



ONTARIO

THE THIRD ANNUAL REPORT
OF THE ADVISORY COMMITTEE ON
LEGAL AID IN ONTARIO
TO THE HONOURABLE ALLAN F. LAWRENCE, Q.C.,
MINISTER OF JUSTICE AND
ATTORNEY GENERAL FOR ONTARIO

1970

Digitized by the Internet Archive
in 2017 with funding from
Ontario Council of University Libraries

https://archive.org/details/mag_00035996



ONTARIO

THE THIRD ANNUAL REPORT
OF THE ADVISORY COMMITTEE ON
LEGAL AID IN ONTARIO
TO THE HONOURABLE ALLAN F. LAWRENCE, Q.C.,
MINISTER OF JUSTICE AND
ATTORNEY GENERAL FOR ONTARIO

1970

THE HONOURABLE ALLAN F. LAWRENCE, Q.C.

*Minister of Justice and
Attorney General for Ontario,*

Parliament Buildings,
Toronto 2, Ontario.

Dear Mr. Attorney:

I have the honour of presenting to you the third report of the Advisory Committee on legal Aid 1970 pursuant to the provisions of the Legal Aid Act, 1966.

Yours faithfully,

JOHN W. BROOKE,
Chairman.

April 19th, 1971.

THE THIRD ANNUAL REPORT OF THE ADVISORY COMMITTEE ON LEGAL AID IN ONTARIO

TO: THE HONOURABLE ALLAN F. LAWRENCE, Q.C.,
*Minister of Justice and Attorney
General for Ontario.*

This is the third annual report of the Advisory Committee on Legal Aid. Our report this year, in addition to commenting on the Third Annual Report of the Law Society for the year ending March 31st, 1970, will also include an account of the activities of this Committee until March 31, 1971.

THIRD ANNUAL REPORT OF THE LAW SOCIETY

1. The third annual report of the Law Society being the report for the year ending March 31st, 1970, was received by this Committee during the month of January for this year. In our opinion, it complies with section 10 of the Legal Aid Act, containing a full statement of the nature and amount of legal aid rendered, a statement of receipts and disbursements of the fund, a copy of the auditor's report and general information as to the working of the Act and Regulations.

2. The Committee does not propose to comment on each item of the Report of the Law Society separately. The Report is clear and in our view is reassuring that the administration of the plan is carried out in a most responsible manner.

3. Since our last report to you the Committee has attempted to discern the effectiveness of the plan and, by learning something of the extent to which it is known by the public, to discover whether or not it is providing the service which you intend that the public should have, including service to those persons who are referred to as being poor or in poverty. As a preliminary step to visiting some of the areas of the province, assisted by the Provincial Director of Legal Aid during the summer of 1970, we caused enquiries to be made from each of the Area Directors in the province as to his views as to whether the poor in this area were being served by the plan and what steps ought to be taken to assure that service was being utilized by them.

We have set out below portions of some of the replies which we received as we felt they would be of interest to you. In our view, they show a positive attitude of many of the Area Directors in administering the plan and good reason for confidence that the plan is generally well managed by them.

4. From the various Area Directors, the following was remarked:—

(i) "(a) *Criminal Matters*

The duty counsel in our Provincial Courts of criminal jurisdiction have an opportunity of speaking to all accused who are either in custody or summoned to the Remand Court. In this way, we feel that Legal Aid is reaching the very poor people in the community who have problems relating to criminal matters.

(b) *Family Court*

With the implementation of duty counsel in the Family Court, I feel that the same comments with reference to duty counsel in the Criminal courts will also apply. The Family Court appears to be a court which many very poor people of the community are associated with. Although a number of the problems in the Family Court, I would estimate as high as seventy-five to eighty percent of the problems, are social problems rather than legal problems, and a duty counsel should certainly be able to assist them. In the court we require duty counsel with a good deal of experience and awareness of facilities which are available in the community. We find from past experience in this court, that the duty counsel is required to direct people to various social agencies rather than advising them as to legal matters.

