The Ontario Legal Aid Plan

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The Attorney General of Ontario, when he introduced the bill for the *Legal Aid Act, 1966*,[1] said that it was important and momentous legislation. The principle speaker for the opposition in the debate on the bill said: "I think that there are few members in this House who will say that it is not an advance step over anything we have known before, and probably will result in the Province of Ontario having a system of legal aid as good as anything that exists in the western world".[2] One Toronto newspaper, in its enthusiasm, called it "the most advanced social welfare programme on the continent since Saskatchewan exploded medicare".

I. Legal Aid in Ontario Prior to 1967

Prior to 1951, legal aid in Ontario was on an informal basis. Lawyers in recognition of their duty to society and of the strong tradition in the profession provided their services freely to needy persons. Before the war, however, it was becoming apparent that there was a need, particularly in the larger cities, for a more organized system of legal aid. One of the methods employed to meet this need was a plan of "assigned counsel" which developed in Toronto. Counsel would volunteer their services and, when required, they would be assigned to defend indigent persons charged with serious crimes.

The first statutory legal aid plan in Ontario was contained in the *Law Society Amendment Act, 1951*.[3] This was also a voluntary plan. Lawyers contributed their services without remuneration. However, the government of the Province of Ontario contributed some $30,000 annually from which legal disbursements were made. The plan was administered by the Law Society through local directors and legal aid committees in each of the countries and districts of the province. In the 16 years of the operation of this plan, some

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[1] Bill 130, 14-15 Eliz. II, S.O. 1966, c. 80.

[2] Legislature of Ontario, *Debates*, 1966, Vol. 3, p. 3858.

[3] 15 Geo. VI, S.O. 1951, c. 45.

96,658 persons were represented in the courts through it, while many more were given advice only.

In addition to the contributions made by the government of Ontario to this early legal aid plan, the government provided financial assistance when an indigent was charged with a capital offence. It paid, for example, a nominal *per diem* counsel fee, the costs of the transcript of evidence at the preliminary hearing, the costs of perfecting an appeal either to the Ontario Court of Appeal or the Supreme Court of Canada.

In the early 1960's, it was obvious that the voluntary legal aid plan was not comprehensive enough to keep up with the real demand for legal aid within the Province. All who needed legal aid were not receiving it, and it was quite rightly estimated that the demand would increase in the future rather than diminish. There was also a growing conviction that legal aid was an integral part of the administration of justice, and that access to legal aid should be a "right" to those without sufficient means, not something in the nature of charity.

In July of 1963, the Attorney General of Ontario established a joint committee on legal aid composed of members of the Law Society of Upper Canada and the civil service of Ontario. Its terms of reference were in essence, to enquire into and report on the existing Ontario legal aid plan, and to investigate and report upon legal aid and public defender schemes in other jurisdictions.

The report of the joint committee was tabled in the Ontario Legislature in April of 1965. It recommended a comprehensive legal aid plan administered by the Law Society and subsidized by the provincial government. In October of 1965, the Attorney-General requested the Law Society to appoint a committee to propose a plan to implement the report. This new committee drafted the bill for the *Legal Aid Act, 1966* [4] which was enacted by the legislature on June 28, 1966.

II. The New Ontario Legal Aid Plan

Viscount Jowitt said of the English *Legal Aid and Advice Act, 1949*,[5] that it was "a bold social experiment — a leap in the dark".[6] With the advantage of the experience of legal aid in England and

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[4] *Supra*, n. 1.
[5] 12-13-14 Geo. VI, c. 51.
[6] *Hansard*, 5th series, Vol. 164, col. 163, House of Lords.

the work of the Ontario Joint Committee, the Ontario Legal Aid Plan was by no means the same leap in the dark. It was, however, an equally bold social experiment, and has become so recognized in the two years or so that it has been in existence.

The new Plan became operational on the morning of March 29, 1967. On that date, legal aid offices in each county in the Province were opened and legal aid counsel first appeared in the criminal courts throughout the province.

