



# What Do We Want? Canada's Future Legal Aid System

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## A Consultation Paper on National Legal Aid Benchmarks

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Prepared by the  
Canadian Bar Association/Association of Legal Aid Plans  
Working Group on National Legal Aid Benchmarks

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**Note:** Please see specific *Discussion Questions* on page 16. Your comments are also requested on the contents of this Consultation Paper/*Backgrounder* and the broader question of *what do we want for Canada's future legal aid system?* Please send all feedback to [equaljustice@cba.org](mailto:equaljustice@cba.org) by **July 17, 2015**.

## Part 1: The Case for National Legal Aid Benchmarks

### The Project: Background and Purpose

Developing national legal aid benchmarks for Canada provides an opportunity to take a step back from the current realities and pressures of legal aid, and consider, *what do we want Canada's legal aid system to look like in future?*

- The first and primary task is to ask people what they want from their legal aid system – what should it look like, who should it serve and what services should it provide. That information is essential for developing national benchmarks.
- Next task is drafting and consulting on any draft national benchmarks, leading to their eventual adoption.
- The last significant task concerns measures that must be taken, including securing additional dollars, to achieve the goals set out in national benchmarks once they are developed.

This project has its genesis in the CBA's *Reaching Equal Justice* report and its 31 targets for achieving equal access to justice by 2030.<sup>1</sup> Several of those targets address the need for a renewed approach to legal aid in Canada, with one specifically calling for national benchmarks for legal aid coverage, eligibility and quality of legal services by 2020.

A Working Group of the Canadian Bar Association Access to Justice Committee (CBA Committee) and the Association of Legal Aid Plans of Canada (ALAP) initiated the National Legal Aid Benchmarks project to encourage new ways of thinking about legal aid reform and build support for substantial change. The Working Group hopes that the process of developing national legal aid benchmarks will contribute to a positive dialogue about this critical human services program and a revitalization of its purpose. It calls for a long-term commitment to innovation linked to evidence-informed practices, and accompanied by a substantial reinvestment in legal aid.

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<sup>1</sup> It is also grounded in earlier CBA legal aid advocacy work including the 1993 *Charter of Public Legal Services* and the discussion paper *Toward National Standards for Publicly Funded Legal Services* (which contains the *Charter* as an appendix) (prepared in April 2013 during the CBA's *Envisioning Equal Justice* initiative, research and consultation phase).

The Working Group has set four goals for the project:

- to build awareness of the need for legal aid renewal,
- to generate discussion about the potential for national legal aid benchmarks to assist in this renewal,
- to build public and political support for national legal aid benchmarks, and
- to solicit feedback on the content of national legal aid benchmarks.

This Consultation Paper provides an overview and is designed to facilitate consultation. It and the Working Group's full *Backgrounder* can be accessed on the [CBA website](#).

The *Backgrounder* is divided into two main parts. Part I makes a case for national legal aid benchmarks by investigating approaches to benchmarking in other sectors and considering the value of this type of exercise. It provides examples of benchmarks in other sectors, the Canadian justice sector as a whole and then within the legal aid sector specifically, both at home and abroad. These concrete examples assist in understanding the diversity of benchmarks and their potential value. Part I concludes with a discussion of how benchmarks could assist in legal aid renewal in Canada.

Part II canvasses options for national legal aid benchmarks. What should guide Canada's legal aid system? What should it be targeted at accomplishing? How should it be delivered? As potential responses to these questions, the paper provides a brief overview of the current Canadian situation, a summary of evidence-informed best practices and some options for related benchmarks. Note that the benchmark options are offered only to provide examples for discussion, and not all examples are compatible. *The examples of benchmarks do not reflect a Committee consensus or the views of either the CBA Committee or ALAP. They are presented in concrete form to stimulate, not foreclose debate.*

The conclusions to the Consultation Paper and the full *Backgrounder* contain *Discussion Questions* to further stimulate and focus dialogue, and facilitate responses to these papers.

The *Backgrounder* and Consultation Paper are a first step. This initiative provides us, the justice community, with an opportunity to begin a collaborative process to determine what we want from Canada's future legal aid system. The Working Group defines the 'justice community' in broad and inclusive terms, encompassing those working in the sector and those seeking assistance from it, on equal footing.

