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Advisory Committee on Legal Aid

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24th Parliament
Tabled 14 March 75*

Final report

Fifth Annual Report



Ministry of the
Attorney
General

THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE BROOKE



OSGOODE HALL
TORONTO, ONTARIO M5H 2N5

November 15, 1974

The Honourable Robert Welch, Q.C.,
Provincial Secretary for Justice
and Attorney General,
18 King St. E.,
TORONTO M5C 1C5

Dear Mr. Attorney:

I have the honour of presenting to you the Fifth Annual
Report of the Advisory Committee on Legal Aid pursuant to the
provisions of the Legal Aid Act 1966.

Yours faithfully,

Encl.

John W. Brooke

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

TO: THE HONOURABLE ROBERT WELCH, Q.C.,
ATTORNEY GENERAL FOR ONTARIO

This is the fifth report of the Advisory Committee on Legal Aid. As in the past, in addition to commenting on the report of the Law Society, we will also refer to our own activities since last reporting.

At the outset we wish to record that effective November 1st, 1972, three new members were appointed to the Committee to replace those members who had resigned a year previously. The new members were Mrs. Frances Jamieson of Georgetown, Ontario, His Honour Judge C. W. Morrison of the Provincial Court Criminal Division and His Honour Judge J. P. Felstiner of the Provincial Court Family Division. Mrs. Anna Stevenson was appointed to the Committee on September 1st, 1973, having previously served as its Secretary since its inception. Two vacancies occurred in 1974, one with the expiration of the term of appointment of Mrs. Jamieson and the other with the resignation of His Honour Judge Felstiner who commendably acted promptly when it was apparent that his schedule and that of the Committee were so incompatible that he was unable to devote sufficient time to the Committee's work.

We acknowledge with gratitude your concern that there be no delay in the appointment of persons to fill the present vacancies in our number. It is most important that Committees such as this one be at full complement and that there be no delay in filling vacancies. Like others this Committee needs the strength of new members and fresh views.

SIXTH ANNUAL REPORT OF THE LAW SOCIETY

1. The annual report of the Law Society being a report for the year ending March 31st, 1973, was received by this Committee during the month of April of 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. We do not propose to comment on each item of the report of the Law Society. We think the report is clear not only with respect to the amount of legal aid provided but as to the cost of providing such legal aid and it contains an analysis of the operation of the plan and the programs that have been carried

on by the Law Society in its continuing efforts to determine the needs of the Ontario community and improvements in the methods by which those needs may be met.

THE COMMITTEE'S WORK AND THE OPERATION OF THE PLAN

3. We turn now to the work since last reporting to you. Insofar as it is possible in the time available to us we continued to visit the areas into which the Province is divided and there to observe the plan in operation and to meet and discuss with as many people as we could, including both those involved and those not directly involved who might assist us with their views. It has been our aim to meet with the public so that we could assist you by knowing of their complaints, suggestions and views. So that you may better assess our comments, we record our activities as follows:-

4. During the month of September, 1972, the Committee met with Mr. James Chadwick, the Area Director at Ottawa, to discuss with him the Divorce Pilot Project which was being conducted there and other matters relating to the provision of Legal Aid service in the Ottawa area. The Pilot Project had been established to determine whether or not a recommendation of this Committee as adopted by the Law Society Legal Aid Committee

with respect to the use of Duty Counsel in uncontested Legal Aid divorces was feasible and economical. At the time of the Committee's visit the Pilot Project was operating smoothly under the direction of Mr. Chadwick and Gordon Killeen, Q.C., (now His Honour Judge Killeen of the County Court of the County of Middlesex). These gentlemen have since reported that the recommendation ought not to be implemented and this will be dealt with further in our report.

5. During the month of September, 1972, the Committee met with Professor Julien Payne and discussed with him the role of Law Reform in Legal Aid and Legal Aid in Law Reform in relation to divorce and family law cases. Professor Payne had recently joined The Law Reform Commission of Canada where his time was to be devoted to matters relating to divorce and family law. We also discussed the question of whether Legal Aid under the Plan might assist the Law Reform Study with respect to the preparation and presentation of Family law cases. At the conclusion of our discussion Professor Payne assured the Committee that we would be kept abreast of any of his findings or suggestions that might be relative to the questions discussed.

6. During the month of September, 1972, the Committee travelled to North Bay where we met with the Area Director Richard

Tafel and received from him a report on the operation of the Plan in his area. The Committee met with the Area Committee and other persons including:

A. B. Klein	Lawyer
Jack Trussler	Lawyer
Mike Bolan	Lawyer
John Inch	Crown Attorney
Bob Steadman	Teacher
Hector Soubliere	President, Nipissing Bar
George Wallace	Past member of Advisory Committee on Legal Aid
Frank Falconi	Active Lawyer in Legal Aid in Nipissing
Roy Ettles	Supervisor of Field Staff, Ministry of Community & Social Services
Chief Bill Wotherspoon	North Bay Police
Chief Fred McLeod	Chief of Nipissing Indian Band
Gerald Cardinal	Assistant Administrator, North Bay Welfare Office
Roy Poulin	Administrator, Nipissing District Welfare Board
Judge Joe Evans	Provincial Court Family Division
Judge Jim Lunney	Provincial Court Criminal Division
Judge Fern Gratton	District Court Judge

Legal Aid was discussed with those present and its effect on the special areas with which each of those present was concerned, also the question of availability of Legal Aid to the poor and problems that were being encountered in the operation of the plan in the area.

7. A public meeting was held at which time the Committee was joined by a number of persons who had been welfare recipients, recipients of service from the Ministry of Community and Social Services, Probation services, Welfare services and representatives of each of these offices. The following persons appeared from the agencies:

Mrs. Edna Mulligan	Addiction Research Foundation
Len Payne	Probation Service
Boyd Hicks	Ministry of Community and Social Services
Roy Ettles	Ministry of Community and Social Services

In our view a valuable dialogue took place in the presence of each other which perhaps lent some confidence to the members of the public in order to speak their views with respect to Legal Aid. At the conclusion of the meeting we met again with the Area Committee under the leadership of Mr. Tafel, when solutions to the questions which had emerged from our discussions were considered.

8. During the month of October, 1972, the Committee went to Sault Ste. Marie, Ontario, where we met with the Area Director, Alexander C. Harry, Q.C., and received from him a report on the operation of the Plan in his area. The Committee subsequently met with members of the Area Committee:

Stanley R. Kurisko, Q.C.,	Provincial Probation Officer
William T. Ellis	
George W. Priddle, Q.C.,	Crown Attorney, Sault Ste. Marie
Douglas Gaetz,	Solicitor
Frank Sarlo	Steelworker
R. Gurevitch	

We also met with the following persons:

Donald Orazietti	Assistant Crown Attorney
Carlo China	Law Student
Gregory Cameron, Q.C.	
W. Wayne Cohen, Esq.,	
Frank F. Shunock, Esq.	

Roy A. Youngson, Esq.
Patrick S. FitzGerald, Q.C., Bencher and member of
The Legal Aid Committee
of The Law Society of
Upper Canada.

We were pleased to have the assistance of Mr. Patrick S. FitzGerald, Q.C. in our discussions. He is perhaps one of the more knowledgeable persons in this Province on questions relating to Legal Aid. He had played an active part in the work of this Committee and obviously lends strength to the Benchers of the Law Society since his election to that body and membership in its Legal Aid Committee.

9. We met with the Area Committee and members of the Bar of the area and considered with them a broad range of questions. As full participation of the Bar in this scheme is important, we felt it desirable to obtain the views of the Bar with respect to a number of matters and accordingly there was discussion as to compensation for lawyers under the Legal Aid Plan and the statutory 25% contribution. At this meeting we invited the Bar to discuss the appointment of lawyers in criminal cases, the discretion of Area Directors in matters relating to summary conviction offences and generally methods of improving the delivery of legal services particularly service to the poor. We met with the persons below named and discussed with them the manner in which Legal Aid affects the area in which they are principally engaged and the problems being encountered. These persons included:

Judge Maitland G. Gould
Judge James Greco
Ron Gurevitch
Jack Flesher

District Court Judge
Provincial Court Judge
Area Committee Member
Administrator for Social
and Family Services
for City of Sault Ste.
Marie.

W. Wayne Cohen, Esq.,
John deP. Wright, Esq.,
Jack McDonald

Administrator for
Community and Social
Services.

Stanley R. Kurisko, Q.C.
Gregory C. Cameron, Q.C.
William Ellis
James Pride
Anne Wright

Probation Officer
Probation Officer
Legal Aid Assessment
Officer

10. Following these meetings we met with the Area Committee and Area Director to consider solutions for the questions which had arisen.

11. During the month of November, 1972, the Committee met with Andrew M. Lawson, Q.C., the Provincial Director and Lyle S. Fairbairn, Esq., the Assistant Provincial Director, to hear a report from them with respect to current and anticipated programs planned by the Law Society. These gentlemen discussed with the Committee the proposed Advice and Assistance Project in Peterborough and the Hamilton Pilot Project being the Victoria Park Community Corporation. Papers which had been prepared in relation to these subjects had

been distributed in advance and were reviewed by the Committee. It is apparent that these programs must be regarded as most important in the development of Legal Aid in the Province and those charged with responsibility for the administration of the plan should be commended and encouraged to vigorously pursue them.

