

Justice
Information
Report



LEGAL AID SERVICES IN CANADA

1979/80

Report prepared on behalf of the
Implementation Work Group on
Justice Information and Statistics

87826

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Report

LEGAL AID SERVICES IN CANADA

1979/80

Report prepared by:



National Centre national
Legal Aid d'information
Research et de recherche
Centre sur l'aide juridique

on behalf of the:

Implementation Work Group on
Justice Information and Statistics (IWG)

Ottawa
April 1981

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JUSTICE INFORMATION REPORT
LEGAL AID SERVICES IN CANADA 1979/80

ERRATA

BRITISH COLUMBIA.

A. Add new Table Note 50 on page 96.

50. In Table 2, p.53 the figure shown as the federal government contribution reflects the federal "advance" of funds as of May, 1981. When the final federal payment is received, this figure and the corresponding figure for the provincial share will be adjusted accordingly.

The provincial contribution to revenue is the actual grant made for legal services less the federal contribution.

Revenue and expenditure figures do not include revenues and expenses for the Native Courtworker and Counselling Association. The total expenditures for the Association's activities in 1979-80 were \$1,140,512.

The amount shown as expenditures for "Delivery of Services by Salaried Staff" (\$3,966,409) includes expenses for all Community Law Offices.

B. Tables 17, 18 & 19 have been amended. See the reverse side of this sheet.

NORTHWEST TERRITORIES

A. Add new Table Note 51 on page 96.

51. In Table 6, p.47, the territorial contribution to revenue was \$217,676. Total revenue was \$452,919.

B. See reverse side for changes to Table 18.

ONTARIO

A. Add new Table note 52 on page 96.

52. In Table 8, p.64, the figures for expenditures for "Delivery by Salaried Staff" includes an amount of \$3,105,389 for independent clinics, which are funded by the O.L.A.P. Actual expenditures by staff were \$363,776., all of which qualified as Criminal under the F/P Agreement.

B. The above results in changes in Table 17. See the reverse of this sheet.

QUEBEC

A. Add new Table note 53 on page 96.

53. The actual contribution by the provincial government was \$28,808,285. Other revenues came to \$549,506. Total revenues were \$35,949,556.

B. Table 18 is amended. See the reverse of this sheet.

C. Page 73, line 1, should read "During 1979-80, the Provincial Commission spent \$348,235....".



Office of the Deputy
Provincial Secretary
for Justice

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Justice

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March 31, 1981

TABLE 17: Expenditures of Legal Aid Plans, by Object, for Provinces, 1979-80

| | Total | Administration and Direct Services | | Sub-total | Payments to Private Bar | | | | | | | Funding of autonomous agencies & projects | |
|------------------|------------|------------------------------------|------------------|-----------|----------------------------|------------------|----------------------------|---------------|--------------|------------------------|---------------------|---|-----------|
| | | Sub-Total | Admin. & General | | Payments to Clinics/branch | Criminal Matters | | Civil Matters | | | Provincial offences | | |
| | | | | | | Duty Counsel | Other fees & Disbursements | Sub-Total | Duty Counsel | Other fees & disburse. | | | |
| 1=2+5+13 | 2=3+4 | 3 | 4 | 5=6+9+12 | 6=7+8 | 7 | 8 | 9=10+11 | 10 | 11 | 12 | 13 | |
| British Columbia | 11,620,870 | 4,640,244 | 673,835 | 3,966,409 | 5,593,744 | 4,170,159 | 306,475 | 3,853,179 | 1,399,976 | | 1,395,976 | 27,609 | 1,386,882 |
| Ontario | 36,637,359 | 7,078,138 | 6,714,362 | 363,776 | 26,145,136 | 16,308,563 | 1,863,466 | 14,445,097 | 9,808,841 | 971,890 | 8,836,951 | 27,732 | 3,414,085 |

TABLE 18: Expenditure of Legal Aid Plans, by Source of Fund for Provinces, 1979-80.

| Province | Total | Government | | | Lawyers Trust Account Interest | Client Contribution & Recoveries | Other |
|-----------------------|------------|------------|-----------|------------|--------------------------------|----------------------------------|---------|
| | | Sub-total | Federal | Provincial | | | |
| | 1=2+5+6+7 | 2=3+4 | 3 | 4 | 5 | 6 | 7 |
| British Columbia | 11,620,870 | 10,795,597 | 2,416,473 | 8,379,124 | 612,800 | 56,658 | 155,815 |
| Quebec | 35,994,760 | 35,305,189 | 6,451,700 | 28,853,489 | | 140,065 | 549,506 |
| Northwest Territories | 452,919 | 435,352 | 217,616 | | | 17,567 | |

TABLE 19: Percentage of Legal Aid Expenditures, Excluding Administration and Special Programme Costs spent on Services provided by Private Practice Legal Professionals and by Salaried Staff, for Provinces with "Mixed" delivery systems, 1979-80

| Province | Percent Expenditures Private Practice | Percent Expenditures Salaried Staff |
|------------------|---------------------------------------|-------------------------------------|
| British Columbia | 58.5 | 41.5 |

Mr. Roger Tassé, Q.C.
Deputy Minister of Justice
Chairman of the Justice Information Council
3rd Floor, Justice Building
Kent and Wellington Streets
Ottawa, Ontario
K1A 0H8

Dear Roger:

The Implementation Work Group, established in June 1980 and mandated to implement the concept of a Justice Statistics Satellite Centre, accepted the responsibility of developing a legal aid information report by March 1981. Through the good offices of your Department this task was undertaken by the National Legal Aid Research Centre.

Mr. Robert R. O'Reilly, the Director of the Centre, assumed responsibility for this Report. We believe you, the other members of the Justice Information Council and those working in the area of legal aid will find to be useful and well worth the effort it entailed. Our thanks are due to John Charles Clifford, Research Assistant with the NLARC, and to the Directors of Legal Aid in the various jurisdictions for the cooperation they gave so willingly to Mr. O'Reilly.

Yours sincerely,

Don Sinclair

D. Sinclair
Chairman
Implementation Work Group

LEGAL AID SERVICES, 1979-80:
A DESCRIPTIVE ANALYSIS OF CANADIAN LEGAL AID SERVICES

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PREFACE

Legal services for Canadians who are unable to obtain counsel with their own resources have become a standard feature of Canada's system of justice. Such services, once totally dependent on the generosity of individual lawyers, are now generally available to all eligible persons due to the cooperation of lawyers and governments.

The present report briefly sketches the development of legal services and agencies in Canada and in each Province and Territory. The structure, activities and plans for the future of the agencies are reviewed. The services which they provided and the resources allocated to these activities are presented.

It is anticipated that this is but the first in a series of annual reports on legal aid statistics for Canada.

The authors are indebted to the administrators of all the provincial and territorial agencies, and to the staff of the Department of Justice who provided information and reviewed drafts of this report. The authors remain solely responsible for any errors or omissions.

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LEGAL AID IN CANADA

Background

Previous descriptions of Canadian Legal Aid plans have cited the universal Declaration of Human rights, proclaimed by the U.N. General Assembly in 1978 the International Agreement on Civil and Political Rights, adopted by the same assembly in 1966, and the 1960 Canadian Bill of Rights, as the impetuses which led to the eventual institutionalizations of legal aid plans in Canada. As a signatory of the U.N. Agreement, Canada committed itself to respect the legal rights of every individual, including the right to legal representation, free of charge if it is beyond the financial means of the individual, every time the interest of justice so demands it; further, Canada's Bill of Rights provides for the right of any individual under arrest or under detention to retain and instruct counsel without delay.

Public services, to respond to the newly recognized rights to legal representation, have evolved to meet the perceived needs of the respective provinces and territories. The responsibility for provision of legal aid is divided between the federal government under its exclusive authority in matters of criminal law under the British North America Act, and the provincial governments which have been vested by the same Act with exclusive legislative authority for the administration of justice and for property and civil rights. "Legal Aid" has developed to include a variety of services, generally described as remedial and preventive approaches. Canadian legal aid plans spend most of their budgets on remedial approaches, namely in representation of clients in court and administrative matters, drawing documents, negotiating settlements and providing advice. Some provinces experiment with preventive law programs such as seminars, lectures, literature production, radio and television programs, and public school curriculum development. Some of those preventive or "public legal education" initiatives are noted in the descriptions of individual legal aid plan activities. For the purposes of this report no data has been included concerning Courtworker Programmes which operate in several jurisdictions and which provide services which fall generally within the legal aid sphere. Neither have we included descriptions or data concerning the activities of other public and private bodies which are undertaking various preventive and remedial legal aid initiatives.

Given the multitude of creative contemporary responses and the general public acceptance of legal aid in Canada, it has become clear that the need for legal aid services runs deep; the institutionalization of legal aid is resulting in profound impact on Canada's social fabric. It should be said, however, that evaluation is not a function of this report.

Federal-Provincial Agreements

The joint responsibility for legal aid has been confirmed in agreements since 1972 when the federal Department of Justice began cost-sharing legal aid for criminal cases. The federal government pays the lesser of 90% of provincial expenditures for criminal legal aid or

an amount determined by an arithmetic calculation based on population increases. The main conditions under the agreements are as follows: legal aid is to be made available to any eligible person charged with an indictable offence against an act of Parliament or who is subject to proceedings under the Extradition Act or the Fugitive Offenders Act; legal aid is to be made available, at the discretion of the province, to any eligible person who is charged with a federal summary conviction offence or an offence subject to juvenile delinquent legislation if conviction might result in imprisonment or loss of livelihood; legal aid is to be made available on crown appeals in cases falling into categories outlined above; the province has the responsibility to take reasonable measures to see that a lawyer is made available to the eligible person as soon as he has been arrested or detained; the province establishes financial conditions to be met by applicants to receive legal aid, and the province administers same, provided that the test is flexible so that an applicant need not be required to hire a private lawyer if in doing so he would have to contract major debts or sell modest assets; legal aid for criminal matters cannot be refused on grounds of residence alone; an applicant for legal aid is to be allowed choice of lawyer in the most serious cases where the possible penalty for the accused is life imprisonment; for all other cases the province is free to determine whether legal aid is to be delivered by private or salaried lawyers; the province sets the fee schedule for legal aid lawyers; the federal government is represented on the governing body of each provincial legal aid plan; financial terms are reviewed every three years and an agreement may be terminated by either party on one year's written notice. Legal aid agreements with the territories provide for 50% federal contributions, up to specified maxima for criminal and civil matters.

While the agreements do not extend to legal aid coverage in civil cases for the provinces, eight provinces provide coverage, to varying degrees, for remedial legal aid in civil cases for eligible applicants, while Prince Edward Island and New Brunswick do not.

Administration and Delivery Systems

Nine provincial legal aid organizations and the two territorial agencies function independently of government. Only Prince Edward Island offers legal services through a department of the government. In Ontario and New Brunswick services are provided by legal aid committees of the provincial law societies. In the other seven provinces, autonomous bodies administer the plans; they were all created by statute except Alberta which is governed by an incorporated society. The six autonomous bodies are normally made up of appointees of the provincial bar and of the Provincial Government. The two territorial plans are administered by legal Aid Committees whose members are largely appointed by and responsible to the Territorial Commissioners. Funds to operate all legal aid plans come mainly from the federal and provincial governments, with smaller amounts coming from client contributions, cost recoveries, law foundations and interest on revenue investment.

As mentioned in the description of federal-provincial legal aid agreements, each province is free to determine the method of delivery of legal aid services while any eligible legal aid applicant is to be allowed his choice of counsel where he is liable to incur a sentence of life imprisonment.

Three delivery models for remedial legal aid services are utilized in the 12 Canadian jurisdictions. The two Territories, New Brunswick, and Alberta operate on the *judicare* model in which the majority of services are provided by private practice lawyers who bill the legal aid plan; Ontario's legal aid plan is delivered mainly on the *judicare* model, but a significant dollar amount is spent on delivery by salaried staff. Ontario may therefore fairly be grouped with those jurisdictions which operate a mixed system, providing services through both private lawyers and community legal centres with staff lawyers. The other provinces which provide a mixed system are Newfoundland, Quebec, Manitoba, Saskatchewan and British Columbia. The provinces of Nova Scotia and Prince Edward Island provide legal services mainly by way of the salaried staff model in which the bulk of services are provided by salaried lawyers employed in community clinics by legal aid societies and their governing bodies.

Some plans assist with the funding of other groups which provide forms of legal aid; among those groups are student legal aid clinics, preventive law programs, public legal education and research projects.

National Legal Aid Research Centre

The National Legal Aid Research Centre is supported by the provincial and territorial legal aid organizations, and the federal government, to provide a national service for legal aid research, documentation, resource facilities, information exchange and publications.

The Centre was established by the Centre de recherche en droit public of the Université de Montréal in June 1976. Financial support was given in the first year by The Donner Canadian Foundation, provincial legal aid organizations, the Federal Department of Justice, the Université de Montréal and the Alberta Law Foundation.

The Centre began publication of the *Canadian Legal Aid Bulletin* as a bimonthly periodical in October, 1977. Beginning in January, 1981, the Bulletin was modified and became a quarterly journal publishing articles, reviews and commentaries.

In 1979, the Centre was moved to the University of Ottawa. It is governed by a nine person Board of Directors. The Secretary of the Board is the Secretary of the Provincial Legal Aid Directors. In addition, the Board is composed of five members elected by the Annual Meeting of the Provincial Legal Aid Directors, two members representing the Federal Department of Justice and one representative of the University of Ottawa.

Comparison of Services: Current Limitations

Although there have been several reports produced in Canada about legal aid programmes, it is generally conceded that the statistics accompanying such reports are of limited use, and can even be misleading. Within each province, most statistical data is generated as a result of financial accounting procedures. They do not serve management functions and are not compatible or comparable with data from neighbouring provinces.

Those provinces which operate a *judicare* model of legal aid, whereby services are provided by the private bar, possess reliable systems designed to control billings and pay the lawyers for services rendered. Since services are provided under certificates issued on a case-by-case basis, aggregated data are frequently available. Provinces which depend more on salaried staff to provide services tend to have less complete and less reliable data systems since financial control systems focus to a lesser extent on the completion of individual case assignments.

As a consequence of the lack of uniformity in existing legal aid systems there is a lack of universally accepted definitions of legal aid services and units. As a consequence data on legal aid cannot be accepted at face value and must be examined and defined. It is generally accepted that few items are operationally defined in a uniform manner within a province let alone across the country.

F.H. Zemans, writing about legal aid in Canada in a recent volume containing descriptions of legal aid plans in several countries, "Perspectives on Legal Aid", makes clear the need for reliable legal aid information systems:

We need to have the provincial plans co-ordinate their record keeping and statistical information so that the legal researcher can compare the cost of legal aid in each province on a case-to-case basis; can compare the cost of the private practitioner with the public defender; and based on documented information make recommendations about the future of legal services... Ultimately the role of the legal researcher will be to integrate statistical information regarding cost effectiveness to compare the social and economic impact of various models of delivery of legal services and to recommend to government the best means of responding to the needs of the recipients of legal aid.

A program proposal, for the development of compatible legal aid statistics systems by the National Legal Aid Research Centre is currently under consideration by the Canadian Centre for Justice Statistics.

The Future

From modest, tentative beginnings legal aid in Canada has won public acceptance. Legal aid services have been institutionalized and currently receive a small but significant proportion of the total budget allocated to justice services in Canada. The tasks of legislators and managers will be to enhance and extend existing services. Members of the legal profession have always favored and contributed to some form of legal aid; they have been very influential in shaping the present services. Yet the emergence of legal aid agencies does and will continue to have an impact on the legal profession and on the administration of justice. Some of these influences can be discerned in part; other can only be guessed at. The collaboration of legislators, managers and lawyers will be required to ensure an efficient and adequate delivery of appropriate legal services to the Canadian community.

Aside from provisions of the federal-provincial agreements little consensus exists with respect to the provision of legal aid services in Canada. The existing uniformity in criminal legal aid representation covers only a portion of the remedial function of legal aid. Remaining on the list of unmet remedial legal aid needs are the full range of legal services (advice, representation, negotiation, drafting) for civil matters. Included in such representation are litigation and the range of legal matters which are not litigated and which to date have received little attention from the legal aid plans. Included in the latter group are the clients who wish to embark on profit or non-profit initiatives and who will probably fail without legal advice. Some non-profit enterprises have been granted legal aid in isolated instances, for limited purposes, and by experimental projects, also for limited, clearly-defined purposes.

In addition to the remedial legal aid needs, preventive programs and experiments proceed on random paths; no national policy has yet been developed on public legal education programs. Innovations, fostered by funding assistance to "other" programs, shall continue to identify and meet special legal needs, but it is suggested that a consolidated policy making effort by the 12 legal aid plans could lead to more effective development of remedial and preventive legal aid. When compatible statistics are produced by the legal aid plans it is hoped that such information will provide a basis for comparing services and fostering improved public service.

ALBERTA

THE LEGAL AID SOCIETY OF ALBERTA

History

Prior to 1970, there was no organized legal aid plan in Alberta. In criminal matters the Attorney General of Alberta in co-operation with the members of the Bar permitted Judges to appoint counsel for people charged with indictable offences so that they would be represented by counsel at their trials. In serious criminal matters counsel were appointed by the Deputy Attorney General or his agent prior to the preliminary hearing. The Attorney General always recognized the responsibility for payment of counsel so appointed and they were paid on the same basis as agents of the Attorney General were paid in rural areas where they had part-time employment.

In civil matters a formal scheme was set up under the "needy litigant" rules contained in the Consolidated Rules of the Supreme Court of Alberta. Under this procedure all Court House charges and Court Reporters' fees were absorbed by the Department of the Attorney General.

The lawyer who received the appointment performed his services gratuitously unless a recovery was made, and in that event he received such remuneration as was specifically authorized by the local Needy Litigant Committee; otherwise the only payment lawyers ever received was for party and party costs in the event that appointed counsel was able to collect them.

In 1963 approval was given by the Attorney General and the Law Society to operate a pilot project in Edmonton in co-operation with the Edmonton Bar Association to provide extended criminal legal aid services, particularly at the Magistrates Courts level. After some adjustments this was extended to the rest of the Province.

In 1967 another pilot project was started in Edmonton to provide comprehensive legal aid coverage in both civil and criminal matters. In civil matters qualified applicants were able to see a lawyer in his office for a short time for a \$5.00 "deterrent" fee.

The legal aid plan, as it then was, had no legislative base and was operated under an informal agreement between the Provincial Government and the Law Society. Government participation consisted of providing the funds necessary to operate the scheme and participating on the Legal Aid Committee.

Eligibility was not decided on the basis of a means or needs test. Applicants had no choice of counsel. Choice of counsel was the prerogative of the Legal Aid Committee. However, if a disagreement arose between an applicant and his lawyer, the applicant could request the services of another lawyer. The Committee also kept a list of experienced counsel to call upon in cases requiring particular expertise or in very serious or complicated matters.

On July 1, 1970, an agreement was signed between the Law Society of Alberta and the provincial government whereby the Law Society was empowered to establish, maintain and operate the legal aid plan to provide necessary legal services to qualified applicants.

The Legal Aid Society of Alberta was incorporated on May 24, 1973 under the Societies Act of Alberta and that body is now responsible for the administration of the legal aid plan.

On January 31, 1973 the Province of Alberta and the Federal Government signed the first cost-sharing agreement for the provision of legal aid in criminal matters.

New agreements between the Government of Alberta and Law Society of Alberta and the Legal Aid Society of Alberta were concluded during 1979-80 and the legal aid rules were incorporated into those agreements. Co-operation among the department of the Attorney General, the Law Society and the Legal Aid Society was reported by the plan to be continuing at a very satisfactory level.

Plan, Structure and Operation

There is no specific legislation regulating legal aid in the province. The plan is operated by the Legal Aid Society of Alberta. A Board of Directors, whose members are appointed by the Law Society and the provincial government, is responsible for policy matters under the plan. The Board also hears appeals from refusals to grant legal aid and decides whether individual cases should be appealed to the Supreme Court of Canada. The membership of this Committee consists of 15 members, which include members of the Law Society and lay representatives. The provincial director is responsible for the administration of the plan in the province.

In addition to the Board of Directors, there are twelve regional legal aid committees throughout the province, in Edmonton, Calgary, Grande Prairie, Drumheller-Hanna, Lethbridge, Red Deer, Medicine Hat, Peace River, Wetaskiwin, Vegreville, Fort Macleod and St. Paul. The autonomy of the regional committees in the operation of the legal aid plan is limited only by:

- the policy guidelines set out by the Board of Directors;
- the appellate function of the Board of Directors on refusals of legal aid by regional committees;
- applications for appeals to the Supreme Court of Canada.

The legal aid service has permanent offices in Edmonton, Calgary, Lethbridge, Red Deer, Peace River, Wetaskiwin, Grande Prairie, Medicine Hat, and St. Paul. The executive director of the Legal Aid works out of the Edmonton office with Southern, Northern and Finance Directors involved with the day to day operations of the plan. In the judicial districts of Edmonton, Calgary, Lethbridge, Red Deer, Peace River,

Wetaskiwin, Grande Prairie, Medicine Hat and St. Paul, staff are employed to handle routine applications and the regional committees meet regularly to consider only cases with special circumstances, applications for appeal to higher courts and appeals from refusals by staff. Although regional committees are not policy setting bodies they make recommendations on policy matters to the Board of Directors.

