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Legal Aid in Canada: Existing Facilities

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I

Few of the civilized countries of the world are today without some form of legal aid.¹ In England and the United States particularly, it has long been accepted that legal assistance for the poor is essential if the democratic system is to operate effectively under modern conditions. Although opposing views are held on whether the state or private charity should assume financial responsibility, it is common ground in both countries that the lawyer, because of his position and training, has a special duty to see that legal aid² is available.

In England, a comprehensive plan is now being introduced for the provision of legal aid and advice to poor persons, under the control of the legal profession but financially supported by the state.³ For many years groups of lawyers provided assistance to

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¹ See, for example, Schweinberg, *Legal Assistance Abroad* (1950), 17 U. of Chi. L. Rev. 270. See also, Cohn, *Legal Aid for the Poor* (1943), 59 L.Q. Rev. 250, 359.

² In England, the meaning of the term "legal aid" is confined to the assistance of poor persons before the courts, and "legal advice" is used to denote the provision of assistance in legal matters other than litigation. In the United States, "legal aid" is generally used for both types of assistance. Canada tends to follow the American usage, and in this article "legal aid" will be used in this broader sense.

³ Legal Aid and Advice Act, 1949, 12 & 13 Geo. VI, c. 51. The provisions of the Act with respect to proceedings started in the Supreme Court came into force on October 2nd, 1950. No date has been set for the introduction

the poor in most of the principal cities. In 1945, over 125 Poor Man's Lawyer centres, where solicitors attended to give free legal advice, were in operation. The state-supported plan was introduced on the recommendation of the now famous Rushcliffe Committee, which found these volunteer facilities totally inadequate to meet the growing demand for legal services.⁴

In the United States, the growth of legal aid has been supported mainly by charitable organizations in co-operation with local bar associations, with funds provided in most cases by the local community chest. At the end of 1949 there were 90 legal aid offices in the United States, of which all but 17 were manned by paid legal staffs.⁵ Most bureaus operate independently and confine their efforts to one city or metropolitan area, but a National Association of Legal Aid Organizations has been formed to integrate their work and assist in the establishment of new offices in other cities.

In Canada, development has been much slower, and little progress has yet been made in fixing the extent to which the public or the state should share responsibility with the legal profession in providing legal aid. At present there is only one city in the country where offices are open during regular hours to receive applicants. In three more centres offices are open one evening a week. Apart from a few voluntary committees that accept cases referred by welfare organizations, and some machinery to help needy litigants in the courts, the rest of the country is entirely without organized facilities. There are indications, however, of increasing activity. Three cities have formed well publicized legal aid groups during the past year, and the final touches are now being put on a province-wide scheme in Ontario. With the exception of Prince Edward Island and Newfoundland, legal aid committees of some kind have been established in every province, and additional organizations may be expected soon.⁶

II. *Legal Aid in Civil Matters*

Although the basic problems are the same, experience has shown that legal aid in civil and in criminal matters frequently requires

of the remaining provisions dealing with legal advice and litigation in the lower courts. See Egerton, *Legal Aid in England* (1948), 26 Can. Bar Rev. 950; Smith, *The English Legal Assistance Plan* (1949), 35 A.B.A.J. 453.

⁴ "Report of the Committee on Legal Aid and Legal Advice in England and Wales", May 1945, Cmd. 6641.

⁵ 1950 Legal Aid Directory (published by the National Association of Legal Aid Organizations, Rochester, New York). These figures do not include the many volunteer committees that do not maintain regular offices.

⁶ See Appendix A for a list of existing organizations and investigating committees.

a different approach. The procedure and clientele are usually quite distinct, and most bureaus confine their efforts to one field or the other. It will therefore be more convenient to discuss these two branches of legal aid separately.

Of the two, legal aid in civil matters has perhaps received more attention in Canada and facilities of some kind have been established, or are soon to be established, in one or more cities of eight of our ten provinces. In the West, organizations are operating in Winnipeg, Vancouver and Victoria. In addition, procedure for the assistance of poor persons in the courts is available in Alberta and Saskatchewan. Ontario, though comparatively inactive at the moment, expects to introduce an extensive plan shortly. Two full-time legal aid bureaus are operating in Montreal, and the bar of Quebec City recently introduced a legal aid scheme there. In New Brunswick, the legal aid committee of the Saint John Law Society provides assistance for the poor of that city. At its last annual meeting the Nova Scotia Barristers' Society announced plans for the establishment of legal aid in Halifax. Only in Prince Edward Island and Newfoundland has no action been taken.

So far as any pattern is distinguishable, existing facilities may be divided into four groups: procedure for the assistance of needy litigants in the courts; legal aid "clinics" which are held at announced times to dispense advice and refer more serious cases to volunteers for further action; volunteer panels maintained by local bar associations; and legal aid bureaus operated by welfare organizations. Although long dormant, the country-wide effort of the Canadian Bar Association's Committee on War Work should perhaps be placed in a special category.

Needy Litigants Procedure

In the reign of Henry VII, an Act was passed by the English Parliament as "a Mean to help and speed poor Persons in their Suit".⁷ This Act, which permitted the destitute to appear in court without paying the usual court fees, was in effect in England, with modifications, until only two years ago. As part of the general law of England, it was inherited by all our common law provinces.⁸ Analogous procedure was provided under the Quebec Code of Civil Procedure. Never very liberal in scope, *in forma pauperis*

⁷ 11 Henry VII, c. 12.

⁸ In British Columbia (*Bland v. Agnew*, [1933] 4 D.L.R. 756) and in Manitoba (*Paul v. Chandler and Fisher*, [1924] 3 D.L.R. 282), the courts of appeal have specifically found the Act to be part of the provincial law. In Ontario, the courts have implicitly done so by allowing *in forma pauperis* actions to be taken (see *Paul v. Montgomery* (1875), 22 Gr. Ch. 176).

proceedings, as they are called, gradually fell into disuse and in most provinces have long been ignored.

Alberta was the first province to revivify the procedure. In 1928 the Court of Appeal held that the provisions of the Alberta Rules of Court prescribing the payment of court fees and security for costs had effectively barred the use of *in forma pauperis* proceedings in that province.⁹ The Alberta Law Society took the matter in hand and, largely through its efforts, the rules were changed in 1932 to allow the poor to use the courts without cost.¹⁰ Unlike the corresponding English rules, under which the entire procedure is in the hands of the court, the Law Society itself assumed responsibility for the administration of the plan. A needy litigants committee was established by the Society in each judicial district to hear applications for assistance. The first organized plan for the legal assistance of poor persons introduced by any law society in Canada, the Alberta scheme is still in operation.

To be eligible, an applicant must satisfy three conditions. He must be without sufficient means, have a *prima facie* case and have a prospect of recovering from the opposite party after judgment. Applications concerned with probate or criminal matters are not heard. Divorce cases are accepted, but only when the wife is the applicant and is not contemplating re-marriage; in other cases it is felt that the husband or prospective husband should bear the cost. Appeals will be approved only where a committee is convinced that a gross miscarriage of justice is likely to occur. In actual practice, only one or two appeals have ever been authorized.

When an application is approved, a certificate is granted entitling the holder to proceed in the courts of the province without payment of the usual filing charges¹¹ and a lawyer is appointed to conduct the case on his behalf. Usually a solicitor already familiar with the case, or known to the applicant, is named, but all members of the local bar are considered to be available. The decision of a committee in refusing a certificate is final and no appeal is possible.

No provision is made for the payment of disbursements other than those made to court officials, and witness fees and other necessary expenses must be paid by the litigant out of his own pocket. Normally the solicitor may not accept any payment from the indigent, and even payments on account of disbursements

⁹ *Augustino v. Canadian National Railways*, [1928] 1 D.L.R. 1110.

¹⁰ Rules of the Supreme Court of Alberta, Order XLVI; Rules 679-711.

