THE EVOLUTION OF LEGAL AID POLICY IN BRITISH COLUMBIA 1950-1976: A STRUCTURALIST ANALYSIS

by

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ABSTRACT

This dissertation applies a modified structuralist analysis, as developed by Gough, to the evolution of legal aid policy in British Columbia in the period 1950 to 1976. This analysis is combined with a detailed consideration of the viability of an interest group interpretation of legal aid reform. Structuralist interpretations focus on the limits imposed on reform by prevailing ideology and the constant need of capital to accumulate. Interest group analysis focuses on the interaction of various elements of the policy community in their quest to expand or limit legal aid reform. Sources consulted include private papers, public archives, interviews with persons involved in legal aid development, newspapers, and secondary works.

Legal aid in British Columbia was initiated by the organized Bar as a means to increased legitimacy; the Bar's primary goal was to enhance the image of the profession through improved public relations. Its demands on government, however, were shaped by its anti-interventionist ideology grounded in fear of government control of the Bar.

The Government was moved to take action in the area of legal aid reform by its need for increased legitimacy. The Social Credit Government, intent upon maintaining conditions favourable to capital accumulation, took only incremental action in the area of legal aid. The Government was thus content to leave the provision of legal aid to the legal profession, with the attendant costs borne in large part by other agencies.

The election of an NDP government in 1973 brought a shift in ideological orientation and initiative for legal aid reform shifted from the Bar to the Government. The pace and direction of reform were, however, blunted by the reluctance of the Bar to engage in anything other than traditional legal aid activities.

In 1975, deteriorating economic conditions and a change of government brought legal aid reform to a halt, but not before the State had consolidated its control over all aspects of legal aid in British Columbia through the creation of the Legal Services Commission. The NDP wished to control the development of legal aid reform to circumvent the objections of the Bar and hasten social reform.

DEDICATION

In Memory
of
My Father
C.H.R. Cawley

and

In Appreciation
of
My Mother
J.M. Cawley

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LIST OF ABBREVIATIONS

Annual General Meeting of the Law Society (LSAGM)

Area Directors (AD's)

Canadian Assistance Plan (CAP)

Canadian Bar Association (CBA)

Canadian Civil Liberties Association (CCLA)

Canadian Labour Congress (CLC)

Citizen Advice Bureaus (CAB's)

Community Law Office (CLO)

Company of Young Canadians (CYC)

Co-operative Commonwealth Federation (CCF)

Criminal Justice Subsection of the BC Branch of the CBA (CJ Subsection)

Criminal Justice System (CJS)

Federal du Liberation de Quebec (FLQ)

Federal/Provincial Cost-Sharing Agreement (FPA)

Law Reform Commission (LRC)

Legal Aid Committee (LAC)

Legal Aid Society (LAS)

Legal Services Commission (LSC)

Legal Services Program (LSP)

Legal Services Project (LSP)

National Legal Aid and Defender Association (NLADA)

Neighbourhood Law Firm (NLF)

New Democratic Party (NDP)

North West Territories (NWT)

Office of Economic Opportunity (OEO)

Opportunity for Youth (OFY)

Parti Quebecois (PQ)

Public Defender (PD)

Unemployed Citizens Welfare Improvement Counsel (UCWIC)

Unemployment Insurance Commission (UIC)

Vancouver Bar Association (VBA)

Vancouver Bar Legal Aid Committee (VBLAC)

Vancouver Liberation Front (VLF)

CHAPTER I

INTRODUCTION: LEGAL AID REFORM AND THE WELFARE STATE

Since the mid-1960's, there has emerged a growing literature on the introduction and rapid growth of legal aid in Western democracies (Snider, 1986; Garth, 1980; Cappelletti and Garth, 1978). This literature reflects the renewal of scholarly interest in the emergence and development of the welfare state and of welfare state ideology (George and Wilding, 1976; Mishra, 1977; Pinker, 1971), together with an equally lively interest in the sociology of law (Hunt, 1981; Unger, 1976; Bankowski and Mungham, 1976; Ratner and McMullan, 1987).

Literature on legal aid in the welfare state provides evidence of the many ways in which the roles of government, law, reform, civil and human rights, and other issues vital to an understanding of the welfare state, may be interpreted. This dissertation assesses four major interpretations of these factors - the pluralist, the instrumentalist, the structuralist, and the modified structuralist interpretations - in order to develop a model of analysis for legal aid in British Columbia.

Broadly stated, the pluralist approach is grounded in the basic assumptions that rights legislated by the State are meant to be enforced and that legal forums are appropriate mechanisms for ensuring and protecting such rights (Garth, 1982). The State, in this view, is essentially neutral and independent of partisan or class interests. The impartial State considers, responds to and

arbitrates among the interests of various social groups. It recognizes that inequalities exist, but maintains that the law can be used to eliminate or lessen inequalities. Concepts such as 'due process' and 'the rule of law' are cornerstones of the democratic state. If existing arrangements show imperfections, these must be corrected through legal action and reform. Reforms are initiated by interest groups and communicated to the State, which acts as both mediator and arbitrator. Proposals for reform should be practicable and, if implemented, should achieve their purpose. Pluralists thus tend to presuppose that the State is a benign instrument "for the progressive achievement of goals of social reform: the redistribution of wealth, the spread of welfare programs, and so forth" (Giddens, 1981:203).

Neo-Marxists take a different view, adhering to the classical Marxist view of the State as grounded in Materialism, with contradiction as the source of class conflict and dialectical relations between productive base and ideological superstructure. But within these parameters, neo-Marxists follow divergent paths leading to several major variants. Of these, instrumentalism, structuralism and modified structuralism are of particular interest for legal aid and reform (Rather, 1986:29). Milliband has defined the State as the complex of institutions in which state power is vested (a definition that is, admittedly, tautological in part). These institutions include the government and those bodies which administer the justice system, the military, and the police (1969:54). The government often speaks on behalf of the State, and is invested with State power. The degree to which the government controls the state apparatus is, for Milliband, open to question (Milliband, 1969:49). For Poulantzas, the structuralist concept of the State incorporates functional

interrelationships which organize "the power co-ordinates of domination and conflict as a whole" (Poulantzas, 1973:251). The system of the State "is composed of *several apparatuses* or *institutions*, of which certain have a principally repressive role...and others a principally ideological role" (Poulantzas, 1973:251. Emphasis in original).

The linkages between state and class and the role of law in the State are also variously viewed by neo-Marxists. Neo-Marxists working within the instrumentalist paradigm view 'rights' as a form of "mystification" and a means of social control. Doctrines such as 'the rule of law' and 'equality before the law' are merely ideological masks concealing the interests of the capitalist ruling class. Rights enshrined in the law can thus be readily dismissed as empty rights, without import or validity. Law is an instrument of social control in the hands of the ruling class (Quinney, 1974:48).

Instrumentalists view the State as a tool used by the ruling class to further its interests (Milliband, 1969; Domhoff, 1970). All institutions of the State, including those relating to the law, can be manipulated by the capitalist elite. Laws reflect the ideology and interests of those who control the economic resources of society, for economic power confers political power and influence in the legislative process. Reform too is a method of social control, a placebo rather than a cure for social ills that require radical treatment (Hastings and Saunders, 1987:138). 'Meaningful' reform is not possible (Martin, 1986; King, 1986).

For structuralist Marxists, the State is an entity relatively autonomous from capital, a site where legitimacy of particular policies is fashioned. It is an institution of broad utility that fulfils a number of functions (McMullan and Ratner, 1983:8). Structuralists hold that the welfare state serves three major functions: accumulation, legitimation, and coercion (O'Conner, 1973; Poulantzas, 1969; Panitch, 1977). Of these, the overarching function is to create conditions favourable to the accumulation of capital. Welfare reforms are part of the legitimation function of the State, that is, the process of winning the "loyalty of economically and socially oppressed classes and strata of population to its programs and policies, and to the imperatives of accumulation". Reforms also serve to give legitimacy to the social order and to those institutions, such as the law, which assist the function of accumulation (O'Conner, 1973:79). The success of reforms depends upon the relative strength of classes and of their interests.

A dominant characteristic of modified structuralist theory is the importance of incorporating analysis of the influence of human agency into any consideration of the functioning of the capitalist state. Thompson, who in the main argues against the structuralist approach, accepts the structuralist view of law as a "pliant medium" of the superstructure, "adapting itself to the necessities of an infrastructure of productive forces and productive relationships" (Thompson, 1975:259). It is not, in Thompson's view, "absolutely foreclosed and prescribed that ordinary people will lose every contest with power" (Thompson, 1980:155). Such doctrines as the "Rule of Law" and "Equality Before the Law" may serve to mystify, but 'rights' enshrined in law are not necessarily empty rights. Rights granted by the State can be used as a means of defense against the ruling class,

for those who make the laws must, if only occasionally, be seen to abide by them. Law in certain instances provides the forum in which class conflict is fought out (Thompson, 1975:263-65). Ratner, in emphasizing the importance of incorporating human agency into structuralist analyses of law and the State, argues that if the power of class factions is undervalued, "it makes it difficult to explain advantages won from the state by struggles 'from below'" (Ratner, 1987:31).

Most of the legal aid literature holds to a pluralist interpretation of legal aid reform. Under this rubric, various explanations of the growth of legal aid; are presented: legal needs studies; comparative historical studies; and studies that apply interest group theory to the factors that contributed to the development and forms of legal aid. These approaches share two underlying assumptions: reforms will be implemented if sufficient pressure is applied; and inequalities in access to justice contradict the democratic ideal. The purpose of reform is to eliminate or mitigate injustices. All such analyses of legal aid policy decisions take into consideration the strengths of various interest groups, their competing legal aid ideologies, and the efficacy of legal aid systems in meeting the ultimate goal of eliminating injustice.

There has recently emerged a substantial literature that follows a predominantly structuralist interpretation of the emergence and development of legal aid reform (Snider, 1986; Alcock, 1976; Abel, 1985; Gordon, 1983). The fundamental assumption of this approach is that inequality and poverty are endemic in the capitalist state. These analyses focus on how legal aid reform contributes to the functions of legitimation, accumulation and coercion; the extent to which

'meaningful' reform is possible; and, to a lesser extent, the origins of reform. Structuralist interpretations also focus on the limits imposed on reform by the structure of the capitalist state (Snider, 1986; Abel, 1979; 1985).

All analyses of legal aid reform, regardless of ideological orientation, acknowledge certain characteristics common to the development of all legal aid programs: the origins of legal aid reform as a response to unmet needs; the tendency of legal aid delivery models to evolve into a mixed model of service delivery (see table 3:1)[1]; the social control potential of legal aid reform; the predominance of governments and organized bars in legal aid policy initiatives; and the separate evolution of criminal and civil legal aid. Pluralists and neo-Marxists differ greatly, however, in their interpretations of these characteristics. In the pluralist view, the mixed model of service delivery is an effective means of resolving conflicts between traditional and social reform delivery models, and accommodating both individual case work and community and group organization (Cappelletti and Garth, 1978; Zander, 1978). Neo-Marxists, on the other hand, regard this gravitation towards the mixed model as an example of the inevitable dilution of reform in societies where the working class is not strongly organized and demands are sporadic (Snider, 1986).

Pluralists see the social control function of legal aid as an undesirable ramification of legal aid reform. Neo-Marxists hold that social control is an inevitable consequence of social welfare legislation; indeed, it is central to the purpose of such legislation. Pluralists focus on micro-level analysis, examining the mechanics of policy making with particular attention to the interaction between government and the organized Bar in terms of interest group

competition. Neo-Marxists are more concerned with macro-level analysis: the social, political, economic, and ideological motives underlying these activities. But both pluralists and neo-Marxists do little more than note in passing the tendency of criminal and civil legal aid to develop as separate programs. Neither approach explores why this occurs, a question which will be addressed in the following study.

This dissertation centres on an analysis of the origins of legal aid policy initiatives and the growth of legal aid programs in Canada, and specifically in British Columbia, during the period 1929-1975. Particular attention is given to the last decade of this period, when legal aid programs grew rapidly in Canada and other Western democracies. The tendencies noted above will be analyzed as they unfold in the Canadian setting.

British Columbia was chosen as the primary focus of this study for several reasons, including the ready availability of archival sources. Permission was received to explore the provincial archives, the archives of the Law Society of British Columbia, and the archives of the Legal Services Commission (LSC). Also, BC has in some ways moved in a direction parallel to that of other Canadian provinces in developing a legal aid system. It reached a cost-sharing agreement with the Federal Government in the early 1970's; it experienced similar economic trends; and its legal aid program was developed after, and influenced by, the introduction of a publicly funded legal aid program in Ontario. Thorough analysis of the development of legal aid in BC thus provides the groundwork for more extensive comparative studies of legal aid development in Canadian provinces.

Of additional interest is BC's role as a pioneer in the field of legal aid development in Canada: it was the first province to provide open-ended public funding for criminal legal aid in matters other than capital offenses; and it developed one of the first legal aid programs based on an Neighbourhood Law Firm (NLF) model. Lastly, analysis of legal aid policy initiative and formation in BC during the period 1973-1975 provides an opportunity to assess the impact of a change in government and a major ideological shift.

The dissertation moves along a neo-Marxist theoretical trajectory within the sociology of law. In doing so, it adopts the methodology of historical sociology.[2] Chapter Two provides the background of legal aid development in Canada up to the signing of the first Federal/Provincial Cost-sharing Agreement (FPA) in 1972, and focuses largely on developments at the federal level. Chapter Three discusses the various approaches adopted in analyses of the implementation and growth of legal aid in general, and furnishes a theoretical structure within which legal aid developments in British Columbia in the period 1950 to 1975 will be analyzed. Chapters Four through Six describe those developments in detail. Chapter Four covers the period from 1950 to 1969, when government involvement in the funding of legal aid was minimal. Chapter Five examines legal aid development between 1970 and 1972, the period in which the Legal Aid Society (LAS) was established and took over the direction of legal aid development from the Law Society. Chapter Six follows the fortunes of legal aid as it moved through a period of unprecedented expansion and into restraint. In the final chapter, the findings of this study will be compared with the findings of previous research on legal aid. The implications of this study for the

larger body of knowledge dealing with legal aid reform will also be examined. This chapter will also examine the contribution of this research to neo-Marxist state theory - specifically, the explanatory power of a modified structuralist approach that incorporates a detailed analysis of human agency. Finally, recommendations for further research will be made.

.. The judicare model of legal aid delivery is reactive, dispenses only :raditional law, and works for the maintenance of the status quo. The NLF model .s proactive, deals with poverty law matters, and works for social change. The iixed model is a compromise model- a reactive model which deals in poverty law)ut does not challenge the status quo.

'. See Appendix A for a commentary on methodology.

CHAPTER II

LEGAL AID IN CANADA: THE HISTORICAL CONTEXT

A. An Overview

The notion of legal aid (i.e., the provision of free legal advocacy for the poor) has been traced back to ancient Rome (Cappelletti, et al., 1975). However, up to the mid-twentieth century, legal aid was provided primarily on a charitable (*pro bono*) basis by lawyers in private practice. Government-subsidized legal aid programs are largely a product of the post-World War II era.

The period of most rapid expansion for legal aid programs among Western democracies was 1965-1976. During this period in Canada, legal aid expenditures rose from "nearly nothing to over 50 million dollars" (Zemans, 1978:664). In BC, Provincial Government expenditure rose from 35 thousand dollars in 1965 to over five million dollars in 1976.[1]

Two basic models of civil legal aid delivery evolved during the post-war period: the English Judicare system and the (American) NLF. In criminal legal aid, the 'duty counsel' approach and the Public Defender (PD) model came into prominence. The virtues of these models of criminal and civil legal aid were seriously debated as the concept of publicly funded legal services evolved in Canada. In order to place the development of legal aid in Canada in historical context,

we should first look in more detail at the evolution of legal aid reform in England and the United States.

1. Legal Aid Development in England

England was the first Western democracy to implement a publicly funded legal aid plan. This scheme was introduced in the Rushcliffe Committee's report of 1945 (Cmnd. 6641) and implemented by the *Legal Aid and Advice Act* of 1949.[2] It was primarily concerned with civil matters, although some recommendations concerning criminal matters were made. The impetus behind the early development of the English legal aid plan has been found in the overall development of the Welfare State, and in events that preceded and accompanied World War II.

Many policies associated with the Welfare State, such as old age pensions and unemployment benefits, existed prior to World War I. The more extensive intervention of Government in providing benefits for its citizens, however, was a general phenomenon of the post-World War II realignment of capital and labour. This phenomenon reached its most highly articulated form in Britain. Many authors attribute this to factors associated with Britain's wartime experience (Marshall, 1963:279; Sleeman, 1979:39).

The evolution of the Welfare State was, however, profoundly affected by the worldwide depression of the 1930's. This economic collapse revealed the inadequacies of the existing system and the need for Government intervention. Government funding of all social services expanded after the War. Before the

War ended, the principle of expansion was enunciated in the 1942 Beveridge Report, the theoretical underpinning of which was Keynesian economic policy.

Keynesian economics advocated Government intervention in the economy and expansion of social welfare programs in order to reduce the severity of cycles of boom and slump in national economies. Keynesianism was deemed capable of resolving the internal contradictions in the capitalist system that had led to the depression of the 1930's (Taylor, 1980:86). Keynes' chief concern was what he perceived as the failure and inability of a *laissez-faire* economy to generate sufficient demand for goods to avoid depression and unemployment (George and Wilding, 1976:47). Followers of Keynes' policies hoped that, given an appropriate form of government intervention, the economic system could again become self- regulating (George and Wilding, 1976:47).

The Beveridge Report recommended the replacement of all existing social insurance schemes with one comprehensive scheme providing universal coverage. Beveridge argued that social evils could not be overcome without state intervention. It was government's responsibility to undertake the social remedy of problems. From Beveridge's point of view, these social tasks entailed the elimination of the five great evils: 'Want', 'Disease', 'Ignorance', 'Squalor', and 'Idleness'. Beveridge's aim was "to make want under any circumstances unnecessary". Priority was given to minimum standards of housing, health, education, and nutrition (George and Wilding, 1976:58). Provision of legal aid was included among these basic measures:

> If one of the objects of the present war is the achievement of social security for the less wealthy sections of the

> community, then a state system of legal aid for the poor, with reasonable recompense for those who are employed upon it, is just as much a necessity as a scheme of national insurance. It ought to be the immediate concern of the legal profession to ensure that such a scheme is introduced at the earliest possible moment after the war (Keeton, 1942:256).

The English *Legal Aid and Advice Act* of 1949 presented a model of service delivery which is generally termed 'Judicare': a legal aid system which provided central government funding for a plan that was administered and controlled by the profession through the Law Society. Services were delivered by the private Bar on a fee-for-service basis. The goal of this model was to establish equality before the law, and to do so by subsidizing the poor so that they had equal access to legal representation. As Mathews and Oulton (1971:1) point out, the purpose of legal aid in this view is to ensure that no one is denied access to legal services because of poverty.

The problem that legal aid initially addressed was limited access to the courts. Proposed solutions to this dilemma included waiving of court fees, providing lawyers for indigent persons, and increasing the number of lawyers providing legal aid. Advocates of equal access espoused formal justice, a concept in which:

> ...the prosecution and the defense, the plaintiff and the defendant, have equal opportunity to tell their stories to a judge and be heard in accordance with the legal norms of due process (Snider, 1986:212).

There was widespread acceptance in England of the need to provide formal justice and of the Judicare model of legal aid reform (Snider, 1986).

The civil side of Judicare was administered by the Law Society under the authority of the Lord Chancellor's office, and through local and area committees. Applicants for legal aid were directed to the local committees by Citizen Advice Bureaus (CAB's), the courts, or private solicitors. If the applicant had legal grounds and was financially eligible, the committee issued a legal aid certificate, which provided authority for the solicitor chosen by the applicant to proceed on the matter. A means test administered for the Law Society by the National Assistance Board served to determine financial eligibility and the contribution required (if any). The test was based on an assessment of a person's disposable income and disposable capital. In addition, there was a Legal Aid Advisory Committee that included laypersons. This committee was to take into account the interests of the general populace and to give advice in regard to general organization of the legal aid system (Pollock, 1975:20).

Civil legal aid was funded by the Lord Chancellor's Office through a block payment made annually to the Law Society, which in turn allocated funds to the various area committees according to need. As Pollock has pointed out:

> ...control exercised through a fixed annual budget would have led either to a reversion to charitable support from the legal profession or an invidious discrimination over the cases undertaken to insure keeping within the budget (Pollock, 1975:31).[3]

All courts--the House of Lords, the Privy Council, the county courts, and magistrates' and coroners' courts--were to be included. It took 10 years, however, before the full range of courts was actually included. Even after 1960, the issues dealt with in magistrates' courts were limited to matters affecting the rights of spouses and children.

Some proceedings were excluded from coverage by the legal aid plan. The most notable of these were defamation and relator actions. The scheme was intended to cover administrative tribunals, and informal courts were set up to "decide disputed claims against the state on social welfare matters" (Paterson, 1970:44). But it was left for regulations to specify which tribunals should be covered, and in practice no tribunals were covered by legal aid in the period under study.

In criminal legal aid, the Rushcliffe Committee left the provisions of the *Poor Persons' Defence Act* of 1930 virtually untouched.[4] The administration of criminal legal aid remained with the courts under the general control of the Home Office. Decisions as to the eligibility of individuals were made at the discretion of the judge or magistrate in all but murder cases. There was no right of appeal if legal aid was refused. Criminal legal aid was funded by the Treasury separately from civil legal aid. Criminal legal aid was originally a non-contributory service, but this changed to a system based on client contribution in 1967 (Paterson, 1970).[5]

The *Legal Aid and Advice Act* took over a decade to implement; even then, it was incomplete. But, although it remained limited in scope, it was, until the

1960's, the most comprehensive plan in the non-communist world (Cooper, 1983:31).

Certain features of this system attracted attention outside of Britain. The program was state subsidized and not based on charity. Criminal and civil legal aid operated independently of each other. The civil component of legal aid was based on a contributory principle. Civil legal aid was administered by the Law Society and channelled through private practitioners using their own private offices. Barristers and solicitors participating in the program were remunerated at 85% of their normal fee.

2. Legal Aid Developments in the United States

In contrast to English developments, by the mid-1960's in the United States, criminal legal aid had become entrenched in the Constitution. Civil legal aid had become an adjunct to the war on poverty.[6] Traditional legal aid programs in the United States, and the Judicare system in Britain, were declared to be inadequate in the war on poverty. Legal aid reform thus went beyond the issues of access and formal justice and into the area of substantive justice which:

> ...rests on the idea that the legal system is inequitable, structurally biased against the poor and powerless. Legal reform is seen as necessary to challenge the discriminatory laws which maintain these conditions (Snider, 1986:212).

In order to meet the needs of the impoverished, a federally funded Legal Services Program (LSP) evolved under the Office of Economic Opportunity (OEO).

The LSP nurtured an NLF model of legal service delivery. The major features of this model were law offices located in poverty areas, staffed by salaried, activist lawyers, and funded primarily by the Federal Government with financial supplements from other sources. The underlying assumption was that the law perpetuated inequality and needed to be reformed (Carlin, et al., 1967:28-29).

The conclusion drawn by proponents of the NLF philosophy was that the legal needs of the poor were extensive and could be met only if those providing legal services took "the initiative in 'going to the people'" (Carlin and Howard, 1965:430). The problem was not accessibility to the legal services, but poverty. There was, however, an ambivalence as to whether this proactive stance included organizing the poor, or whether looking after the unique poverty needs of these groups should be combined with law reform activity.

The activities engaged in by NLF's resolved this ambivalence: by the early 1970's, law reform had been chosen as the best strategy. Although there was no precise definition of law reform,[7] class action and test case litigation were the methods that gained widest acceptance (Handler et al. 1978:295).[8]

There were several features of the LSP system that attracted attention outside of the United States. The program was proactive, concentrated on substantive law, and had a social reform orientation. Services were delivered through NLF's and coverage was expanded to the 'unmet' legal needs of the poor. The LSP encouraged the participation of the poor in programs, and developed a number of

methods of serving the needs of the poor through group organization, community education, law reform, and class action.

NLF's were, with few exceptions, not authorized to cover criminal matters.[9] State and county defender programs had, however, begun to expand, building on the constitutional base established prior to 1960.[10] The rationale for criminal legal aid remained entrenched in the concepts of equality before the law and right to counsel introduced in the Sixth and Fourteenth Amendments to the American Constitution.

Until 1942, other than in murder cases, which were already covered by assignment, the constitutional provisions were interpreted as "guaranteeing the opportunity to be represented by counsel if the accused is unable to secure an attorney through his own efforts and resources" (Brownell, 1961:54). The right to counsel was extended by the decision in *Betts v. Brady* to noncapital criminal cases, but only in special circumstances such as "mental illness", "youth", or "lack of education" (*Betts v. Brady* 316 U.S. 455 [1942]). In 1963, however, the decision made in *Betts v. Brady* was superseded by *Gideon v. Wainright*. Counsel was now constitutionally required in all criminal cases at both State and Federal levels. The *Gideon* decision held that:

> ...any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided to him... Every defendant stands equal before the law (372 U.S. 335 at p.344 [1963]).

The decision in *Douglas v. California* extended this right to appeals (Waldbilling, 1965:67). The major question left unresolved in *Gideon* was at what level in criminal proceedings the right to counsel should apply. Two decisions in 1964 partially resolved this issue. *Excobedo v. Illinois* extended the constitutional right to counsel to police investigations "which had begun to focus on a suspect". In *Massiah v. U.S.*, the right to counsel at post-indictment interrogations (i.e., while out on bail) was established (Waldbilling, 1965:89).

Growing concern for the indigent's right to counsel was reinforced at the Federal level by the findings of a two-year study by the *Attorney General's Committee on Poverty and the Administration of Criminal Justice* (the Allen Committee). Initiated in 1961, the Committee's recommendations were passed into law as the *Criminal Justice Act 1964* (18 U.S.C. 3006A [1964]). In the President's words, the bill sought to "diminish the role which poverty plays in our federal system of criminal justice". This would be accomplished by assuring, at all stages of the criminal justice process, "effective legal representation for every man whose limited means would otherwise deprive him of an adequate defense against criminal charges" (Soloman, 1966:250).

In 1963, the Ford Foundation funded a National Defender Project. The objective of this project was to increase the use of the PD model of legal aid.[11] Seventy-three projects were funded, varying from small county organizations to state-wide and some federal projects. The projects established affiliations ranging from private defender organizations to law schools and Legal Aid Societies (Legal Aid Briefcase, 1968). The growth of defender programs is best

illustrated by statistics put forward by the National Legal Aid and Defender Association (NLADA) in 1973:

> In 1961, defender programs existed in 3 percent of the counties of the nation and served only about 25 percent of the population: by 1973, 650 defender programs were providing services in 28% of all counties, reaching 66 percent of the population. In addition, 16 states had organized and funded defender services at the state level (1973:13).

Certain aspects of American criminal legal aid developments are of special note. Criminal and civil legal aid programs were separate, and had very different rationales: equality before the law and the right to counsel for criminal programs; and social reform for civil programs. Although the assignment system (by which a judge or central administrator would assign counsel) predominated into the 60's, the most rapidly expanding program was the public defender system. The PD office was staffed by publicly funded attorneys (public officials) whose function was to "defend upon request of the court or the accused, any person charged with a crime who cannot [themselves] afford a lawyer" (Friedland, 1975). In the United States, the right to counsel was constitutionally guaranteed. This was the driving force behind the development of all criminal legal aid programs (Handler, 1978:39-40). Provision of legal services to needy persons was mandatory. The existing provisions for legal aid were not adequate. State legislatures and bar societies were faced with "the overwhelming responsibility of providing counsel at the police station if a suspect [requested] a lawyer" (Grosman, 1967:200).

B. The Historical Context: The Emergence of Legal Aid in Canada 1922-1969

Legal aid in Canada did not mature as a publicly funded system as rapidly as it did in Britain, or take the same path as the United States. By 1969, however, it had made much headway since it was first mentioned in the 1922 report of the Committee on the Administration of Justice (CBA, *Proceedings*, 1922:279).

In Canada prior to the outbreak of World War II, the only official provisions for legal aid in civil matters were provided by *in forma pauperis* rules of court. These proceedings were inherited as part of the general law of England by all Common Law provinces, and in Quebec a similar procedure was provided under the Quebec Code of Civil Procedure. *In forma pauperis* procedures permitted the destitute to appear in court without paying the usual court fees. Gaining access to the court required the charitable services of a lawyer. As early as 1930, however, there were localized attempts to put civil legal aid on a more formal basis.[12]

There was no government involvement in civil legal aid at either the provincial or federal levels. At the provincial level, the only involvement was in the provision of criminal legal aid through the 'assignment' system. Government involvement at the Federal level was non-existent, for the administration of justice was, according to the *Constitution Act*, under Provincial jurisdiction.[13]

Involvement of the legal profession at the Federal level was also minimal. The subject of legal aid was first brought up in 1922 in the context of changes to the Criminal Code.[14] In 1929, there was some concern expressed by the Canadian Bar Association (CBA) [Canada's national organization of lawyers] that

leadership should be sought at the provincial, municipal, or even individual agency level to initiate some permanent form of legal aid organization. It was recommended:

> That Provincial Governments be requested to investigate the subject with a view to passing enabling legislation so that in one or more suitable districts the feasibility and efficiency of the principle of the appointment of Public Defenders may be tested and applied to cases in which counsel are in charge of prosecutions (CBA, *Proceedings*, 1929:75).

Very little was heard from the CBA on the matter of criminal legal aid until after the Second World War.[15] As the Great Depression of the 1930's deepened and labour strife increased, the CBA increasingly viewed criminal law as a coercive tool rather than as a tool of legitimation.[16]

Interest in civil legal aid continued to flicker under the auspices of the Legal Aid Committee of the Junior Bar (CBA, *Proceedings*, 1931; 1938). The activities of this committee did not receive strong support from provincial and local bar associations (CBA, *Proceedings*, 1941:26). There is, however, evidence that recommendations of the Junior Bar first stirred an interest in the provision of civil legal aid amongst members of BC the Bar (Watts, 1984:139).

The rationales for involvement of the legal profession in some sort of organized provision of criminal or civil legal aid were quite diverse. In the *Proceedings* of the CBA, legal aid was presented as a tool for social integration, as a matter

of fairness, as a right, as a duty of the profession, and as a means to improved publicity for the profession (CBA, *Proceedings*, 1922; 1926; 1929; 1938). That legal aid could be used as a mechanism for social integration was noted by Jules Prud'homme, who argued that in order to avoid revolutionary fervour, it was necessary to "instill in the minds of the people...not only respect, but a due regard for the law". This could only be attained by "leading the mass of the people to realize that they are entitled to a fair share of the advantages of the law" (1924:186). This would be achieved through legal aid. This argument met with no response from the Canadian legal profession. No mention of working class agitation or potential revolution is made in any article on Canadian legal aid up to the 1960's.

The 'fairness' argument struck a much more responsive chord. Legal aid was necessary "to impress the community with the fairness of the courts, so that it may not be said that there is one law for the rich and another for the poor" (Jones, 1931:274). Similar rationales were advanced by almost all authors of legal aid articles in the period under study (Scott, 1935; Johnson, 1937; Gibbons, 1937). Another argument forwarded was the benefits in publicity and good community relations that would accrue to the legal profession with the implementation of legal aid programs (Johnson, 1934:7). Although not forming a separate, identifiable rationale for the provision of legal aid, a theme that runs throughout the literature is the duty of the profession to provide this service (Scott, 1935:165). The legal profession had been granted a monopoly in regard to the administration of the law; in return it was the duty of the profession "to shoulder the burden of that administration by assisting the poor in litigation free of charge" (Cohen, 1943:371).[17]

Although arguing that provision of counsel in criminal matters was a right, not an act of charity (CBA, *Proceedings*, 1926), the Bar resisted the idea of extended government funding of such a service (CBA, *Proceedings*, 1957). Provision of counsel in civil matters was, however, clearly a duty imposed on the profession. Even the payment of staff lawyers out of a charitable fund, as was the case in some American legal aid offices, was rejected. It was, however, considered proper to recommend that, in larger centres, law societies, county associations and other organizations should provide some small remuneration to a young lawyer who would undertake the routine, clerical work necessary for the efficient operation of a legal aid bureau (CBA, *Proceedings*, 1937:248).

One of the most common arguments *against* the provision of legal aid was the ever present fear that clients able to pay would be given free legal aid, and business would thereby be lost to the profession:

> The matter has now advanced in the opinion of the public and the profession to a point where it is no longer necessary to debate the wisdom and fairness of providing means of defence for poor persons. . .The only point that seems to disturb some lawyers is that persons well able to pay for their defence might unduly take advantage of the statute (Jones, 1931:274).

This was, perhaps, an overly optimistic view of the popularity of providing counsel for indigent defendants. Nevertheless, the attitude that this type of charity should not cut into paying business was prevalent throughout the depression, and not entirely absent during the economic boom that followed the War (Johnson, 1934:7).

The interest of the *attentive public*, as represented by the press, the potential clients of legal aid, and public and private agencies which had a vested interest in the area, was limited. In 1922, the special committee of the CBA appointed to consider legal aid matters received briefs in favour of a PD system from labour unions across Canada[18] (CBA, *Proceedings*, 1924:71). For a brief time, legal aid was a topic of editorials in many newspapers (CBA Report of Special Committee, 1924:73). A 1938 editorial in the Saskatchewan Bar Review noted that one objection to the provision of legal aid was that "there was no demand from the public for legal aid." The editorial went on to observe that such a statement could only be proved or disproved by bringing a system for the indigent into existence and observing the results (Saskatchewan Bar Review, 1938:22).

Prior to World War II, very little interest in legal aid was displayed by the State, the Bar, or the attentive public. Equality before the law, fairness of procedure, and right to counsel were not issues that captured the public's attention. Neither the Canadian Bar nor governments at the national or provincial levels felt compelled to make equality before the law a reality. The Canadian Constitution made no provision for equality as a right. The *Criminal Code* was couched in terms that 'allowed' representation or appointment of counsel. I*n forma pauperis* proceedings 'allowed' poor persons access to courts, but access was contingent on the charitable assistance of a lawyer.

The overall impression of legal aid in Canada up to World War II is that it followed the English model. Some members of the CBA advocated the American

public defender model, but there was no interest in such a model at the provincial level (Jones, 1934:272). Scott (1935:160) summed up the relative weight to be given to the American and British systems of providing legal aid when he commented that, from the Canadian perspective, it was unclear which system should be followed.

There was, however, a marked preference for the British system, as indicated by a 1938 report of the Junior Bar Committee of the CBA:

> ...the profession is interested only in methods of legal aid voluntarily provided and controlled by the Bar. There is, therefore, little to be gained from a close study of...Legal Aid Societies...in the United States....In Canada, legal traditions and procedures stem from Great Britain, and in that country legal aid has developed historically as a service which the profession itself offered to the community (CBA, *Proceedings*, 1938:181).

Progress was slow, but the War and its aftermath did have some impact on the civil side of legal aid developments in Canada. In August 1942, the CBA Committee on war work, in co-operation with the Department of National Defense, initiated a Dominion-wide system of legal aid to members of the armed forces and their dependents. This system was similar to programs established in the United States and England.

Under this program, matters that could not be handled by service-appointed legal aid officers were referred to CBA-appointed representatives who in turn assigned the cases to local lawyers who had volunteered their services. Initially, matrimonial cases and applications from dependents of service personnel were

excluded. The excluded cases rapidly outnumbered those covered. At the 1943 meeting of the CBA, it was decided that "all limitations on the kind of legal aid which would be furnished should be removed and that dependents should be included" (CBA, *Proceedings*, 1943:200).

After the War, the CBA committee on war work decided to continue giving aid to service personnel, but only for problems arising "during or by reason of the period of active service" of the individual involved. In the summer of 1947, the program was discontinued. It had, nonetheless, stimulated interest in *civil* legal aid work in several provinces.

1. The Advent of the Welfare State

The War also had an impact on the structure of the Canadian state, although this impact did not lead to the degree of state intervention that transpired in Britain. State intervention was not a policy new to Canadian governments; indeed, it was a common feature of Canadian political life. This intervention was, however, on the *accumulation* side of the ledger rather than the *legitimation* side (Panitch, 1977:14). Finkel comments that, historically, the accumulation and coercion functions of the state have been strong in Canada, notably in financing Canadian industry and defeating attempts by workers to form unions and improve their wages and standards of living (Finkel, 1977:345). On the other hand, the legitimation function of the state has been underdeveloped in Canada. In comparison with other welfare states, Canada "has been a laggard" (Panitch, 1977:20. See also Wilensky, 1973:122-124; Moscovitch and Drover, 1987).[19]

The slow development of the welfare state in Canada has been explained, in part, by the constitutional division of power. As the Canadian Constitution evolved, responsibility for welfare matters was deemed to fall under provincial jurisdiction. The *Constitution Act* of 1867 divided provincial and federal responsibilities along lines conducive to a strong central state. In this division, the Federal Government was given control over accumulation functions and the provincial governments were given control of legitimation functions.

It was intended that residual power should fall to the Federal Government under the 'peace, order, and good government' clause of the Constitution. Successive decisions of the Privy Council, however, transferred much of the residual power to the provinces (Smiley, 1980:32). This trend continued when responsibility for judicial review passed to the Supreme Court of Canada in 1949. This division of power had a significant effect on the implementation of welfare programs in Canada. At the time of confederation, Canada was a rural society. Health and welfare were primarily the responsibility of the extended family.

The need for health and welfare provisions, however, grew with the increasing urbanization and industrialization of Canada. The responsibility for payment of these services lay with the provinces. The provinces, however, lacked the financial resources necessary to carry out this responsibility. As Morgan points out, this dichotomy of provincial and Federal responsibility created a serious weakness in Canada's welfare arrangements. This may be one reason for Canada's trailing behind other capitalist countries in the establishment of

welfare programs (Guest, 1980:8). Advances in social welfare legislation had to wait upon one of three developments:

> ...a provincial government's willingness and ability to finance needed measures; an amendment to the B.N.A. Act to permit federal entry into an area of jurisdiction otherwise assigned to the provinces; or the development of stratagems to secure federal financial help without appearing to violate the provisions of the B.N.A. Act (Guest, 1980:8).

Working class agitation during and immediately after the War made the development of welfare programmes pressing necessity.[20] Those who served at home and abroad during World War II realized that while depression and unemployment marked the pre-war *laissez-faire* economy, the war itself, through government controls and maximum use of resources, brought full employment. They feared, therefore, that the end of the War would herald the return of depression conditions (Panitch, 1977).

Canada experienced marked labour agitation during the War, and a strong showing of workers and farmers dominated the Co-operative Commonwealth Federation (CCF) party immediately after the War. Public opinion, as evidenced by polls which indicated majority support for the nationalization of industry, showed a sharp turn to the left. This, together with the instability of the economy, caused many businessmen to question relations among government, industry, and the populace (Finkel, 1977:345). Keynesian economics provided the solution:

> In effect, the new apparatus of fiscal and monetary control guaranteed *accumulation* through the maintenance of full employment and the protection of investment, much of it from

> America. At the same time, Keynesian policies offered a neat solution to the *legitimation* crisis. Welfarist policies of redistribution, such as the family allowances scheme, placed purchasing power in the hands of the people, which provided demand for the goods and services of capitalist enterprise, which in turn kept employment up (Whitaker, 1977:58-59. Emphasis added).

Extensive social welfare legislation was proposed. Canada had its equivalent of the British Beveridge Report in the Heagerty and Marsh reports. The Heagerty Report proposed health insurance and the development of a public health service. Leonard Marsh produced a 'blueprint' for Canadian social security which was published in March 1943. It recommended public investment as a means of ensuring full employment; a comprehensive system of social insurance protection; a comprehensive system of public medical care; and a universal system of children's allowances. These proposals were not well received by Ottawa's political elite:

> Despite the powerful political appeal of comprehensive social security, the plan for postwar reconstruction was dictated by a group of conservative-minded individuals in Ottawa, comprising a majority of the federal cabinet supported by an elite group of civil servants. They attacked the Marsh Report's proposals as beyond the power of the British North America Act because of the commanding role assigned to the Federal Government, but they were probably most offended by the emphasis on social responsibility and the report's implied criticism of the individualistic, free-enterprise system (Guest, 1988:217).

The keynote of Canadian welfare legislation was not so much the ideal of social justice as political and economic expediency (Finkel, 1977:348). Advocates of the only major piece of social welfare legislation implemented, the family allowance, argued that it would increase the spending capacity of poorer

families, stimulate the economy, prevent a recession, and thereby ward off social unrest (Kitchen, 1988:236).

The convergence of interests that called forth this expediency did not last long. With the election of the Liberals in 1945, the potential threat of a left-dominated government disappeared and "almost all initiatives in social welfare legislation ceased" (Panitch, 1977:60). In spite of the limited nature of social welfare legislation, Dennis Guest argues that this legislation broke the predominantly residualist, or anti-state intervention, mould that shaped the attitudes of Canadian public and governments towards the welfare state. Although the implementation of family allowances in 1944 and unemployment insurance in 1957 did not open the floodgates to social reform legislation, they did give institutionalist ideology a foothold.

2. Legal Aid in the Welfare State

The interplay between residualists (those who would minimize the role of government) and institutionalists (who would extend it) was a continuous theme in Canadian social security legislation. This conflict hampered the development of the social services system, but it did not stem it. Between 1945 and 1969, the growth of legal aid programs, which were seen as a component of the welfare state, proceeded incrementally. In *civil* legal aid, more Bar associations were convinced to take on administrative duties in providing legal aid clinics[21] or panels.[22] Law societies became more involved. The most extensive plan to emerge during this period was the Ontario Legal Aid Plan of 1951. This was the first plan in Canada to utilize public funds on a large scale, although only for

disbursements, not for remuneration of lawyers. The Ontario plan remained the bench-mark of Canadian civil legal aid programs until an entirely new plan was implemented by the Ontario Government in 1966.

Criminal legal aid developed separately from civil legal aid and with slightly more government participation. This participation, however, was no more than an incremental extension of the assignment system that existed prior to the War. At the local bar association level, rosters of lawyers were maintained to deal with criminal legal aid matters on a *pro bono* basis in the magistrates' courts at the request of the magistrate. These services were usually provided only for first offenders (Anderson, 1965:127; Nelligan, 1951;613). In 1954, the Vancouver Bar Association (VBA) formulated a legal aid plan to cover indictable and summary matters. This plan was administered by the Legal Aid Committee of the VBA in conjunction with the City Prosecutor's office.

In 1947, Manitoba established the first criminal legal aid service administered by a law society (Larsen, 1978:161). Their activity, however, was confined to Winnipeg. In 1950, Alberta set up a committee to study the PD model of criminal legal aid delivery, but no action was taken. In Ontario, the legal aid plan implemented by the Law Society of Upper Canada in 1951 had a small criminal legal aid component. Cases referred by court officials were taken in rotation by a panel of lawyers (Chitty's Law Journal, 1963:8). The Ontario plan applied to first offenders only, and excluded all but indictable offenses (Chitty's Law Journal, 1963:8). Even with these limitations, the Ontario plan was the most advanced of its kind because the Law Society undertook to compensate counsel for disbursements. These were small payments, it is true, but they set an important

precedent for the development of the legal aid system (Nelligan, 1951:613). It was also the first plan to put the administration of civil and criminal legal aid under one administrative umbrella - the Law Society.

Saskatchewan was the first provincial government to extend payment of counsel fees to lawyers assigned to indigents in other than murder cases (Saskatchewan Bar Review, 1949:70-71). The responsibility for assigning counsel remained with the trial judge. In 1964, the Attorney General of British Columbia provided an initial fund of $50,000 to allow the Law Society to expand the honorarium system which, up to that time, had applied exclusively to capital offenses. The honorarium was not restricted to indictable offenses. Counsel fees ranged from $30 *per diem* for minor offenses to $50 *per diem* for offenses triable in higher courts. In its 1965 report on legal aid, the Joint Committee on Legal Aid for Ontario commented that "The outstanding feature of this [BC] scheme is that it is supported by Government funds with control, supervision, and administration in the hands of the Law Society" (1965:22). Provincial governments were slowly being drawn into funding legal aid plans, but on a limited scale.

There was, however, no overt interest in legal aid at the Federal Government level until 1965, and, other than the appointment of the Canadian Committee on Corrections (hereafter the Ouimet Committee) in June 1965 to examine "the broad field of corrections...and to recommend...what changes, if any, should be made in the law and practice relating to these matters", there was no action at the Federal level until 1970 (Ouimet Commission Report, 1969:iii). Whenever this

matter was raised in the House of Commons, the Government's response was that legal aid fell under provincial jurisdiction (House of Commons, June 22, 1950;[23] House of Commons; April 6, 1964).[24]

In 1965, Andrew Brewin, MP of the New Democratic Party (NDP), who had attempted to raise this topic a year earlier, moved a private member's bill urging the convening of a conference between the Minister of Justice and the provincial attorneys general to consider a "jointly financed and operated" plan for the "provision of legal aid in all criminal cases in which imprisonment is a possible outcome" (Brewin, House of Commons, May 5, 1965).

Neither the *Criminal Code*, which provides that a person charged in a criminal case is entitled "to make full answer and defense personally, or by counsel", nor the *Bill of Rights* which provides for a fair hearing in accordance with the principles of fundamental justice, were sufficient to ensure that counsel was appointed to indigents. Citing *Gideon v. Wainwright*, Brewin stated that "the rights of people accused in Canada should be no less than the rights of people accused in the United States" (Brewin, House of Commons, May 5, 1965).

Brewin anticipated the Government's argument that the provision of legal aid fell within the powers of the provincial governments by suggesting that Section 91 (27) of the *Constitution Act* gave responsibility for procedure in criminal matters to the Federal Government and "it is very difficult to distinguish criminal procedure from the administration of justice" (Brewin, House of

Commons, May 5, 1965). He commented on the report of the Ontario Joint Committee that promised government legislation to provide for legal aid "not only in criminal but in certain civil matters":

> It is therefore desirable that any scheme of legal aid that is evolved in this connection with criminal proceedings should be integrated into Provincial schemes and should be fitted to the situation that exists in each of the Provinces where the Bar is organized Provincially and where different circumstances prevail (Brewin, House of Commons, May 5, 1965).

Brewin's comments received general support from all sides of the House. The Conservatives were especially supportive of the concept of individual rights:

> It often seems to us today that whereas in most western states we have adopted principles which attempt, through the means of state intervention, to provide for the problems of disease, sickness, illiteracy and ignorance, sometimes that state assumes *vis-a-vis* the individual too great a role; that the shadow thrown by the monolithic, pragmatic and impersonal state has a tendency to dwarf the individual. So when the opportunity arises, as it does in this particular resolution to strike a blow for what I think is the preservation of individual rights, we seize upon it. Because no matter what else the state may be attempting to do, I think that everything must be based on the necessity for giving effect to the principle that the individual must always be the centre around which our society moves (G.W. Baldwin, House of Commons, May 12, 1965).

The Conservatives suggested that the proposal should be broadened to include widows and juveniles, in keeping with much other social welfare legislation. That a system similar to medicare should be introduced was also mooted. These suggestions received no support. It was pointed out that a plan of broader scope would infringe on provincial jurisdiction. It was also pointed out that lawyers were not yet prepared to accept the concept of an insured legal services

plan. The discussion was firmly focused on the administration of justice (House of Commons, May 12:1965). The social welfare aspect of legal aid had not yet come into play.

The Government's response indicated the difficulties it perceived in Federal intervention in criminal legal aid matters. Macdonald, Parliamentary Secretary to the Minister of Justice, conceded that amendments to the *Bill of Rights* would not affect the situation in regard to the right to counsel, for "the Bill of Rights was not strongly enough regarded by the Canadian Courts to really provide protection" (House of Commons May 12, 1965). He suggested that amending the *Criminal Code* was the way to proceed, and this could only be done after careful consideration of the financial burden such an amendment would place on the provinces (Macdonald, House of Commons, May 12, 1965).

The role of poverty in the inequality of the legal system was also recognized by MacDonald. He referred to the Allen Commission's report on *Poverty and the Administration of Federal Criminal Justice* as a model, "not only in respect of the type of inquiry we should have, but in respect of some of the basic principles that should be followed" (MacDonald, House of Commons May 12, 1965).[25]

MacDonald noted the growing interest in criminal legal aid in the provinces, commenting particularly on the Ontario Report and the study of criminal legal aid carried out in BC. He discussed the Ouimet Committee, viewing the forthcoming report of this committee in somewhat the same light as the Allen Committee Report. It was anticipated that the Ouimet Report would inform

Parliament's decision on potential revisions of the *Criminal Code*. The Federal Government would await the findings of the Ouimet Committee before taking further steps towards ensuring the indigent's right to counsel. Federal attention remained firmly focused on criminal legal aid in the context of the administration of justice.

By 1966, the Federal Government had recognized the need for the provision of counsel as a right in 'serious' criminal matters. They had also recognized that this would undoubtedly mean the expansion of criminal legal aid programs. There was general recognition that the advanced state of voluntary legal aid systems, in most cases gathered under the administrative umbrella of provincial law societies, would mean that civil and criminal legal aid would be united, but, because of the Constitution's division of power, the Federal Government felt obligated to fund only the criminal aspect of these programs. The impact of poverty and the differential treatment of the poor in the criminal justice system was also recognized. The solution to this was the provision of counsel. It was also felt that the best method to provide counsel as a matter of right was to revise the *Criminal Code*, keeping a close eye on the financial burden this might place on the provinces. The Federal Government deferred action in this area until after the publication of the Ouimet Committee Report.

Provincial governments were also taking an interest in legal aid in both criminal and civil matters. Under pressure from law societies, who were facing

a growing demand for *pro bono* work, provincial governments were drawn into financial support of both civil and criminal legal aid programs (Larsen, 1977:164-165; Hoehne, 1985:212).[26] Small grants were allocated to law societies and local bar associations to cover disbursements or, in criminal matters, honoraria for individual lawyers.

At the federal level, the CBA maintained only a tepid interest in legal aid matters. The 1954 report of the Legal Aid Committee of the CBA--a committee for liaison between the Association and the provinces--expressed disappointment in the growth of legal aid in Canada. In 1954, the task set by the CBA in co-operation with provincial bar associations was to convince each province to adopt a comprehensive system of legal aid "similar to the system used in Ontario". The Committee regretted that it had "fallen far from the goal" (Chitty's Law Journal, 1955:19):

> Prince Edward Island and Newfoundland still remain without any organized Legal Aid whatsoever. The only new additions reported are those in Moncton, New Brunswick and in Sydney, Nova Scotia. In the rest of New Brunswick it has been impossible to interest anyone to assume chairmanship and the same is the case in Nova Scotia. The other provinces with minor exceptions are satisfied with existing facilities... (Chitty's Law Journal, 1955:18).

At the CBA annual meetings in 1956 and 1957, discussion of criminal legal aid resumed. The Criminal Justice Subsection recommended "payment out of public

funds of the defense costs of indigents." This resolution was defeated. The sole argument stated against it was that lawyers were doing an excellent job, and the press coverage of a proposal for public funding would "lead the public to believe that the lawyers 'are thinking of themselves only'" (Parker, 1963:181). According to Parker (1963:182), "the profession succeeded in deluding itself once again that the present facilities were adequate".

There were, in addition to the need to ensure equal access, other rationales put forward by the CBA and by authors writing on the subject in the post-war period. The need for fairness and the importance of impressing upon the public that there was not one law for the rich and another for the poor remained common themes (Johnson, 1947; Nelligan, 1951; Parker 1963; Waldbilling, 1965). In the 1950's, the East-West tension that became known as the 'Cold War' led to the argument that legal aid was necessary in order to shore up democracy, the keystone of which was 'equality before the law'. (Guss, 1953). The provision of legal aid had a clear ideological function. Legal aid services would promote democracy as it would inculcate respect for the law upon the poorer classes, convince them of the fairness of the courts and integrity of Canadian institutions, and thus earn their loyalty to the democratic system (Guss, 1953).

Legal aid was also put forward as a duty or obligation of the legal profession (Gowling 1951:716-720; Howard, 1950:723) and as an insurance policy against social unrest. Providing the means for indigent persons to gain access to the

law thus did not stem from a purely altruistic adherence to the ideal of equality before the law. Access to the law is "...necessary to the preservation of social stability, a major goal of our legal system." (Guss, 1955:18).

Fear of socialism was prevalent in the attitude of the profession in the early 1950's. One writer noted the increase in socialist states and argued that it was imperative that the profession work to ensure access to the legal system for all as a means of warding off socialism (Swallows, 1951:22-23). Guss (1950:491), addressing the same problem, pointed out "...the anomaly of legislating in the field of old age, health and unemployment but not in respect of legal rights...of providing minimum wages but not minimum justice".

The use of legal aid programs to generate good public relations was also frequently emphasized (Carter, 1949; Guss 1953; Chitty's Law Journal, 1954). Good public relations accruing through legal aid would have material benefits, for participating in legal aid programmes would surely demonstrate the probity of the profession and lead to an increase in business (Guss, 1953). It was also argued that legal aid programs could stem the tendency to use administrative tribunals. These were gaining in popularity owing to their simplicity of procedure, expedition, and low cost (Carter, 1949).

Legal aid programs would improve public confidence in the profession in general. An editorial commenting on the Ontario Legal Aid Program, pointed out that it

was an extremely effective public relations measure and had enormously increased public confidence in the profession. (Chitty's Law Journal, 1955). The nature of the link between legal aid and public relations is best demonstrated by a motion made at the 1953 mid-winter meeting of the CBA council to transfer the responsibilities of the existing committee on legal aid "to the Special Committee on Public Relations" (CBR, 1953:182).

Right to counsel also became an issue, although it was more consistently raised in criminal matters than in civil. Nelligan (1951:606) pointed out that persons facing criminal prosecution were in particular peril, for they had arrayed against them the full power of the State and its resources. He argued that it was thus the responsibility of all to ensure that such individuals were given a proper defense, a fair trial, and, when appropriate, just punishment. The issue of right to counsel came up more frequently after the passing of the *Bill of Rights*[27]. "A fundamental right provided by (the *Bill of Rights*) is 'equality before the law' and the protection of the Law" (Parker, 1963:68).[28]

There was widespread opinion that Canada was not living up to this ideal (Parker, 1963; Shabbits, 1965). The most positive comment concerning decisions regarding due process and right to counsel during this period was that there was "... no need for pessimism because...none of the decisions were such as to irrevocably relegate the *Bill of Rights* to an ineffectual instrument" (Tarnopolsky, 1975:652).

Right to counsel in Canada in 1967 was limited to trial or appeal. No protection was available if counsel was denied at pre-trial (i.e. police interrogation) or extra-judicial proceedings. Even at trial, there was no absolute guarantee of right to counsel. "It was merely a permissive power available to any accused to retain a lawyer if they have the funds to do so." For the indigent, the right to counsel was illusory. Counsel could be provided by the presiding judge for "an indigent accused at trial and on appeal in the judge's discretion" (Grosman, 1967:196).

Kaiser (1969 in part equates the existence of an adequate legal aid system with the right to counsel. He estimates how many indigent individuals could actually obtain counsel in 1968. Based on an annual income of $3,000 or less, the indigent had the greatest access to the law in Ontario, where 18 per cent of all families had an income less than $3,000. In all other provinces, where the number of families with incomes under $3,000 was greater (as high as 51 % in the Maritime Provinces), there was substantially less access to legal assistance. Although some provinces had instituted the office of Ombudsman, which was a valuable protection for human rights, this office was not a substitute for an effective individual right to counsel. Nor was the enactment of comprehensive human rights legislation, which had taken place in five provinces between 1962 and 1968, an adequate substitute for legislation of right to counsel. The right to counsel thus remained without legislative guarantee or administrative infrastructure (Kaiser, 1969:87-88). Kaiser's predictions for future

development of right to counsel were not optimistic: "Perhaps the guarantee of effective right to counsel on a national scale can only be implemented after the right has been entrenched in a Constitutional Charter of Human Rights" (Kaiser, 1969:88).

Even this seemed to hold out little hope, for, as Kaiser pointed out, at the 1969 Constitutional Conference, provinces were concerned with their autonomy and tended to maintain a position which emphasized provincial control over their own internal arrangements; they therefore argued against entrenchment of fundamental human rights (Kaiser 1969:88-89). There were, however, some positive signs:

> Given the policy for the reduction of poverty being developed at the federal level by the Economic Council of Canada and the Special Senate Committee on Poverty, it would seem appropriate that protection of indigent legal rights be given greater attention (Kaiser, 1969:99).

The right to counsel applied primarily to criminal legal aid, although a rather militant, even if hardly radical, expression of this right was expressed by Shabbits (1965:99). He equated the right to life and liberty with the right to property:

> ...there is no logical reason why the principle of equality should be restricted to criminal actions. The principles of natural justice apply to both civil and criminal proceedings. The enjoyment of property for example is in no sense less important than one's right of life and liberty.

The interest of the 'attentive public' in legal aid reform remained very limited until 1964. Nelligan commented that the Bar and the public were more favourably disposed to the provision of civil legal aid. This was linked to a prevalent distinction between 'deserving' and 'undeserving' poor. Criminal troubles are largely of the person's own making, and the test of indigence should be applied more strictly than in civil matters (Nelligan, 1953:765).

The issue of legal aid was brought up in the House of Commons in 1951 and 1952, but a generally apathetic or negative attitude prevailed. This lack of interest towards the provision of legal aid in criminal matters changed after 1964. The change in attitude seems, at least in part, to have been inspired by the *Gideon* v. *Wainright* decision of the United States Supreme Court. It also appears to have been influenced by 'the times'. Poverty was of growing concern to the Canadian public, and government intervention to provide for the welfare of its citizens was becoming a growth industry. Whatever the causes, there was a notable increase in interest in the issue of right to counsel and the provision of legal aid in criminal matters. The John Howard Society of BC and the British Columbia Civil Liberties Association wrote briefs advocating the principle of right to counsel (House of Commons, April 6, 1964).

Whatever the rationale put forward for the provision of legal aid, the discussion of legal aid programs up to 1969 tended to concentrate on *criminal* legal aid. The American PD system was most frequently argued for. The Manitoba Law Society recommended to the provincial Attorney General the adoption of a PD system in 1951 and again in 1958. No response was received in either case (Larsen, 1978:161). The public defender system as a model for criminal legal aid did not, however, go unchallenged. In 1952, the Alberta Law Society's Needy Persons Committee expressly rejected the public defender model, stating that it could not be effective in a region with a population thinly spread out over a large area and with numerous and widely distributed trial venues (Conroy, 1952: 59). Nelligan's survey of magistrates, which was undertaken as part of the 1950 survey of the legal profession, indicated that 90 per cent of the magistrates felt that the volume of work did not warrant a public defender in most districts.

In their 1965 Report, the Joint Committee on Legal Aid in Ontario denounced the public defender system, and their criticisms were endorsed in the Ouimet Committee Report (Ouimet Committee Report, 1969:159). Criminal legal aid programs were the most thoroughly discussed and studied programs in this period. They also received the most attention from provincial governments. Civil legal aid programs were discussed very little in the literature and funded even less, but it was in this area, in Ontario, that the first extensive legal aid program was implemented. As the Ontario programs were the first to receive public funding in Canada, we shall examine them here in some detail.

The civil side of the English *Legal Aid and Advice Act* had a significant impact in Canada. It formed the basis of the fee-for-service model adopted by the Ontario Government in 1967.[29] Prior to 1967, the impact of the Rushcliffe Committee Report was apparent in Ontario in the *Law Society Amendment Act* of 1951. The committee established by the Law Society in 1948 to study the implementation of a legal aid program, recommended adoption of a system similar to that proposed by the Rushcliffe Committee, but modified to meet the specific needs of Ontario. Responsibility for implementation was placed upon the Law Society, with the rider that the Province would provide funding at a later date (Chitty's Law Journal, 1951: 124).

In December 1950, a permanent supervisory committee was appointed to draft Law Society regulations governing provision of legal aid. The *Law Society Amendment Act* was approved by the Ontario Legislature on March 22, 1951, and the plan went into operation in October of that year. Unlike its English model, however, it included both civil and criminal matters. The plan was administered by a Provincial Director, appointed by the Law Society, who, in turn, worked through local directors and committees. The functions of local clinics or, where these were non-existent, the local director, were to interview applicants; decide on financial eligibility; ascertain whether the problem was of a legal nature; give immediate advice; and, where immediate advice was not sufficient, refer the applicant to a panel lawyer for further assistance (Chitty's Law Journal, 1951:124).[30]

The Law Society, after conferring with welfare authorities, established a schedule of entitlement to legal aid based on income and disposable assets. This was not, however, a rigid means test. An individual whose ability to "furnish himself or his family with the essentials necessary to keep them decently fed, clothed, sheltered and living together as a family" would be impaired by the payment of legal fees, was eligible for legal aid (Chitty's Law Journal, 1951:125).

Exclusions from civil legal aid were similar to the English plan. The 1965 Report of the Joint Committee commented that "the excluded matters are for the most part those which have fallen out of use or which might be the subject of oppression" (59).[31] It was felt that, with the exception of bankruptcy proceedings, these exclusions worked "no particular hardship" (59). Although divorce proceedings were not specifically excluded, they were placed in a special category which, in effect, did exclude them. The reason for this seems to have been that many lawyers felt legal aid should be provided only in cases of 'real hardship'. To many lawyers, divorce was a 'luxury' in that the client benefited without any effort on his or her part, while the lawyer was often required to make a real sacrifice. (Joint Committee, 1965: 63).

The 1951 Ontario plan, unlike its English counterpart, included criminal legal aid matters under the administrative umbrella of the Law Society. In the criminal area, coverage extended only to indictable offenses. Summary conviction offenses were specifically excluded, as was any person previously convicted of either an indictable or a summary offense.

Initially, it was assumed the plan could be supported solely through Law Society funds; costs or fees recovered or paid in civil actions; and fees or charges remitted by the Crown. The Law Society created a fund for the payment of disbursements and contributed administrative facilities. Shortly after the plan came into operation, however, outside fiscal support was found to be necessary, and the Ontario Government began to make annual grants towards the cost of administration:

> These grants began at $3,000 per annum and were increased later to $5,000 in 1956 and still later to $20,000 in 1961. The Law Society made grants to the fund from time to time ranging from $2,000 to $4,000 annually (Carter, 1965:252).

The Ontario legal aid plan as it evolved after 1951 was the most extensive legal aid plan in Canada, and the first to utilize public funds for legal aid. It was, however, still based on the *pro bono* services of lawyers. This changed dramatically after a new Legal Aid Act was passed in 1966.

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. The terms of reference of this Committee were "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" (Hornsberger, 1969:431). The Joint Committee recommended a comprehensive legal aid plan subsidized by the Provincial Government. This recommendation passed into legislation as the *Ontario Legal Aid Act* in July 1966. The Ontario Legal Aid Plan has been described by many commentators as

strongly influenced by the English Legal Aid Plan (Justice Information Report, 1981; Penner, 1977; Garth, 1980). Professor Zemans (1973:148) comments that "the English influence accounts in large part for the structure of the Ontario plan and the adoption of the Judicare Model".

The newly enacted Ontario Legal Aid Plan included both criminal and civil legal aid. It was funded by the Provincial Government, and administered and controlled by the profession through the Law Society. Legal aid was provided on a judicare basis. Lawyers were remunerated 75% of their normal fee. The goal of this model was equality before the law; the underlying assumption, that the law was sufficient to meet the needs of the poor. It was inequality in access to the courts that needed to be remedied.

The plan was administered by a Director of Legal Aid, appointed by the Law Society but subject to the approval of the Attorney General. The Director administered the legal aid plan through area directors. At the provincial level, there was an Advisory Committee, appointed by the Attorney General, similar in structure and function to the English Advisory Committee (see p. 15). At the local level, there were area committees, appointed by the Law Society but including lay representatives, to represent community interests and hear appeals from individuals refused certificates. Further appeal could be made to the Provincial Director, whose decision was final (Hornsberger, 1969).

Evaluations of financial eligibility and contributions, if any, were made by the Department of Public Welfare based on a needs test rather than a flat income

means test. The client's need and ability to pay were weighed against the cost of the legal aid required (Hornsberger, 1969; Justice Information Report, 1981).

The Legal Aid Certificate entitled the client to advice or representation in civil, criminal, and quasi-judicial proceedings. In civil matters, this included action in the Ontario Supreme Court, County or District Court, Surrogate Court, and the Exchequer Court of Canada. The area directors could refuse applications they considered "frivolous or vexatious" (Justice Information Report, 1981:56). Matters excluded remained the same as under the 1951 act (see endnote 31), with the exception of bankruptcy proceedings.

The 1949 English Legal Aid Plan clearly accounted, in large part, for the civil component of the Ontario Legal Aid Plan. The British *Poor Prisoners Defence Act* also had some impact in Canada: New Brunswick passed into law the *Poor Persons Defence Act* in 1952 (RSNB 1952 C. 171). By virtue of this Act, the Government undertook to pay for the defense of indigents charged with a capital offence. This statute, however, merely formalized a procedure that was followed by all provinces (Parker, 1963:183-190). The 1965 Report of the Joint Committee indicated that they were not impressed with the criminal side of English legal aid. They noted that the system had been thoroughly criticized (see endnote 5). There seemed to be agreement in England that there was an urgent need that "the whole system of legal aid in criminal proceedings should be thoroughly overhauled" (Joint Committee, 1965:34).

The only advantage to the American PD model that the Committee (1965:101-109) could discern was that it appeared to be cheaper than any other system

considered. This system was rejected[32] because it was "wrong in principle to have both the prosecutor and the defence counsel employed by the same authority" (1965:101). Other disadvantages of the system cited were that, because of the press of cases, a high quality defense was not provided, and it had the appearance of "a somewhat second-rate alternative made available to the poor" (Joint Committee Report, 1965:107).

The PD system offended the principle of the adversary system, for there was no right to choice of counsel and no opportunity for a proper solicitor-client relationship to develop. One of the most serious objections to the PD system put forward by the Joint Committee was its effect on the criminal Bar: "Where the defense of accused persons is concentrated so heavily in a few hands, the effect should almost certainly be the shrinkage of the independent criminal bar" (Joint Committee, 1965:107-108).

The Committee ultimately recommended the Duty Counsel System that was a main feature of the Legal Aid Plan in Scotland, and this system was adopted. The Duty Counsel system in fact became one of the distinctive features of the Ontario Legal Aid Plan. (*Justice Information Report*, 1981:56)

The question of the right to counsel which the PD system was meant to address in the United States also, however, became an issue for the Ontario Joint Committee. Owing to interest in the *Gideon* case, the issue of right to counsel was raised a number of times in committee hearings (1965:55). One of the briefs filed with the Committee recommended that:

> ...the Criminal Code or the Canadian Bill of Rights (both Federal Statutes) be amended to make representation by counsel mandatory in all cases involving indictable offenses unless the accused after having been advised of his rights expressly waives them (Joint Committee, 1965:58).

The Committee pointed out that consideration of the matter of the right to counsel was beyond its terms of reference. It did add, however, that it shared the sentiments expressed in the *Gideon* decision. The Committee observed that adoption of the plan suggested in the report might well obviate any need to amend Federal Statutes (1965:58).

It is important to note, however, that rather than endorsing the view that the *Gideon* case extended the concept of the right to counsel, the Joint Committee emphasized that "*the effect of Gideon was to deprive State Courts of jurisdiction to try accused persons who appeared at trial without counsel*" (1965:60. Emphasis added). This foreshadowed the difficulty the Federal *Government in Canada would have in passing any* legislation that infringed on provincial powers.

Criminal legal aid was administered in the same way as civil legal aid, that is, by the Law Society through the agency of the Provincial Director and area directors. Added to this administrative structure was a Duty Counsel system. Duty Counsel were assigned by area directors to all provincial criminal and family courts in their area. They were available to:

> ...*advise an individual 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 (*Justice Information Report*, 1981).

Duty Counsel attended to all individuals, regardless of their financial status, but did not undertake any legal aid cases. If, however, the individual qualified for legal aid, Duty Counsel would assist in filling out an application. The case proceeded as in other legal aid matters, with the accused having a choice of counsel. Generally speaking, Duty Counsel served from a roster for one or two weeks at a time and were paid on an hourly or *per diem* basis (*Justice Information Report*, 1981).

Any individual found to be eligible for criminal legal aid was entitled to representation in all indictable offenses. Subject to the discretion of the Director, legal aid might also be made available for any summary conviction proceedings if upon conviction there were a likelihood of imprisonment or loss of means of livelihood.[33]

Graham Parker felt that the Duty Counsel system increased opportunities for a "fast trial, adjournment or bail." Moreover, the realization that a lawyer would be seen soon after arrest had a salutary effect on police interrogation practices and reduced the likelihood of "precipitous" decisions in such matters as plea bargaining (1968:486).

Of the entire Legal Aid Plan, it has been said:

> 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 (Hornsberger, 1969:451).

The Ontario plan, as the first statutory comprehensive plan in Canada, had a major impact on the development of legal aid in the rest of the country. It is important to note, however, that the Joint Committee was formed prior to the establishment in the United States of the Legal Services Branch of the OEO and the reform-oriented NLF offices. The Joint Committee presented its report before any significant information was available on the American NLF innovation in the provision of civil legal aid.

The law reform focus of American NLF's had not been an issue for the Joint Committee. When law reform did become a matter of some interest in the late 60's, Ontario already had in place their own Law Reform Commission (LRC), established in 1964 for the purpose of promoting the reform of the law and legal institutions (*Law Reform Commission Act*, 1964). Law reform was seen as coming within the bailiwick of the LRC. Although the LRC had limited community contact, and few methods of gaining insight into the problems of the poor, it was felt that this could be remedied by drawing on "the recommendations of counsel engaged at the community level in full time service to the poor" (Kaiser, 1969:93).[34]

C. Involvement of the Federal Government

In 1972, the Federal Government inaugurated a legal aid program cost-shared with the provinces. This was one of many social welfare programs that the Government initiated between 1966 and 1972. These programs were directed towards integrating the poor and disenfranchised into Canadian society (Loney, 1977:446-447) and defusing the growing constitutional crisis that appeared to threaten not only the legitimacy of the Government but the continued existence of the Canadian state.

In 1962, Michael Harrington's *The Other America* had alerted the American public and politicians to the existence of widespread poverty in America, questioning the effectiveness of the welfare state and thus posing a problem of legitimacy. This book also had some influence in Canada, where it roused suspicions that there might also be a poverty problem among that nation's people (Thatcher, 1984:88). Canada declared its own 'War on Poverty' in 1965, during the Liberal administration of Prime Minister Lester Pearson. Confirmation that there was a 'poverty' problem in Canada came in September 1968 when the Economic Council of Canada published *The Challenge to Growth and Change*. This publication contained a broad critique of Canadian economic and social policy. It concluded that the poor in Canada could be numbered "not in thousands but in millions" (1968). The following month, the Special Senate Committee on Poverty (the Croll Committee) was struck. It reported that:

> Unless we act now, nationally and in a new purposeful way, five million Canadians will continue to find life a bleak bitter and never ending struggle for survival (Special Senate Committee on Poverty,1971:vii).

During the drafting of the committee's report, four members of its research staff resigned because discussion of the actual causes of poverty, "the roles played by the tax system, corporate autonomy, collective bargaining and the rest -- was systematically eliminated from the drafts of the reports" (Adams, 1971).

Although the Government was reluctant to examine *too* closely the causes of poverty in Canada, it clearly recognized the need to offer some legislative relief. The need for government action was made even more urgent by increasing social unrest, escalating labour strife and, perhaps most urgently, the growing constitutional crisis.

By 1970, the Western phenomenon of discontent among the young, and particularly students, protesting against the war in Vietnam, poverty, and racial discrimination, was of serious concern to politicians in Canada. Although student and urban strife never reached the magnitude in Canada that it did in the United States, Best points out that it is perhaps significant that recommendations for dealing with student discontent reached Secretary of State Gerald Pelletier at the height of the October Crisis of 1970 (Best, 1974:142). That event at once posed problems in terms of both legitimacy of government and maintenance of order.

The decade of the War on Poverty was also one of increasing labour unrest and growth in union membership. In 1966, there was a sharp increase in labour militancy as measured by the number of strikes and the number of contracts rejected by union members (Wolfe, 1977:261). Between 1964 and 1976, union membership in Canada grew rapidly. This growth is in part accounted for by the

rapid rural-urban population shift that was taking place in Canada, and in part it reflected the growth of white-collar unionization, particularly in the public sector (Thatcher, 1984:110). In 1961, organized labour, through the Canadian Labour Congress (CLC), forged an alliance with the old CCF to form the NDP. In Parliament, the new party encouraged the Federal Government to increase its activity in the social welfare field.[35]

During this period, constitutional disputes gave rise to increasing tension between Quebec and Ottawa. By 1961, an occasionally violent separatist movement had taken shape. From the early 1960's, Quebec began to acquire most of the administrative apparatus of an independent nation state, a process dubbed the 'Quiet Revolution'. In 1968, the Parti Quebecois (PQ) was formed, originally with the clear objective of establishing the independence of Quebec through democratic means (Behiels, 1985:166).

In October 1970, the 'Quiet Revolution' became more obtrusive. The degree of tension in Quebec manifested itself in what has been described as "the major Canadian post-war political confrontation". Members of the Federation du Liberation de Quebec (FLQ) kidnapped a Quebec cabinet minister, Pierre Laporte, and a British diplomat, James Cross, and eventually 'executed' Laporte. This represented the height of separatist violence. The Trudeau Government responded with the *War Measures Act*. This massive military response "alarmed many Canadians and Quebecois about the fragile nature of civil liberties in this country" (Cross and Kealey, 1985:141).

Quebec was not, however, the only threat to the national fabric. Canada was not a highly centralized state, and it now became apparent that growing provincial power and provincial control of resource revenue and the legitimizing apparatus also threatened Canadian unity:

> During the 1960's , the roots of Canadian disunity were being clearly exposed; to legitimize Confederation, the federal government turned almost frantically to social policies aimed at preservation of the unity of the country (Thatcher, 1984:105).

The expansion of social welfare spending in the late 60's and early 70's was directed at strengthening the integrative mechanisms of Canadian society. Expanded spending was prompted both by the serious threat which political developments in Quebec posed to the maintenance of Canadian federalism, and by problems posed by a rising tide of social and political unrest (Brodie and Jenson, 1988:263). The Government could initiate this expansion because the economic situation was favourable. A major growth in federal revenue in the 1960's provided the means for a general increase in federal spending in the social policy field and created the material base for greater government action to combat social and constitutional problems. Solutions for these problems were sought within the context of Pierre Elliot Trudeau's Just Society and the stated need for increased citizen participation.

In the election campaign of 1968, Prime Minister Trudeau campaigned under the twin banners of the Just Society and the need for "participatory democracy" as a "necessary and vital support of representative democracy". Citizens would be given a sense of full participation in the affairs of government and full

control over their representatives (Trudeau, 1968). In the 1968 Speech from the Throne, the Government reiterated this call for a Just Society which would "ensure increased justice, dignity, and recognition to the individual". It would be a society more just in terms of income distribution and "security against the vicissitudes of life". Poverty would be dealt with through "determined action" in a variety of ways by all levels of government. It was, however, just as important to correct regional disparities as it was to relieve the poverty of the individual. The unity of the country was considered "fundamental to the attainment of these goals". And, perhaps, most essential was the pursuit of a prosperous economy:

> Unless Canada can maintain an economy that is efficient, competitive and productive in relation to the most advanced nations on earth, we can't have the basis for a society from which poverty has been eliminated, we can't maintain the high levels of employment and income and we cannot ensure the standard of life to which Canadians generally aspire (House of Commons, October 22, 1968).

The Government's priorities were economic expansion, unity, and then the pursuit of a Just Society. Citizen participation was an important aspect of the quest for such a society.

Even before Trudeau's proclamation of a Just Society, his predecessor had declared war on poverty. Pearson fostered the Company of Young Canadians (CYC), a semi-voluntary agency through which young people, working for subsistence wages, helped create "welfare rights" organizations, tenants' associations, and other co-operative enterprises in rural and urban low-income areas. In 1965-66, social legislation reduced eligibility for Old Age Security benefits from

70 to 65 years over a 5-year period, introduced the Canadian Pension Plan and its Quebec counterpart, and the implemented the *Medicare Act* (Thatcher, 1984:88).

The Canadian Assistance Plan (CAP), which provided a basic framework for the funding of federal/provincial cost-shared social assistance programs, was introduced in 1966. This plan had the effect of consolidating a number of previously separate cost-shared welfare programs. It also reflected a major attempt by the Federal Government to use financial incentives to encourage provinces to expand social security programs beyond subsistence payments to the long-term unemployed (Thatcher, 1984:89). Cost-sharing under the CAP applied to volunteer agencies as well as provincial agencies. This program had a "wide impact on the quality and quantity of voluntary sponsored social services as well as those under public auspices" (International Council on Social Welfare, 1970:11).

CAP legislation also allowed for community development services, which enabled the provinces to field community organization and community development workers, social animators to assist in the development of groups traditionally considered to be on the fringe of Canada society. As was pointed out in the Report of the Canadian Committee on Social Development:

> These experimental efforts, as elsewhere, are playing a valuable, although at times a not unexpectedly controversial role in the politicization of low income and other minority groups which have been traditionally silent and voiceless as is typical of poverty subcultures, whether urban or non-urban (International Council on Social Welfare, 1970:11).

Advocacy of citizen participation was stimulated by similar developments in the US and was seen as a means of broadening the base of the pluralist system (Chapin and Deneau, 1978). Citizen groups and organizations representing low income and disadvantaged populations proliferated in the 1960's and early 1970's. The Government introduced grant programs for organized citizen groups. In 1969, $30 million was budgeted for this purpose. By 1974 this had increased to over $75 million (International Council, 1974:32). Department of Health and Welfare Demonstration Grants, initiated in 1969, were designed to fit into this plan for citizen participation. These grants were given directly to community groups to establish community services (Best, 1974:142).

Increases in social welfare spending continued into the 1970's.[36] In 1970, as student unemployment increased, the Federal Government moved to meet some of the demands of the young. In 1971, the age of majority was lowered from 21 to 18, a network of youth hostels was established, and a $24.7 million dollar employment package was given to the Opportunity for Youth (OFY). In 1971, the *Unemployment Act* was rewritten, extending coverage to over 96% of paid workers. In 1973, the amount of family allowance payments more than tripled (Thatcher, 1984:89). The decade was also marked by a dramatic expansion of funding for voluntary social service organizations. By 1973, the domination by government of the funding of social welfare activities was almost complete. Armitage (1975:54) estimates that the total financial resources raised for social welfare in Canada through voluntary contributions was less than one percent of state expenditures.

The considerable expansion of social welfare expenditures that took place in the 1960's and early 1970's resulted in Canada shifting from a position where the state's legitimation functions were relatively underdeveloped to one in which, in some areas, the country pioneered new social programmes which drew international attention (Loney, 1977:451).

Thatcher has argued that social expenditure expansion during this period "was a necessary response by the Federal Government to provide an efficient administrative framework that would maintain political stability and also encourage the accumulation of capital in the private sector" (1984:87). Other motives for this increased expenditure have been suggested: the well intentioned activities of higher level bureaucrats; and the activities of interest groups committed to the creation of the Just Society. Whatever the motives, Loney argues that the importance of maintaining an image of the State as neutral was paramount. In providing funds to the poor to help them protest welfare policies, or to native groups to help them fight land claims, the State asserts its role as independent arbiter -- inevitably a difficult one, balancing the desire for legitimacy with the need to maintain social order and stability (1977:453).

The economic development that enabled the Government to expand its social welfare spending ended abruptly in the mid-1970's. There was a fundamental change in the overall performance of the capitalist economic system. In Canada, as in other industrialized nations, the relatively high economic growth rates of the 1960's and early 1970's had given way, by the mid-seventies, to economic stagnation: low investment levels; high unemployment and inflation rates

('stagflation'); high interest rates; and declining living standards (Thatcher, 1984:87).

By the middle of the 1970's, Canadians, feeling the effects of inflation, particularly in housing prices and rents, automobile prices and energy costs, indirectly through opinion polls and directly through voting booths seemed to favour a reduction in social expenditures. Financially troubled 'middle Canada' listened sympathetically to those critics who suggested simple solutions and pointed to Canada's poor, among others, as the source of Canada's economic difficulties (Thatcher, 1984:91).

In 1975, the Federal Government cut $1.5 billion from projected 1976-77 social welfare expenditures (Guest, 1980:196). OFY and CYC were abolished, and Unemployment Insurance Commission (UIC) accessibility was tightened (Thatcher, 1984:91). When economic restraint hit and federal and provincial funding for programs dried up, "many citizen participation groups, particularly those associated with social action and consumer advocacy ceased to exist" (Chapin and Deneau, 1978:14). There was no longer financial support at the provincial level for community development projects:

> Provincial governments which initially supported community development activities moved quickly to withdraw their support because these activities often led to increased demands for other social and community services and to criticism of existing government programs. In the 1970's public and voluntary organizations alike have been dropping community development as a "luxury" during a period of economic restraint (Chapin and Deneau, 1978:15).

State activity in the social welfare and antipoverty areas during the 60's and early 70's was reflected in the area of legal aid reform. As noted earlier, in October 1969, the Ouimet Report was published with several recommendations pertaining to the provision of legal aid in criminal matters. The Report stated that "the Committee considers that equal justice under the law requires that no person charged with a serious offense should be precluded by poverty from having the assistance of counsel" (131). It went on to recommend that counsel be provided to individuals unable to pay for an attorney. Counsel should be provided in every case where conviction may involve a serious penalty. The Ouimet Report, was, however, tempered by economic considerations:

> It must also be borne in mind that due regard for the expenditure of public funds, if counsel is to be compensated, requires the existence of machinery to determine whether a defendant who requests legal aid lacks the means to employ counsel himself (139).

It was recommended that legislation requiring the appointment of counsel be implemented gradually and initially limited to the most serious offenses. The criminal justice system in some areas of the country could not otherwise cope with the increased demand that would be placed on the machinery of justice.

