THE INTERNATIONAL LEGAL AID SCENE
a concise comparison

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Introduction

In preparation for the Hague Legal Aid Conference we asked some of you a number of questions about your legal aid system. Of course, we were afraid you would postpone your answer, then run short of time, have unavailable data and other unspecified inconveniences. And that's exactly what happened! (How about unpredictability of human behaviour?)

But, as we hoped, you stuck to your promises. So, faxes came in, followed by corrections (and sometimes even corrections of those corrections). In the end most of you responded to our questions. Thanks!

Next you will find some comparative figures as well as short summaries from statements made by you on several items of our questionnaire. We hope you will be able to recognise your own system as depicted in the graphics as they have been based on the materials provided. You know there are lies, damned lies and statistics; so please feel free to criticize if you think we are wrong.

You might be surprised to see your own system compared to others. Well, there you are! This is where our debate starts.

The Hague, April, 7 1994

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1. We feel greatly in debt to Erhard Blankenburg for his generous help not only for improving our translation into English but especially for clearing our arguments.

2. We were informed by Don Femming (Australia), Joanna Kuras & Fred Zemans (Canada), Tamara Goriely (England & Wales), Alan Paterson (Scotland), Ola Ling (Sweden) and Gerry Singsen (US). With regard to the Dutch system we briefed ourselves.

3. In order to facilitate your criticism we present all the figures we used in the Appendix. We apologize for having excluded US-figures for reasons being not able to get them in a comparative way.
THE SOCIAL FRAMEWORK

We try to see our legal aid systems in relation to other social indicators. Figure 1 presents some such indicators: the differences in population, GNP per capita (US $) as well as actual unemployment rate (as a percentage of the labour force).

Frankly speaking, for reason of scale we are glad we had to skip the USA as it has nearly five times the UK population (i.e. 260,000,000).

Fortunately, it seems that actual unemployment rates differ slightly. The United Kingdom scores highest: nearly 10% whereas the Canadian percentage of 7.5 is the lowest. The latter equals the missing USA-level, being approximately 7%. But with regard to the latter percentage: we know this information is measured by survey. For that reason resulting figures are not 100% comparable with the European information which is based on registration.

We also computed the justice expenditures as a percentage of their GNP. With regard to this, we see two big spending systems: Canada (2.9%) and the UK (2.4%) near to each other. The Dutch (miserly as they are by tradition) and the Australians spend only one third of the above-mentioned systems. The very rich Swedish nation shows a very modest spending figure (1.2%).
THE LEGAL FRAMEWORK

2.1 Current Legal Aid Act and Legal Aid practices

Australia
Legal aid is provided through statutory schemes and agencies and administrative schemes and non-statutory agencies. The Commonwealth government is not a major provider of legal aid services, however it is the major source of public funds. It also provides national advisory and policy oversight through the federal Office of Legal Aid and Family Services, The National Legal Aid Advisory Committee and the Aboriginal and Torres Strait Islander Commission.

Lawyers' services at public expense are provided by 8 statutory legal aid commissions (established by regional and territory governments) and over 100 community legal centres and 21 Aboriginal and Torres Strait Islander Legal Services centres. These statutory commissions, generally known as 'Legal Aid Commissions', are the major providers. Their relevant legislation differs in time ranging from 1976 (Western Australia) still 1990 (Tasmania).

There are no imminent or anticipated changes to the statutory or administrative arrangements affecting the legal aid provision. However the Office of Legal Aid and Family Services and community legal centres are working on proposals for a coordinated national data and information scheme.

Neither are any changes anticipated which will affect the operations of the Aboriginal and Torres Strait Islander Services. A report of a Royal Commission into Aboriginal Deaths in Custody announced an additional 50 mln US$ for legal aid for indigenous peoples and another 14.5 mln for related law and justice initiatives. This is at present under review now.

Canada
Legal aid is organized on State basis; so systems differ on relevant items in relation to local conditions. Due to the fact we don't have got the relevant information on several of our items in the questionnaire, we only can refer to the recent Legal Action Group report A Strategy for Justice (1992) on the Ontario legal aid system as well on the Quebec situation.

The Ontario legal aid began as a voluntary scheme in 1951 and was put on a statutory bases in 1967. The Ontario Legal Aid Plan (OLAP) is administered by the Law Society of Upper Canada. The system provides services through two types of provision: at the one hand there is the 'certificated' scheme using private lawyers, on the other we find a network of legal clinics. The first scheme is administered by the Law Society through 47 area offices.

