

A Matter of Right and Justice: 50 Years of Legal Aid Saskatchewan



by Darla Tenold

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The term “Indigenous Peoples” includes First Nations, Inuit and Métis people in Canada. Although used as a synonym to Aboriginal, Indigenous is the preferred term. Individuals are more likely to identify with their Nation than the term Indigenous. In this book, terms such as Native, Aboriginal, and Indian are used when quoting material from a time where those terms would have been in use, or so as not to compromise the context of the comments made.

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A Message from The Honourable Roy Romanow

"The Community Legal Services Act will lead the way in the field of legal aid, setting an example for other provinces to follow. It will be the aim of the newly appointed commission to ensure all members of Saskatchewan society have equal ability to enforce their rights, that public information programs be initiated to inform citizens of their rights and obligations, and that programs be developed to prevent the creation of legal problems." – Roy Romanow, Attorney General, August 22, 1974

Fifty years ago, the Province of Saskatchewan implemented a legal aid program designed to formalize legal aid as a matter of right, rather than an act of charity. This was made possible, in large part, because of the dedicated lawyers and legal professionals, human rights advocates, community workers and concerned citizens who lobbied to make a strong legal aid system a reality.

Access to justice is a meaningful democratic principle, assuring effective governance, prioritization of an individual's dignity, and directly impacts society's ability to progress. During my time as Attorney General for Saskatchewan in the 1970s, I was often quoted in the media as stating that the Saskatchewan legal aid plan was the best in Canada. Although it is not a competition, I hold true to that belief today. The passing of *The Community Legal Services (Saskatchewan) Act, 1974* marked the first significant increase of people who lacked financial means and people of Indigenous backgrounds being represented in Saskatchewan courts.

Much of the same social stresses from 50 years ago remain – institutional racism, economic constraint for marginalized groups, lack of education and community support, un-affordable housing – all compiled with the growing pressures of mental illness and life-threatening addictions. What has remained constant throughout the decades is the commitment and passion Legal Aid Saskatchewan employees have for clients and the justice system.

To all employees, past, present and those to come – your work matters. The people you help matter. The impact you make on the justice system matters. You bring value to a complex society. While this book is a fractional recollection of the impact you have made over the past 50 years, your contributions have created a foundation for the future of law in Saskatchewan.



The Honourable Roy Romanow, PC OC SOM KC

A Message from The Honorable Bronwyn Eyre

Happy 50th, Legal Aid Saskatchewan!

Yours has been a remarkable path—from the "matter of legal aid to poor persons" in the 1930s to Legal Aid's now established, important place and honourable role within our provincial legal system.

The early champions are well-known: Alan Blakeney, Roger Carter, the John Howard Society, Ken Norman, Lindon Smith, Mervyn Shaw, Don Purich, Connie Hunt, Roy Romanow, Bill Wardell, Lloyd Deshaye, Tim Quigley, Ron Camponi and Clarence Trochie, Gerry Albright, Linton Smith ... the list goes on. It is a list of passionate, committed people who, through the decades to today, have believed in 'access to justice' in its truest sense and 'innocent until proven guilty' as a fundamental tenet.

As Jayne Mallin writes in her epilogue, "The story of Legal Aid Saskatchewan is not just a history of legal services; it is a testament to the enduring spirit of those who believe in justice for all ... The heart and soul of Legal Aid is its people."

I take pride in Mallin's words that "recent years have seen a marked improvement in the dynamics" with the provincial government; and that "provincial initiatives have begun to bridge the divide, fostering a more collaborative and unified approach to serving the people of Saskatchewan." With this past year's provincial budget, Legal Aid salaries are now more competitive with Crown Prosecutions; and the Ministry of Justice is working with the College of Law to place students in regional Legal Aid offices across the province.

There is no question that, over the past five decades, Legal Aid Saskatchewan has adapted to the evolving legal landscape in the province, addressing emerging challenges and expanding its services to meet the diverse needs of our communities. Its dedicated teams, most notably in criminal defence and family law, have advocated tirelessly for those who would otherwise have to navigate the complexities of the legal system alone.

This book chronicles the significant milestones of Legal Aid Saskatchewan and highlights the vital role that it plays in protecting rights and fostering a more equitable society. In an increasingly complex world, as legal issues intersect ever more with social and economic barriers, the work of Legal Aid is more important than ever.

Enjoy the stories and insights within these pages. This important milestone anniversary provides an opportunity to reflect on and celebrate Legal Aid's legacy, as we invite the next generation of advocates to become leaders in promoting and enabling access to justice.



Bronwyn Eyre
Minister of Justice and Attorney General

Chapter 1

The Matter of Legal Aid to Poor Persons: Volunteer Lawyers

In the 1930s, the “matter of legal aid to poor persons” was on the radar of Saskatchewan’s lawyers.¹ The 1930s are commonly known as the Dirty ‘30s, a term coined to describe life on the prairies during the Great Depression. Saskatchewan’s economy was dependent on wheat farming, but grasshoppers, drought and hail continually destroyed crops and demand for wheat plummeted. By 1937, two-thirds of Saskatchewan’s farm population was destitute. Canadian newspapers published photos of massive dust storms, drifted soil, giant Russian thistles tumbling across the landscape and bleached bones of cattle. The federal government, churches and Canadian citizens across the country responded by sending railway cars of food: fruit from Annapolis Valley; fish, cheese, canned milk, apples and turnips from the Maritimes; and canned goods from Niagara Falls and Aylmer, Ontario. More than 1,000 Saskatchewan families benefited from this generosity of spirit.²

At that time, for those accused of criminal offences who could not muster resources from friends and family to defend the charge, courts could appoint a lawyer for them, but only if it was a serious charge. The Attorney General of Saskatchewan paid these appointed lawyers only when the offence was punishable by death. As a result, Saskatchewan’s lawyers spent a “great deal of time and energy for a most inadequate reward in the interests of justice.”³ In 1938, the author of a *Saskatchewan Law Review* article opined: “In a matter which touches so closely on the interests of the whole community and the maintenance of law and order it is reasonable that the state should provide counsel for the defence as well as counsel for the prosecution.”⁴

On the subject of legal aid in civil cases, members of the junior bar in Saskatoon were known to be doing legal aid work,⁵ and the Benchers⁶ believed the English remedy of *in forma pauperis* – which allowed an eligible person to sue without paying costs and judges to assign lawyers to act for free – likely applied in Saskatchewan. They cited the 1924 Manitoba Court of Appeal case,

¹ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1936 1-3, 1936 CanLIIDocs 86, <<https://canlii.ca/t/7n22r>>

² https://esask.uregina.ca/entry/great_depression.html

³ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1938 3-2, 1938CanLIIDocs 77, <<https://canlii.ca/t/7n230>>, p 21.

⁴ *Ibid.*

⁵ The Law Society of Saskatchewan Benchers asked the president of the Saskatoon Bar Association to prepare a report on this practice and submit it to the Governing Bodies of the Legal Profession. College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1936 1-3, 1936 CanLIIDocs 86, <<https://canlii.ca/t/7n22r>>

⁶ The Law Society of Saskatchewan is governed by a board (Benchers) that meets several times per year. The Benchers set and enforce standards for admissions to the Law Society, professional conduct and quality of service. <https://www.lawsociety.sk.ca/about-us/benchers/>

*Paul v. Chandler and Fisher, Limited*⁷ as authority for the opinion.⁸ In that case, the plaintiff's husband had died of tetanus after an appendectomy. The wife sued Chandler and Fisher Limited, alleging the catgut they'd manufactured and sold for use in internal operations, and warranted as sterile, caused her husband's death. In her King's Bench application for the *in forma pauperis* remedy she gave affidavit evidence that she was not worth \$25, "her wearing apparel" and the subject of the suit excepted.⁹ She had no money of her own, no means of support and no hope of getting any funds.

The Manitoba Court of King's Bench granted an order allowing her to continue her action *in forma pauperis* and assigned a lawyer to act for her on a voluntary basis. Chandler and Fisher Limited appealed, arguing there was no practice in the province authorizing such an order. The Manitoba Court of Appeal reviewed English case law and statutes in force when, in 1870, those laws were introduced in Manitoba. The court cited, as one definition of the origin and extent of the practice, an 1871 text: "[T]he practice of the Courts of Law has been to admit all persons to sue *in forma pauperis* who could swear that they were not worth \$5 except their wearing apparel and the subject matter of the suit."¹⁰ Though the court thought the plaintiff should have sworn an affidavit that she was not worth \$5, they found the statements in her affidavit evidence sufficient.

The Court of Appeal found the applicable English statute and common law became the law of Manitoba in 1870 and there was no authority for denying the plaintiff the right to carry on her suit as a pauper.¹¹ In dismissing Chandler and Fisher Limited's appeal, the court stated: "The public interest that the Courts should be open to suitors regardless of their means is properly held to outweigh the individual hardship [to the defendant] that may result. This attitude of the Courts ... enters into the very bones of the law."¹²

Though the Benchers in Saskatchewan had decided the *in forma pauperis* procedure likely applied in their province, the author of an appeal for state-funded legal aid in Saskatchewan argued the fact that the procedure may be available did not serve to answer the charge that there was one law for the rich and one for the poor.¹³ According to the same author, until 1932 Canada had

⁷ *Paul v. Chandler and Fisher, Limited*, 1924 CanLII 641 (MB CA), <<https://canlii.ca/t/j0qlx>>

⁸ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1938 3-2, 1938 CanLII Docs 77, <<https://canlii.ca/t/7n230>>, p 21.

⁹ *Paul v. Chandler and Fisher, Limited*, 1924 CanLII 641 (MB CA), <<https://canlii.ca/t/j0qlx>>, p 262.

¹⁰ *Ibid.*, p 261.

¹¹ *Ibid.*

¹² *Ibid.*, p 270.

¹³ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1938 3-2, 1938 CanLII Docs 77, <<https://canlii.ca/t/7n230>>, p 21.

been “the only western country in which the legal profession as a body had not realized its obligations and made provisions for legal aid.”¹⁴ Manitoba and Alberta, which had both implemented rules governing *in forma pauperis* proceedings, had “relieved [Canadians] in some measure from this stigma,”¹⁵ but a formal legal aid system was still needed in Saskatchewan.

By the 1944 provincial election, Saskatchewan was deeply in debt and lacking in modern infrastructure. The Great Depression and its many hardships were still fresh in the minds of Saskatchewan’s people. In addition, thousands of Saskatchewan soldiers were fighting overseas in World War II. When they returned, they would need jobs, homes and health care. People called on the provincial government to cushion the blow of what they feared could be a slide into a recession, as had happened after World War I, and the suffering and deprivation they’d endured during the Dirty ‘30s.¹⁶ The Saskatchewan section of the national Co-operative Commonwealth Federation (CCF) political party, led by Tommy Douglas, campaigned on the basis of policies that included protection for the family farm; insurance programs to cover illness, old age, accidents and unemployment; expanded rural and social services; and a health planning commission. They won the provincial election in June 1944.

Of the later years of World War II, one historian observed that they were “a time of intellectual ferment, with both civilians and soldiers determined that a new society should emerge from the ashes of the war.”¹⁷ In a 1947 address delivered to ex-service lawyers of Regina, the speaker (who requested his name not appear in the printed version of his address) encouraged the lawyers to maintain their leadership positions in the community by seeking out fields of community service. He noted that he’d been to many national and provincial bar association meetings and that most of the discussions at these meetings were “on subjects not immediately concerning the legal profession and the advancement of pecuniary and professional interests of its members, but on subjects related to the interests of the public and upholding the rights of its citizens and the rule of law.”¹⁸

The matter of legal aid for “needy persons” was still on the radar of the legal community, both in Saskatchewan and nationally. In the immediate post-war years, the Law Society of Saskatchewan’s needy persons committee was

¹⁴ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1938 3-2, 1938 CanLIIDocs 77, <<https://canlii.ca/t/7n230>>, p 22.

¹⁵ *Ibid.*

¹⁶ Gruending, Dennis. “Allan E. Blakeney, 1971-1982” in *Saskatchewan Premiers of the Twentieth Century*, Gordon L. Barnhart, ed. Canadian Plains Research Centre, University of Regina Press, Regina, SK, 2004, p 272.

¹⁷ *Ibid.*

¹⁸ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1947 12-1, 1947 CanLIIDocs 123, <<https://canlii.ca/t/7n244>>

composed of four members of the profession.¹⁹ In 1948, the Canadian Bar Association passed a two-part resolution. The first was an assertion that the provision of competent legal services, without fee for anyone lacking the means to retain their own lawyer, was the responsibility of the legal profession collectively, and the duty of individual members of the bar to assume and discharge their fair share of that responsibility. The second was a recommendation to the governing bodies in each province to consider the means of discharging this responsibility in a fair and equitable way. The Law Society of Saskatchewan referred the resolution to its legal aid committee.²⁰

In June 1950 Ariel F. Sallows²¹ gave an address at the annual meeting of the Law Society of Saskatchewan about public defenders.²² At the time, in certain limited serious cases, judges could still assign a lawyer to an accused person who could not afford one. However, there was no list of lawyers willing to act in such cases. Judges usually assigned a lawyer who happened to be sitting in court that day, or if there was none, then one that the judge knew and suspected would be willing to take the case.²³ The Department of the Attorney General, on the recommendation of the trial judge, was paying lawyers assigned to conduct a murder trial a fee²⁴ for each day of the trial.²⁵ The department had also extended payment of legal fees, on recommendation of the trial judge, to trials other than murder,²⁶ but the fee did not include “absence from home, subsistence, railway fare or any disbursements.”²⁷ The Attorney General would also consider paying for certain appeals to the Court of Appeal and witness expenses upon the request of, and with the support of an affidavit by, the assigned lawyer.²⁸

Nationally, with exception of legal aid committees of some kind in each province and a few free clinics that were open sparingly, Canada was entirely

¹⁹ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1947 12-1, 1947 CanLIIDocs 123, <<https://canlii.ca/t/7n244>>; College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1948 13-1, 1948 CanLIIDocs 133, <<https://canlii.ca/t/7n247>>; College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1949 14-1, 1949 CanLIIDocs 116, <<https://canlii.ca/t/7n24b>>

²⁰ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1948 13-1, 1948 CanLIIDocs 133, <<https://canlii.ca/t/7n247>>

²¹ The University of Saskatchewan’s College of Law named Canada’s first endowed chair in human rights the Ariel F. Sallows Chair of Human Rights. <https://law.usask.ca/documents/sallows-chair-2023.pdf>

²² Public defenders are lawyers employed by the state, usually on a salary basis, to represent accused persons who are financially unable to retain lawyers. By 1950, the public defender system had been in use in California for several years.

²³ College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1951 16-2, 1951 CanLIIDocs 101, <<https://canlii.ca/t/7n24m>>

²⁴ In 1949, the fee was \$75 for a one-day trial, or \$50 per day for trials longer than one day. College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1949 14-4, 1949 CanLIIDocs 113, <<https://canlii.ca/t/7n24f>>

²⁵ *Ibid.*

²⁶ The fee was \$25 per day. College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1949 14-4, 1949 CanLIIDocs 113, <<https://canlii.ca/t/7n24f>>

²⁷ *Ibid.*

²⁸ *Ibid.*

without organized facilities for legal aid.²⁹ In England, a comprehensive legal aid plan, under the control of the legal profession but financially supported by the state, was being introduced.³⁰ In the United States, there were 90 legal aid offices, mostly operated by paid legal staff in cooperation with local bar associations and funded by charitable organizations.³¹

Sallows, in his 1950 address, noted that, in Saskatchewan, it was no longer necessary to stress that the need existed for an adequate and workable method of providing a legal defence for accused persons unable to retain their own lawyer, since one still heard the refrain among lay people that there was one law for the rich and one for the poor, or as one prominent English jurist once put it, “the law is open to all, like the Ritz-Carlton.”³² Sallows asserted that the establishment of a legal aid scheme was “not a matter of politics, of political ideologies or socialization.”³³ Rather, it was a matter of right and justice, a “belated endeavour to make real in practice as well as in spirit the fortieth paragraph of the Magna Carta—‘to no man will we deny, sell or delay right or justice.’”³⁴ He suggested – boldly, he admitted – that the whole “problem of legal aid rather than the narrower field of legal aid to accused persons be studied by a committee of the Bar with a view to extending the services of the legal profession to the public.”³⁵

Arguably, the most impactful and long-lasting of the CCF’s policies was the introduction of universal medical care. In its early years, the Douglas government focused on laying the foundation for this historic social program. In 1962, during a time when the province had never been more prosperous,³⁶ the CCF introduced legislation to establish Canada’s first universal medical care plan, but its passage was not without a tense battle with Saskatchewan’s doctors who were concerned about their livelihood. In the summer of 1962, Allan Blakeney, a young politician who had played a key role in drafting the legislation, also played a prominent role negotiating with Saskatchewan’s doctors throughout the conflict. That summer, the government and doctors came to an agreement and universal medical care was adopted in Saskatchewan. Over the course of the next decade, it was adopted throughout the nation. In 1965, Roger Carter, a professor at the University of Saskatchewan College of Law, reported on the findings of a joint committee on legal aid in Ontario,

²⁹ John P Nelligan, “Legal Aid in Canada: Existing Facilities”, 1951 29-6 *Canadian Bar Review* 589, 1951 CanLII Docs 41, <<https://canlii.ca/t/t4c9>>

³⁰ *Ibid.*

³¹ *Ibid.*

³² College of Law, University of Saskatchewan. *Saskatchewan Law Review*, 1951 16-2, 1951 CanLII Docs 101, <<https://canlii.ca/t/7n24m>>, p 23.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*, p 26.

³⁶ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 379.

where the Law Society of Upper Canada had, since 1952, “administered the most ambitious system of free legal aid to be found in any of the Canadian provinces.”³⁷ He predicted his report on the committee’s findings, might “make uncomfortable, as well as interesting, reading”³⁸ for Saskatchewan’s lawyers since there was no legal aid system for either criminal or civil matters in Saskatchewan. Though trial judges could still, in certain limited cases, appoint lawyers for those who could not afford one, this could not be considered a legal aid system.

The Ontario committee had reviewed the system in that province, as well as legal aid and public defender systems in other jurisdictions. In their recommendations for a new Ontario plan, the committee had rejected a public defender system. Carter, however, was not “completely convinced” the system should be rejected since, if the government were to subsidize legal services, it had a responsibility to see those services were adequate, and if that was so then it may follow that the government should select the lawyers. Drawing a parallel to the Keep Our Doctors (KOD) Committee that had formed during Saskatchewan’s medicare dispute and had organized marches on Saskatchewan’s legislature, he noted that adopting the public defender system might “encourage the formation of a KOL organization complete with marches upon the Legislative Building,” from which, he wrote with a dash of humour, “may heaven, as well as the Ontario Committee, protect us.”³⁹

³⁷ O E Lang et al, Book Reviews, 1965 30-3 *Saskatchewan Law Review* 251, 1965 CanLII Docs 132, <<https://canlii.ca/t/7n2f2>>

³⁸ *Ibid.*, p 252.

³⁹ *Ibid.*

Chapter 2

The Saskatchewan Legal Aid Plan (Criminal Matters)

While it was never accurately documented, in the years leading up to the formal establishment of a legal aid program in Saskatchewan, both rural and urban lawyers contributed thousands of hours defending persons with criminal charges and providing services to poor persons with civil law matters, without fee.⁴⁰ By the mid-1960s, it was clear Saskatchewan lawyers could no longer continue to provide free legal services to the many people who needed them.

The Saskatoon and Regina Bar Associations each had a legal aid chair to administer legal aid in criminal matters.⁴¹ To distribute the legal work, a rotating system of lawyers willing to take the work was used. However, in Saskatoon at least, a few firms were taking a disproportionate load of cases. Since the work was mostly unpaid – and when it was paid, the pay was low and did not include many essential expenses – legal aid was still mostly left to the charity of lawyers. Articling students most often appeared in Magistrate’s Court⁴², sometimes sent to handle cases that were beyond their competence. There was no set procedure to inform accused persons of their rights and their right to counsel, and those arrested and detained often did not see a lawyer until some time after their first court appearance – at times, not until just before their trial. Trial judges were still left with the responsibility to decide when it was appropriate to appoint a lawyer, and the method of determining financial need was vague.

Outside Saskatoon and Regina, judges had to contact lawyers they felt were competent and willing to take the case, and they were sometimes difficult to find. Such lawyers generally were scarce in smaller centres, let alone those experienced in criminal litigation. The chances of an “indigent receiving adequate representation in any centre outside Regina and Saskatoon” were “very slim.”⁴³

In civil matters, a “needy persons” certificate was available under the Queen’s Bench Rules,⁴⁴ but only one had been used since its inception. The material needed to obtain it was onerous, and, if one was obtained, the lawyer would

⁴⁰ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch III.

⁴¹ James G Anderson, Symposium on Legal Aid, 1965 30-2 *Saskatchewan Law Review* 85, 1965 CanLIIDocs 124, <<https://canlii.ca/t/7n2ds>>

⁴² Magistrate’s Court was the forerunner of the Provincial Court of Saskatchewan. The Provincial Court was established on October 1, 1978.

⁴³ James G Anderson, Symposium on Legal Aid, 1965 30-2 *Saskatchewan Law Review* 85, 1965 CanLIIDocs 124, <<https://canlii.ca/t/7n2ds>> p 133.

⁴⁴ During the reign of Queen Elizabeth II (February 6, 1952 until September 8, 2022), this court was known as the Court of Queen’s Bench. Under the reign of King Charles III, it is now known as the Court of King’s Bench.

only be paid if the needy person recovered judgement or negotiated a settlement and the court ordered remuneration be paid to the lawyer.⁴⁵

The only other assistance available in civil matters was under *The Deserted Wives' and Children's Maintenance Act*⁴⁶ or *The Child Welfare Act*⁴⁷, but the fee was minimal. Lawyers were reluctant to take cases unless they were almost certain of obtaining judgement against the father, since the fee did not pay the costs of representing the applicants.⁴⁸

Essentially, legal aid in civil matters was nonexistent, yet the poor were more likely than the rich to have their legal rights infringed, and any infringement was more likely to have serious consequences. The poor were more susceptible to credit buying than the average consumer, encountered many landlord and tenant problems where they were at a disadvantage without a lawyer, and with the changing role of government, many rights and privileges were increasingly being handled by administrative organizations.⁴⁹

In criminal matters, not only was there an unequal burden on the legal profession to provide legal aid, the rights of "indigent accused" were being denied.⁵⁰ The John Howard Society was also gravely concerned about the need for an adequate legal aid system and carried out extensive lobbying in the legislature, enlisted the assistance of community organizations and, in 1965, joined the Saskatoon Bar Association in submitting a legal aid brief to the Attorney General's Department.⁵¹ At the same time, the Law Society of Saskatchewan submitted a legal aid proposal to the government. It was accepted almost in its entirety,⁵² though negotiations over the exact terms continued until 1967 when the Law Society and Attorney General finally reached agreement and Saskatchewan's first formal legal aid plan for criminal defence was created.⁵³

The 1967 Saskatchewan Legal Aid Plan (Criminal Matters) was contained in an agreement between the Law Society and the Attorney General, and

⁴⁵ James G Anderson, Symposium on Legal Aid, 1965 30-2 *Saskatchewan Law Review* 85, 1965 CanLIIDocs 124, <<https://canlii.ca/t/7n2ds>>, p 134.

⁴⁶ R.S.S. 1953, Chapter 305.

⁴⁷ R.S.S. 1953, Chapter 239.

⁴⁸ James G Anderson, Symposium on Legal Aid, 1965 30-2 *Saskatchewan Law Review* 85, 1965 CanLIIDocs 124, <<https://canlii.ca/t/7n2ds>>, p 135.

⁴⁹ *Ibid.*, p 133-134.

⁵⁰ *Ibid.*

⁵¹ Applegate, Ian. "Improved Legal Aid Predicted" *Saskatoon Star Phoenix*. Saskatoon, SK, February 9, 1967, p 3.

⁵² JG McIntyre, *Annual Report of the Benchers*, June, 1966 — June, 1967, 1967 32-2 *Saskatchewan Law Review* 139, 1967 CanLIIDocs 160, <<https://canlii.ca/t/7n2g7>>

⁵³ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch III.

administered by the Law Society based on a fee-for-service model.⁵⁴ If an accused person was financially eligible, and the charge faced fell within the parameters of the 1967 Plan, they would be granted a legal aid certificate and assigned a lawyer who had agreed to take legal aid work. The assigned lawyer was paid by the Attorney General based on a tariff of fees contained in the 1967 Plan. *Criminal Code* prosecutions punishable by imprisonment, prosecutions under the *Narcotic Control Act*, the *Food and Drug Act*, the *Juvenile Delinquents Act* (or where a judge requested the appointment of a lawyer for a juvenile) and bail applications in courts higher than Magistrate's Court were all covered under the 1967 Plan⁵⁵, though not long after, the Attorney General issued a directive to the effect that legal aid could only be given to any one individual twice in a given year.⁵⁶

The 1967 Plan contemplated local committees in various judicial centres across the province made up of local volunteer lawyers who were to take legal aid applications, interview the accused person and adjudicate financial eligibility. Lawyers assigned to a case under the 1967 Plan could submit requests to appeal to a local committee who had the responsibility to approve those requests that had merit and were not an appeal on facts only. Courthouse staff were to ensure legal aid forms were on hand at the courthouse and in all local jails, as well as regularly contact police to see if any applications were waiting to be processed. Magistrates were also asked to supply legal aid forms and take applications when requested or the need arose.

The system came under stress quickly, and local legal aid committees deviated in various ways from the 1967 Plan's rules.⁵⁷ Due to high caseloads in Saskatoon, Regina and Prince Albert, those committees hired non-lawyers to take applications, adjudicate them and assign lawyers. Outside of the cities, legal aid committees were often inactive or nonexistent. There was a lack of rural lawyers, and the Attorney General did not pay for travel time. If they existed, local committees were composed of local lawyers or lay people or both. If they did not, legal aid applications were still processed by local lawyers who received them in various ways: through the local registrar, another law firm or direct contact with an applicant.

⁵⁴ In addition to the 1967 Plan, minimal legal aid was still available through the Department of Social Services for women seeking child maintenance or spousal support, or for parents whose children were being apprehended.

⁵⁵ Also included under the 1967 Plan: Legal advice when bail was granted but could not be obtained due to the confinement of the applicant and cases where an application was made against a person as a habitual criminal or dangerous sexual offender for a sentence of preventative detention.

⁵⁶ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch III.

⁵⁷ *Ibid.*

Magistrates in rural areas could be put in the position of taking legal aid applications, and therefore having to interview an accused person about their background, family situation and finances, and then, later, adjudicate the trial. This made it difficult, as one magistrate put it, to remain objective when he understood so much about the accused's personal circumstances.⁵⁸

Similarly, financial eligibility guidelines were interpreted and applied in different ways around the province depending on the opinions and viewpoints of those adjudicating the applications. Some felt the guidelines were too low or too rigid. In some communities, adjudicators felt that anyone who owned a vehicle should not receive legal aid, especially for impaired driving cases. Others felt impaired driving should not be covered at all, while still others believed it was necessary to provide legal aid for impaired driving charges since a conviction on such a charge could severely affect a person's livelihood.⁵⁹

Lawyers who agreed to take legal aid cases, even though they were being paid, were still volunteering time since the tariff was so low and the Attorney General did not pay for preparation time and other services required to properly defend cases. In rural areas, the system suffered even more due to a lack of lawyers in those zones, compounded by the low tariff that made no allowance for travel time.

One of the most notorious miscarriages of justice in Canadian history illustrates some of the problems with the 1967 Plan. In 1969, Calvin Tallis, a well-known and highly regarded criminal defence lawyer — some said the best — received a call advising him that Joyce Milgaard wished to hire him to defend her 16-year-old son, David Milgaard, who'd been charged with the second-degree murder of nursing student, Gail Miller. Joyce Milgaard never wavered in her belief in her son's innocence, but did not have the financial resources to pay for her son's legal defence. Tallis was her first choice of counsel, and he took the case under the 1967 Plan.⁶⁰

The case was not an easy one to defend. There was no direct evidence linking Milgaard to the murder, but several witnesses gave incriminating, and sometimes contradictory, statements against him. Many hours of preparation were required to mount a thorough defence. Tallis requested additional funding for a second counsel but was refused. Nonetheless, Tallis provided the services of a second counsel free of charge. In addition, Tallis' secretary attended court

⁵⁸ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch III.