In all regions other than those nine above, the regional committee is responsible for the issuance of legal aid to an eligible applicant in its region. The chairman of each regional committee is a lawyer and the public is represented on every regional legal aid committee.

Once an applicant for legal aid is found to be financially and legally eligible for services, the committee appoints counsel for him from a list of local lawyers. Cases are assigned on a rotational basis. A legal aid client shall only be entitled to retain and instruct his choice of lawyer from a roster of the Legal Aid Society where he has been charged with a criminal offence for which a minimum penalty is life imprisonment, or where in the opinion of an officer, a matter before the board of review pursuant to section 547 of the criminal code requires a choice of counsel, and a lawyer has indicated that he is prepared to act for him pursuant to the Legal Aid Society of Alberta rules.

Thus, the plan utilizes a rotational - referral delivery system. The society does not employ full-time salaried lawyers for the delivery of legal services as such.

In 1979-80 the plan employed Legal Aid Officers to work out of the Legal Aid Offices in Edmonton, Calgary, Lethbridge, Red Deer, Peace River, Wetaskiwin, Grande Prairie, Medicine Hat and St. Paul. Those staff members have the responsibility of interviewing applicants for legal aid who are in custody in the municipal jails, juvenile detention centres, remand centres and other places of incarceration.

The staff also appear by arrangement in the Alberta Mental Hospitals at Oliver and Ponoka and other related facilities. The staff, after attending at the jails and lock-ups, sit in criminal court for the duration of these sittings, accepting applications and making referrals.

The plan also maintains a roster of private lawyers who function on a rotational basis as Duty Counsel in the provincial and juvenile courts of Edmonton and Calgary. Each Duty Counsel provides summary advice to persons in custody, assists them in the completion of legal aid applications, appears in court on behalf of applicants, acts as intermediary between the accused and interested persons or relatives and pursues where necessary the further provision of legal aid services for applicants.

The duty counsel program to other centres in Alberta has been approved and was in early implementation stages at the close of fiscal 1979-80.

COVERAGE

Criminal Law

According to the Legal Aid Society of Alberta rules as approved by the Law Society and Legal Aid Society on May 31, 1979, the provisions of the Federal-Provincial cost sharing agreement on criminal legal aid, are generally confirmed; in addition, the rules indicate that legal aid shall be provided to a financially eligible applicant in respect of an appeal by an accused of a matter normally accepted for legal aid, where, in the opinion of the regional legal aid committee, the appeal has merit or likelihood of success, or both. Further, the rules specify that the financially eligible applicant shall be provided with Legal Aid in respect of an appeal to the Supreme Court of Canada, and in those cases, the rules require opinions from the applicant's lawyer and/or an independent lawyer to determine whether or not to provide legal aid. The Board of Directors of the Legal Aid Society is vested with discretion to define circumstances under which an applicant may be refused legal aid in respect of criminal matters: by reason of an applicant being charged with an offence the same or similar to one for which he has previously been convicted; or, for reason of the total amount of legal aid that the applicant is currently receiving or has received from the society.

Civil Matters

According to the Legal Aid Society of Alberta rules, coverage is available to a financially eligible applicant in respect of any civil matter where the matter is subject to the jurisdiction of the courts, where a reasonable person of modest means would commence or defend the action.

For civil matters, the Legal Aid Society provides legal aid to financially eligible resident Albertan applicants, for matters that are subject to the jurisdiction of the courts; the matter must be referred to a lawyer, and the lawyer must recommend that an action be commenced on behalf of a legal aid client, and the Legal Aid Society must be of the opinion that the legal cost of commencing or defending the action is reasonable when compared to the relief sought and the matter has merit or a likelihood success, or both. Following the omnibus coverage provision, there are exclusions: for example, in divorce matters, legal aid is not available as a matter of right unless there is an urgent physical, legitimizing, or other compelling need. Further, the Legal Aid Society may refuse to provide legal aid where there is a reasonable payment into court or likelihood of settlement. The society may provide legal aid to financially eligible applicants who are respondents in divorce actions, in certain circumstances, and to other financially eligible applicants in matrimonial causes, custody and adoption matters, real property matters subject to certain exclusions, estate matters, motor vehicle matters and some matters for non-residents, in certain circumstances. Similar to the rules respecting criminal appeals, in civil appeals to the Supreme Court of Canada, the Legal Aid Society is required under the rules to obtain a legal opinion from both the applicant's lawyer and an independent lawyer as to the merit or likelihood of success, or both.

Financial Eligibility

An applicant must demonstrate to the appropriate Regional Legal Aid Committee or Legal Aid Officer that he/she is not capable of retaining a lawyer without causing undue financial hardship to himself or his family, or without requiring that he dispose of modest and necessary assets. Circumstances such as present income, cash on hand, earnings during the past year, assets, family responsibilities, ability to pay, ability of family to assist and other relevant matters are considered. The applicant is expected to use all necessary and ordinary means of retaining a solicitor privately before applying for legal aid.

Pursuant to the rules as approved by the Law Society and the Legal Aid Society on May 31, 1979, the guidelines, effective May 1979, for determining financial eligibility of applicants, are as follows:

| <u>Number of Members</u> | <u>Gross Family Income for the Year Family Preceding the Date of Application</u> |
|--------------------------|--|
| 1 | \$ 8,700 |
| 2 | 9,960 |
| 3 | 11,040 |
| 4 | 12,000 |
| 5 | 12,960 |
| 6 | 14,520 |
| 7 | 16,080 |

In determining the financial eligibility of an applicant, the regional legal aid committee and the Board in addition to considering the income and asset guidelines, may consider assets possessed by the applicant and the liquidity or securability of those assets, the amount and nature of the indebtedness of the applicants and any other matter which the Regional Legal Aid Committee or the Board considers relevant. The financial eligibility rules do not apply to an individual who receives legal aid from Duty Counsel.

There is no residency requirement for applicants for legal aid in criminal matters in Alberta in accordance with the terms of the federal-provincial cost-sharing agreement. In civil matters, an informal reciprocity arrangement has been worked out with most other provinces which results in appointments being made for persons who reside outside the province of Alberta when they are sued civilly in the Alberta courts. A similar arrangement benefits Alberta citizens who are engaged in litigation in other provincial jurisdictions.

TABLE 1
Legal Aid Revenue and Expenditures 1979-80 : Alberta

Population: 2,068,800

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|---|---------------------|--|---------------------|
| Government of Canada | 2,008,800.00 | | |
| Provincial Government | 2,509,200.00 | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 418,818.00 | 182,086.00 | 236,732.00 |
| Other | 146,866.00 | | |
| Total Revenue | 5,083,684.00 | | |
| EXPENDITURES | | | |
| Administration | 1,276,677.00 | 951,957.00 | 324,720.00 |
| Delivery of Services by Salaried Staff | 0 | " | |
| Delivery of Services by Private Lawyers | 3,278,525.00 | 2,540,460.00 | 738,065.00 |
| Other Programs | | | |
| Total Expenditures | 4,555,202.00 | 3,492,417.00 | 1,062,785.00 |
| Less Contributions and Recoveries | 418,818.00 | 182,086.00 | 236,732.00 |
| Net Expenditures | 4,136,384.00 | 3,310,331.00 | 826,053.00 |
| Total Expenditures per capita | 2.20 | | |
| Net expenditures per capita | 2.00 | | |
| Net Criminal F/P per capita | 1.60 | See Table Notes: 5,7,8,23,25, 26,32,43,45 | |
| Net Provincial Summary Conviction and Civil per capita | .40 | | |
| Other Programs per capita | | | |

BRITISH COLUMBIA

LEGAL SERVICES SOCIETY

History

Until 1952, no organized system of legal aid existed in British Columbia, although voluntary services were provided by some members of the legal profession. In 1949, the Victoria Bar Association started a free legal aid clinic and in 1950, the Vancouver Bar Association opened a similar clinic. In 1952, the Law Society of British Columbia introduced a limited legal aid plan in which local Bar Associations established legal aid clinics throughout the province. These clinics publicized the availability of legal aid, screened applicants, gave summary advice, and referred deserving cases to private lawyers willing to act without fee. Coverage of the plan included both criminal and civil matters, although the types of cases handled were quite restricted. Financial eligibility was not fixed, but each case was decided on its merits.

In April 1964, the Attorney-General agreed to pay a modest honoraria to legal aid counsel in criminal cases only.

In 1969, law students from the University of British Columbia established several Legal Advice Clinics in the Vancouver area. This program is still in operation with sixteen legal advice clinics operating weekly. University law students give legal advice in minor matters and take on cases under the supervision of qualified practitioners.

A group of U.B.C. law students formed part of an organization called Inner City Services, and in 1971 they incorporated the Vancouver Community Legal Assistance Society (VCLAS). Funded federally, VCLAS established the first storefront community law office in Canada. The Society supervises the operation of the U.B.C. Law Students Legal Advice Clinics, provides direct services to persons referred from law student advice clinics, provides counselling to self-help groups, and engages in legal education and law reform. VCLAS also handles test cases, particularly providing assistance to anyone involved in a legal dispute which may be of significance to a class of socially disadvantaged persons.

In 1969, the Law Foundation of British Columbia was established and some of the interest earned on lawyers' trust accounts is paid to the Foundation to be used for legal services programs. In 1977, the Foundation provided \$943,000 in grants, almost 50% of its budget, for this purpose.

In 1970, the Law Society of British Columbia created the Legal Aid Society. Incorporated as a private Society under the Societies Act, its primary object was to provide legal advice and counsel to persons unable to afford the services of a private lawyer. Originally funded by the

Attorney-General's Department and the Law Foundation, it started with one office and three staff lawyers in Vancouver. The Society administered a combined private bar referral (judicare) and regional office system, with a network of 14 Legal Aid Offices (LAO's), 16 part-time area directors, and the Burnaby Criminal Defence Office.

The Legal Aid Society established a fee-for-service legal aid program in criminal cases in 1970, with private lawyers being paid for their services according to a criminal tariff schedule. The Vancouver office co-ordinated province-wide legal aid services through local county Bar Associations and started to augment services available in the Vancouver area. Coordination of county Bar Association programs led to the development of volunteer area directors in thirty centres throughout the province. Those directors would take applications for legal aid and financially eligible people were referred to lawyers in private practice. The Society depended upon the co-operation of private lawyers who agreed to represent clients in criminal cases for nominal fees and clients with family law or other civil problems for free.

In 1972, the Federal Government entered the legal aid field. The province of British Columbia, through the Attorney General's Department, and the Federal Government, through the Department of Justice, entered into a cost-sharing agreement for the provision of legal aid in criminal matters in the province. Additionally, the programs of Opportunities for Youth, of Local Improvement Programs, and of the Secretary of State provided funds to many private community groups which entered the public legal services field. Law students, Civil Liberties Associations, Elizabeth Fry Society, John Howard Society, and other concerned citizens received funding to offer general advice, including legal information, to citizens. In 1973, the Community Programs Branch of the Provincial Department of Human Resources funded a number of these organizations.

In 1973, the Provincial Government and the Legal Aid Society reached an agreement whereby the provincial government would pay an honorarium to private lawyers handling family law cases. The Society established a tariff schedule to cover family law cases referred to private practice lawyers. For all other civil matters, there was no tariff available and only disbursements were paid, with costs being recoverable and payable to the Legal Aid Society. In 1974, the criminal tariff was increased.

In 1972, the Legal Aid Society proposed the establishment of fifteen Legal Aid Offices throughout the province with each office to be staffed by two lawyers and two secretaries. Referrals of criminal and family law matters to members of the private bar was to continue under the Criminal and Family tariff program but staff lawyers would augment and improve legal aid services through acting as duty counsel in criminal court, providing summary advice on criminal and family law problems and co-ordinating the referral program. Staff lawyers would give legal advice and act on matters not covered by existing criminal and family law referral programs.

This proposal was approved by the Attorney-General in 1972 and the first regional office opened in Prince George in 1972. By the end of 1974, nine offices were in operation.

In 1974, the Provincial Government created the Justice Development Commission (JDC) to plan future development of the administration of justice in British Columbia, including the provision of legal services and the operation of legal aid programs. A Legal Services Division was established within the JDC and a Delivery of Legal Services Project was instituted in May 1974, to examine the best means of delivering legal services and the extent of provincial needs in this area.

The Legal Services Division also received applications and funded a number of community groups, some of which had previously been funded under OFY or LIP grants or by the Department of Human Resources. These groups provided quasilegal services utilizing para-professionals, sponsored public education programs, or operated store-front Community Law Offices (CLO's).

In December 1974, the Leask Report was published by the Legal Services Division. The report advocated a decentralized approach to the delivery of legal aid services which would allow each community to choose the type of legal services it needed. The locally established community legal programs would be assisted by a central administrative body to act as policy maker, to help define local problems, to assist in organizing, and to supervise the funding of local organizations.

This central body, the Legal Services Commission, was established in August 1975, under the Legal Services Commission Act. The Act provided for the management of public legal services in the hands of a body independent of both the government and the Bar.

The Commission was responsible for the provision of all legal services in the province. Most of the direct services were provided through the funding of other organizations. The Commission's functions included the planning, development, and co-ordination of legal services throughout the province, the training of paralegals, and aiding in the establishment and funding of organizations wishing to deliver legal services. The Commission also promoted research and experimental programs, consulted with provincial and federal governments, professional groups and educational institutions, and provided information to the public respecting the availability of legal services.

In March and April of 1977, the Commission held a series of seventeen community hearings in the Vancouver area. The purpose of the hearings was to examine the adequacy of legal services in the area. The Commission sought public opinions in order to help it plan the development of legal services in the future. The Commission issued a report on these public hearings.

In October, 1979, the Legal Services Society was created by statute to provide legal services in British Columbia; the Society was formed as a result of the merger of the Legal Services Commission and the Legal Aid Society of B.C.

Plan, Structure, Organization

The governing board of the Legal Services Society is composed of seven directors, 2 of whom shall not be lawyers, appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, and seven directors, 2 of whom shall not be lawyers appointed by the benchers of the Law Society after consultation with the executive of the B.C. Branch of the Canadian Bar Association. No director may hold office for more than 6 consecutive years; directors' terms are two years excepting one year terms for 3 of the first appointments by the Lieutenant Governor in Council and 4 of the first appointments by the benchers of the Law Society.

The Society is a Crown Corporation and is not covered by the Public Service Act. It therefore can engage employees and specialists as consultants as necessary to carry out its functions. The Commission can receive money from any source but receives the bulk of its revenue from the Ministry of the Attorney-General. The monies for the Society from the Ministry are appropriated by the Legislature.

The Legal Services Society Act differs from similar acts in other provinces in that it does not set out the terms of the Legal Aid Scheme that shall be applied in the province, leaving this matter to be determined by the Society. Nor does the act describe how legal offices will be organized. This area has been left principally to the Legal Services Society.

The Legal Services Society appoints an executive director who is responsible for the day-to-day administration of the Society's operations. The Society funds, either partially or totally,

1. the private Bar referral system (judicare) and the fourteen Legal Aid offices (LAO's), formerly operated by the Legal Aid Society;
2. the community groups or societies which operate the thirteen community law offices (CLO's) and the three Native community law offices;
3. the private courtworkers agencies;
4. the Native Courtworker and Counselling Association of British Columbia (NCCA);
5. the native Indian societies operating Native Friendship, Legal Assistance and Counselling Centres; and
6. the law students advice and legal aid clinics.

The Society is also required by its statute to ensure that "education, advice and information about law are provided for the people of British Columbia"; the Society therefore provides legal education and information to the public through its three legal education branches:

1. The Schools Program funds the development of curriculum materials to assist in the teaching of law in the schools. The program also organizes workshops for law teachers and publishes a legal education newsletter five times per school year;
2. The Library Services Program funds the legal collections of many of the public libraries in the province. In addition, the program organizes workshops to train librarians in the use of legal materials. Program staff also maintain a telephone information service through the Legal Resource Centre, a collection of legal materials, and a research facility for the public;
3. The Public Legal Education Program funds individuals and agencies to produce legal education projects for the general public. These projects include pamphlets, booklets, audiovisual productions and workshops explaining law to the lay person.

Legal Aid Offices

The Legal Services Society has inherited the offices and programs of the Legal Aid Society of British Columbia which was the major organization funded by the Legal Services Commission. The Society operates a network of fourteen regional Legal Aid offices and sixteen part-time area directors, and administers the criminal tariff and family tariff for the whole province.

The majority of criminal and family matters are referred to private practice lawyers. Persons who are charged with an offense or who have a matrimonial problem and who are financially eligible, can have a lawyer from private practice assigned to them, or the client can choose his own lawyer. The lawyer is then paid under the Legal Aid Tariff at a rate which might be one-third or less of normal fees.

Most of the Legal Aid offices are staffed by at least two lawyers and a secretary. Legal Aid offices process applications, provide duty counsel in criminal courts, give summary advice, and assign criminal and family cases to willing lawyers in private practice. Staff lawyers also provide some services directly to clients, especially in areas of the province where there is a shortage of lawyers and in legal matters where there is no tariff to pay private lawyers.

In communities where there are no Legal Aid Offices, applications and the referral to private practice lawyers are handled by a lawyer (part-time area director) appointed by the Society.

Other Legal Aid Services Society Programs

The Society retains private lawyers as Duty Counsel to visit those charged with criminal offenses in jails in Vancouver, Burnaby, and New Westminster. A program was recently developed to administer to the legal service needs of the more than five thousand people being held in the prisons and psychiatric institutions of the Vancouver area. The Society, as well, provides lawyers to act as inmates' nominees in the review hearings of inmates retained in Riverview Hospital.

Coverage

Criminal Law

In criminal matters coverage extends to anyone who is financially eligible and includes all matters under the federal-provincial cost-sharing agreement on legal aid. A limited number of provincial summary matters are also handled.

Civil Matters

Under the Family Law Tariff, in family matters such as divorce, custody disputes, annulments and maintenance actions, cases are referred to members of the private Bar. Coverage under the Tariff program extends to respondents, under the Family Relations Act; parents under the Protection of Children Act; children in any family law matter in which they need independent representation; and all family law matters in the County Court, Supreme Court of British Columbia, British Columbia Court of Appeal and the Supreme Court of Canada. Family Court (Provincial Court) applicants, who are usually seeking maintenance, custody or protection orders, are not covered by the family tariff program. Legal Assistance for these applicants is provided by the Ministry of the Attorney General.

In other civil cases, there is no tariff available to pay private lawyers for their services. These cases are generally handled by staff lawyers in the fourteen Legal Aid Offices or are referred on a rotation basis to private lawyers who have agreed to provide legal counsel without fee (these lawyers are reimbursed for out-of-pocket expenses). There are many kinds of cases which are not within the traditional areas of private practitioners for which the Legal Services Society has developed a particular expertise, including such matters as welfare appeals, unemployment insurance, worker's compensation, immigration and similar proceedings, as well as court matters involving bankruptcy, foreclosure, eviction, employment and similar problems. Exclusions from coverage include small claims court matters, breach of promise actions, proceedings under the Election Act, defamation actions and private prosecutions. Matters involving probate and letters of administration are also excluded except where there is undue hardship involved. For instance, estates will be handled if the estate would be wiped out by paying legal fees. Bankruptcy matters will be handled after receiving orders are given and on applications for discharge.

Eligibility

The Legal Services Society does not use a fixed income cutoff. Instead, a discretionary test is applied: a person qualifies for legal aid when requiring him to pay legal expenses would impair his ability to furnish himself or his family with the essentials to keep them decently fed, clothed, sheltered, and living together as a family unit. Each applicant fills out a form setting out his financial circumstances.

There is no residency requirement for applicants for legal aid in criminal matters in British Columbia in accordance with the terms of the federal-provincial cost-sharing agreement. With regard to civil matters, if the matter is one in which British Columbia courts have jurisdiction and if the non-resident applicant is eligible for legal aid in his home province, then he would also be eligible for legal aid in British Columbia.

Tariffs

A tariff schedule of fees paid to members of the private Bar for services rendered under the legal aid plan in criminal matters was approved by the provincial government and increased in 1974. In the civil area, a tariff for family matters was established in 1973. Otherwise, there is no tariff for civil matters; disbursements only are paid. Both the criminal and family tariffs were increased effective June 1, 1980, by an average of eight per cent.

Lawyers' records and accounts are forwarded to the central legal aid office in Vancouver for taxing and statistical purposes, and the claims are then sent to the Ministry of the Attorney-General in Victoria for payment.

Community Law Offices

Community Law Offices (CLO's) are funded by the Legal Services Society and in some cases, receive grants for special projects from the federal Department of Justice.

Community Law Offices and Native Community Law Offices are located around the province. CLO's are staffed by paralegals supervised by lawyers.

The CLO's are incorporated societies operated by a local board of directors drawn from a cross-section of the community, including former clients, justice service professionals, lawyers and laymen.