According to the Ouimet Committee, the best way to ensure right to counsel was a uniform system of criminal legal aid enacted by Parliament. A separate system of federal criminal legal aid would not, however, be desirable:

> Legal aid in its wider aspect is primarily within the jurisdiction of the provincial legislatures. It is preferable for each province to develop the legal aid plan or public defender concept, as the case may be, that is best suited to

> its needs, having regard to its population, the number of lawyers available and geographical considerations (159).

Furthermore, a Federal system of legal aid in criminal matters "would involve unnecessary duplication of costs and administrative personnel" (159-160).

Concurrent with the publication of the Ouimet Report, government officials were making it clear that the establishment and extension of legal aid programs, in both civil and criminal matters, was a priority. In September 1969, in a speech to the annual meeting of the CBA, the Federal Minister of Health and Welfare, John Munroe, advocated community organization, and in particular, group representation by lawyers (Lowrey, 1970:62-67). Munroe argued that conditions for the poor needed to be improved in order to forestall social unrest.

In December, 1969, Justice Minister Turner discussed the need for substantive and procedural law reform to protect the rights of the poor in Canada. The poor were often victimized by the law "when urban renewal arbitrarily disrupts a neighbourhood" or when "creditors garnishee wages or repossess furniture" or when "welfare agencies deny, reduce or terminate welfare benefits on vague unarticulated or clearly illegal grounds" or when "Draconian clauses permit landlords to withhold repairs or capriciously evict them into the street" or when "bail procedures are linked to financial means" (Lowrey, 1970:48).

Turner recognized that many of the areas requiring reform fell within provincial jurisdiction (Turner, 1971). In subsequent speeches and comments in the House of Commons, Turner made it clear that his department would concentrate on law

reform in areas that fell under Federal jurisdiction.[37] He was particularly interested in reform of the *Bail Act*. He was also interested in ensuring the right to counsel of indigent offenders. He was not, however, sanguine about provincial government co-operation, and felt that amendment to the *Criminal Code* would be the way to proceed (House of Commons, November 7, 1969; The Province, September 3, 1970). He foresaw that such an amendment would require Federal support for provincial legal aid plans (The Vancouver Sun, December 4, 1969).

In 1971, the Special Report of the Senate Committee on Poverty was published. In this report, the goals of both Health and Welfare in the area of poverty law and of Justice in the area of criminal law reform were reinforced. In the area of criminal law, it was pointed out that both the bail[38] and fine[39] procedures of the Criminal Justice System (CJS) made it more likely that poor people would serve a prison term than rich people.

In the area of civil law, preventive law, including a major role in an advisory capacity for legal aid systems, was advocated. Extensive expansion of legal aid into the area of welfare law was also recommended. Welfare matters were characterized by the Senate Committee on Poverty as the one area of law or *quasi* law "... which is restricted to the poor, and which in most places has resisted the attempts of the poor and interested lawyers to change it..." (Senate Committee on Poverty, 1971:146).

By the time the Senate Committee's Report on Poverty had been published, the Department of Health and Welfare had already forged ahead under the rubric of

Community Participation. Hoehne identifies several reasons why Health and Welfare was first into the field of Federal funding of legal aid programs[40]; foremost among these was the delicate nature of federal- provincial relations. Trudeau felt that Federal government promotion of cost-shared legal aid might be interpreted as a breach of faith "with respect to the federal government's commitment not to initiate any new cost-sharing programs before the Victoria Constitutional Conference in June, 1971" (Trudeau to Turner, February 26, 1971, cited in Hoehne, 1985:108).

The Department of Health and Welfare suffered from no such strictures. In 1970, it made demonstration grants to four community law projects: Parkdale Community Services in Toronto, Ontario; Dalhousie Legal Aid Services in Halifax, Nova Scotia; Community Legal Services Inc., in Point St. Charles, Montreal, Quebec; and Saskatoon Community Legal Assistance Society in Saskatoon, Saskatchewan. All four programs started, in part, as training facilities for undergraduate law students and were affiliated with law schools. The goal common to their proposals was to develop a workable model for the provision of community legal services which would:

i. make legal services accessible to the poor;
ii. 'involve' the poor in some way in the provision of those services;
iii. go beyond conventional legal services by developing preventive law programs, law reform activities, and group legal services;
iv. expand the legal service team by the use of law students and paralegals;
v. engage in legal education.

It was recognized by participants in this program that there was a need for services that were not being met by traditional programs. It was also recognized that, in addition to being an adjunct to the legal system, legal aid was also "an adjunct to the totality of government programmes directed towards the elimination of poverty in Canada" (Taman, 1971:1).

Opposition to this philosophy was strongest in Ontario, where the staff and Board of the Parkdale Community Services program were engaged in a heated debate with a majority of the members of the Ontario Bar and the administration of the Ontario Judicare plan[41] over the virtues of the Community Law Office (CLO) system of legal aid delivery. It was pointed out by advocates of the CLO approach that remedial and passive programs, even those such as Ontario's judicare plan, could not "alter in any significant way the life situation of the poor..." (Taman, 1971:6). It was argued that the only effective way to alter the situation of the poor was to involve them "in determining their own action, priorities and in formulating plans and carrying out programmes" (Taman, 1971:6).

Participants in these programs were also interested in law reform, as was implied in the references to "preventive law" and "group action" (Penner, 1977:16). These programs, in other words, were designed to engage in proactive poverty law, although, as Penner points out, the term "Poverty Law" in the Canadian context is an ambiguous concept:

> Its definition is necessarily subjective, however, the term is primarily used to cover matters such as welfare, housing, landlord-tenant, compensation and unemployment insurance which

> though not exclusively the concern of the poor are more clearly related to economic deprivation (Penner, 1977:23).

These original program objectives were not so easily achieved. As most of these programs were introduced into areas where there was no publicly funded legal aid, the centres rapidly became inundated with criminal and matrimonial cases and, for the most part, had little time or energy to devote to what has been defined as CLO functions. These programs were evaluated just a little more than a year after they were initiated. Even at this early date, problems common to all four programs were detected:

i. Extensive case loads in the traditional fields of law (criminal and domestic) were hampering specialization in poverty law and inhibiting the development of preventive law and group and community organization.

ii. In no clinic had the 'civilian perspective' been realized in terms of client and community input in the governance of the clinics (Penner, 1977:29-30).

While Health and Welfare was funding programs, Justice Minister Turner was laying the groundwork for provincial agreement to a cost-shared criminal legal aid program. In 1970, a survey of existing legal aid programs was undertaken to establish the extent of and variations among legal aid provisions in the provinces. In June 1971, the Justice Minister wrote a letter to the attorneys general of all provinces soliciting their opinions on cost-shared criminal legal

aid. By September, Turner had received a favourable response from all provinces.[42]

The Justice Minister had also developed a legal aid program for the North West Territories (NWT), an area where there was no constitutional conflict. Turner, as Attorney General of the NWT, implemented a legal aid program in criminal and civil matters in 1971. Although Turner suggested this as a model for Federal participation in the provinces, several factors that shaped the nature of legal aid in the NWT were not present in the rest of Canada. The extremely low population density and small number of lawyers made an assignment system mandatory in all but murder cases (where the client had a choice of counsel). The federal program in the NWT could also include civil cases as there was no jurisdictional dispute involved. Other features of the system, however, made it clear that the Justice Minister's model of legal aid delivery was a traditional, access-oriented model. There was no provision on the civil side for the inclusion of "poverty law".

By this time, Turner's strategy of having the right to counsel entrenched in the Constitution had been rejected by the Victoria Constitutional Conference. It was also clear that the strategy of revising the *Criminal Code* would not be pursued.[43] The legal aid agreement that the Federal Minister of Justice negotiated with the provinces would be the mainstay of right to counsel in Canada.

All this activity on Turner's part generated interdepartmental jurisdictional conflict with Health and Welfare. However, by December of 1971, the fear of

provincial opposition that had dictated a 'go-slow' program for Justice in 1970 had been turned against Health and Welfare. In May of 1971, the Attorney General of Ontario complained to Turner about the activities of the Osgoode Hall Neighbourhood Legal Services Project, funded by Health and Welfare. Turner reported to Trudeau that the AG objected to the project because:

> ...it interferes with and prejudices the Ontario Legal Aid Plan in that one of the most significant principles of the Ontario plan is that any Ontario citizen is entitled to legal advice from a qualified lawyer rather than having to depend on advice from a student (Letter, Turner to Trudeau, June 1, 1971, cited in Hoehne, 1985:131).

Turner capitalized on this complaint. He went on to present to Trudeau a list of OFY projects which involved some aspect of legal aid and which employed law students or other non-professionals. This was not the first complaint about a community participation-oriented program. In 1970, the CYC had generated a great deal of opposition from both municipal and provincial governments in politically sensitive Quebec (House of Commons, January 28, 1970).

As these events were unfolding in the political arena, pressure was being applied by the CBA and by the attentive public for Federal Government involvement in legal aid. The introduction of the Ontario legal aid plan had transformed the CBA's attitude towards publicly funded legal aid schemes. In the 1968 Presidential Address to the CBA, Cooper asserted that "the time for voluntary piecemeal legal aid" had passed. It was now time for the governments of all provinces where there was no comprehensive legal aid plan to organize one. It was the responsibility of the Bar to urge that this be done and it was

also the responsibility of the Bar to administer such a service. Cooper emphasized that "equal opportunity for access to legal services must be available to all our citizens in Canada" (CBA *Proceedings*, 1968).

In December 1970, when the legal aid debate was beginning to escalate at the Federal level, the CBA rather belatedly resolved that they would recommend that the Parliament of Canada "provide funds to the provinces of Canada and the Territories thereof for the purpose of providing such legal services" (CBAJ [N.S.] 1971:5).[44]

The 1970 Conference of Governing Bodies established a committee to clarify the CBA's position on legal aid matters which would then be "fed into the Department [of Justice] decision-making process". This position paper asserted that legal aid was a right and the responsibility of government. It was now the task of the profession to "offer [its] assistance to the Federal and Provincial Government in the establishment of a legal aid system in Canada" (CBA Position Paper, March 22, 1970 cited in Hoehne, 1985:67).

It was agreed that legal aid in both civil and criminal matters should be administered as one system. The plans would be administered by the provinces. Federal funds would be provided for federal legal code violations. The CBA position paper emphasized the importance of choice of counsel for the maintenance of an independent profession and rejected the PD system because it did not provide this choice.

The CBA was concerned about the threat to the profession that a publicly funded legal aid system might pose. They were positively alarmed by the menace they perceived as inherent in the NLF model of legal aid delivery:

> There is a prominent tendency to adopt the American model using full time 'poverty' lawyers and to abandon, rather more hastily than appears proper, some fundamental principle to which there has been a substantial public and professional commitment in Canada--servicing legal needs by the independent bar... (CBA Position Paper, March 22, 1970 cited in Hoehne, 1985:69).

The Canadian Civil Liberties Association (CCLA) wrote for the Senate Committee on Poverty a brief (1971) that included an analysis of the shortcomings of the legal system in both criminal and civil matters as they affected the poor. This brief was mentioned several times in Parliament (House of Commons, November 1, 1971; January 2, 1972). On the criminal side, the CCLA study disclosed that almost half of the accused individuals studied were unrepresented at trial. One in five of those individuals had been kept in jail anywhere from one week to three months before trial (Senate Committee on Poverty, 1971). The Poor Peoples' Conference of January 1971 condemned existing legal aid programs as a "system by the legal professional for the legal professional with total indifference to the client - the poor" (Hoehne, 1985:139).[45]

Between May 1970 and December 1971 there was increasing pressure for expeditious federal action in the area of legal aid reform. Questions were asked in the House of Commons about the 1970 Legal Aid Survey (House of Commons, May 26, 1971; December 8, 1971). In October, a private member's bill urged revision of the *Criminal Code* to provide right to counsel (House of Commons, October, 1971).

Comments made by the Poor Peoples' Conference in regard to the inadequacy of legal aid were discussed in the context of the need for legal aid reform (House of Commons, October, 1971). The Poverty Report and the criticism of criminal legal aid made by civil liberties associations were brought up (House of Commons, November 1, 1970). Several provinces had initiated their own programs with varying degrees of provincial government support.[46]

In late 1971, the community participation programs funded by Health and Welfare once again came under fire. The Hamilton Welfare Rights Group confronted provincial and local governments over the inadequacy of the welfare system. Their activities outraged several politicians at the municipal and provincial levels, and the Health minister was forced to terminate the group's funding. Health and Welfare projects were proving to be too much of a threat to delicately balanced federal-provincial relations. Comments of the Health minister in terminating this funding give an indication of the limits the Federal Government would put on community participation and reforming zeal. The Minister of Health stated that:

> I have to make certain decisions with respect to these grants...Where the preoccupation is rhetoric and inflammatory action that contributes to a hardening of attitudes in this country I feel that in the long run this undermines the overall objective of rendering useful assistance to the disadvantaged. (Munroe, House of Commons, December 9, 1971)

By February 1972, the decision had been made that Federal Government participation in legal aid would be limited to the provision of funding for a

minimum standard cost-shared program in criminal legal aid. The Justice Minister did express the hope, however, that provincial government funds would be diverted to civil legal aid programs (House of Commons, February 17, 1972). The first FPA was signed with Quebec in December, 1972.

D. Conclusion

The high water mark of Federal activity and interest in legal aid policy was reached in 1973. The CBA had made its stand clear: it would support all expansion of legal aid programs administered by the Bar on a judicare basis. Equality before the law and equal access were its rallying cries. CLO's and PD programs, lacking as they did a choice of counsel, did not meet these essential criteria. These programs were an anathema to the CBA and a threat to the independence of the profession. The CBA focused on criminal legal aid because that was the focus of the Federal Government. They were not opposed to civil legal aid as long as there was freedom of choice of counsel.

The focus of activity in the House of Commons was clearly on the provision of criminal legal aid. This may originally have been the case because considerations of how this aid should be provided concentrated on amendments to the Canadian *Criminal Code*. It had been consistently demonstrated that legislative amendments in the civil law area were beyond the powers of the Federal Legislature.

As the period progressed, lack of interest in civil matters may have reflected and arrangement where civil matters were covered by Department of Health and

Welfare grants to various community organizations, specifically CLO's. After 1972, it would have been politically inexpedient to push for more involvement on the part of Health and Welfare, for community participation programs in general were rapidly losing their appeal, and political unease over poor peoples' organizations was on the rise (Hoehne, 1985:142).

Activities of groups and commissions concerned with the plight of the poor (the Ouimet Commission, the Senate Committee on Poverty, civil liberties associations) also focused heavily on criminal legal aid matters. The Senate Committee on Poverty made several recommendations for legal aid in civil matters. Their report, however, was made in October 1971, at a time when the jurisdictional dispute between Health and Welfare and Justice was rapidly being resolved in favour of the criminal administration focus of Justice. The Justice Department set up grants for 'experimental' legal aid programs at the community level and announced its commitment to seeking ways to support civil legal aid; what it lacked was the ideological commitment to legal aid as a tool for social change that the Department of Health and Welfare embodied (Hoehne, 1985:106).

By 1973, almost all poor people's organizations were dependent upon government funding. Funding criteria had placed limits on reforming zeal; student unrest was dissipating; the constitutional crisis simmered unresolved; and inflation was beginning to curb economic expansion. The Federal Government was nonetheless committed to cost-shared funding of the criminal component of provincial legal aid programs. Legal aid at the provincial level was rapidly moving toward expanded state funding. Two models of criminal legal aid delivery (Assignment and judicare\Duty Counsel) were in operation in Canada, and the PD

system was still being actively considered by some provinces. Two models of civil legal aid delivery (judicare and CLO) had also been implemented.

The following chapter will examine explanations of the development of legal aid in Western democracies in general, looking at the strengths and weaknesses of these explanations as they apply to the Canadian experience. At the same time, there will emerge an integrated explanatory model within which the evolution of legal aid policy in British Columbia may be examined in detail.

1. The initial cost to the BC Government was for honoraria and disbursements in criminal legal aid matters only. In the fiscal year 1975-76, the total provincial contribution to criminal and civil legal aid had risen to $5,196,285.55. The Federal Government contributed $1,535.00 and the Law Foundation $616,490.00 (Legal Services Commission, *Annual Report*, 1976/77:31).

2. Although the *Legal Aid and Advice Act* of 1949 had provided for legal advice and called for the establishment of separate advice centres, no legal advice plan was implemented until 1959 and separate advice centres were never established. Legal advice was provided by solicitors in private practice in their own offices. It was available only to those with less than 125 pounds capital and a disposable income of not more than seven pounds ten shillings per week. At the same time, the Law Society introduced a voluntary scheme whereby any person could obtain advice on payment of one pound, without any means test (Paterson, 1970:14). The burden of advising citizens of their rights fell upon Citizens' Advice Bureaus (CAB's) a few charitable Poor Man's Lawyer bureaus, and local legal advice centres run by political parties (Abel-Smith, 1967:328).

3. British public expenditure on legal aid, particularly the fees the profession was receiving, were felt to be excessive and became a topic of adverse public comment in the mid-1970's. This debate led directly to the appointment in 1976 of a Royal Commission on Legal Services to examine all aspects of legal aid in Britain (Zander, 1976; Zander, 1978).

4. The first statutory provision for criminal legal aid in England was contained in the *Poor Prisoners Defence Act* of 1903, which authorized the appointment of counsel in felony or summary cases if the prisoner could demonstrate that he should have counsel but could not afford to do so (Shabbits, 1974:101). Appointment of counsel was at the discretion of the committing justice and would only be provided at the actual trial. Further, the Act only applied to proceedings in the court of Assize or court of Quarter Session. *The Criminal Appeal Act* of 1907 made legal aid available in the newly created Criminal Court of Appeal if the court felt it was "in the interest of Justice" (Waldbilling, 1965:91).

The *Poor Prisoners Defence Act* of 1930 removed the requirement that the defence be disclosed and made legal aid a right in murder cases. In indictable cases, the committing justices or the trial judge could grant a 'defence certificate' if the two basic criteria of desirability in the interest of justice and insufficient means were met. Provision was also made for the services of a solicitor in courts of summary jurisdiction if the gravity of the charge, or exceptional circumstances, warranted (Pollock, 1975:21).

5. The British criminal legal aid system has been criticized on several grounds, notably that provision of counsel was not mandatory but at the discretion of the courts, and that there was no coherent authority for providing criminal legal

aid as the statutes governing its provision were too complex (Paterson, 1970; Zander, 1978; Joint Committee on Legal Aid, Report, 1965).

6. In 1964, the Federal Government in Washington acknowledged the problem of poverty and declared "war" on it. One of the major weapons in this war was the Office of Economic Opportunity (OEO). All of the OEO anti-poverty programs were based on the premise that:

> ...poverty and the characteristic legal problems of the poor were, in large measure, produced by *social and legal structures* which blocked poor people's access to social and economic opportunities. The theory argued that opening access to opportunity, while at the same time involving poor people in the operation of the organizations and agencies that were doing so, would go a long way to the eradication of poverty as a social reality (Brantingham and Brantingham, 1984. Emphasis added).

7. Law reform took such varied approaches as handling a large number of individual cases in one area and thus affecting the practices of agencies; organizing and supporting community groups; legislative lobbying at the state level; and class action or test case litigation.

8. In test case litigation, the purpose of a case or number of cases is to "challenge a law or practice as invalid on constitutional or other grounds. The purpose is to substitute a new law or practice by judicial order." Class actions usually "seek both compensatory relief for members of a class who have been victimized by the challenged practice and a change in that practice" (Garth, 1980:172).

9. This was a responsibility that the Federal Constitution imposed on the states. There were, however, some exceptions to this ban on criminal coverage. Counsel was provided if the state was not meeting its constitutional responsibility and in areas of the criminal law where the State had no recognized responsibility, such as:

> ...[provision of] counsel prior to arraignment; in juvenile cases, in misdemeanour cases, in felony cases at an earlier stage in the proceedings than the public defender or other appointed counsel is usually assigned by the court; and in post-conviction proceedings (Guidelines, 1966:23).

10. The constitutional foundation for the right to counsel in the United States is provided by the Sixth Amendment to the American Constitution, which requires that "in all criminal proceedings, the accused shall enjoy the right...to have the assistance of counsel for his defense" (U.S. Constitution, amend. vi). In 1938, the Supreme Court gave a broad interpretation to this clause, stating in *Johnson v. Zerbst*:

> The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel (*Johnson* v. *Zerbst*, 304 U.S. 458 [1938]).

The requirements of the Sixth Amendment are supported by Rule 44 of the *Federal Rules of Criminal Procedure*, which provides that:

> If the defendant appears in court without counsel, the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceedings unless he elects to proceed without counsel (Rule 44, 18, UCLA).

The defendant had a clear right to counsel in Federal criminal courts. This right was not so clear in state courts. The 'due process' clause of the Fourteenth Amendment provides that "No state shall...deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (U.S. Constitution, amend. xiv). Representation by counsel at the state level was assured in capital offenses by the Supreme Court decision in *Powell* v. *Alabama* (287 U.S. 45 [1932]).

11. The first public defender's office was established in Los Angeles County in 1914. The office was supported by the county treasury and was staffed by a salaried solicitor. The public defender concept developed gradually, and although the nature of funding varied from contributions given by private non-profit organizations to moneys coming entirely from public funds, the functions of these offices were similar. Lawyers were paid primarily to defend felony cases.

12. This was notable in Winnipeg in the early 1920's where the City Law Department took cases referred by local welfare agencies, and in Windsor where the city solicitor dealt with some welfare cases (Prud'homme, 1924:182; Jones, 1931:276). In 1932 civil coverage became a concern of the Provincial Law Society in Alberta, followed in 1936 by Manitoba. In criminal matters all provinces used the assigned counsel system and most provinces provided a fee for counsel in capital cases. In all provinces except Quebec and Nova Scotia, counsel received a small fee for their services, ranging from a high of $100 for the first day in Newfoundland to a low of $40-50 per day in Ontario. New Brunswick was the only province which had specific statutory authority, through the *Poor Prisoners Defense Act*, for paying assigned counsel. In most provinces, disbursements were expected to be paid by the lawyer out of fees allocated (Nelligan, 1951:608).

In matters under appeal, the Canadian *Criminal Code* authorized the provincial courts of appeal "to appoint counsel where necessary to represent appellants who are without funds" (Nelligan, 1951:609-610). The *Code* did not, however, provide for payment of counsel, and Alberta and Saskatchewan were the only two provinces to make provisions for payment. No province provided for payment of

disbursements. This was a major flaw, for many appeals had to be abandoned owing to lack of funds (Nelligan, 1951:611).

Outside of the assigned counsel system, which affected only about *two per cent of indictable offenses*, prior to World War II there were no legal aid organizations to provide defence of indigents in criminal courts. The bulk of legal aid work in criminal courts was done by lawyers in a voluntary capacity, and most of that work was done on a purely individual basis (Nelligan, 1951:612).

13. The federal/provincial division of criminal justice functions had profound ramifications for legal aid development in Canada. Not surprisingly, the Canadian Constitution contains no specific indication of jurisdictional powers with regard to legal aid matters. According to the terms of the *Constitution Act*, "the Criminal Law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters," is entrusted to the Federal Government (s. 91[27]). Provincial powers include the administration of justice, the organization of provincial courts (s. 92[12]), and responsibility for civil rights (s. 92[13]), although the Federal Government has jurisdiction over divorce.

It is clear that jurisdictional arguments for the provision of legal aid can be made on either side. If, for instance, the right to counsel, which was a major impetus behind the provision of legal aid in criminal matters in the US, were considered to be a procedural matter, it could fall under federal jurisdiction; if it were considered an administrative matter, it could fall within provincial jurisdiction (Marachessault, 1978:9-12). Provision of counsel in civil matters would appear to fall within provincial jurisdiction. Federal control over divorce, however, would appear to give the Federal Government some authority in the most common area of civil dispute treated by legal aid. Until 1969, the Federal Government consistently argued that both matters fell under provincial jurisdiction.

14. In 1922, the CBA formed a Committee on the Administration of Justice to consider revisions of the Dominion *Criminal Code* (CBA, Annual Proceedings, 1922). The 1922 report of this committee contains one of the first Canadian references to a public defender system. It was noted that one of the revisions suggested, by a lawyer or magistrate unnamed, to the department of the Solicitor General, was the implementation of a public defender system.

This suggestion undoubtedly came from a Toronto magistrate, Edmund Jones, who was concerned that the appointment of Crown Counsel, rather than a private prosecuting attorney or the police, newly provided for in an Act of the Ontario Legislature, would put defendants at a disadvantage. Jones was considered by his colleagues to be ahead of his time. Judge Coatsworth, the Chief Magistrate of Toronto, stated that "he was soft" on criminals. This 'softness' had previously manifested itself when Mr. Jones had the temerity to speak out against the indiscriminate use of the strap on first offenders (CBA, *Proceedings*, 1925:36).

It is important, however, to put this reforming zeal in historical perspective. Although it is true that Jones undoubtedly knew he was fighting an uphill battle in trying to get the CBA to recognize the need for legal aid reform, and that

he undoubtedly wished to 'let the argument fit the audience', it is worth noting the arguments Jones put forward in favour of a public defender system. He pointed out that a PD system would eliminate the use of trivial defenses, speed up the administration of criminal justice, and lead to more convictions. In regard to domestic matters, Jones felt that a PD was necessary because the appointment of a crown prosecutor would be unfair to men accused of spousal violence and men who were being sued for alimony:

> In Ontario the alimony cases particularly are tried in magistrates' courts, and what is the result? The wife is furnished with a $7,000 counsel free of charge, and the man, who very often has as good defence and claims as the wife, and perhaps better, is thrown on his own resources, and is not able to cross-examine the wife. He failed to do it in ordinary life, and cannot do it in the witness box. On the other hand, the woman has the advantage of a very skilled man to conduct her case for her (CBA, *Proceedings*, 1925:49).

In 1929, the unfair treatment that men were receiving because of the appointment of Crown Counsel was still a matter of considerable concern for Mr. Jones:

> A wife appears before the Police Matron, and tells a story which is plausible but untrue. On the strength of this, the husband is arrested. The wife has the advantage of a skilled Cross-Examiner to appear for her, whereas the man who perhaps cannot even support his children much less engage a criminal lawyer, is at the disadvantage of having to appear in the dock and act for himself with no one to defend him or give him counsel or courage.

Other arguments were made for a PD system. Mr. Jones was, above all, concerned with 'fairness'. The provision of crown prosecutors for the plaintiff but no counsel for the defense was, whatever the charge, not fair:

> ...and anything that is not fair puts us lawyers in wrong with the public, and anything we can do to justify to the public the administration of law will stop the mouths of those who are continually attacking our courts, who say "that's not fair" (CBA Proceedings, 1925:50).

15. The CBA Committee on the Reform of the Administration of Justice (1941) once again recommended that a PD system be adopted. As Hoehne points out, however, the CBA did not adopt any political strategy in order to carry this recommendation to fruition (1985:39).

16. Reports of the Committee on the Administration of Criminal Justice were filled with admonitions to be vigilant against "certain individuals, societies and organizations, whose object is to endeavour to force upon this country a form of Government or mode of living totally different and foreign to Canadian and

British ideals" (1931:172). It was recommended that the full weight of the criminal law be brought to bear on such individuals, societies, and organizations.

In 1932, it was again noted that there had been no notable increase in crime, in spite of the pressing economic conditions. Yet it was the opinion of the Committee that the persisting economic conditions were "fraught with grave public danger". The Committee was particularly concerned:

> ...that the public should be especially warned against permitting the continuation of the movement of vagrants begging their way from place to place. These conditions will, if they persist, produce a criminal class from which Canada has heretofore been practically free (CBA, Report of the Committee on the Administration of Criminal Justice, 1932:162).

17. Cohen saw the argument that it was a duty of the profession to provide legal services to the poor as a very weak one. If legal assistance was a *quid pro quo* for the privileges enjoyed by the profession, it became a duty exacted rather than a charitable act (Cohen, 1943:371).

18. Briefs were received from Toronto, Hamilton, Ottawa, Branford, Guelph, Vancouver, Moncton, Quebec City, and Prince Rupert (CBA, *Proceedings*, 1924:71).

19. In Social Security spending as a percentage of GNP, Canada ranked behind Sweden, Netherlands, Norway, Denmark, Germany, Belgium, and France in 1966. In spite of a considerable increase in social welfare expenditures from 1965 to 1970, Canada ranked behind these countries in 1979.

20. Cost-sharing evolved as one of the major methods of avoiding this jurisdictional conflict. In cost-sharing programs, each province wishing to take part "...must pass its own legislation which conforms to the *minimum* conditions of the federal legislation" (Morgan, 1961:160. Emphasis added). It has been noted, however, that even within the limits imposed by the federal legislation there is a wide variation between one province and another (Morgan, 1961:160).

21. Clinics were usually held at a specific location once or twice a week. Individuals requiring more than advice and deemed eligible for services were referred to the Chairman of the Bar Association Legal Aid Committee, which in turn assigned the case to a member of the Bar Association. Two of the more notable of these clinics were set up in British Columbia: in Victoria and Vancouver.

22. Bar Association panels were the most extensively used form of organized legal aid. Under this system, the panel's secretary took referrals from welfare agencies and other organizations concerned with the poor and assigned them to members of the panel on a rotatory basis (Nelligan, 1951:600). Although these informal rosters provided a useful service for welfare agencies, "their efficiency was doubtful, particularly in larger centres" (Nelligan, 1951:600).

23. The topic of legal aid was brought up in the House of Commons shortly after the implementation of the English *Legal Aid and Advice Act*, at which time there was a query as to whether or not the Government would, at some time in the future, "...introduce a bill for the purpose of establishing legal aid for the people of this country below a certain income level. That has been done in other countries and I think it is necessary here" (Gillis, House of Commons, June 22, 1950).

The Government did not respond. The topic was brought up again in May of 1952. The argument was made that the provision of legal aid was a *federal* matter that could be determined by the Justice Department "so that Justice would be available to every citizen in Canada regardless of their financial status" (Gillis, House of Commons, May 22, 1952). The Justice Minister Mr. Garson argued that legal aid was a *provincial* matter. He felt that a charitable system was preferable to one funded by provincial governments. He further pointed out that the provincial governments had funded legal aid under the assignment system. If such assistance should prove insufficient, Garson argued, there was nothing preventing the provincial governments from expanding their assistance "if they wished to do so" (Garson, House of Commons, May 22, 1952).

24. In 1964, the issue of the provision of counsel in criminal legal aid matters emerged in a discussion of individual rights issuing from the *Gideon v. Wainright* decision in the United States. During a discussion of Justice Department supply estimates, Andrew Brewin of the New Democratic Party (NDP) brought up the subject of the preservation and protection of the fundamental rights and liberties of the individual (Brewin, House of Commons, April 6, 1964). Brewin's speech focused primarily on the weaknesses of the existing *Bill of Rights* as an instrument to protect individual rights and liberties. The major weakness of this instrument was that it was limited to Federal jurisdictions, whereas the greatest threats to individual rights had always been in provincial legislation (Brewin, House of Commons, April 6, 1964). Brewin's primary concern in this area was with the right to counsel in criminal matters. He had received several briefs on this subject, the most notable of which were from the John Howard Society of BC and the British Columbia Civil Liberties Association, both of which urged the need to adopt a "proper system of criminal legal aid" (Brewin, House of Commons, April 6, 1964). The government made no response to this plea.

25. The impact of poverty and the need for legal aid in criminal matters was mentioned again in the context of a Private Member's Bill proposing an amendment to the *Criminal Code* that would allow, at the discretion of the judge, compensation to individuals prosecuted unsuccessfully (House of Commons, February 9, 1966). In the context of this debate, Warren Allmand, a Liberal MP who had, for a number of years, been associated with a legal aid committee in the city of Montreal, once again noted the disproportionate number of poor people who were processed through the criminal justice system (Allmand, House of Commons, February 9,1966).

Poverty and the need for criminal legal aid were brought up again in the debate on the abolition of capital punishment. John Diefenbaker, commenting on the disproportionate number of poor people who were convicted by the criminal justice system and who were unrepresented, commented that "I have followed the stand that

poverty must not provide a one-way ticket to the gallows" (Diefenbaker, House of Commons, March 24, 1966).

26. Some indication of the rapidity with which provincial programs were evolving can be gained by reading the 1971-72 editions of the Canadian Bar Association Journal. Legal aid programs or modifications in programs were announced in British Columbia, Manitoba, Nova Scotia, and New Brunswick.

27. The lack of concern over the issue of right to counsel is underlined by its complete absence as a topic for discussion in the 1959 issue of the CBR, which was dedicated to lengthy consideration of the proposed *Bill of Rights* (CBR, March 1959).

28. The *Criminal Code* of Canada formed the basis of judicial elaboration of right to counsel at trial until late 1960. In that year the *Bill of Rights* was enacted, and a number of its sections were relevant to the question of right to counsel:

> 1. It is hereby recognized and declared that in Canada there has existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,
>
> a. the right of the individual to life liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law...
>
> 2. Every law of Canada shall, unless it is expressly declared by an Act of Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights of freedom herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to...
>
> c. deprive a person who has been arrested or detained
> (ii) of the right to retain and instruct counsel without delay, or
> (iii) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful (*Canadian Bill of Rights*, 1960).

29. The Ontario plan represents the first example in Canada of state assistance for the provision of legal aid in civil matters. Until 1965, all provincial governments provided financial aid for a limited number of criminal cases, but no assistance in civil matters. In 1965, the BC Government contributed to a disbursement fund for civil legal aid.

30. This system was similar to many set up throughout Canada by *local* bar associations and provincial law societies. The major and significant difference

between the Ontario plan and other plans was the initial and increasing government contribution to the former.

31. The following matters were excluded from legal aid:

a. proceedings wholly or partly in respect of
    i. defamation
    ii. breach of promise of marriage
    iii. the loss of the services of a woman or girl in consequence of her rape or seduction
    iv. alienation of affection
b. criminal conversation
c. relator actions
d. proceedings for the recovery of a penalty where the proceeding may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings
e. proceedings relating to an election
f. proceedings subsequent to judgment for recovery of a liquidated sum
g. proceedings in bankruptcy subsequent to a Receiving Order or an authorized assignment (Joint Committee, 1965:11-12).

32. The American Public Defender System received relatively little press in Canada prior to World War II. In articles written on the provision of legal aid, many statements were made about the lack of legal aid provision in Canada when compared not only with England (Jones, 1931:271) and the United States (Prud'homme, 1921) but with other Western democracies (Cohen, 1945).

33. In 1969, this discretion was extended to all offenses where the Crown may elect to proceed either summarily or by way of indictment (Wilkins, 1975:9). In his 1971 study of criminal legal aid in Toronto Provincial Courts (Criminal Division), Wilkins found that 36% of his sample was unrepresented at first appearance. Although Wilkins did not directly attribute any portion of this to the exercise of discretion by area directors, he did not rule out this possibility (1975:50).

34. Commentators pointed out difficulties in the American approach to law reform. It had been clearly demonstrated by cases which had challenged the discriminatory nature of legislation enacted prior to the *Bill of Rights* that few courts would "exhibit social progress...to the extent of discarding traditional practice" (Kaiser, 1969:91). Moreover, test case action was unlikely to be supported by the traditional Bar, and the Bench in general "objected to the urging of public funds to challenge a public agency" (Kaiser, 1969:91).

35. Although the NDP was present in the House of Commons to contribute the democratic socialist alternative for social reform, the party did not "make great headway either in the electoral arena or in the creation of a solid working class constituency" other than for a brief period from 1972-74 when they held the balance of power in Parliament (Brodie and Jenson, 1988:280).

36. From 1966 to 1976, Federal expenditure rose from $2.89 billion to $15.4 billion (*Social Security in Canada*, 1977, Table 1:79).

37. Turner's interest in law reform was underlined in the 1969 Speech from the Throne, in which it was announced that a law reform commission would be appointed at the federal level to consider suggestions for the improvement and modernization of the law and its administration (House of Commons, October 23, 1969). Doubts expressed by the Conservative opposition as to the efficacy of this particular method of engaging in law reform seem to have been well founded (Wooliams, House of Commons, May 12, 1970). Neither the question of legal aid reform nor amendment of the *Criminal Code* to provide right to counsel were ever placed on the agenda of the federal LRC.

38. The Canadian Civil Liberties Association argued:

> Our system contains fewer inequities more offensive to the principle of legal equality than the concept of financial bail. Persons whom the law presumes innocent suffer long periods of incarceration essentially because they are too financially poor to purchase their freedom (Canadian Civil Liberties Association, 1970, cited in the Croll Committee Report, 1971: 30-31).

39. The imposition of monetary penalties in lieu of prison sentences obviously punished the poor more severely than the rich (Canadian Civil Liberties Association, 1970, cited in the Croll Committee Report, 1971:30-31).

40. Requests for funding for legal aid projects were coming in from the provinces. As the Justice Department had no means of funding these projects, requests were channelled to Health and Welfare, which had demonstration grants. In addition to this, most of the legal aid projects funded by Health and Welfare had a social welfare orientation, which did not fall within the traditional realm of Justice.

41. The Ontario Legal Aid Plan was administered by the Law Society.

42. This agreement on the part of the provinces seems to have had a decisive influence on Turner's decision not to pursue the right to counsel through *Criminal Code* amendments. There is no mention by the Justice Minister of *Criminal Code* amendments in this area either in the House of Commons or in newspaper articles after this date. When the *Criminal Code Amendment Act* was presented to the House of Commons in May 1972, it was silent on the issue of right to counsel (House of Commons, May 1, 1972).

43. Turner's lack of enthusiasm for this strategy probably stemmed from a consideration of the potential problems that would arise if the proclamation of right to counsel preceded agreement to share the cost of criminal legal aid.

44. The CBA received assurances from Turner that he was indeed acting in this area (CBAJ, [N.S.] 1971:5).

45. The Poor People's Conference was organized and funded by the Department of Health and Welfare, which was at that time engaged in a dispute with the Ministry of Justice over which department had jurisdiction in legal aid matters. Hoehne identifies the Poor People's Conference as an interest group developed by the

Department of Health and Welfare in order to support its position in this conflict (Hoehne, 1985, 135-139). The Conference came out strongly against judicare systems of legal aid delivery:

> In so far as such plans hold out a service with no prospect for creative involvement of the clients-recipients, they perpetuate the dependency of the donor-donee relationship, and completely negate the strong thrust exerted by this government for effective participatory involvement of all citizens in the making of public policy (cited in Hoehne, 1985:139).

46. *Law Society Act*, British Columbia, 1970; *Legal Services Society of Manitoba Act*, 1970; Report of the Committee for the Study of Legal Aid in Nova Scotia, 1971.

CHAPTER III

THEORETICAL INTERPRETATIONS OF THE LEGAL AID REFORM

A. An Overview

Although legal aid reform in Canada and its various provinces became an area of state activity at a later date than in either England or the United States, there were similarities in its development both interprovincially and across national boundaries. The timing of legal aid developments was similar in most Canadian provinces. Central government initiatives in England, the United States, and Canada triggered the most rapid period of reform. Civil legal aid coverage was initially provided as a *pro bono* service of the private bars of all three countries. The war on poverty in all three countries led to the emergence of poverty law programs.

There were also, however, some pronounced differences. In England and the US, the central governments took the initiative in funding and providing legal aid for indigents in criminal matters; in most Canadian provinces that initiative remained with the organized profession. The State took the initiative in funding poverty law programs in the US and at the federal level in Canada; in BC and in England the initiative for these programs remained for a longer period of time with private organizations. Civil legal aid remained under the administrative control of the private Bar in England and Ontario, while in the

US and BC it was administered by a separate corporation or commission. In most Canadian provinces, civil and criminal legal aid evolved under one administrative umbrella; in England and the United States they were administered separately. Ontario implemented a judicare model of legal aid delivery, while Nova Scotia opted for a Staff Office approach and BC began with what they termed a "mixed model". In Ontario and Nova Scotia, lawyers and government official worked together to establish legal aid delivery systems; in BC there was no such co-operation.

This dissertation will consider the reasons for the interest in and the growth of legal aid in BC, with particular emphasis upon changes that have occurred since the mid-sixties. Why did the BC Law Society increasingly take on the burden of providing legal assistance to the indigent? Why did civil and criminal legal aid evolve under one administrative umbrella? Why did the Provincial Government choose to accept the financial burden of funding such a program? Do differing ideological orientations lead to significantly different programs? Can an explanation for shifts in legal aid policy be found in changing economic conditions? Are periods of legal aid reform the product of individual and/or interest group activity? How have these divergent elements combined with other factors to generate legal aid reform in BC?

A review of North American and English literature on legal aid reveals four major approaches taken in accounting for the appearance and eventual shaping of legal aid programs. These approaches form a continuum from applied to theoretical. The first three of these approaches -- liberal reform needs studies, comparative studies, and interest group analysis -- are firmly grounded

in a pluralist view of the State. The fourth is formulated within a structuralist framework based upon a neo-Marxist interpretation of the State.

TABLE 3:1

MODELS OF EXPLANATION

	Pluralist		Neo Marxist
Liberal Reform	Comparative	Interest Group	Structuralist
Understanding the nature and definition of legal needs with a view to their provision. State is neutral, and responds to often-competing constituencies.	Identifying and analyzing useful similarities and differences in formation and implementation of legal aid reform.	Examining the effects of and interaction among groups in the development of legal aid policy.	Analyzing the functions of reform and the extent to which reform is possible. State uses ideological and repressive apparatuses, including law, to maintain hegemonic rule.

1. Social Reform -- Needs Studies

The first of these approaches is what has been identified in the literature as "legal needs studies". Legal needs studies are most strongly oriented towards practical application, and elements of liberal reformism are also apparent in this approach. Legal needs studies are generally pragmatic and empirical in method. The empirical method identifies problems and seeks reforms in the form of "administrative interventions and piecemeal social engineering underpinned by the values of compassion and justice as well as efficiency" (Mishra, 1971). Needs studies utilize an applied, positivistic approach based on measuring the

exact need for legal aid and recommending reforms that will meet this need.

The first legal needs studies were those that preceded the development of both charitable and judicare models of legal aid. These studies pointed out that the poor could not afford legal representation and such representation should therefore be provided for them. The rationale for providing legal representation was based on the concept of equality before the law; the duty of the profession to provide service to the community; and, occasionally, the fear of bloody revolution if the discrepancy between ideology and practice became too great.[1]

The legal needs studies considered here, however, were made between the mid-1960's and the mid-1970's. Although traditional legal aid forms the historical context for these studies, they were, at least in the area of civil legal aid, based on a different premise and evolved under different social and political circumstances.

By the mid-sixties, the idea that the development of the welfare state was accompanied by social stability and economic prosperity had won widespread acceptance in North America, where needs studies originated. In the welfare state, social change is pursued through the creation of new rights, establishing a moderate, non-socialist solution to inequality and poverty. Failure to enforce these rights creates a potential source of social conflict. According to Garth, those who favour the welfare state, "which presumably includes those

who enacted the laws promoting change, must respond to any perceived gap in the enforcement of these rights" (1982:188).

Legal aid reform from this perspective is seen as an effort to translate rights created by the welfare state into effective rights for the disadvantaged. Legal needs studies are based on the assumption that rights created by the welfare state are meant to be enforced. Any discrepancies that appear between rights and their enforcement should be closed as quickly as possible. Legal needs studies from the mid-sixties onward continually discovered such discrepancies (Carlin and Howard, 1965; Carlin *et al*, 1966).

In the period under study, the need to resolve discrepancies appeared to be particularly pressing. In North America and much of Western Europe, the decade from the mid-60's to the mid-70's was characterized by economic expansion and social unrest. It was also a decade in which the existence of widespread poverty in the midst of plenty became a major political issue (Ross, 1975; Able-Smith and Townsend, 1965, Harrington, 1962).

The legal equivalent of the sociological 'discovery' of poverty was the 'discovery' of unmet legal needs. Legal needs studies focused on the 'gap' between the theory of equality and the reality that the poor suffered most of the disadvantages of the capitalist system and received few of the benefits (Snider, 1986:214). Moreover, the poor did not use the legal system to alleviate their plight. Recommendations for reform engendered by legal needs studies focused on applying pressure to see that 'rights' were enforced.

This identification of unmet needs was based, in part, on Charles Reich's concept of 'new property'. Reich identified the growth of government largesse as a function of the State's increasingly interventionist role in the economy. The benefits, services, contracts, franchises and licenses dispensed by government are what Reich means by 'new property'. Government dispensation of largesse, ruled as it is by wide discretionary power, can control the rights and status of individuals:

> The most clearly defined problem posed by government largesse is the way it can be used to apply pressure against the exercise of constitutional rights. A first principle should be that government must have no power to 'buy up' rights guaranteed by the Constitution. It should not be able to impose any conditions on largesse that would be invalid if imposed on something other than a 'gratuity' (Reich, 1964:779).

Large businesses and corporations which receive government contracts, subsidies and franchise have access to traditional legal mechanisms to protect and define their rights. The intent of many legal aid reformers was to ensure that the poor and disadvantaged who receive benefits from government would be equally protected through the practice of 'poverty law', a "proactive enterprise embodying a form of partisan advocacy that incorporates an aggressive assertion of needs and 'property rights'" (Gordon, 1983:28). The major findings of needs studies, repeated across national boundaries, indicated that current legal aid programs -- whether charitable or state-funded judicare programs -- were not sufficient to meet the needs of the poor.[2]

The legal needs of the poor were unmet in several areas. The poor needed legal assistance in most of the areas traditionally regarded as legal needs, primarily property and family matters, although their property needs were limited to rather modest requirements in the areas of estates and wills (Snider, 1981; Messier, 1975). In addition to these problems, the poor had legal needs which were peculiar to their stratum of society or which weighed more heavily on them because of their relative powerlessness. They were more likely to be defendants in the criminal justice system; consumer problems were likely to weigh more heavily on them; and, having few if any financial resources, they were more adversely affected when wages were not paid by employers. The poor were also more likely to fall victim to ruinous financial contracts (McMullan, 1983:290), and they had to deal with welfare boards and other government agencies which could withhold benefits (Carlin and Howard, 1965; Cahn and Cahn, 1964; Cruickshank and Manson, 1971). These particular problems of the poor in the civil law area came to be identified as "poverty law" matters.

It was also discovered that the poor had little knowledge of their rights (Zander, 1978; Carlin and Howard, 1965: Cahn and Cahn, 1964). They were unlikely to define a problem as a legal problem and thus were unlikely to seek the help of a lawyer for anything but traditional matters such as domestic problems, criminal matters, and wills and estates (Sykes, 1969; Marks, 1971; Hazard, 1969; Messier, 1975; Savino, 1976).

Although lack of economic resources, a limited knowledge of rights, and reluctance to use the law were major obstacles for the poor in fulfilling their legal needs, these were not the only significant hurdles revealed by the needs studies. It was discovered that lawyers were generally unprepared to deal with non-traditional law (Reich, 1964; Mayhew and Reiss, 1973). Lawyers did not have expertise in poverty law matters, nor were they overwilling to acquire such knowledge. They were trained to identify with, and to serve, the affluent and organized. They were usually advocates for landlords, not tenants; large corporations, not consumers; government agencies, not the clients of those agencies (Snider, 1986; Mayhew and Reiss, 1969; Mayhew 1975; Johnson, 1972).[3] These were all factors that limited the accessibility of the legal system to the poor. The poor needed lawyers because the laws were unjust, and rules and practices were weighted against them (Carlin, et al., 1967; Waldbilling, 1965; Wexler, 1970).

It is in the area of law reform that the ideological underpinnings of the legal aid reform movement are most apparent. It was recognized by both participants in and analysts of the legal aid movement that pluralism was not functioning as it should in North American society. Much of the law reform activity undertaken in the 60's and 70's was, according to Handler, meant to revitalize pluralism (Handler, 1978:4). The success of pluralism depends on the strength of interest groups. The poor lack all the important characteristics of successful interest groups: strong commitment, clear objectives, experienced leaders, extensive interaction within the group, and the necessary economic and social resources

(Notes, Yale Law Journal, 1966:601). Arguments were also made that the greatest need of the poor was organization. Wexler concluded that it was impossible to litigate an end to poverty. Poverty could only be ended by the poor themselves, and they would only be able to do so if they were organized (Wexler, 1970: 1053).

Recommendations that flowed from legal needs studies typified and reinforced the 'making rights effective' philosophy that characterized the NLF model of legal aid delivery established in the United States in 1965. This organizational model included proactive, community-based law offices, staffed by publicly funded attorneys who would engage in 'poverty law'. The staffs of these offices, supported by paralegal or community legal workers, were to engage in community education. They were to make laws intelligible and accessible to the community, and make the poor aware of their rights through publication of pamphlets and information kits, seminars on topics of interest to the community, and other techniques. They were to engage in individual case law which covered traditional matters, as well as the 'new rights' areas of poverty law. Where possible, they were also to engage in law reform. Lawyers were also to help the poor organize themselves by strengthening existing organizations and helping to create organizations where none existed. These offices were to involve the poor through participation on boards and by training and encouraging indigenous leaders who would then be capable of articulating the demands and concerns of the poverty community (Cahn and Cahn, 1964:1317).

Lawyers were seen as an appropriate vehicle for citizen participation. What was needed was an *institutional force* that would take orders from civilians,

rather than from service agencies or local politicians, a force that could exert influence on all institutions involved in the war on poverty. The legal profession was ideally suited to this purpose. Lawyers could, through their virtual monopoly on access to the courts, exercise an exceptionally powerful influence over local antipoverty agencies (Johnson, 1974:33). The activity of lawyers was buttressed by the use of paralegals or community legal workers indigenous to the community involved. In the American NLF movement, the training of such individuals was an integral part of community participation (Henderson, 1985:17).

One of the major underlying goals of the legal reform movement, as represented by academics and reformers involved in legal needs research and the programmatic recommendations that evolved from such research, was to ensure that the interests of the poor and powerless were properly represented and that their rights were enforced.[4] Early on in the reform movement, many of the problems identified by needs studies did seem to be remediable by the NLF approach to poverty law. Efforts made by academics to heighten the awareness of a new generation of lawyers appeared to be successful. Law schools introduced courses in 'poverty law'. A new breed of lawyer emerging from law schools in the mid to late 60's had a social orientation different from that of their pre-60's counterparts. Law firms had to compete with NLF's for the best law graduates. Large law firms attracted these idealistic young graduates by establishing 'ghetto offices' and making *pro bono* service an integral part of their work (Snider, 1986:213; Handler, 1978:45-46).[5]

Community organization and law reform activity served to change the focus of legal aid litigation from the individual to disadvantaged groups. Law reform initiatives met with considerable success.[6] Studies of the unmet needs of the poor expanded the concept of legal needs from purely legal to socio-legal or politico-legal considerations, although suggested strategies to remedy these problems still focused on *legal* strategies implemented by *lawyers* (Garth, 1980).

Further studies, however, revealed the weaknesses of the remedies being applied. *Overcrowding* was one of the most frequently cited problems of NLF's. Legal aid lawyers were faced with a dilemma: Should they turn away people in order to establish a broader based service, or should they accept all individual cases to the detriment of other strategies? (Cahn and Cahn, 1966:928). This was a dilemma that was never resolved at the philosophical level. The sheer number of cases, however, led to its resolution at the practical level -- *individual case work* formed the bulk of NLF activity in almost all offices.

Although law reform activity had a few notable successes, it was argued that the victories of law reformers were more apparent than real. Large institutions and governments have the power and a multitude of ways to avoid decisions that are unfavourable to them (Galanter, 1974; Brill, 1970). Results of test cases had to be constantly monitored, and NLF's did not have the resources to do so (Capowski, 1976). Moreover, it was soon apparent that legal aid victories generated political opposition.[7]

The concept of citizen participation fared no better. Although serious attempts were made to implement this concept in the American LSP programs, it had become clear by the early 70's that it was unworkable (Pye and Cochran, 1969; Champagne, 1970). When lawyers were willing to encourage such participation, it was difficult to find individuals in the 'poverty community' willing to participate. Even when this difficulty was overcome, participation often turned into a mere formality. Decision-making was still dominated by lawyers. Even if clients do participate on boards, "they tend to be outnumbered and, in any case, dominated by other board members, who are more articulate, better educated, of higher status, and often legal professionals" (Abel, 1976:523).

Perhaps one of the most notable failures of the NLF movement was its inability to overcome the conservative orientation of the majority of the Bar.[8] Several studies demonstrated that, no matter what the programmatic scope offered by the NLF movement, without broad-based support from lawyers these programs would fail. In the United States, it was discovered that it was the ideological make-up of local NLF boards, composed primarily of lawyers, that determined the content of legal services programs (Fineman, 1971:1071). This ideological orientation resulted in a generally conservative interpretation of LSP guidelines that focused on reactive provision of primarily traditional services. Although, as Sullivan has commented, the LSP established under OEO may have been successful in stimulating an approach to legal aid more proactive than that of traditional legal aid programs, and although some programs undertook successful law reform initiatives, most offices continued to function in more conventional ways (Sullivan, 1971;6).

The limitations that the ideological orientation of lawyers put on legal aid practice are seen as inherent in the *organization* of the legal profession:

> The more that lawyers view themselves exclusively as courtroom advocates, the less their willingness to undertake new tasks and form enduring alliances with clients and operate in forums other than courts, the less likely they are to serve as agents of redistributive change (Galanter, 1974:153).

By the late 70's, those engaged in needs studies and program analysis were faced with the reality that measures that had seemed so promising at the start had not succeeded in alleviating the plight of the poor. Reasons for this failure were located in the nature of the programs, the weakness of the poor as an interest group, or the conservative nature of lawyers.

2. Comparative Studies

Comparative studies move one step closer to possible explanation of the phenomenon of legal aid reform. These studies give a useful historical overview of legal aid development in several countries. They identify many analytically useful similarities and differences in the formation and implementation of legal aid reforms and offer several explanations for both similarities and differences (Capelletti and Garth, 1978; Brantingham and Brantingham, 1985; Hoehne, 1985). Comparative studies adopt the general tenets of pluralism as identified in the needs studies, and add to these a generally 'Whiggish' interpretation of history: things get better as time goes on.[9]

The primary task of comparative legal studies is to determine the relationships among national legal developments and broader social developments. This approach is especially useful in the study of policy in Western democracies, for they have in common two goals that are not always compatible: economic growth and improvement of the living conditions of the impoverished (Garth, 1982:183). One result of this incompatibility is that while rights have greatly increased in the welfare state, these rights have been only partially enforced. The question this poses to governments is whether or not to expend the funds necessary to implement rights fully and ensure that every citizen has access to justice.

Comparative studies identify and analyze the solutions to this problem adopted by various states, with particular emphasis on the results of their implementation. Analysis of successful or common policies or trends may yield some insight into future developments in a number of societies. Once such a development is identified, it is possible to measure the degree of its progress or delay in any one state (Capelletti and Garth, 1978:viii).

In looking at comparative studies, we shall be considering not only works that offer a comparative analysis of legal aid development as their principal focus (Zander, 1978; Cappelletti, Gordley, et al, 1975; Cappelletti and Garth, 1978; Blankenberg, 1980; Brantingham and Brantingham, 1985), but also studies of individual legal aid programs that make comparative statements (Hoehne, 1985; Larsen, 1981; Pollock, 1975).

The identified prerequisites for the growth of traditional legal aid programs are the increasing complexity of modern life and the increasing demands placed on all services by rapid industrialization and urban growth. The prerequisites for the development of the NLF style of legal aid program have been identified in the comparative literature as the development of the welfare state and the change in legal culture that accompanies this development. Given this common base, comparative studies of legal aid development identify the evolution of models of legal aid delivery as the most pronounced trend in legal aid development in Western Europe and North America.

This trend first appears with the traditional *judicare model* of legal aid. It continues with the development of a *social change* model of legal aid, and culminates in the merging of these two models into a 'mixed model' of legal aid delivery which, it is argued, represents the optimum solution to the problems of legal aid delivery to the poor (see Table 3:2 below). Some of the comparative literature notes the potential of legal aid reform as a social control mechanism, but this is not a major focus of analysis. In this literature, the main impetus behind legal aid reform is found in the discovery of poverty and the social ferment of the period, although a great deal of emphasis is also put on the effect of the growing demand for *pro bono* services.

TABLE 3:2

MODELS OF LEGAL AID DELIVERY

	TRADITIONAL	TRADITIONAL/POVERTY LAW	SOCIAL CHANGE
MAJOR ISSUE	Access to formal justice.	Access to formal and substantive justice.	Social change; access to substantive law.
BARRIERS	Lack of financial resources to retain a lawyer.	Lack of financial resources and knowledge of legal rights; reluctance to contact lawyers.	Unjust laws and the powerlessness of the poor as an interest group.
OVERCOMING BARRIERS	Provide access to the poor through subsidized legal aid services.	Provision of subsidized services; community legal education and activities to heighten the visibility of the office and thus increase access.	Community and group organization around political and legal issues.
PROBLEMS COVERED	Individual Cases: clients sought out services for problems they could identify as legal problems. They were limited to traditional matters such as family, divorce, and criminal offences. Purely legal activities - advice and representation - no advertising of services other than through the legal aid administrative body.	Priority given to individual cases, purely 'legal' activities, but expanded to include test cases and law reform activity and to meet the heretofore 'unmet' needs of the poverty community in such matters as welfare rights, landlord-tenant matters, workers compensation claims, consumer law, etc.	Problems common to a community, group, or class.
DELIVERY	Delivered by private practitioners from their own offices. Reactive.	Delivered by legal aid staff lawyers out of highly visible open door agencies located in poverty areas. Re/Proactive.	Delivered by staff attorneys, para-professionals, and community organizers. Proactive.
ADMINISTRATION AND CONTROL	Administered by the legal profession.	Legal profession or a surrogate body dominated by professionals. Lay participation encouraged.	Lay participation/control. Community members set policy and priority.
OBJECTIVES	Expanded availability of routine legal services to individual poor clients (equal access).	To ensure that the poor have access to legal representation for an expanded set of essentially legal problems. To make "Welfare Rights' effective.	Increase the voice of the poor as an interest group; to bring about legal and social change; to enhance equality and the democratic process.
PHILOSOPHY	Laws are adequate to achieve formal justice, it is inequalities in access that need to be remedied.	Equality before the law and equal access - there are gaps and deficiencies in social welfare legislation that need to be remedied - rights go by default for want of legal advice and assistance.	There is a vast potential to enforce social rights or 'unmet' legal needs. The decision as to which needs to enforce is as much a political one as a legal one and cannot be made without community participation.

The similar nature of legal aid programs across national boundaries is explained by the concepts of imitation and diffusion, while the divergences are accounted for primarily in terms of differences in legal culture. The rationale for state action in first encouraging the development of legal aid in the 60's and early 70's, and then actively inhibiting such growth in the mid to late 70's, is not subjected to any detailed analysis in the comparative literature. It is argued that state action is affected by varying degrees of acceptance of the philosophy of the welfare state and by differing interpretations of what is entailed in making welfare rights accessible, but there is no analysis of what underlies this differing acceptance.

The development of the welfare state is cited as one of the major prerequisites of the evolution of the NLF model of legal aid delivery.[10] The aspect of welfare states that has most affected the development of NLF's is the commitment "to ameliorate some of the hardships and inequalities generated by the operation of their economic system" (Garth, 1980:4). Social reform in the welfare state is advanced by government action.

With the development of the welfare state has come a concomitant change in the legal culture: strict observance of form has in part given way to concern with the purpose of laws and a greater interest in justice in its procedural and substantive aspects (Unger, 1976:19).[11] These changes helped shift the focus of legal aid policy from a 'traditional' to a 'social welfare' orientation, from a reactive to a proactive stance. Accordingly, NLF's became vehicles for reform (Gough, 1982:3).

In accordance with this perception of a shift in legal culture from formalism to instrumentalism, the first model is described as the traditional legal aid model. Although this approach is primarily based on the English judicare program of legal aid delivery, it is equally applicable to American *pro bono* legal aid offices.[12] Whatever the method of delivery or funding, the primary distinguishing features of traditional legal aid are its reactive stance and the limited extent of coverage.

In the traditional model, the initiative in seeking help lies with the client. Individual clients seek out the assistance of lawyers for problems that they can readily identify as legal in nature. Lawyers in turn deal only with problems traditionally held to be within the legal realm, such as divorce, family law, and criminal law. Traditional legal aid is usually administered and controlled directly by the legal profession.

The primary intent of legal aid reform up to the mid-60's was to ensure that the legal system was representative of all individuals. When poverty became an issue in the 60's and 70's, the philosophy of civil legal aid reform quickly went beyond the issue of formal justice into the area of substantive justice. The latter is grounded in the concept that there is no equality before the law because the system is biased against the underprivileged. There must be reform to combat laws which maintain this bias (Snider, 1986:212).

The model of legal aid that centred on the concept of substantive justice was a social change model of legal aid delivery. According to this model, staff

attorneys operating out of publicly funded NLF offices were to engage almost exclusively in such proactive activities as law reform, community organization, and lobbying.[13] Problems or grievances in the area of poverty law would be undertaken only if they were shared by a large number of individuals (Bellows, 1968). This activity was to be undertaken in consultation with, or at the behest of, the individuals, groups or communities affected. The primary underlying belief of this type of system is the need for social change. It is argued, however, that work for social change is a political and a legal activity, and should only be carried out with community participation.

The concept of citizen participation was central to this model. The fundamental argument was that in order for democracy and pluralism to thrive, lay people must be actively involved "in formulating and implementing policies that influence their lives" (Stephens, 1985:80). Proactive legal aid centres were to devote much of their energies to the development of a more competent citizenry as one way of increasing the means of representation of the poor:

> The development of a more competent citizenry and the opportunities to exercise both the skills and rights of citizenship depend, in part, on a different kind of professionalism, one that stresses "outreach" tactics and a more participatory role for the client. This can be found in proactive law centers, which seek to provide clients with the knowledge and resources they require to participate in local policy issues, to criticize existing policies, and to propose alternatives (Stephens, 1985:81).

This proactive model did not become entrenched as a model of delivery in either England or North America. Several explanations for its failure to take root have been advanced. The difficulties encountered in securing community

participation have already been discussed, as have the difficulties encountered by law reform activists. Needs studies emphasize that, in order for law reform to work, group and community organization had to be undertaken, but this did not prove practicable. Some authors argue that it was unworkable because it was too *political* and not sufficiently "lawyerly" (Penner, 1977; Garth, 1980, Stephens, 1985).[14] Others argue that it attracted strong political opposition. Still others argue that it was simply overwhelmed by the demand for individual case work (Bellow, 1968; Stephens, 1985).

It is argued in the comparative literature that the lack of success of this 'politically' oriented social change model and dissatisfaction with the limited coverage of the traditional model led to the emergence of a third -- a *mixed model*, which combined a proactive delivery of *poverty law* with a reactive delivery of the more traditional matters such as criminal and family law. In this system, individual poverty law cases were to be handled by staff lawyers in storefront offices located in poverty areas. These offices were to maintain a high profile in the area through community education and broadcasting of rights. Group organization and representation were seen as a viable strategy. The political element was, however, dropped. This strategy has been articulated best by the Newham Rights Centre in England: "...it is usually outside the proper scope of the Law Centre's work to assist in the organisation of groups whose activities have no bearing on the solution of problems that can be seen as legal or susceptible to the intervention of lawyers" (Newham Rights Centre, 1975:47).

Thus, the role of NLF's in the war on poverty was downgraded from working for social change through political activity to enforcing existing rights more effectively. The limitations of NLF's in 'wars on poverty' and battling against other inequalities were recognized. It is here that traditional legal aid reemerges as a viable tool, albeit with only a supporting role to play, in the effort to make rights effective. Traditional legal aid takes care of the individual rights of clients (divorce and criminal work), while NLF's are left free to organize and work for group rights (Garth, 1980; Zander, 1980, Cappelletti, Gordley and Johnson, 1975).

This 'mixed' model of legal aid delivery evolved in the late 70's and early 80's and has been depicted as the optimum in legal aid delivery (Zander, 1978; Cappelletti, Gordley and Johnson, 1975; Penner, 1977).[15] In 1978 Zander predicted the future course of legal aid development:

> In countries such as England where legal aid has been channelled via private practitioners, the chief structural expansion in the next decade or two will be in the building-up of the public sector to complement the role of the private profession. In countries such as the United States, where legal aid is currently being dispensed mainly through salaried Legal Service Corporation lawyers and salaried Public Defender Offices, the development may be rather in the opposite direction of enabling private practitioners to play more of a role in the provision of state-funded services (Zander, 1978:336).

Another common trend described in the comparative literature is the potential of legal aid as a mechanism of social control. Garth noted the tendency of all models of legal aid representation to serve social control functions. NLF's in general may do so by drawing the poor and the persecuted into the system; and

if at least some rights are seen to be enforced on some occasions, it is possible to argue that the system is working and people need neither protest too much nor enter into collective action, whether or not their situation actually improves (Garth, 1980:xvii). Garth sees this as a risk inherent in the NLF movement. NLF's may succeed only in securing reforms that legitimate the existing system (Garth, 1980:172). Almost all activities of NLF's have socially integrative functions that work against substantive change. Community participation, bitterly opposed by 'traditional' lawyers, has been observed to have a perverse social control function: when the poor do participate, they may actually take a conservative stance and undermine attempts at reform (Carlin, 1973:197-98). Group organization also has its social control aspect. The very act of organizing such groups as pensioners, the unemployed and ethnic minorities implies discipline of members and their integration into the system (Garth, 1980:192).[16]

Johnson noted that legal aid can serve the useful function of neutralizing social demands. He sees this as the "political paradox" of legal aid:

> Welfare legislation is meant to be the answer to social problems. The existence of a large unmet legal need implies that many problems have only been transferred from the political to the legal arena without concrete improvement for the individuals concerned. The major effect is a political neutralization of social demands. When the problems cease to be political issues, the client's chances of gathering support and sympathy from the public also diminish. The problem becomes a private one of enforcing individual rights. (Johnson, 1980:26).

The comparative literature on legal aid reform has very little to say about the origins of such reform. As a general phenomenon, the "legal aid movement" has been explained in terms of the "wave theory", according to which, successive legal aid movements reflect changes in concepts of human rights (Cappelletti, Gordley and Johnson, 1975; Cappelletti and Garth, 1978; Zander, 1978; Abel, 1985; Blankenburg, 1980). The waves represent a growing pattern of "struggle towards the realization of the principle that the State must affirmatively and effectively guarantee the right of all to competent legal assistance" (Cappelletti and Gordley; 1975). Three major waves are perceived by Blankenburg:

> The first wave consisting of an attempt to provide *legal aid* to lower classes and minority groups who have so far been barred from access to the legal system. The second wave, of (predominantly American) lawyers campaigning for *public interest issues* of a much wider social spectrum. The third wave of looking for *alternative forms of law* in order to avoid some of the dysfunctions of legalization that have been increased by the legal aid movement as well as the public interest law campaigns (Blankenburg, 1980:2).[17]

Other than a general orientation towards a 'Whig' interpretation of history, or, as Earl Johnson puts it, "first sympathy and ultimately reason propelled nation after nation to create a system of legal representation for impoverished litigants" (Johnson, 1975:135), there is little explanation of these waves.

Another factor in the expansion of legal aid reform movements that has been identified in the literature is the effect of the growing public demand for *pro bono* services. This is cited as one of the main reasons the English Law Society and Bar came to support publicly funded legal aid (Abel-Smith, 1967:164). Some

sources comment that it was this demand that led to the establishment in Ontario of the first legal aid program (Hoehne, 1985:45); and Larsen identifies it as one of the prime mobilizing forces among lawyers in Manitoba (Larsen, 1977:164). This increasing demand for *pro bono* services has been explained in the general literature on the welfare state as a product of growing industrialization and urbanization. The increasing complexity of urbanized society creates a heavy demand for expenditure on welfare services in general, simply because "the urban economy generates many more individuals who do not have personal sources of support other than the rural economy" (Drover and Gartner, 1980:66). In the legal aid literature, it is argued that urbanization and industrialization increase the legal complexities of life and thus increase the demand for legal solutions to problems (Paterson, 1970:10).[18]

In commenting on the differences of timing in the introduction of traditional legal aid programs, Hoehne also notes that urbanization occurred at a later date in Canada than in the United States. Canada did not experience rapid urbanization until after the Second World War:

> ...the poor across the country were not concentrated in distinct areas. Thus it took much longer to recognize the legal problems of the poor as collective problems which could be addressed by law reform and a focus on specific civil legal aid aspects (Hoehne, 1985:24).

Immigration has also been identified as a factor that may precipitate increased demand for legal aid (Hoehne, 1985:24). In commenting on the position of Canada as a laggard in the implementation of traditional legal aid services, Hoehne notes that the first legal aid organizations in the United States were organized

to serve the needs of an expanding immigrant population. In Canada, however, immigrants were not plunged at once into the complexities of urban life and thus stood in less need of legal protection (Hoehne, 1985:24).[19]

The timing of social welfare-oriented legal aid reform movements is accounted for by the convergence of conditions calling for change (Blankenburg, 1980:3). Such conditions included the discovery of poverty in many Western democracies and the general social ferment of the period (Penner, 1977, Larsen, 1981, Garth, 1980). These developments had a profound effect on many young lawyers, who took up the causes of community participation and the War on Poverty. Socially aware members of the profession became sensitive to the fact that the impoverished had a gamut of rights in the welfare state, and that these rights could only be enforced with legal assistance (Garth, 1980:131; Cahn and Cahn, 1964; Wexler, 1970).

In commenting on the spread of legal aid concepts and the similarities among programs across national boundaries, numerous authors emphasize the importance of 'imitation' (Blankenburg, 1980: Garth, 1980: Capelletti, Gordley and Johnson, 1975: Penner 1977; Larsen, 1981). Canadian civil legal aid developments were, according to these studies, particularly affected by imitation. As Penner has pointed out legal aid developments in Canada were heavily influenced first by the development of Judicare in England, with its notable impact on legal aid in Ontario, and then by developments in the United States, the social change NLF model of which profoundly affected the Canadian Community Law Offices movement. The acceptance of the English Judicare model in Ontario was to have a profound influence on the further development of legal aid in Canada.

Imitation also had its effect in England. Several commentators have identified the American NLF movement as the major force behind the establishment of NLF-oriented Law Centres in England (Zander, Partington, 1974; Jackson, 1977). Garth notes:

> It may be significant that the NLF movement began in English language countries, spread to Holland, where English language materials are accessible to the educated public, and then moved through the Flemish part of Belgium, the French speaking part of Belgium, and most recently to France (Garth, 1980:XXI).

Just as imitation is the major explanation advanced for the similarities of programs developed to deal with the legal aspects of social and economic change, disparity in legal culture is the explanation most often used to account for differences among national legal aid programs. Blankenburg comments that the law reform movement "took different forms in different countries according to the specific national legal cultures" (1980:2). Garth cites *group organization* and *law reform strategies* as examples of the effect of legal culture. The legal culture of the United States, with its written constitution and practice of judicial review, led to law reform as the major social change strategy[20], while in England NLF's (Law Centres) opted for the community education, group organization strategy.[21]

Hoehne has combined these two explanations in what he identifies as the "diffusion effect". He argues that diffusion, based not only on geographic contiguity or socio-economic parallels but also on "shared political tradition",

helps to explain the earlier preference in Canada for the English Judicare model over the American NLF model. Contiguity in this case could not overcome the fact that England and Canada shared a political and legal tradition, and thus English models have always been accepted much more readily than their American counterparts (Hoehne, 1985:157-58).[22]

Although comparative studies go to some lengths to explain similarities and differences among legal aid programs, little energy is expended on explaining why state governments would either support or oppose the growth of such programs, or on accounting for alternations between support and opposition. In an attempt to account for the support of such programs, Garth notes that the general orientation of the NLF model for legal service delivery was one that socially progressive governments and organizations would find appealing, for it required neither great financial expenditure nor major shifts in political power. Rather, it was grounded in the concept of reform as 'social engineering', an approach equally attractive to socially aware professionals, welfare state governments, and charitable foundations (Garth, 1980:22).

Garth also notes, however, that there is a spectrum of degree of acceptance of these programs, with liberal and socialist governments generally being more favourably disposed (Garth, 1980:4). Even conservative governments, it is argued, do not challenge the program's overall tenet of making welfare state rights effective, although they may pursue that tenet with considerably less enthusiasm (Garth, 1980:viii).

The political opposition that the NLF model encountered is seen as a consequence of the nature of the model. The welfare rights model of legal aid, which has as its objective furthering the interests of the poor as a class, is hampered by this very objective. It necessarily relies on government support for activities of an inevitably political nature, activities which are often directed against the government on which it depends. This reliance presupposes that society will accept that any legal device to help the poor is desirable, even if it requires challenging the actions of government and of dominant groups (Cappelletti, Gordley and Johnson, 1975: 109). This assumption is questionable. As Cappelletti and Garth point out, in the 60's the United States government seemed to have committed itself to "eradicate poverty". American legal aid attorneys, however, "have been under continual political attack" (1978:29).

Stephens comments that any approach that urges citizens to assert their rights will inevitably result in conflict with government because of differing interpretations of rights. He emphasizes that, because this conflict frequently involves symbols of justice held sacred, the State cannot risk responding in an authoritarian manner. Thus it may finance a variety of programs, such as legal aid schemes, Ombudsman offices, and administrative tribunals, to ensure some degree of access to the legal system. It is unlikely, however, to support programs that might challenge the political *status quo* and undermine public confidence in the efficiency of existing legal channels. If the State sees proactive law centres in this light, it is likely to withhold funding, or to police and contain them (Stephens, 1985:92).

The comparative literature also notes, but does not account for, the separate development of criminal and civil legal aid in almost all jurisdictions except for Canada (Brantingham and Brantingham, 1985).[23] It is also noted that criminal legal aid does not evolve in the same manner as civil legal aid; that is, from concern with access to formal justice to concern with enforcement of rights and assurance of substantive justice.

Arguments for the development and expansion of criminal legal aid remain firmly entrenched in the concern with access and the ideological importance of due process and equality before the law. Given that individuals accused of a crime finds themselves in opposition to the State, it is the responsibility of society as a whole to ensure that they receive a fair trial and just punishment (Nellingan, 1951:606). The primary intent of criminal legal aid reform was to ensure that the legal system was representative of all individuals. Although less emphasis was placed on the poverty issue in criminal legal aid, that problem did have its impact, most clearly in the area of formal justice:

> Since poverty has a prejudiced effect on the poor in criminal law, there is no criminal justice for the poor. In three areas of criminal law; bail, legal aid, and fines, the goals ought to be...to render the poverty of the litigant an irrelevancy (Cotler and Marx, 1977:112).

3. Interest Group Theory

Interest group theory gives the most complete explanatory model for legal aid development at the micro level.[24] The interest group model is also based on a pluralist interpretation of the State. In this view, the most salient factors

in reform are the effect of and interactions among interest groups. The most plausible explanation of the success of interest groups is their relative strength in the bargaining process. Analysis of legal aid from this perspective tends to focus on the strengths of various interest groups vying for political acceptance of one or other of the competing legal aid ideologies (Hoehne, 1985).

Analysis of the influence of interest groups on policy formation and reform movements has an extensive theoretical base in the broader literature (Pross, 1975; Dawson, 1975; Kwavnick, 1972; Constain and Constain, 1981). Their influence on the legal aid reform movement and the implementation of legal aid policies is also discussed frequently in the legal aid literature (Cooper, 1981; Zander, 1978; Johnson, 1978; Garth, 1980).

The most elaborate application of interest group theory to legal aid policy was undertaken in a 1985 doctoral dissertation by Dieter Hoehne. Hoehne adopts an interest group theoretical trajectory as one possible explanation of legal aid reform in Nova Scotia during the period 1968-1977. He places interest group theory within the context of the overall normative base of democratic pluralism, in which the decision-making process is portrayed as a system which distributes power among overlapping groups. Within this context, interest group theory "focuses on the ways in which interest groups make their voices heard, on the mechanism of group interaction and on the adjustment procedure" (Hoehne, 1985:367-368). Reform initiatives are translated into public policy through a bargaining process, the outcome of which is determined by the strength of participating groups.

Hoehne adopts Pross's concept of 'policy community' as an organizing principle of interest group interaction. Policy community is a concept that uses policy substance as the criterion by which to identify the actors in a particular issue and determine their relative positions towards one another. The policy community is divided into *sub-government* and *attentive public*. As Pross points out, 'sub-government' is an American term which refers to the responsible executive agency, the congressional committee which oversees its activity, and the most influential pressure groups concerned with the policy area. This term does not translate easily into the Canadian context. As Hoehne argues, however, when taken in conjunction with Pross's definition of 'attentive public' -- "those who are interested in policy issues but do not participate in policy making on a frequent, regular basis" -- the application of the concept to legal aid policy-making in Canada would allow inclusion of Provincial law societies as part of the sub-government (Pross, 1981:303). Interest groups identified as part of the sub-government are considered to be more influential than those which are identified as part of the attentive public. Members of the policy community continuously shift their positions relative to one another:

> ...governments and key personnel change, provincial government participation varies, or changing economic factors compel provincial agencies to retreat or advance into the sub-government....Similarly, pressure groups come and go from the centre (Pross, 1981:237-238).

The policy community that Hoehne identifies in relation to Nova Scotian legal aid includes, at the sub-government level, various departments of the provincial and federal governments, the Nova Scotia Barristers' Society, and several social service agencies. At the level of the attentive public, the policy community

includes citizens' groups, the potential client, welfare rights groups, churches, and the press.

Although interest group theory focuses almost exclusively on the human agency factor in policy formation, Hoehne incorporates into his analysis a consideration of the impact of several factors that have been found, in recent analyses, to influence the interaction between government agencies and interest groups in the reform process. These include the socio-economic and ideological contexts in which interest groups function (Pross, 1980:88-89)[25], the organizational structure of interest groups (Dawson, 1975)[26], and the content of interest group demands (Kwavnick, 1972).[27] At the Federal level, Hoehne considers the effect of central government agencies in the shaping of policy content (Gilles and Pisott, 1982; Faulkner, 1982)[28] and the impact of interest group activity at the federal and provincial levels of policy formation (Simeon, 1972).[29]

The major part of Hoehne's analysis, however, is based on a study of the interaction of those interest groups identified as part of the legal aid policy community. These various elements of the policy community have also been identified in the broader legal aid literature as playing a major role in the formulation and implementation of legal aid policy.

In Hoehne's policy community, lawyers and their associations are identified as the most powerful interest group. According to Hoehne, the dynamics shaping legal aid policy in Nova Scotia resulted from contacts between government and the profession. This assessment is based on their position as a sub-

governmental interest group within the legal aid policy community and on their organizational structure. The Bar has additional characteristics which enhance its efficacy as an interest group. Most obviously, the status, education and income of its members give them a variety of privileges and advantages, the more so as lawyers are frequently to be found within political institutions and thus in a position to influence relations between government and the Bar (Presthus, 1974:84; Porter, 1965:391). Though less than 1% of the population, lawyers comprised 41% of new MPs elected between 1945 and 1965 (Van Loon, Rick and Whittington, 1981:473), and Hoehne states that 10% of lawyers in Nova Scotia work for the provincial government, guaranteeing a sympathetic audience for suggestions from the Bar (Hoehne, 1985:375).

The legal aid literature that considers the influence of interest groups emphasizes the power of the Bar to gain control of, provide support for, and shape programs (Garth, 1980; Blankenburg, 1980; Johnson, 1978). It is especially significant in this regard to note that, although all other social reform-oriented programs implemented under the OEO have been disbanded, the LSP lives on (Garth, 1980:47). This is largely attributable to the lobbying power of the ABA (Francis, 1977; Scheindlin, 1974). Cooper comments that the support of the ABA enabled the radical planners in the OEO to give their LSP program an aura of respectability in spite of the vehement opposition of local government agencies and local lawyers (1981:76).

Blankenburg cites "the increase in the number of lawyers that all Western industrialized countries have experienced in the last two decades and the increasing social awareness of these lawyers" as one of the quantitative factors

that has made the legal profession receptive to change in the form of legal aid reform" (1980:1). It is frequently pointed out that lawyers have been moved by political ideals or philanthropic motives (Blankenburg, 1980:215); by the need for good publicity at times when the functioning of the legal profession was being criticized by academic researchers and jurists (Bellow, 1968; Blankenburg, 1980); or by the need to at least appear to uphold the 'rule of law' (Cappelletti and Gordley, 1976).[30] These motives are attributed, however, to a minority of the profession. It is argued that the 'real' reason why lawyers have become involved in the legal aid movement in such large numbers is financial gain (Zander, 1978:110-111; Garth, 1980:136-137).

The prospect of financial gain has, it is argued, been one of the prime reasons many lawyers give strong support to the judicare model of legal aid and oppose publicly funded offices:

> The power of the pocketbook is evident throughout the NLF story....If lawyers receive a certain part of their income from public funds...they are especially loathe to lose their legal aid clients to publicly-funded offices....It is thus not surprising that no existing judicare system has yet been *replaced* by a staff one; the result has been at most a combined model calculated to protect the private practitioner's legal aid practice (Garth, 1980:136).

The financial benefit to lawyers of other legal aid forms, such as duty counsel, has also been identified. Duty counsel systems have been cited as particularly useful in restructuring the job market, especially in that they broke the monopoly on criminal cases held by a few law firms (Smith and Thomas, 1977; Bankowski and Mungham, 1976). Duty counsel are particularly significant factors

in the market when there is a decrease in normal activities or an increase in the number of lawyers (Smith and Thomas, 1977; Widiss, 1977).

Lawyers did not, however, act as a monolithic group. In Nova Scotia, controversy over the form of legal aid policy developed among various factions of the Bar (Hoehne, 1985:204). Local bar associations and private lawyers in individual practices oppose legal aid reform because they are primarily concerned with the competition presented by legal aid, but the "elites of the profession are less concerned with competition and more concerned with image and legitimacy" (Garth, 1980:32). The legal profession as represented by its professional organization may be 'conservative', opposing innovation and competition from NLFs, and its interests may be linked closely to individuals and organizations that benefit from the status quo, but there is nonetheless evidence that the failure of the legal system to represent all the people, and its failure to make rights effective, "must be taken very seriously by the professional organization, especially those somewhat removed from the concerns of the average practitioner. Their prestige and legitimacy depend on people's perceptions of the legal system" (Garth, 1980:138).