⁵⁹ *Ibid.*

⁶⁰ Honourable Mr. Justice Edward P. MacCallum, Commissioner. "Chapter Nine: Investigation and Prosecution of David Milgaard," *Report of the Commission of the Inquiry Into the Wrongful Conviction of David Milgaard*, Saskatoon, SK, September 2008.

to take shorthand notes of key witness testimony so that he could adequately prepare for cross-examination.⁶¹

Forensic evidence introduced at trial required particular expertise, but the 1967 Plan did not provide funding for expert forensic witnesses. Instead, Tallis relied on contacts he'd made in the medical community to educate himself about the forensic evidence. Most lawyers defending criminal cases found it necessary to develop a network of contacts in the medical and other professional fields that they could call on to assist their preparations.⁶² Tallis' efforts paid off in that he was able to discern, to a certain extent, the forensic evidence was exculpatory.

When asked at the Inquiry Into the Wrongful Conviction of David Milgaard if the fact that he was retained under the 1967 Plan influenced in any manner the defence he mounted, Tallis responded, "No. I always took the position that when you undertook a defence you undertook a committed defence regardless of the station in life of an accused person. I felt that anybody charged deserved as good a defence as I could give them and I didn't, in any way, feel that any other approach was justified. And I think I should say, this, in my view, was the culture of the bar here in Saskatoon, one that had been passed along to me."⁶³

The Inquiry found that Tallis' preparation for trial was thorough and his "advocacy at both the preliminary and trial was skilled and ethical. His client David Milgaard received a sophisticated, dedicated and nuanced defence."⁶⁴ Though Milgaard was wrongfully convicted, and his defence was subsidized by Tallis both financially and with his expert connections, Milgaard's defence did nothing to contribute to the wrongful conviction.

⁶¹ Honourable Mr. Justice Edward P. MacCallum, Commissioner. "Chapter Nine: Investigation and Prosecution of David Milgaard," *Report of the Commission of the Inquiry Into the Wrongful Conviction of David Milgaard*, Saskatoon, SK, September 2008.

⁶² Alexander D. Pringle K.C. *Submissions of Calvin Tallis In the Matter of The Commission of Inquiry Into the Wrongful Conviction of David Milgaard*, Edmonton, AB, November 2006.

⁶³ *Ibid*, p 10-11.

⁶⁴ Honourable Mr. Justice Edward P. MacCallum, Commissioner. *Report of the Commission of the Inquiry Into the Wrongful Conviction of David Milgaard*, Saskatoon, SK, September 2008, p 575.

Chapter 3

The Saskatoon Bar and College of Law Organize: The Saskatoon and Valley Legal Assistance Clinics

In the late 1960s, Ken Norman, described by some as the brains behind legal aid in Saskatchewan,⁶⁵ was a young professor at the University of Saskatchewan's College of Law. He'd studied neighbourhood legal services programs in the United States. These had their beginnings in President Lyndon Johnson's 1964 declaration of war on poverty. The thrust of these programs was not only to provide poor people with access to lawyers, but to also provide the opportunity, orientation and training to "stimulate self-reliance and leadership among the ranks of the poor."⁶⁶ At the College of Law, professor Norman and others began working with community advocates in Saskatoon who were invested in ameliorating poverty and in the development of legal aid as one way to do so.

In April 1969, the Saskatoon Bar Association passed a resolution supporting a proposal to extend volunteer legal services to poor people in the city.⁶⁷ In November of that year, College of Law students and faculty, in collaboration with the Saskatoon Bar Association, began offering free legal services to fill in gaps left by government legal aid programs. The volunteer clinics were governed by an all-lawyer board⁶⁸ called the Saskatoon Legal Assistance Clinic Society, incorporated under *The Societies Act*.⁶⁹

The establishment of these clinics was also sparked by strong community organizations and "a group of able, community-minded folks," including members of Métis Local 11 – one of the oldest Métis locals in Saskatchewan⁷⁰ – anti-poverty groups and women.⁷¹ At its first meeting, the Saskatoon Legal Assistance Clinic Society board elected a citizen's advisory board made up of representatives from the Unemployed Citizens' Welfare Improvement Council, the Single Parents Group, the Friendship Inn, the Indian Cultural College, the Saskatoon Indian-Métis Friendship Centre and the "unorganized poor"⁷² in Saskatoon.⁷³

⁶⁵ William Wardell, K.C., September 6, 2023 personal interview.

⁶⁶ Ken Norman and Connie Hunt. "The Poor: A Study in Injustice," *Saskatchewan Law Review, Quaere*, 1972 CanLII Docs 156, <<https://canlii.ca/v/7p271>>

⁶⁷ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁶⁸ *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

⁶⁹ *The Societies Act* was a forerunner to *The Non-profit Corporations Act*.

⁷⁰ Now Gabriel Dumont #11: <https://www.gabriel Dumontlocal11.com/about>.

⁷¹ William Wardell, K.C., September 6, 2023 personal interview.

⁷² Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁷³ In December 1972, the Clinic Society and citizen's advisory boards merged into a single board made up of both lay people and lawyers: Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

The first Saskatoon Legal Assistance Clinic opened in the fall of 1969 in the Friendship Inn.⁷⁴ A few months later, a second clinic was established at the Family Service Bureau.⁷⁵ Both organizations donated office space for the clinics. Twice weekly, second- and third-year law students volunteered at the Friendship Inn, assisting clients with consumer credit, landlord and tenant, and other civil law problems as well as minor offences not covered by the 1967 Plan. At the Family Service Bureau, students helped with family law problems. If clients qualified as “needy,” students arranged for divorces at no cost.⁷⁶ The program also partnered with the University of Saskatchewan Students’ Union to provide legal advice to university students and sent law students to a youth drop-in on Broadway Avenue three times a week to answer teenagers’ questions and inform them about their legal rights.⁷⁷

Volunteer law students were assigned supervisors from the private bar or law school faculty who provided free advice and assistance to the students. The private bar in Saskatoon supported the program so well that they sometimes even represented clients of the clinic, free of charge, in litigation arising out of clinic cases.⁷⁸

At the time, there were similar volunteer legal services clinics in all major centres in Canada⁷⁹ and, in 1971, the Saskatoon Legal Assistance Clinic Society was one of three clinics (along with the Parkdale Community Clinic in Toronto and the Dalhousie Legal Aid Clinic in Halifax) chosen to receive a \$30,000 Department of National Health and Welfare grant to establish a legal aid demonstration project.⁸⁰ The federal government’s goal was to fund the clinic for one year as a pilot project and gather information about the legal problems of low-income and disadvantaged groups. Professor Norman, secretary of the Saskatoon Legal Assistance Clinic Society, hoped the province would also use the statistics and integrate the clinic into a provincial legal aid plan.⁸¹ With the funding, the Saskatoon Legal Assistance Clinic hired Linton Smith,⁸² the first staff lawyer and legal director, and a secretary. At the beginning of June

⁷⁴ The Friendship Inn, founded in March 1969, still provides meals, clothing and general assistance to those in need.

⁷⁵ The Family Service Bureau was a family counselling organization supported by United Appeal Funds. Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁷⁶ Cronkite, Kathy. “Saskatoon’s indigents get free legal advice” *Saskatoon Star Phoenix*. Saskatoon, SK, February 24, 1970, p 3.

⁷⁷ *Ibid.*

⁷⁸ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁷⁹ GR Green, Twentieth Street Justice, 1971-72 36-1 *Saskatchewan Law Review* 163, 1971 CanLIIDocs 148, <<https://canlii.ca/t/7n3ll>>

⁸⁰ *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

⁸¹ Cresswell, Dean. Legal aid clinic to open June 1” *Saskatoon Star Phoenix*. Saskatoon, SK, April 10, 1971, p 3.

⁸² Linton Smith grew up in the Yorkton and Melville areas, and had been a social worker for two years before obtaining his law degree from the University of Saskatchewan’s College of Law in 1968. “Saskatoon lawyer chosen legal aid plan advisor” *Regina Leader Post*, Regina, SK, September 5, 1973, p 16.

1971, they opened a storefront office in the 300 block of 20th Street West. Second- and third-year law students continued to offer volunteer legal services at the Friendship Inn and Family Services Bureau, as well as at the new clinic through the College of Law clinical law program. Twenty-five members of the Saskatoon bar donated their time on a rotating basis to assist the clinic.⁸³ College of Law faculty members also continued to offer supervision and, on occasion, worked in the clinic.⁸⁴

The Saskatoon Legal Assistance Clinic provided a wide range of legal services to individuals who, in the opinion of the clinic, would suffer hardship if they were required to hire a private bar lawyer. The only types of cases the clinic did not take were those already covered by the 1967 Plan or Department of Social Services certificates, or those that could be taken by private bar lawyers on contingency⁸⁵ basis.⁸⁶ By the beginning of July 1971, the storefront office clinic had opened 125 new files. Almost 50 were debt and consumer problems. Seventy of them were matrimonial cases.⁸⁷ Three years earlier, Parliament had introduced the first federal law governing divorce. The *Divorce Act, 1968* dispensed with the need to prove fault, such as adultery or cruelty, in order to get a divorce. Though divorces were still available based on those grounds, for the first time in Canadian history a married person could seek a no-fault divorce as long as they'd been living separate and apart from their spouse for at least three years. Many of the matrimonial files opened at the Saskatoon clinic were opened for women seeking no-fault divorces.

The clinic also provided services to organizations such as the Unemployed Citizens' Welfare Improvement Council, a group instigated and organized by the clinic that began operating on its own, maintaining close ties to the clinic. Other groups the clinic assisted included the We're Here Group, which assisted families of inmates, and the Injured Workers' Association, which helped persons disabled through occupational accidents. The clinic also continued to maintain close relationships with the Friendship Inn and Family Service Bureau.⁸⁸

Though the day-to-day "crisis intervention" type of caseload occupied much of the clinic staff's time, they, along with volunteers, also carried out educational activities, providing speakers to high schools and the university, and creating pamphlets and offering workshops on topics such as matrimonial law, welfare

⁸³ "Legal aid clinic does brisk business" *Saskatoon Star Phoenix*. Saskatoon, SK, July 6, 1971, p 3.

⁸⁴ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁸⁵ Contingency basis, sometimes referred to as fee-generating, are services that a solicitor would ordinarily render in civil matters on the understanding that he would receive no remuneration from the client except out of the proceeds generated through pursuing the matter.

⁸⁶ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁸⁷ "Legal aid clinic does brisk business" *Saskatoon Star Phoenix*. Saskatoon, SK, July 6, 1971, p 3.

⁸⁸ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

rights, sales and debt law, police powers and citizens' rights, and landlord and tenant law. As part of its educational campaign, the clinic, in partnership with the Saskatoon Bar Association, ran a series of one-hour weekly call-in radio programs on CKOM radio station, as well as a series of half-hour call-in programs on CFQC TV. The call-in programs provided a wide variety of legal information to the public.⁸⁹

Yet another facet of the clinic's work involved law reform. The clinic advocated for a number of reforms, including changes to landlord and tenant legislation to benefit the poor, as well as urging legislation to prohibit employers from firing employees because of garnishment of wages.⁹⁰

The clinic's philosophy was to be physically and psychologically accessible to clients seeking its legal services. Clinic staff wrote:

"Poor people are different than rich people in more ways than merely financial ones. Years of accumulated negative experiences with the law and its institutions have built up deep feelings of distrust and resentment in the poor community, which is difficult for the middle-class person to comprehend. To the poor person, the lawyer has always been the one acting for the landlord, the finance company or the state — few people know any lawyers, let alone can afford to hire one."⁹¹

In alignment with its philosophy, the clinic was located on 20th Street West, in the heart of the neighbourhood where its clients lived and worked. Many of the problems the clinic's clients encountered were significantly different from the problems faced by middle class people. Staff and volunteers sought to specialize in "poverty law," gaining expertise in areas such as welfare rights, debt and consumer credit problems, housing and landlord and tenant issues, and saw themselves as community lawyers who, by the nature of their work, were in a position to see the importance of developing relationships with clients, which was not possible to do in a hectic downtown office. Staff were determined to spend time with clients discussing issues that were not necessarily legal in nature, such as upgrading employment skills or how to navigate government bureaucracies, that a private lawyer could not afford to spend time on but that could have a bearing on future legal problems. These efforts were in service of "assisting poor people in changing some of the ground rules of a society, which has done little to destroy the cycle of poverty" and lessening "the sense of

⁸⁹ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, p 8-9.

alienation which poor persons feel from the legal system, and the social system of which it forms part."⁹²

At the same time the Saskatoon Legal Assistance Clinic was opening its storefront doors, the College of Law expanded its volunteer legal services clinic to Regina. During the summer of 1971, second year law students operated a legal aid clinic from the John Howard Society office. Hugh McLaren, a third-year law student, managed the pilot project as a summer research assistant to professor Norman. Like Saskatoon's program, the clinic aimed to help people with civil matters such as welfare, credit and consumer problems, and matrimonial issues. McLaren noted the services they were offering had been available all along through the private bar, but a lot of people were afraid to approach lawyers or didn't know they could get help from regular law offices.⁹³

As a student at the College of Law, Mervyn Shaw thought Duck Lake would be a good place to set up an experimental legal aid clinic where a budding lawyer could learn to be of service. He enlisted the help of other students and, in the summer of 1972 they, along with staff from the Saskatoon Legal Assistance Clinic, set up a rural legal services office in Duck Lake. Within a year, the group obtained a grant, hired its own permanent staff and began operating separate from the Saskatoon clinic as the Valley Legal Assistance Clinic.⁹⁴ The Valley clinic's board was comprised of lawyers, College of Law faculty members and law students.⁹⁵

The Valley clinic was the first rural community legal aid clinic in Canada.⁹⁶ Though the main Valley clinic office was located on 20th Street West, down the street from the Saskatoon Legal Assistance Clinic, it maintained satellite offices in Rosthern, Wakaw and Duck Lake. Staff traveled to the satellite offices regularly to take legal aid applications and meet with clients and acted as duty counsel at magistrate sittings in Rosthern and Wakaw.⁹⁷ Staff also regularly traveled to the Beardy's & Okemasis and One Arrow reserves.⁹⁸ This system of satellite offices later became a model for legal aid services across the province.⁹⁹

⁹² Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁹³ "Legal aid clinic open Wednesday" *Regina Leader Post*. Regina, SK, June 1, 1971, p 3.

⁹⁴ *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

⁹⁵ Cresswell, Dean. "Legal clinic focus of community life" *Saskatoon Star Phoenix*. Saskatoon, SK, October 5, 1973, p 4.

⁹⁶ At the time, there was one lawyer per 966 people in Saskatchewan cities, but in rural areas the ratio was one per every 7,446. Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch V, p 19.

⁹⁷ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV.

⁹⁸ Cheryl Boechler, September 27, 2023 personal interview.

⁹⁹ *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

Don Purich, the clinic's first staff lawyer and legal director, noted that the area around Duck Lake was "saturated with poor white people" fleeing the high cost of living in the city.¹⁰⁰ Purich stated that 40 per cent of the clients in Duck Lake were "poor whites" while 60 per cent were "natives."¹⁰¹

Purich initially found people hesitant to seek his services, but after some initial effort establishing relationships, "a very close bond resulted."¹⁰² The rural clinic work was similar to the work done in the Saskatoon Legal Assistance Clinic in the sense that there were definite areas of law, such as financial and social benefits problems in which the legal aid lawyer needed to develop expertise, that private practice lawyers were not often called on to handle. The clinic provided a range of services from strictly legal to matters with very little law content. Much of the work involved acting for clients against government agencies. Purich spent time pursuing matters that were often considered impractical in private practice due to the cost and time involved. In addition, though clients eligible for services under the 1967 Plan could choose lawyers from the surrounding larger centres, a large majority asked Purich to act for them.¹⁰³

Starting in July 1972, staff from the Saskatoon Legal Assistance Clinic, along with a few private bar lawyers from Saskatoon and Prince Albert,¹⁰⁴ began a temporary and limited project offering free legal services at court points in La Loche, Buffalo Narrows and Île-à-la-Crosse. In her report to Saskatchewan's Attorney General about the lawyers' experiences and impressions of the administration of justice at these northern court points, Connie Hunt, the "anchor person" for this work, observed that most native people in the north never had access to a lawyer, but if they did, they were probably just as afraid of him as they were of the police and the judge. They probably did not understand or trust him and, worst of all, the lawyers were certain that in most cases they had no understanding whatsoever of the mechanics of the whole process which brought them to court.¹⁰⁵

¹⁰⁰ Cresswell, Dean. "Legal clinic focus of community life" *Saskatoon Star Phoenix*. Saskatoon, SK, October 5, 1973, p 4.

¹⁰¹ *Ibid.*

¹⁰² Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV, p 17.

¹⁰³ *Ibid.*

¹⁰⁴ Including Marty Irwin, Bruce Fotheringham, Bob Frances, Ian Disbery, Dave McKeague (student), Bob Finley, Dave Wooff, Ken Stevenson. Report to the Attorney General's Department Re Northern Court Circuit at La Loche, Buffalo Narrows and Île-à-la-Crosse, submitted by Connie Hunt, February 21, 1973, Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Appendix XIV.

¹⁰⁵ Report to the Attorney General's Department Re Northern Court Circuit at La Loche, Buffalo Narrows and Île-à-la-Crosse, submitted by Connie Hunt, February 21, 1973, Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Appendix XIV, p 14.

Sometimes accused people spoke little or no English. In these cases, part of the job of defence counsel was to find someone to translate. In La Loche, one of the people used as an interpreter (though not by defence counsel who knew of his involvement with police) was also a police informant. Court facilities were such that counsel were forced to interview clients in cars outside court or find a quiet unoccupied corner in the hall in which court was being held. People waited for hours while court went on, sometimes without a docket list, and without knowing whether their case would go ahead. Many trials did not go ahead for lack of Crown witnesses.

Defence counsel were alarmed by the “overwhelming propensity” of people to plead guilty in order to “get it over with,”¹⁰⁶ or because they lacked the courage to oppose police, they didn’t trust members of the court party or they grew “weary of awaiting the disposition of their case.”¹⁰⁷ After defence lawyers began attending court, more people began pleading not guilty. At the beginning of October 1972, the defence lawyers observed accused people that had not first consulted with them entering not guilty pleas. After a long string of not guilty pleas that day, one of the defence lawyers overheard an RCMP member sarcastically comment that there would likely only be not guilty pleas from now on.¹⁰⁸

While they were attending court on these northern circuits, lawyers also handled some civil matters. They encountered obstacles here too, including language barriers and the vast distances between isolated communities, making negotiations difficult. If people were unable to resolve their issues by negotiation, travel to the location of a higher court was nearly impossible for most. In reference to the informality with which people dealt with their land (as compared to white people) the report pointed out that lawyers were “constantly faced with the thorny question as to whether [they] should even be introducing traditional legal analysis of these kinds of problems in a culture which simply doesn’t operate in accordance with traditional legal principles.”¹⁰⁹

On the clinic’s mission to empower people through education, the lawyers observed that they were “eminently unsuccessful” in bringing education to the north, not necessarily by design but simply by inexperience and a misunderstanding of the culture and its needs.¹¹⁰ On one occasion, the lawyers spent an evening attending a Métis Society meeting where there was “fairly

¹⁰⁶ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Appendix XIV, p 7.

¹⁰⁷ *Ibid*, p 12.

¹⁰⁸ *Ibid*, p 4.

¹⁰⁹ *Ibid*, p 17.

¹¹⁰ *Ibid*, p 18.

extensive discussion of the inadequacies of the judicial system in the north," including the fact that \$150,000 was being spent to build a new jail in La Loche but there was an absence of alcohol rehabilitation centres in the area despite an "enormous liquor problem."¹¹¹

Of the many problems with the justice system in the north, Hunt noted that the biggest problem defence lawyers, and all members of the legal system in Saskatchewan, faced was the "cultural gap between native society and white man's courts." This was manifested in the "apparent confusion which the native accused exhibits in court, his fear and intimidation, and his general disregard for the whole court procedure because it simply is not relevant to his life."¹¹²

¹¹¹ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Appendix XIV, p 11.

¹¹² *Ibid*, p 15.

Chapter 4

The Carter Committee

In the lead up to the 1971 provincial election, the New Democratic Party,¹¹³ led by Allan Blakeney, who had played a key role in implementing Saskatchewan's Medicare system under the Tommy Douglas government, campaigned on an ambitious agenda of expanded social programs called A New Deal for People.¹¹⁴ In the latter half of the 1960s, while Saskatchewan farmers produced record crops, wheat prices began to fall and family farms continued to disappear.¹¹⁵ Blakeney believed that any government was duty bound "to reduce the sense of isolation and of economic insecurity which permeated Saskatchewan life and to encourage and strengthen the sense of neighbourliness and community."¹¹⁶ Under his leadership, the New Democratic Party (NDP) promised, among other social programs, a human rights code and a commission to enforce it, and a provincial ombudsman. Though it was not a major campaign promise in 1971, Roy Romanow, one of the more visible NDP candidates, had been calling for an expansive provincial legal aid plan since his first foray into politics in 1966.¹¹⁷

In 1967, Ontario had implemented the first comprehensive legal aid plan in Canada. It was administered by the Law Society of Upper Canada and was, like *The 1967 Saskatchewan Criminal Legal Aid Plan (Criminal Matters)*, primarily a fee-for-service program, except for a few pilot project clinics. Applicants judged financially eligible received a certificate and chose a lawyer from a panel of lawyers willing to take legal aid cases in the areas of civil and criminal advice and litigation.¹¹⁸

Alberta and New Brunswick had followed suit in 1970 and 1971 respectively, passing legislation modelled on Ontario's. Nova Scotia took a different route in 1971, setting up a system of neighbourhood clinics staffed by salaried lawyers, the first in Canada.¹¹⁹

The NDP swept to power in Saskatchewan in June 1971. Premier Blakeney named Romanow Attorney General and Deputy Premier. In July, the Law

¹¹³ In the 1960s, the Co-operative Commonwealth Federation (CCF) joined the New Democratic Party (NDP).

¹¹⁴ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 403.

¹¹⁵ *Ibid*, p 401.

¹¹⁶ *Ibid*, p 406.

¹¹⁷ Marchildon, Gregory J. "Roy Romanow, 1991-2001" in *Saskatchewan Premiers of the Twentieth Century*, Gordon L. Barnhart, ed. Canadian Plains Research Centre, University of Regina Press, Regina, SK, 2004, p 362.

¹¹⁸ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch II.

¹¹⁹ Manitoba passed legislation in 1972 that set up a fee-for-service system but also allowed for neighbourhood legal aid centres. Quebec also passed legislation in 1972, contemplating regional community legal services centres. Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch II.

Society of Saskatchewan held its annual meeting in Waskesiu. Delegates discussed a resolution that would call on the new Attorney General to raise the legal aid tariff of fees to bring it in line with Alberta and Manitoba. Members of the Prince Albert Bar Association threatened to withdraw their services under the 1967 Plan unless the government increased the tariff. They estimated they'd handled 500 legal aid cases in the last year, but Prince Albert only had 23 practicing lawyers at the time. After a long discussion, the resolution was tabled, after which Don McKercher, Law Society President, advised delegates that Attorney General Romanow had already requested a meeting with the Law Society to discuss the legal aid tariff.¹²⁰

Over the following months, Attorney General Romanow held meetings with Law Society executives, not only to discuss the tariff. He sought the cooperation of the Law Society in devising a whole new legal aid scheme. In the fall of 1971, he presented the Law Society with a proposal to set up a committee composed of representatives from the Law Society and the public to study legal aid delivery systems, including the possibility of extending legal aid to civil matters and a Saskatchewan version of neighbourhood legal services.¹²¹

The Law Society welcomed the idea of expanding government legal aid to civil matters, noting it could help Saskatchewan lawyers who were already “providing legal assistance to civil litigants in financial straits at reduced fees, and in some cases without fee” as part of the lawyer’s professional obligations. But, its members were concerned that the low fees in criminal cases would be extended to civil cases, in which case, it would be difficult for lawyers to maintain the service.¹²²

At the beginning of May 1972 Attorney General Romanow announced the appointment of a committee to review legal aid systems in Saskatchewan and other Canadian and U.S. jurisdictions, examine the causes of under-utilization of legal services by the poor in Saskatchewan, and make recommendations about the extent of the need for “subsidized programs of legal assistance” along with the “pre-conditions necessary for adequate programs.”¹²³ The committee would consider a possible public defender system, utilization of neighbourhood law clinics, the extent of the service, the role of salaried and volunteer solicitors and the extent of civil matters that would be covered. Though the terms of reference did not extend to considering a “legalcare” type of insured service

¹²⁰ Cresswell, Dean. “Legal aid plan fees too low — lawyers” *Saskatoon Star Phoenix*. Saskatoon, SK, July 3, 1971, p 3.

¹²¹ “Legal aid plan up for review” *Regina Leader Post*. Regina, SK, October 25, 1971, p 3.

¹²² “Aid in civil actions” *Saskatoon Star Phoenix*. Saskatoon, SK, March 28, 1972, p 39.

¹²³ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Terms of Reference.

similar to Medicare, the committee would examine whether the service could be “extended beyond legal advice to counselling services in social areas,” described by the Attorney General as a “complete package of para-legal service to the community.”¹²⁴

Attorney General Romanow appointed Roger Carter, who was by then dean at the College of Law, to head the committee, which became known as the Carter Committee. Carter had practiced law at the firm Makaroff Carter and Carter¹²⁵ in Saskatoon for 15 years before joining the College of Law in 1963. Known for his “magnificent courtroom presence,”¹²⁶ Carter had received a Queen’s Counsel designation in 1958 and completed a Master of Laws degree at the University of Michigan in 1968, the same year he became dean.¹²⁷

Attorney General Romanow also appointed Judge Tillie Taylor to the committee. After supporting her husband through law school and giving birth to their two daughters, Judge Taylor had earned her LL.B. from the University of Saskatchewan’s College of Law in 1956 at the age of 33. She’d been the only woman in her class, and, in 1960, was the first woman in Saskatchewan to be appointed a magistrate.¹²⁸ Other appointees to the committee included Linton Smith,¹²⁹ the first staff lawyer and director of the Saskatoon Legal Assistance Clinic; Margery Heath, a social justice advocate from Regina;¹³⁰ and Antonine “Tony” Cote, Chief of the Cote First Nation.¹³¹

¹²⁴ “Committee to delve into legal aid system” *Regina Leader Post*. Regina, SK, May 9, 1972, p 3.

¹²⁵ The second Carter in the law firm name belonged to Roger’s wife, Mary Carter, who, in 1960, was the second woman to be appointed a magistrate in Saskatchewan. Judge Carter became Madam Justice Carter in 1981 when she was elevated to the Court of Queen’s Bench.

¹²⁶ Persson, Heather. “Roger Carter encouraged First Nations lawyers across Canada” *Saskatoon Star Phoenix*. Saskatoon, SK, March 23, 2017, <https://thestarphoenix.com/news/saskatchewan/roger-carter-encourages-first-nations-lawyers>

¹²⁷ Roger Carter launched the University of Saskatchewan’s Program of Legal Studies for Native People in 1973, founded the Native Law Centre in 1975, and received numerous awards and honours, including an Honorary Doctorate of Laws from Queen’s University (1981), Companion of the Order of Gabriel Dumont (1989), honorary member of the Indigenous Bar Association (1989), and Officer of the Order of Canada (2001).