¹¹ Sheriff's fees and the reporter's charges for examination for discovery are also remitted. Payment for these services is made by the crown.

must be approved by the committee. If the action is successful, the solicitor may recover his costs from the other party, again with the approval of the committee.

Although no figures are available on the total number of certificates granted since the establishment of the plan, it is estimated that in Edmonton alone over two thousand applications were heard between 1932 and 1939. Of these, approximately one-third were granted, another third adjusted without litigation, and the remainder refused. Half the applications concerned domestic relations. In recent years the demand has slackened appreciably. Originally, meetings were required every week in Edmonton, and later every two weeks, but now they are only called when the chairman receives an application requiring attention. During 1949 and 1950, a total of 13 certificates were granted in Edmonton, and 20 in Calgary;¹² 11 certificates were granted by all the rest of the committees in the province. In some of the rural districts no applications have been received in the last ten years.

The decline in the volume of work done is largely attributable to the economic prosperity which Alberta enjoys, but other factors may also be involved. No publicity has been given to the scheme and most applicants are referred to the committees by lawyers who wish to reduce the disbursements required of their clients in conducting an action. Again, assistance is confined to litigation and no provision is made for dispensing advice on non-litigious matters. In the light of their past experience, however, and of the tremendous economic growth of their province, it would appear that the consensus among the members of the Alberta bar is that there is no need to extend the plan at the present time.

Although many of the other provinces have specific provisions in their rules of court for needy litigant procedure, only in Manitoba are they used to any extent. The practice there will be described in the next section. In Saskatchewan, the relevant rules of court are similar in most respects to those found in Alberta.¹³ In 1939, certificate-issuing committees were established for the various judicial districts and a memorandum for the guidance of solicitors was printed by the Law Society. Little has been done since, however, and only one instance is known where recourse has been had to the procedure. In Quebec, the Code of Civil Procedure provides for waiving the fees of court officials for indigent persons.¹⁴ The indigent is still required to pay for the law

¹² Only 3 certificates were granted in Calgary in 1949, but 17 were issued in 1950, following the reorganization of the district committee.

¹³ Saskatchewan Rules of Court, Chapter 47, Rules 585-599.

¹⁴ Quebec Code of Civil Procedure, Chap. IX, Arts. 89-93.

stamps which constitute the greatest part of the court costs. One of the few court officials affected would appear to be the advocate representing the needy litigant. Existing legal aid groups do not consider the procedure worth using and experienced advocates have difficulty in recalling instances where it has been used. New Brunswick, Nova Scotia and Newfoundland have all incorporated the old English provisions into their rules of court. Court fees may be waived if an applicant is worth less than \$50.00, his wearing apparel excepted. The rules have never been used.¹⁵

In May 1950 the Rules of the Supreme Court of Canada were amended to permit *in forma pauperis* proceedings in appeals to the Supreme Court.¹⁶ To be eligible an applicant must show that he is worth less than \$500 and obtain an affidavit from counsel that he has reasonable grounds for appeal. If a judge grants leave, all Registrar's fees and the requirement of security for costs are waived. The Registrar's fees are of minor concern, rarely amounting to more than \$20.00 before judgment, but normally an appellant must post \$500 as security for costs before he may appeal. Elimination of this financial hurdle should prove of considerable help to poor appellants. There has been no relaxing of the requirement of providing printed copies of the evidence for use by the court, however, and this item may still serve to deter many suitors. In the year since it was adopted only 2 applications have been made under the new rule, one of which was granted.

*Legal Aid Clinics*¹⁷

Although no lawyers group in Canada operates a full-time legal aid office, several hold weekly "clinics", usually at the local court house, where the poor may apply for help. Unlike the needy litigants committees in Alberta, the legal aid clinics are not confined to litigation. Several lawyers attend each week to hear applications and dispense advice on non-contentious as well as contentious matters. Where a case cannot be satisfactorily disposed of in this way, it is referred to a member of the local bar for negotiation and, if necessary, litigation. The oldest of the clinics is operated by the Law Society of Manitoba in Winnipeg. Others, based on the Winnipeg model, are now operating in Victoria and

¹⁵ The relevant rules of court in each province are: New Brunswick, Order 16, Pt. 3; Nova Scotia, Order XVI, Pt. 4; Newfoundland, Order 15, Pt. IV. In Nova Scotia, a redrafting of the rules, based on the modern English procedure, has been submitted to the Council of the Bar Society but has not yet been adopted.

¹⁶ Rule 142.

¹⁷ The term "clinic" is usually associated with legal aid bureaus attached to law schools, but in Canada it has been used more loosely and bears little connection with the teaching process.

Vancouver, and a considerable number are expected to be opened in Ontario this year.

The Winnipeg clinic was established in 1938 when needy litigant procedure similar to that in Alberta was first introduced in the Manitoba courts.¹⁸ Unlike Alberta, the machinery established by the Manitoba Law Society contemplated the provision of legal aid generally and was not confined to hearing applications for aid in the courts alone.¹⁹ Two committees were established in Winnipeg, a junior committee, which operates the "clinics", and a senior committee, which reviews cases requiring further attention. A young lawyer acts as secretary of both committees and attends all clinics, providing a continuity that has proved invaluable. When the circumstances warrant, the senior committee will issue a certificate, permitting an applicant to proceed in the courts without payment of the usual court fees, and appoint a lawyer to represent him. Technically, all Winnipeg lawyers are available to represent litigants, but in practice those employed by the government and by corporations are exempted, as well as some others who are in highly specialized types of practice. The experience has been that any one individual need not be asked to take a case more than once in three years.

No fixed standard of eligibility has been set, but single persons earning less than \$75.00 and married persons earning less than \$100 a month are usually considered proper subjects for legal aid. Recipients of public relief are normally not considered since their legal problems are looked after by a solicitor in the provincial Welfare Department. Where the applicant can afford a lawyer, no assistance is given him in choosing one. Sometimes in borderline cases where he can pay something, but not much, he is unofficially referred to a young lawyer who will act for a reduced fee. Few restrictions are placed on the types of cases handled. Applications by a husband for divorce are usually refused, though even here exceptions have been made in special circumstances. Damage actions that would be accepted by practising lawyers on a deferred payment or contingent fee basis are also refused.²⁰

Provision for payment of court fees is similar to that in Alberta. The payment of other disbursements remains the responsibility of the litigant. If an action is successfully concluded, the

¹⁸ Rules of the Court of King's Bench (Man.), Chap. XXIX, Rules 696-705; Law Fees Act, R.S.M., 1940, c. 113, s. 114.

¹⁹ For a more detailed account, see A. W. Johnson, *Poor Man's Law in Manitoba* (1947), 25 Can. Bar Rev. 478.

²⁰ Unlike most provinces, Manitoba still permits counsel to accept cases on a contingency fee basis: Law Society Act, R.S.M., 1940, c. 115, s. 74.

indigent's solicitor may get permission from the court to recover his full costs from his client, but otherwise he is expected to serve for nothing.

Since the inauguration of the scheme, over 2,200 applications have been heard and of these approximately one-third have been sent on to the senior committee for consideration. In the year ending March 31st, 1951, 287 interviews were held by the junior committee and 94 applications were referred to lawyers by the senior committee, of which all but one dealt with domestic problems.

No general publicity has been given to the scheme and most applicants are referred to the committee by welfare organizations or the Family Court. As the years go on, an increasing number of people hear of the scheme through friends who have already been helped. Although originally intended for the benefit of the whole province, the plan has not been implemented in centres other than Winnipeg. The possibility of establishing committees in other cities has recently been reconsidered, however, and further action may soon be taken.