12. During the month of December, 1972, the Committee went to Brockville where it met with the Area Director, R.W. Summerby, Q.C. and received from him a report as to the operation of the Plan in his area. Following this meeting the Committee met with members of the Area Committee being:

John T. Corbett, Q.C.	Brockville
John E. Henderson, Q.C.	Brockville
E.J.W. Warren	Solicitor, Kemptville
Gerald G. Eastman	Solicitor, Brockville
Duncan C. Fraser	Solicitor, Brockville
John H. MacIntosh	Solicitor, Brockville
Harry C. Clarke	Solicitor, Gananoque
Robert K. Arthurs	Solicitor, Prescott
Captain Ed Amos	Salvation Army, Brockville

13. A principal problem which concerned the Area Committee was that encountered in other large areas like this one, being difficulty for applicants for Legal Aid brought about by distance to be travelled to obtain advice and assistance and the time consumed and cost of such travel. In addition, the Area Committee being aware of the difficulty in communicating the fact of Legal Aid to some areas of the community,

sought solutions to this problem.

14. Subsequently the Area Director and the Chairman of the Committee visited the Director of the Ontario Hospital at Brockville and there discussed with him the present program and the question of delivery of Legal Aid services to patients in that institution.

15. In the month of February, 1973, the Chairman of your Committee attended at Ottawa and met with an assistant to the Deputy Minister of Justice for Canada with respect to the proposed agreement between the Province of Ontario and the Government of Canada regarding Legal Aid in matters related to the Criminal Law.

16. In the month of March, 1973, the Committee met in Toronto. At that time the Chairman reported to the Committee on his meeting in Ottawa and the nature and effect of the agreement between the Province and the Government of Canada.

17. The Committee then met with the York County Area Director, W. R. Donkin, Q.C. and his Deputy John B. Allen, Q.C., at the York County Legal Aid Office. The Committee heard from these gentlemen a report of the operation of the Plan in the area. This office is the largest office in Ontario and it was our view that it was extremely well managed. We reached

this opinion after hearing the Director and the Deputy Director as to work of Legal Aid in the area, the operation of the office, the work of the Area Committee and its records and examination of the office itself. It was apparent that in the not too distant future larger space and further office equipment would be required to keep pace with the volume of work being handled.

18. During our meeting at Toronto we were anxious to obtain the views of the Area Director with respect to practical problems and so discussions included consideration of a number of questions including: (1) the delivery of Legal Aid Services to the chronic poor in Metropolitan Toronto and the use of clinic-community law offices; (2) the wisdom of decentralizing the York County Legal Aid Office; (3) as to the costs of Legal Aid - was there justification for demanding a contribution by a common-law partner whether or not he or she was the one who sought assistance and what was done in other Government plans; (4) should minors be granted certificates if their parents were able to pay for the legal aid which they required but refused to do so; (5) when is the issuing of certificates under the discretionary Section 13 of the Act justified; (6) the extent to which duty counsel can legitimately act in juvenile sittings and their role on a plea of

guilty; (7) untapped sources of information with respect to the ability of an applicant to pay, particularly in criminal cases.

19. As previously reported, we had met with members of the Area Committee for this area and at this time we considered their work with the Area Director and examined the documents in his possession which revealed the Area Committee's constitution, workload and disposition thereof, its work scheduling and several minutes of meetings of the Area Committee and panels into which it is divided for convenience. It was apparent there has been virtually no turnover which is really quite remarkable having regard to the substantial workload and the hours required to effectively deal with the matters presented to the Committee. We discussed with the Area Director the desirability of limiting the term of office of members of the Area Committee and methods of assuring that the expertise which they had developed would not be lost.

20. During the month of February, 1973, the Chairman met with representatives of the Legal Aid Committee to consider the question of the 25% contribution made by the Bar to the cost of Legal Aid from fees earned under The Legal Aid Act.

21. In the month of April, 1973, the Committee went to Hamilton, where it met with the Area Director, F. S.

Weatherston, Q.C. (now the Honourable Mr. Justice F.S. Weatherston of the Supreme Court of Ontario) and Barry Lowe, Esq., the Deputy Area Director. The Committee received from these gentlemen a report of the operation of the program in their area. Subsequently the Committee met with members of the Area Committee. As to criminal matters the Committee discussed with the Area Director and his assistant the questions relating to the frequency of change of solicitors in criminal cases, the difficulty of collecting the legally aided client's contribution to the costs of the Legal Aid afforded them and the taxation of solicitors' accounts. We discussed with these gentlemen the question of the delivery of Legal Aid in other than criminal cases and reviewed with them their interim report of the Hamilton Pilot Project in the Victoria Park Community Corporation and later attended at the Clinic to observe its operation.

22. During the month of May, 1973, the Committee met to review its activities over the previous months. We held discussions with Mr. Lawson and members of his staff and reviewed with them the proposed revision of the tariff of fees payable under the Legal Aid Act. We considered the report of the Committee of the Law Society with respect to the Divorce Pilot Project in Ottawa. The statistics recorded in that report on the six-month experiment led to the conclusion that one could

not justify using duty counsel in uncontested Legal Aid divorce cases, as this achieved neither a cost-saving to the Plan nor a time-saving to the client. There was no justification for a departure from the basic principles of the Plan to ensure solicitor-client relationship and the use by the client of the solicitor of his choice. The Committee concluded the experiment had been carefully managed and documented and those reporting have apparently proceeded upon an examination of proper principles and accordingly that their judgment was in all probability correct.

23. During the month of September, 1973, the Committee made a second visit to Kenora, Ontario. It was our concern to see whether or not any of the recommendations which we had previously made with regard to this area had been implemented and, in any event, to examine once again the problems of delivery of Legal Aid services to this community where time, distance and population distribution along with customs and language difficulties pose serious problems. When in Kenora we met with the Area Director J. K. Doner, Esq., whom we consider one of the more knowledgeable persons in this Province with respect to problems relating to the delivery of legal services in such circumstances and we received from him his report with respect to the operation of the Plan in his area. We subsequently met and discussed related problems with the Area Committee composed of:

J. K. Doner	Area Director
Norman F. McAuley, Q.C.	Area Committee
Thomas A. O'Flaherty, Q.C.	
David L. Swancar	
Philip Spalton	
Kenneth McLeod	

We also met with the following persons:

A. E. Johanson	Community & Social Services
Clarence Sinclair	Detoxification Centre
Charlie Fisher	Court Worker
Mr. Bob Major	Grant Treaty Council No. 3
Mr. Fred Kelly	
Mr. Kenneth Redsky	Shoal Lake
Mr. Herb Redsky	
Mr. Andy White	Whitefish Bay
Mr. Cecil Keesick	Grassy Narrows
Mr. William Fobister	

24. A public meeting was held. This meeting had been advertised in the local newspapers for a week prior to the Committee's arrival. The Area Director had made direct contact with the Chiefs of the Indian Bands on the reserves within driving distance of Kenora and made arrangements for transportation for those interested in attending. In addition, the offices of the Deputy Minister of the related Department of the Government of Canada had assisted in assuring that our concern was known to those on the reserves who were interested in attending. The turnout at the meeting was encouraging and many of the representations made gave the Committee a better understanding of the problems of the delivery of Legal Aid services. Unfortunately, we were left with the marked impression by those who attended to speak to the Committee of

a sense of futility as they had said the same things on so many occasions to so many people without result that they dispaired of help. We did not find that any of our previous recommendations had been implemented.

25. At the public meeting we also heard from the Kenora Social Planning Council. There was however, unfortunately, no representation by any member of the white rural communities in the area.

26. This is a vast area stretching from almost the American border to the Arctic Ocean, east from the border of Manitoba to the District of Thunder Bay. There are but 50,000 people in the area and about 15 lawyers all of whom serve on both the Duty Counsel panel and the Legal Aid panel. The area provides special problems, time and distance separating lawyer from the client arising from the special community and family life of the native Canadian people. While the Bar has served diligently to meet the demands upon them, nevertheless, we are convinced that special arrangements must be made to meet the situation here. We see no reason to depart from the recommendations previously made but rather affirm them, and add that there must be consideration given to permanent duty counsel for legal advice and assistance on the reserves to people who reside there and perhaps consideration must be given to the provision

of legal assistance to the Bands as such.

27. In October, 1973, the Committee went to St. Catharines where we met with the Area Director, T. E. Quinlan, received from him his report of the operation of the Plan in this area. The Committee subsequently met with the Area Committee and others who included:

Roderick Barr, Q.C.,	Area Committee
G. M. Lampard, Q.C.,	
B. W. Doliszny, Q.C.	
Mrs. W. E. Bray	Retired Teacher
Alfred J. Chapman, Q.C.	
Joseph J. Zabek	Solicitor
Col. Eric Partington	Retired Bank Manager
Milton E. Pummell	Retired Director of Education
Donald Taliano	
Malte Van Anrep	Solicitor
John E. Wilson	Solicitor

It appeared from our discussion that there was some need of clarification of the role of duty counsel. Subsequent to our meeting with the abovementioned, we attended to hold a public meeting which had been advertised in the local paper for a week prior but the attendance was negligible.