¹²⁸ Tillie Taylor was appointed the first chair of the newly formed Saskatchewan Human Rights Commission in 1972 and went on to work with Roger Carter to create opportunities for Indigenous people to study and practice law. She received the Saskatchewan Order of Merit in 1996 and was known to continually “stir up controversy in her quest for justice, equality and a fighting chance for everyone.” Ewing-Weisz, Chris. “Tillie Taylor was dedicated to the cause of social justice” *The Globe and Mail*. November 2, 2011, <https://www.theglobeandmail.com/news/national/tillie-taylor-was-dedicated-to-the-cause-of-social-justice/article4200021/>

¹²⁹ Linton Smith was appointed to the Provincial Court of Saskatchewan in 1979 and went on to pioneer sentencing circles in that court in the 1990s.

¹³⁰ Margery Heath was past president of the Seekers of Security Welfare Rights Group: “Committee to delve into legal aid system” *Regina Leader Post*. Regina, SK, May 9, 1972, p 3.

¹³¹ Tony Cote was a residential school survivor and respected Elder. He was first elected Chief in 1970 and served in that role until 1976 when he began taking on a series of roles in organizations like the FSIN, NOR-SASK Native Outreach Inc. and the Saskatchewan Indian Housing Commission. During his tenure as Chief of the Cote First Nation, he began the First Nations Summer Games, which eventually gave rise to the North American Indigenous Games, to “ease the challenges youth faced on the reserve.” He secured funding for, and oversaw the construction of, the first artificial ice arena on a Saskatchewan First Nation, and worked with the council to create many employment opportunities for Cote First Nation people such as Cote Wood Industries, Cote Furniture Making, Cote Band Farms and Cote Leather Crafts. A veteran of the Korean War, he was a veteran’s advocate. He was cofounder of the Saskatchewan Indian Federated College, now known as First Nations University of Canada, and

The Law Society was in full support of the idea that “the question of legal aid should be fully considered.” To the consternation of the Law Society, however, the Attorney General still had not increased the legal aid tariff, but he did invite the organization to nominate two members to the Carter Committee. The Law Society’s nominees were Joseph McIntyre, Q.C., a union lawyer and advocate for disadvantaged people,¹³² and Silas Halyk, who was a senior criminal defence lawyer¹³³ and, at the time, chair of Law Society’s Needy Persons Committee.¹³⁴

In his annual report to the Benchers, John Moss, then President of the Law Society, confirmed that McIntyre and Halyk were at liberty to make their own decisions in their work on the committee and were not bound to support any view, including the Law Society’s. He stated his own perspective that, though he had some concerns about the possibility of a public defender system, members “should not pre-judge the matter on the basis of labels.”¹³⁵ Instead, he called on lawyers to await the committee’s report in the expectation that it would be preceded by a full study of all the possibilities.

Moss added that it was “a matter of disappointment to the profession” that neither Attorney General Romanow or his predecessor had increased the legal aid tariff, and it would not be increased until after the legal aid committee reported.¹³⁶ He concluded his comments on the legal aid committee by saying that, although it would be difficult to continue working under the existing inadequate rates, he was confident that the profession would keep in mind its professional tradition to assist the poor with legal aid according to their need.¹³⁷

William “Bill” Wardell obtained his law degree from the University of Saskatchewan in 1971. In the summers during his university career, he worked for the National Farmers Union (NFU). He completed his articles in a private practice setting in 1972, but the type of corporate work he was doing did not fit with the kind of career he wanted. He’d been heavily influenced by Roy Atkinson, the first leader of the NFU, who’d “insisted there were lots of lawyers for corporations and oil companies but there weren’t very many lawyers for small farmers and poor people.”¹³⁸ When he finished his articles, Wardell

Tribal Chief of the Yorkton Tribal Council from 1995-2001. Ackerman, Jennifer. “Respected elder and First Nations Veterans’ advocate Tony Cote dies at 84” *Regina Leader Post*. Regina, SK, July 31, 2019, <https://leaderpost.com/news/saskatchewan/respected-elder-and-first-nations-veterans-advocate-tony-cote-dead-at-84>

¹³² William Wardell, K.C., September 6, 2023 personal interview.

¹³³ Later, the University of Saskatchewan’s College of Law created the Silas E. Halyk, Q.C. Visiting Scholar in Advocacy.

¹³⁴ “Committee to delve into legal aid system” *Regina Leader Post*. Regina, SK, May 9, 1972, p 3.

¹³⁵ EJ Moss, The Law Society of Saskatchewan Annual Report of Benchers, 1972-73 37-1 *Saskatchewan Law Review* 162, 1972 CanLII Docs 178, < <https://canlii.ca/t/7n3l2>>

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ William Wardell, K.C., September 6, 2023 personal interview.

approached the Attorney General about legal work outside of private practice and was hired as secretary to the Carter Committee.¹³⁹

Over the course of the next year, the Carter Committee organized wide ranging meetings with stakeholders around the province and made visits to other Canadian and U.S. cities to examine their legal aid systems. The committee also received briefs from 14 people and 54 diverse groups from across the province, including the Law Society of Saskatchewan, National Farmers Union, Métis Society of Saskatchewan, Federation of Saskatchewan Indian Nations¹⁴⁰, RCMP, Saskatchewan Council of Anti-Poverty Organizations and the John Howard Society.

In March 1973, the Carter Committee submitted a lengthy and comprehensive report to Attorney General Romanow. It canvassed and analyzed different systems that could be used to deliver legal aid, existing programs in Saskatchewan, and all other Canadian provinces and territories, as well as the public defender system that existed in Minnesota and the English legal aid system and made recommendations “for a legal aid plan designed to promote the interests of the poor, and serve their real needs.”¹⁴¹

The committee laid out six general conclusions that underpinned their specific recommendations and that they felt were necessary to meet their goal of designing a plan that would serve the interests of the poor:¹⁴²

1. **Independence:** In addition to the more obvious tenant that lawyers must remain independent of community or government pressures when representing their clients, legally aided clients, “with considerable justification” in the opinion of the committee, were more likely to be skeptical, if not antagonistic toward government. Lawyers assisting legal aid clients were more likely, even than private lawyers, to come into conflict with government departments and agencies. A legal aid system would be “seriously impaired” if its structure prevented it from pressing matters and claims opposed to government departments or agencies.
2. **Legal Aid as a Right:** The committee proposed two strategies to help ensure legal aid was seen as a right and not a charity. The first was to ensure “some degree of local, community involvement by poor persons and their organizations in the establishment of a legal aid plan.”

¹³⁹ William Wardell, K.C., September 6, 2023 personal interview.

¹⁴⁰ In 2016, the Chiefs-in-Assembly voted to change the name to the Federation of Sovereign Indigenous Nations.

¹⁴¹ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VII, p 1. Underlining from the original.

¹⁴² *Ibid*, Ch VII.

Secondly, lawyers working in the system would be continuously exposed to the problems of poor people and communities and would build up valuable expertise to deal with them. The hope was that poor persons would come to regard the legal aid plan and its lawyers as theirs. Even more, the committee hoped that “[t]he solicitor-client relationship — one of mutual trust, which is always so vital to the proper performance of a lawyer’s task” would take on a “new dimension for the poor person.”

3. **Social Change:** The committee asserted that the legal aid scheme should function as a vehicle for social change, on “proper occasions.” This would be accomplished through education and lobbying for law reform. The problems faced by poor people would be reduced, and in some cases dealt with by the poor themselves, or even prevented in the first place. As a result, and to the extent this could be accomplished, it would “assist in removing the sense of alienation from society (and from the legal system governing it) felt by so many of the poor.”
4. **Comprehensive:** The system must provide solutions for any legal problems poor people encounter, not only the poor person with a middle-class law problem. The criteria for the range of services available under the scheme “must be the seriousness of the case or problem to the particular individual.” This included not only family law problems, but also the myriads of problems that faced poor people, including claims for social benefits, debt and housing problems.
5. **Professional:** The committee emphasized that care must be taken to ensure the same legal expertise and technical skill was available to those obtaining assistance under the plan as was available to others. One strategy to meet this goal was to ensure lawyers working in the system received a financial return competitive with those working outside it. In addition, since the private bar delivery system was developed in response to the legal problems of the middle class, the legal aid scheme must “encourage the development of new professional skills in dealing with the problems of the poor.” The committee heard from many that poor people were “not uncommonly, reluctant to approach the ordinary private practitioner in his down-town office.” While making it abundantly clear that they were not criticizing the private bar, who had, after all, made tremendous contributions toward legally aided services in the province, including, most notably the Saskatoon Legal Assistance Clinic, the committee endorsed the suggestion that legal aid offices should be located in or near the

communities where the system's clients lived and should be designed so that clients would not feel uncomfortable in them.

- 6. Paraprofessionals:** The committee recognized that many legal problems faced by poor people contained non-legal elements. Paraprofessionals could assist clients to connect with services, for example counselling for family breakdown. Paraprofessionals could also "assist significantly" in many aspects of legal work and in achieving, and maintaining, the kind of community involvement the committee felt was crucial to the legal aid scheme they were proposing.

The committee analyzed both the fee-for-service and salaried approaches to delivering legal aid.¹⁴³ Under a fee-for-service system, which was the system in place in Saskatchewan under the 1967 Plan, eligible clients could choose any lawyer they preferred whose name was on the legal aid panel.¹⁴⁴ Lawyers representing legal aid clients would be paid by the system based on a tariff of fees. In its brief to the Carter Committee, the Law Society of Saskatchewan urged the guarantee of free choice of counsel as the best way to ensure the law was the same for both rich and poor. It asserted that the free choice approach was not more expensive than a salaried system, and in any event, the cost of the system should not be a primary factor.¹⁴⁵

But the Carter Committee criticized Ontario's fee-for-service system because it did not permit the "uneconomic case." If the cost of legal aid exceeded the value of the result, legal aid would be denied. The types of uneconomic cases that would be denied included the recovery of small debts, more important to a person of limited means than to a middle-class person, and other problems faced by poor people such as landlord and tenant or government social benefits issues. The committee stated: "While the statement is a bit unfair, the entire situation on this point might be summed up by saying that the Ontario plan provides legal aid only to the poor person who has a middle-class legal problem."¹⁴⁶

While other Canadian systems were much more in their infancy, the other fee-for-service plans came under similar critique for not accommodating the

¹⁴³ Of the briefs presented to the committee that directly addressed the delivery system, 20 urged the clinic system, while two urged the fee-for-service system: Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch V, p 1.

¹⁴⁴ The legal aid panel was a list of private practice lawyers that had agreed to take legal aid cases. The Carter Committee recommended that any lawyer requesting to be on the panel should be placed on the list, but the executive director of each clinic should have the right to remove any name where, in his opinion, there was good reason to do so: Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VIII, p 18.

¹⁴⁵ *Ibid*, Ch V, p 4.

¹⁴⁶ *Ibid*, Ch II, Section I, p 16.

uneconomic case. Alberta, New Brunswick and Nova Scotia's systems also came under criticism for having a "colour of charity." Lawyers working under the Alberta plan were expected to provide their legal services for a lower fee than the one they could potentially collect by acting for the "mythical 'man of modest means'." In New Brunswick and Nova Scotia, the plans did not guarantee legal aid as a right. Even if the applicant was financially eligible, the granting of a legal aid certificate was always discretionary.¹⁴⁷

Manitoba had also introduced a fee-for-service system, though the legislation also allowed for community clinics staffed by salaried lawyers. The committee saw the clinic function in Manitoba's plan as an add-on to the fee-for-service approach, since clinics would only provide services for the uneconomic case. In the committee's view, this approach would eventually become expensive and run the risk of tainting the clinic's staff as second-class lawyers for only handling cases that were not justifiable for a private practice lawyer.¹⁴⁸

The committee concluded that a "non-salaried" system could not, except at enormous expense, incorporate legal education, the "uneconomic case" or law reform. While the public defender system shared the strategy of employing full-time salaried staff lawyers with the community clinic system, the similarities stopped there. The differences between the community clinic and public defender systems, as the committee saw it, were vast. The public defender system, in addition to being restricted to criminal matters, though that coverage was extensive, made no attempt to involve the community in its operations or engage in public education or law reform activities.¹⁴⁹ Professionals working under a salaried system, dealing with the varied and particular problems of the poor full-time, would be in the best position to deliver on the goals of the committee. The committee therefore recommended the community clinic approach, with a provincial agency to have administrative control of the plan.

However, the committee also thought it was important to preserve a role for the private practitioner in the system. Private practice lawyers had legal expertise that should be available to the poor person and a "very real sense of social responsibility" that should be allowed to play a part in the legal aid scheme. The committee also subscribed to the view that a reasonable amount of healthy professional competition between salaried and non-salaried lawyers would ensure a high quality of legal services available to poor persons.¹⁵⁰

¹⁴⁷ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973

¹⁴⁸ *Ibid*, Section 4.

¹⁴⁹ *Ibid*, Ch I.

¹⁵⁰ *Ibid*, Ch VII, p 8.

The committee envisioned community legal aid clinics in various regions throughout the province. Each clinic would be governed by its own advisory council made up of “poor persons and their organizations within the clinic region” to assess the work of the clinic, set clinic policy and recommend education and law reform activities.¹⁵¹ The clinic would act as the intake centre for legal aid applications, including determining eligibility, and would provide legal services, carry out educational programs and encourage and engage in law reform. The executive director of each clinic would be employed by the provincial central agency, but the advisory council would employ clinic staff and be responsible for the day-to-day operation of the clinic.¹⁵²

The committee imagined that, as each clinic became operational, which would necessarily happen in stages across the province, it would replace the 1967 Plan, which would disappear as a result. In the meantime, the committee recommended the provincial administration should have general responsibility for operating the 1967 Plan.¹⁵³

The provincial central agency would be made up of representatives from the local clinics, the Law Society of Saskatchewan, College of Law and the provincial and federal governments. It would receive government funding and distribute it to the clinics as well as set general policy, prepare budgets, make annual reports and recommend any changes to the plan to the provincial government.

To help fund legal aid in criminal matters, the federal government entered into cost-sharing agreements with each province. The Saskatchewan agreement required complete choice of counsel for legally aided clients charged with offences punishable by death or life in prison, but the committee recommended that, in the southern half of the province, clients charged with any criminal offence be free to select a lawyer from the private bar panel or a clinic. Clients with civil matters or charged with provincial offences would be limited to clinic lawyers (unless special approval from the advisory council).

In the north, where private bar lawyers were almost non-existent, permitting legally aided clients to have the same choice of counsel was likely to result in “astronomic” costs since most private bar lawyers would incur costly travel expenses.¹⁵⁴ The committee recommended instead that complete choice of counsel be limited to clients charged with an offence punishable by death, life

¹⁵¹ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VIII, p 17.

¹⁵² *Ibid*, p 15.

¹⁵³ *Ibid*, p 20.

¹⁵⁴ *Ibid*, p 15.

imprisonment or a term of 10 years or more. For summary conviction *Criminal Code* and other summary conviction federal offences, and all indictable matters where a magistrate in the north had absolute jurisdiction, a legally aided client could choose a northern clinic lawyer or a private bar lawyer living and practicing in one of the north's clinic areas. In all other cases the legally aided client in the north would have the right to a clinic lawyer, subject to permission from an area advisory board to hire a lawyer entitled to practice in the province.

The committee was not entirely in agreement about the choice of counsel recommendations. As a magistrate, Judge Taylor had seen her share of petty crime cases, particularly involving Indigenous people and youth, and understood how poverty was behind much of it.¹⁵⁵ She wrote a dissent urging the Attorney General to adopt the fee-for-service approach only in those cases required by the federal-provincial cost-sharing agreement, that is only for offences punishable by death or life in prison. She reasoned that, just as in civil cases, the community clinic was the best method for delivering legal aid in criminal cases. She wrote: "Poor people's 'criminal' problems are often a result of, or inseparable from, family problems, debt problems, landlord problems, etc. If the clinic is to be 'their' clinic, it should follow their problem into the criminal court when necessary."¹⁵⁶

Judge Taylor's dissent was also based on a purely financial concern arising out of "the fee-for-service approach adopted in the Report." Experience in other jurisdictions had shown how steeply and quickly the costs of such a plan would rise. She predicted that the province would be "unable to extend the salaried service and the para-professional staff to the extent needed," if it was "saddled with the constantly mounting costs" of a fee-for-service system for criminal cases.¹⁵⁷

McIntyre also wrote a short dissent on the same issue. However, he argued for an expanded right to choose a lawyer. He felt a legally aided person should have the same ability to choose a lawyer as a "person of modest means" and that it was "highly necessary that there be competition as between private practitioners and members of the clinic to ensure a high standard of legal services to poor persons."¹⁵⁸ He did not agree with the restrictions on the right to choose counsel recommended for the north, except for in summary

¹⁵⁵ Ewing-Weisz, Chris. "Tillie Taylor was dedicated to the cause of social justice" *The Globe and Mail*. Toronto, ON, November 2, 2011, <https://www.theglobeandmail.com/news/national/tillie-taylor-was-dedicated-to-the-cause-of-social-justice/article4200021/>

¹⁵⁶ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VIII, p 23.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, p 24.

conviction matters or indictable matters where a magistrate had jurisdiction. In these cases, he reluctantly agreed that, for financial reasons, the choice of counsel could be restricted to lawyers living and practicing in the clinic area.

When they were publicly released, the Carter Committee's choice of counsel recommendations were criticized, mainly by members of the legal profession, for being too restrictive. Professor Wuester from the University of Saskatchewan's College of Law felt the poor person should be able to choose between a clinic lawyer and a private lawyer. He told the press, "I would have thought that any legal aid scheme should attempt to equate a poor person with a man of modest means before the bar of justice ... in other words there should be little or no difference between a poor person and the rich."¹⁵⁹

The Prince Albert Bar Association, in a brief submitted to the Attorney General, suggested the fee-for-service system should be used in the north because it would be more economical, guarantee choice of counsel and provide better service by lawyers that were not under government control. Attorney General Romanow expressed his opposition to the fee-for-service system.¹⁶⁰ Though he had some reservations about community-controlled clinics, he told the press that if there ever was a strong case for a clinic system for legal aid, it was in the north.¹⁶¹

The Carter Committee paid close attention to reports of the administration of justice in the north and recommendations for solutions. They devoted an entire chapter of the report to the need for a legal assistance program in the north. The committee held a number of meetings in the north, assisted by the Métis Society of Saskatchewan and the Federation of Saskatchewan Indian Nations who both did considerable legwork in local communities in advance of the meetings. As a result, the committee felt the meetings were well attended and "exceedingly worthwhile for committee members."¹⁶²

The committee stated its substantial agreement with the observations and conclusions of the Saskatoon Legal Assistance Clinic's staff about the administration of justice in the north, and quoted from the clinic's brief to the committee: "These communities, far removed in almost every aspect from the characteristics of the rest of the province, inhabited by peoples who neither speak, think, or act in English, have been placed under the laws which govern

¹⁵⁹ Cresswell, Dean. "Legal aid system termed restrictive" *Saskatoon Star Phoenix*. Saskatoon, SK, April 14, 1973, p 1.

¹⁶⁰ "A-G opposes fee-for-service legal aid" *Saskatoon Star Phoenix*. Saskatoon, SK, August 24, 1973, p 3.

¹⁶¹ Cresswell, Dean. "Legal clinic focus of community life" *Saskatoon Star Phoenix*. Saskatoon, SK, October 5, 1973, p 4.

¹⁶² Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VI p 1.

the rest of the province. The laws are enforced by white police officers from the south, and by a white prosecutor and a white judge who are flown in monthly from the south. The law is neither understood nor respected — it is either feared or considered irrelevant. People know that the law exists — it is a travelling theatre dropped down from the sky once a month, one which everyone comes out to watch, if only for the entertainment.”¹⁶³

The committee emphasized the devastating effects of “white governments and white paternalism” on Indigenous people in the north including the overrepresentation of “persons of Indian and Métis origin” in prisons,¹⁶⁴ alcohol dependency, crime, poverty and unemployment and found that there was “an absolute necessity for native people to regain their pride and independence, both economically and socially.” The committee believed that a “legal aid program could play its part in assisting native people to begin their climb back up the ladder to the position of pride which they once occupied.”¹⁶⁵ But this could only be done so long as the north’s population were “directly involved in the operation of their legal problems.”¹⁶⁶

To this end, the committee recommended the province be divided into northern (north of Meadow Lake, Prince Albert and the Melfort/Tisdale areas) and southern divisions. The northern division would have more autonomy from the provincial central administration, including its own central administration, to give it the ability to address the pressing issues peculiar to the north. The committee envisioned community legal services workers, drawn from the “native population,” working out of a community clinic in La Ronge, as well as other points in the north, at least some of which would be the centres where magistrates court was held. Local advisory committees would be established throughout the north wherever community legal services workers were employed. Clinic lawyers would attend Magistrates’ Court plus one additional day between court days.

The northern division central administration would be made up of representatives from clinic area advisory councils around the north, as well as representatives from the Law Society of Saskatchewan and the province,¹⁶⁷ and would employ its own executive director to carry out operation of the northern

¹⁶³ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VI p 2.

¹⁶⁴ The Committee quoted from a Saskatchewan Correction Study Committee that found that although persons of Indian and Métis origin only made up eight per cent of the province’s population, this eight per cent produced approximately 50 per cent of the prison intake population. Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VI p 4.

¹⁶⁵ *Ibid*, Ch VI p 3-6.

¹⁶⁶ *Ibid*.

¹⁶⁷ *Ibid*, Ch VIII p 7.

central administration, including employing staff in the clinics and communities.¹⁶⁸

While the provincial central administration would divide provincial funds and distribute them to each of the local southern clinics, the northern division would receive and administer its own portion of the funds from the provincial central administration. The committee also envisioned that policy work done in the central provincial administration would be done in consultation with the northern division, but the northern division would have the ability to set its own policies and budgets in accordance with particular needs and “local peculiarities” in the north.

The committee stressed that, in the north, all clinic staff should conduct work to make it clear to clients that legal aid was entirely independent of courts and law enforcement. To that end, the committee recommended that legal aid should have its own plane. This cost was factored into the committee’s proposed budget for the northern division.¹⁶⁹

The Carter Committee estimated a total budget of almost \$2 million¹⁷⁰ for Saskatchewan’s new legal aid plan, which worked out to roughly 50 cents more per capita than Ontario’s fee for service program. But, when the costs of including the uneconomic case, sufficient service to remote areas, legal education and law reform were factored in, the committee estimated Saskatchewan’s plan would be less costly than Ontario’s. They made no apologies for the potential cost of their recommendations, while also stressing they had not been moved to adopt the comprehensive community clinic recommendation based on cost.¹⁷¹

¹⁶⁸ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, p 9.

¹⁶⁹ *Ibid*, Appendix XV, p 3.

¹⁷⁰ \$500,000 of which would come from federal funding for criminal matters. “Carter named counsel to legal commission” *Saskatoon Star Phoenix*. Saskatoon, SK, July 12, 1974, p 3.

¹⁷¹ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch VIII.

Chapter 5

The Flying Legal Aid Clinic

The need for legal aid was so pressing in the north, the Carter Committee felt changes could not wait for the establishment of a provincial legal aid plan. They recommended the Attorney General set up a community clinic in La Ronge, with the possibility of other local clinics established in other areas of the north if needed, to begin serving the north immediately.

In November 1973, Attorney General Romanow hired Lloyd Deshaye to staff a “flying legal aid clinic”¹⁷² based out of La Ronge.¹⁷³ Deshaye, a classmate of Linton Smith’s, had been called to the bar in 1969. He had been successful in private practice but found the legal work he was doing then did not hold his interest. Though he’d never been further north than Prince Albert, he was up for a challenge.¹⁷⁴ After touring La Ronge, he agreed to take the position of Director of Northern Legal Services, a position established as part of the Saskatchewan Department of Justice.¹⁷⁵

For a short while, Deshaye saw clients in the small house he rented in the parking lot of Robertson Trading Ltd. Later that winter, the office moved into a green trailer on La Ronge Avenue. A bold sign out front of the trailer declared it to be the “Northern Legal Services Office.”¹⁷⁶ The trailer was converted to office space by the previous occupant, a dentist. It contained a waiting room and space for secretarial staff (the kitchen and living room) and two offices (bedrooms). It also contained a bathroom. Initially, there was no running water, so the bathroom was used as library space where important books were stored within easy reach in the bath tub.¹⁷⁷

For the first six months, Deshaye worked on his own at the Northern Legal Services Office, attended court in La Ronge, and flew to court points in Uranium City, Stoney Rapids, Sandy Bay, Pelican Narrows, Creighton, Île-à-la-Crosse, Buffalo Narrows, La Loche and Cumberland House.¹⁷⁸ He was joined by articling student Barry Singer¹⁷⁹ in June 1974 and lawyer Ian Buckwold in August of that year. It wasn’t until September, though, that the three of them

¹⁷² *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975, p 18.

¹⁷³ Sid Robinson (editor) et al. *The Northern Legal Aid Office (1974-1999)*. La Ronge, SK, July 31, 1999. p 3.

¹⁷⁴ Lloyd Deshaye, September 8, 2023 personal interview.

¹⁷⁵ Sid Robinson (editor) et al. *The Northern Legal Aid Office (1974-1999)*. La Ronge, SK, July 31, 1999. p 3.

¹⁷⁶ Palmer, Lynne. “Legal aid available now to poor in north” *Regina Leader Post*. Regina, SK, September 13, 1974.

¹⁷⁷ Sid Robinson (editor) et al. *The Northern Legal Aid Office (1974-1999)*. La Ronge, SK, July 31, 1999.

¹⁷⁸ Palmer, Lynne. “Legal aid available now to poor in north” *Regina Leader Post*. Regina, SK, September 13, 1974.

¹⁷⁹ Barry Singer was appointed to the Provincial Court of Saskatchewan in 2002.

finally received the highly competent and organized support of secretary Aline Zakowsky who soon had the office in “shipshape.”¹⁸⁰

When the provincial legal aid plan was finally established in August 1974, the office came under the control of the Saskatchewan Community Legal Services Commission. Though the northern central administration, as envisioned by the Carter Committee was never formally implemented, the office achieved a degree of autonomy, at least initially, by virtue of its isolation. Someone from the Department of Justice or the Commission would call every so often to ask how it was going, but the office was remote and therefore off the radar, which gave staff an independence for which people were grateful.¹⁸¹

Staff in the Northern Legal Services Office began organizing local legal services advisory groups in the communities they served.¹⁸² These groups, it was hoped, would eventually provide ongoing liaison with each community, as well as a source from which to draw in order to establish a local board to govern the office.

Staff also held workshops throughout the north to discuss legal matters that were of interest to residents.¹⁸³ They adopted an innovative teaching method that involved mock court trials based on situations familiar in northern courts, conducted in Cree or Chipewyan languages, to help residents become more familiar with the court system. They also placed an emphasis on assisting northern residents to establish groups that would help them improve their situations, such as a day care centre, a community communications group and a Commodity Purchases Co-op, which the northern office incorporated.¹⁸⁴

Social assistance was the main income for up to 34 per cent of the population in the north and many working people lived in poverty.¹⁸⁵ Clinic staff hoped to deal with increasing numbers of civil problems, such as welfare appeals and landlord tenant disputes, but northerners were relatively unaware of their rights and needed education first to know when they had a legal problem. For example, there had rarely, if ever, been a welfare appeal because people did not understand the appeal system.¹⁸⁶

¹⁸⁰ Sid Robinson (editor) et al. *The Northern Legal Aid Office (1974-1999)*. La Ronge, SK, July 31, 1999.

¹⁸¹ Lloyd Deshayé, September 8, 2023 personal interview.

¹⁸² *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ Palmer, Lynne. “Legal aid available now to poor in north” *Regina Leader Post*. Regina, SK, September 13, 1974.