The Victoria Bar Association established a clinic in July 1949. Unlike the Manitoba plan, which is directed by the governing body of the profession, the Victoria clinic is operated by a voluntary association and therefore is more dependent on the goodwill of the local members of the bar. One general legal aid committee appointed by the Bar Association administers the whole scheme. At present a permanent secretary conducts the clinic each week, assisted by two members of the committee. If further services are required, the case is referred to the chairman of the committee, who assigns it to one of the members of the Bar Association. Needy litigant procedure is not available to relieve indigents of liability for court fees, and no action can usually be taken unless the applicant is able to pay all disbursements himself.²¹

The committee has carried on with a minimum of publicity, feeling that too widespread a knowledge of the services provided might result in an unmanageable number of applicants. All welfare groups have been advised, and they refer most of the cases.

²¹ A difficult question has arisen over costs awarded at the conclusion of an action. Under the needy litigants rules in the Prairie Provinces, the court may award costs to a needy litigant who has been successful. Normally, since costs are an indemnity, they may not be awarded to a poor person who has not incurred any liability for them to his solicitor (*Simpson v. Belleville* (1917), 41 O.L.R. 320). The Victoria committee has arranged with the resident judge of the Supreme Court that no costs will be awarded a legal aid recipient even though he is successful. This principle has even been extended to settlements made out of court.

Fifty applicants were dealt with by the committee during its first full year of operation. The chairman finds that the volume of business handled is about the maximum that can be efficiently disposed of on a voluntary basis. If any serious increase in applications were experienced, the services of at least a part-time lawyer would be necessary.

The Legal Aid Committee of the Vancouver Bar Association established the most recent plan of this type in January 1951.²² Organized on much the same lines as the Victoria clinic, it is subject to the same inherent restrictions because of its local character. Applications are only accepted from residents of greater Vancouver. Probate, divorce and criminal cases, and cases that practising lawyers would accept on a deferred fee basis, are normally excluded. Although no provision has yet been made for waiving court fees, a disbursement fund has been established on which solicitors acting for indigents may draw for out-of-pocket expenses. An initial contribution of \$50.00 was made to the fund by the Vancouver Bar Association, and all costs awarded successful legal aid litigants are to be placed to its credit.²³ In addition, whenever a solicitor feels that a legal aid client is able to pay a fee, the Legal Aid Committee may determine how much should be paid and these payments will also be added. No payments have yet been made from the fund, but on the basis of the experience gained by the Special War Work Committee of the Canadian Bar Association, which established a similar fund for needy servicemen, it is feared that it may ultimately prove inadequate.

Unlike the Winnipeg and Victoria clinics, the Vancouver clinic has received wide publicity in the local press, and the result is indicated in the number of cases handled. On the first night 50 applicants attended and since then from 10 to 15 cases have been heard each week. Of those eligible for aid, two-thirds have had their problems answered at the clinic, and the remainder have been referred to volunteers for further action. Less than twenty per cent of the applications are refused on financial grounds, and even here the clinics have served a useful purpose. None of the applicants had ever been to a lawyer before, and many had exaggerated notions of the amount they might be charged for legal fees. The committee relieves their fears and encourages them to visit a lawyer's office. It avoids giving out actual names, but

²² Regulations for the conduct of the Vancouver plan are set out in (1951), 9 *The Advocate* 20.

²³ The Vancouver committee, rejecting the cautious approach of the Victoria bar, intends to claim for party and party costs, whatever the legal technicalities of its position (see footnote 21, *supra*).

suggests that the applicant select a young graduate in his own neighbourhood who will probably be able to give his problem more attention than would the established lawyer with a large practice.

The volume of work now handled in Vancouver has imposed a severe burden on the members of the committee. One member attends every clinic, supervises the allotment of cases to the members of the panel, and handles the administrative detail throughout the week. If the volume of cases continues at its present level, it is felt that a lawyer may have to be retained on a part-time basis to administer the scheme.

The only other known attempt to provide a service of this kind was begun in Toronto during the depression years. A group of young lawyers in Toronto organized the Toronto Legal Aid Bureau, which worked in co-operation with the city Welfare Department. Law books were provided by the Law Society, together with a small fund for necessary disbursements. One lawyer attended at the City Hall once a week for interviews. The lawyer who first heard an application became responsible for it and was required to carry on any further work from his own office. Considerable opposition to the scheme was expressed by various law firms in the city and, since the work was confined to references from the Welfare Department, the number of cases gradually dwindled after the war began. The secretary still permits the National Association of Legal Aid Organizations in the United States to list his own office as the headquarters of the Bureau, and on occasion he accepts cases from the Welfare Department.

The most ambitious plan yet devised is the one contemplated for Ontario by the Law Society of Upper Canada. In October 1950 the Law Society approved in principle the institution of a legal aid plan, entailing the establishment of a series of legal aid clinics, based generally on the Winnipeg model, but differing essentially in being province-wide and not confined to any one city or district. The co-operation of the county law associations has been enlisted in appointing county directors and advisory committees in each county in the province. General supervision of the plan is exercised by a provincial director appointed by the Law Society. The county directors have been given wide discretion to adapt the plan to local needs. Clinics may not be necessary in some of the more sparsely populated districts, but local directors will be appointed to handle any work that may arise.

An applicant for legal aid will be considered eligible if his annual earnings are less than \$900 plus an additional \$200 for each dependent. These limits are subject to extension whenever

it is considered that payment of legal fees would impair his ability to furnish himself and his family with the essentials necessary to keep them decently fed, clothed, sheltered and living together as a family. Where an applicant is considered able to pay something, the case may be referred to a solicitor who will be entitled to retain any fee payable. Certain types of cases, chiefly of a punitive nature, such as defamation or breach of promise, will not be accepted. Criminal cases will be handled if they concern indictable offences. Appeals will only be permitted on the authorization of the provincial director.

Apart from the cases just referred to — where the applicant is declared able to pay part of the fee — the solicitor assigned to a case will not receive any payment for his services, but where the client cannot pay disbursements, the solicitor may be reimbursed for out-of-pocket expenses by the Law Society. Under an amendment to the Law Society Act, costs awarded a litigant on the successful conclusion of an action will be paid into a Legal Aid Fund, which will then be available for the payment of disbursements in other cases.²⁴ The amendment also provides for the remission by the Provincial Treasurer of all court fees paid out of the fund which are not recoverable from other parties. Under the original scheme the only salary was to be paid the Provincial Director, but the Secretary of the Law Society has now been appointed to this post and the question of salary does not arise. All other work will be voluntary, and the only cost to the Society will be the maintenance of the Legal Aid Fund at a proper level.

Regulations and instructions have now been sent to the county law associations with the request that local organizations be established as soon as possible. The actual date of commencement will vary from county to county. In the meantime, the plan has been given considerable publicity and much favourable comment has been received from the press. A large number of law firms have offered their services in handling cases that are referred to the Law Society in the interval, and many cases have already been looked after.

In Nova Scotia, the Barristers' Society has even more recently authorized the establishment of legal aid clinics in Halifax and Sydney. A Junior Bar Panel will supervise the clinics and handle most of the cases, and a Senior Bar Panel will be available for advice and for carrying on necessary litigation. A local director has been appointed for Halifax, but no date has been fixed for the opening of the clinic there. Operation of the plan in Sydney is

²⁴ The Law Society Amendment Act, 1951, c. 45.

subject to the approval of the Cape Breton Bar Society, which so far has expressed little interest in the plan. It is doubtful, therefore, that clinics will be established there in the near future.

Bar Association Panels

Perhaps the most extensively used form of organized legal aid is the volunteer panel maintained by local lawyer associations to handle legal aid cases brought to their attention. Unlike the clinics, no regular hearings are held to receive applications, nor is any provision made for payment of court fees or other disbursements. The secretary of the local association accepts cases from welfare organizations and others concerned with the poor and assigns them to members of the panel. Records are rarely kept, and all work is done in the law offices of the volunteers. These informal rosters provide a useful service for welfare agencies, but their efficiency is doubtful, particularly in the larger centres.