The Working Group hopes that this project will foster a dialogue and encourage action to develop, and eventually adopt and implement national legal aid

benchmarks in Canada. For now, feedback is sought on the *Discussion questions* (on page 16), the contents of this Consultation Paper/*Backgrounder* and the broader question of *what do we want for Canada's future legal aid system?* **Your feedback is requested by July 17, 2015, c/o equaljustice@cba.org**

Based on feedback received, the Working Group will circulate draft national legal aid benchmarks in fall 2015 and then launch consultation activities. The objectives will be to refine the substantive content of the draft benchmarks, and aid legal aid renewal by building public and political support.

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Pressures and deficiencies in Canada's legal aid system are not new, but this is an opportune time to rethink legal aid with a view to fundamental renewal. The goal is to see the eventual adoption of national legal aid benchmarks by the responsible government entities, perhaps partially in the form of federal legislation or a national federal/provincial/territorial agreement.

Benchmarks will not end the debate about the appropriate level of legal aid funding but they could contribute to a new policy framework for making more integrated and rational funding decisions.

### Context

Canada's legal aid system is our primary vehicle for delivering publicly-funded legal assistance services. It was established by the federal, provincial and territorial governments in the early 1970s as an integral part of ensuring the justice system is accessible to all. It recognizes the important social, economic and health implications of unresolved legal problems and an unequal justice system. Along with other public human services such as health, education, employment insurance, and social assistance, legal aid is designed to advance the welfare of individuals and the well-being of the community.

Legal aid, however, has always been the poor cousin of other human services and has lost ground relative to them over the years. In addition, there is greater disparity between provinces and territories as to what services are available and to whom than with other essential public services. Individuals seeking legal assistance are far less certain about what benefits they can access than for other services. None of the other public human services varies as significantly depending on where a person lives or in what year that person might need assistance.

Canadian legal aid plans have been doing tremendous work with limited resources. Still, there is always room for improvement in the delivery of legal aid services, greater strategic coordination among all involved and systemic reform within the justice sector as a whole. Publicly funded services must deliver good value for

money and any call for additional funding must be accompanied by evidence that current budgets are being spent as efficiently and effectively as possible. Sound principles and policy reasons to support better legal aid are not enough; legal aid providers must also show they are “providing the ‘right’ mix of services, to the ‘right’ clients, in the ‘right’ areas of law and in the ‘right’ locations.”<sup>2</sup>

National legal aid benchmarks can help to achieve these goals. They can also provide a better balance between living within financial constraints and guaranteeing access to justice than exists at present. Developing national legal aid benchmarks is an important strategy for revitalizing the discussion about legal aid in Canada.

### What are Benchmarks?

In various fields, including health, education and international development, benchmarks have fostered continuous learning and improvement through a framework of best practice standards representing a common goal. They have also provided a way of measuring specific achievements and overall progress.

This project considers the development of national legal aid benchmarks for Canada. Benchmarks can be an important mechanism to shift the discourse about legal aid from simply ‘more funding is required’ to ‘what can we do to improve the legal aid system in Canada’?<sup>3</sup> Rather than offering a minimum threshold, national benchmarks should:

- be aspirational and include targets for progressive implementation
- supply a principled basis for working within legal aid funding allocations
- be focused and concrete, while still allowing for local priority setting and innovation
- integrate empirical knowledge and best practices for delivering legal aid services

Part I of the *Backgrounder* canvasses a wide range of approaches to benchmarking in the healthcare, education and other public policy sectors. Several examples are provided in an annex to the paper. It also considers what makes benchmarks effective and some of the challenges to developing indicators for the justice system.

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<sup>2</sup> Australian Government Productivity Commission, *Access to Justice Arrangements – Productivity Commission Inquiry Report - Volume 2* (Melbourne: APC, 5 September 2014) at 665-808 (PCR); Allen Group, *Review of the National Partnership Agreement on Legal Assistance Services: Final Report* (Melbourne: Allen Group for the Australian Government Attorney-General’s Department, June 2014).