The CLO's were established to provide legal services for the lower income or disadvantaged sections of their communities with particular emphasis on providing services in the areas of law not traditionally handled by private practice lawyers or by the Legal Services Society. The CLO's assist local people with summary advice, welfare appeals, worker's compensation, landlord and tenant problems, pensions and many other areas of legal needs.

Paralegals (Legal Information Counsellors) are used to interview clients, analyse problems, screen applications, give summary advice, and handle cases in the areas of welfare appeals, unemployment insurance, small claims, worker's compensation, and other matters that do not require the services of a lawyer. Problems which require the services of a lawyer are referred either to the supervising lawyer or to the Legal Services Society. Paralegals also assist staff lawyers by conducting interviews and by sorting and fact gathering.

In addition, the CLO's organize self-help projects and assist individuals and community groups in their representations to governmental agencies. Information and educational services are offered by CLO's and vary from area to area, depending on local needs.

The Native Community Offices are located in areas with high native Indian population. There are very few native lawyers in the province and these particular CLO's provide their native populations with expertise in legal matters, particularly in those areas of law affecting native peoples.

One CLO, the Vancouver Community Legal Assistance Society, is unique because it takes on litigation or test cases which raise novel or significant issues of law or social policy. It also supervises the operations of the University of British Columbia Law Students Legal Advice Clinics.

Other Community Law Office Programs

Probably unique in Canada, the Victoria Law Centre is a combined service of the Legal Aid Society (LAS), the Greater Victoria Community Action Legal Assistance Group (CLO), the University of Victoria Faculty of Law, and School of Social Work.

Staffed by lawyers, para-professionals and social workers and augmented by eighteen law students from the University of Victoria Faculty of Law who spend a term in the centre, it provides representation for all types of cases, including Federal and Provincial offenses, small claims actions, family court matters, UIC, and Worker's Compensation Board hearings, landlord and tenant disputes, as well as acting for community groups and societies where the groups cannot afford the services of a lawyer. Extensive work is also done in the field of public legal education.

In addition to the Victoria Law Centre, three CLO's send staff to local correctional institutions to give advice to prisoners on legal problems, sentence computation, parole and family matters. Also in centres where there are no Legal Aid Offices, the CLO staff may provide duty counsel services in criminal and juvenile courts.

Law Student Programs

Law students operate seventeen part-time clinics in the Vancouver area, supervised by the Vancouver Community Legal Assistance Society. University of British Columbia law students give legal advice, process Legal Aid applications and take on their own cases under the supervision of practicing lawyers, help clients with a do-it-yourself divorce service and are experimenting with a program for the handicapped, actually making house calls to see clients and handle problems on the spot.

The University of British Columbia Law Faculty operates a quasi law office in which twenty third-year students spend one term handling cases under the supervision of practicing lawyers. There is a similar program at the University of Victoria Law Faculty with eighteen students assisting the operation of the Victoria Law Centre.

Other Legal Services

In 1977 the Ministry of the Attorney-General introduced a new branch within the Civil Law section entitled Family and Social Service Law. This unit carries responsibilities formerly held by Crown Counsel in the province and includes providing legal counsel:

- a) to wards of the Superintendent of Child Welfare involved in court actions and delinquency charges,
- b) to children who are the subject of difficult custody, access, child neglect, abuse, maintenance, or similar proceedings,
- c) on behalf of needy applicants, dependent spouses, or children involved in Family Court (Provincial Court) matters under the Family Relations Act (usually women seeking maintenance, custody or protection orders),
- d) on behalf of the court as amicus curiae in custody, guardianship, access, child abuse, or neglect, maintenance, adoption, or similar matters.

The unit presently employs five staff lawyers and retains private practice lawyers on a retainer or fee-for-service basis.

In October, 1978, the Legal Aid Society established the Burnaby Criminal Defense Office, a public defenders' office employing three lawyers and one paralegal worker. This pilot project, inherited by the Legal Services Society, serves Burnaby and is partially funded by the Federal Department of Justice and will operate until 1981, its purpose being to experiment with the delivery of exclusively criminal legal aid services by salaried lawyers rather than private lawyers on a tariff. The project will be monitored to evaluate the relative merits of public defender and judicare systems in Canada.

Finally, the British Columbia branch of the Canadian Bar Association operates a province-wide telephone Lawyer Referral Service through which people with any type of legal problem can arrange for a half-hour interview with a lawyer for a flat fee of \$10.00 (or less).

TABLE 2
Legal Aid Revenue and Expenditures 1979-80 : British Columbia

Population: 2,626,400

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | |
|--|-------------------|--|------------------|
| | | | Other |
| Government of Canada | 2,416,473 | 2,328,923 | 87,550 |
| Provincial Government | 8,352,822 | | |
| Lawyers Trust Account Interest | 612,800 | | |
| Client Contributions and Recoveries | 56,658 | 12,832 | 43,286 |
| Other | 155,815 | | |
| Total Revenue | 11,594,568 | | |
| EXPENDITURES | | | |
| Administration | 673,835 | 286,167 | 387,668 |
| Delivery of Services by Salaried Staff | 3,966,409 | 782,596 | 3,183,813 |
| Delivery of Services by Private Lawyers | 5,593,744 | 4,159,654 | 1,434,090 |
| Other Programs | 1,386,882 | 26,526 | 1,360,356 |
| Total Expenditures | 11,620,870 | 5,254,943 | 6,365,927 |
| Less Contributions and Recoveries | 56,658 | 12,832 | 43,826 |
| Net Expenditures | 11,564,212 | 5,242,111 | 6,322,101 |
| Total Expenditures per capita | 4.42 | | |
| Net expenditures per capita | 4.40 | | |
| Net Criminal F/P per capita | 2.00 | See Table Notes: 5,6,7,8,23,25,26,32,40,43,44,45,50 | |
| Net Provincial Summary Conviction and Civil per capita | 2.41 | See Errata Sheet for Note 50 and changes for Tables 17,18,19 | |
| Other Programs per capita | 0.53 | | |

MANITOBA

THE LEGAL AID SERVICES SOCIETY OF MANITOBA

History

There has always been a semblance of criminal legal aid in Manitoba beginning with the docket brief where the judge would request representation for the accused from the dock.

In 1935, students from the University of Manitoba Law School started to give free legal advice in civil matters, particularly on foreclosure actions, since the Depression was on and many people were losing their homes.

The Law Society of Manitoba later established a Monday Night Centre at the Law Courts Building in Winnipeg where individuals would line up for advice. If the problem was an ongoing matter, an application would be taken for legal aid and if the applicant was below the income guideline, he would be granted legal aid. The lawyers participated on a voluntary rotational basis. In 1969 an applicant had to earn as little as \$250. a month to qualify for legal aid. Divorce actions were not handled except in the most extreme circumstances.

In 1968, the provincial government gave \$40,000 to the Law Society's Legal Aid Committee to support the provision of criminal legal aid in the province. Civil legal aid was given on a purely voluntary basis.

In January, 1969 the government increased its contribution to the Law Society program to \$125,000 having received a commitment from the Law Society that with the appointment of a full time Director, the Law Society program would expand its delivery of legal aid services.

In 1969 the provincial government contributed \$300,000 to the legal aid program. The Legal Aid Committee of the Law Society which administered the funds and the program allotted that entire sum for criminal legal aid cases which left none for civil matters.

In the same year, a Task Force was established to do a study of legal aid programs. The Task Force's report was released in late 1970 and basically recommended that the Ontario program of legal aid be adopted with the exception that an independent agency be formed to run the legal aid program, and that a neighbourhood law centre pilot project and a juvenile court duty counsel system be established.

On July 27, 1971, the Legal Aid Services Society of Manitoba Act was passed and came into force on February 1, 1972.

The Society's regulations have remained virtually unchanged since 1972. Several minor changes were made in 1974 and in order to update the regulations, the Society appointed two members of its board to conduct a review. In recognition of the need to make several changes to

the Society's Act, amendments were passed in July, 1980 and new regulations are scheduled to be in force from April 1, 1981.

Plan, Structure, and Operation

The legislative base of the Manitoba legal aid plan is contained in the Legal Aid Services Society of Manitoba Act, passed in 1971 and amended in 1972. The Act came into force on February 1, 1972. The Society exists as a corporate entity, and its operations began in September 1972.

The Board of Directors of the Society is made up of eleven persons. The Lieutenant-Governor nominates seven persons and the other four are chosen from a list of names submitted by the Law Society of Manitoba.

The Board is responsible for budget policy, general policy direction, research and development, community relations, and the hiring and firing of senior personnel. The executive director is appointed by the Board and is responsible for the complete administration of the plan.

The Act provides for the appointment of area directors who must be solicitors, and are appointed as full-time employees. There are five area directors, one in Winnipeg, one in Brandon, one in Dauphin, one in The Pas, and one in Selkirk.

The area directors are responsible for the processing of applications for legal aid in their district and determining financial and legal eligibility within the guidelines of the statute and regulations.

Private practitioners who volunteer to participate in the Judicare component of the plan, have their names placed on panel lists. Two separate lists are maintained - for criminal and civil work.

Community Legal Service Offices

The Act provides for neighbourhood legal aid centres in communities designated for this purpose by the Board. Each clinic is run by a senior lawyer under the general supervision of the executive director. The regulations provide for the hiring of junior lawyers, articling students, paralegals and clerical help.

The function of these offices is to advise, assist or represent legally aided clients, as well as to provide the community with information regarding the law and the availability of legal services. With the approval of the executive director, the community office can also represent groups and organizations. Solicitors and articling students employed in the clinic may also be directed to act as duty counsel by the executive director.

In 1979-80 the Society continued to operate six community law centres, three in the city of Winnipeg and one each in Brandon, Dauphin and The Pas. People in the Interlake are serviced by an area director's office situated in Selkirk. On June 1, 1980 a one-lawyer office was opened in Thompson. The Society continued to support the operation of Citizen Advisory Committees. During the past year, the Citizen Advisory Committees attached to the Ellen Street and Main Street offices in Winnipeg combined to form one committee, while the committee assigned to the Parklands office in Dauphin was in the process of dissolving. The committee assigned to the LaSem Law Centre in Winnipeg continued to meet on a regular basis. At year end the Society was in the process of forming a committee to evaluate the effect of Citizen Advisory Committees and make recommendations to the Board.

COVERAGE

Criminal

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to applicants. In summary conviction cases where there is a likelihood of imprisonment or loss of livelihood on conviction legal aid will be granted. Manitoba provides legal aid to Juveniles, if they may be transferred to adult court or if they may be committed to a juvenile institution, until they reach the age of eighteen.

Civil Matters

Comprehensive coverage is available in poverty law, areas including consumer protection, welfare rights, landlord/tenant matters, motor vehicle - personal injury action, unemployment insurance matters, workmen's compensation and family law matters.

Personal injury actions may be excluded if these cases can still be covered under contingency agreements in Manitoba.

Breach of promise actions are excluded. In addition private prosecutions in magistrate's court are not handled although in Winnipeg they may be referred to the University of Manitoba Law Centre.

In 1979-80 the number of legal aid certificates issued was 11,454, an increase of about 1890 above 1978-79, yet slightly less than the number of certificates issued in 1977-78. The ratio between civil and criminal certificates remained nearly equal, as in the last several years.

Financial Eligibility

The Society's financial eligibility guidelines were increased, effective as of April 1, 1980, as follows:

| Family Size | Allowable Gross Annual Income | |
|-------------|-------------------------------|-------------------|
| | before 1 April 1980 | from 1 April 1980 |
| 1 | \$ 7,000.00 | \$ 7,500.00 |
| 2 | 8,500.00 | 9,000.00 |
| 3 | 9,500.00 | 10,000.00 |
| 4 | 10,500.00 | 11,000.00 |
| 5 | 11,500.00 | 12,000.00 |
| 6 | 12,500.00 | 13,000.00 |
| 7 | 13,500.00 | 14,000.00 |

During the past year agreements to pay for applicants who fell just above the eligibility guidelines were reinstated, while the collection of delinquent accounts including those outstanding because of judgment costs and settlements, were being pursued more aggressively with the retention of a collection agency.

The Society continued to collect the \$35.00 user fee and the society reported that it found very few instances of people being deterred from applying for legal aid because of that fee. It is the Society's intention to collect this fee in the foreseeable future.

The figures in the financial eligibility table are only guidelines and the test is flexible and discretionary. The value of an applicant's house, car or family allowance payment is not included in his income. There is an appeal from a refusal to grant legal aid by the area director, to the executive director and from him to the Board of Directors. In 1979-80, the Law Centres handled 2,648 certificates (about 26% of the total issued) and provided informal information and advice for 13,192 telephone inquiries and drop-ins.

There is no residency requirement for applicants for legal aid in criminal matters in Manitoba in accordance with the terms of the Federal-Provincial cost-sharing agreement. Manitoba has a formal reciprocal arrangement with the other provinces for the provision of civil legal aid for non-residents and the practice is to honour a request from a non-resident if the request is made through the Director's office of the province where the applicant is resident. In 1979-80 Manitoba made 108 requests to other Canadian legal aid plans and received 51 requests from other plans.

Tariffs

The existing tariff of fees has remained virtually unchanged since its introduction in 1972; the last change appeared in 1974 with the introduction of block fees and maximum preparation fees: those changes had the effect of reducing payment to the private bar. In recognition of the need to revise the tariff, the Board of Directors appointed a special sub-committee to study various alternatives. A systems analyst was retained and over 5,000 files were studied, using support staff and computer time. Following the study a proposal was presented to the Attorney General in November 1979. It was recommended that a tariff be instituted, consisting almost exclusively of block fees, and in which the number of items in the tariff would be reduced by 50%. Recommendations were submitted to the Law Society of Manitoba in March 1980, and at year end were still under review and discussion.

Duty Counsel

A most significant element of the Society's service continues to be the provision of duty counselling services in most provincial criminal courts in the province, by members of the private bar, staff lawyers, and students. Appearances, bail applications, remands and speaking to sentence are matters that are handled for everyone by duty counsel regardless of eligibility for legal aid. The Society instituted a system at the Public Safety Building in Winnipeg, combining private bar lawyers and staff lawyers.

Staff students were being employed on a daily basis at the Manitoba Youth Centre to provide assistance to young offenders, while a regular duty counselling service was begun in the Portage LaPrairie and Langruth courts.

In addition, the Society continued to provide duty counselling services and general advice on a circuit basis to remote communities in Northern Manitoba, and in the Interlake and south-east Manitoba.

The Society also continued, through the use of its paralegals, to provide duty counselling services in the family court in Winnipeg.

Experimental and Supplementary Services

The Society, with the co-operation of the Age and Opportunity Bureau continued to provide regular advice to senior citizens at nine drop-in centres in Winnipeg: this program employs members of the private bar, who are paid a reduced fee, and over 1,000 senior citizens were assisted during 1979-80.

Legal Aid Services are made available in penal institutions: lectures are given to inmates along with advice on matrimonial, financial and parole problems. Community legal service personnel were also going into mental institutions and offering their services to all patients.

Staff lawyers gave lectures on legal rights upon request in the province's school system and elsewhere.

A variety of pamphlets on poverty and family law, mainly produced by other government departments, are distributed through the Law Centres.

The society continues to support the law Phone-In project, which continues to provide Manitobans with free legal information. The project has become the responsibility of the Law Society of Manitoba, and the executive director of the plan was appointed a member of the Law Society's committee responsible for administering the project.

Independent and Student Legal Aid Services

The Society continued its support of the University Law Centre operating out of the Faculty of Law at the University of Manitoba. Primarily people charged with summary conviction matters and those who have small claims, are referred to the law students at the Centre: students receive supervision from a member of the Faculty paid by Legal Aid Manitoba, and from staff lawyers. Over 500 hundred people were assisted during the past year at the Centre. As well, this past year saw the introduction of a clinical program in family law, with domestic cases being referred by the Winnipeg area director to members of the private bar acting as supervisors with law students assisting: it is anticipated that this latter program will expand in 1980-81.

TABLE 3
Legal Aid Revenue and Expenditures 1979-80 : Manitoba

Population: 1,027,100

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|--|---------------------|---|---------------------|
| Government of Canada | 1,061,000.00 | | |
| Provincial Government | 2,328,049.00 | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 122,016.00 | 35,643.00 | 86,373.00 |
| Other | | | |
| Total Revenue | 3,511,065.00 | | |
| EXPENDITURES | | | |
| Administration | 547,148.00 | 257,807.00 | 289,341.00 |
| Delivery of Services by Salaried Staff | 1,231,817.00 | 433,970.00 | 797,847.00 |
| Delivery of Services by Private Lawyers | 1,725,212.00 | 995,855.00 | 729,357.00 |
| Other Programs | 7,500.00 | | 7,500.00 |
| Total Expenditures | 3,511,677.00 | 1,687,632.00 | 1,824,045.00 |
| Less Contributions and Recoveries | 122,016.00 | 35,643.00 | 86,373.00 |
| Net Expenditures | 3,389,661.00 | 1,651,989.00 | 1,737,672.00 |
| Total Expenditures per capita | 3.42 | | |
| Net expenditures per capita | 3.30 | | |
| Net Criminal F/P per capita | 1.61 | See Table Notes: 5,7,8,13,14, 23,25,26,32, 43,45 | |
| Net Provincial Summary Conviction and Civil per capita | 1.69 | | |
| Other Programs per capita | .01 | | |

NEW BRUNSWICK

LEGAL AID NEW BRUNSWICK

History

Prior to the establishment of the present Legal Aid Plan, legal aid was only available where lawyers were prepared to provide the necessary services on a voluntary basis.

Legal Aid New Brunswick began operating on January 1st, 1972.

The legislative authority for the New Brunswick legal aid scheme is contained in the Legal Aid Act passed in 1971 and amended in 1973.

Plan, Structure and Operation

The Act established a program called "Legal Aid New Brunswick". Under this Act a Legal Aid Committee, with not less than five members of the provincial Barristers' Society represented, was established as an advisory committee on administrative policy matters to the provincial director of legal aid. The provincial director is appointed by the Barristers' Society subject to the approval of the provincial Minister of Justice.

The Barristers' Society is empowered to establish regional legal aid offices to be run by area legal aid directors. These offices and their area directors are responsible for the issuing of legal aid certificates and for drawing up panels of solicitors willing to offer their services to legal aid applicants as fee-for-service duty counsellors and lawyers in criminal matters. In 1977-78 there were eight area directors located in Fredericton, Saint John, Moncton, Newcastle, Bathurst, Campbellton, Edmunston, and Woodstock. The area directors are all practising lawyers and fulfill their functions as directors on a part-time basis. There are no staff lawyers employed for direct service functions. There are full time secretaries employed by the Plan in Saint John, Fredericton, and Moncton, and parttime secretaries in the five other areas.

Eight area Legal Aid Committees have been established to advise the area directors and to hear appeals from refusals to grant legal Aid. All are Barristers' Society appointees and one of these must be a member of the Barristers' Society in order to provide a quorum.

Duty Counsel

Under the province's duty counsel program, lawyers are appointed on a rotational basis from the appropriate panel list and work for a week at a time in a particular court while it is in session. Duty counsel are paid on an hourly basis. Duty counsel inform applicants of their

right to choose other counsel and if necessary refer them to the area director for that purpose. They also advise persons appearing before such courts on matters such as pleas, the right to request an adjournment and to request bail.

The duty counsel system is the most comprehensive and geographically extensive part of the provincial legal aid program. Duty counsel operate in every criminal and family court in every sitting in the province, even on Campobello Island and Grand Manan Island.

The duty counsel system has been used in the family courts and duty counsel sit through all the proceedings of that court while it is in session. Certificates are not usually issued but on-the-spot representation is given in situations where, as under the Deserted Wives and Children's Maintenance Act, the defendant may go to jail because of continuous default or contempt of court in failing to follow court orders. Under the authority of the Act, criminal duty counsel panels were established, and were composed of a total of 246 private practice lawyers at March 31, 1980.

During the fiscal year of 1979-80, duty counsel rendered assistance to 13,954 persons, for 15,093 offenses. During the period under review duty counsel made up approximately 25% of the expenditure.

Tariffs

The Legal Aid Committee of the Barristers' Society, appointed pursuant to the Act considered recommendations to council regarding a new legal aid tariff. The Committee proposed average increases in most items of 20 to 25%; the committee also proposed the introduction of a tier system under which lawyers with more years of experience within the Legal Aid System would be entitled to be compensated at higher rates and the latter proposal was intended to encourage more experienced practitioners to continue their participation. The revised tariff has been implemented, effective October 1, 1980.

During the fiscal year 1979-80, the applicable tariff was the original tariff established in 1971, amended in 1974. The fees actually payable to participating solicitors were 25% less than those prescribed in the Tariff; this statutory reduction represented a substantial contribution by participating solicitors to the operation of Legal Aid New Brunswick. During the 1979-80 period the profession's contribution, thus calculated, was \$174,382 broken down as follows:

| | |
|-----------------------------------|---------------|
| Criminal Legal Aid (Certificates) | \$110,410 |
| Duty Counsel | <u>63,972</u> |
| | \$174,382 |

Coverage

Criminal Law

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person who is charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

Civil Matters

The relevant parts of the Act providing coverage in civil matters have not been proclaimed. In the 1977-78 Annual Report of Legal Aid New Brunswick, the Barristers' Society expressed disappointment that New Brunswick continued to be the only province other than Prince Edward Island which does not have an organized civil legal aid program. However, there is a duty counsel system operating in the family courts that does provide some necessary assistance.