Financial gain and public image are clearly vital factors in determining the degree of support or opposition given to legal aid reforms by individual lawyers or the Bar as a whole. However, by far the most important reason for the Bar to give support to reforms is the need to control such far-reaching innovations. Whenever government intervention seems pending, the rallying cry, "Independence of the Bar", goes up and the organized profession seeks to ensure that it is in control of any innovations that may have an impact upon it (Garth, 1980:137).

There is also unanimous agreement in the literature that national and local governments can play a decisive part in originating, formulating, and implementing legal aid programs (Cooper, 1980; Garth, 1980; Penner, 1977). The significance of the role of government has also been recognized in Canada. Commenting specifically on the introduction of the NLF model in Canada, several observers have noted that the Federal Government was the moving force behind what are called Community Law Offices (Brook, 1977:543; Cowie, 1975:5; Penner, 1977:148). The Federal Government's implementation of a cost-sharing arrangement for criminal legal aid greatly accelerated legal aid reform in the provinces (Cowie, 1975:5).

Similarly, the role of the NDP government in initiating the Community Law Office model on a province-wide basis in British Columbia and Manitoba has been recognized (Morris and Stern, 1976:75; Larsen, 1981:238). The role of the Nova Scotia Liberal Government in initiating the reform process has also been acknowledged, as has the role of the Conservative Government in initiating cutbacks in funding to the legal aid program in Manitoba (Larsen, 1981:262). Outside of Hoehne's analysis, however, little attention has been given to the actions of specific departments within governments and their impact on legal aid reform. Hoehne provides refreshing insight into this area of policy-making, concentrating on the competing claims of the federal departments of Health and Welfare, with its social reform orientation, and Justice, with its traditional orientation toward legal aid policy (see Chapter II).

Although the importance of organizing community groups and poverty rights groups is frequently mentioned in the literature, the actual impact of these groups on legal aid reform has been found to be minimal. The client community has rather wistfully been put forward as a group that should have some effect on legal aid reform (Hoehne, 1985; Cooper, 1981), but developments have shown otherwise. Hoehne attributes this specifically to the low significance that legal aid reform has for the poor. While they may well do battle for better housing and a better standard of living, they are often unaware of the legal dimension of these struggles (Hoehne, 1968:244).

The influence of individuals on legal aid is also an area that has been largely neglected in the literature. In referring to contributions to early developments in legal aid in the United States, Johnson comments that Smith and his immensely influential writings were almost solely responsible for the creation of the legal aid movement (Johnson, 1974:5). Hoehne comments that Smith's influences was also felt in Canada (Hoehne, 1985:159).[31] The impact on legal aid development of other individuals, such as the Cahns on the NLF movement, has also been noted. Johnson points out that the unique contribution of the Cahns was to advocate the concept of the neighbourhood law office, which would serve as a powerful voice through which a local poverty community could express its needs and concerns to the agencies responsible for distributing funds and economic opportunities to that community (Johnson, 1974:34).

Penner attributes much of the strength of the Community Law Office movement in Canada to the programs that had been carried into effect by the LSP of the OEO, to the writings of Jean and Edgar Cahn, and to the writings and active

participation of Stephen Wexler (see endnote 13). The American influence appeared to be especially strong in the area of community participation.

In the context of legal aid reform in Nova Scotia, Hoehne identifies Professor Lowry, an American with extensive NLF experience, as having a profound influence on legal aid in that province. Hoehne argues that if the Cox Committee (on legal aid) had not received Lowry's brief in favour of NLFs, the Committee would certainly have opted for either the Ontario or English judicare systems (Hoehne, 1985:224-225).[32] Putting this influence in analytical context, however, Hoehne argues that two factors determine the influence of individuals on legal aid reform in Canada and its provinces. The first factor is the stage reform activity or policy development has reached, for the nearer a policy is to actual legislation, the less significant are concerned individuals. The second factor is the level of government: individual actors have more impact at the provincial level than at the federal level (Hoehne, 1985:160).

Although Hoehne identifies the press as one of the key actors in the policy community, he does not identify the role the press played in legal aid reform in Nova Scotia. Two basic arguments have been advanced concerning the role of the media in a democratic society: the pluralist argument and the neo-Marxist argument. The pluralists view the media as an independent but influential element of the body politic, in effect sharing in the process of government. It meets the needs of citizens by "...presenting the information necessary for effective political participation and by providing a forum for debate on public issues" (Fletcher and Taras, 1984:195). The functions of the media consist in helping government broadcast information about public services and government

policies, while providing a platform for opposition parties to criticize government measures and propose alternative policies. Ideally, they furnish commentary on public affairs from a wide variety of perspectives, including those of unpopular minorities (Fletcher and Taras:194-195).

Neo-Marxists view the media as:

> ...an important part of an ideological system which effectively promotes the dominant ideology of society, providing a justification for the economic and political status quo, thus serving the interest of the rich and powerful (Fletcher and Taras:195).

The media establish the limits of debate and are thus able to effectively screen out radical critiques and reinforce existing values. The values of society are defined by the upper stratum, whence they filter down, in large part communicated by the media. Criticisms of the economic and political system presented in the media are reformist rather than radical. Neo-Marxists thus view the media as a means by which those in power can keep the populace in thrall to capitalism (Miliband, quoted in McQuail, 1977:89).

Analysts of the Canadian mass media tend to agree that "the effective range of public debate is limited" (Black, 1982:54). Ericson argues specifically that the media plays a major role in "controlling the public conversation, and in influencing ideology". Journalists and their sources "articulate the contours of 'the Knowledge society', reproducing the power/knowledge structures of bureaucratic life and thereby, the authoritative apparatus of society" (Ericson, 1989).

The media does set limits to debate and generally excludes from the discussion serious challenges to the *status quo* from either extreme -- left or right. In the 1960's and 70's even the views of the NDP were considered too radical for most newspapers, and editorials favourable to the NDP were few and far between (Fletcher and Taras, 1984:205).

There is general agreement that the media reinforces the *status quo*. What is rejected, however, is the 'conspiracy' explanation of this phenomenon:

> Conspiracy theories which attribute vast malevolent influences to the media through subliminal advertising and deliberate slanting of the news have had to give way to those which view the process as a form of social interaction. Media priorities emerge from the organization needs of the media and from their interaction with political parties, interest groups, advertisers, boards of directors, government regulators and so on. The political bias which excludes radical criticisms of the status quo is more a function of the perceived limits of public tolerance than of the preferences of corporate owners (Ibid:216-217).

What is true of the media in general is true of the Canadian press in particular. In *The Press and the Poor*, a National Council of Welfare study, suggests that the media tend to maintain rather than alter contemporary attitudes toward poverty: "...the press reflects the view of those with power; the views of the powerful shape those of the general community; the press mirrors the attitude of the community" (40-41). When looking at the press as part of the attentive public, we shall analyze it in terms of what it tells us about the attitude of the community towards legal aid policy.

Although interest group analysis focuses on the role of group interaction in the success or failure of legal aid reform, there is some recognition in the literature that, no matter what the strengths of any given interest group, reform movements and policy initiatives can fail for reasons outside the control of interest groups. Three of the major constraints identified are the ideologies of particular political parties, the conservative impact of increasing bureaucratization, and economic exigencies.

Larsen comments that the increasing bureaucratization of legal aid in Manitoba might have been one of the reasons for its loss of reforming zeal. The demise of the "community participation" component of Legal Aid Manitoba is, however, directly attributable to a change in government. Of several new directors appointed five months after the Conservatives took office in 1977, none were lay members chosen from the Citizen Advisory Committees of the three Neighbourhood Law Centres in Winnipeg (Larsen, 1981:287). The amount of legal aid available depends to a very real extent on economic exigencies (Cappelletti and Garth, 1978:10-15). There will, it is assumed, always be a greater demand for legal aid than there will be money to provide for it (Zander, 1980:90).

a. The Pluralist Base of Reform Analysis

Needs analyses, comparative studies and interest group theory all provide valuable insight into the development of legal aid movements. Taken together, they clearly delineate the role of human agency -- comprising individuals, government bureaucracies, and interest groups -- in initiating reform and how these agents interact in the reform process. These studies identify the broader

context within which legal aid developments take place, chiefly in terms of political unrest, social alienation, and economic shifts. Of particular value is their identification of welfare state ideology and changes in legal culture as the specific prerequisites for the growth of the NLF model of legal service delivery. Finally, this literature offers possible explanations for similarities among legal aid plans by identifying instances of imitation of another society's model or of diffusion among states with shared legal traditions, and for differences in terms of variations in legal culture.

There are, however, several questions which these studies do not consider. They do not account for instances in which reform is initiated by the State, as in England in 1949,[33] at the Federal level in the United States in 1965,[34] and at the Federal level in Canada in 1970.[35] Nor do they explain why certain developments emerge simultaneously in different societies or, indeed, why those developments should take place at a particular time in a particular society. There would appear to be much more at work here than imitation or diffusion: the decision to act at all has to be made and the rationale for that decision explained. Yet the literature cannot account for England's adoption of Judicare in 1949, the American concentration on NLF's in 1965, or the diverse preferences of Canadian provinces. They note, but do not account for, the drift of all models towards a 'mixed model' approach.

Although these studies identify important agents in legal aid reform -- government departments, individuals, interest groups -- and the broader context within which these agents interact, their explanations are incomplete. They fail to grasp the complexity of interaction among human agents (whether for or

against reform), the State, and the various ideological factors -- particularly economic and political creeds -- that influence the State's attitude towards the policies of reformers. As a result of that failure, theorists cannot establish why a government will or will not react to the views of reformers, nor why they favour one interest group over another at any given time (Scull, 1984; Gordon, 1989).

Scholars who consider legal aid developments from the above perspectives have been attacked for their underlying pluralist assumptions about the functioning of the State, society, and the political process. Specifically rejected by most pluralists is the argument put forward by Piven and Cloward that "whatever influence lower-class groups occasionally have on American politics does not result from organization, but from mass protest and disruptive consequences of protest" (Piven and Cloward, 1977:37).

It is undoubtedly true that the predominant theoretical interpretation of the State from 1945[36] to the mid-1970's was pluralist democratic. According to Balbus, pluralism owed its elevation to the status of academic orthodoxy in that period, to its claim to have 'refuted' Marx (Balbus, 1971:36). This view of the State received its most extensive elaboration in the United States, but, Miliband argues it came in one form or another to "dominate political science, and political sociology and for that matter political life itself in all other advanced capitalist countries" (Miliband, 1969:3).

Pluralist democratic theory posits that the State is rooted in popular consent and represents the general will (Hall and Scranton, 1981:472). It is not

claimed that all individuals have equal access to political power. One of the major advocates of this theory concedes that "blue collar workers are almost totally excluded from decision making groups" (Dahl, 1961:23). It is argued, however, that what wage earners lack as individuals they more than make up for as a group: "An absence of wealth can be overcome by the exercise of skill in mobilizing other political resources and by entering coalitions to broaden support" (Hall and Scranton, 1981:134).

Another version of this model admits that there is potential for rule by elites, especially if apathy allows the accumulation of power in the hands of a small number of groups. But even then, it is argued, such a concentration would not be tantamount to a ruling class:

> ...in particular, business interests do not hold sway over all important political issues. *Competing* elites, but not a single elite, may be accepted as the dominant influence on the process of government (Hall *et al*, 1975:133-134. Emphasis in original).

In general, the model of competing elites comes closest to the Canadian view of pluralism, and this is certainly not the simple liberal view of pluralism as full and equal opportunity to participate in the decision-making process, a view which in fact has very few proponents (Forcese, 1983:293).

The existence, interconnection and influence of elite groups in Canada has been well demonstrated (Porter, 1965; Clement, 1975, 1977; Olson, 1980; Presthus, 1973; Newman, 1977). What remains in question is the existence of a 'ruling class'. Van Loon and Whittington take the view that there are *multiple*

competing elites (Van Loon and Whittington, 1981:448-500). They admit the potential for a ruling class, but maintain that "the great complexity of the decision making process in Canada ensures that control by any one small group is extremely difficult" (Van Loon and Whittington, 1981:66).

This leads into an area of uncertainty, if not actual confusion. Ossenberg, an advocate of pluralism, admits that the poor are left out of the process; ethnic minorities, other than the French, tend to be excluded; native peoples are unrepresented; and women grossly under-represented. But in 1971 he was still optimistic enough to maintain that competing elites ensure the possibility that all interest groups will be represented and that social mobility enables the unrepresented to gain entry into elite groups (Ossenberg, 1971).

Porter deems open recruitment into elites as essential to the functioning of pluralism (Porter, 1965:558), and Van Loon and Whittington argue that 'open recruitment' need be only limited in order to maintain a formally pluralist system (Van Loon and Whittington, 1981:483).

> Given that the decision makers are primarily middle and upper class in origin and that most inputs from the environment are channelled through middle-class organizations it seems probable that the voice of lower-class citizens is, at best, muffled (Van Loon and Whittington, 1981:66).

The influence of the upper and middle classes on decision-making is buttressed by the fact that decision makers are reluctant to alienate or jeopardize the interests of the upper and middle classes (Van Loon and Whittington, 1981:66). Although democracy may be undermined by this lack of access to the ranks of the

elite, consolation is found in the conclusion that the problem lies not in the structure of the State, but in the structure of the system of higher education. Law schools, for example:

> ...are too exclusively the preserves of the 'well born'. The solution to elite dominance in the Canadian system may therefore be to democratize the educational system so that more of the children of working class Canadians can acquire the qualifications that open the doors to careers in politics, the bureaucracy and the judicial system (Van Loon and Whittington, 1981:483).

The pluralist view of society is firmly entrenched in Canadian political culture. Even its most ardent advocates concede, however, that it is an hierarchical elitist form of pluralism, and it remains in doubt to what extent the under-represented and underprivileged can gain entry to elite groups. .

This brings into question the pluralist assumption that both government and law are neutral arbiters of interests. "Where society is crosscut by competitive interests, only the state and the law can claim to speak in the name of the 'general interest'" (Hall and Scranton, 1981:472). In the most generalized view of pluralism, law is depicted as based on consensus. The legal and political systems are neutral arbiters of interests, insulated from the direct influence of economic elites by the nature of competing interest groups: "conflicts and disputes must be settled within the framework of legal procedure" (Hall and Scranton, 1981:490). In theory, the law applies universally to all classes and to the State itself; it guarantees the rights and liberties of the citizen and "stands as a legal barrier against the exercise of arbitrary state power. It entails 'due process', a body of formal protocols which must be observed in the

administration of justice and the adjudication of civil disputes" (Hall and Scranton, 1981:490).

In this view, reforms may be implemented in order to mitigate conflict. They are initiated by various interest groups[37] and implemented by government acting as a neutral arbiter of these interests. In the more elitist model of pluralism, reforms may be anticipated by one or more of the elites and initiated from above.

Most analysis of legal aid development and reform has taken place under the pluralist rubric. Legal aid has developed within a theoretical orientation that, various qualifiers and degrees of scepticism notwithstanding, views both the State and the legal system as neutral arbiters of competing interests groups. Two considerations vital to the development of legal aid issue from this perspective. First, reforms will be brought about if sufficient pressure is exerted. Second, inequalities in access to the legal system work against the democratic ideal and must be eliminated (Snider, 1986:173). Analysis of legal aid policy in this light tends to focus upon the strengths of various interest groups vying for political attention; upon their success in gaining acceptance of the legal aid model they wish to promote; and upon the efficacy of such models in achieving reform of the legal system and access to it.

The pluralist theoretical orientation has not been without its critics. It has been pointed out that the groups which form the base of pluralist democracy usually become oligarchic and internally undemocratic. Moreover, the process of bargaining among groups tends to become one of elite accommodation by which

the leaders of the groups serve their mutual interests more than they serve the interests of the group they are supposed to represent (Prethus, 1973). It has, in fact, been demonstrated in the Canadian context that the elites have so much more in common with each other than they have with their mass constituency, that it is inevitable that the intergroup bargaining process will end up primarily serving the narrow interests of the elites (Porter, 1965; Clement, 1975; Olsen, 1977).

Two major theoreticians of pluralism, Dahl and Lindblom, have called for a major revision of pluralism based on the failure of empirical research to support the theory, especially during the eras of Vietnam and Watergate. Their restructuring of pluralism -- what John Manley calls Pluralism II -- recognizes the growing inequalities in American society and disproportionate influence and power of business people. Pluralism II calls for structural changes to correct the faults that have created such a power imbalance. Such changes must, however, be incremental, and it should not be supposed that they would create substantive equality or eliminate economic differences that make the ideal of equal opportunity to compete unobtainable:

> Lindblom and Dahl try to resolve the contradictions of pluralist theory by supporting increased incremental changes in a system with essential structural inequalities -- inequalities that they themselves increasingly realize (Manley, 1983; 372).

Some attention was given to the importance of understanding the structure of the State and how it influenced the way in which decisions were made. Weaknesses in the pluralist analysis were seen to arise from concentration upon competitive

elites working within an existing or "given" structure rather than examining that structure in order to examine its biases (Bachrach and Morton, 1969:3).

> ...absence of public issues there may well be, but this is not due to any absence of problems. Impersonal and structural changes have not eliminated problems or issues. Their absence from many discussion -- that *is* an ideological condition, regulated in the first place by whether or not intellectuals detect and state problems as potential issues probable publics, and as *troubles* for a variety or individuals (Mills, 1961:253).

The implication of this is that some individuals are excluded from the dominant consensus and prevented from identifying their problems by lack of understanding of the structure within which they must function. Their feelings of dissatisfaction, anxiety, resentment or frustration merely fester. And that resentment and frustration is directed toward those elites who do indeed wield power, especially corporate elites (Connolly, 1969:15). This again is not a matter of a 'ruling class', but rather the ability to ensure "that some concerns, aspirations and interests are privileged while others are placed at a serious disadvantage" (Connolly, 1969:15). The key problem in the context of reform is that:

> ...the old constellations of interest groups take on a special legitimacy in the balancing process, and citizens with new problems and concerns encounter serious institutional and ideological obstructions to the formation of new organized groups which might express their aspiration (Connolly, 1969:16).

In sum, elites working within the existing structure do not necessarily serve the public interest. The dominant value system and societal structure tend to encourage the exclusion of many groups and inhibit the expression of less organized and unarticulated concerns. The rapid transformations characteristic of modern society -- in technology, ideology, and institutional structure -- merely serve to increase dislocation. These weaknesses and more are recognized.

The way out of this dilemma was to be found in the education of the public, the encouragement of community participation in decision making, and the creation of interest groups to allow the expression of "less organized and unarticulated concerns". All of these solutions were advocated by legal aid reformers. The underlying assumption of the validity of the bourgeois state remained. Attention was directed to bringing reality more in line with the ideal (Greenway and Brickey, 1978:85-86).

b. Neo-Marxist Interpretations of Reform

By the late 1960's, major criticisms of the modified pluralist trajectory had evolved. Notable among these criticisms were those voiced by neo-Marxists whose interpretations were grounded in the instrumentalist view that the State, far from being a neutral arbiter of competing elites or interest groups, is a tool of the ruling class. According to Miliband, the 'ruling class' of capitalist society is that stratum which owns and controls the means of production and which is able, by virtue of the economic power thus conferred upon it, to use the State as its instrument for the domination of society (1969:23).

TABLE 3:3
(Adapted in part from Ratner, et. al., 1987)

NEO-MARXIST INTERPRETATIONS OF STATE, LAW, AND REFORM

	THE STATE	THE LAW	REFORM
INSTRUMENTALISTS	The state is a tool of the ruling class. Control of the state is exercised through the ruling elites' control of key offices. The economic power of the capitalist class is transformed into political influence in the legislative process, either "directly through the manipulation of state policy or indirectly through the exercise of pressure on the state" (Gold et al 1975:34).	Law and the criminal justice apparatus are tools of the ruling elite. Law regulates and reproduces the property relations of capital.	Social welfare reforms and legislation, are seen as attempts of the upper class to co-opt the more radical thrust of political movements standing for more substantial changes. Such reforms are more a means by which a lid is kept on an explosive situation.
STRUCTURALISTS	The ruling class is not monolithic and therefore the state is relatively autonomous. The state is able to transcend internal disputes, parochial capitalist interests and contradictions within the power-bloc to afford protection and direction for the capitalist class as a whole. The state often pursues policies which are at variance with the interests of certain factions of capital. Although not overly controlled by a capitalist class, the function of state in capitalist society is to guarantee the long term interests of capitalism.	The prime function of the law and judicial institutions is, "the preservation of a particular capitalist division of labour" (Hinch, 1982:13). The atomizing character of law is emphasized. Workers are not members of a class; they are individual citizens with individual rights as opposed to group rights.	Reform in this perspective is undertaken either as a legitimizing function, or as a means to assist in the accumulation of capital. Reforms are implemented to reconcile or disorganize the working class. Reforms can go against the interests of the capitalist factions but they cannot undermine the long term needs of the capitalist mode of production for accumulation.
GRAMSCI	The state is the site of class struggle. It is the site and agency through which popular consent is won or lost. Hegemony implies a form of 'mastery', achieved only through constant struggle and its success ultimately depends on a balance between contending forces in any areas in which the state seeks to intervene (Hall and Scranton, 1981:479). The dominant class must make the apparatus of the state appear legitimate. The greater the extent to which this is accomplished the less will be the need for coercion.	Law is seen as part and parcel of winning the necessary consent. Law and Justice are pivotal as 'positive civilizing activities', sanctioning, but more importantly educating, moralizing, and rewarding conduct which bolstered the ethical principles and directions of the total social foundations (Ratner and McMullan, 1983:11).	Because the process of hegemony is countered by emergent and less structured forms of thought, there is a constant struggle for hegemony. Reform in this context can be seen as a possible means for maintaining the consent of the dominated class.
CAPITAL LOGIC	The state reflects a particular mode of production. The state tends to function in a manner to secure that mode of production and the relations of exploitation that take place within it. Under Capitalism this means that the state functions so as to ensure the continued accumulation of capital.	The ideological nature of the law derives from the economic relations of capitalism and their logic. Relations of market exchange (based on equivalence between the contracting parties) overlay, disguise, and displace production relations (which are relations of non-equivalence). Law masks the real content of economic relations. (Gough, 1979:23).	Reform in this perspective is undertaken to reinforce the ideological content of law or to further mystify the exploitative nature of capitalism.
CLASS STRUGGLE	The capitalist class attempts to create state structures which channel working class political activity in ways which do not threaten capitalist political dominance and objective interests. Working class challenge makes the success of such attempts problematic. A political class struggle perspective on the state tries to locate the state within the dialectical relationship between class dominance and systemic constraint (Epsing-Anderson, 1976:190).	Law and the legal system is the site of class struggle. Although the law can be used as an instrument of class repression, it can also be used as a tool of defense by the working class.	Reform, whatever its origin, is to insulate the political regulation of the economy from working class control. Reform, however, often has contradictory or unintended effects. Political class struggle determines the nature of reform; reform creates contradictory consequences leading to further attempts to conciliate through reform.

This control is exercised through the ruling elite's monopoly of key offices (Milliband, 1969). The overt similarities in class background, interests, and world view between those who shape and control the economy and the personnel of the government and criminal justice systems are evidence of this monopoly. The economic power of the capitalist class is transformed into political influence in the legislative process, either "directly through the manipulation of state policy or indirectly through the exercise of pressure on the state" (Gold *et al*, 1975:34). In this view, law and the criminal justice apparatus are also tools of the ruling elite. Law regulates and reproduces the property relations of capital:

> Law is a tool of the ruling class. Criminal law, in particular, is a device made and used by the ruling class to preserve the existing order....The state and its legal system exists to secure and perpetuate the capitalist interests of the ruling class (Quinney, 1974:8).

Ericson, although not an instrumentalist, does adopt a distinctly instrumentalist viewpoint when he argues that:

> ...[criminal law] reform is simply the favourite programme of a particular interest group at a particular time. [Since] the bulk of present-day reformers are agents of government, reforms are the latest adjustments to serve state interest on behalf of the status quo (Ericson, 1987:26).

The two major protagonists of the instrumentalist view have been Domhoff in the US and Milliband in England. Both have commented on the role of reform and have suggested that welfare programs and reforms are not legislated in the teeth of

ruling class opposition and in the interests of the disadvantaged, as the pluralists would have it. Rather, such reforms are supported by the 'liberal' element in the ruling class as a means of undermining truly radical movements and defusing a potentially explosive situation. The power of the ruling class is in essence left untouched (Stevenson, 1983:89).

Piven and Cloward appear to adopt this view of reform in their book, *Regulating the Poor*:

> Relief arrangements are initiated or expanded during the occasional outbreaks of civil disorder produced by mass unemployment, and are then abolished or contracted when political stability is restored. Expansive relief policies are designed to meet civil disorder, and restrictive ones to reinforce work norms (Piven and Cloward, 1971:xiii).

The instrumentalist argument thus draws attention to the exercise of state power by members of the capitalist class directly, through the manipulation of the law and the judiciary, and indirectly, through interest group pressure on government.

Instrumentalism has been criticized on several grounds.[38] One major criticism is that the instrumentalist approach ascribes no logic of its own to the State, and thus cannot explain actions which are not in the interests of the ruling elite. As McMullan and Ratner point out, the State does take actions to serve interests other than capital, actions that are not the outcome of ruling class manipulation (1985:8).

The State is an arena of class struggle; ideology and law do possess a degree of autonomy outside the sphere of simple manipulation (McMullan and Ratner, 1985:8). As Snider argues, the ruling class is only likely to advocate reform when the situation is so perilous that there is no alternative but to respond to the demand for reform and attempt to shape it (Snider, 1986:183).

Attacks on the pluralist interpretation of legal aid reform have emerged from another variant of neo-Marxism: the structuralist perspective, which tends to concentrate on the functions and limits of reform in the capitalist state. Structuralists argue that the functions of the State are broadly determined by the structures of society rather than by the individuals (or agents) who control or occupy roles within the State. They emphasize the fractured nature of the ruling class and that the State, recognizing that the ruling class is itself riven by sectarian interests and contradictions, takes upon itself the task of protecting the interests of capital as a whole. In this sense, the State is autonomous (McMullan and Ratner, 1983:9).

It is also argued that the State often pursues policies which are at variance with the interests of certain factions of capital: rent controls, antitrust legislation, zoning restrictions, corporate taxes, and more (Bierne, 1979:379). The overarching function of the State is, however, seen by all of the above as the preservation of a capitalist division of labour (Hinch, 1982:13).

Although not overtly controlled by a capitalist ruling class, the function of the State in capitalist society is to guarantee the long-term interests of capitalism. The State serves to reproduce the capitalist society as a whole,

and it is this function which informs policies. For Poulantzas, one of the major advocates of the structuralist perspective, the State must perform two functions: it must create unity out of a diversity of interests, and it must ensure consent to particular policies. Most importantly, it must secure the consent of the lower strata of society to rule by the upper (Scranton and Hall, 1981:476).

Through the mediation of the State, all class interests become symbolically transformed into 'general' interests, and 'general' interests in effect become 'ruling' interests. The ability of the State to accomplish this rests in its relative autonomy from manipulation by specific capitalist-class members or interests (Gold, et al., 1975:38).

These functions have been further defined by O'Conner and Panitch: the major functions the State must perform in order to maintain the capitalist division of labour are accumulation, legitimation, and coercion. According to O'Conner, the capitalist state must fulfil two basic, and often mutually contradictory, functions -- accumulation and legitimation. The State must maintain conditions in which profitable capital accumulation is possible, while at the same time creating the conditions for social harmony (O'Conner, 1973).

State expenditures, according to this construct, have a twofold character, corresponding to their two basic functions. *Social Capital* is expenditure required for profitable private accumulation and it is indirectly productive. *Social Expenses*, which include projects and services required to maintain social harmony, fulfil the State's "legitimization" function. These expenses are not

even indirectly productive -- welfare measures, for example, fall under social expenses -- but are designed to maintain social harmony among the underclass populations, those who are outside the productive process: welfare mothers, alcoholics, and the mentally incapacitated. Panitch has added "coercion" to these two functions, and this he defines as "the use by the state of its monopoly over the legitimate use of force to maintain or impose social order" (Panitch, 1977:8). Ultimately, if the legitimating functions of government fail or prove too costly, the State can fall back on the use of coercion. Coercion can take the form of anti-union legislation, police suppression of protest, government-initiated military intervention, or the less direct form of manufacturing moral panics that then 'force' the State to act in more repressive ways. Whether or not a given capitalist state will opt for the use of coercion in a given circumstance, and what form that coercion will take, is mediated by historically specific circumstances.

O'Conner argues that accumulation of social capital and expenditure of social funds are contradictory processes which create tendencies toward economic, social, and political crisis. This is so because, although the State has socialized more and more capital costs, the social surplus (including profits) continues to be appropriated by the private sector. The socialization of costs and the private appropriation of profits creates a fiscal crisis, or 'structural gap', between state expenditures and state revenues (O'Conner, 1973).

Reform, in this perspective, is undertaken either as a legitimating function or as a means of assisting in the accumulation of capital. Reforms are

implemented either to co-opt or to disorganize the working class. Reforms can go against the interests of capitalist factions, but they cannot undermine the *long-term* need of the capitalist mode of production for accumulation.

c. A Modified Structuralist Interpretation of Reform

Gough has expanded on the structuralist interpretation of the State in this area. He argues that the two basic activities of the welfare state are to modify the reproduction of labour power and to maintain the non-working population. The welfare State, according to Gough, is "the institutional response within advanced capitalist countries to these two requirements of all human societies" (Gough, 1979:48). The State responds to these needs through direct provision of benefits and services, such as a national health service, social welfare, education and training, and so forth. It also responds by regulating the private activities of both individuals and corporate groups through taxation policies and a range of social legislation, "from the Factory Acts to modern consumer protection, from building by-laws to the statutory compulsion on children to receive an education" (Gough, 1979:4).

Gough points out that the role of the State in reproducing labour cannot be sharply distinguished from the State's role in maintaining the non-working population. The non-working population constitutes in large part the 'industrial reserve army', many of whom are potential members of the work force; their maintenance could, therefore, be included under the heading of labour reproduction.[39]

Gough then categorizes welfare state functions under O'Conner's headings of 'social capital' and 'social expense'. In doing this, he demonstrates that any given social policy can serve both legitimating and accumulating functions. A legal aid program that increases the ease with which divorce is obtained, and thereby allows the reconstitution of another family unit and the concomitant reproduction function, can at the same time serve, by ensuring child support payments, to maintain the non-working population (although this function is somewhat undermined by default in payment of maintenance). This same policy can also serve a legitimating function by creating access to the law for lower income families.[40]

There is conflict within social welfare polices. For instance, a legal aid policy that serves a legitimating function by demonstrating the State's interest in ensuring equality before the law, may have within it a program that destabilizes society by advocating group action to rectify social injustices. Similarly, conflict between social welfare policies may arise. In the area of legal aid, one example of such conflict can be seen in the divergence of those who emphasize equality of access, which dictates an individualized judicare model of legal aid, and reformers who favour an NLF group services model of legal aid.

Gough argues that historically specific circumstances determine whether or not the State actually performs these functions (bearing in mind that legal aid in its early stages was provided by the Bar, charity organizations provided relief for the 'deserving poor', and so on) and the actual function that any given reform will fulfil (for example, NLF-type legal aid organizations have had a far

more stabilizing effect politically in England than in the United States). However, as Gough also points out, the functions of social policy can tell us nothing about their origins:

> [The] *function* of social policies must always be distinguished from their *origins*. Analyzing the former can, strictly speaking, tell us nothing about why a particular policy was enacted, how it was administered and so on (Gough, 1979:54; Emphasis in original).

In discussing the origins of welfare reform, Gough uses the distinction that Mishra drew between the two models employed by Marx: the *conflict* theory of class, and the *structural* view of the economy.[41] It is only through analysis of the interrelationship between these two models that the origins of welfare reform can be understood.

Within the conflict theory of class, the most important characteristic of the State is its systematic exploitation of the lower strata and, therefore, the endemic class struggle between, at the most general level, capital and labour. The State provides the political terrain on which the class struggle can be fought and temporarily resolved. The major question to be answered in this construct is "What is the role of class conflict in explaining the emergence of social welfare policies?" (Gough, 1979:38).

The structural view of the economy emphasizes the State as an economic system with its own laws and dynamics. The State is seen as a mechanism for ensuring the accumulation and reproduction of capital and its social relations. The major question to be answered in this construct is "How are the 'functional

requirements' of the welfare state mediated by the state?" (Gough, 1979:38). It is in answering these two questions and providing an explanation of how they are related that Gough furnishes an explanation of the origins of welfare reform in the capitalist state.

In explaining the effects of class conflict on welfare policy, Gough concedes that the ways in which class pressure generates reform may vary from direct extra-parliamentary pressure to measures devised by representatives of the ruling class in an attempt to forestall further agitation or reform. Welfare reform, therefore, depends on two factors: the strength of the working class and the degree to which the State is prepared for, and can anticipate, working class demands.

In analyzing how these two aspects of the Marxist dialectic - the conflict theory of class and the structural view of the economy - are interrelated, Gough points out that the relative importance of either of these models of explanation will vary according to the policy at issue. He cites the relatively weak labour movement in the United States, in tandem with the relatively high development of post-secondary education, as an indication that the pressure of class conflict is probably not crucial to the development of educational policies. Educational reform would, therefore, appear to be the type of reform that is highly functional to the preservation and advancement of monopoly capital. The absence of social housing and comprehensive social assistance policies in the United States (in contrast with their presence in Britain, where there is a strong labour movement), suggests that the pressure of class conflict is crucial for these policies.

Gough argues that the interrelation of the class struggle and the structural constraints of the State is most easily identified when there appears to be a congruence of interest. It is during periods of apparent consensus between capital and labour that the most rapid expansion of the welfare state takes place. The general growth of the welfare state, Gough argues, is caused by this coincidence of the interests of capital and labour. Capital uses reform to reduce working-class discontent and as an added means of controlling and integrating the working class. Labour welcomes reform, if it mitigates hardship (Gough, 1979).[42]

Gough warns, however, that because the interests of capital and labour are fundamentally opposed, this apparent congruence of interests rapidly breaks down: "This can take the form of myriad conflicts over the nature of the service, or the way it is organized...or over the level of benefits and the conditions attached to their receipt..." (Gough, 1979:66). Gough adds that, in the absence of a strong labour movement through which to express working-class interests, reforms conceded in the face of social unrest will be temporary.[43]

The first extensive publicly funded legal aid program in Britain emerged with the congruence of interest that precipitated the formation of the welfare state. During a period of rapid movement toward the welfare state, from 1960 to the mid-1970's, the legal aid movement experienced its greatest expansion in other Western democracies. This period of expansion was accompanied by economic growth and increasing political unrest. There was a coincidence of interests

in this period: economic expansion made welfare concessions relatively painless to grant, and growing social unrest underlined the utility of these functions as a legitimating measure.

The structural constraints of the welfare state do, however, impose limits on reform measures. The limits that Gough cites are related to ideology and the need for accumulation. The State must function within the structural constraints imposed by monopoly capital, acting as "a mechanism for ensuring the reproduction of capital and its social relations" (Gough, 1979:56). Gough indicates that the structural constraints imposed by the mode of production are basically the 'law of value' (or market pressures, which now operate on a global scale) and the ideology of modern capitalist states.

Market pressure ensures that no single nation-state can safely ignore the conditions for capital accumulation and reproduction. If circumstances in a given state become too uncertain, capital will remove itself to more promising centres of accumulation. This, according to Gough, explains why a capitalist state will always seek to preserve those conditions necessary for accumulation of capital (Gough, 1979:43).

Bierne elaborates on these structural constraints as they apply to law:

> ...the form of law is contingent on the dominant modes of production in any social formation. The *content* of legal norms may only vary within these determinate limits. Under the capitalist mode of production, for example, there can be no law which abolishes rent, interest or industrial profit, for that would be to abolish capital itself (Bierne, 1979:382).

He points out that the level of profit, rent or interest demanded by capital may be subject to state regulation. Such regulations are, at least partly, conditioned by the relative strengths and weaknesses displayed in the class struggle (Bierne, 1979:382).

The ability of the State to concede reforms, while at the same time ensuring the reproduction of capital, also depends upon the rate of development of the capitalist world economy in its international context, and upon the place of each country within that world economy. The success of British imperialism up to World War II was, according to Gough, crucial in providing resources for the welfare state. Economic prosperity provides the leeway necessary to finance concessions which may mitigate class conflict (Gough, 1979:69).

There was a major structural shift in the capitalist economic system after the War. The pre-War depression had indicated that a free market economy could not regulate itself. The structure of the post-War economic system was based on Keynesian economics, which advocates government intervention and expansion of social welfare programs in order to reduce the severity of cycles of boom and slump in national economies. Keynesianism was seen as the solution to the basic contradictions of capitalism that had resulted in the depression (Taylor, 1980:86). Keynes' greatest achievement was to:

> ...destroy the notion of a self-regulating economic system and provide the theoretical underpinning for a new economics....[He] showed that there was no technical reason why demand and production should be in balance....Such an analysis was 'dramatic' and 'imperative'. Dramatic because it stood existing economic theory on its head, imperative

> because it implied the need for government action of a kind, and on a scale, never before contemplated (George and Wilding, 1976:46).

This made it impossible to believe in the automatic reconciliation of conflicting interests. Economics once again became political economy (George and Wilding, 1976:47). Keynes remarked on the inability of an unregulated economy to generate the demand necessary to counteract economic depression and unemployment. The hope of Keynesians was that a system of government which would allow the economy to become self-regulating was somehow attainable.

Keynesian economics predominated from 1945 into the 1970's. After the War, there was an economic boom, and full employment was achieved and maintained. Living standards rose, productivity increased, and the economic cycle was relatively stable (Gamble and Walton, 1976:43). During this period, legal aid reforms were initiated and programs implemented.

One problem that Keynesianism could not master, however, was permanent inflation. The inability of Keynesian economics to curb inflation had, by the late 1960's, seriously undermined this philosophy of government intervention. In the early 1970's, a combination of economic problems, such as inflation, unemployment, industrial militancy, and declining profitability, were exacerbated by the rapidly escalating cost of energy, which reached crisis proportions in 1974. Keynesian economics were "ripe for overthrow " (Taylor, 1980:286-287). The liveliest contender, with its free market, anti-government-intervention philosophy, was monetarism.

Monetarists place faith in economic growth to overcome scarcity. According to this view, big government and government's waste of resources are the main causes of scarcity. Growth and the market can take care of nearly every difficulty relating to ecology or social competition (Bosanquet, 1983:4). In order to restart the growth process, a firm policy of controlling the money supply must be adopted, and government and public services must be 'down-sized'. According to Bosanquet, the issue for a monetarist is a simple choice between free markets and coercive government (1983:4). With the adoption of monetarism, government cutbacks in welfare spending began.

It is argued that another constraining factor imposed on reform is the ideology of a monopoly capitalist system. Ideology, in this view, is a product of the prevailing system of economic relations. Therefore, as Marx has stated, "the ideas of the ruling class are in every epoch the ruling ideas" and are "sustained and propagated by the various institutions in society -- the government, the church, the family, the school, the mass media..." (quoted in George and Wilding, 1976:92). As George and Wilding point out, "it is rare indeed for an individual to transcend these familiar habituations" (1976:92).

A concomitant of the Keynesian belief in state intervention to regulate the economic cycle was the theory of state intervention to ameliorate the condition of the disadvantaged. The ideology of the welfare state necessarily implied a positive attitude towards state intervention in both economic and social policy. This reached its highest expression in post-war Britain and was exemplified in the 1942 Beveridge Report, which recommended the replacement of all existing

social insurance schemes with one comprehensive scheme providing universal coverage.

Beveridge argued that social evils could not be overcome without state intervention. It was government's responsibility to undertake social tasks considered to be necessary and only attainable through government. In Beveridge's view, these social tasks are related to the elimination of what he described as the five great evils: Want, Disease, Ignorance, Squalor, and Idleness. Beveridge stressed the attainment of a natural minimum standard as the goal of his social insurance plan. His aim was "to make want under any circumstances unnecessary" (George and Wilding, 1976:58). As part of the Government's goal of maintaining full employment, priority was to be given to minimum standards for all citizens in the areas of housing, health, education, and nutrition. It was not, however, the responsibility of government to go beyond the provision of this minimum (George and Wilding, 1976:58).

After the publication of the Beveridge Report in 1942, with its commitment to full employment, the term 'welfare state' became inextricably bound up in the concept of extensive government intervention in social and economic policy:

> Written as it was in this spirit, and coming at the turning point of the war, at the time of Alamein and Stalingrad, the Report became a symbol of the country's aspirations for a better society to be achieved after victory was won, and its principles were to be accepted far beyond the field of social security which was its immediate concern (Sleeman, 1973:41).

This concept gained wide acceptance in most capitalist countries,[44] but in such a variety of forms that it is not possible to identify *the* ideology of the welfare state. Rather, there exists a continuum of ideologies that have been identified and analyzed by several authors. In the United States, two predominant ideologies have been noted: residual[45] and institutional.[46] Wilenski and Lebeaux (1965:140) have, in fact, described this as an ideological dualism in American society. A third ideology, the social democratic, has been identified by Moscovitch and Drover in the Canadian context, and by Room in the British context.[47]

Residualism rests on the values of economic individualism and free enterprise. The residualists' value system emphasizes the desirability of thrift, self-help, and independence. They tend to assume that state provision of income or services will undermine the individual's independence and willingness to work; therefore, any state intervention in this area must be based on the 'minimum' possible. Individual needs, according to this perspective, are ordinarily met by the family and the market economy. Social welfare institutions come into play only when these mechanisms break down, with social services acting only as a residual agency and only in times of emergency. Once the family and the economic system are functioning normally, social services have no role to play (Wilinsky and Lebaux, 1965:139; Wedderburn, 1965: 135-136; Pinker, 1971).

Institutionalism, on the other hand, is grounded in the values of security, equality, and humanitarianism, and in bureaucratic rationality and equity. In this perspective, the demonstrated inability of the market to distribute goods in a just and equitable manner requires the establishment of welfare services

as major institutional agencies to combat the poverty, unemployment, illiteracy and disease consequent upon industrialization (Pinker, 1971:100). Institutionalists tend to argue that welfare services be provided on a universal basis, expanding rather than contracting in scope over time.

The social democratic paradigm emphasizes an egalitarian order based on substantive justice. Social welfare is seen as a norm:

> Social welfare is realized not only through the recognition of rights but in accordance with a system of organization of production and distribution based on a criterion of human need (Drover and Muscovitch, 1981:4).

Social democrats believe that the general welfare can be improved through state intervention within the capitalist order. They emphasize issues concerning rights and equality which may be resolved through collective action, mainly by communicating the needs and wishes of groups to government (Drover and Moscovitch, 1981:4). The Social Democratic approach to the welfare state, according to Room, centres on the idea of social rights, which, in a rather oblique formulation, he argues "involve a guarantee of the individual's free access, through social policies, to an endowment from a common patrimony" (Room, 1979:9). The social policies of the welfare state group and treat individuals according to need, not economic power (Room, 1979:59).

What the above three paradigms have in common, according to Drover and Moscovitch, is the idea of the State as a neutral arbiter. State intervention "rests on the separation of the economic from the social and presupposes that

social policies benefit those to whom they are addressed" (1981:5). The degree of state intervention recognized as valid by each model depends on the extent to which the market is seen as ineffectual in overcoming inequalities and injustices. The institutionalist and social democratic ideologies seemed to thrive in the heyday of Keynesian economics, while the residualist approach prevails under monetarism. None of the three, however, has suffered a total eclipse.

When looking at this gamut of what have been identified as welfare state ideologies, it is important to recognize that the dominance of any given ideology varied from state to state, and within certain states over time. It has been argued, for instance that the social democratic ideology is stronger in Britain than in Canada, and stronger in Canada than in the United States (Horowitz, 1966:143-170; Lipset, 1976).

In the early period of social reform in Britain, it was the institutional model that predominated, so much so that other value propositions were not taken seriously (Mishra, 1986). This preeminence did not hold true in Canada, where more residualist attitudes prevailed for a longer period of time. (Guest, 1980). Moreover, even in Britain, the political consensus was never as great as some authors would have us believe. Gooby-Taylor points out that, even during the ascendancy of the welfare state, it required constant effort to expand and maintain the system (Gooby-Taylor, 1985:54).

As an era of social policy has given way to an era of social politics (Gilbert, 1970:305), the conflicts among ideologies of the welfare state have become more

evident. The economic crisis which has been growing since the late 1960's has led to more strident residualist demands for retrenchment and more focused Marxist criticism of the reforms of the welfare state.

Another ideological tenet necessary to the smooth functioning of monopoly capitalism is equality before the law. In the structuralist perspective, just as the State is not the 'handmaiden' of the ruling class, neither are law and the judicial system merely tools. The prime function of these institutions is, however, "the preservation of a particular capitalist division of labour" (Hinch, 1982:3). The atomizing character of law is emphasized. Workers are not members of a class; they are individual citizens with individual rights as opposed to group rights. While appearing to represent the universal interest of the entire society, law and criminal justice systems seek to reduce, or at least hide, class conflict by fragmenting classes, atomizing their individual members and imposing on them new identities as citizens with formal political and legal rights (Hall and Scranton, 1981:477). As Sumner (1981:75) puts it:

> The juridical subject reflecting capitalist relations of production (both as relations of commodity exchange and of private exploitation) not only masks the class struggle but re-presents it as a series of issues of individual interest, thus laying the basis for the political hegemony of the capitalist welfare state.

Thus, "due process", "the rule of law", and "equality before the law" are basic concepts of legal ideology, masking inequality of power among the classes with a semblance of legal equality and legitimacy. The dominated classes are robbed

of power through mystification, disorganization, and coercion (Poulantzas, 1973).

However, the ideological impact of law is premised on the "kernel of truth" imbedded in its claim to provide equal justice and due process. The law can not be seen to consistently oppress some groups while consistently benefitting others (Bartholomew and Boyd, 1990:227). Moreover, as Corrigen and Sayer have argued, "to the extent that capital rules in and through law...the specific forms and procedures of law circumscribe its freedom and constrain its modes of action' (1985:36).

In considering legal aid reform, the tenet of equality before the law, encompassing as it does the concepts of right to counsel and due process, are particularly important. The exact nature of these concepts, and the degree to which equality is deemed an ideal to be pursued, differs from state to state and is affected by the historically specific circumstances of each nation state.

It is clear that the structuralist theoretical framework requires an analysis of the limits imposed on reform by the structure of the capitalist state. Although there are limits to change, Gough warns against falling into what he calls the 'hyper-structuralist' trap, which deprives agents of any freedom of choice and manoeuvre and turns them into the 'bearers' of objective forces which they are unable to affect (Gough, 1979:62).

The structural perspective helps to explain why governments achieve only a limited number of these reforms. Governments are forced, by various needs, to

fight against structural constraints, and they can implement reforms. The importance of the structural constraint perspective is that it points to ultimate *limits* on these reforms (Miliband, 1977:73-74).

4. Structuralist Interpretations of Legal Aid Reform

A theoretical explanation of legal aid reform at the macro-level[48] has been put forward by neo-Marxists in the structuralist tradition. Neo-Marxists approach legal aid reform as part of the legitimating and social control function of the State. The focus of analysis from this perspective is on the function of reform, and the extent to which reform is possible in a capitalist state (Snider, 1986; Abel, 1978; 1985).

The role of working class consciousness in bringing about legal aid reform has received relatively little attention, as it is argued that legal aid reform has not been brought about by working class struggle. The working class's lack of overt interest in legal aid reform possibly stems from the fact that this stratum of society generally does not qualify for legal aid. However, even those who may be eligible for legal aid benefits have little or no interest in this reform (Alcock, 1976; Abel, 1985).

This indifference to legal aid on the part of those who might benefit from it has been explained by the pessimism of those who are socially and economically deprived and politically oppressed that legal institutions will satisfy their needs and resolve their grievances (Abel, 1985:521). Failing to find an impulse toward reform among the working class, the structuralists turn to analysis of

the conditions and activities of other class factions and search for potential motives for those groups to favour state action.

Structuralists point out that the demand for, and initiation of, legal aid reform is almost always to be found among factions of the ruling or middle classes. It is *their* belief in the legitimating function of the justice system and *their* recognition of the 'malfunctioning' of the system that generates much of the reform initiative (Alcock, 1976):

> Our system of civil law helps to legitimate the polity from which it derives by proclaiming that citizens have rights to both material entitlements and ultimate values, such as equality. Those who enjoy such benefits--disproportionately middle and upper class individuals and organized entities--tend to give the legal system some of the credit, that is, they accord it some legitimacy. At the same time, they invoke the legitimacy of law and order to justify their own privileged position, arguing that such privilege is simply their just desserts under a legal system that provides equal justice for all (Abel, 1978:193).

When disillusionment with this system sets in, the privileged respond by seeking to reform the system so that it adheres more closely to their image of the law "as an ideal elevated above the strife of the market and the political arena" (Abel, 1978:193). The gap between ideal and reality must be closed. The social and political turmoil of the 1960's and 1970's highlighted inequalities in society and widened the gap between ideal and reality in the justice system. It was believed by individuals advocating reform that bridging this gap would serve a legitimating function. Legal aid reform was one of the spans in this bridging mechanism.

Structuralists also pay particular attention to the activities and motivations of "interest groups", in particular of lawyers in bringing about legal aid reform. But as Abel points out, to examine such groups is not to embrace pluralism. Power and influence vary greatly among groups, they may well be in conflict with one another, and thus the outcome of their activities is not a long-term 'compromise' but a temporary situation that will change with circumstances (Abel, 1985:540).

Structuralist interpretations of the motives and interests of lawyers and the organized profession do not differ in any significant way from pluralist interpretations. Lawyers are identified as the major class faction in the promotion of legal aid reform. Lawyers and lawyers' organizations form the quintessential lobby group. As mentioned above, their social and political status in society is often translated into disproportionate representation in legislative bodies and government bureaucracies, and this influences the reception accorded to their own views and those of other interest groups (Geerts, 1980:218). The philanthropic and socially conscious motives of some legal aid activists within the profession is recognized (Abel, 1985; Snider, 1986), as are the need to sustain a 'good image' for the profession and the necessity to champion the 'rule of law' (Geerts, 1980).

While it is also recognized that the interests of the profession are not monolithic, the motive of the majority of individual lawyers who participate in the plans is seen as economic (Alcock, 1976; Geerts, 1980 Snider, 1986; Abel, 1985); lawyers from small firms are less likely to support an initiative for legal aid reform when it presents economic competition (Abel, 1985); large,

prestigious firms are more interested in image and good publicity (Geerts, 1980; Abel, 1985). Once legal aid plans are adopted, lawyers in general are more supportive of a judicare model because it is most likely to protect their economic interests (Abel, 1985).

Where staff offices have been established, private practitioners seek to ensure that the most remunerative work comes to them:

> [They] insist that salaried lawyers abstain from fee-generating cases and observe strict financial eligibility limitations that exclude any client who might be able to pay a private lawyer's fee (Abel, 1976:504).

Legal aid staff lawyers also have much to gain from the extension of legal aid programs. Most legal aid lawyers are activists who seek to imbue their causes with a significance far beyond that inherent in the cases themselves and far wider than the specific interests of their clients (Abel, 1976:512). They stress the legal dimension of social movements, which in turn leads to an emphasis on test case litigation. This tendency is, however, tempered by pressure to stay within the bounds of 'reason', within normal judicial procedure, in order to win the respect of judges and adversaries. This desire to be 'reasonable' usually originates, according to Abel, with more senior administrators who "expect to remain in legal aid indefinitely" (Abel, 1976:518).

Once the adoption of legal aid schemes appears inevitable, the interest of the organized Bar is to secure control of the plan (Alcock, 1976; Abel, 1985; Geerts, 1980). Once control is achieved the interest of the Bar turns once more to economic concerns (Abel, 1985).

State participation in legal aid reform is also an area of enquiry for structuralists. Once again, pluralists and structuralists offer similar interpretations of the motives and activities of state and local governments. Pluralists, however, tend to concentrate more upon explaining or puzzling over why government support so rapidly turned to opposition, concluding that this is at least in part an outcome of the ideological make-up of the party in power. Structuralists concentrate on why governments would support reform in the first place, and conclude that such support stems from the need to control such reforms.

It is pointed out by neo-Marxist structuralists that the State, while reacting to pressure from various interest groups, is still the principal actor on the political stage. It "creates, controls and can abolish legal aid" (Abel, 1985:324). Lawyers may control the administration of legal aid: the establishment of procedures, the day-to-day functions. They may have input at the management level and propose policy. But, at the bottom line, the State can determine the direction and the fate of legal aid through fiscal control and power of appointment.

Abel asks the question, "Why would the State want to create and administer programs of which the State itself is one of the main adversaries?" All state-

supported legal aid programs established after World War II have imposed restricted eligibility requirements such that all but the unemployed poor, who have claims primarily against the State, are excluded. Abel argues that the State intervenes in order to control legal aid. The State manages this control through the powers of appointment and the purse, fiscal control being the ultimate weapon "for restraining or even eliminating disobedient programs" (Abel, 1985:538).

Gordon, commenting on the evolving state domination of legal services for mental health patients in Canada and Australia, notes the growing rift between the original intent of *proactive* poverty law and the *reactive* practices of state-controlled legal aid programs. Rather than fighting for the welfare and legal rights of clients, state-controlled legal aid systems tend to take a reactive stance, their central concern being to counter-balance the power of social control systems in areas such as criminal justice, family law, and mental health (Gordon, 1983:28). This reactive stance serves a legitimating function and counters any growing coercive function of the State, while, at the same time, posing no threat to the accumulation function of the State.

Structuralists agree, however, that the ideological make-up of the party in power can have a substantial impact upon legal aid reform. Alcock points to the effect that the vagaries of federal and local politics can have on the provision of legal aid (Alcock, 1976:162). Abel reiterates this, stating that the "tenure of particular administrations is associated closely with the rise and fall of legal aid" (Abel, 1985:526-527). He then adds more bluntly that one

of the most crucial factors in state management of legal aid is the ideological make-up of the party in power.

Neo-Marxists argue that the State may support or continue legal aid programs because of specific functions they perform in reinforcing the State structure. The primary function of legal aid has been identified as *legitimation* of the justice system through reinforcement of the ideological myths of equal access to the law, equality before the law, and due process (Alcock, 1976; Abel, 1985; Abel, 1978; Snider, 1986). Legal aid eligibility criteria have always been so stringent, however, that it is only the non-working or marginally employed, -- the industrial reserve army, -- who qualify for legal aid. The legitimating function of legal aid in this sphere appears to be somewhat problematic. As Alcock has pointed out, equal access cannot be attained because:

> ...without fundamentally changing the legal system, and by implication also the society in which it operated, the supporters of legal aid were continually faced with an internal contradiction, which would be heightened if the lower classes tried to use the limited remedies available to them on anything approaching a regular basis (Alcock, 1976:172).

Alcock's study focused on legal aid policy in Britain between 1920 and 1940. During that period, the only area of legal aid, outside of criminal matters, that was actually utilized by the working poor was divorce. Although access to this remedy was severely restricted by a means test, demand for the service continually exceeded the supply of available lawyers. This provoked a series of crises which impelled those responsible for the system to amend it in order

to maintain the appearance that it was ideologically coherent and fulfilling its mandate (Alcock, 1976:172).

Structuralists conclude that legal aid reform in both the criminal and civil law areas does not serve a legitimating function in the eyes of the poor. The poor do not accept the myth of equal justice for they do not view the law as an abstract idea divorced from considerations of wealth and power (Abel, 1978; Crowe, 1978):

> Consequently, they have low expectations about what they could get from the legal system were they to use it proactively. When they do use it, therefore, they are often pleasantly surprised....But affirmative use of the civil legal system by the poor is so rare that the occasional pleasant surprise does not greatly enhance the legitimacy of the system in their eyes, nor that of the polity and society (Abel, 1978:194).

As Casper has suggested, 'fairness' is the concept most vital to the interests of criminal defendants (Casper, 1978), and thus the concept of equality of treatment is of the greatest significance in reform efforts aimed at legitimating the system. However, as Abel points out:

> ...the criminal process in an unequal society is no more able to satisfy the desire for equality than is the civil law.... Nevertheless, the most frequent response, when the legitimacy of the criminal law is threatened because defendants perceive its outcomes as harsh and unequal, is to emphasize the fairness of its procedures (Abel, 1978:195).

The primary criterion of fairness used by advocates of reform is adherence to due process (Casper, 1978). Yet, although due process may not be entirely without interest to 'clients' of the criminal justice system:

> ...fair procedures, by themselves, appear to be insufficient to sustain the burden of justification: the full-fledged criminal trial, which most closely approximates the ideal of due process, elicits less satisfaction from the defendants who experience it than does the process of plea bargaining (Abel, 1978:195).

Criminal Justice System 'clients' are more interested in outcomes that are "less harsh and more equal" (Abel, 1978:195). It is argued that only the upper strata of society adhere to the belief that due process and legal aid prevent, or at least redress, arbitrary action, brutality, exploitation and incompetence. Only for them does legal aid serve a legitimizing function (Abel, 1985:606).

Structuralists and pluralists agree that legal aid can serve the function of individualizing conflict, thereby stifling political and social conflict. Unlike their pluralist counterparts, structuralists do not see this as an unfortunate side effect of legal aid reform but as a major function of such reform. The provision of legal aid helps to dissipate collective action against the State by individualizing grievances and channelling them into the system. The client is atomized, and the activist tendencies of his or her lawyer are neutralized by the inescapable limitations of the legal system, which presupposes that significant social conflicts will inevitably take legal form; those that do not, can be ignored (Abel, 1985:600).

According to Abel, legal aid reform can also counter the coercive function of the State by expanding the availability of due process. The coercive nature of the State is most apparent in criminal proceedings. This is why "the accused is the first litigant to be granted legal aid" (Abel, 1985:611). All of the social control functions that legal aid performs (see pp. 109-110) are seen by structuralists as contributing to a lessening of the need for coercion. The State's goal is to control the lower strata of society in the most cost-effective manner possible. Whether coercion or reform will be the most effective way of doing so depends on historically specific circumstances:

> ...if the proletariat is necessary to production, organized, vocal and allied with other classes and class factions, it is obviously inefficient to pour massive amounts into keeping them down. Far better to give in to some of their demands and restore the economy to working order (Snider, 1986;224).

If, on the other hand, the working class is weak and disorganized and without allies, coercive methods might be more effective.

Abel argues that the growth of welfare benefits is not merely contemporaneous with state subsidization of legal aid, but actually demands it. In this view, legal aid becomes a means of controlling and disciplining the welfare apparatus, in particular the "street level bureaucrats" who work in local outposts of national government and in state and local governments (Abel, 1985:590). Legal aid thus provides an important regulatory mechanism and, in addition, assists in achieving cost efficiency:

> Along with flexibility the welfare state seeks the lowest possible cost per case. Legal aid lawyers help streamline the welfare state by weeding out unqualified welfare claimants, dealing with those who cause trouble and getting the paper work in order. (Abel, 1985:565).

It is in the area of limits of reform that the foci of neo-Marxists and pluralists are clearly different. While recognizing the effects of the limiting factors that pluralists identify, structuralists take their analysis of the limits of reform in a capitalist state to a higher degree of abstraction. The pervasive nature of pluralist assumptions about the State is one of the major limiting factors in legal aid reform. Conceptualizations of the problem and potential solutions are limited by these assumptions.

Alcock points out that conceptualizations of the problem of legal aid have been similar across time. There have been disagreements over tactics, but most writers subscribe to the same ideological approach to the legal system. This approach is based on a concern for the nature of law as a mechanism for "maintaining social order, defining problems and preventing social disorder" (Alcock, 1976:139). He labels this as a functionalist approach based on the assumption that "the law is independent of any conflicts within society and that there is a consensual agreement upon the use of the legal system to provide solutions to social problems" (Alcock, 1976:158).

Even the more radical pluralists, who do not agree that the law is independent of the social structure, nonetheless see the legal process, buttressed by cross-group social organization, as a viable vehicle for reform. This has led to the continuing belief that formal, and to a lesser extent substantive justice, can

be achieved. Structuralists argue that neither goal can be achieved in a capitalist society.

It is argued that, while belief in equality before the law and equal access may be strong enough to serve as the initial impetus for reform, it is not strong enough to carry through substantive reforms. The quest for due process has been portrayed as self-defeating and possibly regressive. It is argued that procedural rights are 'paper' rights for society never allows funding sufficient to guarantee that everyone has full and equal enjoyment of them (Abel, 1978:193). Moreover, in criminal legal aid, "enhancing the procedural rights of the accused inevitably stimulates a public outcry against the 'coddling' of criminals that leads to either dilution of those rights, or an increase in the severity of criminal penalties, or both" (Abel, 1978:194).

Although criminal legal aid reform has produced a marginal improvement in formal justice, in as much as fewer defendants are totally unrepresented (Snider, 1986; 221; Wilkins, 1975), it is argued that this advance is more apparent than real, for defense of the poor is usually prepared by neophyte lawyers shortly before entering the courtroom (Snider, 1986; 221).

And the quest for substantive justice is just as illusory. Reforms of structure and process directed at the implementation of substantive rights cannot succeed. That this is true in the criminal justice area is well documented (see p. 168-169). Substantive reforms implemented in the civil legal aid area may have some impact, but that impact is limited and gains are precarious. The State will tolerate only small victories against its own bureaucracies:

> ...pitting poor people and their representatives against civil servants, it is reasonable to expect that some legal victories can be obtained. Making the lives of civil servants more difficult is all right, as long as it doesn't visibly result in making the lives of the poor easier! (Snider, 1986:224).

Legal aid reform that goes beyond these manoeuvres and actually threatens to inconvenience the ruling class are, by their very objectives, programmed to failure. This is owing to the powerlessness of the class which is intended to benefit from legal aid reform. Legal aid eligibility has been limited in such a way as to apply only to the underclasses. These are made up of two distinct elements: individuals who are unemployed but who form a viable part of the industrial reserve army (primarily the young, males, and the healthy); and individuals who are considered to be outside of the productive processes, "such as welfare mothers, tramps, skid-row bums, alcoholics, and the mentally deranged or handicapped" (Snider, 1986:224).

Criminal and civil legal aid reform also neatly divide the disadvantaged into two camps. Criminal legal aid applies, to a large degree, to young, healthy, but unemployed and therefore potentially disruptive, males. Civil legal aid applies to the "unproductive residue". The ideological grounds for provision of legal aid is the same for both of these groups: "Generally speaking, the state tries to create the impression that whatever is done to these two segments of the underclass is done in accordance with the canons of law" (Snider, 1986;224).

Reform will only occur, however, when "the class bias of the prevailing legal system has become both obvious and embarrassing"; when the gap between the ideal of equality and universal justice and the reality is, in other words, an abyss. State acceptance of the necessity of publicly funded legal aid programs directed at increasing access to the system and to formal justice was a tactical acknowledgement of the abyss (Snider, 1986:224). Snider argues that when legal aid reformers attempted to go beyond the measures necessary to at least appear to be meeting the ideological requirement of equal justice, they ran into structural limits inherent in the capitalist state -- the need to accumulate:

> From a theoretical perspective, the legal reformers were attempting to use the statutes to change the rules of the state to the advantage of the underclass. However, the bourgeoisie, including its state faction, has a vested interest in keeping this sector of the population under control in the most efficient way possible, so that they do not hinder the amassing of surplus value or disturb the relations of production (Snider, 1986:224).

Snider and Abel argue that legal aid programs that threaten the accumulation interest of capital are unlikely to be implemented, and if implemented are unlikely to be effective. Small victories might be obtained against "isolated and peripheral targets, members of the petty bourgeoisie or the minor classes, rather than the bourgeoisie" (Snider, 1986:225). Victories could be won, for instance, against ghetto businessmen who were also loan sharks, crooked cops, fraudulent doctors, and used-car salespersons (Snider, 1986:224). Larger victories -- reforms directed against the interests and activities of more powerful members of the capitalist class -- could not be won.

Legal aid lawyers have, as Abel points out, won significant victories for individual clients: improved housing, higher welfare benefits, alleviation of debt burdens, and so on (Abel, 1985:610). These are limited victories. They have no power to force reduction of exorbitant rents; they can battle sex or race discrimination, but they cannot force financial institutions to lend money to bad credit risks simply because they are impoverished. They can secure welfare benefits for those who qualify, but have no control over the amount of benefit received (Abel, 1985:610). Above all, they cannot challenge property rights (Snider, 1986:225).

The structural limits of reform may help explain the similarities and differences among legal aid systems, and also the limited nature of legal aid reform. Structuralists argue, however, that explanations of the diversity to be found in legal aid reform systems must be sought in historically specific circumstances:

> One the one hand, legal aid does develop in most advanced capitalist societies, suggesting the two may be linked. On the other hand, it appears at very different times, is absent in some and is found in socialist and third world countries as well, suggesting that concrete historical circumstances are decisive (Abel, 1985:526).

Snider emphasizes the importance of historically specific circumstances. Given that legal aid reform has not been brought about by pressure from the underclasses, reasons for reform must be sought, in part, in the pressure of situational factors and historically specific events, events which, according to Snider, exposed the class bias of the State and made legitimating action

necessary. She suggests what some of these historical circumstances might be when she places the expansion of legal aid programs in historical context: "Legal Aid came to fruition near the tail end of the expansive phase of capitalism as a system, a period which lasted roughly from 1945 to 1970" (Snider, 1986:211).

In North America, legal aid reform occurred at a time of political and social unrest and was seen by its advocates as being a weapon in the war against poverty, discrimination, and inequality. The need for legal counsel for the poor was highlighted in the US by two Supreme Court decisions made in what Snider describes as "the last days of the liberal era": *Miranda* in 1966 and *Gideon* in 1963. Reform initiatives foundered during the period of economic contraction in the mid-70's (Snider, 1986).

Structuralist consideration of legal aid reform changes the focus of analysis from the micro- to the macro-level. It is especially successful in identifying the structural constraints that are brought to bear on all reform initiatives in the capitalist state. They also identify historically specific considerations that must be considered in any attempt to analyze similarities and differences among legal aid programs.

One of the major criticisms of the structuralist approach is that it tends to downplay the role of conscious action. If interests and functions coincide, it is by reason of the system itself (Esping-Anderson *et al*, 1977:142-143). The structuralist approach cannot explain class action which arises from class consciousness. Class action is seen as a 'passive response' to stimuli created

by structural determinants. This is true both of the working class and the capitalist class (Stevenson, 1983:93-95): "Class located individuals respond to the stimuli born out of the systemic logic, rather than act on the basis of self-conscious political practice" (Epsing-Anderson, *et al*, 1976:189). A modified structuralist perspective does pay some attention to the activities of class factions and various interest groups, but little consideration is given to the influence of human agency on the reform process.

Another major criticism of the structuralist approach to reform is that most of their analysis is focused on the failure of reforms to achieve their stated goals. Little attention is paid to the origins and implementation of reform. These limitations can be overcome if we combine the interest group model of analysis, with its detailed examination of human agency, with a modified structuralist analysis as suggested by Gough.

B. A Modified Structuralist Model for Analysis of Legal Aid Reform

It is within the context of the relative autonomy of the State and the elasticity of structural limits that the impact of what have been identified as micro-level phenomena will be analyzed. Analysis at this level will focus on the impact of individuals, interest groups and government bureaucracies on the formation and implementation of legal aid reform policies. The interaction between these elements will also be examined. Also to be considered are the historically specific circumstances which clearly have the potential to affect legal aid policy formulation and implementation at both the federal and provincial levels.

Analysis will focus primarily upon the following:

1. The impact of structural considerations.
   i. How do economic and social forces influence or 'determine' the trajectory of legal aid reform?
   ii. How does legal aid reform affect relations of power within society?
   iii. How does the concept of relative autonomy operate within the state?
   iv. How do the structural limits of the capitalist state (ideological and material) affect the evolution and implementation of legal aid policy?

2. The influence of ideology on other members of the policy community (such as lawyers and the public as represented by the Press). This will take into account such questions as:
   i. How do changes in legal culture (attitudes towards due process, right to counsel, the appropriate role for legal aid lawyers) affect the development of legal aid programs?
   ii. How do changes in attitudes towards the functions and purposes of legal aid reforms (such as variations in emphasis upon traditional access, making rights effective, and social change) affect this development?

3. Interactions among the policy communities and their impact on legal aid reform, using Pross's concept of policy community as developed by Hoehne, but expanding the policy community to include opposition parties (see Table 3:4 below).

TABLE 3:4

POLICY COMMUNITY IN BC

Sub Government	Attentive Public
BC Department of the Attorney General	Legal Aid Clients
BC Department of Human Resources	Civil Liberties and Welfare Rights Groups
BC Treasury Board	The Press
Law Society	Individual Lawyers
Legal Aid Society	Churches
Legal Services Commission	Opposition Parties
Federal Department of Justice	
Federal Department of Health and Welfare	

In theoretical terms, the modified structuralist approach, relying heavily upon Gough's approach to explanation of reform in the welfare state, and Hoehne's interest group theory as applied to legal aid reform in Nova Scotia, will be utilized to indicate key factors which must be examined in any attempt to explain the origins and implementations of legal aid reform.

This model or theoretical approach will be employed in the search for answers to the specific questions asked in Chapter One and at the beginning of this chapter. Why was 1965-1976 the period of greatest expansion for the legal aid in Canada and all of its provinces? Why did legal aid develop the way it did, specifically in BC? How do we account for similarities across national and provincial boundaries. How do we account for differences?

1. Several articles on legal aid emphasize the need to demonstrate the fairness of the courts, arguing that there is not one law for the rich and one for the poor (Scott, 1935:155-156; Johnson, 1937; Gibbons, 1937:710; Jones, 1931:274). At least in part, this argument was intended to lessen any attraction communism might have had for Canadians in the post-War period. This was a particular concern of the legal profession (Gowling, 1951:716; Guss, 1953).

2. Criteria of eligibility for legal aid varied from nation to nation. In England, eligibility was established by a means test, but during the period of legal aid development in North America, the most widely accepted criterion of 'poverty', and therefore of eligibility for legal aid, was the ability of individuals to provide themselves or their dependents with the essentials necessary to keep them adequately fed, clothed, sheltered, and living as a family unit.

3. It was pointed out by Mayhew and Reiss (1969) that the poor were not the only group affected by lawyers reluctance to deal with non-traditional law. Certain categories of problems "surrounding such daily matters as the citizen's relation to public merchants or public authority" are not brought to lawyers or treated as legal matters because "the institution of legal advocacy is not organized to handle these problems on a routine basis" (Mayhew and Reiss, 1969:317). Subsequent works (Garth, 1980) brought some attention to the organization of the legal profession and how it serves or discourages certain types of claims. It is, however, the poor in the welfare state who are most likely to find their claims discouraged and who must consistently deal with administrations, tribunals, and service agencies. Again, it is the poor who are most dramatically affected by consumer and landlord/tenant problems.

4. Studies of the problem of unmet legal needs have only been conducted on a large scale since 1965. These studies concentrate on lack of representation in court, and it is recognized that absence of counsel in criminal cases is of particular seriousness. Zander notes that in England, studies conducted in the late 60's and early 70's showed that most persons sentenced to prison by magistrates were unrepresented. Persons represented were more likely to plead guilty and twice as likely to be acquitted (Zander, 1978:276-77). Wilkins study of criminal legal aid in Toronto showed 29.3% unrepresented when the finding of the court was made (Wilkins, 1975:49).

5. The actual deflection of top law students into NLF's was probably quite small. The creation of *pro bono* departments was primarily confined to large law firms in the most densely populated urban areas (Handler 1978:123).

6. In the first LSP case to reach the Supreme Court, residency requirements, which were in effect in 41 states and ranged from six months to two years, were declared unconstitutional (*Shapiro v. Thompson*, 394 U.S. 618[1969]; Sullivan, 1971:7). In *Goldberg v. Kelly*, 397 U.S. 254[1970], it was established that welfare recipients were entitled to a fair hearing before welfare payments were discontinued. State substitutes -- 'father rules', which deny benefits to

eligible children whose mother lives with an employable male -- were struck down. It has been estimated that welfare litigation added 5.5 million people to welfare roles (Garth, 1980:175).

In *Edward v. Habib*, retaliatory evictions against tenants who complained about housing code violations were declared invalid in some jurisdictions (Sullivan, 1971:8). In *Brown v. Southall Reality Co.*, the defence of illegal contract was held to be valid if a landlord brought suit for possession on the grounds of nonpayment of rent when serious building code violations existed at the time of the letting. Debtors were provided with the right to a hearing before being deprived of their property by creditors in *Fuentes v. Shevin* (407 U.S. 67[1972]; Garth, 1980:15).

7. Governors vetoed renewal of funding for legal services in California, Florida, Connecticut, Arizona, and Missouri. In 1970, NLADA reported that community chests in St. Louis, Albuquerque, New Orleans and six other localities had withdrawn support from local OEO-funded legal aid societies because of their involvement in controversial cases. The University of Mississippi Law School threw out its OEO-sponsored Legal Services Agency because it had begun to undertake far-reaching litigation. In Philadelphia, the police commissioner announced that department personnel would refrain from donating to the community chest because it supported the Legal Aid Society. The police chief in Los Angeles denied use of a municipal communication facility to the University of Southern California merely because that institution co-sponsored the law reform unit in the Los Angeles area--the Western Centre on Law and Poverty. (Johnson, 1974: 193; George, 1976: 687, n.46).

8. The CBA was especially sensitive to what it perceived as a threat to professional autonomy inherent in the NLF model. Its Legal Aid Liaison Committee argued that measures to meet legal needs were being adopted too hastily to allow proper consideration of the role of the Bar. In particular, adoption of the NLF model was resulting in abandonment of "principles to which there has been a substantial public commitment in Canada", notably provision of legal services by the independent Bar and freedom of choice of counsel. The latter, the Committee argued, took away "the stigma of poverty attached to public defender-type operations..." (Legal Aid Liaison Committee, *Report*, 1972:I. Cited in Hoehne, 1985:68).

9. Perhaps the characterization of the Whig interpretation of developments in society most frequently resorted to is that of the Cambridge historian Sir Herbert Butterfield: "the tendency...to emphasize certain principles of progress in the past and to produce a story which is the ratification if not the glorification of the present." (Butterfield, 1931:Preface). [This historical view of the goings-on of society is shared by many social scientists, and is frequently accompanied by, if not bound up with, a belief in liberalism and an adherence to the concept of pluralism.9.]

10. Definitions of the welfare state, and many of the policies associated with the welfare state, such as old age pensions and unemployment benefits, were founded in a number of capitalist societies prior to the outbreak of World War II. The term 'welfare state' first found its way into print in 1941, in a book written by Archbishop Temple entitled *Citizens and Churchmen*. The term was used

to characterize democratic states in contrast to the fascist states, and was intended to sustain morale and discipline in war-torn Britain. After the publication of the Beveridge report in 1942, with its commitment to full employment, the term became inextricably linked with the concept of extensive government intervention in social and economic matters. This was a concept which, in various forms, gained wide acceptance in most capitalist countries. Since its implementation in post-War Britain, attempts to clarify precisely what is meant by the concept 'welfare state' have been almost as numerous as the authors writing about it. In judging the intent behind welfare measures, authors range in interpretation from the 'Mary Poppins' approach -- the welfare state represents "an organized attempt to put humanistic values of society into effect..." (Armitage, 1975:8) -- to the Machiavellian -- the welfare state is "a bourgeois conspiracy to forestall a communist revolution..." (Aiyar, 1966:xviii). Desai has selected, from the various definitions put forward, three features unique to the welfare state:

1. A Welfare State is a positive state -- the state promotes the general welfare by a positive exertion of power.
2. A Welfare State is a democratic state -- possessing certain formal institutional mechanisms, which are considered essential by bourgeois liberal thinkers as vehicles for expressing and exerting the will of the people.
3. A Welfare State postulates a 'mixed economy' or 'managed economy' -- government intervention envisaged within a framework of private enterprise (Desai, 1966:158-161)

What distinguishes the welfare state is not, in other words, the provision of welfare, but the *manner* in which welfare is provided within the framework of democratic political institutions (Aiyar, 1966:45-46). These distinguishing features are accepted as delineating the type of state we referred to when we discuss the welfare state.

11. Legal culture in this sense refers to the internal culture of the Bar and the Judiciary. This term has also, however, been used to refer to the "network of values and attitudes relating to law which determines when and where and why people turn to law or government or turn away" (1969:34).

12. In England, this took the form of the traditional or judicare model -- private practitioners working out of their own offices. In the United States, the traditional model functioned within charitable legal aid programs, with paid staff attorneys functioning out of legal aid offices.

13. The most extreme interpretation of group representation and community organization (Wexler, 1970) argued that lawyers and lay personnel should work with NLF's, going into the community and organizing the poor around social change issues -- whether or not these issues had any clearly legal content.

14. Stephens notes in this context that the Law Society in Britain harboured doubts about the professional ethics involved in proactive strategies. The Royal Commission on Legal Services seemed to concur in this view (1979:vol. I:83-84).

15. Models of civil legal aid delivery have often been depicted as being either reactive or proactive (Cappelletti and Garth, 1978; Garth, 1980; Stephens, 1985), with poverty law NLF models of legal aid delivery falling on the proactive side of the divide and traditional or judicare models falling on the reactive side. This is not, an accurate picture of legal service delivery models. A more precise division would be between legal aid delivery systems that deal primarily with 'traditional' legal matters and systems that deal with poverty law. It is true that the traditional/judicare model is reactive. It is also true, however, that poverty law falls within a spectrum from reactive to proactive. The heavier the individual case load, the less time there will be for proactive activities and the more reactive the centre will be. Many centres start out with the intention of dealing only in poverty law and only on a case-by-case basis; this was the intention of many of the traditional legal aid offices funded by OEO. Many also started out with the intention of being proactive. These offices were either quickly inundated with individual cases and had no time to devote to proactive activity, or they were quickly embroiled in political turmoil -- again limiting their ability to devote time and energy to proactive activity.

16. Garth cites a neo-Marxist analyst, Claus Offe, when he states:

> Group leaders discourage "unrealistic" or "utopian" demands by the rank and file, and status groups *ipso facto* limit conflict to narrow issues flowing from the status. Such groups in the words of political scientist, Claus Offe, tend naturally "to exclude from the process of formation of the political will all expressions of general needs not tied to groups of status" (Garth, 1980:192, citing Offe, 1977:47).

17. This dissertation is concerned only with the first two of these waves.

18. The effect of urbanization was recognized at a very early stage of legal aid development. Reginald Herber Smith, in his study *Justice and the Poor* (1919:188), adopted the population figure of 100,000 as representing the size of a community in which "it was generally agreed that a full-fledged legal aid office with a salaried legal staff was required to meet the need fully" (Cited in Brownill, 1961:63). This standard was adopted for the 1951 survey of legal aid. Brownill comments that some form of organized service is required for communities as small as 50,000 (Brownill, 1961:67).

19. Hoehne notes that a link between immigrants and legal aid did nonetheless exist in Canada. Early manifestations of organized legal aid "occurred in those parts of Canada in which predominantly non-British immigrants settled" (Hoehne, 1985:24).

20. The American choice of law reform as the major means to welfare reform in general clearly did not emerge full blown from the intellectual musings of academics. There were solid historical reasons for assuming that law reform could improve the condition of under-represented or unrepresented individuals or groups in the United States. Law reform had worked for the National Association for the Advancement of Coloured People (NAACP), and it had worked

for the American Civil Liberties Union (ACLU). There was also encouragement in the success of such work during what is often referred to as the Warren Court Era in America. Conditions were auspicious for law reform on behalf of the poor.

21. In England, group organization was chosen over law reform as a strategy. Garth cites several historically specific circumstances that shaped this choice:

> (1) The substantive law was already far more advanced in England in terms, for example, of welfare, consumer, and tenant rights, particularly when compared to U.S. law in 1965; (2) at this point (in 1973 and 1974), there was already some disenchantment with test cases in the U.S. movement, and the English were able to draw on that critical literature; (3) without a Supreme Court, a written Constitution, and the doctrine of judicial review, test cases understandably never could be as important in England as they were in the United States...; and (4) it appears that in England lawyers were inspired by a more "political" stance than that taken by most of their American counterparts. This made them more wary of law reform and more receptive to strategies designed to give power to the disadvantaged (Garth, 1980:65).

22. It should be noted in this context that the American NLF approach was not an existing option when the first government funded legal aid program was proposed for Ontario.

23. It should be noted that almost all analysis of and commentary on legal aid reform in the 60's and 70's takes place in the context of reform of *civil* legal aid. Very little attention is given to reform of criminal legal aid. This is, perhaps, because the literature examined deals primarily with English and American legal aid programs. In these programs, the criminal and civil aspects were separate entities differently administered. Another consideration is that legal aid reform is often analyzed in terms of making rights created by welfare state legislation effective. These rights are in the area of civil law. More broadly based analysis of reform in the welfare state considers the efficacy of such reform in ameliorating the harshness of industrial society. The Criminal Justice system does not appear to enter into such considerations.

24. 'Micro-level' refers to that level which deals with the mechanics of policy making, i.e., interest group interaction.

25. Although Pross concentrates on structural aspects of government organization and the interaction of members of the policy community, he does bring into consideration the importance of socio-economic conditions, ideology, and culture. These are not, however, subjected to any systematic analysis.

Hoehne's study reveals that the ideological climate of the time was heavily influenced by events in the United States. The *Gideon v. Wainwright* decision, the American War on Poverty, and the social change model of legal aid delivery that evolved were important factors in legal aid reform at both the Federal and

provincial levels. The ideology of the "Just Society" promulgated by Prime Minister Trudeau also had an important impact on the formation of legal aid policy. Hoehne also emphasizes the economic factor prevalent in legal aid reform decisions at provincial government level. Indeed, he concludes that the major reason for the adoption of the NLF model in Nova Scotia was the calculation that it would not require the heavy expenditures that accompanied implementation of the judicare system in Ontario. Hoehne does not emphasize the economic factor as heavily in his consideration of policy development at the Federal level, although a close examination of parliamentary debates reveals that one of the major reasons the Federal Government did not choose to revise the Criminal Code, which, on the surface, would appear to be the more effective approach to ensure right to counsel in criminal matters, was that such a revision would impose too heavy an economic burden on the provinces, a burden that the provinces would not willingly take on (see Chapter 2).