The legal Aid Act in Quebec dates from 1972. The body set up that year to administer legal aid - Commission de Services Juridiques - echoed the US Legal Services Corporation; an emphasis on the public education and law reform. Clients have to go to the commission for a preliminary assessment of their case. Then they have their right to choose either a salaried lawyer employed by the Commission or a private lawyer.

England & Wales
The Act currently in force is the Legal Aid Act 1988. The outline of the scheme goes back to the Legal Aid and Advice Act 1949.

The last major increase in the scope of legal aid was in 1986, when the 24 hour duty solicitor scheme was introduced to cover legal advice within the police station. A small decrease came in 1989: wills and conveyancing were excluded from the green form scheme.

A major change in the organization of services delivery is the 'franchising scheme', in which private solicitor firms who meet various 'quality' criteria imposed by the Legal Aid Board are given a special status within the legal aid scheme. They are paid more quickly and are freed from some of the administrative controls of the scheme. The first applications for franchises were received in October 1993; up to now no franchises have been granted.
The Netherlands
After some 'try outs' (1981, 1986, 1990) we now have our brand new Legal Aid Act which came into effect on January 1st 1994. This Act replaces the 1957 Act (which was the oldest statutory provision on legal aid in Europe; only the UK drafted earlier their statutory provision earlier in 1949). In fact that 1957 Act had already been changed with regard to several important issues such as: eligibility level (1981 Act), client contribution (1981, 1984) and the organisation of the 20 Legal Aid Centres, which came into effect in the period 1974 - 1980.

The Dutch legal aid is called a 'mixed model', where legal aid is provided by salaried lawyers (the Legal Aid centres' staff) as well as by private practitioners (in Dutch: advocates). The help provided by the Legal Aid Centres was free of charge until our newest Act came into effect.\(^4\)

By tradition nearly all private practitioners dealt with legal aid cases. Due to the new Legal Aid Act those advocates who are willing to do legal aid cases are required to register at one of the 5 regional Legal Aid Boards. By law these Boards have set some 'quality' standards which advocates have to meet. Among others an advocate is required to stick to a minimum as well as a maximum number of certificates he is handling over the year.

Scotland
Regarding the scope of the legal aid system, we can refer to the situation in England & Wales with some minor exceptions. Conveyancing and wills have not been removed from the schema as in England & Wales.

Recently the scope has been expanded for Advice By Way of Representation (ABWOR).

Sweden
In December 1971 the Government proposed Sweden's first Legal Aid Act which was passed in January 1973. In 1980 courts and certain other authorities were given greater power to make decisions in matters concerning legal aid. In 1991 Legal Aid Authority was established.

There are different sorts of legal aid that people in Sweden can apply for.

*General legal aid:* available to all Swedes or immigrants or foreigners living in Sweden. You can get help in paying for legal matters which cannot be solved within the time allowed for consultation or cases not included by other sorts of legal aid. There are some exceptions; one of these is that one cannot get legal aid on matters relating to property if one is a current or previous owner of real estate. The same goes for personal damages which can be covered by liability insurances.

*Public defending counsel:* available as soon as you are suspected of a serious criminal offence. The court decides about eligibility. All fees are paid by the State but if you are convicted you may have to reimburse the State to a maximum of the limit payable for general legal aid.

*Complainant's counsel:* in case of victimization of crime or of sexual offences since 1988 the court can appoint such a counsel for you. The State will pay all the fees.

*Public counsel:* which you can get for certain types of administrative proceedings. This sort of legal aid is always free of charge.

*Legal advice:* is available to everybody even associations and companies although there are some restrictions with respect to subject matter. Legal advice is given by a private practitioner as well as lawyers in public law offices.

\(^4\) Due to our new Act the centres only have a 30 minutes free client hour. If the services needed take more time, clients have to pay 15 US$ for the next one and a half hour service. If their case is more time consuming, they have to pay according to the scheme which applies to client contribution for help from private practitioners.
In general, the USA is difficult to use the State based structure. Salaries for staff members and payment levels for private attorneys under contract in Legal Services Corporation-funded programs are totally under the jurisdiction of 320 local non-profit, private grantees rather than the national Legal Services Corporation (which is also a private, non-profit making organization, although it is chartered by Congress).

Current Federal Legal Aid Act date from 1977. In addition there are annual appropriation acts that contain funding formulae and substantive restrictions. Pending federal legislation may reduce some restrictions on activities and forms of representation. These changes cannot be predicted now.