28. During the month of October, 1973, the Committee attended at Welland where it met with the Area Director, F. W. Cash, Q.C., and received from him his report of the operation of the Plan in his area. Subsequently the Committee met with the Area Committee which included:

D.A. Riou, Esq.
F. Girdlestone, Esq., Q.C.
J. Butler, Esq.,
D. McLeod, Esq., Q.C.
W.K. Ebert, Esq., Q.C.
F.W. Cash, Esq., Q.C.

and others who included:

Dr. H.A. Cardwell	Psychiatrist
Mr. I. Desiri	Regional Welfare
Mrs. Charlotte Lewis	Administrator Field Worker
Mr. W.L. Barber	Superintendent Niagara Regional Detention Centre
Mr. Donald Thompson	Family and Childrens' Services
Ernest Harrison, Esq.	Family and Childrens' Services
Sergeant Clive Jones	Court Clerk
Peter Colson, Esq.	Assistant Crown Attorney
Col. J. Lawson	

After discussion with the Area Committee we discussed with each of the others attending the effect of Legal Aid upon the area with which he or she was concerned and received from them their comments, criticisms and views.

29. In November, 1973, the Committee attended at Kingston, Ontario and met with the Director, D.G. Cunningham, Q.C., and received from him his report with respect to the operation of the Plan in his area. The Committee then met with the members of the Area Committee as follows:

L.S. Willoughby, Q.C.	
G. Lloyd Sills,	Solicitor
L.H. Tepper	Solicitor
Henry L. Cartwright	Solicitor
J.A. Black	Solicitor
J.G.W. Sands, Q.C.	

30. We discussed with the Area Committee the operation of the Plan and sought their views as to the functions of Area Committees and whether or not they should be broadened to include advice to the Area Director as to methods of improve-

ment of delivery of Legal Aid services in the area,
particularly to the poor and underprivileged.

31. We met with the following persons and received
their views with respect to Legal Aid.

Judge A. Campbell	Court House, Kingston
Judge P. E. D. Baker	Court House, Kingston
Judge G. Thomson	Provincial Court, Family Division, Kingston
Mr. Michael Davies	Publisher, Whig Standard, Kingston
Acting Dean L. R. Robinson	Faculty of Law, Kingston
Prof. Stanley Sadinsky	Faculty of Law, Kingston
James Metcalfe	President of John Howard Society, Kingston
Wm. McCabe, M. McFarlane and Professor R. R. Price	
Mrs. M. McKee	President, Elizabeth Fry Society, Kingston
and members of the Staff of Penitentiary Services and Warden's office.	

32. During these meetings the Committee learned for the
first time that there was a problem in the area in that
a number of those qualified for Legal Aid sought to choose
lawyers from Toronto to represent them. This was not confined
to persons who were inmates of the Penitentiary system. The
Committee was of the view that this matter should be studied
as it seemed to impose unnecessary cost to the plan and
we questioned whether it was consistent with the policy
and regulations under which the Plan was administered in other
areas.

33. Of particular interest to us were reports by the Area Director and those in charge of the institutions of the Penitentiary system with respect to the work of duty counsel and the role being played by law students from the Queen's University Law School Legal Aid Society and Prisoners' Assistance plan operated under Professors Price and Ryan. In addition both the Area Director and Acting Dean L. R. Robinson reviewed the relationship between the office of the Area Director and the Community Law Offices operated by the Queen's Law School at Kingston and Belleville, Ontario, and satisfied the Committee that through this cooperation valuable service to the community had been established by the student offices.

34. A public meeting was held at Kingston and although the local daily newspaper had carried prominent notice of the meeting, attendance was negligible.

35. Before leaving the area the Committee visited Millhaven, a maximum security institution and while there had discussions with the Warden and some of the members of the staff and with some of the inmates. Perhaps as a result of this visit and discussions our Committee was better able to understand the difficulties present of those who sought to deliver legal services and act as duty counsel in these institutions. There is no doubt

that those in charge of the institutions have done a very great deal to facilitate these Legal Aid services within the prison system and they could make a very valuable contribution to those who might consider change. With the assistance of the Warden and the inmates in charge of the inmate newspapers, the Committee invited communication from inmates of their views or criticisms with respect to the operation of the Plan and services rendered under it. Some letters have been received.

36. During the month of January, 1974, the Committee went to Sudbury. On this occasion we were accompanied by the Honourable Mr. Justice John Osler, the Chairman of the Task Force on Legal Aid in Ontario. In Sudbury we met with the Area Director, R. J. Huneault, and received from him at a public meeting a report on the operation of the Plan in his area (copy of which report is annexed hereto as an example of such reports for your consideration).

37. Subsequently the Committee met with members of the Area Committee including the following:

Jean M. Labrosse	Solicitor
Norman J. Forest	Solicitor
H. A. Auvinen	Solicitor
B. A. Dumont	Solicitor
Michael R. Meehan	Solicitor
Ralph Connor	Manager, T. V. Station
Roger Barbeau	Area Supt. Board of Education.

We then met with the following persons and had discussions with each of them:

His Honour Judge A. Falzetta
His Honour Judge G. Michel
His Honour Judge Wm. Fitzgerald
Mr. B. Benness, Justice of the Peace
Mr. J.N. Charette, Justice of the Peace
Superintendent S. Whitehouse, Ontario Provincial Police
Police Chief J. Shilliday
Mr. B. Belanger and members of his staff, Community and Social Services.

38. Of significance to us in our meeting with the Area Committee were the views of the lay members of that Committee as to the contribution that might be made by them with respect to advertising of the Plan and through the medium of education. With this Committee we also discussed the question of enlarging the function of Area Committees and we benefited from their views with respect thereto.

39. A public meeting was held at which the Committee heard representations by a number of native Canadian people from the area and from other persons including an Area Supervisor of the Steelworkers Union. Like the Kenora District, this district presents substantial problems by reason of the time and distance which separates persons in need of Legal Aid from legal offices, and there are serious problems about lack of knowledge of the Plan and its availability to those in need of help. The Area Director and an aggressive Area Committee are searching for solutions to this problem.

40. We met with members of the Bar from the City of Sudbury and discussed with them the operation of the Plan and invited their criticism.

41. During the month of May, 1974, the Committee attended at Bracebridge, Ontario, and there met with Peter Stuart, Q.C., the Area Director for the District of Muskoka and received from him an extensive report of the operation of the Plan in this area. Subsequently we met with members of the Area Committee composed of:

W. Alan Newell, Q.C.	Crown Attorney, Huntsville
John A. Christensen, Q.C.	
F.B. Schuch, Q.C.	
H.E.S. Sugg, Q.C.	
J.D.C. McBride	District Court Clerk, Bracebridge
Jack Johnston	Retired Resort Proprietor
Donald Fink	Probation Officer, Bracebridge

42. His Honour Judge D.C. Thomas of the District Court of the District of Muskoka, His Honour Judge D.G. Bice of the Provincial Court, Criminal Division, members of the Ontario Provincial Police and representatives of the Community and Family Services also attended and we received from them their views as to the operation of the Plan in the area.

43. A public meeting had been well advertised in the newspapers in the District; however, attendance was negligible. The Committee met with members of the Bar of the District of Muskoka and discussed with them the operation of the Plan and we received their views and criticisms in that regard.

44. Muskoka is a large area with a permanent population of 25,000 persons which increases to 100,000 during the summer months. There are 27 lawyers in the District. Despite the large increase in population during the tourist season, it seemed clear that members of the Bar operating under the Plan were able to meet the needs of Legal Aid during the peak population. The real problem which concerned them was the needs of the population who lived beyond the major centres, particularly where the population was sparse. It appeared the Area Director and his Committee had pursued aggressive programmes in order to improve the delivery of legal services to the community which included the holding of a clinic which had been well advertised and they have sought or entertained the cooperation of social and welfare agencies in the area, but notwithstanding these things, there is a need which is difficult to meet. It was their view that perhaps most pressing was the need for publicity and advertising of the Plan and the services available under it.

45. The Committee wishes to record its appreciation of the frank discussion with representatives of the Ministry of Community and Social Services Welfare Department. It was agreed that perhaps there is a need of re-examining the provision of this service in the area and we are satisfied this can be achieved by meetings with the Area Director.

SOME OBSERVATIONS AND CONCLUSIONS

46. Mr. Attorney, it is our impression that the Plan is providing a good service to the people of Ontario in criminal cases, but there are some matters which we must draw to your attention. There are criticisms that we have heard which were related to us by persons involved in the administration of the Plan, as well as those who have seen the Plan in operation and depend upon it. The criticisms are set out below.

47. We are also of the opinion that while the Area Directors and the Bar have made great strides in bringing an effective and efficient service in criminal cases to the native Canadian people in Ontario, there are some aspects of that service which may be improved upon. We are aware of the report of the Canadian Civil Liberties Association on Indian Life and Canadian Law which is referred to in the report of the Law Society and it is both encouraging and complimentary and recognizes the contribution by the lawyers of Ontario under the Plan in both criminal and civil cases. But the authors of that report note the need for further improvement and, as stated, we think there are some areas where the service must be re-examined and these will be defined later.