The Plan is administered by a Director of Legal Aid appointed by the Law Society, subject to the approval of the Attorney General.[7] The province is divided into 46 legal aid areas which, for the most part, coincide with the counties and districts of Ontario. In each area there is an area director who is responsible for maintaining an area legal aid office, the leases for which are all in the name of the Law Society. The area director is also responsible for establishing and maintaining the duty counsel and legal advice panels for his area.

Legal aid is provided in civil, criminal and quasi-judicial proceedings. A certificate may also be obtained for advice only. Thus a legal aid certificate will be issued to a person entitled to legal aid in respect of any proceeding or proposed proceeding in the Ontario Supreme Court, a County or District Court, Surrogate Court, the Exchequer Court of Canada, on proceedings under the *Extradition Act*[8] or the *Fugitive Offenders Act*,[9] and where an application is made for a sentence of preventive detention under Part XXI of the *Criminal Code*.

A legal aid certificate may also be issued, subject to the discretion of the area director, where the applicant is entitled to legal aid in any summary conviction proceeding if, upon conviction, there is a likelihood of imprisonment or loss of means of earning a livelihood; in any proceeding in a juvenile, family or division court, or before a *quasi*-judicial or administrative board or commission; in bankruptcy proceedings subsequent to a receiving order or an assignment; and generally for drawing documents, negotiating settlements or giving legal advice wherever the subject matter or nature thereof is properly within the scope of the professional duties of a barrister and solicitor.

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[7] All employees of the Plan are employees of the Law Society. As of February 1, 1969, there were 179 employees of the Society engaged in the Legal Aid Plan.

[8] R.S.C. 1952, c. 322.

[9] R.S.C. 1952, c. 127.

A wide range of appeals up to and including an appeal to the Supreme Court of Canada may also be authorized subject to the approval of the legal aid committee.

A legal aid committee composed of both lawyers and laymen representing the community proposed to be served by the area committee may be appointed by the Law Society. The responsibility of the area committee, in addition to approving certificates for appeals, is to hear in the first instance appeals from the area director where he refuses to issue or cancels a certificate. An appeal may be taken from the area committee to the Director whose decision is final.

On the provincial level there is an advisory committee on legal aid. It is composed of judges, lawyers, a person holding a responsible position in the field of public welfare, and such other persons as the Attorney General may appoint. The committee is required to report at least once in every year to the Attorney General on the operations of the Legal Aid Plan as well as on the annual report of the Law Society, which the latter is required to make concerning the statistics, financial and otherwise general information as to the working of the *Legal Aid Act*.

An application for legal aid must be referred to a welfare officer of the Department of Public Welfare, unless the probable cost of the legal aid required is $60 or less. The welfare officer considers the income, disposable capital, indebtedness, requirements of persons dependent upon the applicant and any other circumstances he considers relevant. There is no longer any arbitrary means test such as used in earlier plans. The only test is "need" and the need is balanced against the cost of the legal aid required. Once the welfare officer has examined the applicant, he reports to the area director as to whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for, and the sum, if any, the applicant is able to contribute towards the cost thereof. The area director may issue a legal aid certificate only when he has received the report of the welfare officer and only where, in the opinion of the area director, the issue of a certificate is justified. It is, however, the area director, not the welfare officer, who makes the final decision as to who receives legal aid assistance.

Once a person receives a legal aid certificate, he has the right to choose his own lawyer from among those who are registered on the different panels. Approximately one-half of the lawyers in Ontario, representing a broad spectrum of the profession, are on one or the other, or both the civil and criminal aid panels. This com-

pares with approximately two-thirds of the profession in England who have volunteered to serve on the panels.

The right of a lawyer to choose his own client is retained. A lawyer is not obliged to act for a person who presents to him a certificate. A normal solicitor-client relationship exists between a legally assisted person and the lawyer of his choice. Except in the case of Duty Counsel, the court should have no knowledge whether an accused or a party is receiving legal aid or is paying the entire cost of the counsel who is appearing on his behalf.

