & Enter	\$ 4,785,750	\$ 5,638,811	18%
Weapons Offences	\$ 1,715,164	\$ 2,346,585	37%
Mischief	\$ 1,080,158	\$ 1,153,694	7%
Fail to Comply	\$ 4,888,613	\$ 5,870,422	20%
Other Drug Offences	\$ 4,433,360	\$ 5,100,883	15%
Opinion Letter (to Area Committee)	\$ 226,603	\$ 210,466	-7%
Criminal Total	\$ 79,165,996	\$ 88,812,675	12%
Uncontested Divorce	\$ 19,013	\$ 84,430	344%
Contested Divorce	\$ 332,228	\$ 371,923	12%
Family Law/Children's Law Reform	\$ 23,448,089	\$ 25,493,802	9%
Child and Family Services Act	\$ 12,430,922	\$ 14,832,269	19%
Other Domestic	\$ 40,928	\$ 43,685	7%
Variations	\$ 4,632,397	\$ 4,683,246	1%
Unbundled Family	\$ 906	\$ 268	-70%
Family Case Managed	\$ -	\$ -	#DIV/0!
Family Total	\$ 40,904,483	\$ 45,509,624	11%
Other Immigration Matters	\$ 316,581	\$ 407,305	29%
CRDD Refugee Division Hearing	\$ 15,287,728	\$ 17,527,638	15%
Appeals to Immigration Appeal Division	\$ 108,672	\$ 81,088	-25%
Judicial Review/Appeal to Federal Court	\$ 509,022	\$ 677,143	33%
Immigration Total	\$ 16,222,003	\$ 18,693,174	15%
Worker's Compensation	\$ 73,495	\$ 89,364	22%
Property Actions	\$ 54,391	\$ 42,171	-22%
Damage/Negligence Actions	\$ 215,281	\$ 298,390	39%
Other Civil	\$ 1,315,102	\$ 1,041,674	-21%
Mental Health	\$ 1,396,689	\$ 1,923,225	38%
Personal Injury	\$ 211,642	\$ 55,914	-74%
Landlord and Tenant	\$ 261,491	\$ 262,096	0%
Substitute Decision/Health Care Consent	\$ 26,047	\$ 13,648	-48%
Opinion Letter (to Area Committee)	\$ 408,709	\$ 604,356	48%
Social Assistance Tribunal	\$ 679,925	\$ 679,443	0%
Parole Board	\$ 497,285	\$ 598,307	20%
Other Prison Boards	\$ 11,723	\$ 25,740	120%
Ontario Motorist Protection Plan Mediation	\$ 2,654	\$ 3,933	48%
Unemployment Insurance Appeals	\$ 6,985	\$ 4,372	-37%
Criminal Injuries Compensation Board	\$ 39,079	\$ 45,519	16%
Civil Abuse Claims	\$ 360	\$ 368	2%
Civil Total	\$ 5,200,858	\$ 5,688,519	9%
Grand	\$ 141,493,340	\$ 158,703,992	12%

Legal Aid Ontario: Lawline

Legal Aid Ontario funds a telephone duty counsel hotline service (called the Brydges hotline, or Lawline). This service is available 24 hours a day, seven days a week, all year long and it is offered free of charge to its users. It is available in both official languages, and non-English or French-speaking callers can access the hotline through a third-party interpreter service. The system operates as a call-back service: if an accused wishes to use the service after being informed of its availability, the police call the toll-free number to request the service and a duty counsel returns the call to the accused within 45 minutes.

The Lawline service offers legal advice to all accused persons who are detained by the police, as well as to young persons seeking information about alternative measures or diversion programs under the Youth Criminal Justice Act.

LAO advised 46,480 clients through the Lawline service in 2003-2004. This is 174 more clients than in 2002-2003.

LAO spent \$1,074,031 on the Lawline service in 2003-2004. The cost per person assisted was \$22.54.

CANADA: BRITISH COLUMBIA LEGAL AID AND ADVICE EXPENDITURE/COSTS

(Source Legal Services Society Annual Service Plan Report f2002/ 2003
www.lss.bc.ca)

The Legal Services Society (LSS) of British Columbia is an independent, non-profit organisation that reports financially to the BC legislature. It is not part of the government. The provincial government provides the major portion of its funds; the federal government indirectly funds LSS through federal-provincial cost-sharing agreements for legal aid. The Law Foundation and the Notary Foundation also provide substantial funds to LSS.