48. The criticism which has reached us as to the

criminal cases under the Plan is not solely a criticism of the Plan but rather relates to the conduct of some persons who seek Legal Aid and of some members of the Bar who serve under the Plan. The criticisms include:

- (1) criticism of those performing the role of duty counsel;
- (2) too frequently we heard that an accused person is able to manipulate the system through delay in application and delay in making his choice of counsel;
- (3) too frequently we have heard that by unnecessary elections or by frequent adjournments disposition of criminal cases has been delayed and perhaps the lawyers have been able to claim a higher remuneration than might otherwise have been the case.

49. Turning to the first of these criticisms:- We consider duty counsel to be an important and distinctive feature of the Ontario Plan to ensure an adequate defence and equal justice. This service is available to all at no cost to the recipients. No certificate of eligibility is required and the role is defined by the Regulation which is a matter of record.

50. The simple theory is that duty counsel will be made available in all courts of first instance so that their advice will be available to persons appearing there who face a court for the first time in relation to a particular charge. In large centres duty counsel also visit the jails and so will be available to give advice in that important period of time between arrest and first appearance.

51. In a number of areas which we visited there was concern about the manner in which duty counsel's function was being carried out. We have discussed this with Area Directors and with the Provincial Director. In short, it appears that there was some uncertainty with respect to the role of duty counsel.

While most Provincial Court Judges assured us that duty counsel was an important help to them in dealing with their heavy docket, there were others who complained that duty counsel was late for court perhaps because of lack of facilities and this produced further delays as interviews with those who required the service of duty counsel caused delay in starting times. The Area Directors and some of those who performed the function of duty counsel complained that the public was often late in attending at court and this was the cause of the delay, whilst others, whose words were echoed by the police and some Judges, pointed out that the system was frustrated by lack of adequate space at the Court Houses and thwarted as there was no privacy for the interviews with persons who

sought to make important decisions and who had to face a court for the first time and all this despite all efforts to make space available. Sudbury is a case in point.

52. It is our opinion because of the representations to which we have referred and the importance of the role of duty counsel that the Law Society should undertake a careful examination with respect to the matter. We do not think that the task of duty counsel is a task for inexperienced persons and Area Directors in conjunction with the Law Society should consider some uniform programme of instruction for those now beginning to serve in this area for they must be aware of the decision that will have to be made and how they are to be carried out. We recommend to you that in conjunction with the Law Society and Area Directors consideration be given to providing space needed to ensure that duty counsel may effectively carry out their function in the privacy that is necessary to assisting those who come to them and, of course, when the present Court Houses undergo alterations, or new Court Houses are erected that there be appropriate facilities provided.

53. As to the second criticism, we have not been provided with any concrete information or statistics which might give

support to this statement and while we agree that persons experienced in the process of our courts in criminal cases by reason of having been involved with some frequency might, through procrastination, attempt to delay the process, on the other hand, it is not surprising that persons with less experience would be indecisive by reasons of embarrassment and confusion. For example, while the right of counsel of one's choice is important to the inexperienced, to choose is meaningless until advice is given as to whom to choose and the anxiety to pick the best may well compound the confusion until confidence comes with good advice. The criticism, however, arises with some frequency. Perhaps the Law Society should consider further a means of assisting inexperienced persons in making an appropriate selection of counsel and this would go some distance in ending the criticism.

54. With respect to the third criticism, we are aware that some time ago the Law Society kept a record of cases in which elections as to trial by a higher court were made and examined the results of such cases in contrast with others and reached a conclusion that the statistics so gathered did not justify or support the criticism. But the opinion of jurists who preside over the trials of such cases cannot be ignored. The matter should be one for which Area Directors are constantly on guard. There are innocent and proper rea-

sons for such elections as well as reasons which may properly be criticised. However, the criticisms having been made, and in some quarters publicly, tarnishes the system. Rightly or wrongly the public may glean the impression that Legal Aid is a lawyers' preserve for the purposes of making money rather than serving the public. A handful of offenders may be responsible and if discerned, consideration should be given to removing their names from the Legal Aid panels. Because of public statements in this regard, we recommend that the Law Society and the Area Directors carry out an investigation.

APPEALS IN CRIMINAL CASES

55. A great number of these cases begin with a notice of appeal prepared by the prisoner with the assistance of duty counsel who really has at best sketchy information as to the case and must rely entirely upon what he is told by the convicted person. It is simply a matter of filing a notice of appeal irrespective of whether it complies with the Rules in this regard and does not attempt to specify the actual grounds of appeal. But of importance is the fact that at the same time that notice of

appeal is filed an application for Legal Aid is made and until it is disposed of the appeal does not proceed.

56. The procedure provided by the Act to determine whether or not a certificate of Legal Aid should be granted to the appellant for his appeal from either a conviction or a sentence has been criticized as causing delay. Such certificates do not issue as of right but only if in the opinion of the Area Committee it is justified after consideration of the notice of appeal, application and opinion of counsel at trial. We have examined the minutes of the Area Committee at Toronto and know that its obligation in relation to these appeals is a very onerous one. This large body of lawyers and lay people, who serve without remuneration, conscientiously brings independent judgment to bear on the question of whether or not a fellow citizen should have counsel for his appeal paid for by the Plan. In theory obviously hopeless appeals should be screened out at this time. But is this a task that can be and is done with despatch?

57. The Area Committee at Toronto follows a regular schedule of meetings but this is not always the case in other locations and while in the one case a large volume of work can produce the delay, in the other the converse may be true. In

addition, we are told there is delay following the issuance of the certificate entitling the appellant to Legal Aid. This is, of course, delay in the selection of counsel and the briefing of counsel in the ordinary sense. The end result is then while the Plan attempts to put persons who qualify for legal Aid on an equal footing with a person of modest means who can pay his own counsel, the procedures may be such that an injustice could be caused by delay, the court's disposition of the appeal may be delayed and this may be the price of insisting upon the procedures laid down in the statute. The circumstances and procedures involve many people; duty counsel at the prison, the Area Director's office, the Area Committee and, finally, the selection of new counsel. Viewed in this light the passage of more time than that required for an ordinary appeal seems a certainty.

58. We think there should be a re-examination of these procedures or at least the case is made for very strict control of the processing of each step in the application with some control over the promptness with which counsel is selected and then completes the appeal.

59. As to the costs of appeal, we are of the view that considerable saving may be achieved through careful decisions

as to the need of whole, or part or none of the transcript at trial. These are decisions which can affect not only the costs of the appeal but also facilitate an early hearing of the appeal.

60. There has been criticism of the fact that where an application for a certificate for Legal Aid is refused, no assistance whatever is available under the Plan to an appellant in his appeal from conviction or sentence. If the system were perfect and only applications in hopeless cases rejected, the result would support this decision; but it appears there are some cases in which the certificate of eligibility for Legal Aid is refused but an appeal by the prisoner on the merits succeeds.

61. The Student Legal Aid Programme at Queen's University and the Prisoners' Assistance Programme working in conjunction with duty counsel have done a great deal to help persons in the institutions in this position in preparing for their appeal. These persons stand alone before the Court as no assistance is provided for them under the Plan. It is our view that perhaps the time has come when you should reconsider this aspect of the matter and that perhaps some form of duty counsel assistance, when the appeal comes on for hearing, would better ensure the rights of these persons and relieve our anxiety "that justice shall be done".

62. In considering the above matter you might refer to page 30 of the Annual Report of the Law Society for a statement showing the applications for Legal Aid that are subject to the approval of the Area Committees pursuant to Section 14 of the statute.

CONTRIBUTION

63. There have not been a great number of cases in which a contribution has been made to the cost of Legal Aid or promises to pay have been made and the monies collected. The question of contribution to the cost of Legal Aid provided is properly one of concern as at present 75% of the criminal cases are defended under the Plan. There is little doubt that before the Plan in many cases funds would have been forthcoming to pay some of the legal fees but these sources of funds (e.g. family, friends and relatives) are not within the purview of the Plan, and the information sought by the Ministry of Community and Social Services enquiries. The ability of one who has lived by crime to pay counsel and the ability to discern his assets has not recently been openly discussed.

64. During our visits to some of the areas of the Province the police officers with whom we spoke reported to us their surprise that an accused person was entitled to a Legal Aid

defence when from their knowledge of his life style he was able to pay counsel. While it seems proper that the Area Director should not employ the agency which enforces the criminal law and has the image of the prosecutor, to assist in the determination of whether or not an accused person is entitled to counsel for his defence, on the other hand the information which the police possess should be available when the public purse is called upon for accused defence. We propose to pursue this topic in the hope that we may be able to be of some assistance to you in the future in this regard.

THE OPERATION OF THE PLAN IN CIVIL MATTERS

65. The Plan has provided good service to those who recognize they have a problem that requires the attention of a lawyer, who know that the Plan exists to help them and where to obtain that help. The principal difficulties are known and understood by those charged with the responsibility for the administration of the Plan and they continue to seek solutions for them. These difficulties are that there is a great need for a programme of communication and advertising and, secondly, the resolution of the problem of time and distance which separates those in need from those who can help.

66. The Annual Report of the Law Society reveals a very modest amount of money was spent for information and publications and it does not appear that there was any large sum of money allocated to the Law Society or budgeted for expenditure of a continuing programme of advertising or communication.

