

PLANC RESEARCH PAPER

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**POVERTY LAW ADVOCATES NETWORK OF CANADA (PLANC)
Research Paper**

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INTRODUCTION

This paper was commissioned by a steering committee comprised of poverty law advocates from across the country.¹ The goal of this committee is to establish a network of advocates to create a national voice for poverty law. The steering committee was initiated by an ad hoc group of poverty law advocates who came together following an international clinic conference held in Ontario in 2003.

Poverty law services are those that enable poor people and disadvantaged communities to advance their interests and legal rights. Typically, such services protect fundamental interests such as shelter and income -- whether through income maintenance schemes, injured workers' compensation, or employment. Poverty law encompasses areas of law that specifically affect ethno/racial communities, like criminal law when police forces engage in racial profiling, or matters relating to First Nations status. Poverty law services also typically cover a range of services, from individual advice and representation, to community organizing and law reform, to test case litigation and presentation of briefs to legislative and policy bodies. Most importantly, they are services that allow the communities of interest to set their own agenda -- that allows communities to articulate their legal needs, make the decisions about service priorities and strategies to address those needs.

PLANC supports the litigation initiated by the Canadian Bar Association (CBA) against the government of British Columbia, the government of Canada, and the Legal Services Society of British Columbia.

This paper will inform a consultation that will include advocates across the country to create a national poverty law network, and to develop advocacy guidelines to present a Canada-wide message for the rebirth of and reinvestment in poverty law. This paper is intended to be a tool to facilitate discussions in the preparations of such guidelines.

Why a Poverty Law Network Matters

While the federal government provides some of the funding for criminal and immigration services, it is the provinces and territories that administer legal aid plans through government agencies, commissions or law societies and enact enabling legislation. At the

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national level, there is little contact among those actually providing legal aid services. Governments and legal aid plans meet regularly through the statutory body of the Permanent Working Group (PWG) on legal aid. Through the PWG, multi-lateral funding agreements have been negotiated, national research agendas developed, and federal legal aid policy developed. According to the Department of Justice website, the federal/provincial/territorial PWG “provides a forum for discussion about legal aid related issues. The resultant collaboration promotes the development and implementation of legal aid policy in Canada. The PWG comprises FPT [federal/provincial/territorial] representatives and members from each provincial and territorial Legal Aid Plan responsible for the delivery of legal aid services. The PWG is accountable to the FPT Deputy Ministers Responsible for Justice for its activities.”

In addition, legal aid plan administrators meet annually to discuss matters of mutual concern, and to compare strategies and experiences in delivering legal aid services.

There is no such body or process for legal aid service providers. Lawyers are regulated at a provincial level, so law societies are provincial, as are most lawyers’ professional associations. But the Canadian Bar Association is the only national body through which advocates can discuss matters of concern in the delivery or adequacy of legal aid.

Because poverty law is an area where the community is involved through various anti-poverty groups, women’s organizations, tenants’ rights groups, and many of the services of provided by community workers and paralegals, the CBA on its own cannot encompass all of those interests. To create a national presence for poverty law, advocates need a vehicle to speak about issues that affect low-income and disadvantaged groups across the country, both to each other and to governments and policy makers.

The premise of this paper is that a better understanding of the history of poverty law in Canada, as well as its roots in other jurisdictions, will inform our discussions in the future. It is intended as a discussion paper for the development of a national network of poverty law advocates across the country, which will assist in defining the critical elements of community-based poverty law services.

Research

The objective of this paper is to broaden and deepen our understanding of key issues relevant to the practice of poverty law by looking at its history and development. It will do so in the particular context of the history of poverty law services in Canada, and, where it helps our understanding of the Canadian experience will look at the experience of other countries. It will examine the relationship between the practice of poverty law and the delivery models in which it is practiced. It will survey the current state of poverty law services in Canada.

In the last thirty years we have seen the expansion and contraction of legal aid services across Canada. We have seen the contraction, and sometimes disappearance of civil legal aid altogether.

Poverty law is not always seen as a legitimate area of practice, and certainly not a high priority in legal aid. Legal aid plans are often driven by traditional areas of practice, and in conditions of fiscal restraint, poverty law is the first to disappear entirely. In some jurisdictions, poverty law never took hold at all within legal aid plans.

Federal funding of civil legal aid began with the Canada Assistance Plan in 1979, through which the federal government provided a fifty per cent cost share agreement with the provinces. With the demise of CAP in 1996, federal funding that had been provided for civil legal aid was blended into the Canada Health and Social Transfer (CHST), and given to provinces to spend at their discretion in any of those areas. While the federal government continues to state that funding for civil legal aid is included in the transfer, the provinces are not obliged to spend it on legal aid, and in fact, often do not. Federal jurisdiction over civil legal aid appears to be split between the federal departments of Justice, Finance, Citizenship and Immigration Canada, and Human Resources and Social Development. While the Department of Justice Canada has undertaken some research in the areas of civil legal aid and funded some pilot projects, there have been no national standards in civil legal aid services and little policy leadership. There has been no federal department that clearly has the lead on matters of civil legal aid.

Poverty law services, where they existed, have either been slowly eroded over the years, or eliminated in one swift political action, as in Saskatchewan in the mid-eighties, and more recently, in British Columbia. Community Law Offices and Native Community Law Offices in British Columbia were lost through cuts to legal aid funding, and new legal aid legislation. This lack of a network of poverty law service providers triggered our concern as to the future of poverty law in Canada.

HISTORY

The Birth of the Concept of Poverty Law

The roots of poverty law services are in the United States. In the early 1960's, demonstration projects funded by the Ford Foundation, a charitable organization, began to experiment with services for poor people. American President Lyndon Johnson initiated a policy of a "war on poverty", which had as an objective, ending poverty in America through his new project, the Office for Economic Opportunity (OEO). This initiative included a legal component that was to change the way law was practiced with the goal of eradicating poverty. In his policy statement of 1964², Johnson stated:

Because it is right, because it is wise, and because, for the first time in our history, it is possible to conquer poverty, I submit, for the consideration of the Congress and the country, the Economic Opportunity Act of 1964. The Act does not merely expand old programs or improve what is already being done. It charts a new course. It strikes at the causes, not just the consequences of poverty. It can be a milestone in our one hundred eighty-year search for a better life for our people.

Addressing legal services directly, he added:

² Modern History Sourcebook: President Lyndon B. Johnson, The War on Poverty, March 1964, www.fordham.edu/halsall/mod/modsbook.html

It will give every American community the opportunity to develop a comprehensive plan to fight its own poverty-and help them to carry out their plans.

An article in the Yale Law Review by Edgar and Jean Cahn entitled “The War on Poverty: A Civilian Approach” established the framework for these new services. Critiquing the demonstration projects that went into poor neighbourhoods with a pre-existing plan to provide services for them, they rejected the notion of professionals deciding what services were needed by the poor because “A service program fills a need, but experts, not recipients designate the need to be filled and establish the criteria for eligibility for aid.”³ . While not setting out specific structures, they stated that “whatever form the endeavor takes and whatever the context to which it responds, it has, as a matter of definition, one necessary characteristic -- that it voice the concerns of individuals in their capacity as citizens”⁴. They went on to say: “...there is a need for supplying impoverished communities the means with which to represent the felt needs of its members”. The concept of “felt need” was need from the perspective of the client community, in contrast to needs as determined by professionals.

According to Alan Houseman⁵, of the Center for Law and Social Policy (CLASP) in the US, the following were the five elements of the new legal services funded by the federal program:

- The notion of responsibility to all poor people as a ‘client community’, not just individual clients who happen to be poor
- The right of clients to control decisions about the solutions to their problems. The Legal Services Program was not an agency to give services to poor people but rather an advocate whose use poor people were to determine
- A commitment to redress historic inadequacies in the enforcement of poor people’s legal rights...“Legal services pursued ‘law reform’ ”
- Responsiveness to legal need rather than demand. Probably the greatest deficiency of the legal aid societies was that they responded only to uninformed demand -- to those who walked into the office. ...through community education, outreach, and physical presence in the community, legal services programs assisted clients in identifying critical needs
- Full range of service and advocacy tools, as full a range as that offered by private attorneys for the affluent.

The OEO developed guidelines for funding of these new legal services that included a representation of poor people on the boards of local legal services programs and encouraged the formation of client advisory councils⁶.

³ The War on Poverty: A Civilian Perspective, Edgar and Jean Cahn, 73 Yale Law Journal 1317 (1964), p. 1321.

⁴ Ibid., p. 1332

⁵ Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States, Alan Houseman and Linda Perle, Centre for Law and Social Policy, November 2003, www.clasp.org/publications/Legal_Aid_History, p. 12

⁶ Ibid p. 8-9

According to Houseman, “The Office of Economic Opportunity also developed a unique infrastructure -- found...that, through national and state support, training programs and a national clearinghouse, provided leadership and support on substantive poverty law issues and undertook litigation and representation before state and federal legislative and administrative bodies”.⁷

Houseman states that these programs had some immediate successes, including constitutional recognition of the rights of the poor, redressing of grievances in courts, advocacy that helped shape programs for the poor and at an individual level, enforcement of legal rights.⁸

Significantly, the program organizers were able to obtain the support of the organized bar. The American Bar Association became a champion for the neighbourhood law offices, and these offices became the dominant model for the provision of civil legal aid services in the United States.

In 1975, the program was transferred to an independent body, the Legal Services Corporation, whose board was appointed by the President and confirmed by the Senate, a highly political process that was to create problems in the future. Throughout the seventies the program grew. By 1981, the LSC funded 325 programs with 1,450 offices throughout fifty states.

International impact of neighbourhood law offices

The success and inspiration of the US model was felt around the world. It influenced legal services in the United Kingdom, Australia and in Canada. The model did not become the dominant one in any other jurisdiction, although some think that Quebec came close.

For the most part, the influence produced instead local grass roots initiatives, leading to the establishment of law centres in England and Wales, and in Australia, and community clinics and offices in some jurisdictions in Canada, co-existing with legal aid plans that were delivered, and often administered by the private bar. While jurisdictions that already had a strong involvement by the private bar in early legal aid plans often resisted the notion of staff offices, eventually law centres and legal clinics gained acceptance. This conflict sometimes played out through professional regulatory bodies, and sometimes through local organizations of private lawyers when offices opened in their communities.

Law Society rules that attempted to limit the work done by clinics and law centres have probably contributed to shaping some of the services that have developed in poverty law, with explicit or implicit prohibitions on some areas of law, specifically criminal and family.