¹⁸⁶ *Ibid.*

The priority files in the northern office were criminal cases. About 95 per cent of the criminal caseload involved Indigenous or Métis clients.¹⁸⁷ The northern legal aid lawyers were on the road, or, more accurately, in the air, most days of the month.¹⁸⁸ Deshayé recalled, “We’d all fly, the judge, prosecutor, legal aid lawyer, probation officer, get off the plane, get into a police van, get driven to wherever court was being held, get out of the van altogether.”¹⁸⁹

Though language barriers were a problem at times, a bigger problem was the lack of understanding of the charges against people and court procedure, and this was where the lawyers played the biggest role. Clinic lawyers contested 15 to 20 per cent of cases, and of those, 65 per cent were acquittals.¹⁹⁰ And, they had a lot of success helping people understand the court system and explaining the circumstances of their clients to justice system officials.¹⁹¹ In 1974, Deshayé told the press that, in almost every instance, the charges they dealt with on behalf of their clients were alcohol related. But, the problem in the north was “Not so much the drinking but the reasons for the drinking.”¹⁹² He elaborated by saying, “If I lived in a one-room shack in La Loche with eight other people, I’d probably drink too.”¹⁹³ The previous year, the Department of Northern Services had commissioned a study that found crime occurred not because the oppressed are more criminal, but because they were more oppressed. Though there may have been a lot of native people in the courts, Deshayé didn’t think there were many native criminals.¹⁹⁴

People worked in the justice system in the north with the best of intentions, hoping to make a positive difference in the lives of the people they served. Those who were more idealistic could more easily become overwhelmed and discouraged but Deshayé saw himself as someone on the less idealistic side. Though he felt he was a good lawyer, he never had the idea that the lawyers were “coming in as saviours. Far from that.” The legal aid lawyers were viewed with a mixture of suspicion, dis-ease, and maybe a little bit of gratitude. When they flew into communities with the whole court party, local people may have been saying, “It’s them guys,” but at least someone was in court speaking and advocating for accused people.¹⁹⁵

¹⁸⁷ Palmer, Lynne. “Legal aid available now to poor in north” *Regina Leader Post*. Regina, SK, September 13, 1974.

¹⁸⁸ Lloyd Deshayé logged all his flying hours in a notebook from November 1973 until the time he left the north in January 1980. He recorded 925 hours, 25 minutes in the air. Deshayé was appointed a magistrate on the northern circuit, along with Judge Claude Fafard, in 1975.

¹⁸⁹ Lloyd Deshayé, September 8, 2023 personal interview.

¹⁹⁰ Palmer, Lynne. “Legal aid available now to poor in north” *Regina Leader Post*. Regina, SK, September 13, 1974.

¹⁹¹ Lloyd Deshayé, September 8, 2023 personal interview.

¹⁹² Palmer, Lynne. “Legal aid available now to poor in north” *Regina Leader Post*. Regina, SK, September 13, 1974.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ Lloyd Deshayé, September 8, 2023 personal interview.

Chapter 6

Organizing in Earnest: 1973-74

In early 1973, the Saskatoon and Valley Legal Assistance Clinics continued to do brisk business. The Saskatoon clinic received additional federal funding and in February 1973 William Wardell, who had finished his term with the Carter Committee, became the second staff lawyer at the clinic.¹⁹⁶ The clinic had rapidly outgrown its first office above a Credit Union in the 300 block of 20th Street West, but found another in the 100 block over a vacant former fur storage business. There was a large vault at the back of the space. Staff used Wardell's farm truck to haul scrap lumber and build three offices on top of the vault, as well as interview rooms on the main floor. Those in the offices above the vault had a choice of either light or heat. Plug in the heater below the desk, work without light. Or, turn on the lights and work without heat. Though the office was modest, it was easy to meet with clients and others, such as witnesses, in their neighbourhood. "We had a community there," Wardell reflected fondly almost 50 years later.¹⁹⁷

One of Wardell's first tasks was to interview several women in preparation for their divorce trials, which were still required to obtain a divorce. Petitioners would have to prove, among other things, there was no reasonable prospect of reconciliation. Wardell was required to ask each woman standard questions that were hard for many to answer, such as, "Why did you separate?" and whether they wanted to reconcile. The first two women he interviewed sobbed during the meeting. The third woman managed to maintain her composure and a sense of humour. When asked why she had separated from her husband, she said, "It was his 42nd birthday and I wanted to trade him in for two 21-year-olds." One morning in court, Wardell ran 27 divorce trials. It was a wonderful experience because all the women he had been helping had the opportunity to meet each other and make connections in the community.¹⁹⁸

In the 1960s and early 1970s, many Indigenous and Métis people flocked to Saskatoon to escape poverty on reserves, but in the city they faced racism, unemployment and a lack of housing. Many, including Ron Camponi and Clarence Trotchie, retired veterans, turned to alcohol. But Camponi and Trotchie overcame addiction, became proponents of Alcoholics Anonymous and wanted to help others.¹⁹⁹ They had a bit of pension income and wanted to use their own

¹⁹⁶ Saskatchewan Legal Aid Committee. *Report of the Saskatchewan Legal Aid Committee*. March 1973, Ch IV, p 2.

¹⁹⁷ William Wardell, K.C., September 6, 2023 personal interview.

¹⁹⁸ *Ibid.*

¹⁹⁹ www.camponi.ca/about.php

money to buy a house on the corner of 20th Street West and Avenue H to provide residential alcohol counselling. They hoped social services would pay for room and board for the house's residents while they received treatment. They met with Wardell at the Saskatoon clinic. He helped them buy the house and connect with the province's director of social services. With the assistance of government grants, the first Indigenous alcohol treatment centre, the Native Alcohol Centre (NAC), came into existence in 1973.²⁰⁰ Trotchie was its first director and Camponi a councillor.²⁰¹

Camponi and Trotchie operated the house for nearly a year. The people who stayed there were getting sober, but when they left the treatment program they didn't have housing. Back on the street, they'd turn to alcohol again. Camponi and Trotchie wanted to buy more houses to provide additional support. They went back to see Wardell at the Saskatoon clinic, and in the spring of 1974, Sasknative Housing Corporation was created. Wardell studied the Canada Mortgage and Housing Corporation (CMHC) legislation, and together with Camponi and Trotchie, contacted the CMHC office. It took over a year but they finally completed a mortgage application for 20 houses.²⁰² Sasknative Housing²⁰³ secured homes, but the mission went beyond housing. In addition to CMHC funding, the organization secured job grants and provided employment, basic skills training and connections to social services.²⁰⁴

By the fall of 1973, when Cheryl Boechler started her secretarial job at the Valley Legal Assistance Clinic, the clinic employed two lawyers, two secretaries and one community legal services worker, who worked as a paraprofessional. The clinic had expanded its satellite office system to Martensville where it had opened an office on a half-day basis. The caseload had grown from 150 each month to 250.²⁰⁵ The office on 20th Street West consisted of two rooms with one phone line. Boechler shared the back room with a second secretary, Joyce, who, since she'd been hired first, used the only typing stand. Boechler's IBM Selectric typewriter sat in the middle of her desk where, if she was typing divorce documents, she used four pieces of carbon paper to produce the required five

²⁰⁰ William Wardell, K.C., September 6, 2023 personal interview.

²⁰¹ www.camponi.ca/about.php

²⁰² William Wardell, K.C., September 6, 2023 personal interview.

²⁰³ William Wardell eventually became the director of the Clinical Law Program and taught at the College of Law. In 1986 he established a private practice. Throughout his career he continued to assist the Sasknative Housing Corporation, now called Camponi Housing. In the summer of 2023, Wardell and his articling student spent a week and a half doing a mortgage on an 80-unit facility Camponi Housing is building in the Blairmore area of Saskatoon. In total, Camponi currently has 400 units. William Wardell, K.C., September 6, 2023 personal interview.

²⁰⁴ www.camponi.ca/about.php

²⁰⁵ Cresswell, Dean. "Legal clinic focus of community life" *Saskatoon Star Phoenix*. Saskatoon, SK, October 5, 1973, p 4.

copies of the documents. When the lawyers asked her to do something, she took it all down in Pitman shorthand.

The two lawyers and community legal services worker shared the second room until they were lucky enough to move across the hall when those tenants moved out. The staff painted the office themselves – there was money in the budget for paint but not labour. Boechler and Joyce chose a bright yellow to make their office brighter, though it was still pretty shabby. Smoking was allowed in the office and Joyce was a chain smoker. Their office also had a sink. When it was cold, they ran their hands under hot water to warm them.²⁰⁶

The community legal services worker worked with non-profits and helped people with social benefits appeals, such as unemployment insurance and social assistance. Though roles were necessarily defined, there wasn't a huge emphasis on them outside of a lawyer's professional responsibility. The atmosphere was such that everyone pitched in and did the work that needed to be done.²⁰⁷

Many people could not afford to hire a lawyer for a small estate, so this was one source of work for the Valley clinic. "Mrs. M," one of the clinic's clients, was a recent widow. Her husband had been the one to write the cheques and do the banking. He'd even done the shopping. Mrs. M arrived at the Valley office for help with the estate when the clinic was located above an appliance and sporting goods store. Clients entered the office from the front and climbed a long flight of stairs. The staff were thrilled to have some very nice brown indoor/outdoor carpet but Mrs. M. would stand at the bottom of the stairs until her shoes dried before climbing the stairs to the office. Staff would hear the door open then a period of silence and remark, "That must be Mrs. M." As part of their full-service community legal clinic, Boechler took Mrs. M to the bank and showed her how to write a cheque and deposit money. She even showed her how to get to Sears. Mrs. M. was so happy and thankful for the staff at the clinic, who loved her like she was their grandmother. The estates the clinic worked on were small, and other files may have seemed to have little financial value, but the work the clinic did was important to clients and had a significant impact on their lives.

Though it took some time to cultivate community involvement, by October 1973 the clinic's board had evolved into a community board comprised of "nine

²⁰⁶ Cheryl Boechler, September 27, 2023 personal interview.

²⁰⁷ Ibid.

native and six white members,” all lay people.²⁰⁸ Don Purich,²⁰⁹ still the clinic’s legal director, noted it was the only legal aid clinic board in Canada that had no legal people on it. He told the press that the community support was “astonishing,” and more than the staff had hoped for.²¹⁰ More than 150 people had turned out at the last Valley Legal Assistance Clinic meeting. He’d watched the “experimental law for the poor program turn into a focal point of community life” to the point that “people would stand up and fight for the service should it be taken away.”²¹¹

In the wake of the Saskatoon and Valley clinics’ success, the release of the Carter Committee report, and the introduction of legislation at the end of 1973 to establish a comprehensive legal aid program based largely on the Carter Committee’s recommendations, citizens in other areas of the province began to organize. Attorney General Romanow appointed Linton Smith as his special advisor to the proposed Saskatchewan legal aid scheme.²¹² Smith, along with Al Skagen, president of the Saskatchewan Council of Anti-Poverty Organizations, made a presentation about the proposed legal aid scheme to Moose Jaw City Council in July 1973.²¹³ In December, Smith met with members of Moose Jaw’s Rotary Club to seek their support for a legal aid clinic in their city.²¹⁴

Citizens in North Battleford began organizing in late 1973, forming the North Battleford and Area Legal Services Society by the end of the year. Lawyers from the Saskatoon clinic attended the board’s first meeting to talk about the work they were doing. The board elected Edward Bear from the Poundmaker Reserve as chair. He emphasized that the organization was for any person who needs legal assistance, not only “native people.”²¹⁵

Claude Fafard, who was then practicing law in Melfort, chaired a meeting of an “overflow crowd” in the Melfort Civic Centre in February 1974 to discuss the possibility of establishing a legal aid clinic in the area. Smith attended, along with four law students, to explain the proposed legal aid system. “A lively discussion ensued from the floor with spokesmen representing anti-poverty

²⁰⁸ Cresswell, Dean. “Legal clinic focus of community life” *Saskatoon Star Phoenix*. Saskatoon, SK, October 5, 1973, p 4.

²⁰⁹ Don Purich went on to co-found (with Karen Bolstad) Purich Publishing which built an “influential and enduring list of books in Indigenous studies and law” and Western Canadian issues. Purich Publishing was acquired by UBC Press in 2015. <https://www.ubcpres.ca/purich-books>

²¹⁰ Cresswell, Dean. “Legal clinic focus of community life” *Saskatoon Star Phoenix*. Saskatoon, SK, October 5, 1973, p 4.

²¹¹ *Ibid.*

²¹² “Saskatoon lawyer chosen legal aid plan adviser” *Saskatoon Star Phoenix*. Saskatoon, SK, September 5, 1973, p 16.

²¹³ “Council Hears Presentation Proposing Legal Clinic” *Moose Jaw Times Herald*. Moose Jaw, SK, July 10, 1973.

²¹⁴ “Legal Aid Pilot Project Could Develop Provincially” *Moose Jaw Herald*. Moose Jaw, SK, December 4, 1973.

²¹⁵ “Saskatchewan Indians named to board of new legal clinic” *Saskatchewan Indian*. Volume 3, number 12, December 1973, p 3.

groups, Métis society locals, Indian reservations, the farming sector, schoolteachers and other interested individuals taking part.”²¹⁶ The Pasqua Community Legal Services Society formed by April 1974 to provide legal services to northeastern Saskatchewan. The first executive was made up of community members from Armit, Nipawin, Carrot River and Kelvington.²¹⁷ A Prince Albert group consisting of a “cross-section of poverty, native, labor and other organizations” met with Smith in March 1974. The group intended to seek recognition as a community legal services board and Smith confirmed the group appeared to be the kind envisioned by the proposed legal aid legislation.²¹⁸

In the latter part of 1973, a group of Regina citizens set up a board of directors and incorporated the Regina Community Legal Services Society under *The Societies Act*.²¹⁹ The board was comprised of representatives of the Department of Social Services, the Regina Family Services Bureau, the Native Alcohol Council, Outreach and the John Howard Society. Margery Heath, who had been a member of the Carter Committee and a member of the Seekers of Security program, also sat on the board.²²⁰ In addition to the board, the society had 65 members.

With a four-month, \$2,500 grant from the Human Resources Development Agency, the Regina society opened an office on South Railway Street in February 1974. The clinic was staffed by two full-time paraprofessionals: Bill Howe, who had gained experience as a volunteer at a legal advice clinic at the Regina Public Library’s Connaught Branch,²²¹ and Donna Ross, a legal secretary with 15 years of experience. Ross and Howe worked with the assistance of the Regina Bar Association, whose lawyers offered free consultation services, to provide free legal advice on all matters not covered by the 1967 *Saskatchewan Legal Aid Plan (Criminal Matters)*.²²²

In the first month of operations, clinic staff received 150 phone calls and assisted 50 people with litigation or potential litigation.²²³ They answered many questions about women’s rights. Ross noted there were many women who didn’t know their rights or that they were entitled to spousal support.²²⁴ Most of the litigation files concerned family and matrimonial problems such as divorce,

²¹⁶ “Large turn-out for legal aid meeting” Unknown newspaper. February 1974.

²¹⁷ “Legal service plan started” *Regina Leader Post*. Regina, SK, April 19, 1974.

²¹⁸ White, Geoff. “Group Seeks Recognition As A Legal Services Board” *Prince Albert Daily Herald*. Prince Albert, SK, March 8, 1974.

²¹⁹ “Aid program opens doors” *Regina Leader Post*. Regina, SK, February 23, 1974, p 3.

²²⁰ “Legal aid society business booms” *Regina Leader Post*. Regina, SK April 29, 1974, p 8.

²²¹ Bill Howe began law school at the University of Saskatchewan’s College of Law later that year and went on to practice in Regina for over 40 years.

²²² “Aid program opens doors” *Regina Leader Post*. Regina, SK, February 23, 1974, p 3.

²²³ “Legal aid use surprising” *Regina Leader Post*. Regina, SK, March 20, 1974, p 3.

²²⁴ “Legal aid society business booms” *Regina Leader Post*. Regina, SK April 29, 1974, p 8.

separation and custody of children but some concerned landlord and tenant disputes, debt and consumer problems and two files were of a criminal nature.

In addition to providing legal assistance, clinic functions included acting as the legal arm of citizens groups, conducting public information and education programs about the law, making recommendations to the government about law reform and acting as a liaison among community groups. To assist the clinic's staff, 15 Regina lawyers had donated their legal services to the clinic on a regular basis.²²⁵

By the end of April, the Regina clinic had managed roughly 130 court cases and 250 inquiries. About 30 divorce cases were pending trial but there were not enough volunteer lawyers available to take those cases to court. The clinic began advertising for a full-time lawyer to help with the exponential increase in requests for legal assistance and to take cases to court.²²⁶

The Regina clinic moved to the 2300 block of 11th Avenue at the beginning of May, and by mid-July hired Gerry Allbright as its first full-time lawyer and legal director. Business was still booming. The staff had grown to seven non-lawyers, including Heath and the original employees, Howe and Ross. The clinic had by that time 300 files. One hundred were divorce cases, many of them a result of marital breakdown that had occurred up to 15 years before, but the couples had not been able to afford to get a divorce.²²⁷

The basic problem, as the staff saw it, was that people did not know their rights. Howe opined that all tenants should have a copy of *The Residential Tenancies Act*. Staff planned to offer education programs on women's rights, buying a house and divorce procedures in the fall. The clinic functioned as a kind of legal social work, with an emphasis on the legal, which was possible because the clinic operated on global funding instead of fee-for-service financing. Howe noted that everyone had a family doctor but very few had a family lawyer, someone to call on when they needed advice. Even if a private lawyer might not ask for a fee, people still felt as though they could not approach a lawyer without money. But a legal aid clinic at street level with large glass windows that allowed people to see that others were inside seeking assistance was much more welcoming. The outlook at the clinic was optimistic. One of the staff declared they would take on the world.²²⁸

²²⁵ "Legal aid use surprising" *Regina Leader Post*. Regina, SK, March 20, 1974, p 3.

²²⁶ "Legal aid society business booms" *Regina Leader Post*. Regina, SK April 29, 1974, p 8.

²²⁷ Slater-Smith, Colleen. "Clinic pioneers legal aid in province" *Regina Leader Post*. Regina, SK, July 23, 1974, p 3.

²²⁸ *Ibid.*

Chapter 7

Leading the Way: The Creation of Saskatchewan's Community Clinic Legal Aid Plan

When, in December 1973, Attorney General Romanow introduced Bill 43, proposed legislation to establish a comprehensive legal aid program based largely on the Carter Committee recommendations, he told the press: "It's high time that a legal aid plan be developed which not only allows the poor to enforce their rights in the same way as the rest of the population but which also assists them to overcome the need of state services such as legal aid and welfare."²²⁹ The Carter Committee clearly had the government's ear. When they reported the government listened and adopted most of the innovative and progressive recommendations, not the least of which was the concept of a community board running a law practice, which was almost unheard of at the time.²³⁰

Though he'd publicly expressed his reservations about both a fee-for-services system and community-controlled clinics,²³¹ the Attorney General now expressed enthusiasm for the decentralized, community clinic plan and gratitude to the Federation of Saskatchewan Indian Nations and others for pointing out the need to place a heavy emphasis on the prevention of legal problems as well as dealing fairly with them once they arose. Saskatchewan was leading the way in legal aid.²³²

However, the proposed legislative scheme was criticized immediately. Though he was generally pleased with it, Roger Carter expressed concern that the province had the ability to control the legal services definition and could therefore restrict the range of services that could be offered by the clinics. He understood the government had to keep an eye on controlling costs but felt cost control could be achieved by rolling out the program in stages in order to assess precise costs, and then budgeting accordingly.²³³

²²⁹ "Bill-43 — Legal Aid Plan With A Difference" *Prince Albert Daily Herald*. Prince Albert, SK, December 14, 1973.

²³⁰ William Wardell, K.C., September 6, 2023 personal interview.

²³¹ "A-G opposes fee-for-service legal aid" *Saskatoon Star Phoenix*. Saskatoon, SK, August 24, 1973, p 3.

²³² "Bill-43 — Legal Aid Plan With A Difference" *Prince Albert Daily Herald*. Prince Albert, SK, December 14, 1973.

²³³ "Prof. Carter questions legal aid act" *Saskatoon Star Phoenix*. Saskatoon, SK, January 19, 1974, p 3.

The Saskatchewan Association on Human Rights²³⁴ suggested community boards be given the responsibility to decide which legal services to provide.²³⁵ Though Marty Irwin, then director of the Saskatoon Legal Assistance Clinic, felt confident the government would fully implement the Carter Committee's recommendations regarding the wide range of services, and there were no obvious strings attached to the money going into legal services, he noted that lawyers dealing with government and government agencies, as they regularly did at the Saskatoon clinic, must always be on alert to the assertion of control through government funding.²³⁶

The Saskatoon Legal Assistance Clinic's board was also concerned. The clinic had grown to three full-time lawyers (including Irwin), two articling students and one paraprofessional (a community development worker) along with 11 third-year and 10 second-year law students who worked part time.²³⁷ They were providing a wide range of services and opposed any attempt at restricting the kind of work they could do. They wanted to be able to "raise hell with government departments" without the fear of losing funding.²³⁸ They'd opened 3,000 files in the previous year, had roughly 1,500 active files²³⁹ and were about to run out of the federal funding they'd enjoyed since 1971. Responsibility to fund that clinic had been passed on to the provincial government.

Near the beginning of January 1974, the clinic's board submitted a funding request to the province to keep the clinic running after March 31 when federal funding ran out. The province responded not to worry. But the board and staff were not content with that answer and demanded a meeting with the Attorney General. The meeting took place on a Saturday at the end of February. The group of 30 individuals concerned about the future of the clinic took the opportunity to assail Attorney General Romanow with their demands. In addition to the guarantee of an unrestricted range of service, they opposed the "token" community participation in the proposed legislation and demanded at least parity representation for community clinics on the proposed provincial commission. As for the funding, the Attorney General was 99.9 per cent sure the

²³⁴ The Saskatchewan Association on Human Rights was a voluntary non-profit organization that investigated and arbitrated complaints falling outside the jurisdiction of organizations such as the Ombudsman and Saskatchewan Human Rights Commission: <https://www.connexions.org/CxLibrary/CX2994.htm>

²³⁵ "Possible legal aid limits worry human rights body" *Regina Leader Post*. Regina, SK, February 18, 1974, p 3.

²³⁶ Cresswell, Dean. "Legal Services Act questioned" *Saskatoon Star Phoenix*. Saskatoon, SK, January 11, 1974, p 3.

²³⁷ *Ibid*.

²³⁸ Taylor, Len and Smith, Gary. "Legal Assistance Clinic Threatened" *The Sheaf*. University of Saskatchewan, Saskatoon, SK, February 27, 1974.

²³⁹ Cresswell, Dean. "Legal Services Act questioned" *Saskatoon Star Phoenix*. Saskatoon, SK, January 11, 1974, p 3.

clinic would get its money. However, they would have to wait until at least March 15 when the Treasury Board would decide the question.²⁴⁰

Others also expressed concern that the proposed provincial commission would have too much control over community boards. Henry L. Siwak, president of the Prince Albert Bar Association, said that although the government had claimed that community boards would be independent of the government, the fact that the provincial government would appoint the majority of commission members, who would, in turn, give approval to the local boards, meant that control of the local boards would effectively be maintained by the government.²⁴¹ To ensure community control, the Saskatchewan Association on Human Rights suggested that at least one member from each clinic should be on the provincial commission.²⁴²

The Prince Albert community group vying for recognition as a community legal services board under the new scheme also expressed its concern that too much power over community boards would be vested in the hands of the provincially appointed commission. John Keiser, a spokesperson for the group, asserted that the delivery of legal services should be firmly in the hands of a democratically elected community board that included client and client group representation. Those groups using the services should, he asserted, have a role in determining board policy.²⁴³

The Law Society of Saskatchewan expressed concern about the proposed use of paraprofessionals, alleging that under the proposed scheme people without proper qualifications would be practicing law, creating second-class legal services for the poor. It was of fundamental importance to the Law Society that legal work for needy persons be done only by professionally trained lawyers with professional accountability. Second-class services for the needy should not be tolerated.²⁴⁴ The Law Society submitted that the proposed legislation be amended to ensure paraprofessionals were supervised by lawyers.²⁴⁵ The Saskatchewan Council of Anti-Poverty Organizations criticized the Law Society for its stand on the use of paraprofessionals, who would be assistants to lawyers, much like nurses were to doctors.²⁴⁶

²⁴⁰ Taylor, Len and Smith, Gary. "Legal Assistance Clinic Threatened" *The Sheaf*. University of Saskatchewan, Saskatoon, SK, February 27, 1974.

²⁴¹ "Act Lacks Eligibility Guidelines" *Prince Albert Daily Herald*. Prince Albert, SK, December 14, 1973.

²⁴² "Possible legal aid limits worry human rights body" *Regina Leader Post*. Regina, SK, February 18, 1974, p 3.

²⁴³ White, Geoff. "Group Seeks Recognition As A Legal Services Board" *Prince Albert Daily Herald*. Prince Albert, SK, March 8, 1974.

²⁴⁴ Cresswell, Dean. "Law society fears poor legal services" *Saskatoon Star Phoenix*. Saskatoon, SK, December 15, 1973, p 4.

²⁴⁵ Owen, Ed. "Legal aid bill may be changed" *Regina Leader Post*. Regina, SK, March 22, 1974, p 3.

²⁴⁶ "SCAPO critical of law society" *Saskatoon Star Phoenix*. December 22, 1973.

Eligibility for legally aided services was not specifically set out in the proposed legislation, which was general in order to give those who would be administering it flexibility to meet developing situations.²⁴⁷ However, some were concerned about the lack of eligibility guidelines in the proposed legislation. The Law Society asserted that, in the interests of those who would be served by the plan, the legislation should clearly limit legal aid to the needy and specify eligibility criteria.²⁴⁸ Others asserted that the community boards should have the ability to determine financial eligibility.²⁴⁹

The Blakeney government passed *The Community Legal Services (Saskatchewan) Act, 1974*,²⁵⁰ in August. Its objective, to provide civil and criminal legal services to people and organizations unable to secure them from their own resources, was set out in section three. The Act established the Saskatchewan Community Legal Services Commission, a corporate body²⁵¹ with powers to receive provincial funding and distribute it to Community Legal Services Boards.²⁵² A society incorporated under *The Societies Act*, could apply to the Commission for appointment as the board of the local clinic in its area.²⁵³

Once appointed, area boards entered into a contract with the Commission's provincial director to provide legal services under the Act.²⁵⁴ The Commission could also revoke an area board's appointment, or withhold its funding, in specified circumstances, such as where the board acted contrary to the contract, became inactive, ceased to act fairly toward those it was mandated to assist, failed to follow instructions of the provincial director or where the commission believed it was no longer in the public's interests to have that society act as the board.²⁵⁵

Area boards were responsible for administering funds received from the Commission to operate the local clinic. Boards hired and fired staff, though clinic directors were employed by the Commission and the hiring and firing of lawyers was subject to Commission approval. Boards were responsible for all day-to-day necessities of running a legal services clinic including finding office space, paying rent and purchasing office supplies and furniture.²⁵⁶

²⁴⁷ "Prof. Carter questions legal aid act" *Saskatoon Star Phoenix*. Saskatoon, SK, January 19, 1974, p 3.

²⁴⁸ Cresswell, Dean. "Law society fears poor legal services" *Saskatoon Star Phoenix*. Saskatoon, SK, December 15, 1973, p 4.

²⁴⁹ "Possible legal aid limits worry human rights body" *Regina Leader Post*. Regina, SK, February 18, 1974, p 3. White, Geoff. "Group Seeks Recognition As A Legal Services Board" *Prince Albert Daily Herald*. Prince Albert, SK, March 8, 1974.

²⁵⁰ S.S. 1973-74, c. 11.

²⁵¹ *Ibid*, s. 4.

²⁵² *Ibid*, s. 10.

²⁵³ *Ibid*, s. 14.

²⁵⁴ *Ibid*, ss. 8(c) and 15 (c).

²⁵⁵ *Ibid*, s. 14.

²⁵⁶ *Ibid*, s. 15.