67. Relevant to the question of Legal Aid in criminal cases, but of particular importance in relation to civil matters, the question of advertising and communications is important in relation to Legal Aid.

68. From Kenora to Toronto in all of the areas which we visited we found need for better and further publicity about the Plan and the services available to the public. Whatever advertising and public information programmes have been undertaken in the past have really not been too successful and so despite the substantial investment in the Plan it cannot reach its potential. As we previously reported there is a need for special consideration of communication in the case of the native Canadian people who, for example, in some remote areas have no idea at all that legal advice is available to them if it is needed because they have no knowledge of the Plan. There is a need for special consideration to be given to the areas which have problems comparable to the District of Muskoka, Sudbury and North Bay not limited to the case of the native Canadian people

but the whole community in both small centres and the countryside where the population is sparse. There is a need for special consideration of methods of communication necessary in high density areas of Southern Ontario where low income and underprivileged groups may, like those in the remote and sparsely populated areas be apathetic with respect to their needs while others do not recognize their need for help or, if they do, are uncertain as to where to find it.

69. We found that even persons whom one customarily expects would be well-informed sometimes have little knowledge about the Legal Aid Plan in Ontario. For example, some newsmen who have come to cover public meetings have been quite frank in stating to us their own particular lack of knowledge. It was obvious to us in one case in particular from questions put to us that the individual believed Legal Aid to be a purely local undertaking.

70. We should point out that in our opinion before any new programme of publicity or communication is undertaken, the Area Directors must be consulted since theirs is a unique knowledge which must be drawn upon before it is likely that an effective programme could be undertaken.

In these areas, it is our respectful view that you should consider whether or not there is an area here of

responsibility for those charged with public education. Is it not just as important that every young man and woman who leaves our high schools to make his or her living in this Province should do so with a fairly complete knowledge of this and other comparable Government programmes available to assist them if need be, as it is that they have knowledge of say mathematics and another subject? To us, to ask the question is to answer it. Such plans as Ontario Hospital, Medical, Legal Aid, Workmen's Compensation and Social and Family Benefits may be referred to. The Province spends heavily to provide a good education and to provide good programmes to assist people who live here. It seems to us that there should be some mandatory minimum education to ensure that future generations will fully understand the availability of such assistance.

71. We agree with the Law Society that there must be more publicity and communication and we recommend that the monies be made available for this undertaking. We recommend also that you consider the question of education in this field.

72. As to the question of population distribution and time and distance. A very large area of the Province is sparsely populated and not infrequently even short distances provide a substantial obstacle between a person in need and those who

can assist him. For example, in the District of Muskoka the Area Director emphasizes the fact that there is no east-west public transportation by which persons can reach the three main centres of Gravenhurst, Bracebridge and Huntsville where most lawyers live and practise and, of course, where other main services are located. The result of such circumstances has been that even though widely advertised, clinics held in the main centres do not receive the attendance of those who live any distance outside these centres and it seems obvious that the establishment of a permanent clinic or community law office in these centres is not really the answer. Perhaps then an economic and efficient approach is the legal advice and assistance scheme with appropriate advertising to be tried in Peterborough. It is not dependent upon the holding of a clinic at a specified place at a specified time it is not prominent in the sense of being a "storefront" or community law office which to some extent depends upon specialty in the needs of a particular community but rather perhaps more appropriately the lawyer who participates in the scheme is available to anyone who seeks advice or assistance whether he be from an isolated area or from the heart of the community. It may well be, and we think perhaps probable, that there should be in addition some regular attendance by solicitors in the remote areas but we recognize that distance and time for travel may pose the same or even greater barriers as do the same factors with respect to attendance at larger centres. We think the matter

should be studied further by the Law Society; that once again the Area Directors and an Area Committee composed of lay people and professional people from the particular area are perhaps those best suited to workout the practical problems in resolving this difficulty.

73. Time, distance, expense, travel, apathy and no doubt lack of understanding of their need are common problems which present difficulties in delivering Legal Aid to persons who live in other than major metropolitan centres. Accordingly, we believe the Law Society should continue its study and we recommend that the Programme which was to be instituted in Peterborough be renewed at an early date with emphasis placed upon the service not only to those who live in the community but efforts to attract those who live outside the community to utilize the service upon any occasion that they attend at Peterborough and further that consideration be given to include within the programme any lawyer who may live in the smaller centres in the area.

DELIVERY OF LEGAL SERVICES TO NATIVE CANADIAN PEOPLE

74. As set out in paragraph 26 we reaffirm our statements and recommendations in our previous report in this regard, and in

addition, it is our view that consideration must be given to providing improved legal assistance and advice on the reserves to persons who live there. What is required is to make service available to the people where they live and that there be continuity with the same persons providing such service in order that he or she be familiar with customs and problems and to foster confidence. From our discussions it is apparent that advice and assistance is sought on a broad range of questions in relation to civil matters including civil rights and there is a need to encourage the use of a lawyer of one's choice should more than advice be required, particularly if advice and assistance from "specialists" would be helpful. In addition, there is a legitimate concern on the part of the representatives of the bands, because of the delicate question of appreciation of customs and language difficulties, that more time is needed for preparation for court appearances in criminal cases and that persons under consideration would be able to assist duty counsel in such preparation and also to assist the individual in the choice of counsel for defence at trial, if need be.

75. In addition, we believe consideration must be given to the provision of legal assistance to counsel for the bands as such to help them as they chart the course for the development of their community and to better ensure progress and avoid delay.

76. We are aware of the activities of the Law Society in relation to this matter as reported on page 9 of their Annual Report for 1973 and that since the delivery of that Report the sub-committee appointed has been active in pursuit of the matters referred to. We urge that the matter be given priority.

COMMUNITY AND SOCIAL SERVICES

77. In most areas of Southern Ontario the Committee formed the opinion the system was working efficiently. However, frequently, we heard complaints in other areas of the Province that there was unnecessary delay and cost on occasions in obtaining completion of forms and doing assessments in cases where the applicant for Legal Aid was already in receipt of welfare or social and family benefits. Rather than continuing in this way, as the cost of interviews is high, it is our view that the public might be better served if the interviewing lawyer obtained the basic information necessary for the completion of the present forms and assessment and particularly that concerning the ownership of a home for lien purposes, and that upon this information the Area Director might proceed at once to issue the certificate in a proper case.

78. In Northern Ontario the cost of transporting assessment officers to interview prospective applicants for Legal Aid may

parallel the cost of legal aid granted and affect the time within which the certificate is issued. Delay may be occasioned by the length of the trip undertaken and it is said that in some instances assessments are not done until there is more than one application which necessitates the trip to a distant point.

79. We respectfully suggest that you consider with those in charge of the relevant departments methods of reducing the time for obtaining the assessment by Community and Social Services, and that serious consideration be given to doing away with further assessment once the applicant has been established to be a recipient of welfare or family allowances. In such cases the lawyer taking the application for Legal Aid might do the welfare assessment on the spot being provided with a simplified version of the application form or assessment sheet which, when completed would require merely confirmation in the local office having regard to information available there.

80. We agree and recommend to you that it should be unnecessary to have an assessment made of an applicant for debt consolidation. Such an application assumes a person is in serious financial difficulty and it would perhaps be sufficient, and a saving to the Province in money and in time, if the costs of Legal Aid were merely added to the debts being consolidated and the financial

assessment omitted.

STUDENT LEGAL AID SOCIETIES

81. We heard representations from those in charge of Student Legal Aid Societies and Area Directors in the areas where they are functioning. In our view, Student Legal Aid Societies are making an important contribution to those communities, to the Plan and to student education.

82. At Queen's University the program is headed by a practising lawyer who is a Faculty advisor. During the last year the Student Legal Aid had expanded its operation from its community office in Kingston to a small office in the City of Belleville. Students assist duty counsel performing duty counsel function in some of the courts under appropriate supervision. New ideas explored such as at the invitation of His Honour Judge Allan Campbell, students attend him and are available to those appearing on judgment summons days. The Student Legal Aid Programs have made an important contribution to the Plan in their attempts to discern methods by which legal services may be delivered to the community. Some Area Directors with whom we have discussed this matter have stated there is a positive value to the community. We are informed that the sum of \$55,000 was made available for the

six participating Student Legal Aid Societies last year. One group we spoke to had an annual budget of some \$22,000 which was explained to us in detail and the difference between its proportionate share of the monies available and that required had to be found from other sources so there is concern that unless the monies available are increased Student Legal Aid Societies will be unable to continue as they have in the past. In our view, because of the substantial contribution these programmes are making, we recommend that further monies be available for their assistance as required.

POVERTY LAW

83. Lawyers participating in the Legal Aid Programme in civil matters must understand poverty law and the methods by which problems thereunder may be quickly and decisively dealt with, for such cases require immediate attention or result in hardship, such matters as the improper withholding of welfare or family benefit payments, decisions with respect to housing and some landlord and tenant matters are obvious examples. In truth few lawyers practise in this field save when called upon to provide service under the Plan in these areas. There is no doubt of their competence but if the Plan is to give the service required of it, then, to assist the Bar there must be a fresh emphasis on education in matters of poverty law. Every city, town and community unfortunately has its citizens who are poor and underprivileged.