The relevant parts of the Act providing coverage in civil matters were not changed during the year. In its annual report, 1979-80, the plan states that the continuing failure to implement civil legal aid constitutes a denial to many citizens of access to the legal system and, therefore, a denial of justice. The society again urges most strongly that civil legal aid be implemented at the earliest opportunity. As has been noted, duty counsel services are provided in family court, and that service constitutes the plan's only civil legal aid.

Eligibility

An income guideline test is applied. The guidelines are for the area directors and are discretionary.

Appeals from the area directors' refusal to grant a legal aid certificate are made to the area committee; the decision of the area committee is final except where the application is in respect of a proceeding of an appellate nature: in those cases the applicant may appeal to the Provincial Director.

There is no residency requirement for applicants for legal aid in criminal matters in New Brunswick in accordance with the terms of the federal-provincial cost-sharing agreement.

TABLE 4

Legal Aid Revenue and Expenditures 1979-80 : New Brunswick

Population: 705,700

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|---|-------------------|--|------------------|
| Government of Canada | 578,700.00 | | |
| Provincial Government | 121,300.00 | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 11,775.00 | 11,775.00 | 0 |
| Other | 3,461.00 | | |
| Total Revenue | 715,236.00 | | |
| EXPENDITURES | | | |
| Administration | 221,102.00 | 203,951.00 | 17,151.00 |
| Delivery of Services by Salaried Staff | 0 | 0 | 0 |
| Delivery of Services by Private Lawyers | 523,085.00 | 482,510.00 | 40,575.00 |
| Other Programs | 600.00 | | 600.00 |
| Total Expenditures | 744,787.00 | 686,461.00 | 58,326.00 |
| Less Contributions and Recoveries | 11,775.00 | 11,775.00 | |
| Net Expenditures | 733,012.00 | 674,686.00 | 58,326.00 |
| Total Expenditures per capita | 1.06 | | |
| Net expenditures per capita | 1.04 | | |
| Net Criminal F/P per capita | .96 | See Table Notes: 5,7,8,23,25, 26,32,43,45, | |
| Net Provincial Summary Conviction and Civil per capita | .08 | | |
| Other Programs per capita | | | |

NEWFOUNDLAND

LEGAL AID COMMISSION

History

In 1964, the Law Society of Newfoundland appointed a committee to explore the whole matter of legal aid with a view to the establishment of an adequate system of legal aid in the province. The committee made its initial recommendations in 1966, and in 1968 with the assistance of a provincial government grant of \$10,000, a legal aid plan was started. Office space was provided by the provincial government and a full-time secretary was employed. At that time, applicants were interviewed by solicitors on a voluntary basis and cases were assigned to members of the Society who provided their services free of charge.

The provincial government grant was substantially increased from year to year and a full-time administrator was engaged effective January 1, 1972. On February 21, 1973 the Government of Newfoundland and the federal government entered into a cost-sharing agreement for the provision of legal aid in criminal matters.

On March 23, 1973 the Minister of Justice of Newfoundland designated the Legal Aid Committee of the Law Society of Newfoundland as the provincial agency responsible for the administration of the agreement respecting legal aid in criminal matters.

This agency administered legal aid in civil matters and the provincial government provided a grant for the cost of administering both the criminal and civil legal aid services.

On January 16th, 1976 the Newfoundland Legal Aid Act was proclaimed, providing a legislative basis for the operation of the plan and making the Newfoundland Legal Aid Commission the plan's governing body.

Plan, Structure and Operation

The legal aid commission is a seven member board consisting of five members named by the Lieutenant Governor in Council and two ex-officio members: the Deputy Minister of Justice and the provincial director. Three of the five Lieutenant-Governor in Council appointees are chosen from a list of five names submitted by the provincial law society. The provincial director is the Plan's chief administrative officer and is named to the position by the Commission.

The Commission operates eight offices: Clarenville, Marystown, St. John's, Corner Brook, Grand Falls, Happy Valley, Gander and Stephenville. All offices except Stephenville, Clarenville, Marystown and Gander have at least one full time lawyer on staff. In providing the service, the plan uses both judicare and staff lawyer system. Four salaried lawyers have operated out of the St. John's office and four

salaried lawyers acting as area directors work in the Grand Falls, Corner Brook and Happy Valley offices. The majority of legal aid services are provided by private lawyers. With the exception of duty counsel cases, salaried lawyers handled about 42% of all cases completed in 1979-80.

The Duty Counsel system operates at St. John's, Corner Brook, Harbour Grace and Holyrood on a regular basis. The fee for duty counsel is based on \$30. per hour, up to a maximum of three hours per day. In 1979-80, duty counsel on criminal matters was provided by the private bar and staff through the plan to about 770 persons. A duty Counsel lawyer also travels with the Provincial Court on its circuit to Northern Labrador Communities.

Coverage

Criminal Law

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant to those cases where there is a likelihood of imprisonment or loss of livelihood.

Eligible applicants will receive legal aid if charged with a serious criminal offence. With regard to the less serious criminal offences, summary conviction matters, an individual may receive legal aid if there is a possible defence to the charge and one or more of the following conditions are present:

- (i) there is a likelihood, upon conviction, of imprisonment or loss of means of earning a livelihood, or
- (ii) there are in existence circumstances that would serve to mitigate the severity of the penalty that may be imposed, or
- (iii) because of extraordinary circumstances, it is in the interests of justice that the applicant be represented by a lawyer.

Civil Matters

Where financial eligibility is established any civil matter will be undertaken except:

- (i) in proceedings wholly or partially in respect of defamation, breach of promise of marriage, loss of services of a female in consequence of rape or seduction, alienation of affections, or criminal conversation;
- (ii) in relator actions;
- (iii) in proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings;
- (iv) in proceedings relating to any election; or
- (v) private prosecutions in criminal and civil matters or proceedings.

In civil cases, a decision to grant legal aid is determined by the merits of each individual case. In an application for divorce, for example, in addition to financial eligibility and grounds for divorce, the plan assesses the physical or mental hardships being suffered by the spouse and/or the children.

During the past year, the former practice of confirming hardship with a responsible third party, has been discontinued.

Eligibility

A person qualifies for legal aid if requiring him to pay legal fees would impair his ability to furnish himself or his family with the essentials necessary to keep them decently fed, clothed, sheltered and living as a family, or where he is at the moment without funds and requires immediate legal assistance for the preservation of his legal rights. It is understood that the provision of legal aid services may be terminated upon the applicant becoming financially able to obtain legal services in the usual way.

There are no specific financial guidelines used in the determination of eligibility. Flexible guidelines are applied, however to determine whether or not legal aid should be provided and if so, whether a contribution should be made toward the cost by the client. Applicants are required to list in detail all sources of income, fixed and liquid assets, and also expenses and dependents. If the applicant is married, the above information is required of the spouse as well before eligibility is determined.

Other Projects

During the summers of 1979 and 1980 law students were hired to continue public legal information program work begun during the summer of 1978. Under special funding, these students prepared and up-dated a consumer law handbook and a high school teachers' manual: neither of those works have yet been published. In addition, some short newspaper and radio spots were prepared and used in the media, on subjects of criminal, consumer and employment law. The plan found that the students' work was worthwhile and shall seek ways and means to procure students' services to continue the work during the summer of 1981. There are no independent student legal aid services operating in Newfoundland.

TABLE 5
Legal Aid Revenue and Expenditures 1979-80 : Newfoundland

Population: 578,200

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|---|---------------------------------------|--|------------------------------------|
| Government of Canada | 365,400.00 | | |
| Provincial Government | 205,152.93 | | |
| Lawyers Trust Account Interest | 0 | | |
| Client Contributions and Recoveries | 24,892.00 | | |
| Other | 15,536.07 | 9,634.17 | 5,901.90 |
| Total Revenue | 610,981.00 | | |
| EXPENDITURES | | | |
| Administration | 381,438.03 | 152,254.78 | 155,613.97 |
| Delivery of Services by Salaried Staff | included in Administration exp. | 73,569.28 | included in Administration exp. |
| Delivery of Services by Private Lawyers | 317,504.81 | 246,041.00 | 71,463.81 |
| Other Programs | 0 | | |
| Total Expenditures | 698,942.84 | 471,865.06 | 227,077.78 |
| Less Contributions and Recoveries | 15,536.07 | 9,634.17 | 5,901.90 |
| Net Expenditures | 683,406.77 | 462,230.89 | 221,175.88 |
| Total Expenditures per capita \$1.21 | | | |
| Net expenditures per capita 1.18 | | | |
| Net Criminal F/P per capita .80 | | | |
| Net Provincial Summary Conviction and Civil per capita .38 | | | |
| Other Programs per capita 0 | | | |

THE NORTHWEST TERRITORIES

THE LEGAL SERVICES BOARD

History

Prior to 1971, the Federal Government was responsible for all aspects of the administration of justice in the Northwest Territories. The system was restricted to criminal cases and lawyers were paid \$75. a day for all criminal cases except those involving murder where the fee was \$150. a day.

In 1969 a process for transferring most of the administration of justice functions to the Territories commenced. The two main functions retained by the Federal Government were the prosecution function and the appointment of judges to the Supreme Court of the Territories. The list of functions transferred to the Territories expressly included legal aid. Federal legislation was enacted to authorize the Territorial Governments to perform these administration of justice functions and the actual transfers were made in March and April, 1971.

On August 17, 1971, the Government of the Northwest Territories and the Government of Canada, through the Department of Justice, concluded an agreement for the provision of legal aid in both civil and criminal matters. The present Northwest Territories Legal Aid Program is formally constituted by this Federal-Territorial Agreement.

Plan, Structure and Operation

In 1979 the Legal Services Ordinance was enacted by the Territories. That measure provided a comprehensive revision of the administration of the plan and came about largely as the result of a federal-territorial joint government committee. The committee spent about 1½ years addressing itself to the problems of providing Legal Services in the far north in an area 2/5 the size of Canada to a population generally unfamiliar with the Canadian Legal System. The committee's 1977 report recommended structural changes in delivery of legal services to reduce program deficiencies, to co-ordinate and maximize the use of existing resources and to extend services to all territorial residents.

The Legal Services Board of the Northwest Territories is a body corporate established by the 1979 ordinance and is constituted as follows: one lawyer on the nomination of the President of the Law Society; one member of the Public Service of the Territories; one person who is a member of neither the Law Society nor of the Public Service of the Territories; one person resident in the Territories on the nomination of the Attorney General of Canada; one person on the nomination of each regional committee; and, the Executive Director, ex officio.

The Territorial Ordinance provides one constitutional base for provision of legal services by lawyers and "non-professionals". The Legal Services Board is empowered to make policies for provision of legal aid, including: the establishment of legal services centres; entering contracts of service with lawyers for the provision of legal aid; entering regional contracts with committees respecting localized administration, in varying degrees, of the provision of legal services.

Delivery System

Under the Ordinance the Board is responsible for establishing two panels of lawyers. All the resident lawyers of the Territories make up the first panel and the second panel consists of lawyers who are members of the Northwest Territories Bar not resident in the Territories. The Board assigns counsel from the first panel to qualified applicants except for those criminal offences where the accused is subject to be sentenced to death or is subject to imprisonment for life. In such cases, the qualified applicant is permitted to select his own legal aid counsel from members of the Bar on either panel. In practice, qualified applicants have always chosen from the first panel of lawyers resident in the Territories.

In assigning counsel from the first panel the Executive Director is required to have regard to the nature of legal services required and the experience and qualifications of counsel with the result that all persons on the panel share the legal aid work among them more or less equally. As a matter of practice, cases have been assigned on a rotational basis by firm and not by lawyer. There are lawyers whose names appear on the first panel list who do little or no legal aid work. The provisions requiring assessment of the experience and qualification of counsel are, in practice, used in civil matters only.

In Hay River and Inuvik where private practitioners have located permanent offices, almost all of the legal aid matters arising in the immediate surrounding areas are assigned to those lawyers. Outside of Yellowknife, Hay River and Inuvik, required legal aid services are delivered by a lawyer who is appointed to accompany the Supreme and Territorial Court circuit parties. Such appointments are made on the rotational basis indicated above. The Executive Director has the power to authorize legal aid counsel to precede the court circuits.

Coverage

Criminal Law

Under the agreement, legal aid in criminal cases is provided in the following matters:

- (1) an offence under a Statute of Parliament which includes the Criminal Code and is to be proceeded with by indictment;

- (2) an offence under a federal statute or regulation or under a Territorial ordinance or regulation, where the Crown proceeds by way of summary conviction and the accused is subject to a sentence of imprisonment or to a penalty that, in the Committee's opinion, will interfere substantially with his livelihood;
- (3) proceedings under the Juvenile Delinquents Act;
- (4) in any other case where, in the opinion of the court or the committee, the accused is not capable of making an informed decision as to his proper course of action, or where he may be subject to a jail term or a sentence which would affect his livelihood; and
- (5) in appeals taken by the Crown, or where counsel advises that an appeal by the accused has merit and the committee agrees, or where the appeal court requests counsel for an accused.

As a matter of practice, the coverage is effectively limited to cases falling within the defined categories that are heard before a Territorial or Superior Court Judge i.e., there has as a general rule been no representation under this program for persons appearing before the Justices of the Peace Courts, even though the charges may fall within the coverage provisions of the Agreement.

Civil Matters

Under the agreement, legal aid is available in certain classes of civil matters, where the lawyer certifies that the client has a reasonable case and the committee agrees. Certain matters are specifically excluded:

- (1) defamation;
- (2) estates;
- (3) incorporation of companies or societies or the formation or dissolution of partnerships;
- (4) real property transfers;
- (5) breach of promise of marriage;
- (6) loss of service of a female in consequence of rape or seduction;
- (7) alienation of affections or criminal conversation;
- (8) realtor or representative actions;
- (9) arbitrations or conciliations;
- (10) proceedings relating to any election.

Eligibility

The Federal-Territorial Agreement provides that legal aid in both criminal and civil matters shall be made available to every natural person in the Territories and every natural person ordinarily resident in the Territories who, in the opinion of the Committee, cannot afford to retain his own lawyer without depriving himself or his dependents of reasonable necessities or without sacrificing modest capital assets. In determining whether a person can afford to retain his own lawyer the Committee has regard to the financial status of that person, the financial status of the members of his family and any other matter that is considered relevant. Potential earnings of applicants are also considered.

There are no specifically prescribed financial guidelines for the determination of eligibility.

Tariffs

Fees allowed in criminal cases are set under the agreement and in 1977-78 were \$30. per hour court, \$20. per hour for necessary preparation, and \$15. per hour when the lawyer was away from the office on circuit up to a maximum of ten hours per day plus reasonable travelling expenses. The Commissioner is empowered, under the 1979 ordinance, to fix a tariff of fees for legal services provided and of disbursements.

Legal Services Clinic

Under a separate agreement the Territorial Government and the Federal Government have cost shared the operating expenses of a Legal Services Clinic located at Frobisher Bay and known as Maliiganik Tukisiiniakvik. This was established as a pilot project with terms of reference to deliver legal services supplemental to those delivered by the Legal Aid Plan in the criminal context and in addition, to deliver services in civil areas and develop preventive education and reform -- direct programs. The project commenced in 1975; as mentioned, the administration of all Legal Aid in the Territories is enjoyed by the Legal Services Board.

TABLE 6
Legal Aid Revenue and Expenditures 1979-80 : Northwest Territories

Population: 42,800

| REVENUE | TOTAL | Criminal under Federal - Territorial (F/T) Agreement | Other, under F/T Agreement |
|---|-------------------|---|-------------------------------|
| Government of Canada | 217,676.00 | | |
| Territorial Government | | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 17,567.00 | 15,970.00 | 1,597.00 |
| Other | | | |
| Total Revenue | | | |
| EXPENDITURES | | | |
| Administration | 119,048.00 | 108,227.00 | 10,821.00 |
| Delivery of Services by Salaried Staff | | | |
| Delivery of Services by Private Lawyers | 333,871.00 | 300,308.00 | 33,563.00 |
| Other Programs | | | |
| Total Expenditures | 452,919.00 | 408,535.00 | 44,384.00 |
| Less Contributions and Recoveries | 17,567.00 | 15,970.00 | 1,597.00 |
| Net Expenditures | 435,352.00 | 392,565.00 | 42,787.00 |
| Total Expenditures per capita | 10.58 | | |
| Net expenditures per capita | 10.17 | | |
| Net Criminal F/T per capita | 9.17 | See Table Notes: 5,7,8,23,25, 26,32,43,44,45 | |
| Net Provincial Summary Conviction and Civil per capita | 1.00 | | |
| Other Programs per capita | | | |

NOVA SCOTIA
LEGAL AID COMMISSION

History

In Nova Scotia, prior to 1970, legal aid services were provided on a voluntary basis, through an established legal aid committee of the Nova Scotia Barristers' Society, which designated a number of legal aid districts for the province.

The Committee appointed a full-time director, a senior panel, a panel of counsel and a junior panel of lawyers for each district. In Halifax the junior panel consisted of the most junior fifty-two practicing barristers and each were required to attend two legal aid clinics a year. Articled clerks were also required to attend the clinics on a rotational basis to assist the junior panel at the discretion of the local director. The senior panel was available to advise any member of the junior panel on legal problems encountered.

The Barristers' Society provided funds for administrative, operational and advertising expenses only. Lawyers were not paid for their services. Legal aid clinics were held in each legal aid district on at least one evening a week by two members of the junior panel. The time and place of the clinics were advertised by notices in the court offices and in the offices of co-operating welfare agencies.

The first half-hour of advice was always free but if the problem was ongoing and the applicant could afford it, contributions were required. In civil matters, assignments of costs were taken. In criminal cases, and before the opening of the Supreme Court sessions, the county sheriffs interviewed possible legal aid applicants and referred them to the local director of legal aid. In 1970, the Attorney General of Nova Scotia constituted a committee to study the legal aid situation in the province, and that committee reported in 1971. The committee recommended the establishment of a "comprehensive publicly funded legal aid plan".

The recommended comprehensive legal aid program funded by the province of Nova Scotia has been in existence since 1971 when the province enacted the Legal Aid Planning Act, chapter 14, Statutes of Nova Scotia, 1970-71, and later entered into an agreement with the Nova Scotia Barristers's Society on October 13, 1971. On March 1, 1973, the agreement was extended to include the provisions of the first Federal-Provincial Agreement relating to Legal Aid in criminal matters. The program was administered by the Legal Aid Committee of the Nova Scotia Barristers' Society from October 13, 1971 to October 31, 1977, at which time responsibility for the program was assumed by the present commission. In the six year period from 1971 to 1977 Nova Scotia Legal Aid developed a network of provincial offices and engaged the services of full-time lawyers and support personnel necessary to staff the offices. A full range of legal services is provided with the greatest emphasis being in the areas of criminal, divorce and family law.

The province's new Legal Aid Act was assented to by the Lieutenant Governor on May 19, 1977 and was proclaimed on November 1, 1977.

Plan, Structure and Operation

The Commission

One of the most significant features of the Act was the creation of the present Nova Scotia Legal Aid Commission. The Commission, consists of (a) 15 Directors appointed by the Governor-in-Council on the recommendation of the Attorney General; and (b) 2 persons in the public service designated by the Attorney General.

Seven of the Directors appointed by the Governor-in-Council are from among persons nominated by the Council of the Nova Scotia Barristers' Society. The composition of the Commission is not restricted to lawyers.

The Act provides for the appointment of one Director as Chairman of the Commission and deals with other matters relating to the composition and operation of the Commission.

The Commission is made responsible for all matters relating to Legal Aid in the Province and is directed to act in accordance with any general directions of the Attorney General in carrying out its functions, powers and duties.

The Transfer of Responsibility

The transfer of control from the Nova Scotia Barristers' Society to the Commission took place in November, 1977, without disruption of staff or of services. The personnel employed by Nova Scotia Legal Aid at the time were all engaged by and became employees of the Commission. The Executive Director of Nova Scotia Legal Aid continued in the same capacity with the Commission.

Staff, Offices and Work Responsibilities

In 1979-80 the staff of the Nova Scotia Legal Aid Commission included thirty-six full-time lawyers, ten of whom have over five years continuous service with Legal Aid. There were nine main offices operating in the larger population centres of the province, with appropriate sub-offices maintained to serve the smaller areas.

The normal procedure for handling legal aid cases under the Nova Scotia system is for the cases to be conducted by salaried staff lawyers with the normal solicitor-client relationship existing.

In addition to the cases handled by staff lawyers, there are situations where cases are handled by lawyers in private practice with the resulting accounts being paid for by the Commission. These situations arise where a choice of counsel is provided to the client under the Federal-Provincial Agreement related to criminal matters and also in

cases of conflict in both criminal and civil situations outside the Federal Provincial Agreement, cases where for one reason or another it is not appropriate for a staff lawyer to act.