Among the subject matter restrictions that might continue are those that concern the drawing of legislative districts, abortion and representation of illegal aliens.

Among the types of services which may remain restricted in some fashion are legislative advocacy, class actions and handling matters that might generate attorneys fees.

2.2 Eligibility & Clients contribution

Australia

No overall figure estimating eligibility seems available. But it is said that the National Means Test draws heavily on poverty line frameworks. Although every legal aid commission is applying its own eligibility test, there is some degree of national uniformity. From the figures about the applications approved for legal assistance 1990/91 it follows that 66% of these applicants are receiving welfare benefits.

Changes in eligibility and availability of services are not reflected in statutory change. But in the past 3 or 4 years there have been significant regular reviews by the legal aid commissions of their respective administrative guidelines applying to the provision.

The probable overall effect of these changes has been:
- an increasing concentration of free legal aid in serious criminal trials;
- restrictions and increased contributions on legal aid in family law matters;
- a restriction on the availability of free or contributory legal aid in civil law matters;
- the availability of legal advice and duty lawyer services has probably been restricted.

Canada

The Ontario eligibility levels (giving access to the certificated scheme) have not been increased since 1989. The large measure of discretion is in the hand of the area director which means that adequate estimates of population being eligible cannot be made.

Criminal legal aid is free for those with incomes below a certain level: in 1991 equivalent to about 150% of the long term welfare support rate but lower than the minimum wage. There is no mandatory free limit for civil legal aid, although the criminal limit is often followed. The matrimonial home, both actual and normal expenditure and income are taken into account.

The level of eligibility in Quebec seems very low. According to the 1972 Statute those are eligible who are 'economically underprivileged'. Initially, the Commission had power to set eligibility levels, but this was ceded to the government in 1982. Except for one rise, which applies only to families, levels gave not changed since 1981, and are now below the minimum wage. The Ministry of Justice provided the LAG with an informal estimate of eligibility at 32% of the population (1991), but the president of the Commission until 1990, reckoned 15% to be a more accurate figure.

Note that approval of legal aid is also dependent upon the availability of public funds; the legal aid commissions are required to operate with annual budgets determined by agreement between the central and the regional governments.
England & Wales
According to the most recent figures 48% of households in 1991/92 were eligible for full civil legal aid; this means 35% of them are entitled to free legal aid, whereas 23% to contributory aid. This percentage represents a substantial fall from 81% of households eligible in 1979.
As far as it concerns legal advice there has been a severe reduction since April 1993 caused by the abolishment of legal advice for those who previously paid a contribution. It is estimated now that only 21% of households are eligible compared with 44% in 1990 and 70% in 1979.
Since the 1993 changes, estimates are that only 27% of households are eligible for contributory help. In April 1993, the Government substantially increased contributions for civil court cases. More people must pay, they must pay more each month, and contributions continue for a longer period. Previously, people paid contributions for one year only. Now contributions last the length of the case, an average of 2.5 years.

The Netherlands
Up to 1981 the Dutch legal aid scheme was in an experimental phase without statutory basis. Financial contributions vary according to local conditions. However most of the Legal Aid Centres, being responsible for granting legal aid certificates, used the 'Amsterdam scheme' (developed by the Amsterdam legal aid centre). That scheme proved to be a rather lenient one, taking into account net household income reduced by a number of deductions (among others housing cost, child raising funds and other financial obligations) whereas at that time 82% of the population was eligible for legal aid, 45% of them without any financial contribution. In effect the new scheme also proved to be a permissive one: in 1982 70% of the population being eligible; 51% without any financial contribution.
In 1984 a temporary statute came into effect that did away with the free legal aid under the scheme, requiring a minimum financial contribution from clients: 14$ (for advice) or 28$ (in case of representation). Also the eligibility level was reduced by sharpening of the required means test.
The new statute in effect since January 1994, brought two amendments. Eligibility for single persons households has been reduced and financial contributions for all applicants have been raised. But not in the same degree. So the latter will affect the creaming strata of the 'higher' incomes under the scheme. As research from the Social and Cultural Planning Office showed, they have already had to swallow higher charges over the years.
Based on their 1987 survey (which takes place every four years) an 5% to 6% reduction in eligibility was predicted; from 68% of the population being eligible at that time to 62%, ceteris paribus. Our most recent figures, of the 1991 SCP-survey tell us that we were right as far as it concerned the reduction in eligibility. But we were wrong on our estimate of the percentage of the population being eligible at the beginning of the Nineties. It turned out to be 54% instead of 66%! This brings us to our new prediction that the new scheme which came into effect this year will reduce eligibility to 49% of the population.
All this only relates to civil law. As far as criminal law is concerned, in theory there is not such a legal aid scheme as ours. In practice however, the civil eligibility standards are used in granting legal aid certificates. Neither is financial contribution raised in criminal legal aid. But also with regard to this: the times are changing. Pending legislation will make an end to these 'old fashioned' practice.

