THE LEGAL AID TRADE*

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Members of the Law Society of Alberta have undertaken to provide a comprehensive legal aid service in order to enable Albertans of insufficient means to be represented by counsel in court. Mr. Evans feels the present legal aid system, while founded on a strong theoretical basis, has not accomplished its objectives. The author points out that the system has experienced rising costs coupled with a diminishing quality in the legal aid provided. Various abuses of the legal aid system are presented and Mr. Evans notes that the essential weakness of the system lies in its failure to provide defence counsel "approximating the ability of the Crown Prosecutor". To alleviate this inequity the author submits that a Public Defenders Office should be established to operate on much the same basis as the Crown Prosecutors Office. This would consistently provide competent defence counsel who are acceptable to the court. Mr. Evans suggests, after a review of the costs of the present system and of several Public Defender systems in the United States, that such counsel can be provided at less expense than the current legal aid system.

I. INTRODUCTION

At least one Justice of the Supreme Court of Alberta has publicly expressed his disappointment with the present legal aid system, and many other Judges, Provincial Judges and Barristers have become strongly critical of the plan, both publicly and privately. Why is the legal aid plan under fire? Simply, because it has failed to fulfil its one major objective: to provide an adequate defence to the poor and indigent accused of a crime. Because it has failed to fulfil this obligation, it may well be said that the age old problem of "a law for the rich and a law for the poor" is still unsolved in Alberta.

By way of introduction, the writer takes cognizance of one of the expressed philosophies of the new Provincial Government, that is, the protection of the citizen against the abuses inherent in "big government". At the Fourth Session of the Sixteenth Legislature, Mr. Len Werry, M.L.A., presented Bill 138 to the Legislative Assembly of Alberta, entitled The Workmen's Compensation Advocate Act. Mr. Werry proposes that one of the officers of the Workmen's Compensation Board be an advocate who may:

(1) Advise pensioners and claim applicants upon the provisions of the Act;
(2) Assist applicants in preparing a written or oral presentation to the Board in furtherance of their claims;
(3) Assist the pensioner or claimant at the hearings; and
(4) In his absence, represent him at any hearing before the Board.

Mr. Werry states:[1]

> In the terms of today's complex society, governments, their boards and agencies, generally give inadequate attention to the individual citizen's grievances. Too often a

*This article represents the personal view of the author as a criminal lawyer and is in no way a comment on or an expression of government policy. The reader will appreciate that it is not possible to verify many of the statements made and conclusions reached herein by statistics. Such statements and conclusions are the opinions of the writer, based on his own observations and experience. Many of these same opinions are shared by other members of the Profession. Please be assured that the writer's criticisms stem from a genuine concern for the proper defence of the poor and indigent, and not from any intention to be failing in courtesy to the Profession.

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[1] An Act to Establish The Workmen's Compensation Advocate Act, 4th Sess. 16th Alta. Leg., 1971 Bill 138, explanatory notes.

> citizen is not aware of the grievance procedures which are available to any individual, and even if he does [*sic*] he often feels helpless in dealing with government. . . . A large majority of those appearing before a board are ill-equipped in preparing and presenting their problems before a technical administrative board.

It is to be hoped that the present government, working with the Law Society of Alberta, is prepared to extend this philosophy to the defence of the citizen, particularly the poor citizen, accused of public crime in this Province.

It is the writer's thesis that a large majority of the "legal aid lawyers" appearing before the various criminal courts are ill-equipped in preparing and presenting their client's defence in a highly competitive and highly technical milieu. It is, therefore, proposed that a public defender system be immediately instituted in the Judicial District of Calgary, and thereafter in the remainder of Alberta.

II. THE PRESENT LEGAL AID SYSTEM

1. Present Structure

The original intention of the Law Society and the Government of Alberta in instituting the legal aid plan (criminal) was clearly that active members of the Law Society should be assigned on a rotational basis to act as counsel for indigent accused. A system of independent interviewing was set up whereby articled students-at-law in Edmonton and corporation lawyers in Calgary volunteered their services for one week periods in rotation to consider the eligibility of applicants for legal aid. If the interviewer granted a legal aid certificate, that certificate was forwarded to an employee of the Government's Debtors' Assistance Board to be assigned to a defending counsel.

The administration of the legal aid plan was recently turned over to the officials of the Law Society of Alberta. At present, a salaried Director and Assistant Director employed by the Law Society administer the plan, assisted by a secretarial staff, with offices in both Edmonton and Calgary. Although unpopular with some assigned counsel, who for various reasons have not been anxious to contribute their time or expertise, the plan has gained general acceptance. While the interviewers granting certificates are volunteers, assigned counsel are paid a fee according to a Tariff of Fees, the latest dated January 1, 1971. In addition to the fee, they are reimbursed for their proper expenses for transcripts, mileage, etc. In no case is an assigned lawyer required to defend without remuneration. In some cases of exceptional difficulty, *e.g.* homicide, the fee "may be increased by the Legal Accounts Officer in those cases where in his opinion an increase is justified."[2] There is an appeal to the Joint Committee on Legal Aid from the taxation of the Legal Accounts Officer. It is also noteworthy that where an assigned counsel acts for more than one accused jointly charged, he receives one-half again of the fee for one accused for each additional accused. A reasonable fee is also allowed for the preparation of an "opinion".

It cannot be said that Alberta lawyers have ever suffered under the legal aid plan.

Legal aid certificates are granted to qualified persons who are charged

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[2] The Alberta Legal Aid Plan. Tariff of Fees, January 1, 1971. Note 'A' page 4.

with indictable offences under the Criminal Code[3] and the Narcotic Control Act.[4] It is not the practice to grant a certificate to a person charged with an indictable offence over which a Provincial Judge has absolute jurisdiction, but some exceptions are made in extraordinary cases. The legal aid certificate is in effect until the conclusion of the trial, that is, the "retainer" ends with acquittal or sentence. For an appeal, a fresh application must be made to the Committee.

Under the present setup, if adhered to, almost every active practitioner in Alberta would take his or her turn defending a person charged with an indictable offence, or in arguing an appeal on behalf of such a person. With the great number of lawyers in active private practice in the larger centres, a practitioner should be called upon to accept a legal aid appointment on only a very few occasions in any year. It is to be expected that on such occasions the appointee will bring to bear his best efforts and customary diligence on behalf of the accused, comparable to that exercised by him for a client who is able to reward him financially.

In theory, the Alberta Legal Aid Plan is an excellent workable system, specifically designed to achieve its stated ends.