The Federal-Provincial Agreement relating to criminal matters remained in effect during the year and the province qualified for the maximum applicable contribution.

Eligibility

An applicant is eligible to receive legal aid:

- (a) when he received all or part of his income through a program of municipal or provincial social assistance;
- (b) when he has an income equal to or less than that which he would be entitled to receive under Provincial Social Assistance; or
- (c) when the obtaining of legal services outside of a legal aid plan would reduce the income of an applicant to a point where he would become eligible for the benefits under Provincial Social Assistance.

A Client who is eligible under (c) above may be required by the Commission to make a contribution towards the payment of the costs of his or her legal services. An applicant shall not be required to dispose of his principal place of residence or assets necessary to maintain his livelihood. Where the income of an applicant for legal aid exceeds the amounts specified above, the applicant may be declared eligible for legal aid if the applicant cannot retain counsel at his own expense without him or his dependents if any, suffering undue financial hardship such as incurring heavy indebtedness or being required to dispose of modest necessary assets.

Coverage

Criminal Law

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in Federal criminal cases. In other criminal proceedings, e.g., summary conviction offences and proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

Civil Matters

There are no established restrictions on the legal services that can be provided by Nova Scotia Legal Aid.

Dalhousie Legal Aid Service

The Dalhousie Legal Aid Service has two main objectives: one is the provision of regular services, the other is concerned with the provision of student training.

Since April 1, 1979, the Nova Scotia Legal Aid Commission has contributed toward the first objective. The grant for 1979-80 was \$52,500.00 and for 1978-79 was \$50,000.00.

Penitentiary Legal Services

In 1978 Legal Aid assumed responsibility for services for inmates at the Dorchester and Springhill Institutions. A paralegal is employed full-time for these services.

Evaluation of Nova Scotia Legal Aid

A major evaluation of Nova Scotia Legal Aid has been underway during the past year. In 1979, the Atlantic Opinion Research Centre was asked to conduct a preliminary study and develop a proposal. The first report was submitted to Nova Scotia Legal Aid and the Canadian Department of Justice in January, 1980. The proposal was approved and the project got underway. At this point, the project has not been completed. This will be one of the first such comprehensive assessments of Legal Aid in Canada.

TABLE 7
Legal Aid Revenue and Expenditures 1979-80 : Nova Scotia

Population: 851,600

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|--|---------------------|---|-------------------|
| Government of Canada | 867,800.00 | 862,800.00 | 5,000.00 |
| Provincial Government | 1,110,500.00 | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | | | |
| Other | 109,157.00 | | |
| Total Revenue | 2,087,457.00 | | |
| EXPENDITURES | 114,123.00 | 62,123.00 | 52,000.00 |
| Administration | 1,767,210.00 | 974,466.00 | 792,744.00 |
| Delivery of Services by Salaried Staff | 59,028.00 | 36,519.00 | 22,509.00 |
| Delivery of Services by Private Lawyers | 52,500.00 | 27,737.00 | 24,763.00 |
| Other Programs | | | |
| Total Expenditures | 1,992,861.00 | 1,100,845.00 | 892,016.00 |
| Less Contributions and Recoveries | | | |
| Net Expenditures | 1,992,861.00 | 1,100,845.00 | 892,016.00 |
| Total Expenditures per capita | 2.34 | | |
| Net expenditures per capita | 2.34 | | |
| Net Criminal F/P per capita | 1.29 | See Table Notes: 5,7,8,23,25, 26,32,43,45, 49 | |
| Net Provincial Summary Conviction and Civil per capita | 1.05 | | |
| Other Programs per capita | .06 | | |

ONTARIO

THE ONTARIO LEGAL AID PLAN

A Legal Aid Plan was established in Ontario in 1951 by The Law Society Amendment Act (1951). Prior to this time Legal Aid had been supplied almost entirely on a personal and individual basis, although it was customary for the Attorney-General's Department to pay a modest fee to Counsel acting at trial on behalf of an indigent accused who was charged with a capital offence. The 1951 Plan was a purely voluntary Plan. It was administered by the Law Society through Local Directors and Local Legal Aid Committees in each county or district. Lawyers contributed their services without remuneration although a fund was created from which disbursements could be paid.

In July, 1963, the Attorney-General of Ontario appointed a Joint Committee on Legal Aid. Four members of the Committee were appointed by the Attorney-General and three members were appointed by The Law Society of Upper Canada.

The Committee reported that the voluntary Plan was not adequate to meet the existing demand for Legal Aid. (It was estimated that at least 60% of all persons charged with serious crimes in Ontario could not afford counsel, and that in criminal matters, only one person out of six in Ontario who required Legal Aid was receiving it), that it made excessive demands upon volunteers and imposed a disproportionate burden on some members of the profession.

The Committee recommended the establishment of a New Plan for Legal Aid in both civil and criminal matters. It recommended that the Plan should be financed by the Provincial Government but that the administration of the Plan should be the responsibility of The Law Society.

The Committee also recommended that Lawyers participating in the Plan should receive remuneration on the basis of 75% of a solicitor and Client Bill in both civil and criminal proceedings.

The Legal Aid Act which was enacted in June 1966, is substantially based on the Plan presented to the Attorney-General by The Law Society. The Plan incorporates some of the features of the Legal Aid Plan in England with respect to Legal Aid in civil matters, and some of the features of the Legal Aid Plan in Scotland with respect to Legal Aid in criminal matters.

The Provincial Director is responsible for the day-to-day operation of the Plan and is the chief executive officer. He is also the secretary of the Legal Aid Committee of the Law Society and is responsible to the Law Society for the proper administration of the Plan. He has the authority to call meetings of all area directors, to consider matters of common interest and to encourage uniformity of practice.

There are forty-seven area directors appointed under the Legal Aid Plan and they are responsible to the Provincial Director for the administration of the Plan within their areas. Each acts as secretary to the local area committee but is not a member of that committee. He is responsible for establishing and maintaining the panels for legal aid, duty counsel and legal advice according to the directions of the Provincial Director. The area director calls meetings of the area committee, keeps the minutes of those meetings and reports on the administration of the plan in his area to the Provincial Director.

If an application for legal aid is refused, the rejected applicant may appeal to an area committee. Each of the 47 areas has an area committee comprised of lawyers and laymen representing the local community who authorize the issuance of a certificate in a wide range of appeals including appeals to the Supreme Court of Canada.

Panels

Any solicitor in good standing with the Law Society can apply to the area director to have his name placed on the list of local practitioners willing to represent persons holding legal aid certificates. In order to have his name placed on one of the area panel lists, the solicitor must maintain an office or have an established practice in the area.

Any person holding a legal aid certificate is allowed to choose his lawyer from the established panel lists. Section 21 of the Legal Aid Act provides for the establishment of panels of barristers and solicitors who agree to give Legal Aid in criminal and civil matters, panels of barristers and solicitors who agree to provide professional services as Duty Counsel and panels of barristers and solicitors who agree to give legal advice.

One of the distinctive features of the Ontario Legal Aid Plan is the panel of Duty Counsel.

The use of Duty Counsel is derived from the Legal Aid System in force in Scotland. Their function is to assist an accused prior to his first appearance in Court.

Neither the Act nor the Regulation contemplate the conduct of a defence as part of the normal function of Duty Counsel because the professional services performed by Duty Counsel are performed without the necessity for a Legal Aid Certificate and are, therefore, intended to be of limited nature.

In the Fall of 1976, a Sub-committee, after studying the function of Duty Counsel in Metropolitan Toronto under the then existing system, concluded that because of the volume of cases and the number of courts at the Old City Hall a pilot project should be initiated to consist of salaried Duty Counsel to perform all functions theretofore carried out by Duty Counsel under a rotating system. It was the Sub-committee's view that the project would provide greater uniformity and serve accused individuals more efficiently.

Criminal Legal Aid Panel - York County

In January 1979, criteria were developed to be met by lawyers wishing to be placed on the criminal legal aid panel in York as well as to make it possible to identify members of the panel competent to handle serious criminal cases. A questionnaire was prepared and mailed to all members of the York County criminal legal aid panel for completion. The questionnaire contained a list of qualifications necessary to be placed on the criminal legal aid panel and listed a number of points which could be obtained not only to qualify for entry onto the panel but also to identify those members of the panel qualified to handle serious criminal cases. A lawyer wishing to do criminal legal aid work in York County is not able to place his name on the panel unless he has obtained a minimum of 10 points. A lawyer with 100 points is categorized as "experienced criminal counsel".

This project is predicated on the right of the accused to select his or her own counsel but recognizes that it is most difficult for the accused who is in custody charged with a serious crime to make an enlightened choice from a panel which contains the names of more than 1,400 lawyers. A legal aid applicant charged with a less serious criminal offence will be shown a list containing all the names of criminal legal aid lawyers. An applicant charged with a more serious indictable offence will be shown the same panel list on which the names of members qualified to act in serious criminal cases will be identified by an asterisk. The applicant, of course, will always be free to select counsel of his choice.

The Scope of Legal Aid Under the Plan

Except with respect to certain matters to which the Act does not apply a person is entitled to Legal Aid in civil matters under Section 12 of the Act in respect of a proceeding or proposed proceeding:

- (a) in the Supreme Court;
- (b) in a County or District Court;
- (c) in a Surrogate Court;
- (f) in the Exchequer Court of Canada.

The Area Director may, however, refuse to issue a certificate if the Application is frivolous or vexatious or an abuse of the process of the Court or an abuse of the facilities provided by the Act, or for any of the reasons set out in Section 39 of the Legal Aid Regulation. The Area Director is not required to determine whether the Applicant will win a case or succeed in a defence. If the Application falls within the scope of clauses (a), (b), (c) or (f) of Section 12, if the Application is not on its face frivolous or vexatious and if the applicant is financially eligible he is entitled to a Legal Aid Certificate.

Under Section 12(d) of the Act a person, charged with an indictable offence or with respect to whom an Application is made for a sentence of preventive detention, is entitled to Legal aid if financially eligible. A person is also entitled by virtue of Section 12(e) to Legal Aid in proceedings under the Extradition Act or the Fugitive Offenders' Act.

Under Section 13 of the Act the Area Director may, in the exercise of his discretion, issue a Certificate to a person otherwise entitled thereto, in any summary conviction proceeding if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood.

The granting of a Certificate is also subject to the discretion of the Area Director in respect of any proceeding in a Juvenile or Family Court, in a Small Claims Court, before a quasi-Judicial or Administrative Board or Commission, or in bankruptcy subsequent to a Receiving Order or an authorized Assignment, or for drawing documents, negotiating settlements or giving legal advice where the subject matter is properly or customarily within the scope of the professional duties of a barrister or a solicitor.

The basic philosophy of the Legal Aid Plan is that it preserves the normal solicitor and client relationship between a legally assisted person and the lawyer of his choice who has agreed to act.

Under the Legal Aid Act an application for Legal Aid by a person not ordinarily resident in Ontario shall be disposed of by the Director.

Financial Eligibility

Under Section 16 of the Act the Area Director may issue a Certificate only when he has received the Report of an Assessment Officer and only where the opinion of the Area Director the issue of a Certificate is justified.

The Area Director is, however, empowered under the Act to issue a Provisional Certificate without having first received the Report of the Assessment Officer where the circumstances require the issue of a Certificate immediately.

When a person applies for Legal Aid the Area Director endeavours to calculate the approximate cost of the Legal Aid sought. He then refers the Application to an Assessment Officer. The Assessment Officer is directed by Section 16 of the Act to consider the income, disposable capital, indebtedness, requirements of persons dependent on the applicant, and such other circumstances as he deems to be relevant and to report to the Area Director whether the applicant can pay no part, some part or the whole of the cost applied for and the sum, if any, the applicant is able to contribute to the cost thereof.

Depending upon the facts disclosed by the Assessment Officer's Report the applicant is informed by the Area Director that he is not eligible for Legal Aid, or that he is entitled to Legal Aid without contribution, or that he is entitled to Legal Aid provided that he enters into an agreement to make the payment or payments specified in

the Notice. The applicant may also be required to place a lien on real property. The Area Director may refer an Assessment Report back for further consideration. The ultimate decision as to whether a Certificate shall issue rests with the Area Director.

The Tariff

A revised Tariff was approved by Government, effective April 1, 1979. Under the previous Tariff, fee levels were based solely on the court in which a case was tried. If a lawyer elected to have a theft case tried in County Court, he or she would be paid more than if the case was tried in Provincial Court.

The new Tariff replaced this system with fee levels based on the seriousness of offences. There are four offence categories, ranging from those punishable by life imprisonment to those punishable on summary conviction.

A Lawyer now receives no less money for a Provincial Court trial than he would for a County Court Trial. The lawyer will, however, be paid more for trying a rape case, no matter what level of court the trial takes place in, than he will for a less serious offence. This reflects the billing practices of lawyers handling private retainers.

Although the old Tariff incorporated some block fees, the new Tariff extends the block fee principle to more of the high volume offences, so that the lawyer's fee will be the same no matter how long the case takes in court. This is a particularly significant area of cost control.

The new Tariff contains three levels of fee payments based on the actual experience of the lawyer in trial work, as opposed to a system based solely on the number of years at the Bar. This innovation permits the Ontario Legal Aid Plan to pay experienced lawyers at higher rates. Lawyers having the equivalent of four years practice in criminal law or in civil litigation, as the case may be, qualify for the second level rate. Lawyers who qualify at the second level and have a total of ten years litigation experience qualify for the third level rate.

One of the most significant areas of control in the new Tariff is the application of a formula for the number of hours of preparation time for which a lawyer is paid. Firm guidelines with respect to time allowed for preparation are imposed with discretionary powers given to the Legal Accounts Officer to increase the preparation allowance when merited.

The Tariff provides for an average 20 per cent increase in fees paid to lawyers working under legal aid certificates and acting as Duty Counsel.

In civil matters, the new Tariff adopts a uniform schedule of payment which is applicable to most matters, abandoning in most cases the different fees now paid based on the level of court in which the matter is tried.

A second change involves the increased control which will be placed on opened certificates through the time limitations which will apply to lawyers at each stage of the litigation process.

Additionally, in family matters, the new Tariff reflects the significant changes brought about by the Family Law Reform Act.

Legal Aid to Patients in Psychiatric Hospitals

Early in 1975 a formalized programme was initiated with the cooperation of the Ministry of Health and the Ministry of the Attorney General wherein Duty Counsel attends on patients in psychiatric hospitals on a regular basis to assist patients with their legal aid problems.

Independent Community Legal Clinics

There were 32 independent Community Legal Clinics in 1979-1980. The Regulation provides for a Clinic Funding Committee of five members, two to be appointed by the Attorney General and three to be appointed by The Law Society. In addition, one member appointed by the Attorney General and one member appointed by The Law Society must be persons who "have been associated with a clinic".

Clinic legal services are provided by a combination of lawyers and trained community legal workers. The types of legal assistance provided are varied and include the whole range of administrative law matters such as workmen's compensation, unemployment insurance, immigration, employer-employee relations, welfare, pensions, debtor-creditor problems, landlord-tenant disputes, some family law matters and environmental law. In addition, clinics provide services in relation to juvenile justice and child welfare matters.

As well as case-related services, the clinics are engaged in activities designed to increase the citizen's awareness of his or her rights and obligations under the law in non-litigation matters. Most clinics also engage in legal education activities for the benefit of their clients.

Each community legal clinic is under the direction of a community-based Board of Directors which is generally representative of the community served by the clinic. The Board of Directors is responsible for the general policy of the clinic and meets on a regular basis in order to direct the work of the staff of the clinic.

Duty Counsel Clinics

In addition to the community clinics, there were forty-two Duty Counsel clinics operating in Ontario in 1979-80. These clinics provide the services of a lawyer (in most cases a different lawyer on each occasion) for several hours a week. Duty Counsel provides summary advice to applicants, takes and assists in the completion of legal aid

applications, and so on. These clinics are often associated with a social service agency which provides support work and locations for interviews: Neighbourhood centres, shopping centres, churches, libraries, and the like.

Student Legal Aid Societies

During the 1979-80 fiscal year, funds allocated to the five Student Legal Aid Societies totalled \$188,380. This allocation represents a net increase to the Societies of approximately \$45,000 over the previous year taking into account that only five Societies were funded in 1978-79 compared to six which were funded in 1977-78.

The University of Toronto Student Legal Aid Society was granted independent community-based legal clinic funding status during the year and it now comes within the funding program of the Clinic Funding Committee.

The \$188,380 was distributed as follows:

| | |
|------------------------------------|----------|
| University of Ottawa..... | \$43,660 |
| Queen's University..... | \$37,431 |
| Osgoode Hall Law School..... | \$44,169 |
| University of Western Ontario..... | \$30,975 |
| University of Windsor | \$32,145 |

As in previous years, the Student Legal Aid Societies played a significant part in the delivery of legal aid services in the Province. Ontario's law students provide an essential service to the citizens of the communities in which they study, especially in poverty law matters and in minor non-certificate matters referred to them by local Area Directors.

Senior-Junior Counsel Project (The Mentor Program)

The Mentor program is aimed at encouraging the development of skills of young counsel devoted to the practice of criminal law.

The underlying concept is that many junior lawyers who are interested in practicing in the criminal courts do not know senior counsel with whom they can discuss technical and judgmental matters on an informal basis.

The project envisages drawing senior counsel to participate in the program by agreeing to have assigned to them a workable number of junior counsel with whom they can meet and consult from time to time on an informal basis.

The second goal of the project is to encourage senior counsel to provide an educational experience to junior counsel by involving them as "juniors" in criminal trials and appeals.

It is also intended to provide a formal mechanism for encouraging junior lawyers to invite senior counsel to assist them in difficult cases. This is because many young lawyers would prefer not to forsake a serious criminal case entirely even though they may not have the experience to grapple with all the complexities.

Research Facility

The Research Facility is responsible for implementing an information gathering, indexing, storing, retrieval and dissemination system which will make up-to-the-minute criminal legal research available to lawyers acting for legally-aided clients.

The Research Facility provides significant improvements to the efficiency of legal research. With hundreds of thousands of criminal cases having been handled under the Plan, it is apparent that virtually every legal point has been researched innumerable times. The expense of this duplication has been borne by the Plan without there being any corresponding benefit to it.

Establishment of the central research facility to collect, collate and update research performed under legal aid certificates will eliminate duplication. It will also encourage thorough legal preparation by counsel across the Province.

Independent Representation for Children

In January, 1979, the Ministry of the Attorney General requested the Plan to assist it in implementing proposed amendments to The Child Welfare Act which would provide that where a child is not legally represented in protection proceedings, it is the duty of the court to determine whether representation is desirable to protect the interests of the child. The Ministry requested that the Plan establish panels of lawyers across the Province who would, if requested, represent a child in those instances where a Judge determines that separate legal representation is desirable.

The Plan agreed to maintain panel lists of lawyers in its 46 Area Offices and to facilitate requests from courts seeking counsel for children by contacting counsel on the panel. The counsel will be selected on a rotating basis.

Lawyers on the panel are paid for their services by the Office of the Official Guardian. If special expertise is required in representing a juvenile, the Office of the Official Guardian will take responsibility for appointing counsel.

Local committees have been established in each County and District composed of the local Director of the Children's Aid Society, the local legal aid Area Director and a senior member of the local Bar. These committees will advise the Attorney General on the operation of the program and will monitor its performance on the quality of representation provided by panel lawyers.

Delivery of Legal Services in Northern Ontario

In August 1973, a special Sub-Committee was appointed to investigate the problems surrounding the delivery of legal aid services in Northern Ontario. The Sub-Committee subsequently made fourteen recommendations. These included the continuation of a collect call service to the Area Director's Office from remote areas as well as the continuation of travel warrants being supplied to such applicants. Further, when itinerant Courts are held in remote areas Duty Counsel will precede the Court by a day or two so that civil and criminal matters can be processed. The Assessment Officer's report is replaced by a simple declaration from which Duty Counsel will determine eligibility, and if an applicant is in receipt of public assistance, Duty Counsel may represent the applicant as though a Legal Aid Certificate had been issued. A special List of counsel willing and able to represent applicants from remote areas is available but, as stated, the Duty Counsel may represent the applicant as though a legal aid certificate had been issued if the client requests this.