Scotland
The levels of eligibility are the same as in England except in advice and assistance where the probable figure is about 40% of the households (as compared with 21% in England).

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6 These figures are for households rather than people. Less than 48% of adults will be eligible, but a 1990 rule change allowing children to apply on the basis of their own income means that most of them are eligible.

7 Free legal aid was available for people with net household income below 1,000 US$ per month. Eligibility standard at that time was set on a net household income below 1388 $ per month.
Clients contributions have risen to the same extent as in England. However, there are some differences:
- there are no contributions in criminal cases.
- the contributory band has been retained and is restricted to a twelve month period (not the duration of the case).

Swedden
The actual eligibility is over 90% of the population.
As far as General legal aid is concerned everyone has to pay their legal expenses according to their capacity; the State pays the rest. Your amount depends on your economic commitments, your assets, your liabilities and your maintenance obligation.
The charge in 1994 is between 56 US$ (450 Sw crowns) and 1,477 US$ (11,820 Sw crowns); the latter is based on an income of 30,000 US$ (240,000 Sw crowns) a year for a person with no liabilities and no maintenance obligation. In addition you have to pay a supplementary charge geared to all the costs. Depending on your economic status you must pay between 10% and 30% of those costs but never more than twice the base charge.

The charge for a one-hour consultation is 113 US$ (910 Sw crowns). Discounts are available for the very poor.

USA
Eligibility levels are not being changed and local grantees will retain the authority to determine which cases they will accept (low funding levels make it impossible to accept all cases). LSC's national eligibility maximum makes about 20% of the U.S. population eligible for free services. There is no subsidized program for the remaining 80%.
Eligibility for criminal defence services is determined locally and varies depending on the expected cost of hiring private counsel.
A larger share of the total population may qualify for free defense services in serious cases than qualifies for free civil legal services.

2.3 Remuneration levels

Australia
No information available

Canada
As far as it concerns private practitioners, only few of them participate in the scheme. According the LAG report 43% of the total number of lawyers (23,000) participate to some degree; but only 5% of them do rely on legal aid in substantial degree. Reasoning from the latest figure, we may assume legal aid doesn't pay very well, at least seen from the private lawyers perspective.

In Quebec legal aid work doesn't play a significant role in private practice. In 1989/90 about 20% (2,671) of all advocates (13,094) did at least any legal aid work. On the average their payment was only 7,5 US$; only six of them seem to rely on legal aid work in a substantial way.

England & Wales
Traditionally civil legal aid bills were assessed by court staff; they would both set an hourly rate and decide how many hours were necessary. The principle was that legal aid solicitors would be given 'normal' fees less 10%. In practice there was considerable variation.
Since 1988 the government has been trying to get away from this method of paying solicitors which is difficult to check and leads to costs increases each year. In October 1988 the Government set hourly rates in matrimonial cases, and is currently negotiating with the Law Society to introduce set hourly rates in other civil cases. Meanwhile the 10% deduction has been abolished.
For advice and criminal work the government set hourly rates. In 1993 'fixed fees' were introduced for cases in the lower criminal courts (Magistrates courts). Solicitors are paid a fixed fee for all those cases which fall within a certain band.

Where the pay rate is government controlled, increases in the last five years have been small, considerably under the rate of inflation. However, many elements of pay are not under government control and overall cost per case has increased substantially: 10.4% over last 10 years (at a time when the averaged inflation was 5.5%).

The Netherlands
In 1983 the so called 'unit fee scheme' (in Dutch: Moduulbesluit) was introduced encompassing two different forms of remuneration. At the one hand legal aid lawyers get lump sum fees based on an enumerative list of unit values. A divorce procedure was taken as basic unit value. On the other hand a substantial part of their services is valued according to their manifold of time and expertise that they were supposed to require.

