

LEGAL AID IN WAR AND PEACE

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The system of legal aid to members of the armed forces and their dependants set up and operated by the Committee on War Work of the Canadian Bar Association, in co-operation with the Department of National Defence, has been the largest and farthest-reaching undertaking in which the Association has ever engaged.

All members of the Bar of Canada were invited to enroll for this work. Approximately half of the 3,000 who have participated were not members of the Association when they first enrolled. In addition, a considerable proportion of the 1,500 or more lawyers on active service have taken part in the services' end of the work. These are mostly younger men, less than 200 of whom belong to the Association. Returning officers speak highly of the service rendered.

Thus an unanticipated result of this undertaking has been to double the number of lawyers with whom the Association is in contact, and that, among both the public-spirited at home and the valiant abroad.

Lawyers working under the Committee on War Work have since the commencement of our work given legal aid in over 9,300 recorded matters and an unascertainable number of unrecorded cases. Of the recorded cases, approximately 1,000 were handled during the first year, 1,700 the second year, 4,000 in the eleven-months period from July 1st, 1944, to June 1st, 1945, and 2,800 from then to the end of the year. These figures do not include trivial or casual inquiries or advice. In all this volume of work not a single complaint has been received that any business distributed through our established channels has been mishandled.

A review of the history of this enterprise may be appropriate.

The undertaking was proposed first to the Ontario Section of the Association in February, 1942, by Miss Margaret Hyndman, K.C. The meeting approved the proposal and authorized the appointment of a committee. Naturally and fortunately, Miss Hyndman was appointed chairman; and, again fortunately, Mr. George Edmonds, K.C., found himself in the position of secretary and subsequently provincial representative. No one realized at the time what was involved.

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At the request of General McNaughton, then General Officer Commanding in England, through Brigadier R. J. Orde, Judge Advocate General, the Association authorized at its annual meeting in August, 1942, a Dominion-wide organization to which might be referred legal problems of the men in the armed forces in England, whose morale was being seriously affected by problems with which they were helpless to deal. Colonel J. L. Ralston, then Minister of National Defence, endorsed the undertaking and a close liaison was formed between the Association and the Office of the Judge Advocate General for furnishing legal aid.

While the Honourable R. L. Maitland and the present Chairman were the first Joint-Chairmen of this Committee, Mr. Maitland will agree that the cooperation of the profession outside of Ontario was enlisted largely through the enthusiasm and industry of Colonel G. H. Aikins of Winnipeg, then President of the Association.

The organization arranged with the Judge Advocate General worked out as follows:

On the service side—

A soldier brought his problem to his commanding officer. That officer, if he thought legal assistance was required, sent the man to the nearest officer assigned to legal-aid duty, of whom there was one for each division or command.

The legal aid officer, if unable to deal with the matter himself, sent the case forward to the Legal Aid Section established at Canadian Military Headquarters in London.

If the applicant had no solicitor of his own choosing, the Legal Aid Section would refer the matter to the appropriate provincial representative of the Canadian Bar Association.

Similar arrangements were made for the Army in Canada and, through their personnel departments, for the Navy and Air Force.

On the Association's side—

The Association appointed a Provincial Representative, so-called, for each province. His function was to distribute the matters referred to him to appropriate solicitors in the appropriate localities.

The machinery for such distribution was left entirely to the Bar of each province and there is consequently a wide diversity of provincial organizations: in Ontario the work is

under the supervision of the committee taken over from the Ontario Section of the Association; in several of the provinces the work is supervised by the official law society; in British Columbia the bulk of the work lies in Vancouver and is under the control of the Vancouver Bar Association.

The Dominion Committee's function is to maintain liaison with the Judge Advocate General's Department, to exercise general supervision and lay down general principles, but to refrain from interfering with whatever local methods of operation seem best to those on the ground.

The original army orders excluded applications for legal aid from the dependants of service men and applications concerning divorce or other matrimonial causes. As time went on, the excluded problems over-shadowed those covered in the orders. This exclusion naturally resulted in the Legal Aid Branch in London forwarding matrimonial cases to lawyers of their own choosing, and some matters thus fell into undesirable hands, resulting in complaints to our provincial representatives. There was reason to believe that divorce actions were being prosecuted in cases and by methods that the Association could not approve and there was danger of a situation developing that would reflect on the Association, even though it was outside its knowledge or control. At the same time, cases of dependants were in fact being referred by various outside organizations to, and being handled by, our organization. It was therefore decided at the 1943 annual meeting that all limitations on the kind of legal aid which would be furnished should be removed and that dependants should be included. This extension was approved by Colonel Ralston, Minister of National Defence, and the Judge Advocate General, and revised orders were issued accordingly.