Duty Counsel are assigned by area directors to all provincial, criminal and family courts in their area. The Duty Counsel are available to advise a person taken into custody, and before any appearance to the charge, of his rights and to take steps to protect those rights as the circumstances require. They attend to such immediate problems as remands, bail applications and guilty pleas. They also explain to those awaiting trial how they make applications for a legal aid certificate. The services of a Duty Counsel are not dependent upon an accused person's financial position. Generally speaking, Duty Counsel serve from a roster for a week or two at a time.

A Duty Counsel is paid on an hourly or *per diem* basis, whether he is a Duty Counsel in a court or a civil Duty Counsel who assists an area director in the operation of the legal aid office. All other solicitors representing legal aid clients are paid on a tariff arrived at by taking three-quarters of what a solicitor would ordinarily charge a client of modest means who had the ability to pay. The present tariff provides, for example, a counsel fee of $250 per day for an indictable offence, or in a Supreme Court civil action other than an uncontested matrimonial action, and $18.75 an hour for interviews and advice to applicants by solicitors in their offices.

All payments are made from the Legal Aid Fund into which is paid all moneys appropriated by the Legislature for the Fund, all costs awarded to recipients of legal aid, and all contributions made by recipients of legal aid who are required to pay any part of its cost.

At least once in every fiscal year, the Law Society must submit an estimate of the sum required to meet the payments out of the Fund during the next succeeding fiscal year. The moneys are then paid to the Law Society upon requisition. Once a year, the Provincial auditor must examine and report upon the accounts and financial transactions of the Fund.

It will be seen that a vital attribute of legal aid in Ontario is the attempt to maintain the independence of the profession. All administrative decisions of a professional nature belong to the Society. On the other hand, decisions such as the extent and kinds of legal aid which will be provided, and which are in the nature of political decisions, belong to the government.

III. The Measure of the Success of the Plan

The current provincial budget for legal aid in Ontario is 6.7 million dollars. For the fiscal year ending March 31, 1969, the Plan was within the budget. The costs of the Plan, for any year, however, cannot be accurately calculated for perhaps as long as a year afterwards. It is estimated, for example, that there is a two year time lag between the issuing of a civil certificate and the payment of a solicitor's account.

As of December 31, 1968, when the Plan had been in operation for twenty-one months, 95,581 applications for legal aid certificates were received and were granted. In addition, some 120,654 persons were represented by Duty Counsel. Approximately 86% of all certificates issued do not require the holder to make any contribution towards the cost of their legal aid. The remaining 14% are required to contribute a part of the cost.

The statistics to date indicate that civil actions represent 57% of all applications. Approximately 20 to 25% of all legal aid certificates issued relate to divorce actions, and about another 20% relate to other matrimonial actions, or in other words, about 80 to 90 per cent of all civil legal aid certificates relate to domestic and matrimonial matters.[10] With the new *Divorce Act*[11] there will undoubtedly be an increase in civil legal aid certificates. On the other hand, many of the certificates issued in the first two years of the Plan represented a backlog in divorce cases which should not continue. Since the commencement of the Plan, a substantial number of certificates have been given for proceedings under the *Immigration*

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[10] There is a high proportion of domestic and matrimonial cases in most legal aid systems. In England after the *Legal Aid and Advice Act, 1949* came into effect the percentage was upwards to eighty per cent. It has declined to about 75%. The Dallas Legal Services Project, which is a part of the Legal Services Programme of the Department of Economic Opportunity, reported that 40% of its case load was matrimonial cases.

[11] 16-17 Eliz. II, 1967-68, c. 24.

Act[12] and the *Workmen's Compensation Act*,[13] but in much smaller numbers than those given for divorce and matrimonial proceedings.

About 50% of all legal aid applications for the province are made in Toronto, at the County of York Legal Aid Office. Thirty per cent of all these applicants do not receive a certificate because their legal problems are solved during the initial interview or they are not financially eligible.