26. The impact of interest groups on the reform process is seen by a number of authors to be related to the complexity of their organizational structure. Degree of structure is usually classified along a continuum indicating the measure of organizational complexity. Organizations at the high end of the continuum are those which have:

> ...multiple, broadly defined, collective and selective objectives and extensively human and financial resources, and which employ sophisticated public relations techniques and have regular contacts with government officials, representatives on advisory boards or even exchange staff with government agencies (Pross, 1981:298-99).

These are assumed to have more influence in the reform process than groups at the low end of the continuum (Hoehne, 1985:369). An added refinement to this argument is that the more similar an interest group organization is to the organizational structure of the Government, the more influence they will have in the reform process (Dawson in Pross, 1981).

Hoehne argues that the organizational structure of the Bar most closely resembles that of the Government, which should have given this interest group the upper hand in the formulation of legal aid reform policy. This did not, however, occur in Nova Scotia.

27. The overall conclusion of Kwanick's study of the role and influence of the Canadian Labour Congress (CLC) in several policy areas was that "the determining factor in the success or failure of a particular demand is not the strength of the group making the demand but some characteristics of the demand itself..." (Kwanick, 1972:198). Hoehne considers this to be one of the most important factors in legal aid policy formation in Nova Scotia. The aspect of the proposals for legal aid reform that most appealed to the Nova Scotian Government was the presumed cost efficiency of the NLF model of legal aid delivery. The ideological content -- social change, law reform, and poverty group advocacy -- received little consideration and was never, in fact, successfully implemented.

28. In the Canadian literature on policy formation, there is a continuing debate over the power of central government agencies to shape policy content and interest group activity. Hoehne's analysis of legal aid policy formation at the federal level confirms the ultimate influence of central agencies in policy-making and the ability of the Department of Health and Welfare to promote interest group activity in support of departmental goals.

29. There is general agreement in the literature that, at the inter-provincial level of policy making, interest groups have little or no impact (Simeon, 1972). This was confirmed by Hoehne in his analysis of legal aid in Nova Scotia.

30. It was pointed out that lawyers were more sensitive than other members of society to the ideal of equality before the law and the need for equal access. When lack of access became an issue, as it did in the 60's and 70's, they were forced to respond (Cappelletti and Gordley, 1976).

31. In discussing the influence of individuals, Hoehne is referring to Herber Smith's book, *Justice for the Poor*, written in 1919.

32. The Cox Committee was a joint committee of the Nova Scotia Bar that the Government appointed in 1970 to study the provision of legal aid in Nova Scotia and to make recommendations to the Government on how to implement a government-funded legal aid system.

33. In 1949 it was clear that the Government was going to act, and this galvanized the Law Society, anxious as it was to be involved from the very start.

34. In the United States, a radicalized branch of the bureaucracy--the OEO--took the initiative in launching the Legal Services Program.

35. In 1970, the Department of Health and Welfare took the first steps in funding Community Law Offices in four Canadian centres (see Chapter II). In 1973, the Justice Department initiated cost-sharing in the area of criminal legal aid. The situation in Canadian provinces was rather different. In some provinces, early initiatives in legal aid reform rested completely with the Law Society, as in British Columbia in 1970. In other provinces there was a joint initiative on the part of government and law society, as in Ontario in 1965 and Nova Scotia in 1970.

36. The pluralist interpretation of the state has a distinguished lineage. Aristotle averred that "a state is not made up only of so many men, but of different kinds of men" and the "nature of a state is to be a plurality." (Jowett, 1969). Six propositions form the foundation of pluralism, each capable of use as an empirical generalization, as a component in a model of analysis, or as a guide for reform:

1. Small governmental units alone are representative and can assure individual fulfilment.
2. Geographical dispersal of government or other public agencies serves to frustrate unrepresentative exercise of government power.

3. Society is composed of a diversity of religious, cultural, educational, professional, and economic associations, each to some degree independent.
4. Affiliation with these associations is always voluntary and partial.
5. Public policy accepted as binding upon associations is the outcome of the free interaction of the associations.
6. It is the obligation of government to identify and act upon -- perhaps one should say act only upon -- the consensus of these groups of associations.

In the Aristotelian ideal, the perfect state is one in which government will develop upon a plurality of groups which naturally complement one another, and the role of government itself is limited to the maintenance of an equilibrium which should ideally emerge naturally from the amicable competition of the various groups and associations.

Early in this century, pluralism received a more sophisticated formulation that clarified its ideological basis, its innate liberalism, and its limitations. The moving force behind this re-evaluation was an interest in reconstructing institutions for the protection of individuals who appeared in danger of being lost in mass society, debased by the industrial revolution, and vulnerable to the depredations of an increasingly unrepresentative state. The sense of community had been lost; people were bound together not by natural ties but by the demands of the industrial system, a centralized economy, and a coercive legal order. What was needed was a plurality of associations which could be interposed between the individual and the state and which would allow the individual to regain a sense of self and community. A variety of homogeneous groups could be accommodated within a heterogenous state. Questions of public policy would be dealt with within this essentially federalist framework. The state would thus be limited to two chief functions: 1) to encourage and maintain those small groups that are essential to the preservation of self-government and 2) to administer the general public order to maintain peace between these coexisting, and sometimes competing, groups (See Cole, 1920; Figgis, 1914; Laski, 1919; Tawney, 1920).

By the 1930's, the fundamental defects of the pluralist position had been identified: it paid little attention to the complex reality of group life; gave no consideration to the question of tyranny of the group over the individual; it assumed, somewhat naively, that groups exist to represent and protect human purposes, realize individual values, and help maximize freedom; it presupposed individual rationality, together with a general interest in and understanding of politics; and it gave little consideration to the problem of groups coming into conflict. It further assumed that there would be group consensus and that the Government would act as a neutral umpire, facilitating agreement.

These defects in the pluralist argument were made glaringly apparent by the increasingly intense competition among groups. Moreover, business corporations, trade associations, labour unions and professional groups were only ostensibly voluntary, increasingly oligarchical, and not more likely to free the individual than the sovereign state. Perhaps more significantly, such groups could in fact stifle state action intended to extend liberty (see Cole, 1929).

37. Recognition of the influence and power of elite groups has lead theoreticians to speak more of 'interest groups' rather than simply of 'groups'. For example, criticism of the financial structure in Canada emanates from the industry-financed Canadian Tax Foundation; the CBA works closely with the Department of Justice; and ethnic groups co-operate with the Canada Employment and Immigration Commission. The list could easily be extended. These interest groups "articulate political demands in the society, seek support for these demands among other groups by advocacy and bargaining and attempt to transform these demands into authoritative public policy by influencing the choice of political personnel and the various processes of public policy making and enforcement" (Almona, 1964:132-3).

Harry Eckstein views this process somewhat differently:

> In democratic systems parties must perform simultaneously two functions which are, on the evidence, irreconcilable: to furnish effective decision makers and to represent, accurately, opinions. The best way to reconcile these functions in practice is to supplement the parties with an alternative set of representative organizations which can affect decisions without affecting the position of the decision makers. This is the pre-eminent function of pressure groups in effective democratic systems, as the competition for power is the pre-eminent function of parties (Eckstein, 1960:163).

According to Eckstein, then, political parties furnish decision makers, while interest groups influence political decisions. In this view of the structure of society, interest groups become part-and-parcel of the political system, an element in a support system that gives a patina of legitimacy to decisions made. Groups are in this sense what Durkheim referred to as "secondary groups near enough to the individuals to attract them strongly to their sphere of action and drag them, in this way, into the general torrent of social life" (Durkheim, 1947, cited in Presthus, 1973). It is the struggle between interest groups that determines what decisions are made (Eckstein, 1963:690).

38. As Beirne has pointed out, although the instrumentalists may have performed:

> ...the useful iconoclastic function of revealing the social fictions promoted by doctrines such as 'the rule of law', 'equality before the law' and the 'separation of power', it is highly doubtful that frequent and visible abuse of such widely held doctrines could serve the interest of the capitalist class *as a whole* (1979:379. Emphasis in original).

Moreover, this approach cannot explain why "...a system so manifestly biased and coercive appears to so many as fair and just. It explains neither the 'legitimacy' of law nor the 'consensual' nature of the state in democratic societies" (Hall and Scranton, 1981:475). An additional criticism is that there is little analysis of classes and their relation to the means of production. Social causes are reduced to the wants or grievances of groups or individuals.

Little consideration is given to how the voluntarism of the powerful is shaped and limited by the systemic, structural, and impersonal forces that limit the exercise of state power (Gold, *et al*, 1975:34-35).

39. As has been noted, however, many recipients of legal aid are not potential members of the Industrial Reserve Army.

40. The difficulties of collecting support payments and the reluctance of the State, until very recently, to become involved in such collection makes this a somewhat tenuous argument (Wachtel and Burtch, 1981; Wachtel, 1983).

41. Laws, according to Marx, "perpetuate a particular mode of production" (Taylor, Walton and Young, 1975:52). The capitalist mode of production is based on a system of law with a developed concept of property, rights of private possession, and contractual obligations. The legality of contracts, the defence of property rights, and the concept of 'legal equality' regulate the capitalist form of wage labour: "The pursuit of 'legal equality' in a society based on an unequal division of wealth, property and power has meant that law legitimates and legalizes precisely these inequalities" (Hall and Scranton, 1981:468). Law not only maintains the capitalist form of wage labour, but in the area of criminal law and its intent to ensure 'preservation of the peace', it also punishes "the property offenses of the poor while maintaining stable and peaceful conditions for the 'regular' exploitation of labour" (Hall and Scranton, 1981:468).

Marx's theory minimizes the possibility of significant change in the economic order through political or administrative intervention. Thus, Marx emphasized the obstacles in the path of reform and the difficulty of maintaining reforms passed by governments. He consistently exposed:

> ...the limitations of bourgeois reformism, for example the reluctance of government to move in these matters, the limitations of various measures that reached the statute book, the stubborn resistance offered and the various means adopted by vested interests to circumvent the effect of legislation (Mishra, 1977:66).

However, in his analysis of factory legislation, Marx highlighted the role of the working class in bringing about reform. Factory legislation was seen as the victory of a principle, the victory of the political economy of the working class over the political economy of the middle class. The workers need not wait for revolution but could establish, piecemeal, socialist values and institutions within bourgeois society. Mishra explains the apparent contradiction in Marx's writings by pointing out that he was, in fact, working with two different models of capitalism. The first was a 'static' model which ruled out change except though revolution. The values and norms of capitalism, which entail coercion and competition, are antithetical to the underlying values of a welfare society based on human need and social solidarity. The contradictions of capitalism would, however, result in growing class consciousness and lead eventually to social revolution (Mishra, 1971:4).

The second model Marx worked with was a dynamic model which allowed for change through workers' actions in opposition to the nature of the State. Although Marx argued that the State in capitalist society served the interests of the dominant class, he also recognized that the State had, to some extent, to represent the interest of the community. On the one hand, the State:

> ...represents the community, acts on its behalf and responds to pressure exerted by various sections of the community. On the other hand, it remains firmly rooted in the class structure and therefore, in the long run, can not act effectively against the interests of the dominant class whose power and influence remain decisive (Mishra, 1977:66).

The first of these models remained of primary importance for Marx: the economic base is the decisive element in the system. It dominates the 'superstructure', which consists of law, politics, and ideology. Legislation, whether it consists of political or administrative measures, cannot change economic relationships, which are rooted in the mode of production, i.e., capitalism (Mishra, 1977:67).

42. Piven and Cloward demonstrate this congruence of interests in their analysis of federal welfare initiatives in the United States in the mid-1960's. They argue that these reform initiatives were necessitated by black rioting in northern cities, rioting which stemmed from the forced migration of blacks from the South in the aftermath of the mechanization of southern agriculture (Gough, 1979:67).

The rioting and breakdown of law and order occurred at a time when the traditional political machines of the cities were no longer effective, for they had not integrated the black population. The crisis precipitated by these events led to exactly the kind of action on the part of the "class conscious political directorate" that O'Conner cites as one of the major organizational responses of governments to working class power:

> In each case the Federal Government, and in particular the executive branch, bypassed state and local government in order to initiate these policies speedily....The aim was to integrate black leaders within the urban political system by providing them with limited resources and decision making powers....In this way many 'agitational' elements were absorbed and the crisis eventually ended (Gough, 1979:67).

43. Piven and Cloward argue that reforms enacted could be only superficial and temporary as long as blacks lacked the support of a strong labour movement (Cited in Gough, 1979:68).

44. The acceptance of the idea of extensive government intervention in capitalist economies after the War was, according to Panitch, essentially a political decision. During the Depression, governments had rejected the policy of increasing employment through budgetary deficits, primarily because of the opposition of business (Panitch, 1977). This opposition was largely based on the fear that:

> Under a regime of full employment, 'the sack' would cease to play its role as a disciplinary measure. The social position of the boss would be undermined and the self assurance and class consciousness of the working class would grow, strikes for wages increase and improvement in conditions of work would create political tension (Kalecki, 1971:140-141).

Panitch argues that opposition to full employment was overcome after the War because the political dangers of not taking measures to ensure full employment outweighed the difficulties of introducing such measures. The major considerations in this decision were:

1. The need to sustain trade union co-operation during the course of the War with the promise of continued prominence in decision making after the War and a commitment not to return to pre-war conditions;
2. the recognition that the experience of full employment and comprehensive planning in wartime had led to rising expectations of a post-War rise in living standards and security on the part of the working class;
3. the example of the Soviet economy (much played up during the wartime alliance) and concern over its effect on the working class in the post-war period;
4. the mass radicalism that exhibited itself in the electoral success of working class parties in the immediate post-war years (Panitch, 1977:76).

45. These views have also been described as 'anti-collectivist' (Wedderburn, 1965) and 'market liberal' (Room, 1969).

46. Also identified as 'reluctant collectivist' (George and Wilding, 1976) and 'political liberal' (Room, 1979).

47. Also identified as Fabian socialism by Mishra (1979).

48. The Macro-level describes actual power configurations determined and defined by the nature of the State. Analysis of this level elucidates the parameters of possible action (Hoehne, 1985:384).

CHAPTER IV

LEGAL AID IN BC 1934-1969: DISCOUNT LEGITIMACY

A. An Overview

The role of the State in the area of legal aid reform in British Columbia prior to 1970 was very limited. The course of legal aid development in the Province was to that time determined primarily by the activities of the organized Bar. The Bar appears to have been motivated by two primary considerations: a need to legitimate the profession, and an intent to ensure control of all legal aid developments.

The Government was, on the whole, content to leave the provision of legal aid to the profession, arguing that *noblesse oblige*. It was only when collapse of the system seemed inevitable that the Government stepped in with limited assistance. The Government was also motivated by its own need for legitimacy. That need was not pressing until late in this period, when a temporary economic downturn and by-election losses made legitimating action in the area of social welfare an astute political manoeuvre. The legal profession, on the other hand, was in constant need of increased legitimacy. The profession perceived its public image as unfavourable; the creation of a legal aid program was one way to enhance this image.

Reluctance to involve the Government in what was seen as a private affair of the Bar was reinforced by the general anti-welfare state, residualist mentality of

the profession, an attitude somewhat masked by an insistence that the provision of such a service was a duty imposed on the profession by virtue of its monopoly status.

There was no evidence that the BC Government was truly interested in providing legal aid. Indeed, it most decidedly was not. But the Bar was made wary by government involvement in legal aid elsewhere: the British Government provided public funding for legal aid shortly after the war, and decisions made by the Supreme Court of the United States in the early 1960's led to expanded government intervention in the provision of criminal legal aid in that country.

Provision of legal aid by the organized Bar evolved first in the civil area, stimulated by the War Works Program of the Canadian Bar Association (CBA). Interest in criminal legal aid developed in the mid fifties and dominated the discussion of legal aid reform throughout the remainder of the period. Criminal legal aid was more readily identifiable as an area in need of legitimation which would benefit both government and Bar. In this area, the rights and corresponding obligations of citizens were spelled out in greatest detail, while the raw power of the State over the individual was particularly apparent. The responsibilities of the profession in criminal matters were especially pressing, for the principles of equality before the law and equal access to the law were much more engrained in lawyers than in the general public.

The profession's determination to provide legal services in order to enhance their image, and the concomitant principle that government involvement was to be avoided, led to several crises in the development of legal aid. As the Bar

gave more publicity to legal aid, it attracted more clients and the volunteer program became overburdened. This created the impression that the legal profession was unable or unwilling to live up to its professed obligation to provide legal aid for the needy, which generated more negative commentary in the Press followed by further efforts to improve the public image of the profession by improving the provision of legal aid.

The demand for expanded legal aid coverage increased notably during the sixties. In criminal matters, this was triggered by the apparent lack of effectiveness of the Federal Government's *Bill of Rights*, and by crucial 'right to counsel' decisions made in the United States, notably *Miranda* and *Gideon*. Agitation for expanded criminal coverage was brought to a head by the decision of the Vancouver Bar Association (VBA) to cut back on its already limited coverage because of its inability to cope with the expanding case load on a voluntary basis. When collapse of the system seemed inevitable, the Law Society sought and received limited government assistance in the form of an honorarium for a limited range of criminal matters.

Growing interest in expanded provision of civil legal aid was stimulated by growing awareness of poverty in the midst of plenty and the increasing number of citizen groups organizing around the poverty issue. Part of this organizing activity was undertaken by law professors and students at the University of British Columbia, who came together to form the first Community Law Office (CLO) system of legal aid delivery in BC. One of the salient features of this program was its social integration orientation. The alienated poor would be reconciled to society through renewed confidence in the rule of law and the legal system.

The activities were not sufficient to meet the demand for expanded civil legal aid coverage. The provision of criminal legal aid reached an impasse. Sympathy for legal aid programs was not sufficiently widespread in the profession to make feasible the raising of funds necessary for adequate legal aid administration by raising Law Society dues; and the number of volunteers was in any case insufficient to allow the charitable program to continue. Yet, the anti-welfare state mentality of the profession, together with the fear that government involvement would mean government control, prevented an appeal for government funding.

A temporary escape from this impasse came with the establishment of the Law Foundation -- the concept of the Chairperson of the Legal Aid Committee of the Law Society, and modelled upon the Australian Legal Contribution Trust. The foundation's moneys came from interest on lawyers' trust accounts, and legal aid was one of the major beneficiaries of Foundation funds. But this proved to be only a respite. The legitimacy of the profession was at stake, and when it became evident that further funds were needed, they were sought from the Government.

A flagging economy and growing discontent with a government too long in power increased the Government's need to take legitimating action. The reluctant agreement of the Social Credit government to fund an expanded legal aid program, and the introduction of a *Law Reform Act*, indicates its acknowledgment of the need for legitimacy in this area. Judging by the response of the Press, legitimacy was indeed bestowed on both the Government and the profession by expanded funding of legal aid.

B. Legal Aid Provisions 1934-1965

The first suggestion that legal aid be provided to indigents on an organized basis was made in a 1934 resolution of the Law Society of British Columbia. This resolution urged local Bar associations to form legal aid societies "...whose objects will be to render legal aid to indigent persons who appear to be worthy thereof and who are unable to obtain legal assistance themselves" (*Proceedings*, Annual General Meeting of the Law Society (LSAGM), 1934).[1] Both the Vancouver and Victoria Bar associations set up embryonic legal aid committees (Watts, 1984:139). In addition, the 1939 meeting of the Law Society recommended that the Benchers[2] "evaluate the practicality of a Province-wide plan" (*Proceedings*, Annual Meeting, Law Society, 1939). In 1939, the outbreak of the Second World War brought these local developments to a halt, although British Columbia did play an active role in the legal aid scheme developed for the Armed Forces.

After the War, the Vancouver Bar Legal Aid Committee (VBLAC) undertook a study of various legal aid plans in operation in the United States and concluded unequivocally that services in Vancouver "were not adequate" (Norris, 1948:193). In 1951, the VBA set up a legal aid clinic.[3] By January of 1952, the Law Society, inspired by the newly developed Ontario legal aid plan, had put in place a Province-wide program. In Vancouver and Victoria, applications for aid were made to the local Bar associations; their legal aid committees and clinics continued to function as before. Applications from other parts of the Province were funnelled through the Law Society's office in Vancouver.

Criminal legal aid formed a very small component of this program. The Law Society placed severe eligibility restrictions on such cases: only first offenders facing serious charges were considered (LSLAC Annual Report, 1960:61). All referrals were made through the John Howard Society or similar organizations (Benchers' Minutes, October 29, 1956).[4]

The civil legal aid component of the Law Society's legal aid plan operated fairly smoothly throughout the period under consideration. A comment made in the legal aid report at the Annual Meeting of the Law Society in 1963 appears to hold true for the period 1952-1968: "There appear to be no unusual problems in connection with civil matters. The procedure for handling these cases seems to be well established and operating smoothly" (LSLAC Annual Report, 1963:68).[5]

Divorce and matrimonial cases were excluded from coverage, "unless, in the opinion of the committee, there was some social purpose involved which warranted an exception" (Cowan, 1951:198). The exclusion of these cases, which formed the bulk of civil legal aid work in jurisdictions where these limitations were not applied, restricted the number of legal aid applications and contributed to the smooth functioning of the program.[6] Although the needs of the indigent population were not being met by this program, it was sufficient to meet the legitimation needs of the profession. Furthermore, no demand that these needs be met came from those potentially eligible for assistance. Pressure for coverage of divorce cases did not mount in BC until after the passage of the 1969 *Divorce Act*, which greatly increased the number of individuals eligible for divorce.

In Vancouver, criminal legal aid first became a large component of the work of a Bar Association legal aid committee. A plan for expanded legal aid coverage was formulated and put into effect in 1955. The administration of criminal legal aid was left primarily to the office of the City Prosecutor and to individual lawyers. The Secretary of the VBA provided the Prosecutor with a list of lawyers willing to participate in the plan. The Prosecutor assigned a lawyer to each case on a rotation basis. The VBA did not apply the 'no previous conviction' rule enforced by the Law Society. The only criterion for accepting cases was financial: "Once it is established that economic need is present, Legal Aid is furnished" (MacLennan, 1961:217). All legal aid was provided on a *pro bono* basis. The widespread belief in the importance of the concepts of equality before the law and equal access to the courts as a means of legitimizing the Criminal Justice System (CJS), and therefore the profession, is reflected in the broad spectrum of political and ideological beliefs represented by the founders of this program, from the conservative-leaning Stuart McMorran who, as City Prosecutor, harassed the editors of the *Georgia Straight* and hippies who sat on the court house stairs, to Harry Rankin, avowed radical, general rabble-rouser, and one-time member of the Communist Party.

One major problem noted early on in the program's history was the cost of furnishing transcripts, essential in all higher court trials and especially so in appeal hearings. Applicants had to be turned down if they were unable to pay for transcripts.[7] Funding beyond the capacity of the VBA was necessary if the criminal legal aid portion of the Vancouver Bar's program were to continue. The Legal Aid Committee of the Law Society (LSLAC) requested that the AG's

department provide transcripts. Prior to the implementation of the VBA criminal legal aid program, the AG's department had, provided and paid for counsel in murder cases and in 'deserving' cases before the appeal court (Interview, D. Matters, Provincial Archivist, May 1989). After the inauguration of the criminal legal aid program, the AG's department referred such cases to the VBLAC. It would soon have become apparent that provision of transcripts cost far less than provision of counsel, while still bolstering the Government's legitimacy. In January 1957, the AG's office agreed to "provide transcripts in general legal aid matters, where the Law Society recommended that Legal Aid be made available" (Benchers' Minutes, January 29, 1957).

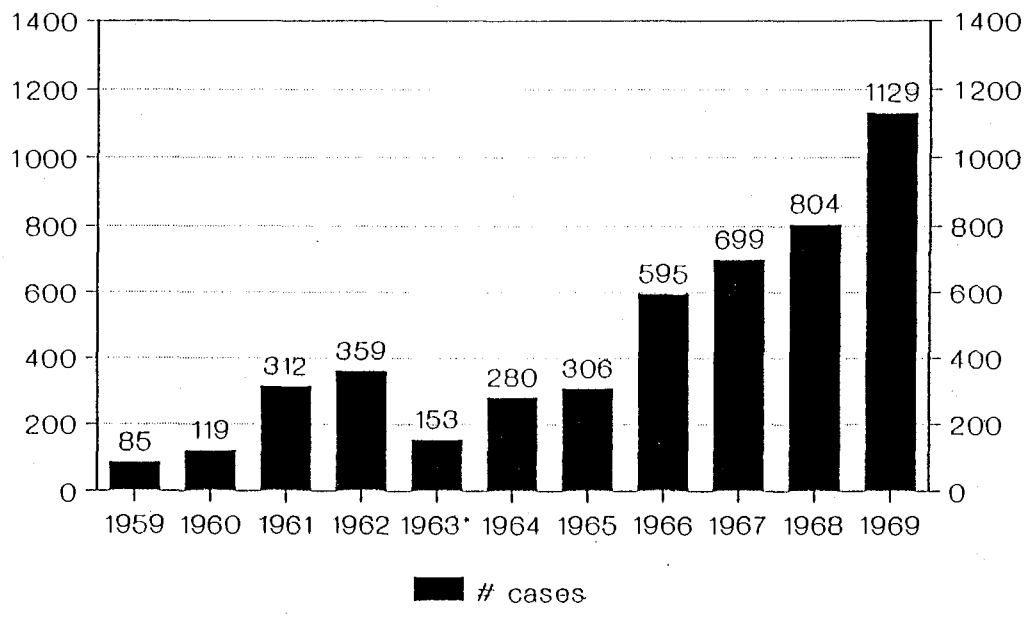
Another problem was the excessive case loads of participating lawyers, or, put another way, too few volunteers; this was not so easily resolved, and in fact persisted up to the formation of the Legal Aid Society (LAS) in 1970. An attempt was made to stem the flow of applications by improving the screening procedure,[8] and an appeal was made for more volunteers.[9] However, by 1961 the chronic shortage of qualified lawyers to handle cases made the collapse of legal aid in Vancouver seem imminent. The December 1961 Report of the President to the VBA was almost entirely concerned with legal aid matters (MacLennan, 1961:216-217). The report concluded with the statement: "A curtailment of our efforts in this field of Legal Aid certainly appears to be indicated" (Proceedings, VBA, 1962:77).

In early 1962, the VBA was forced to take extreme measures to restrict the growing case load. In March of that year, it was resolved that:

> ...henceforth the policy of the Vancouver Bar is to grant criminal legal aid to those who have had no previous convictions or a term of five years has elapsed since the termination of the applicant's last imprisonment... (Proceedings, VBA, 1962:77).

As a means of reducing the case load, the policy of accepting only first offenders was effective. Although the number of criminal legal aid applications did not drop, the number of applicants accepted decreased by over 40% (Proceedings, VBA, 1962:77; LSLAC Annual Report, 1963:69). The public image of the Bar, however, was severely tarnished by this move.

Table 4:1
Criminal Legal Aid Cases in Vancouver
(1959-1969)



Source: Law Society Annual Reports

* No breakdown is available for 1963, the year in which the 'five-year' rule was implemented. The figure given is an estimate based upon a total of 179 cases in the Province as a whole during that year. The percentage of cases in the Province constituted by Vancouver cases was calculated for each year and averaged over ten years.

The period 1962-1965 was one of considerable legal aid activity. This activity was fuelled by the negative publicity that followed upon the VBA's introduction of the five-year rule. It was further stimulated by events in the United States, where legal aid coverage in criminal matters was expanded, and by the report of the Ontario Joint Committee on Legal Aid, which recommended the introduction of the first publicly funded, comprehensive legal aid program in Canada.

From the early 50's to the early 60's, the public, as represented by and in the Press, showed no enthusiasm for criminal legal aid programs. Harry Rankin, one of the founding members of the VBA criminal legal aid plan, suggests that, in the early days, the attitude of the public towards the provision of criminal legal aid was indifference. The VBA was well in advance of public opinion when it set up its plan for the provision of criminal legal aid in 1954. The plan was not preceded by any groundswell of favourable public opinion: granting free legal aid to alleged rapists, muggers, and murderers was in fact unpopular (Interview, Harry Rankin, 1989).

This view of public resistance was shared by the John Howard Society. In 1961, motivated by the passing of the *Bill of Rights*, the John Howard Society "...appointed a Committee to gather information on facilities for the provision of legal counsel to persons who cannot afford to hire a lawyer, particularly as it relates to criminal cases" (John Howard Society, 1963:73). Citing developments in the United States, in particular the case of *Powell v. Alabama*, the Committee asked: "Why then, if the need for counsel for all indigents charged with serious crime is now becoming so 'obvious', has a proper system

been so slow in developing?" (John Howard Society, 1963:76). The Committee felt that the answer to this question lay in the public's attitude towards persons accused of criminal offenses:

> The public has always been far more concerned with the prosecution of accused persons than with their defence -- despite the rule of law that a person is presumed to be innocent until his guilt is proved in a court, beyond a reasonable doubt. There has been a reluctance on the part of the public and their representatives in the legislatures to provide funds for the defence of impoverished accused persons whom the public often assumes to be guilty (John Howard, 1963:76).

This perceived attitude of the public appeared to shift after 1962. The 1962 decision of the VBA to restrict criminal coverage to first offenders had a profound effect on public opinion. Although many groups and private individuals had previously commented on the need for improved criminal legal aid coverage, it had not been a major issue of public debate until the VBA imposed the five-year rule. Thereafter, however, legal aid became a focus of public interest. The VBA made valiant attempts to publicize their program and attract more positive media attention to it.

The administration of legal aid was streamlined by appointing an additional secretary to the VBLAC: one secretary now handled civil matters while another dealt with criminal matters. Criminal cases were screened by the Salvation Army, but they no longer passed through the City Prosecutor's office (LSLAC Annual Report, 1963:68). In 1963, a legal aid pamphlet was published clarifying the eligibility requirements and coverage of the voluntary legal aid plan (Proceedings, VBA, 1963:173). In an effort to improve public relations, copies

of this pamphlet were distributed to newspapers and radio stations; this in turn increased the number of legal aid applicants (LSLAC Report, 1965:44; 1966:100). Pressure from other sources was also mounting. The John Howard Society and the BC Civil Liberties Association had undertaken studies of the existing legal aid program, and both had found it wanting.

The major conclusion of the report of the John Howard Society was that the provision of the *Criminal Code* that a person accused of a criminal offence is entitled "to make full answer and defence personally, or by counsel", and the provisions in the *Bill of Rights* that every individual in Canada had the right to "equality before the Law", and a fair hearing in accordance with the principles of fundamental justice, could not be met unless individuals who could not afford to engage their own counsel were given legal aid. The John Howard report suggested that either a public defender system or a modified version of the English Legal Aid Plan would prove a substantial improvement in the provision of criminal legal aid (Benchers' Minutes, May 29, 1969).

The Civil Liberties Association's report recommended that individuals charged with any offence in which the penalty was three months' imprisonment or more should be eligible for provision of counsel without requirement of a means test or any other qualification; that a PD be appointed and paid from public funds, but that the accused should be allowed to select counsel of his/her own choice; and that a tariff of defence counsel fees should be drawn up sufficient to induce counsel to undertake criminal cases under the plan and spend sufficient time on each case. The question of who should pay (i.e., the accused, the public exchequer, etc.) would be decided by the court (Benchers' Minutes, May

29, 1969). In the same year, the Association also submitted to the Law Society a report advocating the expansion of legal aid in both civil and criminal matters.

Events in the U.S. spurred on legal aid development in BC. An editorial in the *Vancouver Sun* newspaper in January 1964, commenting on the Ford Foundation's funding of the Public Defender Project, pointed out that "much already has been done in the United States in reducing the differences between justice for the rich and justice for the poor." The job of reducing such discrepancies would thus be "vastly easier than a similar effort in this country". It was considered unfortunate that Canada lacked both the open-handed charitable foundations and the requisite prestigious individuals willing "to go to bat for the little man". Even more unfortunate was the fact that it remained the responsibility of provincial attorneys general "to see that our *Bill of Rights* offers more than lip service to justice." This was a responsibility that they were not notably eager to take on (The *Vancouver Sun*, January 13, 1964). The attentive public was enamoured of the American system and in general agreement that the principle of equality before the law was not being met in BC. The responsibility to rectify this situation lay with the Government, and it would require a vastly increased expenditure of public funds.

The increasingly negative publicity given to the lack of adequate criminal legal aid coverage, the growing interest of the attentive public, and the impact of events in the United States, clearly gave the Government cause to think. Although not prepared to take on the expense of the type of coverage that Supreme Court decisions in the United States dictated, the Government was

willing to take steps to ensure legitimacy and control demands for increased funding. The AG was eager to ensure that the *pro bono* system of the organized Bar continued.

When the CBA formed a Continuing Committee for Criminal Legal Aid to consider pressing problems in the area of criminal legal aid and to "make recommendations to the Law Society for future development of legal aid in the Province", the AG agreed to send a representative (LSLAC Annual Report, 1963:69). The participation of a government official on the Committee ensured that the Government was well informed of the difficulties of providing criminal legal aid. It also ensured that the Government had a considerable degree of influence over the tenor and direction of discussions concerning expansion of legal aid.

At the LSAGM in 1963, the impact that the decisions of the U.S. Supreme Court were having on the Bar became even more apparent. The report of the LSLAC included the following commentary:

> ...your committee is well aware of the public clamour for what I will call unrestricted legal aid, and societies, such as the John Howard Society and also the Civil Liberties Association, are interested in this subject, and have made a study of it, and perhaps as many of you know, in March last a most interesting judgment from the Supreme Court of the United States was pronounced, and in so many words it stated that it was the duty of each State of the United States to supply counsel to indigent persons, and as a matter of fact, if counsel was not supplied, it was to be considered as a mistrial. Mr. Justice Black, in giving that decision, stated that lawyers in criminal cases in today's society are necessities, not luxuries (*Proceedings*, LSAGM, 1963).

The attitude of the organized Bar in BC had undergone a subtle transformation between 1950 and 1964. During most of this period, the Bar had tended toward a residualist mode of thinking. Although in the 1950's reaction to the perceived threat of communism was not as virulent in BC as in the US, there was very considerable opposition within the profession to Marxist ideology and even to milder socialist sentiments. The perils of the welfare state were emphasized by the Right Honourable Arthur Meighen in a 1950 address to the combined annual meeting of the Law Society and the BC branch of the CBA:

> So swiftly...have we been carried by the glamour and political temptations of the Welfare State down a back alley to Socialism that though in point of conviction we are no farther removed from that creed than we have been for decades, in point of fact and reality we are vastly nearer the dismal destiny itself than ever before in our history (Meighen, 1950:186-187).

Mr. Meighen hastened to assure his audience that this did not imply that sources of charity should be stopped, nor that the Government should not "in appropriate cases and on sound principles" perform certain acts of charity:

> That is, however, altogether different -- and I pray to you to keep this in mind -- it is wholly different from supporting the State in a programme of underwriting the lives of its citizens, of undertaking protection of its people from the cradle to the grave, or from any other arbitrary state to the grave (Meighen, 1950:186).

This general reluctance to accept welfare state principles was reflected in the profession's reluctance to seek government funding of legal aid programs.

The heavy demand that criminal legal aid made on those members of the Profession who volunteered their time had led, very early on, to a discussion of government funding of criminal legal aid. The idea was not, however, first broached by members of the Vancouver Bar or by members of the Law Society. The discussion was triggered by a resolution of the Criminal Justice Subsection of the BC branch of the CBA (CJ Subsection):

> Resolved that the Canadian Bar Association approve in principle of the necessity for various Canadian Governing bodies to make proper arrangements to provide for payment out of Public Funds of the Defense costs of indigent persons charged with a criminal offense (Benchers' Minutes, April 11, 1957).

This resolution was received as poorly at the provincial level as it was at the national level (see p. 39). It was bumped from committee to committee, but no decision to accept or reject it was ever made.[10]

That the issue of public funding and government intervention in legal aid was a matter of growing concern in the legal profession is indicated by the fact that it was the keynote of an address given by the Honourable Mr Justice Wilson to the VBA in July 1959. In analyzing the arguments for and against a system under which all litigation costs are borne by the State, Wilson dealt in some detail with developments in Britain. While noting that the English plan had been branded in some quarters as "socialist law", he pointed out in its defence that the operation of the scheme was entirely in the hands of the profession, "who have lost none of their independence by participating therein". Wilson concluded that "a radical departure has already been made in England and that

more changes seem to be on the way, all in the tradition of the Welfare State" (Wilson, 1959:144-145). The people of British Columbia, and BC lawyers in particular, were not, in Wilson's opinion, ready for such a radical departure. But he did feel that the volume of criminal legal aid cases and the burden this placed on the limited number of volunteers would ultimately dictate that, if the plan were to continue, some fee-for-service would be required (Wilson, 1959:146).

By the fall of 1961, pressure on the voluntary criminal legal aid system led the LSLAC to suggest that the executive of the Benchers be asked for their opinion on "whether or not assistance might be sought from the Government" (Minutes, LSLAC, November 21, 1961). The Ontario scheme, under which a substantial yearly grant for legal aid was made to the Law Society by the Government, was discussed, and consideration was given to the possibility of implementing a similar program in BC, based on an expanded honorarium system: the Government, it was suggested, might be willing to give grants to the Law Society as compensation for disbursements paid by the Society. This, however, was considered too extreme a measure (Minutes, LSLAC, November 21, 1961).

In early 1963, the Law Society once again examined other legal aid systems and once again refused to recommend expanded government funding. After considering both the American PD System and the English Judicare system, the Legal Aid Committee concluded that "both systems resulted in substantial cost to the taxpayers". Of the two systems, the Committee preferred the English system, as it "reduces government control to the minimum necessary to protect the public purse" (*LSLAC Annual Report*, 1963:68).

In addition to being opposed to state intervention on ideological grounds, the Bar was generally hostile to a publicly funded system out of fear of government interference in the profession. This fear was apparent in an article on the Seattle Legal Aid Bureau published in the *Advocate* in 1951. The Bureau, which consisted of a full-time salaried director and a full-time secretary, was cited as the only one in the United States "financed entirely by the annual voluntary contributions of local Attorneys". It was pointed out that the Bureau was a "recognition by the Attorneys of their social responsibility". Just as importantly, however, it was pointed out that support of the program was the best argument against a government-financed and government-run plan (Note, 1951:163).

The growing fear of the possibility of government intervention was reiterated by a member of the Vancouver Bar who submitted to the *CBA Journal* a letter concerning the voluntary handling of criminal legal aid cases. The letter emphasized the reluctance of government and the legal profession to consider government funding, arguing that government did not wish to expend public funds on legal aid and the profession did not want government interference (CBAJ, 1956:1107). There was also concern that, if interest in the provision of legal aid continued to grow, public demand might force the Government to act should the profession prove incapable of providing the service: "The profession can best be served by creating such a scheme now. Delay may mean a demand for government intervention" (CBAJ, 1956:1107).

In addition to obviating government intervention, the reasons put forward by the legal profession in BC for the acceptance and expansion of legal aid on a

charitable basis were similar to those put forward at the federal level: it attracted favourable publicity; fulfilled a professional obligation; and bolstered the credibility of the principle of equality before the law. Prior to 1965, the equality argument was rarely invoked. The only direct reference to equality before the law occurred in a Bencher's memorandum dated April 3, 1950, which stated that: "Legal Aid is an arrangement to ensure that the principle 'All Men Are Equal Before The Law' is an actuality" (Benchers Memorandum, April 13, 1950). In the Law Society's annual report for 1964, reference was made to this memorandum, with the comment that "there never has appeared to be any reason to depart from that principle" (LSLAC Annual Report, 1964:103). Fleeting references were made to the Law Society's interest in "seeing justice or a day in court afforded to a person who is not able...financially to bear the cost of a trial or of the litigious matter" (*Proceedings*, LSAGM, 1961).

Arguments to professional duty or obligation, although not common, were also made and discussed. In the Annual Report of the VBA it was stated that "...it is important that all lawyers appreciate that as a member of an ancient and honourable profession, he has a very real responsibility to those who for one reason or another are unable to enlist his services in the ordinary way" (Annual Report, VBA, 1958:102). This sentiment was reiterated in 1961, when the Chairperson of the LSLAC, taking exception to the Civil Liberties Association's description of legal aid as a charity, pointed out that it was a duty of the profession to provide legal aid, and, although it was provided on a voluntary basis with no fee charged, it was not an act of charity (*Proceedings*, LSAGM, 1961).

BC lawyers seemed to cling tenaciously to the idea that provision of representation was the obligation of the legal profession, not the responsibility of the State. And although this attitude had begun to crumble by the end of the period under discussion, the change in thinking was brought about by practical, not philosophical or ideological considerations (*Victoria Colonist*, June 27, 1968). Chief among these was the need for legitimacy. The legitimizing function of legal aid was, from very early on, the main sustaining argument put forward by the Profession. The first discussions of legal aid, which took place at the Benchers' meetings in the 1930's, coincided with the Benchers' concern over the growing practice of 'ambulance chasing' (Benchers' Minutes, May 4, 1934; April 1, 1935; July 2, 1935) and with the taking of measures to combat "popular prejudices" against the legal profession (*Proceedings*, Annual Meeting of Benchers, 1935). This general paranoia of the Bar in regard to its public reputation persisted. Almost every annual report of the VBA or the Law Society between 1950 and 1962 mentions the favourable publicity to be garnered from legal aid, and the *Proceedings* of the Law Society are full of references to legal aid as good PR.[11] From 1962 onward, constant reference is made to its potential as an attractant of bad publicity and ways in which the system could be improved in order to avoid this.

By 1963, the growing demand for legal aid (combined with increasingly bad publicity) forced the organized Bar to accept in principle expanded government funding of criminal aid. In June of 1963, the CBA Continuing Committee decided "to seek the payment of fees in all criminal legal aid matters" (Proceedings, VBA, 1963:173). In spite of their decision earlier in the year not to seek

government funding, the LSLAC endorsed this recommendation; the executive of the VBA did likewise in October 1963 (Proceedings, VBA, 1963:173, 205). The Benchers also adopted this recommendation and presented to the AG's department a request for expanded government funding of criminal legal aid (*Proceedings*, LSAGM, 1963). The CJ subsection, however, recommended acceptance of a more comprehensive legal aid program, including a tariff for both civil and criminal matters. The Continuing Committee, with the participation of the AG's office, shelved the more extensive recommendations of the CJ subsection and adopted the more moderate course of establishing an honorarium for criminal legal aid (Proceedings, LSAGM, 1965).

The AG responded favourably to the Bar's request for expanded funding. It was clear from mounting negative publicity in the Press and increasing concern within the profession that some concession on the part of the Government was necessary. In his speech to the LSAGM, AG Robert Bonner indicated that he was well aware of the growing public interest in legal aid, noting discussions of the issue that had taken place in the House of Commons. He also noted the general sentiment of the Bar and the Government, that the latter "should not be intervening in so many things". However, that there was a growing demand for legal aid was apparent and, as Bonner noted, the deliberations of the Continuing Committee "have been marked by virtual unanimity as to what might be done in the immediate future. If this matter becomes more crystallized in the immediate future I think we can share some satisfaction in an improvement to the public in this important and developing field" (*Proceedings*, LSAGM, 1963).

In March 1964, the first major breach in the wall holding back the development of legal aid in British Columbia appeared when the AG's department agreed to the Benchers' proposal for an expanded honorarium in criminal legal aid matters. The honorarium already provided for capital offenses was expanded to all indictable offenses covered by the Law Society. The Government agreed to provide $50,000 for honoraria on the basis of $30 *per diem* for trials of less serious indictable offenses and $50 *per diem* for trials of more serious indictable offenses. There was no pretence that these honoraria were intended to furnish full compensation for lawyers' services; rather, they were to defray expenses incurred in the conduct of cases (Priorities in Legal Aid, 1977:3). The Law Society submitted the lawyers' bills for payment to the AG's Department. They were also responsible for the administration of the scheme, for the screening of applicants, and for the appointment of counsel. The 1964 Annual Report of the LSLAC noted that "on the criminal legal aid side, we have come much further than anyone dared to hope eighteen months ago and the Profession has taken upon itself a very heavy responsibility" (LSLAC Annual Report, 1964:118).

Government concessions, limited as they were in this area, were facilitated by the healthy state of the public exchequer. The BC economy "surged into the mid sixties at a speed greater than any in the country and, possibly, the continent" (Robin, 1973:258). They were also entirely in keeping with previous government action in the social expense area.

The structural shift in capitalist economies brought about by the introduction of Keynesian policies was fully reflected in the Social Credit Government's

treatment of the functions of accumulation and legitimation. There can be no doubt the foremost priority of the Social Credit Government was to maintain the accumulation function of the State, often through patently interventionist policies (Persky, 1983:22).[12]

> Bennett assumed the premiership in the midst of a fierce injection of foreign capital, full employment, rising wages, and unprecedented government revenues....[His task was] to conserve a legal environment favourable to the exploitation of large companies (Robin, Pillars of Profit:173).

The Social Credit Government focused on the "expansion of monopoly capitalism and the pursuit of a somewhat reckless policy of resource exploitation" (Persky, 1983:22). But during this period of remarkable economic prosperity that marked the first fifteen years of Socred rule, the Government was not averse to bolstering its legitimacy through increased social expenditures. As Robin comments, "Social Credit, if only for pragmatic electoral reasons, lives comfortably with the welfare state" (Robin, 1978:39). BC was certainly not a welfare state laggard in comparison with other provinces. Although Socred welfare legislation broke little new ground, the work of previous governments was refined and continued (Clague, 1983:18).[13] A limited honorarium for legal aid fit comfortably into Social Credit fiscal policy.

The Law Society had no wish to see any further increase in the AG's largesse. Nor would they have been popular with the Government if they had. The LSLAC pointed out the need for future planning, envisioning a necessary expansion of services:

> It is patently obvious that legal aid matters cannot stand still. In England, in the United States, and in various Provinces of Canada, urgent investigations are going forward. Thus while this Law Society has just now taken on new responsibilities, it must continue to urgently explore the future (LSLAC Annual Report, 1964:118).

The Law Society stated firmly, however, that administrative costs would remain its own responsibility (LSLAC Annual Report, 1964:118). The profession's acceptance of the principle of expanded government funding in the form of honoraria for criminal legal aid won it a temporary respite from adverse publicity: "Now, this legal aid work gives us great opportunity to re-establish and advance our reputation with the public at large..." (*Proceedings*, LSAGM, 1964). In 1965, legal aid was described as "one of the best ways of servicing the public as well as servicing ourselves" (*Proceedings*, LSAGM, 1965). Both the Government and the Bar had got what they wanted: the Bar improved its public image without relinquishing control, while the Government ensured that legal aid would continue to be provided at minimal cost to the State.

After the adoption of the criminal legal aid honorarium system by the Law Society and the BC section of the CBA in June of 1964, attention began to turn to the much neglected civil legal aid system. The Benchers felt it would harm their image with the public and the Government if they were to get into a position "where we are accentuating one type of legal aid against another". Criminal and civil legal aid should advance hand-in-hand. Moreover, the administration of any program that evolved should be under the control of the Law Society. This was "agreeable to the Department of the Attorney General." In order to advance legal aid, "It may come, it may come sooner than we think,

that the Law Society and the Benchers will have to appoint either a part-time or full-time director of legal aid....We may find ourselves involved in expense which at the moment we are not called upon to bear....I can only call for your co-operation and assistance" (*Proceedings*, LSAGM, 1964). Exactly how these funds would be raised was not made clear. A suggestion that Law Society fees be increased in order to cover legal aid administrative expenses had been considered and rejected by the LSLAC in 1961 (*Proceedings*, LSAGM, 1961).

The Government too was aware of the growing demand for civil legal aid and, in addition, was now faced with a very expensive Canadian precedent in the *Joint Report* in Ontario. Some gesture in the area of civil legal aid was required. At the LSAGM in June 1965, AG Bonner made mention of the positive working relationship that had developed between the AG's Department and the Bar, and commented that:

> ...although I don't expect to say anything too precise about this at the moment, I think you know that those who are heading up the legal aid effort in the bar are in constant touch with the Department with a view to broadening the service available to the public in this regard, and some discussions will be had during the next few days in the general direction of broadening the assistance given to the public in this connection (*Proceedings*, LSAGM, 1965).

Mr. Harper, chairperson of the LSLAC, also commented on the amicable ties that had been established with the AG's Department: "I must say we have had complete co-operation and a very sympathetic hearing from them, and I am very pleased to hear the AG today say that there will be some further discussions" (*Proceedings*, LSAGM, 1965). He reiterated that criminal and civil legal aid "must march along

hand-in-hand." Harper had spent the previous year in England and had taken time to study the English legal aid plan. Although impressed by "what a good system they have," Harper also made note of what a "gigantic" undertaking such a system entailed:

> If we had a similar system here, it would mean a staff of from 20 to 30 people to run a system like that ...I just mention that to let you know when we eventually get to what we consider a proper legal aid system, both criminal and civil, it is going to take a proper office, a proper staff, and it is going to take money (*Proceedings*, LSAGM, 1965).

Harper advocated a 'go slow' attitude toward future development of legal aid: "We are fully aware that our system is growing very slowly, but first things must come first and we must see that as we develop and as we perhaps experiment, if you want to put it that way, that we are heading towards the right system for our province". His personal preference was for the English system, although he admitted that it would "certainly have to be changed to be adapted to our Province". Harper preferred the English system because it allowed choice of counsel. The counsel selected would treat a legal aid case in the same way as any other. "There is no question of it being delegated to a salaried civil servant who treats it as case #343". He commented once more on how costly such a system would be, and added that proper legislation would be necessary in order for the scheme to run properly (*Proceedings*, LSAGM, 1965).

In July 1965, the Benchers adopted a resolution of the VBA that "...a committee be established to consider the whole question of civil legal aid with particular reference to the report of the Ontario Royal Commission on Legal Aid..."

(Minutes, LSLAC, July 30, 1965). Once again, a representative from the Department of the AG was invited to sit on a committee to consider "matters that should properly be the subject of civil aid, the proportion of the costs that should be borne by the profession and the establishment of a permanent body under the Law Society to handle the plan" (Minutes, LSLAC, July 30, 1965; *LSLAC Annual Report*, 1966).

When the committee was formed, the AG declined to send a representative. The need for government action in the area of civil legal aid was not sufficiently pressing for the AG to feel that his department should be represented on the committee. But while declining to sit on the committee, the Government did take steps to provide minimal assistance to the Bar in this area. It was announced that, commencing July 1, 1965, the Law Society would be recompensed for any deficit in its civil legal aid disbursement fund (LSLAC Annual Report, 1966).[14] The Government once again succeeded in enhancing the legitimacy of the justice system at minimal expense to the treasury. The Bar remained firmly in control of legal aid in the Province and the Government was happy to watch developments from the upper balcony.

The Law Society's interest in further development of a joint plan for criminal and civil legal aid appeared to be lukewarm at best. Mr. Harper, speaking as Chairperson of the LSLAC, was full of cautionary statements at the 1966 LSAGM. He emphasized that the existing criminal legal aid plan was working very well; the Committee's relationship with the Government was "very good" and the LSLAC had "been very careful with their money," actually spending less than had been anticipated.

Harper then commented positively on the assistance the Government had extended in the civil field with their grant to cover civil disbursements. A lengthy analysis of the Ontario Legal Aid Plan followed. The major advantage of this plan was that "Legal Aid will be administered by the Law Society and paid for by the Government, which is the way I think it should be. That is the way it is done in England". The 75% fee that solicitors received was "of interest", but, in BC, a "simpler block tariff might be more appropriate". Harper emphasized, however, that the LSLAC would remain a step behind Ontario: they would watch developments in that province and perhaps learn from them, but no hasty decisions would be made (*Proceedings*, LSAGM, 1966). There was very little more that the profession could do without expanded funding. The Law Society's decision that government funding should be limited to tariffs or honoraria, and that the administration of legal aid should be funded by the profession, had painted legal aid into a corner from which there was no immediate way out.

From 1965-1967, the mutual admiration between the Bar and the Government grew while legal aid stagnated. Events were, however, conspiring against the continuation of this amicable relationship. Conditions that had led to the launching of the Federal version of the War on Poverty were increasingly apparent at the provincial level, and social agitation was being fuelled by funds from Ottawa. As these structural conditions changed, the *status quo* was endangered.

C. The Introduction of Poverty Law

The period from the mid sixties to the early seventies was one of considerable social ferment. The impact of the poverty issue at the provincial level was considerable. There emerged a host of organizations concerned with the causes and consequences of poverty. The proliferation of such organizations was encouraged by Federal Government funding channelled to the provinces through LIP and Opportunities For Youth (OFY) grants and through the Canadian Assistance Plan (CAP) cost-sharing program. The Secretary of State and the Welfare Grants Division of Health and Welfare Canada also provided project grants to innovative services:

> The sudden availability of federal money coincided with a grass roots movement to improve social services. Communities took advantage of the federal initiatives to create new organizations and expand the work of existing agencies. The network of community service projects expanded dramatically... (Clague, *et al*, 1984:25).

One such innovative service was the Inner City Service Project, established in the summer of 1967 to provide university students with an opportunity to engage in an interdisciplinary learning experience by undertaking "innovative and experimental community services activities in economically depressed areas of the city" (Atrens, 1970). Inner City pioneered a dozen or more services for youths and people on low incomes, including a store-front legal program.

This program had its origins in an earlier initiative by students at the UBC Law School. In 1967, these students attempted to organize a legal aid clinic

modelled on the American Legal Services Project (LSP). Jerome Atrens, a member of the law faculty at UBC, and several law students had noted the success of the Neighbourhood Law Office in Seattle. The Seattle operation provided free legal aid to individuals who could pass a means test; educated people in the law; and researched key areas of the law, such as landlord-tenant relationships. The Seattle project also produced a report proposing changes in legislation (The *Province*, May 22, 1969).

In 1967, Atrens proposed a two-year, $150,000 project to establish a pilot legal aid office in a poor neighbourhood. A number of Vancouver lawyers were canvassed for their support, which produced many good wishes but no active help. The organizers felt that, in the absence of strong local support, they could not legitimately approach outside charitable foundations for assistance (The *Province*, May 22, 1969).

In the winter of 1968, however, the project was revived. Initially, UBC law students set up a legal aid service on campus, and then expanded into an off-campus legal advice service under the auspices of a larger program: the Inner City Service Project. By August 1969, the legal advice services of the UBC law student clinics were provided in three locations. Michael Harcourt, a recent graduate of the UBC Law School, was hired to administer the project on a full-time basis (The *Vancouver Sun*, August 7, 1969). Funds for the project came from the 1969 graduating class of the UBC Law School, the Law Students Association, and from the Law Society (The *Province*, May 22, 1969).

The long-term objective of the project was to demonstrate clearly the need "for a comprehensive legal aid system" (The *Province*, May 22, 1969). In addition, Atrens was quoted in the *Province* newspaper as stating, "the concept of equality before the law demands access to legal advice as a matter of right, not money." Moreover, in practical terms the provision of legal services:

> ...provides further avenue for the poor to escape from some of the vicissitudes of poverty by protecting them from illegal practices by landlords, merchants, or bureaucrats who now are safe from effective counteractions. Furthermore, the person whose legal rights receive attention and protection is first of all going to acquire a respect for the law....He will be more likely in the future to use the processes of the law to achieve his legitimate goals (The *Province*, May 22, 1969).[15]

Harcourt, in a presentation to the Croll Committee on Poverty, stated that the ultimate goal of the project was "to achieve 'a degree of reform in society itself' to help end poverty" (The *Province*, November 20, 1969).

Atrens, undoubtedly aware of the controversy a similar project had generated within the organized Bar in the United States, was careful to point out that the research project did not involve "...a commitment to any particular type of province-wide scheme. It is not assumed that neighbourhood legal services offices could become the *only* source of legal aid in B.C." A few such offices located in urban areas could, however, prove most valuable when operated within a general system patterned after the English and Ontario plans. The concept of a 'mixed' service came early to BC.

The stated objectives of the Inner City Project differed notably from those of the four CLO projects funded by Health and Welfare in 1970 in that they did not include "involving the poor in some way in the provision of those services" (see Chapter II).

A proactive, reform-oriented legal aid program had, nonetheless, been introduced in BC, although the exact content of this program and the direction it would take had not been established. The intention of the law students and lawyers who originated the program was clearly to ameliorate the condition of the poor through the use of the law. They were liberal reformers, many of whom went on to positions of prominence in the NDP.[16] The gap between the principle of equal access and its realization had been noted and steps taken to rectify it. The potential social control function of such a program is, however, also apparent. The possibility of collective action against the State could be obviated through the individualization of rights and grievances or by inculcating in the indigent the assumption that both individual and collective grievances could be solved through the legal system. Those that could not were unlikely to attract that attention or services of the Inner City Legal Service Project.

Nevertheless, the launching of the poverty law program was not sufficient to quell agitation for further efforts in this area. Negative publicity reached a crescendo in 1968-69, a period in which a barrage of commentary upon the administration of justice and the legal aid system issued from the media. Demands from groups and agencies representing legal aid's potential client population increased substantially. Interest was heightened by the fact that both federal and provincial political campaigns were being waged. The Just

Society elements of the federal campaign had some influence on the provincial campaign. It is difficult to tell how much of the commentary on the legal aid system in British Columbia was political rhetoric and how much was an expression of genuine public interest and concern. This was, however, a period in which the plight of the poor and the causes of poverty in Canada were often the subject of debate, the object of task force investigations, and the focus of commissions. There was also growing public acceptance of the need for expanded social welfare programs, including publicly financed legal aid schemes. Expanded social welfare programs were made feasible by booming economic conditions, which always make the expenditure of tax payers' money on social welfare matters, if not popular, at least tolerable.

Increasing demands were being made upon the agencies which served the population who qualified for legal aid. Many community organizations had protested to the Government that it was wrong to base provision of legal aid upon the whims and charity of a profession when it was clearly a public responsibility. The parallel with the medical services plan was repeatedly pointed out (*Victoria Times*, January 12, 1970). These protestations increased in 1968-1969, with mounting criticism from such sources as the John Howard Society, social workers, and the Salvation Army. Both federal and provincial election campaigns focused in part on the inadequacies of legal aid provision in the Province.

In the federal election campaign of 1968, Conservatives, Liberals and New Democrats criticized the existing legal aid system as 'farcical' and in imminent danger of collapse (The *Province*, June 4, 1968; July 4, 1968; The *Vancouver Sun*, July 4, 1968). In January 1969, Garde Gardom, a member of the provincial

Liberal opposition, introduced a private member's Bill, the purpose of which was to "...put legal aid in proper perspective on a province-wide basis and eliminate the oft-heard complaint that there is a law for the rich and another for the poor" (The *Vancouver Sun*, January 30, 1969). This bill was ruled out of order on the grounds that a private member may not propose a bill which would entail government spending. In the provincial campaign of August 1969, Stuart Leggatt, an NDP candidate and a lawyer, stated that he felt that British Columbia probably had one of the worst legal aid systems in North America (*New Westminster Columbian*, August 6, 1969).

Opposition criticism of the legal aid plan as operated under the Socreds was vehement. Proposed solutions to the problem were, however, very traditional. There is little indication, in the comments of opposition parties and candidates, that they thought legal aid should be used to alleviate poverty. The Liberals and NDP advocated a judicare approach fashioned on the Ontario program (*Victoria Times*, March 1, 1969). The NDP did argue for wider coverage. Tom Berger, a prominent member of the judiciary, advocated a program that would cover "...cases involving large legal expenses which 'the little man' often cannot afford including expropriation claims, divorces, and laws relating to the poor such as cases where social welfare has been denied" (The *Vancouver Sun*, 28 June 1969). There was unanimous agreement that public funding of legal aid should be undertaken to ensure that there would no longer be 'one law for the rich and one for the poor' (The *Province*, July 4, 1968; The *Vancouver Sun*, June 29, 1969; January 30; 1969).

Interest in, and agitation for, an expanded legal aid system was growing. The gap between the ideal of equal access to rights bestowed by the law and the reality of inaccessibility for the poor was highlighted. The problem of legitimation was thrown into high relief by the activities of interest groups. In February 1969, the BC Association of Social Workers, representing nine hundred members, sent a telegram to the AG urging immediate action on "comprehensive criminal and civil legal aid legislation similar to the Ontario act" (*Victoria Colonist*, February 28, 1969). They described the existing system as "grossly inadequate and breaking down", and pointed out that low-income families and deserted wives were unable to avail themselves of new *Divorce Act* provisions because of "prohibitive legal fees":

> This is an old problem of rights. There is a lot of legislation on the books which poor people are unable to take advantage of because they can't afford the legal fees. This is increasingly so with the new divorce laws, and we see many women who could remarry and start a happy life away from poverty and welfare but are prevented because there is no way they can afford a divorce (*Victoria Colonist*, February 28, 1969).

The Salvation Army in Victoria called for an expanded legal aid scheme, noting that many individuals appeared in court unrepresented because they did not qualify for legal aid. The voluntary system was not capable of handling the demand. The solution was "a government scheme to give lawyers some reimbursement" (*Victoria Times*, February 28, 1969). The John Howard Society and the BC Civil Workers' Association also put forward briefs on the subject of criminal and civil legal aid.

The arguments for expanded legal aid coverage expressed by the attentive public in the Press and elsewhere seemed to be preoccupied with the principles of making rights effective through expansion of the 'Right to Counsel' and 'Equal Access to the Law'. The general perception of the concept 'equality before the law' was perhaps best represented by Keith Bradbury, a well-known Vancouver journalist:

> One of the things we are all taught as school children is that in this society everybody is equal before the law. But one of the things we soon learn in practice...is that if we really do have to go to court one of the best things we can have in our favour is money (The *Vancouver Sun*, August 7, 1969).

It was clear from comments in the Press that few people believed the principle of right to counsel was realized in Canada: "That the rich face better odds than the poor in our law courts comes as no surprise....The Diefenbaker Bill of Rights is almost a worthless piece of paper in any legal crunch..." (The *Vancouver Sun*, March 2, 1968).

Equality before the law was not the only argument advanced in favour of expanded legal aid coverage. Others were clearly inspired by the Canadian version of the 'war on poverty'. Community organizations formed to assist the poor had been first off the mark, but by the late sixties the poor themselves were becoming organized, frequently with the help of federal grants. Welfare and tenant groups were growing in number, and for the first time since the Depression the poor were actively lobbying for social change (Clague, 1984:22). "Poverty is a crime and the people who are responsible for it are criminal," declared the Unemployed Citizens Welfare Improvement Counsel (UCWIC) at a meeting of the

Senate Committee on Poverty held in Vancouver in November 1969 (Proceedings of the Special Committee on Poverty, Ottawa, 20 November, 1969:7,9).

This was a period of growing prosperity, but many groups -- the elderly, the working poor, the disabled, native people, and single parent families, particularly those headed by women -- did not share in the general prosperity. They suffered, as before, from unemployment, inadequate incomes, poor housing, and poor nutrition (Clague, 1984:22). Submissions presented to the Senate Committee on Poverty by 'concerned activists' reflected the general temper of the time with regard to poverty. The message of a brief prepared by a group of Vancouver community workers and presented by Margaret Mitchell was that the war against poverty in Vancouver was being lost. Some sectors of society were unwilling to change, but changes were nonetheless necessary "to correct the inadequacies of today's society and avoid the widespread dissent, rebellion and perhaps even revolution that is rife south of our border" (The *Province*, November 20, 1969).

In commenting on legal aid for the poor, Michael Harcourt of the Inner City Project emphasized that legal aid served relatively few needy people. He emphasized the severe restrictions placed on access to criminal legal aid and stated that "legal aid is not available for most of the commoner civil cases" (The *Province*, November 20, 1969). After hearing Harcourt's enumeration of the deficiencies of the legal aid system, one of the Senators commented, "It seems to me you in British Columbia have one of the most backward legal aid systems in Canada" (The *Province*, November 20, 1969).

Speaking to the Poverty issue, the Chairperson of the Committee, Senator David Croll, commented: "Our social and economic structure guarantees poverty...with inadequate delivery of services, inequitable taxation and uneven income distribution." He noted with some satisfaction, and not a little trepidation, that "we have found that the poor are ahead of us getting organized and ready." Croll was careful to add the rider that "those in the poverty category must be able to distinguish between activists who are involved and concerned, and activists who just take the negative side and try to stir up trouble" (The *Province*, November 20, 1969).

Concern over 'the organized poor' was not confined to the Senate Committee on Poverty. At a University Women's Club program on Human Rights held earlier in Vancouver, a UBC professor argued that poverty harms the affluent as well as the poor: "It may sound crass, but it's good business for the wealthy to invest in bringing the poor up to a higher standard of living. It's a form of insurance -- it will come in handy when the poor get organized" (The *Vancouver Sun*, December 11, 1968).

The useful function that legal aid could perform by integrating the poor into society and individualizing their grievances had already been noted by the founders of VCLAS. Liberal elements of the ruling class were now also aware of the need to reconcile the poor.

D. Formation of the Legal Aid Society

Agitation for change in the justice system, and in particular for expanded legal aid coverage, appeared to have some effect on the willingness of the Government to heed demands for increased social expenditure in this area. Its sensitivity to criticism was enhanced by a temporary decline in Social Credit's political fortunes. The economic boom that had continued unabated since the beginning of the decade levelled off; unemployment increased; cost overruns on the Bennett Dam project brought an increase in Hydro rates; and charges of ministerial corruption forced the resignation of Highways Minister Gagliardi. All these developments served to undermine government legitimacy. The Socred Government suffered five consecutive by-election defeats (Robins, 1979).

The Government, aided by a temporary economic recovery and an innate ability to "live comfortably with the welfare state" for pragmatic if not philosophical reasons, proceeded to "sprinkle the electorate with assorted goodies" (Robin, 1978:39). In March of 1968, the AG, Robert Bonner, claimed to be "considering a legal aid program similar to Ontario's" (The *Vancouver Sun*, March 20, 1968). In response to a question from the Secretary of the Law Society, Mr. A. M. Harper, about the possibility of expanded government funding, Bonner stated:

> The parameters within which legal aid is operating in the province are to a considerable degree limited by the provisions for this service within my existing budget which was only recently approved. Accordingly, an extension of legal aid services will require a different budgetary back-up than that with which I am presently working (Bonner to Harper, May 21, 1968).

Bonner commented, however, that he hoped the situation would be reviewed during the course of the year so that agreement upon desirable changes could be reached

before the next budget (Bonner to Harper, May 21, 1968). Encouraged by this response, the Law Society, at their annual meeting in June, approved a motion calling on the Provincial Government to establish a scheme, supported by public revenue, that would ensure adequate civil and criminal legal aid for every needy citizen. The meeting further authorized the Law Society to undertake research on the scope of such a scheme and how it could be implemented (Minutes, Annual Meeting Law Society, 1968).

Two months after Gagliardi's resignation, however, Bonner himself resigned to take up an executive position with MacMillan Bloedel. On leaving the Ministry, Bonner made the following observation on the Socred tendency to simultaneously increase social and capital expenditure:

> We may have oversold it. Now there is a feeling there is no limit to what can be done. Everything has to be done at once... there is a failure to relate our expectations with our capacities. We have deluded ourselves into believing there is some sort of magic in government financing (The *Vancouver Sun*, May 28, 1968, cited in Robin, 1973:289).

Bonner may have shared his concerns in regard to overexpenditure of government funds with his successor, Leslie Peterson. Mr. Peterson may have come independently to the conclusion that the Ontario plan was far too rich for Socred blood.[17] In any case, in March 1969, the BC Government announced the increases to be made in government funding of legal aid. The proposed budget of $110,000 would be supplemented by other assistance to bring the total expenditure for 1970 to $200,000 (*Victoria Columnist*, March 1, 1969). All of the additional money was to be devoted to the criminal legal aid honorarium.

The AG made it clear that the Government would not consider the implementation of a plan modelled on the Ontario system of legal aid provision; indeed, they would not consider any further subsidy of the legal aid program (Meredith Report, 1969).

Another equally incremental measure taken at this time, in part to counter the negative publicity surrounding the administration of justice in the Province and in part as a response to Law Society demands, was the formation of a Law Reform Commission. At the 1968 Annual Convention of the Law Society, the AG had expressed an interest in establishing such a commission, an interest that was met with cautious enthusiasm by the Bar. The Civil Justice Committee of the CBA had, in fact, passed several resolutions calling for the establishment of a commission, modelled on the lines of the Ontario Law Reform Commission (Marshall, 1968:87).

The CBA section recommended that the mandate of the Commission be twofold: to consider matters referred to it by the Attorney General's Department, and to undertake studies on its own initiative. The CBA section also drew attention to the need for the Commission to receive adequate funding:

> No government can afford not to spend money in this area in the next few years and it is hoped that the government of British Columbia will see fit to recommend a generous provision in the 1968-69 estimates (Marshall, 1968:87).

On July 1, 1968, the *Law Reform Commission Act* came into being. It was not the great advance that had been hoped for. The Commission was to have one full-

time chairperson and two part-time commissioners. The Bar felt that the appointment of only one full-time commissioner was "a clear admission that the government had not grasped the magnitude of the problem" (MacIntyre, 1969:68).[18]

It would appear that Peterson was much less sympathetic than his predecessor to appeals for reform in the administration of justice, and that he had a far less amicable relationship with the Bar. The Bar, to this point seemingly exempt from the generally negative attitude of the Socred Government toward professional groups, joined the ranks of doctors, teachers and social workers as an object of Social Credit suspicion (Robin, 1978:55).[19]

In an apparent attempt to make the Bar rather than the Government the focus of negative publicity, the AG, at the 1969 annual convention of the Bar, suggested to the Press that delays in the administration of justice could be laid at the feet of the legal profession. This put the State and the Bar in conflict. An editorial in the *Advocate* stated that:

> The Attorney-General might have had the grace and courage to say in his speech to the profession what he appears to have said to the press afterwards. Those delays in the administration of justice caused by the inadequacies of its Department can, we suppose, be best obscured by putting the blame on the profession on the principle that the public is always prepared to believe something nasty about lawyers (Entre Nous, 1969:122).

An equally notable change, although one much more favourable to the future of legal aid, occurred on the LSLAC. In 1968, the rather cautious Arthur Harper

was succeeded by Kenneth Meredith, who brought to the position a determination to expand the legal aid program and to find the funding necessary to accomplish this goal.

Negative publicity and agitation for more far-reaching measures had a more profound effect on the Law Society than it did on the Government. The Benchers resolved to act independently and establish a separate legal aid office in Vancouver. Such an office would deal with both criminal and civil legal aid matters under the directorship of a full-time legal aid administrator (Meredith Report, April 21, 1969).

The costs of such a program would have been beyond the means of the Law Society if it had not been for the development of an alternative source of funds. Impending changes in the *Law Society Act* regarding interest on lawyers' trust fund accounts opened up the possibility of another source of revenue for the expansion of legal aid. Meredith had been working for some time on a proposal that would divert the interest on lawyers' trust funds into a source of revenue for funding legal aid programs. To this point, lawyers' trust funds had been held in current accounts which earned no interest. Lawyers, however, gained considerable personal perquisites from the banks where these funds were held, and there was a strong vested interest in maintaining the *status quo* on this issue. Meredith was successful in overcoming this opposition and, in March 1969, a bill was introduced by the Government, at the request of the Law Society, which amended the *Legal Professions Act* to allow interest to be earned on trust funds held by lawyers. The Secretary of the Law Society, T. V. McCallum, made it clear that the money earned would be used to expand the legal

aid program and offer assistance to a greater number of needy citizens (*Nanaimo Daily Free Press*, March 7, 1969).

The amendments to the *Legal Profession Act* established the Law Foundation, which was to establish and maintain a fund created out of the interest earned on lawyers' trust fund accounts. Only too aware of the Government's tendency to allow the Law Society to absorb the cost of expanded legal aid coverage whenever possible, it was recommended that the Law Foundation grants be spent only on the administrative costs of legal aid, not on the tariff (Interview, Meredith, 1989). A seven-member board, including a representative appointed by the AG, administered the Foundation, the first organization of its kind in North America (LSC, First Annual Report, 1976).

As Mr. Justice Taggert noted, it was only the creation of the Law Foundation that permitted the Law Society to consider the expansion of the legal aid program without further commitment of government funds (Interview, May, 1989). In April 1969, encouraged by the possibility of funding from the Foundation, the implementation of an expanded legal aid program was once more considered. Kenneth Meredith, as Chairperson of the LSLAC, described the effectiveness of the legal aid system as it stood. He pointed out that "as good and constructive as the contribution of lawyers to legal aid has been, neither the civil nor criminal legal aid programs are satisfactory....Mounting demands for legal aid, particularly in areas such as Vancouver and New Westminster, reveal the present plan as inadequate" (Meredith Report, April, 1969).

The meeting of the Benchers on May 29, 1969, was dedicated to discussion of legal aid. Before the meeting, the Legal Aid Committee (LAC) reviewed several earlier reports: the John Howard Society Report of 1963; the Civil Liberties Association's report of 1963; and the Deputy Secretary of the Law Society, Angus Smith's 1968 report on the Ontario Legal Aid Plan. The final recommendations of the Legal Aid Committee to the Law Society appear to have been based very heavily on Mr. Smith's report, which recommended a modified version of the Ontario program. In less populated areas, direct referral of criminal and civil cases to lawyers in private practice was recommended, while in more populated areas, a combined referral and staff system was thought preferable. Staff counsel could act as the equivalent of Ontario's Duty Counsel in criminal cases. Staff lawyers would also handle referrals and attend to routine adjournments in the Magistrates' Courts, and in some instances conduct cases at that level. Staff lawyers would, however, refer to the private Bar all criminal matters heard in County Court, Supreme Court, and the Court of Appeal (Angus Smith, *Report to LAC*, 1968).

In his report to the 1969 annual meeting of the Law Society, Meredith stated that "in some places in the Province criminal legal aid may well break down unless adequate compensation is provided" (Meredith, 1969:151). The shortcomings of the program stemmed from its voluntary nature:

> Obviously a scheme which makes excessive demands upon volunteers cannot be expected to survive indefinitely. The fact that the aid is donated on a charitable basis is fair neither to the lawyer nor to the person served. Further the voluntary program gives rise to difficulties in organization and control and in uniformity of operation. There is no method of insuring that legal aid work is distributed fairly throughout the profession. Moreover the voluntary plan

> inevitably gives rise to delays that attend the granting of civil legal aid and make it unavailable in some cases to person in need (Meredith, 1969:153).

The report reiterated some of the major recommendations of the Ontario Committee: lawyers should be properly remunerated; the Provincial Government should accept responsibility for the cost of legal aid as part of its overall responsibility for the administration of justice; and provision of aid should be uniform throughout the Province in order to obviate confusion and discrimination (Meredith, 1969:151).

The report analyzed legal aid systems in the US, rejecting the Ontario committee's negative appraisal of the PD program. The PD system described by Smith was, in fact, far different from that actually operating in the United States. *Smith saw the Public Defender as a legal aid administrator*, processing and ruling upon applications for assistance (Benchers' Minutes, May, 1965). This type of PD program was obviously part and parcel of a larger referral system, and it came to be referred to in BC as the 'modified' PD system. In addition to the LSP of the Office of Economic Opportunity (OEO), the PD system and the Ontario programs, projects closer to home were considered. The interest shown by students and academics in the Inner City program was thought to be worthy of note, especially as it identified a source of people willing to offer their services (Meredith, 1969:152). The report also noted the NLF programs initiated under the LSP in the United States. One of the features that made the LSP program especially attractive was the suggestion that it was much less expensive than a referral program (Meredith, 1969:152).

After consideration of all of these schemes, it was recommended that a Legal Aid Society be incorporated under the *Societies Act*, and that the responsibility for legal aid throughout the Province be transferred to that Society. The Board of the Society would have up to twelve members, including "six lawyers, members of the bench and other persons appointed or recommended by the Attorney General". This organizational structure presupposed the participation of the Government. If the Government was unwilling to participate, however, the LAC recommended that the Law Society appoint all members.

A number of advantages were to be derived from transferring responsibility from the LSLAC to a newly formulated LAS, particularly one which included government representation and appointees:

1. It would bring to legal aid the benefit of the considered advice of persons deeply involved in legal aid and fully aware of its need and potential;
2. The submissions of the Society to Government would have added weight because of the participation of a diversity of interests;
3. The AG's department would be directly involved and brought into closer contact with the whole problem;
4. The criticism that the plan was being promoted by lawyers out of self-interest would be obviated;
5. The plan would qualify for funds from the newly established Law Foundation;
6. The Society would be so structured that it could become a statutory body governing the whole legal aid program (Meredith, 1969:154).

It was further recommended that an office be established in Vancouver for the administration of civil and criminal legal aid throughout BC, and that the

Government be asked for assistance in funding if the costs involved were beyond the means of the Law Foundation (Meredith, 1969:156). The system of delivery recommended was a mixed system[20] of referral and staff lawyers. This was modelled to some extent on the Ontario Plan, but with the addition of staffed law offices which at least in the metropolitan areas, seemed "to afford the most efficient and economical answer" to the problem of legal aid delivery (Meredith, 1969:152).

Discussion at the Benchers' meeting made it clear that the five-year rule should be dropped, although there were indications that this would create some problems in outlying areas with few lawyers. It was also made clear that coverage should be extended to all juvenile matters that would be covered if the individual were to appear in adult court. Expansion of coverage to domestic matters was also considered necessary; the existing system was described as "unsatisfactory, inadequate and burdensome to all" (Benchers' Minutes, May 1969).

In regard to funding, it was recommended that the proposal be put to the Government in the form of a detailed budget, with a request for immediate implementation. It was recommended that a new tariff of costs for both criminal and civil matters be presented to the Government (Meredith, 1969:156). The Law Society would launch a full-scale campaign to secure government approval of the recommendations. There was, however, some concern expressed by Benchers that this funding should not get out of hand and become an over-financed "social welfare set up" like the Ontario Plan (Benchers' Minutes, May 29, 1969).

It is clear, however, that activity in the poverty law area had some impact on the LSLAC. In expanding on the need for increased legal aid coverage, Kenneth Meredith, as Chairperson of the LSLAC, was the first member of the Law Society to state in an official capacity that legal aid might be used as a weapon in Canada's 'war on poverty'. He commented that the prime purpose of legal aid was "to provide an indispensable element in the quest for social justice". He continued:

> Besides the obvious benefits to citizens of equal access to legal advice...the U.S. War on Poverty program has discovered legal aid is the most potent tool because it in itself tends to relieve poverty....Legal aid does more than simply ensure that all persons have access to qualified advice and the courts....Access by the poor to competent legal services promotes self reliance and self respect. The sense of futility of those in poverty can be relieved by resort to these services (The *Province*, June 27, 1969).

The economic argument and the impending collapse of legal aid because of lack of volunteers were not completely forgotten in the midst of this new interest in alleviating poverty. Harper commented that "lawyers at the present time are losing money", and pointed out that it was becoming more and more difficult to find lawyers willing to act without fee, especially in more time-consuming cases. Some cases could take up to four weeks to complete, during which time lawyers were not only losing fees. but also subsidizing legal aid, for they still had to pay their own overheads (The *Whalley Herald*, June 26, 1968).

Nor were the 'duty' and 'equality' arguments forgotten. In response to a *Victoria Colonist* editorial criticizing the legal profession's unwillingness to handle legal aid cases, Mr. Aldridge, the Chairperson of the Victoria Bar

Association LAC agreed that lawyers enjoyed "privileges under the law and they are not deaf and blind to their corresponding duties". He pointed out, however, that "the sheer complexity of society is such that a much better answer must be found" to the provision of legal aid: "Equal justice before the law and a 'just society' are a sham and a mockery if representation, and counsel depends on one's pocketbook; and we have a long way to go" (*Victoria Colonist*, June 27, 1968). Aldridge agreed that the pressing need for legal aid was beyond argument, but stated that "any really effective solution lies with our legislators" (*Victoria Colonist*, June 29, 1968).

In commenting on the sudden pressure to expand legal aid, Atrens stated that it emanated from the heightened awareness of legal aid that had been generated by the Inner City Project and the introduction of the Ontario Legal Aid Plan. Kenneth Meredith commented that there was another explanation for the growing concern of the Law Society. Noting the growing awakening "on the part of the public in general and the Bar in particular to the need for legal aid," he attributed it to the growth of the welfare state. It was simply a matter of evolution or social progress: "Sure the problems were the same 17 years ago. But this is like medicare and other social assistance of one form or another. This is all part of the same general move" (The *Vancouver Sun*, August 7, 1969).

In presenting the LAC report to the Annual General Meeting of the Law Society, the Treasurer and former Chairperson of the LSLAC, Arthur Harper, declared:

> I feel I speak for all of the lawyers of the province when I say that in the light of present day developments elsewhere,

> our legal aid scheme in British Columbia, to put it mildly, is totally inadequate (*Victoria Times*, January 12, 1970).

The cause of this inadequacy seemed to be a matter of dispute between Mr. Harper and Mr. Meredith. Harper stated unequivocally that "this inadequacy does not stem from any lack of interest or effort on the part of lawyers". He placed the blame squarely on Premier W. A. C. Bennett's Social Credit Government: "The need for Legal Aid has grown to such an extent that it is high time for the government to assume its full obligations in this area" (*Trail Daily Times*, June 26, 1969). Meredith agreed that the Government had been the major obstacle to the expansion of the legal aid program, but he felt that the lack of adequate legal aid was as much the fault of the profession as of the Government. Although the Government had been urged many times to introduce a broader program at public expense[21], the Bar had displayed "...little imagination in co-opting informed public opinion and in advancing specific ways in which a broad legal aid program should and could be developed and financed" (The *Vancouver Sun*, August 7, 1969).

In Meredith's view, it was the responsibility of the profession to convince the Government of the urgent need that existed, and the Law Society should lay before the Government a comprehensive program that it must either accept or reject. He commented that, despite the inadequacies of the existing scheme, the Government had to date shown "no evidence of being convinced that a new comprehensive paid legal aid plan is justified" (Meredith, 1969:152). There was no indication in the Government's attitude that it would agree to expanded government funding for legal aid programs. In fact, the AG's department made

it clear that it had "no intention of subsidizing a plan similar to that in Ontario" (Benchers' Minutes, May 26, 1969).