The Commission was responsible for setting policies, procedures and guidelines needed to determine eligibility and under which the boards would deliver legal services, as well as evaluating the legal services provided under the Act. The Commission was also responsible for setting the tariff of fees and administering payments for private bar lawyers working under the Act, as well as maintaining a panel of lawyers willing to take legal aid files. The Commission could also encourage and assist Canadian university undergraduate law programs that had objectives consistent with Saskatchewan's new legal aid system and authorize boards to use full-time university law students in providing legal services, so long as they were properly supervised.²⁵⁷

All legal services, subject to the choice of counsel available for *Criminal Code* and federal offences, conflict cases or other situations where it was improper or impossible for a certain lawyer to act, were to be provided by employees of a Community Legal Services Board or the Commission.²⁵⁸ Under the new legislation, a person charged with a *Criminal Code* offence, or an offence under any other federal statute, punishable by death or life in prison, could choose any panel lawyer in the province. If the offence was not punishable by death or life in prison, he could select a panel lawyer residing and practicing in the area in which the applicant resided or in which he would be tried. The choice of counsel provisions applied across the entire province and were operated on a fee-for-service basis.²⁵⁹ The Commission's provincial director was responsible for appointing counsel from the panel.²⁶⁰

Eligibility for services and the scope of services were provided for in regulations made under the Act. Those who received social assistance as the whole or part of their income, or whose income was less than would be received under social assistance, or whose income would be reduced to a level making them eligible for social assistance if they had to pay for a lawyer were eligible for legal services under the Act. Eligible clients could be required to make a contribution toward the cost of their legal services, but the contribution could not be so large as to reduce the client's income to a level where he would be eligible for social assistance.²⁶¹ Section 24 of the Act also provided that the Commission could require an applicant that it considered financially able to contribute towards the costs of his legal service, to pay a portion of the costs as specified by the Commission. Any amounts determined payable under this section were a debt owing, and to be paid, to the Commission.

²⁵⁷ S.S. 1973-74, s. 11.

²⁵⁸ *Ibid*, s. 3(1).

²⁵⁹ *Ibid*, s. 21.

²⁶⁰ *Ibid*, s. 17.

²⁶¹ Appendix G *Regulations Made Under The Community Legal Services (Saskatchewan) Act, 1974*, s. 2, *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

The scope of service was wide, excluding only fee generating cases.²⁶² Criminal appeals taken by the Crown were covered, but any other appeals, civil or criminal, required the prior consent of the provincial director or his designate.²⁶³

The original Commission consisted of three members appointed by community legal services board chairs from among their number,²⁶⁴ one member from the Law Society of Saskatchewan, appointed by the province but nominated by the Law Society,²⁶⁵ one member from the Law Society of Saskatchewan appointed by the Attorney General of Canada,²⁶⁶ three members appointed by the province²⁶⁷ and the provincial director who was to be appointed by the Commission, except for the first provincial director who would be appointed by the Attorney General.

Linton Smith was appointed the first provincial director with responsibility to act as secretary to the Commission, employ Commission staff, negotiate area contracts with boards, and other duties required by the Commission.²⁶⁸ Carter left his post as dean of the College of Law to help establish the new legal aid plan in the first year.²⁶⁹ He took the position of the first general counsel to the Commission, responsible for all the lawyers working under the plan. He would also act as a resource person for individuals working in the clinics and provide advice on legislative problems or amendments.²⁷⁰ Irving Goldenberg, who'd been a partner in the Goldenberg, Taylor, Tallis and Goldenberg law firm in Saskatoon, and actively involved as a volunteer supervisor²⁷¹ for the Saskatoon clinic, was hired as a senior staff solicitor with the Commission.²⁷²

²⁶² Fee generating services were any service which a solicitor would ordinarily render in civil matters on the understanding that he would receive no remuneration from the client except out of the proceeds generated through pursuing the matter: *The Community Legal Services (Saskatchewan) Act, 1974*, S.S. 1973-74, c. 11, ss. 2 and 3.

²⁶³ Appendix G *Regulations Made Under The Community Legal Services (Saskatchewan) Act, 1974*, s. 3, *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

²⁶⁴ Elton Davidge, community worker and chair of the Parkland Legal Assistance Society; Raymond Fox, native courtworker and chair of the Battlefords and Area Legal Services Society; and Ted Hayes, social worker and chair of the Regina Community Legal Services Society. Fox and Hayes resigned within the first year and were replaced by Ron Cole, community worker and chair of the South East Saskatchewan Legal Services Society and Anne Baszucki, community worker and chair of the Saskatoon Legal Assistance Society. *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

²⁶⁵ Silas E. Halyk, lawyer. *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

²⁶⁶ Ken Halvorsen, lawyer. Halvorsen resigned within the first year and was replaced by Robert Thompson, lawyer. *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975; "A-G proclaims legal aid plan" *Saskatoon Star Phoenix*. Saskatoon, SK, August 23, 1974, p 13.

²⁶⁷ Colvin Peyson, psychologist, chair; Nicholas Sherstobitoff, lawyer; and David Wooff, farmer. *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

²⁶⁸ *The Community Legal Services (Saskatchewan) Act, 1974*, S.S. 1973-74, c. 11, s. 8.

²⁶⁹ After his year with the Commission, Roger Carter returned to the College of Law as a professor. "Law dean named" *Regina Leader Post*. Regina, SK, January 21, 1974, p 11.

²⁷⁰ "Carter named counsel to legal commission" *Saskatoon Star Phoenix*. Saskatoon, SK, July 12, 1974, p. 3.

²⁷¹ William Wardell, K.C., September 6, 2023 personal interview.

²⁷² "Carter named counsel to legal commission" *Saskatoon Star Phoenix*. Saskatoon, SK, July 12, 1974, p 3.

The Commission's first office was located near the Saskatoon clinic on 20th Street West.²⁷³ Smith told the press that, under the new legal aid system, clinics would operate in same way as they were before the provincial scheme was in place. The only difference would be the funding, which would be handled by the Commission instead of federal and provincial grants directly to the clinics. The new program was expected to cost between \$1.7 and \$1.9 million dollars, of which the federal government would contribute roughly \$500,000 under the federal-provincial cost sharing agreement.²⁷⁴

²⁷³ "Carter named counsel to legal commission" *Saskatoon Star Phoenix*. Saskatoon, SK, July 12, 1974, p 3.

²⁷⁴ *Ibid.*

Chapter 8

Community Law in Action: 1974-77

After the establishment of Saskatchewan's community legal services system, Saskatchewan citizens, legal professionals and lay people alike, continued to organize and provide a wide range of legal services to the province's most disadvantaged people.

South West Community Legal Services Society

The South West Community Legal Services Society opened an office in Swift Current on October 15, 1974. Calvin Clark was the staff lawyer and legal director. The office also employed two paraprofessionals and one stenographer. To properly service the office's vast area of approximately 37,000 square kilometres, staff opened satellite offices in Kindersley, Maple Creek, Shaunavon and Ponteix which were open one day a week or one day every alternate week.²⁷⁵

In the first year, the South West office averaged 55 new cases each month. By early 1976, the clinic was hoping to hire a second staff solicitor to help manage the increasing caseload. In addition to criminal files, which could be referred to the private bar when the workload for clinic staff was too heavy, the clinic also had many matrimonial files, helped people with a wide range of issues from income tax problems to preparation of wills, tried to help citizens establish public education and preventative law programs and represented groups to bring about law reform advantages to poor people.

True to the spirit of the new community legal services plan, staff paid special attention to the social aspects of legal work. In one case, the clinic worked with a client who had an alcohol addiction. Several attempts at rehabilitation failed, but when the client was once again charged with a criminal offence, the clinic worked with the probation officer, the Alcoholism Commission and the Crown prosecutor to find an appropriate strategy for their client, who was facing jail. Jail would have been of no help to the client who needed extensive and intense counselling to contend with his alcohol problem. The Crown prosecutor agreed to an adjournment until legal aid staff could find treatment for their client. Though the Alcohol Commission was hesitant to accept the client into one of its treatment centres, staff were able to find a rehabilitation centre in Regina that would accept him. When the client returned to court after treatment, and upon

²⁷⁵ "Swift Current society busy" *Regina Leader Post*. Regina, SK, February 11, 1976, p 33.

receiving reports from the treatment centre and the probation office, the judge assessed a minimal fine instead of jail.²⁷⁶

Parkland Legal Assistance Society

The Parkland Legal Assistance Society opened its Yorkton clinic in November 1974. By December 1975 the clinic employed Dave Plosz and Dave Bright as staff lawyers, Jim Cusack, a community development worker, and two office staff. About 75 per cent of the clinic's files involved criminal or family law matters. The clinic also provided a public service, speaking to groups, schools and individuals about the law, legal aid and human and property rights.

In its first year of operation, with a budget of \$107,927 (of which \$68,196 was for salaries), the clinic worked with 750 people, but that excluded the countless phone calls and visits to the office by people who only needed advice. The clinic covered an area of approximately 2,500 square kilometres. In one month, staff could travel 7,500 kilometres for a total of 90 hours of driving. At times, Magistrate's Court sat in three different towns at the same time, and the clinic's two lawyers would have clients in all three places.

The clinic had a good rapport with police, other lawyers and social service workers who often referred people to the clinic. Near the end of 1975, the clinic noticed a trend of an increasing number of juvenile clients. They weren't sure if this was due to an increase in juvenile crime or an increase in awareness about the clinic's services. Economic and cultural factors led to a disproportionate number of criminal files involving accused people who were Indigenous, so staff began working with the Yorkton Friendship Center with the hope that if young people got together to discuss their problems, the trend would decrease. Clinic staff were more deeply involved with their clients than lawyers in private practice, and their involvement did not necessarily end when the cases were resolved in court.

Both Plosz and Bright had left lucrative private practices to join Saskatchewan's community legal services system, where they escaped the more mundane aspects of private practice such as corporate law, dealing with income tax returns and mortgages. In fact, the clinic had few similarities to a private practice. Bright explained that, with the legal aid clinic, he had the opportunity to worry about principles and problems that were considered minor in private firms but important to clients.²⁷⁷ Staff tried to prevent crime by instilling a sense

²⁷⁶ "Swift Current society busy" *Regina Leader Post*. Regina, SK, February 11, 1976, p 33.

²⁷⁷ Cusack, Tom. "A year of growth for legal aid clinic" *Regina Leader Post*. Regina, SK, December 5, 1975, p 25.

of pride in people who'd lost it by having to receive welfare or unemployment insurance. Often, when pride was returned, crimes were prevented.

Moose Jaw and District Legal Assistance Society

After being one of the originators of the Valley Legal Assistance Clinic, finishing law school and his articles in private practice in 1975, Mervyn Shaw was still interested in community action and in the new community legal aid program. The newly formed Moose Jaw and District Legal Assistance Society, which included Al Skagen of the Saskatchewan Council of Anti-Poverty Organizations, hired him as their first staff lawyer and legal director. The board also hired Maggie Hodgson as a paraprofessional and Yionna Clark, “the best legal secretary in Moose Jaw who knew everything about running a law office,” who'd been employed at Grayson & Company where Shaw had finished his articles.²⁷⁸

The three of them had barely started when Shaw received a call from the local registrar in Moose Jaw advising him that the judge knew the legal aid office was opening and wanted Shaw to get down to the courthouse. Shaw did not have a gown. He borrowed one from the sheriff's office. When he attended court, the judge asked Shaw to handle some contested divorces. That day, Shaw began a courtroom practice that spanned more than four decades.²⁷⁹

One morning in 1976, on her first day of work as a secretary at the Moose Jaw and District Community Legal Services office, Gladys Johnston stood along with Jim Bailey, who was starting as a staff lawyer, at the office door, waiting for it to open. Johnston expected something like a stuffed shirt atmosphere. Instead, she found it was the opposite, like working as a family — as a team. The office was above a furniture store, a large open space with one little room in the front part. Since there was a lot of empty space, staff used foam dividers to create cubicles. Shaw worked in a cubicle in the front. Clark worked next to him on one side. Bailey's desk was next to Shaw's, on the other side of a foam divider. Initially, Hodgson sat at a desk in the back and Johnston was in the front. Eventually, Johnston moved her work area to the top of the stairs and Hodgson moved hers into the broom closet close by. That left a large empty space in the back where Shaw sometimes facilitated community meetings.²⁸⁰

The people who came to the office for help had problems that ranged from small to significant. But even the smaller problems that would not have been a

²⁷⁸ Mervyn Shaw, K.C., August 4, 2023 personal interview.

²⁷⁹ *Ibid.*

²⁸⁰ Gladys Johnston, October 12, 2023 personal interview.

crisis for middle class people were important for their clients who often had nothing. When their clients came to the office, Johnston explained, “it was a safe place where they could bring their problems. For people who have nothing and they walk into an office that’s all polished and brass and the people in there have their suits and ties and looking like a million bucks, and you come in with your street clothes you feel like you’re a charity case. But when they came to our office, that was their office.”²⁸¹

The legal aid staff did mortgages, sometimes for low-income housing, and provided ongoing assistance in the event clients ran into trouble with the bank or with their house. They did social assistance and unemployment insurance appeals and helped people with landlord and tenant problems. They even looked after little amounts of money at one time, and acted as a trustee for one family.²⁸² The office was a “one-stop service station” for low income people, there to try to help people with their problems in life, as opposed to criminal law which was, almost, help for people when it was too late and they were already involved in the criminal system, had a court date or were in custody.²⁸³

Both Shaw and Hodgson were instrumental in the formation of the Moose Jaw Friendship Centre, the Moose Jaw Transition House and the Community Action Society, an organization dedicated to helping vulnerable people. Hodgson was a fireball. “She only knew one speed and that was full blast,” Shaw said.²⁸⁴ She was a good support for Shaw who was newer to community organizing. She “took her work to heart, very seriously. When her clients came in, she listened to the whole problem. She even took people for groceries on her day off because they didn’t have a vehicle.”²⁸⁵ She had an uncanny ability to dig out root causes of problems, working with the Community Action Society to ensure people in need were in touch with the right resources for help, and holding Social Services accountable for where they placed children, making sure they checked on them.²⁸⁶

Shaw also helped arrange housing for homeless people in Moose Jaw, at one time organizing a meeting with local organizations to discuss establishing a shelter for the homeless. Though they did not succeed in establishing a shelter,

²⁸¹ Gladys Johnston, October 12, 2023 personal interview.

²⁸² *Ibid.*

²⁸³ Mervyn Shaw, K.C., August 4, 2023 personal interview.

²⁸⁴ *Ibid.*

²⁸⁵ Gladys Johnston, October 12, 2023 personal interview.

²⁸⁶ After working for the Moose Jaw office for about five years, Maggie Hodgson, a member of the Carrier Nation, moved to Edmonton where she continued her activism in the area of addictions, suicide, sexual abuse, residential schools, family violence and mental health, and went on to earn an Honorary Doctorate of Laws from the University of Alberta (<https://indspire.ca/laureate/maggie-hodgson-2/>). Among her many accomplishments and awards, too numerous to list here, she co-authored four books and in 2006 was named an Officer of the Order of Canada (<https://ammsa.com/publications/alberta-sweetgrass/community-activist-receives-official-recognition>).

Johnston felt “it was a great meeting, recognizing the need that you don’t send people to jail just because they have no residence. When our mission was full and there’s no bed and nowhere to go, when you recognize a need you do something. It comes with caring for your clients.”²⁸⁷ Shaw later sat on the founding board of the Gamin-Abet group home that still operates today as a group home for vulnerable youth.

One of the Moose Jaw and District Legal Assistance Society’s early board members was Willy Hodgson (no relation to Maggie Hodgson), a nurse from Sandy Lake, Saskatchewan who was also studying social work. Shaw arranged a practicum for her at the Moose Jaw office, during which she realized the extent of bias against Indigenous people in the justice system.²⁸⁸ She worked alongside Shaw and Maggie Hodgson with community organizing, and went on to sit on the board of the Saskatchewan Legal Aid Commission.²⁸⁹

Qu’Appelle Region Community Legal Services Society

David Andrews spent the first four years of his career in private practice doing solicitor work like mortgages, foreclosures, wills and estates. But he’d grown up watching Perry Mason and nearly every case Mason, played by actor Raymond Burr, had was a murder in which he would break down a prosecution witness who would then confess that Mason’s client was not the killer. Andrews’ job sitting at a desk doing paperwork all day did not match up to all that. He’d heard young lawyers could get some good cases at one of the new community legal services clinics, so he put the feelers out. Irving Goldenberg and Gerry Allbright, who had succeeded Linton Smith in the role of provincial director for the Commission, wooed him. They took him for burgers and fries at a brand-new restaurant, McDonald’s, the first in Regina, and guaranteed that legal aid lawyers would always get paid as much as their counterparts with the Crown.²⁹⁰

²⁸⁷ Gladys Johnston, October 12, 2023 personal interview.

²⁸⁸

<https://www.thefreelibrary.com/Willy+Hodgson:+Saskatchewan+nurse+stood+with+pride+and+dignity+as+an...-a0156366451>

²⁸⁹ In 1997, Willy Hodgson was appointed a Lay Bencher of the Law Society of Saskatchewan. She served in that role until 2001. The Law Society created the C. Willy Hodgson Award in her honour to recognize the commitment and contributions she made to advancing equality and diversity in the administration of justice in Saskatchewan. The award is “presented to individuals or organizations which exemplify integrity, leadership and character” and have helped advance equity and diversity in legal education, the legal profession and/or the administration of justice in Saskatchewan or Canada.” Mervyn Shaw received the award in 2018 for working his entire decades-long career as legal director of the Moose Jaw office, “defending underprivileged clients, seeing the humanity in every individual, whatever the circumstances.” Craig A Zawada et al, *Benchers’ Digest*, 2018 31-2, 2018, CanLIIDocs 11159, <<https://canlii.ca/t/tst7>>. Willie Hodgson also received the Saskatchewan Order of Merit and was named an Officer of the Order of Canada.

²⁹⁰ David Andrews, K.C., July 18, 2023 personal interview.

The Qu'Appelle Region Community Legal Services Society opened its clinic in June 1975 at 604 12th Avenue in Regina, though it would serve an area outside Regina bounded by Wynyard, Milestone and Last Mountain Lake. Andrews took the job as legal director. The Qu'Appelle Region Community Legal Services Society, chaired by Andy Shepard, also hired Barry Hamilton as a staff lawyer and intended to hire two paraprofessionals, a summer student and two office staff.²⁹¹ Very few law offices hired female lawyers. When Andrews had been in private practice, coffee breaks consisted of the male lawyers getting together. Female staff were not allowed to join. At the Qu'Appelle clinic, Andrews took over as principal²⁹² of the articling student that had been articling under the first legal director. In the following year he hired Shelly Gavigan²⁹³ as an articling student, and the year after that, Margaret Gordon.²⁹⁴⁻²⁹⁵

The Qu'Appelle clinic's first office was a true legal storefront with big picture windows in the front. The building was also home to mice. They pitter-pattered in the ceiling and some mornings staff would open files to find evidence of their presence in tiny brown pellets. There was a garage attached to the back of the building for vehicles used by courier companies. But the staff was so busy handling increasing caseloads, their physical surroundings occupied a back burner. One day, investigators with Occupational Health and Safety came to the office and ordered staff to move within one month because the air was dangerously polluted with carbon monoxide. By the end of its second year in operation, the Qu'Appelle clinic was located at 281 Albert Street in Regina, where it remained for the next 17 years.²⁹⁶

The Qu'Appelle clinic's lawyers spent plenty of time on the road. Some of their circuit points were more than 200 kilometres from the office. Andrews began his legal aid career going to court in Fort Qu'Appelle on Mondays and Thursdays, Indian Head on Tuesdays and Broadview on Wednesdays, which was an almost impossible schedule since it left little time for research or preparation. Early on, the Commission purchased cars for the lawyers to drive, though in the early 1970s these cars did not have air conditioning or a radio, making for some long and grueling drives to work on hot summer days.²⁹⁷

²⁹¹ "Legal aid clinic in operation" *Regina Leader Post*. Regina, SK, June 2, 1975, p 4.

²⁹² Because David Andrews did not have the required years of experience to act as a principal, he received a special dispensation from the Law Society of Saskatchewan to take over as principal of the articling student.

²⁹³ Shelly Gavigan went on to a distinguished career as a law professor at Osgoode Hall Law School. She was appointed dean twice. <https://www.osgoode.yorku.ca/faculty-and-staff/gavigan-shelley-a-m/>

²⁹⁴ Margaret Gordon practiced at the Qu'Appelle Region Community Legal Services Society clinic from 1976 until 1984 when she moved to Wapella and practiced law in Moosomin and area. Gordon was appointed to the Provincial Court of Saskatchewan in 2007. <https://www.saskatchewan.ca/government/news-and-media/2007/september/14/new-judges-for-moose-jaw-la-ronge-and-regina>

²⁹⁵ David Andrews, K.C., July 18, 2023 personal interview.

²⁹⁶ The Regina Rural office moved to 1630 Park Street in the 1994-95 fiscal year: *Twenty-first Annual Report*. Saskatchewan Legal Aid Commission. 1994-1995.

²⁹⁷ David Andrews, K.C., July 18, 2023 personal interview.

Most of the criminal and civil²⁹⁸ work was in the trenches, handling the kinds of cases nobody notices most of the time, except for the clients and their lawyers. “Doom and gloom” law, as Andrews put it, the kind of law where people want to know if you can keep them out of jail or get their kids back. When attending court at his circuit points, Andrews noticed the criminal records of some of his clients showed several convictions on charges arising out of one incident. Without legal help, the clients didn’t know police were overcharging, had pled guilty to all charges and gone to jail as a result.

Within a year, Andrews tried his first murder case. He seldom had co-counsel when one was needed. Money was tight and there was never enough staff. Sometimes he would have the help of a secretary during crucial testimony to try to take notes of his cross-examination so that he could refer to contradictory evidence during his closing argument.²⁹⁹ One of his first murder trials involved a man who had killed his aunt. He was convicted. The judge imposed a lengthy sentence. Legal aid appealed the sentence and it was reduced. Years later, Andrews bumped into his former client outside the courthouse. He had done his time and was filled with remorse about taking his aunt’s life, but he’d become a respected Elder and was running an open custody home for youth, which Andrews felt he was well-suited for since he was “tough as nails.”³⁰⁰

Legal aid gave Andrews the opportunity to do the kinds of cases he could never have done in private practice, though they weren’t exactly the kinds of cases Perry Mason tried on TV. He won several murder trials in front of juries, but prosecution witnesses proved unwilling to blurt out his client’s innocence. Still, there was nothing like getting a not guilty verdict at the end of a murder trial, a feeling of being on top of the world. For his clients, these cases were paramount.³⁰¹ While the work was stressful, the staff could never lose sight of the fact that their lives were simple compared to the stress that most of their clients were going through. They worked hard to do what was necessary for their clients and to be of real service to them.³⁰²

Northern Legal Services Office

As a student at the University of Saskatchewan’s College of Law, Tim Quigley worked at the Saskatoon Legal Assistance Clinic, and when he graduated in the spring of 1974, took a summer job there. Shortly after, the Saskatchewan Community Legal Services legislation came into force. Quigley began his

²⁹⁸ The Qu’Appelle clinic offered the full range of services.

²⁹⁹ David Andrews, K.C., July 18, 2023 personal interview.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

articles at the Saskatoon clinic, then continued to work as a staff lawyer after he was called to the bar in 1975. In addition to some criminal law work and other civil law cases, when William Wardell became the Saskatoon clinic's legal director, Quigley took over the Sasknative Housing work, as well as other social housing projects. One project involved the building of six houses for families on social assistance through a provincial co-op housing program. The housing work included all aspects of conveyancing, registering mortgages and builders' liens, as well as other related work such as incorporating a non-profit to act as a general contractor for the building project.³⁰³

In the fall of 1976 Quigley left the Saskatoon clinic and began work as a staff lawyer in the Northern Legal Services Office in La Ronge.³⁰⁴ Jim Plemel,³⁰⁵ a classmate of Quigley's, was the legal director at the time. Aline Zakowsky continued to contribute her highly organized secretarial skills to the office. Vie Laffrenere, trained by Zakowsky in her "Office Procedures 101," also worked as a secretary, though initially her duties were somewhat open-ended. Early in her employment, due to unavailability of other staff, she was called on to fly to Sandy Bay to handle docket court by herself. A few months later, she was sent to La Ronge RCMP cells to interview a woman from Sandy Bay who'd been arrested for murder.³⁰⁶

Janice Gingell, called to the bar in 1976, joined the office shortly after Quigley. Between Quigley, Gingell and Plemel, they had about four years of experience at the bar. Early on, Quigley got a murder file out of La Loche on a Friday. The next morning, he took a call from the La Ronge RCMP about a woman in custody on another murder charge. In short order, he had two murder files and was on the road 15 or 16 days out of 20, leaving him precious little research and preparation time. The three young lawyers covered the entire northern half of the province.

Almost all cases were resolved in Magistrates' Court because the judges were familiar with the local situation and were more understanding than southern judges might have been. In addition, it was hard to get people to trials in Prince Albert, the closest superior court. The first murder trial Quigley did in Prince Albert required defence witnesses from the north, but there was no budget for

³⁰³ Tim Quigley, August 28, 2023 personal interview.

³⁰⁴ Lloyd Deshayé was appointed a magistrate on the northern circuit in 1975 alongside Claude Fafard. For a number of years, Bob Francis had been the sole magistrate resident in the north. When he left, Attorney General Romanow asked Deshayé to take his place. Deshayé initially refused because of the workload. He only later agreed to take the job on the condition that a second magistrate was appointed. Lloyd Deshayé, September 8, 2023 personal interview.

³⁰⁵ Jim Plemel was appointed to the Provincial Court of Saskatchewan in 2009. From 2014 to his retirement in 2021 he served as Chief Judge.

³⁰⁶ Sid Robinson (editor) et al. *The Northern Legal Aid Office (1974-1999)*. La Ronge, SK, July 31, 1999.

witness travel and accommodation. Quigley paid the expenses out of his own pocket. He was later reimbursed, though not until he wrangled with the Commission.

On the northern circuit, court was conducted in community buildings, such as band offices or halls. Docket court could take most of, or even a whole day, with up to 100 charges on the docket in some places. After five or six people on the docket were called and said they wanted a lawyer, the judge would adjourn for a short period so those people could speak to a lawyer. Since there were no interview rooms, Quigley would seek out an unoccupied corner of the hall, a place where he and his client might be afforded some measure of privacy, while he spoke to each person for about five minutes. During that time, he would try to get enough information to decide what to plead, or what court to elect, or what to present on a guilty plea or bail hearing. Following docket court, defence lawyers represented clients at preliminary hearings and trials.

Most of the time clients spoke at least some English but, in some communities, the primary language was Cree or Dene, and the courts did not supply interpreters. If trial witnesses, or the accused, did not speak English well enough to navigate in it, or at all, lawyers attempted to find someone in the court audience, who wasn't related to the accused or any of the witnesses, who could interpret. Since informal interpreters did not have training or expertise in translating, awkward situations for the judge and lawyers were not uncommon. At times the witness and the interpreter would have a long exchange, after which the interpreter supplied the answer of "yes" or "no" and Quigley was left in the unenviable position of not understanding what had taken place in the conversation. A few times, when the judge pronounced, "I acquit the accused," Quigley's client continued to sit next to him until he said, "You're free to go." Quigley got the uncomfortable sense that his client lacked understanding of the entire proceedings.³⁰⁷

Conflicts of interest were another uneasy reality of criminal law practices in the north. The chances were good in some places that a Crown witness would become the defence lawyer's client the next time court was held in that community. If the same thing happened in the south, the file would be referred to a private lawyer. But there were few private lawyers in the north, and no funding to fly them in.

Often at the end of a long court day, legal aid lawyers would see people with civil law problems like simple wills or estates or social benefits appeals, but

³⁰⁷ Tim Quigley, August 28, 2023 personal interview.

usually it was women with family law matters. On more than one occasion, a woman consulted Quigley for family law assistance because of a spousal assault and the husband later approached him for help with charges resulting from having assaulted his wife. In those cases, Quigley clearly could not act, but sometimes people didn't have any sense of the conflict of interest. Husbands would ask if Quigley could at least put in a good word for them. But the husbands were out of luck and forced to represent themselves.