<sup>3</sup> *Report of the Deputy Minister Advisory Panel on Criminal Legal Aid* (Ottawa: Justice Canada, 2014).

## How Can Benchmarks Assist in Achieving Legal Aid Renewal?

Benchmarks would assist in achieving legal aid renewal by providing a clear picture of what eventual success will look like. The process of setting benchmarks begins by considering our expectations - *how good do we want Canada's legal aid system to be?* What metrics and standards should we use to define excellence in the areas most central to fulfilling that goal? We can also ask how well each legal aid program is doing relative to others both across Canada and compared to other countries. We can inquire into why some legal aid providers that are facing similar challenges are achieving better results, and learn from those providers. And, we can review empirical and policy research for evidence of best practices relevant to legal aid benchmarks.

## Hard Costs and Hard to Know Costs

The paper does not set out the policy rationale for the Canadian legal aid system as that rationale is well-developed and already set out in numerous reports.<sup>4</sup> In any case, beyond sound policy reasons for legal aid, benchmarks can help to demonstrate that legal aid providers are offering an appropriate mix of services to clients in need, when and where clients need those services.

The project is based on the conclusion that additional resources must become available as an inevitable part of legal aid renewal. The benchmark discussion needs to be framed by a brief comment about costs. It boils down to this: "Providing legal aid is costly. So is not providing legal aid."<sup>5</sup> Recognition is growing that cuts in legal aid funding do not necessarily contribute to more efficient and effective services. Strong arguments can and have been made for how legal aid spending saves in other areas of government spending.<sup>6</sup> However, it is difficult to integrate our growing knowledge about the visible and invisible costs of inadequate legal aid into the discourse on legal aid funding. Government funding in discrete silos between departments and programs exacerbates these difficulties.<sup>7</sup> Benchmarks can help draw together the visible 'hard costs' of legal aid with the invisible but just as real 'hard to know' costs that result from its denial.

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<sup>4</sup> See, CBA Access to Justice Committee, *Reaching Equal Justice* (Ottawa: CBA, 2013). See also, Dr. Melina Buckley, *Moving Forward on Legal Aid* (Ottawa: CBA, 2010); L. Doust, QC, *Foundation for Change* (Vancouver: BCLS, 2011), as a few examples.

<sup>5</sup> Former Chief Justice Gleeson (of Australia), "The State of the Judicature" (Canberra 1999), cited in Law Council of Australia, sub. 96 at 114 and reproduced in PCR, *supra* note 2 at 739.

<sup>6</sup> *Reaching Equal Justice*, *supra* note 4 at 53.

<sup>7</sup> See discussion by [Law and Justice Foundation of New South Wales](#), April 2014.

## Part II – Options for National Legal Aid Benchmarks

Part II canvasses options for national legal aid benchmarks. This discussion focuses on three questions:

- What should the Canadian legal aid system be guided by?
- What should it be targeted at?
- What should it be delivered with?

Part II is the Working Group’s attempt at sparking a conversation about where the Canada legal aid system is now and what eventual success of a renewal process will look like. It is largely based on the relatively new but swiftly evolving body of research on ‘what works’ in legal assistance schemes.

### A Legal Aid System Guided By..

Several of the examples of effective public sector benchmarks discussed in Part I of the full *Backgrounder* include a general policy statement to frame the more tailored practice-oriented benchmarks. In the health care sector, for example, the United Kingdom’s *Essence of Care* Benchmark on the promotion of health and well-being is framed by the overall health outcome policy statement, “*People will be supported to make healthier choices for themselves and others*”. The Canadian Institute for Informational Health performance measurement framework is geared toward three concrete outcomes: improved health status for Canadians, improved health system responsiveness, and improved value for money.<sup>8</sup>

Recent reports on legal aid reform have emphasized clarifying the purpose of individual public legal assistance services and the public good that is advanced through an effective and efficient legal aid system.<sup>9</sup> This section discusses three guidance benchmarks: a national policy statement on legal aid, a statement on the shared federal, provincial and territorial responsibility for legal aid and a statement on overarching funding principles.