It is evident that the Benchers and the Executive of the Law Society were in favour of, and actively supported, the expansion of the legal aid system and increased government funding for legal aid. Equally evident, there was some concern that this expansion should not get out of hand: "I don't think it should ever become the intention of practising lawyers to make a living out of legal aid" (Benchers' Minutes, May 29, 1969).

Further, to the recommendations of the LSLAC, Michael Harcourt was asked to undertake a study of the legal aid needs of areas outside of Vancouver. Harcourt recommended in the fall of 1969 that full-time legal aid lawyers should be appointed in five other areas: New Westminster, Burnaby, the Fraser Valley, Victoria, and Prince George. Furthermore, it was possible that either full- or part-time lawyers would be needed in several other areas (Harcourt, *Report to LSLAC*, October, 1969). It is apparent that Harcourt felt that, in addition to the traditional functions that lawyers appointed in these areas would perform, they could also act as community lawyers and ombudspersons, undertake test cases, and initiate programs of public education. He noted, however, that "the main body of research and law reform could be left to the Vancouver Community Lawyer Program working with the law school, the Law Reform Commission, the Canadian Bar Association sub sections and the Legal Aid Society..." (Harcourt, Attachment to October Report, 1970).

The Law Society's stance on legal aid was popular with the Press. Newspaper editorials and commentaries favoured expanded legal aid coverage. In media coverage of the Law Society's pursuit of expanded government involvement in legal aid, there was a consensus that the general public was likely "to support the lawyers in this for there has been unease about legal disabilities of the poor citizen for some time" (The *Vancouver Sun*, July 2, 1969; *Nelson Daily News*, June, 28 1969). Moreover, it was felt that the AG "had been stung by the Law Society's statement that the problem facing the profession is to drive home to the government the urgent need that exists" (The *Vancouver Sun*, July 2, 1969).

Overall, the stance taken by the Law Society was felt to be justified. The *Vancouver Sun* pointed out that "Mr. Peterson will have been in office for three years when his proposed new program gets to the legislature. That is a long time to have a priority without action". The Government's refusal to consider expanding the legal aid program was considered to be entirely in character:

> For the same reason it refuses to countenance an ombudsman, humane expropriation laws, abolition of the flat privilege of suit against the Crown, recompense of victims of crime -- and that reason is the convenience of the bureaucrat -- our government has been content to jeopardize the right of fair trial. Because public opinion over these many years has made little impression on the government's quaint ideas of civil rights it may be that what's required now is more a kick than a push (The *Vancouver Sun*, July 2, 1969).

The Law Society applied to the Law Foundation for funds to meet the operating costs of the central office. This request was granted. In the March annual report of the LSLAC it was announced that the Law Foundation had agreed to contribute 27,000[22] dollars to equip the office and defray operating costs for

the first year. It was commented that "the contribution of the Foundation is the key to the operation of the program" (LSLAC Report, 1970:213). The determination to rely on the Bar for funding of legal aid was a carry-over from the Law Society's longstanding belief that it was its responsibility to finance the administrative costs of legal aid and thus maintain the independence of the profession.[23]

Although Law Foundation funding was seen as the financial backbone of legal aid administration, the Law Society was forced to seek initial funding for central office salaries from the Government. Whenever requesting government funds, Meredith was careful to point out the cost effectiveness of establishing a central office:

> It seems apparent that if a staff counsel (with student assistance) could undertake most of the guilty pleas (about 14 per month) and in addition take, say, 20 cases per month, the prospective saving would be 3,400 dollars per month before staff salaries. I think probably he could in fact take more cases than that. Not only do we save money but we improve the system (Meredith to McDiarmid, November 28, 1969).

Pressure from the Bar and the Press ultimately prised from the Government a tentative agreement to pay the salaries of a Director of Legal Aid, two lawyer assistants, and secretarial help; a total grant of $57,300 was eventually agreed upon (Director's Report, March 25, 1971). In addition to contributing to the salaries of the central office staff, the Government continued to pay disbursements in civil matters and the limited criminal legal aid tariff that had been established in 1964.

The attitude of the attentive public as expressed by the Press would seem to indicate that it was necessary to provide very little in the way of publicly funded legal aid in order to satisfy the public that the poor were, in fact, receiving equal treatment before the law. The inauguration of the LAS was greeted with enthusiasm by the Press, although it was little more than an administrative rearrangement of the provision of legal aid, which, in turn, affected only the urban centre of Vancouver.

In some quarters, this rearrangement was greeted as a "radical change in the provision of legal services to the needy" (The *Vancouver Sun*, 22 May 1970: *Daily Colonist* 31 May, 1970). Even the most radical newspaper in Vancouver, The *Georgia Straight*, gave it moderately good press, although critical of its tardy appearance: "Thirty-six years after the need for a legal aid system was first discussed by British Columbia lawyers...a Legal Aid Society was incorporated and opened its Vancouver Office...". The author of the article, did, however, go on to imply that given the vast amounts that the Provincial Government spent on prosecuting people, the $57,000 increase in government funding of legal aid was perhaps not as wonderful as it seemed (The *Georgia Straight*, November 11, 1970).

The more conventional press was not entirely uncritical either, but it was clearly anxious to give credit for what little had been accomplished:

> Although it hasn't exactly made waves the provincial government deserves credit for at least a small splash in a field of social service which has been distressingly neglected. Its encouragement and assistance seem to give some evidence of a change in policy which, however slow, will be welcomed by the many people who easily become trapped in

the tortuous -- and expansive maze of the law (The *Vancouver Sun*, August, 1970).

Legitimacy, for the government, was once again assured at very little expense.

E. Conclusion

Between 1934 and 1970, legal aid in British Columbia evolved from a suggestion made by the Benchers as one way of improving the public image of the Bar into a major undertaking of the legal profession operated through the Legal Aid Society. Government involvement in legal aid expanded from the provision of counsel for accused in murder trials to the provision of an honorarium for all indictable offenses, disbursement in civil matters, and a small grant for the administrative functions of the LAS. The creation of the LAS introduced a traditional, reactive model of legal aid delivery, while the Inner City Project produced a 'making rights effective', proactive model.

Structural indicators of a need for legal aid reform, such as the pressure of class conflict or the need of the Government to intervene in order to mediate the functional requirements of the welfare state, were limited until the very end of this period, when growing social and political unrest intensified. The importance of human agency, in particular the activity of the organized Bar, as the most powerful interest group advocating legal aid reform is, however, apparent throughout this period in the bargaining process which took place between the Government and the Bar. The influence of programs developed elsewhere, through imitation and diffusion, was also evident, although this impact was modified by the historically specific circumstances. The limits imposed on proposals for legal aid reform by the ideological orientation of the Bar and by the fiscal priorities of the Social Credit Government are also manifest in this period of legal aid development.

The organized Bar, ever concerned with its public image, initiated and participated in provision of legal aid on a charitable basis as an exercise in legitimation. Although individual members of the Bar may have been moved to expand legal aid coverage by more altruistic considerations, for the Benchers it was first and foremost a venture in legitimization through good public relations. The dynamics of this quest for legitimacy, however, moved the Law Society steadily toward what many lawyers saw as socialism. The Bar was never able to keep up with the demand for its charitable services. The introduction of the five-year rule demonstrated that, having created a legal aid service as an exercise in PR, the Bar could not back out without severely tarnishing its image. It therefore came, with great reluctance, to accept the necessity of government funding, and then to make a virtue of that necessity.

The Bar's hesitancy to seek public funding of legal aid was grounded in an ideological aversion to the concept of state funding of social welfare programs and in a fear of government intervention in the profession. But demand for lawyers outran supply and put the public image of the Bar at stake. Pragmatism overcame ideology and the Bar sought government funds. The illusion of independence from government in the provision of legal aid was, however, maintained through the Bar's insistence that funding of legal aid administration be the responsibility of the Legal Aid Society.

It is clear that the major impetus behind reform at the level of human agency, was the legal profession. In the case of criminal legal aid, the initiative was taken by the Criminal Legal Aid Committee of the VBA as a means of bridging the gap between the actuality of access to counsel and the Bar's attachment in

principle to the concepts of due process and, if not right to counsel, at least the need for counsel in order to provide a fair trial. The ability of the Bar to provide counsel voluntarily was quickly exceeded by the demand for representation. The Bar could not, however, turn back. Events in the US had given added weight to arguments in favour of due process and right to counsel, and public opinion had turned from indifference or opposition to support of these concepts.

Liberal reformers were at the forefront of civil legal aid expansion in British Columbia. The impetus behind legal aid reform in this area came from a social reform oriented group of students and professors at the UBC Law School who were clearly moved by the social upheaval of the 1960's. Social agitation focused primarily on the 'discovery of poverty' and the need to alleviate this condition. There was no direct pressure for legal aid reform from those who would be its major beneficiaries. In BC, as elsewhere, however, socially aware members of the profession became sensitive to the fact that the poor had a gamut of rights in the welfare state and that these rights could only be enforced with legal assistance. Demands for improved conditions were translated into unmet legal needs and into programs to meet these needs. Members of the ruling and middle classes encouraged law students to expand provision of civil legal aid as a means of forestalling agitation for further reform.

Although the Bar did not act as a monolith in this period, there was no little conflict of interest between groups. The LSLAC was interested in providing traditional legal aid coverage to the indigent. The Inner City Project emerged out of the growing awareness of poverty in the midst of plenty and the potential

of the law to alleviate some of the consequences of poverty. In its formative period the Inner City Project received inspiration from the newly developing NLF's in the US; it was strongly oriented toward social welfare and proactive use of the law to ensure that rights granted by the welfare state were enforced. These two groups of the Bar did not, however, work at cross purposes; rather, they were symbiotic. The short-term objective of the Inner City Project was to demonstrate the need for expanded legal aid coverage *without* specifying the type of delivery system that should evolve; without, in other words, antagonizing the organized Bar.

The Bar was not, however, a strong lobby group during this period. Unlike Ontario and Nova Scotia, where Bar and Government worked hand in hand to implement legal aid programs, there was considerable tension between the BC Bar and the Provincial Government. The appointment of Peterson as AG dissolved the amicable relationship that had previously existed between the two. The legal profession, as many other professions in BC, fell out of favour with the Government. The organized Bar, nevertheless, determined the form and content of the legal aid program within the fiscal constraints imposed by the Government.

Government involvement in legal aid reform, as limited as it was in this period, also originated in a need for legitimation. The provision of legal aid to indigents clearly bolstered the legitimacy of the criminal justice system. The Law Society, during most of this period, did an excellent job of providing that legitimacy in a cost effective manner. The Government only intervened, and then in an incremental way, when the system seemed about to collapse. Gough asserts

that although the functions of legitimation and accumulation must be fulfilled, whether or not the *state* performs them depends on historically specific circumstances. In the historically specific circumstances of BC's legal aid development up to 1970, the Bar fulfilled the legitimation function inherent in the provision of legal aid.

The same forces that moved the Bar in its quest for legitimacy, however, also influenced the Government. Developments in the US in the early 1960's brought attention to the responsibility of government to provide counsel, and general approval of this notion was reflected in the BC Press. The inability of the Bar to provide sufficient coverage called for legitimizing action on the part of the Government.

The 'discovery' of poverty and the attention drawn to the legal aspects of poverty by the Inner City Project required further exercises in legitimization of government: the Law Reform Commission was created and funds for an increased criminal honorarium were granted. When Law Foundation funding of the administration of the newly created Legal Aid Society proved inadequate, and the Law Society was no longer willing or able to provide sufficient coverage to legitimize the State, the Government once again stepped in. Again, its contribution was the minimum possible: additional funds for the criminal honorarium. When this proved insufficient, the Government agreed to provide funds, temporarily, to cover the administrative expenses of the LAS.

In spite of its apparent willingness to leave the development of legal aid to the profession, the argument that the state can determine the fate of legal aid

programs through fiscal control can be seen in this period of legal aid development in BC. The dilatory and frugal financial contributions of the State played a role in ensuring that legal aid evolved under one administrative umbrella. Legal aid, in both criminal and civil matters, evolved initially as the preserve of local bar associations, primarily the VBA, and then of the Law Society.

Under the British system, the Government took responsibility for criminal legal aid at a very early point. Criminal legal aid was administered by the courts, civil legal aid evolved as a charity under the administration of the Law Society, and thus criminal and civil legal aid evolved under two separate structures. Under the American system, decisions of the Supreme Court occasioned the rapid and separate development of criminal legal aid. However, in BC, the State showed no interest in the administration of either criminal or civil legal aid. Legal aid evolved as a unitary system under the administrative umbrella of the Law Society.

Lack of government funding also influenced the decision of the LSLAC to accept the concept of staff offices, in conjunction with a referral system, as the most cost-effective way of providing legal aid. There were not enough lawyers willing to take referrals, given the lack of a tariff in civil matters and the meagre tariff provided in criminal matters.

The concept of legal aid as it entered the 1970's was still bound by tradition, centring on divorce, family matters, and criminal law. Poverty law had received some recognition through the activities of the Inner City Project, but as yet

there was no movement towards citizen participation and no significant law reform movement. Although seen as insufficient given the magnitude of the problem, it appeared likely that the Law Reform Commission would become the preferred vehicle for Law Reform in BC. Once again, the Government had a major role in determining the form and direction of law reform.

The major impetus for legal aid reform can be found in the Bar's need to legitimate the profession and in the Government's need to legitimate the State. During this period, however, ideology played a major role in limiting the call for, and shaping the nature of, legal aid reform. The ability of the State to concede reforms was not, with the exception of a slight economic downturn in 1968, hampered by economic recession or stagnation, conditions in which the accumulation function of the State is threatened and the ability to concede reforms is diminished. British Columbia's fiscal policy had made a shift to accommodate the acceptance of Keynesian economics. The expenditure of government funds in the social welfare area had become an accepted method of legitimizing the Government. The Government was still, however, primarily interested in enhancing the ability of capital to accumulate; it was determined that social welfare expenditures should put as little pressure as possible on the public purse. Social Credit policy coincided with capitalist interests. There is no indication, in this period, of the autonomous functioning of the State. Concessions made in the area of legal aid reform were always incremental and usually grudging.

Although the request of the Law Society for government funding of legal aid may have been a result of pragmatism triumphing over conviction, the creation of the

Legal Aid Society and, more specifically, the assertion that the provision of legal aid was a government responsibility, marked a notable shift in the ideology of the Law Society. In 1950, government funding of legal aid was considered "a step down the back alley to socialism"; in 1969, the Law Society's willingness to accept funding for expanded legal aid coverage was "just another manifestation of the growth of the welfare state".

The Law Society recognized the provision of legal aid as one manifestation of the welfare state; the Inner City Project had demonstrated the extent of unmet legal needs and the viability of a CLO approach to legal aid provision. However, the Law Society's concept of legal aid was traditional in nature and based on arguments to accessibility and equality. The Chairperson of the LSLAC might adopt the rhetoric of social welfare legal aid; the Law Society showed no inclination to accept its substance.

The role that imitation and diffusion played in the formulation and expansion of BC programs is clear. The conservative Bar, as represented by the Law Society, favoured the English system, for it was more in keeping with Canadian legal tradition. The Ontario system was preferred because it was "like the English system".

Ultimately, much of the administrative structure of the proposed BC plan was based on the Ontario model. The BC plan was on a much smaller scale and required much less in the way of government funding. It also included staff office lawyers, which the Ontario Plan specifically excluded as not providing choice of counsel. Although some mention was made of the benefits of closer

contact with the community provided by the CLO approach, the most pressing reason for including a staff office component was the mutual reluctance of Bar and Government to expand public funding of legal aid. It was not expected that extensive government funding would be either sought or offered. Provision of legal aid would continue to depend on charity extended by members of the Bar. But this charity had already reached its limits -- the only feasible way to extend legal aid coverage was through a staff office approach. The Ontario experience could not be imported into BC without significant alterations. Developments in BC were, to a very real extent, peculiar to the province.

The CLO approach to legal aid delivery that was introduced through the Inner City Project was heavily influenced by the LSP-directed NLF movement in the United States. Key elements of the LSP were, however, omitted from the Inner City Project. The academic orientation of the program undoubtedly dictated the strong law reform and research orientation of the program. Moreover, one of the primary objectives of the Inner City Project was to demonstrate the need for an expanded legal aid system; given the conservative orientation of the Bar and the unsympathetic ear of the Government, community organization or community participation did not recommend themselves.

The constitutional division of power and the Federal interpretation of criminal legal aid reform as the exclusive administrative preserve of the provinces dictated that legal aid reform during this period would take place at the provincial level. The Federal Government played no part in the development of criminal legal aid, although funding from the Department of Health and Welfare, encouraging community groups to organize, especially around the poverty issue,

did have an impact. Federally-funded groups played a role in helping to voice discontent over the justice system, and heightened awareness of the disparity between the ideal and the reality of justice as it applied to the poor.

The inauguration of the LAS elicited positive commentary in the Press, indicating that the Bar and the Government had been successful in their pursuit of legitimation. But this was to be a short-lived victory. The temporary economic slump experienced in 1967-68 reoccurred in 1970; this time it developed into a full-scale recession. The accumulation function of the State was threatened, and social welfare spending was targeted for restraint. Yet, government expenditures on legal aid continued to increase incrementally.

1. According to Alfred Watts, the author of the official history of the Law Society, this suggestion was inspired by the CBA's resolution of 1928 concerning Public Defenders (Watts, 1984:139), and the Alberta Law Society's formation of a needy litigants committee in 1932. Word of these two events "percolated through to British Columbia via the Junior Bar Committee of the Canadian Bar Association" (Watts, 1973:99).

2. The Benchers are the administrative body of the Law Society.

3. The Victoria Bar Association was actually first into the field, inaugurating their program in 1950. The Legal Aid Committee of the Victoria Bar Association, however, felt that the limited size of the Bar allowed only a small number of applicants to be dealt with. The Victoria Bar accordingly set up a legal aid clinic but did little to publicize it.

4. In the years up to 1960, the total annual number of criminal legal aid cases handled in the Province as a whole but exclusive of Vancouver, Victoria, and New Westminster, never exceeded seventeen.

5. Analysis of Law Society statistics on civil legal aid for the period in question reveals some of the reasons for the smooth functioning of the civil legal aid program. For every thousand cases, approximately one third were refused and one third were dealt with summarily, either at the clinics or through correspondence with the Law Society. The remaining third fell into one of the following categories: landlord and tenant disputes, torts, contracts, and estates. These were all matters that many members of the Bar could deal with comfortably; they were, for the most part, not extremely time-consuming, and the number of such cases a lawyer was called on to deal with in a year was minimal.

6. H. P. Legg, Chairperson of the VBLAC at the time the program was inaugurated and the officer in charge of directing referrals, commented that accepting these cases would have "opened the flood gates". The LAC would have been unable to handle the resulting volume of work (Interview, Legg, 1989).

7. The Legal Aid Committee was quick to point out the irony of this situation: "Applicants are not eligible for assistance unless they are indigent and if they are indigent they cannot be adequately assisted unless they can purchase a transcript" (The *Advocate*, 1956:225).

8. The City Prosecutor's office had agreed to refer cases to the Legal Aid Committee, but it refused to screen applicants. The John Howard Society undertook screening at Oakalla but would not do so at the Vancouver Police Court. As a consequence of this lack of screening, some members of the Bar felt that they had been called on to defend persons who were not properly entitled to legal aid (The *Advocate*, 1956:225).

9. Appeals for more volunteers made in 1957, 1958, and 1961 met with limited success (The *Advocate*, 1957:111; The *Advocate*, 1958:230; *Proceedings*, Law Society Annual General Meeting (LSAGM), 1961).

10. At the Benchers' meeting of January 24, 1957, it was decided that discussion of the CBA resolution "could not be profitably considered until the next meeting of the legal aid committee". On January 26, the resolution was read to the Executive of the Benchers, who referred it to the Legal Aid Committee (Benchers' Minutes, January 26, 1957). This matter was not considered by the Legal Aid Committee until April, when it was decided to refer the whole matter back to the CBA for further clarification.

11. At the LSAGM in the summer of 1952, the Law Society's legal aid plan was discussed. The Chairperson of the LSLAC commented, "We know we will get the finest kind of publicity" from this program (*Proceedings*, LSAGM, 1952). In the Treasurer's report for 1957, the legal aid program was described as a "new adventure in public relations" (*Proceedings*, LSAGM, 1957). In 1961, the Chairperson of the LSLAC commented that "the work we do to give free legal aid to those who cannot afford it is probably one of the most important of our public relations. Anything we can do to keep that as high as possible, and any money we spend, I think is well spent" (*Proceedings*, LSAGM, 1961).

12. In 1958, when the Seafarers International Union struck the Canadian Pacific Railway (CPR) and Black Ball Ferries, the Social Credit Government entered the ferry business in direct competition with these companies in order to ensure that in the future "ferry connection between Vancouver Island and the mainland shall not be subject to the whim of union policy..." (The *Vancouver Sun*, July 8, 1958). In August 1962, the Government took over the British Columbia Electric Company. According to Martin Robin, this move "guaranteed the successful completion of the Peace project to which the new public agency committed itself; an enterprise geared to stimulate the booming northeast economy by its very construction, as well as supply attractive power on site to the new industries locating in the area" (Robin, 1973:231).

13. Socred welfare measures taken between 1951 and 1957 included enactment of provincial/federal cost-sharing programs providing support for senior citizens, the disabled, the chronically unemployed, and the sick. In 1958, the Government entered into a cost-sharing agreement with the municipalities in order to equalize *per capita* costs. The following year saw the creation of two new provincial ministries: the departments of Social Welfare and of Health Services and Hospital Insurance (Clague, 1983:18).

14. In 1966, $153 was paid into the disbursement fund. This amount had increased to $3,500 by 1968 (LSLAC, Annual Report, 1968; *Victoria Times*, January 12, 1970).

15. In reporting on its first six months of operation, Michael Harcourt, Director of the Legal Services and Research Program of the Inner City Service Project, made reference to Justice Minister John Turner's speech of November 1969, in which the Minister stated that "it is the poor who suffer most from society masked in the trappings of Law". Harcourt asserted that a major purpose of the legal program of the Inner City Project was to change this situation "so that the poor could see the law as a friend not as an enemy, as an aid not as an adversary, as a remedy not as an obstacle" (Legal Services and Research Program Report, October, 1970).

16. Michael Harcourt, the first Director of the Inner City Project, is now leader of the provincial NDP. Ian Waddell, who replaced Harcourt, is a federal NDP MP, and still active in VCLAS.

17. The cost of legal aid in Ontario in 1969 was $7,481,216.64 (LSLAC Annual Report, 1970).

18. During the 1968 fall sitting of the legislature, the Government also passed a Human Rights Act, which has been described as being totally ineffective (Robin, 1973). It would appear that the Government had again failed to grasp the magnitude of the problem.

19. The Social Credit Government, almost totally bereft of professionals when swept into power in 1952, had to import an accountant, Einar Gunderson, to fill the office of Treasury Minister, and a lawyer, Robert Bonner, to become Attorney General. Although professionals were slowly incorporated into the Social Credit Government, relationships with professional groups were marked primarily by "tension and mistrust" (Robin, 1978:55).

20. This was a mixed *delivery* system, not a mixed system in terms of content and approach. There was no poverty law element in BC's mixed system.

21. From 1966 to 1968, the CBA passed resolutions at their annual meetings asking the Government to establish a comprehensive legal aid program. These resolutions were approved by the Law Society and submitted to the Government as proposals which, Meredith pointed out, were never presented in any detail, but rather as blanket resolutions (Benchers' Minutes, May 26, 1969).

22. This was increased, by various grants, to $32,000 for the first year.

23. In Ontario, the right to choose counsel symbolized the independence of the profession; in BC, it was the independent funding of the administrative function of legal aid.

CHAPTER V

LEGAL AID IN BC 1970-1972: A BREEZE OF SOCIAL UPHEAVAL 1970-72

A. An Overview

During the period 1970-1972, BC's economy once again went into a recession, with an attendant increase in social and political unrest. That a large part of the attentive public wished for reform was apparent. Protests against the treatment of the poor, the elderly and other minorities multiplied. The Government continued in its reluctance to increase social welfare expenditures. Indeed, the coercive function of the State became pronounced in this period, with an increase in anti-union attitudes, suppressive police actions, and moral panics. Riot police were called out against youth and welfare protestors in Vancouver; the Provincial Government launched a campaign against welfare fraud; and a province-wide crackdown on soft drug use sent the crime statistics soaring. BC appeared to be experiencing what O'Conner has identified as a crisis of legitimacy: the structural gap between state revenue and state expenditure created by the socialization of costs and the private accumulation of capital precipitated a fiscal crisis (1973:62). The effects of financial cutbacks or government programmes in turn undermined legitimacy.

The organized Bar was not unaffected by these events, nor did it ignore demands for improvements in the administration of justice. Although the Bar appeared to be much more receptive to pleas for reform in the criminal law area than in

any pursuit of social justice through poverty law, concern for reform in both areas was expressed by the Bar by the end of this period. In 1972, a Special Committee of the BC branch of the CBA was struck to consider deficiencies in the administration of justice; shortly after this committee was established, the LRC launched its own investigation into this matter. Both committees examined provisions for legal aid in the criminal and civil areas and found them seriously wanting. The gap between the ideal of criminal justice and its actuality had become a chasm. The governing class, as represented by the organized Bar, recommended reforms to rectify this situation.

The *initiative* for legal aid reform remained in the hands of the legal profession; their motivation was not only the need to legitimize the profession, but also the growing need to legitimize the State by closing the gap between the ideal and the reality of the administration of justice. The emphasis in arguments for expanded legal aid coverage shifted from the benefits of favourable publicity to the value of legal aid as a tool for social integration.

It should not, however, be supposed that the Bar, or any significant elements within this organization, were contemplating massive government intervention in the area of legal aid reform. Expansion of the system was required, but the Bar intended that it take place within the already established structure -- more coverage would be provided for a broader spectrum of the needy. Cost effectiveness was an important feature of any proposed reform, and the charitable component of the legal profession's contribution to legal aid, symbolized by the amount by which the normal fee for services exceeded the

tariff provided for these services, would continue to be an essential element of legal aid programs. Fear of government intervention in the affairs of the profession continued to exercise a conservative influence in legal aid development. The division between the provision of traditional legal aid and poverty law oriented legal aid, as represented by the activities of the LAS and Inner City, was maintained. Strong support for expanded legal education of the public also emerged during this period.

The Government did not, however, remain totally detached from the growing crisis in the administration of justice. While it expressed reluctance to become further enmeshed in the costs of legal aid, state expenditure increased significantly (LAS Annual Report, 1970-1972; LSLAC Annual Report, 1970). Government action appears to have been motivated by a recognition of the need to take some legitimating action in the face of growing unrest; their protestations against even further action were based on a desire not to increase the growing bureaucracy of professionals and a keen interest in cost effectiveness in the area of social welfare expenditure. In short, they were attempting a balancing act to deal with the shortage of funds and the need for increased legitimacy.

B. Crisis of Legitimacy

By 1971, the Canadian economy had entered a period of recession. The Federal Government price restraint program had led to a significant increase in unemployment. Measures taken by the US government to encourage multi-national companies to invest and relocate in the US emphasized the vulnerability of the

Canadian economy, which relied heavily on foreign ownership in the manufacturing and resource sectors (Wolfe, 1977:268-270).

The recession hit BC particularly hard, for the base of the Province's economy was "skewed in the direction of the capital intensive primary resource sector which employed few people and a diminishing portion of the labour force". The annual growth rate of the Province declined, from 7.2% in 1969 to 2.6% in 1970, and unemployment was the highest in the country, reaching 9.4 percent in January 1971 (Robin, 1973:283; Rachert, 1990:51). The problems caused by the recession were compounded by a spiralling inflation rate, causing the Premier to comment in his 1970 budget speech that rapid inflation was the "greatest threat to the free world economies" (The *Vancouver Sun*, July 21, 1970).

These were also times of increasing social unrest. Industrial strife increased when the labour force's demand for improved wage settlements met with management resistance; the result was a series of confrontations, strikes and lockouts which continued, with little respite, into the summer of 1972. Such unrest in the workplace led the Premier of the Province to characterize labour leaders as brigands and barbarians (Robin, 1973).

Unemployed professionals joined unemployed labourers in demonstrating and petitioning the Government (The *Vancouver Sun*, January 22, 1971). Employed professionals, also hit by increasing inflation, pressed for salary and fee increases. The demands of doctors, teachers and public employees for a larger

share of the economic pie were met with "a heavy handed policy of selected wage and salary restraint" (Robin, 1973:287).

Social conflict was most pronounced in BC's urban core. Transient youth in Vancouver were in constant conflict with authority, culminating in a riot in Gastown in August 1971. Of the 1200-1400 people involved in this disturbance, 12 were taken to hospital, 79 were arrested, and 38 were ultimately charged with various offenses. Accusations of police brutality in quelling the disturbance filled the daily papers (The *Vancouver Sun*, August 9, 1971; The *Vancouver Province*, August 10, 1971).[1] On August 9, 1971, Vancouver mayor, Tom Campbell, agreed to hold an inquiry into police tactics. By August 10, the mayor had drawn the conclusion that the police used only necessary force, "except for a few isolated cases". Campbell attributed the riot to the actions of "a bunch of young thugs trying to take over the town"; he went on to predict further trouble, stating "...these young punks have got to be stopped and if it means violence, violence must be taken, even if it means more violence" (The *Vancouver Sun*, August 11, 1971).

One of the precipitating events in the Gastown Riot was a crackdown on drug use in the Province (see Table 6:1). The daily newspapers were replete with headlines such as "Our drug mess scares Toronto" (The *Vancouver Sun*, August 4, 1971); "One Million in Heroin seized by RCMP" (The *Vancouver Sun*, July 15, 1971); "14 Drug Arrests made in Gastown 'Drugmart'" (The *Vancouver Sun*, July 9, 1971); and so on. This crackdown swept many university students, and others, into the arms of the criminal justice system, and some into the correctional system (The *Vancouver Sun*, July 9, 1971). In September, 1971, the President of

the UBC Students Association requested the UBC Senate to appeal to the Government for amnesty for all those serving time on marijuana charges. This appeal was ruled out of order (The *Vancouver Sun*, September 16, 1971).

There was a marked increase in the number of young first offenders being brought before the criminal justice system. Demand for legal aid from this group was growing; even as early as 1969, over one-quarter of the individuals receiving criminal legal aid were charged with drug offenses (Meredith to McDiarmid, November 28, 1969). Members of the legal profession had argued that it was precisely this type of offender who most deserved and required legal aid: the young first offender who could be prevented from slipping any further into a criminal life style. Government action leading to an increase in the number of young offenders brought additional pressure to bear on the criminal legal aid system.

The 'young and restless' were not, however, the only protest groups in BC; the poor and disadvantaged were also in a state of unrest. Individuals on fixed incomes were particularly hard hit by spiralling inflation rates. Old age pensioners formed their own organizations to fight for better treatment from the Government, including such groups as BC Old Age Pensioners and Pensioners for Action Now. Bob McConnell of the Province newspaper concluded that "pension power is becoming reality..." (The *Province*, June 22, 1972).

The recession had also dramatically increased the number of people on welfare; the Provincial Government tried to pass the growing cost of welfare on to the municipalities, suggesting that welfare premiums charged to municipalities be

increased. Municipalities, however, balked at paying out an ever-increasing percentage of their budget to welfare recipients (Rachert, 1990:52-57).

Fixed rates of assistance and rising inflation placed additional pressure on the precarious economic position of welfare recipients. Frustration with the existing system reached a peak in the summer of 1971. At the end of July, police were called in to block the path of three hundred "angry and resentful" welfare rights protestors who were marching on City Hall to denounce abysmally low social assistance rates (The *Vancouver Sun*, July 28, 1971). The Government responded to this crisis with further coercive measures, launching a welfare fraud campaign that placed the blame for increased welfare costs on those most vulnerable to the effects of recession and inflation (Rachert, 1990).

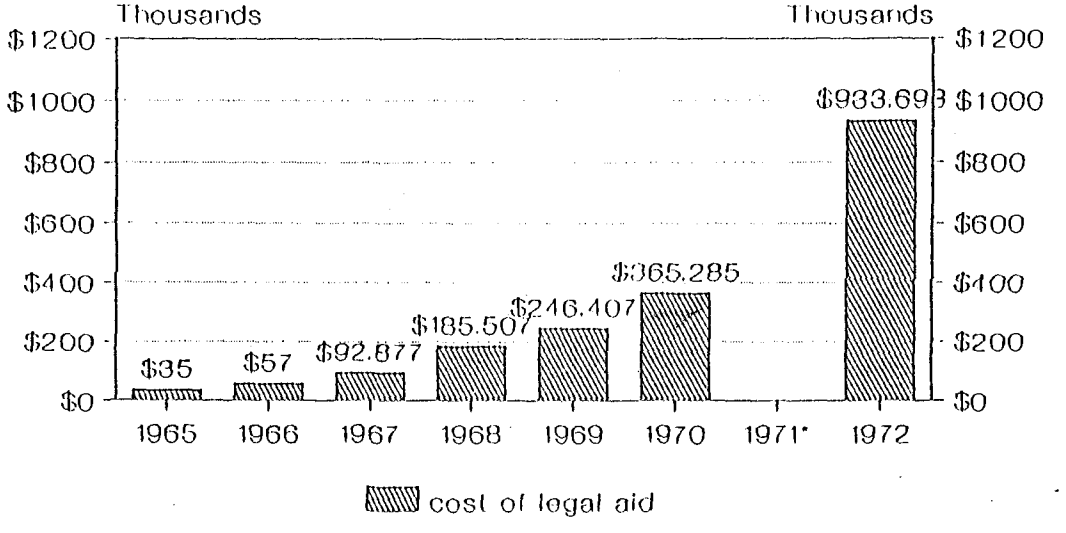
There existed clear evidence of a deepening crisis of legitimacy on the social and economic fronts, and the Socreds were also under attack on the political front. The decline in Social Credit fortunes was matched by a corresponding increase in the popularity of the NDP.[2] On a less conventional note, the Vancouver Liberation Front (VLF), a coalition formed of young radicals of uncertain intent, proceeded to issue various threatening proclamations.

The crisis of legitimacy was also reflected in the administration of justice. During the early 70's, more glaring deficiencies in the administration of the criminal justice system became apparent. The disadvantages suffered by minorities, particularly Native Peoples, became an issue of increasing concern in BC. This paralleled a nation-wide discovery of the over-representation of Native Peoples in the criminal justice system and in correctional institutes.

Indians were characterized as victims of "primitive justice" (*Comox District Free Press*, March 22, 1972), and the issue of the inadequacy of the administration of criminal justice, particularly in the more remote areas of the Province, became a focus of concern in the Press (*Victoria Colonist*, February 6, 1972).

The Social Credit Government's preference for the use of coercion as a means of dealing with the deepening crisis of legitimacy made it appear unlikely that the crisis in the administration of justice would be rectified by expanded expenditures on legal aid. Provincial Government expenditures on the criminal legal aid honoraria did, nonetheless, increase from a budgeted $200,000 for the fiscal year 1970 to over $939,000 in 1972 (see table 5:1).

Figure 5:1
Government Spending on
Criminal Legal Aid in BC



*No data
From LSLAC Annual Reports, 1966-69 and
LAS Annual Reports, 1970-73

The first priority of the Social Credit Government was to protect the accumulation interests of capital, a policy which had, to this point, kept government actions in harmony with the interests of various capitalist factions. But the Government's inability to quell unrest, stifle union agitation or implement socially integrating reforms was discordant with the interests of capital accumulation. The Government seemed to lose its ability to function within the structure of the welfare state, and the Socreds fell from power in August 1972.

C. Administrative Consolidation of the Legal Aid Society

While these events were unfolding, an independent society, the LAS, took the first steps toward consolidating the small gains that had been made in legal aid reform. Continued and increased funding of legal aid was their primary concern. The administrative structure and system of delivery were also consolidated during this period.

The LAS was incorporated under the *Societies Act* on February 26, 1970. Board members were appointed by, and responsible to, the Law Society. The legal aid system was co-ordinated by a director who was hired by and reported to the Board. Smooth transition from the LSLAC to the LAS was ensured by the fact that all twelve board members appointed by the Treasurer of the Law Society were members of the LSLAC. Kenneth Meredith, the Chairperson of the LSLAC, was appointed Chairperson of the LAS (Meredith to Brazier [Treasurer of the Law Society], January 28, 1970). Frank Maczko was hired as the first Director of the LAS, and the Vancouver office opened in July 1970. The AG was asked to

appoint a representative, but this would have indicated a government commitment to legal aid that it was not willing to make. The offer was declined.

The purpose of the LAS, as stated in its constitution, was "to administer throughout the Province of British Columbia a program of legal aid to persons unable to afford legal services" (LAS Constitution, 1970:312). Further objectives, as stated to the Press and as formulated in the first annual report, were:

(i) To expand the availability of services to areas not served.

(ii) To increase the Criminal Tariff and create a Civil Tariff.

(iii) To collect data on the need for legal aid to convince government to expand further.

(iv) To engage in Public Legal Education (LAS Annual Report, 1971).

The program was to cover both criminal and civil matters. It was not envisaged that this fledgling service would be adequate to meet the total demand for legal aid. By demonstrating the shortcomings of the system, and by gathering data illustrative of its inadequacies, it might lay the groundwork for a more adequate system (Report, LSLAC, April 21, 1969).

When the Vancouver office opened, the Law Society's administration of criminal legal aid in Vancouver was taken over by the LAS.[3] In areas where there were legal aid clinics, the system operated much as it had before the inauguration of the LAS. In remote areas where there was neither an organized Bar nor a legal aid committee, the LAS appointed local lawyers to act as area directors

(AD's), and they voluntarily performed the function of screening applicants. By the end of the first year of operation, 29 AD's had been appointed. AD's and local legal aid committees exercised considerable discretion. They interviewed the applicant, determined whether a legal problem existed, decided on financial and legal eligibility (i.e., whether the matter was covered by legal aid), and then found a lawyer willing to take the case.[4]

1. Funding

One of the primary concerns of the Government in its consideration of funding of legal aid was cost effectiveness: forcing the legal profession to shoulder as much of the expense as possible while still maintaining the appearance of a viable system. Another equally important goal was minimizing the expansion of government bureaucracy. The goals of the Law Society, initially shared by the LAS, were cost effectiveness, which meant a reasonable civil and criminal tariff with the legal profession shouldering its share of the responsibility, and, avoiding government control of the profession. The major dispute between the LAS and the Government arose over the question of what the profession's share of the legal aid burden should be.

In order to ensure independence, one of the long-term goals of the LAS was for the Law Foundation to meet all costs of the administration of the central office, including the salaries of the Director, staff counsel, and secretaries (Meredith to E. B. Strongitham [Treasurer of the Law Society], March 15, 1971). The Government, through the various agreements on tariffs and disbursements, would fund the costs of legal aid "apart from the central office". If the

central office were maintained without government funds, "the director and his staff would not be civil servants under the control of the government financially or otherwise" (Meredith to Strongitham, March 15, 1971).[5]

The LAS turned first to consideration of the existing tariff. The Ontario tariff of 75 percent of lawyer's fees was frequently mentioned in the Press. The 75 percent solution did not, however, recommend itself to the LAS. Both Meredith and Maczko were convinced that the Ontario system was far too expensive a system for the public to tolerate and that it did not reflect the obligation of the legal profession to serve the public. According to Maczko, the legal aid program in BC was a system which ensured, and properly so, that a significant degree of obligation fell upon the legal profession (Maczko, Interview, 1989). This, of course, also meant that an element of charity remained in the provision of legal aid services -- how big an element would depend on the adequacy of the tariff agreement.

The tariff established in 1964 as an honorarium had, by 1970, been eroded even further by inflation. The LAS felt some increase in the criminal tariff and the establishment of a civil tariff were essential if a legal aid system were to function (Minutes, LSAGM, June 25, 1971). Shortly after its inauguration, the LAS requested the establishment of a civil tariff and an increase in the criminal tariff (LSLAC Report, 1970:215).

The Government initially refused to consider either request (Minutes, LSAGM, June 25, 1971).[6] It rapidly became apparent, however, that the low criminal tariff made it impossible to provide even a semblance of equal justice in areas

outside of Vancouver.[7] Cases were refused or dropped after preliminary hearing (Minutes, LAS, September 2, 1971). Individuals with a previous record and "not much chance of success" were refused legal aid altogether (Notes, Board of Directors, October 22, 1970). Confronted with evidence that the system faced imminent collapse, the Government finally agreed to negotiate an increased tariff. In January 1972, the criminal legal aid tariff was increased, incrementally, by ten percent across the board. This increase brought payment in criminal law matters up to about thirty percent of regular fees. In his report to the Law Society, Meredith commented that the new tariff was settled "not to the total satisfaction of the LAS" (LSAGM, June 25, 1971).

That this tariff increase was given grudgingly is indicated in a letter from the Deputy AG to the Federal Government concerning participation in the FPA. Kennedy indicated that the 1972 tariff increase was not, in fact, intended to meet lawyers demands, but a revision which "provided compensation, to a large extent by the case, and eliminated specific compensation for adjournments and one or two other things." This was done "in an effort to prevent what appeared to be growing abuses in our legal aid scheme on the criminal side." (Kennedy to H.T. Locks, April 3, 1973). The goal of the AG's department then, was to compensate lawyers for a job completed and to avoid paying for remands or adjournments.

In spite of similar problems in the area of civil legal aid, where refusals had become widespread and, in some areas of the Province, the whole scheme was "on the verge of collapse", the Government steadfastly refused to create a civil tariff (LAS, January 27, 1971; Sheppard to Maczko, August 13, 1971). Only when

the entire administrative edifice of legal aid in areas outside of Vancouver appeared to be about to crumble did the government act.

Administration of legal aid outside of Vancouver depended on the voluntary services of AD's. By January 1971, area directors were threatening to resign, and letters of complaint and resignation were forwarded to the AG's Office. The LAS emphasized the urgent need for remedial action, and suggested that area directors receive an eight-dollar fee for each application (Minutes, LAS, January 27, 1971).

After lengthy negotiations, the Provincial Government agreed to this solution, and the eight-dollar fee was introduced in July 1971 (Maczko to Area Directors, June 29, 1971). The fee was charged against the criminal tariff. The Government's acceptance of this arrangement was, however, conditional upon the Law Foundation providing a grant sufficient to fund the *entire* administrative structure of the LAS (Kennedy to Harper, July 22, 1971). This had been the intention of the LAS from the initiation of its program. The Law Foundation did not have sufficient funds to furnish such a grant, but in March 1972 the *Legal Profession Act* was amended to make lawyers' participation in the Law Foundation mandatory, and this which substantially increased the Foundation's income. By June 1972, the legal aid central office was "fully subsidized by the Law Foundation" (McCallum to Maczko, March 1, 1972; Minutes, LAS, May 17, 1972).

The Government's acceptance of the eight-dollar administrative fee and an expanded criminal tariff came only after repeated demonstrations that the LAS could not function in rural areas without this assistance. The value of legal aid as a means of legitimization for the Government was sufficient for it to

agree to these incremental increases in legal aid expenditures. But, it was not sufficient to convince the Government of the necessity of a civil tariff. Although opposed to the creation of a civil tariff, the Government was more than willing to urge the Law Society to seek funds elsewhere. In September 1970, the Government made known its opinion that costs should be collected in civil legal aid actions (Minutes, LAS, September 21, 1970), and in early November 1970, the LAS established a policy whereby lawyers were encouraged to collect such costs. When costs were collected, the lawyer was permitted to retain 60 percent and 40 percent was remitted to the Law Society. The LAS also continued, under the agreement reached in 1965, to receive money from the Government to reimburse lawyers for their disbursements in civil legal aid matters (LAS Minutes, November 5, 1970).[8] The Government had once again found a cost effective way to avoid expanded public expenditure on legal aid.

The collection of costs in civil cases and the eight-dollar area director fee did very little to alleviate the strain on the profession in rural areas. By December 1971, refusals of applications for civil legal aid were on the increase (Maczko to Board of Directors, December 7, 1971). In reporting to the Benchers of the Law Society, Meredith commented that whether aid was granted in a particular area depended upon how the local Bar viewed legal aid, distances involved in furnishing services, the fees paid in criminal matters, and the absence of fees in civil matters (Meredith, Report to Benchers, January 27, 1972).

Plainly, the Social Credit Government was not an avid supporter of the concept of expanded public funding of legal aid, nor was the LAS seeking a large

increase in the expenditure of government funds. The organized Bar continued to be preoccupied with fear of government interference in the profession. The LAS was concerned to ensure that a legal aid bar did not emerge.

Threats of government interference in the legal profession were, according to the Vice-Chairperson of BC branch of the CBA, Ferris, present in "governmental studies and reports in other Provinces, particularly in Alberta and Quebec, where it had been recommended that the Professions in general be made more accountable to the public." In BC, "there had been two significant moves in the direction of laying a tighter rein on our Profession". The Provincial Government had reserved to itself the right to appoint one lay governor to the Board of the Law Foundation, "notwithstanding that the objects of the Foundation are purely professional in nature and its revenue is being derived from interest earned on lawyers' trust accounts." The other area of potential government interference was the composition of the Judicial Council of the Provincial Court, "where out of seven, the Provincial Government reserved to itself the right to appoint three persons who need not be lawyers," which, indeed, they were not (LSLAC Report, 1971:239).

The powers of the Council included making recommendations to the AG for improvements in Provincial Court services. Ferris argued that "It would be an easy step for this recommendatory power to be extended so as to take in admission and licensing requirements". His opinion was that the profession tended "to be confident that there would not be any governmental steps taken which would directly affect our Profession as a whole without prior consultation with us and at least our general approval obtained". But Ferris also suggested

that "any such confidence may well be misplaced" (LSLAC Report, 1971:239). The expansion of legal aid could clearly be another avenue to government intervention in the affairs of the profession. Government reluctance to become further involved in the provision of legal aid was almost equalled by the profession's reluctance to invite such participation.

The incremental nature of legal aid expansion was also reinforced by the determination of both Bar and LAS that a legal aid bar not be established. This determination was most apparent in the opposition to choice of counsel for legal aid applicants. The Board of Directors had decide that in criminal matters the principle should be established that no legal aid applicant had a right to request a specific lawyer (Minutes, LAS, November 5, 1970). In Vancouver, this principle tended to be applied very flexibly. If a client requested a lawyer and the lawyer was available, then that lawyer would in fact be appointed. In areas outside of Vancouver, no choice whatsoever was allowed: the Area Director tended to think himself lucky if he could find any lawyer at all to attend to legal aid matters (Minutes, LSAGM, June 25, 1971).

Even in Vancouver, however, there was opposition to allowing a choice of counsel. Unlike their Ontario colleagues, the organized Bar in BC did not see choice of counsel as the mainstay of an independent profession. The Board of the LAS and many of the Benchers were opposed to allowing choice of counsel because they felt that "if choice was permitted some lawyers might solicit cases" (Minutes, LAS, September 15, 1971). There was a strong feeling that care needed to be exercised to ensure that the legal aid program did not become "a full employment program for lawyers" (The *Vancouver Sun*, October 27, 1972).

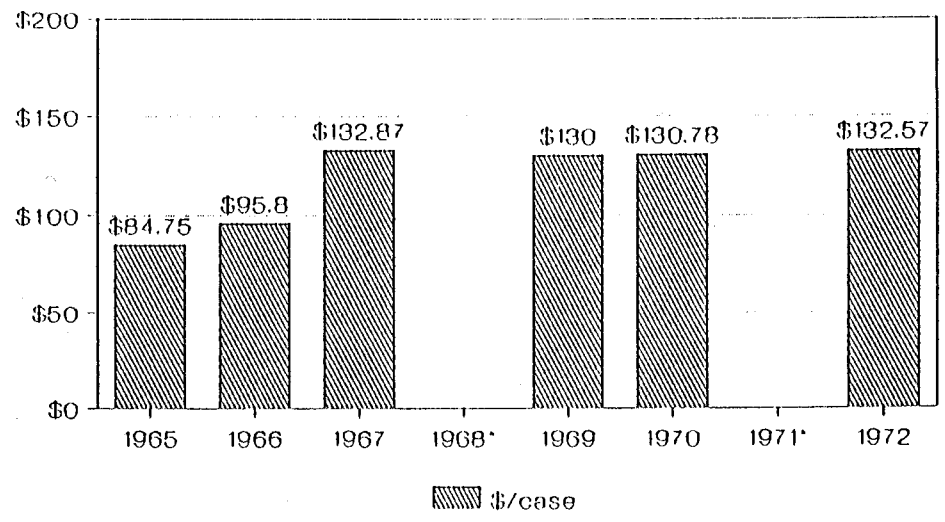
The origins of this attitude seem to lie in the Bar's general opposition to state funded programs and in the strongly held belief of many members of the profession that legal aid was an obligation of the profession, a charitable act from which individuals should not be able to make a living (Interview, Brian Ralph, May 1990). But the proclivity of lawyers to make legal aid into "a barrel which they bail money out of" was also commented on by individual lawyers who favoured the expansion of legal aid not as a charity but as a right. Harry Rankin was quoted in the *Prince George Citizen* as stating, "Law is a monopoly [and] we are quite generous with ourselves" (January 17, 1972). Continuing concern for the public image of the profession was also at work here: it did not "look good" if any one lawyer received too much income from legal aid cases (Maczko, Report on Restriction of Number of Cases, 1971).

A group of lawyers heavily involved in providing legal aid coverage in Vancouver courts presented a strong case to the Board of Directors of the LAS for the preservation of the right to choose counsel, stating that clients were getting excellent representation from seasoned lawyers.[9] Arguing in favour of retaining the choice of counsel option on legal aid application forms, Maczko emphasized that this procedure was both cost effective and administratively efficient. The criminal legal aid lawyers' presentation to the Board of Directors undoubtedly had some impact on their final decision. The practice of allowing the client to choose counsel was allowed to continue on the grounds that these procedures "provided the maximum service to the client and were the most administratively efficient" (Maczko, Report 1971). A new interest group had been introduced into the legal aid policy community. In spite of the stated wish of the LAS not to create a legal aid Bar, such a group was forming. Even though, until 1972, the

criminal legal aid tariff remained below 30 percent of the standard fee, a small but growing number of individuals were able to make an adequate income from legal aid cases -- up to $2005 per month (Attachment to Minutes, LAS, August 4, 1971).

It should also be noted that, although the tariff remained the same, the average cost per criminal case increased from $84.76 in 1964 to $130.78 in 1970 (LSLAC Annual Report, 19700). With a 75 % tariff, the average cost per case in Ontario in 1969 was $155 (LSLAC Report, 1970). There seems to be strong indication that, at least in Vancouver, cases could be so managed as to ensure adequate reimbursement. The levelling off of cost per case after 1969, however, indicates that the management of cases for maximum profitability had reached its limit (see Table 5:2). This undoubtedly contributed to the mounting pressure for an increased tariff.

Figure 5:2
Cost/Case - Criminal Legal Aid in BC



* No data
From LSLAC Annual Reports, 1966-69 and
LAS Annual Reports, 1970-73

D. Expansion of Coverage

Even with the establishment of the LAS, coverage in criminal and civil matters remained extremely limited during this period. Extended coverage tended to take the form of increased accessibility to the administrative offices of area directors in the more remote areas of the Province, or of increased accessibility to other entirely charitable programs initiated by organizations such as the CBA's program of legal aid for Native People[10], the Native Court Workers Projects[11], the Vancouver People's Law School[12], and several UBC student projects[13]. There were, however, exceptions to this in the area of criminal legal aid coverage.

1. Duty Counsel

From the initial description of the duties of the Director of the LAS, it is clear that providing adequate coverage in Vancouver's criminal courts was one of the Director's responsibilities. Directors or their assistants were to receive applications for legal aid and appear in criminal courts for the purposes of securing adjournment, fixing bail, and interviewing the accused. It was anticipated that staff counsel would be able to take many cases through to completion. Staff counsel did not actually attend at the jails in the mornings, but they took care of these matters when called upon (LAS, Notice to the Profession, March, 1970). The evolution of coverage from a modified public defender approach to a duty counsel approach was slow and made necessary by government reluctance to allot any more funds to the central office of the LAS. In January 1971, Maczko had visited Ontario to examine how their legal aid system functioned. He brought back a very favourable report on the duty counsel

system, emphasizing the "efficiency for the Court because the Court then doesn't have to take the time to deal with each of these people and explain their rights because this has all been done;" he also stressed the cost effectiveness of duty counsel, which provided a "tremendous saving in Legal Aid fees" (Maczko, Report on Duty Counsel, Minutes, Board of Directors, March 25, 1971).

Enthusiastic about the duty counsel approach, Maczko felt this service could be provided most economically through legal aid staff counsel. A one-week experiment in April of 1971, in which Duty Counsel was provided for criminal matters in Vancouver courts, clearly demonstrated the need for such a service.[14] At first, many judges were extremely reluctant to allow Duty Counsel to appear, complaining of the potential for interference and obstruction. After the week of experiment, however, the judges were more than willing to see the continuation of the system (Interview, Maczko, April 7, 1989). Letters of recommendation were forthcoming from both judges and prosecutors, commenting on the benefits enjoyed by both the accused and by the courts. All of the advantages observed by Maczko in Ontario were equally evident in Vancouver.

Of special note was the economy of the system. Maczko pointed out:

> In at least four cases on the 23rd of April, it was very clear that the accused would have had their cases adjourned to obtain Counsel in spite of the fact that they intended to plead guilty. With my being there, they were prepared to go ahead on that day. In those 4 cases, a minimum of $360.00 was saved (Maczko, *Duty Counsel Report*, April, 1971).

District Judge Eckardt and City Prosecutor Stuart McMorran were most impressed with the advantages which accrued from streamlining the processing of the accused (Eckardt to Maczko, April 27, 1971).[15] Provision of Duty Counsel, according to Judge Eckardt, had the additional advantage of creating a situation "where justice has not only been done, but has been 'seen to be done'" (Eckardt to Maczko October 7, 1972).

Maczko estimated the cost of Duty Counsel at $12,000 or the salary of one additional lawyer (Maczko to Rankin, June 7, 1971). A request for these funds was sent to the AG's Department, but the Government refused to consider any increased government expenditures on "lawyers' salaries". Although the advantages of the Duty Counsel system for both the administration of justice and the protection of the rights of the accused were recognized (Simson, AG Departmental Solicitor, to Maczko, April 12, 1972), the funds for a modified PD program employing a full-time salaried lawyer as Duty Counsel in Vancouver courts were not forthcoming. Even if savings could be made in the provision of legal aid, the Government was not willing to furnish the salaries of yet another group of professionals.

The Government was, however, sufficiently interested in the proposed system to allow the experiment to continue, but based on the Ontario model of using as duty counsel a lawyer in private practice paid out of the tariff at a rate of $100 per day (Maczko to McDiarmid, September 26, 1972). The decision as to whether this program would continue to be funded, and on what basis, was still pending when the Social Credit Government was ousted from office in September 1972 and the NDP formed the Government for the first time in provincial history.

2. Juvenile Matters

The one area in which there was no Socred opposition to expansion of legal aid coverage was for juveniles charged with such matters as breaking and entering, theft, drug, and serious assault cases, as well as with homicide -- in effect, with offenses that would be covered if the individual were an adult. (Minutes, LAS, August 1970). This expanded coverage was in line with the desire of both the Bar and the Government to protect young and first offenders from further involvement with the Criminal Justice System; it also had the additional advantages that it did not add significantly to the tariff and did not require any increase in the administrative costs of legal aid.

In August 1970, a directive to expand coverage to juveniles was sent to area directors, but in many of the outlying areas, where it was difficult to get lawyers to accept legal aid cases, this directive was ignored (Minutes, LAS, January 19, 1972). In Vancouver, the bulk of this work was undertaken by law students supervised by VCLAS (LSLAC Report, 1970:215). In his Annual Report to the Law Society, Meredith commented that "this by all reports has proved of great benefit to the Court and students alike" (LSLAC Annual Report, 1970:215).

The Government also found a way to use this measure to enhance the cost effectiveness of the legal aid system. In Vancouver, where this directive was followed, there was some question of the Government using this provision as a "cheaper means" of providing counsel in cases where the child was a ward of the Superintendent of Child Welfare. Instead of appointing a lawyer for the child

when required and paying that lawyer at the prevailing rate, as had been the practice prior to the inauguration of the LAS, the Superintendent was now transferring these cases to legal aid (Minutes, LSAGM, June 25, 1971). In fact, in late June 1971, the Superintendent of Child Welfare circulated a memorandum to his staff stating:

> The Attorney-General's Department has advised that they can accept no responsibility for the provision of legal counsel to those children who come into the care of the Superintendent of Child Welfare through the *Juvenile Delinquents Act*, including those committed as a result of a complaint being laid under Section 65 of the *Protection of Children Act*. Where legal services appear to be necessary, and cannot be provided by the parents, the child should be referred to Legal Aid (Department of Rehabilitation and Social Improvement, Special Staff Bulletin, vol 5, no.33, June 22, 1971).

In his report on "The Problem of Referring Domestic Relations Matters", Maczko stated:

> Legal Aid is more and more becoming a means of subsidizing other social agencies, for example the Superintendent of Child Welfare and the Children's Aid Society of Vancouver will no longer pay for the defence of people who are in their custody (September, 1971).[16]

3. Civil Legal Aid 1970-72

Although there was some progress in the area of public funding for criminal legal aid, civil legal aid coverage remained based on the charity of the profession. Directors of the LAS initially envisaged that staff lawyers in the Vancouver office could take over many of these non-tariff matters and relieve some of the pressure on the Vancouver Bar. It rapidly became apparent that even this additional coverage would not meet the demand. Maczko pointed out very early on in the development of the Vancouver office that his primary problem stemmed from matters of civil law: "There were too many problems to be dealt with properly by the lawyers and the funds available" (Maczko, Report to the CJ Subsection, September 16, 1970). Difficulties of providing coverage in civil matters were especially pronounced in the area of divorce, a problem that had been growing since the Federal Government amended the *Divorce Act* in 1969.

a. Divorce

Divorce and other matrimonial problems had always been the largest area of civil coverage, even given the incredibly stringent eligibility requirements that were imposed after the formation of the LAS. The incorporation of the LAS coincided very closely with changes in the *Divorce Act* which created an enormous potential demand for legal aid divorces and no resources to meet this demand.[17]

The LAS felt particularly pressed to provide expanded coverage in this matter, for it was an area where "the Legal profession as a whole has been receiving and

will continue to receive considerable criticism for its failure to lead the way and deal with this distressing social problem" (Report Appended to Minutes, LAS, November, 1970). It was also an area of service that was quickly being filled by commercial firms who marketed divorce kits,[18] and by lay practitioners who, for a nominal fee, furnished advice (Report, Appended to Minutes, LAS, November, 1970). The Bar was feeling the threat of encroachment on their monopoly.

The LAS realized that if the demand for divorce were to be met by the organized Bar, additional resources would be required. The AG was approached in the hope that the Government might grant the funds necessary to hire two lawyers to process divorces. Kennedy stated that he would not approach the Treasury with any request for expanded funding of lawyer's salaries, and advised the LAS to create its own divorce kit (Minutes, LAS, August 6, 1970). The burgeoning number of divorce cases was a problem for the legal profession, not the Government.

In one area, however, the Government itself was affected by this increase in cases. Persons attempting to secure their own divorces were causing considerable difficulty at the court registries, which were forced to deal with improperly prepared documents and numerous questions from aspiring 'do-it-yourselfers':

> Confronted with the questions and stumblings of In-Person Petitioners, the staff of the Registry was at first helpful, then increasingly impatient. They are busy, and value highly their own time and that of the professionals with whom they work. Consequently they have an attitude that is something less than friendly to petitioners filing their own papers (VCLAS to T.V. McCallum [Secretary of the Law Society], July 28, 1970).

The Government, therefore, was willing to take on some of the attendant expense in this matter. Kennedy suggested that the Department would appoint one person in each Court Registry to vet divorce petitions filed under the auspices of the LAS (Minutes, LAS, August 6, 1970), and he agreed that the AG's department would provide disbursements for Court Registry fees (Minutes, LAS, November 5, 1970). The administration of justice would thereby be streamlined and the primary cost would be borne by the profession.

The LAS, in conjunction with the Legal Services Division of Inner City[19], turned to an examination of alternative methods of providing inexpensive divorces (Swift to McCallum, July 28, 1970; Minutes, LAS, November 5, 1970). By June 1971, three alternative programs had been developed:

> 1. The regular legal aid divorce program for financially eligible women who qualified either by reason of their health being in danger or in the interest of the welfare of their children;
>
> 2. A 'do-it-yourself' divorce program set up in co-operation with VCLAS for individuals suing on the grounds of three years' separation. In this program, applicants were first screened by the LAS for financial eligibility. The applicants were assisted by law students working out of the CBA office. If the applicant could not pay the 30 dollar Court Registry fee, this fee was paid by the LAS and repaid by the Government as a civil disbursement. The applications were then vetted by a volunteer lawyer who would appear in chambers when necessary;
>
> 3. A program developed in co-operation with the Family Law Section of the CBA, whereby the LAS screened and referred cases to a panel of lawyers. This program was for individuals who could pay on time or who could pay a reduced fee or whose costs could be collected from the husband (Minutes, LAS, January 27, 1971; Minutes, AGM, May 27, 1971, LAS, June 25, 1971).

These programs were not without their limitations. Michael Harcourt, commenting that 40 women on welfare had been assisted in getting divorces, added: "We hope, however, that the program doesn't become too publicized. We were strained considerably just arranging for forty women. There is no way we could handle an expanded demand" (Harcourt, 1970:90)[20] Harcourt emphasized that these programs were purely 'stopgap measures' to demonstrate a need. The only reasonable long-term solution would be to have proper fees for civil matters (Minutes, LAS, May 27, 1971).

Nonetheless, the combined efforts of the LAS and VCLAS were sufficient to alleviate the threat to the profession and allow the Government to escape demands for any further contribution. No approach was made to the Government for additional funds for legal aid coverage in divorce cases until after the fall of the Social Credit Government.

The demands for fiscal restraint, and the generally accumulation-oriented attitude of the Social Credit Government, required that as tight a lid as possible be kept on legal aid expenditures. The Government resisted an increase in the criminal tariff and refused to take on any further administration expenditure for criminal or civil legal aid in the guise of additional staff salaries. Government expenditure on legal aid did, nonetheless, increase in this period. The increasing need for legitimation meant that the Government could not cut back on expenses by visibly limiting legal aid coverage already provided for under the tariff. The example of the public outcry after the VBA introduced the five-year rule was a recent reminder of the consequences of such

an action. Thus, as the administrative structure of LAS expanded through the creation of AD offices, so too did the number of tariff cases. Thus, in spite of various policies of restraint, government expenditure on legal aid rose to over $950,000 for the period ending March 31, 1972 (LAS Annual Report, 1973). The need for legitimacy in the area of criminal legal aid was strong.

E. Civil Legal Aid and the Community Law Office Approach

The provision of legal aid in civil matters was not the exclusive preserve of the LAS. The Legal Aid Division of the Inner City Project[21] was incorporated as an independent agency, VCLAS, in March 1971. In its first year, VCLAS was headed by Michael Harcourt, who had worked full time as Legal Director of the Inner City Legal Services and Research Program. Harcourt resigned to return to his practise in 1972 and was replaced by Ian Waddell. VCLAS had established an office by May of 1971, and by June had ten functioning clinics staffed by law students, articled students, and lawyers (Waddell, 1972:23).

Legal aid was delivered by VCLAS through clinics staffed by law students under the supervision of lawyers. Unlike most law firms and the existing LAS:

> ...which sit and wait for clients to come to them, VCLAS actively seeks out clients. It holds day and evening clinics every week in 10 areas of the city. These clinics, located along bus routes, are easily accessible and provide the low income person with immediate legal advice. Free. If necessary, the lawyer represents his new client in court. Free. (The *Province*, June 3, 1971).

VCLAS had several objectives:

> (i) To act as an ombudsperson or advocate for the poor involved with creditors, bailiffs, collection agents, used-car dealers, welfare administrators or probation officers;
>
> (ii) To undertake law reform activity. They would test laws in areas such as debtor-creditor problems, landlord-tenant problems, statutes, administrative proceedings and case law;

> (iii) To educate the public on legal matters. Harcourt described this activity in his paper on "Legal Aid and the Community Lawyer Program", as a preventative law function which involved speaking to low-income people about their *duties*, *obligations*, and *rights*. This activity also included organizing meetings and speakers to groups of various kinds (VCLAS Report to Law Foundation, May 1971).

A further objective of VCLAS was to involve law students and articled students "so that they can gain practical experience in dealing with problems of the poor" (VCLAS, Report to the Law Foundation, May 1971; Interview, Harcourt, April 20, 1989). As a teaching arm of the UBC Law School, it placed a heavy emphasis on research, law reform, and 'significant' litigation in the form of test case and class action.[22]

Harcourt stated that "Our program shouldn't be confused with the Legal Aid Society of BC. They take criminal cases. We take the rest" (The *Province*, June 3, 1971).[23] In extenuating circumstances, however, the VCLAS would provide criminal coverage. The *main* areas dealt with by VCLAS were family law, debtor/creditor law, landlord/tenant disputes, consumer law, and small debts cases (Harcourt, Report, 1970). VCLAS would not, however, ordinarily take matters to litigation "unless the issue to be determined was of interest to all low-income persons" (Annual Report, 1972).

An important aspect of the program was research to "back up representations the program will make to government requesting changes in various statutes". VCLAS conducted research into laws and institutions which directly affected the lives of poor people, such as *The Bankruptcy Act*, small claims court, family and juvenile court, and *The Landlord and Tenant Act* (Annual Report, 1972). VCLAS

would work for reform "where they see the legal system is weighted against the poor" (LSLAC Report, 1970:89).

VCLAS was funded by the Federal Departments of Justice[24] and Consumer Affairs, the Donner Foundation in Ontario, the City of Vancouver, the Law Foundation, and the UBC Law Students Association. In addition, they received an OFY grant to pay thirteen students working in the clinics during the summer.

VCLAS enjoyed an amicable relationship with the LAS. The *Province* described Harcourt as a "new breed of lawyer". Harcourt, on the other hand, was careful to point out that:

> ...without the support of the old guard in the law profession, it is unlikely CLAS [sic] would have got off the ground. It is not a young thing. We're getting excellent support from the senior members of the bar, all the powers-that-be in the legal profession (The *Province*, June 3, 1971).

From its inception, there was close co-operation between VCLAS, the Inner City Project from which it emerged, and the LAS. Harcourt and Atrens, the founding members of VCLAS, were on the Board of Directors of the LAS. Harcourt reported on VCLAS activities at Board meetings. VCLAS and the LAS co-operated in the formulation of a 'do-it-yourself-divorce program', and many public statements made it clear that the LAS felt VCLAS was a necessary complement to its own services.

When VCLAS expanded the CLO approach to legal services that Inner City had inaugurated, there was no opposition from the LAS. In the closing remarks of the Inner City Legal Services annual report in 1970, the Director commented that after unofficially touring the country for the Minister of Justice, John Turner, studying the various law student and neighbourhood lawyer programs, he discovered that:

> What is so unique about B.C. in general and Vancouver in particular, is the positive and constructive co-ordination between all segments of the "legal community" -- law school, practising lawyers, and judiciary (Harcourt Report, 1970:5).

In his report on legal aid and the community lawyer program, Harcourt emphasized the complementary natures of the two systems of providing legal aid in British Columbia: "Basically, legal aid and a community lawyer program deal with the same group of people. However, the two programs have different purposes and different approaches" (Harcourt, Attachment to Report:1970). Legal aid dealt primarily with emergency legal matters that could not be postponed -- primarily criminal and family cases. Legal aid removed "the *financial* barriers low income or no income people face when they require lawyers" (Harcourt, Attachment to Report:1970). Community lawyers, on the other hand, dealt with matters not covered by legal aid:

> Either they are explicitly excluded, for example, in bankruptcy situations where the costs of a trustee are not covered by legal aid, or family court problems or small claims court disputes, or the legal aid staff lawyers are so overworked because of the tremendous and spiralling number of people who require lawyers for criminal defence or family law work (Harcourt, Attachment to Report:1970).

Into this same category would come matters spurned by private lawyers because they were too time consuming, not covered by a contingency fee, or otherwise not financially attractive.

Community lawyers were also interested in the *non-financial* barriers that faced poor people in their pursuit of justice, and in particular their natural reluctance to pursue their rights in law. The poor, Harcourt pointed out, had a very different experience of the law than the average citizen. The poor are usually the *objects* of legal action rather than the initiators, *defendants* rather than plaintiffs. The state prosecutes them in criminal matters (where they are often undefended); courts hound them in family matters (often forcing women on welfare to fight for maintenance payments); landlords attempt to evict them; bailiffs seek to seize their goods; creditors and collection agencies threaten and harass them:

> It is the poor whose children are taken away by the Superintendent of Child Welfare. It is the poor who have to put up with snoopy social workers looking for breaches of welfare legislation and regulations (The *Province*, June 3, 1971).

Given their experience of the law, it was not, Harcourt pointed out, surprising that the poor "did not have the same positive view of lawyers and the legal system" as the average citizen.[25] The fundamental task of VCLAS was to change this view through supportive legal action (The *Province*, June 3, 1971). VCLAS also complemented the LAS by screening out ineligible legal aid applicants, thus cutting down on the tremendous volume of applicants besieging the legal aid office (Harcourt, Attachment to Report, 1970). VCLAS was also, undoubtedly,

performing the function mentioned by Abel (1985) of streamlining the welfare bureaucracy by getting paperwork in order and screening problems before they reached the government bureaucracy.

Ian Waddell, who took over as Director of VCLAS in September 1971, spoke of the compatibility of the judicare and CLO approaches to legal aid delivery. The CLO approach was different but "not in opposition to a 'judicare' system". Waddell, who had attended the Poverty Law Conference held in Ottawa in 1971, quoted from the Cahns' speech:

> We do know that whenever judicare has been established, it has been necessary to couple it with a specialized law reform or research and development unit because the nature of private practise precludes the kind of investment and specialization, the fundamental research, in the development of long run strategies which make it possible to get at the causes as well as the symptoms of injustice (Waddell, 1972:23).

The LAS shared this belief in the necessity of combining the two services. After attending the Poverty Law Conference, Meredith, the Chairperson of the Board of Directors of LAS, commented that the judicare program "cannot be fully effective without the direct service which CLAS [sic] provides" (LSLAC Report, nd:4). The LAS, however, had a very narrow view of what constituted poverty law:

> ...such things as how to relieve welfare situations, deal with complaints about welfare payments, how to deal with landlord and tenant problems, the whole field of family law, how needs can be exposed and how the law and lawyers can be co-opted to resolve these needs (LSLAC Report, nd:3).

Legal aid in BC seemed to have arrived at the 'mixed' model of service delivery without passing through the usual intervening stages and without provoking any political protest.

The Inner City Project, and later VCLAS, fell within the parameters of proactive poverty law as described by Carlin and Howard in 1965. Law needed to be reformed because it created and perpetuated poverty. The needs of the poor were extensive and could only be met if legal services programs seized the initiative and took legal services to the people. By the end of its first year of operation, Inner City had a fairly well defined idea of what it would do when it reached the people. There was no ambivalence over whether this proactive stance included organizing the poor over political issues. It did not. VCLAS undertook activities which tended to the unique poverty needs of groups and individuals and combined this with an active research and law reform function. Neither organization of the poverty community for political action nor the concept of community control were pursued by the Inner City Project or by VCLAS. The VCLAS program focused on the integration of the poor and alienated into the mainstream of society.[26]

F. Initiative for Reform

The creation and expansion of VCLAS and VPL and the CBA program for Native Indian groups (see endnotes 11, 12, 13, and 14) indicated "a growing awareness of the need for improvements in legal aid in [the] Province" (Atrens, 1970:89).[27] It is clear, however, that in spite of the proliferation of charitable groups providing certain aspects of legal aid, the initiative for reform of the legal aid program was firmly in the hands of the Law Society through the LAS. It is also clear that the major needs, as defined by the LAS, were expansion of the criminal legal aid tariff, the establishment of a duty counsel system, and the creation of a civil tariff. Examination of the official correspondence of the LAS, and of the public statements of officials associated with the provision of legal aid, furnishes a clearer picture of the ideas that informed agitation for expanded legal aid coverage in this period. Establishment of good public relations as a rationale of the provision of legal aid, though still a consideration, was not a prevailing theme in the 1970's. The profession, by taking the initiative and posing as the vanguard of the expansion of legal aid, had, at least temporarily, succeeded in bolstering its legitimacy.[28]

In the early 1970's, a matter clearly thought important by the Bar and by the Director of the LAS was the role legal aid could play in social integration, especially in the highly populated urban centre of Vancouver, where the Legal Aid Office was located. In its first few years' of existence, legal aid was promoted primarily on the basis of its integrative qualities. Equality before

the law, it was argued, was a means to integration in a time of social discontent. The FLQ was in a state of insurrection in Quebec; the VLF had become a flagship of radicalism; there was rioting in the streets of Vancouver; and unrest was rampant on university campuses.

At the Law Society annual meeting in 1970, Maczko warned that "a social upheaval is threatening the entire governmental and legal structure". He went on to point out that legal aid, "even if supported by lawyers for only selfish reasons", was one way to deal with the problem. He claimed that even if "you don't care about the rights of poor people it is still an intelligent thing to do....There is a wind, a breeze of social upheaval. We've got to face it" (The *Vancouver Sun*, June 1979). Maczko warned that the urban rioting and protest taking place in the US could spill over into Canada. If this kind of upheaval took place, he predicted, "government will be at the bottom of the pile and lawyers will be second from the bottom" (The *Vancouver Sun*, June, 1970).

Maczko did not, however, reserve for the ears of his colleagues his warnings of the dire consequences of not providing legal redress for the alienated in society. He took them to the business community. In a speech to the Kiwanis Club in August 1970, Maczko stated:

> If we don't give people equal justice the number of discontents grows and grows...All you need then is someone to organize these people. This is what the Vancouver Liberation Front is doing. And this will continue until we give people equality before the law...Everyone must get justice or we will see an overthrow of the system (The *Vancouver Sun*, August 1, 1970).

The urgency of Maczko's warning increased after the rioting in Vancouver in August 1970. This new note can be detected in a speech to the Lions Club given in September 1970:

> The handwriting for a bloody revolution in Canadian cities is on the wall and it's not going to be prevented by more policemen, more riot sticks and bigger jails...In today's society a whole new set of problems -- including that of overcrowding in urban areas -- has to be attacked in a new way....One solution involves provision of legal services for all, rich or poor....If we don't provide for people a means within the system to have access to the law, they are going to deal with their problems in an anti-social way -- with crime, demonstrations and riots (The *Vancouver Sun*, June 5, 1970).

This view of legal aid as an *integrative force* was shared by others. John Farris, President of the BC Branch of the CBA, writing in support of a request by the newly founded VCLAS for financial support from the City, commented:

> It is common knowledge that the institutions of this country, particularly the courts and the judicial system are under attack from all sides. Where citizens have not had access to legal advice and whose rights have thereby not been protected fully under the law, a sense of alienation can only be left in their minds. Unfortunately, this happens more often in the case of lower income groups and such a situation is intolerable in modern day society (The *Province*, June 3, 1970).

Considerations other than fear of rioting in urban centres moved the legal profession most strongly toward expanded legal aid coverage. The reasons put forward for expanded coverage in rural areas centred entirely on the argument that the entire Criminal Justice System was in disarray and needed to be restructured, with expanded legal aid coverage included as a necessary

component. It was argued that not even the pretence of equality before the law could be maintained in rural areas. Especially at risk in this 'frontier justice' type of system were minorities, especially Native Peoples.

The sorry state of justice in rural areas was vividly described in a letter to the Deputy AG written by Victor Stephens, one of the senior lawyers in Courtenay on Vancouver Island and an individual who, at a later date, would run for the leadership of the Conservative Party in BC. He asserted that Indians were treated as "second class citizens". They were "arrested, charged, convicted (usually on a guilty plea) and sentenced by some resident judge without ever having been independently advised of their rights". He emphasized the difficulty and expense of even hiring a lawyer in rural areas:

> First of all, there are no lawyers practising on a full-time basis in [remote areas], and the accused person has to bear the cost of travel expenses of any lawyer coming into the district in addition to the regular fee. Secondly, the lawyer's fee is bound to be higher because he will be spending more time away from his office than he normally would to attend a provincial court in the area where he practices. Thirdly, if the matter of sentence is to be adjourned pending the preparation of a pre-sentence report, the lawyer will have to make a second trip to the area at further cost to the client. You can see that the total cost soon becomes prohibitive even for a person who might have some separate means and not qualify for legal aid (Stephens to Kennedy, February 16, 1972).

Stephens also noted that, in the North Island area, there were no probation officers or court reporters and only four or five courts to serve a population of ten thousand. Speaking specifically about legal aid, Stephens pointed out:

> ...as for legal aid itself, there is no place in any of the communities that I have mentioned where an application can be made. I have satisfied myself that some of the judges in the area have no comprehension whatever as to what legal aid is, and are incapable of advising an accused person how to go about getting it (Stephens to Kennedy, February 16, 1972).

The remuneration for legal aid services in rural areas he characterised as "grossly inadequate". It might, Stephens commented, be possible for lawyers in urban areas to handle legal aid cases profitably, but this was not so in more remote areas, where it was necessary to spend two or three days out of the office travelling to outlying courts.

The Deputy AG responded with outrage to Stephens' comments on the administration of justice. To this, Stephens retorted:

> If you interpret my remarks as a condemnation of the administration of justice in certain rural areas then I am reasonably satisfied, because that is exactly what I intended them to be. Unfortunately, it seems that very little attention is attracted to these special problems until they are published in the press. Evidently, some personal feelings have been hurt and, while I regret this, perhaps it is the price that must be paid in order to get some action (Stephens to Kennedy, February 16, 1972).

Sectors of the attentive public were also critical of the abysmal state of the administration of justice in British Columbia. The British Columbia Conference of the United Church of Canada circulated a paper entitled, "Is There a Case for Judicare?: The Tragic Limitation of Our British Columbia Legal Aid System". The paper described the existing system of legal aid in BC as "ineffective" and "wrought with frustrations for both lawyer and client". The primary

deficiencies of the system were "(a) inconsistency; (b) emasculated coverage (especially civil cases); (c) it is based on the charity of lawyers and not the protection and dignity of human rights" (United Church of Canada, Judicare, 1971). The Conference strongly recommended the adoption of a judicare system that offered adequate remuneration for the profession. They felt that the Ontario system was completely appropriate and should be emulated.

By 1972, the Press, at first favourably impressed by the steps taken by the BC Government in 1970 to provide additional funding for legal aid, was once again highly critical of the sorry state of the administration of justice in the Province. The focus of their criticism was on the unfairness of the administration of justice as it applied to the poor and minorities (The *Vancouver Sun*, October 1972; The *Province*, October 1972).

In the same year elements of the organized Bar began to show a more active interest in law reform and reform of the legal aid system. The question of law reform in BC as it is associated with legal aid must take into consideration the existence of the BC LRC. The stated objectives of law reform could in fact be achieved through the LRC or any of the subcommittees of the BC Branch of the CBA that dealt with such issues.[29] Although both the LAS and VCLAS had stated an interest in law reform, this was not the aggressive, often confrontational type of law reform, centred on the courts, that so often surfaced in the US. Emphasis was on working through the LRC or the AG, rather than through the courts.

The difference in approach between the US and BC in this matter could, at least in part, be attributed to a difference in legal culture. Canada had inherited the British tradition of *stare decisis*, parliamentary supremacy, and judicial restraint. One of the basic elements of the British Constitution is the supremacy of Parliament. In Britain:

> ...there is no higher legislative authority; no court can declare an Act of Parliament to be invalid; there is no limit to Parliament's sphere of legislation, and no Parliament can legally bind its successor, or be bound by its predecessor (Punnett, 1980:173).

The authority of Parliament in Canada prevailed over that of the courts in law-making (Pollock, 1975:133). This limited view of the judicial function was further restricted by the doctrine of judicial restraint, which:

> takes note of the fact that the court is an appointive non-elective body that can make no valid claim to having a popular 'mandate' and that its members' prestige and public standing depend in certain measure on their political non-involvement and the extent to which they in fact stay aloof from the exigent here-and-now (Grossman, 1967:207).

The concept of parliamentary supremacy was inherited as part of the *British North America Act* and prevailed until the passing of the *Constitution Act* of 1982.[30] Court challenges to the constitutionality of Acts of Parliament, or Acts passed by provincial legislatures, were only allowed on grounds of transgression of the federal/provincial division of power.

Unlike those of Britain and Canada, where the legislature is supreme, the American Constitution makes the judiciary an equal and co-ordinating branch of government. This gives the judiciary substantial power in the legislative and executive realms. This has meant that:

> ...American Courts have been more open to new challenges, more willing to take on new tasks. This has encouraged others to push problems their way -- so much so that no courts anywhere have a greater responsibility for making public policy than the courts of the United States (Horowitz, 1977:3).

The concepts of *stare decisis*, parliamentary supremacy, and judicial restraint in Britain and Canada and the absence of these concepts in the US had an effect on the development of legal aid programs in these countries. During the period under study, the making of law and public policy in Canada was considered a *political* function. It was the responsibility of the executive and the legislature and not open to judicial review. Legal aid programs directed at changing laws through test case or class action litigation had limited appeal in countries where the supremacy of Parliament was accepted.