(c) *Civil Matters*

In most civil matters, where the very poor people are involved, such as divorce or civil actions commenced against them, we find that they are referred to us by various social agencies in the community. Civil matters, other than landlord and tenant problems and debts which I will comment on further, do not appear to present any real problem. Most of the very poor people in the community have some association with one of the various social agencies, and from our experience, these social agencies are well aware of the facilities available to them in the community with reference to legal aid.

In the past, I have addressed various social groups, from time to time, outlining the Legal Aid Plan in the Province of Ontario.

(d) *Landlord and Tenant Matters*

Up until January, 1970, landlord and tenant problems created a great deal of concern in the community. In this area, I feel that the very poor people were not getting the true advantages available to them through Legal Aid. Landlords were moving rather arbitrarily against the poor people. As a result, a good majority of them were being victimized, not knowing their legal rights or where to turn for assistance.

Since the amendments to the Landlord and Tenant Act, and the amount of publicity which has been given to landlord and

tenant matters, more and more people are becoming aware of their rights as a tenant. We find that, since the passing of the amendments of the Landlord and Tenant Act, a good fifty to sixty percent of our calls to the Legal Aid office deal with landlord and tenant problems.

There has also been set up in this area a Landlord and Tenant advisory bureau, which we anticipate will make the very poor people in the community much more aware of their legal rights with reference to landlord and tenant matters. With the advent of the Landlord and Tenant Advisory Bureau, and with the amount of publicity which has been given to the matter, the very poor people in the community are now becoming much more aware of their legal rights and where to turn for assistance.

(e) *Debts*

This area presents the weakest link in the Legal Aid Plan. I do not think it is a weak link from the fact that we are not getting to the poor people in the community, but due to the fact that there is a gap in the service and assistance which we can give them.

A good majority of the poor people who contact us with reference to their debts are faced with a situation which really cannot be resolved with legal advice. These poor people are being harassed by collection agencies and have managed to get themselves so deep in debt that there is no hope that their problems can ever be resolved.

It is hopeless to advise them to attend on a trustee in bankruptcy for the purpose of making an assignment of bankruptcy under the Bankruptcy Act, as ninety-five per cent of these people could never raise the trustee's fee.

We have given certificates, from time to time, for the purpose of Consolidation Orders and applications under the Wages Act, but this does not really resolve or assist the debtor in solving his problems, only in prolonging them.

We have no solicitors in this community who will operate a pooled account, nor do we have any agencies which will operate a pooled account or give advice to the debtors with reference to counselling. We are, at present, setting up a Credit Counseling Service in the community and we hope that this will be of some assistance in helping these people.

In my opinion, this is the area where the very poor people in the community are not getting the proper guidance. Whether it is the responsibility of the Ontario Legal Aid Plan to give these people the guidance is questionable, as most of their problems are not of a real legal nature, but are more of a social nature, and it requires a great deal of time and effort to be spent with them in setting up budgets, pooled accounts, etc."

- (ii) "As for our method, (if it can be called such), that is used in our area to ascertain whether legal aid is reaching the truly poor in the community, I am presently involved in two neighbourhood centres which hope to assess the needs of certain areas.

From the meetings I attended at the centres there appeared to be a need for some sort of legal advice centre in the neighbourhood centre. I have arranged, on a three month trial basis, for a civil duty counsel to attend at one of the centres one night a month starting September 24th, from 7:00 to 10:00 p.m., to be available for consultation. The staff at the centre are arranging interviews. The duty counsel is to assess the extent of the need for this service, and to determine whether legal aid is known to these people.

There is also another area which is being explored, that of patients in hospitals, particularly senior citizens, needing legal advice. I am at present discussing the possibility of a civil duty counsel being there on a trial basis.

Last year I arranged for lawyers (not under the Legal Aid Plan) to speak in three secondary schools. Our biggest effort was for 27 lawyers to speak to 54 classes from Grade 9 to 13, over a period of three days. The teenagers are another area of concern, and through them parents may be reached. I expect to be called on again this school year to set up more of these speaking engagements. The lawyers discuss general subjects including, of course, legal aid, and answer questions. The lawyers involved are most enthusiastic about this program.