The first stage of the new Plan might be said to have lasted for about a year. It was a year of maximum effort in making the plan fully operational. A provincial director and area directors were recruited; staff were hired, offices opened, panels of lawyers and area committees were set up, sophisticated systems and procedures for accounts, records, filing and reporting were created and a province wide programme for publicizing the Plan was carried out. There was no attempt to start the Plan off in a small way and then expand in the light of the experience gained. The complete Plan functioned from almost the first day of its operation and a complete range of the services and benefits available under the Plan was simultaneously provided in every county in the province. The institution of the Plan and its operation during this first stage was a remarkable feat of organization marked by no serious or unforseen difficulties.

During the first year of the Plan, great inroads were made in the backlog of civil litigation, particularly in the field of domestic relations, which had resulted from the financial inability of a large group at the lower levels of the economic scale to resort to the courts.

Apart from the obvious benefits to those who previously could not afford the services of a lawyer, there have been substantial benefits accruing to the profession. While the fees offered are not generous and no one can expect to get rich on legal aid, the Treasurer of the Society at the time the Plan was introduced said:

> Yet on the other hand, there will be no write-off of bad debts at the end of the year in respect of legal aid work. If you do the work properly you get paid for it, and apart from the direct payment that you will receive, you may find the legal aid client of today will become a good private client tomorrow, or he may recommend you to others.

Undoubtedly, the over all quality of legal work by the profession in Ontario has improved since the inception of the Legal Aid Plan. For example, a number of manuals for legal aid lawyers for use in appeals and in the Family Court have been prepared by senior

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[12] R.S.C. 1952, c. 145.
[13] R.S.O. 1960, c. 437.

members of the Bar for the guidance of junior counsel or solicitors. Senior counsel acting as senior Duty Counsel regularly give valuable assistance to the less experienced counsel who are carefully instructed for appearing in Provincial Courts. In particular, there has been a noticeable increase in the number of barristers specializing in criminal law. It is said that 70% of all criminal cases in Ontario now come under the Legal Aid Plan.

An indirect benefit, which in time might prove to be the most valuable, is in the field of law reform. Through the Plan, the government has, for the first time, a substantial financial stake in the judicial process which hopefully will give to it a greater impetus for law reform. Family law is a case in point. On the basis of an annual budget of approximately seven million dollars for legal aid, and considering that 57% per cent of all legal aid relates to civil law, of which 80 to 90 per cent is for divorce and matrimonial actions, the Ontario government has a direct annual financial interest in the functioning of family law within the province of upwards of four million dollars. This undoubtedly will influence the government when it considers the recent and future reports on family law by the Ontario Law Reform Commission.

The second stage of the Plan could also be said to have lasted about a year, and coincided with the second year of the operation of the plan. This was a period of intense evaluation of the Plan. The very magnitude of the concept and operations of the Plan not unnaturally resulted in the necessity to re-examine particular aspects of it. There have been some complaints about the Plan both from the public and the profession although these have been remarkably few. Nevertheless, the Law Society has very noticeably acted with vigour in examining all complaints and all areas where complaints might be anticipated, if these areas of concern were not rectified. The Society is determined, as it has often stated, to insure that the administration of the Plan will be efficient in every sense, since it involves public funds.

In July and November of 1968, two, two-day conferences were held with area directors. At these conferences, the criteria being used to determine whether a certificate should be issued were examined and new guidelines were laid down in the light of the experience in administering the Plan.

Also in July of 1968, a meeting was held of all the Deans of the Law Schools in Ontario to consider the manner in which student Legal Aid Societies might be incorporated into the Plan's operations. Proposed amendments to the *Act* and Regulations will ensure that

student Legal Aid Societies will be able to make a greater contribution to the Plan.

In December of 1968, more than one hundred amendments to the *Legal Aid Act*[14] and Regulations were submitted to the Attorney General and have since been enacted. They, in no way, change the basic philosophy of the Plan but will facilitate its administration and, it is hoped, will go a long way in obviating some of the abuses which have become apparent.