Although this did not eliminate completely the possibility of test case litigation (as evidenced by successful VCLAS action in the matter of BC Hydro deposits)[31], it did substantially affect the approach and accomplishments of the law reform element in legal aid programs.[32] All of the Common Law provinces have a rule of court that allows class actions which permit "numerous plaintiffs to bring one action which raises an identical question of law against the same defendant for a single determination" (Cooper and Kestner, 1978:334). But the

history of class action in Canada "reveals that the device has been of little use....[F]ew class actions have been taken in Canada and fewer have succeeded, the courts generally have not favoured the use of class action in consumer damages" (Cooper and Kestner, 1978:336).[33] In B.C., law reform was seen to be a legitimate activity of legal bodies functioning through the LRC or through the AG's Department. By 1972, however, there were growing indications that many elements of the legal profession felt that the LRC was not moving fast enough. This became clear with the formation in January 1972 of a Special Committee on the Administration of Justice in BC. The Committee was formed by the BC Branch of the CBA (The *Vancouver Sun*, February 5, 1972). Its mandate was to:

> ...consider the scope, priorities of subject matter, the appropriate body and manner in which a proposal may best be implemented for a full inquiry (with power to make recommendations) with respect to the administration of justice, both criminal and civil, in the Province of British Columbia (Report, April 20, 1972:1).

While recognizing the essential contribution made by the LRC of BC, the Committee noted that the Commission had, in the past, concentrated on the examination and reform of substantive law. The Committee felt that a vital need was not being met by the LRC:

> The most enlightened body of substantive law is of little value if the machinery of its administration is inadequate. It is therefore paradoxical that the administration of justice in British Columbia has never been the subject of systematic and comprehensive review (Report, April 20, 1972:1).

This review was undertaken by five subcommittees appointed to study the administration of justice in several different areas, one of which was access

to legal services and legal aid. Each of the subcommittees concluded that there were serious problems associated with the administration of justice, and that these required "immediate study and solution" (Report, April 20, 1972:3).

The subcommittee appointed to look into access to legal services and legal aid consisted of Maczko, Director of the LAS, as Chairperson, and Harcourt and Atrens, founding members of VCLAS. The draft recommendations they submitted to the Committee of the whole were substantially those included in a memorandum from Atrens to Maczko in February 1972. It is perhaps of interest to note that the only change to the draft that the Committee of the whole recommended was dropping the preamble to the section on need, which stated that "it is assumed that the general desirability of providing legal aid is a matter that is now beyond controversy" (Draft Report, February, 1972).

The final draft noted that the experience of existing agencies demonstrated that a demand for legal assistance was not being met (Report, April 20, 1972:28). The Committee felt that the inadequacy of the existing system was especially apparent in the area of domestic relations (Report, April 20, 1972:29). The rationale of expanded legal aid coverage put forward by the subcommittee on legal aid was based on rights and justice:

> Under our system of justice, a person with a legal problem requires the services of a lawyer if his rights are to be adequately protected. A denial of access to professional legal services frequently results in a denial of justice (Report, April 20, 1972:27).

The Committee's recommendations for reform, however, did little more than reiterate the already stated goals and objectives of VCLAS and the LAS. They did not propose any new strategies for increasing the funding of legal aid, nor for integrating, reorganizing or expanding administration of legal aid -- these areas were to be the subject of further deliberations.

The report of the CBA Committee did, however, galvanize another section of the Bar. That the LRC felt its function was, perhaps, being usurped by the special committee is indicated by the speed with which this body, not previously known for the rapidity of its deliberations, decided to undertake its own review of the matter. The LRC approached the AG for approval in principle of a project to examine the administration of justice. This approval was given in March 1972, under the usual conditions that:

> ...the Commission would prepare a profile paper setting out the scope and organization of the Project, including an outline of the various topics to be included and some indication of the priorities to be assigned, the methodology to be followed, and the estimated cost of completion (LRC, Profile, December 1972:1).

The Commission gave every indication that it would proceed with this study at the usual 'snail on valium' pace. The Chairperson of the LRC, the Honourable E. D. Fulton, pointed out:

> It must be emphasized...that the size and complexity of the project, and the comprehensive nature of the studies involved necessitate a great deal of preliminary work and discussion by all those concerned, and that the successful completion of the project will require careful organization of the

> personnel and resources available, and will necessarily extend over several years (LRC, News Release, March 29, 1972).

But that a note of urgency had been introduced into the deliberations of the Commission was evident in the LRC's December "Profile for a study of the Administration of Justice and Organization of the Courts in British Columbia":

> Some of the most serious problems, such as delay and lack of access to the law, are well known and are a continuing source of public discontent and of frustration among those responsible for the administration of justice. These problems cannot wait for the results of elaborate studies (LRC, Profile, 1972:6).

Remedial action was called for and at an early date. The Commission suggested that this could take place in two ways:

> First, the *judgment of experienced people* can be drawn on to identify improvements that can be effected quickly without limiting the range of alternatives available through long-term programmes of study and reform. Some problems may arise which are best dealt with by informal suggestions and information rather than changes in substantive law. Here, the Commission can act or serve as a clearing house and catalyst in securing results. Second, the project can be so conducted that reports and recommendations can be *prepared independently* in the various studies without having to await a single, comprehensive report covering every aspect of the project (LRC Profile, 1972:6. Emphasis added).

The LRC consulted with the CBA Special Committee and subsequently appointed David Vickers to prepare an analysis of the scope and content of the project. The Special Committee, in turn, "enthusiastically" welcomed "...the initiative

taken by the Commission and the fact the Attorney General has given his approval in principle to the proposed project" (Report, April 20, 1972:3).

Vickers' recommendations closely approximated those of the Special Committee. The report was not completed, however, until December 1972, by which time the NDP had been elected and an entirely different climate of reform prevailed. The organized Bar's conservative approach to legal aid reform was not appreciated by the Social Credit Government and it would remain unappreciated under the NDP. The activities of the CBA and the LRC demonstrated, however, that elements of the governing class had noted the gap between textbook law and law as it existed in actuality for the economically and geographically disadvantaged in the Province, and found it to be significant. They appeared to be ready to consider more extensive recommendations for legal aid reform.

G. Impact of Federal-Provincial Negotiations

By August of 1972, it was apparent that settlement on the terms of a Federal/Provincial Cost-sharing Agreement (FPA) on Legal Aid was nearing completion. BC was, by this time, in the throes of a heated provincial election. Discussion in the Press focused on the issue of whether or not the Government would use money saved through Federal Government funding of criminal legal aid to expand the civil legal aid programs.

At least one member of the NDP opposition expressed the opinion that the Government would indeed use the federal funds as an excuse to withdraw its funding: "...what can you expect from a Social Credit government?" (The

Vancouver Sun, August 25, 1972). The AG, on the other hand, by this time well aware of the considerable sentiment in favour of legal aid reform, assured the public that such funds would be turned back into legal aid projects (The *Vancouver Sun*, August 25, 1972).

The Director of the LAS expressed the opinion that if the Provincial Government maintained its current commitment and used the federal money to pay ninety percent of the current criminal tariff, BC "could have a superb legal aid system...one of the best in Canada" (The *Vancouver Sun*, August 25, 1972). That the Director felt that an infusion of approximately $300,000 would change the legal aid system from one that could barely limp along on the funds available to "one of the best" in Canada is indicative of the limited vision of the LAS.

It is not possible to know whether or not the AG would have turned these funds towards the provision of civil legal aid. The Socred Government fell in September. But it is possible to speculate, upon the basis of its past record, whether the Social Credit Party would have applied at least some of the funds saved in the criminal legal aid area to civil legal aid. The system was in disarray, the public was discontented, and the cost to the Provincial Government would have been minimal. Although the Government had shown no signs of taking the initiative in legal aid reform, all of the elements that had forced the Government to act on previous occasions, albeit in an incremental way, were present in late 1972.

Although the organized Bar was not, in general, enthusiastic about expanded government funding for the administration of legal aid (*LSLAC Report*, 1970:216),

there was no opposition from the Bar or the Directors of the LAS to the expanded funding of legal aid that would be delivered under the FPA. The administration of legal aid would not be affected. The tariff in criminal legal aid would at the very least be maintained, and possibly expanded, and implementation of a civil tariff appeared a very real possibility. There was nothing in these arrangements to threaten the independence of the Bar and much to recommend them. Some members of the Bar did express concern that expanded legal aid coverage would take away their paying clientele, but they were assured by the leading advocates of legal aid, and by events, that this would not, in fact, be the case (LSLAC Report, 1970:216; Interview, Meredith, 1989).

H. Conclusion

By the end of 1972, legal aid in *Vancouver* was effectively operating under what has been termed a 'mixed system', with LAS handling traditional legal aid matters, largely through referrals to the private Bar, and VCLAS handling poverty law matters. While the activities of the LAS were entirely reactive, VCLAS took a more proactive stance. The LAS did not see its function as providing proactive legal aid or even dealing with poverty law issues. There was, however, a consensus that the mixed model, as represented by the separate activities of VCLAS and the LAS, was the best model for legal aid delivery.

Clamour for reform in the administration of criminal justice, including an expanded role for criminal legal aid, had reached a crescendo by the time the Socreds fell from power. Expanding government expenditure on the criminal legal aid tariff during a period of fiscal restraint emphasized the importance placed

on ideological concepts such as equality before the law as legitimating factors for a beleaguered government. Government sensitivity to the issue of equality before the law did not, however, extend to equality in civil matters or to an expanded concept of rights in the area of poverty law.

Except in the area of divorce, the attentive public and the organized Bar also appeared to be content with the civil coverage provided by VCLAS in Vancouver. Concern for civil legal aid in rural areas was simply overshadowed by the emphasis placed on the inadequacies of the CJS.

Structural indicators of a need for legal aid reform became pronounced in this period. Growing social and political unrest made the need for government intervention to mediate the functional requirements of accumulation, legitimation and coercion more apparent. The ideological slippage between the ideal functioning of law in a democratic society and the actual functioning of the criminal justice system in BC had become too great to ignore. Members of the governing class were urgently advocating reform to integrate the disenchanted and minimize the threat to the capitalist social order.

An increase of over 300% in the criminal tariff gives some indication that the Social Credit Government was aware of the need to respond to the growing demand for reform. Government response in the area of legal aid, as well as in several other areas of reform, was not sufficient to win the confidence of liberal elements of the governing class. The determination of the Government to act autonomously was apparent in its refusal to take vigorous action in the area of reform. This refusal threatened social stability and was not in the long-term

interest of capital accumulation. The attitude of the Government and the interests of the governing class diverged. The limits of government autonomy were indicated by Social Credit's electoral defeat.

The impact of legal culture was also apparent in the secondary role given to law reform and test case action by the LAS. VCLAS placed some emphasis on these activities, but during this period they concentrated much of their activity on research to be submitted to the LRC, the CBA and the AG's department, rather than on legal action in the courts. The influence of imitation was slight. It is true that the LAS adopted the Ontario Duty Counsel model, but this was not the model of choice of the LAS. It was, rather, the only alternative model considered by the LAS.

The importance of human agency as a factor in legal aid reform was somewhat diminished in this period. The basic features of the legal aid program had been set in 1969. Government restrictions on expenditure played a major role in determining the characteristics of the program. Initiative for reform remained with the Bar. The number of groups participating in legal aid expanded, but while the types of legal aid service they advocated differed, there was no conflict between groups. The Bar, still not a strong interest group, could not gain the ear of the Government. Control of the extent and, to a degree, the nature of reform remained with the Government.

Although the organized Bar continued to participate in legal aid as an exercise in legitimacy, their interest had passed beyond legitimation of the profession to legitimation of the state. Law and lawyers were, after all, part of the

state apparatus. The legitimating and social integration functions of legal aid, together with the necessity of maintaining the image of equality before the law, were heavily emphasized by the LAS in this period of heightened social unrest. The Bar was moved to make greater efforts to determine the need for reform, and make specific recommendations, by the increasingly apparent disparity between not only the rich and the poor, but also the rural and urban areas of the Province. By the end of this period, the Bar's reform oriented elements, of all political persuasions, were to the fore in the creation of the CBA's special committee and in the activities of the Law Reform Commission.

The impact of the conservative nature of the Bar on demands for legal aid reform were clear. The LAS continued to be concerned with cost effectiveness, the threat of government control, and the importance of the Bar's 'duty' in legal aid provision. This kept requests for tariff increases low, and limited, but did not prevent the creation of, the criminal legal aid Bar. The threat of government control produced the first indications of a slight divergence of the interests of the Law Society and the LAS. The Law Society had a pronounced fear of the potential for growing government control of the profession -- control that might come about through expanded public funding of legal aid. The LAS, on the other hand, was much better acquainted with the Government's natural reluctance to intervene. Thus, although one of the LAS's primary goals -- formulated while the LAS was still the Legal Aid Committee of the Law Society -- was to persuade the Law Foundation to fund its administrative side, the executive of the LAS was constantly requesting government funding of administrative positions.

Given that the Government consistently opposed expanded expenditure on administrative salaries, and only reluctantly agreed to an increase in the criminal tariff even more modest than that requested by the LAS, it is clear that activities of the organized Bar had much less impact on the evolution of legal aid in this period than at any previous time.

Government participation in legal aid was not as it had been previously, merely an exercise in legitimation at the least possible expense. Although the government was concerned with the overall cost of providing legal aid, an equally important consideration would appear to have been a desire to minimize their responsibility for and administrative involvement in the provision of legal aid. The Social Credit Government refused to appoint a representative to the Board of Directors of the LAS. It refused to fund staff lawyers, although on the surface this appeared to be the most cost effective way of providing Duty Counsel in BC. During this period of increasing salary demands and tightening budgets, the Government was alert to the financial strain involved in funding a growing professional bureaucracy to administer social welfare programs.

In 1970, the refusal of the Government to create a civil tariff had made necessary the development of a staff office approach to legal aid delivery. There were simply not enough lawyers willing to accept the growing number of civil cases for which no fee was provided. The reluctance of the Government to fund the administrative function of legal aid after 1970 resulted in greater emphasis on the use of the tariff and a judicare approach. Publicly funded legal aid in this period grew with the expansion of the criminal tariff. The concept of Duty Counsel was accepted over the modified PD model simply because

the Government refused to pay the salaries necessary for an expanded staff office approach.

Although the interests of both Bar and Government focused on the legitimating function of legal aid reform, largely in terms of reinforcing the ideology of equality before the law, legal aid served other functions in this period. It would appear that legal aid served, as Gordon (1983) has suggested, to counter the increasingly coercive action of the State. As the Provincial Government cracked down on drugs and the municipal government in Vancouver harassed youth, more young first offenders became grist for the criminal justice system and criminal legal aid coverage increased. And as the coercive function of the State was being brought to bear on welfare fraud, VCLAS expanded the availability of legal advice and assistance to welfare recipients.

1. Legal Aid Society lawyers played a pivotal role in having most of the charges against these youths dismissed. Police had taken pictures of the riot scene and these were posted in the police station. Legal aid lawyers questioned whether subsequent police identification of the youths was based on the fact that their pictures were plastered all over the police station rather than on an officer having actually seen them in the commission of an illegal act.

2. An increase in NDP popularity was not an entirely new phenomenon, and Social Credit popularity had been on the wane prior to the 1969 election. At that particular juncture, however, the Social Credit, free enterprise, rallying cry of "The Socialists are at the gates" was all that was necessary to turn the tide. Although the NDP share of the popular vote rose from 27.8% to 33.9%, they picked up no new seats (Kavic and Nixon, 1979:16-19).

3. In civil matters, the legal aid office in Vancouver was open from 9 a.m. to 5 p.m. on weekdays, and civil legal aid applicants were interviewed there. If only advice was required, the legal aid lawyer furnished the necessary assistance in the course of the interview. If clients were eligible for aid and required further assistance, they were then assigned to a lawyer on a rota basis.

Eligibility and coverage remained the same as under the pre-1970 system; exclusions were numerous. An analysis of the statistics of the Society in its first years of operation indicates that the major areas of civil legal aid dealt with were divorce proceedings and debt, presumably where a client was being harassed by collection agencies. From reading LAS documents, it becomes clear that the extensive category 'other', although not significant, covered such matters as landlord/tenant problems and matters involving administrative tribunals such as welfare, unemployment insurance, and the workers' compensation board (LAS Minutes, 1970-1972; LAS Annual Reports, 1970-72; Interview, Maczko, April 1989; *The Columbian*, December 9, 1970).

Among matters excluded were:

> i. Divorce and matrimonial cases, judicial separations, alimony or maintenance *except* where the applicant has been referred by a social worker who believes that legal action should be taken for the benefit of infant children, or by a doctor who certifies that the matrimonial problem is undermining the applicant's health;
>
> ii. bankruptcy proceedings;
>
> iii. small debts court actions;
>
> iv. family court matters (except where a child has been apprehended by Children's Aid);
>
> v. any legal proceeding from which the applicants would derive no real benefit or which, if the applicant were using his own money, he would not begin;

vi. matters where the Legal Aid Society or the local bar association or the area directors as the case may be, decide that because of special circumstances aid should not be granted (*Legal Aid Brochure*, 1970; LSLAC Report, 1970).

Other matters excluded were breach of promise of marriage; private prosecutions in criminal or quasi-criminal matters; obtaining letters probate or letters of administration; any proceedings relating to an election; and proceedings under a judgment order for recovery of money (*Legal Aid Brochure*, 1970; LSLAC Report, 1970).

In criminal legal aid, the five-year rule was not applied in Vancouver, but although in February 1970 the LAS announced its abolition, this rule continued to be applied in remote areas of the Province where finding a lawyer to cover criminal cases was more difficult (Minutes, LAS, October 20, 1970; LSLAC Report, 1970:214).

4. The Terrace newspaper commented that in remote areas this discretion was "usually exercised to eliminate applicants because there are not enough lawyers to go around" (October 8, 1971).

5. In Ontario, it was the right to choose counsel that symbolized the independence of the profession; in BC, it was the independent funding of the administration of legal aid.

6. The refusal to increase the criminal tariff came as no surprise to many members of the Bar. After all, as one member of the CJ Subsection commented, "in the ordinary course of human frailty" an increase in legal fees was unlikely as long as lawyers appeared content to go on providing legal aid at thirty dollars per day (Minutes, CJ SubSection, September 10, 1970). The refusal to establish a civil tariff undoubtedly elicited even less surprise.

7. In Vancouver, the thirty to fifty dollar a day tariff per case was less of a financial hardship simply because there were so many cases that a lawyer could handle more than one in a day. In areas outside of Vancouver, it was difficult to find lawyers willing to accept cases (Minutes, LAS, September 21, 1970; Directors Report, January 1971).

8. It was not long before lawyers working outside the legal aid system argued that their clients should not have to pay costs when the other party had been granted legal aid (Minutes, LAS, November 5, 1971). This argument was upheld by Judge Wooton (Director's Report, March 25, 1971). The Government then introduced legislation to allow payment of costs to legal aid clients in civil matters (Director's Report, May 27, 1971).

9. Between January and June of 1971, 11 lawyers in Vancouver received the bulk of legal aid cases. The number of cases ranged from a high of 89 to a low of 35. The total in honoraria going to each lawyer ranged from $12,030 to $4,800, with an overall average of approximately $7100 per lawyer. The average cost per case per lawyer ranged from $135 to $89, with an overall average of $100 per case.

10. By the late 1960's, the question of justice for Native peoples had become a public issue in Canada. The activities of the civil liberties section of the BC Branch of the CBA reflected this growing interest. In 1969, this group of lawyers started a program whereby various Native organizations could approach the Chairperson of the section and obtain legal assistance from a pool of approximately 100 volunteer lawyers. This service covered indictable and summary matters and civil representation. The program received funding from the Law Foundation until the end of 1972.

11. By 1972, several native courtworker projects, mostly funded by the Federal Government, had evolved, and a Native Courtworkers Association had been formed.

12. The legal education aspect of legal services for the poor received additional emphasis when, in 1972, the Vancouver People's Law School (VPL) was established through an OFY grant from the Federal Government. The school's purpose was to inform people of their rights and responsibilities under the law, primarily through the publication of pamphlets and information brochures and through free law classes.

This school initially received an OFY grant of $15,315. In its second year of operation, it applied for and received additional funding from the Law Foundation. In applying for these funds, it received numerous letters of commendation from a gamut of members of the legal community, including one from the Director of Legal Aid.

Educating the poor in their duties, obligations and corresponding rights under the law was seen by the Bar as an important area of endeavour and had been mentioned as one of the objectives of the LAS. It was not, however, a priority of the LAS; if other groups were willing to undertake this task, the Society was ready to support their appeals to the Law Foundation for funds.

13. In 1971, a group of UBC law students received a $6,000 OFY grant from the Federal Government to investigate the need for legal services for Natives. This grant was supplemented by a $1,500 grant from the Union of BC Indian Chiefs. One member of the group functioned as a court worker, while three carried out a prison visitation program. The group also prepared pamphlets containing basic information on legal aid, bail, and arrest (Minutes, LAS, May 27, 1971).

14. The function of Duty Counsel in the experimental program introduced in April 1971 was described as follows:

> Once having interviewed the client and having advised him of his rights, I found out what he intended to do and whether or not he intended to retain a lawyer. If he wanted me to speak to bail or to just have the matter adjourned, I would provide this service whether or not he was eligible for Legal Aid. If he intended to plead guilty and did not have funds to retain a lawyer, I would act on his behalf when I appeared in Court later in the morning. If the accused wanted Legal Aid, the Salvation Army Officer would see him immediately and complete the application forms which were later sent to

> our office (Legal Aid Society, *Duty Counsel Report*, April 28, 1971).

15. McMorran wrote:

> The important thing to me is to make sure that accused people understand what it is they are charged with and the legal procedure in connection with their particular case. At the same time, because of the large number of cases, it is essential that accused people and their cases are handled expeditiously. Without Counsel, the latter is not always possible. In the five days in which you were Duty Counsel handling these cases both objects were achieved extremely well (McMorran to Maczko, May 3, 1971).

16. The Vancouver Legal Aid office was also a clearing house for inquiries from social service agencies such as the Children's Aid Society, Social Welfare, and Family Services (Director's Report, June-December, 1970:3).

17. An indication of the potential demand for legal aid divorce services can be gathered from a brief review of the situation in Ontario, where eligibility requirements were not as stringent and where the Bar was adequately remunerated for their services in these matters. Prior to the new Divorce Act, which came into effect in July 1969, Ontario legal aid handled approximately 1,600 divorce cases annually. This took up nine percent of the total legal aid budget. In 1969-70, the number of divorces handled increased to 4,677, taking up 22 percent of the budget. The figures for 1970-71 were even higher: divorce actions took up 25.6 percent of the budget. By 1971, Ontario was searching for alternative ways to handle divorce cases and they looked to British Columbia for guidance (Minutes, LAS, May 17, 1972).

18. By November 1970, there were four do-your-own-divorce kits on the market and a three-part series on do-it-yourself divorce had been published in the *Georgia Straight*. The origins of this rapid increase in divorce kits was described in a letter from VCLAS to the Secretary of the Law Society:

> Recently on an open line radio show a young women described to the public "the five simple steps necessary to procure one's own divorce". A few months prior to that broadcast another young women...made history and the newspapers by obtaining her divorce without professional assistance. Shortly thereafter the first of the divorce kits appeared and an industry was born (July 28, 1970).

19. Hereinafter VCLAS, formerly part of the Inner City Project.

20. That there was potentially a much greater demand is indicated by a survey undertaken in 1970 to determine the number of women on welfare who required a divorce. With only three of the four units of the City's social services

department canvassed, 650 women responded that they needed a divorce. As Harcourt commented:

> When you add the number of women from the 4th unit, the unknown number of unemployed women who can't afford a divorce and the non-working wives whose husbands do not have funds for security of costs, the need for divorce appears mind boggling (Harcourt, 1970:90).

21. The Inner City Project was an organization, primarily of students (nursing, social work, teaching, and law), created by the major churches to heighten awareness of the problem of poverty in the city.

22. For the difficulties of class action in the Canadian context see p. 303.

23. This is both an informal comment on the scope of the VCLAS operation and a telling comment on LAS's inability to commit resources to civil matters.

24. VCLAS was one of the first CLOs to be funded by the Federal Department of Justice. This funding was granted in the midst of the jurisdictional dispute between Health and Welfare and Justice (see Chapter II).

25. Harcourt may have been overestimating the esteem in which lawyers are held by the average citizen, if the profession's constant and continuing attempt to create a positive public image is any indication.

26. Although this was its main purpose, there was still the underlying need to improve the image of the profession. If the community lawyer program were implemented, "The whole community in B.C. benefits. The profession in particular would certainly receive not only more work but some good publicity for actively putting into effect such a program" (Harcourt, Attachment to Report:1970).

27. The incorporation of legal services into such groups as Kool Aid and the BC Civil Liberties Association is also an indication of the growing awareness of the need for legal services.

28. There was, however, still some indication that lawyers in general, and, perhaps, the LAS, would garner favourable publicity from their programs. In commenting on the value of developing a 'do-your-own-divorce' program, it was emphasized at a meeting of the LAS that such a program would "be tremendously beneficial to the image of the profession. The public relations value of this kind of program simply could not be purchased". At the same meeting, commentary on a proposal to have third-year law students act on behalf of individuals going through small debts court included the argument that "a tremendous amount of public reactions mileage could be obtained out of such a program at no cost to the profession" (Attachment, Minutes, LAS, November 5, 1970).

29. In the Directors Report of June-December 1970, Maczko commented that law reform was an important function of the Legal Aid Office: "Liaison has been

formed with the LRC and we are in a position to provide information to the Commission" (Attached to Minutes, LAS, January 27, 1971).

30. In Canada, federalism acts as a constraint on parliamentary supremacy. Parliament can not encroach upon provincial fields of jurisdiction. In matters assigned to provincial jurisdiction by the Canadian *Constitution Act*, parliamentary supremacy rests with the provincial legislative assembly.

This has changed with the repatriation of the Canadian Constitution and the entrenchment of a Charter of Rights and Freedoms. As Gibbons comments:

> ...the Charter enumerates...rights and freedoms, entrenches them within the written constitution, and transfers the power to determine the practical limits to their application from a political process that is federally divided to a judicial process which is not. For the first time, the courts have been placed in a position where they can judge acts of either Parliament or the provincial legislatures to be unconstitutional on grounds other than contravening the federal division of powers (Gibbons, 1985:237).

31. VCLAS undertook research in such areas as juvenile offenses, family matters, and the bail system (Harcourt, 1970:91).

32. Another form of litigation much favoured by American law reformers was class action suits.

33. A VCLAS action against BC Hydro was one of the few exceptions to this general reluctance to admit class actions. VCLAS challenged BC Hydro's practice of demanding security deposits of its customers was challenged. The court ruled that the regulation, made under the Act of the Legislature permitting such deposits, was *ultra vires* and that the defendant was no longer enabled to hold these deposits (*Chastain v. British Columbia Hydro and Power Authority*, [1973] 32 DLR [3d] 443).

In late 1974 the NDP Government became the first province to specifically authorize class actions. Section 16 of the *Trade Practices Act* of 1974 allowed the Director of Trade Practices *or any consumer* to bring an action on their own behalf or on the behalf of a designated class of consumers in the province. According to David Mossop of VCLAS this provision is not often used (Interview, 1990).

CHAPTER VI

LEGAL AID IN BC 1972-75

KEEPING THE CAMEL'S HEAD OUT OF THE TENT

A. An Overview

The period 1972-1975 was the period of most rapid expansion of legal aid in BC history. A social welfare oriented government, a health economy, and the signing of the Federal-Provincial Agreement on Legal Aid (FPA) led to a period of increased spending on legal aid. Legal aid was transformed from an administrative structure linked to the Law Society into a central bureaucracy with fourteen regional offices and twelve community law offices. Coverage was extended to all summary offenses; an expanded duty counsel system was put in place; and a tariff for family matters was created.

Bar/Government animosity nevertheless remained. The organized Bar once again focused upon limiting government intervention in legal aid or, as one member of the LAS Board of Directors stated, on "keeping the camel's head out of the tent". A downturn in the economy and the fall of the NDP Government ensured that the organized Bar would have the last word on legal aid developments in BC.

Two developments at the start of this period were of particular significance. The first was the coming to power in late August 1972 of the New Democratic Party (NDP), which introduced an entirely new ideological approach to the role

of the State and to social welfare spending. The second was the signing, in January 1972, of the Federal/Provincial Cost-Sharing Agreement (FPA) for the provision of Criminal Legal Aid, which established minimum standards for criminal legal aid coverage in all provinces signing the agreement.

1. The NDP

The NDP Government came to power in August 1972, during a period favourable to reform. The opposition was disorganized and demoralized (Kristianson, 1977:20). The economy was healthy. A strong sentiment in favour of reform had been expressed by various elements of the public, and the NDP had the support of many professional groups alienated by Social Credit fiscal policies. Kavic and Nixon (1978:80) point out that BC was the first wealthy province to be governed by social democrats. Neither the fiscal constraints of the welfare state nor strong political opposition played a part in limiting the NDP's zeal for reform during their first two years of rule. The major constraining influences on the relative autonomy of government action in the legal aid arena were the conservative ideology and entrenched interests of the organized Bar. The NDP adopted a tripartite reform policy based on the principles of integration, decentralization, and community participation (Clague, et al, 1984:234). The Government firmly believed that social problems could best be defined and treated at the community level (Vickers, Interview, 1991).

The philosophical differences between the NDP and the Social Credit Party in regard to public expenditure on social welfare programs were striking. Indeed, Dyck has stated that "ideology is the single most important factor in British

Columbia provincial politics...intense ideological conflict between the forces of left and right, democratic socialism and private enterprise" (Dyck, 1986:256). The NDP was imbued with a strong collective mentality, one of their major contentions being that "private enterprise tends to exploit resources, human and material, wastefully and immorally" (Robin, 1978:39). The NDP was particularly intent on reversing the Social Credit Government's policy on social welfare spending.

This reversal, most significant in the area of health and welfare, was also notable in the area of legal aid. Speaking of reform in the administration of justice, the Deputy AG, Vickers, commented:

> We are in an unprecedented period of reform, not for the sake of reform but so that justice can be done for all people. That will be our objective. A compassionate system of justice equally accessible to all of the people of this Province and within their means (Vickers, 1974:78).

The NDP's "first cut" at establishing priorities for reform focused on the area of *criminal* justice (Vickers, 1974:78). There was a general consensus that this was the primary area in need of legitimation through reform (Manson, Interview, 1990). The 1972 report of the Canadian Bar Association (CBA) on the administration of justice concluded that: "What is required is an immediate, systematic and comprehensive review of the administration of justice in British Columbia in all its aspects, and recommendations for reform" (35). Moreover, it was the view of one author that "...in more remote communities badly paid lay judges sometimes dispensed a kind of frontier justice that was seen to be unacceptable in the 1970's" (Morley, 1975:127). Stephens' letter criticizing

the administration of justice in rural areas (see p. 299) was a prime example of this discontent.

When Alex McDonald became AG, the need for reform was pressing. Morley states that Mcdonald came to the department "...without any detailed proposals but with a healthy suspicion about the commitment of his new subordinates, in particular that of his inherited deputy attorney general, to such reforms" (Morley, 1975,:124). Kennedy was seen by many in the NDP "to be closely associated with the stance taken by the government of the day in the justice field" (Morley, 1975:123).

The suspicion with which senior deputy ministers were regarded was greatly heightened by the "intense and even slightly ferocious" manner in which partisan politics were conducted in British Columbia. As Morley comments:

> The two major parties...have fundamentally different ideological perspectives, and political debate is often carried on in intemperate...language. In this kind of atmosphere it is difficult for any department of government to escape being embroiled in partisan controversy. (Morley, 1975:123).

Kennedy was removed from the mainstream of events in the AG's Department when he was appointed Associate Deputy Minister and put in charge of revising statutes. He was replaced by David Vickers, former Chairperson of the LAS, in September 1973, but this manoeuvre was still not considered sufficient to overcome the bureaucratic rigidity of the AG's Department.[1]

a. The Justice Development Commission

In April 1974, the *Administration of Justice Act* was passed. During its second reading, the Bill was described as a "...vehicle and an attempt to catch up and give a totally new commitment to the quality of justice in this province..." (Hansard, March 18, 1974). An explanatory note attached to the Bill stated:

> The purpose of this Bill is to establish a Justice Development Commission for the purpose of inquiring into and investigating all aspects of the administration of justice in the Province, to develop experimental programmes and projects, and to make recommendations to the attorney general (Bill No. 2, 1974, *Administration of Justice Act*, 'Explanatory Note':4).

The mandate of the Justice Development Commission (JDC) included examination of all aspects of reform in the administration of justice. For the purposes of this dissertation, the main significance of the JDC lies in the creation of its Legal Services Division (LSD), headed by John Brewin. This appointment clearly indicated an expanded interest in the area of *civil* law within the AG's department. Brewin had recently arrived from Toronto, where he had been a strong advocate of the CLO approach. According to Donald Jabour, Brewin, after he was appointed chairperson of the LSD, "became a one man show", promoting and finding funds for the CLO approach to legal service delivery (Jabour, Interview, 1990).

The rationale of the creation of the LSD was "that the other division of the JDC had existing and well established structures to deal with, while little information of the legal service needs of the Province was available" (Ekstedt,

1975:13). The Delivery of Legal Service Project (LSP) was established in May 1974 to gather the necessary information on legal services in the Province. Brewin appointed Peter Leask as director of the project, authorizing him to "examine the best ways to deliver legal services to disadvantaged people and to determine the extent of need for legal services in the province" (Brantingham and Brantingham, 1984:40). Leask recruited a number of young, enthusiastic lawyers fresh out of law school to assist him (Leask, Interview, 1990).

The initiative for the development of legal aid in the civil sector thus fell upon a small group of lawyers much more radical than those who sat on the Board of Directors of the LAS (Morris, 1976:90). In their opinion, the LAS was not protecting or expanding social rights or even doing an adequate job of covering areas of acute legal need (Report on Conference on Legal Aid, 1975:53). These lawyers both inspired and were inspired by the growth of a CLO and paraprofessional movement that was already under way in the Province. They firmly believed in such radical concepts as community organization and the right of citizens in local communities to set the priorities in providing legal services. Although this group remained very much a vocal minority, the support they received from the NDP Government and the concepts they advocated made them a very powerful minority. Their views lay at the heart of the report that Leask would produce.

The JDC Act had been greeted with suspicion by all elements of the organized Bar. The fear that the Government was going to interfere in the profession was strong. The creation of the LSD and the overtly pro-CLO orientation of the LSP were perceived as threats to the predominance of the LAS in the provision of

legal services to the poor on a province-wide basis (David Vickers, Interview, 1991). This fear of government interference coloured the Bar's reaction to the Leask Report (Leask, Interview, 1990).

Two of the elements of the tripartite NDP reform policy were central to the Leask Report and the development of legal services in the Province in general: decentralization and community participation.

> The concept of decentralization is posited upon the belief that the human service needs of consumers vary from community to community. In B.C., as elsewhere in Canada, a common procedure for facilitating the provision of such services in a way deemed to be consistent with meeting these differing needs, has been the creation of community boards. Such structures are thought to bring consumers into direct contact with government agencies, thereby affording them an opportunity to contribute to policy planning and to ensure that local needs are reflected in decisions (Morris, 1975:1).

These concepts were introduced into the area of legal services through the creation of the Legal Services Commission (LSC), and through adherence to the notion that CLOs should be controlled by boards of directors composed of members of the community and not dominated by lawyers.

2. Federal/Provincial Cost-Sharing

The FPA was signed in December 1972. The terms of the Agreement included a Federal Government subsidy of up to $.50 per capita, not to exceed 90% of the cost of Criminal Legal Aid. The Agreement provided for coverage in the following matters:

1. Indictable offenses;

2. Proceedings under the *Juvenile Delinquents Act* and all federal summary offenses where there is a likelihood that there will be imprisonment or loss of means of earning a livelihood upon conviction;

3. Proceedings pursuant to the *Extradition Act* and the *Fugitive Offenders Act*;

4. Appeals by the accused in any of the above matters where it is the opinion of the provincial agency that the appeal has merit or where the court requests the appointment of counsel on behalf of the appellant

(Federal/Provincial Legal Aid Cost-sharing Agreement, December 21, 1972).

Rules determining eligibility were to be flexible:

> ...taking into account whether the applicant can retain counsel at his own expense without him or his dependants (if any) suffering undue financial hardship such as incurring heavy indebtedness or being required to dispose of modest necessary assets (Federal/Provincial Legal Aid Cost-sharing Agreement, December 21, 1972).

The NDP had indicated in their election campaign that they would turn moneys saved on criminal legal aid toward the expansion of a civil program. They were philosophically disposed to reform, and the FPA ensured that funds would be available for this reform. The FPA also gave the BC Government reasons to furnish legal aid that were at once politically expedient, fiscally sound, and, for the term of the Agreement, binding in law. If the Provincial Government wished to continue to receive funding from the Federal Government, they would have to meet the minimum requirements of the Agreement. In the event, NDP legal aid policy quickly exceeded those requirements.

B. Catalyst to Crisis: Reform under the NDP

Prior to the creation of the LSP, it was clear that the NDP was intent on reforming the provision of legal services. CLO's were promoted, and the LAS was encouraged to expand its operations to more remote areas of the Province. The NDP was in power for only three years, yet those years comprised the period of most rapid expansion of legal aid in BC. From mid 1974 to the fall of 1975, however, the rosy picture of potential reform gradually faded. Rachert (1990) has identified three major bills introduced early in the NDP term of office that seemed to form the focus of capitalist opposition to the new regime. In December 1972, a freeze was placed on large tracts of agricultural land, and the subsequent enactment of the Land Commission Act (February 1973) was greeted with "howls of protest from realters, speculators and farmers who held agriculture land they were hoping to have zoned industrial" (Kavic and Nixon, 1978:99). Also, in February 1973, Bill 54, which established the Insurance Corporation of British Columbia (ICBC), was introduced. Passage of this Bill created a government monopoly on auto insurance. The *ICBC Act* put 183 private insurance companies out of business (Ratchert, 1990:79).

In February 1974, the *Mineral Royalties Act* was passed. This *Act* placed a royalty on metals to bring the mining industry in line with the oil, gas, coal, and forestry industries. The passage of this *Act* generated the most "determined and concentrated" anti-socialist attack the NDP would face during their term of office (Kavic and Nixon, 1978:113).

This growing capitalist opposition found political expression in a rejuvenated Social Credit Party. In November 1973, the Socred leadership convention elected Bill Bennett, son of W.A.C. Bennett, as party leader. After a brief but unsuccessful attempt by non-Socred interests to form a party around the rallying cry of "free enterprise", the Social Credit Party emerged as the only viable party of opposition to the socialist menace. By mid 1974, capitalist interests in the Province had clearly put their money on Social Credit as the only free enterprise grouping likely to defeat the NDP. After mid 1974, the Socreds became "virtually the sole recipient of significant corporate contributions". By July 1974, the Socreds, whose ranks had been decimated in the August 1972 election, had been rejuvenated under their new leader and "had reached a take off point" (Kristianson, 1977:28).

Social Credit encouraged Liberals and Conservatives to join their caucus. On September 30, 1975, the last major hold outs from the Liberal Party, McGeer, Williams and Gardom, joined the Social Credit caucus. It was, according to Williams, an "absolute necessity" to defeat the socialists for the public good" (cited in Kristianson, 1977:28).

The crystallization of opposition to the NDP in the Social Credit Party was accompanied by a cleaner focus of criticism. NDP public credibility was seriously undermined by continual charges of fiscal mismanagement (Rachert 1990:71). Both the NDP's unwillingness or inability to curb expenditures and a worsening world economy conspired to supply ample ammunition to the Opposition. The 1974 *Mineral Royalties Act* was imposed at a time when the industry was experiencing a serious recession. According to Kavic and Nixon

(1978:114), the public was left with the impression that the NDP had seriously crippled the provincial mining industry. The political repercussions were to be significant in 1975.

In June 1974, the Province entered a period of economic slow down. In September it was announced that the Department of Human Resources would have a cost overrun of $1,000,000, leading to opposition charges of fiscal irresponsibility. In February 1975, the NDP introduced a budget which showed an increase in expenditure of 14% over the 1973-74 revised budget. In that month it was also announced that ICBC had run up a $34.5 million loss, which confirmed for the general public an impression that the Corporation was inclined to pay inflated claims, write off repairable vehicles, and in general expend public moneys too generously. The deficit demonstrated that the NDP had wholly mismanaged what had once been a competently run business (Harris, 1987:13).

By early 1975, the economic slow down had deepened into a recession. A precipitous drop in resource revenue made it clear that the NDP was not going to enjoy a balanced budget. A balanced budget, primarily achieved through accounting sleight of hand, was one of the central claims to fiscal competency made by the Social Credit Government. For Barrett to run a deficit was tantamount to digging his own grave "in the field of public financial credibility" (Kavic and Nixon, 1978:91). The year 1975 was also one of escalating labour disputes, which had a serious impact on the economy and further undermined the public's confidence in the NDP: "As the global economic

crisis deepened, a dedicated and innovative Government acquired the look of irresponsible clowns" (Kavic and Nixon, 1978:253).

There is a consensus that the NDP Government did not act as if it had been given a mandate to restructure government and economy along socialist lines (Resnick, 1977; Rachert, 1990). They were but a moderate social democratic party:

> The fears of many British Columbians about disruptive policies towards the private sector were for the most part unfounded. The howl of the socialist wolf was unnerving but its bite was remarkably mild. Unfortunately for the government, the public sense of hearing was more acute than its sense of feel (Kavic and Nixon, 1977:128).

Clearly, however, some capitalist interests were being threatened. The forces of free enterprise were brought to bear on the NDP Government. Opposition criticism of NDP economic policies forced the Government to revise the *Mineral Royalties Act* in the fall of 1975, despite the fact that its chief target was windfall profits, which were unlikely to be reaped in a period of recession. Furthermore, one copper mine valued at $80 million actually received a subsidy of two cents per pound. This reversal of policy may be seen as part of the accommodations demanded by a 'mixed' economy and by BC's position within a world capitalist economy (Resnick, 1977:12).

Government social policy also attracted heavy opposition. Cost overruns in the DHR gave credence to Socred charges of fiscal irresponsibility and mismanagement. Rachert (1990:78) argues that this opposition criticism was "part of a larger strategy aimed at reducing the legitimacy of a government that

threatened capitalist interests". Social Credit criticism of NDP Social Welfare policy was reported in and supported by the Press. This opposition also influenced NDP social welfare policy making. The Government toughened its attitude towards welfare fraud and froze welfare rates in 1975, all in an attempt to recoup lost legitimacy (Rachert, 1990:71). The capitalist need to accumulate had obvious repercussions in the area of social welfare. The relative autonomy of government action had been severely limited. A provincial election was called for December 1975. The Social Credit party, representing the united free enterprise vote, returned to power.

The limitations placed on policy formation and implementation by the decreasing popularity of the NDP Government and by the Government's continuing quest for legitimacy, apparent in the economic and social spheres, were not as obvious in the area of legal aid policy formation. The Socreds "had decided to focus on the NDP's inability to manage the government, they criticized portfolios where mismanagement was evident" (Rachert, 1990:85). The AG's department did not become a focus of opposition criticism. No charges of fiscal irresponsibility were directed their way. Attorney General McDonald, "despite a reputation for being overly relaxed in his approach to his duties", was a "reassuring presence in the NDP cabinet". Moreover, McDonald was "the best public relations man in the cabinet" (Kavic and Nixon, 1978:253). NDP legal aid reform was well received in the press. When the cost of criminal legal aid started to expand exponentially, McDonald knew how to deflect criticism from the Government and onto the legal profession.

Although economic recession and the growing need for legitimacy did play a role in shaping NDP legal aid policy, equally significant roles were played by the conservative ideology of the Bar and NDP Government's lack of a focus of reform. It has been argued that the NDP lacked a blueprint for office when it came to power and failed to develop one while in power (Kavic and Nixon, 1978). This certainly holds true for legal aid policy. Other than a generalized suspicion of the legal profession, which it shared with the Socreds, and a clear preference for community participation, which it did not, the NDP failed to bring any clearly articulated ideological orientation to legal aid reform.

C. Change of Government and the Provision of Legal Aid

The LAS was nervous about the overall ramifications of an NDP government for the independence of the Bar and the independent action of the LAS in legal aid matters. The positive ramifications of the election of the NDP for the long-term objectives of the LAS, however, soon became apparent. The LAS Board moved quickly to request implementation of a civil tariff for family matters; expansion of the criminal tariff; establishment of staff offices in areas outside of Vancouver; and implementation of a full duty counsel program. The NDP was itself intent on reform and acutely aware of the deficiencies in the administration of justice. However, in their first few months in office, they had no well developed plan of action, which left the LAS and VCLAS as the resident experts in the field. Until the LSD of the JDC was formed, legal aid reform proceeded very much according to the conservative, traditionally oriented LAS agenda. The traditional view of legal aid prevailed.

1. Regional Offices

On October 3, AG McDonald met with a number of representatives of the legal aid lobby, including Maczko, Meredith, Harcourt, and Carol Gibbons of VCLAS. Meredith was relieved to report that the AG did not appear to have "any preconceived ideas about what direction" legal aid should take. He was equally relieved to note that the NDP would turn money received from the Federal Government for criminal legal aid towards civil legal aid. He noted that "the manner in which this should be spent is crucial" (Report, LSLAC, October 19, 1972). The priority of the LAS was that it be spent on the creation of a civil family tariff (see chapter V). The LAS wanted all funds expended on legal aid to be paid to lawyers for the performance of those functions that lawyers traditionally performed (McDonald, Interview, 1990).

These funds could not, however, go in total to an expanded tariff, because in many areas of the Province there were simply not enough lawyers to meet the demand. Indeed, rebellion against the LAS was brewing in rural areas of the Province. Maczko took the opportunity presented by this meeting to forward a plan to expand the number of legal aid offices, which would be controlled by the LAS but funded by the Government. In the absence of government support, this plan had been held in abeyance since the inauguration of the Society in 1970. A nod in the direction of the social welfare orientation of the NDP is evident in the wording of this presentation. Regional offices were now described as "community store front operations". Maczko described this as an alternative to

Ontario's civil referral system. He further pointed out that if the question of divorces and matrimonial cases could be set aside, the store front approach could deal with the civil side of legal aid relatively easily (Report, LSLAC, October 19, 1972). Civil activities a community store front operation could engage in were, however, very limited. The creation of community offices would, according to Maczko, combine the best of CLO's and of judicare. A well-funded community office might engage in research and class action. It would not, however, be a force for organization or agitation in the community. Matters would be referred out whenever possible, but office staff could be used as a safety valve if tariff costs ran too high (Draft Article, July, 27, 1973). The LAS had adopted the rhetoric of the new government's reform program; the substance, however, was lacking.

In November 1972, the LAS made a specific proposal for the expansion of the legal aid program to more remote areas of the Province. It was suggested that a pilot project of three area offices staffed by two lawyers and two secretaries be initiated. It was also apparent that any expanded program of legal aid would continue to be oriented towards criminal matters. Although it was stated that "each of the offices would operate as an independent law office", the primary function of these offices would clearly be to aid poor people in conflict with the law:

> The lawyers would act as duty counsel in the provincial courts, do criminal trials from time to time, make referrals of the majority of criminal cases to lawyers in private practise, hire and train court workers in those areas where there are no lawyers or duty counsel (Proposal for Expansion, November 28, 1972).

The only reference to civil matters was that the duties of the lawyers would also include making:

> ...referrals in civil cases where by reason of conflict of interest or geography the area office could not undertake the same, and to act as a referral service in cases where the client can make partial or full payment over a period of time (Proposal for Expansion, November 18, 1972).

The LAS did not completely ignore the NDP tripartite reform policy. The Society acknowledged the policy of decentralization through local input by emphasizing the importance of local committees. These committees were to be established in all areas where local offices were opened. "The staff lawyers in the offices will be young lawyers...[who] will look to the area committees for assistance" (Minutes, AD Meeting, May 25-26, 1973).

Lay participation on these committees was encouraged:

> It is hoped that there will be lay members on the local committees so that there will be a liaison with the general community as well as with the local Bar Associations. The lay members will be particularly useful with problems which are partly legal and partly social (Minutes, AD Meeting, May 25-26, 1973).

There was some concern expressed at the AD meeting that lay members of more 'radical' persuasion might be disruptive in local committees. Harcourt pointed out, however, that VCLAS "...had tried to recruit radical members for their

Board but found that these people were not interested. Most non-lawyer members on their Boards were social workers attached to interested agencies" (Minutes, AD Meeting, May 25-26, 1973).

Another description of the functions of the area committees, however, makes it clear that the majority of representatives were expected to be lawyers. In this account, it was suggested that the committee:

> ...could also assist in the screening of appeal matters. As the number of appeal requests increases, it is difficult for Mr. Maczko to judge the requests and he has to rely on what the lawyer says. Initial screening would be done by the local committees and their recommendations could be sent...to Mr. Maczko (Minutes, AD Meeting, May 25-26).

The LAS could live with the form of the NDP's general philosophical principles, but not with their application. The LAS's regional offices should be under the central control of the Society, and any local input should be dominated by lawyers. The Provincial Government suggested local area offices be run by five-member committees made up of two lawyers and three non-lawyers (Minutes, LAS, May 25, 1973). This recommendation was ignored. Neither social reform nor poverty law nor significant community input were on the LAS agenda.

2. Creation of a Civil Tariff and Increase of the Criminal Tariff

The criminal tariff increase provided by the Social Credit Government in January 1972 was considered inadequate at the time. By mid 1973, complaints and threats to discontinue service were once again being received by the LAS. Complaints

from lawyers in the northern part of the Province were especially vehement (Minutes, LAS, October 5, 1973; Attached letters, July, September, and October),[2] and the LAS requested an increase in the criminal tariff. The NDP had already given civil servants pay hikes of 16-25% because Social Credit policies had lead to a depleted and demoralized civil service incapable of providing necessary services (Nixon and Kavic, 1978:51). They could now scarcely refuse to consider the case for an increased criminal tariff presented by an equally demoralized and depleted criminal legal aid Bar in the less densely populated areas of the Province. An increase of approximately 25% was granted effective April 1, 1974. The NDP did not, however, feel as inclined to line the pockets of the legal profession as they did those of the civil service. The new criminal tariff still provided compensation lower than that set by the governments of Ontario, Manitoba, and Alberta (McDonald to Otto Lang, Minister of Justice, January 22, 1975).

The NDP was equally reluctant to place money in the pockets of the civil Bar. The NDP Government had a deep interest in Family Law matters and was undertaking research into a Unified Family Court System;[3] the immediate need for increased availability of services to families in distress was clear. The expertise of the private Bar was required in family and divorce matters, and after some negotiations, a civil tariff to cover family matters was accepted and implemented effective April 1, 1973.[4] The family tariff was, however, extremely limited[5]; indeed, it was described in the circular announcing its adoption as an 'honorarium' (Attached to Minutes, AD Conference, May 25-26, 1973). It was pointed out by a number of AD's that "some areas such as Fort St. John, Williams Lake and Cranbrook, expect to have difficulty in referring civil cases, even

with the tariff, due to the lack of lawyers in the area. In Vancouver, each lawyer receives one civil referral per year; however, in Williams Lake, each lawyer would have to take about two per week" (Minutes, AD Conference, May 25-26, 1973).

It was hoped that this problem would be alleviated somewhat in areas where regional offices were established. Staff lawyers in these offices would be encouraged to handle "civil cases, such as UIC problems, which are not suitable for referral" (Minutes, AD Conference, May 25-26, 1973). That this tariff was viewed as being entirely inadequate is indicated in a letter from a Vancouver lawyer who was returning a civil tariff referral:

> Aside from the social aspects I would not consider taking the case for three times the Tariff and can see absolutely no reason why the Legal Profession should be the only Profession subsidizing Government Aid programmes to the extent the Tariff imposes.
>
> As to the social aspect, I feel I have over twenty-two years done considerable legal aid work, mostly not through the LAS and I am convinced that most conscientious lawyers do the same, which is more than can be said for any other profession or group in society of which I am aware.
>
> Having in mind present Civil Service, teacher, politician salaries and benefits these days I think the Tariff is an insult (Attachment to Minutes, LAS, October, 1974).

The NDP Government was as willing as that of Social Credit to enhance its legitimacy through reform subsidized by the legal profession.

3. Duty Counsel

One of the areas of concern of the LAS when the NDP took office centred on the intention of the Government to introduce a public defender (PD) system. The Premier, Dave Barrett, and the Rehabilitation Minister, Norm Levi, had publicly stated that they favoured such a system (The *Province*, October 3, 1972). At the first meeting of the LAS Board of Directors after the change in government, Michael Harcourt suggested "...that a brief should be sent to the new Attorney-General concerning Legal Aid with full facts and figures on the Society's view of a Public Defender versus a referral system" (Minutes, LAS, September 20, 1972).

The Society, up to this point, had not objected to a 'modified' public defender approach to legal aid delivery. Meredith stated that the merit of any system:

> ...lies not so much in maintaining a right of the accused to a choice of counsel as it does in ensuring that the accused is represented by *an independent counsel who is not connected permanently with the court* (Meredith to Fairbairn, January 19, 1973; Emphasis added).

In other words, a PD system operated through the LAS, or some other independent body, would be acceptable. What the LAS feared was a PD system run as an arm of the AG's Department. This may have been acceptable in the United States, where the accused had clearly defined 'rights', but not in Canada, where too much discretion rested with government (Meredith, Interview, 1989). The LAS feared the encroachment of government on their monopoly.

Maczko, who up to this point had been advocating a salaried lawyer approach to DC, made an abrupt *volte face*. Apparently fearful that the Government might

take control of any system based on a staff office approach, he wrote to Kennedy in October stating that "it is much better to hire lawyers in private to do the Duty Counsel on a per diem basis, than to have a full time lawyer on staff" (Maczko to Kennedy, October 5, 1972).

Maczko was not the only one to take a different tack. Kennedy had clearly been instructed to support the expansion of coverage of criminal legal aid matters. He responded to Maczko that he would like to "discuss the matter more fully" (Kennedy to Maczko, October 23, 1972). Savings in cost was still foremost in Kennedy's mind: "Would you please let me know if there is any indication statistically...that the procedure has probably saved us money in legal aid" (Kennedy to Maczko, October 23, 1972).[6] By November 1973 the Deputy AG had decided that:

> There appears to be no question about the usefulness of duty counsel in Vancouver. Will you discuss with me...the extension of a modified form to say, Burnaby, Surrey, and Greater Victoria? (Kennedy to Maczko, November 16, 1972).

Approval for two DC lawyers on a permanent basis was given in December 1973, not by Kennedy, but by Dennis Sheppard, the newly appointed Director of Legal Research and Reform (November 14, 1973). By the end of November 1974, the LAS was providing, on an experimental basis, three DC in Vancouver Courts, and one each in Burnaby, Coquitlam, Richmond, and Delta. The staff counsel in regional offices were acting as DC for their areas, and funding for DC in other areas was included in the 1975-76 budget. In October 1974, the LAS, ever cost conscious, reported that two lawyers in the Vancouver Courts would probably be sufficient

(Minutes, LAS, October 24, 1974). Although the LAS was requested by lawyers providing DC to ask the Government for an increase in the *per diem* allowance, the LAS never approached the Government on this issue (Memo from Brian Ralph, June, 1974).

The LAS continued to express concern for the cost effectiveness of proposed measures, and a belief that duty and obligation required *some* financial sacrifice on the part of the profession. They did not, however, take upon themselves too great a burden. The LAS had no problem filling the roster for DC. A lawyer applying to be put on the roster in February 1975 was informed that "...the DC positions are filled to the end of 1975, and we are not making any more appointments at the present time" (Joan Wilson, Secretary LAS, February 11, 1975).

In spite of the limits placed on payment of DC's and on the fees allowed under the criminal tariff, by May 1974 Provincial Government expenditures on criminal legal aid exceeded the amount covered in the FPA. Further, expenditures in this area were entirely the responsibility of the Provincial Government.

D. The Government Takes the Initiative

The formation of the JDC and the interest Brewin took in CLO's signalled a shift of the initiation and focus of legal aid reform from the LAS to the Government. The Government also created and encouraged other programs and administrative vehicles for bringing services to the poor in the poverty law field. In

addition, the Government encouraged the LAS to broaden its definition of legal aid coverage and take on a more social welfare oriented approach.

1. Other Programs

The NDP did not rely exclusively on the Legal Aid Society to exercise its mandate to bring about social justice. Brewin ensured that programs that had a CLO element were encouraged. Community groups which utilized paraprofessionals to deliver quasi-legal services, organize public education programs, and operate store front legal advice centres which had, initially, been funded by moneys from federal programs such as OFY and LIP, were now funded from the provincial Department of Human Resources and the Consumer Affairs Branch. In addition, a number of new projects were inspired by Brewin and by the staff of the Leask Commission (Jabour, Interview 1990; JDC Periodical Status Reports [PSR's], August, 1974).[7]

The NDP also created the office of the Rentalsman, to handle landlord-tenant disputes, and the Debtors Assistance Program, which assisted individuals with debt-related problems through a number of offices opened throughout the Province. These services provided a further means of redress for numerous persons who would otherwise have had to appeal to the store front offices or Legal Aid offices for assistance in such matters.[8]

These programs functioned as administrative tribunals. The proliferation of such tribunals was another source of disquiet for the Bar. As representing individuals before most such tribunals was, however, unremunerative, the

profession confined its activities to the training and control of paralegals who would appear before these tribunals (LSLAC Report, 1974:27; Memo, Mackzo to Law Society, October 15, 1973; CBA Legal Support Services Committee, November 26, 1973).[9] The number and use of paralegals was expanding. The Law Society wished to link this emerging group as closely as possible with the Law Society in order to be able to control their activities.

2. Provincial Government Funds for VCLAS

Shortly after the NDP came to office, VCLAS approached the AG's Department for provincial government funding. To this point, the funding that VCLAS received from specific groups, such as the Law Foundation, was to a certain degree tied to the activities undertaken by the Society. In granting funds, the Law Foundation would also request that research be undertaken in specific areas. The President of the VCLAS Board, Carol Gibbons, commented that if provincial government funds were forthcoming, VCLAS staff could be deployed in a different manner (Minutes, VCLAS Annual Meeting, October 26, 1972). When VCLAS approached the AG for provincial funding, it received $40,000, for their programming fit into the Government's "overall venture into civil legal aid" (McDonald to Gibbons, March 8, 1975).

Maczko did not approve of this move. He saw a definite link between government funding and government control. Reliance on government funding had caused the LAS to lose some of its original drive: "We are so respectable that we can't be put out of business, but we can't do anything really important either" (The *Sun*, October 27, 1972). He felt that VCLAS should steer clear of provincial

government funding in order to maintain its freedom of action. VCLAS would only be able to "press for changes in law and call attention to injustice as long as it retains the independence to do things some institutions consider 'disrespectful and even at times disgraceful'" (The *Sun*, October 27, 1972).[10]

In an interview in 1989, the former Director of the LAS stated that he was opposed to the VCLAS applications for Government funds because he could see the way things were going in California with the farm workers and Reagan. "The lawyers were really beginning to have an effect, the farmers were pressuring the government and funds were cut off". Maczko felt that if you were going to represent groups, you could not rely on government funds, for "pretty soon the landlords will get pissed off and pressure the government and funds will get cut off" (Maczko, Interview, 1989). The notion of landlords pressuring the NDP government, in 1972, to cut off funds to poverty stricken tenants seems somewhat unlikely. The proliferation of government tribunals did, however, bring VCLAS into more frequent conflict with the Government. Near the end of NDP rule, cabinet colleagues began to question McDonald about the frequency with which VCLAS seemed to be representing appellants of tribunal decisions. McDonald is reported to have brought this to the attention of a VCLAS representative with the comment: "For Pete's sake, we're on your side" (Maczko, Interview, 1989). Even a reform-minded government could be frustrated by constant appeals against decisions made by its bureaucratic agencies, the more so if that reform-minded government was facing strong political opposition in economically hard times.[11]

3. Regional Office Expansion

The Government was in agreement with the LAS that coverage in traditional law matters was essential to any complete system of legal aid delivery, and thus they supported the efforts of the LAS in this area. Although the LAS was expanding its offices at an unprecedented rate, the Provincial Government suggested that the Society should step up the pace of expansion still further. The Government requested that the Society "open as many branch offices in as many centres as possible immediately rather than over a period of years as had been planned" (LAS report to Benchers, May 24, 1974). The LAS was authorized to hire additional staff for regional offices "with *no financial restrictions*" (Minutes, LAS, May 4, 1974).

This move to rapidly increase the number of Regional Offices, and the potential for expanded civil coverage that these offices represented, was widely and positively reported in the Press. "The new Regional Offices will permit Legal Aid to improve its services in each region [and] give Legal Aid a greater opportunity to expand into such areas as Landlord and Tenant and Consumer Law..." (*Fraser-Fort George News Advertiser*, October 2, 1974).

There were, however, some difficulties in the way of rapid expansion. Maczko pointed out that finding qualified lawyers at the pay scale in effect was a major problem.[12] The LAS was authorized to pay their lawyers "pursuant to the Government salary scale". The Government felt that there was "no logical reason why Prosecutors should be on a higher salary scale than lawyers who work full time for the LAS" (Minutes of Meeting in Victoria, April 24, 1974).[13] The NDP did not share Social Credit's reluctance to expand the number of employees for whose salaries it was responsible.[14] The Government also recognized that these

new responsibilities would require expansion of the central office, and urged the Society to expand the central office staff as quickly as necessary (Minutes of meeting in Victoria, April 24, 1974). In order to accomplish this, a supplementary budget was approved by the Government.

Even with the expanded budget and increased salary for staff lawyers, the LAS was not able to expand as rapidly as funds would allow. It was still extremely difficult to find lawyers willing to move to some of the more remote areas of the Province (Minutes, LAS, September, 1974).

4. Expansion of the Court Worker Program

The Government was also concerned over the inadequacy of criminal legal aid in rural areas. Although the creation of more regional offices would have gone some way to rectifying this situation, there were still regions of the Province where population density did not warrant a regional office, and where there were insufficient lawyers to provide DC for individuals who became enmeshed with the CJS. One of the solutions to this problem was the expansion of Court Worker programs which, to this point, had been funded by federal grants.

The NDP was more than willing to leave the provision of criminal legal aid to the LAS, an area in which it clearly excelled. The Government encouraged the Society to take on the training and administration attendant upon the introduction of an expanded Court Worker program. But an ideological difference between the AG's Department and the LAS soon became apparent during the negotiations over the expansion of this program.

The LAS was asked by the Government to undertake the organization of a Court Worker program in early 1974. Prior to 1974, there were a number of groups providing services that fell under the general rubric of 'Court Worker Programs', "whereby lay people assist in criminal courts in such things as bail matters, applying for legal aid, gathering evidence and generally assuring that people don't get lost in the system" (Minutes, LAS, March 27, 1974). All of these groups were applying for funding. The Government felt there was a need for unified administration and that the LAS was the appropriate body to provide it (Minutes, AD Conference, May 3-4, 1974).[15] There was, however, a "marked disagreement...as to whether that Society should be involved with Court workers at all" (Memo, McEachern to Benchers, September 20, 1974).

The LAS was reluctant to become involved in any program that was mixed with social work. There might well be a need to deal with the non-legal needs of the accused, but the LAS was not the body to provide this type of service (Minutes, LAS, September 19, 1974). Such activity was within the purview of the Department of Human Resources (Minutes, LAS, May 4, 1974).

The LAS and the Law Society differed in their views of LAS control of Court Worker programs. It was clear that the Government was determined to expand the number of Court workers and create a bureaucracy to administer this program. The Benchers of the Law Society felt that:

> ... it is desirable to keep Court Workers as close to the legal profession as possible, even though they may be more social workers than anything else, because, inevitably, once

> they get into the court system they are going to become involved in matters on the legal side.

Court Workers should therefore be "under the umbrella of the Legal Aid Society" (Minutes, Benchers Meeting, September 27, 1974). The Law Society clearly saw the administrative structure of their creation, the LAS, as one means of controlling the burgeoning number of groups becoming involved in the provision of legal services. This desire to control groups engaged in any activity that might infringe upon the monopoly of the legal profession was also apparent in the Bar's desire to control the expanding use of paralegals (see p. 348).

At the LAS meeting of September 19, 1974, a subcommittee was struck to study the question further. This subcommittee rejected the idea that Court Workers should combine an LAS staff program, arguing that it would create too many problems and would add one hundred people to the legal aid staff. The difference of opinion between the Law Society and the LAS did not develop any further. A compromise was reached: the LAS would have overall supervision of the program but would contract services out to various bodies. Where no Court Worker groups existed, the LAS would hire Court Workers who would then become part of the LAS staff. The program would be administered by a subcommittee of the Board of Directors of the Society, together with representatives of other groups. The various Court Worker groups would submit their plans and budgets to the subcommittee. Training would be provided by the LAS.

The view that the LAS was too closely involved in provision of social services continued to be expressed.[16] However, Mr. Ralph commented that "lawyers should

not have too narrow a view of what is a legal service" (Minutes, LAS, October 24, 1974). The reaction of the LAS to the Court Workers proposal made it abundantly clear, if it was not so already, that the LAS would cling tenaciously to its traditional orientation. If the Government wished to introduce an expanded social welfare orientation into legal aid programming, it would have to look elsewhere. It was equally clear that the primary intent of the Law Society was to establish and maintain control of any program that had even a quasi-legal component.

5. Funding

A difference in attitude between the LAS and the funding arm of the Law Society became apparent when the Government proposed significantly expanded funding of the central office. At the April 24 meeting between Maczko and the AG's Department in Victoria, the Deputy AG gave it as his view that:

> ...in view of the large size of the Legal Aid budget, the $150,000 received from the Law Foundation becomes rather insignificant...it may now be the time to have all of the funds for the LAS come from the Provincial Government, and the Law Foundation monies be used for special projects, experiments, etc. (Minutes of Meeting in Victoria, April 24, 1974).

The LAS had clearly moved far enough down the back alley to socialism to be able to accept this increased government funding for the central administrative costs of the Society. It was also clear that they felt the Society was sufficiently well established to be able to maintain its independence even if government funding was expanded (Minutes, LAS, May 4, 1974).

A great deal more apprehension about government control of legal aid in general, and about the direction that the delivery of legal services project was taking in particular, was expressed by the Law Foundation. One member of the Board of Directors commented: "In view of massive government involvement, I...am of the firm opinion that at this particular moment we should go out of our way to maintain the central office..." (Cox to Harper, July 2, 1974). He added that:

> In view of the role which the Legal Aid Society may be called upon to play in this whole matter of "delivery of legal services" which is now under consideration by the Government...it seems to me highly desirable that we keep these people in the central Legal Aid Office as much as possible connected with the Profession (Cox to Harper, July 2, 1974).

The size of the proposed budget increase for the central office made continued reliance on the Law Foundation impossible. Refusal to expand the program was not even considered: the expansion of legal aid into rural areas was a priority already accepted by several committees of the Bar. The existence of the LSP, the first government-initiated investigation into the need to provide legal services, was a clear indication that if the Law Society did not co-operate with the Government they might lose all control over legal aid expansion. It was thus reluctantly decided that, with the rapid expansion of legal aid into regional offices, any attempt by the Law Foundation to have the Society maintain independence of the central office would be futile. In the future, the Law Foundation would fund "items in the LAS budget which the Government might not have as priorities: for example, research, education, and staff lawyers conferences" (Minutes, LAS, October 24, 1974).

Government policy had been reversed: Social Credit had been intent on limiting the financial liability of staff offices; the NDP was interested in expanding staff offices and limiting the amount of public funds paid to private practitioners to provide a public service (Maczko, Interview: 1989). The Government's stake in the development of LAS programs had gone up considerably. The initiative for legal aid reform no longer lay with the LAS or the organized Bar. Abel (1985:538) has argued that the major reason for the Government's financing of legal aid programs was to establish control over them. This was clearly the case in BC. The NDP Government wanted rapid expansion of a social welfare oriented legal aid system. The conservative Bar was resistant. In these circumstances, fiscal control, rather than being the ultimate weapon "for restraining or even eliminating disobedient programs" (Abel, 1985:538), was the only way to ensure rapid expansion of legal aid programs and government input into the content of these programs.

E. Expansion of Coverage to Summary Conviction Matters: A Joint Endeavour

There was one area in which the LAS and the NDP Government were in accord: the expansion of legal aid to cover summary conviction matters. Both thought it a worthwhile undertaking, although they also agreed that the lack of lawyers in rural areas made the expansion of coverage to *all* summary conviction matters problematic. The FPA called for coverage of summary conviction matters where there was a reasonable likelihood that the person might be sentenced to gaol if found guilty, or if conviction would likely mean a loss of livelihood. The first indications that there was a measure of support for coverage of *all*

summary conviction matters came in March 1974. In that month, Law Foundation funding of the CBA's experimental legal aid program for Native Peoples was coming to an end. The Civil Liberties Subsection of the CBA (CL Subsection) passed a resolution that "permanent and adequately financed Legal Aid facilities should be made available to fill the particular needs of native people so long as such needs continue to exist" (Attached to LAS Minutes, March 27, 1974).

A memo attached to the copy of this resolution, sent to the LAS, included the comment that the Provincial Government objected to the specificity of the resolution (Attachment, Minutes, LAS, March 27, 1974). Maczko too felt that coverage should be provided for everyone, "without special treatment for Indians" (Minutes, LAS, March 27, 1974). It was also observed that there was no point "in extending Legal Aid in areas where lawyers are hard pressed to keep up with indictable offenses" (Minutes, LAS, March 27, 1974).

The Benchers, however, pointed out that "the government is dedicated to improving the quality of justice for the people of British Columbia and...it would be wise for the Legal Profession to stay ahead of the government in this field" (Benchers Minutes, March 30, 1974). In spite of the argument that extension of coverage to summary conviction matters would be an empty gesture in many areas of the Province, and in a clear attempt to 'out reform' the Government in a matter that fell within the LAS mandate, the LAS supported a proposal that "Legal Aid should be provided for everyone financially eligible for all offenses under the 'Criminal Code', the 'Narcotic Control Act', and the 'Food and Drug Act'".[17] Maczko pointed out that this would expand coverage

beyond that provided for in the FPA, and the Provincial Government would have to provide the additional funds (Minutes, LAS, March 27, 1974).

Before the Area Directors' Conference in May, Maczko met with Brewin, who suggested that the LAS should undertake pilot projects in two or three areas to get some idea of the cost and availability of lawyers to undertake this coverage (Minutes, Meeting in Victoria, April, 24, 1974). At the AD meeting, some Directors said that they definitely could not handle the additional coverage. It was suggested that the additional coverage might be provided by Court Workers acting as advisors (Minutes, AD Conference, May 4-5, 1974).

Although the debate on increased summary coverage had been triggered by the issue of coverage for Native Peoples, the focus of the debate very quickly turned to the increased number of prosecutions for drug offenses, particularly possession of marijuana. The LAS noted that treatment of possession of drug charges differed widely from one jurisdiction to another, and within judicial districts according to which judge heard the charge. The availability of legal aid in such cases also varied from one area to another. In Prince George, for example, those charged with summary offenses, many of them Natives, *never* received legal aid; in Vancouver, *all* such cases were eligible (LAS, May 25, 1974).

The matter of provision of coverage in Summary Conviction matters was, quite suddenly, brought to a head by actions of VCLAS. Ian Waddell of VCLAS met with the AG and informed him that he felt the provisions of the FPA were not being

met by the Provincial Government (Ralph to Vickers, July 19, 1974).[18] Ralph assured the AG that:

> If the funding to provide these services is made available to us, we are prepared to appoint lawyers on such cases to the fullest extent possible. We would anticipate no problem in providing such service in the Vancouver area but would find it to be increasingly difficult the farther north that we go in the Province... (Ralph, to Vickers, July 19, 1974).

It seems clear that VCLAS' action in this matter was precipitated by an unsuccessful appeal made by VCLAS lawyers Ian Waddell and David Mossop on behalf of two eighteen year-olds charged with possession of cannabis. Their application for legal aid had been turned down "on the ground that conviction was not likely to lead to a jail sentence or loss of livelihood" (*Re* Ewing and Kearney and the Queen (1974), 18 C.C.C. (2d):356). This decision was appealed. The appeal was denied and the argument made that legal aid provisions in BC provided a right to counsel equivalent to constitutional guarantees advanced in the United States by *Argersinger v. Hamlin* (1972), which concluded that counsel be provided whenever imprisonment was anticipated.[19] It was apparently assumed that the FPA, which could be revoked by the Provincial or the Federal Government or renegotiated at the insistence of either party, was the equivalent of a constitutional guarantee.[20] In the United States, constitutional decisions had dictated an expanded provision of legal aid. In BC, as in other Canadian provinces, the state-funded legal aid program defined the extent of right to counsel. This right, in BC, was backed only by a voluntary adherence to the FPA.

Action on this matter was pressing, given that Waddell and Mossop might bring suit against the AG's department, and possibly the LAS, for failure to cover those cases which fell under the Federal *Interpretation Act* (Ralph to Vickers, July 19, 1974). Ralph was especially concerned that the LAS "be clearly on record with the Government as being willing to provide this service if they will make funds available. It would be very unfortunate if such an action were commenced and this Society's position on the matter was misunderstood by the public" (Ralph to McAlpine, July 19, 1974).

In October 1974, the Provincial Government agreed to fund expansion of coverage to include *all* summary conviction matters coming under the Criminal Code, the Narcotic Control Act, and the Food and Drug Act (Minutes, LAS, October, 1974). They did this in full knowledge that a lack of lawyers willing to undertake legal aid cases would make this an impossibility in many areas of the Province. Any legitimacy to be gained by the expansion of coverage would be undermined by the accentuation of rural-urban differences. This was one of the reasons the NDP urgently pressed the LAS to take on the Court Worker Program and expand the number of staff offices in these areas. It is also clear that appearing to be actively engaged in reform was more important than the actual substance of reform. The NDP were caught up in their own reform rhetoric.

The expansion of legal aid to all summary conviction matters did receive public approval. Arguing against a system that discriminated in favour of individuals who ran a higher risk and left many accused of lesser offenses with no lawyer, an article in the *Province* stated boldly that "A discriminatory system is an

unfair system. The answer is simple. The government should make sure Legal Aid is available to anybody who needs it, period" (The *Province*, June 29, 1974).

F. The Leask Report

Until the creation of the LSP of the JDC, the pursuit of CLO programs had been the responsibility of one man, John Brewin. In addition to being one of the foremost advocates of a CLO approach to legal aid, Brewin made his opinion of the 'traditional' approach towards the provision of legal services very clear. In a speech at the Second Annual National Conference on Legal Aid, held in Victoria in June 1975, he stated unequivocally that he felt provision of legal services to the disadvantaged had suffered because it had been planned by lawyers:

> Lawyers have dominated the planning of legal aid and legal services and lawyers are by training poor planners. First of all, they assume they know everything -- a very bad place to start. Second, they tend to think in the historical perspective -- to decide what you need next, you look at where you've been and then add a few things. That has resulted in the priorities getting mixed up. By this process, you move from volunteer programs of legal help for criminal matters to government-sponsored programs and to civil legal aid and then slowly, only gropingly, to what, for most people, are the real issues --legal information, legal advice and public education. A better approach, it seems to me, would be to begin by trying to *sketch where you want to be a few years from now* and then to analyze the present deficiencies. Out of that, one begins to find the priorities for today... (Report on Conference on Legal Aid, 1975:53. Emphasis added).

The JDC considered the organized Bar reactionary and an obstacle to their quest for social justice through CLO's. The actual objectives CLO's were to attain

were never clearly delineated. Emphasis was, however, placed on such activities as "legal information, legal advice and public legal education". Attorney General McDonald, also speaking at the Victoria Conference, emphasized the role of CLO's in attaining equality before the law. McDonald observed that the law to that time had been:

> ...a rich man's instrument and has been denied those who could never afford the expense of hiring a lawyer...There is going to be civil disobedience and a rising crime wave unless we come down from our ivory tower to the people's level and make the law simpler for people to understand. If we want to make the law equal it is up to you people as technicians in Legal Aid to open the doors of justice to the poor (*Prince George Citizen*, June 13, 1975).

The "sketch of where you want to be a few years from now" was never completed.

One of the first acts of the LSD of the JDC was to commission a study of existing legal aid programs in order to identify areas in need of improvement. The Director of the Legal Services Project, Peter Leask, also took on the task of promoting the expansion of CLO's. Leask recruited a number of young, enthusiastic lawyers fresh out of law school to assist him (Leask Interview, 1990).

The Leask Report was published in March 1975. The report outlined the legal services delivery methods of the LAS. It reviewed the nature of problems dealt with by the LAS, which were described as primarily criminal and civil matters covered by the tariff. But the report also pointed out that:

> Criminal law and litigious family matters represent a small portion of the total volume of legal work done by the bar. If economically disadvantaged people have legal problems of the same basic character as the sector of society who make use of legal services, a reasonable estimate would be that three-quarters of their problems are not covered by a Legal Aid tariff (Leask Report, 1975:19).

While granting that Legal Aid regional officers were the spearhead of an attack on this problem, it was stated that "much more must obviously be done" (Leask Report, 1975:19):

> In the past, it may have been true that a person with few economic resources had few legal problems. Today, the increasing complexity of government and the mushrooming bureaucracies mean that every citizen, and in some instances the disadvantaged citizen more than others, must deal with a bewildering array of laws and regulations. Some improvement in the delivery of legal services is necessary to help citizens deal with these complexities (Leask Report, 1975:19).

The Leask report concluded that there was an unmet need and examined how legal service delivery could be extended to the disadvantaged to meet this need. It highlighted five possible methods of delivery: an expanded and *centrally administered* judicare system; a staff lawyer system; a medicare-type system; a 'mixed' system; and a *decentralized* 'mixed' system. The Leask report opted for the last of these.

The decentralized plan was based on the premise that the great geographic, economic and social diversity within the Province required a flexible approach, not a centralized system that disseminated "...a similar legal delivery system throughout the province as devised by some central collection of planners or

bureaucrats" (Leask Report, 1975:36). The plan recommended in the Leask Report was not, however, totally without a centralized administrative structure. Indeed, the central body, which Leask called the 'Legal Services Commission' (LSC), was to play a crucial role in the development of a widespread decentralized system. To oversee the localized legal aid delivery systems, there would be a central 'policy-making' body representing a tripartite partnership: the legal profession, the Government, and the public (Leask Report, 1975:37).

This central 'policy making' Commission would have a staff of lawyers, community development workers, and individuals with research and training skills. The basic task of the Commission was to ensure that "adequate legal services" were provided to every resident of the Province no matter what their income or domicile. How this mandate was carried out was left to the Commission (Leask Report, 1975:37). Their initial task would be to identify and bring together in each area or community responsible and representative people willing to undertake the task of determining their area's legal services needs, most serious problems, and solutions to those problems (Leask Report, 1975:38). Resource personnel from the LSC would assist local groups in defining problems and help to refine proposed solutions. Where no group existed, it would be the LSC's job to foster the formation of such a group "unless it was reasonably clear that the area had no problems of legal service delivery" (Leask Report, 1975:38).

Under the terms of the Leask proposal, the LSC would receive an annually budgeted sum of money out of which all local projects would be funded. As a

fund-granting body, the Commission would be expected to ensure that each area group was making a genuine effort to improve delivery of services and that their plans were sensible and fiscally responsible (Leask Report, 1975:40).

In conclusion, Leask pointed out that his preferred system was really only one type of 'mixed system':

> It involves a province-wide mixture of systems that are the outcome of a series of local choices rather than a central decision or set of decisions. Obviously the commission would function as a source of centralized expertise and also a means of informing people in different areas and communities (within the province) of seemingly successful plans being carried out in other areas. The commission and its staff would also be responsible for developing things such as para-legal training programs which could be applied in various areas that felt a need for increasing numbers of para-legals etc. (Leask Report, 1975:40).

The content of the Report makes Leask's purpose in travelling around the Province inscrutable. Most of the section that discusses need was primarily derived from American legal needs studies. The description of existing systems certainly did not require any travel; the discussion of models of delivery was again standard textbook fare; and the decision to opt for a community-based decentralized system was obviously grounded more in political and theoretical preferences than in information gleaned when visiting various communities.

It would appear that the only purpose in the perambulations of this committee was to foster the type of community groups that Leask was to recommend should form the backbone of his legal services delivery system. Indeed, this was not a hidden agenda. Leask stated quite clearly in the introduction to his report

that the "project was not intended as pure research". The researchers would take an activist role in "encouraging change and improvement in the current BC situation" (Leask Report, 1975:1).

In 1974, it was the intention of the NDP Government to push through the LSC with or without the support of the Bar. Before the Leask Report was made public, Brewin predicted that "there will be no shortage of proposals for the commission" (JDC Periodical Status Reports (PRS), Legal Services Delivery (LSD), September, 1974). The LSD arm of the JDC was reformulated to serve as the administrative structure of the commission. The head office of the LSD was moved to Vancouver and the Delivery of Legal Services Group was formed.

> At the provincial level this group will consist of a legal component, a community development/project management officer, a person responsible for developing training programs for paraprofessionals, staff lawyers, lay advocates and counsellors and a research component....This group will not actually deliver legal services but will work with groups and projects around the province that are involved in direct delivery... (JDC, PSR, LSD, October 23, 1974).

These developments, however, took place before opposition to the NDP had crystallized in a rejuvenated Social Credit opposition.

G. Criticism of the Leask Report

Several criticisms of the Leask Report were forthcoming, some from within the AG's own department. Pauline Morris, a social science researcher attached to the AG's office, argued that the underlying philosophy of the Leask Report was

not based on a social change model, but on a poverty law model of legal aid delivery. Leask's proposal, Morris argued, represented a piecemeal approach to the expansion of legal services. It was not based on any clearly defined ideology, and could even inhibit the initiative for long term social change (Morris, February, 1975). In spite of a recognition of the complex nature of people's problems, the emphasis in the report remained on the delivery of *legal* services "rather than upon a more innovative, multi-disciplinary approach". A major shortcoming of the Report was the emphasis on the individualization of problems, rather than on the structural factors which underlie so many of the problems faced by low income groups (Morris, 1975:8).

The idea of community participation was also not clearly articulated:

> Experience in other jurisdictions suggests that in practice 'community participation' is synonymous with community 'leaders': representatives of local organizations, teachers, clergy, members of the local bar, etc., and to the extent that these people represent specific interest groups in society, the fact that they are in a position to define the nature of the service to be made available means that power resides in the hands of the powerful (Morris, 1975:7).