In the scheme there was no built in inflation index which gives the Justice department the chance to repeatedly forego adaptions of the remuneration levels to the general price index. When in 1989 the Bar claimed an inflation raise by 30%, an independent 'Royal' Commission (as normally named to their chairman: Polak-Commission), came up with an 25% upgrading of remuneration. The Minister of Justice however, granted the 25% under the condition that the pending Legal Aid Act would be accepted (by the Bar). As a consequence it took a lobbying fight until the end of 1993 to get the remuneration scheme legislated. By the way, given the constraints of the justice budget this rise in remuneration is to quite an substantial degree financed by higher clients contributions.

As everywhere, growing budgets form the main issue of the political debate. However, the overall increase of civil legal aid expenditures from 713 min US$ (1983) to 88.9 min USS (1993) is largely due to inflation. Averaged growth for civil legal aid expenditures over the last decade counts only 0.2% each year, while the criminal expenditures account for 3.6% growth each year. In addition it may be nice to remark that the budgets of the Legal Aid Centres showed a 6.9% growth on average each year during last nine years.

Scotland
Fees are less than in England & Wales which is a source of considerable grievance for Scottish lawyers. It is widely considered that legal aid rates of pay for complex civil litigation are very poor but that criminal legal aid can be lucrative if done in sufficient quantities. Thus in 1992/ 1993 20% of all firms received 78% of all criminal payments. The Government is proposing to re-introduce fixed fees in criminal cases; Scotland having had them originally from 1967 until 1990.

Sweden
The remuneration level per hour was 90 US $ (721 Sw crowns) in 1976; in 1994 it is 91 US $ (728 Sw Crowns).
2.4 Services entitled to

Systems vary to a substantial degree in scope. We asked you to inform us about it. The scheme below summarizes the present state of far as we could figure out.

<table>
<thead>
<tr>
<th>Type of services &amp; subject matter</th>
<th>Advice</th>
<th>Representation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Civil</td>
<td>Criminal</td>
</tr>
<tr>
<td>Australia</td>
<td>partial</td>
<td>full</td>
</tr>
<tr>
<td>Canada</td>
<td></td>
<td>full</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>full</td>
<td>full</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>full</td>
<td>partial</td>
</tr>
<tr>
<td>Scotland</td>
<td>full</td>
<td>full</td>
</tr>
<tr>
<td>Sweden</td>
<td>full</td>
<td>partial</td>
</tr>
<tr>
<td>USA</td>
<td>no</td>
<td>full</td>
</tr>
</tbody>
</table>

1 Including Duty lawyers'schemes; Legal Advice Centres, Neighbourhood Law Centres etc.

2 No Duty lawyer services in case of civil & administrative matters

3 No representation available in administrative law matters

The unavailability of representation in administrative matters implies that one cannot get legal help in cases dealing with 'welfare law' (such as labour law and social security law) tribunals.
Figure 2: Legal services providers

We asked for the number of members of your lawyer profession as well as the percentage of those who provide legal aid, ranging from advice to procedural assistance, in criminal matters as well as in civil law (including administrative law). In most cases we only got the first figure. Relating these numbers to (100,000) population, a clear cut pattern appears. Canada as well as Australia followed by the UK are in front of both the Continental countries. But as we know from the classic Lawyers in Society trilogy the Dutch and the Swedish have a small lawyer profession even in the Continental legal cultures. However, we know that the common world lawyers have many more task than their civil world colleagues (especially in conveyancing and making wills) which makes these figures somewhat incomparable.

Legal service providers

Further more we computed a 'staffed legal aid' ratio as a rough indicator for legal aid system's departure from the archetypical private practitioner's dominance. Table 1 tells you our findings.

Table 1: Staffed legal aid providers as a percentage of the total legal profession

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>2.9%</td>
</tr>
<tr>
<td>Canada</td>
<td>0.3</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>4.3</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>0.2</td>
</tr>
<tr>
<td>Scotland</td>
<td>3.1</td>
</tr>
<tr>
<td>Sweden</td>
<td>3.0</td>
</tr>
<tr>
<td>USA</td>
<td>0.3</td>
</tr>
</tbody>
</table>

Even if we have to admit that our data are far from perfect, we think this picture at least reinforces our knowledge about the typical differences between the Civil and the Common World legal aid structure. Don't you agree?
THE FUNDING FRAMEWORK

Money makes the world go round and legal aid too. So this item needs our attention in detail. For that reason we asked you not only for total expenditures but for some breakdowns too (for instance by subject matter, by jurisdiction and type of providers). Based on these materials we were able to sketch an intriguing picture of the spending pattern.