Careful consideration has also been given to the problems relating to the collection of payments owed by contributory clients. As of October 31, 1968, the total client commitments outstanding amounted to $837,000. Of this amount, $331,000 was past due over 30 days. This is a problem which is not unique to the Ontario Plan. In England, £650,000 was written off in 1966 for bad debts under its Plan. This represented £46,000 assessed contributions and £600,000 in costs assessed against non-assisted parties which could not be collected. The future policy under the Ontario Plan, which takes into consideration the fact that attempts to collect payments due often prove more expensive than the amounts owed, has been defined as follows:

1. every effort is to be made to trace delinquent clients,
2. certificates will be cancelled if a client is in arrears over 30 days, and
3. a "delinquent list" will be established. A person who has defaulted in payments will not be entitled to further aid.

The new collection procedures have been in force now for almost six months. They have resulted in a substantial increase in the percentage of accounts collected.

Early in 1969, a special meeting was held with the Deputy Attorney General and senior officials of the Department of Social and Family Services to discuss, in detail, the procedure, philosophy and criteria, which the Department has been using to determine financial eligibility of legal aid applicants. It was agreed to re-define such factors as disposal income, liquid assets and immoveable, property as they relate to financial need for legal assistance.

A problem, which is currently giving the Plan some concern, is the situation where an applicant accused of a serious criminal offence selects an inexperienced counsel from the panels. This raises the question whether the right to choose one's own counsel is in the interest of the client holding a legal aid certificate. The same problem exists in other jurisdictions, and with other legal aid and public

[14] Bill 124, assented to June 27th, 1969, 17-18 Eliz. II, S.O. 1968-69.

defender systems. The following comment was made in reference to the Poverty Programme in the United States but is equally applicable to the Ontario Plan, as it relates to those in the lower levels in the economic scale:

> The 'right' to choose ones own attorney constitutes for the poor, a mirage. Approximately 80 per cent of the recipients of legal assistance in the neighhourhood law offices have never before consulted with an attorney for any purpose and have no idea to whom they should turn. For these people, choosing their own attorney means a game of "eeny, meeny, miny, mo" with the Yellow pages. Furthermore, once an attorney is selected, the client is bound to accept what comes his way, for he is not, in any position to judge the effectiveness of the lawyer's work.[15]

There are at least two approaches which might be taken to make the choice of a counsel or solicitor more meaningful to the client holding a legal aid certificate. The present panels which distinguish between those who have volunteered to work on the civil or criminal side of legal aid could be further divided to indicate specialists within these two broad fields. The legal aid applicant might also be encouraged to ask for a certificate entitling him to advice only. Where litigation might be necessary, he would have the opportunity to get to know a lawyer before he had to chose a lawyer to take his case to trial. This is the present emphasis in the administration of the English Legal Aid Plan. There is, of course, a limitation in the usefulness of this approach when dealing with the client needing legal aid in a criminal matter. As a rule, time is of an essence, and a quick choice of counsel is necessary.

Certainly, however, it is in the interest of both the client and the Plan for a client entitled to legal assistance to be encouraged to consult solicitors at an early stage in their problems through a certificate for advice. The statistics indicate that there has not been a sufficient use of this type of certificate. If it were used more often, it is possible that many potential actions might be settled without the necessity of resorting to litigation.

To make it easier for a person faced with the difficult task of selecting a solicitor to conduct his business when he does not know a solicitor, or does not know what types of work a solicitor does, the Law Society is presently considering establishing a lawyer referral service. Under such a plan, solicitors would offer their services indicating the types of work on which they do, or do not, wish referrals. Applications by persons who do not know a solicitor

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[15] Marsh, *Neighbourhood Law Offices or Judicare?*, (1966), 25 Legal Aid Briefcase 12.

are referred to solicitors on the panel, on a rotation basis, who will give a preliminary consultation for a nominal fixed fee.