One of the most active of these schemes was organized in 1950 in Saint John, New Brunswick. Because of the size of the city, about 60,000 people, the local Law Society felt that a clinic sitting regularly was not called for. Instead, the Family Welfare Bureau was asked to hear all applicants, and send on those considered financially eligible to the secretary of the Society's legal aid committee for assignment to a lawyer. Most of the young lawyers in the city have volunteered to help. They in turn may call on the older lawyers for advice and for any counsel work that may be required. Considerable publicity was given to the plan when it was inaugurated, and 25 cases were handled during the first six months of operation. Husband and wife and landlord and tenant cases have made up the bulk of the applications. In practice it has been found that the scheme has been hampered by the lack of a permanent office where applicants might go directly for advice. The committee has also felt the need for a disbursement fund of some kind. At present, when applicants are unable to pay disbursements, costs are frequently absorbed by the lawyers themselves. The problem is particularly acute in Saint John, since all documents in court cases must be filed with the registrar in Fredericton, the provincial capital. Consequently, agency fees must usually be paid in addition to the regular court fees.

The Bar of the City of Quebec introduced a well publicized plan of this kind in May 1951. Applications for aid are heard by the syndic or secretary of the Quebec Bar, who inquires into the financial circumstances of the applicant and refers cases to advocates who have placed their names on the panel list. The syndic

himself does not tender any legal advice. Whenever possible, the case is referred to a lawyer of the applicant's own choosing. If the syndic finds that the applicant is unable to provide for out-of-pocket disbursements, the lawyer is expected to pay them himself. Over 80% of the eligible members of the local bar have volunteered for service under the scheme. In the first three months the syndic received nearly 50 applications for aid, of which 40 were granted.

Before the establishment of the Vancouver legal aid clinic this year, the Vancouver Bar Association operated a volunteer panel in co-operation with the Family Welfare Bureau of Greater Vancouver. Approximately sixty legal aid cases a year were handled by the Bureau, which is half the number of cases received by the new widely-publicized clinic in its first eight weeks. Only six cases were actually referred to a lawyer appointed by the Bar Association in 1949, and eight in 1950. The operation of the scheme does not appear to have been too successful. In its annual report for 1950, the Bureau complained that of the eight cases referred to lawyers by the Bar Association during the previous year, five had been handled unsatisfactorily from the client's point of view. It remains to be seen to what extent the new scheme will be an improvement.

Volunteer panels are in operation elsewhere, though with varying success. Much seems to depend on the zeal of the custodian of the roster and the co-operation of local officials. In rural areas, with closer contact between the profession and the public, the welfare agencies at least seem to be satisfied that most of the need is being filled where arrangements of this kind exist.

Legal Aid Bureaus Operated by Welfare Organizations

By the very nature of their work, welfare organizations are constantly encountering cases in which legal problems are involved. Municipal and governmental welfare agencies frequently refer these problems to the town solicitor, the crown attorney or the local magistrate. In Manitoba, the solicitor for the Department of Public Welfare provides legal advice for all welfare dependents coming under the supervision of the Department. Private agencies refer cases of a legal nature to lawyer members of the board of directors, to personal friends of the welfare worker, or, as we have seen, to local legal aid clinics or panels. In a large number of cases none of these methods seem to be available, and the welfare worker herself gives legal advice so far as she is able,

or tells the unfortunate client that he must make his own arrangements with a lawyer.

Welfare organizations maintain legal aid offices of their own in only two cases, both in Montreal. There, welfare organizations are divided into ethnic or religious groups. The Protestant and non-sectarian charities form a Montreal Council of Social Agencies representing about one-fifth of the population of greater Montreal, and the Montreal Legal Aid Bureau is a member of this Council. The Montreal Jewish community, of about 80,000 people, supports the Baron de Hirsch Institute, which also operates a legal aid department. Both legal aid offices depend entirely on the public charity drives of their parent organization for financial support.

The Montreal Legal Aid Bureau developed out of the needs of the Society for the Protection of Women and Children, and the work of the Society and of the Legal Aid Bureau is still closely interrelated. The Bureau was incorporated in 1930 and just before the last war had received sufficient recognition to obtain the services of a part-time lawyer, who dispensed legal advice to welfare clients and referred more detailed cases to a panel of volunteers. The budget of the Bureau no longer permits retaining a lawyer on a regular basis and the work is now administered by a lay Executive Secretary under the supervision of four lawyers on the Board of Directors. Routine advice on non-technical matters is dispensed by the secretary or his assistant on the basis of opinions prepared by the lawyer directors. Difficult cases are referred to volunteers on a panel in accordance with their recorded specialties. The Bureau operates on a budget of \$7,500 a year, of which approximately one-third is paid to lawyers on the panel on account of fees and disbursements. Over a period of years, these payments have averaged considerably less than \$10.00 for each of the cases assigned. Most advocates fail to submit a bill even for disbursements. The balance of the budget is used to pay part of the salaries of the secretary and his assistant, who are also on the staff of the Society for the Protection of Women and Children.

As a social investment, the Bureau more than repays its cost. In 1950, 243 cases were referred to volunteer lawyers, of which 149 involved court action. In addition, advice was given on minor problems in 643 cases, and 872 declarations and affidavits were prepared and attested. In the last ten years, over \$280,000 has been recovered on behalf of clients for whom the Bureau acted. In spite of this record, the secretary, who has been associated with the Bureau since its inception, feels that as presently organ-

ized it is quite inadequate to meet the need for free legal service in Montreal. As a layman, he believes that the work could be done much more efficiently if directed by a lawyer and he has offered, without success, to turn his Bureau over to any committee of lawyers willing to run it.

The Baron de Hirsch Institute established a legal aid department for the poor of the Jewish community nearly forty years ago. Since May 1949 the department has been directed by a member of the Quebec bar who devotes all his time to it. So far as can be discovered, this is the only legal aid service in Canada that employs a lawyer on a full-time basis. Assistance is usually confined to giving advice or writing letters, but 52 clients in all were represented in the courts last year. No provision has been made for disbursements, which the client must be prepared to pay himself. The need for an adequate needy litigant procedure is keenly felt, and its absence often prevents worthy cases from being heard in court. In 1950, over 2,500 interviews and consultations were held by the legal aid director, of which approximately 1,500 were with legal aid applicants, and the balance with welfare workers in affiliated organizations.

The close liaison these two welfare bureaus are able to maintain with affiliated organizations often proves valuable. Most legal aid cases involve problems of a social as well as of a legal nature and are best handled through the co-operation of all welfare groups concerned. In domestic cases particularly, the social desirability of any course of action must be considered before legal proceedings are taken. The sectarian division of the agencies also has its advantages. The legal aid director of the Baron de Hirsch Institute reports that family problems are more readily discussed and settlements more amicably obtained when discussions are carried on in a wholly Jewish atmosphere than if the quarrel is aired in open court or even brought to a non-sectarian legal aid bureau.

Recently, a committee of the Montreal bar drafted a plan to establish a legal aid office in Montreal to serve cases referred from all welfare agencies, Catholic, Protestant and Jewish.²⁵ The committee proposes to establish an office with a lawyer in charge, which will serve as a reference bureau, allocating cases in rotation to a panel of volunteers. The lawyer to whom any case is referred

²⁵ At present the two Catholic welfare groups in Montreal handle their legal aid problems on an informal basis. The English-speaking group have a panel of six lawyers who accept legal work referred to them by the welfare organizations. The French-speaking group advise that legal aid is adequately provided, but have not said how.

may charge nothing, a moderate fee, or a full fee, depending upon his own personal estimate of what the applicant can afford. The cost of the plan, estimated at \$7,000 a year, would be borne by the various welfare agencies. Apart from an initial grant of \$1,000, the bar itself would contribute nothing beyond the service of its members. The plan has been approved by the Council of the Bar of Montreal, but it is doubtful whether the charitable organizations in the city will agree to it in its present form.