Comparing the subsidized money we had to reduce complexity caused by the differences in currency as well as the variation in legal aid provisions. Table 2 may be seen for that purpose presenting countries' legal aid expenditures for civil and criminal law in total as well as broken down per capita.

Table 2: Government legal aid expenditures for civil and criminal law

<table>
<thead>
<tr>
<th></th>
<th>Civil law</th>
<th></th>
<th>Criminal law</th>
<th></th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>US $ mln</td>
<td>per capita</td>
<td>US $ mln</td>
<td>per capita</td>
<td>US $ mln</td>
<td>per capita</td>
</tr>
<tr>
<td>Australia</td>
<td>48</td>
<td>3</td>
<td>91</td>
<td>5</td>
<td>139</td>
<td>8</td>
</tr>
<tr>
<td>Canada</td>
<td>73</td>
<td>3</td>
<td>88</td>
<td>3</td>
<td>196</td>
<td>7</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>764</td>
<td>17</td>
<td>865</td>
<td>15</td>
<td>1630</td>
<td>33</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>83</td>
<td>6</td>
<td>40</td>
<td>3</td>
<td>124</td>
<td>8</td>
</tr>
<tr>
<td>Scotland</td>
<td>46</td>
<td>9</td>
<td>103</td>
<td>21</td>
<td>149</td>
<td>30</td>
</tr>
<tr>
<td>Sweden</td>
<td>39</td>
<td>2</td>
<td>64</td>
<td>9</td>
<td>103</td>
<td>12</td>
</tr>
</tbody>
</table>

A clear cut three fold classification rises. First, the big spenders England & Wales and Scotland. Secondly, the Swedish system spending half as much as the UK. Thirdly, the Australians, Canadians and Dutch each of them spending nearly one fourth of the amount spent by the UK. It's a tantalizing question as to which factors could explain this pattern. Would this be differences in clients legal needs or variation in governmental control capacity in funding the legal professions? Regarding this question, we tried to compute the pattern of lawyers’s profit under different legal aids schemes.

Table 3: Government legal aid expenditures spend per legal services provider (in US $)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>15.8 (4.4)</td>
</tr>
<tr>
<td>Canada</td>
<td>30.1</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>28.9</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>17.4</td>
</tr>
<tr>
<td>Scotland</td>
<td>24.4</td>
</tr>
<tr>
<td>Sweden</td>
<td>29.4</td>
</tr>
</tbody>
</table>

Admittedly we only have a first and rough indicator for analysis to start with. Because what we really should know is the share of the legal services providers who are relying on legal aid for their living to quite an substantial degree. From our research among the Dutch Bar (1981) it proved that 95% all qualified advocates did legal aid work to some degree. But at the same time only a tiny fraction of 10% of the bar could be seen as totally relying on legal aid money. Actual situation is supposed to differ substantially as far as it concerns an increasing percentage of advocates which do not provide legal aid any longer. For that reason we present two figures for the Canadian system whereas the first relates to the ‘relevant’ lawyers while the second figure is based on the total number.

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8 As follows from our recent research the percentage of lawyers participating on the legal aid scheme varies between 75% (in highly urbanized regio’s) and 92 (in rural areas).
Figure 3: Government expenditures on legal aid by civil and criminal law

Three out of our six systems (excluding USA) give priority in spending criminal law: Australia, Scotland and Sweden. The Scottish system is particularly dominated by the criminal side, spending 2.3 times more on this subject than they do on civil law. The Canadians are nearly in a perfect equilibrium, closely followed by the English & Welsh.

You may argue these figures contradict the ones we presented in our Dutch legal landscape report. This difference is caused by one of the typical pitfalls comparative research is confronted with: not having all relevant data due to the fact that some expenditures come from 'hidden budgets'. Part of the criminal budget is on the Duty Solicitor scheme of the Chancellors Office. Maybe the next conference will shed some light on this.

By the way, being aware of a possibly parochial purport of our argument: look to the remarkably deviant Dutch pattern. We are nearly the antipodes of the Scots.
Figure 4: Government expenditures on legal aid by type of services

It is obvious that all systems spend more on legal representation than on legal advice. But as this figure shows, there is substantial variation: whereas the Australian ratio counts 7:1, England & Wales, Canada and Sweden come close to 5:1 (which is one and a half less) at length followed by the Dutch 2:1.
Combining both the subject matter and the type of services provided, this figure really underlines in a marvellous way the differences in legal aid priorities set by our respective governments. While criminal representation gets priority (relatively spoken) in Scotland and Australia (more than 60% of the expenditures per capita) closely followed by Canada (50%) and Sweden (45%), both England & Wales and the Netherlands spend most on help in civil procedures (up to 44%).