### National Policy Statement

Legal aid is the primary public program designed to ensure equal access to justice and contribute to social inclusion. The objectives of legal aid are usually described in relation to a blend of principles and policy goals related to the purpose and functioning of the justice system. More rarely, the objectives of legal aid are described in broader terms related to improving the status of individuals and groups living in situations of disadvantage as a whole, rather than simply in their

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<sup>8</sup> See discussion at 16 of the full *Backgrounder*.

<sup>9</sup> *Supra* note 4.

relationships with the justice system. A policy statement could also acknowledge the important role of legal aid plans in contributing to reforming both the justice system and the substantive law.

### Shared Governmental Responsibility

Clarification of the shared federal, provincial and territorial responsibility for legal aid is an important guiding benchmark. While provincial and territorial governments have primary responsibility for the day to day functioning of the justice system, the federal government also has a critical role. Like healthcare, justice is a shared governmental responsibility. Renewal, and in particular national equality, depends upon revitalizing the federal government's role in both criminal and civil legal aid. Equal justice is about more than only the administration of justice in a province or territory: it is about the health, safety and security of all residents of Canada and ensuring good governance through a fair and effective legal system. These are national concerns, both as a matter of constitutional division of powers and good public policy.

### Funding Principles

Sustainable funding is key to the future Canadian legal aid system. Putting funding for these essential public services on a sustainable course involves several factors: a principled method for determining total funding requirements, a principle setting out the relative responsibility of the federal, provincial and territorial governments, a method for determining priorities during the progressive move toward full funding and a statement on the relative funding for criminal and civil legal aid.

### A Legal Aid System Targeted At..

Legal aid is designed to provide meaningful access to justice for those who require legal assistance and are unable to obtain it on their own due to financial or other barriers. Unlike health care and public education, legal aid has never been a universal social program. Thoughtful consideration has been given to the benefits of making this shift away from a targeted social service for low income and disadvantaged individuals to serving all those who cannot afford legal services, and potential ways to fund universal services through a public insurance scheme.<sup>10</sup>

Legal aid services are rationed in three main ways: types of legal matters covered (coverage); who can access services (eligibility); and the type, depth and quality of legal assistance provided, that is whether a client gets full or partial assistance

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<sup>10</sup> *Reaching Equal Justice*, *supra* note 4; S. Choudry, M. Trebilcock, J. Wilson, "Growing Legal Aid Ontario into the Middle Class: A Proposal for Public Legal Expenses Insurance" in M. Trebilcock, A. Duggan, L. Sossin, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

(service delivery). Other rationing measures include financial contributions by clients and limited remuneration of service providers (e.g. below market rates for both staff and judicare lawyers, claw-backs, and/or partial payments).

There is a critical relationship between these elements and the strategic policy choices required to ensure meaningful access to justice. The three are inextricably connected. For example, by setting very narrow eligibility criteria, a legal aid provider could offer full high-quality services in a large range of matters to a very small group of people. Or, conversely, by having more generous eligibility criteria, a legal aid plan could provide partial assistance in a few selected areas to a larger group of people.

This section considers issues for targeting legal aid services by canvassing potential benchmarks related to coverage, eligibility and service delivery.

### Coverage

Coverage refers to the *scope* of legal aid services provided by the program or system. It is usually defined with reference to specific areas of law or types of legal issues. The concept of legal aid coverage used to be synonymous with a right to legal representation. Now, there is growing recognition that legal aid plans provide a spectrum of services. However, the greatest challenge remains deciding which situations require counsel to be provided, as opposed to offering legal information or limited assistance. The coverage issue overlaps in this way with the third targeting principle: limits to the type, depth and quality of legal aid services provided for a client about a particular legal problem or matter. The term ‘service delivery’ is used for this latter category of benchmarks.

People experience a wide range of legal problems. Laws and legal issues affect people in a wide range of ways and situations. As with other human services, legal aid is a public program that must prioritize providing essential legal services. The initial important question is what legal services do we, as a society, consider ‘essential.’ Services deemed essential must be fairly awarded to all those who need them and qualify financially. Only governments can ensure that happens consistently and so, they are by definition a public service.

This section of the *Backgrounder* reviews five main approaches to defining essential public legal services that could serve as coverage benchmarks. These are: legal categories, basic needs, empirical needs assessments, high risk and complex needs and strategic/systemic impact advocacy.