Those involved in the Plan must make every effort to discern, if possible, the areas where these people are to be found and to bring legal services to them and accordingly we recommend that those in charge of the Plan continue the study of this question of identity perhaps through the expanded use of Area Committees and, in addition, that further educational programs be undertaken for the Bar on poverty law and related subjects.

STAFF SALARIES AND WAGES PAID UNDER THE LEGAL AID ACT

84. As in the past, we have examined the establishment of the office of the Provincial Director and the Area Directors and considered the turnover of personnel there. We have also examined the salaries, wages and retainers paid to all persons engaged under the Legal Aid Plan. We are satisfied there has been no undue turnover or increase in staff. As to salaries and wages, in our view, the salaries paid those under the Plan are not generous, indeed, as of the time we examined them it was our view that sums paid to some senior salaried employees were below what we had expected they would have received having regard to the responsibilities and duties of the incumbent. Salaries and wages must be sufficient to attract and retain qualified persons to make a career of this important service. To do so, they must be comparable to that paid for similar work in Government and elsewhere. We recommend that salaries be carefully be reviewed

regularly, particularly having regard to current pressures. We think that retainers paid to Area Directors should be re-examined at this time.

JUDICIAL DISTRICT OF YORK

85. With respect to our discussion with the Area Director in the Judicial District of York concerning the wisdom of decentralizing the York County Legal Aid Office, it is to be observed that there are two regular Criminal Courts in the Regional Municipality of York sitting in the towns of Richmond Hill and Newmarket serving a population of approximately 200,000 people. From the northern end of that municipality to the Legal Aid office in downtown Metropolitan Toronto is approximately 40 miles and must be a costly and time-consuming trip for applicants required to journey there. We think there is merit in the suggested decentralization. We think there is merit in the proposal for the establishment of a Legal Aid Office at Newmarket, perhaps with its own Area Director and Area Committee and staff serving people of a substantial part of the present Regional Municipality of York and quite independent of Metropolitan Toronto.

CONCLUSIONS

86. In the above we have attempted to set out for you

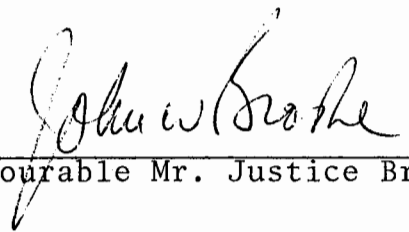
those criticisms which have come to us from persons with whom we have discussed the operation of the Plan and we have set out our impressions of the problems and some solutions that may be available. These matters are, of course, known to those responsible for the administration of the Plan and they continue to seek their resolution. We state it to be our opinion the Plan is operating well. It is providing a good service to a great many people who are in need of it, but it is flexible and may be adapted to provide service to those in need who are not yet reached by its present operation. We think you can draw assurance from the fact that there are so many people in Ontario concerned about Legal Aid and anxious to be sure that the Plan here is the best to be found anywhere. You may derive assurance from the fact that the Benchers of the Law Society and the Legal Aid Committee have worked tirelessly to this end. You may be assured by the fact that 75% of the practising Bar in this Province are engaged in Legal Aid or representing accused persons or in civil matters on a fee for service basis when sought by the individual and as duty counsel. You may be assured by the fact that a great number of men and women have served the Plan by participating in the work of Area Committees and, in the main, have served since the inception of the Plan and always without remuneration. You may be assured by the concern of members of the staff of the Law Schools in this Province who, quite properly, have been quick to point ways in which Legal Aid might better be provided for the people

of the Province, whose views have been considered and evaluated by those responsible for the administration of the Plan. You may be assured by the participation of students in the Student Legal Aid Programmes that perhaps future generations of lawyers will understand that the provision of Legal Aid is a professional responsibility to the community to be borne by practising lawyers and their profession. We believe that you may be assured by the continued interest and concern that we have observed in those employed in other areas that are affected by Legal Aid including the police, courts and social and welfare agencies. It is our opinion that you can say with confidence that the management of the Plan is in the good hands of men and women devoted to its success.

87. During the month of January 1974 your Committee invited the Honourable Mr. Justice John Osler to join us in our visit to Sudbury which is reported above. On Wednesday, March 27th, the Committee attended upon members of the Task Force which had been appointed by your predecessor in office to discuss with them those matters which were put forward at that time. We remain

available to assist them in the future if we can and
if called upon to do so.

All of which is respectfully submitted.



The Honourable Mr. Justice Brooke

"W.E.C. Colter"

His Honour Chief Judge W. E. C. Colter

"C.W. Morrison"

His Honour Judge C. W. Morrison

"F.E. Wigle"

Francis E. Wigle, Q.C.,

"J. Elliott Stedelbauer"

Elliott Stedelbauer, Esq.

"Chas. E. Hendry"

Professor Charles E. Hendry

"Anna Stevenson"

Anna Stevenson

"Christine Carroll"

Christine Carroll
Secretary to the Committee.

REPORT OF THE AREA DIRECTOR FOR THE DISTRICTS
OF MANITOULIN AND SUDBURY

TO: THE ADVISORY COMMITTEE OF LEGAL AID IN ONTARIO

Mr. Chairman, Gentlemen of the Committee,

In view of your present visit to Sudbury, I felt that it would be useful to the Committee if I prepared a report on the operations of the Legal Aid Plan in the two districts which I serve as Area Director. I will attempt to make the report as factual as possible, but in those areas where I express an opinion, I wish to make it clear that the opinion in question is a personal one and it may very well be that other persons who appear before your Committee may not agree with me.

GEOGRAPHY AND POPULATIONS

(a) DISTRICT OF MANITOULIN: - Refer to Map

Population: 10,931

Area: 1,588 square miles

Distances from Sudbury: Little Current - 74
Wikwemikong - 94
Gore Bay - 114
Meldrum Bay - 168

(b) DISTRICT OF SUDBURY: - Refer to Map

Population - 198,079

Area - 18,058 square miles

Distances from Sudbury: Espanola - 42
Massey - 53
Warren - 36
Gogama - 105
Foleyet - 223
Chapleau - 277

AREA DIRECTOR'S OFFICE

The Area Director's office is located at 69 Elm Street, West, in the City of Sudbury. It is within what is generally referred to as the downtown area of the City. It is approximately one-quarter mile from the District of Sudbury Court House and Jail.

The legal aid office itself presently occupies approximately 520 square feet. The amount of space available has not really been satisfactory for the last two years or so. However, we shall shortly acquire an additional 240 square feet as a result of which I believe the size of the legal aid office will be adequate for many years to come.

The office is staffed by a part time area director, one full time secretary and one part time (4 days) secretary. Both the Area Director and the part time secretary are fluent in French and English. This is practically a matter of necessity since there are approximately 45,000 French speaking persons in the Regional Municipality of Sudbury, a surprisingly high number of whom speak French only. I consider the present secretaries to be extremely competent and I am satisfied that the office is adequately staffed.

As Area Director I spend approximately twelve (12) hours a week on legal aid work. This work is carried out not only in the legal aid office but also in my private office. My private office is located in the same building as the legal aid office and I have an intercom system between the two offices so that I am readily available to the staff if any problem arises when I am not actually physically present in the legal aid office itself.

PARTICIPANTS

This part of my report deals with those persons or agencies which I would refer to as active participants in the operation of the legal aid

Plan excepting therefrom the Area Director's Office which I have already dealt with.

(a) AREA COMMITTEE:

The Area Committee consists of seven (7) members, five of whom are lawyers and two of whom are laymen. Evidence that members of our Area Committee are devoted to their work and very much interested in such work is the fact that since March of 1967, there has been one change only on this Committee. That change occurred some four months ago when a member of our Committee was appointed a member of the County Court Bench.

Originally the Committee consisted of five lawyers only. Approximately six months after the commencement of operations, a layman was added. A subsequent layman appointment was submitted to the Legal Aid Committee of the Law Society of Upper Canada approximately eight months ago and such appointment was approved.

The Committee meets on a rather irregular basis depending of course on the amount and urgency of the work to be performed. Meetings last approximately three hours and are held on the average every six weeks. The members are very faithful in their attendance. In all these years we have never had to cancel a meeting because of lack of quorum. Each member of the Committee has been of great assistance to me in making suggestions regarding improvements which could be made to the local operation in order to render better service to the communities which we serve.

(b) SUDBURY LAW ASSOCIATION:

The Sudbury Law Association consists of 87 active practicing members. I am pleased to report that 70 of these members participate on one or more panels of the Legal Aid Plan. This of course shows the enormous co-operation of our Bar. I might point out that apart from one or two exceptions, those who

do not actively participate in the Plan are the older members of the Association who specialize in their practices in such things as corporate law and real estate transactions. Their lack of participation in the Plan is therefore of non concern to the clients applying for legal aid since these people are exclusively practicing in an area of the law which deals with problems in which legal aid applicants have no interest.

The public therefore has an extremely wide choice of lawyers and they are making use of this wide choice since the legal aid work is widely spread amongst the legal profession. In support of this last statement, I would mention for example that notwithstanding the large amount of criminal work in this region, no single lawyer has yet reached the so called magic number of 75 certificates in any given year for criminal work.