In the UK, for example, since 1977, “waivers of Law Society rules against advertising and touting have made it possible for the Law Centres to provide some services

⁷ Ibid., p. 9

⁸ Ibid., p. 20

proactively, but they are limited to specific geographic areas and are generally limited a few areas of law such as landlord/tenant matters, juvenile crime and care cases, and employment and welfare benefits matters. They are generally forbidden to provide services touching on such traditional private practitioner's work as criminal defence, divorce, probate, or conveyancing".⁹

Some in the profession feared that clinics and law centres would be a threat to their livelihood: "In 1975 the Federal Government of Australia announced its decision to open Government sponsored 'shop front' legal aid offices throughout the country, staffed by a salaried service, thereby making access to the law available to all. The private profession, who had spawned the very concept of legal aid, saw this pronouncement by the government as the end of the free enterprise legal system which had flourished for almost two centuries".¹⁰

These conflicts were short-lived. Not only did poverty law organizations achieve a peaceful co-existence, but most frequently law societies and lawyer associations have been champions for community-based legal services when threatened by government cuts.

Canada

In Canada, the neighbourhood offices influenced academics and local organizers, as well as legal aid plans. Four of the earliest community-based poverty law services were modeled on the American model as outlined by Houseman above, including the affiliation to a law school. These pioneers were Parkdale Community Legal Services in Toronto, Dalhousie Legal Aid in Halifax, Vancouver Community Legal Assistance Society (now known as Community Legal Assistance Society), and Saskatoon Law Clinic. They were directly influenced by the model described by the Cahns. Students were often in the forefront of organizing community-based programming.

At the same time, other community organizations were beginning to form. Even before these three clinics, injured workers in Toronto were organizing themselves into the Injured Workers' Consultants, a clinic that began in 1969 with no lawyers on staff, and resisted a lawyer even when it came under the umbrella of Ontario's legal aid system until it became a condition of funding in the 1980's. It continues to operate today, with a clear focus on community organizing and law reform. It is known for its highly effective use of street theatre in community legal education.

These early forays into poverty law were supported by funding from the federal government through sources such as Opportunities for Youth (OFY), and Local Improvement Programs (LIP) grants. Those in Ontario, British Columbia and Nova Scotia were able to survive because of the legal clinic funding that came from the respective provinces beginning in the mid to late seventies.

⁹ Presentation by Patricia Brantingham, Bureau of Programme Evaluation and Internal Audit, Department of Justice Canada, National Symposium on Legal Aid, Canadian Bar Association, Halifax, August 1985

¹⁰ Ibid., Presentation by Barry Smith, Director of Queensland Legal Aid.

An article by Larry Taman and Fred Zemans, written for the Canadian Bar Review in 1973, entitled: *The Future of Legal Services in Canada*, set out a vision that saw a future that lay in the neighbourhood law office approach, that would not only create a new way to deliver legal services, but would ultimately influence the very way in which justice would be administered. Despite the dominance of the judicare, or private bar certificate model at the time, they saw a movement towards community-based services, citing examples in Quebec, Nova Scotia, and Manitoba. According to the authors, Quebec “propounded the superiority of a neighbourhood law office system: full-time salaried lawyers and a strong community base were the keynotes here, modeled on the American Office for Economic Opportunity offices. Nova Scotia opened offices with 40 full-time staff lawyers “in neighbourhood offices”, while Manitoba replicated Ontario’s judicare model, and “one large experimental neighbourhood law office in Winnipeg’s North End” that would be “used as a laboratory for testing future directions”¹¹.

With the benefit of hindsight, Taman and Zemans clearly overestimated the impact of neighbourhood law offices on legal aid plans, and were proven wrong about it superseding judicare services. At the time, however, it was unclear what the future held, as most jurisdictions in Canada were discussing poverty law or trying to implement it at the time. The influence of the US experiment was felt across the country.

A study of the early history of legal aid plans in Canada show that Saskatchewan, Manitoba, Nova Scotia, the Northwest Territories, Quebec, British Columbia and Ontario were all influenced, even if only for a short time, by the US neighbourhood law office focus on prevention, law reform and an activist anti-poverty strategy. Studies in Alberta recommended similar initiatives that were never implemented. Poverty law services do not ever appear to have taken hold within the legal aid plans of PEI, New Brunswick, or Newfoundland. There is no information as to whether grassroots programs had begun in the early seventies that had to be abandoned with the disappearance of the original funding sources.

Those poverty law organizations that survived generally did so with legal aid funding, and sometimes law foundation funding. Some were brought under the umbrella of legal aid plans.

Ad Hoc Delivery of Poverty Law Services within Legal Aid Plans

While this paper has set out the documented impact of the neighbourhood offices, what cannot be captured is the influence that the ideas coming from across the border had on individual law students, lawyers, and community activists. The development of university based community legal services created a new generation of lawyers who went out into private practice or into legal aid staff offices. While the legal aid models with staff offices were centrally administered and may have only “officially” offered criminal and family law services, they were not as closely managed as they are today. There was a period where poverty law services were not mandated, but were tolerated. Individual lawyers with a commitment to fighting poverty through legal services could often, on their own

¹¹ The Future of Legal Services in Canada, Larry Taman and Fred Zemans, 1973 Canadian Bar Review 32, p. 33

initiative, carry some of this work into the communities where their offices were based. For example, alumni from Dalhousie Legal Aid often joined legal aid upon their call to the bar.

DECLINE OF POVERTY LAW SERVICES

United States

The decline of poverty law in the US was a highly politicized process. As the political environment began to change in the US, so did the treatment of neighbourhood law offices. The early successes of the neighbourhood offices had triggered a response almost immediately in some states. Ronald Reagan, as Governor of California, attempted to cut funding being used to assist farmworkers. In addition to the geographically based neighbourhood offices, the Office of Economic Opportunities also funded and administered a program for farmworkers, and Native people. As Governor, he was unsuccessful, but these attempts were successful years later when he assumed the office of President.

With the changeover from the OEO, to the Legal Services Commission, funding for the Legal Services Commission (LSC) had to be approved directly by Congress, and it was highly politicized. The demise of the LSC began with the Reagan presidential years, with cuts to funding, and the appointment of board members who were hostile to the program. “Compliance monitors audited local programs in a highly adversarial manner and frequently demanded information records that attorneys could not ethically provide” .¹²

Restrictions began with prohibition of use of funds “for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any state legislature”.¹³

The first restrictions on casework began in 1980 with a provision that “ prohibited LSC and legal services programs from using LSC funds to undertake any activity or representation on behalf of known illegal aliens.”¹⁴

By the mid-nineties, three things happened: first, grants began to be awarded through competition; and legal services were redefined and made far more narrow, with the LSC stating they should be “focused primarily on individual cases” while efforts to address the problems of the client community had to left to those that did not receive federal funds. Secondly, class actions and most legislative advocacy would no longer be permitted; and finally, overall levels of funding were also cut.¹⁵

Through these actions, according to Houseman, “A strong community based national program that saw many successes, has been cut, and undermined through program

¹² OpCit at 5 (Houseman & Perleman), p. 22

¹³ Ibid, p. 25

¹⁴ Ibid, p. 25

¹⁵ Ibid. p. 23

restrictions. LSC programs can no longer practice poverty law in the full sense of the broad range of services.”¹⁶

The demise of poverty law practice within federally funded programs was the result of direct political decision. It was the very success of the program in its defence of the interests of the poor against state authorities that led to prohibition of those activities within federally funded legal aid programs in the US.

Over the years, this had led to the development of legal aid services that operate entirely outside the Legal Services Commission. Some of the strongest local programs continue in the practice, and have given up their federal funding in favour of state grants, and private donations. For example, Greater Boston Legal Services receives state funding, as well as being supported by the local bar. In fact, 40% of its budget comes from law firm donations.¹⁷ The LSC has become largely irrelevant to the operations of organizations like GBLS.

Canada

While the 1970’s saw the growth of legal aid plans, and the early development of community-based legal services, by the 1980’s, things began to change in Canada as well. While the political backlash to poverty law was felt in some jurisdictions, like Saskatchewan and Nova Scotia, the Canadian story of the decline of services has more often been the slow erosion of those services, under the weight of increased demand for criminal and family services, and static or shrinking legal aid budgets. Nova Scotia Legal Aid and Manitoba Legal Aid quickly saw their staff offices transform into traditional law offices focused on criminal and family services. While the Saskatchewan government, in one action, eliminated community boards and poverty law services in its legal aid plan, this was preceded by years of erosion of poverty within their clinics, and erosion of the community base.

Because legal aid is administered provincially rather than federally, these influences played out differently in each province and territory. The recession of the mid 1980’s meant a new era of fiscal restraint in many jurisdictions, or conservative governments that, like the Reagan government, rejected legal services as an anti-poverty strategy. In Canada, many legal aid services began to shift back to the traditional criminal and family law services. There was also an increased demand for family law services as legislative frameworks were being fundamentally reformed.

Yet, in Ontario and British Columbia, clinics, community law offices and Native community law offices continued to expand throughout the eighties. Dalhousie Legal Aid and Community Legal Assistance Society also continue to operate, and until recently, were supported by legal aid funding for their poverty law services. In Quebec, the government made a commitment to a well-funded and very broad plan that for many years was lauded as a world leader.

¹⁶ Ibid. p. 24

¹⁷ Interview with Dan Manning, Greater Boston Legal Services

Details of the struggles and erosion of poverty law services in individual jurisdictions are elaborated below. But, some general points can be identified.

SOME LESSONS

The poverty law services that survived the longest in Canada were those that were dedicated exclusively to the provision of poverty law services, and who could make the interests of community paramount. British Columbia's community law offices and Ontario clinics, as well as Dalhousie and CLAS, did not attempt to deliver comprehensive criminal and family law services as part of their mandates. All are (or, in the case of British Columbia, were) governed by community boards.

Dedicated poverty law services allow for a collective or systemic response to legal issues, not simply assistance to individuals. The essence of poverty law is the advancement of communities of interest, either geographic communities of poor people, or people who share an historical socioeconomic disadvantage, be it race, gender, or disability. Poverty law services must allow for a range of options to advance those interests that include but are not limited to: individual advice and representation, community education, community organizing and law reform.

Manitoba, Saskatchewan and Nova Scotia's attempts to incorporate poverty law into the full complement of legal aid services soon found those services marginalized to criminal and family, and to the pressures of individual case representation. Neither Manitoba nor Nova Scotia had the community involved in the development of legal aid service priorities, so communities of poor people or other disadvantaged communities did not have a voice to opt for services that would meet their needs.

Even in Saskatchewan, locally controlled boards had difficulty sustaining that control when the same offices were given responsibility for criminal services. It also appears to take time for the community development that is necessary to sustain a community based legal service. Saskatchewan's clinics were created very quickly, and Jennie Abell states that the full implications of community based services were never really understood. In British Columbia and Ontario, the long-standing community office networks were built over time.

Local control (geographic community) or control by the community of interest, is an important factor in protecting the continuation of those services. While control of services does not protect against funding cuts, or political annihilation as happened in British Columbia, involvement of the community and a vested interest in the community helps to protect those services from political pressures. Their very existence creates a public voice for the services, which doesn't exist when they are inside legal aid plans. Staff lawyers and legal aid plan administrators cannot be a public voice because of their personal financial interest in their jobs.