TABLE 8
Legal Aid Revenue and Expenditures 1979-80 : Ontario

Population: 8,558,200

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|---|----------------------|--|----------------------|
| Government of Canada | 8,676,900.00 | | |
| Provincial Government | 21,026,800.00 | | |
| Lawyers Trust Account Interest | 3,857,753.00 | | 3,857,753.00 |
| Client Contributions and Recoveries | 2,913,324.00 | 642,363.00 | 2,270,961.00 |
| Other | 178,419.00 | | 178,419.00 |
| Total Revenue | 36,653,196.00 | | |
| EXPENDITURES | | | |
| Administration | 6,714,362.00 | 3,493,279.00 | 3,221,083.00 |
| Delivery of Services by Salaried Staff | 3,469,165.00 | 519,045.00 | 2,950,120.00 |
| Delivery of Services by Private Lawyers | 26,145,136.00 | 16,308,563.00 | 9,836,573.00 |
| Other Programs | 308,696.00 | 76,387.00 | 232,309.00 |
| Total Expenditures | 36,637,359.00 | 20,397,274.00 | 16,240,085.00 |
| Less Contributions and Recoveries | 2,913,324.00 | 642,363.00 | 2,270,961.00 |
| Net Expenditures | 33,724,035.00 | 19,754,911.00 | 13,969,124.00 |
| Total Expenditures per capita | 4.28 | | |
| Net expenditures per capita | 3.94 | | |
| Net Criminal F/P per capita | 2.31 | See Table Notes: 5,7,8,23,25 26,32,43,45 | |
| Net Provincial Summary Conviction and Civil per capita | 1.63 | | |
| Other Programs per capita | .04 | | |

PRINCE EDWARD ISLAND

OFFICE OF THE PUBLIC DEFENDER

History

Prior to October 1973, there was no official organized legal aid plan in Prince Edward Island. Where an individual, charged with a serious offence, could not afford a lawyer, the Court or a lawyer referred him to the provincial Department of Justice and that Department arranged for a private member of the Bar to represent him.

The same procedure was followed in a lawyer's office with a client who could not afford the fee. The lawyer would write to the provincial Department of Justice outlining the problem, and if the Department thought representation was necessary, it would appoint a member of the Bar to handle the case and would pay his fee.

On April 10, 1973, the MacKimmie Report, dealing with the constitution of the courts and judicial and quasi-judicial institutions and certain other aspects of the administration of justice within the province, was completed. One of the recommendations of this report was that the province adopt a Public Defender System for the provision of legal aid services in criminal matters. However, just before this report was completed, the government had introduced into the Legislative Assembly a Bill to establish a fee-for-services or judicare system of legal aid for the province to become effective April 1, 1973. The Bill was passed and received royal assent but it has never been proclaimed. Instead, on October 1, 1973 the province introduced a Public Defender System to provide legal aid services in criminal cases.

There is no legislative basis for the legal aid plan in Prince Edward Island as it exists today. The government decided in 1973 to implement the public defender system on a three-year trial basis.

In 1979-80, the programme was in its seventh year of operation as part of the Justice Department of the Government of Prince Edward Island.

Plan, Structure and Operation

In 1979-80, the Office of the Public Defender was operated by two staff lawyers (the director of legal aid) and one secretary. As with previous years, the service provided by the office continued to be that outlined in the agreement between the Government of Canada and the Government of this Province providing for assistance in matters relating to criminal law. The legal assistance provided in 1979-80 was delivered through a staff lawyer system, with approximately 98% of all cases being handled by staff lawyers and the remainder by private counsel.

There are commonly many inquiries concerning legal problems which are both within and outside the terms of reference of the office. These inquiries are not statistically recorded unless they relate to a specific legal problem requiring a court attendance by a staff lawyer on behalf of the applicant. In any instance where the inquirer requests it he is placed in direct contact with a staff lawyer for advice and direction. For example, in the area of drinking driving offences, the majority of inquiries do not result in court action by a staff lawyer because, due to the technical nature of the proof in such charges, their outcome and disposition is relatively predictable. Most inquirers are aware of the range of dispositions and merely wish to confirm whether they may have a defence.

Numerous other inquiries relate to civil matters. The most common inquiries of this nature relate to matters of family law, consumer transactions, and landlord and tenant law. Where a staff lawyer has available time and the inquirer requests it, gratuitous advice of a summary nature is usually given in these matters although the problem frequently indicates the necessity of substantive action. In such cases the inquirer is strongly urged to consult with private counsel.

The director is centred in Charlottetown. The other staff lawyer serves the Summerside area daily from the office located in the Courthouse at Summerside but, in addition, practises before other courts in the province as well. While the number of requests for assistance in the Summerside area is about three-quarters of the number received in the Charlottetown office, experience to date indicates the support staff of one office can adequately cope with the clerical and administrative aspects of this program. This approach facilitates communication between staff lawyers and uniformity of approach throughout the province. In addition, it provides stimulus to staff lawyers by enabling them to practise before all of the courts in the province.

Eligibility

The free legal assistance provided by the program is made available to all persons determined by a public defender to be within the contemplation of Section 4(1) of the Federal-Provincial Agreement, which states:

The provincial agency shall determine the financial circumstances under which an applicant for legal aid may be approved as a recipient thereof, but in so doing it shall apply flexible rules which take into account whether the applicant can retain counsel at his own expense without him or his dependents (if any) suffering undue financial hardship such as incurring heavy indebtedness or being required to dispose of modest necessary assets.

Eligibility is determined by an applicant on a criminal matter making personal application to a staff lawyer, who as well as considering the income and means of the applicant, considers the complexity of the charge against him, and estimates the approximate cost

to the applicant of representation by private counsel on the matter in question and then relates that estimate to the means of the applicant.

Without restricting the generality of the test set out in Section 4(1) of the Agreement, a sliding scale of financial eligibility is used. As a reference point in 1980 the figure of \$100 per week take-home pay was used. An applicant with minimum financial obligations seeking assistance on a matter of minimum complexity would not qualify for the free assistance of a staff lawyer if his weekly take-home pay exceeded that amount. While this guideline appears lower than in other legal aid jurisdictions in Canada, Prince Edward Island's minimum wage is lower than elsewhere, and there are many young counsel, especially in Charlottetown, who appear willing to represent individuals on minor matters to gain litigation experience. Eligibility consideration is extended as the financial obligations of the applicant or complexity of the matter increases.

Coverage

Criminal Law

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person who is charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces grant legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood. In similar cases where the above likelihood does not exist provinces have discretion in granting legal aid.

Civil Matters

On December 1, 1979 comprehensive family legal aid coverage was instituted under a federal provincial project; it was still in place at the end of the fiscal year.

Tariffs

The tariff is used in all cases handled in whole or in part by private counsel. The lawyer submits his account to the legal aid office where it is approved and forwarded to the Department of Justice for payment.

Experimental Projects and Supplementary Services

There are no offices or organizations delivering supplementary legal aid services independent of the provincial legal aid plan in Prince Edward Island, except the family legal aid project, noted above.

TABLE 9
Legal Aid Revenue and Expenditures 1979-80 : Prince Edward Island

Population: 124,000

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|---|------------------|--|-------|
| Government of Canada | 82,500.00 | | |
| Provincial Government | 4,400.00 | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 0 | | |
| Other | | | |
| Total Revenue | 86,900.00 | | |
| EXPENDITURES | | | |
| Administration | 15,980.00 | 15,980.00 | |
| Delivery of Services by Salaried Staff | 68,382.00 | 68,382.00 | |
| Delivery of Services by Private Lawyers | 2,536.00 | 2,536.00 | |
| Other Programs | | | |
| Total Expenditures | 86,898.00 | 86,898.00 | |
| Less Contributions and Recoveries | 0 | | |
| Net Expenditures | 86,898.00 | 86,898.00 | |
| Total Expenditures per capita | .70 | | |
| Net expenditures per capita | .70 | | |
| Net Criminal F/P per capita | .70 | See Table Notes: 5,7,8,23,25, 26,30,32,35, 43, 45 | |
| Net Provincial Summary Conviction and Civil per capita | | | |
| Other Programs per capita | | | |

QUEBEC

LEGAL SERVICES COMMISSION

History

Legal "assistance" in Quebec emerged in 1951 through creation of a legal aid service of the Bar section of Quebec. In February 1956, the junior Bar of Montreal created a private non-profit corporation: the Legal Aid Bureau of the Bar of Montreal. A permanent secretariat was opened under the direction of an advocate employed full-time to receive potential clients and to cope with applications for legal assistance.

The legal aid applicant who was found eligible for services was referred to a member of the Bar in private practice, who provided his professional services on a voluntary basis. Legal and other costs were paid by the Legal Aid Bureau and for the first ten years the funds necessary for the proper operation of this Bureau were provided by members of the Bar. Legal aid was provided in all areas of law and before all courts if funds were available to meet disbursements and other costs.

In 1967, in an effort to assist in the establishment of a broader service, the Government of Quebec began to make increasingly larger annual grants. With a constant increase in the number of applications, the salaried advocates of the Legal Aid Bureau could no longer meet the established needs and advocates in private practice who assisted them continued to do so on a voluntary basis.

In an attempt to create the beginnings of a more structured legal assistance program for the province, the Bar of the Province of Quebec and the provincial Department of Justice signed two successive agreements during the Winter and summer of 1971. Under the second agreement, the Bar agreed to provide legal assistance in criminal matters. The tariff was to be 60% of an established fee schedule. The Bar agreed to provide services free of charge in civil matters.

In 1970, 1971 and 1972, clinics were set up in disadvantaged areas of Montreal, Quebec City and Sherbrooke. The Montreal and Quebec Bars and the provincial Bar Society also set up legal assistance bureaux. Co-ordination was lacking and much of the work was still being done on a voluntary basis.

On July 8, 1972, the Legal Aid Act of the Province of Quebec received royal assent. On August 23, 1973, members of the Legal Services Commission provided for under the legislation were appointed.

On December 12, 1972, the Province of Quebec and the Federal Government of Canada entered into a cost-sharing agreement for the provision of criminal legal aid services in the province.

Plan, Structure and Operation

The Legal Aid Act was passed by the National Assembly in July 1972, was partly proclaimed in September 1972, was amended in December 1972 and wholly proclaimed in June 1973. The Act was amended again in June 1978, June 1979 and December 1979.

The Act creates a corporate body, the Commission des Services juridiques, to administer the plan. The Commission operates from Montreal and is made up of twelve members named by the Lieutenant Governor in Council and chosen from those groups of persons who because of their activities are likely to contribute to the study and solution of the legal problems of the underprivileged. The Commission also includes the Deputy Minister of Justice or his representative and the Deputy Minister of Social Affairs or his representative who are members of the Commission in an advisory capacity without the right to vote.

The Commission is responsible for seeing that legal aid is provided to economically underprivileged persons, and for this purpose it must establish and develop regional legal aid corporations and empower them to provide legal aid. The Commission finances the regional and local corporations which are the component parts of the plan responsible for the actual delivery of legal services.

The Commission encourages the development of information programs and legal education programs for indigents.

Regional Corporations

In 1979-80, eleven regional corporations were in existence under the Quebec Legal Aid Plan. These are community legal centres and their names must include that notation as required by the Legal Aid Act.

Regional Corporations have the status of corporations under the Civil Code and are responsible for providing legal aid in their geographical areas. They carry out this function by establishing legal aid bureaux in various parts of their territory depending on the needs of the population. Advocates are hired on a full-time basis along with the necessary support staff. The regional corporations are listed as follows:

| | |
|-------------------------|----------------------|
| Lower St-Lawrence/Gaspe | Northwest |
| North Shore | Quebec |
| Eastern Townships | Outaouais |
| Laurentide-Lanaudiere | South Shore |
| Mauricie/Bois-Francs | Saguenay/Lac St-Jean |
| Montreal | |

Local Corporations

The regional corporation recommends the establishment and certification of local legal aid corporations where a need is evident. These are legal entities incorporated under Part 3 of the Quebec Companies Act. Two local corporations are now in existence, one in Montreal and one in Hull.

Local corporations tend to be more independent in operation than the bureaux although their funding now comes from the regional corporations on an annual basis and therefore certain standards and criteria have to be met. Indeed, the regional corporations, having jurisdiction in a region, must see that the activities of a local corporation are integrated within the overall legal services provided in the region, and that such local corporations comply with the Act and Regulations.

Bureaux

There are 142 offices now operating in the province of Quebec, 140 operated by the regional corporations and 2 by the local corporations. As of March 1980, there were 325 lawyers working full-time in legal aid offices.

Applications for legal aid are received and processed by the local bureaux. In all cases, if an applicant is financially and legally qualified, a legal aid certificate will be issued.

Once an applicant has a legal aid certificate, he has free choice of counsel. He may choose a member of the private Bar or a full-time salaried bureau lawyer to represent him. Staff lawyers may also make referrals where there is a conflict of interest or where the office staff lacks the necessary experience.

Coverage

Coverage in civil, criminal and penal law is comprehensive. The following matters are excluded:

- an action for defamation or an action for libel, plaintiff only;
- an action in contestation of an election;
- an action in case of usurpation of offices or franchises;
- an action for damages for breach of promise of marriage, plaintiff only;
- an action for damages resulting from alienation of affection, plaintiff only;
- an action in respect of which a fine is likely to be payable, in whole or in part to the claimant, plaintiff only;

- any defence relating to an offence against laws or bylaws respecting parking.

Eligibility

A guideline income test is applied. As of January 1st, 1980, for a single person, the applicant must have a gross weekly income of \$155. or less; for a couple with one dependent, it is \$195. and \$15. for each additional dependant. The test is flexible and is indexed to the Canadian annual increase of the average salary. Adjustments are made on January 1st of each year.

In every case, financial eligibility is a decision for the individual lawyer and no applicant will be refused legal aid on these grounds without an interview. Appeals from refusals are made to a provincial review board whose decision is final.

There is no residence requirement for applicants for legal aid in criminal matters in Quebec in accordance with the terms of the federal-provincial cost-sharing agreement. In civil matters, there is a reciprocal agreement with every Canadian province administering a civil Legal Aid Plan. By virtue of this agreement, legal aid is granted to non-residents from those provinces.

When there is no reciprocal agreement in force with the province or the country of origin of the non-resident, legal aid is granted on a case-to-case basis.

During the past two years, the number of applications for legal aid has been stable. The estimated population eligible for legal aid services in Quebec is about 2,000,000 persons or one third of the total population.

Other Services and Projects

The Commission provides extensive consultant, education and research services. The legal research group responded to 1361 requests for research services by lawyers employed by legal aid. They also organized in-service study sessions, training sessions for newly-appointed staff lawyers and engaged in other training activities. The Research Service also produces and revises a Practice of Legal Aid Manual. The manual is a resource on many of the legal issues encountered by legal aid lawyers. The Service prepared legal education materials which are published by public education groups or by the Commission itself. Examples include popular legal discussions written for the Bulletin of the Montreal Consumers Cooperation and comic strips addressed to the young.

The Commission has also hired a criminologist to expand its research capacity. The Documentation Centre, directed by a librarian, serves as a library and research resource.

During 1979-80, the provincial Commission spent \$125,774.00 on the above consultant, legal and research services. Regional corporations spent an additional \$154,984.00 on professional development activities.

The Commission also has a very active Information Service. During the past year, it produced a radio campaign entitled "La Minute Juridique" which was broadcast to a network of over 57 radio stations. Local and regional newspapers also publish the same material in regular columns. In addition, 26 thirty minutes television programs were produced and televised. The series "Justice Pour Tous" won a silver medal at the Can-Pro Festival. Another series of 26 one hour programs were prepared for cable TV. A number of legal education pamphlets were also reissued. The service distributed over a million brochures and conducted press conferences. The 1979-80 expenses for this service amounted to \$204,735.00.

The regional corporations also carried out a wide variety of special projects, study sessions and public education activities.

TABLE 10
Legal Aid Revenue and Expenditures 1979-80 : Quebec

Population: 6,298,000

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|---|----------------------|--|-------------------------------------|
| Government of Canada | 6,451,700.00 | | |
| Provincial Government | 26,858,500.00 | | |
| Lawyers Trust Account Interest | 0 | | |
| Client Contributions and Recoveries | 140,065.00 | | 140,065.00 |
| Other | 4,737,967.00 | | |
| Total Revenue | 38,188,232.00 | | |
| EXPENDITURES | | | |
| Administration | 2,115,676.00 | 660,726.00 | 1,454,950.00 |
| Delivery of Services by Salaried Staff | 19,965,526.00 | 6,201,387.00 | 13,764,139.00 |
| Delivery of Services by Private Lawyers | 13,913,558.00 | 4,379,172.00 | 9,534,386.00 |
| Other Programs | | | |
| Total Expenditures | 35,994,760.00 | 11,241,285.00 | 24,753,475.00 |
| Less Contributions and Recoveries | 140,065.00 | | 140,065.00 |
| Net Expenditures | 35,854,695.00 | 11,241,285.00 | 24,613,410.00 |
| Total Expenditures per capita | 5.72 | | |
| Net expenditures per capita | 5.69 | | |
| Net Criminal F/P per capita | 1.78 | See Table Notes: | 5,7,8,9,23 25,26,32,39, 43,45 |
| Net Provincial Summary Conviction and Civil per capita | 3.91 | | |
| Other Programs per capita | | | |

SASKATCHEWAN

SASKATCHEWAN COMMUNITY LEGAL SERVICES COMMISSION

A wide range of legal aid services is available to residents of Saskatchewan as a result of The Community Legal Services (Saskatchewan) Act, 1974 (R.S.S. 1973-74, c. 11 as amended R.S.S. 1978-79, c.20). Beginning in August, 1974, the Saskatchewan Community Legal Services plan offered community-based legal aid through a provincial network of local area boards. In 1979-80, there were thirteen local boards. Each local board represents local community groups and is incorporated under The Societies Act. According to Section 15 of the Legal Services Act, boards negotiate contracts with the Provincial Commission to provide required local legal services and public information services.

The Governments of Canada and Saskatchewan have had cost-sharing agreements for the provision of legal aid in criminal matters since November, 1974.

The Saskatchewan Community Legal Services Commission is a body corporate consisting of nine members. The Commission consists of: three members appointed by chairmen of local area boards from among their number; one member appointed by the Lieutenant Governor in Council from among members of the Law Society of Saskatchewan nominated for that purpose by the benchers of the Society; three members appointed by the Lieutenant Governor in Council; one member who is a member of the Law Society of Saskatchewan appointed by the Attorney General of Canada; and, an employee of the Attorney General's Department.

The Chairman is also the chief executive officer of the Commission, employs the Commission staff, participates in the negotiation of area boards, and carries out the policies of the Commission and performs other designated duties.

The Commission finances the operations of area boards by contract, evaluates legal services under the Act, and may withhold funds from and or decertify boards acting contrary to the instructions of the Commission or in a manner which the Commission feels is contrary to the interests of those served by the plan.

The Commission is empowered to establish eligibility rules, to draw up administrative guidelines for area boards for the provision of legal services, to ratify area contracts with boards, to certify area boards, to retain lawyers to provide legal services under the plan, to encourage and assist university clinical law programs, to authorize the use of students in the provision of legal services, and to publicize and implement the Act and the plan.

Area boards are empowered to employ the necessary legal services support staff in their areas, and may retain and dismiss solicitors with Commission approval. Area boards are also empowered to advise the area staff on the legal needs of the area residents, establish committees to review financial refusals of eligibility, negotiate area contracts with

the Commission, establish information and counselling programs, and advertise the provision of legal services under the Act.

The majority of legal services are provided by the clinic lawyers and support staff of the area boards and of the Commission. Some services are provided by private lawyers (retained on a fee-for-service basis) who are prepared to act in possible conflict of interest situations or where it is impossible or improper for clinic lawyers to act, and in Criminal Code cases where client choice of solicitor is provided by the Act. In all cases coming under the Criminal Code or any Act of the Parliament of Canada, a legal aid recipient may choose a solicitor to act on his behalf from a panel of private solicitors, where upon conviction, the maximum penalty would be life imprisonment. The solicitor so chosen has the right to decline to offer his services.

COVERAGE

Criminal Law

Under the terms of the Federal-Provincial Agreement, the province makes legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in Federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the province may grant legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; in most cases the discretion is exercised in favour of the applicant.

In the criminal field, the plan provides for a community legal services delivery system with referrals of qualified applicants being made to the Bar only where conflicts exist and special expertise is required. However, the accused will have a choice of counsel where he is charged under the Criminal Code or any other federal statute as mentioned above.

Civil Matters

In 1979-80 comprehensive civil legal services were provided through the plan, in the areas of divorce and other family matters; bankruptcy and insolvency cases; wills and estates; landlord and tenant; welfare allowances; income tax; auto accidents; unemployment insurance; consumer problems and cases concerning old age pensions. Services are also available for cases involving child apprehensions, wages and employment, small claims, insurance, changes of name, and tort problems. The plan is expected to cover everything except fee-generating matters. Staff lawyers handle civil matters except in cases of conflict and other special circumstances.

Services Rendered

In 1979-80, most of the services were provided by staff lawyers and others employed in community clinics. The thirteen area boards accepted 16,250 applications and completed 14,313 cases. No statistics are available on the operations of the Northern Legal Services Office. These figures are similar to the corresponding 1978-79 totals of 15,904 and 16,177. In addition the private bar in 1979-80 completed 505 criminal cases and 625 civil cases. These figures represent a significant drop since the previous year when the corresponding figures were 2562 and 2843.

Financial Eligibility

An applicant is eligible to receive legal services under the plan:

- when he receives all or part of his income under a social assistance program of the Department of Social Services, the Department of Northern Saskatchewan or the Federal Department of Indian and Northern Affairs;
- when he does not receive any of his income through a program of social assistance and he has an income equal to or less than that which he would be entitled to receive under social assistance; or
- when the obtaining of legal services outside of the plan would reduce his income to a point whereby he would become eligible for the benefits under social assistance.

Should a legal aid client be required to make a contribution toward the payment of case costs, the amount will not reduce the income of the applicant to a level where he would be eligible for social assistance.