When the provincial government announced dramatic changes to legal aid in BC in January 2002, the LSS was faced with the daunting task of replacing, by September 2002, an \$85 million operation with one that could function on \$55m in government funding by 2004/05. This seemingly impossible task was achieved and the society completed the transition on time and within overall cost projections.*

Some important long-standing services, such as legal representation for poverty law problems, no longer exist, and others have been reduced e.g., effective 22nd May 2002 coverage for family law matters was restricted to matters involving violence, the threat of violence, or the threat of parents losing contact with their children. However, other services, such as taking applications for legal aid over the phone, are available for the first time. As well, services such as Law Line and legal information on the internet are more accessible than ever before.

The society's obligation to provide service in any given area is now limited to the funding allocated to that area in the Memorandum of Understanding (MOU) between LSS and the Ministry of Attorney General:

- Legal representation for eligible applicants for specified criminal, family, child apprehension, immigration, mental health, and prison law matters, as well as specified exceptional matters that fall within the society's mandate.
- Public legal education and information services
- Service and strategic objective initiatives

The future of legal representation for immigration cases remains uncertain. The provincial government agreed to fund the service until March 31st 2004. Unless the federal government steps in with funding, LSS will have to begin phasing out the service next fiscal year. In the meantime, a priority for the society will be to investigate alternative sources of funding for emergency services in this area.

During the first 5mths of 2002 the LSS eliminated, reduced, or redesigned a variety of services, and replaced 60 offices with a much smaller organisation based on 7 regions centres, 19 local agents (later increased to 22), and a provincial call centre.

*Note: The provincial government provides the major portion of the Society's funds. Government funding has been set at \$71.5 million (2002/03), \$63.2 million (2003/04) and \$55 million (2004/05). LSS also receives funding from the Law foundation and the Notary Foundation. The federal government reimburses the province for some legal costs.

Legal Aid Rates

Private bar lawyers who represent legal aid clients are paid according to a schedule of fees and disbursements known as the tariffs. Fees are generally \$72 per billable hour (after holdbacks) up to specified maximums for most work. The criminal tariff is generally based on block fees, which represent the average amount of time required for a proceeding at \$72 per billable hour (after holdbacks). Cases that require fees in excess of the LSS tariffs may qualify for enhanced fees of \$125 per hour (not subject to holdbacks) for senior counsel as deemed appropriate according to criteria developed in consultation with the tariff committees.

Holdbacks are amounts deducted when tariff accounts are paid. At the end of each fiscal year, the board determines whether funds are available in the tariff budgets to pay any portion of these amounts. Holdbacks are 10% for all tariffs.

Criminal Law Services (Tariffs)

Expenditures

2003/2004	\$27,349,175	39.5% of total expenses
2002/2003	\$19,269,211	26.3% of total expenses
2001/2002	\$18,835,042	19.7% of total expenses

Family Law Services (Tariffs)

Family Expenditures

2003/2004	\$6,432,371	9.3% of total expenses
2002/2003	\$11,319,885	15.5% of total expenses
2001/2002	\$18,162,787	19.0% of total expenses

CFCSA (Child Family and Community Service Act) Expenditures (Child Apprehension Coverage)

2003/2004	\$3,563,404	5.1% of total expenses
2002/2003	\$4,112,980	5.6% of total expenses
2001/2002	\$4,200,867	4.4% of total expenses

Immigration & Refugee Law Services (Tariffs)

Expenditures		
2003/2004	\$3,647,560	5.3% of total expenses
2002/2003	\$3,695,260	5.0% of total expenses
2001/2002	\$4,435,750	4.6% of total expenses

Australia Legal Cost/Expenditure

Noone, M. A. and Tomsen, S. (2001) "Service Beyond Self-Interest? Australian Lawyers, Legal Aid and Professionalism" 8:3 *International Journal of the Legal Profession* 251-273

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"During the period under review (1973-2000) there have been significant shifts in the social context of legal aid, the legal profession and the way government operates. The current dominance of economic globalisation with a philosophy of neo-liberalism has increased the focus on competition policy generally and undermined the concept of the welfare state. With this approach, welfare becomes a personal responsibility rather than a social one. "Government services are reduced, with remaining responsibilities contracted out to private practitioners in a commercialised purchase-provider relationship." (Arup, C. (2001) "Pro Bono in the Post-Professional Spectrum of Legal Services" 19 *Law in Context* 190 (Sydney, Federation Press)). In this account the shifts in the approach to welfare and the focus on competition policy are reflected in the changes made to the amount and mechanisms of legal aid funding and the response of the legal profession.

During the last decade, major changes have occurred in the Australian legal profession, the legal services industry and the legal aid system. Within the legal aid system there has been change in the organisational structure of legal aid organisations; the management of the provision of legal aid services; the funding arrangements; the form and number of legal services; and the relationship between the stakeholders in the system.