Even where those communities are unsuccessful in protecting services or funding, they remain as a stronghold for rebuilding. British Columbia, for example, was devastated by

legal aid cuts, but the continued existence of a network of community based groups that provide some services appear to be the basis upon which poverty law in BC is beginning to be rebuilt.

High quality legal expertise is also essential. This was taken as a given in the early years, but with the proliferation of volunteer services in this area, it needs restating. While community based organizations are fundamental, inside or outside legal aid umbrellas, so too is the involvement of lawyers. A paper commissioned by the Law Foundation of BC by SPARC looks at what kind of supports community groups need to be able to provide poverty law sources. It recognizes the importance of lawyers who get paid to practice in the areas of law around poverty law in order to develop and maintain the expertise to be able to provide training and supervision to advocates in community organizations across the province.

The knowledge required does not just come from reading relevant pieces of legislation, but also from an understanding and appreciation of the context within which the case is unfolding-expertise it is difficult to amass for lawyers who do not regularly work in this area.¹⁸

The report goes on to say:

The overwhelming strategy emphasized by respondents is to create and fund a core group of lawyers to work in the poverty law field on a full time basis. The frequency with which this theme was cited by respondents far exceeds all of the others mentioned below. While respondents acknowledge that it is likely impossible to create the same number of poverty law lawyer positions as previously existed under legal aid, even a handful of lawyers functioning as a centre resource for advocates and community groups would be a significant asset.¹⁹

The report further states that “The need for lawyer involvement in poverty law cannot be satisfied by volunteer based services.”²⁰

Because the closings of the CLO’s are recent, there is still a pool of lawyers who have gone to private practice or other kinds of practice who might still be available as volunteers. But because of the interests that poverty law protects, there is no pool of paying clients who can support the legal practices of lawyers to provide pro bono services. Volunteer lawyers can only offer expertise in areas of law that are supported by paying clients.

Another important factor in the survival of poverty law services is the importance of a strong legal aid plan that delivers comprehensive criminal and family services. Poverty law appears to have survived, and flourished, over the years in jurisdictions where it co-

¹⁸ Delivering Poverty Law Services: Lessons from B.C. and Abroad, Andrea Long & Anne Beveridge: Social Planning and Research Council of B. C. 2005, p.33

¹⁹ Ibid. p. 35

²⁰ Ibid. p. 38

existed with successful legal aid organizations that deliver services through the private bar, or through staff offices that mirror private practice. Where poverty law is integrated into family, or even criminal law services, poverty law tends to get overwhelmed by individual caseload demands. This has happened in Manitoba, Saskatchewan and Quebec, and very early on in Nova Scotia. Poor men and women alike have a right to expect traditional legal aid services in family law, and child welfare law, particularly where there are competing legal interests within poor communities. Where such services don't exist, poverty law clinics or law centres end up having to provide those services, and under the weight of the demand of individual client need, become unable to advance collective community interests.

RECENT TRENDS IN THE DELIVERY OF CRIMINAL AND FAMILY LEGAL AID SERVICES AND THEIR IMPACT ON POVERTY LAW

The 1990's saw dramatic changes to legal aid plans in Canada, the UK, and Australia. Common law jurisdictions that had enjoyed open-ended demand driven budgets were all beginning to move to capped budgets. The recession of the early 90's created a large increase in the demand for legal aid. As unemployment rose, an increasing number of people became financially eligible for legal aid. In combination with the changing political winds that no longer accepted budget deficits during economic downturns, and increasing tax cuts, governments faced declining revenues. Many governments began deep cost-cutting to a wide range of social programs, including legal aid. Criminal and family law services that had previously been funded to meet demand now faced capped budgets.

Operating within capped budgets has fundamentally changed how legal services are delivered in the areas of criminal and family law. Those services could no longer simply mirror the services to "persons of modest means". Those plans that had relied on the private bar to deliver services had managed legal aid only to the extent that case priorities and tariffs were determined. Clients were either eligible for full services or not at all. Duty counsel, a program that has been in place in many jurisdictions, was the only exception to this.

The initial reaction to capped budgets was massive cuts in services. In legal aid plans with traditional legal services, where they could only say yes or no to clients, the answer increasingly became no. As services, particularly in the area of family law, plunged to unacceptable levels, plans began to experiment with "innovative" services that sought a middle ground between outright refusal of services, and full representation. This is often referred to as "unbundling", allowing lawyers to provide partial services, without becoming the lawyer that the client can rely on to take their full case. It increasingly relies on advice and information to support clients representing themselves in court appearances.

Legal aid plans have borrowed from the range of services that previously had been a hallmark of poverty law services in order to expand the number of individuals they could serve. While community based legal services use the range of services to advance

community interests, legal aid plans often use their range of service in order to increase volume.

While the services may look the same, they are fundamentally different. Choice of remedy or service is driven by the community in poverty law services, while choice of service is imposed on the community by legal aid plan administrators. When these decisions are driven from the top down, it is very important that the decision-making process be transparent. Innovation to improve services should not be confused with innovation to reduce costs.

Community based services have historically relied on advice or a brief service when that could resolve the problem. For example, letting a client know that they do not have to comply with an illegal eviction notice, or making a telephone call to a welfare worker to clarify information required to obtain benefits. This is very different from providing advice when what is required is court or tribunal representation.

Community education has traditionally been rights-based information that assists clients in avoiding legal problems, or in alerting them to a remedy that might be available, with a referral to the appropriate service. It has been used to define and articulate legal problems of poor people. Community education can also be used to support organizing of communities to advance their interests in a law reform context.

Now community education is often being used by courts to manage their intake by requiring litigants in family law to attend information sessions. It moves from a process to empower the community to one that attempts to manage its expectations, and reduce its use of the justice system for redress. With greater frequency, it becomes an alternative to representation, with the provision of information geared towards “self-representation”.

While the innovations of the seventies was an acknowledgement of the magnitude of unmet legal need, innovations of the nineties has been about finding cheaper ways to deliver services. In the seventies, community workers and lay advocates were promoted because they understood the communities they were working with, and were seen as closer to or more sensitive to the needs of poor people. In the nineties, paralegals were promoted because they could provide some services more cheaply than lawyers.

Poverty law services have in fact always been cost effective, but cost-effectiveness has not been the primary goal.

These changes to legal aid plans have important implications for poverty law services. The priority of legal aid plans has become the management and integration all services, and efficiency has become the mantra. Innovation of services becomes driven by cost reduction. Local control is seen as fragmentation of services. Efficiency has acquired a moral dimension, with the argument that lack of top-down control over services results in waste that hurts clients.

In the United States, the Legal Services Commission has moved from funding and supporting over 1000 neighbourhood law offices, to funding 325 legal service deliverers. They have moved to state-wide planning processes, often through Access to Justice Commissions in which legal aid is only one player. LSC funded neighbourhood legal services have been forced to amalgamate or face the tendering process to compete for funding among themselves. On a positive note, some states have seen the flourishing of neighbourhood centres that opted out of the LSC, and continue to provide community based services funded by interest on trust accounts (IOLTA), and charitable donations from large law firms.

In a 2005 paper by Alan Houseman, he states that while the U.S. civil legal has done well in “educating and informing low-income people persons of their rights and responsibilities” and in “informing low-income persons about the options and services available to solve their legal problems...” they have made slow progress in meeting the their third objective of “ensuring that all low-income persons, including individuals and groups who are politically or socially disfavored or have distinct and disproportionately experienced legal needs, have meaningful access to a full range of high-quality legal assistance providers when they have chosen options that require legal advice and representation”.²¹

In the UK, the new “Community Law Service” was intended to bring together the state run legal aid scheme, community law centres, and citizen’s advice bureaus, creating a continuum of services. Advice centres and law centres had previously been funded primarily by local councils. While this initiative has seen an increase in the allocation of legal aid funds to law centres, it is increasingly for the purpose of casework, diminishing their ability to respond to local issues and local need.

In Australia, some states governments are engaged in a tendering process for poverty law services, often resulting in competition between legal aid commissions, law centres, church-based services and for-profit service providers.

In Canada, provincial jurisdiction over legal aid has meant that for the most part, provincial government funding, with federal funding going directly to the provinces, has meant fewer service providers outside legal aid plans, though Law Foundations are playing a growing role in funding services outside legal aid plans.

Another consequence of capped budgets has been the reduction of financial eligibility for legal aid. Reducing the number of people who qualify for any service at all has been a key strategy used by legal aid plans to balance budgets. This has created an increasing segment of the population that does not qualify for legal aid, but also cannot afford legal services. This means that discussions around access to justice increasingly occur outside discussions about legal aid. This is a dangerous trend, as it increasingly accepts the notion that legal aid is responsible for providing services only to the poorest of poor people, abandoning the working poor to advice or information often from volunteer services. As

²¹ Civil Legal Aid in the United States: An Overview of the Program and Developments in 2005, Alan Houseman, Center for Law and Social Policy, 2005, p.29

legal aid services become available to fewer and fewer, pro bono, or volunteer services have begun re-appear, services which had pre-dated the development of legal aid services in Canada. The current model is borrowed from the US, which grew in response to the massive cuts to legal aid. Pro bono in the US, in addition to providing legal services, was a way to engage the private bar in the delivery of legal aid services, because legal aid in the US has been exclusively delivered by staff lawyers.

The notion of legal aid being a right in a democratic society, which had finally gained acceptance in the seventies, is slowly being eroded. The response to this by legal aid advocates is to seek the use of the Charter to re-assert this right. This is the basis for the test case being brought by Canadian Bar Association.

The challenge for poverty law advocates is to articulate a vision and goals that will inspire a new generation, and to develop a strategy that links to social movements of the twenty first century.

JURISDICTIONAL REVIEW

The following is a detailed review of poverty law in Canadian jurisdictions, with a focus on where poverty law either took hold, or was specifically rejected. It details how the trends outlined in the first section of the paper played out across Canada. There are a number of jurisdictions where there is no evidence of poverty law ever having developed. It is not certain whether that was because it never did, or because whatever nascent activity might have occurred, it was never recorded.

The sources are a variety of research reports, and conference papers reflecting a range of views by the writers. The limitation of this section is that the written record of poverty law in Canada varies as does the activity itself. Some jurisdictions have more information available. The section on Quebec is particularly limited by resources that are available in English.

The richness of Canada's history with respect to poverty law services is not reflected in services that are available today. Most legal aid plans no longer offer poverty law services as a significant portion of its services. Some offer representation, some offer information and advice, but only Ontario provides full range of poverty law services through locally controlled clinics across the province funded entirely by legal aid. Other jurisdictions offer casework assistance, public legal education or self-help materials in areas of law that have historically come to be defined as poverty law, ie income maintenance, workers' compensation, landlord/tenant through staff or a certificate (or judicare) model. Some staff offices offer outreach and education, as well as law reform or "public interest" advocacy. Some legal aid plans provide core funding or a component of funding to local community-based legal poverty law services.