2. The Abuse of the Current Legal Aid Scheme

(a) By inexperienced lawyers taking "trivial" matters to the Superior Court of Criminal Jurisdiction

It is true that the Criminal Code provides an election to the accused in a large number of crimes, and it is not suggested here that a person should be restricted in law from such a choice of forms. But surely, the matter of mode of trial being one of the most crucial stages in the proceedings, that election should not be predicated on any other considerations than the welfare of and tactical advantage to the accused person. The election is a matter to be exercised at the discretion of the defence counsel, who should be experienced and canny enough to know that his client is far better off in some instances in electing for a summary trial.

There are three obvious advantages to a quick trial in Provincial Judges' Court:

(1) The delay constantly complained of by defence counsel and their clients would be eliminated. If the Crown is unable to proceed on short notice, then the charge should never have been preferred in the first place. Some cases may be finally disposed of in less than two weeks from arrest. An accused person should have the right to face his accusers as soon as practicable.

(2) The defence is often in a better position than the Crown if there is no preliminary enquiry. Of course, the court has an overriding discretion to order that the proceedings become a preliminary enquiry, but in practice it is seldom exercised.[5]

(3) Provincial Judges today are legally trained experts in the rules of evidence and in the definition and correct application of the criminal law. Neither the Provincial Judges' Court nor the Supreme Court

[3] R.S.C. 1970, c. C-34.

[4] R.S.C. 1970, c. N-1.

[5] *See* Criminal Code, R.S.C. 1970, c. C-34, s. 485(1) and s. 498.

should be a training ground for junior lawyers. Counsel are required to be experts as well.

These comments apply to most indictable offences that may be properly considered as having no "unusual" aspects.[6] No indictable offence may be called "trivial", but quite often the evidence is of a routine nature, and there is no way that an experienced counsel for the defence may be taken by surprise, especially when he is able to obtain full particulars of the evidence beforehand from the Crown, which is a standard courtesy in this jurisdiction (Calgary).

In any event the court has the discretion to order particulars in every criminal case, if applied for, and those particulars supplied bind the Crown to the strict proof thereof. To be quite frank, the major advantage to an accused in proceeding at once at the Provincial Judges' Court level is that the Crown is quite often unable at the first go-round (where there is a preliminary enquiry) to field an "air-tight" case. How many preliminary enquiries have we attended where there has been just barely enough for a committal? The subsequent indictment is quite different from the original information; there are new witnesses subpoenaed for the Supreme Court. Probably one-half of such cases may be disposed of at the Provincial Judges' Court level, without prejudice to the accused, and doubtless to his advantage. With the last-minute rushing, the crowded docket, non-appearance of witnesses at the eleventh hour, and badly-worded informations, it is the Crown who is often at the real disadvantage in the lower courts. After all, the Crown has to prove every material allegation in the information. A preliminary enquiry enables the Crown Prosecutor to review the evidence at his leisure, indict for a differently worded charge, or for a completely new charge, or, in many cases, add one or more counts to the indictment. Too often the fledgling defence counsel takes refuge in the rationalization that his client "insisted" on going to the higher court. Defence counsel must learn to control his client, which sometimes requires a heavy hand. It is the lawyer who is the expert. If the client demurs, counsel has his remedies.

In fairness, however, it must be pointed out that many defence counsel advise their client to go to a higher court because they feel he will receive a better hearing and a lighter sentence.

(b) By "fee-padding" lawyers

Of course, counsel obtain a larger fee and perhaps some newspaper publicity from a protracted trial in the Superior Court. Examine for a moment, the current "Legal Aid Plan Tariff of Fees" in criminal matters:

(1) Guilty plea in Provincial Court
(all inclusive of appearances) ..... $ 50.00

(2) Trial in Provincial Court
(all inclusive) $100.00

(3) Preliminary hearing (The average preliminary enquiry takes less than one hour and few defence counsel prepare extensively for it) ..... $ 75.00

(4) Trial in District or Supreme Court

[6] *E.g.*, Theft, break and enter, false pretences, possession of stolen property, possession of an offensive weapon, indecent assault, escaping custody, and mischief (damage over $50.00).

($50.00 "refreshers" per half day) $100.00
(5) Guilty plea in Supreme Court ..... $ 25.00

For a guilty plea in Provincial Judges Court counsel receives $50.00. Frequently, after numerous delays, it seems that defence counsel goes through a preliminary enquiry knowing full well it is the intention of the accused from the beginning to plead guilty. They excuse this procedure on the mythological grounds that their client will be dealt with more leniently in Supreme Court (more experience should prove to them that such is not necessarily the case). In fact, they are padding their accounts. For a guilty plea in Supreme Court after a preliminary hearing the fee is exactly double: $100.00. Very few defence counsel, following this philosophy, waive the preliminary enquiry under the Criminal Code.[7] As long as the defence insists on a preliminary, his account is larger by $50.00 (or more, if more than one-half day is required for the preliminary). It may seem incomprehensible that accused persons should languish in custody, Supreme Court dockets should be grossly overburdened, and proceedings should be inexcusably delayed, all for the gain of a mere $50.00. But it must be remembered that there are some lawyers who are obviously making a business out of criminal legal aid. One of the frequent practices is the legal aid lawyers' remanding of all his current legal aid cases to a particular half-day remand list. He then makes one appearance on that morning or afternoon. If he has four legal aid clients, he is paid four times over for one appearance. As of January 1, 1971 the Tariff of Fees was amended so that the fee to the lawyer included "all necessary remands", "adjournments" and "bail applications". Formerly, these items were paid on an individual basis, resulting in a great deal of duplication in billing. But the jockeying still goes on, because the canny practitioner is able to combine a "necessary appearance" with a guilty plea or a trial in another or the same court on the same date. In other words, he ensures that he doesn't go all the way to the Provincial Judges' Court for one remand only if he can avoid it. The legal aid lawyer would argue that it is only good business to follow this practice of "doubling up". But it is not the intent of the plan to encourage good business practice on the part of its appointees. The whole principle of legal aid is that the lawyer, in a sense, is donating his time and services for less remuneration or for free. Certainly, the tariff is far below what a criminal lawyer can expect to command from a paying client, but the lawyers are expected to make a contribution, in the sense of reduced fees, equal to that of the public. What happens in fact is that a substantial portion of over half a million dollars of public funds is being paid annually into the pockets of a few lawyers who, for one reason or another, are in the legal aid trade.

Legal aid lawyers are paid $150.00 for appeals to the Court of Appeal, plus $50.00 for each additional half day. This fee includes filing the Notice of Appeal, but in practice the client usually files his own on a form provided by the gaols. A $50.00 fee with $50.00 half-day "refreshers" is paid for sentence appeals, which take a matter of minutes.

(c) By entrusting the majority of the legal aid case defences to the hands of an anxious few

[7] R.S.C. 1970, c. C-34, s. 476.