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The Australian legal aid system is referred to as a 'mixed model'. In 1990, The National Legal Aid Advisory Committee described the Australian legal aid infrastructure as a partnership between governments, legal aid commissions, community legal centres and private practitioners, but recent changes have altered the nature of the relationships between these bodies.

The system combines the use of salaried lawyers (employed by legal aid commissions and community legal centres) and the private profession through 'judicare' arrangements. Legal aid commissions are independent statutory bodies constituted by a board of commissioners prescribed by state legislation...The primary function of the legal aid commissions is to provide legal assistance by referral to private legal practitioners or salaried lawyers employed by the commissions. In performing this function, the legislation typically requires the commissions to have regard to a range of matters affecting the efficiency and effectiveness of providing legal assistance, the independence of the private legal profession, liaison and cooperation with other legal aid commissions and private legal practitioners, eligibility for legal assistance, the accessibility of services provided in the legal aid programmes and the provision of duty lawyer services.

Networks of Aboriginal Legal Services and Community Legal Centres also exist throughout Australia and are critical for the provision of legal services to the Australian community. Both community legal centres and Aboriginal Legal Services are independent non-statutory organisations. Community legal centres are funded by both state and federal governments and provide legal advice and advocacy to both individuals and groups in the community disadvantaged in their access to justice. This work included individual legal advice and assistance as well as law reform, test case litigation, referrals and community legal education activities aimed at addressing systemic problems. Aboriginal Legal Services are funded through the Aboriginal and Torres Strait Islander Commission and provide individual legal services to the indigenous population as well as pursuing test cases and land rights issues.

Both state and federal governments provide funding for legal aid. Since the establishment of a national legal aid scheme in 1973, the funding available for the Australian legal aid system has always been by the annual budgetary allocation (finite resources) and has never been demand driven".

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The nature of the federal government's involvement in the Australian legal aid system changed dramatically on 1 July 1997 when the funding agreements between the federal and state governments, which had been in place in most states since 1987, were terminated. Additionally, the federal government announces, in the August 1996 budget, legal aid funding cuts of around 22% for 1996/97. In the Attorney's budget press release, he confirmed that the Commonwealth would "no longer provide funds to support the growing demand for legal aid matters arising under State or Territory laws". (In Australia, the states and territories have jurisdiction for most criminal law).

Both unexpected announcements...combined to signal the end of the partnership between the Commonwealth and the states/territory governments in the provision of legal aid services...Instead, the new agreements signified a shift in how the Commonwealth viewed its role in the provision of legal aid services. The Commonwealth moved to being a principal contracting with the state-based legal aid commissions to deliver legal aid services in matters involving Commonwealth law (principally family law).

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The private legal profession has always played a central role in the provision of legal aid services in Australia. The system currently relies on the involvement of private practitioners to deliver legal services to a range of people and areas not serviced by legal aid commissions and community legal centres. Between 60% and 70% of legal aid expenditure consists of payments to private practitioners.

But unlike the situation in the UK, legal aid expenditure has always been limited and is small in comparison with the income of the legal services industry as a whole. In 1990, the Australian Bureau of Statistics estimated that payments by legal aid providers to private practitioners constitute about 3% of the gross income of the legal services industry.

A range of current research...verifies a trend that fewer legal practitioners are prepared to do legal aid work [there's a] "noticeable exit from legal aid work by private legal practitioners in Australia." The reasons behind this phenomenon are varied but appear to be a consequence of successive changes to the legal aid system.

Recent History of funding to Legal Aid:

Pre 1997 the legal aid commissions (LACs) of each state and territory were responsible for determining their own budget priorities and expenditure. Post 1997 the state and territory legal aid commissions have been restricted to allocating Commonwealth funding to matters

arising under Commonwealth laws. This funding arrangement is referred to as a 'purchaser/provider' arrangement, as under the legal aid agreements the Commonwealth sets the priorities, guidelines and accountability requirements regarding the use of Commonwealth funds. The intention being to move funding responsibilities to the jurisdiction within which a matter arose. So, the Commonwealth Government no longer accepts responsibility for the funding of any matters arising under state and territory laws. States and Territories fund matters arising under their laws.