The thorny language and conflict issues were troublesome for staff, putting them in difficult situations where, practically speaking, there wasn't a way around it. They would have to "turn a blind eye to what, in other circumstances would be very unsatisfactory."³⁰⁸

Though criminal defence was the primary practice, the Northern office also did family law and nearly every other kind of legal work. Sometimes people did not have documents to verify their birth. If they lived in an isolated northern community and didn't speak English, obtaining social benefits, like Old Age Pension, was nearly impossible. Legal aid staff stepped in to do detective work and helped many people obtain social benefits.³⁰⁹

The provincial government ran a housing program around that time to give people title to their houses, but when those homeowners died it was necessary to probate the estate in order to transfer the land. Many of the homeowners were indigent, as were their beneficiaries. The Northern office took care of probating a lot of these kinds of estates.³¹⁰ For Quigley, the estate and other civil work was a nice break from the crisis work of criminal and family law, and it was a desperately needed service.

In the Northern Legal Services Office, Quigley found the atmosphere much more collegial and collaborative than that of the Saskatoon clinic. Due to the vast distances in the north, organizing a community area board was difficult and still in progress and the clinic was governed by the Commission. All the staff, including the legal director, were employed by the Commission, and they were not yet unionized. They did not have the extra burden of internal divisions and pulled together to help each other with work and sometimes with their personal lives. At one time, one of the support staff came to work pulling a toboggan with her four little kids on it because she'd been abused by her husband. One of the

³⁰⁸ Tim Quigley, August 28, 2023 personal interview.

³⁰⁹ Ibid.

³¹⁰ Sidney Robinson, August 10, 2023 personal interview.

secretaries huddled with the children, while another translated from Cree so they could draft an affidavit to try to get some help for their colleague.³¹¹

The Saskatchewan Community Legal Services Commission's first annual report, called *Our Legal Aid Plan*, proclaimed that all of the Carter Committee recommendations were substantially achieved. The conclusion summed up an eventful first year:

The period covered by this report, although it has been a period of initial establishment has been marked by singular accomplishment. It has seen the development of the basics of a legal aid system established throughout the province. This has included the hiring of lawyers — a task which many had considered impossible. It has seen the commencement of the delivery of legal services throughout the province, and more importantly, has seen numerous programs of legal prevention and legal education commenced. Perhaps most importantly, it has been a period of time during which a diverse group has come together to jointly attack serious mutual problems. The co-operation of local groups and citizens, of client and potential client, of government, of the Attorney General of Saskatchewan, of lawyers (as employees of the plan and as private practitioners), of the Law Society and the various bar associations, of policemen, of local government, of social workers, and of many many more, has led to the successful development of a legal aid plan in Saskatchewan which is well on the road to becoming the first jurisdiction wide legal aid plan where community control is a reality rather than a myth.³¹²

Without a doubt, the achievements by members of the legal profession, community organizations, Attorney General Romanow, strong community-minded Saskatchewan citizens and many others were remarkable. By the end of August 1975, 13 community clinics across the province were operational and providing a complete range of services to their clients. All of them were governed by community boards, except the Northern Legal Services Office, which was governed by the Commission.³¹³ No other jurisdiction in Canada provided a more comprehensive range of services to eligible clients or the kind of community involvement in, and control of, legal services that the Saskatchewan plan did.³¹⁴

³¹¹ Tim Quigley, August 28, 2023 personal interview.

³¹² *First Annual Report*. Saskatchewan Community Legal Services Commission. 1975.

³¹³ *Second Annual Report*. Saskatchewan Community Legal Services Commission. 1975-1976.

³¹⁴ *Ibid.*

But the tension between community control of the clinics and government manifested quickly. As required by the Law Society, and section 31 of *The Community Legal Services (Saskatchewan) Act, 1974*, clinic lawyers set up trust accounts in the name of their clients who were required to pay for some out-of-pocket legal expenses like mortgage certificates and disbursements. In the fall of 1974, the provincial auditor requested access to audit the trust accounts of lawyers at the Saskatoon clinic. They refused, claiming solicitor and client privilege. Represented by Roger Carter and Ken Norman, they sued the provincial auditor for a declaration that he had no right to audit their accounts or access their books, records and documents relating to the accounts, and for a permanent injunction restraining the auditor from accessing or auditing the trust accounts.³¹⁵

The auditor counter-claimed for a declaration that he had a duty to audit the trust accounts and the right to have access to all their books, records and documents for the purpose of conducting the audit. In deciding the case, in 1978, Justice G.E. (Ted) Noble of the Court of Queen's Bench noted that, in day-to-day dealings with their clients, the role of a legal aid solicitor was no different than the role of a solicitor acting on behalf of a client in the traditional manner, except that no fee was paid by the client directly to the solicitor. He failed to see a difference between the solicitor and client relationship that existed in a traditional fee-for-service relationship and that of the lawyers employed by the Saskatoon Community Legal Assistance Society, which was set up for the limited purpose of establishing a legal way to compensate the lawyers hired to carry out the objectives of the legal aid scheme. The whole tenor of *The Community Legal Services (Saskatchewan) Act, 1974* seemed to protect the lawyers from interference by the area boards that governed the clinics, so far as the lawyers' duty to a client was concerned. The court was therefore loathe to permit the auditor to violate solicitor and client privilege without clear legislative authority. Justice Noble granted the order requested by the Saskatoon Legal Assistance Clinic's lawyers.³¹⁶

Early on, the Canadian Union of Public Employees (CUPE) began organizing the Saskatoon clinic's staff. Wardell, in the role of legal director, was called to testify in court for the certification, which was a contradiction for him since he was supportive of the union, but as legal director was excluded and had the job of protecting management's rights.³¹⁷ Rightly or wrongly, staff at the clinic viewed the Commission as part of the problem. They seemed to have trouble negotiating enough funding. They were always the guys in between and the

³¹⁵ *Wardell v. Lutz*, 1978 CanLII 1792 (SK KB), <<https://canlii.ca/t/gzhnr>>

³¹⁶ In 1979, the government amended the legislation so that the auditor could audit the trust accounts.

³¹⁷ William Wardell, K.C., September 6, 2023 personal interview.

guys who said no. Government officials may not have truly bought into the community law office model. It did not fit nicely into a government run social program. There were too many unpredictable needs for funding and clinic staff often sued the government or were very critical about legislation.³¹⁸

The community clinics operated much as they had before the Saskatchewan Community Legal Services Commission was established. Though they took on criminal matters, they also offered a wide range of services, essentially excluding only fee-generating cases. During its first full year of operation, April 1, 1975 to March 31, 1976, the total cost of the legal aid program was \$2.14 million. Across the province, over 15,000 legal aid files were opened. Roughly 7,000 were criminal files and 3,000 family law. The remainder of the files consisted of other civil law matters. By the end March 1976, the plan employed 31 lawyers, 19 paraprofessionals and 51 support staff. Gerald Allbright was by then the provincial director. The annual report for that year concluded that the Saskatchewan Community Legal Services plan had seen “orderly growth and development” and that consistently high-quality services were now available anywhere in rural or urban Saskatchewan.³¹⁹

In the plan’s third fiscal year, 1976-1977, total funding had grown to almost \$3.1 million, while the federal portion of the cost sharing agreement had grown from \$459,000 in 1975-1976 to \$710,000 in 1976-1977.³²⁰ Clinics continued to offer the full range of services and the Commission continued to refer a substantial number of criminal matters to the private bar.³²¹ But Colvin Peyson, Commission chair, reported, “with regret that due to monetary constraint the Commission has not been able to carry out its mandate in the areas of prevention and public education. It is my sincere hope that this would be remedied in the near future. In the past year, there has been a consolidation of services and any expansion that took place was of a temporary nature. If this plan is to continue to be the best in Canada, there must be room for growth from time to time.”³²²

Leadership of the Commission had remained stable under Peyson as chair, but in January 1977 Calvin Clark, who was the legal director of the South West Community Legal Services Clinic, took up the position of provincial director. He

³¹⁸ William Wardell, K.C., September 6, 2023 personal interview.

³¹⁹ *Second Annual Report*. Saskatchewan Community Legal Services Commission. 1975-1976.

³²⁰ *Third Annual Report*. Saskatchewan Community Legal Services Commission. 1976-1977.

³²¹ In the 1976-77 fiscal year, clinics in the southern half of the province completed a total of 1,339 *Criminal Code* indictable offences, and the Northern Legal Services Office completed 1,320. The total *Criminal Code* indictable offences completed by the private bar was 2,719. The Northern Legal Services Office intake statistics showed a much heavier caseload overall, 4,933 total intakes, compared to the next highest caseload, the Saskatoon Legal Assistance Clinic at 2,687 total intakes. *Third Annual Report*. Saskatchewan Community Legal Services Commission. 1976-1977.

³²² *Ibid.*

was the third person to fill that role in as many years. In his 1977 report, he pointed out that the Commission had been, “properly charged with the delicate balance of public accountability yet assuring the independent nature of the plan whereby the integrity of those delivering the service is not placed in jeopardy.” More to the point, he wrote, “The public’s right to service without political interference is obligatory.” He wrote of the vital and unique community participation aspect of the plan and the Commission’s obligation to incorporate it, as well as finding ways to prevent legal problems from arising. While progress had been made to fulfill the Commission’s far-reaching mandate to “appreciate the dimensions of law and poverty problems,” the plan had not yet reached its full potential.

Chapter 9

The “Fiscal Crisis”

Since its inception, the Commission had been accumulating a budget surplus each year. By the end of the 1976-1977 fiscal year, the total surplus was just over \$450,000.³²³ In the 1977-1978 fiscal year, the Commission decided to use some of the surplus to hire 16 new staff members, including support staff, paralegals and lawyers, in an attempt to alleviate workload issues in 10 of the 13 clinics. The Commission advised the clinics that the positions were temporary and contingent on increased funding in the following fiscal year.³²⁴

The Commission submitted a total budget request for the 1978-1979 fiscal year of just over \$4 million, a 26 per cent increase over the previous year. The request included an increase to retain the temporary staff, as well as normal operational cost increases. The government advised the Commission that times were tight, and any budget increase would likely be limited to six per cent.³²⁵ The Commission had the view that the future of the Community Legal Services Plan was in jeopardy due to this budgetary limit. At an emergency Commission meeting in early February, Commissioners passed a motion to appeal to the Attorney General for a hearing to present the “fiscal dilemma” facing the Community Legal Services Plan.³²⁶ At a second emergency meeting at the end of February, Commissioners resolved to inform the area boards that the Commission could not guarantee 1978-1979 funding for the 16 temporary employees. The affected community boards were advised to give lay-off notices to the temporary employees effective March 31, 1978, with the proviso that if funds became available, they would be re-hired to the extent funds were available.³²⁷

The following day, Andy Iwanchuk, a community legal services worker in the North Battleford clinic and president of CUPE Local 149, which represented most of the clinic’s employees, told the media that staff were “desperately overworked.” Tim Quigley, staff lawyer in the Northern Legal Services Office, said staff turnover was high because people were under extreme pressure to deal with files that were almost always of a crisis nature. He expressed

³²³ *Third Annual Report*. Saskatchewan Community Legal Services Commission. 1976-1977.

³²⁴ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978.

³²⁵ *Ibid.*

³²⁶ The hearing would include all Commissioners, the Commission’s Director of Administration, Kenneth Brigden, and the President of the Association of Community Boards, Lori Currie. Saskatchewan Community Legal Services Commission. *Edited Minutes of an Emergency Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, February 10, 1978.

³²⁷ Saskatchewan Community Legal Services Commission. *Edited Minutes of an Emergency Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, February 20, 1978.

frustration that the government had created a progressive legal aid system but then did not have the commitment to maintain it.³²⁸

The Battleford's and Area Legal Services Society resolved to ignore any layoff notices directed to its employees. CUPE urged other local boards to follow suit.³²⁹ The union was opposed to the NDP's labour policies generally including wage controls and job cutbacks in the civil service, and accused the government of trying to control the labour movement. They urged their members to oppose the NDP and develop alliances with other unions to fight the government's actions.³³⁰

The Commission expressed optimism that they would be able to keep the 16 positions and continued to negotiate with the province and CUPE.³³¹ At the beginning of March, provincial director Calvin Clark announced funds had been granted to keep the temporary employees until June 30. The alternative to keeping the employees was to increase referrals to the private bar, which was also costly. Clark told the press that if they applied pressure on one side, it would then squirt out another side.³³² The Commission submitted a supplementary application for funds at the end of March, emphasizing that the delivery model contemplated by the Community Legal Services Plan legislation was clinical and that, if additional funds were not found, the program's direction would have to be altered.³³³

In April, the Prince Albert and District Community Legal Services Society announced its decision, taken at an emergency meeting, to reduce services due to heavy caseloads that were beginning to take a toll on the quality of work in the clinic. The clinic halted services to prisoners at the Saskatchewan Penitentiary and the Pine Grove and Prince Albert Correctional Centres, cut back on clinic time in some of its rural satellite clinics and stopped attending Magistrate's Court at four rural points.³³⁴

The Commission asked the Prince Albert clinic to resume services to the correctional institutions by reducing services in other areas to a minimum³³⁵ and

³²⁸ McGee, Doug. "Legal aid union fighting feared layoff of workers" *Saskatoon Star Phoenix*. Saskatoon, SK, February 21, 1978, p 8.

³²⁹ "Board ignores legal aid layoff notices" *Saskatoon Star Phoenix*. Saskatoon, SK, February 28, 1978, p 3.

³³⁰ "CUPE urges oppose government" *Regina Leader Post*. Regina, SK, February 27, 1978.

³³¹ "Sixteen employees to be laid off" *Regina Leader Post*. Regina, SK, March 1, 1978, p 3.

³³² "Legal aid layoffs stalled three months" *Saskatoon Star Phoenix*. Saskatoon, SK, March 4, 1978, p 58.

³³³ Saskatchewan Community Legal Services Commission. *Edited Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, March 28, 1978.

³³⁴ Gannon, Kathy. "Legal aid office cuts back services" *Prince Albert Daily Herald*. Prince Albert, SK, April 13, 1978.

³³⁵ Saskatchewan Community Legal Services Commission. *Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, April 25, 1978.

referring files to the private bar.³³⁶ At the same time, Commissioners asked Clark to project when private bar referrals would absorb the full amount allocated in the 1978-1979 budget, and, one month before that time, advise everyone with power to make referrals, to cease making them because the Commission did not have the funds to continue paying for referrals. The Prince Albert clinic agreed to resume services as soon as caseloads reached a manageable level,³³⁷ though Terry Bekolay,³³⁸ the clinic's legal director, was of the view that a better solution would be to hire more permanent staff.³³⁹

At the end of May, CUPE was the prime mover in a protest over staff shortages and the looming layoffs.³⁴⁰ Clinic staff across the province participated in a one-day study session.³⁴¹ Lawyers honoured pressing court commitments but provided emergency service only. William Wardell was president of the Association of Clinical Lawyers, a group of 35 clinic lawyers that had formed mainly to ensure the clinics continued to be free of government influence and to support community control of them.³⁴² Wardell spoke on behalf of the Association lawyers in support of the one-day walkout, saying that they were "gravely concerned about the staffing problem," and the efforts of Commission, local boards and the union to explain the emergency to the government.³⁴³ The work stoppage ended after one day, but the union threatened further work disruptions if the Commission went ahead with the layoffs.³⁴⁴

The Commission received feedback on the supplementary application for funding at the end of May, cancelled the layoffs and made the 16 temporary positions permanent. The Commission realized that, though it had budgeted \$600,000 for private bar fees in the 1977-1978 fiscal year, the actual cost was just over \$900,000. In addition, a large number of cases that had been referred to the private bar in 1977-1978 had not been completed and the fees owing for these cases would come due in 1978-1979.³⁴⁵ The private bar referral budget was depleted so the Commission terminated all private bar referrals as of May 30.³⁴⁶

³³⁶ McGee, Doug. "Legal group to decide on restoring services" *Saskatoon Star Phoenix*. Saskatoon, SK, May 4, 1978, p 18.

³³⁷ Steffenhagen, Janet. "Jail legal aid services to return" *Saskatoon Star Phoenix*. Saskatoon, SK, May 10, 1978, p 8.

³³⁸ Terry Bekolay was appointed a judge of the Provincial Court of Saskatchewan in 1992.

³³⁹ "Demand has grown" *Prince Albert Daily Herald*. Prince Albert, SK, May 10, 1978.

³⁴⁰ "Legal Aid disruption ends" *Saskatoon Star Phoenix*. Saskatoon, SK, May 25, 1978, p 17.

³⁴¹ McGee, Doug. "Legal aid system stalled" *Saskatoon Star Phoenix*. Saskatoon, SK, May 24, 1978.

³⁴² William Wardell, K.C., September 6, 2023 personal interview.

³⁴³ McGee, Doug. "Legal Aid staff plans walkout" *Saskatoon Star Phoenix*. Saskatoon, SK, May 20, 1978, p 3.

³⁴⁴ "Legal Aid disruption ends" *Saskatoon Star Phoenix*. Saskatoon, SK, May 25, 1978, p 17.

³⁴⁵ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978.

³⁴⁶ Saskatchewan Community Legal Services Commission. *Minutes of an Emergency Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, May 29, 1978.

Clark cited the increase in cases and the legislative requirement to provide legal services to those who were eligible, along with a lack of restriction on private bar referrals, as the reason for the budget crisis. The Commission needed \$500,000 to continue operating for the rest of the year and \$400,000 to reinstate the use of private bar referrals. Until such time, clinic lawyers would have to handle all criminal legal aid files.³⁴⁷

The Saskatoon, Regina and Prince Albert clinics were the hardest hit by the decision to halt referrals to the private bar. Staff lawyers at the Saskatoon Legal Assistance Clinic spent most of their time on civil cases such as divorce, child custody and debt counselling.³⁴⁸ Ed Holgate, the Saskatoon Legal Assistance Clinic's legal director, speculated that government underfunding of the system was a tactic, in response to conflicts between legal aid clients and the government, particularly the social services department, to force clinic staff to give up handling civil law matters.³⁴⁹ The clinic's lawyers resolved to take as many criminal cases as possible, but if they were to take them all they'd have to cut back half to three-quarters or more of their civil cases.³⁵⁰

In the previous year, the Regina clinic had referred 1,500 criminal cases to the private bar, but now had to handle almost all criminal cases. In Prince Albert, staff began rejecting half of their applications due to a lack of resources.³⁵¹ The Qu'Appelle clinic already had a heavy criminal caseload, but they had to turn away some civil files. One temporary employee was laid off, but legal director David Andrews worried most about the possibility of having to refuse legal services at some of the clinic's more distant points.³⁵² The clinic had sub-offices at Fort Qu'Appelle, Punnichy, Indian Head, Broadview and Moosomin³⁵³ and served towns as far apart as Wynyard and Milestone. The Parkland clinic in Yorkton was already operating with a small staff of two lawyers, one paralegal and one secretary and did not have to begin turning away any clients.³⁵⁴

In response to the Commission's termination of private bar referrals, the Saskatoon Criminal Defence Lawyer's Association expressed concern about over-worked legal aid staff lawyers as well as limiting choice of counsel for accused people. The Association resolved to step in and offer free legal services

³⁴⁷ "Legal aid fund lack said deliberate" *Saskatoon Star Phoenix*. Saskatoon, SK, June 2, 1978.

³⁴⁸ *Ibid.*

³⁴⁹ "Legal aid lawyer raps government move" *Prince Albert Daily Herald*. Prince Albert, SK, June 2, 1978.

³⁵⁰ "Legal aid fund lack said deliberate" *Saskatoon Star Phoenix*. Saskatoon, SK, June 2, 1978.

³⁵¹ "Legal aid turning away half of all applicants" *Prince Albert Daily Herald*. Prince Albert, SK, November 24, 1978.

³⁵² Owen, Ed. "Low-income clients hit by legal aid budget cut-backs" *Regina Leader Post*. Regina, SK, October 23, 1978.

³⁵³ *Fourth Annual Report*. Saskatchewan Community Legal Services Commission. 1977-1978.

³⁵⁴ Owen, Ed. "Low-income clients hit by legal aid budget cut-backs" *Regina Leader Post*. Regina, SK, October 23, 1978.

to those who would normally receive state-funded services. Private bar lawyers agreed to act as duty counsel on a rotating basis and follow through with cases even if they weren't paid, until the end of June when they would assess the situation.³⁵⁵

Attorney General Romanow thought perhaps it was "time to take a second look" at where the province was going with legal aid.³⁵⁶ Clinics were set up to deal "first and foremost" with criminal cases. While taxpayers accepted that people facing a loss of liberty before the courts should receive legal aid, there was a question "whether the taxpayers should be picking up the tab for people in private legal battles." Though the legislation allowed legal aid for civil matters, the system had "gone off the tracks." The clinics had been referring too many criminal files to the private bar and spending too much time on civil files. "To say this is an open-ended plan ... that's nonsense," he told the press.³⁵⁷

In response to the Attorney General's assertions, Holgate produced excerpts from the 1974 *Hansard* containing quotes by the Attorney General about the importance of providing poor people with legal education and a means to enforce basic human rights and prevent legal problems. Holgate wanted to know where cuts should be made, saying, "if the attorney-general thinks that a husband charged with assaulting his wife should have legal aid, but that the wife should not have legal aid to get a restraining order, then he should clearly say so."³⁵⁸

The Attorney General insisted that the community legal services plan was his bill and his plan, and that it was, first and foremost a criminal legal aid plan.³⁵⁹ He criticized the Commission for deciding to make the 16 temporary positions permanent. Though he was studying the possibility of providing further funding to the Commission, any additional funds would come along with an independent inquiry into the legal aid system.³⁶⁰ Premier Blakeney insisted on running a fiscally responsible government, making it tough for Attorney General Romanow. He supported the cause, but he was also responsible for the cost of the system.³⁶¹

The system had seen such rapid growth in caseloads and personnel over its first three years that the Commission ordered its own review of the Community Legal

³⁵⁵ Johnsrude, Larry. "Lawyers pledge to serve poor" *Saskatoon Star Phoenix*. Saskatoon, SK, June 8, 1978, p 8.

³⁵⁶ "Legal aid lawyer raps government move" *Prince Albert Daily Herald*. Prince Albert, SK, June 2, 1978.

³⁵⁷ Lowrie, Wayne. "Legal aid woes tied to civil cases" *Saskatoon Star Phoenix*. Saskatoon, SK, June 3, 1978, p 3.

³⁵⁸ McGee, Doug. "Romanow statements challenged" *Saskatoon Star Phoenix*. Saskatoon, SK, June 9, 1978, p 15.

³⁵⁹ "Lack of funds curtails legal aid service" *Saskatoon Star Phoenix*. Saskatoon, SK, June 12, 1978.

³⁶⁰ "Romanow considering an inquiry to study lack of legal aid funds" *Prince Albert Daily Herald*. Prince Albert, SK, June 17, 1978.

³⁶¹ William Wardell, K.C., September 6, 2023 personal interview.

Services Plan.³⁶² Management consultants Peat, Marwick and Partners delivered their report at the end of June. Although the system had been in operation for only four years, it was considered to be one of the leading programs of its type in Canada. Both provincial and community views and needs were represented in the system. Staff were committed to their work, delivered a “more than satisfactory” standard of performance, had developed considerable expertise in poverty law, and showed concern and desire for improvements in the organization.³⁶³

The consultants found the organizational structure was complex, with many different management groups whose interests and individual objectives did not always concur with each other. The Commission communicated with 11 area boards (both the Moose Jaw and Northern offices were without area boards, and therefore governed directly by the Commission) and 13 clinics about policy, legal services and administration. Similarly, the clinics managed communications both from their respective area boards, which took a local orientation, and the Commission, which took a provincial outlook.³⁶⁴

Staff shortages had created a backlog of casework and unnecessary delays for clients. Local boards lacked knowledge because they were primarily laypeople and lacked training. Staff members were often confused about who their employer was, the local board or the Commission. Morale was declining among paraprofessionals due to lack of training, high workload and lack of communication with the Commission.

The consultants identified a list of organizational weaknesses, including a lack of financial control, weak program evaluation, and inconsistency in policies such as eligibility and client contributions. They concluded the Commission needed to be strengthened to increase its capacity as an effective resource centre, and, thereby, its credibility and respect. They suggested the Commission hire a full-time chair and a general counsel (the position had been vacant for some time) to provide professional guidance, counsel and resource materials to the local offices. In the result they would be able to create greater influence, guidance and leadership of the system as a whole, and clients would be better served.³⁶⁵

³⁶² Saskatchewan Community Legal Services Commission. *Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, January 24, 1978.

³⁶³ Peat Marwick & Partners. *The Saskatchewan Community Legal Services Commission Organization and Systems Study*. May 1978.

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

At the end of June, provincial officials advised the Commission that the government would not grant funds to pay for the 16 positions the Commission had made permanent. The Commission advised the affected clinics that there would be no funding for those positions past the end of July, subject to formal confirmation from the government, and that the clinics must continue to provide criminal legal services in all eligible cases where a member of the private bar was not appointed, and in priority to civil cases. The Commission froze all vacant staff positions and allowed for the appointment of private bar lawyers, subject to availability of funds, and only when the accused specifically requested or on authority of the provincial director.³⁶⁶

Layoff notices were given to 15 clinic employees, according to seniority, effective at the end of July. CUPE demanded the legal aid review the Attorney General had been hinting at for weeks. Staff morale was low and many doubted the government's commitment to the legal aid system or that any rational administrative process existed at the Commission.³⁶⁷

At the end of July, the government granted one-third of the Commission's \$900,000 supplementary funding request and directed that it be used to pay for private bar referrals. Though the Commission was an autonomous body, the government deemed it necessary to attach the directive to the additional funding to avoid jeopardizing the province's cost sharing agreement with the federal government, which required choice of counsel in certain cases. CUPE met with the Attorney General to appeal for funds to save the 15 staff that had been given layoff notices. But the Attorney General confirmed there would be no more funds for legal aid for the rest of the year and he was still considering a review to determine if the system was running efficiently.³⁶⁸ The union began planning a public relations campaign including a potential demonstration in Regina and meeting with Premier Blakeney to try to save the jobs.³⁶⁹

The Commission advised area boards that, due to financial restraints and the necessity of establishing priorities in staffing and delivery of services, the Commission's clinical budget had to be reduced by \$250,000 immediately. Each of the clinics was to advise the Commission by August 15 of their action plan to make the needed cuts.³⁷⁰

³⁶⁶ Saskatchewan Community Legal Services Commission. *Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, June 27, 1978.

³⁶⁷ Steffenhagen, Janet. "Legal aid workers get layoff notices" *Regina Leader Post*. Regina, SK, July 11, 1978, p 3.

³⁶⁸ Steffenhagen, Janet. "A-G rejects legal aid funds" *Saskatoon Star Phoenix*. Saskatoon, SK, July 25, 1978.

³⁶⁹ "Layoffs at legal aid clinics delayed" *Regina Leader Post*. Regina, SK, July 31, 1978, p 2.

³⁷⁰ Saskatchewan Community Legal Services Commission. *Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, July 18, 1978.

In response to the pending layoffs and budget cuts, the Saskatoon Legal Assistance Society board decided to shut down the clinic effective at the end of August, reasoning that they would be unable to provide adequate service in the face of a \$36,000 reduction to their \$200,000 budget, the loss of several positions, and the direction to handle all criminal legal aid files in the clinic. The clinic announced they would no longer accept new clients and lawyers would wrap up their caseloads where they could or give their clients their files along with a referral to the private bar.³⁷¹

The Law Society was of the view that, though legal aid needed to reassess priorities and focus on criminal cases, legal aid coverage of civil matters encroached on private practitioners. Instead, young lawyers should be given the chance to start out by taking the civil matters at lower fees without having to compete with government-paid lawyers.³⁷²

Peter Abrametz, president of the Prince Albert Bar Association, also criticized the closing. He scoffed at the suggestion that private bar payments caused the financial crisis and made the point that the private bar subsidized the legal aid system in time and effort because the tariff was so low. While he allowed that legal aid lawyers handled matrimonial cases well, he thought they were spending too much time on matters that amounted to nothing and should start handling cases on a priority basis.³⁷³

The Commission struck a committee to meet with the Saskatoon clinic board. After discussions, the Commission accepted the board's invitation to take over the clinic effective September 1. Mervyn Shaw, the Moose Jaw clinic's legal director, was hired to work in Saskatoon alongside a Commission staff lawyer and paralegal. By mid-August, Commission staff began providing legal services out of the Commission's 8th Street office³⁷⁴ while planning to hire laid off Saskatoon Legal Assistance Clinic staff on a priority basis and take over its 20th Street West premises after September 1.³⁷⁵

To deal with the budget cuts at the Moose Jaw clinic, staff had been trimming expenses wherever they could, including cutting back on travel and long-distance calls, and making more effort to collect out-of-pocket costs such as witness and court fees from clients. Prior to his move to Saskatoon, Shaw

³⁷¹ "Saskatoon legal aid clinic to close" *Saskatoon Star Phoenix*. Saskatoon, SK, August 1, 1978.