Instead of most of the members taking a turn at a reduced fee, the available monies are being distributed among a small number of practitioners. Statistics recently compiled by the legal aid administration indicate that one lawyer in Calgary had more than 100 legal aid cases in one year.[8] The "Legal Aid Fund Estimated Case Costs" (by type for the year ending March 31, 1972) indicates that the only type of criminal case on which the projected fee averages less than $100.00 is forgery, set at $97.00 per case. Using the Law Society's own projected average figures, I have calculated the average cost per criminal case in Alberta under the legal aid plan for the year ending March 31, 1972 to be $220.60.[9] That figure includes the average cost per homicide case, set at $964.00. Even eliminating the homicide figures (as not every legal aid lawyer defends a person charged with homicide in any year) the average is still $138.00 per case.[10]

A little simple arithmetic tells us that if a legal aid lawyer manages to get appointed to one case per week, he can pay his overhead with the $7,000.00 fees. The only usual disbursement is the preliminary transcript. To use a colloquialism, "the rest is gravy". Is it any wonder that one young lawyer in Calgary telephoned the legal aid office regularly looking for work![11]

Due to most lawyers seeking the rewards offered by other branches of practice:[12]

> Eventually, it will be only the members of the lowest standing in reputation and ability that will be available to defend the poor.

It is a well known fact that the great bulk of the criminal legal aid cases in Calgary are handled by a very few legal aid lawyers. The original intent of the scheme, as I have stated earlier herein, was that all members of the Bar, regardless of rank, income or position, would

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[8] Hearsay.

[9] The Law Society of Alberta. Legal Aid Fund. Estimated case costs by type for the year ending March 31, 1972, page 1.
This figure ($220.60) is the "average cost per case" calculated by adding the Law Society's "average cost per case" for each of ten categories of criminal offences "for five months ended February 28, 1971," and dividing the total cost by ten. The figure of $138.00 was calculated on the same basis after deleting the $964.00 average cost per case for the Homicide category from the total calculations, and dividing the lesser total by nine. The figures of $220.60 and $138.00 (disregarding the high "Homicide" category), therefore, are the average costs per case, in the two examples referred to above, for the five-month period ending February 28, 1971. In projecting the "estimated number of cases" and "estimated cost" for the year ending March 31, 1972, the Law Society has based these figures on the actual number of cases for the five months to February 28, 1971, "prorated over a full year and increased by 15 per cent". I used the same average cost (for the five-month period to February 28, 1971) for the later period March 1, 1971 to March 31, 1972, because the Law Society "note" to its figures continued:
> Estimated cost calculated by multiplying the estimated number of cases times the average cost per case to date.
The average cost per case for the year ending March 31, 1972 *would in all probability be higher than the figure of $220.60,* because the tariff of fees dated January 1, 1971 increased some of the fees paid to counsel under the former "tariff of fees payable to counsel appointed pursuant to legal aid plan, Form A.G. 959" (for example: guilty plea at Provincial Court level—new fee $50.00, old fee $20.00 plus $10.00 and $5.00 increments for necessary remand; trial at Provincial Court level—new fee $100.00, old fee $40.00 per half day; preliminary hearing—new fee $75.00, old fee $50.00, plus increase in amount for each additional one half day by $15.00; bail application to a Justice of the Supreme Court—new fee $40.00, old fee $15.00; attendance at any necessary adjournment or remand granted at the request of the Crown—new fee $15.00, old fee $10.00; appeals to the Court of Appeal on conviction, first day—new fee $150.00, old fee $100.00; etc.); also new billing categories have been added that were not formerly provided for except under a catch-all section of the old tariff "for services performed in connection with the administration of justice in the province, where no provision is made" (for example: District Court appeals—fee $100.00; preparation for appeal to the Court of Appeal, per hour (maximum ten hours)—$15.00; appeals to the Supreme Court of Canada; appeal by way of stated case—$75.00; extraordinary remedies including prerogative writs—$50.00 preparation plus $50.00 counsel fee per half day; attendance by solicitor on accused in custody outside the city—$25.00; written argument—$15.00; mileage by private automobile, per mile—10¢).

[10] *Id.*

[11] Hearsay.

[12] Harold W. Riley, *The Law and The Poor* 21.

be required to take their turn in defending some poor or indigent person charged with crime. This well-intentioned practice became obsolete just about the time the first Alberta legal aid case was assigned. It appears to have been the practice almost without exception that in all law firms, large or small, any legal aid case assigned to any lawyer in the firm was automatically passed on to the junior man, often a hapless student-at-law. How the senior practitioners are able to reconcile this practice with the very grave undertaking of responsibility for the liberty of a man charged with a crime, together with the oft-expressed high ideals and goals of the Alberta Legal Aid Plan, is quite beyond the writer. If any blame, therefore, is to be laid for the current practice of assigning large numbers of cases to the same few persons in this jurisdiction, some of that blame falls squarely upon the shoulders of these large and medium sized legal firms who not only shunt the legal aid case to the low man on the totem pole, but are reputed to actively discourage any criminal defence work for fear of offending their other clients. The members of the Law Society have accepted the responsibility with one hand, have assigned it indiscriminately with the other, and turned a blind eye with alacrity to that abdication of responsibility. I am instructed that an effort is now being made by the Director and his Assistant (neither of whom are criminal lawyers) to put a new rotational system into effect, so that all lawyers will be required to take their turn. I am pessimistic enough to predict that the cases will still find their way into the hands of the junior and inexperienced members of the firms, since some medium sized firms encourage their juniors to accept legal aid cases in order to supplement their billings.

I must point out here that I was recently advised by a spokesman for the Legal Aid Committee that they are determined to effect a wider spread of the work and by the end of this year they are hopeful that the statistics will show a much broader distribution of appointments. It was also pointed out to me that there is a much wider distribution of the legal aid (criminal) work in Edmonton than in Calgary.[13]

What started off as a necessary service by the members of the Law Society to the less fortunate members of the community has taken on several aspects of a profit-making venture on the part of some of the appointed solicitors. The passage of time has demonstrated that the constant exposure to the criminal courts of that same group has hardly developed the long-hoped-for "strong Criminal Bar", at least not in Calgary, where it has been noted by a number of qualified critics that the same appointees keep re-appearing and repeating the same mistakes to the detriment of their clients.

It is submitted that the whole purpose of the legal aid scheme is defeated if it is merely a means for young lawyers to get on-the-job training, or income subsidization. Under the present system, those who want the work get it, apparently without regard to their lack of competence in the field.