### Eligibility

Eligibility is the second major issue to be considered in developing benchmarks to guide and measure the targeting of legal aid. Eligibility criteria determine who can

apply for and receive legal aid. This is also sometimes referred to as a 'means test.' The main focus is usually on the financial capacity of the individual or family seeking assistance, although other criteria are sometimes also considered. In some cases, legal aid information or assistance services, particularly web based or print material, are provided to everyone regardless of their financial situation. The group of people eligible for legal aid can also be extended by requiring financial contributions from individuals who do not meet the financial criteria but still cannot afford legal services.

The central issues here are:

- the underlying principles and method for determining financial eligibility;
- if and how to take into account other non-financial factors in determining who should receive publicly-funded services; and
- how to deal with any gap between who qualifies for legal aid and who requires services but cannot afford to pay for them.

These issues are intertwined with the availability of affordable services in the private market and the complexity of the substance of law and its procedures. The latter determines the range of situations in which partial or full legal assistance/representation is required to ensure meaningful access to justice. In addition, it is important that eligibility tests are simple, fair and easy to efficiently administer.

There are two main challenges in developing national eligibility benchmarks:

- The first is developing a national means test based on an effective measure of poverty and disadvantage.
- The second is the need to continue to prioritize the disadvantaged while finding ways to provide services to other individuals who cannot access legal assistance to meet essential legal needs.

Further, as noted at the outset, increases in eligibility cannot be made at the expense of the range of matters covered by legal aid or the quality of services provided.

This section of the *Backgrounder* provides an overview of five approaches to determining eligibility:

- general principles based on jurisprudence
- a national means test
- measures of poverty and disadvantage
- expanding eligibility, and

- use of single or multiple criteria, flexible and able to take into account special circumstances.

### Service Delivery: Types, Depth and Quality of Legal Service

The term 'legal services' incorporates a broad range of assistance on legal matters. At one end of the spectrum are the most comprehensive models of assistance, exemplified by full representation by a lawyer or even expanded to include a holistic approach in which individuals can access integrated assistance with both the legal and non-legal dimensions of their problems. At the other end of the spectrum are the least comprehensive models, which include various methods of making legal information and materials available to the public.

In addition to deciding who gets legal aid and for which legal matters, targeting legal aid services requires determining the right type, depth and quality of service required by an individual experiencing a legal problem or to address a systemic legal problem affecting disadvantaged people as a group.

Setting service delivery benchmarks involves assessing the quality of legal services and how they are able to meet the needs of a given client and a given situation. *Reaching Equal Justice* proposed that services be judged against the standard of 'meaningful and effective access to justice'. This concept was important to the Supreme Court of Canada to determine whether state funded counsel was required in the *J.G.* case.<sup>11</sup> The Court did not define or delineate this standard but linked it to three elements: the capacity of the individual, the complexity of the legal proceeding and the seriousness of the potential outcome. These factors can provide a beginning for the type of indicators to use when assessing which of different types of legal services will be required. However, they do not go far in elaborating what will meet the standard of 'meaningful and effective' access to justice.

Decisions about which legal aid services will lead to efficient and effective resolution of legal issues, and so, meaningful access to justice, are not easy. They involve an appreciation of a range of issues, including:

- the personal and legal capability of the individual or group;
- the nature/characteristics of the legal issue or problem;
- the interests at stake and potential consequences;
- the relationship with other party/parties
- the interrelatedness of legal issues with other problems experienced by an individual or group;

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<sup>11</sup> *New Brunswick (Minister of Health and Community Services) v G (J)*, [1999] 3 S.C.R.46.

- the procedural options/dispute resolution processes available and their complexity;
- the types of legal assistance available;
- the procedural, substantive and systemic outcomes desired; and
- the legal aid provider's resources.

All these dimensions are dynamic. For example, a person's legal problem can change over the course of a resolution process, as can their knowledge and ability to participate effectively in the dispute resolution process.