³⁷² Erb, Marsha. "Clinic closing criticized by law society president" *Saskatoon Star Phoenix*. Saskatoon, SK, August 2, 1978, p 1.

³⁷³ "Bar president suggests legal aid changes" *Prince Albert Daily Herald*. Prince Albert, SK, August 26, 1978.

³⁷⁴ "Lawyers hired to handle new legal aid program" *Saskatoon Star Phoenix*. Saskatoon, SK, August 11, 1978.

³⁷⁵ Saskatchewan Community Legal Services Commission. *Minutes of an Emergency Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, August 17, 1978.

considered taking an unpaid leave of absence from the clinic during which he would take private clients to “keep the wolves from [his] door.”³⁷⁶

In Prince Albert, clinic staff, along with the area board, “regretfully” decided to institute rotating six-week unpaid lay-offs rather than permanently lay off 2.5 staff positions, but warned this would further threaten services.³⁷⁷ All other area boards except North Battleford and Qu’Appelle provided budget cut plans.³⁷⁸ The Commission de-certified the North Battleford and Qu’Appelle boards for failing to comply with the request for budget cut plans,³⁷⁹ though the Commission hoped the North Battleford board would be re-established once the budget issues were handled.³⁸⁰ The Qu’Appelle board, however, “suffered primarily from inactivity.” Staff lawyers had been running the clinic.³⁸¹ Commission staff continued to examine the private bar budget to determine if any of it could be directed to the clinics to ease the difficulties caused by the budget cuts.³⁸²

The Association of Clinical Lawyers, CUPE and some clinics urged an inquiry into the legal aid system and called for the resignation of the Commission and Clark, its provincial director, alleging mismanagement of the budget by overspending on private bar referrals.³⁸³ Private bar criminal cases had risen from 2,200 in the first (partial) year of operation, to 4,770 at the end of March 1978. During the same period, private bar criminal costs had risen from \$221,266 to \$925,405. By the end of March 1978, the Commission’s \$450,000 budget surplus had been reduced to a \$57,000 deficit.³⁸⁴

Though Attorney General Romanow had been considering a full public inquiry, he decided on an independent review as a “fast and inexpensive” way to obtain an objective examination of, and recommendations on, *The Community Legal Services Act (Saskatchewan), 1974*, roles of the Attorney General, Commission and local boards and establishment of management and financial systems to ensure an efficient and economical delivery of legal aid services. He hired District Court Judge Harold McClelland for the job.³⁸⁵

³⁷⁶ “Legal aid boss may lay himself off” *Regina Leader Post*. Regina, SK, August 12, 1978, p 4.

³⁷⁷ “Legal aid board accepts cutbacks” *Prince Albert Daily Herald*. Prince Albert, SK, August 29, 1978.

³⁷⁸ Saskatchewan Community Legal Services Commission. *Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, August 28, 1978.

³⁷⁹ *Ibid.*

³⁸⁰ “Legal aid boards dismissed” *Saskatoon Star Phoenix*. Saskatoon, SK, August 29, 1978, p 5.

³⁸¹ “NB legal aid dismissals called temporary move” *Saskatoon Star Phoenix*. Saskatoon, SK, August 30, 1978, p 3.

³⁸² Saskatchewan Community Legal Services Commission. *Minutes of a Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, August 28, 1978.

³⁸³ “Resignations called for by legal aid clinic lawyers” *Prince Albert Daily Herald*. Prince Albert, SK, August 25, 1978.

³⁸⁴ *Fourth Annual Report*. Saskatchewan Community Legal Services Commission. 1977-1978.

³⁸⁵ “Romanow to seek opinion on legal aid legislation” *Saskatoon Star Phoenix*. Saskatoon, SK, September 18, 1978.

The Commission's legal services program was in full swing in Saskatoon by the beginning of September,³⁸⁶ but once Judge McClelland's review was announced, the Saskatoon clinic's area board asked to resume control pending the outcome of the review. The board began operating the clinic again at the end of September with the hope that the review would be favourable.³⁸⁷

Between September and December 1978 Judge McClelland conducted wide-ranging meetings with community legal services plan stakeholders, including all the area boards, clinic legal directors and some clinic staff, members and staff of the Commission, provincial and federal court judges, prosecutors and former community legal services lawyers (including Roger Carter). He placed newspaper advertisements inviting written comments or submissions and received briefs from some of the clinics and area boards, the union, FSIN and police, as well as numerous letters.³⁸⁸

In his December 1978 report, Judge McClelland characterized the system as a mixed fee-for-service and clinic system. Though clinic lawyers were not precluded from acting on criminal files, where private bar lawyers were available, primarily in larger centres, criminal cases had largely been referred to the private bar.³⁸⁹ The expensive mixed system resulted from the "admittedly mistaken impression" of the Commission that they could refer cases to the private bar without restraint. The clinics had been operating within the budgetary restraints imposed on them by the Commission, but then found themselves being accused of taking too many civil cases and being made to bear the brunt of the financial crisis by taking on criminal cases in the face of budget and staff cutbacks.³⁹⁰

In order to bring costs under control, Judge McClelland concluded the clinical system needed to be developed to the point where it was capable of handling most eligible criminal matters. He recommended the government repeal the section of *The Community Legal Services (Saskatchewan) Act, 1974* that allowed eligible applicants charged with any criminal offence to select a private

³⁸⁶ Erb, Marsha. "New Saskatoon legal aid program in full swing" *Saskatoon Star Phoenix*. Saskatoon, SK, September 16, 1978, p 8.

³⁸⁷ "Board takes temporary control of legal aid clinic" *Saskatoon Star Phoenix*. Saskatoon, SK, September 29, 1978, p 3.

³⁸⁸ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section XI.

³⁸⁹ Judge McClelland quoted Judge Tillie Taylor's prescient dissent to the Carter Committee's choice of counsel recommendations for criminal cases that the costs of the fee-for-service approach recommended in the report would rise steeply and quickly and the province would be unable to extend the salaried service as a result of being saddled with those costs: His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section VII.

³⁹⁰ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section II.

bar panel lawyer from the area in which he resided or was to be tried.³⁹¹ Eligible applicants charged with *Criminal Code* or other federal offences punishable by death or life imprisonment would still be able to select a private bar panel lawyer, as required by the federal-provincial cost sharing agreement.³⁹²

Judge McClelland recognized that his solution would be criticized for taking away choice of counsel, but felt it was necessary. By the end of March 1978, the legal aid plan's fourth year, private bar referral costs had risen to almost \$1 million. Limited clinic staff were also forced to devote a large percentage of their resources to criminal matters because of the "diseconomics" of the private bar approach. If that strategy continued there would be few resources left to provide civil law services essential to a large segment of the population. The private bar could still participate in community legal services plan referrals for cases with the possibility of death or life in prison or cases where there was a conflict or other reason why clinic lawyers could not act.³⁹³

While the area boards were the "foundation upon which it was hoped to build the legal aid system" and appeared to be given extensive powers in the legislation, board members were frustrated by a growing sense that they lacked much input into the system. Judge McClelland was impressed with the character and quality of the board members he met. They were "keenly interested in providing the best possible legal services to their areas." Many were of Métis or Indigenous descent, and some were representatives of anti-poverty or related groups. They served without pay, charging only mileage and out-of-pocket expenses, and some relinquished even that.³⁹⁴

Many of the clinics had just reached a stage where they considered themselves accepted by "needy people" as "their lawyers" but without adequate funding were unable to implement their legal education and preventative law mandates. Some limited education and prevention programs had been implemented but they were entirely without cost to the system since staff and board members volunteered their time for these programs. The Moose Jaw area board had

³⁹¹ If the government did not repeal section 21(b) then McClelland recommended it be amended to ensure some cost controls were enforced, such as instructions to lawyers on how to proceed and/or independent assessments of the merits of cases. These strategies could help with the tendency of the organization to pay maximum amounts for some referrals where certain lawyers entered not guilty pleas when a guilty plea was most appropriate, elected trial by a superior court, applied for bail and adjournments, then re-elected a lower court and entered a guilty plea. His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section VIII.

³⁹² *Ibid.*

³⁹³ *Ibid.*, Section VIII.

³⁹⁴ *Ibid.*, Section III.

resigned two years previously because members had felt they had no significant role to play, other than to approve routine business of the clinic.³⁹⁵

Some clinic legal directors also expressed the opinion that, in reality, the Commission was effectively in control of the clinics through its dictation of the terms of the area contracts. In addition, the Commission had begun implementing line by line control of the budgets in place of global funding whereby boards and clinics could overspend on one line item but make up for it by underspending on a different line.³⁹⁶

Judge McClelland noted the lack of harmony between all components of the system, and in particular the “we-they” dynamic that had existed for some time between the clinics and their boards and the Commission. To help address these issues he recommended at least two meetings per year between the Commission, area board chair and clinic directors to consider budget allocations and area contracts. He also recommended³⁹⁷ area contracts be based on global rather than line-by-line budgeting and that the Act be amended to remove the Commission’s ability to decertify a board without a hearing.³⁹⁸

Attorney General Romanow expressed his agreement with Judge McClelland’s recommendation to limit choice of counsel in criminal matters even though it could be controversial.³⁹⁹ In the spring of 1979 the government introduced amendments to *The Community Legal Services (Saskatchewan) Act, 1974* closely following Judge McClelland’s recommendations, including changes that would limit private bar referrals to cases where life imprisonment was a possibility.⁴⁰⁰ Though private bar referrals would be more limited than before, they were still less restrictive than the federal-provincial cost sharing agreement which stipulated that only clients charged with first and second degree murder must have the right to choose counsel. In Saskatchewan, any person charged with an offence that carried a potential life sentence, including rape, robbery and drug trafficking, would have choice of counsel.⁴⁰¹

³⁹⁵ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section VIII.

³⁹⁶ *Ibid*, Section III.

³⁹⁷ *Ibid*.

³⁹⁸ Judge McClelland made other recommendations such as the appointment of a provincial Attorney General representative to the Commission, removal of the provincial director position from the Commission to be replaced by one more area board representative, and continued co-operation with College of Law on the clinical law program.

³⁹⁹ “Romanow plans changes in legal aid” *Regina Leader Post*. Regina, SK, January 16, 1979, p 3.

⁴⁰⁰ Other amendments based on Judge McClelland’s recommendations were also introduced, including those that gave area boards more control, one that gave the provincial Attorney General representation on the Commission (Jeff Bugera, who was Assistant Deputy Minister in the Attorney General’s department, and had acted as a liaison between that department and the Commission, was appointed to the Commission) and the removal of the requirement that the provincial director be a lawyer. Thoner, Lawrence. “Legal aid amendments follow recommendations” *Saskatoon Star Phoenix*. Saskatoon, SK, April 20, 1979, p 32.

⁴⁰¹ *Ibid*.

Chapter 10

Hope to Heartbreak

Shortly before Judge McClelland's report was publicly released in January 1979, Calvin Clark resigned as provincial director. Linton Smith stepped in to take over as acting provincial director.

The position of general counsel to the Commission had been vacant for some time. The Commission had trouble finding a qualified person, though they'd advertised widely, and had decided to leave the position vacant during the financial crisis to save money. Judge McClelland recommended this role be filled to provide oversight and guidance to the many capable but younger lawyers employed by the clinics.⁴⁰² In early 1979, the Commission hired Harold Pick, an experienced trial lawyer who'd been a senior Crown prosecutor, as general counsel.⁴⁰³

In his 1978-1979 annual report, Commission chair Colvin Peyson expressed optimism that Judge McClelland had found the "cure" for legal aid. The Commission accepted the report, was implementing the recommended changes and hoped for "smooth sailing" after a turbulent time.⁴⁰⁴ He'd predicted a maximum eight per cent budget increase,⁴⁰⁵ but the Commission received a 14 per cent increase, a direct result of Judge McClelland's recommendations, bringing its total annual budget to \$4 million.⁴⁰⁶

In 1978, during the financial crisis, a group spearheaded by the La Ronge Native Women's Organization had formed the Yetha Ayisiniwuk Legal Services Society ("Yetha" is Dene for "northern" and Ayisiniwuk is Cree for "people")⁴⁰⁷ and applied to be certified as the Northern office area board. The Commission had denied the application for financial reasons.⁴⁰⁸ Yetha Ayisiniwuk was not deterred. The group, and other allies, met with Judge McClelland when he visited La Ronge as part of his review. He concluded the group was capable of operating the clinic and that a northern area board could help facilitate further understanding between northern residents and the rest of the province.⁴⁰⁹ He

⁴⁰² His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section VI.

⁴⁰³ "General counsel appointed" *Regina Leader Post*. Regina, SK, February 1979.

⁴⁰⁴ *Fifth Annual Report*. Saskatchewan Community Legal Services Commission. 1978-1979.

⁴⁰⁵ "Full-time chairman proposed as solution" *Regina Leader Post*. Regina, SK, January 18, 1979, p 3.

⁴⁰⁶ "Legal aid spending to rise by 14%" *Saskatoon Star Phoenix*. Saskatoon, SK, March 8, 1979, p 6.

⁴⁰⁷ Sid Robinson (editor) et al. *The Northern Legal Aid Office (1974-1999)*. La Ronge, SK, July 31, 1999.

⁴⁰⁸ Saskatchewan Community Legal Services Commission. *Minutes of an Emergency Meeting of the Saskatchewan Community Legal Services Commission*. Saskatoon, SK, August 4, 1978.

⁴⁰⁹ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section IX.

recommended that the Yetha Ayisiniwuk board be certified.⁴¹⁰ The Moose Jaw, Qu'Appelle and North Battleford legal service societies all began to once again operate the clinics in their respective areas. By early 1979, with the Commission's certification of Yetha Ayisiniwuk as the area board for the Northern office, for the first time in the short history of the community legal services plan, all 13 areas were governed by an area board.⁴¹¹

In August, Attorney General Romanow announced the appointment of Ian Wilson, who'd been Deputy Minister of Education since 1973, as the Commission's new provincial director and full-time chair. The combination of the director and chair roles meant that the Commission chair would no longer be elected and was instead appointed by the government.⁴¹² Though Judge McClelland had not recommended this change (he felt it was not needed so long as the Commission had a strong provincial director and an experienced general counsel),⁴¹³ the government interpreted his report as calling for a stronger central commission, while still allowing for area board involvement.⁴¹⁴ Though he lacked a legal background,⁴¹⁵ Wilson said he was not concerned about it since he could defer to legal counsel. His strength was in the area of administration, and he felt he could bring a commitment to the sound principles that had already been established in the legal aid program and some capacity for sound administration.⁴¹⁶

In the 1979-1980 annual report, the first for chair Wilson, and the sixth for the Commission, Wilson noted the short history of the organization had been "dynamic" and pointed out four developments: increased funding, increased services, greater responsibilities assumed by the boards and reduced private bar referrals. He expressed optimism that, while each area board was unique, there was a growing coherence to the provincial plan, resulting mostly from a closer understanding between the Commission and the Association of Area Boards, a

⁴¹⁰ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section X.

⁴¹¹ *Fifth Annual Report*. Saskatchewan Community Legal Services Commission. 1978-1979.

⁴¹² As a result, Colvin Peyson, who had been chair since the plan's inception, was no longer on the Commission. He had been "pushing for" a full-time chair and was "not unhappy to go." He felt he had "done his bit." "Legal aid body restructuring said based on judge's report" *Saskatoon Star Phoenix*. Saskatoon, SK, August 2, 1979, p 3.

⁴¹³ His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section V.

⁴¹⁴ "Legal aid body restructuring said based on judge's report" *Saskatoon Star Phoenix*. Saskatoon, SK, August 2, 1979, p 3.

⁴¹⁵ Judge McClelland recommended that the requirement that the provincial director be a lawyer be removed from *The Community Legal Services (Saskatchewan) Act* since it restricted the pool of applicants and the likelihood the position could be filled by someone with the necessary administrative skills. His Honour Judge R.H. McClelland. *A Judicial Review of the Legal Aid Plan of the Province of Saskatchewan*. December 15, 1978, Section V.

⁴¹⁶ "Legal aid body restructuring said based on judge's report" *Saskatoon Star Phoenix*. Saskatoon, SK, August 2, 1979, p 3.

group composed of representatives from all area boards that had formed early in the organization's history.⁴¹⁷

Premier Blakeney attended the official opening of the relocated Battlefords and Area Legal Services Society's clinic in the spring of 1980. He noted the new office was located in a neighbourhood occupied by legal aid clients and offered hours of service that were not offered by traditional law offices, helping to break down psychological barriers "inherent in modern social structures." He praised the move as an illustration of the "co-operative spirit of the local society and its desire to keep legal services at an approachable level," adding that the legal services program itself was an "outgrowth of the province's co-operative spirit." Wilson was also in attendance. He noted the province's commitment for further funding indicated a confidence in the future of the legal aid program.⁴¹⁸

The Commission had been unable to invest substantial funds in legal education, an important component of the program to many of its original proponents. Perhaps seeing the writing on the wall in the late 1970s, William Wardell, Roger Carter, Ken Norman, law students, the Saskatoon area board and others began lobbying the Law Foundation of Saskatchewan for funding to establish a legal education organization. Wardell became president of the Canadian Bar Association - Saskatchewan Branch.⁴¹⁹ After nearly three years of lobbying, the Law Foundation provided that funding. With additional support from other community organizations, including the Community Legal Services Commission,⁴²⁰ the Public Legal Education Association, or PLEA, was formed. PLEA held its first meeting in June 1980.⁴²¹ As a further way of showing the Commission's continued interest in legal education, Wilson sat on its board of directors.⁴²²

Throughout the 1970s the Blakeney government had continually delivered surplus budgets and Saskatchewan transformed from a "have-not" province into a "resource-rich haven studded with Crown corporations, nicely enhanced by Bay Street's seal of approval."⁴²³ The government had been prudent in its spending and used resource revenues to establish the Heritage Fund, a special

⁴¹⁷ *Sixth Annual Report*. Saskatchewan Community Legal Services Commission. 1979-1980.

⁴¹⁸ Lewis, Linda. "Premier opens legal offices" Unnamed newspaper. North Battleford, SK, 1980.

⁴¹⁹ William Wardell, K.C., September 6, 2023 personal interview.

⁴²⁰ Other PLEA supporters were the Saskatchewan Association of Legal Assistance Societies, Canadian Bar Association - Saskatchewan Branch, Attorney General's office, Law Society of Saskatchewan, College of Law, and the Saskatoon Public Library. Miller, John. "PLEA promoting understanding of law" *Regina Leader Post*. Regina, SK, September 26, 1980.

⁴²¹ Miller, John. "PLEA promoting understanding of law" *Regina Leader Post*. Regina, SK, September 26, 1980.

⁴²² *Seventh Annual Report*. Saskatchewan Community Legal Services Commission. 1980-1981.

⁴²³ Steed, Judy. "Cool and capable, that's Blakeney" *The Globe and Mail*. Toronto, ON, February 27, 1982.

“rainy day” account. At the beginning of the new decade, it had a \$1 billion balance.⁴²⁴

But by the end of the Commission’s 1980-1981 fiscal year, Wilson noted there was growing evidence of increased strain on the capacity of the system to deliver fully adequate services. Staff had increased from 131 the previous year to 143, but the private bar referral budget had been kept low at \$113,000 and 253 completed cases.⁴²⁵ The range of services had been preserved, but the strain began showing itself more clearly and publicly by the summer of 1981.

The Regina clinic began turning away some criminal cases including driving offences, common assault, theft and possession of stolen property under \$200 and possession under the *Narcotics Control Act* and the *Food and Drug Act*. Factors that led the clinic to cut back services included an increase in serious crime in Regina, and its impact on the courts, a reduction in staff due to summer holidays and a leave of absence, lack of money to refer cases to the private bar and a need for lawyers’ time to do a proper job of the more serious and complicated cases.⁴²⁶

Clinic staff were not happy about turning away cases. Marvin Bloos, a staff lawyer, told the press, “I don’t like it if someone is at home the night before their court appearance worrying about what will happen or scared of going to jail.” The staff was doing all they could to avoid that situation, including advising people on the range of sentences possible on a guilty plea or if there was no chance of jail. They had also prepared a brochure to help people who would be forced to represent themselves at a trial. The clinic hoped the service cutbacks would be restored in the fall once the clinic was back on full staffing capacity.⁴²⁷

Though the clinic had informed Pick, the Commission’s general counsel, of the list of cases they planned to turn away, he had not approved it, and Wilson had not been informed of it. Wilson admitted the private bar referral budget was “perhaps a little tight” and, though the Commission had been putting money into increased staffing, it had not kept pace with the caseload in Regina. He warned that there needed to be a reconsideration of the services available or the eligibility levels or a substantial increase in money.⁴²⁸

⁴²⁴ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 430-434.

⁴²⁵ *Seventh Annual Report*. Saskatchewan Community Legal Services Commission. 1980-1981.

⁴²⁶ Allan, Bill. “Legal Aid office forced to cut back” *Regina Leader Post*. Regina, SK, June 13, 1981, p 3.

⁴²⁷ *Ibid.*

⁴²⁸ “Effects beginning to show” *Regina Leader Post*. Regina, SK, June 15, 1981.

The Commission agreed to lend the services of Pick to the Regina clinic. Pick would handle 30 to 40 cases per month over the summer but would not be working full time out of the Regina office. Based on this, the Regina area board voted unanimously to suspend the list of cutback cases, though they did not know if Pick's help would be enough.⁴²⁹

The Saskatoon clinic had also adopted a list of charges it would not handle, but it was shorter than Regina's. It included only criminal drinking and driving and *Vehicle Act* and *Liquor Act* charges,⁴³⁰ but the clinic had also stopped extending legal aid for uncontested divorces, certain maintenance actions and matrimonial property disputes. As in Regina, Saskatoon staff were unhappy about the cutbacks, but budget increases had failed to keep up with inflation, and staffing was not sufficient to keep up with heavy caseloads.⁴³¹

The Prince Albert clinic was facing a similar challenge but Jim Crane, the legal director at the time, hoped to increase staff rather than cut back on the charges the office was able to defend.⁴³²

In Moose Jaw, of the 418 criminal cases the clinic had handled in the previous year, most were serious cases. Due to staff limitations, legal aid employees could not represent all eligible people. People with less serious cases were facing charges without a lawyer, resulting in the high proportion of serious cases handled by the Moose Jaw clinic.⁴³³ At some point, legal director Mervyn Shaw began telling potential candidates for jobs in the Moose Jaw office that when you're up to your arse in alligators, you forget to drain the swamp. The Moose Jaw clinic began evolving away from the rural office of the underrepresented or the marginalized and they were less and less able to get at the root causes of their clients' problems.⁴³⁴ Gladys Johnston remained proud to work with very skilled colleagues (from among them came one judge and two King's Counsel appointments).⁴³⁵ As the range of services narrowed, legal aid lawyers became even more skilled, the best in their field.⁴³⁶

Pick's help at the Regina clinic ended in September. Staff felt they could cope with the caseload but continued to seek increased resources and clarity about what, if any, priority the Commission wanted them to place on criminal cases.

⁴²⁹ Allan, Bill. "Legal aid cutbacks are killed" *Regina Leader Post*. Regina, SK, June 16, 1981, p 3.

⁴³⁰ Ibid.

⁴³¹ Erb, Marsha. "Legal aid clinic cuts services in Saskatoon" *Saskatoon Star Phoenix*. Saskatoon, SK, June 19, 1981, p 3.

⁴³² "Effects beginning to show" *Regina Leader Post*. Regina, SK, June 15, 1981.

⁴³³ "Family therapist needed in Moose Jaw" *Moose Jaw Times Herald*, Moose Jaw, SK, June 18, 1981.

⁴³⁴ Mervyn Shaw, K.C., August 4, 2023 personal interview.

⁴³⁵ To see a complete list of Saskatchewan Legal Services Commission staff lawyers who received King's Counsel appointments or were appointed judges of Saskatchewan Courts, visit Legal Aid Saskatchewan's website.

⁴³⁶ Gladys Johnston, July 2024 correspondence.

The Commission was working internally in an attempt to define what services clinics should be providing.⁴³⁷

By January 1982 the Saskatoon clinic was turning away one out of every three eligible cases. They continued to maintain the list of ineligible criminal cases and on the civil side were only handling child custody and emergency maintenance cases. But they were still swamped. Though the community legal services budget had been increased by 40 per cent in the previous three years, expanding services and increasing costs had taken all of the budget increases. Clinics in Saskatoon, Regina and Prince Albert were feeling the most pressure, but the smaller, rural clinics were still faring well.⁴³⁸

In April 1982, the Progressive Conservative Party of Saskatchewan won the provincial election under the leadership of Grant Devine. They had focused their campaign on the idea that the Blakeney government had been too involved in Saskatchewan's economy at the expense of private enterprise. Devine believed the province's economy would perform much better "once the constricting, socialist barriers to growth had been removed so that a favourable business climate could flourish."⁴³⁹

Gary Lane became the new Attorney General. At the end of June, he announced his intention to examine the legal aid plan. Though he couldn't be more specific, he said the review was in response to concerns raised by the private bar about the type of services being provided by the 13 clinics and to help identify the source of "problems plaguing" some of the area boards.⁴⁴⁰

At the end of September, the Commission once again instituted a freeze on private bar referrals. It was projecting a \$420,000 private bar bill, almost double the previous year. The Criminal Defence Lawyers' Association of Regina expressed concern that articling students would not get well-rounded articles for lack of criminal law files and criminal law expertise unless they worked in a legal aid clinic. They were also concerned about the four to six week waiting period to get an appointment with a legal aid lawyer which was causing delays in the judicial process. Increased private bar referrals could help ease the pressures, but Wilson did not want to see a repeat of the 1978 fiscal crisis. He

⁴³⁷ Allan, Bill. "Office says staff can cope" *Regina Leader Post*. Regina, SK, September 10, 1981, p 3.

⁴³⁸ Johnsrude, Larry. "Staff shortage hampers legal aid operations" *Saskatoon Star Phoenix*. Saskatoon, SK, January 16, 1982, p 1.

⁴³⁹ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 437.

⁴⁴⁰ Steffenhagen, Janet. "Legal Assistance system to be reviewed" *Saskatoon Star Phoenix*. Saskatoon, SK, June 23, 1982.

hoped that by freezing private bar referrals, the Commission could balance its budget by the end of the year.⁴⁴¹

At the end of October, Attorney General Lane appointed Murdoch Alexander (Sandy) MacPherson, Q.C., a recently retired Queen's Bench judge, to conduct a comprehensive review of the legal aid system. Though the Attorney General did not want to limit the parameters of Judge MacPherson's review, he pointed out that he was concerned that legal aid services be given efficiently to those who had a need for, and a right, to it. He allowed that economy was not the only test by which to judge efficiency, but he could not emphasize too strongly in difficult times the need for financial prudence.⁴⁴²

He also asked that Judge MacPherson test the Commission in all its functions, as well as the area boards and asked for his opinion about whether the area boards were "cooperating among themselves in order to create a proper, uniform organization throughout the province," and whether they were "necessary to provide the service to the public." The Attorney General also wished to be "reassured that Indians and other citizens of native blood" were being "well cared for in the system." He asserted that the quality of service for them should be as high as for any other group or individual. Noting the high levels of incarceration of status and non-status Indians and the Métis, he wanted Judge MacPherson to "give particular attention to their needs."⁴⁴³

The main thrust of Judge MacPherson's 12-page report released in February 1983 was that area boards should be relieved of their powers to govern legal aid clinics. He found that the "we-they" attitude identified in Judge McClelland's report still existed, and where there was not full cooperation, there could not be efficiency. The main problem was that the boards employed the lawyers and, being mostly lay people, were not in a position to assess the quality of services the lawyers provided.⁴⁴⁴

Judge MacPherson had identified quality of service as an issue when he had toured 11 of the community legal services clinics. During his tour he observed "not a few lawyers" whom he considered "incompetent to do the type of practice they were doing." These lawyers were young and had "seldom worked under competent and experienced seniors." They were thrown into court to learn from judges, opposing counsel and their own mistakes. No one seemed

⁴⁴¹ Kyle, Anne. "Legal aid clinic lawyers will temporarily handle all cases" *Regina Leader Post*. Regina, SK, October 2, 1982, p 3.