(d) By many applicants

This fourth abuse is not attributed to legal aid lawyers, or to any negligence on the part of interviewers. This paper would not be com-

[13] All of the writer's conclusions in this paper are based on his observations and experience in Calgary.

plete without its mention, however. We are instructed by the administrators of the plan that the granting of a certificate to an applicant is not predicated upon any set means test, but is discretionary as the need varies with the personal and financial circumstances of the individual applicant, and rightly so. But nevertheless, in my view, one of the greatest abuses to which this plan is subjected is the indiscriminate granting of legal aid certificates to persons who overtly live by crime. A large number of successful legal aid applicants, it appears, are known criminals. This is not a condition to which there is any satisfactory solution. One cannot expect an applicant to list his occupation as criminal, even if that be true. The difficulties in screening the type of applicant who should not, because of his antecedents, be granted legal aid, are recognized here, and no doubt this is not the first occasion on which this distasteful subject has been raised. Criminals are crafty. They are able to state with hardly a pang that their last year's earned income was less than the minimum subsistence. Of course, what the interviewer does not appreciate is that the applicant stole about $10,000.00 and has been living on the avails of his anti-social behaviour for years. Being apprehended by the authorities and charged with a crime is a business risk to this man, in much the same way that a bad debt is a hazard to the legitimate business man.

No one can appreciate more than the writer the very limited use to which criminal records of accused persons may be put. To seek to prejudice a man because he has shoplifted or strayed once or twice from the narrow path is unthinkable. On the other hand, the interviewer determining eligibility for the granting of a certificate should be allowed, in his discretion, and in the strictest confidence, access to an applicant's criminal record for the purpose only of determining the man's background more accurately than the man is likely to divulge. He may then have some concrete information on which to base some of his questioning of the applicant, and it may well be that the impression that the interviewer receives after the interview is that the applicant does in fact live by crime; or, contra, he may determine that despite the man's background, there are other good reasons why legal aid should be granted. It is probably only the applicant who lies about his background who will be denied legal aid in any event.

It has been observed by me on more than one occasion that the hardened criminal often chooses his legal aid lawyer, and is soon out on a high cash bail, while the poor wretch cast into *durance vile* on the first or second occasion gets anybody for a counsel, and continues to rot in the common gaol. Presumably this is the reason why, in British Columbia, transients and known criminals are not as a rule eligible for legal aid.

3. The Defence Counsel

The loneliest man in the court room is the defence counsel. Against his meagre resource is marshalled the machinery of the Super State. With only his wit, his knowledge and his thick skin to fend for his client, the defence counsel in a criminal court feels assailed from all sides by the bureaucrats, the police, the Crown Prosecutors, sometimes the court, and in many cases the accused. The defence counsel does not have the luxury of being able to philosophize. His job is simple: to get the accused out on the street as soon as possible, win, lose or draw. He

must, therefore, lie in wait throughout the proceedings, holding himself ready to go for the loose brick of the Crown's case and knock it out at the first opportunity. But some of the holds *are* barred in this contest. The defence counsel owes a duty to the court, to his learned friend, to the State, to his client, and to himself (if he has any part left over after satisfying the other onerous requirements). Above all, he is a member of the Criminal Bar, and he must never fail in his frankness and courtesy to the court. The practice of criminal law should be the highest calling of the legal professional man. As Riley J. has said:[14]

> The work of the criminal courts is more important than that of the civil courts. The liberty and often the life itself of the defendant is far more important to him, to his family and to society in general, than is the result of civil litigation where only dollars are at stake.

And further:[15]

> To seek the whole truth, and do exact justice is most assuredly the purpose of the criminal trial. To reach this result it is necessary that the accused be represented by counsel approximating the ability of the Crown Prosecutor. . . .

Therein lies the essential failure of the legal aid system in Alberta. It is often said that the inexplicable fervour of a young counsel more than makes up for his inexperience. Unfortunately, that is not so. And even more unfortunately, from the point of view of the accused, the calibre of counsel representing accused persons through the Alberta Legal Aid Plan is generally low. In fact, many of the legal aid appointed counsel deserve a fee at the conclusion of a criminal trial for acting as assistant Crown Counsel.

Granted, the adversary system is founded upon the principle that in the final analysis a synthesis will be obtained which comes as close as possible to the truth of the matter, that is, what actually happened. But nobody expects the defender to lose the case by default. The adversary system is not functioning properly if one side does not have ready access to adequate legal services.

In Calgary, at least, the contest is unequal. The Crown holds all of the winning cards:[16]

> More often assignments are made to younger and more inexperienced lawyers, who are honest and painstaking and devote much time to the preparation of their cases, but this does not make them an even match for the Crown Prosecutor.

To be fair, I must state that there are some young counsel undertaking legal aid who do a first class job. Also, many of today's competent counsel got their start doing legal aid cases and in fact, it may be said that the legal aid plan was instrumental in their training.

III. THE PUBLIC DEFENDER SYSTEM: A SENSIBLE ALTERNATIVE

1. What is a Public Defender?

A Public Defender has been described as:[17]

> . . . a public official paid at public expense—and could well be associated with the office of Crown Prosecutor. That is, he would be a full-time advocate appearing in the criminal courts constantly. The essential underlying ideas in the proposition are:

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[14] Riley, *supra*, n. 12 at 26.

[15] *Id.* at 19.

[16] *Id.* at 27.

[17] *Id.* at 18.

(i) That the official or the attorney responsible for the defence of indigent accused should be paid for his services, and his expenses defrayed;

(ii) That instead of having counsel changing from case to case the work should be centralized in the hands of one official or organization.

2. The Advantages of the Public Defender System

In submitting this brief, the writer proposes three goals that must be achieved by the members of the profession:

(1) To properly defend the poor and indigent accused of a crime;

(2) To drastically reduce the cost of criminal legal aid for the Judicial District of Calgary (and throughout the Province); and

(3) To reduce the workload of all of the courts.

These three long-term goals may be achieved by the appointment in Alberta of Public Defenders. A public defender system in Alberta is the obvious workable alternative to the present legal aid scheme.

The immediate advantages of a public defender system are as follows:

(1) Competent representation for all accused persons qualifying for legal aid, regardless of means, background or circumstances of life;

(2) The Public Defender will receive a fixed salary, or will contract with the Law Society for a fixed amount which will include his administrative costs, which payment in either case is estimated at approximately one-half the present projected payment for legal fees and disbursements to March 31, 1972.[18]

(3) Those cases that can be dealt with competently to the advantage of the accused at the Provincial Magistrate's level will be conducted at that level;

(4) There will be open and effective co-operation between Crown Counsel and the Public Defender to the advantage of the accused. The public defender's office will work in close liaison with that of the Crown Prosecutor, for example:

(i) Subpoenas for defence witnesses served by the police (proper witness fees paid by the Crown);

(ii) Pre-arraignment and Court of Appeal list conferences to agree on dates for trials and appeals well ahead of time;

(iii) Systematic routine set up for automatic notification to the Crown of an application for adjournment, or change of plea;

(iv) Pre-arranged times for bail appeal applications each week (Supreme Court Chambers Monday morning, for example);

(v) The arraignments in the Superior Court of Criminal Jurisdiction will be completed in less than half the time; and

(vi) Particulars of the Crown's case will be more readily obtained.