At the same time legal aid officers within their own military districts were permitted to refer urgent cases directly to lawyers on the panels furnished them by the provincial committee concerned (with a similar modification for the Navy and Air Force).

These arrangements are still in effect.

The return of our forces from Europe has naturally resulted in the increase in the number of applicants for legal aid already noted. But, as soon as a man is discharged, his access to the channels which have been set up by the Department of National Defence is cut off. He then comes under the Department of Veterans' Affairs. The policy of the Association in regard to the termination of legal aid has long since been established, namely, that we should continue to furnish assistance to former members of the armed

forces and their dependants but should limit it to matters arising during or by reason of the period of active service of the person concerned. The furnishing of such assistance through the Department of Veterans' Affairs has been under discussion for some time, with the result that a cooperative system between that Department and the Association's Committee went into effect on January 1st, 1946.

The Department of Veterans' Affairs has set up District Solicitors as members of its staff at various re-establishment centres throughout Canada; the Association's Committee has appointed distributors in addition to the provincial representatives established in liaison with the Department of National Defence in five centres: Quebec City, Ottawa, Hamilton, London and Calgary. These, with the special distributor in Toronto and the provincial representatives in the other provinces, will constitute our allocating service, and be known as District Representatives. A veteran without a solicitor and in process of re-establishment will naturally take his troubles to the re-establishment centre and be referred to the district solicitor. The district solicitor will refer proper cases to our district representative, to be dealt with as is now done by the provincial representatives. The shift from references by the Department of National Defence to references by the Department of Veterans' Affairs is well under way and in the course of a few months will be complete. References from the Department of Veterans' Affairs will probably continue for another year.

The legal aid we have undertaken to give through the Department of Veterans' Affairs is limited, as above stated, to matters arising during or by reason of the applicant's period of military service. It is the view of the Association, concurred in by the Department, that in civilian matters arising in the course of rehabilitation legal service should be paid for at approximately civilian rates. Obviously the Association cannot undertake to allocate such work.

It is difficult, however, to impose a hard and fast rule. Cases frequently arise in connection with re-establishment where the veteran has no solicitor and the district solicitor of the Department asks our district representative to recommend a solicitor. Our distributors are instructed to decline to make a recommendation unless there is a solicitor available who is himself a veteran in process of re-establishment.

There is another class of civilian cases which we cannot well refuse. Unfortunately, there are several people in Canada willing to share veterans' savings and gratuities. When a veteran wakes

up empty-pocketed and rushes back to a district solicitor for legal aid, who are we to pass by on the other side? Our undertaking would not be complete unless we afforded what help we could in such cases.

The question then arises: Who will look after these cases if we do not, or if we cease to function? It is startling to realize that in eastern Canada there is no organized provision for legal aid to indigent persons. A well-organized system exists in England and in the larger American cities such as Boston, New York, and Philadelphia. The Boston Legal Aid Bureau owns its own building and maintains a full-time staff. I have indicated that our legal aid is administered in Vancouver by the Vancouver Bar Association. The Vancouver Bar Association has a long-established Legal Aid Committee, to whose secretary cases of indigent persons are referred by the Family Welfare Bureau. All members of the Vancouver Association are empanelled to handle these cases, which are allocated to them, subject to a reasonable discretion, in alphabetical order. The Secretary of the Committee is our Provincial and District Representative, and applications from the armed forces are fitted into this system. The cases of dependants must pass through the Family Welfare Bureau. In Winnipeg there is a legal aid service, but it cannot be called a community enterprise. East of Winnipeg there is nothing.

I had intended to advocate that, while such services are obviously the duty of local bodies such as the York County Law Association and Le Barreau de Montreal, the Canadian Bar Association might well give a lead. I find, however, that a special committee of the Association has already considered this problem for six years, and paved the 1929 records of the Association with a perfectly good resolution stating "that this Association is of opinion that the problem of Legal Aid for the poor is a pressing one", and calling on the appropriate governmental and other bodies to do something about it.¹

Any report on our war work would be incomplete if it did not pay tribute to all those who have cooperated in it. To the ministers of the several services, to the Judge Advocate General, his deputies and staff, to the provincial chairmen and representatives and to the hundreds of overworked lawyers across Canada who have cheerfully undertaken these cases, the Association is deeply indebted. The work has often been dull, often drab and distasteful, always inglorious. But I believe it has been a great service well rendered.

¹ The subject is fully discussed in Jones, *Legal Aid for the Poor* (1931), 9 Can. Bar Rev. 271.