Another matter of concern to the Plan are the few lawyers who have been able to attract very large legal aid practices particularly in the field of criminal law. If a lawyer takes on too many cases or too much work, the legally assisted client may not be receiving the quality of legal services that was envisaged. Moreover, these lawyers who have been able to charge $20,000 or more a year to the Legal Aid Plan, leave the Plan open to the criticism that it would be much less expensive to operate a public defender system through salaried lawyers. To meet this criticism, the Law Society has recently decided, on an experimental basis, that the number of legal aid certificates in criminal matters one lawyer can accept shall be limited to 75 in any fiscal year without the prior consent of the Provincial Director. It was felt that one result of this action would be to help to spread this type of work among a larger group of barristers, and thus continue to enlarge the criminal bar which is necessary for the good operation of the Plan.

The Law Society is strict in the supervision of its members coming within the operation of the Plan and who are abusing it. Some members have been warned that they risk having their names removed from the legal aid panels. Others have been permanently barred from accepting any further certificates under the Plan.

IV. Possible Areas of Conflict Between the Profession and the Government

A matter which has yet to be examined to any degree, and which must be faced up to soon, is the effect that legal aid will have on the independence of the profession. Certainly, every effort was made in the establishment of the Plan to maintain the profession's independence. Nevertheless, the very existence of the Plan provides the possibility of conflict between the profession and the government. The right of a legally assisted person to choose his own lawyer is one area where the interests of the profession and the government can diverge. The Law Society has always taken the position that all lawyers are equally qualified, and some lawyers in the American tradition have insisted that there is no limitation on what they can do. So long as there are no accredited specialists in the profession, there is some justification for this attitude. If, however, the profession continues to resist accreditation and recognition of specialists and continues to encourage the public to believe that every lawyer is capable of any type of practice, the government might not continue

to take a neutral position concerning specialization.[16] He, who pays the piper, will call the tune.

Consideration will also have to be given soon to the matter of how the tariff of fees will be periodically reviewed by the Society and the government. More important, what will be the position of the Society if, in some future revision, it cannot come to an agreement with the government? Will the freedom of lawyers to opt in or out of the legal aid Plan be recognized?

The most likely cause of a conflict between the profession and the government will result from a failure to keep the cost of the Plan within reasonably economic limits. Mr. John D. Arnup, Q.C., a former Treasurer of the Law Society, considered this problem when speaking to the mid-winter meeting of the Ontario Section of the Canadian Bar Association a year ago, when he said:

> The possibility... of conflict between the professional administration of the provision of professional services on the one hand, and the pressing demand upon public money on the other is very real...
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> (The) division of responsibility makes a clear distinction between those decisions which are political — and I use the word in its broadest and its proper sense — political decisions on the one hand, and administrative decisions on the other. The Law Society must jealously guard its right to make the administrative decisions of a professional nature. The government must be vigorous and vigilant on its part to see that this Plan does not cost the Province of Ontario more money than it can afford to pay. Now how is this to be worked out if it turns out that the cost of the Plan is more than anticipated?...
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> Now it is my view, and I say it not dogmatically, but after due consideration, that it is for the government to decide the extent of legal aid which will be provided, not in the first instance of dollars but in terms of the kinds of legal aid that will be provided... The profession is dedicated to providing appropriate services at a modest cost and if the Province cannot afford the aggregate of a full scale, across the board legal aid plan, then the government will have to cut back the Plan by making the political decision that in some areas legal aid will not longer be given.[17]

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[16] For a discussion of the problems in the roecognition and accreditation of specialists in the legal profession, see the Honourable Edson L. Haines of the Supreme Court of Ontario, *Specialists within the Profession*, (1968), Law Society of Upper Canada Gazette, (Sept.), at p. 11.

[17] *The Government and the Society*, (1968), 2 Law Society of Upper Canada Gazette, (March), at p. 12.

V. Legal Aid and the Chronic Poor

The one group whose need for legal aid is not being satisfied is the chronic poor. This is a problem which is not confined to the Ontario Plan; it is common to almost all legal aid Plans. In the final analysis, the ultimate measure of the success of the Ontario Legal Aid Plan may well be the degree of success it has in reaching out to the chronic poor, who need legal aid and who, for the most part, are not now receiving it.