The only other known attempt to organize a legal aid plan with community chest support was made in Hamilton in 1949. Under the inspiration of a young member of the Hamilton bar, the Hamilton Community Chest opened an office in a down-town office building one hour a day and provided a welfare worker to interview applicants for legal aid. The welfare worker referred the client to one of a panel of six lawyers who had volunteered their services. While the scheme was in operation approximately six cases a week were handled. On the insistence of the Community Chest, no publicity was given it and cases were confined to those referred by member agencies. At the conclusion of the trial period of seven months, the Community Chest cut off its allowance on the ground of inadequate funds. Much of the opposition to the scheme came from lawyer members of the Community Chest directorate, who considered it unnecessary. It is unfortunate that this experiment was not allowed to continue a little longer, with full publicity, so that the real demand for the service might have been determined.

War Work of the Canadian Bar Association

The most successful of all legal aid projects in Canada was established in 1942 by the Committee on War Work of the Canadian Bar Association.²⁶ In co-operation with the Department of National Defence, this committee arranged a system for handling the legal problems of members of the armed forces. Provincial representatives of the committee accepted cases from the legal aid sections of all three services, and from voluntary organizations dealing with servicemen and their dependents. Cases were even received from legal aid societies in Great Britain, the United States and Italy. At the end of hostilities, the committee undertook to handle cases referred to it from the Department of Vet-

²⁶ For a full report of this work, see Mackenzie, *Legal Aid in War and Peace* (1946), 24 Can. Bar Rev. 198. See also the reports of the Committee published in the Annual Proceedings of the Canadian Bar Association for the years 1943-1947.

erans Affairs, and they continued to do so until the summer of 1947, when the caseload gradually tapered off. Within the last few months the scheme has been re-established on a modest scale to assist the present members of the armed forces in obtaining legal services, but few cases have yet been received.

Methods of administration varied from province to province. Since most of the British Columbia cases arose in Vancouver, the Vancouver Bar Association handled the administration of the scheme there. In Ontario, a committee of the provincial section of the Canadian Bar Association supervised the work, and in other provinces the provincial law societies did so. Although in theory all cases were to be referred to lawyers on a volunteer panel, in practice the provincial or district representative found it more efficient to dispose of the smaller problems himself. In Ontario, 60% of the cases were handled in this way. The Department of National Defence provided \$7,500 annually to cover the administrative costs of the provincial representatives, but no funds were available for the payment of disbursements or solicitor's fees, and in many cases the disbursements were paid out of the solicitor's own pocket. Where the soldier could afford it, a charge amounting to about half the usual fee was made in divorce cases. In other cases, the lawyers usually acted without fee.

During the time the scheme was in operation, over 15,000 recorded cases were handled. In spite of this large volume of work, only one complaint was received. All members of the profession were asked to participate and nearly 3,000 accepted the invitation, of whom half were not members of the Canadian Bar Association. In addition, a large proportion of the 1,500 lawyers in the forces took part in some way, as unit legal aid officers while on active service and, after discharge, by helping veterans referred by the Department of Veterans Affairs.

It is perhaps unfortunate that this Dominion-wide co-operative effort was allowed to lapse when the war was over. The machinery established by the War Work Committee was one means of integrating the efforts of local associations into a comprehensive system of legal aid for the country as a whole. Without integration, the local legal aid plans already described often find their efforts sadly handicapped. Legal problems are not always confined to the territorial limits of one county or even one province. Investigations must frequently be made and court actions begun in areas outside the jurisdiction of the organization providing the initial assistance. Delinquent husbands in particular move from city to city and province to province for the sole purpose of avoid-

ing legal prosecution. As a result, unless legal aid groups are able to work in concert in all parts of the country, their efforts on behalf of the poor will often be frustrated. Even now, the organizations operating in Vancouver, Winnipeg, Montreal and Saint John report that they have experienced difficulty in many cases referred to them because of the need for legal action in other parts of the country. As the number of organizations grows, inter-municipal and inter-provincial co-operation in some form will have to be re-established. The problem of legal aid cannot be adequately dealt with in isolated local compartments.

III. *Legal Aid in Criminal Cases*

To an even greater extent than in civil cases, the preservation of justice in the criminal courts is the joint responsibility of every group in society. The man accused of crime is faced with all the resources the state can command. Where he has not the means to prepare an adequate defence himself, every reasonable precaution must be taken to protect him from an unfair trial or an excessive punishment.

The courts have always been at great pains to ensure the fairness of their proceedings. Whenever an accused appears unrepresented by counsel, they may exercise their right to assign any member of the bar to his defence.

The state has helped, or can help, in several ways. It may pay the fees of counsel defending indigent accused, and assist in the payment of necessary expenses. It may provide a simple procedure for the review of conviction and sentence as a safeguard against injustice. It may even assume full responsibility for the defence of those without means by the appointment of public defenders — officials analogous to crown prosecutors — to represent indigent accused, though this has not yet been done anywhere in Canada.

The bar, by the very nature of its function, should play the most important rôle of all. Without its co-operation the efforts of the courts or the state would be of little value. In some centres the local bar has formed criminal aid committees to provide counsel in cases outside the limited group assisted by the court or the state. Legal aid committees concerned with civil cases also provide assistance in the criminal courts to a limited extent. Many lawyers have placed their names on volunteer lists kept by court officials and others for the use of poor persons requiring defence counsel. Many more, without associating themselves with any organized system of legal aid, are quick to make their services

available in cases called to their attention: in fact, the largest part of free counsel work for indigent accused is still provided in this way.

But the courts, the state and the bar, singly or combined, do not provide an adequate service for the defence of poor prisoners under present conditions. The mesh of the net is far too large to catch every case passing through the courts that requires attention. There is no reason, however, why the efforts of the bar, properly organized, with the support of the state, and the supervision of the courts, could not provide a system of legal aid in the criminal courts of which all Canadians could be proud.

Assistance Provided by the Courts

The power of the court to appoint any member of the bar to defend prisoners who appear for trial without counsel is well established by tradition, and has never been challenged. In some provinces, counsel assigned by the court are paid a nominal fee by the attorney-general's department, but even where no payment is involved, the trial judge is still empowered to nominate any barrister to assume the defence of any prisoner at the bar. The power is restricted in its scope since it is normally not exercised until the trial is about to begin, and so at best can only be a remedy of last resort. In actual practice it is rarely used. In Quebec and Nova Scotia, assignment by the court is still the only formal way in which a poor prisoner may obtain counsel. In both provinces the trial judge will usually exercise his prerogative only in capital cases. Counsel may communicate their willingness to act in such cases to a judge, who will nominate one of the volunteers, usually a junior member of the bar, when the need arises. Failing a volunteer, the judge may appoint any lawyer who happens to be in the courtroom at the time. In one recent murder trial in Montreal, counsel was assigned in this way.

Assistance Provided by the State

Although criminal law is within the exclusive legislative power of the federal government, the local administration of justice is under the direction of the attorney-general in each province. In every province except Quebec and Nova Scotia some provision has been made for the financial assistance of indigent accused. The extent of the assistance provided varies greatly, but usually it is confined to paying a small counsel fee in cases involving the more serious crimes. In New Brunswick, the Attorney-General

acts under the authority of the Poor Prisoners' Act of 1943,²⁷ but elsewhere there is no specific statutory authority.