(5) All legal aid appeals will be handled by one experienced criminal counsel acceptable to that court and will be completed in less time;

(6) No frivolous applications; no padded accounts; no delays;

(7) The defence will be properly prepared at all times, and the cases handled efficiently, with no detriment to the accused;

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[18] *See* Appendices I and II.

(8) An investigative department: one of the more desirable features of a public defender system is the availability of an investigator on a *per diem* basis to assist in locating and interviewing witnesses. This aspect is particularly important when the accused person is in gaol (as is most often the case with indigents) and, therefore, unable to go out and look for witnesses he feels would assist him in his defence. There is not one legal aid lawyer in the Province who has the resources to employ an investigator, or who has the time and training to do the sleuthing himself. A retired policeman would be ideal for such work, and no doubt available at a reasonable hourly rate.

(9) The public defender's office would have available a psychiatrist for consultation and examination of clients. At present, unless the Legal Aid Committee specifically authorizes the payment of a psychiatrist, the only assessment an accused person receives as to his mental health, fitness or capacity, is that of the Crown's psychiatric consultant.

3. Existing Public Defender Systems

Are existing public defender systems working? One is required to look to some of the jurisdictions in the United States which have instituted such systems, as there is no public defender scheme in Canada known to the writer.[19]

A questionnaire, forwarded on July 17, 1969, posed the following questions:

(1) What is the legislative authority under which you operate and could you either provide me with a spare copy of the statute in question or let me know where I should write for one?

(2) What is the nature and scope of your jurisdiction? More specifically, what does your operation cover? Do you go the whole route from misdemeanours to Supreme Court Appeals, or is there some limitation? Further, is there any money limitation or means test and how is this administered?

(3) What sort of case volume do you handle? What staff, professional, stenographic and other, do you have and what sort of remuneration is offered?

(4) How is the system accepted locally, both by the profession and by the public at large?

(5) Does the system work?

(6) What improvements, if any, do you think would be desirable?

Three replies were received, which are reproduced here.[20] Unfortunately, due to the urgency of preparing this paper, it has not been possible to bring the answers up-to-date, particularly in regard to the statistics as to salaries and number of cases processed. However, for the limited purpose of determining the overall feasibility of the public defender scheme, the answers set out herein should be extremely helpful.

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[19] I wish to express my indebtedness for the very helpful research in this area of Mr. Max M. Wolfe, Barrister and Solicitor of Calgary, who in 1969 conducted his own independent survey of the U.S. systems by forwarding a questionnaire to a number of American cities.

[20] With the kind permission of Mr. Wolfe.

Reply from Public Defender in and for Tulsa County, Tulsa, Oklahoma:[21]

(1) A copy of our statute is enclosed. In Tulsa County the District Judges appoint the public defenders and they serve for six (6) months to one (1) year as a rule.

(2) We handle all indigent felony cases beginning with the arraignment and ending when all judicial processes have been exhausted. Basically the client has to be a pauper but this rule is more or less enforced by means of inquiry and an affidavit signed by the accused. Occasionally we represent persons charged with misdemeanors whenever the second offence of the crime will constitute a felony.

(3) We probably handle 65 per cent of the felony cases although there are no firm statistics. We have one secretary, 5 trial attorneys, 2 appeal attorneys and 1 attorney assigned to juvenile offenders. The job is not considered full time in that we each conduct a private practice. The pay is $350.00 per month. (Each county varies as to staff, etc., but pay is the same.)

(4) I believe that the system is well accepted.

(5-6) It works but the system does require a larger staff to include full-time attorneys, investigators and the like. For your information about 1,100 felony cases have been filed in this County since January 12, 1969.

Reply from Douglas County Public Defender, Omaha, Nebraska:[22]

(1) This office was created by an Act of the State Legislature, a copy of which is enclosed for your reference.

(2) At present, our jurisdiction is felony cases from arrest through all appeal proceedings. We also have a limited civil responsibility confined to those cases where there is a possibility of deprivation of justice because of indigency. Legislation is pending to provide for representation in juvenile matters. We do not handle misdemeanors except in unusual cases on a voluntary basis. Determination of eligibility is made by the Court after examination of the defendant.

(3) The office handles about eight hundred cases a year. The staff consists of the Public Defender, a chief assistant, three assistants, and two secretaries. Salaries are as follows:

Public Defender	$17,500.00
Chief Assistant	13,125.00
Assistant	11,000.00
Secretary	4,800.00
Receptionist-Secretary	4,200.00

(4) The system is well received locally by the public and especially by the local bar association.

(5) The system works very effectively here. The office has a win ratio over fifty percent for the past few years. It provides skilled and experienced counsel in an area where many attorneys are reluctant to practice.

(6) As to improvements, I feel that we need representation in more serious misdemeanor cases. I don't feel there is any need for rep-

[21] Reply from Andrew T. Dalton, Jr. Public Defender in and for Tulsa County, Tulsa, Oklahoma, dated July 23, 1969.

[22] Reply from A. Q. Wolf, Douglas County Public Defender, Omaha, Nebraska, dated July 30, 1969.

resentation in traffic cases since that is part of the expense of operating a motor vehicle. I would confine representation in misdemeanors to these cases where a jail term is provided on conviction.

Reply from Public Defender, City and County of Denver, Colorado:[23]

(1) State statute and municipal ordinance attached.

(2) Nature and scope of our jurisdiction extends to the defence of criminal cases within the city and county of Denver: from juvenile misdemeanor offences and county court misdemeanors through Colorado Supreme Court appeals. The defendants in these cases are indigent, i.e. neither he nor his family have the financial means to pay a retainer fee. Information is obtained by an Affidavit of Indigency and subject to court approval.

(3) Case volume:

1968—felonies processed—1,774.
misdemeanors processed—1,301.
juveniles—207
Supreme Court proceedings—45.

Professional staff:
Attorneys—13
Investigators—3
Law stenographers—5.

Remuneration:
Attorneys (permanent full-time, no private practice):
for felonies $1,026-$1,282.
for misdemeanors $858.00-$1,026.00.

Clerical:
1 Clerk IV—$489-$614.
4 legal stenos—$428-$537.

Investigators:
1 chief investigator—$672-$839.
2 investigators—$588-$734.

(4) This system has indicated a saving to this county in comparison to the court-appointed attorney system used previously. More centralized adequate services of defence attorneys have been provided. This system has been accepted as successful in the opinion of the municipal government, the public and the courts.