Simply making legal aid freely and readily available is not enough. It assumes that the poor have the initiative to help themselves when the means are made available. The fact is that they do not. The poor are different. They are different in their feelings, attitudes and emotions. Above all else, an intense attitude of fatalism and pessimism permeates every aspect of their lives. Their lack of initiative to improve their position is characteristically marked by an attitude of "What's the use" instilled by a succession of personal failures. There is a similar reaction on the part of the poor to the suggestion that there are legal remedies which could assist them. In the words of Senator Robert Kennedy, "the poor man looks upon the law as an enemy... for him the law is always taking something away."

The failure of the low income groups to use the Division Court, Ontario's small-claims court, to some extent demonstrates this lack of confidence in the courts by the poor with their "what's the use attitude", and their failure to think in terms of invoking legal processes for their own assistance. It was originally considered that these speedy and inexpensive courts with informal rules of evidence and procedure, low filing fees and no necessity to be represented by a lawyer, would be used by the poor to prosecute and defend small claims. But the promise of the Division Courts has not been fulfilled, for in actual practise there is little comparison between the professed aims of these courts and the ends they serve. Justice J. Skelly Wright, a judge on the United States Court of Appeals for the District of Columbia circuit, in writing about the small claims courts in the United States has said:

> Those who have studied them have observed that they are primarily used, not by the poor, but by business organizations seeking to collect debts. A number of these organizations handle such a large volume of claims that they have established collection departments which make routine use of the courts. Thus it is primarily the business man, not the poor man, who reaps the advantage of the inexpensive and speedy small claims courts.
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> Why has the initial purposes of these courts been subverted? Primarily because the business concerns are aware of their rights and the poor

> are not. Consequently, the poor are usually the defendants, rather than the plaintiffs, in small claims courts. The poor lack the security and the capacity to assert their rights even when they recognize the rights. Indeed, most low income consumers are unaware of the existence of the small claims court. They simply do not think in terms of invoking legal processes on their side. They have no confidence in courts.[18]

The Right Honourable Edward Heath in speaking of the English legal aid plan said:

> People should know their rights and know the protection that law can give. If people knew their rights and knew the protection that law could give, it would go a long way to get rid of persecution and racketeering that is one of the afflictions of poverty and to eliminate the inarticulate frustration and resentment that still gives credence to the inveterate fallacy: "One law for the rich and one law for the poor".[19]

This is, however, only part of the answer. The real problem is, assuming that the poor know their rights, how can they be encouraged to assert their rights. Moreover, it is not so much that the law should be the same for the rich and the poor but that the burden should be equal. Otherwise the equality may be the sort that Anatole France had in mind when he said: "The law in all its majestic equality, forbids the rich as well as the poor to sleep under bridges on rainy nights, to beg on the streets and to steal bread."

If the poor are to know their rights, to know the protection that law can give and to acquire the initiative to assert these rights when necessary, they must be first warned against the many common forms of exploitation that surround them. The legal aid society of Atlanta, Georgia as part of the publicity programme have had advertisements such as "They fixed my porch but they took my house" or "I'd rather walk across town than pay 45¢ for a bunch of greens" posted in the city buses. Not only do these advertisements warn the poor, they also serve as a warning to exploiters.

To encourage those who continue to be exploited to assert their legal rights, it may be necessary to take legal aid to the poor and not to expect the poor to ask for it. A local legal centre staffed by Duty Counsel could, for example, be taken, at no great expense, to the poorest and most depressed areas. Social workers should be on the staff of every such legal centre. In many cases, lawyers do not have the patience, time and training to help these inarticulate people who are not knowledgeable enough to either know the nature of their problems or the questions to ask when referred to a lawyer. In

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[18] *The New York Times Magazine*, March 9th, 1969.

[19] (1968), 111 The Solicitors Journal 533, at p. 534.

these cases, the social workers could help by interviewing the client first. They could take down statements, collect basic data and documents which so often the poor are unable to do on their own, and which is so time consuming for a legal aid lawyer, who is used to relying more on his client to do some of the leg work in digging up necessary information.

