

POOR MAN'S LAW IN MANITOBA

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Mindful, perhaps, of the biblical rebuke to the legal profession, many a lawyer has at some time aided an impecunious client to avoid or to disengage himself from the snares of this transitory life. No doubt a record of such doings is kept in the proper quarters. If he is wise the lawyer himself keeps quiet about them; it would never do to have such things shouted from the house-tops. What office could contain the crowd of clients? Yet, though such notoriety be poison to the man himself, it can be meat for his fellows. This the lawyers of Manitoba have proven, for nine years ago they fashioned a system for taking care of the legal problems of poor people. Since then they have maintained an unbroken record of service which may be unique in Canadian circles. How that modern miracle came about and what sustains it the author will attempt to describe.

Background and History

In *Paul v. Chandler and Fisher Ltd.*¹ the Manitoba Court of Appeal declared that the statutes of Henry VII and Henry VIII relating to prosecution of lawsuits *in forma pauperis* were a part of the law of Manitoba. But there were no rules (except in divorce practice) under which a poor litigant could take advantage of his rights. Indeed, his way was barred by the Manitoba Law Fees Act² which required the payment of stipulated fees as a condition of entry to the courts.

Prompted by an article in the Manitoba Bar News, organ of the Manitoba Bar Association, in 1933, the executive sought ways and means. Its delegation waited on the Law Society committee, which was then engaged in revising the King's Bench rules of court, hoping to find the committee receptive to the suggestion of drafting rules *in forma pauperis*. To that the committee did not agree, neither relishing the task nor believing that anything could be gained by it so long as the Law Fees Act blocked the path. Thus a year or more passed while opinion was formed. Support for the general plan came slowly; custom does not easily stale. Some of those who opposed the plan maintained that the contingency fee action (not prohibited in Manitoba) and the Bar's tradition of service were sufficient in themselves, while others feared that the welfare of the legal profession would be

¹ [1924] 2 W.W.R. 577.

² R.S.M., 1940, c. 113.

undermined by the unwarranted extension of free legal services to those who could afford to pay. Eventually, however, it was agreed to set up a joint committee of the Manitoba Bar Association and the Law Society of Manitoba (the official governing body) to consider the general subject of legal services to indigent persons. Both the joint chairmen, R. B. MacInnes, K.C. and C. K. Guild, K.C., were interested in the topic (a guarantee of an active committee) and after bringing in a favorable interim report in February 1936, and considering carefully the provision made in other provinces (especially Alberta) and in England and in certain localities of the United States, the committee reported finally on February 17th, 1937.

These were its general recommendations:

- (1) no change in the practice in criminal proceedings;
- (2) the Attorney-General be requested to introduce an amendment to the Law Fees Act so that no person granted a certificate by the Law Society to proceed *in forma pauperis* should be required to pay any fee in connection with any civil proceeding covered by the certificate;
- (3) the judges of the Court of King's Bench be asked to promulgate rules relating to proceedings *in forma pauperis*.
- (4) the Law Society to set up two committees in the Eastern Judicial District of Manitoba (which includes the City of Winnipeg) to be known as the
 - (a) Needy Persons' Advisory Committee, and the
 - (b) Certificate Issuing Committee,and a Certificate Issuing Committee in each of the other judicial districts;
- (5) no certificate to be issued
 - (a) to a man in respect of a matrimonial matter, except where the result would probably benefit an infant or would be desirable on grounds of public policy or morals,
 - (b) for legal aid in a matter before any person, official or body other than a court,
 - (c) to enable the issuing of letters probate or letters of administration,
 - (d) to take or defend an action for libel or slander,
 - (e) to take or defend proceedings under the Small Debts Act,
 - (f) to appeal to the Court of Appeal, except where there appears to have been a miscarriage of justice.

One of the main tasks of the joint committee had been to prepare a draft of the proposed rules governing proceedings *in forma pauperis*. Its draft, based on English rules, was attached to its report and was accepted with few changes by the judges of the Court of King's Bench on February 5th, 1938. The rules are reproduced in Appendix A to this article.