(i) *Payment of Defence Counsel*

In order to moderate the financial burden placed on counsel who contribute their time to the defence of poor prisoners at the expense of their regular practice, most provinces now make at least nominal payments to counsel in some cases.²⁸ The exact conditions differ but, generally speaking, Alberta, Saskatchewan,²⁹ Manitoba, Prince Edward Island and Newfoundland will pay for the defence of indigents in the higher courts whenever counsel is considered necessary by the trial judge. Ontario, British Columbia and New Brunswick confine their payments to cases involving capital charges. No payment of any kind is made in Quebec. In Nova Scotia, application to the attorney-general's department for compensation has been made by counsel assigned by the court, but payment has been refused. The attitude of the Nova Scotia department is that the bar as a whole owes a certain duty to the public, and this is one method of discharging it.³⁰

Payment is usually made on a straight per diem basis and is rarely commensurate with the amount of work involved. An allowance covering preparation for trial is made only in Manitoba, New Brunswick and Newfoundland, though an increased fee for the first day of trial is presumably intended to take preparatory work into account in Alberta as well. Average payment for capital cases is \$50.00 for each day of trial. Newfoundland has probably the most generous arrangement, with a graduated rate commencing at \$100 a day, plus other allowances. Payments are usually authorized by the trial judge. In most provinces the judge is responsible for appointing counsel in proper cases, though in practice counsel has usually volunteered to undertake the defence long before the trial. In Alberta, the attorney-general's department itself retains counsel on behalf of the accused, but the Ontario

²⁷ Statutes of New Brunswick, 1943, c. 36.

²⁸ The various provisions for payment of defence counsel by the provincial governments are set out in Appendix B.

²⁹ The policy of the Attorney-General's Department of Saskatchewan has been set out in a letter to the Secretary of the Law Society, published in (1949), 14 Saskatchewan Bar Review 70.

³⁰ In a recent case involving the trial of a murder charge, an appeal after conviction, and a successful defence on a second trial, the Nova Scotia department did pay out-of-pocket disbursements for printing evidence, etc. but no fee. In the more isolated districts where no local barrister is available, the judge may request the department to approve of the appointment of someone to act as defence counsel in serious cases. In such cases the department has sometimes paid a small amount for fees, but there is no stated policy and no amount is fixed.

department, in order to eliminate any suggestion of interference, prefers the accused to select his own lawyer.

The actual extent to which these provisions are used varies greatly. During the two-year period 1949-1950, the Alberta department paid over \$7,900 in counsel fees in 76 cases, and Saskatchewan, \$2,500 in 14 cases. In Saskatchewan, two cases accounted for 60% of the total. In the same period in British Columbia, 5 counsel representing accused in murder trials received \$2,400, of which two-thirds was attributable to appeal costs and travelling expenses. In 4 assisted cases in Newfoundland counsel received \$2,000; Manitoba paid 9 counsel \$1,500; and 3 Ontario counsel received a total of \$540. No information is available on the other provinces.

(ii) *Allowance for Disbursements*

Although many lawyers are willing to undertake the defence of a poor person for a nominal fee or even for no fee at all, they are naturally reluctant to pay major disbursements themselves. But if a proper defence is to be prepared, expenses must be incurred. Witnesses must be interviewed and transported to the place of trial, investigations made, and copies of the evidence given at any preliminary hearing procured and closely studied. The attorneys-general appear to expect counsel to make disbursements out of the fee allowed them under the provisions already described. There are a few narrow exceptions. In New Brunswick, the crown will pay for a transcription of the depositions at the preliminary hearing in murder cases. In Saskatchewan, the crown will assume the expenses of defence witnesses if it is satisfied that their presence is necessary and the accused is without funds to procure their attendance. In many of the other provinces counsel may include defence witnesses on the crown witness list by a private arrangement with the clerk of the court or the prothonotary, but arrangements of this sort are made on an unofficial basis. All other expenses must be borne by the accused regardless of his financial circumstances.

(iii) *Procedure on Appeal*

Even where an accused is without benefit of counsel at trial, an easily accessible and adequate system of review can do much to remedy any possible injustices that may have crept into the original proceedings. In its only reference to anything approaching legal aid, the Criminal Code authorizes the provincial courts of appeal to appoint counsel where necessary to represent appel-

lants who are without funds.³¹ In Ontario, at least, the court registrar keeps a list of volunteer counsel who are available for this purpose.³² The Code does not provide for the payment of counsel, however, and payment is normally made only in Alberta and Saskatchewan.

The Code also permits the submission of written appeals, and most of the provinces have prepared printed forms, which are available in all prisons and may be submitted to the court of appeal with a minimum of formality and without fee. In Quebec, however, neither forms nor copies of the appeal rules are available in the jails or penitentiaries, and it is virtually impossible for prisoners to appeal without retaining counsel. Recently a woman attempted to do so, but her appeal was rejected because it did not conform to the regulations. She was advised to obtain counsel, although no list of volunteers is available. In addition, the Quebec courts have ruled that an appeal will not be heard until the prescribed appeal fees have been paid.³³ These may amount to \$55.00, even where bail is not applied for. This ruling has been strictly followed in every criminal appeal, including those in which the death sentence has been imposed.

The procedure followed in most of the other provinces has reduced technicalities to a minimum. Printed applications for leave to appeal may be completed by convicted persons and submitted to the registrar of the appeal court, who secures a report of the case from the presiding judge or magistrate, and a copy of the accused's record. Applications are usually subject to review by a single judge of the appeal court, who may reject those that are obviously frivolous. If leave to appeal is granted, notice is sent to the attorney-general's department, which will send a representative to appear at the actual hearing of the appeal by the full court. Where the appellant requests it, or the court considers it necessary, counsel may be appointed to argue the appeal. Normally, counsel for the attorney-general acts in the rôle of *amicus curiae* and argues both sides of the case.

The chief flaw in the present system, Quebec aside, is the failure to provide for disbursements. Leave to appeal from conviction is usually granted only on condition that copies of the evidence in the case are filed within a fixed period. In Saskatchewan and Alberta, the Crown may instruct the court reporter to prepare copies without charge, but elsewhere the appellant must pay for

³¹ S. 1021, sub-s. 4.

³² Ontario Criminal Appeal Rules, Rule 25. So far as can be ascertained, similar provisions have not been made in the other provinces.

³³ *Morelli v. The King* (1932), 57 C.C.C. 398.

them himself, though an exception is sometimes made in murder cases. Since the cost of preparing the transcript for a trial lasting only two or three hours will frequently amount to \$50.00 or \$60.00, many appeals are abandoned for lack of necessary funds.³⁴ In a recent Ontario appeal, the Chief Justice, considering it a most important one, asked a prominent Ontario barrister to appear on behalf of the prisoner and offered to pay for the evidence personally. Counsel accepted the case and assumed responsibility for all disbursements. Lawyers can hardly be expected to be equally generous in all cases.

(iv) *Public Defenders*

One of the chief difficulties in assisting indigent accused is the small number of lawyers who are willing, or qualified, to act in criminal cases in any circumstances. The number of counsel who earn their livelihood, or even part of it, from this branch of the law is extremely limited. Lawyers whose practice is in other fields are often reluctant to leave their offices to undertake the sometimes thankless job of defending an accused without charge. Of those who do engage in criminal work, many devote a large part of their time to the defence of the poor, often at considerable personal sacrifice. In relation to the demand, however, their number is small, and their efforts fall far short of the need. The result is that the majority of poor prisoners, if defended at all, are represented by inexperienced counsel. In two recent murder trials in Toronto, defence counsel had been in practice for less than a year. Both defended their clients most creditably, but the seriousness of the charge required the assistance of more experienced counsel. An experienced crown prosecutor reports that on several occasions young counsel opposing him in murder trials have asked for advice in conducting the defence. The prosecutor does what he can to help, but the fact that he had to be asked at all does not speak well for the adequacy of the defence.