As early as February 1975 it was clear that demands for economic restraint made "any radical extension of legal services...beyond the bounds of possibility" for the present. It was, Morris argued, nonetheless essential, in order for any worthwhile reform to be implemented, that the Government make explicit its policy and enact it in legislation:

> The fact that adequate resources are not available to make the full implementation of such a policy possible at present should not prevent a clear policy statement which would ensure

> that: (a) Whatever services are set up operate in line with these principles. (b) The poor community, and those individuals and pressure groups who wish to represent their interests, know what their rights are and can press for implementation. Rights should be Province wide and not dependent upon local decision-makers; only the methods of asserting such rights can legitimately be viewed from a local perspective (Morris, 1975:4).

Without statutory enactment, legal service delivery would remain focused on meeting needs (i.e., the need for representation at tribunals) rather than fulfilling rights (i.e., the right to be represented at tribunals) (Morris, 1976:112).

The organized Bar, as represented by the BC Branch of the CBA and the two major groups responsible for the delivery of legal services in the Province, the LAS and VCLAS, were, for quite different reasons, opposed to the conclusion of the Leask Report. The LAS was particularly hostile to the Report's expansion of the concept of legal services to include closely related social matters. This would lead to increased government involvement in the provision of legal aid:

> The danger I see here is that while on the one hand government policy is legitimately concerned only with the funding of legal services and not their administration, on the other, government policy is legitimately concerned with the administration of social services. Accordingly, it seems to me that if we take over the administration of social services, even though of a quasi-legal nature, we will be unable to *keep the camel's head out of the tent* (David Tupper to John McAlpine, Chairperson of the Board of Directors, March 18, 1975. Emphasis added).

Tupper, a Vancouver lawyer and a member of the Board of Directors of the LAS, was of the opinion that as long as the LAS delivered only legal services and was

funded by and responsible to the legislature, it should be exempt from government interference to the same degree as universities and "other institutions which are traditionally regarded as sacrosanct" (Tupper to McAlpine, March 18, 1975). The LAS should remain a "pure group", dealing only with *legal* problems. They should not become involved in *social* problems (Minutes, AD Conference, May 23-24, 1975).

The LAS also opposed the decentralized concept, arguing that it would lead to inequality of access. The objective of the LAS was to ensure that there was equal access to legal services throughout the Province. They stated that the mandatory requirements for an effective legal services program were:

1. the provision of competent legal advice and legal counsel to all qualified applicants;
2. assurance that there is an equal standard of eligibility throughout the Province;
3. assurance that there is a guarantee of legal assistance for specified legal needs;
4. assurance that those specified services are provided throughout the whole Province (LAS, Response, March, 1975).

It was not recognized that the LAS had undermined this formula for equality when they advocated the expansion of coverage to summary conviction matters.

Allen McEachern, LAS Board Member, objected to the idea of an independent commission as a funding agency. He could see no purpose in interposing another bureaucratic body between the Society and the AG's Department or the JDC. McEachern also doubted if a commission funded largely by the Government could

act as a barrier against government interference (McEachern to Ralph, March 12, 1975).

The threat of more staff offices with a different philosophical orientation served to clarify the LAS's entrenched view of the appropriate goals of legal aid reform. In order to provide adequate coverage under the proposed mixed system, it would be necessary to establish a full tariff in civil matters and to restructure and enlarge the existing criminal and family law tariffs. The staff offices in such a system would function primarily as administrative and referral agencies. Furthermore, to maintain its independence from government, the LAS should receive an annual statutory grant from the Government but be directly accountable to the legislature. The creation of an LSC to act as the funding authority for all legal services would thus be unnecessary (LAS, Response, March, 1975).

The LAS did not just criticize the Leask Report: it moved to take preemptive action in the major area of NDP concern: civil legal aid. At the AD Conference in May, the basic functions of the LAS and potential areas for expansion were discussed. It was noted that the LAS had, to that time, emphasized hiring "barristers interested in criminal law" for the regional offices. There was now a need to give more attention to civil matters. The major priority of the LAS, in what was to be the first of many budget proposals for 1975/76, was to ensure adequate service for poor people in the civil law area. In an attempt to keep the rapidly developing area of CLO's under their control, the LAS suggested that this should be accomplished by establishing a civil tariff for non-family matters. It was also suggested that separate store front offices be established

to deal with civil non-family problems. These offices would be staffed with people "willing to do the good solid solicitor's work which our clientele requires, with the ability to follow up with civil litigation" (AD Conference, May 23-24, 1975).

The LAS concept of poverty law and other civil needs of the poor was oriented towards litigation. The reform potential of legal aid was limited to gains that could be made in the courtroom. As Galanter has pointed out (1974:153), this limitation is imposed on reform by the organization of the profession, centred as it is on their role as courtroom advocates (see Chapter III:100).

The most serious criticism of the Leask Report to emanate from VCLAS was that the Report perpetuated the myth of "something called poverty law", which VCLAS equated with community participation. This concept presupposed the existence of communities and, where communities did exist, that lawyers should organize them:

> We believe that lawyers are servants of the community. *They are not and should not be community organizers.* We take strong exception to the comments...of the Report that suggests the Legal Services Commission stimulate interest in the establishment of community law offices, if no interest exists in an area (VCLAS, Position Paper, 1975:2. Emphasis in original).

VCLAS did, however, agree that an LSC should be established as a central source of funding. In order to safeguard against government interference:

> The Attorney-General and the Government in general should be prohibited by statute from interfering with the type of cases

> undertaken by those retained to do legal work. For example, the Government should be prohibited from applying any form of pressure because it finds that it is named as defendant in numerous court cases (VCLAS, Position Paper, 1975:3-4).

VCLAS was also careful to make clear its view that any proposed community law office should *not* be community controlled, and in particular that the Board of Directors should not be empowered to instruct the legal staff in regard to what types of cases they could take. The office would thus be a *community* office only in that it would aid persons whose problems were shared by a large part of the community (pollution, for example) and assist volunteer groups working for the benefit of the community. Nor did the VCLAS vision of a Community Law Office include political organization or agitation. Community Law Offices would provide service in those areas of law not covered by legal aid, the Rentalsman, and the Department of Consumer Services (VCLAS, Position Paper, 1975:6).

VCLAS did not engage in activities that have been identified by Stephens as central to development of the more competent citizenry necessary for democracy and pluralism to thrive. Clients must be provided with "the knowledge and resources they require to participate in local policy issues, to criticize existing policies and to propose alternatives". This could only be accomplished, as Stephens argues, with "a different kind of professionalism". Outreach tactics, client participation, and community organization would need to be stressed (Stephens, 1985:80-81).

Although VCLAS was interested in asserting the rights of disadvantaged groups and individuals, argued that law had an important role to play in social change,

and expressed concern for the extension and preservation of rights, political activity was beyond their purview. It was firmly believed that social change could be brought about through education, individual representations (albeit on issues of broader social concern), law reform and test case action. These were all activities that lawyers traditionally engaged in, or at least they were not alien to their educational experience. As Morris has pointed out, this approach only delineates the area of concern (i.e., areas defined as legal by professionals); it fails to raise the level of consciousness of the poor "as to the more fundamental basis of such problems amongst others in a similar situation" (Morris, 1976:122-123). Nor did the VCLAS vision of a CLO include political organization or agitation. CLO's would, as far as possible, emulate the activities of VCLAS, but without the legal research and law reform component.

The Committee of the BC Branch of the CBA that had been struck to "consult with and assist the JDC and Leask" in the preparation of the Report were also critical of the end result. This criticism was somewhat heightened by a general pique at not being consulted after all. The Committee stated in its report that it had made numerous attempts to instigate meetings with Mr. Leask throughout 1974, but without success. Indeed, the Committee itself did not meet again until after the Leask Report was published (CBA Report, 1975:1).

The Committee felt that a decentralized model would create more problems than it would solve. The administrative machinery required, the duplication of effort and, indeed, the probable disparities in quality among the various local systems were serious disadvantages which militated against the adoption of such

a model (CBA Report, 1975:3). Community control was an issue of great concern for the CBA. They feared that if the provision of legal services were left to local initiative, there would be a great danger of political interference and community pressure. The CBA favoured a judicare system that provided choice of counsel. This was the only system that could ensure equality of service. They also felt that legal aid should be available as a matter of right:

> This presupposes legislation and assumes a definition of eligibility criteria for financially assisted legal services of sufficient certainty that administrative discretion in the granting or refusal of financially assisted legal services is at a minimum (CBA Report, 1975).

The CBA Committee regarded it as a self-evident truth that a person ought not to be deprived of essential legal advice or legal service by lack of funds (CBA Report, 1975:12). All recipients of legal services should be assured of services of a quality equal to that of a fee-paying client. Equal access must also be assured to all, without disparities among regions.

The CBA Committee shared in the general agreement that, regardless of the system chosen or the source of its funding, the Government should have no control over the delivery of legal services. The Committee noted, as had VCLAS, that the Government, its various departments and agents, and the Crown are frequently contestants in cases issuing from the legal problems of individuals. That one department of government should control the funds necessary for an individual to assert his legal rights against another government department or the Crown was plainly undesirable. To obviate these problems, the Committee recommended an "expanded fee for service system that ensures as a matter of right

universality, equal access to legal services of the highest available quality and independence from government" (CBA Report, 1975:11). The Committee felt that the LAS, given "a relatively simple reorganization of the structure", could best meet these requirements.

There was no support within the organized Bar or within established legal aid delivery groups for the concepts of community participation and community control. And very little mention was made of poverty law. Apart from VCLAS, they focused on an expanded judicare system. Emphasis was placed on eliminating disparities among regions, but there was no acknowledgement that, given a chronic shortage of lawyers in rural areas, a judicare system would be unable to eliminate such discrepancies. The Bar was clearly rallying around the interests of the members of the profession, not of the public.

H. The Legal Services Commission Act

While these various bodies were considering the recommendations of the Leask Report, the Government was proceeding with the drafting of a bill that would establish the administrative structure of the type of delivery system envisioned by Leask. The Government was determined to create the LSC. The NDP Government had been quietly suspicious of the LAS when it came to power because they felt it was merely an arm of the organized Bar, which in their view was a very conservative organization, interested primarily in its own aggrandizement (Interview, Maczko, 1989; Interview, Alex McDonald, May-June, 1990). One of the main functions of the LSC, according to the AG, was "to take over the administration of Legal Aid now done mainly by the LAS, a lawyer's society and

an offshoot of the BC Bar" (The *Province*, May 28, 1975; Interview, McDonald, 1990). The Government, however, was feeling the impact of growing public opposition and, moreover, realized that no comprehensive system could operate effectively without the co-operation of the organized Bar. The JDC sought the active participation of the Law Society and the CBA in the drafting of this bill.

The Bar, anxious to establish control over these deliberations, appointed three members of the Law Society to participate in discussions of the initial proposal to establish a Legal Services Commission. Peter Manson, Chairman of the BC Branch of the CBA, was also appointed. On March 14, Leask and Manson met to compose the first draft of the *Legal Services Commission Act*. This was forwarded to the Law Society Executive Committee for comment and redrafting (P. Manson to P. I. Millward, March 17, 1975). The Law Society was advised that the final draft of the bill had to be in the hands of the Government by April 6, 1975. This was not regarded as an adequate amount of time, and it was resolved by the Executive Committee that the Treasurer ask the Government for a postponement so that the profession might have the time necessary to compose its own proposal (Minutes, Executive Committee, Law Society, March 17, 1975).

A second draft of the *Legal Services Commission Act* was submitted to the Benchers on March 21. It was resolved at this meeting that the Executive Committee inform the AG that:

> The Benchers do not like the proposed draft Act and request that this matter be deferred until the Fall session of the legislature to give the Committee time to review Mr. Leask's report and to draft an act which meets with the Profession's

> approval, and to inform the AG that if the passage of the Act can not be deferred until the Fall Session, the Committee will meet now and try to draft an appropriate Act but if it does not agree with the results achieved that the Committee will not accept co-authorship of the Act and will go on public record to that effect (Minutes, Benchers Meeting, March 21, 1975).

The Government extended the April 6 deadline to give the Law Society more time. On Monday, April 21, there was a meeting with the representatives of the JDC to finalize the Act.

The major recommendations of the Leask Report were, in fact, incorporated in the Legal Services Commission Act (Bill 96: Legal Services Commission Act) in June 1975. This legislation provided for the:

> ...setting up of a five-member legal services commission which, when established, will have the mandate to *inter alia* plan for the future development of legal aid in the province and provide financial and other assistance to persons and groups engaged in the delivery of legal services (Report on Conference on Legal Aid, 1975:7).

That the members of the Law Society were still not happy with the Bill is indicated by the following internal memorandum:

> The purpose of this memo is merely to ask you to consider whether some representation should be made to Victoria before it is too late and we have this bill thrust down our throats. I feel as I did in April that we are not keeping faith with the profession if we simply stand aside and fail to make our concern known (Marshall to Millward, June 4, 1975).

The general lack of criticism directed at the AG's department in regard to legal aid policy, and the lack of Social Credit support for the Bar in its opposition

to this Act, was apparent in the *unanimous* passage of the LSC Act by the Legislative Assembly. The desire of the Government to distance itself from any potential squabbles over the LSC is apparent in the AG's description of the relationship between the LSC and the Government.

> We, the Legislature, of course must vote the funds, and the department may set out the broad guidelines, by all means. But in furnishing of those services, whether, say, in the case of the town of Williams Lake there should be services by a legal aid office store front or whether it should be a contract with a local society, as we have done in the Abbotsford area already to furnish those services, or whether it should be done directly through the legal aid society that now exists on a fee-for-service basis arranged through the local bar is a question which, area by area, I would hope would be decided by the commission and not by the Attorney-General's office as such (Hansard, June 11, 1975:3381).

The Commission was not itself to deliver legal services, but to plan the development of such services and to fund organizations wishing to deliver them. Although the concept of the LSC originated in the Leask Report, Vickers stated that the *Act* itself was based to a large extent on the Quebec and Saskatchewan *Acts* (The *Vancouver Sun*, May 29, 1975). But the *LSC Act*, unlike its equivalents in Quebec and Saskatchewan, did not specify what services should be delivered or how programs should be organized, and there were no statutory requirement for the provision of specific legal services. The importance of entrenching rights to legal services in legislation was pointed out in Morris' criticism of the Leask Report and in VCLAS' response to this report. As Snider comments, "the transformation in ideological terms of certain conditions from 'privileges' into 'rights'" is a significant facet of a successful reform process (Snider, 1986:229). Enactment in legislation is an important step in this

transformation. It is only in this way that the provision of legal services can be protected from political expediency or fluctuating availability of funds. Where a right to service is incorporated in an act of the legislature, changes can only be made after thorough and open debate (Priorities, 1977:8). This did not happen in BC during this period. The difficulty of reaching any agreement at all on the *content* of the *Act* precluded such specificity. In a period of growing political and economic crisis, the Government was unwilling to further alienate the Bar. The Bar, on the other hand, could find no political support for its opposition. Both sides were willing to compromise. What services should be delivered and how programs should be organized were left to the discretion of the Commission (LSC, First Report, 1976:10).

1. The Legal Services Commission

The LSC was formally vested with authority by Order-in-Council on August 14, 1975; it took up its mandate on September 1 of that year. Of the five commissioners appointed, two were named by the Lieutenant-Governor in Council, two by the Benchers of the Law Society, and the fifth by the AG after consultation with the Federal Minister of Justice. Donald Jabour was appointed full-time chairperson; Helen Jones, a social worker, was appointed full-time commissioner; and the three other commissioners were part-time.[21] Three lawyers and two lay persons were appointed.

The task of the Commission as stated in Section 3 of the *Act* was:

> ...to see that legal services are effectively provided to, and readily obtainable by, the people of British Columbia, with special emphasis on those people to whom those services are not presently available for financial or other reasons.

'Legal Services' were defined broadly: (i) education, advice and information in or about the law; and (ii) any legal service that may be provided by a barrister and solicitor or a notary public. The Commission was so constituted as to "leave the management of public legal service in the hands of a body independent of both the Government and the Bar" (LSC, First Report, 1976:10). This body would determine what services would be delivered and how they would be organized.

This was not a propitious time for 'working out' such matters in detail. The JDC was undergoing extensive reorganization (Ekstedt, 1975), as a result of which the LSC inherited all the staff of the LSD's Vancouver branch and many of the LSD programs, some of which were at best peripheral to the Commission's mandate.[22] To add to their difficulties, the new commissioners had to submit what was to be the first of several budget proposals for the delivery of all legal services in the Province by the end of September, only thirty days after officially embarking on their task. Furthermore, this budget was to be negotiated in a period of economic recession and with two different governments, for the NDP were ousted by the Socreds in December 1975.

Nor did the LSC have the support of the Bar or the LAS (Jabour to Vickers, February 26, 1976). This created a delicate situation. As Jabour noted, any move to regulate the operation of the LAS had to be made "diplomatically and slowly". Other than withholding funding altogether, the LSC had no way of directing what services should be delivered, by whom, or how. This was, Jabour felt, rather like having a hydrogen bomb but no rifles (Jabour to Vickers, February 26, 1976).

To make matters worse, the creation of the LSC as a funding source for legal services brought numerous, previously independent, agencies into competition with one another for responsibility and money. This created a high degree of tension which increased as the LSC's regulatory role developed. It was particularly evident in relations between the newly developed CLO's and the LAS as they competed for the shrinking legal aid dollar.

Nor did the LSC have any clearly defined concepts around which to mould an emergent legal aid system. According to Jabour, the LSC did not come into being "with pre-conceived ideas as to how legal services should be delivered or developed" (Jabour to Vickers, February 26, 1976). The newly appointed Chairperson of the LSC was unable to convince either the LAS or individual CLO's of this lack of a clearly defined focus:

> The Legal Aid Society is convinced that the Commission favours Community Law offices and that we will force Legal Aid offices to have community boards or to amalgamate with community based organizations. Community Law offices are convinced the Commission favours the Legal Aid Society and that their days are numbered (Jabour to Vickers, February 26, 1976).

In an interview, Jabour commented that the LSC did not have any specific philosophical orientation towards the delivery of legal services. He had participated in legal aid clinics and was somewhat familiar with the concept of CLO's. The two lawyers appointed by the Law Society had a very conservative approach to legal aid delivery, and the two lay members were, by and large, not familiar with the intricacies of legal aid delivery (Interview, Jabour, 1990). CLO's, which to this point had been fostered by the bureaucracy of the JDC and the individual ministrations of Leask and Brewin, were left without a powerful advocate or a unified philosophy (Morris, 1976:73).[23]

In terms of the potential for successful reform, the creation of the LSC did, however, fulfil one important prerequisite: it broadened the bureaucratic base of legal aid reform, creating a still larger bureaucracy with a vested interest in maintaining legal aid reform.

I. Renegotiating the FPA

The increasingly apparent need for fiscal restraint brought about by a worsening global economy also had an impact on the FPA. In early 1975, the NDP

Government, apparently unconcerned with economic matters, began preparations for the renegotiation of the FPA. John Brewin was responsible for the development of the Government's negotiating position. His main concern was that these negotiations begin with the assumption that federal financing should be available for services beyond criminal legal aid. The case for such expanded federal funding could be based on Ottawa's commitment to improvement of policies in the areas of "social assistance, unemployment insurance, immigration, native peoples, the elderly and perhaps others". Brewin felt it was essential that legal assistance be acknowledged as a vital social service for lower income groups: "any federal-provincial agreement should recognize this" (Brewin, Memo, February 25, 1975). One serious problem inherent in Brewin's position was that the Minister of Justice had no authority to negotiate matters of social assistance. But the overall obligations of the Federal Government in this area were acknowledged, and negotiations were embarked upon with the Department of Health and Welfare for funding of civil legal aid services under the Canadian Assistance Plan (CAP) (Minutes, LAS, May 26, 1975).[24]

Before negotiations on this issue could be entered into fully, the worsening economic recession made both the Federal and the Provincial Government anxious to minimize their obligations. The focus of negotiations turned from expanding coverage to civil matters to restricting coverage, and thus costs, of criminal matters.[25]

J. NDP and Restraint

Even under conditions of restraint, the NDP maintained its priority of establishing more staff offices and encouraging CLO's. In early 1975, the first overt signs of recession manifested themselves in restrictions on civil service hiring[26]. In March, restraint measures were applied to the LSD. Seven staff members were cut from the Vancouver office and efforts were being made to "devise alternative planning and staffing in response to the cutbacks" (JDC, PSR, LSD, March 15 - April 15, 1975). These cutbacks did not, however, affect the funding of new CLO offices.[27]

There were also strong indications, as early as May 1975, that government restraint would have repercussions on the LAS budget (Minutes, LAS, May 23, 1975).[28] The NDP promised that funding would continue to be available for the expansion of staff offices and Court Workers. The focus of restraint would be on the criminal tariff (Minutes, LAS, July 24, 1975).

1. Criminal Legal Aid

The NDP was committed to expanded coverage in criminal matters through the expansion of LAS staff offices and the encouragement of Court Worker projects. It is not surprising, therefore, that the first target of NDP restraint was the

burgeoning criminal tariff, through which public money was going into the pockets of private attorneys at an increasing and alarming rate (Minutes, LAS, July 24, 1975).

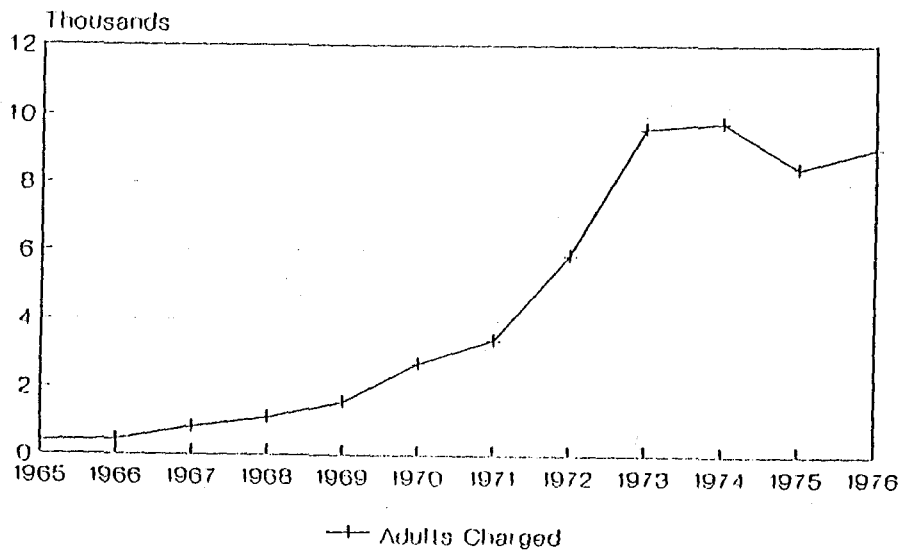
It is ironic that government policies were directly responsible for these increased costs. The Government, possibly fearful of not being in the *avant-garde* of reform, had made a decision to extend coverage to summary conviction matters. The Government also encouraged an expansion of regional offices, which increased the number of referrals in criminal law. The combined impact of these policies led to an increase of over 25% in criminal referrals (LAS Annual Report, 1974-1975).

The LAS, however, did not respond to growing indications that the period of LAS budget expansion had come to an end by seeking ways of imposing economy on the criminal tariff. The proposed Legal Aid budget for 1975-76 requested a 25% across the board increase in the criminal tariff. This increase, combined with the forecasted 25% increase in referrals, would bring the criminal tariff budget to over four million dollars. Most of this, over 72%, comprised increases in the family and criminal tariffs (LAS Budget Proposal, 1976-1977). It was clear that increasing measures of restraint meant that the focus on traditional legal aid would become even stronger. If money was going to be provided for legal services, it should go to lawyers (Ralph, Interview, 1990).

Government reaction to the 'drug problem' was also, in part, responsible for the burgeoning criminal legal aid tariff. The Social Credit Government had made an

issue of the 'drug problem' before their fall from office in 1972. When questioned about the magnitude of this problem in September 1973, AG McDonald commented that "the government believes that the drug problem is basically a health problem" and an area of action for the Ministry of Health (The *Province*, September 29, 1973). By 1975, however, the Government clearly perceived the drug problem as one of organized crime.[29] The NDP launched a war on drugs with the formation of the Co-ordinated Law Enforcement Unit (CLEU). As David Vickers observed, "You cannot appear to be soft on crime without being hardline somewhere" (David Vickers, Interview, 1991). This organization generated a number of drug conspiracy cases, many of which required the appointment of legal aid counsel.

Table 6:1
Drug Crime Rates in BC (1965-1976)



Source: DSS Crime Statistics (1965-1976)

In July 1975, the growing number of drug conspiracy trials also had an impact on legal aid policy considerations. The Government was complaining about the number of defence counsel assigned to these cases. It was pointed out that the FPA required that the defendants in these cases, where the maximum penalty was life imprisonment, be allowed choice of counsel (Minutes, LAS, July 24, 1975; August 19, 1975).[30] By August 1975 the Social Credit opposition to the NDP government was peaking. One of the primary targets of this opposition was cost overruns and client abuse of services, especially in the DHR. The AG's department was anxious that no such charges be directed their way. Brewin once again advised the LAS that the Government was unhappy with the ever-increasing costs of the criminal tariff. The LAS recommended that the Government should explore the possibility of changing the FPA to allow more flexibility in appointing counsel. If such a change were negotiated, legal aid staff lawyers could represent the accused in drug conspiracy cases and the charge on the criminal tariff would be reduced accordingly (Minutes, LAS, August 19, 1975).

In order to eliminate a possible source of negative comment, the AG redirected potential criticism of the growing cost of legal aid away from his department and toward the profession. This tactic also revealed the desirability of cost effectiveness, even for a government intent on reform. McDonald commented to the Press that legal aid lawyers "were clogging up the Courts by taking trials instead of entering guilty pleas in order to get higher legal fees" (cited in Minutes LAS, September 25, 1975), and suggested that the Government was considering changes in the tariff to prevent this abuse.[31] In response to these criticisms Maczko stated that statistics from BC and across Canada indicated an

increase in guilty pleas. Cost efficiency in the administration of criminal justice was clearly linked to the number of guilty pleas that could be negotiated, and, at least in this, BC's legal aid system was as good as any in Canada.[32] No matter how efficient legal aid lawyers became at obtaining guilty pleas, however, the volume of cases covered by the tariff would increase as new offices opened (Minutes, LAS, September 25, 1975).

K. CLO's v. Judicare

Other than VCLAS, CLO's were a relatively new phenomenon in BC when the NDP came to power in 1972. One of the major tasks of the LSD, according to the Leask Commission, was to foster the development of such organizations in order to provide the disadvantaged with the many legal and quasi-legal services not provided by traditional legal service delivery systems. CLO's could deliver both individual and group services. Although the LSD initially had high expectations that many communities would apply for CLO funding, it did not receive as many applications as it had anticipated. The ability of communities to be self-starters varied. The LSD was more likely to receive applications from areas where there was already an established organization delivering a spectrum of services to the public. The common response of communities to Leask's encouragement to form CLO's was, however, "one of scepticism" (LAS Minutes, June, 1975).

The original intent was to have each CLO office staffed by a lawyer and lay persons. The LSD, however, experienced the same problem as the LAS when it came to finding lawyers willing to serve in rural or less densely populated urban

areas. There was a general shortage of lawyers at this time, and most could find more congenial employment in more populated urban areas (Ralph, Interview, 1990; Jabour, Interview, 1990).[33] In an article in the *Province* newspaper, AG McDonald was quoted as stating that he would like to see more CLO's open "but it was impossible to find lawyers to staff them" (The *Province*, April 16, 1975).

It would also seem apparent the BC lawyers were not carried away by the same enthusiasm for social welfare activity that seems to have swept the United States and England. The supply of idealistic young lawyers was limited. Seven of the eleven original offices remained without lawyers.

According to the terms of their contract with the LSC, CLO's "were expected, primarily, to provide *services to individuals* in matters not covered by Legal Aid tariffs...[and] *undertake public legal education* and *community organization* activities relevant to their particular communities" (Brantingham and Brantingham, 1984:41. Emphasis added).[34]

The First Report of the LSC also emphasized the community organization aspect of CLO's, which, as its development in the United States had shown, was potentially an area of considerable controversy. Although proactive community organization in the United States had led to great conflict both between government and NLF's and among lawyers, and in spite of the substantial opposition to the concept expressed by various organizations in their responses to the Leask Report, it never became a major bone of contention in BC. This was undoubtedly because *no* extensive or prolonged attempt to organize communities

was ever undertaken. Almost all CLO's were involved in reactive case work dealing with individual needs: welfare appeals, workers' compensation claims, landlord/tenant problems, unemployment insurance, small claims cases, discrimination, civil rights, pensions, and "other miscellaneous battles that individuals often have with government bureaucracies" (LSC, First Report, 1976:13). They also engaged in group work, such as helping to organize cooperatives and assisting groups of people with problems in common who wished to do their own court work (Henderson, 1985:26).

Those few CLO's that did undertake community organization were diverted from this task by the influx of additional individual case work that followed upon the introduction of coverage for all summary conviction matters. LAS regional offices were forced to take on more of these cases. The overflow of civil cases required that the energies of CLO paralegals be devoted more to individual case work and less to group work and assistance (Henderson, 1985:27). Similarly, the focus of CLO lawyers, at least in one office, changed from law reform and test case matters to individual representation.[35]

As Stephens demonstrated in his study of CLO's in England, once the decision is made to accept individual cases, those cases tend to overwhelm all other activities (Stephens, 1985). The major issue that did give rise to significant concern and opposition in BC was the question of community control. The CLO's, following the recommendation of the Leask Report, were "directed by local boards of directors" (First Report, 1976:13). The major function of these boards, or at least the function most frequently stressed, was to set priorities for provision of services (Leask Report, 1974; Minutes, LAS, 1975). Other functions

of the boards remained vague. In speaking to the importance of decentralization of the LSC, Brewin stated that there was a need for "community committees, with few lawyers involved, who would decide what services would be provided. The commission would have a staff to set minimum standards and to set up paralegal training programs etc., *with all other functions taken care of by the local committees*" (Minutes, LAS, August 19, 1975. Emphasis added).

The directors of the LSC were neophytes at working with government bureaucracies and drawing up budgets (Jabour, Interview; 1990). Given just thirty days to prepare the first budget, Jabour suggested that the LAS draw up an unofficial budget showing the cost of a fully integrated system. Maczko clearly felt this was a golden opportunity to seize control of a rapidly developing legal aid bureaucracy that had grown beyond the control of the LAS. The LAS stated that an integrated budget proposal was the only reasonable approach to take. The Society emphasized that the proposed budget merely reflected the cost of integrating the facilities of the Legal Aid and Community Law Offices, and further insisted that "any decisions concerning how the scheme should be administered, i.e. should each local office be autonomous and responsible to their own board of directors, should all the local offices be responsible to central headquarters in Vancouver, or should there be a number of regional corporations such as in Quebec," should be made at a later date.

In spite of these qualifying statements, the LAS staff lawyers were not happy with this proposed budget (LAS, Integrated Budget Proposal, 1976-77, September 11, 1975). They felt that an integrated budget represented a change in policy that would have a direct impact on them, and that they should have been

consulted. Maczko's plan for a quick *coup de main* were dashed by the appearance of yet another legal aid interest group.

After much correspondence, the views of the regional offices were presented to the Board. Staff lawyers were opposed to integration, stating bluntly that they "would not be prepared to work under the direction of, nor to be accountable to, local Boards". They were not opposed to the introduction of paralegals.[36] However, because of the question of liability, paralegals would have to be under the direction of the staff lawyers and not the community board as proposed by the LSC.[37]

After the views of the regional offices had been presented, it was recorded in the minutes that if the Board did not give these views due consideration "there could be repercussions" (Minutes, LAS, September 25, 1975). The opinions and concerns of regional staff constituted a new element in policy consideration and played a significant role in complicating negotiations on the integration of the LAS and CLO's (Maczko, Interview, 1989).[38] At the same time, opposition to the integrated budget highlighted a significant philosophical difference between the LAS and LSC over the concept of community control, a difference that would eventually have become apparent. This issue gave rise to a protracted debate and was not resolved during the period of this study, although several of the points at issue were quickly settled. Regional staff were assured of confidentiality of files and that local boards would not interfere in staff lawyers' handling of cases; lawyers in all offices would be required to furnish a minimum level of coverage in criminal and family matters.

All this left Maczko to speculate on what was left for the boards to direct. The answer was determining priority among cases to be handled after the minimum coverage was provided. Some legal aid staff did not want to deal with the non-litigious civil matters that were grist to the CLO lawyers' mill. To this time they had been engaged in criminal law, family law, and a little poverty law, and that was the way they wanted it to stay. Others simply did not want their priorities to be set by the community, arguing that this would make them susceptible to political manipulation. This sentiment was especially strong in small communities (Staff Office Response, Nelson, September 23, 1975). Others felt that there was no well-defined community in their area. Community control in that circumstance would at best be a comforting illusion and at worst a damaging restraint on office initiative. "The usual pattern is for the local vociferous elite to articulate their moral values and impose them on the whole community. Accordingly, such an input would be totally irrelevant to our objective -- the real needs of the people" (Staff Office Response, New Westminster, nd).

The philosophical debate over community control continued, with the LAS taking up the cause of its regional staff, and the LSC, prodded on by Brewin, tightening a rearguard action for CLO's. Restraint soon muted the debate, increasing the individual case load of all offices, and making any consideration of priorities "after the minimum coverage was provided" redundant.

L. Conclusion

Legal aid services in BC experienced their period of most rapid growth during the NDP tenure of office. The LAS expanded its central office administrative apparatus and created a number of regional offices. All attempts to maintain independence from government control through reliance on Law Foundation funding were abandoned. Court Workers were organized and brought into close association with the LAS. The formation of CLO's staffed primarily with paralegals was encouraged by the Provincial Government, and VCLAS became a provincially funded legal service. In 1975, all of these services were brought under the administrative umbrella of the provincially funded LSC. The face of legal aid had been transformed: coverage had been expanded and access enhanced. Legal aid in BC had become part of the fabric of the State: the substance of legal aid coverage, however, remained essentially the same.

The ideology of the legal culture had shifted sufficiently to accept, even demand, state funding of legal aid; it did not shift sufficiently to encompass a proactive, social welfare oriented model of delivery. Traditional legal aid coverage remained the priority of the LAS. VCLAS adopted a poverty law model of delivery, somewhat proactive, and oriented toward reform and test case litigation. The remaining CLO's primarily engaged in reactive poverty law. For an explanation of these developments, we must turn to an analysis of the interplay of human agency, structural changes, and historically specific circumstances.

There was a significant ideological difference between the residualist ideology of the Social Credit Party and the institutionalism of the NDP. Both pluralist and structuralist have argued that the ideology of the party in power can have an impact on the formation and implementation of legal aid policy, and there can be no doubt that the NDP had a significant impact on legal aid policy formation in BC.

When the NDP first came to power, the economy was sound and political opposition was in disarray. The Government had considerable autonomy of action. The NDP were ideologically committed to reforms which would improve the social welfare of the people of British Columbia; and in many areas, most notably in the DHR they were quick to implement these reforms. In the CJS, Premier Dave Barrett also had a personal interest: he had once been fired from the BC Corrections Branch. His own experience contributed to the establishment of the Justice Development Commission. The AG's department moved swiftly to introduce reforms intended to enhance the image of justice in the Province. The Government was under considerable pressure to reform the justice system. Significant criticisms had been directed at the CJS in the northern parts of the Province, and the inability of legal aid to contribute significantly to equality in the adminstration of justice had been emphasized. The importance of legal aid for the legitimation of the justice system was recognized. The need to implement reform in traditional areas of legal aid was pressing, and the NDP were quick to provide expanded programs along the lines recommended by the LAS. The criminal tariff was increased; coverage was expanded to summary conviction matters; a civil tariff was created; Duty Counsel and an expansion of LAS into regional offices was funded.

The FPA set minimum standards of coverage in criminal legal aid. By the end of 1974, a short time before the Agreement was signed, the NDP Government was already providing the coverage stipulated; with the expansion of coverage to summary conviction matters, it had gone well beyond this minimum coverage. The FPA as a guarantor of criminal legal aid coverage did not come into play in BC during this period.

All of this activity made the organized Bar acutely aware that the NDP was intent upon legal aid reform, and the Bar was anxious that they not be seen as obstructing these reform efforts. The LAS was persuaded to take on the administration of Court Workers, and the Society itself requested that the Government expand coverage to summary conviction matters, in spite of a demonstrated inability to cover these matters in some areas of the Province, and in spite of the clearly stated opinion of the BC Court of Appeal that the existing provision of legal aid coverage adequately protected an individual's right to a fair trial. It would also appear that the LAS's fear that the Government intended to introduce a Duty Counsel system of legal aid delivery led Maczko to drop the idea of Duty Counsel as a staff office responsibility, which might be amenable to government takeover, and request funding for members of the private Bar to undertake this task.

The relative autonomy of the NDP Government in the area of legal aid reform, even during a period of favourable economic and political circumstances was, however, limited by their lack of reform focus. The strongly defined ideological orientation of the Bar towards traditional legal aid matters, and

the pressing need for reform in this area, dictated the direction of legal aid reform. Legal aid covered only those individual matters defined by the legal profession as being areas of legal need. Traditional matters such as criminal and family law had priority. It was always conceded[39] that coverage of poverty law matters, on an individual case-by-case basis, might also be included, but attention to these matters was severely limited by a bias towards hiring lawyers experienced in criminal matters and by the priority given to criminal and family tariff matters.

The NDP Government did, in time, give a focus to its plans for reform. In 1974, the AG's Department started to concentrate on the social welfare issue. When Brewin was appointed Director of the LSD of the JDC, he initiated the LSP, which clearly focused on reform of civil legal aid. It would concentrate on poverty law matters, engage in community organization, and be community controlled. This initiative occurred at a time when NDP political and economic fortunes were in decline. The autonomy of government action was increasingly limited by fiscal restrictions. The Leask Report brought in reform proposals that galvanized the concerted opposition of the organized Bar.

Even prior to the Leask Report, not all government incursions into legal aid had met with universal acclaim among professional groups. Both the NDP request that the LAS take over the administration of Court Workers and the suggestion that the Government take over the administrative funding of the LAS met with some opposition. The LAS was opposed to acquiring responsibility of the Court Workers because these individuals were engaged, in part, in social work, and the LAS felt that if such a function were associated with the LAS it could invite

government intervention. The Law Society, on the other hand, was concerned with safeguarding the standards of the profession, and thus intent on ensuring that Court Workers were properly monitored and trained. The Society saw the LAS as the ideal group to undertake this task. The LAS took over responsibility for sub-contracting Court Workers in areas already serviced and for the administration of an expanded Court Workers network where none existed.

The Law Society, on the other hand, was suspicious of the NDP proposal to fund the administrative functions of the Law Society. The argument that the independence of the profession would be undermined if the State funded the administrative structure of the LAS had been a constant theme of Law society debates from the inauguration of the LAS in 1970. The bar was, however, aware that the NDP was intent on rapid expansion of LAS services, and the LAS was confident that the society was firmly enough established to be able to exert its own independence. The LAS administrative structure became state funded.

The organized Bar, VCLAS and the LAS were, however, united in their opposition to the Leask Report. This unity was based specifically on opposition to the concepts of community organization and control. The organized Bar and the LAS were also united against the concept of decentralization as represented by the formation of the Legal Service Commission.

The CBA reflected the stance of its parent association at the federal level. The LAS was the logical body to administer the delivery of legal services in the Province. There was no need for an intermediary commission. Legal aid delivery should be based on a judicare system, for this was the only approach that would

ensure equality of access. They also maintained the stance that equality meant equality of access throughout the Province. They refused to recognize that demographic circumstances in British Columbia made judicare and equality of access mutually contradictory goals.

VCLAS also aligned itself with the opposition, arguing that the concept of poverty law, as it pertained to community organization and control, was a myth. CLO's should be headed by lawyers, and it was not the function of lawyers to organize communities; nor was it appropriate for lawyers to take instructions from lay persons as to the types of cases they should handle.

In its criticism of the Leask Report, the LAS opposed the entire concept of proactive poverty law on the grounds that it would introduce an element of social services into legal aid delivery. It was argued that unless the LAS confined itself to the realm of the strictly judicial they would invite government intervention into what would otherwise be a legal preserve. Independence of legal aid from government control was seen to rest on "keeping the camel's head out of the tent" by eliminating any excuse for intervention. The LAS formula for adequate legal aid coverage depended on the establishment of a full tariff in civil non-family matters, and the restructuring and expansion of the existing criminal and family law tariffs.

The Bar's perception of the determination of the NDP to create the LSC, their concern that they not lose complete control over legal aid developments, and their lack of allies in the political arena made them susceptible to compromise. Until September 1974, the Legal Services Division had manifested confidence that

the *LSC Act* could be passed with or without Bar support. But by early 1975, NDP economic and political fortunes were on the decline, and the Government's autonomy of action was seriously undermined. This engendered within the Government a cautious approach to all reform proposals. The support of the Bar became politically expedient, and the *LSC Act* was thus a product of compromise on both sides.

This compromise, however, provided a very weak base for legal aid reform in the Province. No statutory right to legal aid was provided. No agreement could be reached on the method of service delivery or on what was to be delivered. Decisions on these matters were left to the LSC. The two most potentially radical recommendations of the Leask Report were community control and community organization. These concepts were central to all NDP reform initiatives although these elements were never clearly articulated, and definition and clarification was left to the LSC.

The composition of the LSC was also a product of compromise. The Law Society and the CBA were represented on the Commission. The other three members had no clear opinion on the best model of delivery for legal aid. The impact of economic recession was also apparent at this point. The 1975-76 LSC budget was clearly not going to be an expansion budget. A 'hold the line, wait and see' mentality prevailed at the LSC. The vocal minority of lawyers who had supported and helped formulate the Leask Report seemed to fade into the woodwork. A period of stasis began during which the organized, bureaucratically entrenched LAS held sway.

Nevertheless, the NDP's preference for poverty law and aversion to paying public funds to private practitioners continued to be apparent. Funding for the Court Workers was continued, although only limited support was given to CLO's. The criminal tariff was the target of NDP cutbacks.

Although the LAS had opposed the concept of the LSC, once the Commission was established and it was clear that all government funds were to pass through this body, the Society became a leading advocate of integration. The Province was clearly entering into a period of restraint, during which legal aid funds would be limited. The LAS was primarily interested in controlling the body that would be providing funds for legal aid, for it would thus control the direction that legal aid would take.

Efforts at integration were stymied by the emergence of a new legal aid interest group -- staff lawyers. The opposition of staff lawyers to the integration budget proposed by the LAS stemmed largely from their fear of "community control" and the indiscriminate use of paralegals. Their opposition played a major role in delaying the integration of the LAS and the LSC. It was also indicative of the traditional attitude towards legal aid delivery and coverage likely to prevail in their offices.

The formation of legal aid policy was also affected by the historically specific circumstances of the relationship between Bar and Government in BC. The weakness of the Bar as a lobby group did not improve in this period. The organized Bar was regarded with suspicion by the NDP government. Its main strength was that it was the only lobby group -- its program had become well

entrenched and it was serving a legitimation need recognized by both NDP and Social Credit.

Nevertheless, during the period under study legal aid lawyers were never able to command the high tariff rates furnished in other predominantly judicare jurisdictions. This inability to raise the tariff also had an impact on the ability of the LAS to attract lawyers willing to undertake legal aid cases in areas where these cases could not be stacked and made economically attractive. This contributed to the need to establish staff offices in many areas of the Province.

The demography of BC also had a significant impact on legal aid developments. The Court Workers program received the blessing of the Law Society, for it was apparent that there was a demand for these services and a shortage of lawyers in areas outside of Victoria and Vancouver to meet this demand. Paralegals occupied a similar position. Although the number of paralegals was at this point limited, the need and demand for the types of services paralegals offered was so great, and the likelihood of the profession fulfilling this demand so small, that the Law Society did not oppose the expansion of this group. The primary concern of the Law Society was that these groups be controlled by the legal profession

1. The difficulties of newly elected governments in implementing innovative programs have been analyzed in some detail by Seymour Lipset in his study of the Saskatchewan civil service during the tenure of the Co-operative Commonwealth Federation (CCF) government. Lipset, commenting on the crucial role of civil servants in the innovative process, asks the central question: How free are governments to innovate and reform? He points out that:

> The members of the civil service constitute one of the major houses of government, with the power to initiate, amend, and veto actions proposed by other branches. The goals and values of the civil service are often as important a part of the total complex of forces responsible for state policy as those of the ruling political party (Lipset, 1968:309).

It might, in addition, be pointed out that large bureaucracies, regardless of their ideological orientation, are not noted for their ability or willingness to expedite changes. The Royal Commission on Government Organization in Canada commented on the inefficiency, unresponsiveness, and general ineffectiveness of the federal public services, which clearly hinder innovative change (Report of the Royal Commission on Government Organization 1964:101).

2. Discontent with the criminal Legal Aid tariff was heightened even further because, at this time, the Provincial Government was upgrading the salaries of Crown Prosecutors:

> ...$100 a day plus expenses [is] simply not sufficient in this area [Terrace], particularly so, when there have been two recent increases to senior Crown Counsel to $320 or $340 a day. This seems most unfair when you are out of your office for perhaps a week at a time (Attachment to Minutes, LAS, October 5, 1973).

The AD from Dawson Creek stated:

> I regret that unless there is either a revision of the scale of fees paid or some change in the availability of students or young lawyers I am simply going to have to cut back on approval for Legal Aid applications (Attachment to Minutes of LAS, October 5, 1973).

3. The Berger Commission on Family Law recommended changes in the Family Court structure. A United Family Court Project was set up in Surrey and ran for the duration of the NDP term in office (AD Minutes, AD Court, May 4, 1974).

4. In addition to the adoption of a civil tariff, the 60/40 rule was dropped in civil cases where costs were collected. The legal aid lawyer was now entitled to collect the entire amount (Minutes, AD Conference, May 25-26, 1973).

5. The civil tariff in BC was described in 1977 as being the lowest in *any* jurisdiction providing legal aid services (Priorities in Legal Services, 1977:6).

6. Maczko responded that an analysis of DC reports for August indicated a saving of approximately $2,400.

7. The LSD undertook research in the area of legal rights of the handicapped, and co-ordinated efforts with the LAS to provide a lawyer to work with individuals institutionalized in Oakalla Prison, the proposed Willingdon Remand Centre, and the Riverside and Riverview Mental Institutions (JDC Periodical Status Reports, August 1974, Delivery of Legal Services).

8. It would appear that during the tenure of the NDP government these offices functioned to reduce the case load of community and legal aid offices. Although these offices continued to operate through the first term of the Socred administration, they were ultimately disbanded or emasculated by lack of funding. Provision of the services that these offices offered fell on the now seriously curtailed legal aid staff offices or on CLO's (Rankin, Interview, 1989).

Brantingham and Brantingham noted that the closing of these offices portended "further demands on the CLO's and the LSS Branch Offices at a time when the Society was suffering an effective decrease in funds" (Brantingham and Brantingham, 1984:49).

9. This interest was prompted by VCLAS' move into the training of paralegals in 1974. Paralegals were being prepared specifically to assist people with cases before the WCB, UIC, Welfare, and other administrative tribunals (Memo, Maczko to Law Society, re: VCLAS, October 15, 1973). In November 1973, the Legal Support Services Committee of the CBA authorized the production of a position paper on the definition and training of paralegals, the limits of paralegal activity, and the regulation and control of paralegals (November 26, 1973).

10. Maczko's conception of the disrespectful and perhaps disgraceful activities that VCLAS might be free to engage in if it were unfettered by government funds was somewhat vague: "...such as using the media for publicity campaigns" (The *Sun*, October 27, 1972). Maczko also seemed to ignore the fact that it was the *Legal Professions Act* that prohibited such disgraceful things.

11. VCLAS programs and appeals did not lead to any curtailment of its activities during the NDP term in office. The dangers of such activity in less politically favourable times was demonstrated after the NDP fall from power. The new Minister for the DHR, Bill Vander Zalm, was not long in making his opinion of the activities of VCLAS known. In response to a VCLAS report, dated September 1976, that its "Do Your Own Divorce" program had been particularly successful, Vander Zalm asked why the Government was "aiding divorce through this particular Society when...maintenance of these split families is our greatest concern". His reaction to an application for assistance from a Burnaby group seeking to prevent extension of Boundary Road through Central Park suggests that Vander Zalm was unable to see that the matter had any legal aspect at all. Indeed, he seems to have viewed this with suspicion, asking why the group "*suddenly* needs legal representation over a political matter and decision" (Emphasis added). His suspicion was certainly provoked by the news that one lawyer was helping to determine whether a question on the Ministry of Human Resources (MHR) "Employment Profile" form contravened Sec. 7(6) of the BC Human

Rights Code. This, Vander Zalm stated, "is strictly a political 'push'". Assistance in an appeal to the UIC Umpire involving recovery of an overpayment resulting from the UIC's own error had Vander Zalm thoroughly baffled: "How in the world can we directly or indirectly be paying a lawyer to fight for someone who has been overpaid?" Of the VCLAS bulletin as a whole, Vander Zalm's considered opinion was that it was a "bit of garbage" (Vander Zalm to Gardom, November 16, 1976).

12. Lawyers were being offered $12,000.

13. The government salary scale ranged from $12,000 to $15,000 for lawyers with 1-2 years' experience; from $16,000 to $21,000 for lawyers with 2-4 years' experience; and from $22,000 to $27,000 for lawyers with over 4 years' experience (Minutes of meeting in Victoria, April 24, 1974).

14. The Civil Service expanded by 25% in the period 1972-1975, while the population grew by only 10%. In order to rectify the inefficiency resulting from an underpaid and understaffed civil service, the NDP, upon coming to power, increased the salaries of civil servants by 16-25% (Kavic and Nixon, 19782:51).

15. This dissertation does not deal with the Native Court Workers Association (NCA), which refused to be incorporated in this larger body. The NCA would co-operate with the LAS and with the Government, but they felt it was important "that the Association be run by and decisions [be] made by Natives." It was decided to exempt the Native Court Workers Association from the proposed program.

Nor does this dissertation deal with the Native Legal Task Force (NLTF) created in BC in 1975 with the primary objective of delivering legal services to Native Peoples. The NLTF was to "act as a catalyst to existing native communities and native organizations to develop their own program of control" (Morris, 1975:130-132).

16. Opposition to the inclusion of a 'social work' element in LAS activity was expressed by several members of the Board. Tupper felt it was "important to keep clear the boundary between the LAS and social workers. Social workers can make the Society's work more effective, but there is a basic difference in function". Vinge agreed with this sentiment, but he felt that the Court Worker Program should be administered by the LAS: "It will have to be recognized that the Court Worker program will get into the field of social work and paralegal advice, but...society is moving toward the idea of the law and social work profession working together."

17. Legal aid in summary conviction matters was not the only area in which the LAS attempted to fulfil its mandate to cover criminal legal aid matters. The LAS co-ordinated a Prison Program and an embryonic program of assistance to mental health patients, both initiated in 1973. Assistance to clients in these programs came primarily from UBC law students under the direction of Michael Jackson, a UBC law professor. In the summer of 1974, the LAS hired three students to work under Jackson in the prison program. In June, the LAS added an additional lawyer to the New Westminister Regional Office to deal with legal aid in penal and mental institutions (Minutes, LAS, June 22, 1974).

18. In considering coverage of summary conviction matters, the LAS had, to this point, ignored the provisions of the Federal Interpretation Act which deemed all offenses which could be dealt with either summarily or by indictment to be indictable offenses (Ralph to Vickers, July 1974).

19. The appellants argued that they had been denied the *right* to make full answer and defence, a right guaranteed them under the *Criminal Code* and under the "right to retain and instruct counsel without delay" provision of the *Canadian Bill of Rights*. Mr. Justice Seaton, Mr. Justice MacClean and Mr. Justice Taggart, with Chief Justice Farris and Mr. Justice Branca dissenting, ruled that there was "no foundation for finding in this case that a fair trial cannot be conducted in the absence of defence counsel" (*Re Ewing and Kearney and the Queen* (1974) 18 C.C.C. (2d):356-366).

Mr. Justice Seaton was unwilling to accept counsel's reference to *Gideon vs. Wainright* as a precedent for expanding the interpretation of right to counsel as provided in the Criminal Code and the Canadian Bill of Rights. Seaton commented that "*Gideon* represented a broadening of the protection first enunciated in *Powell*, but it was not until *Argersinger vs. Hamlin* ([1972], 407 U.S. 25, 32 L. Ed. 2d 406 at p. 530)" that the full extent of this protection was made clear. In that case, the Court concluded that counsel should be provided *whenever imprisonment was anticipated* (*Re* Ewing and Kearney and the Queen (1974) 18 C.C.C. (2d):364. Emphasis added). Seaton observed that legal aid provisions in British Columbia and the policy adopted in the United States were very close: "The American cases follow this interesting route to approximately the same position Legal Aid has created in this jurisdiction. They lend little weight to an attack upon this position." He argued that it is incumbent upon the trial Judge to ensure a fair trial: "In the past when a trial Judge thought that he could not secure a fair trial without counsel for the defense, he approached the Attorney-General or the Bar. Under similar circumstances today he might contact the Legal Aid Society" (*Re* Ewing and Kearney and the Queen, (1974) 18 C.C.C. (2d):365-66).

Mr. Justice Taggart, a member of the LAS Board of Directors, concurred, emphasizing that the existing policy of the LAS was sufficient to ensure that in all cases where it was deemed that counsel was necessary to ensure a fair trial, legal aid would be granted.

In Chief Justice Farris's opinion, however, a fair trial could not be ensured without assistance of counsel. He pointed out that the criminal justice system was an adversary system. The Crown employs counsel who are trained in the law:

> This means not only trained in the rules of evidence and rules of procedure but knowledgeable in the art of advocacy , in the marshalling of facts and in the case law. The prosecutor not only has this advantage but he has the resources of the State and the power of a police force behind him...In to such an arena two 18 year-old youths are projected, totally unequipped by experience or education to defend themselves against such a powerful adversary (*Re* Ewing and Kearney and the Queen, (1974) 18 C.C.C. (2d):358).

Farris concluded, "In my opinion, it is unrealistic in the extreme to believe that in such a contest these accused can be assured of a fair trial without the assistance of counsel" (*Re* Ewing and Kearney and the Queen, (1974) 18 C.C.C. (2d):359). Nor did Farris believe that the assistance of the trial judge was an adequate substitute for counsel. It was not, after all, "the function of a trial Judge to act as counsel for either party. Further, without briefing, interviewing of witnesses and preparation, the benevolence of the trial Judge cannot be equated with the dedication of counsel" (*Re* Ewing and Kearney and the Queen, CCC (2d):359).

In sum, Chief Justice Farris's opinion was that a fair trial could not be ensured without representation by counsel; hence, accused persons had a right to counsel provided by the State if they were unable to engage counsel themselves (*Re* Ewing and Kearney and the Queen, CCC [2d]:358).

It is clear from the commentary of Justices Seaton and Taggart that legal aid was seen as the guarantor of the right to counsel in British Columbia. In threatening to sue the Provincial Government, and possibly the LAS, VCLAS was moving to ensure that this right was given the broadest interpretation possible.

It is interesting to note that the judiciary was just as reluctant as the Federal Government to make any decisions that would require heavy expenditure by the Provinces. As Leon points out the principle compelling interest is "essentially of a monetary nature" (Leon, 1977/78:46-47). Black's summary of the case, however, surmises that the Court's reluctance to declare a broader right to counsel "may reflect an almost automatic reaction against recent demands that Canadian Courts assume a more activist role" (Black, 1975:78).

20. Leon has also taken issue with the claim, stating that "there are limits to such a contention which depends on the differences between a constitutionally guaranteed right and a discretionary power available to a judge or to legal aid personnel" (Leon, 1977/78). This, however, is not to imply that the American system is necessarily any more successful in establishing equality before the law or even equal access. The rapid extension of right to counsel in the United States led to increased demands for publicly funded legal assistance. As Krantz *et al.* (1976) suggest, "the result may be characterized by 'token compliance'. Differing notions of adequate representation led to an increasing use of waiver of counsel, disparate indigency standards and the appointment of inexperienced counsel" (Krantz *et al.*, 1976). The Miranda Rule's effectiveness in deterring illegal police action has also been questioned (Leon, 1977/78:39).

21. The AG also appointed Joe Mathis, Chief of the Squamish Band, as special consultant on Native matters.

22. These included such projects as the Judges' Chambers Collection-Acquisition for the Provincial Court Judges' Libraries throughout the Province; Central Library Services, which developed a management plan for all the libraries in the AG's Department; and Consolidated Regulations, which compiled and consolidated all the regulations issued in BC under the BC Statutes. Admittedly, these were all short-term projects, but they did require staff and expenditure of time and funds by the Commission.

23. CLO's continued to suffer from this lack of focus and attention. One of the first steps taken by the LSC when the Social Credit imposed budget restrictions was to cut back on administrative support for CLO's. In the late summer of 1976, a group of CLO's got together to form the Association of British Columbia CLO's. Morris feels that it was undoubtedly the failure of the LSC to provide an effective means of communication that led to the decision to set up this association (Morris and Stern, 1976:45).

24. The original suggestion that BC apply for CAP funds would appear to have come from Roland Penner, Chairperson of Legal Aid Manitoba. At a conference on legal aid developments across Canada, held by the JDC in June 1974, Penner commented:

> There is a way in which you can get into the Federal purse that we have been employing in Manitoba and I really ought to tell you about it in case the word gets out, and that is we entered into an agreement with our Health and Social Welfare pursuant to which that Department pays us back anything that we expend for anyone in receipt of the Provincial Welfare within the civil field, and then we bill the Federal Government as part of the cost-sharing agreement. That way we get our own back in part from the Federal purse in civil legal aid (JDC, Developments in Legal Aid Conference, June 28, 1974).

25. In April, Ron Basford, the Federal Minister of Justice, indicated that more flexibility would be allowed in regard to types of offenses covered and coverage for serious indictable offenses. There would, however, be no funding over and above the universally negotiated $0.75 per capita (Minutes, LAS, April 28, 1976). The extent of coverage under the terms of the FPA was announced in early May. Ottawa increased its *per capita* share of legal aid costs to $0.75. Coverage remained as before, but Crown Counsel were instructed to make use of the discretion provided in the 'optional' offenses of the Criminal Code. More specifically, where there was an option to proceed in either summary or indictable fashion, Crown Counsel were to proceed by way of indictment only in exceptional circumstances. One major request of the LAS and the BC Government, that the choice of counsel be limited to offenses for which the minimum penalty was life imprisonment, was met in the Agreement. The Agreement was also amended to allow provinces to define the circumstances under which a person would be ineligible for legal aid, either by reason of being charged for an offence the same as or similar to one for which they has previously been convicted or by reason of the total amount of legal aid the applicant had already received. The provinces were also given discretion to deny services to non-residents of Canada (Vickers to Ralph, August 19, 1976). The Agreement was to cover the period between April 1976 and May 1977.

In announcing the Agreement to the Press, Vickers focused on the issue that had generated the most negative publicity: "Justice officials have called a halt to the courtroom spectacles in which batteries of Legal Aid lawyers defend suspected drug conspirators at taxpayers' expense" (Prince Rupert Daily News, May 4, 1976). What had actually happened was that the Federal Government had drastically

lowered the minimum level of legal aid coverage required by the FPA. The demand for legitimacy in the Criminal Justice arena was not sufficiently pressing to protect it against demands for restraint. It is difficult to know if this willingness to sacrifice at the federal level was prompted more by an interest in keeping all provinces in the Federal Agreement and thus preserving a modicum of uniformity across Canada or simply by a desire to save money.

As a result of the Federal-Provincial negotiations, it was now possible to deny legal aid in almost all summary matters and in all cases involving charges against repeat offenders. All non-residents could be refused legal aid, except in extradition matters (Vickers to Ralph, August 19, 1976). The minimum right to counsel that the FPA had been designed to ensure had been seriously discounted.

26. Although no official declared a 'freeze' on civil service hiring until September 1975, the Treasury Board had since February refused all appeals for new hiring.

27. In March 1975, funds were pledged to the Abbotsford Legal Advice Clinic for the period April 1, 1975 to March 31, 1976 (JDC, PSR, LSD, March, 1975).

28. In the 1975 Annual Report of the AG's Department, Vickers commented on the impact of this freeze:

> Every part of the Department was badly affected in 1975 by Treasury Board directives dealing with staff hiring levels. Inability to replace personnel and restrictions placed on developing programs placed a heavy strain on employees. Control initiated by an insensitive bureaucracy and administered without any appreciation for the nature of programs and Government priorities can only have a disastrous effect. That was the case during the past year and all component parts of the Attorney-General's Department suffered alike. Those engaged in growing and expanding programs in the administration of justice...were particularly disrupted (Vickers, AG Annual Report, 1975:9).

29. According to Ekstedt, the Co-ordinated Law Enforcement Unit (CLEU) was formed for the "detection and reduction of organized crime in the Province" (Memo, Ekstedt to Allerson, August 5, 1975).

30. The Government's response to the increasing cost of the tariff focused on drug offenses. Their concern was not so much the increasing number of charges, but rather the increasing cost of defending cases. The activities of CLEU brought an increase in the number of drug *conspiracy* charges. The increased use of wire tap evidence, which was permitted by amendments to the *Criminal Code*, resulted in the amassing of 200-500 hours of wire tap evidence in each case, all of which the court had to hear both at the preliminary hearing and at trial.

An additional cost factor was the life sentence attached to conviction on a conspiracy charge. This, according to the FPA, entitled each defendant to choice of counsel. This in turn created situations in which several legal aid lawyers would defend individual clients on one conspiracy charge.

The LSC estimated that it could easily cost the Criminal Legal Aid Tariff $1,000,000 to handle each of these cases. It should be pointed out, however, that the Government's reaction to the increasing cost of the tariff and the role that drug cases were playing in this was one of anticipation rather than experience. Bills from the large drug conspiracy cases were not likely to come in until the 1976/77 fiscal year.

31. The LAS had from its inception, been concerned about the possibility that lawyers might be able to make a living off of criminal legal aid cases, and whether or not the number of cases referred to a lawyer should be limited was a matter of continuing debate. When the subject was brought up at the LAS board meeting in August 1975, it was pointed out that in Ontario a limit was placed on the number of cases a lawyer could take in any one year. The opinion was expressed, however, that as long as the lawyer was doing a good job, how much individual lawyers made should not be a matter for concern (Minutes, LAS, August 19, 1975). This marks a subtle shift in the attitude of the LAS towards the creation of a criminal legal aid bar.

32. The lawyers in one of the regional offices carried this penchant for efficiency to an extreme, refusing to represent clients who would not plead guilty (*Campbell River Mirror*, April 16, 1976).

33. A semantic distinction was made between offices that employed full-time lawyers, which were designated Community Law Offices, and those that were staffed only by paraprofessional workers, which were designated Community Legal Information Centres (Qui Bono, 1976:18).

34. Bodies funded by the LSC contracted annually to provide specified services, although by the end of 1976 the LAS had still not signed an agreement with the LSC.

35. This failure to engage in group organization was one of the major criticisms of CLO's put forward by Pauline Morris, who had been commissioned by the LSC to evaluate the CLO's and the LAS (Morris and Stern, 1976).

When cutbacks were imposed by the Social Credit Government, the decision of the LSC, presented as an austerity measure, to have CLO lawyers handle tariff matters further muted the differences between CLO's and LAS regional offices in matters of coverage (Interview, Jabour, 1990).

36. Some offices had been advocating the upgrading of secretarial staff to paralegal status.

37. As Laurie Henderson has pointed out, one of the major problems facing paralegals during this formative period was "their lack of any kind of legal status" (Henderson, 1985:26). If the *Legal Professions Act*, which prohibits the practice of law by anyone other than a member in good standing of the Law

Society, were strictly interpreted, most paralegals, by simply performing the work they were hired to do, would be in constant violation of the *Act*. The Law Society, however, did not react to what would appear to be a blatant violation of the *Act*. Gold has argued that this was related to the fact that:

> ...the areas of activity engaged in by these persons are not areas that lawyers consider as their 'bread and butter'. In most cases, paralegals working in community law offices can rely on the 'piggyback' authority of 'delegation' so far as their legal tasks are concerned and the tacit recognition of their legitimacy as far as their advocacy role is concerned (Gold, 1979:81).

Henderson states that "the only defense available to paralegals, if one of them had been prosecuted for violating the *Legal Professions Act*, would have been their status under the supervision of lawyers" (Henderson, 1985:31). This was viewed as "a Sword of Damocles suspended over the heads of both paralegals who attempt any sort of comprehensive case services, and their consulting lawyers" (Welsh, 1977:26). If lawyers were to be held liable for the activity of paralegals, they were not willing to relinquish any measure of supervision or direction of these individuals to community boards.

38. This did not, in fact, take place until 1979, when the Legal Services Society was formed.

39. Meredith has specifically mentioned the coverage of poverty law matters in his 1969 description of the activities that the LAS would undertake.

CHAPTER VII

IMPLICATIONS AND SUGGESTIONS FOR FUTURE RESEARCH

A. An Overview

This study has presented a modified structuralist interpretation of legal aid reform. Its began with the premise that, while structural considerations are important in an analysis of the origins and implementation of reform, a structuralist approach which focuses on how the structure of the capitalist state brings about and limits reform activity is unnecessarily restrictive. A more complete understanding of the reform process can be gained by situating micro-level findings of interest group interaction and other pluralist-based arguments within the larger design of a modified structuralist approach.

The impact of the structural limitations of the State on legal aid reform in Canada has been studied by Snider (1986); the impact of human agency, and in particular the interaction of interest groups, has been studied by Hoehne (1985). As a basis for this study, these two levels of analysis were integrated and expanded to provide a more comprehensive approach to analysis of legal aid reform in the Province of British Columbia. The purpose of the analysis was to move toward a determination of how reform works its way through the system; answers to such questions as whether the reforms themselves work, why they do not, or how reforms might be implemented more effectively may be implicit among the findings, but they were not the focus of the study. Matters addressed

directly include the impact of structural considerations on the process of reform; the impact of human agency; how these factors interact to bring about the 'final product'; and the process that led to the creation of the LSC.

B. Contributions to the Legal Aid Literature

The process of this analysis revealed a number of possible explanations for the evolution of criminal and civil legal aid programs under one administrative umbrella in BC. It elucidated the process through which the 'mixed' model of legal service delivery has evolved in the Province, and at the same time revealed how the Canadian legal culture has contributed to a comparatively less politically active CLO program in BC. The analysis helped to a clarify the concept of 'policy community' as it has evolved in relation to legal aid in BC, and shed some light on the 'potential' social control function of legal aid.

1. Evolution of Criminal and Civil Legal Aid

Criminal and civil legal aid did not develop under separate administrative umbrellas in BC as they did in the US and Britain. This would appear to be attributable to the late entry of government funding into the area of criminal legal aid. In other states, government intervened early to provide funding for criminal legal aid, and in consequence, criminal legal aid became the administrative responsibility of the courts. In BC, criminal and civil legal aid developed and remained unified under the administration of the Law Society. When state funding for criminal legal aid did become available, this unified structure was retained.

The tardy development of state interest in legal aid funding at the federal level is attributable, in part, to the constitutional division of power over criminal law administration in Canada. Just as split jurisdiction over Health and Welfare delayed the implementation of social welfare legislation, so too the split jurisdiction over civil and criminal legal aid created an excuse for 'nonintervention' in the provision of criminal legal aid. When federal interest in the provision of legal aid was piqued by the increasing social and political unrest of the late 60's and early 70's, funding was approached cautiously because of the delicate nature of federal-provincial relations. At the provincial level, the late development of state-funded criminal legal aid can be attributed to the eagerness of the profession to meet the need for assistance without requesting state funding.

2. The Mixed Model in BC

By 1975, legal aid delivery in BC resembled the statist 'mixed model' of reactive poverty law/traditional legal aid delivery that had evolved in other jurisdictions. The literature commonly attributes a repeated pattern in the development of legal aid systems: the distinct timing and separate evolution of state-funded, traditional, and social welfare/poverty law legal aid programs; the often stormy political reaction to 'making rights effective' models; and of the gradual melding of these two programs into a 'mixed' program of legal aid delivery. No such clear evolutionary process took place in BC.

The legal aid delivery system in BC had three sources. The tradition-oriented LAS and the 'making rights effective' oriented VCLAS sprang up simultaneously. The State's response to the 'discovery' of poverty was to fund a traditional, criminal legal aid oriented model of delivery, not, as in so many other states, a civil oriented legal aid delivery mechanism. VCLAS received funding from the Community and from the Federal Government. VCLAS and the LAS formed a comfortable working relationship from their inception. The activities of VCLAS did not impinge on the activities of the LAS or of private practitioners. VCLAS was closely affiliated with the UBC Law School, and as a consequence devoted much of its energy to academically approved activities such as law reform and test case litigation, functions which the organized Bar saw as legitimate for lawyers, and which were not carried out so aggressively as to raise the ire of politicians.

When it became clear to an NDP government, that the LAS would not serve as a vehicle for expansion of the poverty law model of legal aid to areas outside of Vancouver, yet a third delivery model, the CLO, was developed. Even though they involved such concepts as community organization and community participation, these programs never met with the type of political opposition that they encountered in Ontario, England and the US. This was primarily because these concepts were never fully put into practice. Before the CLO community could become properly organized, the NDP was fighting for its political life and did not have the time or energy to encourage groups that might well attract yet more political opposition.

The recession also took its toll. Cutbacks in the criminal tariff placed more pressure on regional staff offices; civil cases were given even lower priority. CLO's attempted to deal with the overflow of civil cases and curtailed other activities. Inundated with individual cases, the few CLO's that were politically oriented soon suffered the fate of their equivalents in other jurisdictions. The entrenched ideological impulse of lawyers to fill the individual needs of their clients overwhelmed the call of less powerful groups for political organization. Although the process was different, the fate of poverty law in BC was the same as its counterparts elsewhere.

3. Influence of Legal Culture

Part of the explanation for the conservative, individual case orientation of CLO's and VCLAS lies in the legal culture. The politically controversial use of law reform to force governments to recognize welfare rights and to bring about social change was limited in BC, although not completely stifled, by a legal culture imbued with the British traditions of *stare decise*, parliamentary supremacy, and judicial restraint. The small amount of law reform attempted through the courts (e.g. *Ewing Kearney vs. The Queen*) tended to focus on criminal matters, not on enforcing or creating welfare rights.

Law reform activity was further restrained by the existence of the BC Law Reform Commission, a conservative body with no direct community contacts whose main objective was, nonetheless, to promote reform of the law and legal institutions. This body could act at the request of the AG or could undertake studies on its

own initiative. The traditional orientation of this body precluded consideration of poverty law and welfare rights issues.

The only apparent change in the legal culture of the organized Bar was their growing acceptance of the concept of government funding of legal services. There was no acceptance of the idea that the law should be proactive or that welfare benefits were rights that could be enforced with the assistance of legal aid. The LAS maintained a traditional orientation and developed a reactive delivery mechanism.

4. Delineation of the Legal Aid Policy Community in BC

The impact of the attentive public on legal aid policy formation was, for the most part, slight. Legal aid clients had no voice through which to express concerns about legal aid policy. Their needs were defined by the LAS or VCLAS, and were met almost entirely by lawyers or lawyers in training. In the mid to late 60's, the BC Civil Liberties Association and the John Howard Society campaigned strenuously for legal aid innovations. Their briefs and presentations were noted by both Federal and Provincial Governments. These groups were the first of those not affiliated with the legal profession to advocate legal aid reform. This type of lobbying, in conjunction with agitation from church groups and welfare rights groups, lent ammunition to the Law Society's request for funding and gave credence to the need for legitimating action in this area.

The Press also played a role, in conjunction with the desire of the organized Bar, throughout this period, to enhance its public image. The opposition to the introduction of the VBA's five-year rule served ever after to remind the Bar that its public image was fragile, a problem of which it was already aware. The stance of the Bar on legal aid was taken with one eye to public response. The outburst of public indignation over the five-year rule may also have served to convince the Bar that narrowing the definition of eligibility could no longer serve as a means of restricting service. The only way out of this impasse was to accept the principle of public funding. This outburst of indignation in the Press would also seem to indicate a shift in the attitude of the public towards the provision of criminal legal aid to the indigent. When criminal legal aid was inaugurated, it had little public support: in 1963, cutbacks were an anathema.

The impact of various members of the 'sub government' policy community varied greatly. The role of Federal Government in the evolution of legal aid policy in BC is difficult to determine. Government funds received by representatives of the poverty community in BC in the late 60's and early 70's undoubtedly served to increase public awareness of the plight of the poor. It also undoubtedly lent much to the popular support both VCLAS and the LAS received in this period.

The effect of the FPA on legal aid policy development is equally difficult to discern. This agreement was signed by an NDP government already committed to sweeping reform. The money the Provincial Government would receive in the criminal law area may have given an additional boost to the enthusiasm with

which the AG pursued expansion of regional offices, and may also have been a contributing factor in the decision to grant a family law tariff. It is unlikely, however, that a government as intent on reform as that of the NDP would have otherwise refused to consider expansion into these areas. The role of the FPA would seem to be more significant in that it established a minimum below which criminal legal aid could not fall. As such, it did not, in this period of expansion, play a major role.

CAP was another potential source of Federal funding. The BC AG's department was aware of this possibility. Brewin intended to use CAP funding to expand the civil legal aid program. His plans were scuttled when the NDP fell from power, and CAP funding was not pursued by the Social Credit Government with any enthusiasm.

The role of government departments, other than that of the AG, in promoting legal aid reform was minimal. Under the NDP, the Department of Consumer Affairs funded the consumer-oriented activities of some CLO's; otherwise, legal aid in all its aspects was primarily the concern of the AG's Department. Treasury Board input was also limited. Under Social Credit, the Board passed all warrants for legal aid expenditures over the budgeted amounts without apparent concern. Vickers' comment on the impact of the Treasury Board freeze on civil service hiring near the end of the NDP term of office, however, indicates how dramatic an effect decisions made by the Treasury Board could have in all areas of policy formation.

Until the NDP took office in 1972, the AG's attitude toward the legal aid program was to have as little to do with it as possible. When the need for legitimation demanded government input, the Social Credit Government responded grudgingly, always striving to keep their contribution to a minimum. But even if its policy was one of benign neglect, the influence of the AG's department on legal aid developments was paramount. The amount of money the Government was prepared to put into legal aid shaped its boundaries from the beginning. The action of the VBA in implementing *criminal* legal aid made this the focus of legal aid programming. Criminal legal aid was entrenched as the moving force of publicly funded legal aid when the Government established a criminal honorarium in 1964. Government parsimony forced the legal profession to contemplate a staff office approach to legal service delivery because it was more cost effective: an unfettered judicare system was not a viable alternative in BC. Government largesse permitted the expansion of regional offices and the creation of a civil legal aid tariff. Government initiative introduced poverty law to areas outside of the urban core. When forced to impose restraint on legal aid spending, the NDP did so in accordance with their policy of expanding accessibility to civil legal aid. The criminal tariff was cut, while funding for court workers, regional offices, and CLO's was maintained.

However, within the boundaries shaped by the funding proclivities of the Government, Bar participation in legal aid fits the overall description in the literature (Garth, 1980; Hoehne, 1985). The Bar played the major role in shaping legal aid reform, for motives which mirror the findings in the literature (Hoehne, 1985; Blankenburg, 1980). The profession was concerned with duty, public image, the importance of such concepts as equality and due process,

and a need to control the implementation of legal aid reform. Once public funding of legal aid was established, the profession became concerned with maintaining the judicare model of delivery. In BC, the Bar did not openly argue for this model, as it was felt that this would be seen by the public as self serving. Rather, the Bar's preference for judicare manifested itself in support of the traditional concept of legal aid and the creation of a civil tariff to meet a growing demand for coverage in family matters. Moreover, a shortage of lawyers willing to take legal aid cases for the low tariff offered led to an early acceptance of the need for staff offices. In BC, as elsewhere, the profession was unprepared to deal with non-traditional matters. The Bar never actively opposed the coverage of poverty law matters; they merely gave them a lower priority than traditional matters. The area of poverty law could be dealt with once the demand for traditional coverage was met. As the decision to expand into summary conviction matters demonstrated, this demand could be insatiable.

However, contrary to Hoehne's depiction of lawyers as the quintessential lobby group, a portrait based in part on the placement of its members within political institutions and thus in positions from which relations between government and the Bar could be influenced, there were very few lawyers in either the NDP or the Social Credit Government. Many of the lawyers who were within the political structure did not adopt the role of Bar advocate. Some of the most cynical statements about lawyers came from such individuals. Deputy AG Kennedy and Ag Macdonald accused legal aid lawyers of stacking cases to maximize profit; AG Peterson laid the blame for the backlog in the courts at the feet of the

profession. Both NDP and Social Credit Governments distrusted the organized Bar, and this seriously undermined their bargaining position.

The literature also emphasizes that the Bar does not act as a monolithic group (Hoehne, 1980; Johnson, 1978). This holds true for BC. The legal aid policy community included many factions of the organized Bar and, as legal aid developed, a diversity of legal aid delivery groups. The major groups with an interest in the formation of legal aid policy in the early years were the Law Society, the Criminal Justice Subsection of the CBA, the Law Foundation, the LAS, and VCLAS. Until the formation of the Leask Commission, there were no major clashes among these groups. The Leask Commission and the organization of the LSC signalled the formation of a new, and potentially more powerful, interest group: a child of government bureaucracy. It is at this point that the true power of the LAS as an interest group is revealed- not as an advocate of reform, but as an opponent of reform that would direct the legal aid dollar away from the profession. Out of this struggle emerged yet another interest group: not, as in so many other jurisdictions, a group of individuals ready to fight for the maintenance of judicare, but a group of staff lawyers ready to oppose any model that might imply loss of control for the regional office staff. The emergence of this group greatly curtailed the freedom of action of the LAS administrative bureaucracy.

The consistent opposition of the Bar to NDP reform outside of the area of traditional law minimized the impact of such reform. The Bar was aided in this opposition by a turn in NDP political fortunes, and ultimately by the NDP's fall from power. This period of policy formation in BC was dominated by the

interaction of, and bargaining between, the AG's department and the Bar. The attentive public created a climate favourable to expansion, and the Federal Government gave strong backing.

5. Social Control

The potential of legal aid as a method of social control and integration is extensively commented on in the literature (Garth, 1980; Carlin, 1973; Johnson, 1980). Structuralists argue that the reform ideology behind legal aid program - the necessity of free and equal access to the Law - atomizes the subordinate classes by individualizing their needs. Group action is discouraged; the need for group organization is obviated; the potential for problems to become political issues is eliminated. Shared problems become private strivings to secure individual rights. The potential to resist the logic of atomization is reduced. This potential has always been clear in BC. The utility of legal aid programs as social control mechanisms was a major argument for legal aid reform put forward by both the LAS and VCLAS. In BC, this social control function was enhanced by the reluctance of either the LAS or VCL/AS to engage in activities that would foster or support collective action of a political nature. The success of legal aid programs as devices for social control is difficult to measure. That social control was an argument frequently put forward in promoting and supporting programs is, however, difficult to reconcile with the pluralist interpretation of social control as an 'unfortunate side effect' of legal aid programs. It is equally difficult to accept Gough's argument that

the function of reform can tell us nothing about their origins. Rather, it must be recognized that legal aid reform originated, in part, in a need to enhance social control mechanisms, and that social control is part of the intent of such programs.

C. Contributions To Analysis of the Political Economy of the State

This study contributes to the literature that examines the political economy of the State, specifically as it touches on a modified structuralist interpretation of the welfare state. The origins, potential functions, and limits of reform were examined in detail as they apply to legal aid reform in BC. The analysis revealed much about how human agency acts within the structural limits of the State to encourage or retard specific reform initiatives. It also yielded a clear indication of the limits within the state can function; that is, its *relative* autonomy.

1. Autonomy of the State

Much has been said about the relative autonomy of the State within the structuralist perspective. The State is allotted a potentially considerable role as an independent source of power. It is argued that this autonomy is relative, increasing and decreasing with specific historic conjunctures and limited by the need ultimately to ensure capital accumulation. Little attention has, however, been given to exactly how autonomous the State is, or to how and under what circumstances this autonomy is curtailed. Rachert (1990) has

recently undertaken an analysis of welfare fraud during the tenures of the Social Credit and NDP governments. He argues that the ideological orientation of the Social Credit Government was so closely linked to the capital accumulation demands of the governing class that it is difficult to discern relative autonomy of action. This is not borne out by this study. Both the Social Credit demise in 1972 and the NDP demise in 1975 provide examples of the relative autonomy of the State, as represented by the government in power, curtailed by the structural limits set by a capitalist economy's need to accumulate. From the late 60's until the fall of the Social Credit Government in 1972, there was increasing awareness among members of the governing class that the "class bias of the prevailing legal system [had] become both obvious and embarrassing" (Snider, 1986:224). The Social Credit Government, however, was insufficiently flexible to initiate or accept reform during this period. As a consequence, the social stability that is a prerequisite of capital accumulation was threatened.

The State under the Socreds was not protecting the interest of capital as a whole; it was not creating conditions conducive to capital accumulation; it was not creating unity out of dissent; and it was not ensuring consent to particular policies. Lack of reform was undermining the long term need of the capitalist mode of production for accumulation. A change in government brought about the necessary conditions for reform.

When the NDP came to power, they had a great deal of autonomy in implementing their reform package. Political opposition was in disarray, the economy was strong, and there was a clear sentiment among elements of the governing class

in favour of reform that would ameliorate the condition of the poor, if only for the protection of the prosperous. The NDP, however, went beyond this consensus for reform and initiated and implemented measures that were perceived as a direct threat to the accumulation function of capital. This threat became more potent with a downturn in the economy. The reaction of the governing class to this assault on the long term interest of capital was overt. Capitalist money flowed into Social Credit campaign coffers. The NDP were ousted from power. The Social Credit Government was returned as a bulwark against the socialist hordes. What is of most interest is that legal aid reform never became a focal point of opposition protest, although legal aid reform did fall victim to the general backlash.