Source: Senate Legal & Constitutional References Committee *Legal Aid and Access to Justice: Fourth Report*, June 2004 page 3 paras. 2.2, 2.3

Level of Commonwealth Funding

1996/97 \$millions	1997/98 \$millions	1998/99 \$millions	2003/04 \$millions
128.3	109.68	102.84	126.48

In 1997, with the new 'purchase/provider' agreement, Commonwealth funding was reduced by \$18.62 million to \$109.68 a further reduction of \$6.84 occurred in 1998/99 totalling a reduction of \$25.46 on 1997 figures. In December 1999, the Commonwealth Attorney-General announced that the Commonwealth would provide \$64 million in additional legal aid funding nationally over four years, commencing 2000/01. The 2004/05 budget increased Commonwealth funding of legal aid by \$52.7million over four years.

The Law Council of Australia noted that despite the 2000/01 increase of \$64 million the level of Commonwealth funding in 2003/04 was less than the level of funding in 1996/97 due to the massive cuts in Commonwealth funding in 1997.

Also in real terms, the level of funding in 2003/04 is substantially less than that provided in 1996/97. After taking account of inflation, \$128m in 1996/97 is \$153m in real terms for 2003/04. Consequently in real terms the 2003/04 Commonwealth funding is \$27 million less than it was in 1996/97.

In contrast State and Territory contributions to legal aid have, in the main, steadily increased from 1996 to 2004.

Source: Senate Legal & Constitutional References Committee *Legal Aid and Access to Justice: Fourth Report*, June 2004 page 4.

Distribution of Commonwealth Funding

	2002/03		2003/04	
	\$m	%	\$m	%
New South Wales	38.956	32.31	41.574	32.87
Victoria	27.75	23.02	27.75	21.94
Queensland	23.709	19.66	25.612	20.25
Southern Australia	10.351	8.59	10.802	8.54
Western Australia	10.486	8.70	11.232	8.88
Tasmania	3.88	3.22	3.934	3.11
ACT	3.104	2.57	3.137	2.48
Northern Territories	2.334	1.94	2.441	1.93
Total	120.57	100%	126.482	100%

Source: Senate Legal & Constitutional References Committee *Legal Aid and Access to Justice: Fourth Report*, June 2004 pg.11

State / Territory Legal Aid Commissions

(Source: National Legal Aid: www.nla.aust.net.au/html/about.html)

There are eight independent Legal Aid Commissions in Australia, one in each of the States and Territories (Western Australia, Northern Territory, South Australia, Queensland, New South Wales, Victoria, Tasmania and ACT). The directors of each of the Legal Aid Commissions combine at National level to form National Legal Aid (NLA).

The Commissions are funded from three sources (figures are from 2003/2004 budgets):

- 1 Commonwealth Government (\$128.5 million)
- 2 State and Territory Governments (\$147.8 million) and
- 3 Interest, contributions and fees (18.3 million)

The LACs provide services to 3/4 million Australians a year including:

- 238,191 people advised in 2002/03
- 153,678 people represented in courts/tribunal in 2002/03
- 232,704 total number of duty lawyer services in 2002/03

Commission's Budgeted Income and Expenditure 2003/2004
(excluding funding for Community Legal Centres)

LAC	Budgeted Income				Budgeted Expenditure	
	CW Input grants (\$000)	State Input Grants (\$000)	Spec. Trust & Statutory Interest (\$000)	Self Generated Income (\$000)	Total Income (\$000)	Total
NSW	41574	60021	17940	3929	123464	128749
VIC	27800	34370	9500	6826	78496	84130
QLD	25612	21247	13000	3239	63098	63098
SA	11259	9943	1400	1477	24079	25222
WA	12187	13935	600	1761	28483	27852
TAS	4039	3218	68	270	7595	8054
ACT	3367	2616	550	190	6723	7308
NT	2646	2500	0	673	5819	6335
TOTAL	128484	147850	43058	18365	337757	350748

Community Legal Centres

Noone, M. A. and Tomsen, S. (2001) "Service Beyond Self-Interest? Australian Lawyers, Legal Aid and Professionalism" 8:3 *International Journal of the Legal Profession* 251-273

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There are currently over 160 community legal centres around [Australia]. Government spending on community legal centres has increased at a higher rate than other areas of legal aid funding. The commonwealth's expenditure on the Community Legal Services Program is around \$22 million compared to \$102 million for legal aid commissions...Centres have historically performed a variety of innovative and challenging legal and related work, but recently have been overwhelmed with an increasing demand for traditional individual services as a result of the funding cutbacks to other legal aid services.

Volunteers perform the bulk of work at community legal centres...The volunteers are drawn from students (law and non-law), private practitioners, barristers and others in the legal sector. Since the 1970s, governments have recognised the cost-effectiveness of community legal centres, primarily because of the significant contribution by volunteer legal practitioners. A survey of Victorian community legal centres conducted in 1998 found there were 745 volunteers contributing an equivalent of 69.95 effective full time positions and community legal centres estimated the contribution of volunteers to be worth \$5m per annum.