Most, if not all, law schools offer student legal aid services and many also offer volunteer services through Pro Bono Students Canada. Many of these programs include public legal education and poverty law casework services.

A recent addition to the network of legal services in Canada is the newly created pro bono organizations. While volunteerism in the legal profession has always been a critical component to services to poor people, either through legal aid or other community organizations, the institutionalization of pro bono services is relatively recent. It imports the American model which developed in the US in response to the devastation suffered by the Legal Services Commission, with massive budget cuts and limitations to services. Its introduction to Canada has faced some controversy with respect to its impact on legal aid services, particularly services that rely on the private bar for delivery.

The third, and perhaps most important, sector that provides poverty law services is the community based not-for-profit sector. While few of these organizations have the resources to provide the full range of services, many provide representation by “lay” advocates, advice and information, and advocacy for the issues affecting their communities. A handful of them are clear legal services, employing lawyers, law students and community workers. Most are community organizations that provide services or advocacy around specific issues, like housing, or welfare or employment insurance. This section is not comprehensive, as such a review of community groups engaged in poverty law services and advocacy across the country are beyond the scope of this paper. There are hundreds if not thousands of such organizations. It is critical to include this sector, however, because in jurisdictions where there are no services or very limited services provided by legal aid plans, these organizations play a particularly important role. Some are well-established community organizations with strong funding bases outside of legal aid plans, while others have little or no funding. They are often the only providers of poverty law services by advocates, and may very well be the core of poverty law services in the future.

The concept of neighbourhood law offices, while having early community roots across the country, took greatest initial hold on legal aid services in the western provinces, particularly British Columbia, Saskatchewan, and Manitoba, while Alberta explicitly rejected it. Quebec was the other jurisdiction that the legal aid plan was inspired by the model. While Nova Scotia initially used the language of community offices, the poverty law movement has remained closely associated with Dalhousie Legal Aid, which is outside the legal aid plan. And in Ontario, it wasn’t until 1999, with the creation of Legal Aid Ontario that community clinics became a part of the legal aid plan.

The following details these jurisdictions:

Saskatchewan

As early as 1969, a university based clinic “modeled on Cahn and Cahn’s ideas about storefront clinics”²² was established by the College of Law at the University of Saskatchewan. Its areas of service included family, landlord/tenant and consumer/debt.

²² Legal Aid in Saskatchewan: Rhetoric and Reality, 1974-82-Social Policy and Social Justice-The NDP Government in Saskatchewan during the Blakeney Years, Jennie Abell, Wilfrid Laurier Press, 1995, p.173

In 1973, a commission was set up to study legal aid, which became known as the Carter Commission. It conducted a broad consultation and received briefs from professional groups and community-based organizations. According to Abell, while lawyers focused on the need “for professional autonomy”, organizations representing poor people “argued for community control and drew parallels to the success of community health clinics”.²³

The Carter Commission report made the following recommendations²⁴:

1. A legal aid system must, in its administration and operation, be divorced as completely as possible from any government or agency
2. Legal Aid should be regarded as a matter of right and not as a charity
3. Legal Aid should be capable of acting on proper occasions, as a vehicle for social change.
4. Legal Aid must be comprehensive.
5. A legal aid plan must provide good professional services.
6. Provision should be made for the use of para-professional personnel.

According to Abell, these recommendations were “the most far-reaching in North America”. The legal aid plan it proposed was “to be user controlled and not government managed” and “not to focus solely on individual casework”. Abell goes on to say “it also identified several advantages to the clinic system as compared to a fee-for-service model. It would provide more opportunity to detect common problems; it would encourage the development of expertise with respect to the problems of poor people; and it would allow for greater community involvement”.²⁵

Following the report, the *Legal Aid Act of 1973* was enacted. When then-Attorney General Roy Romanow introduced the legislation he stated²⁶: (CUPE paper)

“It does a poor person who is wrongfully evicted from his home no good to know that there is a remedy for him under the Residential Tenancies Act if he has no way of obtaining that remedy because he cannot afford legal services.”

According to Jane Lancaster, the statute provided for local control of legal aid in the form of area boards comprised of people in the communities served by the legal aid office. Their responsibilities were to hire staff and to administer funds from the Saskatchewan Legal Aid Commission pursuant to a negotiated contract. The Commission obtained funds from the government and acted as a clearing house to the area boards who acted as employers and administrators of legal aid in each area. More importantly

The boards determined the need for educational programming and services depending on the perceived need of the community. There were significant differences in range of services, eligibility, collection of statistical data, and personnel and administrative policies from area office to area office.” (Lancaster)

²³ Ibid. p. 175

²⁴ Saskatchewan Legal Aid History, Jane Lancaster, www.legalaid.sk.ca

²⁵ OpCit 22 (Abell), p. 179

²⁶ Legal Aid in Saskatchewan: An Overview, CUPE research, April 2003 p. 5

The Act provided for a full range of legal services to poor people, and for choice of counsel. As a result, for the first few years, the legal aid offices concentrated mainly on poverty law cases—cases involving housing and administrative appeals, and the private bar did the bulk of criminal legal aid.²⁷

In Saskatchewan, poverty law legal services and independent community boards of directors were statutorily eliminated by the conservative government of Grant Devine. According to a paper prepared for the Canadian Union of Public Employees, under the in mid-1980s, “the Devine government abolished the community boards and established the Legal Aid Commission, an arms-length body to administer legal aid. The range of services was cut back to criminal and family law: no more unemployment insurance or social assistance appeals, rental dispute work, or other poverty law matters.”²⁸

This may have been the final blow to poverty law in Saskatchewan, but its decline appears to have occurred long before the statutory elimination. In her paper on legal aid in Saskatchewan, Jennie Abell describes how almost immediately the NDP government backed away from the initial vision of the Carter Commission, and made decisions that in practice undermined poverty law services. According to Abell:

The idea of access to power for poor people and the idea of local control were unfamiliar concepts, and the far-reaching implications of Carter’s recommendations were neither fully understood nor fully endorsed.²⁹

In her paper, she describes a process by which poverty law services were undermined as locally run clinics were increasingly burdened with the provision of criminal legal services. In the early days of Saskatchewan legal aid, civil services appear to have been provided by the offices, while criminal services were “farmed out” to the private bar. According to Abell, “overall control was still held by the Commission and the government”, and not the local boards. As early as 1978, in its attempt to cut legal aid costs, the NDP government pressured clinics to provide more criminal services. She quotes Premier Romanow as stating that legal aid had “gone off the tracks” because it was dealing with too many civil matters, and further stated that “clinics had been intended to deal first and foremost with criminal matters”.³⁰

A further review of legal aid was conducted in 1978 by Justice McLelland which, according to Abell, “endorsed the community orientation of the clinics, applauded the work of the board members, and called for additional resources for the clinics.”³¹

Despite the report recommendations, the act was amended to reduce “farm-outs” of criminal work, increasing the criminal work done by clinics. According to Abell, over the

²⁷ Saskatchewan Legal Aid Website, Jane Lancaster paper, undated, p. 1-2

²⁸ OpCit. 26 (CUPE paper), p.5

²⁹ OpCit. 22 (Abell) p. 183

³⁰ Ibid., p. 167

³¹ Ibid., p. 201

next period, cutbacks led to the fight to obtain funding to do criminal law well, and poverty law was lost in the mix. Abell concludes about Saskatchewan legal aid:

The important aspects of the plan in a radical sense were client control, community organizing, education, and law reform. These were the first to go.³²

By 1985, this loss of poverty law services was enshrined by law to a prohibition. Today Saskatchewan's legislation continues to prohibit the provision of poverty law services, limiting civil law services to family law.

Any poverty law advocacy and services that are available in Saskatchewan are through community-based organizations provide these services in spite of little financial support. These include the Regina Anti-Poverty Ministry, the Regina Welfare Rights Centre, and Equal Justice for All.

Manitoba

Until 1972, "Legal aid was provided by private bar lawyers, acting in most cases voluntarily and with very little remuneration, under a scheme administered by the Law Society. The Service was provided to people charged with serious criminal offences and occasionally to people with matrimonial problems."³³

In 1971, a task force was established to study how to deliver services. It was heavily influenced by the US model. Freedman states: "The task force was particularly excited about what they had observed in the United States. There, young, energetic, idealistic and low paid lawyers were working under various public defender programs, delivering not only traditional legal services, but also working in the area of 'poverty law'. These were people, who were not only providing legal services to indigents, but were also working with poor people and poor peoples' organizations, in identifying and attempting to deal with the root causes of poverty."³⁴

The task force recommended that a legal aid plan be established with private bar lawyers "delivering traditional legal services in most criminal and civil matters" and community law clinics staffed by "lawyers, social workers, para-legals and students, delivering service in less traditional ways. The staff would provide legal advice, attend at prisons and mental institutions, establish outreach clinics in rural and isolated areas of the Province, work with community groups and be involved in law reform."³⁵

Legal aid Manitoba was established in September 1972, while the first community clinic opened on October 1, 1972. According to Penner/ Peltz in an article about Manitoba Legal aid "Its conscious aim was to combine elements of the English 'judicare' system

³² Ibid., p. 205

³³ What are the Present and Possible Methods of Delivery of Legal Aid Services? Robert Freedman, Materials for the Canadian Bar Association and the International Bar Association National Symposium on Legal Aid, August 16 & 17, 1985, Halifax, Nova Scotia, p. 1

³⁴ Ibid., p. 2

³⁵ Ibid., p. 2

initiated by the UK Legal aid and Advice Act of 1949, and the community or neighbourhood law office model developed in the US as part of the “war on poverty”.³⁶

The policy of the new Board of Directors of Legal Aid Manitoba reflected the vision of the task forces. In 1974, it adopted a policy position with respect to the delivery of legal aid services and the priorities of staff. According to Freedman “It was a five-point program, with the highest priority for staff placed on outreach and poverty law work and the lowest priority on traditional casework. Administrators were instructed to allow staff as much flexibility as possible to develop their own programs and to develop an expertise in poverty law.”³⁷

Penner and Peltz describe the first community law office that opened in Winnipeg in 1972:

... a conscious but ultimately unsuccessful attempt was made to involve clients in the policy management of the centre, to employ non-legal professionals eg social workers, and to utilize some of the time of staff lawyers not only to work with such client groups as existed in the particular community but, in the absence of such groups (and the poor do not organize themselves particularly well) to take an activist stand in the organization of such groups. Other community law offices followed in different Winnipeg and smaller urban centre locations. Each was expected to follow the same mandate of individual client service combined with some engagement in the ‘war on poverty’.³⁸

But according to Penner/Pelz “By 1975 it had become clear that, overwhelmed as they were by individual cases, particularly in the areas of criminal and family law, staff lawyers simply had little time or energy left to engage in community organization or to work with existing client groups.”³⁹

Despite this failure described by Penner and Peltz that began as early as 1975, while the proactive work may not have met the high expectations raised by the Board policy position, Legal Aid Manitoba was still providing some poverty law services by the late seventies. A 1979/80 Department of Justice report from on legal aid casework statistics reflected the high priority given to poverty law and other civil matters. According to the report, Manitoba offered comprehensive poverty law coverage, and the ratio between criminal and civil law was equal.⁴⁰

There was never a decision to end the provision of poverty law services in Manitoba. Services were eroded over time under the pressures of budget restraint, and the pressure of casework, particularly for criminal and family law services.