Contributions and Costs

Financial contributions from legal aid recipients are left to the discretion of the Commission and where the Commission does require a contribution, the amount owing is considered to be a debt recoverable in any court of competent jurisdiction.

Costs recovered in favour of a legal aid applicant where the services of a solicitor have been provided are payable to and are the property of the Commission. Costs awarded against an applicant where legal services were provided under the Act may be paid on behalf of the applicant by the Commission.

Experimental Programs and Supplementary Services

Most area boards have played a role in providing services in varying degrees in preventive law programs, public legal education, group organization, and legal counselling to nonprofit societies. Clinics supply speakers to community groups wishing instruction in special legal areas, participate in media programs, and conduct seminars, sometimes on a regular basis, in correctional and educational institutions and elsewhere.

Recent Changes

The Saskatchewan plan has undergone some modifications during the past few years. On September 1, 1978, the Attorney General commissioned His Honour Judge R.H. McClelland to review the provision of legal aid services. The report was submitted on December 15, 1978. As a result of his recommendations, the Act was amended. (R.S.S., 1979, c.20). The changes in the Act included modifications in the composition of the Commission, removed the requirements that the Provincial Director be a solicitor, prohibited boards from making expenditures in excess of the funds placed at their disposal for the year, and made other minor administrative alterations.

TABLE 11

Legal Aid Revenue and Expenditures 1979-80 : Saskatchewan

Population: 947,400

| REVENUE | TOTAL | Criminal under Federal - Provincial (F/P) Agreement | Other |
|--|---------------------|---|---------------------|
| Government of Canada | 973,800.00 | | |
| Provincial Government | 2,625,667.00 | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 18,740.21 | 920.00 | 17,820.21 |
| Other | 4,409.79 | | |
| Total Revenue | 3,622,617.00 | | |
| EXPENDITURES | | | |
| Administration | 571,672.75 | 270,038.16 | 301,634.59 |
| Delivery of Services by Salaried Staff | 3,106,819.30 | 1,568,692.98 | 1,538,126.32 |
| Delivery of Services by Private Lawyers | 248,996.91 | 217,079.34 | 31,917.57 |
| Other Programs | | | |
| Total Expenditures | 3,927,488.96 | 2,055,810.48 | 1,871,678.48 |
| Less Contributions and Recoveries | 18,740.21 | 920.00 | 12,820.21 |
| Net Expenditures | 3,908,748.75 | 2,054,890.48 | 1,853,858.27 |
| Total Expenditures per capita | 4.06 | | |
| Net expenditures per capita | 4.04 | | |
| Net Criminal F/P per capita | 2.12 | See Table Notes: 5,7,8,23,25,26,32,43,45 | |
| Net Provincial Summary Conviction and Civil per capita | 1.92 | | |
| Other Programs per capita | | | |

YUKON TERRITORY

LEGAL AID PLAN

History

Until 1971, the Department of Justice administered the Yukon's system of legal aid. 1969 saw the beginnings of a transfer of responsibilities relating to the administration of justice in the Territory from the Department of Justice to the Territorial Government. The responsibilities transferred included the administration of the established legal aid program. Legislation to secure this major change in administrative responsibility was passed and the transfer took place in March-April 1971.

In 1969, the Department of Justice commenced a further study of the criminal legal aid program and needs in this area in both the Northwest Territories and the Yukon. While the basic program in the Yukon was reported to be operating satisfactorily, recommendations were made in connection with providing more lawyers on a more regular basis to outlying areas, and in connection with the tariff of fees regulating payment to lawyers participating in the program.

Later reports examining the same questions in the northern context considered the possibility of introducing a public defender system but rejected this in favour of the delivery system eventually introduced in the Northwest Territories. Prior to those reports, Mr. Justice Morrow, after conducting an enquiry into the administration of justice in Hay River, N.W.T., recommended that a new legal aid system be implemented for the North but that it should not be based on the public defender type of delivery system.

The Department of Justice finally agreed to a proposal which would see a cost-shared comprehensive legal aid program encompassing both civil and criminal legal aid with services to be delivered by members of the Territorial Bar on a fee-for-service basis. A program of this type was implemented in the Northwest Territories in August 1971 under an agreement between the Government of the Northwest Territories and the Government of Canada through the Department of Justice. The Yukon Government indicated acceptance of such a program in principle, providing that adjustments were made in the cost-sharing formula contained in the agreement concluded with the N.W.T. Government.

In December, 1975 the Legal Aid Ordinance of the Yukon Territory was assented to and formed both the legislative base for a comprehensive legal aid program in the Yukon and later the basis of a cost-sharing agreement between the Yukon and the federal government, signed on March 31, 1977.

Although the Yukon had a criminal legal aid program for a number of years, a civil program was not introduced until April, 1977. Legal Aid was hitherto limited to the provisions of legal services to the under-privileged in serious criminal matters only and in the presence of a Legal Aid Counsel accompanying the courts when travelling throughout the Territory.

The signing of a cost-sharing agreement between the Federal Government and the Yukon Government in support of comprehensive legal aid ensured that the services of a lawyer were available in almost all criminal offences and within a broad range of civil matters as well.

Plan, Structure and Operation

The governing body of legal aid in the Yukon is the Legal Aid Committee. The committee consists of three members appointed by the Commissioner, who also appoints the chairman. Currently the chairman is the Judicial Administrator of the Department of Justice. The remaining two committee members are a lay person and one member appointed on the nomination of the president of the Yukon Law Society. Members of the committee are appointed for terms of office not exceeding three years and are eligible for reappointment.

The committee maintains two panels of lawyers, who are prepared to act on a fee-for-service basis. One panel of lawyers consists of residents in the Yukon, the other of lawyers outside the Yukon. After considering the nature of the services required, the experience, qualifications, and availability of the counsel and wishes of the applicant, the committee assigns the case to one or the other of the Resident and Non-Resident Panels. Duty Counsel is no longer provided in Whitehorse but does attend on court circuits throughout the territory.

With the approval of the Territorial Commissioner, the committee is also empowered to make rules concerning the manner in which legal aid is delivered and concerning other matters it considers necessary to fulfill the terms of the Legal Aid Ordinance.

The Federal-Territorial Agreement

Under the agreement signed in March, 1977, the federal government contributes 50 per cent of the actual cost of providing civil and criminal legal aid (after deducting applicant contributions and costs recovered) up to a maximum annual contribution of \$50,000. With legal aid in the provinces, the federal government contributions are calculated on the basis of population, but because of the relatively small populations in the territories this approach is not considered practical.

Terms of the agreement, effective retroactively from April 1, 1976 was open for renegotiation at the end of an initial two-year period ending in March, 1979.

Eligibility

The applicant's eligibility for legal aid under the plan is determined by a Legal Aid Committee. The committee, consisting of three members, meet on a regular basis and act as an appeal against any decisions adverse to the applicant's interest made by the legal aid clerk. The legal aid clerk reviews applicant requests for services in the criminal area and in crown appeals. In the civil area lawyers review the merits of a case. An interim certificate is provided on this basis until the committee further reviews the merits of civil cases.

Legal aid is available to every person in the Yukon and to every person ordinarily resident in the territory who cannot afford to retain his own lawyer without depriving himself or his dependents of reasonable necessities of life or without sacrificing modest capital assets. In determining eligibility the committee considers an applicant's financial status, that of family members, and other relevant matters. An applicant may be required by the committee to contribute to the cost of employing legal aid counsel.

Coverage

Criminal

The committee arranges for criminal legal aid counsel to accompany the Supreme Court and the Magistrate's Court on all circuits where criminal legal aid counsel may be required.

Subject to the Ordinance and the regulations legal aid is provided in the following criminal matters:

- (1) (a) where the offence is under a Statute of the Parliament of Canada and is to be proceeded with by indictment;
- (b) where the offence is under (i) a Statute of the Parliament of Canada;
 - (ii) a Regulation made pursuant to a Statute of the Parliament of Canada;
 - (iii) an Ordinance of the Territory; or
 - (iv) a Regulation made pursuant to an Ordinance of the Territory, and is to be proceeded with by summary conviction in a court, if the accused is subject to a sentence of imprisonment or to a penalty that, in the opinion of the committee or the court, will interfere substantially with his livelihood;
- (c) proceedings under the Juvenile Delinquents Act or any statute replacing it;

CONTINUED

1 OF 2

- (d) proceedings pursuant to the Extradition Act and the Fugitive Offenders Act; or
- (e) where the offence is one not provided for in paragraphs (a), (b), (c), or (d) and, in the opinion of the committee or the court, the accused is not capable of making an informed decision as to his proper course of action, or it appears to the committee or to the court that the accused may be subject to a sentence of imprisonment or to a penalty that will interfere substantially with his livelihood.

(2) Where,

- (a) an appeal has been taken by the prosecution;
- (b) counsel advises that an appeal by the applicant has merit and the committee agrees; or
- (c) the Appeal Court or a judge thereof requests that legal aid be provided to the applicant,

Legal aid shall be provided in respect of an appeal in any of the matters referred to in paragraphs (1) (a), (b), (c), (d), or (e).

Civil

Subject to the Ordinance and the regulations, legal aid is provided in all civil matters except:

- (a) defamation;
- (b) estates;
- (c) incorporation of companies or societies or the formation or dissolution or partnerships;
- (d) real property transfers;
- (e) breach of promise of marriage;
- (f) loss of service of a female in consequence of rape or seduction;
- (g) alienation of affections or criminal conversation;
- (h) relator or representative actions;
- (i) arbitrations or conciliations;
- (j) proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty, in whole or in part, may be payable to the person instituting the proceedings; or

- (k) proceedings relating to any election.

Other

Concerning the tariff of fees, the Yukon generally looks to Alberta's tariff as a model.

No special projects or legal aid services have been provided of late through the plan.

TABLE 12
Legal Aid Revenue and Expenditures 1979-80 : Yukon Territory

Population: 21,400

| REVENUE | TOTAL | Criminal under Federal - Territorial (F/T) Agreement | Other, under F/T Agreement |
|---|------------|---|-------------------------------|
| Government of Canada | 75,000.00 | | |
| Territorial Government | | | |
| Lawyers Trust Account Interest | | | |
| Client Contributions and Recoveries | 1,988.06 | 1,988.06 | |
| Other | | | |
| Total Revenue | | | |
| EXPENDITURES | | | |
| Administration | 34,405.49 | 32,990.40 | 1,415.09 |
| Delivery of Services by Salaried Staff | | | |
| Delivery of Services by Private Lawyers | 116,985.81 | 95,377.31 | 21,558.50 |
| Other Programs | | | |
| Total Expenditures | 151,341.30 | 128,367.71 | 22,973.59 |
| Less Contributions and Recoveries | 1,988.06 | 1,988.06 | |
| Net Expenditures | 149,353.24 | 126,379.65 | 22,973.59 |
| Total Expenditures per capita | 7.07 | | |
| Net expenditures per capita | 6.98 | | |
| Net Criminal F/T per capita | 5.91 | See Table Notes: 5,7,8,20,23,25, 26,32,43,44,45 | |
| Net Provincial Summary Conviction and Civil per capita | 1.07 | | |
| Other Programs per capita | | | |

DEFINITIONS, INFORMATION SOURCES
AND TABLE NOTES

General

The description, of each provincial and territorial legal aid plan in this study, includes a table of revenue and expense for the individual plan. Other tables appearing as a group display information about all or several of the plans; although the composite tables display information about several plans, much of the information is not comparable between plans because definitions are not compatible, in many instances, and because the twelve information systems have developed independently to meet perceived needs.

It is intended in this part to give examples of the factors which colour comparisons based on currently available information.

Definitions

The following definition problems fairly illustrate why the existing information systems utilized by the plans do not yield compatible or comparable data.

The principal problem for information program development is the lack of consensus, and the range of operational practices in identifying and defining the basic unit of legal aid services, the case. A variety of definitions have been proposed and there is some possibility that uniformity may be achievable. A number of definitions are currently in use. For example, in criminal cases, an applicant may receive counsel in detention, for a bail proceeding, in provincial court, in county or supreme court or finally in appeal court: this may be treated as 5 cases or one. The practice varies from one region to another within provinces. Similar variation of case definition arises from multiple counts. When a woman seeks advice about a divorce, this may be treated as an information only item or a "case". The treatment varies from one plan to another and from one lawyer to another. Which provincial organizations ought to modify their practices and management information systems to meet the needs of a national, integrated system? There are as yet no firm answers to these questions.

The numbers of applications are probably counted in reliable ways under some judicare systems. However, the numbers of applications are probably under-estimated in many instances because: advice is often given without an application; some provinces, such as Ontario, count only completed applications; some provinces, such as Manitoba, count only their long form applications although many more applicants fill out short form applications in a pre-screening process which is not subject to counting; the count can vary with the class of personnel taking, receiving or guiding the application; telephone inquiries are not counted.

Many of the comments regarding "application" definition problems apply to the statistics on rejections. There has been no effort in this study to separate out the cancellations and/or revocations, but separate data on those items may be useful in future.

"Other" program expenditure, as it appears on the individual provincial tables, includes grants to outside groups, student legal aid clinics, preventive law programs, continuing legal education and research projects. In the case of British Columbia, however, this category includes expenditures of the Legal Services Commission (April to September, 1979) and the Legal Services Society (October 1979 to March 1980), which may include expenditure for service delivery by salaried staff or private lawyers.

Also on the individual provincial tables, "other" income includes interest, investment income and miscellaneous income.

Expenditure on service delivery by salaried staff excludes administrative expenditure and is equivalent to clinic-delivered service expenditure. In the case of Newfoundland, however, expenditure for administration and service delivery by salaried staff were combined by the plan in one amount.

"Advice" caseloads have been reported by some plans; it appears that such cases may be classed by other plans as duty counsel cases. Those incompatible definitions and the incomparable statistics which are currently counted from them also illustrate the ways in which definitions do not allow valid comparisons of the plans.

Information Sources

The National Legal Aid Research Centre conducted interviews with staff of nine provincial legal aid plans, and entered into correspondence with all twelve plans. In most cases, final responses were received in time to include same in this report; where omissions in the table occur, they are the result of failure to obtain information in time for printing, or because the requested information was not available.

Much of the information was gleaned from the claims, submitted by the provinces and territories, for contribution from the Government of Canada in respect of the operation of their respective legal aid plans. Where data on a claim conflicted with other information, the claim data was used. Also, it should be noted that several of the claims did not contain complete information.

Although the claims for contribution submitted by the plans to the Federal government contain expenditure allocation figures respecting federal-provincial cost-shared items and other non cost-shared items for the ten provinces and criminal and non-criminal cost-shared items for the territories, the claims do not contain similar breakdowns of revenue sources. For this reason, sources of revenue are given in totals only, where available, on the individual provincial and territorial tables (1-12).

The finance section of the Federal Department of Justice provided estimates of the amounts expected to be paid to each province and territory. At the time of completion of this report, the Department had not completed its auditing of the plans because the last claim was not received by them until February 6, 1981; after completing audits and other calculations, the final amounts to be paid to each jurisdiction can be calculated. The budget originally set for the federal contribution to legal aid plans for the 1979-80 fiscal year was \$24,005,250.00, while the amount currently estimated to be payable for that period is \$24,008,522.00. At the time of completion of this report, seven provinces had received partial contributions from the federal government, while the other jurisdictions had yet to receive any portion of their allotments for fiscal 1979-80.

On the individual provincial and territorial plan tables (1-12) the provincial government revenue was calculated as a balancing figure for Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Quebec, Saskatchewan, Prince Edward Island and Newfoundland because those plans reported total revenue expected and revenue from the other sources; federal revenue entries for all plans are based on federal estimates. Federal contributions were estimated by several plans and those estimates varied from the federal department of justice estimates, as follows:

| | Provincial Estimate of Federal Revenue | Federal Estimate of Federal Revenue |
|----------------------|---|--|
| Newfoundland | \$ 423,218.80 | \$ 365,400.00 |
| Saskatchewan | 967,700.00 | 973,800.00 |
| Quebec | 5,799,490.00 | 6,451,700.00 |
| Nova Scotia | 860,000.00 | 867,800.00 |
| Prince Edward Island | 78,200.00 | 82,500.00 |

All revenue items except government revenue where entered on the individual plan tables, were calculated by the respective plans.

On the Quebec plan table "other" revenue was also used as a balancing entry.

There has been no effort to balance total revenue and net expenditure on the individual plan tables; on Table 18, however, total expenditures of the plans are the same total expenditures which appear on the individual plan tables, and the provincial source has been used as a balancing item, on Table 18, so that total expenditures equal the total of sources of funds. Revenues from the provinces and territories are therefore not the same on Table 18 and on the respective plan tables (1 - 12).

While table formats resemble those such as were produced by the National Task force on the Administration of Justice in its publication "Legal Aid Services in Canada 1977-78: Comparisons of Services", it is suggested that other formats may become more appropriate upon development of compatible and comparable information systems.

The numbers of practicing lawyers on each jurisdiction were obtained from the Canadian Bar Association and were accurate to June 30, 1980. The number of lawyers in Quebec on that date included 2335 notaries.

The annual reports of the nine provincial plans were also utilized in the preparation of this report.

Provincial and Territorial populations used in this report were estimated by Statistics Canada, as at April 1, 1980, according to their catalogue number 91-001.

Table Notes

1. The definition of "application" varies considerably; see the comments in this chapter under the heading "Definitions"; table 14 is affected by this variable.
2. The definition of "rejection" or "rejected application" varies among the plans and some comments made under the "Definitions" heading in this chapter make note of this; table 14 is affected by this variable.
3. The definitions of "case" vary from plan to plan and as mentioned in the "Definition" section of this chapter, the lack of uniform definition poses a major obstacle to program comparisons; tables 15 and 16 are affected by this variable.
4. Ontario Legal Aid furnishes no statistics regarding the caseload handled by its salaried staff; tables 15 and 16 are affected by this variable.
5. Provincial source of fund is a balancing figure in each provincial plan table (1-12) where the revenue totals are as reported by the respective plans; provincial source of fund is also a balancing figure for each plan on table 18, where total expenditures are as reported by the respective plans on their claims for contribution from the Government of Canada.
6. In its claim for contribution from the federal government the British Columbia plan reported other program expenditures to the Salvation Army to the Legal Services Commission and to the Legal Services Society; it is suspected that included in some or all of those amounts are some expenditures for delivery of services by salaried staff and/or by private lawyers; the B.C. plan reported more detailed information in its annual report but since that data

was for the last six months of the period, it was decided to utilize the information for the entire year as noted on the claim for contribution; similarly, while the B.C. annual report noted certain revenue sources and amounts for the last six months of the period, it was decided to omit same from the tables; The B.C. provincial table 2 and tables 17 and 19 are affected by this note.

7. "Other" program expenses include grants to outside groups, student legal aid clinics, preventive law program, continuing legal education and research; the provincial tables 1-12 are affected by this item.
8. "Other" revenue on each provincial and territorial table includes interest, investment income and miscellaneous income (Tables 1-12).
9. For Quebec, expenditure for services performed by private lawyers include fees and disbursements paid to notaries and lawyers; Quebec's provincial table 10 as well as tables 17 and 19 are affected by this item.
10. On table 20 the number of lawyers in Quebec include 2335 notaries.
11. The Newfoundland plan reported different amounts for contributions and recoveries on its claim for contribution from the federal government and on its attached statement of revenue and expense; the claim figure was selected for our tables; the Newfoundland provincial table 5 as well as tables 17 and 19 are affected by this item.
12. The Newfoundland plan reported different amounts for total expenditure on its claim for contribution from the Government of Canada and on its attached statement of revenue and expense; this is illustrative of disparities which occur in the reporting of several plans; where differences appeared, it was decided to use the figures reported on the claim for contribution; the Newfoundland provincial table 5 as well as tables 17 and 18 are affected by this item.
13. In the Manitoba plan the figure for delivery of services by the private bar does not include a total "holdback" in the amount of \$80,467.00; tables affected by this variable are the Manitoba provincial table 3 and tables 17 and 19.
14. Manitoba plan expenditure figures for delivery of services by the private bar do not match on schedules A and B of the plan's claim for contribution from the federal government; it was decided to use the figure appearing on schedule A; the Manitoba plan table 3 as well as tables 17 and 19 are affected by this variable.

15. British Columbia reported no breakdown statistics for types of criminal offence cases handled by salaried staff; table 16 is affected by this item.
16. British Columbia reported no caseload statistic for rape cases handled by the private bar although 564 sex offences were reported; tables 15 and 16 are affected by this item.
17. Northwest Territories did not report duty counsel caseload statistics although duty counsel services were probably provided; table 15 is affected by this item.
18. Northwest Territories Legal Aid Plan did not furnish the investigators with a copy of their annual report in time for publication of the instant study; it is expected that information in its report could have been entered on their individual plan table 6, and on tables 14 and 20.
19. Newfoundland Legal Aid Plan did not furnish the investigators with a copy of their annual report in time for publication of the instant study; it is expected that information in its report could have been entered on their individual plan table 5, and on table 14.
20. Yukon Territory Legal Aid Plan did not furnish the investigators with a copy of their annual report in time for publication of the instant study; it is expected that information in its report could have been entered on their individual plan table 12, and on tables 14, 15, 16 and 18.
21. Saskatchewan reported that the number of rejected applications is unavailable; table 14 is affected by this item.
22. The Newfoundland plan combined expenditures for administration and delivery of services by salaried staff; the Newfoundland plan table 5 as well as tables 17 and 19 are affected by this item.
23. It often occurred that expenditure and/or caseload data, reported on a plan's claim for contribution from the federal government, conflicted with data from other sources; when that occurred, the claim data was utilized; all provincial tables (1-12) as well as tables 17, 18 and 19 are affected by this variable.