There is no ideal model of service delivery that will work in all contexts. These issues require complex thinking and complex policy responses. A new but rapidly growing body of legal aid research focuses on questions of "*what works, for whom, when, why and at what cost?*"<sup>12</sup> This evolving evidence base can assist in developing national legal aid service delivery benchmarks.

This section of the full *Backgrounder* considers service delivery issues under seven themes: strengthened client-centered approaches; personal and legal capability; intake, diagnosis, referral and outreach; comprehensive and holistic services; a focus on outcomes, including timeliness, prevention and post-resolution support; cooperation, collaboration and integration; and efficient and effective services.

### **A Legal Aid System Delivered With...**

The third and final general topic for national benchmarks is considering what the legal aid system should be delivered with? This involves considering what supporting framework is required to ensure optimal performance of the Canadian legal aid system. The Working Group has identified three potential pillars of support: increased service provider capacity; expertise, evidence and innovation; and predictability, transparency and accountability.

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<sup>12</sup> *Supra* note 7 at 180.

### Part III – Options for National Legal Aid Benchmarks

The Working Group has identified some potential national legal aid benchmarks to facilitate dialogue. Some of these options are meant to be alternative approaches, however more than one benchmark may be required in each area.

#### **Option #1 – Policy Statement A**

*The Canadian legal aid system is integrated, efficient, cost-effective and focused on providing services for disadvantaged Canadians in accordance with access to justice principles of accessibility, appropriateness, equality, efficiency and effectiveness.*

#### **Option #2 – Policy Statement B**

*The Canadian legal aid system provides holistic and transformative legal assistance and value for money, and contributes to the health and well-being of disadvantaged and low-income Canadians, combats social exclusion and provides an accessible and effective justice system.*

#### **Option#3 – Shared Governmental Responsibility**

*The federal, provincial and territorial governments are equal partners in ensuring the provision of essential public legal services of reasonable quality to across Canada. The federal government is a leader in supporting national equality in legal aid.*

#### **Option#4 – Funding Principles**

*Essential public legal services are provided with stable and sustainable funding based on triennial comprehensive needs assessments for both criminal and civil legal needs on an equitable basis.*

#### **Option #5 – Coverage: Areas of law**

*The Canadian legal aid system provides assistance to eligible persons with essential legal needs in family law, criminal law, prisoner law, civil commitment proceedings under mental health legislation, immigration and refugee law, administrative law and other civil legal matters.*

#### **Option #6 – Coverage: Basic needs**

*The Canadian legal aid system provides assistance to eligible persons wherever legal problems or situations put into jeopardy a person's or a person's family's security – including liberty, personal safety and security, health, equality, employment, housing or ability to meet the basic necessities of life.*

**Option #7 – Coverage: Needs assessments**

*The Canadian legal aid system provides assistance to eligible persons with essential legal needs based on comprehensive needs assessments.*

**Option#8 – Coverage: Focus on High Risk and Complex Needs**

*The Canadian legal aid system prioritizes assistance to persons at risk and those with complex needs. This includes people with a disability, people in remote areas, people from non-English and/or non-French backgrounds, homeless people, First Nations people, people with mental illnesses, people experiencing or at risk of family violence and people who are financially disadvantaged.*

**Option#9 – Coverage: Strategic legal advocacy**

*The Canadian legal aid system includes as a core function strategic legal advocacy to correct systemic problems affecting low-income persons, with providers using a broad range of impact strategies and measuring outcomes.*

**Option #10 – Eligibility: Policy statement**

*The Canadian legal aid system prioritizes meeting the needs of disadvantaged people, while gradually expanding service availability to all low income households.*

**Option #11 – Eligibility: National Means Test**

*Financial eligibility for legal aid services is determined based on a national means test with a formula taking into account regional differences. The means test is reassessed every three years.*

**Option #12 – Eligibility: Poverty Level**

*All Canadian residents living at 125% of the poverty line are eligible for free legal aid in matters of essential legal need. All Canadian residents living at 250% of the poverty line are eligible for legal aid in matters of essential legal need, on a sliding scale contributory basis.*

**Option #13 – Eligibility: Percentile of Population**

*Legal aid is provided to members of the lowest quartile of Canadian households.*