³⁶ The State of Legal Aid in Manitoba in 1997, Roland Penner & Arne Peltz, Windsor Yearbook of Access to Justice, Volume XVI, 271 p. 271

³⁷ Op.Cit. 33 (Freedman) p. 3-4

³⁸ Op.Cit. 36, (Penner/Peltz), p. 272

³⁹ Ibid. p.

⁴⁰ Justice Information Report: Legal Aid Services in Canada 1979/80, National Legal Aid Research Centre, 1982, p. 27

In the early 80's, with money being tight, "LAM [Legal Aid Manitoba] was encouraged to be innovative, but tough".⁴¹ In the spring of 1982, the Public interest law department was established with a "mandate was to work with groups and organizations on issues affecting poor people generally. It would undertake test case litigation on environmental, welfare, institutional and regulatory matters... It was intended that the Public Interest Law Department would not replace outreach programs in the community law clinics, but rather would complement those programs and be used as a resource base for law clinic staff. However, as the Department developed and as the Board of Directors began to change law clinic priorities, it became the vehicle by which basic group representation would be maintained, though to a lesser degree."⁴²

Freedman confirms that the 1974 policy statement prioritizing outreach and poverty law work "was never repudiated" but budgetary pressures led to major changes. In the summer of 1983, the Board decided the following:

The emphasis of staff would now be switched, almost exclusively, to traditional legal work; namely, case work and duty counseling services. Certain outreach programs, and rural clinics would be eliminated or reduced in scope. Law clinics were given specific case load targets and in order to meet those targets, a process of increased efficiency and specialization began. During that summer, a community law clinic in Winnipeg, hitherto providing a full and varied range of service, was converted into an almost exclusively criminal law office.⁴³

As a result of these changes, "formal caseload numbers increased", putting even more pressure to move in that direction. The Board: "instructed staff in rural areas to reprioritize" and "In early 1985, the Board completed the repriorization process, with the amalgamation of the two remaining Winnipeg law clinics into one civil, primarily domestic office."⁴⁴

The disappearance of community education and law reform appear to have been complete by the time of the Canadian Bar Association report of 1987, with any work beyond casework being done only in the Public Interest Law Department:

In Manitoba, the law centres have reduced what work was being done in those areas, thanks to the pressures of fiscal restraint and the need to concentrate on case productivity. At the same time, the Public Interest Law Department has carried on an aggressive, if limited, program of group representation and interest advocacy since 1982, in a style akin to the American 'back-up centres'. The Department is acknowledged to have served an important function within the plan and has received a highly-favourable evaluation.⁴⁵

⁴¹ OpCit 33 (Freedman), p. 5

⁴² Ibid., p. 5

⁴³ Ibid.

⁴⁴ Ibid., p. 6

⁴⁵ Legal Aid Delivery Models: A Discussion Paper, CBA Standing Committee, National Legal Aid Liaison Committee, November 1987, p. 185

This was confirmed by Penner and Peltz in their 1997 article on Manitoba Legal Aid in which they state that “the Centre maintained an active portfolio of social welfare cases, fighting issues before the Social Services Advisory committee and in the Manitoba court of appeal. ... The Centre pursued public issues regardless of the political heat, occasionally incurring the wrath of government, as in the case of the proposed northern Manitoba Limestone Dam and association Minnesota hydro export sale, both energetically pursued by the government of the day.”⁴⁶

They go on to say that “If important aspects of poverty law, as originally defined, are no longer being practiced by all of the system’s law offices, the system itself through the Public Interest Law Centre particularly, plus the specialized offices, carries it on”.⁴⁷

More recently, some poverty law services have been re-introduced to Manitoba legal aid beyond the Public Interest Law Centre.

According to Gerry McNeilly, Manitoba Legal Aid’s Director, upon his arrival in 1999, he “rekindled” poverty law in Manitoba. He established the Poverty Law Program, staffed by 1.5 lawyers and 1 paralegal which provides services in the areas of welfare appeals, disability, workers’ compensation, public auto insurance, mental health and residential tenancies. They also do outreach and community education with community groups and schools.⁴⁸

The Public Interest Law Centre was “re-focused” under his leadership towards greater involvement in equality rights, environmental and social welfare issues. They now work more closely with the Poverty law Program.

The Aboriginal Law Centre provides services in areas such as criminal law, child welfare, and family law. In addition, they do test case litigation on cases that McNeilly describes as “Aboriginal rights-centric”. He provided an example of an action against a hospital for turning away an Aboriginal person who “appeared to be drunk”. The goal of the action is to change hospital policy.

According to Bonnie Morton, “Legal Aid lawyers in the Poverty Law Office respond to all welfare advocacy requests for their services.” In addition, according to Morton, Community Legal Education Association works with the Poverty Law Office to provide advocacy training to community groups.⁴⁹

British Columbia

According to the Justice Information Report entitled *Legal Aid Services in Canada*, the Vancouver Community Legal Assistance Society “established the first storefront office in Canada”, handling test cases and “particularly providing assistance to anyone involved in

⁴⁶ Op Cit 36, (P & P), p. 276

⁴⁷ Ibid., p. 277

⁴⁸ Interview with Gerry McNeilly, November, 2005

⁴⁹ Access to Justice: Social Assistance Advocacy in Saskatchewan and Manitoba, Bonnie Morton & Josephine Savarese, date?

a legal dispute which may be of significance to a class of socially disadvantaged persons.”⁵⁰ It opened in 1970, the same year as Dalhousie and Parkdale.

There were other community groups that were providing services to poor people that were also being funded by federal government departments, including Opportunities for Youth (OFY), Local Improvement Programs (LIP), and the Secretary of State. By 1974, a provincial funding body had been created called the Legal Services Division (LSD) inside the provincial Justice Development Commission which received applications from groups previously funded by OFY, LIP and Secretary of State. “These groups provided quasi-legal services utilizing para-professionals, sponsored public legal education programs, or operated storefront community law offices”.⁵¹

At the same time, the Law Society established the Legal Aid Society in 1970, and by 1972 proposed to open 15 legal aid offices, each staffed by two lawyers and two secretaries to provide summary advice, referral and duty counsel services in criminal and family.

So in the early seventies, poverty law services were funded through the LSD, while traditional criminal and family law services were provided by the Law Society through the Legal Aid Society.

In 1975, a government report known as the Leask report recommended “a decentralized approach to the delivery of legal aid services which would allow each community to choose the type of services it needed. The locally established community legal programs would be assisted by a central administrative body to act as policy maker, and to help define local problems, to assist in organizing, and to supervise the funding of local organizations.”⁵² This recommendation led to the creation of the Legal Services Commission, an independent legal services organization that continued to support community poverty law services previously funded by Legal Services Division.

By 1979, the Legal Aid Society and the Legal Services Commission were merged into the Legal Services Society (LSS), a single organization that funded and supported both traditional legal aid services, as well as community based poverty law services. Its Board of Directors was appointed by the Law Society and the Ministry, each appointing seven directors.⁵³ The LSS funded the following:

- Judicare services administered through 14 legal aid offices
- 13 community law offices (CLO’s) and 3 Native community law offices (NCLO’s)
- Native courtworker program
- Friendship Centres
- Student legal aid societies.

⁵⁰ Op Cit. 40 (Justice report), p. 13

⁵¹ Ibid., p. 15

⁵² Ibid.

⁵³ Unpublished, undated history of Legal Services Society, Jane Wells, p. 1

It also had responsibility to provide a range of public legal education programming. The Community Law Offices “were established to provide legal services for the lower income or disadvantaged sections of their communities with particular emphasis on providing services in the areas of law not traditionally handled by private practice lawyers or by the LSS. The CLO’s assist local people with summary advice, welfare appeals, workers’ compensation, landlord and tenant problems, pensions and many other areas of legal need.”⁵⁴

According to Wells, the services provided by the LSS were described as follows:

Different services are provided through a variety of programs and agencies. These services are categorized as client-oriented services and issue-oriented services. Client-oriented services attempt to place the financially eligible person on an equal footing before the law with the person who can afford to pay for legal services. Issue oriented services are aimed at assisting individuals or groups to confront problems or issues which affect large numbers of poor people.⁵⁵

Another way to frame this is to say “client-oriented” services were directed at clients as individuals, while the “issue oriented services” were directed at clients as a community of interest. It is the latter which was provided by community law offices.

Vancouver Community Legal Assistance Society, the first poverty law office, received funding from LSS but remained outside of it. It later became known simply as CLAS or the Community Legal Assistance Society.

Throughout the late seventies and eighties, while poverty law was being eroded in other western provinces, community law offices and Native community law offices continued to thrive. While the LSS struggled with budget cuts and increases in demand for services, those cuts were in the areas of family and criminal, with cuts to the tariff paid to the private bar who delivered those services. Service cuts created some serious problems in the delivery of family law services. But throughout the crises, CLO’s, NCLO’s and the delivery of poverty law services survived and grew.

By the 1980’s and 1990’s, British Columbia’s CLO’s and NCLO’s were a well-established part of the Legal Services Society. In 1994, the governing statute was amended such that CLO’s and NCLO’s had control over one third of the appointments to the LSS Board of Directors. It appears that, in return for representation on the Board, they may have relinquished some local control of service delivery. It was at the same time that the LSS developed its “core services” that set out which poverty law services must be delivered by all offices.

In addition to legal aid funded services provided by the CLO’s and NCLO’s, BC has a rich history of community based service and advocacy groups providing poverty law services, often with funding from the Law Foundation of B. C. Traditionally, the links between these groups and legal aid funding organizations have been strong.

⁵⁴ Ibid., p. 19

⁵⁵ Ibid.

In 1997, PovNet was created as a joint effort of community groups, including the B.C. Coalition of People with Disabilities, End Legislated Poverty, Tenants' Rights Action Coalition, Social Planning and Research Council, federated ant-poverty groups of BC, BC Library Association, CLAS, PIAC, as well as the Legal Services Society. PovNet is to an online resource for people who are physically, mentally, socially, economically or otherwise marginalized and the advocates who represent them. It provides a communications network for community groups and individuals involved in anti-poverty work through an integration of offline and online technology and resources.

In 2002, the Liberal government of Gordon Campbell slashed many of the services for poor people including cutting welfare services. In addition, he amended the Legal Services Society Act which led to the closing of all of the CLO's and NCLO's across the province, and the elimination of any poverty law services provided through community based offices. The only assistance left was public legal information and general referrals and phone-based advice.