At present I am chairman of a committee which is involved in setting up an information and referral centre. This committee has been given financial assistance from the Federal and Provincial Governments, and we hope help will come from the municipality and community organizations as well. Through this centre it is our hope that persons needing help and information will be assisted in obtaining the proper explanation and be directed to the proper agency for help in the first instance rather than being passed from agency to agency as is being done now. Also, for persons in trouble who are easily frustrated, this centre will make contact for them with the appropriate agency. Another community is setting up a similar type of centre. Through this centre, services in the community, including legal aid, will be made known. Opening date for this service will be October 20, 1970.

It is my feeling that legal aid now should move into the community, and in so doing, more people will be served and an evaluation can be made of our services and availability. There are persons in the marginal economic level whom I feel are reluctant to apply for legal aid for various reasons, among

which are pride and ignorance of the partial payment arrangements. By going into the community, these people may be reached.

I am sure that you are aware that most Area Directors have close liaison with community agencies, as I have had, and that speaking engagements in various areas are arranged from time to time to keep the public and organizations aware of legal aid. This fall, I have six commitments, including:—

- 1) Seminar at a Childrens' Psychiatric Research Institute;
- 2) A panel at a community college;
- 3) A panel on poverty at a United Church;
- 4) Attending training session for counsellors at Manpower Retraining;
- 5) Giving lecture to In-service Training of Police;
- 6) Talk re legal aid to the Anglican Synod meeting.

Through participation by 'lay persons' in the Area Committee, a liaison is ably made with the community. Our Area Committee is to be expanded to include 'lay persons'.

It is through this in-going and continual contact with the community agencies, with the courts and officials, and with the public in general, that I feel legal aid can best be made known."

(iii) *"Court House*

I am receiving tremendous co-operation from all of the staffs in the various court house offices. I receive referrals and complaints from the Sheriff, the Local Registrar, the Ontario Probation Service, the Family Court, etc.

City Council

I am a member of the City Council of this city and I get feedback from various aldermen concerning the need for legal aid or some particular problem involved with legal aid. I am also in easy touch with the Welfare Administrator of this city.

Children's Aid Society

I am a member of the Board of Directors of the local Children's Aid Society and receive feedback from the social workers and other staff members.

Local Health Unit

I am a member of the Board of Directors of the local health unit and receive considerable feedback from our public health nurses concerning some of the poor people with problems.

School of Nursing

I have given lectures to one of the local schools of nursing and have asked them to refer any problems involving patients who require legal aid. I have received referrals for legal aid from this source.

Indian Chiefs and Councillors

There are two Indian Reserves nearby and I am personally acquainted with the Chiefs and members of the Councils. I am satisfied that the residents of both reserves are well aware of the availability of legal aid.

Lifeline Telecare

This service has recently been instituted in our city and I have lectured at their training course. Referrals and problems are received from this source.

The Bridge

This is a recently established youth drop-in drug information centre and I am in close touch with the Directors and have discussed legal aid problems with them.

John Howard Society

I am a member of the Board of Directors of the John Howard Society and I am sure that any former inmate is made well aware of legal aid if same is required.

United Appeal Services

I am a member of the Board of Directors of the United Appeal Services and am personally acquainted with members of the Boards of the various social and welfare agencies. A certain amount of feedback and referral is obtained from this source.

Family Guidance Service

I have a very good liaison with the operators of the Family Guidance Service and legal aid referrals are made from this source.

Service Clubs and P.T.A.

From time to time I will be asked to address Service Clubs and P.T.A. Groups and I always make it a point to explain the availability of legal aid and the method of application.

Local News Media

From time to time I have received telephone calls from members of our local news media concerning complaints, etc. involving legal aid and these are quickly investigated. Many referrals are received from this source as well."

- (iv) "I am presently working on a proposal which will involve a task-force of legal aid people to visit a nearby settlement. This is an unorganized settlement with many social problems. It is my intention to bring the legal aid task-force to this village some 45 miles north of this city. If necessary, I can reinstitute our former legal aid clinics."

5. On the other hand, some of the replies did not reveal a similar approach.

6. Before proceeding further we feel that we should express to you our opinion that with the growth in the demand for services under the Legal Aid Plan and what we expect will be the future development of its extension into community law, community counselling and service, the role of Area Director has developed and will develop further into one of the most important roles which a lawyer will be called upon to assume in this province. There is definite need continuously to examine the requirements of this position for we are satisfied that a new class of professional administrator has emerged to direct this important work.