I am also pleased to report that there have been no serious complaints of abuse of the Legal Aid Plan against any member of the Sudbury Law Association. There have been complaints of course. A large majority of these complaints have been what the clients considered to be unnecessary delay on the part of the counsel which they have chosen. Evidence of these complaints have in most cases been unfounded. Another often heard complaint comes from inmates of the Sudbury District Jail. Their complaints are always the same i.e. that their counsel is not visiting them often enough at the jail. Those people who so complain seem to believe that their lawyer should visit them every second day or so. I do not believe this and therefore state that in a great majority of the cases, those complaints are also unfounded.

As far as the District of Manitoulin is concerned, there is only one full time practicing lawyer who is located in the Town of Little Current. He actively participates in the operation of the Plan and is of great assistance to the Area Director's Office because of the very fact that he is the only lawyer

available at all times on the Island. In addition, one Sudbury law firm has a branch office in Gore Bay. The office itself is open on a full time basis but lawyers are in attendance usually two days a week during the Summer months and one day a week during the Winter months.

There is only one other lawyer in the District of Sudbury whose office is not located within the regional municipality. This lawyer practices in the Town of Espanola, which is a community having a population of 5,567 and is located approximately 40 miles west of the City of Sudbury. Here again the lawyer in question co-operates to the fullest extent with the Ontario Legal Aid Plan.

In conclusion, I can state without hesitation and with some pride for the Law Association of which I am a member that the Sudbury and District lawyers have given their fullest co-operation to the operation of the Legal Aid Plan in our region.

(c) SOCIAL AND FAMILY SERVICES ASSESSMENT:

The main office for the Districts of Sudbury and Manitoulin is located in the City of Sudbury. Here again my office has received the fullest co-operation and what I consider to be excellent service from this Department. The procedure is generally as follows:

All persons intending to apply for legal aid are requested, if at all possible, to make their application at the Legal Aid Office. Immediately following receipt of the application, my staff contacts the Social and Family Services' Office in order to arrange an appointment for the applicants' interview. The client is remitted a note giving the address and telephone number of the Social and Family Services Office together with the date and time of his or her appointment. Most appointments can be obtained within the next forty-eight (48) hours. Interviews of applicants take place usually between the hours of 8:00 a.m.

and 2:00 p.m. Monday to Friday. For the remaining portion of the day the field worker prepares the reports of those people interviewed, which reports are sent to the Area Director's Office that very day or at the latest the following day. This therefore means that most applications are processed within four working days and if legal aid is granted a certificate is issued within five days of receipt of the application.

If the client is to be what is commonly referred to as a "contributing client", then there may be an additional day or two required before the certificate is issued since the client must re-attend at the Legal Aid Office and execute an agreement to repay or a lien in favour of the Legal Aid Plan.

Whenever applications are received from the District Jail, the field worker is immediately notified and of course attends at the jail for the interviews in question.

My staff also attempts to determine which lawyer will be acting on behalf of a client (if legal aid is granted) at the time the application is made. If that information is available and a certificate is to be issued, the certificate is sent directly to the solicitor in question, thus avoiding the necessity of a client re-attending the legal aid office to pick up his or her certificate or avoiding further delay because of the mail.

In the outlying areas, the problem is a much more difficult one but I am satisfied that every effort is made by the Social and Family Services Office to promptly interview applicants residing in those areas. There are two resident field workers on Manitoulin Island and two others are continuously on the road to visit other outlying areas such as Gogama, Foleyet, Chapleau, etc. Tours of these outlying areas are made every two weeks.

One of the main difficulties which the field workers servicing

the outlying areas run into, is that of locating the applicants. In most instances there are no street addresses and no telephones. The field worker therefore spends a considerable amount of time looking for these applicants. When dealing particularly with native people on reserves, the field worker often discovers that the applicant has temporarily left the area due to such things as to go fishing, work on their trap lines or just temporarily disappeared. There is no easy solution to this problem, which under the circumstances I believe is inevitable nor can it be in any way controlled either by my office or that of the Social and Family Services Office.

SUMMARY OF APPLICATIONS

The Area Director's office for the Districts of Manitoulin and Sudbury is a fairly busy one and I can assure you that there is no time for gossip and the staff is somewhat over-worked at times. The telephone never stops ringing and there are few minutes in a day when there is not one or more applicants in the office. The following statistics will, I believe, substantiate what I have just said:

a) INFORMAL APPLICATIONS:

These particular applications refer mostly to inquiries made of the legal aid office either by telephone or by personal attendance of clients. This type of application often results in our office directing the applicant to civil duty counsel or to agencies such as Welfare, Federal Trustee in Bankruptcy, Social Clubs, etc. Others are simply advised that Legal Aid not available for their particular problem e.g. they wish to borrow money; they wish to retain counsel for a small claims matter where it is not economically feasible to retain counsel because of the amount involved; minor traffic matters. For the 12 months ended March 31, 1973 there were 1,829 such applications in this area. This averages out to approximately seven (7) such applications per day. For the following eight month period ended November 30, 1973, we have received 1,106 similar type applications on

an average of six per day.

(b) FORMAL APPLICATIONS:

These of course refer to cases where an actual legal aid application has been completed by the client. For the period ended March 31, 1973, we received 1,467 applications resulting in the issuance of 1,182 certificates and 382 refusals. Of the certificates issued 67 were to contributing clients. For the eight month period ended November 30, 1973, 1,086 applications were received. If we average these applications over a twelve month period you will see that in the period ended March 31, 1973, we received 122 applications per month and for the period ended November 30, 1973, we have received 136 applications per month.

Until approximately one year ago the Sudbury Region was known as a "Boom Area" . This is not the case at the present time. For the first time in years I believe there has been a decrease in population. The economic situation is somewhat reflected in our statistics since notwithstanding a decrease in population there is an increase in applications and the percentage of refusals because of financial ability to pay has substantially diminished. For the period ended March 31, 1973 the percentage of refusals was 26% and for the period ended November 30, 1973, that was reduced to 18%.

The statistics also indicate a fairly even distribution as between criminal and civil matters. For the period ended March 31, 1973, there were 515 civil and 667 criminal certificates issued. For the period ended November 30, 1973, there were 439 civil and 493 criminal certificates issued. These figures indicate a slight increase over the previous year of operation. Although I have not made a detailed analysis of the criminal certificates issued, I can say that a larger percentage were for breaking and entering, theft and drug cases.

As for the civil cases, by far the great majority of certificates were issued for matrimonial causes either divorce or family Court proceedings.

My final statistics indicate that during the period ended March 31, 1973, 2,603 persons were assisted by Duty Counsel in Criminal matters and 452 in civil matters. For the period ended November 30, 1973, 2,247 persons had already been assisted by Duty Counsel in criminal matters and 440 on civil matters. There has obviously been a substantial increase in work involving Duty Counsel during the last few months. This again possibly reflects upon the present economic situation in Sudbury.

C O U R T S

The Provincial Court, Criminal Division, work load for our area is extremely heavy and we have a very serious lack of courtroom facilities. I have indicated on the map with a green circle the locations where there are Provincial Court Sitzings. These Sitzings are scheduled as follows:

Regional Municipality
of Sudbury:

-- Two Provincial Court Judges sit daily together with two Justices of the Peace, who deal with traffic offences. There is also three bail Courts per week;

ESPANOLA:	Once a week
GORE BAY:	Three times per month
WIKWEMIKONG:	Once per month
GOGAMA:	Once per month
FOLEYET:	Once per month
CHAPLEAU:	Once per month.

Because of the distances involved, Duty Counsel attending Court in Gogama, Foleyet and Chapleau is taken from the Timmins Bar.

I make the personal observation that our Provincial Court Judges, rather than considering the presence of Duty Counsel in their Court as interference, are convinced of its great value and assistance to the Court. All of them make it a point to advise the people present in their Court that Duty Counsel is available to one and all. If due to illness, unexpected Court appearances or simple misadventure, Duty Counsel is not present, the Court office or more often the Presiding Judge himself contacts the Legal Aid Office and requests that another Duty Counsel be sent over immediately.

We sometimes read in the Press that a certain Judge or Grand Jury has criticized Legal Aid and has blamed many delays on the Legal Aid Plan. No such accusations have been made in the Sudbury and Manitoulin Districts since the Plan has been in existence. I am not for one moment saying that everything is perfect however, there is an excellent rapport between the local Judiciary and the Area Director's Office. If a problem arises, I am contacted and immediate steps are taken to rectify the situation. Co-operation and communication between the Judiciary and the Area Director's office is a must for the smooth and successful operation of the Legal Aid in any area. This communication and co-operation should also exist with the police, crown attorney's office and Court staffs. Here again I am pleased to say without restriction whatsoever that it exists in our area. Prior to my becoming Area Director I had a substantial criminal law practice. As a result I got to know most of the people involved in the administration of justice for this area and this has helped greatly to establish the co-operation and communication that I have mentioned.