Many of the community based groups that historically been part of the BC's poverty law network continue to provide services without the support and training that had been provided by LSS funded poverty lawyers in the past. In particular, the BC Public Interest Advocacy Centre and Community Legal Assistance Society continue to provide poverty law services, and often support to other community organizations. PovNet continues to act as a critical resource for these community organizations.

In addition, pro bono services have also emerged in British Columbia through Western Canada Access to Justice, and Pro Bono British Columbia.

The Law Foundation of BC has commissioned a series of research papers to address how to effectively support those poverty law services.

Quebec

According to Larry Taman and Fred Zemans, in their 1973 article on the future of legal aid in Canada, Quebec's was the "most ambitious departure" from traditional legal aid plans, modeling themselves on the American neighbourhood law office model.⁵⁶

Prior to this, much like the rest of the country, traditional legal aid services were being provided by the private bar at no fee at all. According to William Schabas, a parallel movement was taking place

...during the late 1960's socially conscious young lawyers began to organize legal clinics intended to furnish services on a community basis to the poor. This was the practice of 'poverty law'. These two different elements contributed to legislation establishing a state-run and state-funded legal aid plan, an additional

⁵⁶ The Future of Legal Services in Canada, Larry Taman & Fred Zemans, 1973, Canadian Bar Review 32, p.

piece in the welfare state coverage that characterized the final years of Quebec's Quiet Revolution and the social turmoil of the late 1960's and early 1970's.⁵⁷

Quebec's proposed legal services were described as follows:

The plan was to employ over two hundred lawyers who, together with a large group of specially trained laymen, were to service the unmet needs of the province. As ultimately unfolded, the chief administrative organs, the Regional Boards, were to have not less than one third, and as much as two third community representation. While the Boards would have their own local offices, provision was also made for the funding of local legal aid corporations which might be entirely controlled by local organizations of citizens.⁵⁸

The authors saw training of lay people as critical because "This immediately involves the lawyer in his major task of community education and illuminating the legal system for citizens for whom it has remained largely impenetrable."⁵⁹

In Roger Smith's study conducted in 1991, this view was confirmed by those he interviewed.

In the early 1970's, Quebec made a political commitment to spend significant amounts of government money on publicly funded legal services. This initiative was influenced by developments in the US. The name chosen for the body set up in 1972 to administer legal aid was the *Commission des Services Juridiques*, echoing that of the US Legal Services Corporation; and the emphasis on public education and law reform reflected the American, rather than the British model.⁶⁰

According to Schabas, "what distinguished Quebec's plan from that in force elsewhere in Canada was the scope of coverage. Once an individual was declared eligible for services, based on financial information, that person was entitled to virtually all possible legal services."⁶¹

It appears that while the legal aid plan continued to provide generous services until its major reform in 1996, the eighties saw a decline in local control. It does not appear that the Quebec plan ever enjoyed the degree of local control that the American offices had, nor did it develop the network of local centres that occurred in British Columbia and Ontario.

According to Roger Smith in his 1991 study, "The *commission* has been hit severely by cuts in its resources. Its annual report still details the education, organizing and reform work of each of its offices as a reflection of the priority given to placing casework in the context of other activities. However, staff are effectively expected to undertake much of

⁵⁷ Legal Aid Reform in Quebec, William Schabas, Windsor Yearbook of Access to Justice, Volume XVI 280, p. 282

⁵⁸ Op Cit. 56, p. 33

⁵⁹ Ibid., pl 35

⁶⁰ A Strategy for Justice, Legal Action Group: Publicly Funded Legal Services in the 1990's, Roger Smith, p. 87

⁶¹ Op Cit 57 (Schabas) p. 283

this in their own time.”⁶² Much like Manitoba and Saskatchewan, poverty law services began to erode, with the imposition of casework targets.

Furthermore, by 1991, the regional corporations had provision for local committees to advise on need, but according to Smith “these bodies have little power”. In fact, “A commission official admitted that a number of initiatives designed to deliver services to native peoples—none of which had involved local people from the targeted communities in their management—had been closed for lack of use. This contrasts with the operation of Ontario’s clinic system, as demonstrated by the clinic in Thunder Bay.”⁶³

“Sixty-two per cent of the cases taken by staff advocates related to civil matters, with family law cases constituting just under half of them”. We can assume that some poverty casework was still being done, but only casework. “The commission ensures very tight control over its staff advocates: working conditions are highly regulated and workloads carefully monitored.”⁶⁴

Quebec legal aid legislation was amended in 1996. The purpose of the changes, according to Jacques Fremont, was “aimed at radically modifying the legal assistance system in the general climate of government deficit reduction. If the Quebec system had once been a model, it can now confidently be said that it is not anymore...”⁶⁵

William Schabas agrees that what drove the 1996 reforms was an \$18 million cut to a \$120 million dollar budget. After tabling a bill that drew widespread criticism, Schabas was appointed to chair a Committee for the Reform of Legal Aid. After holding public consultations, he states that its report was not significantly different than the original bill.

According to Schabas, the amendments left family law matters essentially untouched (apparently because “many within the public administration see legal aid as little more than a collection agency for the welfare system”⁶⁶), and in the area of criminal law, coverage for matters where jail was “unlikely” was cut. And they “eliminated much of the coverage in civil and administrative law”.⁶⁷

Whereas the original vision for Quebec legal aid may have been neighbourhood community based offices, Fremont distinguishes between the Quebec legal aid model, and those in which the community run the service. According to Fremont, “clinics are ... not a major branch of the legal aid system in Quebec. Before the creation of the legal aid system in 1972, a few clinics operated freely. With the implementation of public legal

⁶² Op Cit 60 (Smith), p. 91

⁶³ Ibid., p. 88 & 89

⁶⁴ Ibid. p. 88

⁶⁵ Patchworking Legal Aid in Quebec in Times of Financial Constraint, Jacques Fremont & Sylvie Parent, A New Legal Aid Plan for Ontario: Background Papers, Fred Zemans & Patrick Monohan, 1997, 119 p. 120

⁶⁶ Op Cit 57 (Schabas) p. 285

⁶⁷ Ibid., p. 280

aid, these clinics were incorporated within the public system.”⁶⁸ Fremont states that only the Pointe-St Charles clinic remains.

For instance, and contrary to the other regional legal aid centres, the members of the board of directors of the Pointe St-Charles clinic come from the community, the remuneration of the lawyers is fixed by the board of directors and they are not evaluated on the basis of their caseload. Although the clinic dispenses legal aid services in the same manner as others, staff lawyers allocate a certain portion of their time to inform citizens of their rights. That clinic is considered unique and the government has never certified any other similar clinic.⁶⁹

The Point St Charles Clinic continues to operate.

More recently, volunteer services by lawyers and judges have been offered by Maison de Justice, an organization that partners with other government and non-organizations, founded by former Supreme Court of Canada Justice Claire L’Heureux Dube.

Educaloi, a public legal education organization was established in the mid-nineties. Its mandate is very broad, with no particular focus on poverty law.

Nova Scotia

Dalhousie Legal Aid places itself squarely in the tradition of community based poverty law office provider, in fact taking credit for being the first university-based legal aid clinic in Canada. According to Professor Rollie Thompson, it began with students working out of an office on Gottingen Street.

The formal trust Indenture was signed on September 1, 1970. Dalhousie Legal Aid thus became the first Canadian university legal clinic (beating out Parkdale Community Legal Services of Osgoode Hall Law School by a few months).⁷⁰

Professor Thompson goes on to say that “the initial funding for DLAS came from the law school and the federal government, as part of Trudeau’s ‘Just Society’ initiative-the kinder, gentler Canadian version of the American ‘War on Poverty’.”⁷¹ It had early support of the Barristers Society.

It had three purposes:

- To provide legal aid services for persons who otherwise would not be able to obtain legal assistance;
- To conduct research, provide information, make recommendations, and engage in programs relating to legal aid and law reform in the province of Nova Scotia.

⁶⁸ Op Cit 65 (Fremont) p. 125

⁶⁹ Ibid.

⁷⁰ Dalhousie Legal Aid: A Short (Personal and Political) History, Rollie Thompson, Dalhousie Law School website

⁷¹ Ibid

- To provide an educational experience in the solution of legal problems for students enrolled in the Faculty of Law Dalhousie University who participate in the work of the Service.⁷²

In other words, its mandate was to provide legal services, law reform and clinical education.

By January, 1976, the Trust Indenture and by-laws were revised to provide for nine community members of the Board to be elected at an annual meeting, transforming it from a university institution, to one with a significant base in the community. Its funding came from the Nova Scotia Law Foundation, the Law School, and the Nova Scotia Legal Aid Commission.

The history of Nova Scotia Legal Aid, on the other hand, has some contradictory roots. According to Taman and Zemans, in their 1973 article, the government was consciously following the American model of neighbourhood law offices.⁷³ Certainly that was the language that was used. Even today, on the Nova Scotia Legal Aid website, staff offices are referred to as “community based law offices”⁷⁴.

According to Professor Rollie Thompson, a report by William Cox QC recommended “the establishment of a comprehensive publicly funded Legal Aid plan to be delivered by means of a province-wide judicare program, with ‘neighbourhood law offices’ established in designated urban areas”.⁷⁵ This would have been a mixed model, much like British Columbia.

Instead the government “opted for ‘local offices’ with full-time salaried lawyers on an experimental basis” to provide all services, rather than a judicare scheme. Offices were opened in Halifax in April 1972, and then in eight other locations. It was administered by the Barristers’ Society.

In its first year, civil legal aid dominated the services provided, with 44% of services being family, 28% civil, and only 27% criminal. According to Thompson, the wide range of civil coverage was “what we would now call poverty law”. This balance was to shift over the next ten years as criminal coverage climbed to a “historic high of 65%”, while the proportion of family fell to 27%. Civil fell to 7%.⁷⁶

A further legal aid review in 1975, known as the Gunn committee, led to the creation of the Nova Scotia Legal Aid Commission. The influence of locally controlled neighbourhood offices continued with the following recommendations from the committee that were never implemented:

⁷² Ibid

⁷³ Op Cit 56 (Taman, Zemans) p.

⁷⁴ Nova Scotia statute

⁷⁵ Legal Aid Without Conflict, Rollie Thompson, Windsor Yearbook of Access to Justice, Volume XVI 309, p. 309

⁷⁶ Ibid.