7. The replies to our inquiries were discussed by our chairman at length with Mr. Andrew Lawson, Q.C., the Provincial Director, whose assistance to the Committee was of great value in preparing to visit the various areas of the province.

8. Upon receipt of the information above we set out to visit as many of the areas into which the province is divided for the purpose of legal aid as was possible, having regard to the time available to us. Since the delivery of our last report to you, the Committee has visited the following areas; London, Kenora, Thunder Bay, Timmins, Ottawa, L'Orignal, Cornwall, Windsor and Kitchener.

9. In London, we met with and welcomed to our Committee our new member, His Honour Judge W.E.C. Colter. We met Mrs. Greta Grant, Q.C., Area Director and several members of the Area Committee as well as Mr. R.A. MacDougall, the Area Director from Woodstock.

10. In Kenora we visited with the following people: Mr. J.K. Doner, Area Director; Mr. A. E. Johansen, Department of Social and Family Services, Mr. Charles Fisher, Alcoholism and Drug Addiction Foundation; Mr. Peter Hare, Department of Indian Affairs (Education); Mr. Ken Wilson, O.P.P.; Mr. and Mrs. Sam Caperace, Addiction Foundation; Mr. J. Parrot, Jail Superintendent; Chief C.W. Engstrom, Kenora Town Police; the Provincial and District Court Judges and Members of the Area Committee.

11. In Thunder Bay we met with Mr. B.B. Tremblay, Q.C., Area Director; Mr. D.A. Han, O.P.P.; Mr. Xavier Michin, Indian Youth Friendship Centre; Mr. W.K. Jackson, Department of Indian Affairs; Mr. J. O. Lees, Lakehead Board of Education; Mr. W.J. Griffis, Lakehead Board of Education; Mr. W.S. Doherty, Mrs. Barbara Workham,

Mr. M. Graner, Department of Social and Family Services, Mr. W. Harrison, Resource Centre Counsellor, the Provincial Court Judges and the members of the Area Committee.

12. In Timmins, we met Mr. J.A. Cousineau, Area Director; Mr. L.D. Kemp, Department of Indian Affairs; Mr. Jim Jolley, O.P.P.; Rev. Desmond E. O'Connor; Mr. R.A. Rivard and Mr. Bruce Roberts, Department of Social and Family Services; Mr. Gerry McGee, Welfare Administrator; Mr. Robert Childs and Mr. Rick Albert, Canada Manpower Centre, Mr. Ken Biggs, Department of Northern Affairs; His Honour Judge W.R. Dupont, Mr. Sam A. Calbick, Q.C. and members of the Area Committee.

13. In Ottawa, we met with Mr. James B. Chadwick, Q.C., Area Director; Mr. Albert Morrow, Department of Social and Family Services; Mr. John Cassells, Crown Attorney; Staff Sergeant Howard Devlin, Ottawa City Police; Governor Robert Webb, Carleton County Jail; Mr. David C. Clancy, Deputy Area Director; the Senior County Court Judge McDonald, Provincial Court Judge Sherwood and Royden Hughes, Q.C. and members of the Area Committee.

14. In L'Orignal, we met with Mr. R. Lalonde, Area Director; Mr. Rene Labrosse, Probation Officer; Mr. Rene Currier, Welfare Officer; Constable Munder, O.P.P.; Chief of Police Wilfred Villeneuve; Mr. Maurice Thioret, S.C.O. Registrar; Mr. Henri Proulx, Q.C., Crown Attorney; His Honour Judge Chartrand and Provincial Court Judge Sherwood, Royden Hughes, Q.C. and members of his Committee.

15. In Cornwall, we met with Mr. R.J. Adams, Area Director; representative of the City Welfare Department, the Department of Social and Family Services, the Adult Education Centre, the Family Service Bureau and the Children's Aid Society; the Crown Attorney; His Honour Judge Chartrand and Provincial Judges and the members of the Area Committee.