In order to ensure the availability of qualified counsel for the defence of the poor, considerable thought has been given in some provinces to the appointment of public defenders who could devote their full time to the defence of indigent accused. At the

³⁴ Considerable publicity was recently given to an Ontario case where the appellant was forced to abandon his appeal because he was unable to pay the \$300 required to transcribe the trial evidence. Originally charged with murder, the accused was found guilty of manslaughter and sentenced to life imprisonment. The crown paid for defence counsel at the trial but refused to procure copies of the evidence since the prisoner had not been convicted on the capital charge. It was felt that there was no substantial merit in the appeal and therefore the crown did not assume its cost.

annual meeting of the Canadian Bar Association in 1929 a resolution was adopted that the provincial governments be requested to pass legislation authorizing the appointment of public defenders.³⁵ No action was taken at that time, but recently the Law Society of Alberta has had a special committee studying the matter, which reported to the Law Society in January of this year. Believing that the problem is primarily one for the attention of the government, since only with government backing could the needed official status and financial support be obtained, the committee was reluctant to recommend a scheme maintained by the Law Society alone. It was feared that, once responsibility was assumed by the bar, the government would be unlikely to take over the plan. The committee therefore recommended that no action be taken for the present. The report was rejected by the members, however, who referred the matter back for further study of the possibility of obtaining government support. A similar committee has been sitting in Saskatchewan but has not yet made its findings public.

Assistance Provided by the Bar

Since many provinces pay counsel only in capital cases, which represent less than 2% of the cases tried in the higher courts, and since none of the provisions for payment extend to the magistrates courts where 92% of all indictable offences are tried, the great bulk of legal aid work in the criminal courts is still left to the volunteer efforts of lawyers. There is even less activity on an organized basis here than in the civil field, and most of the work done by lawyers is on a purely individual basis. It can hardly be said to be adequate.

(i) Groups Specializing in Criminal Matters

Few legal aid organizations are primarily concerned with the defence of indigents in the criminal courts, and all that have been established within the past two years. Winnipeg, Saskatoon and Ottawa are the three principal cities where groups of this kind are operating.

The Manitoba Criminal Aid Committee is the only organization in active operation that is under the supervision of a provincial law society. Since the province will provide counsel only in the more serious cases heard at the assizes, a committee of the Law Society was formed in 1947 to investigate the matter of providing counsel in all criminal cases. Concluding that poor persons

³⁵ Jones, *Legal Aid for the Poor* (1931), 9 Can. Bar Rev. 27.

in Manitoba charged with crime did not receive the same treatment as persons of means, the committee recommended: "That the ambition of the Law Society . . . should be that every person in Manitoba charged under the Criminal Code of Canada or under Acts providing penalties of jail or penitentiary sentences, would have the right to be represented by counsel irrespective of financial position".

As the first step in carrying out this proposal, a plan was drafted to provide legal assistance for accused persons in the greater Winnipeg area. Panels were drawn up of lawyers willing to appear in the various courts and a list prepared of the senior members of the profession who were willing to serve in an advisory capacity. A six-man committee was appointed, each member of which acts as supervisor of the scheme for two months of the year. A senior and junior member of the panel are assigned each week to handle cases referred by the courts. No funds are available for witnesses' expenses, investigation or the payment of counsel. Some discussions have been held with the attorney-general's department on the possibility of paying fees and disbursements for the defence in the more serious cases, but without success. If, however, the accused is eventually tried at the assizes, payment will be made by the department as it has done in the past.

In practice the scheme has not required as elaborate an organization as was first planned. The attorney-general's department, county court judges, the magistrates and all court officials have been advised, but few cases have been referred to the committee for action. From July through September of 1950, twelve cases in all were referred to the committee. During the last three months of the year only four additional cases were brought to the committee's attention. Although the original committee stressed the importance of making counsel available to an accused at the earliest stage of the proceedings, the attorney-general's department has made it clear that an accused will not be advised of his right to counsel before he has been questioned. The department feels that otherwise many of the statements and admissions the accused now make to police officers before seeing counsel would never be made, and the administration of justice would be seriously hindered as a result. Some magistrates, too, are still prone to accept guilty pleas without advising the accused of his right to be represented. It is hoped that as time goes on and the value of the plan is demonstrated, the co-operation of court officials will improve.

As in Manitoba, the provisions for payment of defence counsel

in Saskatchewan do not extend to the magistrates' courts. In Saskatoon a group of articulated students got together in 1949 to provide a defence panel for youthful offenders in the magistrate's court. The local probation officer, who is always in court, maintains the roster and obtains counsel for offenders when requested by the magistrate. In the first year and a half of operation, 27 cases were handled. The experiment is interesting because it is so far the only organized attempt in Canada to provide experience for articulated law students in defending cases in the criminal courts. Reports indicate that they have been keen to get experience and spare no trouble in preparing and presenting their cases. The junior bar in Regina has now begun a similar list to handle cases referred by the provincial Department of Social Welfare.

The only other organized group known to be working in the criminal courts is in Ottawa. A panel of young lawyers ready to serve in the criminal courts was prepared a few years ago by the legal aid committee of the Carleton County Law Association. During the year just past, the panel has been administered by the Themis Club, which is composed of young lawyers interested in acquiring forensic experience. Court officials and welfare organizations have been invited to refer worthy cases to them for defence. The welfare groups are requested to investigate first the financial circumstances of the accused in order to determine his eligibility for free service. The work is not confined to the defence of youthful offenders, and the members will normally act in any case where they are satisfied that the accused is not an habitual or incurable criminal. Some civil cases are accepted, but the greater part of the work performed is in the criminal courts. In 1949 the total number of cases handled was 55.

(ii) *Work of Civil Legal Aid Groups in Criminal Matters*

Partly by accident and partly by design, legal aid bureaus rarely do much work in the criminal courts. Cases are normally referred by welfare agencies, which are not usually concerned with persons accused of crime, and the lawyers serving the bureaus are often more disposed to handle civil than criminal cases. Usually the bureaus only help clients who are already being assisted in other matters. The legal aid committees in Victoria and Vancouver have arranged with the local John Howard Societies to take criminal cases referred to them by that organization, but in 1950 each handled only 2 cases under the arrangement. The clinic in Winnipeg never did criminal work, and this field is now looked after by the criminal aid committee. In Montreal also,

the legal aid bureaus sponsored by the welfare federations usually avoid criminal work, but will sometimes assist prisoners who are already under the care of affiliated welfare organizations. In 1950, the Montreal Legal Aid Bureau defended 16 criminal cases and the Baron de Hirsch Institute 13.

The new Ontario legal aid plan does contemplate handling criminal as well as civil matters. Lawyers willing to accept criminal cases will be put on a separate list and cases referred by court officials will be assigned to them in rotation. No preliminary investigation of the financial status of the applicant will be made, and counsel will be given complete discretion in charging whatever he thinks the accused can afford. Although the plan is not yet in effect, some cases have been accepted by the Law Society and, in at least one instance, the Law Society has reimbursed counsel for out-of-pocket disbursements. Although the payment was small, it set an interesting precedent in legal aid work in Canada. Individual lawyers have helped indigent accused on countless occasions in the past, but now for the first time lawyers as a corporate group have assumed financial responsibility for the defence of those without means to defend themselves.

(iii) *Volunteer Lists*

Failing any formal organization to which an appeal might be made, most indigent prisoners must rely on the good graces of the court officials who hold them in custody. In many places the crown attorney or sheriff keeps a list of those who have indicated their willingness to act, from which prisoners may select a lawyer. There is no supervision, and the lawyer may charge whatever fees he thinks proper in the circumstances. In Toronto, the list is kept by the deputy governor of the municipal jail and at the moment comprises fifteen names. Since over 15,000 persons are committed to the jail annually, a group of fifteen volunteers can hardly be expected to act in even a fraction of the deserving cases and still continue to earn a livelihood. A prisoner will often go through the entire list without finding anyone willing to take his case.