That each NSLA [Nova Scotia Legal Aid] office be administered by a local committee of three citizens from the area served; new lawyers hired be screened “to ensure a reasonable level of social consciousness”; paralegals take a more active role; legal aid be extended to community groups; public legal education about legal aid be undertaken; the Commission make recommendations annually to the Law Reform Commission for changes in the laws.⁷⁷

By 1980 it appears that Nova Scotia Legal Aid had developed into a staff office model providing solid criminal and family services in much the same way as the private bar. The 1979/80 Department of Justice report states that Nova Scotia Legal Aid “developed a network of provincial offices” with staff lawyers and support staff. “A full range of legal services is provided with the greatest emphasis being in the areas of criminal, divorce and family law.” Furthermore, the report notes the resemblance of the staff offices to a traditional law office: “The normal procedure for handling legal aid cases under the Nova Scotia system is for the cases to be conducted by salaried lawyers with the normal solicitor-client relationship existing.”⁷⁸

The Nova Scotia Legal Aid plan, that had begun as an “experiment” evolved into a traditional legal aid plan focusing on criminal and family law services.

In the closest Canadian “echo” of the US struggles, there were successive government attempts to shut down Dalhousie Legal Aid, perhaps because of its successful initiatives. According to Thompson, in January 1986, all government funding was cut, and was to go to a new “Metro Community Legal Clinic”. The President of the Barristers’ Society Bar Council was told that “the Attorney General had stated unequivocally that the defunding had occurred because of ‘Dalhousie Legal Aid’s public criticism of social legislation’.” (RT) Thompson reviews some of the issues of the day upon which Dalhousie Legal Aid focused its advocacy and law reform work:

removal of family benefits from teen mothers; the denial of family benefits to single fathers; the regulations restricting the dubious credit, collections and disconnection practices of Nova Scotia Power; and the changes in tenancies law following a commission of inquiry.⁷⁹

According to Thompson, in 1989 legal aid funding was “quietly” restored to Dalhousie Legal Aid by the Conservative government. There was a brief and unsuccessful attempt in 1990 to merge Dalhousie Legal Aid and the Metro Clinic. By 1992, the Metro Clinic became a staff office.

A further announcement of funding cuts in 2000 “led to public outcry, a round of meetings with the Commission and Justice Minister Baker, and eventually a Commission resolution in June 2000 to restore funding, at a slightly-reduced level. Under the new terms of funding, poverty law was no longer recognized, only family law and young

⁷⁷ Ibid.

⁷⁸ Op Cit. 40 (justice report), p. 49

⁷⁹ Op Cit 70 (Thompson)

offender cases”, through a combination of grant funding and certificate funding. Funding from the Law Foundation allows the clinic to do some of the poverty law cases and the broader community development and law reform work.

According to Rollie Thompson, “Dalhousie Legal Aid has not only survived for 35 years. Time and again, it has made new law, argued the rights of the poor, pressed for law reform, organized groups and coalitions, exposed injustice, spoken out publicly, made some enemies, and made many more friends.”⁸⁰

Nova Scotia Legal Aid continues to have one staff lawyer practicing poverty law, though concern has been expressed by those outside legal aid that it would be unlikely to continue if the lawyer who has filled the position for years were to leave.

Ontario

Legal aid in Ontario began in 1967 as a service delivered by the private bar through the Law Society, but like many other jurisdictions, Ontario felt the influence of Johnson’s War on Poverty, and took advantage of federal funding to support local initiatives and experiments. While Parkdale modeled itself directly on the Cahn and Cahn university based legal service, the Injured Workers Consultants, a group of community activists had already established itself to provide advocacy to injured workers.

In a paper written in 1982 for the Windsor Yearbook, Mary Jane Mossman describes the influence of the American legal services. She states that the deficiencies of legal aid in Ontario “were frequently debated in the late 1960’s and early 1970’s against the backdrop of the American legal services programs and President Johnson’s War on Poverty”, as well as the Canadian concept of ‘the just society’.⁸¹

She went on to say “Essentially it was the critics of the Plan who initiated and established alternative legal aid services in response to ‘unmet needs’; and it is these services which formed the nucleus of the community clinic system now in place.”⁸²

In 1974, Justice Osler was charged with undertaking a comprehensive review of legal aid. In his report, Justice Osler noted and was impressed by the development of a number of creative grassroots initiatives based primarily in Toronto. He said their distinguishing feature was:

...the growth of community organization and the awareness of rights and the possibility of asserting them that has developed among the economically deprived or the poor. This social or legal awareness, sometimes called ‘legal activism’, has been more pronounced, more visible, more sophisticated and more successful in Metropolitan Toronto than anywhere else. It has been encouraged and fostered by ‘activist’ social workers and community leaders, younger members of the profession, law students and law professors... It is no accident that almost every

⁸⁰ Ibid

⁸¹ Community Legal Clinics in Ontario, Mary Jane Mossman (1983) 3 Windsor Yearbook of Access to Justice, p. 380

⁸² Ibid.

private experiment in the delivery of legal services occurring within this province since Legal Aid was established seven years ago, has developed and flourished or floundered in Metropolitan Toronto. We need refer only to Parkdale Legal Services, People and Law, Neighbourhood Law Services, the Kensington project, and Injured Workmen's Consultants.⁸³

Osler was concerned that the end of federal funding might lead to the disappearance of these initiatives:

We urge the government and other funding sources to respond quickly, before it is too late. The groups form a solid foundation on which to build and develop community legal services. They must not be allowed to die."⁸⁴

As a consequence of this report, funding for "neighbourhood legal aid clinics" was recognized, and a supporting Regulation creating the Clinic Funding Committee and funding for clinics was passed. In the first year, there were thirteen clinics. By 1978/79, thirty-one clinics were being funded.

Mossman described the basis upon which clinics developed:

In particular, the experiences of the early clinics identified two principles. One principle is the need to focus clinic services on the legal needs of the poor; in particular, the need to respond to the real needs of poor people, utilizing specialized personnel that includes both lawyers and community workers. The second principle is the need for community involvement in decision making, especially the need to involve the poor community and legal aid clinic clients in decisions about their legal aid services. The early clinics must also receive credit for the development of a third principle, that of clinic independence.⁸⁵

A second report by Justice Grange reviewed more specifically the relationship between clinics and their funder, and resulted in an amendment to the regulation that governed the operation of clinics until 1999. Clinics were authorized to:

...provide legal services or paralegal services, or both, including activities reasonably designed to encourage access to such services and services designed solely to promote the legal welfare of a community, on a basis other than fee for service.⁸⁶

Justice Grange asserted the importance of boards of directors that are drawn from the community:

The object is two-fold: first, to give the community, the intended beneficiaries, some control over the delivery of legal services; and second, to involve the deliverers of those services in the affairs of the community...to the extent that the poor have now placed their confidence in the clinics, much of the credit must go

⁸³ Report of the Task Force on Legal Aid, Justice Osler, 1974 p.

⁸⁴ Ibid., p. 382

⁸⁵ Op Cit 81 (Mossman), p. 380

⁸⁶ R.R.O. 1990 Reg 710, Part IV, s6 (2)

to the strong role played in their development and operation by the boards of directors.⁸⁷

Justice Grange also addressed the role of law reform in the delivery of poverty law services. It remained a controversial role that he felt compelled to address:

I cannot leave this subject without some discussion of law reform. As I have stated earlier, the field is not unknown to the private bar in its service to its clients and it is perhaps even more the proper concern of lawyers who service the poor because the poor are less articulate and their concerns less often heard by the legislators. While there may have once been doubt of the propriety, it does not exist now.”⁸⁸

What made Ontario unique is that while province-wide community legal services were envisaged as the long-term goal, it was deliberately structured and funded outside the legal aid plan. The Ontario Legal Aid Plan delivered services almost exclusively through the private bar until the nineties. (The only exception was the short-term employment criminal staff duty counsel lawyers at Toronto’s Old City Hall). The Grange report made the recommendations that established the roles of the Clinic Funding Committee and its staff, with funding directly from the Ministry of the Attorney General. It was independent from government and from the Law Society. The committee included appointees from the government and from the Law Society.

The clinic system grew slowly and from the ground up as a funding process (that continued until 1991) was available such that geographic communities or communities of interest could organize themselves into community organizations and, if they could show a need, apply for funding to create a new clinic. This meant that all new services prior to 1992 were the result of community based organizing and Boards were effectively developed prior to the opening of the clinic.

Early clinics focused on geographical communities, or communities of interest facing common legal problems, like tenants or injured workers. Eventually, clinics came to encompass communities historically disadvantaged by discrimination or racism. These included the Centre for Spanish Speaking People, the Metro Southeast Asian Legal Clinic, and Aboriginal Legal Services of Toronto.

The elimination of expansion funding has been significant in the development of poverty law services in Ontario. It delayed a planned expansion of geographically based services to cover the province, leaving many parts of the province without poverty law services until 2003. Clinics and Legal Aid Ontario are still struggling with the provision of services for emerging issues and more recent immigrants for whom specialized services are not available.

⁸⁷ Report of the Commission on Clinical Funding, Justice Samuel G. M. Grange, 1978, p. 22

⁸⁸ Ibid. p. 15

A unique legal service combining traditional legal services and the clinic model was developed by Aboriginal communities in the North. Nishnawbe-Aski Legal Services (NAN) was established in 1990, following the recommendations of a Working Group on the Administration of Justice in the Remote North comprised of members from Ontario's Ministry of the Attorney General, and the Nishnawbe Aski Nation. According to the NAN website, the Chiefs

selected a mixed legal service model as one which would be best suited to the needs of the communities", and created the first interim Board of Directors. It serves and is operated by 49 communities that extends from the Manitoba border to the James Bay coast. It provides services in Criminal Family and has pioneered restorative justice programs in criminal law and child welfare law in reserve communities.⁸⁹

Ontario's community based poverty law services thrived throughout the eighties, in part because of the political commitment of the then Attorney's General, first Roy McMurtry of the Progressive Conservatives, then Ian Scott, of the Liberals. Ontario's Legal Aid Plan and clinics, while separate in their administration, worked together on the ground, with cross-referrals. OLAP also began to provide casework services through its certificate program. This was made possible with the availability of lawyers in the private bar who had been through clinical education programs, particularly at Parkdale, or who moved from clinic to private practice.

Ontario faced its first major financial crises in the 1990's. The early nineties saw a deep recession in Ontario that increased the demand for legal aid, in part because of the increasing number of people eligible for it. The NDP government was the first to cap legal aid budgets, leading to the first recorded deficits. The Law Society negotiated a four-year Memorandum of Understanding with the government to manage the deficit by funding the deficit out of future spending, through declining services and funding. Certificates for services through the private bar plummeted from over 250,000 to fewer than 100,000, with a disproportionate impact on family law services.

The Harris Conservative government was elected in 1995 with a plan to cut legal aid funding by 30-40%. It never had to act on the promise because the impact of the MOU had already made this cut.

In 1996, the Tories did announce a plan to cut the clinic budget by 25-40%. A clinic campaign to head off these cutbacks succeeded because it convinced the Law Society to take the position that any cuts to clinic funding would be construed as a violation of the MOU. This was ultimately successful, and clinics continued to operate with funding that had been frozen since 1992.