A word is needed about the proposed duties of the two committees. The Needy Persons' Advisory Committee — let me refer to it as the junior committee — was to interview all applicants for legal advice and assistance. It was predicted that of all the persons seen by this committee comparatively few would need the services of a solicitor to conduct litigation. All that the majority would require would be information as to their legal rights and guidance. The junior committee was intended to be a sort of legal clinic. So it proved.

In contrast, the Certificate Issuing Committee — the senior committee — was to be composed of a few senior solicitors who would review the facts and, if necessary, choose a conducting solicitor from an alphabetical list of all lawyers who had been called not longer than fifteen years previously. This conducting solicitor would be requested to take the case and, consenting, would receive a certificate under which he would have complete control of the prosecution of the civil action (or defence) in which the poor litigant was interested. Over both of these committees it was proposed that there be a general chairman (preferably a bencher of the Law Society) who would keep in touch with the work and be responsible for it.

Working Out the Plan

The Law Society lost no time in accepting these recommendations and, as soon as the judges had approved the new rules of court, the committees began their work. From the first there was never any lack of volunteers for the junior committee. This is now composed of eight junior barristers, who sit in pairs in rotation each week, so that no member of the committee has to give up more than one night a month. The real load falls on the secretary, for as well as attending each meeting of the junior committee, he is also, for the sake of continuity and convenience, the secretary of the senior committee, which issues the certificates. In spite of the amount of time which is necessarily devoted to this work by the secretary, and for which he receives neither fee, profit nor reward, there has been no great difficulty in obtain-

ing the services of capable young men in the persons, successively, of B. R. Coleman, H. Altman and W. J. S. Isaac.

The junior committee meets every Monday night, promptly at half past seven in the small County Court room at the Winnipeg court house. Perhaps readers might like to know how these hearings are conducted. By half past seven there are usually several people waiting in the ante-room. The lawyers take their seats at the counsel table and the applicant sits across from them and is interviewed informally but privately. The secretary has a procedure book in which he enters particulars for later reference. One or two preliminary questions usually type the problem and a few blunt inquiries as to means serve to qualify or disqualify the applicant. There is no rigid means test; the committee merely uses its discretion. If the case seems to require legal services in court a declaration in the form given in Appendix B is always completed. When the committee is satisfied that the applicant needs further assistance and has not the money to retain a solicitor in the ordinary way, the secretary writes out on a slip of paper the time of meeting of the senior committee, at the same time explaining that if the senior committee upon examination confirms the opinion of the junior committee, it will appoint a solicitor. The social welfare organizations to whom female applicants often have already gone with their domestic problems, sometimes send a representative along to explain the nature of the problem to the committee, a time-saving device which is appreciated. Although most of the problems encountered are domestic, there is an extraordinary variety which keeps the work interesting. And there are always the cranks who, having been refused by every legal office in town, turn up with a suitcase full of papers and demand justice. Memory recalls particularly one gentleman, who appeared to be perfectly sane when he calmly claimed that a well-known bank owed him a million dollars.

The senior committee convenes at Winnipeg once a month; more often if needed. The meeting usually takes place at a downtown law office at five o'clock in the afternoon and the recommended people who want solicitors appointed are notified of the time and place. If the committee decides to grant a certificate, two members of the committee sign it and select a lawyer from an alphabetical list of all lawyers in the Province. Then the certificate (Appendix C) goes to the secretary of the Law Society, and is mailed to the conducting solicitor, who thereafter makes his own arrangements with his new client. Because no Certificate Issuing Committee has been set up in judicial districts other

than the Eastern, the practice has been for the committee sitting at Winnipeg to issue a certificate to a lawyer practising in the locality in which the applicant can best be served, no matter in what judicial district that locality lies. The experience in Manitoba has been that a solicitor need not be asked to take a poor person's case more often than once in three years; few decline to act.

General Remarks

Up to April 1947, 1355 persons had been interviewed by the Needy Persons' Committee, and 377 certificates granted by the Certificate Issuing Committee. The general chairmen of legal services to indigent persons have been, in succession, Mr. J. J. Kelly, K.C. (1938), Mr. F. M. Burbidge, K.C. (1939-1942) and Mr. E. G. P. Baker, K.C. (1943-continuing). The undertaking could not have succeeded without the loyal backing of all the members of the Manitoba Bar, who have given generously of their time and talents in this endeavour. There is no reason to fear that, given the same careful screening of applications for assistance by the two committees, and the weeding out of persons who can afford to see a lawyer in the ordinary way, as well as the elimination of those who cannot expect to benefit from litigation, the plan will not continue to function smoothly in the future. Some American centres boast of far more comprehensive schemes, which include representation in court of persons charged with criminal offences. Such legal aid bureaux are supported by grants in aid from community chests and welfare societies and employ paid secretaries and a staff of lawyers. Perhaps in Canada we shall, in time, develop such an organization. Meanwhile Manitoba lawyers have worked out a practical system of assistance to the poor in need of legal aid and are modestly proud of their achievement.