Although there is not as much involvement of the Area Director's Office with the District Court Judges here again I get the fullest co-operation from the Bench when required. We presently have four District Court Judges in this area. I well remember an incident which took place approximately three years ago

and which I believe is worth relating to this Committee. At that time I was politely requested to step into the office of our Senior District Court Judge. He immediately produced a list of approximately forty (40) criminal cases to be tried at the forthcoming General Sessions of the Peace. He was obviously upset and made it very clear to me that he felt that such a long list was a direct result of the existence of Legal Aid. I obtained a copy of the list from the Judge and a search of my legal aid files indicated that twenty or twenty-two of the cases in question were legally aided. At the end of those particular Sittings I attended at the Crown Attorney's Office and checked the results of those cases involving a legal aid client. This investigation revealed that 55% or so of those who had elected trial by Judge and Jury were acquitted and 18% of those tried by Judge alone were also acquitted. Overall approximately 40% of all accused who had elected to be tried by higher Court and who were legally aided were acquitted. At that time, and without waiting to be summonsed, I personally presented myself at the Judge's office and quoted the above mentioned statistics to him. Since then I have not received any further complaints or comments. There is no doubt that legal aid has increased the number of elections to a higher Court but I respectfully submit that in most cases this has been done in the best interest of the client and in many cases, as the end results show, to his benefit.

ACCESSIBILITY AND KNOWLEDGE OF THE PLAN

The greatest concern of all those involved in the operation of legal aid is whether or not we are readily available and accessible to all or at least the great majority of the people whom we wish to serve. Does the community at large know of our existence, and if so, does it, or can it make use of our facilities.

There is no need to dwell on matters relating to criminal law or to defendants involved in civil litigation since knowledge of the Plan is forcibly brought home to the individual by the events themselves. Those brought before the Courts in criminal matters inevitably see Duty Counsel. Those served with documents involving civil matters will immediately seek either the advice of friends, Court Officials or any other person in authority whom they believe can assist them. As a result, they usually contact the Legal Aid Office.

Unfortunately, this does not mean that those people charged with criminal offences had prior knowledge of the existence of the Plan. It can be very important from the defence's point of view that a client contact his lawyer immediately at the time of arrest. I believe that the only way we can properly cover this situation is if Duty Counsel is made available on a twenty-four hour basis and that such fact be made known to the public generally and to the individual charged. If we made Duty Counsel available in that manner, I suggest that the only effective way to make it known would be to impose the duty on the arresting officers to immediately advise the accused that Duty Counsel is available to him and that such accused be provided with the necessary telephone numbers and be allowed to call. This may not be a popular suggestion but I believe that it would be much more effective than the other alternative available i.e. advertising.

The greatest problem with which we are faced in areas such as those I serve is the difficulty of communication, because of the tremendous distances involved. Accessibility is our greatest problem. If the difficulty of access could be solved, knowledge of the Plan would, I believe, automatically follow. If one sees something, he knows about it, and conversely if something is not there to be seen it remains unknown.

The first step which must be taken to make all of our people

aware of the Legal Aid Plan is to undertake a massive advertising campaign by means of newspapers, television and radio. To the best of my knowledge the Legal Aid Plan has not been advertised by means of a formal campaign since the Plan's inception. Locally, we have had some limited television and radio exposure. On television we have had panel type discussions, the last of which took place approximately two years ago. On radio we have had the Area Director and members of the Sudbury Law Association appear on an extremely popular "call in" or "telephone hot line" program. Approximately once every eighteen months or so an article about Legal Aid appears in the Sudbury Star which is the only daily newspaper in our area. Finally there have been a number of public speaking engagements to various organizations but all of which are to a very limited group of people. Such engagements are nevertheless very effective because they are requested by persons or organizations interested in the Plan and once they are familiar with it they spread the word and refer people to our office. I might point out that the Legal Aid Office is often referred clients by the following organizations, agencies or individuals:

- 1) Local M.P.P.'s and M.L.A.;
- 2) Court House staff - such as Justices of the Peace and Sheriff's Office;
- 3) Department of Northern Affairs;
- 4) The Welfare Office;
- 5) Life Line (Telecare)
- 6) The Elisabeth Fry Chapter;
- 7) The Children's Aid Society;
- 8) Information Sudbury;
- 9) The John Howard Society;
- 10) Department of INdian Affairs.

Dealing specifically with the Districts of Manitoulin and Sudbury, I honestly believe that the Plan is easily accessible and fairly well

known to those persons living within the Regional Municipality of Sudbury. It is not accessible and as well known to the fairly substantial population outside Sudbury including all of the District of Manitoulin.

The Area Committee and I have through the years given serious thought to establish legal aid clinics in these areas. However, we have been somewhat restrained pending the success or failure of pilot projects in areas such as Ottawa, Hamilton and Toronto. I am not convinced that Legal Aid clinics of this type would succeed here. The main reason for my saying this is the lack of adequate facilities to locate these clinics and the absolute non existence of library facilities for textbooks of Statute referrals by counsel attending these clinics. To adequately cover this area, we would require a large number of such clinics. For example a clinic in Chapleau is too far away to be accessible to people from Foleyet or Gogama. A clinic in Little Current would be too far for the people of Meldrum Bay. We don't have subways or other rapid transit services in this area. If you come to Sudbury from Chapleau it is practically a two day trip.

I believe that the only way we will reach and properly advise persons living in our remote areas is by means of a "travelling legal aid clinic" i.e. to use a motor home adequately equipped and taken on regular tours by Duty Counsel to the people. The cost would be high. We would probably spend more money to operate these clinics than we would in actual legal fees for persons obtaining certificates. However, Mr. Chairman, Legal Aid is not a profit making organization and if knowledge, accessibility and service is the name of the game, then we must spend the money. All I can say is that it is money well spent. The present cost of Legal Aid is in my opinion very small indeed when we consider the population we serve, the vast area we cover and the results of the Plan's accomplishments throughout this Province.

At the present time inquiries regarding legal aid for civil matters coming from the outlying areas and from the District of Manitoulin are made by mail. In most cases these inquiries are taken care of by advising the clients in question that Duty Counsel will be in Court on a given date and they are requested to discuss their problem with such Duty Counsel and then complete an application if such is warranted.

AREAS OF COMPLAINTS

However hard we may try to please everyone or to try and administer the Legal Aid Plan to the best of our ability, I presume we will always receive complaints. I will verby briefly set out what I consider to be the main complaints in their sources:

A) FROM THE CLIENTS:

Most clients feel that Legal Aid should be available in all legal matters whenever they financially qualify. They become very upset when the Area Director refuses legal aid in the exercise of his discretion pursuant to the provisions of Section 13 of the Act. Most of the clients who apply for legal aid regarding matters or proceedings referred to in Section 13 have no criminal record and many of them are involved with the law for the first time in their life. To them, the fact that they have been charged with a minor driving offence or are being sued for \$50.00 in the Small Claims Court is a very serious matter indeed, since they do not consider themselves to be guilty or liable to pay. Personally, I sympathize with these clients, but I also recognize the substantial increase in the cost of legal aid if we were to extend the statute to cover all legal matters. I suppose it is for our government to decide how much of the tax payers money they are prepared to spend for legal aid.

Another often heard complaint arises in those situations where

they have been refused legal aid because of the fact that through the years, and with great effort they have managed to save a few dollars. They are suddenly faced with the need for a lawyer, the cost of whom will greatly deplete or sometimes completely wipe out such savings. It is difficult for them to accept the fact that another individual who may work when he feels like it, spend every penny he earns and probably owes money to various finance companies, will get rewarded with a legal aid certificate.

B) FROM THE GENERAL PUBLIC:

Under this heading I refer specifically to those persons who have never had dealings with legal aid. I must say that I do not recall ever receiving a complaint relating to the overall cost of operating the Plan. However many persons believe that legal aid should not be available to so called "repeaters" This of course has been the subject of many discussions which have not resulted in any definite conclusions.

C) FROM THE LAWYERS:

For the last three or four years most lawyers were of the opinion that the legal aid tariff was entirely inadequate. I believe however, that such complaints have greatly diminished if not entirely disappeared as a result of the recent amendments. The profession however strongly suggests that the tariff should be reviewed at least every two years.

Another area of complaint from the lawyers is the fact that clients who could possibly obtain financial assistance from other sources do not exert any effort to do so. This of course is particularly true in criminal cases. I have also heard a number of lawyers complaining about the fact that legally aided clients are more demanding of their lawyer than most paying clients. I have in fact run into a fairly large number of cases where lawyers have decided to discontinue acting on behalf of a client because such clients were continuously calling them, demanding

appointments, demanding that they attend at the District Jail for interviews, etc.

D) FROM THE JUDICIARY:

As previously stated I have received few complaints from members of our Bench. They certainly are aware that the volume of defended cases and elections to higher Courts have considerably increased since legal aid is available. Their main concern is the possibility of abuse of the Plan thereby creating an unwarranted demand upon our Courts. However in speaking strictly for the areas which I serve, I do not believe that there is any concrete evidence of such abuse.

Mr. Chairman, Members of the Committee, I apologize to you for being as long-winded as I have been. I believed however that the more information I could provide about the areas which I serve, the better you could analyze our situation and be in a position to evaluate the operation of the Plan in this area. I sincerely hope that your visit to Sudbury will be a pleasant one and particularly fruitful in carrying out your mandate as requested by the Attorney-General of this Province.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

RICHARD J. HUNEULT,
Area Director,
For the Districts of Manitoulin and Sudbury.