No new clinics were to open again until the merger of the Ontario Legal Aid Plan and the Clinic Funding Committee to the newly created Legal Aid Ontario in 1999, when they were brought under the umbrella of the newly formed Legal Aid Ontario. Boards retained

⁸⁹ Nishnawbe Aski Nation Legal Services website

their independence, and the statute gives them responsibility to assess and meet the poverty law needs of their communities.

In the expansion of 2001, geographic clinics covering areas not previously served were opened over the next several years. Two “specialty clinics” in the areas of income security, and tenants’ rights were also opened. Though LAO conducted a wide consultation the process did not include the receipt of applications for news clinics. Decisions about geographic boundaries and funding were made by the Board of LAO on recommendation by the staff. Local boards of directors and clinics mandates were developed through a local needs assessment process.

The impact of being brought under the same umbrella as legal aid services has not yet fully played out. The autonomy of clinics and LAO’s role over activities and reporting continues to be a source of tension which is in the process of continual negotiation.

Ontario also has a broad range of community-based advocacy and service organizations that promote anti-racism, women rights, and human rights, and promote the interests of poor people, tenants, and immigrants and refugees. This sector was dealt a blow during the years of conservative government (from 1995-2004) when many lost their funding entirely, or funding that allowed them do advocacy work. Many organizations in this sector work closely with their local community clinics.

In addition, more recently, Pro Bono Law Ontario was established. It has also worked in partnership with a number of clinics, establishing projects that use volunteer lawyers to provide services to meet emerging client needs.

Northwest Territories

While there is no detail available, it appears that the Northwest Territories introduced poverty law as part of its services in the mid-seventies. According the Department of Justice report of 1979/80, in addition to a judicare plan that provided criminal and civil services, NWT experimented with the delivery of poverty law services.

This was established as a pilot project with terms of reference to deliver legal services supplemental to those delivered by the Legal Aid Plan in the criminal context and in addition, to delivery services in civil areas and develop preventive education and reform-direct programs. The project commenced in 1975; as mentioned, the administration of all Legal Aid in the Territories is enjoyed by the Legal Services Board.”⁹⁰

Alberta

Alberta provides an interesting contrast to the jurisdictions set out above. It is unknown whether there were any local grass roots efforts to bring poverty law to Alberta, but it is clear that it was considered and rejected by the government, and the Law Society which governed legal aid. A paper by Linda Janzen outlining the history of Alberta legal aid, posted on its website, frames this resistance as a federal/provincial conflict, and resistance to federal government policy. It has been quoted extensively, because in the

⁹⁰ Op Cit 40 (Justice report), p. 46

course of rejecting the poverty law model, the paper reflects the degree of influence that the poverty law model had at this time.

She describes it as follows:

The federal department of national health and welfare had funded some experimental community law clinics in 1971. A Law Society of Upper Canada report in 1972, the "Community Legal Services Report", took issue with the community clinic model supported by the federal government and came out strongly in favor of the judicare model of use of the private bar to provide legal aid. The Law Society in Alberta adopted a similar position.⁹¹

She continues along this vein:

In 1975, the federal minister of justice wanted to increase federal involvement in legal aid by seeing minimum national standards. This proposal never came about because of continued provincial opposition. The potential for federal intervention raised the specter of "socialized legal aid" like "socialized medicine". The federal government was another threat to the independence of the profession.⁹²

This resistance extended to opposing "lay people" in the administration of legal aid. "Lay people have been members of the board with some regularity, but the board of directors of the Legal Aid Society rejected recommendations made by the 1988/89 task force for an increased requirement for lay representation on the board."

A Planning Sub-Committee of the Joint committee on Legal Aid was struck in November in 1974, charged with the mandate of studying delivery of legal services to remote areas and native reservations, the delivery of legal service through neighbourhood law offices, legal aid involvement in public legal education, and the extension of coverage and the desirability of granting choice of counsel to legal aid clients. As a result of the work of this committee a *Report and Recommendations* of the Joint Committee of the Legal Aid Society of Alberta on the future development of the Alberta Legal Aid Programme was produced in 1975. Much like other jurisdictions, the report recommended that poverty law services be introduced to Alberta:

The basic premise of the report was that the poor have a whole range of special poverty-related legal problems which were not touched by the current system i.e. welfare, unemployment, debtor's assistance, minimum health, housing and labour standards, native peoples and immigrants' issues, landlord/tenant law a general area of "poverty law". The report argued that the legal aid plan dealt well with problems, which could affect anyone in our society, but not particularly with problems poor people have because they are poor. It advocated a strong role for the Legal Aid Society in dealing with poverty law, the development of an attack on poverty problems, including bringing test cases to the courts, engaging in community education and organization, and pushing for reform of the law and

⁹¹ A History of the Legal Aid Society of Alberta, Published by the Legal Aid Society of Alberta, Linda Janzen, 1999, www.legalaid.ab.ca/LegalAid/publications.html p. 4

⁹² Ibid.

society. The report specifically recommended expansion of coverage to summary conviction offenses, hybrid offences (summary conviction or indictment), and morals offenses. It also recommended legal advice and representation before administrative tribunals, and the use of staff lawyers as supplement to the "judicare" approach, who would operate from neighbourhood poverty law clinics to achieve broader goals than those of success in individual cases. Another recommendation was the use of duty counsel and the establishment of choice of counsel in all cases.⁹³

According to Janzen "At the time, the Law Society seemed to accept some of the proposals in principle, "subject to funding", which never came about. Later developments suggested that the Law Society, and the Attorney General as well, were philosophically opposed to many of the recommendations made by the 1975 report.

A further review of the legal aid program was carried out during 1987/88 by a task force composed of representatives of the Law Society, the Attorney General and the Legal Aid Society. While recommending many changes to the legal aid program, this report took a different view of the provision of poverty law services:

The task force, did however, largely reject the idea that the Legal Aid Society should focus on "poverty law" which might include, for example, representation before administrative tribunals, the pursuit of class action suits in which low income individuals are affected, and advocacy by groups that could not otherwise afford the cost of doing so. They concluded that the plan and the society should instead continue to offer its traditional criminal and civil coverage. Poverty law issues, in the view of the task force, could be handled by staff lawyers "where warranted". The task force was strongly of the opinion that the Legal Aid Society was "not an agency of change", and recommended that charter of rights arguments be covered only where they were an integral part of a service provided to a client: "It is not recommended that the society pursue charter issues for the sake of defining the law."⁹⁴

According to the author, this task force report was far more influential, as "its recommendations brought about significant changes in legal aid programs after 1990".

Today, Alberta legal aid provides some casework coverage for administrative law matters, (but not landlord/tenant law). It also has a number of special programs that have incorporated related poverty law work for their clients. Those programs are: the Siksika Nation Pilot Project, the Family Law Office, and the Youth Criminal Defence Service.

There are also some community-based organizations that provide some poverty law services, some in conjunction with University of Alberta Student Legal Services. They are Calgary Legal Guidance and the Edmonton Centre for Equal Justice.

⁹³ Ibid., p.8

⁹⁴ Ibid. p. 9

Other Atlantic Provinces

Outside of Nova Scotia, poverty law does not appear to have had any influence in the legal services in the Atlantic. Again, it is unclear the movements of the early seventies had any impact at all, as there is no record that this research could find. There is no record that the legal aid plans themselves have ever provided such services in Prince Edward Island, Newfoundland and Labrador, or New Brunswick.

In fact, the 1979/80 report on legal aid reported that New Brunswick was criticized for not yet implementing any kind of civil legal aid program.⁹⁵ While some civil services were provided in the eighties, in 1988 it cut all civil legal aid services. A limited family law program was re-introduced in the nineties. The test case establishing a Charter right to legal aid services in child protection matters originated in New Brunswick.

Yukon

While there has been no historical tradition of poverty law services in the Yukon, they have introduced an interesting pilot project in recent years. A pilot project was initiated with the federal Investment in Legal Aid Renewal Fund following recommendations made by Jamie Furniss in a report entitled: *Self-Represented Litigants in the Yukon Territory* and (second report). The Furniss report draws on the experience of Ontario clinics, and Native Courtworker programs for his recommendations.

The pilot project is called the Neighbourhood Law Centre. Its mandate is described as follows:

The Neighbourhood Law Centre is a Yukon Legal Services Society (Legal Aid) community clinic, providing legal aid to individuals in non-family, civil matters impacting their livelihood, physical or mental health, or ability to provide food, clothing, and shelter for themselves or their families.⁹⁶

The centre has introduced the following:

- New areas of legal aid coverage (poverty and immigration & refugee)
- New manner of service (summary advice and other unbundled services through consultations)
- New methods of services delivery (drop-in clinic, community visit)
- New print materials in both official languages
- New client-friendly appearance of offices

More importantly, the centre offers a great deal of flexibility and responsiveness to its client community. With respect to scope of coverage, while it provides services in the typical poverty law areas of practice like social assistance and Employment Insurance, that is not how they define their services. Their intake process refers back to the mandate stated above to see if the client problem is one that might be captured within the mandate, giving it a broad scope of coverage. Furthermore, they provide a broad range of “consultation services” without financial eligibility testing. While consultations typically

⁹⁵ Op. Cit. 40 (Justice report), p. 35

⁹⁶ Yukon Legal Aid website

run for thirty to sixty minutes, they can run up to five hours if necessary. Financial eligibility testing is done only if full representation is required. The staff lawyer advises that the amount of service offered here often depends on whether there is anyone else to refer the client to.⁹⁷

It has also done extensive outreach into the community. It appears to be successful in reaching the remote/rural population outside of Whitehorse.

Work has been done in the following areas: housing, social assistance, and immigration and refugee. Although the mandate does not refer to law reform, because current legislation or regulation does not provide adequate remedies for tenants, the centre is conducting research to make recommendations “for revising the existing *Landlord and Tenant Act*” as well as scheduling a “Tenant’s Rights” seminar that is “open to the public”. In the area of social assistance, a Petition was brought before the Yukon Supreme Court challenging the regulations as being ultra vires the legislation because they prohibited appeals of discretionary decisions. This petition was successful, and as a result, has opened up the appeal process.

At this point its funding is guaranteed for only three years.

Nunavut

Nunavut is experimenting with many innovative initiatives in the justice field, and is taking the lead on many Aboriginal legal issues. This section is based simply on website information about legal aid services, and does not closely examine recent developments.

According to its website, Nunavut Legal Services Board has three primary roles: to provide legal aid services; to manage the Courtworkers program; and to provide public legal education and information (PLEI).

The website lists three regional centres that provide services from criminal and family staff lawyers, as well as court workers, as well as a “poverty/civil law line” as part of its regular services.

It also runs a “Poverty and Civil Law Office” to “assist Nunavummiut with legal issues arising out of need”. It also states that “representation will be considered on a case-by-case basis”.

⁹⁷ Interview with Sheri Hogeboom, Neighbourhood Law Centre, Whitehorse