However, there have been substantial changes occurring to the way that community legal centres operate and are managed. These have the potential to jeopardise this volunteer commitment. For instance the Commonwealth now *purchases community legal services* instead of funding *community legal centres*. The commonwealth is more concerned with the number and type of services provided rather than how or what organisation provides those services and whether the organisation has local support. The new community legal services established with Commonwealth funds in rural areas have all been put out to open and competitive tender. A number of tenders have been awarded to large welfare organisations. Similarly, the South Australian government (with Commonwealth support) called for tenders to achieve the aim of reducing six existing centres to three.

'Law and Order' Legislation and Increase Demand for Legal Aid

Source: Senate Legal & Constitutional References Committee *Legal Aid and Access to Justice: Fourth Report*, June 2004 pg.28-29

...when state governments engage in 'law and order' campaigns, and introduce corresponding legislation, there is an increase in demand for legal aid.

...when a legislative program does proceed, there is no corresponding compensation given by the Commonwealth, even when an impact on legal aid demand has been identified.

LEGAL AID EXPENDITURE NEW SOUTH WALES
Source Legal Aid Commission of NSW Annual Report 2002-2003

The commission receives its income from the Commonwealth and NSW Governments, the Public Purpose Fund and its clients. Combined income for 2002/03 was \$126.964 million, and expenditure was \$129.863 million. The commission undertakes work for the Commonwealth on the basis of a four-year agency agreement.

Summary of Spending by Program (p.11)

Program	\$m
Criminal Law	66.373
Family Law	38.314
Community Legal Services	13.207
Civil Law	11.969
Total	129.863

Summary of Funding Sources (p.11)

Funder	\$m
State	65.088
Commonwealth	44.254
Law Society	15.965
Other	2.220
Client	0.563

Summary of Services by Program (p.2)

Program	State \$m	Commonwealth \$m	Other Grants	Expenditure \$m
Criminal Law	61.968	4.318		66.373
Family Law	6.512	31.626		38.314
Civil Law	8.583	3.298		11.969
Community Legal Centres	4.126			
Women's Domestic Violence Court Assistance Programs	3.501	4.833	0.674 Public Purpose Fund 0.072 Children's Court	13.206
Total				129.862

Service Delivery

Information services	131,927
Total Duty Appearances	110,819
Legal Advice	64,356
In-house Duty Appearances	57,500
Assigned Duty Appearances	53,319
Total Legal Representation	53,258
In-house Representation	35,350
Assigned Representation	17,908
Under 18s HotLine Service	10,181
Alternative Dispute Resolution	1,412
Community Legal Education	389

LEGAL AID EXPENDITURE VICTORIA
Source Victoria Legal Aid Eighth Statutory Annual Report 2002-2003

Victoria legal aid (VLA) is the largest and most accessible criminal law and family law practice in the State, and is one of the largest purchasers of legal services from the private profession.

For the year 2002-2003 Victoria Legal Aid received \$79.8 million in revenue, mainly from the State (41%) and Commonwealth (35% = \$27.9m) Governments. Other sources: Public Purpose Fund (10% = \$1.1m), client contributions (8%), interest on investments (3%) and other revenue (3%). VLA's major expenses are payments to the private legal profession and the funding of its in-house legal practices.

(Source Houseman, Alan W. (2003) "Civil Legal Aid in the United States: An overview of the program in 2003" Center for Law and Social Policy
www.clasp.org/DMS/Documents/1064583480/view_html)

Introduction:

Civil legal aid in the US is undergoing major change and transformation, in both the system funded by the Legal Services Corporation (LSC)* and the "system" funded exclusively by non-LSC sources. Funding is expanding for the overall legal aid system, with the bulk of the additional funds coming from state government and private sources.

The US system is very decentralised. What legal aid programs do, both functionally and substantively, is primarily determined through local program priority setting and not by federal or state funding entities. For example, under the LSC Act functional and substantive case priorities are set by LSC grantees and not by LSC.

* The LSC is a private, non-profit corporation established by congress (and receiving 100% of its budget from congress) to seek to ensure equal access to justice under the law for all Americans by providing civil legal assistance to those who otherwise would be unable to afford it. The LSC funds local legal services programs to serve clients in every state, county, and congressional district in the US as well as in Puerto Rico, the Virgin Islands, Guam and Micronesia. In addition, special service areas are funded for two populations with special needs (Native Americans and migrant workers).