(5) Yes.

(6) More attorneys in the juvenile courts, at the initial arrest, for consultation at the county jail, and for appeals to our Colorado Supreme Court.

Three points stand out right away:

(1) The public defender system is unquestionably cheaper. Compare the Denver average of $55.00 per case (presumably including homicide) with the Alberta average of $138.00 per case (excluding the homicide average, which is about $1,000.00 per case). The Denver figure is obtained by averaging the statistics supplied by Mr. Chisholm.

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[23] Reply from William J. Chisholm, Public Defender, City and County of Denver, Colorado, dated July 31, 1969.

(2) The system appears to be well supported by the local Bar Associations and the courts, and to be well-received by the public.

(3) I quote again the comment of A. Q. Wolf, Esq., Omaha Public Defender:

> It [the public defender system] provides skilled and experienced counsel in an area where many attorneys are reluctant to practice.

4. The Major Criticism

Let us deal at the outset with the major criticism of the concept of a Public Defender: there are possible abuses by the incumbents which could lead to charges of assembly line or slot machine justice, and to charges of being in cahoots with the police.[24]

> We must impress the community with the fairness of the Courts. Any suspicion lurking in the public mind that discrimination exists between different classes of accused persons must be eradicated.

In my opinion, there are far more abuses by lawyers retained under the current legal aid scheme than there ever would be on the part of a Public Defender. The names of those who consistently abuse their legal aid appointments by protracting and unnecessarily complicating proceedings, and who are possibly incompetent in this area are well known to the Courts:[25]

> The case for the Public Defender (in preference to assigned counsel) rests primarily on the fact that such an office forms an essential and necessary function in the administration of justice more efficiently and with all-round better results than any other plan. The increased efficiency can readily be appreciated. It is apparent that the attorney who devotes all his time to criminal work is more familiar with the law and details of procedure than the attorney who is occasionally assigned a case.

There should be a difference between increased efficiency and simplification of the administration of justice on the one hand, and assembly line or slot-machine justice on the other. Quite often this distinction may not be readily observed by the public. Any tendency to over-simplify procedures in criminal matters should be tempered with the overriding mandate that justice must also manifestly appear to be done. I am not suggesting for one moment that this trite truism meets the major criticism stated above. There can be no really effective check or safeguard against possible laziness or apathy on the part of a Public Defender, any more than against any other public official in a position of trust, or against any legal aid lawyer for that matter. Every care and precaution must be exercised by the hiring committee of the Law Society in appointing the right man to the job. Any Public Defender who persistently exhibited negligence, sloth, or both, resulting in the non-performance of his duties, should have his employment summarily terminated, just as a lazy or indolent Crown Prosecutor should be likewise dealt with by the Attorney General. Any complaints would be immediately investigated by the Joint Committee on legal aid. In that vein, one of the attractive features of an independent contract of services between the Law Society and a firm of four individuals is that all complaints of rail-roading, indiscriminate plea-bargaining, indifferent service, or lack of due diligence would be re-

[24] Riley, *supra*, n. 12 at 30.

[25] *Id.* at 22.

viewable before the renewal of such a contract. If the complaints are substantiated, then of course the contract would not be renewed for another term. Also, the proof of such charges could render the contract voidable during its term at the instance of the Law Society. The initial contract ought to be for a two-year period only, with the entire set-up reviewed towards the end of that two-year period. Security of tenure is a public official's privilege that is coming under closer scrutiny these days, especially by Federal authorities. On the one hand, it enables the civil servant to be free of the caprice of the mob, the threat of patronage, or the jealousy of a superior. On the other hand, security of tenure is an open invitation to some to avoid responsibilities, spend government time on frolics of their own, and generally slack off in the performance of their duties. The Public Defender under contract would certainly not have any such guarantee, that is, of dismissal only for cause. Even if he were on a straight salary from the Law Society, it is my opinion, in view of the abuses to which the office could be subjected, that the Public Defender should not have permanent tenure.

Embodied in the major criticism is the charge that the Public Defender and the police or other investigating authorities will establish too close a relationship. This criticism may be answered in two stages: firstly, by examining the relationship of the Crown Prosecutor with the police, and secondly, by examining the relationship of the defence counsel (*any* defence counsel, not just the Public Defender) to the Crown Prosecutor.

This fear may be well grounded in some of the jurisdictions in the United States, where the District Attorney and his assistants are investigators as well as prosecutors. It must be remembered that in Alberta, as in any other jurisdiction where Her Majesty the Queen is traditionally the "Fountain of Justice", the Crown Prosecutors are not working for the police (although they are frequently accused of that as well as other misdemeanors). Nor are the police working for the Crown Prosecutors. By the nature of their discretionary offices, the Attorney General and his Agents remain aloof from the investigatory aspects of the case, except to advise, when requested, on possible charges and the witnesses required. The Department of the Attorney General may frequently request the local law enforcement authority to undertake an investigation in response to a complaint from a citizen, to report in due course, and to lay the appropriate charges if it appears that there has been a breach of the law. The Agent of the Attorney General is briefed for his court appearances by investigating officers, but he does not meet or interview witnesses except in exceptional circumstances, e.g. a medical expert. The Attorney General, as the Chief Law Officer of the Crown, has as great a duty, on occasion, to stand between the citizen and the State as he has to concern himself with the administration of criminal justice and the maintenance of law and order. Any Attorney General in Canada may intervene at any stage in a criminal proceeding, whether the police have asked him to or not.[26] In short, the Attorney General, his Agents and Crown Prosecutors acting as counsel instructed by the Attorney General, are independent of the law enforcement agencies, and are clothed with a

[26] *R.* v. *Edwards* [1919] 2 W.W.R. 600, 31 C.C.C. 330. *See also* section 508 of the Criminal Code.

wide discretion which may be exercised equally in favour of an accused person as against him.

The point is therefore made that regardless of any arrangements that a Public Defender may make with the police, or regardless of any relationship that he or any defence counsel may have with them, it is the Agent of the Attorney General who makes the ultimate and only binding decision on whether or not a charge should be proceeded with. As shall be pointed out, the writer fails to see how a close working relationship between the police, the Prosecutor and the Public Defender can be anything but beneficial to an accused, unless the persons who raise this objection are suggesting that an unscrupulous Public Defender would, for a variety of reasons, throw in the towel on an accused in order to assist the police to obtain a conviction. That is going a little too far!