Also with respect to this item the Dutch pattern seems a rather deviant one.
For what purposes our legal aid money is used for? To what extent do we see variation in the proportion of the social welfare law problems within the caseload of our systems? And how this relates to the importance of the salaried sector within the total legal aid system? This kind of questions may rise. We only can start here with some tentative hunches about the answers we are looking for.

Figure 6: Number of certifications for civil & criminal law (per 100,000 population)

At least with regard to the shading this picture looks like the mirror image of figure 3 already presented. But be aware, whereas figure 3 informs us over the total costs of legal aid systems per capita, this one relates to the number of legal aid certificates for both the criminal and the civil side.

Look to the remarkable similarity of the Canadian and the Scottish system as far as it concerns the balance of numbers in civil as well as criminal certifications. But both systems differ as even remarkably in their total numbers. Far from thinking that the Canadians see themselves confronted with less legal problems, we have to keep in mind the differences in culture that may be much more an explanatory factor. Or stated in the way a Canadian Law Society official said: "A lot of people prefer to pay even if they can get a certificate. They have the perception of a better service" (LAG-report, p. 82).

Secondly, it has to be noticed that both the Dutch and the English legal aid system seem to be much more sensitive to the civil legal problems in daily life compared to the other systems, especially the Australian.
Figure 7: Pattern of civil law problems in granted certifications for three countries

Here we concentrate on the pattern of services the private profession provides: the traditional sector within legal aid systems. Firstly, we see the striking similarity in the dominance of the family law problems within the systems under review. These problems count for at least one third of all the problems legal aid systems have to deal with. Secondly, we have to point to the different shares social welfare problems—including immigration, debt/consumer, welfare benefits, employment and housing—have in the workload of the three countries compared: Scotland 19%, England & Wales: 36% and The Netherlands 43%. We believe this pattern illustrates in a rather nice way the often stated thesis on legal aid system's differences in responsiveness to welfare state problems.

Granted certifications, the Netherlands

- some problem areas of civil law

- family (33.6%)
- personal injury (6.5%)
- housing (6.9%)
- employment (10.5%)
- welfare benefits (11.1%)
- debt/consumer (9.6%)
- immigration (14.1%)
- other civil (7.7%)

Granted certifications, England & Wales

- some problem areas of civil law

- family (39.7%)
- personal injury (9.5%)
- housing (7.4%)
- employment (15.2%)
- welfare benefits (5.1%)
- debt/consumer (7.0%)
- immigration (1.6%)
- other civil (14.3%)

Granted certifications, Scotland

- some problem areas of civil law

- family (46.1%)
- personal injury (18.7%)
- housing (6.2%)
- employment (2.6%)
- welfare benefits (3.1%)
- debt/consumer (7.4%)
- immigration (0.0%)
- other civil (15.9%)
Regarding the responsiveness thesis we thought it would also be nice to compare the pattern of problems dealt with by the private legal aid sector to those by the salaried sector in our country (for reason being the only system that provides us the data we could rely on).°

Comparing the average law firm to the average legal aid centre we see law firms lawyers concentrate themselves much more on the traditional private practice fields such as family law (22%), criminal law (14%) as well as business law (14%) (the last percentage 'hidden' in 'other civil' law). Legal Aid Centres lawyers focus their attention much more on labour law (20%) as well as administrative law (including immigration (5%) and social security (14%)).

Figure 7: Patterns of time spend on different problem areas by Dutch law firms and Legal Aid Centres (1992)

The figures are based on a 1991 CBS survey among the most important legal services providers. Percentages are computed on the basis of the number of hours spend by lawyers.
Main Policy Issues

Australia

1. The major political issue affecting legal aid remains integration with the mainstream legal services system. Currently, the organisation and regulation of the private lawyers' services industry, the administration of state legal services, and access of ordinary people to lawyers and state legal machinery are political issues.

2. A Senate parliamentary committee has recently reported on the cost of Justice. The federal Trade Practices Commission is investigating anti-competitive practices in the professions. An expert committee appointed by the federal Attorney-General is investigating proposals on which to make recommendations for legal services reforms. Some of these developments may give rise to opportunities to reconsider legal aid policy and services.