Overview of the Current US Civil Legal Aid System

The system consists of a range of different types of service providers funded by a number of sources. The system is really perhaps three different systems:

- 1 One funded and driven by LSC.
- 2 One totally independent of LSC but a critical part of the overall delivery system in each state.
- 3 One totally independent of LSC and not effectively integrated into the delivery system in the States.

In January 2003 there were 160 LSC funded programs, 156 of which serve all types of clients within a service delivery area, and four are stand-alone Native American programs serving only Native American clients (c.f. 325 LSC funded programs in 1995). However, there are many more legal services providers than those funded by these LSC-funded providers:

Total Number of Programs (excluding pro bono)

LSC	160
Non-LSC	734

Full Service Providers (from total)

LSC	153
Non-LSC	56

Pro Bono Programs for the Poor

Bar or Free-Standing	600
Law Firm	155

Other Advocacy Organisations

State Advocacy	38
National Advocacy	30

Many of the LSC programs are not full-service providers, i.e., they do not provide legal aid in all or most substantive areas of civil poverty law. Instead they focus only on one major type of legal matter, e.g., employment or domestic violence. Today, in 16 states and over 20 large or medium-size cities, instead of one full-service provider funded by LSC, there are two direct, full-service providers operating in the same geographic area; one LSC funded and one non-LSC funded. This is due to the service restrictions placed on LSC funded providers.

The US civil legal aid system is not funded by one principal source. Although LSC is the largest single source of funding, it is not a source of funding for most of the system. It is estimated that the total amount of legal aid funding in the 50 states and the District of Columbia at the beginning of 2003 was \$906,951,143. Broken down by funding source for the 50 states and DC, the relative amounts are:

Funding Source	U.S. \$
LSC	298,757,693
Other Federal	78,107,750
State/Local Government	226,714,150
IOLTA	133,228,000
Foundations	61,220,600
Private Lawyer Contributions	38,986,450
United Ways	22,793,000
Other	47,143,500
Total	\$906,951,143*

*This total does not take into account funding in Puerto Rico, the U.S. Virgin Islands, Micronesia, and other territories and countries that receive LSC funding. Nor does it take account of the amount of pro bono time contributed, the funding for many of the State advocacy entities, or the funding for the national advocacy programs.

While LSC funds are distributed according to the 2000 Census data on individuals living below the poverty line, other funding sources are not distributed equally among states. In 34 states and DC, non-LSC funds are greater than LSC funds. The lowest-funded states are in South and Rocky Mountain region, and the highest-funded states are in the Northwest, Mid-Atlantic, Midwest and West. For example, the amount of funding per capita from all sources, based on the 2000 Census poverty population, shows the following wide variations:

State	Legal Aid Funding \$ per capita (all sources)
Alabama	10.25
Mississippi	11.34
Arizona	12.18
Idaho	13.84
California	30.36
Washington	31.25
Maryland	39.86
New York	41.10
Vermont	45.38
Massachusetts	56.48
New Jersey	57.57
Minnesota	60.75

Non-LSC funding sources have been steadily increasing overall but LSC funding has not kept pace. Its purchasing power is less than half what it was in 1981 and LSC has lost considerable ground because of two significant budget reductions (of 1982 and 1996) and the inability to keep up with inflation.

Grant Year	Annual LSC Appropriation in Actual Dollars	Annual LSC Appropriation in 2001 Dollars	Percentage Change from 1980 (using 2001 dollars)
1980	300,000,000	646,238,000	0.0%
1981	321,300,000	627,401,000	-2.9%
1982	241,000,000	443,290,000	-31.4%
1990	316,525,000	429,864,000	-33.5%
1995	400,000,000	465,879,000	-27.9%
1996	278,000,000	314,500,000	-51.3%
2002	329,274,000	329,274,000	-47.0%

The US system is funded far below the level of funding that is provided by most of the other Western developed nations. For example:

Country	Per Capita Government Expenditure for Civil Legal Assistance (U.S. \$)
United States	2.25
England	32.00
New Zealand	12.00
Canada (Ontario)	11.40

In the provision of civil legal assistance the US system is funded far less than comparable Western industrialized countries. However, as the chart demonstrates the US has a far lower social welfare system than these countries. Even so it is important to recognise that over the last decade, the US system has grown from approx. \$400 million to over \$950 million (including Puerto Rico and the territories).