24. The numbers of practicing lawyers in each province and territory, as they appear on table 20, were obtained from the Canadian Bar Association and were accurate as at June 30, 1980.
25. Provincial and territorial population statistics were obtained from Statistics Canada estimates appearing in their catalogue 91-001 quarterly, and the estimates used were for April 1, 1980; all provincial and territorial tables (1-12) as well as table 13 carry data from this source.
26. Revenues from the federal source are based on federal Department of Justice estimates; some plans had received partial payments when this study was being conducted but none of the plans had received full federal contributions for fiscal 1979-80 at the conclusion of this study; the provincial and territorial tables 1-12 as well as table 18 are affected by this variable.
27. The Quebec plan's "advice" caseload was reported to the investigators in response to some questions, while it did not appear in either the plan's annual report or its claim for contribution from the federal government; the Quebec plan reported an advice caseload figure of 27,095; that figure was not added to figures displayed on table 15 but it is mentioned here because the number is significant.
28. The Yukon plan reported total expenditures for payments to the private bar for criminal and civil matters but provided no breakdown data for duty counsel and other; table 17 is affected by this item.
29. The Yukon plan reported no caseload data in its claim for contribution; tables 15 and 16 are affected by this item.
30. The Prince Edward Island plan noted in separate correspondence that a special civil/family legal aid project expenditure (\$30,000.00) was not included in its reportings; its provincial plan table 9 and table 17 are affected by this item.
31. In Prince Edward Island, the legal aid plan did not report any civil caseload data from the civil/family legal aid project, in either the plan's annual report or its claim for contribution from the federal government; the provincial plan table 9 and table 15 are affected by this item.

32. Expenditure for delivery of services by salaried staff excludes administrative costs and is equivalent to clinic delivered service expenditure; the provincial and territorial tables 1-12 as well as tables 17 and 19 are affected by this item.
33. The Manitoba plan reported no statistics for civil caseload handled by salaried staff; table 15 is affected by this item.
34. The Prince Edward Island plan did not report the numbers of applications and rejected applications; table 14 is affected by this item.
35. On the Prince Edward Island Plan table 9, delivery of services by salaried staff includes salaries paid to two staff lawyers and one secretary; on table 17 the Prince Edward Island Plan salaries are combined with administrative expense in the "administration and general" column.
36. The Northwest Territories plan did not report the number of applications; table 14 is affected by this item.
37. The Newfoundland plan did not report the numbers of applications and rejections; table 14 is affected by this item.
38. The Nova Scotia plan did not report the numbers of rejected applications; table 14 is affected by this item.
39. The Quebec plan did not report expenditure for "other programs" in its annual report or in its claim for contribution from the federal government; in response to our questions, however, the plan reported that it spent \$204,735.00 for public legal information during the relevant period; the Quebec plan table 10 and table 17 are affected by this item; this item has not been displayed or included in any of the tables.
40. The British Columbia plan reported \$10,505.00 paid to the private bar for unspecified criminal matters on a schedule to the plan's claim for contribution from the federal government; that amount was not added to the amounts appearing on the schedule A to the claim (i.e., total expenditures for delivery of services by private lawyers) so it has not been included on the plan's table 2 or on table 17.

41. In our calculations of Nova Scotia caseloads for table 15, we assume that the plan's annual report tables C 1, C 2 and C 5 do not include the number of cases completed by private lawyers.
42. On table 16 "other" includes other criminal code and federal acts cases.
43. Administrative expenditure for each plan does not include amounts for "waived disbursements" such as reduced transcript fees and government air travel rates in Manitoba, rent-free premises in Saskatchewan and free air travel for legal aid counsel flying with magistrates and police on circuit in remote parts of Newfoundland; provincial tables 1-12 and table 17 are affected by waived disbursements which are not noted on those tables.
44. Complete statements of Revenues and Expenditures for the British Columbia Northwest Territories and Yukon plans were not available to the investigators during preparation of this study; revenue data on those individual plan tables (1 - 12) are therefore missing.
45. Tariffs of fees, paid by the plans to private practice lawyers, vary between the plans; while tariffs have not been compared in the tables, it is noted that the different tariffs prevent some comparisons of data; the provincial plan tables 1-12, as well as tables 13, 17, 18, and 19 are affected by this note.
46. In its annual report the British Columbia plan noted that 183 provincial offence cases were handled by private practice and salaried lawyers while in its claim for contribution the plan noted that 183 provincial offence cases were handed by private lawyers; table 15 therefore shows no provincial offence cases handled by B.C. salaried staff lawyers.
47. In British Columbia the total number of criminal "proceedings" handled by all lawyers under its plan was reported to be 22,321 in the plan's annual report; the significantly larger figure of 33,236 criminal cases handled by the private practice lawyers, as reported in the plan's claim for contribution, was used on table 16.
48. The Ontario plan noted that the plan engages 40 part-time Area Directors in addition to the 25 staff lawyers performing solely or mainly administrative duties; table 20 is affected by this note.

49. The Nova Scotia plan reported figures for administrative expenses do not represent all administrative expenses incurred; specifically, the "law clinic expenses" reported on their claim for contribution, listed on the plans provincial table as "delivery of services by salaried staff", includes costs of administration for the Halifax legal aid office and a considerable portion of the plan's central administration expenditure; this note affects the provincial plan table 7 and table 17.

TABLE 13: Legal Aid Expenditures, Populations, per capita Expenditures, for Provinces 1979-80

| Province | Reported total Expenditures | Population | Total per capita Expenditures |
|-----------------------|-----------------------------|------------|-------------------------------|
| Alberta | 4,555,202 | 2,068,800 | 2.20 |
| British Columbia | 11,610,528 | 2,626,400 | 4.42 |
| Manitoba | 3,511,677 | 1,027,100 | 3.42 |
| New Brunswick | 744,787 | 705,700 | 1.06 |
| Newfoundland | 698,943 | 578,200 | 1.21 |
| Northwest Territories | 452,919 | 42,800 | 10.58 |
| Nova Scotia | 1,992,861 | 851,600 | 2.34 |
| Ontario | 36,653,196 | 8,558,200 | 4.28 |
| Prince Edward Island | 86,899 | 124,000 | .70 |
| Quebec | 35,994,760 | 6,298,000 | 5.72 |
| Saskatchewan | 3,927,488 | 967,400 | 4.06 |
| Yukon | 151,341 | 21,400 | 7.07 |
| TOTAL | 100,380,601 | 23,869,700 | 4.21 |

See table notes:

25, 45

TABLE 14: Total Number of Applications for Legal Aid and Number Applications Rejected, for Provinces, 1979-80

| | Total Applications | Applications Rejected Number | Applications Rejected Percentage |
|-----------------------|--------------------|------------------------------|----------------------------------|
| | 1 | 2 | $3 = \frac{1 \times 100}{2}$ |
| Alberta | 17,387 | 5,494 | 31.6 |
| British Columbia | 37,375 | 9,000 | 24.1 |
| Manitoba | 14,105 | (approx.) 2,651 | 18.8 |
| New Brunswick | 1,523 | 169 | 11.1 |
| Newfoundland | | | |
| Northwest Territories | | 33 | |
| Nova Scotia | 13,267 | | |
| Ontario | 118,007 | 34,231 | 29 |
| Prince Edward Island | | | |
| Quebec | 216,306 | 24,153 | 11.2 |
| Saskatchewan | 16,250 | | |
| Yukon Territory | 495 | 17 | 3.4 |

see table notes: 1, 2, 18, 19, 20,
21, 34, 35, 36,
37, 38

TABLE 15: Number of Legal Aid Cases completed, by type of case and service delivery, for Provinces, 1979-80

| Province, service delivery | Total | Criminal Cases | | | Civil Cases | | | Advice Certificate |
|---|---------|----------------|---------------|---------------------|-------------|--------|--------|--------------------|
| | | Sub-total | criminal code | Provincial offences | Sub-total | Family | Others | |
| | 1=2+5+8 | 2=3+4 | 3 | 4 | 5=6+7 | 6 | 7 | 8 |
| Alberta: private practice | 12,993 | 9,811 | 9,785 | 26 | 3,122 | 2,422 | 700 | |
| British Columbia: total | 52,567 | 27,771 | 27,588 | 183 | 24,796 | 12,241 | 12,555 | |
| private practice | 33,236 | 25,140 | 24,957 | 183 | 8,096 | 7,957 | 139 | |
| clinic | 19,331 | 2,631 | 2,631 | 0 | 16,700 | 4,284 | 12,416 | |
| Manitoba: total | | 4,329 | 4,154 | 275 | | | | |
| private practice | 6,691 | 3,809 | 3,661 | 148 | 2,867 | 2,565 | 302 | 15 |
| clinic | | 520 | 493 | 27 | | | | |
| New Brunswick private practice | 945 | 945 | 931 | 14 | | | | |
| Newfoundland: total | 1,751 | 1,138 | 1,138 | | 613 | 505 | 108 | |
| private practice | 1,018 | 784 | 784 | | 234 | 184 | 50 | |
| clinic | 733 | 354 | 354 | | 379 | 321 | 58 | |
| Northwest Territories: private practice | 1,295 | 1,225 | 1,132 | 93 | 70 | 66 | 4 | |
| Nova Scotia: total | 13,467 | 7,244 | 6,761 | 483 | 6,223 | 4,377 | 1,846 | |
| private practice | 200 | 48 | 48 | 0 | 152 | 147 | 5 | |
| clinic | 13,267 | 7,196 | 6,713 | 483 | 6,071 | 4,230 | 1,841 | |
| Ontario: private practice | 58,333 | 34,734 | 34,606 | 128 | 21,706 | 18,047 | 3,659 | 1,893 |
| Prince Edward Island: total | 825 | 825 | 825 | | | | | |
| private practice | 13 | 13 | 13 | | | | | |
| clinic | 812 | 812 | 812 | | | | | |
| Quebec: total | 178,451 | 61,474 | 61,474 | | 116,977 | 50,996 | 65,981 | |
| private practice | 51,158 | 19,512 | 19,512 | | 31,646 | 20,339 | 11,307 | |
| clinic | 127,293 | 41,962 | 41,962 | | 85,331 | 30,657 | 54,674 | |
| Saskatchewan: total | 21,601 | 14,318 | 13,884 | 434 | 7,283 | 3,043 | 4,230 | |
| private practice | 625 | 505 | 505 | 0 | 120 | 79 | 41 | |
| clinic | 20,976 | 13,813 | 13,379 | 434 | 7,163 | 2,964 | 4,189 | |
| Yukon: private practice | | | | | | | | |
| see table notes: 3,4, 17,20,27,29,31,33,41, 42,46 | | | | | | | | |

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TABLE 16: Number of Criminal Legal Aid Cases Completed, by Delivery System and Type of Offence, for Provinces, 1979-80

| Province, delivery | Total | Unlawful | Matters | Rape | Robbery | Theft | Drunk | Other | Narcotics | Assault | Fraud | Other |
|--|--------|----------|--|------|---------|--|----------------------------|------------------------------|-----------|---------|-------------------|--------|
| | | Homicide | under Juvenile Delinquent Act | | | Break and Enter, and possession of stolen property | and Impaired Driving | Motor Vehicle Offences | | | False Pretence | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Alberta private practice | 9,785 | 67 | 474 | 81 | 503 | 4,252 | 213 | 62 | 613 | 780 | 368 | 2,311 |
| British Columbia private practice | 33,236 | 475 | 18 | | 920 | 9,135 | 2,742 | 1,081 | 2,384 | 2,045 | 1,737 | 4,420 |
| salaried staff | 2,631 | | | | | | | | | | | |
| total | 35,867 | | | | | | | | | | | |
| Manitoba private practice | 3,661 | 100 | | 119 | 210 | 1,378 | | 206 | 179 | 344 | 262 | 863 |
| salaried staff | 493 | 8 | | 10 | 21 | 195 | | 23 | 14 | 65 | 27 | 130 |
| total | 4,154 | 108 | | 129 | 231 | 1,573 | | 229 | 193 | 409 | 289 | 993 |
| New Brunswick private practice | 931 | 34 | | 13 | 66 | 381 | | 62 | 64 | 83 | 16 | 129 |
| Newfoundland private practice | 784 | 12 | | 28 | 26 | 250 | 78 | | 78 | 60 | 50 | 202 |
| salaried staff | 354 | | | | 5 | 139 | 22 | | 17 | 18 | 59 | 94 |
| total | 1,038 | 12 | | 28 | 31 | 389 | 100 | | 95 | 78 | 109 | 296 |
| Northwest Territories private practice | 1,132 | 13 | | | 7 | 374 | | 91 | | 143 | 85 | 419 |
| Nova Scotia private practice | 48 | 8 | | 1 | | 13 | | | | 6 | 2 | 18 |
| salaried staff | 6,713 | 24 | 182 | 108 | 119 | 2,369 | 423 | 278 | 406 | 383 | 558 | 1,863 |
| total | 6,763 | 32 | 182 | 109 | 119 | 2,382 | 423 | 278 | 406 | 389 | 560 | 1,881 |
| Ontario private practice | 34,734 | 422 | | 262 | 1,582 | 13,944 | 2,327 | 2,148 | 2,183 | 3,429 | 2,362 | 6,075 |
| Prince Edward Island private practice | 13 | 1 | | | 1 | 8 | | | 2 | | 1 | |
| salaried staff | 812 | 2 | 5 | | 8 | 374 | 100 | 50 | 31 | 33 | 89 | 120 |
| total | 825 | 3 | 5 | | 9 | 382 | 100 | 50 | 33 | 33 | 90 | 120 |
| Quebec private practice | 19,512 | 184 | 332 | 214 | 1,098 | 3,411 | 2,123 | 829 | 1,425 | 1,200 | 1,195 | 7,501 |
| salaried staff | 41,962 | 130 | 5,336 | 253 | 817 | 4,509 | 4,997 | 2,049 | 1,772 | 1,627 | 2,117 | 18,355 |
| total | 61,474 | 314 | 5,668 | 467 | 1,915 | 7,920 | 7,120 | 2,878 | 3,197 | 2,827 | 3,312 | 25,856 |
| Saskatchewan private practice | 505 | 35 | | 17 | 83 | 157 | 23 | | 45 | 14 | 13 | 118 |
| salaried staff | 13,379 | 26 | 689 | 41 | 116 | 3,943 | 2,771 | 1,600 | 292 | 1,617 | 705 | 1,579 |
| total | 13,884 | 61 | 689 | 58 | 199 | 4,100 | 2,794 | 1,600 | 337 | 1,631 | 718 | 1,697 |
| Yukon Territories private practice | | | | | | | | | | | | |

see table notes: 3,4,15,16,20,29,47

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TABLE 17: Expenditures of Legal Aid Plans, by Object, for Provinces, 1979-80

| | Total | Administration and Direct Services | | | | Payments to Private Bar | | | | | | | Funding of autonomous agencies & projects |
|-----------------------|------------|------------------------------------|---|------------|------------|-------------------------|--------------|----------------------------|---------------|--------------|-----------------------|---------------------|---|
| | | Sub-Total | Admin. & Payments to General Clinics/branch | | Sub-total | Criminal Matters | | | Civil Matters | | | Provincial offences | |
| | | | | | | Sub-Total | Duty Counsel | Other fees & Disbursements | Sub-Total | Duty Counsel | Other fees & disburs. | | |
| | | | 1=2+5+13 | 2=3+4 | | | | | | | | | |
| Alberta | 4,555,202 | 1,276,677 | 1,276,677 | 0 | 3,278,525 | 2,542,960 | 274,213 | 2,268,747 | 723,133 | 0 | 723,133 | 3,432 | 0 |
| British Columbia | 11,620,870 | 3,056,340 | 673,835 | 2,382,505 | 5,593,744 | 4,170,159 | 306,475 | 3,853,179 | 1,399,976 | | 1,395,976 | 27,609 | 2,970,786 |
| Manitoba | 3,511,677 | 1,778,965 | 547,148 | 1,231,817 | 1,725,212 | 995,855 | 61,880 | 993,975 | 700,023 | 18,587 | 681,436 | 29,333 | 7,500 |
| New Brunswick | 744,787 | 221,102 | 221,102 | 0 | 523,085 | 520,881 | 191,854 | 329,027 | | | | 2,204 | 600 |
| Newfoundland | 698,942 | 381,438 | | | 317,504 | 246,041 | 33,821 | 212,219 | 71,463 | 317 | 71,146 | | |
| Northwest Territories | 452,919 | 119,048 | 119,048 | 0 | 333,871 | 300,308 | | 300,308 | 30,347 | | 30,347 | 3,216 | |
| Nova Scotia | 1,992,860 | 1,881,332 | 114,123 | 1,767,210 | 59,028 | 36,519 | | 36,519 | 22,509 | | 22,509 | | 52,500 |
| Ontario | 36,637,359 | 10,183,527 | 6,714,362 | 3,469,165 | 26,145,136 | 16,308,563 | 1,863,466 | 14,445,097 | 9,808,841 | 971,890 | 8,836,951 | 27,732 | 308,696 |
| Prince Edward Island | 86,898 | 84,362 | 84,362 | | 2,536 | 2,536 | | 2,536 | | | | | |
| Quebec | 35,994,760 | 22,081,202 | 2,115,676 | 19,965,526 | 13,913,558 | 3,905,524 | | 3,905,524 | 10,008,034 | | 10,008,034 | | |
| Saskatchewan | 3,927,488 | 3,670,992 | 564,172 | 3,106,819 | 248,996 | 217,079 | | 217,079 | 31,917 | | 31,197 | | 7,500 |
| Yukon | 151,340 | 34,405 | 34,405 | 0 | 116,935 | 128,367 | | | 22,973 | | | | |

see table notes:
6,9,11,12,13,14,
22,23,28,30,32,35,
39,40,43,45,49

TABLE 18: Expenditure of Legal Aid Plans, by Source of Fund for Provinces, 1979-80.

| Province | Total | Government | | | Lawyers Trust Account Interest | Client Contribution & Recoveries | Other |
|--|------------|------------|-----------|------------|--------------------------------|----------------------------------|-----------|
| | | Sub-total | Federal | Provincial | | | |
| | 1=2+5+6+7 | 2=3+4 | 3 | 4 | 5 | 6 | 7 |
| Alberta | 4,555,202 | 3,989,518 | 2,008,800 | 1,980,718 | | 418,818 | 146,866 |
| British Columbia | 11,610,528 | | 2,603,200 | | | 52,111 | |
| Manitoba | 3,511,677 | 3,389,661 | 1,061,000 | 2,328,661 | | 122,016 | |
| New Brunswick | 744,787 | 729,551 | 578,700 | 150,851 | | 11,775 | 3,461 |
| Newfoundland | 698,942 | 658,496 | 364,400 | 294,096 | | 24,892 | 15,536 |
| Northwest Territories | 452,919 | | 217,676 | | | 17,567 | |
| Nova Scotia | 1,992,861 | 1,883,704 | 867,800 | 1,015,904 | | | 109,157 |
| Ontario | 36,653,196 | 29,687,863 | 8,676,900 | 21,010,963 | 3,857,753 | 2,913,324 | 178,419 |
| Prince Edward Island | 86,899 | 86,899 | 82,500 | 4,399 | | | |
| Quebec | 35,994,760 | 31,116,719 | 6,451,700 | 24,665,019 | | 140,065 | 4,737,976 |
| Saskatchewan | 3,927,489 | 3,904,338 | 973,800 | 2,930,538 | | 18,740 | 4,409 |
| Yukon | 151,341 | | 75,000 | | | 1,988 | |
| see table notes: 5, 11, 12, 18, 20, 23, 26, 45 | | | | | | | |

TABLE 19: Percentage of Legal Aid Expenditures, Excluding Administration and Special Programme Costs spent on Services provided by Private Practice Legal Professionals and by Salaried Staff, for Provinces with "Mixed" delivery systems, 1979-80

| Province | Percent Expenditures Private Practice | Percent Expenditures Salaried Staff |
|---|---------------------------------------|-------------------------------------|
| British Columbia | 70.1 | 29.9 |
| Manitoba | 58.3 | 41.7 |
| Newfoundland | 58.1 | 41.9 |
| Nova Scotia | 3.3 | 96.7 |
| Ontario | 87.7 | 12.3 |
| Prince Edward Island | 3.7 | 96.3 |
| Quebec | 41.1 | 58.9 |
| Saskatchewan | 7.4 | 92.6 |
| See table notes: 6, 9, 13, 14, 22, 23, 32, 33, 45 | | |

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