3. Reforms to the private legal professions, a likely sharp rise in the numbers of law graduates and changes within the organisation and structure of lawyers' service enterprises will also affect legal aid. In some cases, the effect will be advantageous. Deregulation and increasing numbers of barristers and solicitors may have an effect on cost and the availability of lawyers' services in fields of law used by ordinary people. On the other hand, the gap in the quality of services may increase and accessibility of lawyers in some suburban and rural areas diminish.

4. The Australian system still suffers from a serious lack of data about its operation at all levels. This is in part a resources and policy question. In part, it flows from the nature of federal government. A renewed effort by the central government and its Office of Legal Aid and Family Services to develop and coordinate legal aid and legal services research is an important policy issue.

Canada

No items mentioned

England & Wales

1. All debate over legal aid appears to be dominated by the ever-growing budget. In 1992-1993, the net cost to the tax-payer increased by 21%. The net cost per case has been growing at an average of around 10% for the last ten years.

2. Civil legal aid expenditure continues to be dominated by family work and by a divorce procedure which many argue is unduly adversarial and contentious. At the moment, the government is considering reforms to divorce procedure, whereby all those wishing a divorce will be forced to see a counsellor first, after which they must wait a year for a divorce. One proposal is that those wishing to apply for legal aid will first have to attend mediation: legal help will only be available where mediation has failed. Details of all these plans, potentially bearing a great impact on legal costs, are still unclear. Although the government would like to switch resources to conciliation and mediation, it will be extremely difficult to exclude lawyers from an area of work which they currently dominate.

3. There are worries over the quality of service provided by lawyers. Solicitors are particularly poor at giving information about costs, and about the legal aid 'statutory charge'. The Royal Commission on Criminal Justice has highlighted the poor advice solicitors provide to defendants in police stations. The legal Aid Board's franchising scheme is a first attempt to monitor the quality of service solicitors provide.
The Netherlands

1 Even at ours the legal aid debate is dominated by the economic questions. To illustrate: before the new Act came into effect, the proposed financial contribution scheme had to be changed for raising clients contributions. Given the predicted decrease in eligibility as well as the inadequacy in remuneration as perceived by the bar, the money item will be an the agenda for a long time from now. One of the issues that should given high priority - at least from our point of view - is the way the index mechanism built into the actual scheme will work out to eligibility level unless we want to accept our landscape will dramatically change next decade.

2 A question closely connected to the previous one relates the divorce procedure reform. Pending legislation explicitly intends to exclude divorce procedures from legal aid. Whereas up to now government has not been able to create a simple do-it-yourself divorce procedure, it may be far from easy to reach the goal as stated. From the socio-legal research experience we may safely conclude that only financial stimuli forcing people to abstain from lawyers' services will prove not to be sufficient to create a better and cheaper way of dealing with the problems at hand.

3 Last but not least, the implementation of our new statute especially with regard to the 'quality' standards lawyers' have to meet will be a heavy job. To succeed on this we have to cooperate with the Dutch Bar. With respect to this the RDC has initiated a research project on the structure of private practice. Among others this research explicitly focuses on the question of what kind of quality standards can bee seen as adequate stimuli for lawyers to improve their work on legal aid.

Scotland

1 In general: see England & Wales.

2 There are no proposals concerning divorce and mediation whereas there also are no plans to introduce the franchising model here either.

Sweden

No specific items mentioned

USA

1 Refocusing and improving the work done for client in local programs, with an emphasis on work that is more relevant to underlying causes and conditions of poverty and less concentrated on ameliorating the unending, routine symptoms of lives lived without financial resources.

2 Repairing a national infrastructure that was under attack between 1981 and 1993.

3 Developing performance aspirations, and related measures, which effectively consider the outcomes of cases rather than just the qualifications of the staff or the steps taken in handling matters. Communicating those aspirations and handling measures to lawyers and paralegals and local boards of directors in a way that positively affects their behaviour.
APPENDIX

THE LEGAL AID INTERNATIONAL SCENE

Key figures

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- population (mln) 15 17 49,9 4,9 8,7 26,6
- GNP in bln US $ 269 292 885 190 505
- GNP per capita in US (1000 $) 17,9 17,9 15,3 21,7 19
- % unemployed 9 8,5 9,9 8,4 7,5
- government expenditures in US $

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- % justice expenditures expressed in GNP 0,8 0,9 2,4 1,2 2,9

2. The organisation framework

Legal service providers

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### 3. Funding framework

**Government gross expenditures in US $**

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**Per head of the population in US $**

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**Per legal service provider in 1,000 US $**

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4. The use of legal aid providers

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