16. In Windsor, we met with Mr. K.G. Ouellette, Area Director; Mr. J. R. Lawrimon, Deputy Area Director; Mr. Gordon R. Preston, Chief of Police; Mr. E. A. Duchesne, Q.C., Crown Attorney; Mr. Arnold Rundle, Superintendent of the Jail; Mr. M. F. Schooley, Regional Welfare Administrator; Mr. J. Clarke, City Welfare Commissioner, the County and Provincial Court Judges and the members of the Area Committee.

17. We find that the Legal Aid Plan is sufficiently flexible to operate efficiently in areas as diverse in nature as, for example, Kenora and Ottawa. It is our opinion that those persons with whom we met who were directly concerned with providing legal aid service were by and large satisfied with the operation of the scheme and of the view that it served a majority of the community very well. Many, however, were concerned with the question of service for the poor.

18. In Northern Ontario geography and population distribution present difficult conditions under which the Legal Aid Plan must operate, particularly to provide service for the Indian people amongst whom many of the very poor in the district are to be found. For example, the vast area of Kenora stretches from the border of the United States of America to the shores of James Bay and west from the east limits of the Thunder Bay area to the westerly border of Ontario. The population of some seventy to eighty thousand people reside one-half in the immediate area of the Town of Kenora and the other half, most of whom are Indian people, in small settlements many of which are accessible only by trail or air. Most of these native Canadians depend upon hunting, fishing or guiding for their livelihood, but a good many of them require some form of welfare assistance.

19. We find that while legal aid has been able to provide assistance for the Indian people, in criminal cases, from even the most remote areas, after they have been taken into custody, it has been most difficult to bring to their attention the fact that legal aid is available to them in either criminal or civil cases or to offer appropriate service in counselling in civil matters. We approach this aspect of the matter with caution as we know that there has been no real attempt to discern just to what extent legal aid counselling in civil matters is needed by the people. We are advised that in some areas there are both cultural barriers, such as old customs dealing with misbehaviour which preclude one from seeking help, and language barriers, as a good many of the people speak only the Cree or Ojibway languages. On the other hand, we are advised that not infrequently advice is needed on matters relating to welfare entitlement and there is a growing indication of need for counselling on matters relating to family law. At the present, the Social and Family Service workers are able to visit the fly-in areas four times a year and about the same number of visits are made by members of the police force. There has been no organized attempt as yet to explain legal aid to Indian Band Councils and nothing has been prepared for them in their native tongue.

20. Some of the Indian people who live in areas which can be reached by road or which are in close proximity to the highways do find their way to Kenora in search of advice. But, we gained the impression that there is generally a reluctance on the part of these people to seek advice, probably because of embarrassment.

21. In Thunder Bay and Timmins substantially the same problems exist for the Indian people and for the legal aid office in providing service for them. We did however find that in Thunder Bay plans were afoot, which we think it probable have since been carried out, for the Area Director to meet with the Indian Band Councils to make arrangements to discuss problems relating to providing legal aid service for the Indian people in the district. In addition we were impressed with the work done in that city by Mr. Michon from the Development of the Indian Youths Friendship Centre.

22. Communication with the Indian people is vital if the plan is to serve them. We formed the opinion that the best means of communication and that through which a great deal could be accomplished is in

both adult and youth education programmes in the schools operating in these areas, if even a short time were devoted to instruction as to those services, including legal aid, which were available to the people of this province. We discussed this with representatives of the departments responsible for the education programme in the community and recommend to you and to the Law Society that you consider this further. Perhaps motion picture films in the languages of the Indian people would go a long way toward assuring that they were aware of their rights under the plan. We also think that there is some merit in the suggested use of mobile clinics. However, it is quite obvious, having regard to the special language and cultural issues, that trained personnel would be required for this task.

23. We are pleased to report that we received no complaint nor any indication that those persons in the areas we visited who are French speaking had not received satisfactory legal aid service when it was needed. We find that there are at present sufficient lawyers in these communities who are bilingual who are able to act as duty counsel and to provide legal aid services to those who may apply. We found that of the areas which we visited in Northern Ontario, that at Timmins requires special consideration, having regard to the number of French speaking people there and the distribution of the population in the area. Mr. Andre Cousineau, who is the Area Director is, of course, bilingual. We are satisfied that Mr. Cousineau and his Area Committee have paid special attention to the needs of the French speaking community.