2. Origins of Reform

Gough has commented that the function reform ultimately serves tells us nothing about the origins of reform or how reform is implemented. It might, however, be argued that function and origin are more closely connected in the case of legal aid in BC. The need of the legal profession for legitimacy, for example, is a reflection of the State's need for legitimacy. Lawyers are officers of the court: if their legitimacy is called into question, so too is the legitimacy of the justice system. As the major motivating force behind the Law Society's demands for reform, up to the incorporation of the Legal Aid Society, was a need for legitimacy, it would appear that the origins of legal aid reform in the Bar's need for legitimacy and the ultimate function of legitimating the justice system were one and the same.

The other focus of reform initiative that has been identified in the literature (Snider, 1986; Abel, 1985; Hoehne, 1985) is state action. Structuralists and pluralists both argue that the ideological make-up of the party in power can significantly affect initiatives for legal aid reform. Structuralists further argue that government support for reform stems from the need to control such reform. The conservative nature of legal aid reform under the Social Credit Government seemed to obviate any open move to control reform: sufficient control was exercised through fiscal restraint. The NDP Government, however, brought a different attitude towards legal aid reform, expanding funding, prompting expansion, and encouraging new approaches. The reluctance of the organized Bar to engage in non-traditional legal aid made control an issue. The creation of the LSC was an overt attempt to control the direction of legal aid reform in the Province. Legal aid reform under the NDP was certainly a product of state action, and this action in its later stages was definitely directed at controlling the pace and direction of legal aid reform.

It is clear that legal aid reform has not arisen out of class consciousness or class struggle. Such reform is therefore likely to be highly functional in meeting the needs of a capitalist state. The questions are, how did legal aid perform a legitimating function? For whom was the State legitimated? And does legal aid serve any but a legitimating function?

3. Function of Reform

Gough has stated that the fact that some action is required to modify the reproduction of labour power or to maintain the non-working population tells us

nothing about whether or not the State will fulfil this function or the nature of the response. In the case of legal aid in BC, it was the organized Bar that first responded to the need for legitimacy. The Government was not pressed to introduce reform, but acted to assist the Law Society when the demand for service outstripped the charitable inclinations of individual lawyers.

The discovery of poverty and the social agitation that accompanied it exposed the gap between the ideology of equality before the law and the reality of the individual injustices suffered by the poor. In a period of crisis of legitimacy, when government proved incapable of taking the initiative in reform, the legal profession filled the breach, acting to expand legal aid coverage and legitimate the State by reinforcing the ideology of equality, individual justice, and the importance of the individual. Legal aid reform can thus be seen as a means of permeating capitalist ideology throughout society. How effective this permeation was is open to question.

It is clear that the Government, the Bar and other elements of the governing class put a great deal of faith in the ability of expanded legal aid coverage to bring increased legitimacy to the State. In that legal aid was often out of reach because of the stringent eligibility requirements, it is unlikely that this reform legitimated the State in the eyes of the workers, and given the lack of any voice to speak for those most likely to benefit from this reform, it is unlikely that the State was legitimated in the eyes of the legal aid client. It is at least arguable that those who contend that legal aid legitimates the State only in the eyes of the governing class are correct. But this would appear to be an area in which additional research might serve to clarify.

Legitimacy was not the only function served by legal aid reform. It is possible that, as Gordon (1983) and Abel (1985) have suggested, legal aid reform can function to counter the coercive action of the State. The City of Vancouver's response to the 'youth problem' and the Social Credit Government's response to the 'welfare problem' were coercive in the extreme. Yet both governments were at the same time contributing to the expansion of legal aid coverage: Vancouver by making contributions to VCLAS, the Social Credit Government by expanding the funding of criminal legal aid.

At the same time that legal aid countered the growing coercive action of the State, it also served a social control purpose. In fact, its utility as a form of social control was one of the major arguments put forward by the LAS for expanded government funding of legal aid. It was also emphasized that this social control function could be performed at little additional cost to the Government.

4. Impact of Human Agency

The impact and importance of human agency in promoting and shaping reform is apparent in this analysis of legal aid reform in BC. The organized Bar, individual actors and members of government bureaucracies all played a significant role in shaping legal aid reform. The actions of Harper as chairperson of the LSLAC in the mid 60's retarded legal aid development in its early stages. His successor, Meredith, brought a renewed vigour to the quest for expanded legal aid coverage, and through the development of the Law

Foundation as a funding source for legal aid administration broke down a great deal of the resistance of the more conservative elements of the organized Bar to expanded public funding of legal aid. Meredith and Maczko had a firm belief in the duty and obligation of the Bar to provide legal aid coverage to the indigent. It has always been assumed that there would be a substantial charitable contribution by lawyers to any legal aid delivery system.

The organized Bar served as the focal point of legal aid development throughout the period under study. The early development of a criminal legal aid component, and the success of this program in terms of client-generated demand, created the 'image' crisis that pushed the Bar to support public funding of legal aid. It was the Law Society's consolidation of criminal and civil legal aid delivery under the administration of the LSLAC that ultimately led to unified administration under the LAS. The creation of the LSD division of the JDC under John Brewin produced a strong advocacy group for CLO's and an expansion into poverty law that would not otherwise have occurred. It was the animosity between Bar and Government under both Social Credit and the NDP that limited the development of the delivery of either traditional or poverty law. The interaction of human agency had a significant impact on the development of legal aid in BC.

5. Limits of Reform

The major limitations of reform in a capitalist state have been identified by Gough as the constant need of monopoly capital to accumulate and the ideology of modern capitalist states.

a. Accumulation

Legal Aid reform did not threaten the accumulation function of capital; indeed, legal aid always served a useful social integration function. But when other actions of the NDP Government threatened capital, and when the focus of capitalist criticism became the apparent inability of the NDP to control finances, legal aid, as a program that was increasing in cost, fell victim to restraint.

The demise of legal aid reform initiative also demonstrates the operation of the structural constraints imposed by the global economy and the place of each country within that economy. The highly functional nature of legal aid reform, and the lack of political opposition to such reform, would seem to argue for expanded state support of legal aid. The crisis in the world economy brought about in 1974 by the escalating cost of energy stagflation had a significant impact on BC's resource-based, foreign-dominated economy. These economic developments had a significant impact even on an NDP government dedicated to an interventionist policy.

A period of economic expansion was not sufficient to push extensive legal aid reform on a primarily residualist government. It would appear that either an overt and obvious need for legitimation or an ideological commitment was necessary to convince the State to take any initiative. However, a downturn in the global economy was sufficient to overrule ideological commitment and call a halt to reform initiatives.

When we look at the impact of the economy at the micro level we also see a marked influence. Conflict between CLO's and the LAS would probably not have come to a head if the economy had not experienced a downturn and if restrictions had not been placed on the legal aid budget. The LAS and CLO's had been able to live with one another just as the LAS and VCLAS had - it was competition over the legal aid dollar that generated dissent within the legal aid community.

b. Ideology

In BC, legal aid initiatives were almost completely formed by a moderate interpretation of the pluralist views that the State is indeed a neutral arbiter of disputes. The ubiquity of pluralist assumptions about the State is one of the major factors limiting legal aid reform. Conceptualization of the problem and potential solutions to it were indeed limited in BC by these assumptions. The approach of legal aid reformers focused, as Alcock suggests, on the use of law as a mechanism for "maintaining social order, defining problems and preventing social disorder" (Alcock, 1976:139).

This activity was in turn based on the pluralist assumption that "the law is independent of any conflicts within society and that there is a consensual agreement upon the use of the legal system to provide solutions to social problems" (Alcock, 1976:158). This presupposes that significant social conflicts will inevitably take a legal form.

It is argued in the structuralist literature that even the more radical pluralists, who do not agree that the law is independent of the social structure, nonetheless see the legal process, buttressed by cross-group social organization, as a viable vehicle for reform. The presence of *radical* pluralism has not, however, been detected in the BC context. Establishing cross-group social organizations was considered to be a political activity beyond the realm of actions of lawyers.

The concepts of equality before the law and due process also played a role in limiting legal aid reform in BC, a point of irony, for this countered another of the major underlying assumptions of pluralism: the importance of the role of interest group conflict. The ideology of equality and due process emphasizes the importance of the individual and the atomizing character of law. Legal aid clients were not seen as class members, but as individual citizens with individual rights as opposed to group rights: conflict was thus individualized. Collective action was fragmented and channelled into the system.

The residualist mentality of the Social Credit Government, and the impact this had on limiting and controlling the evolution of legal aid in BC has been commented on. The impact of the interventionist ideology of the NDP was most apparent in the formation of CLO's and the creation of the LSC. The scope of this interventionist ideology was not, however, sufficiently broad to encompass advocacy of a social-welfare-oriented model of legal aid as defined in chapter III (p 104). Although the focus of the NDP's plans for reform may have been blurred, it seems apparent it was never their intention to introduce such a model. Although variances among ideological orientations did produce a

different focus for legal aid reform and a different delivery mechanism, both systems functioned within the constraints of a moderate pluralist interpretation of the State.

The limiting effect that the ideological orientation of the organized Bar had on legal aid has also been delineated. Even with LSD support, the CLO movement in BC was unable to overcome the conservative, tradition-bound orientation of the Bar. Sullivan's (1971) conclusion in regard to American NLF's holds true in BC: CLO's focused on reactive provision of primarily traditional services.

6. Historically Specific Circumstances

The importance of historically specific circumstances has been noted both by academics undertaking comparative research in the pluralist tradition and by neo-Marxists. Some of the most notable historically specific circumstances to affect legal aid development in BC were the Federal/Provincial division of power and the devolution of power upon the provincial governments; the relatively late timing of legal aid in BC; the shortage of lawyers to fill legal aid positions; the antagonistic nature of Bar/Government relations; and the focus of legal aid expansion on criminal, rather than civil, legal aid.

a. Federal/Provincial Division of Power

The primary factor in the evolution of legal aid in Canada was the Federal/Provincial division of power over criminal law and the devolution of civil legal aid upon the provinces. This division of power was not mitigated

by the increasing centralization of the State that has been noted in other Western Democracies (Milliband, 1969). In Canada, power increasingly devolved upon the Provinces, forcing the central government to take a cautious approach to all policy matters that might cross into provincial jurisdictions. This division of power, and the delicate nature of Federal\Provincial relations during a time of constitutional crisis, meant that the Federal Government could not take a strong stance on legal aid funding. The historically specific circumstances of Canada's constitutional development determined the nature of federal participation in legal aid reform. Precedents favouring the Province in matters concerning civil law made the Federal Government reluctant to venture too far into that area (Smiley, 1980:32). Increasing animosity between the provincial and federal governments in constitutional matters made the Federal Government reluctant to use the one loophole that remained open to them in criminal legal aid matters: the amendment of the *Criminal Code* which allowed right to counsel. This would prove too costly for individual provinces.

b. Timing

The NDP came to power, its social reform package at the ready, at the tail end of prosperity. Institutionalist ideology and availability of economic resources coincided only briefly. The NDP did not have time to consolidate their reform initiative, and the concept of CLO's was thus rendered more vulnerable to attack. This early termination of reform initiative undoubtedly reduced the number of poverty law offices providing legal aid in BC.

c. Shortage of Lawyers

Blankenburg (1980:1) cites the "increasing number of lawyers that all Western Industrialized countries have experienced in the last two decades and the increasing social awareness of these lawyers" as one of the quantitative factors that have made the legal profession receptive to legal aid reform. In England and the US, the period during which capital funds were made available for legal aid expansion coincided with a period of rapid expansion of the Bar. The supply of lawyers outstripped the demand.

There was only one law school in the Province during this period. At the time when funds were available for legal aid expansion, there were not enough lawyers to fill either LAS regional staff vacancies or CLO vacancies. This shortage of lawyers has been regarded by some authors (Brooks, 1973; Cooper and Kastner, 1978) as a general phenomenon that has affected legal aid development in many Canadian provinces.

This dissertation has provided a detailed picture of how this shortage affected legal aid development in BC. This shortage made a staff office approach a viable option in BC; reduced the appeal of choice of counsel; and affected access to services by limiting the number of offices established. Shortage of lawyers, combined with the large rural population in BC, probably hastened the Bar's acceptance of the need for expanded public funding of legal aid. The demand for criminal legal aid coverage in rural areas placed too great a demand upon altruism. The need for public funding of legal aid became evident. But it is unlikely that the dearth of lawyers altered in any significant way the conservative nature of the mixed model approach; BC lawyers also appear to be

different from their counterparts in other Western nations, as identified by Blankenburg, in that they were not notably social reform oriented.

d. Bar/Government Conflict

One of the singular features of legal aid delivery in BC is the constant antagonism between Bar and Government which occurred during both NDP and Social Credit governments. The impact of this antagonism is probably most evident in the limited nature of both the criminal and civil legal aid tariffs in BC. They were, and remain, the lowest in Canada. Social Credit were reluctant to increase the tariff because of their firm residualist belief that the Bar should provide this service as a charity. They were critical of lawyer's attempts to stack cases and increase their potential income from legal aid cases. This clear prejudice against the level of remuneration earned by lawyers under the Ontario agreement probably engendered a certain degree of caution in the demands of the LAS for tariff increases and undoubtedly underlined the advantages of a staff office approach.

When the NDP came to power they were no more interested in raising the tariff than their Social Credit counterparts had been. This attitude was not based on parsimony and a belief that the Bar should be providing the service as a charity, but rather on the conviction that the entire service should be wrested from the organized Bar and organized along staff office\CLO lines. The NDP also condemned abuses of the tariff and expressed a general aversion to any lawyer in private practice being able to make a living from legal aid. There was a general suspicion of lawyers and their professional organizations that crossed

party lines. The 'blame the victim' mentality that sometimes surfaced in press coverage of legal aid reform did not emerge in BC during this period. Instead, there was a strong inclination to accuse the profession of greed, and this limited the ability of the profession to push demands for expanded funding of the tariff.

e. Focus on Criminal Legal Aid

The impact of growing public demand for *pro bono* legal aid services is also apparent. Unlike England or Ontario, where this demand was centred on civil legal aid (primarily divorce), in BC the demand was for further criminal legal aid coverage, largely because the criminal side has long been favoured and promoted by the Bar. Elements of the VBA established a Criminal Legal Aid program in the mid 1950's. There was no apparent public demand for this type of program. A small number of young lawyers, from the left and the right of the political spectrum, were united in their belief in the importance of the concepts of due process and equality of access, concepts that, it has been argued, have more significance for members of the legal profession than for the public at large. Once established, however, criminal legal aid became the focus of development in BC and continued to be so.

D. Future Research

This analysis has shown how the process of legal aid reform in BC was shaped by the interactions of human agents operating within the structural constraints of

the modern welfare state. It is apparent that social outcomes are not predetermined. It is equally clear, however, that the definition and mediation of choices is limited by structural considerations. This study analyzed but one example of the evolution of legal aid reform. Canada's ten provinces would provide a larger crucible in which to further test the impact of and connections between various micro- and macro level phenomena that have been identified as significant in the process of legal aid reform in BC. A comparative analysis of the interaction of human agents and the structural limits of the State in relation to one mode of reform initiated in a number of sites would serve to clarify more precisely the way agency and structure interact in determining the outcome of legal aid reform.

A consideration of human agency would focus on a detailed analysis of the legal aid policy community in each province, and on the interaction of members of this community with each other and with other environmental and social factors. This would include a comparative analysis of the ideological orientation and interactions of elements of the organized Bar; the nature of Bar/Government relations; the characteristics of individuals leading the call for expanded public funding of legal aid; the timing of demands for increased *pro bono* service; the point at which the Bar requests public funding; the ideological orientation of parties in power; the impact of varying rural and urban demographics on delivery systems; the distribution pattern of lawyers and how it affects the ability to provide legal aid coverage; and the role the press plays in creating, expressing or opposing demands for expanded legal aid coverage.

Certain elements will remain constant in this analysis: the nature of Federal/Provincial division of power; the availability of Federal funding for criminal legal aid after 1972; the potential to tap CAP funding after 1974; the economic crisis of the mid 70's. The different impact that these events have on the development of legal aid policy in each province should give more insight into the function of the structural constraints of the welfare state in limiting or promoting reform.

A structural analysis would consider such questions as: How does the relative autonomy of the State function at different historic conjunctures? How does the ultimate need to assure capital accumulation limit legal aid reform? Does legal aid consistently fulfil a legitimating function, and if so, for whom? Is social control a function that is consistently emphasized by legal aid advocates? How does the ideology of legal aid reform serve to limit the scope of reform initiatives?

Such a comparative analysis might also address the question of whether interest group theory would yield an equally satisfactory explanation. Was the State doing anything more than responding to claims from pluralist interest groups? The traditional approach of the legal profession and their ability to control legal aid initiatives in BC, in spite of their weak position as a lobby group, obscured the nature of the structural limits of the State to accommodate reform. The functions of such limits might, however, be brought out by a detailed and comparative analysis of the expenditure of government funds and the way in which expenditures are prioritized.

APPENDIX A

METHODOLOGY

METHODOLOGY

A. A Methodological Overview: Historical Sociology

In considering the role of historical research in sociological analyses, it should be borne in mind that the historian's world is a transitory one. Past events are independent of our experience, objective in the strictest sense of the word, and therefore unknowable. Though this sceptical point of view may not seem congenial to some, it remains true that the historian cannot discover what the past actually was, cannot experience the past as the actors themselves experienced it; rather, it may be argued that history is what the historian thinks about the past, about the evidence, and it must ever be borne in mind that evidence is ever-changing. New evidence must be evaluated, first of all externally, and then rejected or incorporated into the historian's construct as it stands. Further, some historians do not even consider what they think about the past as having the quality of 'interpretation', for 'interpretation' they would equate with 'to give meaning to', and it is deemed impossible to give meaning to what is in the first place unknowable (Oakeshott, 1933:93; Goldstein, 1962:177).

This is not, however, the approach taken by the historical sociologist. The basic purpose of historical sociology is to establish or test social, cultural or psychological generalizations. The purpose of historical research in this context is to supply "material for such establishment or testing in the form of a 'case study'" (Gruner, 1969:285). Social scientific theory is used as a guide

in historical research, but history itself is rejected as a "nomothetic" science incapable of disclosing either general laws or norms (Hughes, 1960:37; Bullock, 1976:21).

The historical sociologist, then, maintains faith in the utilitarian value of research either as a means to social reform or as a tool in tracing its development, using theory as a guide to enquiry. Certainly, the historical sociologist is not concerned with what Oakeshott refers to as the study of history "for its own sake" (Oakeshott, 1933:106). For the sociologist, recall of past developments demands interpretation of those developments within a sociological framework, which permits no understanding of human groups *on their own terms*. A frequent goal of historical sociologists is the development of a 'case study' of a particular event or series of events. Past data, in this case only constitute evidence if they can be brought to bear upon the particular matter being researched. Research data becomes actual evidence only in so far as it can be used for this purpose. Nothing, in other words, is automatically historical evidence; to become evidence it must be related to some problem (Collingwood, 1956:246; Walsh, 1960:18-19).

The historical sociologist, and in particular the sociologist of law, is generally most concerned with the form of evidence historians refer to as 'records': documents which transmit information either to record past events, or those events as they would like them to be perceived, or to serve immediate practical purposes. Historians conventionally draw a distinction between 'primary' and 'secondary' sources. The former, sometimes also termed 'original' evidence, is, strictly speaking, the contemporary raw material of history;

secondary sources are interpretations written later by historians and subjected to the historical or social scientific process.

It is worth noting here that historical sociologists and historians of the constructionist school (Oakeshott, Walsh, Goldstein, and Meiland, 1965) hold in common the view that evidence gathered really refers to the present concern of the researcher, rather than to a once existing past of which, as was stated at the beginning of this discussion, we have no immediate experience.

As evidence is gathered, researchers of both schools must follow certain basic procedures. Having once identified potential evidence, its provenance and reliability must be tested, either through the criteria of correspondence or coherence. Further examination of the evidence taken at face value may disclose underlying values and biases. This second procedure may assist in the compilation of what may be termed 'facts', evidence little open to dispute and, for the historical sociologist and for certain historians, quantifiable. Such facts may at this point be capable of linear organization, either as a narrative of events or of contingent relations. They may then be reorganized laterally in a series of relations - social, political, ideological, economic - to establish the characteristics of a given society or sector of it, how that society engendered particular developments, and how those developments in turn affected society. E.P. Thompson suggests that these are the basic steps followed by the majority of historians. But he adds to these the final principle that the established fact should be analyzed as evidence of the structural conditions within which developments occurred in order to determine the relationships among those structures and human agency (Thompson, 1975).

In regard to this last point, it is a given that the sociology of law requires the study of legal institutions, in this case legal aid services, within their social context, as distinct from a normative or philosophical approach. Sociology of law is concerned "with the relations between the law and the social, political, and economic and psychological facts, which are relevant to an understanding of its... sociological substratum" (Stone, 1956:65); sociologists of law ask the question "What is the place of Law in society"? (Brickey and Comack, 1986:20).

Having considered the problem of gathering and evaluating evidence, an important distinction must be made between the historical and sociological approaches. The historian, in general, is concerned with establishing the course of events and how they came about in a linear process; the sociologist is preoccupied with why events have developed into the present condition of things. Historians explain the past; sociologists interpret the present.

The subject of this dissertation is a series of policy decisions which determined the evolution of legal aid services in the Province of British Columbia. Historical research will be used as a tool in tracing the development of legal aid policy. In seeking to determine the role of legal aid reform in society, inquiry is guided by a structuralist theoretical interpretation of the state, modified by an interest group theoretical analysis of human agency interaction (see chapter 3).

Evidence relating to these aspects of legal aid policy development within this modified structuralist interpretation was collected from a number of sources, both primary (archival, personal papers, newspapers) and secondary. Research was undertaken in:

(i) The archives of the Legal Services Society[1], which contained the records of the Legal Aid Society and the Legal Services Commission.

(ii) The Provincial Archives, housed in Victoria: Here I obtained access to the personal papers of Walter Young , one of the first individuals appointed to the Board of Directors of the LSC, and to records of the Law Society, primarily proceedings of annual meetings and some internal correspondence. I also received permission to examine the records of the Legal Services Division of the Attorney General's Office. Unfortunately, these records, as they pertain to legal aid, have not been indexed. Several false leads were followed through several hundred boxes of files, but no legal aid records were uncovered. For the Government's side of the story, I have had to rely primarily on correspondence between the AG's office and the LAS and LSC, contained in the LSS archives, and on personal interviews.

(iii) Records of the Law Society, formerly housed at the Law Society Office, are now included in the court archives. These records include internal correspondence concerning legal aid matters, minutes of Benchers meetings, and minutes of LSLAC meetings.

(iv) Records of the Law Foundation are also housed in the court archives. These are primarily records of correspondence concerning grants applied for and/or awarded.

The above material was supplemented by:

(i) In person interviews, primarily with lawyers who participated in administrative decisions regarding legal aid reform during the period 1950-1975: Several past chairpersons and members of the VBA and LSLAC; chairpersons and members of the LAS Board of Directors; the first and second Directors of the LAS; one former staff lawyer of the LAS; the first two Directors of VCLAS; and the first Director of the LSC; and Deputy Attorney General (see list of interviews). A telephone interview was also conducted with former Attorney General Alex MacDonald.

(ii) Newspaper reports and articles. Much of this information was found in the clippings files of the Legal Services Society, mostly covering the post-1960 period. Clippings were supplemented by analysis of the content of the two major newspapers in the Province for periods of two months preceding and following any major event in legal aid development and any period of social unrest or agitation noted in the archival material or in secondary sources.

(iii) Reports of Committees studying the implementation of legal aid programs in a number of provinces, for example, the Ontario Joint Committee Report (1965), the Report of the Saskatchewan Legal Aid Committee (1973), and the Report of the Committee for the Study of Legal Aid in Nova Scotia (1971).

(iv) Secondary sources: articles and books on legal aid and law reform developments primarily in Canada, the United States, and England.

Whether 'doing' history for its own sake or for the purpose of testing theoretical generalizations, points of departure and arrival have to be established. How much evidence should be collected? In the case of this study, the starting point was, conveniently, the first recorded mention of legal aid in the files of the Law Society of British Columbia. 1975 was chosen as the most appropriate year in which to conclude this analysis for practical as well as theoretical reasons. The formation of the LSC in 1975 marked the end of the era in which Law Society dominated legal aid reform in BC. The period from 1930-1975 is rich in social, political, and economic vicissitudes: two changes in government; three shifts in administrative structure; social calm and social crisis; economic boom and bust. 1975 also marks the beginning of a prolonged economic crisis.

The main practical reason for choosing 1975 as the end point of this study was that the Legal Services Society records were open only to 1975, while the files of the Attorney General were accessible only up to 1975. Although Law Society files were available for examination, legal aid was no longer a significant concern of the Law Society after 1975, in which year the Legal Services Commission was established. In all, therfore, there was insufficient archival information to permit a profitable study of the period after 1975.

1. The archives of the Legal Services Society were kept in a large, dingy warehouse on Powell Street. It was fortuitous that I began my research at exactly the same time as the administration of the Legal Services Society had decided to shred its past records to create more space. I conveniently stationed myself between shredder and documents, carefully analyzing each box for its historical relevance. A wealth of valuable historical information was thus saved. Alas, the reprieve was only brief. Several months later, the warehouse, saved archives and all, burned to the ground.

BIBLIOGRAPHY

Books and Articles

Secondary Sources:

Abel, Richard. "From the Editor." *Law and Society Review*, 12(1978), 189-198.

Abel, Richard. "Law Without Politics: Legal Aid Under Advanced Capitalism." *UCLA Law Review*, 32(1985), 474-642.

Abel, Richard. "Socializing the Legal Profession: Can Redistributing Lawyers' Services Lead to Social Justice?" *Law and Policy Quarterly*, 1(1979), 5-51.

Abel, Richard. "Socializing the Legal Profession: Can Redistributing Lawyers' Services Lead to Social Justice?" *Law and Policy Quarterly*, 1(1979), 5-51.

Abel-Smith, Brian. *Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965*. London: Heinemann, 1967.

Abel-Smith B., and P. Townsend. *The Poor and the Poorest*. London: Bell, 1965.

Abercrombie, N., Stephen Hill, and Bryan S. Turner. *The Dominant Ideology Thesis*. London: Allen and Unwin, 1980.

Adams, I., William Cameron, Brian Hill and Peter Penz. *The Real Poverty Report*. Edmonton: M.G. Hurtig, 1971.

Aiyar, Sadashiv P. *Perspectives on the Welfare State*. Bombay: Manaktalas, 1966.

Albo, Gregory, and Jane Jensen. "The Relative Autonomy of the State." In *The New Canadian Political Economy*. Ed. Wallace Clement and Glen Williams. Kingston: McGill--Queens Univ. Press, 1989.

Alcock, P.C. "Legal Aid: Whose Problem?" *British Journal of Law and Society*, 3(1976), 151-174.

Almona, Gabriel. "Interest Groups and the Political Process." In *Comparative Politics*. Ed. R.C. Macridis and B.E. Brown. Illinois: Dorsey Press, 1964.

Anderson, James. "The Law Verus the Poor in Saskatchewan." *Saskatchewan Bar Review*, 30 (1965), 126-139.

Anderson, P. "The Antimonies of Antonio Gramsci." *New Left Review*, 100(1977), 5-78.

"Annual Report." *The Advocate*, 14(1956), 224-225.

"Annual Report of the Legal Aid Committee of the Vancouver Bar Association." *The Advocate*, 16(1958), 102-105.

Armitage, Andrew. *Social Welfare in Canada: Ideals and Realities*. Toronto: McClelland and Stewart, 1975.

Aslin, Audry. "Legal Aid in New Brunswick." *CBA Journal*, 2 (1971), 23-24.

Aristotle. *Politics*. Trans. Benjamin Jowett. New York: Modern Library, 1943.

Atkinson, N.M., and M.A. Chandler. *The Politics of Canadian Public Policy*. Toronto: Univ. of Toronto Press, 1983.

Atrens, J. "A Proposal for a Legal Aid Research Project." *The Advocate*, 26 (1968), 181-183.

Atrens, J. "Experimental Legal Services." *UBC Law Review*. 5 (1970), 91.

Attorney General's Committee on Poverty and the Administration of Criminal Justice (the Allen Committee). Recommendations. 1961.

Auerbach, J. *Unequal Justice: Lawyers and Social Change in Modern America*. New York: Oxford Univ. Press, 1976.

Bachrach, Peter, and Morton S. Baratz. "The Two Faces of Power." In *The Bias of Pluralism*. Ed. William Connelly. New York: Atherton Press, 1969.

Balbus, Issac. "Ruling Elite Theory vs. Marxist Class Analysis." *Monthly Review*, 23(1971), 36-46.

Bankowski, Zenon, and Geoff Mungham. *Images of Law*. London: Routledge and Kegan Paul, 1976.

Bartholomew, Amy and S. Boyd. "Toward a Political Economy of Law." In *The New Canadian Political Economy*. Ed. Wallace Clement and Glen Williams. Kingston: McGill--Queens Univ. Press, 1989.

Behiels, Michael D. "Quebec: Social Transformation and Ideological Renewal, 1940-1976." In *Modern Canada: 1930-1980's*. Ed. Michael S. Cross and Gregory S. Kealey. Toronto: McClelland and Stewart, 1985, 141-176.

Belle, Leslie. "The Provincial Role in the Canadian Welfare State: The Influence of Provincial Social Policy Initiatives on the Design of the Canada Assistance Plan." *Canadian Public Administration*, 22(1979), 439-552.

Bellow, Gary. "Reflections on Case Load Limitations." In *Community Legal Services in Perspective: A Casebook*. Ed. F. Zemans. Toronto: Osgood Hall, 1973.

Best, R.S. "Youth Policy." In *Issues in Canadian Public Policy*. Ed. G.B. Doern and V.S. Wilson. Toronto: Macmillan, 1974.

Beveridge, Sir William H. *The Pillars of Security*. London: Allen and Unwin, 1942.

Bierne, Piers. "Empiricism and the Critique of Marxism on Law and Crime." *Social Problems*, 26(1979), 373-385.

Black, D.J. "The Mobilization of Law." *The Journal of Legal Studies*, 2(1973), 125-149.

Black, E.R. *Politics and the News*. Toronto: Butterworth, 1982.

Black, W.W. "Right to Counsel at Trial." *Canadian Bar Review*, 53(1975), 56-79.

Blankenberg, Erhard, ed. *Innovations in the Legal Services: Research on Service Delivery*. Vol. I. Cambridge, Mass.: Gelgeschlage, Gunn and Hain, 1980.

Bonner, R.A. "Opening Session of the Bar Convention." *The Advocate*, 13(1955), 133-134.

Bosanquet, Nicholas. *After the New Right*. London: Heinemann, 1983.

Boyd, Neil, ed. *The Social Dimensions of Law*. Toronto: Prentice-Hall, 1986.

Brantingham, P.L., and P.J. Brantingham. *An Evaluation of Legal Aid in British Columbia*. Ottawa: Department of Justice, 1984.

Brantingham, P.L., and P.J. Brantingham. *Common Law Legal Aid Systems: A Comparison of Aspects of the Canadian, American and English Approaches*. Halifax: Canadian Bar Association, National Symposium on Legal Aid, 1985.

Brickey, Stephen, and Elizabeth Comack, eds. *The Social Basis of Law: Critical Readings in the Sociology of Law*. Toronto: Garmond Press, 1986.

Brill, Harry. "The Uses and Abuses of Legal Assistance." *Public Interest*, 31(1973), 38-55.

Brodie, M. Janine, and Jane Jenson. *Crisis, Challenge and Change: Party and Class in Canada Revisited*. Ottawa: Carleton Univ. Press, 1988.

Brooke, Rosalind. "Legal Services in Canada." *Modern Law Review*, 40(1977), 533-552.

Brownell, Emery. *Legal Aid in the United States*. Rochester, N.Y.: The Lawyers Co-Operative Publishing Company, 1951.

Brownell, Emery. *Legal Aid in the United States*. Rochester, N.Y.: The Lawyers Co-Operative Publishing Company, 1961 Supplement.

Buci-Glucksmann, Christine. *Gramsci and the State*. London: Lawrence and Wishart, 1980.

Bullock, Alan. *Is History Becoming a Social Science? The Case of Contemporary History*. Cambridge: Cambridge Univ. Press, 1976.

Bush, R.A. "The Economic Significance of Access to Justice: An Analysis of Resource Allocation to Dispute-Resolution Services." In *Access to Justice*. Vol.III. Ed. M. Cappelletti and B. Garth. Milan: Sitjhoff and Noordhoff, 1978, 191-256.

Butterfield, Herbert. *The Whig Interpretation of History*. London: G. Bell and Sons, 1931.

Cahn, E., and J. Cahn. "The War on Poverty: A Civilian Perspective." *Yale Law Journal*, 73 (1964), 1317-1352.

Cahn, E. and J. Cahn. "What Price Justice: The Civilian Perspective Revisited." *Notre Dame Lawyer*, 41 (1966), 927-960.

Capowski, John. "Introduction to the Welfare Law Issue." *Cornell Law Review*, 61(1976), 663-669.

Cappelletti, Mauro, and Bryant Garth. *Access to Justice: A World Survey*. Vol I. Milan: Sijthoff and Noordhoff, 1978.

Cappelletti, Mauro, and James Gordley. "Legal Aid: Modern Themes and Variations." *Stanford Law Review*, 24(1972), 347-421.

Cappelletti, Mauro, James Gordley, and Earl Johnston Jr. *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies*. New York: Oceana Publishing, 1975.

Carlin, J. "Store Front Lawyers in San Francisco." In *The Scales of Justice*. 2nd ed. Ed. A. Blumberg. New Brunswick: Transaction Books, 1973.

Carlin, J., and J. Howard. "Legal Representation and Class Justice." *UCLA Law Review*, 12(1965), 381-437.

Carlin, J., J. Howard, and S. Messinger. *Civil Justice and the Poor*. New York: Russell Sage, 1967.

Carter, A.N. "A New Year's Message: The Aims and Achievments of the Canadian Bar Association." *Canadian Bar Review*, 27 (1949), 1153-1162.

Carter, Roger. "Report of the Joint Committee on Legal Aid: Province of Ontario." *Saskatchewan Bar Review*, 30(1965), 252-256.

Casper, Jonathan D. "Having Their Day in Court." *Law and Society Review*, 12(1978), 237-251.

Chambliss, William, and Robert Seidman. *Law, Order, Power*. 2nd ed. Reading, Mass.: Addison and Wesley, 1982.

Champagne, Anthony M. "Lawyers and Government Funded Legal Services." *Villanova Law Review*, 21(1975-76), 860-874.

Clague, M., R. Dill, R. Seebaran, and B. Wharf. *Reforming Human Services: the Experience of Human Resource Boards in B.C.* Vancouver: Univ. of British Columbia Press, 1984.

Clement, W. *The Canadian Corporate Elite*. Toronto: McClelland and Stewart, 1975.

Clement, W. "The Corporate Elite, the Capitalist Class and the Canadian State." In *The Canadian State*. Ed. Leo Pantich. Toronto: Univ. of Toronto Press, 1977, 225-248.

Cohen, E.J. "Legal Aid for the Poor: A Study in Comparative Law and Legal Reform, Part II." *Law Quarterly Review*, 59(1943), 359-377.

Cohen, Stanley. *Due Process of Law: The Canadian System of Criminal Justice*. Toronto: Carswell, 1977.

Cohen, Stanley, and Andrew Scull. *Social Control and the State*. Oxford: Martin Robertson, 1983.

Cole, G.D.H. *Social Theory*. London: Methuen, 1920.

Connolly, William, E., ed. *The Bias of Pluralism*. New York: Atherton Press, 1969.

Conroy, John W. "Report of the Committee Re 'Public Defenders'." *Saskatchewan Bar Review*, 17 (1952), 59-61.

Cooper, Jeremy. *Public Legal Services in Three Countries: A Study of the Relationship Between Policy and Pratice*. Diss. Florence: European University Institute, 1981.

Cooper, Jeremy. *Public Legal Services*. London: Sweet and Maxwell, 1983.

Cooper, Robert, and Brenda Kastner. "Access to Justice in Canada: The Economic Barriers and Some Promising Solutions." In *Access to Justice: A World Survey*. Vol.I. Ed. M. Cappelletti and B. Garth. Milan: Sijthoff and Noordhoff, 1978, 247-344.

Costain, W. Douglas, and Anne M. Costain. "Interest Groups as Policy Aggregators in the Legislative Process." *Polity*, 14(1981), 249-272.

Cotler, Irwin, and Herbert Marx, eds. *The Law and the Poor in Canada*. Montreal: Black Rose Books, and Les Editions Themis, 1977.

Cowan, A.J. "Report on the Annual Meeting of the Vancouver Bar Association Proceedings", *The Advocate*, 9(1951): 196-201.

Cowie, I.B. "Legal Aid in Canada - 1975." In *Access to Justice, Report of the Conference on Legal Aid*. Canadian Council on Social Development, 1975, 3-26.

Cross, Michael S., and Gregory S. Kealey. *Modern Canada: 1930-1980's*. Vol. V. of Readings in Canadian Social History. Ontario: McClelland and Stewart, 1985.

Crowe, Patricia Ward. "Complainant Reactions To the Massachusetts Commission Against Discrimination." *Law and Society Review*, 12(1978), 217-235.

Cruickshank, D.A., and A. Manson. *Legal Services in London: An Empirical Study*. London, Ontario: University of Western Ontario Law School, 1971.

Dahl, R.A. "Equality and Power in American Society." In *Power and Democracy in America*. Ed. W.V. D'Antonio and H.J. Erlich. Indiana: Univ. of Notre Dame Press, 1961, 73-89.

Dawson, Helen J. "National Pressure Groups and the Federal Government." In *Pressure Group Behaviour in Canadian Politics*. Ed. Paul Pross. Toronto: McGraw-Hill, 1975, 27-38.

Desai, A.R. "The Myth of the Welfare State." In *Perspectives on the Welfare State*, Ed. S.P. Aiyar. Bombay: Manaktalas, 1966, 154-176.

Dobelstein, Andrew. *Politics, Economics, and Public Welfare*. New Jersey: Prentice-Hall, 1986.

Domhoff, W. *The Higher Circles*. Part 2. New York: Vintage, 1970.

Drover, Glenn, and Dennis Gartner. "The Growth of Welfare Expenditures in Canada." *The Social Worker*, 48(1980), 63-67.

Durkheim, Emile. *The Division of Labour in Society*. Glencoe: The Free Press, 1960. (NTM cited in Presthus, R. Elite Accomodati

Dyck, Rand. "The Canadian Assistance Plan: The Ultimate in Co-operative Federalism." *Canadian Public Administration*, 14(1976), 586-602.

Dyck, Rand. *Provincial Politics in Canada*. Scarborough, Ont.: Prentice-Hall, 1986.

Dye, Thomas. "Welfare and Health: The Limits of Rationalism." In *Understanding Public Policy*. Ed. Thomas Dye. New Jersey: Prentice-Hall, 1978, 111-134.

Dye, Thomas. *Policy Analysis: What Governments do, Why they do it, and What Difference it Makes.* University, Ala.: Univ. of Alabama Press, 1976.

Eckstein, Harry. *Pressure Group Politics.* London: Allen and Unwin, 1960.

Egerton, Robert. "Historical Aspects of Legal Aid." *Law Quarterly Review*, 61 (1945), 87-94.

"Entre Nous." *The Advocate*, 9(1951), 19.

"Entre Nous." *The Advocate*, 27(1969), 122-123.

Ericson, R.V. *Making Crime: A Study of Detective Work.* Toronto: Butterworth, 1981.

Ericson, R.V. *The Constitution of Legal Inequality.* John Porter Memorial Lecture. Ottawa: Carleton University Information Services, 1983.

Ericson, R.V. "The State and Criminal Justice Reform." In *State Control: Criminal Justice Politics in Canada.* Ed. R. Ratner and J. McMullan. Vancouver: Univ. of British Columbia Press, 1987.

Ericson, R.V., and Pat M. Baranek. *The Ordering of Justice: A Study of Accused Persons as Dependants in the Criminal Process.* Toronto: Univ. of Toronto Press, 1982.

Ericson, R.V., and Patricia Baranek. "The Reordering of Justice." In *The Social Dimensions of Law.* Ed. Neil Boyd. Ontario: Prentice-Hall, 1986, 41-65.

Ericson, R.V., Patricia M. Baranek, and Janet B.L. Chan. *Negotiating Control: A Study of News Sources.* Toronto: Univ. of Toronto Press, 1989.

Esping-Anderson, G.R. Friedland, and E. Ohlin-Wright. "Modes of Class Struggle and the Capitalist State." *Kapitalistate*, 4/5(1976), 213.

Faulkner, J. Hugh. "Pressing the Executive." *Canadian Public Administration*, 25(1982), 240-253.

Figgis, J.N. *Churches in the Modern State.* 2nd ed. London: Longmans, 1914.

Finkel, Alvin. "Origins of the Welfare State in Canada." In *The Canadian State.* Ed. Leo Panitch. Toronto: Univ. of Toronto Press, 1977.

Finman, T. "OEO Legal Service Programs and the Pursuit of Social Change." *Wisconsin Law Review*, 4(1971), 1001-1084.

Forcese, Dennis. "Elitists and Pluralists: Power in Canada." In *Approaches to Canadian Politics.* Ed. John H. Redekop. Scarborough: Prentice-Hall, 1983, 292-309.

Francis, Paul H. "Legal Aid: The Demise of Idealism." *Wayne Law Review*,. 23 (1977), 1261-1292.

Friedland, Martin L. *Access to the Law*. Toronto: Carswell/Methuen, 1975.

Friedland, Martin L. *Legal Aid: Working Papers Prepared for the Joint Committee on Legal Aid*. Toronto: Osgoode Hall Law School, 1964.

Frohock, Fred. M. *Public Policy - Scope and Logic*. Englewood Cliffs, N.J.: Prentice-Hall, 1979.

Galanter, Marc. "Why the Haves Come Out Ahead: Speculation on the Limits of Legal Change." *Law and Society Review*, 9(1974), 95-160.

Galbraith, J.K. *The New Industrial State*. Boston: Houghton Mifflin, 1961.

Gamble, A., and P. Walton. *Capitalism in Crisis: Inflation and the State*. London: Macmillan, 1976.

Garth, B. *Neighbourhood Law Firms for the Poor: A Comparative Study in Recent Developments in Legal Aid and in the Legal Profession*. Netherlands: Sijthoff and Noordhoff, 1980.

Garth, Bryant. "The Movement Towards Procedural Informalism in North America and Western Europe: A Critical Survey." In *The Politics of Informal Justice*. Ed. Richard Abel. New York: Academic Press, 1982, 183-211.

Geerts, Paul. "The Issue of Delegalization." In *Innovations in the Legal Services*. Ed. Erhard Blankenberg. Cambridge, Mass.: Oelgeschlager, Gum & Hain, 1980, 209-230.

George, V., and Paul Wilding. *Ideology and Social Welfare*. London: Routledge and Kegan Paul, 1976.

George, W. "Development of the Legal Services Corporation." *Cornell Law Review*, 61 (1976), 681-730.

Gibbons, Alan O. "Legal Aid in the U.S." *Canadian Bar Review*, 15 (1937), 709-711.

Gibbons, Roger. *Conflict and Unity: An Introduction to Canadian Political Life*. Toronto: Methuen, 1985.

Gibbons, Roger, and Neil Nevitte. "Canadian Political Ideology: A Comparative Analysis." Canadian Journal of Political Science, 18 (1985), 577-598.

Giddens, A. *A Contemporary Critique of Historical Materialism. Part I: Power Property and the State*. Berkeley: Univ. of California Press, 1981.

Gilbert, Bentley B. *British Social Policy, 1914-1939*. Ithaca, New York: Cornell Univ. Press, 1970.

Giles, James, and Jean Pigott. "Participation in the Legislative Process." *Canadian Public Administration*, 25 (1982), 254-264.

Gold, D., C.Y.H. Lo, and E.O. Wright. "Recent Developments in Marxist Theories of the Capitalist State." *Monthly Review*, 27(1975), 29-43.

Gold, Neil. "The Interface Between the Paraprofessional and the Professional: Some Reflections on the Lawyer and the Community Legal Services Paralegal Worker." In *Public Sector Paralegalism in Canada Today*. National Workshop on Paralegalism, March, 1978. Vancouver: National Legal Aid Research Centre, 1979.

Gordon, Robert. "Legal Services for Mental Health Patients: Some Observations on Canadian and Australian Developments." *Canadian Community Law Journal*, 6(1983), 17-35.

Gordon, Robert M. "Mental Disorder, Law, and State: A Sociological Analysis of the Periods of Reform in Canadian Mental Health Law." Ph.D. dissertation, Univ. of British Columbia, 1988.

Gough, I. *The Political Economy of the Welfare State*. London: Macmillan, 1979.

Gough, I. "The Crisis of the British Welfare State." In *Urban Policy Under Capitalism*. Ed. S. Fainstein and N. Fainstein. New York: Sage, 1982.

Gowling, E. Gordon. "The Presidential Address." *The Canadian Bar Review*, 29 (1951): 715-720.

Greenway, W.K., and S.L. Brickley. *Law and Social Control in Canada*. Scarborough, Ontario: Prentice-Hall, 1978.

Grosman, Brian. "The Right to Legal Counsel in Canada." *Canadian Bar Journal*, 10(1967), 189-211.

Guest, Dennis. *The Emergence of Social Security*. Vancouver: Univ. of British Columbia Press, 1980.

Guest, Dennis. "World War II and the Welfare State in Canada." In *The "Benevolent" State: The Growth of Welfare in Canada*. Ed. Allan Moscovitch and Jim Albert. Toronto: Garmond Press, 1987, 205-221.

Guss, B.R. "The Bar's Responsibility for Legal Aid." *Canadian Bar Review*, 28 (1950), 490-492.

Guss, B.R. "Report of the Legal Aid Committee of the Canadian Bar Association." *Chitty's Law Journal*, 5(1955), 98-100.

Hall, Phoebe, Hillary Land, Roy Parker, and Adrian Webb. *Change, Choice and Conflict in Social Policy*. London: Heinemann, 1975.

Hall, Stuart, and Phil Scranton. "Law, Class and Control." In *Crime and Society: Readings in History and Theory*. Ed. Mike Fitzgerald, Gregor McLennan, and Jennie Pawson. London: Routledge and Kegan Paul, 1981, 460-497.

Hall, S., C. Critcher, T. Jefferson, J. Clarke, and B. Roberts. *Policing the Crisis: Mugging, State and the Law*. London: Macmillan, 1978.

Handler, Joel F. *Social Movements and the Legal System: A Theory of Law Reform and Social Change*. New York: Academic Press, 1978.

Handler, Joel F., Ellen Jane Hollingsworth, and Howard S. Erlanger. *Lawyers and the Pursuit of Legal Rights*. New York: Academic Press, 1978.

Harcourt, M. "Taking Law to the People." *The Advocate* 28(1970), 89-91.

Harper, A.M. "Report of the Legal Aid Committee." *The Advocate*, 18(1960), 61-62.

Harper, A.M. "Report of the Legal Aid Committee." *The Advocate*, 19(1961), 101-103.

Harper, A.M. "Report of the Legal Aid Committee of the Benchers." *The Advocate*, 25(1967), 54-55.

Harrington, Michael. *The Other America: Poverty in the United States*. New York: Macmillan, 1962.

Harris, C.C. "British Columbia 1972-75: The Genesis of a Two Party System." M.A. thesis, Univ. of British Columbi, 1987.

Hastings, Ross, and Ronald P. Saunders. "Social Control, State Autonomy and Legal Reform: The Law Reform Commission of Canada." In *State Control: Criminal Justice Politics in Canada*. Ed. R.S. Ratner and John L. McMullan. Vancouver: Univ. of British Columbia Press, 1987, 126-148.

Hazard, G. "Social Justice Through Civil Justice." *University of Chicago Law Journal*, 36 (1969), 708-710.

Head, Wilson A. "The Poor People's Conference on Social Welfare - Catalyst for Organization." *Canadian Welfare*, Jan-Feb 1971, 3.

Henderson, Laurie. "Public Sector Paralegals in British Columbia: An Analysis of the Differences Between Paralegals and Lawyers in the Provision of Summary Advice." M.A. thesis, Simon Fraser University, 1985.

Hinch, Ron. "The Analysis of Class, State and Crime: A Contribution to Marxist Criminology." Ph.D. dissertation, McMaster University, 1982.

Hoare, Quintin, and G.N. Smith, eds. *Selections From the Prison Notebooks of Antonio Gramsci*. London: Lawrence and Wishart, 1971.

Hoehne, Dieter. *From Charity to Policy: Legal Aid in Canada*. Halifax: Dalhousie Univ. Press, 1985.

Hogarth, John. *Sentencing as a Human Process*. Toronto: University of Toronto Press, 1971.

Honsberger, John D. "The Ontario Legal Aid Plan." *McGill Law Journal*, 15 (1969), 436-451.

Horowitz, D. *The Courts and Social Policy*. Washington D.C.: The Brookings Institution, 1977.

Horowitz, Gad. "Conservatism, Liberalism and Socialism in Canada: An Interpretation." *Canadian Journal of Economics and Political Science*, 32 (1966), 143-170.

Howard, K.S. "It's Later Than We Think." *Canadian Bar Review*, 28(1950), 723-725.

Hughes, H. Stuart. "The Historian and the Social Scientist." *American Historical Review*, 66(1960).

"Inter Alia". Editorial Comments. *Chitty's Law Journal*, 4(1954), 1-3.

"Inter Alia". Editorial Comments. *Chitty's Law Journal*, 5(1955), 3, 14.

Jackson, R. *The Machinery of Justice in England*. Cambridge: Cambridge Univ. Press, 1974.

Jackson, R. *The Machinery of Social Justice in England*. Cambridge: Cambridge Univ. Press, 1977.

John Howard Society of British Columbia. "Report on Legal Aid in B.C., May 23, 1963." *Criminal Law Quarterly*, 7(1964-65), 72.

Johnson, E. "The Prospect of Future Themes." In *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies*. Ed. Mauro Cappelletti, James Gordley, and Earl Johnson. New York: Oceana Publications, 1975, 135-241.

Johnson, E. "Access to Justice in the United States." In *Access to Justice : A World Survey*. Vol.2. Ed. M. Capelletti and B. Garth. Milan: Sitjoff and Noordhoff, 1978, 913-1024.

Johnson, Jack. "The Legal Profession: A Proposal to Deconsecrate a Sacred Cow." *QUARE: The Saskatchewan Law Review Magazine Supplement*, 2 (1972), 3-4.

Johnson, Leo. *Poverty in Wealth.* Toronto: New Hogtown Press, 1974.

Johnson, Leo. "The Development of Class in Canada in the Twentieth Century." In *Structured Inequality in Canada.* Ed. J. Harp and John Hofley. Scarborough: Prentice-Hall, 1980, 99-136.

Johnson, Wallace A. "Poor Persons Law Cases." *Manitoba Bar News*, 6 (1934), 1-7.

Johnson, Wallace A. "Poor Man's Law in Manitoba." *Canadian Bar Review*, 25 (1947), 478-486.

Jones, James Edmund. "Legal Aid for the Poor." *Canadian Bar Review*, 9(1931), 271-276.

Kaiser, Gorden. "Legal Assistance in Canada." *Queen's Intramural Law Journal*, 1(1969), 65-98.

Kalecki, M., ed. *Selected Essays on the Dynamics of a Capitalist Economy.* Cambridge: Cambridge Univ. Press, 1971.

Kavic, L.J. and G.B. Nixon. *The 1200 Days: A Shattered Dream.* Coquitlam, B.C.: Kaen, 1978.

Keeton, G.W. "Law Reform After the War." *Law Quarterly Review*, 58(1942), 247-256.

Kennedy, J. de N. "Legal Aid to the Indigent." *Chitty's Law Journal*, 12(1963), 7-8.

King, Lynn. "Censorship and Law Reform: Will changing the laws mean a change for the better?" In *The Social Basis of Law.* Ed. Stephen Brickey and Elizabeth Comack. Toronto: Garamond Press, 1986, 197-206.

Kitchen, Brigitte. "The Introduction of Family Allowances in Canada." In *The Benevolent State: The Growth of Welfare in Canada.* Ed. Allan Moscovitch and Jim Albert. Toronto: Garamond Press, 1987, 222-241.

Kristianson, G.L. "The Non-Partisan Approach to B.C. Politics: The Search for Party Unity, 1972-1975." *B.C. Studies*, 33(1977), 13-29.1977. [ch6/331]

Kudrle, Robert T., and Theodore R. Marmor. "The Development of the Welfare States in North America." In *The Development of Welfare States in Europe and America.* Ed. Peter Flora and Arnold J. Heidenheimer. New Brunswick: Transaction Books, 1981, 82-121.

Kwavnick, David. *Organized Labour and Pressure Politics.* Montreal: McGill-Queens, 1972.

Larsen, Norman. "Legal Aid in Manitoba." In *The Law Society of Manitoba, 1877-1977.* Ed. C. Harvey. Winnipeg: Peguis Publishers, 1977, 158-175.

Larsen, Norman. "Seven Years With Legal Aid." *Manitoba Law Journal*, 11(1981), 237-290.

Laski, Harold J. *Authority in the Modern State*. New Haven: Yale Univ. Press, 1919.

Lawson, D.J. "Report of the Legal Aid Committee of Victoria." *The Advocate*, 8 (1950), 99-101.

Leman, Christopher. "Patterns of Policy Development: Social Security in the United States and Canada." *Public Policy*, 25 (1971), 261-291.

Leon, J.S. "Rights, Fairness and Effectiveness, in Canada and the United States: Counsel and Client in Criminal Process." *Criminal Law Quarterly*, 20(1977-78), 29-67.

Lipset, Seymour Martin. "Radicalism in North America: A Comparative View of the Party System in Canada and the United States." In *Transactions of the Royal Society of Canada*, 4 (1976), 19-55.

Loney, Martin. "A Political Economy of Citizen Participation". In *The Canadian State*. Ed. Leo Panitch. Toronto: Univ. of Toronto Press, 1977. 446-472.

Lowenstien, D.H. and M.I. Waggoner. "Neighbourhood Law Office: The New Wave in Legal Services for the Poor." *Harvard Law Review*, 80(1966-67), 805-830.

Lowry, David R. *Social Justice Through Law*. Halifax: Dalhousie Legal Service, 1970.

McConnell, Grant. *Private Property and American Democracy*. New York: Alfred A. Knopf, 1966.

MacIntyre, J.M. "Student Legal Aid and the Inner City Service Project." *The Advocate*, 27(1969), 68-69.

MacLean, Brian D., ed. *The Political Economy of Crime: Readings for a Critical Criminology*. Scarborough, Ont.: Prentice-Hall, 1986.

MacLennan, Arthur J. "Report of the President of the Vancouver Bar Association." *The Advocate*. 19(1961): 213-219.

McMullan, J.L., and R.S. Ratner. "State, Labour and Justice in British Columbia." In *Deviant Designations: Crime, Law and Deviance in Canada*. Ed. Thomas Fleming and L.A. Visano. Toronto: Butterworths, 1985.

McQuail, D. "The Influence and Effects of Mass Media." In *Mass Communications and Society*. Ed. J. Curran. London: , 1977, 70-94.

McRae, D.K. "Legal Aid: Report of the Vancouver Committee." *The Advocate*, 8(1950), 214.

Maczko, F. "The Trend Towards Administrative Tribunals." *The Advocate*, 32 (1974), 146-147.

Manley, John. "Neo Pluralism: A Class Analysis of Pluralism I and Pluralism II." *The American Political Science Review*, 77(1983), 368-383.

Marachessault, Jean-Guy. "Aspects Constitutionnels des Services Juridiques au Canada." *Canadian Legal Aid Bulletin*, 2(1978), 190-211.

Marcuse, Herbert. *One Dimensional Man*. Boston: Beacon Press, 1964.

Marks, R. *The Legal Need of the Poor: A Critical Analysis*. Chicago: American Bar Foundation, 1971.

Marshall, T.C. "Your President's Report." *The Advocate*, 26(1968), 87.

Marshall, T.H. *Sociology at the Crossroads*. London: Heinemann, 1963.

Martin, Robert. "The Judges and the Charter." In *The Social Basis of Law*. Ed. Stephen Brickey and Elizabeth Comack. Toronto: Garmond Press, 1986, 207-224.

Mathews, E.J.T., and A.D.M. Oulton. *Legal Aid and Advice Under the Legal Aid Acts, 1949 to 1964*. London: Butterworths, 1971.

Mayhew, Leon, and Albert Reiss. "The Social Organization of Legal Contacts." *American Sociological Review*, 34(1969), 309-318.

Mayhew, L., and A.J. Reiss. "Social Class and Legal Services in America." In *The Social Orginization of Law*. Ed. D. Black and M. Mileski. New York: Seminar Press, 1973, 181-196.

Mayhew, L. "Institutions of Representation: Civil Justice and the Public." *Law and Society Review*, 9(1975), 401.

Meighen, Arthur. "The Welfare State." *The Advocate*, 8(1950), 183-191.

Meredith, K.E. "Report of the Chairman of the Legal Aid Committee of the Benchers." *The Advocate*, 27(1969), 150-156.

Messier, C. *In the Hands of the Law*. Montreal: Legal Services Commission, 1975.

Miliband, Ralph. *The State in Capitalist Society*. London: Quartet Books, 1969.

Miliband, Ralph. "Poulantzas and the Capitalist State." *New Left Review*, 82(1973), 83-92.

Miliband, Ralph. *Marxism and Politics*. London: Oxford Univ. Press, 1977.

Mills, C. Wright. In *Power, Politics, and People: The Collected Essays of C.W. Mills*. Ed. I.L. Horowitz. New York: Oxford Univ. Press, 1963.

Mishra, R. *Society and Social Policy: Theoretical Perspectives on Welfare*. London: Macmillan, 1977.

Mishra, R. *The Welfare State in Crisis*. New York: St. Martin's Press, 1984.

Mishra, R. "Social Policy and the Discipline of Social Administration." *Social Policy and Administration*, 20(1986), 28-38.

Morgan, John S. "Social Welfare Services in Canada." In *Social Purpose for Canada*. Ed. Michael Oliver. Toronto: Univ. of Toronto Press, 1961, 130-167.

Moscovitch, Allan, and Jim Albert, eds. *The "Benevolent State": The Growth of Welfare in Canada*. Toronto: Garmond Press, 1987.

Moscovitch, Allan, and Glenn Drover, eds. *Inequality: Essays on the Political Economy of Social Welfare*. Toronto: Univ. of Toronto Press, 1981.

Moscovitch, Allan, and Glenn Drover. "Social Expenditures and the Welfare State: The Canadian Experience in Historical Perspective." In *The "Benevolent State": The Growth of Welfare in Canada*. Ed. Allan Moscovitch and Jim Albert. Toronto: Garamond Press, 1987, 13-43.

National Legal Aid and Defender Association (NLADA) Briefcase, 13(1973).

Nelligan, John P. "Legal Aid in Canada: Existing Facilities." *Canadian Bar Review*, 29(1951), 589-620.

Nelligan, John P. "Legal Aid in Canada: The Need." *Canadian Bar Review*, 31 (1953), 752-769.

Newman, Peter C. *The Canadian Establishment*. Toronto: Seal Books, 1977.

Norris, Thomas G. "Proceedings of the Annul Meeting of the Vancouver Bar Association." *The Advocate*, 5(1947), 204-207.

Norris, Thomas G. "Annual Report by the President of the Vancouver Bar Association." *The Advocate*, 6(1948), 192-197.

Note. "Legal Aid and the Seattle Bar." *The Advocate*, 9(1951), 163.

"Notes and Comments: Participation of the Poor." *The Yale Law Journal*, 75(1966), 599-629.

O'Conner, J. *The Fiscal Crisis of the State*. New York: St. Martin's Press, 1973.

Oakeshott, Michael. Experience and its Modes. Cambridge: Cambridge Univ. Press, 1933.

Olson, Dennis. "The State Elites." In *The Canadian State*. Ed. Leo Pantich. Toronto: Univ. of Toronto Press, 1977, 199-224.

Olson, Dennis. *The State Elite*. Toronto: McClelland and Stewart, 1980.

"The Ontario Legal Aid Plan." *Chitty's Law Journal*, 1(1951), 124-126.

Ossenberg, R. *Power and Change in Canada*. Toronto: McClelland and Stewart, 1980.

Ossenberg, R. *Canadian Society*. Scarborough, Ont.: Prentice-Hall, 1971.

Panitch, Leo. *The Canadian State*. Toronto: Univ. of Toronto Press, 1977.

Parker, G.E. "Legal Aid: Canadian Style." *Wayne Law Review*, 14(1968), 471-500.

Parker, G.E. "Legal Aid: The Canadian Need." *Canadian Bar Journal*, 6(1963), 179-197.

Partington, Michael. "Some Thoughts on a 'Test Case Strategy'." *New Law Journal*, 124(1974), 236.

Paterson, Alan. *Legal Aid as a Social Service*. London: Cobden Trust, 1970.

Persky, Stan. *Bennett II: The Decline and Stumbling of the Social Credit Government in British Columbia 1979-1983*. Vancouver: New Star Books, 1983.

Pinker, Robert. *The Idea of Welfare*. London: Heinemann, 1974.

Pinker, Robert. *Social Theory and Social Policy*. London: Heinemann, 1971.

Piven, F.F., and R.A. Cloward. *Regulating the Poor: The Functions of Public Welfare*. New York: Pantheon, 1971.

Piven, F.F., and R.A. Cloward. *Poor People's Movements: Why They Succeed, How They Fail*. New York: Pantheon Books, 1977.

Piven, F.F., and R.A. Cloward. *The Politics of Turmoil: Essays on Poverty, Race and the Urban Crisis*. New York: Pantheon Books, 1977.

Plant, Raymond, Harry Lester, and Peter Taylor-Gooby. *Political Philosophy and Social Welfare*. London: Routledge and Kegan Paul, 1980.

Pollock, Seton. *Legal Aid: The First 25 Years*. London: Oyez Publishing, 1975.

Porter, J. *The Vertical Mosaic*. Toronto: Univ. of Toronto Press, 1965.

Poulantzas, Nicos. "The Problem of the Capitalist State." *New Left Review*, 58(1969), 67-78.

Poulantzas, N. *Political Power and Social Class*. London: New Left Books, 1973.

Presthus, Robert Vance. *Elite Accomodation in Canadian Politics*. Cambridge: Cambridge Univ. Press, 1973.

"Proceedings of the Executive Committee of the Vancouver Bar Association." *The Advocate*, 21(1963), 171-174.

Pross, Paul, ed. *Pressure Group Behaviour in Canadian Politics*. Toronto: McGraw-Hill, 1975.

Pross, Paul. *Duality and Public Policy: A Conceptual Framework for Analyzing the Public Policy of Atlantic Policy*. Halifax: Dalhousie Institute of Public Affairs, 1980.

Pross, Paul. "Pressure Groups: Talking Chameleons." In *Canadian Politics in the 1980's*. Ed. Michael S. Whittington and G. Williams. Toronto: Methuen, 1981, 221-242.

Pross, Paul. "Space Function on Interest: The Problem of Legitimacy in the Canadian State." In *The Administrative State in Canada*. Ed. O.P. Dwivedi. Toronto: Toronto Univ. Press, 1982, 107-129.

Prud'homme, Jules. "Legal Aid Societies." *Canadian Bar Review*, 2(1924), 181-186.

Punnett, R.M. *British Government and Politics*. 4th ed. London: Heinemann, 1980.

Pye, K., and G. Cochran. "Legal Aid - A Proposal." *North Carolina Law Review*, 47(1969), 569-573.

Quinney, Richard. *Critique of the Legal Order*. Boston: Little Brown, 1974.

Rachert, John Andre. *Welfare Fraud and the State: British Columbia 1970-1977*. Burnaby: Simon Fraser University, April, 1990.

Ratner, R.S., and J. McMullan. "Social Control and the Rise of the 'Exceptional State' in Britain, the United States and Canada." *Crime and Social Justice*, 19(1983), 31-43.

Ratner, R.S., J. McMullan, and Brian E. Burtch, "The Problem of Relative Autonomy and Criminal Justice in Canada." In *State Control: Criminal Justice Politics in Canada*. Ed. R.S. Ratner and J.L. McMullan. Vancouver, B.C.: Univ. of British Columbia Press, 1987.

Redekop, John H., ed. *Approaches to Canadian Politics*. 2nd ed. Scarborough: Prentice-Hall, 1983.

Rees, W.M. "British Legal Services and Socialist Theories of Law." *Windsor Yearbook of Access to Justice*, 4(1984), 73-97.

Reich, C. "The New Property." *Yale Law Journal*, 73(1963), 733-787.

"Report of the Vancouver Bar Association." *The Advocate*, 15(1957), 153,159.

Roberts, John. "The Ontario Legal Aid Plan." *The Law Society of Upper Canada Gazette*, 2(1968), 7-9.

Robin, Martin. *Pillars of Profit: The Company Province 1934-1973*. Vol. II. Toronto: McClelland and Stewart, 1973.

Robins, Sidney L. "The Ontario Legal Aid Plan." *The Law Society of Upper Canada Gazette*, 8(1974), 211-225.

Robson, C. George. "Address of the President." *The Advocate*, 23(1965), 189-195.

Room, Graham. *The Sociology of Welfare*. Oxford: Basil Blackwell, 1979.

Ross, David. "Who Gets Legal Aid?" *Canadian Welfare*, 51(1975), 7-9.

Saltero, Joe. "Fees for Defence of Indigent Persons." *Saskatchewan Bar Review*, 14(1949), 70-72.

Sanderson, S., ed. *Law Related Educational Activities in British Columbia*. Ottawa: Department of Justice, 1977.

Savino, Victor. *Paralegalism in Canada*. LLM thesis, Dalhousie University, 1976.

Scheindlin, S.A. "Legal Services - Past and Present." *Cornell Law Review*, 59 (1974), 960-988.

Scheingold, Stuart. *The Politics of Rights: Lawyers, Public Policy and Political Change*. London: Yale Univ. Press, 1974.

Schuyt, Kees. "Dilemmas in the Delivery of Legal Services." In *Innovations in the Legal Services*. Vol. I. Ed. Erhard Blankenberg. Cambridge, Mass.: Oelgeschlager, Gunn and Hain, 1980, 53-75.

Scott, Cuthbert. "Free Law for the Poor." *Canadian Bar Review*, 13(1935), 152-163.

Scull, A.T. *Decarceration: Community Treatment and the Deviant - A Radical View*. 2nd Edition. Englewood Cliffs: Prentice-Hall, 1984.

Shabbits, James S. "Legal Aid in Great Britain: A Saskatchewan Viewpoint." *Saskatchewan Bar Review*, 30(1965), 98-104.

Shabbits, James S. "Symposium on Legal Aid II: Legal Aid in Great Britain." *Saskatchewan Bar Review*, 30(1974), 100.

Shearing, C. "Deviance and Conformity in the Reproduction of Order." In *Organizational Police Deviance*. Ed. Clifford Shearing. Toronto: Butterworths, 1981, 29-27.

Simeon, Richard. *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*. Toronto: Univ. of Toronto Press, 1972.

Skolnick, Jerome. *Justice Without Trial*. New York: John Wiley and Sons, 1967.

Sleeman, J.F. *The Welfare State: Its Aims, Benefits and Costs.* London: Allen and Unwin, 1973.

Smiley, Donald Victor. *Federalism in the Seventies.* 3rd ed. Toronto: McGraw-Hill Ryerson, 1980.

Smith, R.H. *Justice and the Poor.* New York: Carnegie Foundation, 1919.

Snider, Laureen. "Legal Aid, Reform, and the Welfare State." *Crime and Social Justice*, 24(1986), 210-242.

Snider, Laureen. *Legal Services in Rural Areas.* Rev. ed. Ottawa: Department of Justice, 1981.

Soloman, Harold. "This New Fetish for Indigency: Justice and Poverty in an Affluent Society." *Columbia Law Review*, 66(1966), 248-274.

Sparer, Edward. "Legal Services and Social Change: the uneasy question and the missing perspective." *National Legal Aid and Defence Association (NLADA) Briefcase.* December/January (1976-77), 58-62.

Stephens, Mike. "Law Centres, Citizenship, and Participation." *Law and Policy*, 7(1985), 77-91.

Stevenson, Garth. "Federalism and the Political Economy of the Canadian State." In *The Canadian State: Political Economy and Political Power.* Ed. Leo Panitch. Toronto: Univ. of Toronto Press, 1977, 71-100.

Stevenson, P. *The State in English Canada: The Political Economy of Production: Socialist Studies; A Canadian Annual.* Canada, 1983.

Stone, J. "Problems Confronting Sociological Enquiries Concerning International Law." *Recueil des Cours*, 89(1956).

Stuart, R. *The Politics of Rights: Lawyers, Public Policy and Political Change.* London: Yale Univ. Press, 1974.

Sullivan, Lawrence A. "Law Reform and the Legal Services Crisis." *California Law Review*, 59(1971), 1-27.

Sumner, C. "The Rule of Law and Civil Rights in Contemporary Marxist Theory." *Kapitalistate*, 9(1981), 63-91.

Swallows, Ariel F. "The Public Defender." *Saskatchewan Bar Review*, 16(1951), 22-25.

Sykes, Gresham M. "Legal Needs of the Poor in the City of Denver." *Law and Society Review*, 4(1969), 255-277.

Taggart, J.D. "Report of the Legal Aid Committee of the Vancouver Bar Association." *The Advocate*, 22(1964), 172-174.

Taman, Larry. *The Legal Services Controversy: An Examination of the Evidence*. Toronto: National Council of Welfare, 1971.

Taman, Larry. "Legal Services and Social Reforms." In *Access to Justice*. A Report of the Conference on Legal Aid, Canadian Council on Social Development, 1975, 95-98.

Taman, Larry. "The Adversary Process on Trial: Full Answer and Defence and the Right to Counsel." *Osgoode Hall Law Journal*, 13(1975), 251-271.

Tarnopolosky, W.S. "The Supreme Court and the Canadian Bill of Rights." *Canadian Bar Review*, 53(1975a), 670-674.

Tarnopolsky, W.S. *The Canadian Bill of Rights*. Ontario: McClelland and Stewart Ltd., 1975b.

Tawney, Richard Henry. *The Acquisitive Society*. New York: Harcourt, Brace and Howe, 1920.

Taylor, Ian, Paul Walton, and Jock Young. *Critical Criminology*. London: Routledge and Kegan Paul, 1975.

Taylor, I. "The Law and Order Issue in the British General Election and the Canadian Federal Election of 1979: Crime, Populism and the State." *Canadian Journal of Sociology*, 5(1980), 285-311.

Taylor-Gooby, Peter. *Public Opinion, Ideology and State Welfare*. Boston: Routledge and Kegan Paul, 1985.

Tepperman, Lorne. *Crime Control: The Urge Toward Authority*. Toronto: McGraw-Hill, 1977.

Thatcher, Richard W. "The Political Economy of Canada's 'War on Poverty'." In *Contradictions in Canadian Society*, Ed. John Fry. Toronto: John Wiley and Sons, 1984, 86-112.

Thompson, E.P. *Whigs and Hunters: The Origins of the Black Act*. Harmondsworth: Penguin Books, 1975.

Thompson, E.P. "The Secret State." In his *Writing By Candlelight*. London: Merlin, 1980.

Trubeck, David M. "Complexity and Contradiction in the Legal Order: Balbus and the Challenge of Critical Social Thought About Law." *Law and Society Review*, 11(1977), 538-569.

Trubeck, David M., and G. Louise. "Legal Services and the Administrative State: From Public Interest Law to Public Advocacy." In *Innovations in the Legal Services*. Ed. Erhard Blankenberg. Cambridge, Mass.: Oelgeschlager, Gunn and Hain, 1980, 131-160.

Trudeau, P.E. *Campaign Speech*, Ottawa: Liberal Party of Canada, 1968.

Turner, John. "Justice for the Poor." *The Law Society Gazette*, 4(1971), 195-205.

Unger, R. *Law in Modern Society*. New York: Free Press, 1976.

Van Loon, Richard J., and Michael S. Whittington. *The Canadian Political System: Environment, Structure and Process*. Toronto: McGraw-Hill, 1981.

"Vancouver Bar Association Annual Minutes." *The Advocate*, 11(1953), 209-211.

Vickers, David H. "The Attorney-General's Page." *The Advocate*, 32(1974), 78-81.

Wachtel, Andy, and Brian E. Burtch. *Excuses: An Analysis of Court Interaction in Show Cause Enforcement of Maintenance Orders*. Vancouver: United Way, 1981.

Waldbilling, F.L. "Legal Aid: A Basic Right?" *Saskatchewan Bar Review*, 30 (1965), 85-97.

Watts, Alfred. *History of the Law Society of British Columbia 1869-1967*. Vancouver: Law Society of B.C., 1973.

Watts, Alfred. *History of the Legal Profession in British Columbia 1869-1984*. *Vancouver:* Law Society of B.C., 1984.

Wedderburn, Dorothy. "Facts and Theories of the Welfare State." In *The Socialist Registrar*. Ed. Ralph Miliband and John Saville. New York: Monthly Review Press, 1965, 127-146.

Welsh, Michael F. *"What's a Paralegal?": A Personal Assessment of Legal Information Counsellors in British Columbia*. Unpublished Manuscript, Vancouver, 1977.

Wexler, S. "Practising Law for Poor People." *Yale Law Journal*, 79(1970), 1049-1067.

Whitaker, R. "Images of the State in Canada." In *The Canadian State*. Ed. Leo Panitch. Toronto: Univ. of Toronto Press, 1977, 28-68.

Widiss, A.I., J.W. Little, R.S. Clark, and T.C. Jones, eds. *No Fault Automobile Insurance In Action. The Experiences in Massachusettes, Florida, Delaware and Michigan*. New York: Oceana Publishing, 1977.

Wilensky, H.L., and C.N. Lebeaux. *Industrial Society and Social Welfare*. New York: Free Press/ Macmillan, 1965.

Wilensky, H.L. *The Welfare State and Equality: Structural and Ideological Roots of Public Expenditures*. Berkeley: Univ. of California Press, 1973.

Wilkins, J. *Legal Aid in the Criminal Courts*. Toronto: Univ. of Toronto Press, 1975.

Zander, Michael. "Costs in Crown Courts: A Study of Lawyer's Fees Paid Out of Public Funds." *Criminal Law Review*, January 1976a, 5-41.

Zander, Michael. "Legal Aid Contribution Orders." *New Law Journal*, January 1976b.

Zander, Michael. Cases and Materials on the English Legal System. London: Weidenfeld and Nicolson, 1976c.

Zander, Michael. *Legal Services for the Community*. London: Temple Smith, 1978.

Zander, Michael. "Public Policy for Legal Services." In *Innovations in the Legal Services*. Ed. Erhard Blankenberg. Cambridge, Mass.: Oelgeschlager, Gunn and Hain, 1980.

Zemans, F.H. *Community Legal Services in Perspective: A Casebook*. Toronto: Osgoode Hall, 1973.

Zemans, Frederick H. *Perspectives on Legal Aid: An International Survey*. Westport, Conn.: Greenwood Press, 1979.

Primary Sources:

Attorney General's Committee on Poverty and the Administration of Criminal Justice (the Allen Committee). Recommendations. 1961.

British Columbia Justice Development Commission. *Developments in Legal Aid Across Canada*. A Conference. Vancouver, June 28, 1974.

Canada. Department of National Health and Welfare. *Social Security in Canada*. Ottawa: Information Canada, 1977.

Canada. Parliament. *House of Commons Debate: Official Report* (Records 3 and 4). Ottawa: Queen's Printer, 1950-1976.

Canada. Parliament. Special Senate Committee on Poverty (The Croll Committee). *Poverty in Canada*. Ottawa: Queen's Printer, 1971.

Chapin, Henry and Denis Deneau. *Citizen Involvement in Public Policy-Making*. Ottawa: Canadian Council on Social Development, 1978.

Economic Council of Canada. *The Challenge to Growth and Change*. Ottawa: Queen's Printer, 1968.

International Council on Social Welfare. *Social Development Canada*. Ottawa: Canadian Welfare Council, 1970.

Joint Committee on Legal Aid (Ontario). *Report of the Joint Committee on Legal Aid*. Toronto: Ministry of Attorney General, 1965.

Justice Information Report. *Legal Aid Services in Canada*. Ottawa: Supply and Services, 1981.

Letter. Bonner to Harper. May 21 1968.

Morris, P., and R.N. Stern. *Cui Bono - A Study of Community Law Offices and Legal Aid Society Offices in British Columbia*. Vancouver: British Columbia Ministry of Attorney General, 1976.

Morse, Bradford W. "The Native Legal Task Force in BC." In *Access to Justice: Report of the Conference on Legal Aid*. Ottawa: The Canadian Council on Social Development, 1975, 130-137.

National Task Force on the Administration of Justice. *Legal Aid Services in Canada 1977-78: A Comparison of Services*. Ottawa: Department of the Attorney-General, 1979.

Newham Rights Centre. *Report and Analysis of a Community Law Centre 1974-75*. London, 1975.

Office of Economic Opportunity. *Guidelines for Legal Services Programs*. 1966.
Ouimet, R. *Towards Unity: Criminal Justice and Corrections*. Report of the Canadian Committee on Corrections. Ottawa: Queen's Printer, 1969.

Penner, R. "The Development of Community Legal Services in Canada: An Evaluation of Parkdale Community Legal Services in Toronto; Dalhousie Legal Aid Service in Halifax; and Community Services. Inc. in Point St. Charles, Montreal." Manuscript prepared for the Canadian Department of Health and Welfare, Ottawa, August, 1977.

Report of the Committee on Legal Aid and Advice in England and Wales, Cmnd 6641 (*The Rushcliffe Report*). London: Her Majesty's Stationary Office, 1945.

Smith, P., and P.A. Thomas. *Evidence to the Royal Commission on Legal Services: The Duty Solicitor Scheme in the Cardiff Central Charge Unit*. Cardiff: Faculty of Law, University College, 1977.

Society of Labour Lawyers. *Justice for All*. London: Fabian Society, 1968.

Vancouver Inner-City Service Project Legal Services and Research Program, October 1970 Report:5 (Harcourt Report)

Wachtel, Andy. *What Works? An Explanatory Examination of Court Enforcement Efforts and Payment Levels of Maintenance Orders Monitored by the Vancouver Family Court*. Vancouver: British Columbia Ministry of Attorney General, 1983.

ARCHIVAL SOURCES

Victoria, B.C. Provincial Archives. Law Society Records.

Vancouver, B.C. Courthouse Archives. Law Society Records.

Vancouver, B.C. Legal Aid Society Archives.

NEWSPAPERS

Alberni Valley Times, July 9, 1969.

Labour Statesman, July 1968.

Langley Advocate, June 7, 1968.

Nanaimo Daily News, June 28, 1969.

Nanaimo Free Press, March 7, 1969.

New Westminster Columbian, August 6, 1969.

The Province, June 4, 1968.

The Province, July 4, 1968.

The Province, May 22, 1969.

The Province, June 27, 1969.

The Province, November 20, 1969.

The Province, September 3, 1970.

Trail Daily Times, July 3, 1969.

Trail Daily Times, June 18, 1969.

Trail Daily Times, June 26, 1969.

The Vancouver Sun, January 13, 1964.

The Vancouver Sun, March 2, 1968.

The Vancouver Sun, March 20, 1968.

The Vancouver Sun, July 4, 1968.

The Vancouver Sun, December 11, 1968.

The Vancouver Sun, January 30, 1969.

The Vancouver Sun, June 17, 1969.

The Vancouver Sun, June 28, 1969.

The Vancouver Sun, June 29, 1969.

The Vancouver Sun, July 2, 1969.

The Vancouver Sun, August 6, 1969.

The Vancouver Sun, August 7, 1969.

The Vancouver Sun, December 4, 1969.

Victoria Colonist, June 27, 1968.

Victoria Colonist, June 29, 1968.

Victoria Colonist, February 28, 1969.

Victoria Columnist, March 1, 1969.

Victoria Times, February 28, 1969.

Victoria Times, March 1, 1969.

Victoria Times, January 12, 1970.

The Whally Herald, June 26, 1968.

LEGAL PROCEEDINGS

Johnson v. Verbat, 304 U.S. 458 (1938).

Powell v. Alabama, 287 U.S. 45 (1932).

Betts v Brady, 316 U.S. 453 (1942).

Ellis v. United States, 356 U.S. 674 (1957).

Gideon v. Wainwright, 372 U.S. 335 (1963).

Douglas *et al.* v. California, 372 U.S. 353 (1962).

Massiah v. United States, 377 U.S. 201 (1964)

Escobedo v. Illinois, 378 U.S. 478 (1964).

Miranda v. Arizona, 354 U.S. 430 (1966).

Shapiro v. Thompson, 394 U.S. 618 (1969).

Goldberg v. Kelly, 397 U.S. 254 (1970).

Argensinger v. Hamilin, 407 U.S. 25

Fuentes v. Sherin, 407 U.S. 67 (1972).

Re Ewing and Kearney v. the Queen C.C.C. [2d] (1973).

R. v. Gray (1962) Can. C.C. 337.

INTERVIEWS

Harcourt, Michael. Personal Interview. April 7, 1989.

Jabour, Donald. Personal Interview. June 16, 1989.

Leask, Peter Leask. Personal Interview. May 8, 1990.

Legg, The Honourable Mr. Justice. Personal Interview. February 24, 1989.

MacDonald, The Honourable Mr. Alex. Telephone Interview. June 15, 1990.

Maczko, The Honourable Mr. Justice. Personal Interview. April 10, 1989.

Manson, Peter Manson. Personal Interview. June 12, 1990.

Matters, Diane Matters. Personal Interview. February 16, 1989.

Meredith, The Honourable Mr. Justice. Personal Interview. March 15, 1990.

Mossop, David. Personal Interview. November 13, 1990.

Ralph, Brian. Personal Interview. June 18, 1990.

Rankin, Harry, Q.C. Personal Interview. March 6, 1990.

Taggart, The Honourable Mr. Justice. Personal Interview. March 13, 1989.

Vickers, The Honourable Mr. David. Personal Interview. February 23, 1991.