**Option #14 – Eligibility: Special Circumstances**

*In determining eligibility, legal aid providers must take into account special circumstances making it difficult to obtain legal assistance. Special circumstances include language or literacy problems, intellectual, psychiatric or physical disabilities, a person's remote location or status as a prisoner, or where the person is otherwise at risk of social exclusion.*

**Option #15 – Service Delivery**

*The Canadian legal aid system delivers a spectrum of client-focused legal aid services that provide meaningful and effective access to justice consistent with these factors:*

- a) **Empowerment** - People and communities are enabled to find ways to maintain or improve their legal health and legal capabilities and to prevent further problems;*
- b) **Accessibility** - Proactive steps are taken to increase access through effective and tailored intake, diagnosis, referral and outreach services;*
- c) **Suitability and timeliness** - People and communities have timely access to information, services and supports that meet their diverse needs, personal and legal capabilities and circumstances;*
- d) **Holism** - Services are comprehensive and holistic;*
- e) **Partnership** - Legal aid services are provided in partnership with other services so that people and communities benefit from integrated service provision;*
- f) **Outcome Focus** - People and communities have improved and sustainable legal outcomes, systemic legal health is enhanced and justice system performance is ameliorated; and*
- g) **Efficiency and Effectiveness** - Legal aid services provide effective resolution of legal issues taking into account the system-wide costs per completed case.*

**Option#16 – Service providers**

*The Canadian legal aid system values and supports service providers so that they are able to deliver consistently high-quality and respectful services.*

**Option#17 – Expertise, Evidence and Innovation**

*The Canadian legal aid system fosters innovation underpinned with skills in the design, implementation and management of legal assistance services as well as expertise in key related areas of knowledge, such as poverty, health, gender, race, and disability.*

**Option#18 – Transparency and accountability**

***The Canadian legal aid system is transparent and accountable through regular reporting of national performance measures derived from these benchmarks.***

## **Part IV – What do we want? Canada’s Future Legal Aid System**

The CBA Committee/ALAP Working Group has drafted this Consultation Paper/*Backgrounder* to join the ongoing conversation about the Canadian legal aid system. It is designed to encourage innovative thinking about how to renew legal aid in Canada. Like all benchmark projects it builds on current practices but is focused on the future.

In closing, we pose this question: *what do we want from Canada’s future legal aid system?*

The Working Group needs your responses to this general question about the place of public legal services in our communities, as well as the more specific *Discussion Questions* listed below. Although the conclusions to the Consultation Paper/*Backgrounder* are framed as specific benchmarks – the conversation is very much open-ended. The Working Group offers these specific and concrete benchmark examples to make it easier for individuals and groups to respond.

For more information or to submit your comments, please call Gaylene Schellenberg at the CBA (1 800 267 8860 ext 139) or write to [equaljustice@cba.org](mailto:equaljustice@cba.org) by **July 17, 2015**. The Working Group will consider all input carefully and integrate the views received into proposed national legal aid benchmarks by mid-October 2015.

Thank you in advance for your input!

## Discussion Questions

### General

1. Do you support the development of national legal aid benchmarks? Why or why not?
2. What criteria should there be for national legal aid benchmarks?
3. Do you agree with the Consultation Paper/*Backgrounder* about the major expected benefits of national legal aid benchmarks?
4. What in your view should be included in national benchmarks?

### Guidance benchmarks

5. What benchmarks should be included to guide the national legal aid system? Do you have specific comments about the guidance options listed?

### Coverage benchmarks

6. What should national standards include on legal aid coverage? Do you have specific comments about the coverage options listed?

### Eligibility benchmarks

7. What should national benchmarks include on eligibility for legal aid? Do you have specific comments about the eligibility options listed?

### Service Delivery benchmarks

8. What should be included in national legal aid service delivery benchmarks? Do you have specific comments about the service delivery options listed?

### System benchmarks

9. What should be included in national legal aid system benchmarks? Do you have specific comments about the systems options listed? What did we forget?

### What have we omitted? Other issues?

10. What other issues should be considered in developing national standards for legal aid?

### Process

11. What strategies could or should be adopted to engage the civil justice sector, other relevant government agencies, users of the civil justice system, and the public on the issue of national legal aid benchmarks?