Nation	Government's Civil Legal Investment per \$10,000 of GNP (in US dollars)	Government's Public Social Expenditures per \$1,000,000 of GDP (in US dollars)
United States	0.70	16.03
Germany	1.90	26.56
France	1.90	29.64
Australia	2.75	18.09
Canada	Quebec: 3.50 Ontario: 3.60 British Columbia: 4.00	16.95
Netherlands	4.20	25.10
New Zealand	20.70	5.10
United Kingdom	12.00	21.59

State Justice Communities (comprehensive, integrated statewide systems of delivery in each state)

The US civil legal aid system is currently in the midst of large change. LSC, state Interest on Lawyers Trust Account (IOLTA) entities, the National Legal Aid and Defender Association (NLADA), and the American Bar Association (ABA) are working to create in each state comprehensive, integrated statewide delivery systems, called *state justice communities*. These state justice communities seek to create a single point of entry for all clients; integrate all institutional and individual providers and partners; allocate resources among providers to ensure that representation can occur in all forums for all low-income persons, and provide access to a range of services for all eligible clients no matter where they live, the language they speak, or the ethnic or cultural group of which they are a member.

The state justice community will result in a fundamental change in how legal aid has been organized in the US. Instead of a group of individual programs who are self-sufficient and funded by LSC, IOLTA, and/or other funding sources, each state is now attempting to develop a statewide system that includes LSC, non-LSC providers, pro bono programs and initiatives, other service providers including human service providers, and key elements of the private bar and the state judicial system. The focus is no longer on what an individual program can do but on what a state system should be. The legal aid system is no longer primarily a federal-local system but a state system with a variety of funders.

In the majority of states, the new statewide system is being led by state access to justice commissions that involve the courts, the bar, and providers working together in some formal way to expand and improve civil legal aid. Over half of the access-to-justice entities have formal status independent of a single institution, another 10-12 are part of the state bar, and several others are part of the court system. In addition, in about 20 states, the state Supreme Court has been formally involved in the access to justice commission efforts in some concrete way, such as creating the commission, serving on one, and/or participating in meetings. In short, how the civil legal aid system develops is no longer

solely or primarily in the hands of civil legal aid professionals but is now in the hands of a much broader group of people within the justice system.

LSC Funded Cases

Only a very small percentage (9% in 1999) of LSC-funded cases are resolved by the decision of a court, and the majority of these are family law cases that require a court determination. Rather than litigating cases, legal services lawyers consistently find other, more efficient ways to solve problems for their clients. Nearly three-fourths of cases in 1999 were resolved through advice (50%), referral (2%), or brief services (20%).

For 1999, LSC grantees 9234,000 cases (adjusted according to an 11% error rate), distributed as follows:

Issue	Percentage of Total Case Load
Family	36%
Housing	23%
Income Maintenance	14%
Consumer	12%
Other	6%
Health	3%
Individual Rights	2%
Employment	2%
Education	1%
Juveniles	1%

Public Funding Comparison between States 1999

State	1999 Population	'Poverty Pop.'	Funding/\$	Per Capita/\$
Alabama	4,369,862	723,614	7,080,601	9.8
Arizona	4,778,332	564,614	10,498,246	18.6
California	33,145,121	3,627,585	78,014,482	21.5
Florida	15,111,244	1,604,186	40,251,793	25.1
Georgia	7,788,240	923,085	15,060,382	16.3
Maryland	5,171,634	385,296	17,282,837	44.8
Massachusetts	6,175,169	519,339	25,026,135	48.2
Michigan	9,863,775	1,190,698	20,886,108	17.5
New Jersey	8,143,412	573,152	30,625,669	55.4
New York	18,196,601	2,277,296	66,239,433	29.0
Ohio	11,256,654	1,325,768	29,303,850	22.1
South Carolina	3,885,736	517,793	7,470,363	14.4
Texas	20,044,141	3,000,515	41,168,927	13.7

CALIFORNIA

Total Population	35,116,033*
Poverty Population:	4,706,130
2004 State Total Funding:	\$40,670,572
2003 State Total Funding:	\$39,919,709
2002 State Total Funding:	\$32,892,197
2001 State Total Funding:	\$32,804,539
2000 State Total Funding:	\$30,711,482
1999 State Total Funding:	\$30,753,268
1998 State Total Funding:	\$29,199,642
LSC Programs in State:	11

*Estimate based on census 2000 population data, then supplemented for changes after 07/01/2000
www.areaconnect.com/population.htm?s=CA

Legal Aid Association of California

The Legal Aid Association of California (LAAC) is a statewide, private, tax-exempt organization, founded in 1982 for the purpose of ensuring delivery of effective legal services to indigent and disadvantaged people throughout California. LAAC's membership is comprised legal aid and legal services programs, as well as individual attorneys and clients. The Association serves as a unified voice for the California legal services community.