The work is handicapped and limited by its local character. Undoubtedly the development of similar organizations elsewhere would bring about reciprocity of service with benefit to many persons whose claims cannot otherwise be investigated and satisfied. If a defendant is out of the jurisdiction the committee is hampered and often frustrated in its efforts by being unable to grasp the friendly hand of a society working along the same lines in the defendant's locality. When a husband, for instance, forsakes his wife and family, leaving them destitute, justice demands that he be made to maintain them. To whom can the wife appeal in such circumstances? True, she may go to the police, who will probably succeed in tracing the man's where-

abouts. They may even lock him up for non-support. But their duty falls far short of what is required to restore a measure of happiness to that broken home. Only by the intervention of a lawyer can the full legal rights be asserted. And there is often no money for retaining a lawyer.

Manifest difficulties appear when a person without means attempts to enforce rights outside the province in which he resides. Nothing which comes to mind would redound so much to the credit of the Canadian Bar Association as the fostering and encouragement of legal assistance for needy persons in all provinces, with possibly a central committee for clearing extra-provincial claims. Here is an opportunity for public service and better public relations.

APPENDIX A

PROCEEDINGS BY AND AGAINST NEEDY PERSONS

697. In rules 697 to 705, both inclusive:

- (a) "needy person" means any person, resident in Manitoba, who has obtained a certificate under these rules;
- (b) "committee" means a committee set up by The Law Society of Manitoba for the purpose of inquiring into applications for certificates and of granting or refusing the same;
- (c) "conducting solicitor" means a solicitor who has been nominated by a committee to act, and who has consented to act, as solicitor for a needy person in relation to the proceedings specified in a certificate;
- (d) "certificate" means a certificate issued by a committee, signed by two members thereof present at the inquiry, and certifying:
 - (i) that the person named therein is in indigent circumstances;
 - (ii) that such person has reasonable grounds for taking, or defending, or otherwise being a party to, the proceedings specified in the certificate;
 - (iii) that there are reasonable grounds for believing that such person may realize a substantial amount under any judgment which he may recover in the proceedings specified in the certificate, or derive other substantial benefit from such proceedings; and
 - (iv) the name and address of the conducting solicitor;
- (e) "these rules" mean rules 697 to 705, both inclusive.

698. Any person, resident in Manitoba, who obtains a certificate under these rules shall be admitted to take, or defend, or otherwise be a party to, the proceedings specified in the certificate, as a needy person.

699. Before taking any other step the conducting solicitor shall file the certificate in the office of the prothonotary, or the deputy clerk of the crown and pleas for the judicial district in which the proceedings are pending or intended to be taken.

700. Every certificate complying on its face with the requirements of, and purporting to be signed as provided in, these rules shall be accepted by the prothonotary, or the deputy clerk of the crown and pleas, for the purpose of filing, unless he has received notice of the revocation thereof.

701. The committee which issued a certificate may revoke it at any time before it has been filed.

702. (1) Except as provided by these rules, the conducting solicitor shall not take, or agree to take, or seek to obtain, any payment, fee, profit, or reward for the conduct of the proceedings, or for out-of-pocket or office expenses; and, if he does so, he shall be guilty of contempt of court.

(2) If any such payment, fee, profit, or reward shall be made, given, or promised, the court may order that the certificate be taken off the file; and the needy person shall not thereafter have the benefit of the certificate, unless the court otherwise orders.

(3) The committee may from time to time allow such payments of money to be made by the needy person to the conducting solicitor in respect of out-of-pocket expenses (not including office expenses) as it may consider just.