A warning of what could happen if lawyers neglect to meet the needs for legal assistance for all levels of society was contained in a recent editorial in *The Solicitors Journal*:

> If we cannot meet the needs of the public, (including the poorest sections of the community) for adequate legal advice and assistance, the politicians will do the job for us — and their way without our help, probably will not be the best way for the public or ourselves.[20]

VI. Conclusion

The Plan has been most successful in the field of criminal law. Those in need of legal assistance have been easily identified. They have not had to seek out legal aid. Duty Counsel in the courts of first instance have sought out and have brought legal aid to those in need of it.

In the field of civil law the number of divorce actions taken by legal aid lawyers give some idea of how those without the financial resources were locked into unhappy relationships which those who were better off did not have to endure. There is however a greater number in need of legal aid in the civil law sector who have not been receiving it; the need has, however, been recognized; measures to tackle this admittedly difficult problem are being considered.

Although recognizing the danger and limitations of speaking from a position that is not impartial, there is reason to believe that legal aid has done much to increase the stature of the profession within the province. From the beginning, the zeal and the determination on the part of the Law Society to make the operation of the Legal Aid Plan as successful as possible has always been apparent. The Compensation Fund to protect clients from defaulting solicitors and the Legal Aid Plan have more than anything else indicated to the public an awareness on the part of the legal profession of its responsibility to use the privileges given to it in the service of society. The report of the Treasurer to this year's annual

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[20] (1968), 111 The Solicitors Journal 525.

meeting of the Law Society recognized this responsibility when he said:

> (I)t is fair to say that the operation of the Plan to dato, has been unquestionably successful. It is imperative that the spirit of co-operation between the government and the Law Society with the administration of (the Plan) should be maintained so that every Ontario resident will be assured of his measure of legal aid security which is unique in the world.

The Ontario Legal Aid Plan which started as a "bold social experiment" has, in two and a half years, become an integral part of the administration of justice in the province. It has had at the same time a far reaching and increasing effect upon the law itself, the respect for which people hold the law and in the organization of the legal profession of Ontario.[21]

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[21] See generally, *The First Annual Report of the Advisory Committee on Legal Aid in Ontario,* (1968); Andrew M. Lawson, *Ontario Legal Aid — Bane or Boon to the Criminal Bar,* (1968), Chitty's Law J. 258; Hon. John Robarts, Q.C., *The Ontario Legal Aid Plan,* (1968), 2 Law Society of Upper Canada Gazette, (March), at p. 10; John D. Arnup, Q.C., *The Government and the Society,* (1968), 2 Law Society of Upper Canada Gazette, (March), at p. 10; *Criminal Appeals Under Legal Aid,* (1968), 2 Law Society of Upper Canada Gazette, (September), at p. 38; David J. Thomas, Q.C., *Settling Accounts under the Ontario Legal Aid Plan,* (1968), 2 Law Society of Upper Canada Gazette, (December), at p. 15; G. Parker, *Legal Aid — Canadian Style,* (1968), 14 Wayne L. Rev. 471; The Law Society of Upper Canada, Ontario Legal Aid Plan, *Annual Report,* (1968); G. Arthur Martin, Q.C., *Legal Aid in Ontario,* (1967), 10 Can. Bar J. 473; Lee Silverstein, *The New Ontario Legal Aid System and its Significance for the United States,* (1967), 25 The Legal Aid Brief Cose, No. 3, at p. 83; *The Ontario Legal Aid Plan: A Symposium,* (1967), 1 Law Society of Upper Canada Gazette, (May), at p. 8; John M. Magwood, Q.C., *The Berth and Growing Pains of the Ontario Legal Aid Plan in York County,* (1967), 1 Law Society of Upper Canada Gazette, (September), at p. 33; G. Arthur Martin, Q.C., *Legal Aid Certificates for Appeal,* (1967), 1 Law Society of Upper Canada Gazette, (December), at p. 25; Province of Ontario, *Report of the Joint Committee on Legal Aid,* (1965).