Surely, there can be no valid criticism of harmonious relations between the Crown Prosecutors and the Public Defenders. As members of the Criminal Bar, they should be expected to share a number of common interests and common goals, one of which is the streamlining of procedures in criminal cases. It is only common sense that the Public Defender (or any defence counsel worth his salt) will not go out of his way to antagonize the prosecutors or the police. One does not give anything away by using good manners. On the contrary, clearly, a defence counsel who is friendly with the prosecutor will obtain more accurate particulars in an informal way far more easily than one who is spoiling for a fight. By maintaining a cordial relationship with the other professionals in this critical field, he will do his client a greater service than by being suspicious and taciturn. It is as ridiculous and futile to challenge cordiality and mutual consideration between defence counsel and Crown Prosecutors as it is to challenge the working arrangement between the Crown Prosecutors and the police.

Any defence counsel who is combative and antagonistic merely for the sake of being so, or disruptive and unduly technical merely in the hope of some brief advantage, is doing his client no service, and is of little assistance to the finder of fact. It is to be hoped that if the defence counsel is frank and practical in his dealings with the Crown Prosecutor, then the latter will be equally as straight-forward and approachable in his dealings with the defender. The requirement of arms-length discussion is not weakened by frankness and cordiality. In court, they are adversaries. In private, let us hope they are at least gentlemen. Such a relationship can only work to the advantage of the accused. Criminal lawyers who do any volume of defence work are usually at great pains to establish and maintain such harmonious relations. That is especially true of those who are pre-eminent and well-paid in the field, as it is a large part of the secret of their success:[27]

> The Public Defender being an office holding a public trust and responsibility to the people, does not stoop to the questionable methods often employed in criminal cases. . . . Unnecessary delays are not sought. . . . Harmonious relations have existed between the District Attorney and the Public Defender in cities which have established the office. The administration of the criminal law has been greatly simplified.

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[27] Riley, *supra*, n. 12 at 20.

5. Two Further Questions

Two fundamental questions arise at this point, however.

(a) What if the accused indigent person states that he does not want the particular Public Defender assigned to his case to conduct his defence?

Although the poor are as entitled as the rich to the best defence available, they should not also be afforded the luxury of choosing a person to defend them if they are being defended with public funds. The entire proposition rests on the assumption that the Public Defenders will be appointed, from a number of applicants, on the basis of their abilities, their practical experience and their standing in the eyes of the Court. It may well be that in the past, under the present legal aid set-up, certain prisoners have asked for and been granted a particular lawyer. That favouritism is totally inconsistent with the "dock brief" tradition that underlies legal aid, and with the course professed by the Law Society that most lawyers in active practice shall take their turn. If an accused wants a particular lawyer over another, equally qualified, then he should be expected to pay for the privilege of having such a choice.

(b) What if the accused person refuses to follow the advice of the Public Defender assigned to his case?

The smart patient takes the advice of his physician. Some patients do not, and often come to a more horrible end than the one that was in store for them. Just as a patient in pain, the accused person is usually the last one to know what course of treatment is good for him and what is not. There are even cases where an accused may assume the aspect of a vexatious litigant. The Public Defender must advance every reasonable defence that is available to his client to the best of his skill and ability:[28]

> Public Defender must represent an indigent person to the best of his professional ability, and protect his statutory and constitutional rights, and when this is done, he has fulfilled his obligation to profession and to client.

He should not be expected to advance irrelevant arguments at the whim of his client, nor encourage frivolous applications. As stated earlier, it may be necessary at times to use a heavy guiding hand, and to establish very early on in the proceedings exactly who is in charge of the defence. A professional man whose advice, judgment and conduct of a matter are questioned by his client is entitled to be relieved by the Court. Sometimes an accused is completely uncooperative, by reason of his being a high grade moron or a psychopath. Each individual case requires a careful exercise of discretion by the Public Defender, who, if in doubt, would be wise, within the limits of reasonableness, to follow the rule that having once grasped the plow, he must see the furrow through to the end.

Although many a criminal litigant demands an immediate appeal, the Legal Aid Committee intervenes at the conclusion of a trial to screen each applicant for legal aid on appeal. In my experience, far more selectivity is exercised by the Legal Aid Committee at this level. The granting of an appeal certificate is by no means automatic. Often the

[28] *Franklin* v. *State* (1965) Okl. Cr. 409, P. 2d 13.

advice of counsel is solicited as to the possibilities of success and the importance of the issue to be argued. The retainer should end at the conclusion of trial under the public defender system as under the present legal aid scheme.

In the not unlikely event of a conflict between co-accused, they may be separately represented by two of the Public Defenders, or in the alternative, the Public Defender having conduct of the defence may refer one of the co-accused (or more, if more than two are jointly charged) to competent criminal counsel of another firm, who will be paid by the Law Society out of public funds at the present tariff rates. On many of the charges where there is more than one accused, it is quite often the case that they may all be fairly represented by one counsel.

6. Civil Legal Aid Example

The Report of the Joint Committee on Legal Aid states:[29]

> In round figures the projected amount of civil legal aid fees for the fiscal year is $400,000.00, of which $300,000.00 is for divorce and other matrimonial causes.

In the report of the Joint Committee on Legal Aid to the Benchers, it was suggested, with respect to undefended divorces, that one lawyer be employed to do all of these cases in the major centres. It appears to be a good idea. This is precisely what is proposed for the criminal law as well, by the appointment of Public Defenders.

IV. THE PROPOSAL

It is proposed that four competent criminal defence counsel handle all legal aid defences in the Judicial District of Calgary, including country points. The only basic change from the present legal aid system is that all criminal Legal Aid cases will be handled by either:

(1) One four-member firm, the members of which will contract with the Law Society of Alberta in one package deal, or

(2) Salaried Public Defenders employed by the Law Society.

The contract will be for a stated length of time, requiring a high degree of fulfilment of the obligations of the Law Society to poor and indigent persons accused of crime. There will continue to be an independent granting of certificates by the present Director of Legal Aid (administration). The Public Defenders, who will contract with or be employed by the Law Society, will be independent of the civil service. This will get over one of the main objections to a Public Defender system, that is, that the Public Defender is just another hireling of the Department of the Attorney General or the Government. It is realized that it would be impractical for the Law Society, having adopted a course, to rescind it completely. It is, therefore, proposed that the Public Defender system be instituted in the Judicial District of Calgary in the first instance, and that it be fitted into the current legal aid scheme, the only difference being that four trained and experienced counsel handle the entire criminal case load.

It is also submitted that a candidate for Public Defender must have great experience in this field, proven ability, exceptional zeal and, not the least important attribute, a sense of humour. He must be clinical, but not cynical.

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[29] Report of the Joint Committee on Legal Aid, June 1, 1970 to May 31, 1971, p. 4.

If the Public Defenders appointed are employees of the Law Society, they will not be granted tenure, but will be subject to removal for incompetence or indifference. A Chief Public Defender should be named who will be responsible for the conduct of the scheme.