ILLINOIS

Total Population	12,600,620*
Poverty Population:	4,706,130
2004 State Total Funding:	\$11,092,289
2003 State Total Funding:	\$11,209,038
2002 State Total Funding:	\$11,737,172
2001 State Total Funding:	\$11,711,351
2000 State Total Funding:	\$10,949,804
1999 State Total Funding:	\$10,974,715
1998 State Total Funding:	\$10,420,282
LSC Programs in State:	3

* US Census 2002 total population estimate based on census 2000 population data, then supplemented for changes after 07/01/2000 www.areaconnect.com/population.htm?s=CA

NEW YORK

Total Population	19,157,532*
Poverty Population:	2,692,202
2004 State Total Funding:	\$22,802,319
2003 State Total Funding:	\$22,484,480
2002 State Total Funding:	\$20,146,522
2001 State Total Funding:	\$20,102,198
2000 State Total Funding:	\$18,812,193
1999 State Total Funding:	\$18,837,787
1998 State Total Funding:	\$17,886,118
LSC Programs in State:	7

*US Census 2002 total population estimate based on census 2000 population data, then supplemented for changes after 07/01/2000 www.areaconnect.com/population.htm?s=CA

TEXAS

Total Population	21,779,893*
Poverty Population:	3,117,609
2004 State Total Funding:	\$26,434,138
2003 State Total Funding:	\$26,180,366
2002 State Total Funding:	\$26,572,955
2001 State Total Funding:	\$26,684,271
2000 State Total Funding:	\$24,971,796
1999 State Total Funding:	\$25,005,769
1998 State Total Funding:	\$23,742,502
LSC Programs in State:	3

* US Census 2002 total population estimate based on census 2000 population data, then supplemented for changes after 07/01/2000 www.areaconnect.com/population.htm?s=CA

ISRAEL

(Source: Response by the Justice Department Israel, to the Department for Constitutional Affairs' legal aid questionnaire)

Criminal Legal Aid

There has been a virtual revolution over the last ten years in the area of criminal legal aid. The creation of the Public Defence Organisation in 1996 has dramatically reduced the number of unrepresented defendants and detainees, and has significantly improved the level of state-funded criminal legal aid.

Over the past five years, there has been an increase in the allocated budget for criminal legal aid, coupled with a series of steps designed to reduce costs. This is because the operation of the public defence organisation was not properly budgeted in the past.

Since the Public Defence Organisation was established in 1996, there have been a number of reforms designed to increase the number of clients entitled to representation, while reducing costs, without harming the quality of representation. This balancing act has resulted in many legislative proposals and several reforms.

Family Cases

There are a small number of cases in this field, generally concerning taking children from their families and changing conditions as to where they will be held.

Legal aid is available in disputes involving custody and visitation. If one of the parties requests legal aid the request is examined by the same parameters as for other areas of the law.

The government is usually not involved in family cases. If the government decides to get involved, the responsibility is on the legal advisor of the welfare office.

JAPAN

Civil Legal Aid Expenditure of JLAA for 2003

Services	Expenditure	Government Subsidy
<i>Govt. Funded Services</i>		
(1) Legal Representation	6,509,411,951	2,497,253,000
(2) Pro se litigation Aid (aid to making court documents)	222,861,800	1,94,031,000
(1) + (2) Subtotal	6,732,273,751	2,691,284,000
(3) Legal Consultation	377,884,500	354,805,000
(4) Investigation	33,245,180	32,347,000
(1) ~ (4) Subtotal	7,143,403,431	3,078,436,000
<i>Non-Govt. Funded Services</i>		
Legal Consultation	90,104,672	0
Aid to the acquisition of Japanese Nationality by Japanese Orphans left in China	5,332,540	0
Legal Assistance to Crime Victims	10,993,960	0
Legal Aid to Refugees	2,803,939	0
Subtotal	109,235,111	0
Grand Total	7,252,638,542	3,078,436,000

Reimbursement from the client for (1) and (2) amounted to 4,541,829,794
 Besides this the government subsidized JLAA 410,473,000 for operation costs

Criminal and Juvenile Cases in 2003

Services	Organisation	Expenditure
<i>Criminal Cases</i>		
Duty Attorney	JFBA	558,121,168
Legal Aid to criminal suspects (in pre-indictment stage)	JLAA	544,273,667
Court Appointed attorney (after indictment)	Court	7,895,320,000
Subtotal		8,997,714,835
<i>Juvenile Cases</i>		
Legal aid to Juveniles by Attending attorneys	JLAA	330,061,061
Subtotal		330,061,061
Grand Total		9,327,775,896