24. Finally, in Northern Ontario we were impressed with the willingness of the social agencies and government agencies, particularly the new Department of Northern Affairs, to co-operate and assist in the communication of information as to the Legal Aid Plan to the people in the area.

25. We found it much more difficult in Southern Ontario to determine to what extent legal aid is serving the needs of the poor. We believe that it is probable that the plan is providing the services needed by the largest sections of the public, including a large part of the public who might properly be said to be poor. We are, however, convinced that there are many amongst the poor who are in need of legal assistance but do not know of the plan or of their needs and others who do know of the plan and their need for assistance but are apathetic and feel that for them there may be no equality before the law. We are satisfied that the Law Society is aware of the problem and know that it is at present attempting to identify, through research, the service that will best meet the needs of the poor and the locations from which such service can best be offered. The Law Society has evidenced its intention of taking whatever steps may be necessary, not only to complete its investigations but to provide service by authorizing the Area Director at Ottawa to:—

- (a) Place civil duty counsel in depressed areas to give persons advice on legal matters and to process applications for legal aid where necessary—the duty counsel to be present in the evening rather than during the day;

- (b) Arrange for the attendance of duty counsel to go with the "Community Service Team" into the depressed areas of the community and to act in the same capacity as duty counsel as outlined in paragraph (a);
- (c) Place notices and announcements in the various community papers as to the availability of duty counsel in such depressed areas—the announcement to be directed through a local community paper rather than a daily newspaper.
- (d) Duty counsel will file a detailed report on calls, day or night's activity and it is felt that such a report would facilitate the assessment of the legal needs of people in a depressed area.

26. Our Committee is greatly impressed with the initiative and imaginative approach by the Area Director in Ottawa in this matter. We are advised that the programme at Ottawa is presently under way.

27. In addition, law schools in Ontario authorized by the Law Society pursuant to the Act to operate Student Legal Aid Programmes have begun programmes of local counselling as a community service.

28. During the fall, several members of this Committee visited New York City to examine an aspect of legal aid services offered to the poor there through the community law offices.

29. The present legal aid plan in Ontario is, in our opinion, amongst the best to be found anywhere and has provided good service to the majority of the people who require it in this province. Its excellence is evidenced by the fact that it has been used as a model in other jurisdictions and recently has been put forward by a section of the bar for consideration for proposed legislation suited to the needs of the State of New York presumably in addition to the community law programme above referred to which is providing a much needed help for the poor.

30. Because of our conviction that there is a special need to provide assistance for the poor and the apparent success of the community law offices or clinics which we visited, we believe a comparable programme should be considered for Ontario.

31. It is our opinion that the Law Society should consider as a part of the Legal Aid Plan the use of a community law programme which will provide community counselling and carry the law to the poor. Our information leads us to conclude that it is essential that the present plan be maintained and that any use of clinics should be supplemental to the plan or dovetailed into it so as to give the plan the additional depth that may be found to be necessary to insure that the community is fully served. Proceeding in this way, the poor can be assured of receiving without delay and when needed, those services available to all other persons through the plan particularly counsel of one's choice and they will receive the protection of the privilege assured by the Act and the Regulations. We are advised that the needs of the poor for legal services usually require immediate attention and are of such a nature that delay

may render help of little use. Accordingly, in our opinion the community law offices or clinics must be staffed and supervised by experienced practicing lawyers, although students-at-law may well be of assistance to them.

32. We recommend that the Law Society consider the use of a clinic as an experimental measure in the City of Toronto, to be established in an area in which need is found to exist.

OTHER MATTERS

1. Social and Family Service Assessment

33. The problem arises under section 16(2) of the Legal Aid Act, 1966, which states that "Except where the Legal Aid Act for which an application is made is estimated by the Area Director to whom the application is made to cost not more than \$60.00 . . . every application for legal aid shall be referred by the Area Director to an assessment officer for a report . . ." This section reflects government policy and is therefore regarded as mandatory by Area Directors.