(4) The committee may from time to time, in its discretion, require the needy person to deposit with it, or as it shall direct, such sum of money as it may consider just, to cover the out-of-pocket expenses of the conducting solicitor. Every sum so deposited shall be used by the committee only for the payment to the conducting solicitor of any out-of-pocket expenses (not including office expenses) properly incurred in relation to the proceedings; and any surplus shall be repaid to the needy person.

703. The court may at any time discharge the certificate and direct it to be taken off the file; and the needy person shall not thereafter have the benefit of the certificate, unless the court otherwise orders.

704. (1) Neither the needy person, nor the conducting solicitor shall discontinue, settle, or compromise the proceedings, without the leave of the court or of the committee.

(2) The needy person shall not discharge the conducting solicitor, without the leave of the court or of the committee.

(3) The conducting solicitor shall not be at liberty to withdraw from the proceedings, without the leave of the court or of the committee.

705. (1) If and whenever the needy person (or in matrimonial causes when the wife is the needy person, she or her husband) becomes possessed of means beyond those stated in the application for a certificate, the needy person shall at once report that fact, with particulars, to the conducting solicitor and to the committee.

(2) When such fact comes to the knowledge of the conducting solicitor, whether by means of such report or otherwise, he shall forthwith report it in writing to the committee.

(3) Costs ordered to be paid to or by a needy person shall be taxed as in an ordinary action; and the court may order to be paid to the conducting solicitor out of any money recovered by the needy person, whether for claim or costs or both, or may charge in favour of the conducting solicitor on any real or personal property recovered by a needy person, such sum in respect of costs as would have been allowed to the solicitor on taxation

between himself and his client if he had been retained by his client in the ordinary manner.

(4) In the event of the recovery of money or other property, real or personal, by the conducting solicitor on behalf of such needy person without proceedings, or on the settlement of any proceedings before trial or other final disposition, the court may, on the application of the conducting solicitor, allow him out of such money or other property, such fees and expenses as may seem proper.

APPENDIX B

CANADA
PROVINCE OF MANITOBA } IN THE MATTER OF AN Application for
To Wit: Legal Aid

DECLARATION OF APPLICANT

I, of
in the Province of Manitoba,, do solemnly declare:

1. That my permanent residence is at
in the Eastern Judicial District of, where I have lived
for years, and I am years of age, and by nationality.

2. That I am in indigent circumstances and I am desirous of obtaining
legal aid, and I hereby apply for the same.

3. That I have a wife (husband) and children dependent on
me (us) aged I am single.

4. That the following is a list of all lands, chattels or other assets
owned by me or owned by my wife (husband) and myself, and of all sources
of income which I have or (I and my wife (husband) have) subject to the
encumbrances or liabilities as hereinafter set forth.

	Value
Real Estate.....	\$.....
Personal Property, e.g. furniture, clothing	\$.....
Other sources of income.....	\$.....
.....	\$.....
.....	\$.....
Encumbrances or liabilities.....	\$.....
.....	\$.....

5. That during the past 12 months I have earned and
received.....

6. The nature of the legal aid for which I apply is as follows:

7. That in respect of the said matter I have not employed a Solicitor
nor have I previously applied for or been refused legal aid, except as follows:

8. That as soon as I become possessed of money or other means or
property I will immediately report the same to the conducting solicitor
appointed to act for me.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act".

DECLARED before me at the.....
 of....., in the Province of
 Manitoba, this.....day of.....
A.D. 19 .

.....
 A solicitor entitled to practise in the
 Province of Manitoba.

.....
 A Commissioner for Oaths
 My Commission expires.

APPENDIX C

THE LAW SOCIETY OF MANITOBA

Parties Proceeding in Forma Pauperis
 Certificate, under Rules 697 et seq., of
 Committee appointed by The Law Society of Manitoba

We, the undersigned members of this Committee after enquiry by us held, certify as follows:—

(1) That of
 a needy person, is in indigent circumstances;

(2) That such person has reasonable grounds for taking or defending or being a party to the following proceedings:

(3) That Mr. of
 a Solicitor, has been nominated and has consented to conduct the proceedings on behalf of the needy person;

(4) That there are reasonable and proper grounds for believing that the needy person may recover under execution, or obtain other substantial benefit or remedy under any judgment or order which may be made in the proceedings.

DATED at Winnipeg this day of 19 .