Though hardly typical perhaps, the case earlier referred to, in which the Law Society of Upper Canada paid the disbursements, illustrates some of the difficulties that can be experienced. A young man was taken into custody in September 1950 on a charge of theft. Being without funds, he requested a lawyer from the "free list" and was provided with nine names. By waiting until a lawyer visited the jail to interview another client, he man-

aged to see seven of them, but failed to find one willing to take his case. In desperation, he wrote to his mother in Nova Scotia who spoke to a nearby lawyer, who secured the help of another lawyer in Toronto. This lawyer (whose name, until recently at least, appeared on the "free list") interviewed the prisoner and went so far as to have his case removed from the jury list to the non-jury list for trial. Having advised the prisoner that he had a reasonably good chance of acquittal, he then refused to take any further steps until he was paid a fee of \$200. As neither the prisoner nor his mother had any money at all, they were unable to meet the lawyer's terms. After five months in jail, and only a few days before his trial, the unfortunate man's case was brought to the attention of the Law Society, which obtained counsel for him. At the trial it was successfully demonstrated that the prisoner was not involved in the crime and a verdict of "not guilty" was returned. Another man was tried for the same offence, found guilty and sentenced to three years in the penitentiary.

There would appear to be much less difficulty in obtaining lawyers to undertake appeals than to defend cases in the first instance. The number of lawyers who have placed their names on the registrar's list in the Ontario Court of Appeal office in Toronto is double the number available for the defence of accused persons at trial. Unlike the trial list, which is made up chiefly of newly admitted lawyers, the appeal list includes a number of lawyers with considerable experience in court work.

Volunteer lists kept by court officials are usually available only to those in custody, and those who are released pending trial must depend on even more informal methods. In small centres where everyone is known, no serious problem exists, for members of the profession will undertake the defence of their poorer brother townsmen out of a sense of public duty. In the cities, however, this personal relationship is missing and the lawyer is often unaware of the plight of accused persons. Clergymen and welfare workers do what they can to help. Usually they have a few lawyer friends to whom they can turn for assistance, but they are reluctant to impose too frequently on the generosity of the few who are available.

IV. Conclusion

It is not the purpose of this article to evaluate existing legal aid plans or to suggest how future schemes might be operated. All that has been attempted is a factual account of the work that has been done, in the hope that the experience already gained will be of value in the formulation of plans for the future.

Every province has its own social, economic and local problems, and the experience of existing legal aid organizations has varied accordingly. There would appear to be some conclusions of a general nature, however, that may be drawn from the reports upon which this article is based:

1. Whatever the nature of the legal aid organization, continuity of service must be provided by some official who is familiar with the administration of the plan and with the nature of the problems encountered. Where plans are of a voluntary kind, the amount of work thus imposed on one volunteer frequently raises the problem of whether some payment should not be made for the services of an executive officer.

2. The amount of work done by existing bureaux seems to be directly affected by the regularity with which service is offered at fixed times and places. Where offices are open during normal hours every day, the load is greatest. The smallest volume of work is handled in those centres where there is no fixed office or time when service is made available.

3. Although a large proportion of all legal aid cases may be expected to be referred by welfare organizations, it is only through the widest publicity that all deserving cases can be reached. Many poor persons with legal problems have no way of knowing that help is available to them unless the existence of the available services has been widely publicized.

4. Most organizations have found the problem of disbursements a vexing one. Frequently cases have to be abandoned for lack of funds to pay expenses even though lawyers services are available. Even when court costs are waived, the payment of other expenses often presents serious difficulty.

5. However efficient a local organization may be, its efforts are badly handicapped when work must be done in other parts of the country. This difficulty can only be overcome by some system of inter-organization co-operation extending to every part of Canada.

6. Perhaps the most obvious conclusion that can be drawn from a study of existing legal aid organizations is that there are not enough of them. The provision of legal aid for the poor in Canada in both civil and criminal matters still remains largely in the hands of the individual members of the legal profession. It is in no way disparaging the tireless efforts of hundreds of lawyers to say that this reliance on the individual is becoming increasingly inadequate in an expanding society. The professional ideals that have brought honour to countless generations of lawyers in the

past are just as important today as they ever were. If the tradition of public service by the bar is to be preserved, we must see that the means to provide that service keeps pace with the needs of the community. Although some action has been taken, much more remains to be done.

APPENDIX A

Legal Aid Organizations and Committees in Canada

British Columbia

Vancouver Bar Association Legal Aid Committee

Victor L. Dryer, Chairman
c/o Ellis, Dryer, McTaggart and Ellis
602 West Hastings Street
Vancouver, B.C.

Victoria Bar Association Legal Aid Committee

D. J. Lawson, Chairman
c/o Crease, Davey, Lawson, Davis, Gordon & Baker
530 Bastion Street
Victoria, B.C.

Alberta

Law Society of Alberta Needy Litigants Committee

A. W. Miller, Chairman
Tegler Building,
Edmonton, Alta.

* Law Society of Alberta Committee on Public Defenders

J. V. H. Milvain, Chairman
c/o Shouldice, Milvain and MacDonald
Canada Life Building
Calgary, Alta.

Saskatchewan

Saskatoon Magistrate's Court Panel

A. H. D. Sharpe, Secretary
Bus Depot Building
Saskatoon, Sask.

* Law Society of Saskatchewan Committee on Public Defenders

J. N. Conroy, Chairman
North Battleford, Sask.

Manitoba

Law Society of Manitoba Legal Aid Committee (Civil Matters)

Geo. W. Saunders, Secretary
Bank of Nova Scotia Building
Winnipeg, Man.

Law Society of Manitoba Criminal Aid Committee

Ward Hollands, Chairman
c/o Hollands and Cook
Somerset Block
Winnipeg, Man.

* Investigating committee only

Ontario

Ontario Legal Aid Plan, Law Society of Upper Canada

W. Earl Smith, Director

Osgoode Hall

Toronto, Ont.

Themis Club

G. J. Gorman, Secretary

c/o Clark, Robertson, Macdonald & Connolly

56 Sparks Street

Ottawa, Ont.

Quebec

Montreal Legal Aid Bureau

George Corbett, Executive Secretary

1040 Atwater Avenue

Montreal, P.Q.

Baron de Hirsch Institute, Legal Aid Department

S. Louis Kursner, Director

493 Sherbrooke Street West

Montreal, P.Q.

* Montreal Bar Council Legal Aid Committee

Gabriel Marchand, Secretary

c/o Dansereau, Marchand and Riel

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Quebec Bar Council Legal Aid Committee

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New Brunswick

Saint John Legal Aid Bureau (Saint John Bar Association)

Ersine Carter, Chairman

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* New Brunswick Barristers' Society Committee on Legal Aid

R. D. Mitton, K.C., Chairman

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* Canadian Bar Association Committee on Legal Aid Work

B. R. Guss, Chairman

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Saint John, N.B.

* Investigating committee only

APPENDIX B

*Payment of Counsel by Provincial Governments
for Defence of Indigent Accused*

Province	Types of Case	Fees Paid
British Columbia	Capital only Murder appeals	\$150 (maximum) Expenses may be paid on appeals.
Alberta	Capital cases Other serious cases at discretion of the court Appeals from above	Capital cases—\$100 first day and \$50 each subsequent day Other cases—\$50 (max.) Similar rates applied to the Court of Appeal
Saskatchewan	All cases heard in District Court or Court of King's Bench, and all appeals therefrom	Capital cases—\$50 per day Other cases—\$25 per day Capital appeals—\$75 (max.) Other appeals—\$50 (max.)
Manitoba	All cases heard at assizes Murder appeals in special circumstances	Preparation for trial—\$100 (max.) Capital cases—\$50 per day Other cases—\$30 per day Appeals—"reasonable allowance"
Ontario	Capital only	\$40-\$50 per day
Quebec	Nil	Nil
New Brunswick	Capital only	Preparation for trial—\$100 (max.) \$35 per day (also cost of depositions)
Nova Scotia	Nil	Nil
Prince Edward Island	All indictable offences	Varies according to the nature of the case
Newfoundland	Capital offences and any other case where a point of law is involved	\$100 first day \$60 second day \$50 each subsequent day (also fees for appearance at arraignment, drawing of jury, consultations, etc.)