V. COST OF PUBLIC DEFENDER VERSUS PRESENT LEGAL AID STRUCTURE

The legal fees and disbursements to be paid to legal aid lawyers have been estimated by the Law Society of Alberta for the year ending March 31, 1972 at $915,100.00.[30] This includes the fees and disbursements for civil Legal Aid ($326,983.00). The estimated fees and disbursements for criminal Legal Aid for the entire Province is therefore $588,144.00.

In addition to that expense, the administrative expenses are calculated at $78,550.00.[31] It is proposed that the present administrative setup, so far as determining eligibility for legal aid and the granting of a certificate, be maintained. From the Report of the Joint Committee:[32]

> Interviews—Criminal: In Edmonton interviews are being conducted by law students, and in Calgary by articled students and by lawyers employed by corporations. This procedure has relieved the legal aid officer of a great deal of work, and seems to be working out extremely well.

The barristers conducting the cases should have nothing to do with the decision to grant a certificate, nor will they have time for such clerical work. Once a case is assigned to the Public Defender (by the legal aid administration) he is bound to accept it regardless of whether he personally feels a certificate should have been granted or not. This system makes the client independent of any reluctance or bias on the part of the Public Defender assigned. In any event, the Public Defender will need all of his time in order to prepare the defence, hold the necessary interviews with the client and his witnesses, and conduct the defence in court.

If we accept the Law Society figure of $588,114.00 for criminal legal aid for the Province of Alberta, we must break this figure down to obtain a fairly accurate forecast of what the cost of fees and disbursements is in the Calgary Judicial District. The Edmonton and Calgary Judicial Districts are the two major areas for Legal Aid, and are roughly the same size. If we are generous in allocating $148,114.00 to other Judicial Districts, then it is suggested that approximately $440,000.00 will be paid out in the Calgary and Edmonton Judicial Districts to March 31, 1972, in fees and disbursements to criminal legal aid lawyers alone. That is approximately $220,000.00 in Calgary and $220,000.00 in Edmonton. The actual figures will, no doubt, be higher in the future.

It will be seen at once that the system proposed by the writer, in addition to the other obvious advantages to the accused, will save the public (that is, the taxpayer) approximately $100,000.00 per annum.[33] To put it quite simply, the Public Defender can *provide better service and a more competent defence for approximately one-half of the present projected cost.*

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[30] *See* Appendix II.

[31] *Id.*

[32] Report of the Joint Committee on Legal Aid, June 1, 1970 to May 31, 1971.

[33] *See* Appendix I.

VI. SUMMATION

The initials "L.A." should stand for legal aid, not "Lawyers' Assistance". In the Judicial District of Calgary, a few of the legal aid lawyers who are inexpert and/or inexperienced counsel are living, at least in part, on the legal aid tariff, which is the major source of their income. A number of the regular Calgary appointees are ill-equipped to represent persons charged with criminal offences. Therefore, there are frequent miscarriages of justice. This situation also leads to padded accounts, protracted procedures, numerous appearances, too frequent carrying of the cases to preliminary enquiry and trial in the Supreme Court, and then the almost inevitable, and sometimes frivolous, appeal. All of this when many of the proceedings could and should have been dealt with in the Calgary Provincial Judges' Court in the first place, or in some other expeditious manner. A few of the "legal aid lawyers" are clogging the courts unnecessarily with protracted proceedings. The accused, the major participant in this drama, is largely prejudiced by this system. Because they are the people most often in trouble with the law, the poor are entitled to the best defence available from counsel of ability *and* stature. That representation can only be achieved by the implementation of a Public Defender system. Even if that system cost *more* than the present legal aid scheme, it would be the only reasonable alternative.

The backlog of cases in all of the courts is beginning to resemble the alarming situation in some of the United States, even though sittings have been expanded in the Superior Court and Provincial Judges sit continuously in the lower courts. The rising crime rate will worsen this grave situation. That is all the more reason for a Public Defender system.

In summary, it is undisputed that the members of the Law Society of Alberta wish to provide, and have undertaken to provide, a comprehensive criminal legal aid service, so that less fortunate Albertans may be adequately and competently represented in the Criminal Courts. For the above reasons, I submit that we are falling far short of our intended goals. The persons who are suffering are, firstly, the accused, and secondly, the public, who are paying premium prices for second rate service. That obligation and responsibility to them can and should be properly discharged by the appointment of Public Defenders by the Law Society. This will be a position of trust. If the Public Defender fails to live up to that trust, he may be dismissed. The only criterion for appointment: can the appointee effectively discharge that obligation of the Law Society to the public? The legal aid lawyer does not.

APPENDIX I

Estimated Costs of the Proposed Public Defender Plan

It is not an extravagant claim that the appointment of four Public Defenders for the entire Judicial District of Calgary (including the small towns in this Judicial District) will save the Alberta Legal Aid Plan, and hence the public, a great deal of money.

Costing—Judicial District of Calgary

Budget		$120,000.00 per annum
Salaries (professional)		
Two seniors at $48,000		
Two juniors at $40,000		88,000.00
Secretarial (two)		
Senior Secretary	$7,000	
Reception and assistant secretarial	5,000	12,000.00
Investigator (per diem as required)		5,000.00
Rent ($500.00 per month)		6,000.00
Mileage		3,000.00
Stationery, forms, supplies, postage, equipment rental, telephone		5,000.00
Miscellaneous (Insurance, Accounting, Library)[34]		1,000.00
TOTAL (approximately)		$120,000.00

APPENDIX II

Law Society of Alberta—Legal Aid Fund[35]

Statement of estimated disbursements for year ending March 31, 1972
(prepared without audit)

Legal fees and disbursements (see below)		$915,100
Administrative expenses:		
Salaries (professional)	$30,000	
(clerical)	21,200	
Equipment and furniture	2,400	
Data processing	3,600	
Printing, stationery and supplies	6,300	
Telephone and telegraph	2,300	
Postage	1,200	
Office rent	2,400	
Travelling	3,200	
Employee benefits	2,500	
Accounting	1,000	
Meetings and conferences	300	
Audits	750	
Law Library	400	
Insurance	500	
Sundry	500	
Total Administrative Expenses 11 per cent		78,550
		$993,650

[34] Transcripts, Appeal Books and Professional Fees (*e.g.* psychiatrist) to be paid for by the Legal Aid Committee.

[35] *See* Appendix 1.

Legal Fees and Disbursements

Estimated case costs by type for year ending March 31, 1972

	Estimated number of cases	Estimated cost	Average cost per case
Criminal	4,080	$588,114.00	$220.60 (including homicide) $138.00 (excluding homicide)
Civil	1,724	$326,983.00	$113.00
		$915,097.00	