34. In Northern Ontario the cost of transporting social and family service assessment officers to interview a prospective applicant for legal aid sometimes exceeds the cost of the legal aid granted as well as causing delay in obtaining the necessary services. In other cases the assessment officer often serves two or three legal aid areas. This too causes delay, inasmuch as the social and family services office is generally staffed with one person only and is not open after five o'clock to interview applicants who must come some distance for assessment.

35. Areas in Southern Ontario have encountered less practical difficulties, but we have been advised of delay from time to time, which appears to have been caused principally by reason of volume. We suggest that you should reconsider the inflexibility of the policy which is clearly stated in this section. Perhaps it would be sufficient in many cases if an applicant for legal aid was found to be currently in receipt of welfare, a fact that could be established quickly by telephone communication with the appropriate authorities. We are advised that the experience in most of the applications for legal aid in Northern Ontario that the inquiry pursuant to the section might well have been terminated once it was discovered that the applicant was currently on welfare. We are, however, aware through our discussions in this regard with those concerned at Toronto that there have been a number of cases where applicants on welfare have still been found to be able to make a contribution to the cost of the legal services required by them.

It was also suggested to us by Area Committees, particularly in Northern Ontario, that the estimated cost of legal aid sought might be increased to \$125.00 rather than \$60.00 before an applicant would be referred for assessment.

36. We suggest these matters for your consideration as it appears that two purposes would be served; one, that there would be a substantial saving in cost and the other that delay in obtaining a legal aid certificate would, in many cases, be eliminated.

2. Duty Counsel

37. Concern was expressed to us by some Provincial Court Judges, some police officers and some Area Directors regarding the difficulty in obtaining the attendance of duty counsel at the court house in time to interview prospective applicants for legal aid before the scheduled opening of court each day. These persons made it clear to us that they had no criticism as to the ability and effectiveness of duty counsel and indeed of the necessity of having duty counsel present. Rather, their concern was related solely to the necessity of courts beginning their work for the day at the scheduled time rather than being required to wait until duty counsel interviews had been completed.

38. We are aware that there are many pressures which affect the members of the bar who have accepted the responsibility of acting as duty counsel. We are also aware that the Law Society has done a great deal to eliminate the problem referred to through workshops and study programmes. However, it is our opinion that there must be a continuing education of the bar with respect to these matters.

39. In the northern communities the obligation to perform the work as duty counsel is onerous as it quite frequently involves travel for great distances. Seasonal weather frequently makes such trips difficult and unduly long. We gained the impression that some of the members of the bar were called upon to perform duty counsel work in the areas of Northern Ontario are of the view that the present tariffs of the Law Society for travel time are inadequate and do not fairly reflect the position in which they find themselves. We recommend to the Law Society that this matter be reviewed as we believe that the whole-hearted and full participation of the bar is essential to the success of the plan.

40. In arriving at our conclusions with respect to the matters referred to and in addition to discussions with Area Committees and those persons named, your Committee has sought and received reports from most of the Provincial Court Judges (Criminal Division) stating their views regarding the operation of the Legal Aid programme in Ontario and its effect upon the administration of justice. We have also sought and received reports on the effects of legal aid upon the work of the Metropolitan Toronto Police Department and a survey made by the Ontario Provincial Police of the operation of the Provincial Courts in certain of the counties of the province, including comments of the effect of legal aid upon their work. We have in addition had the benefit of a study made by the John Howard Society relating to legal aid services which had been rendered to some of their clients.

3. *Divorce*

41. During the past three years the largest number of cases in civil litigation have been divorce and it has been the highest per unit cost of all civil matters. Our investigation reveals that similar experience has been encountered in another jurisdiction. Because of the unique position in the overall cost of legal aid we believe that it deserves special consideration with a view to reducing costs, recognizing however that nothing must be done which undermines the basic principles of the plan.

42. We found that the high cost of divorce has been a source of alarm to the Area Directors and members of Area Committees and tends to create a disparity between districts as to the criteria to be applied in determining whether or not a certificate will issue for legal aid in divorce actions. We regard such a development as unfortunate as the plan must, to fulfill its stated objectives operate uniformly throughout the province.

43. As a result, the Committee feels that the Programme Committee might re-examine the field of uncontested divorce cases to determine whether the present tariff is justified in view of the services required in the average uncontested case. Another method which we suggest might be considered is the employment of the solicitor of the applicant's choice to prepare the matter down to setting the action down for trial and to have the actual trial conducted by duty counsel. In any event, it is our opinion that the whole matter should be considered at this time.

4. *Appeals in Criminal Cases*

44. At the instance of the Chief Justice of Ontario a committee headed by him and attended by His Honour Judge Colin Bennett, the Chief Judge of the County and district Courts for Ontario and His Honour Judge Arthur Klein, the Chief Provincial Court Judge for Ontario, Arthur Martin, Q.C., the Treasurer of the Law Society and Andrew Lawson, Q.C. Director of Legal Aid, met to consider procedures in appeals in criminal cases with a view to eliminating, if possible, matters that might contribute to unwarranted costs or in any way cause delay. Areas of agreement were reached at the meeting with respect to these matters and it is believed their implementation will be rewarding.

45. Notwithstanding the notoriety which the Legal Aid Plan has received in Ontario we have discerned that there are throughout the province, including Southern Ontario, a number of persons unaware of the existence of the plan and their rights under it. Consistent with the proposal for community law counselling, it is our view that you might consider that the programme of education in Ontario should include some instruction with respect to the law generally, by acquainting students as to their rights and obligations in our society and encouraging respect for the law as well as instruction as to laws and plans which are designed to provide assistance to the public including needy people, particularly a plan such as welfare, housing, OHSIP, OMSIP, legal aid, workmen's compensation, etc. Perhaps in this way the generations of the

immediate future would be aware of the agencies available to assist them. This might well overcome the problems that exist today and go some distance in ensuring confidence in our system.

46. Mr. Attorney, we have enjoyed the complete co-operation of all those with whom we met in the legal aid areas across Ontario and from whom we sought information and advice. We have been advised that these discussions have assisted in encouraging those responsible to make the plan more effective and insofar as it is possible we propose to pursue comparable inquiries throughout the coming year.

47. We would also like to commend the Donner Foundation, which has made a grant of \$75,000 to the University of Toronto's Centre of Criminology for a research study of our plan as it operates in the Provincial Courts of Toronto. This study has the support of the Ontario Department of Justice, and has been assured of co-operation by the Treasurer of the Law Society of Upper Canada and the Provincial Director of the Ontario Legal Aid Plan.

48. The cost benefit study which our Committee initiated last year has been completed and the results have been put in the hands of the Director. We feel that it will be of considerable benefit in the working of the plan over the years.

49. We have examined the salaries and remuneration paid to all those persons employed by the Law Society in the administration of the Legal Aid Plan both in Toronto and in other centres. At the present time we are satisfied that the salaries are within an acceptable range. We reiterate a recommendation of previous years that the Law Society continue to study the salaries and remuneration to be certain that they are fair and that they are sufficient to attract and maintain competent people who will make a career of this important work.

50. We have no reason to recommend any change in the composition of the Committee from that which is presently required by the provisions of the statute. We recommend that the Committee be retained in its present form and with its present personnel.

51. The Committee would like to record with appreciation our belief that the devotion and leadership of Arthur Martin, Q.C., Treasurer of the Law Society, Thomas P. Callon, Chairman of the Programme Committee of the Law Society and Andrew Lawson, Q.C., the Director of Legal Aid for Ontario have been a major factor in the success of the plan.

All of which is respectfully submitted.

JOHN W. BROOKE
The Honourable Mr. Justice Brooke
Chairman

W.E.C. COLTER
His Honour Judge W.E.C. Colter

JOHNSTONE L. ROBERTS
His Honour Judge Johnstone L. Roberts

GEORGE E. WALLACE
George E. Wallace, Q.C.

FRANCIS E. WIGLE
Francis E. Wigle, Q.C.

P. S. FITZGERALD
Patrick S. FitzGerald, Q.C.

ELLIOTT STEDELBAUER
Elliott Stedelbauer, Esq.

C. E. HENDRY
Professor Charles E. Hendry

ANNA STEVENSON
Anna Stevenson
Secretary to the Committee