⁴⁴² The Honourable M.A. MacPherson, Q.C. *Report on Legal Aid by the Honourable M.A. MacPherson, Q.C. to The Honourable J. Gary Lane, Q.C., Attorney General of Saskatchewan*. February, 1983.

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

responsible for their performance. Staff turnover, ranging from a high of 51.5 per cent in 1978 to 23 per cent in the previous year, was “quite a significant consideration.” He had also heard complaints from judges about unnecessary court proceedings.⁴⁴⁵

Judge MacPherson’s solution was to place all legal aid employees under the direct authority of the Commission who would employ a senior lawyer to set standards throughout the entire organization. Responsibility for the quality of service delivered by an office would be “squarely on the legal director” who would be accountable to the Commission for all the work in the office. He suggested legal directors be paid additional amounts commensurate with the size of their responsibility, and that there be two legal directors in both Regina and Saskatoon where there were 10 or more staff lawyers and budgets of close to \$900,000.⁴⁴⁶

Judge MacPherson opined that that the legal aid plan was having a “most unfortunate effect” on the private bar since the bulk of criminal work was being done in legal aid clinics. As a result, junior private bar lawyers were strangers to criminal matters. Many advocates who Judge MacPherson respected had pressed upon him that they did not want to join legal aid, but they yearned for more criminal law work and asked only for minimal compensation. Though he acknowledged that his thesis was not likely to be welcome to a government in days of fiscal restraint, he nonetheless recommended that a portion of the Commission’s budget go toward private bar referrals. The details of that should be left to the discretion of the Commission, but he thought perhaps the use of private bar lawyers could make it possible to free up a legal aid lawyer for other work or reduce legal aid staff.⁴⁴⁷

Judge MacPherson found it sad to eliminate area board authority because “with one or two exceptions” those he had met consisted of “conscientious, intelligent people trying, within their limitations, to do a good job.” But he saw a continuing role for the area boards as advisors to the legal aid offices respecting the legal needs of their area. They would continue to be voluntary, non-profit organizations, but they would not receive funds from the Commission. The cost savings from elimination of area board travel and meetings was expected to be \$45,000. An additional cost savings of \$30,000 would come from the provincial auditor who would no longer have to employ private chartered accountants to

⁴⁴⁵ The Honourable M.A. MacPherson, Q.C. *Report on Legal Aid by the Honourable M.A. MacPherson, Q.C. to The Honourable J. Gary Lane, Q.C., Attorney General of Saskatchewan*. February 1983.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

audit the accounts of local offices, a necessity that arose from the words of *The Community Legal Services (Saskatchewan) Act* legislation.⁴⁴⁸

In response to Attorney General Lane's request to be reassured that the quality of service for status and non-status Indians and the Métis was the same as for everyone else, Judge MacPherson found legal aid lawyers were universally "greatly concerned by the problems of our native people" and expressed a sincere desire and intention to do everything possible on their behalf. He was confident that they did. He suggested that two members of the Commission be persons of Indigenous ancestry.⁴⁴⁹

Attorney General Lane said changes recommended in Judge McPherson's report could save as much as \$1 million in the current year. He hoped to save money by gradually reducing the number of employed lawyers and "downgrading offices."⁴⁵⁰ Judge MacPherson had noted most of the offices he visited were in commercial office buildings which were a "far cry" from storefronts in working class districts, were not in the tradition of those who serve the poor, and gave the appearance of being part of government.⁴⁵¹ By that time, most of the 13 clinics used office space either in government buildings or privately-owned buildings being leased by the government. The Department of Government Services paid for these spaces, saving the Commission about \$100,000 a year.⁴⁵² The Saskatoon Legal Assistance Clinic had moved to office space in a high-rise tower on Spadina Crescent, overlooking the river. Though the offices had a nice view, Wardell lamented the fact that, precipitated by the move and the shrinking range of services, the clinic's community base all but disappeared.⁴⁵³

Wilson agreed with Judge MacPherson's finding that the area board structure perpetrated a "we-them" attitude between the lawyers and the Commission. But, once the report's recommendations were implemented, organizational structures would not be much different from the past. The Commission would be responsible for all hiring and setting budgets for each office, compared to previously when the area boards hired all staff except lawyers. The Commission would also be responsible for setting policies, a job that was previously mostly the responsibility of each area board.⁴⁵⁴

⁴⁴⁸ The Honourable M.A. MacPherson, Q.C. *Report on Legal Aid by the Honourable M.A. MacPherson, Q.C. to The Honourable J. Gary Lane, Q.C., Attorney General of Saskatchewan*. February, 1983.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Steffenhagen, Janet. "Legal aid revisions seen as saving \$1 million" *Saskatoon Star Phoenix*. Saskatoon, SK, March 11, 1983, p 3.

⁴⁵¹ The Honourable M.A. MacPherson, Q.C. *Report on Legal Aid by the Honourable M.A. MacPherson, Q.C. to The Honourable J. Gary Lane, Q.C., Attorney General of Saskatchewan*. February, 1983.

⁴⁵² "Legal aid offices claimed too lavish" *Saskatoon Star Phoenix*. Saskatoon, SK, May 18, 1983.

⁴⁵³ William Wardell, K.C., September 6, 2023 personal interview.

⁴⁵⁴ Johnsrude, Larry. "Legal aid restructuring questioned" *Saskatoon Star Phoenix*. Saskatoon, SK, March 16, 1983, p 3.

Bev Schermann, president of CUPE, said the \$1 million savings could only be accomplished by massive staff reductions and corresponding reduction and removal of services to poor and Indigenous communities. She said other report recommendations, such as more private bar referrals, hiring more legal directors, training courses for paralegals, increased salaries for legal directors and changes in clinic names, would cost more money.⁴⁵⁵

Carter disagreed with Judge MacPherson's conclusions and opined that he had not had enough time to complete a "worthwhile investigation." He noted there was no "hard evidence" in the report to support Judge MacPherson's criticisms of the abilities of legal aid lawyers and suggested that the Commission's general counsel role could be expanded to mentor younger lawyers. In addition, the enquiry into legal aid should have been undertaken by a representative committee, as the original committee was. He pointed to the extensive consultations the original committee undertook with disadvantaged people, and the feel that these meetings, both formal and informal, gave the committee for the needs of potential clients of the system. He drew on the year he spent helping to set up the system to describe the sincerity, interest and competence of area board members and lamented the possibility of losing people of that character in the legal aid system.⁴⁵⁶

Carter pointed out that Saskatchewan was unique in its community control. In every other jurisdiction in Canada, legal aid was controlled either by a commission, legal aid society or the law society (the Ontario and New Brunswick plans were the only two still run by their respective law society). The main reason the Carter Committee had rejected a government-controlled system was because poor people were often in conflict with the government. He emphasized the importance of public legal education and the meaningful involvement of local people as underpinning the system and predicted local involvement would wither away if the boards were made advisory only.⁴⁵⁷

The Association of Community Legal Services Boards and 12 of the area boards met in Yorkton to discuss the report. They held a press conference after the meeting and criticized many aspects of the report including Judge MacPherson's failure to consult the public, legal aid employees and more board members, lawyers and judges. Judge MacPherson had misunderstood the "cornerstone of legal aid services" in the province which was community participation. They asserted that the area board-Commission antagonism was not a reflection of the

⁴⁵⁵ "Proposed legal aid changes seen hurting poor, natives" *Saskatoon Star Phoenix*. Saskatoon, SK, March 17, 1983, p 9.

⁴⁵⁶ Carter, Roger. "Local control essential to legal aid's effectiveness" *Saskatoon Star Phoenix*. Saskatoon, SK, March 3, 1983, p 5.

⁴⁵⁷ *Ibid.*

whole system. Instead, there was a “healthy tension” in board-Commission dealings.

Six of the Parkland Legal Assistance Society board members were Indigenous. Elton Davidge, a spokesperson for the board, said Judge MacPherson could have asked a “dozen questions” about Indigenous Peoples’ needs in the legal system but instead relied on a “motherhood statement that lawyers are doing their best.” Parkland area board members predicted a regression in the development of Indigenous-white relationships since the Indigenous influence on legal aid would be reduced.⁴⁵⁸

The Saskatoon Legal Assistance Clinic area board began planning a campaign to block the implementation of the MacPherson report. They advertised a public meeting, sponsored by various community groups,⁴⁵⁹ at the Frances Morrison Central Library in Saskatoon.⁴⁶⁰ A capacity crowd, including people from legal, union, academic, women’s, Indigenous and church groups, attended the meeting. Ron Camponi of the Saskatchewan Native Housing Corporation spoke at the meeting. He pointed out that Indigenous Peoples made up a large part of the working poor who use legal aid, and many sat on legal aid boards. He saw the boards as a “break in the bureaucracy” and feared that under a centralized system, lawyers employed by the government would control it. Kathy Boswell, a representative of the Saskatchewan Action Committee on the Status of Women, noted that the proposed cuts to legal aid would disproportionately affect women who earned less than men and were chief users of legal aid.⁴⁶¹

Representatives of the Prince Albert Bar Association, CUPE, the Association of Métis Non and Status Indians of Saskatchewan (AMNSIS), Interval House, John Howard Society and the Indian Métis Friendship Centre attended the annual meeting of the Prince Albert and District Community Legal Services Society. The president of the Prince Albert Bar Association said the MacPherson report was “for the most part inadequate” and should not be accepted by the government. He supported the autonomy of local boards and the need for legal aid to help people with no understanding of the legal system and prevent them from being coerced into guilty pleas. A spokesperson for AMNSIS said that legal aid had the support of the native community and that the community had “a lot of respect”

⁴⁵⁸ Vance, Catherine. “Board brands MacPherson legal aid report as ‘without merit’” *Regina Leader Post*. Regina, SK, March 16, 1983, p 27.

⁴⁵⁹ Community groups included the Saskatoon Legal Assistance Clinic Society, Self Help Council Saskatoon, Association of Clinical Lawyers, Law Union of Saskatchewan, Regina Community Legal Services Society and the Urban Core Support Network. Advertisement *Saskatoon Star Phoenix*. Saskatoon, SK, March 19, 1983.

⁴⁶⁰ Johnsrude, Larry. “Legal aid boards fight proposals for restrictions” *Saskatoon Star Phoenix*. Saskatoon, SK, March 18, 1983, p 11.

⁴⁶¹ Perry, Leslie. “Number of groups take swipe at legal aid report” *Saskatoon Star Phoenix*. Saskatoon, SK, March 26, 1983, p 3.

for legal aid lawyers. The president of the local friendship centre said friendship centres provincially supported a “meaningful legal aid system” that was responsive to their needs.⁴⁶²

In the 1983-1984 budget, the government cut legal aid funding by two per cent, or \$125,000. Attorney General Lane predicted the Commission would spend even less after the reorganization based on the MacPherson report. But, according to Wilson, the budget cut threatened the “basic orientation” of the service.⁴⁶³ The Commission instituted a hiring freeze, including articling positions, leaving nine lawyer positions vacant in the province, and, despite Judge MacPherson’s recommendation to increase private bar referrals so non-staff lawyers could obtain criminal law experience, instructed clinics to halt private bar referrals. The Commission said it had no other choice given the budget cuts.⁴⁶⁴

Saskatchewan’s legal aid plan was not the only one experiencing financial challenges. By that time, all Canadian legal aid plans had felt at least some financial squeeze. A major factor in the squeeze was growing demand, according to an executive at the National Legal Aid Research Centre at the University of Ottawa.⁴⁶⁵ The same economic problems that were eating away provincial budgets also increased the general need for the service. In addition, more and more people were becoming aware of the service thanks to increased emphasis on legal education.⁴⁶⁶

The cost of legal aid across the provinces was difficult to compare because the different plans provided varying levels of service, used a “myriad of methods” for providing statistical information and used various combinations of the staff and fee-for-service models in their delivery systems. Saskatchewan was one of five provinces (the others were Nova Scotia, Prince Edward Island, Quebec and Newfoundland) where staff lawyers handled most legal aid cases. Ontario, B.C. and Manitoba used staff lawyers to a more limited degree. Alberta and New Brunswick used the fee-for-service model exclusively. Based on 1979-1980 statistics, the cost of Saskatchewan’s system was the fourth highest in the country at \$4.06 per capita.⁴⁶⁷

⁴⁶² Gordon, Sandra. “Legal aid autonomy defended” *Prince Albert Daily Herald*. Prince Albert, SK, undated.

⁴⁶³ Steffenhagen, Janet. “Legal aid official fears cost-cutting consequences” *Saskatoon Star Phoenix*. Saskatoon, SK, April 5, 1983, p 24.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ This organization itself was a casualty of budget cuts when, in 1983, provinces could no longer fund it and the Association of Legal Aid Plans of Canada recommended that it be abolished. *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

⁴⁶⁶ Ross, Ken. “Times Tough for legal aid services across Canada” *The National*, unknown location, April 4, 1983.

⁴⁶⁷ Strauss, Marina. “Public defenders in five provinces called efficient, effective” *The Globe and Mail*. Toronto, ON, January 18, 1982, p 9.

Almost a decade earlier, Canadian legal aid plans had come together to form the Association of Legal Aid Plans of Canada as a way to consult and exchange information inter-provincially. In 1983 the organization issued a public statement about the strains on Canada's legal aid systems:

"Many legal aid plans are in trouble. Leaders of Canada's twelve legal aid agencies ... are concerned that more Canadians will have to face the justice system alone. ... there must be an increase in government and public support for the principle of equal access to legal representation. Without such support ... many thousands of Canadians will be unable to exercise their legal rights. The severe economic recession and the resulting high unemployment have caused many more people to need and qualify for legal aid. ... The Legal Aid Plans are having difficulty maintaining basic services. Government, the legal profession and the public have traditionally recognized and supported the fundamental rights of equal access to justice; however, without adequate funding, this right cannot be protected."⁴⁶⁸

Feeling the staffing crunch, the Saskatoon Legal Assistance Clinic stopped taking all but urgent civil cases and began refusing applications for assistance with lesser criminal offences. The clinic also stopped collecting maintenance payments for wives and children, defending respondents sued for maintenance or alimony, and acting in matrimonial property disputes.⁴⁶⁹

Dianne Fisher, an employee of the Saskatoon clinic, attended the annual meeting of the two-year-old Elizabeth Fry Society. She said more women were shoplifting due to cutbacks in social assistance. Legal aid services that were cut back, such as help for summary conviction offences like shoplifting, or custody problems, affected women more than men. The cutbacks meant that access to legal services for women were virtually non-existent. To pick up the slack from the reduction in legal aid services, the Elizabeth Fry Society decided to become more involved in the general legal needs of women.⁴⁷⁰

On May 30, 1983, the government introduced new legal aid legislation based on the MacPherson report. The main thrust of the bill was to transfer the power to employ staff from area boards to the Commission and replace the boards with advisory committees that would be appointed by the government. Advisory committees would also take on the role of providing legal education in their

⁴⁶⁸ *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

⁴⁶⁹ Steffenhagen, Janet. "Legal aid clinic handling only urgent cases" *Saskatoon Star Phoenix*. Saskatoon, SK, April 29, 1983, p 3.

⁴⁷⁰ Mortin, Jenni. "Legal aid cuts said hurting women" *Saskatoon Star Phoenix*. Saskatoon, SK, May 16, 1983, p 3.

areas. The bill also amended the choice of counsel provisions for criminal cases, further limiting choice to only those cases involving a minimum sentence of life in prison, which were cases in which persons were charged with first- or second-degree murder or high treason.⁴⁷¹

The new legislation, *The Legal Aid Act*, came into force at the beginning of September. The 13 former community clinics became area offices of the renamed Saskatchewan Legal Aid Commission (SLAC). Clinic staff became employees of the Commission.⁴⁷² Judge MacPherson had observed that the system was commonly known as “Legal Aid” and felt that there was no reason why the Commission and area offices should not bear that name. He thought too many of the offices had names that had little or no relationship to the geographical area for which they were responsible and suggested the area offices should bear the name of the city or town in which they were situated. The Valley Legal Assistance Society Clinic was renamed Saskatoon Rural Area Office, though employees continued to call their office “Valley” for some time after.⁴⁷³ Likewise, the Pasqua Community Legal Services Clinic became the Melfort Area Office, Parkland Legal Assistance Clinic became the Yorkton Area Office, the Saskatoon Legal Assistance Clinic became Saskatoon City Area Office, and so on.⁴⁷⁴ For the first time, the Commission clearly had the responsibility for providing a consistent level of quality services for all parts of the province; improving the efficiency of the plan by rationalizing support services; providing a planned program of in-service education for all staff and developing methods of evaluating the Commission’s work.⁴⁷⁵

At the end of September, the Commission revealed its new policy on the legal aid plan’s range of services. The policy divided services into three categories: essential or those that would be provided, optional or those that would only be provided if the demand for essential services was being met, and excluded services. Essential services included criminal services for indictable offences under any federal legislation, summary conviction offences under federal or provincial legislation where there was a likelihood of imprisonment or loss of livelihood, and juveniles charged under the *Juvenile Delinquents Act* facing jail

⁴⁷¹ “New bill is blueprint of report” *Regina Leader Post*. Regina, SK, May 31, 1983, p 3.

⁴⁷² *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

⁴⁷³ Cheryl Boechler, September 27, 2023 personal interview.

⁴⁷⁴ Regina Community Legal Services became Regina City Area Office; Moose Jaw and District Community Legal Services became Moose Jaw Area Office; Prince Albert and District Community Legal Services became Prince Albert Area Office; Battlefords and Area Legal Services became Battlefords Area Office; South East Saskatchewan Legal Services became South East Area Office; South West Community Legal Services became Swift Current Area Office; Qu’Appelle Region Community Legal Services became Regina Rural Area Office; Meadow Lake and District Legal Services became Meadow Lake Area Office; Yetha Ayisiniwuk Legal Services became Northern Area Office. *Ninth Annual Report*. Saskatchewan Community Legal Services Commission. 1982-83. *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

⁴⁷⁵ *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

or time in a juvenile delinquent's facility. Criminal appeals by the Crown, as well as appeals by an accused that had merit, in any essential category were also included. Essential family law services included cases ranging from divorce⁴⁷⁶ to child protection, restraining orders and filiation proceedings where it was reasonable to expect support could be obtained in the near future.

Optional services included summary advice deemed appropriate by a solicitor in any area of the law as well as further services approved by the Commission. All other cases not enumerated in the essential or optional categories were excluded, including wrongful dismissal, municipal bylaws, name changes, workers' compensation, welfare and unemployment insurance appeals, small claims, wills and estates and *Vehicle Act* offences, except for drinking and driving.⁴⁷⁷

The government intended to announce appointments to the 13 advisory committees by mid-March 1984. Though the former area boards were to continue in an advisory role, including hearing appeals from people with complaints about the clinic and advising the Commission, they did not have access to information they needed to fulfill that role. They were only entitled to the same information as the public, which were the annual reports.⁴⁷⁸ At the Saskatoon Legal Assistance Clinic Society annual meeting in March 1984 only seven people attended in support of the society. Members felt they had no purpose and decided to dissolve the society. In some smaller communities, including North Battleford and the South West, area boards had dissolved earlier.⁴⁷⁹ Greg Whalen, an appointee of the Association of Area Boards, remained on the Commission until the end of May 1988. Advisory committees remained on the Commission's organizational chart until the 1988-89 fiscal year, after which there was no longer area board representation on the Commission.⁴⁸⁰

While the 1983-1984 budget cut was \$125,000, taking into account inflation and rising costs, the budget reduction, according to Wilson, was closer to \$500,000. SLAC managed to remain within its budget by refraining from hiring articling or summer students, conducting rigid salary negotiations with unionized staff, encouraging clients to provide partial payment for services,

⁴⁷⁶ Including custody, access, maintenance and matrimonial property issues, except for matrimonial property issues that were fee-generating. Saskatchewan Legal Aid Commission. *Policy on Range of Legal Services*. Effective October 1983.

⁴⁷⁷ Saskatchewan Legal Aid Commission. *Policy on Range of Legal Services*. Effective October 1983. The range of services was restricted by Commission policy until it was incorporated into regulations under *The Legal Aid Act*.

⁴⁷⁸ "Legal aid clinics said less responsive to needs" *Sunday News*. Regina, SK, December 3, 1983.

⁴⁷⁹ Perry, Leslie. "Legal aid society calls it quits" *Saskatoon Star Phoenix*. Saskatoon, SK, March 30, 1984, p 3; *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

⁴⁸⁰ *Fifteenth Annual Report*. Saskatchewan Legal Aid Commission. 1988-1989.

restricting private bar referrals even more severely to conflict cases or those with minimum life sentences, and from centralization administrative savings.⁴⁸¹ By the end of the 1983-1984 fiscal year, the number of SLAC staff was down to 135 from a high of 146 in 1982-1983.

In his 1983-1984 annual report, Wilson wrote that while the Commission still had a legislative mandate to provide legal education, it was “a matter of both regret and embarrassment” that the Commission’s activities in this regard were limited to a “modest” grant to the Public Legal Education Association of Saskatchewan. He noted that SLAC staff “most generously” gave time and service to local PLEA programs, and he continued to serve with the PLEA board of directors. He closed his comments by saying, “The report which follows is a pallid reflection of the reality which is that more than twenty-five thousand people received legal services from competent and conscientious staff in all areas of the province. The Saskatchewan Plan falls short of meeting the principle of ‘equal access to legal representation’ but it does stand as evidence of the importance of a fundamental, historic right.”⁴⁸²

⁴⁸¹ Greenshields, Verna. “Legal aid system stays within budget” *Saskatoon Star Phoenix*. Saskatoon, SK, February 13, 1984, p 3.

⁴⁸² *Tenth Annual Report*. Saskatchewan Legal Aid Commission. 1983-1984.

Chapter 11

Who Should Pay: Budget Cuts and Contributions

In 1985, the government transferred responsibility for the Saskatchewan Legal Aid Commission to the Department of Social Services under the responsibility of Grant Schmidt, a Melville lawyer. Five Commissioners met with Minister Schmidt at the end of January 1987. The meeting did not go as the Commission had hoped. The minister told them that if they thought they were going to get any additional money, they were going to be “greatly surprised.”⁴⁸³ He expressed a “very low opinion” of legal aid and a “great interest” in a fee-for-service system. During the following meeting of the Saskatchewan Legal Aid Commission, Ian Wilson, chair, explained the meeting with the minister had been unproductive and they’d been unable to present their views on the issues facing legal aid in the province.⁴⁸⁴

Minister Schmidt’s interest in a fee-for-service system provoked Wilson to ask federal officials guiding a DPA Group Inc. evaluation into the Saskatchewan Legal Aid Commission⁴⁸⁵ to include a sub-study comparing the cost of Saskatchewan’s staff system to the potential cost of a fee-for-service system. They agreed,⁴⁸⁶ though it would not be completed until the main report was concluded.⁴⁸⁷

Over the next few months the Commission responded to various requests from the Department of Social Services, including requests for budget proposals based on a zero per cent increase, all the way to a 25 per cent decrease, and proposals that contained discussion of different modes of delivery, including fee-for-service and contracting out of services.⁴⁸⁸ SLAC members discussed strategies to address the government’s budget restraint announcements, including the possibility of expanding the range of services to include fee

⁴⁸³ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, January 23, 1987.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ The federal justice department had hired DPA Group, Inc. to undertake a formal evaluation of SLAC. As part of the Federal/Provincial Cost Sharing Agreement, all legal aid programs are regularly reviewed to assess cost effectiveness and the availability of uniform legal aid services. DPA Group Inc. *Costing Sub-study of the Saskatchewan Legal Aid Evaluation Final Report*. Department of Justice Canada, September 1989.

⁴⁸⁶ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, March 20, 1987.

⁴⁸⁷ The costing sub-study was completed in September 1989 and found that, under the assumptions presented for the study, “a move towards an expanded referral system would not lower the total cost of Saskatchewan Legal Aid, even though the private bar hourly tariffs [were] lower than the equivalent hourly costs of the present staff. The main reasons for this [were] that the lower hourly tariffs [were] balanced by higher administrative and travel costs, and by the possibility of using the present maximum billable tariff hours to spend more preparation time per criminal case than do staff.” *Costing Sub-study of the Saskatchewan Legal Aid Evaluation Final Report*. Department of Justice Canada, September 1989.

⁴⁸⁸ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, March 20, 1987.

generating cases⁴⁸⁹ and collection of increased contributions. In March, the Commission asked staff to tighten up the collection of contributions and hold off on the purchase of additional office supplies until the end of the fiscal year, and anxiously awaited the 1987-1988 provincial budget announcement.⁴⁹⁰

When the government cut legal aid funding by eight per cent, the Commission discussed three options to address the \$500,000 shortfall: cut 20 staff positions, operate at a deficit, or implement a more formal and strict contribution policy.⁴⁹¹ Minister Schmidt had reassured Wilson that the government had no plans to dismantle the legal aid program or change the mode of delivery until the Federal/Provincial DPA Group Inc. evaluation was complete,⁴⁹² but Wilson told the press the Commission was forced to lay off staff in order to “survive without wiping out all the services the plan provides.” He noted that inadequate funding for delivery of legal service to poor people was “not a major sensitive political issue.”⁴⁹³

The Saskatchewan Legal Aid Commission was not the only provincial organization to be hit with cutbacks. In an attempt to bring mounting provincial debt under control, the government implemented widespread budget cuts to many social programs, including social assistance. The native courtworker (also called justice workers) program’s entire \$418,000 grant was cut, putting the eight-year-old program in serious jeopardy.⁴⁹⁴ In June 1987, in response to all the cuts, more than 7,000 protestors marched at the legislature, which was, up until that time, one of the largest demonstrations in Regina’s history.⁴⁹⁵

After much debate between the layoff and contribution strategies, and in the midst of intense media coverage, the Commission settled on a combination of staff cuts and raising revenue by collecting increased contributions from some legal aid clients.⁴⁹⁶ By the end of July, SLAC had frozen 10 staff positions, laid off five employees, and produced a Contribution Policy and Procedure guide⁴⁹⁷ All full service applicants not on social assistance would be asked to pay a minimum \$60 contribution for ongoing legal services. The contribution could

⁴⁸⁹ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, February 6, 1987.

⁴⁹⁰ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, March 13, 1987.

⁴⁹¹ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, June 19, 1987.

⁴⁹² Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, June 26, 1987.

⁴⁹³ “Legal aid’s plight explained” *Regina Leader Post*. Regina, SK, July 2, 1987, p 4.

⁴⁹⁴ Brock, Gord. “End of program could tie up courts” *Regina Leader Post*. Regina, SK, June 17, 1987, p 5.

⁴⁹⁵ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 447.

⁴⁹⁶ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, June 26 and July 23, 1987.

⁴⁹⁷ Abell, Jennie. “Is legal aid’s very future in doubt?” *Regina Leader Post*. Regina, SK, July 31, 1987, p 7.

be paid in installments, but a minimum payment of at least \$20 was required before any services, except emergency services, would be provided. Failure to make a payment could, at the discretion of an area director, result in the immediate discontinuation of services. Area directors had the discretion to determine the level of contribution required, in accordance with the Commission's guidelines, and a payment schedule. Minimum contributions for criminal cases ranged from \$75 for motor vehicle offences where no fatality occurred to \$400 for homicide cases. On the family law side, a \$75 minimum fee would be charged for uncontested divorces, restraining orders and filiation proceedings, up to \$400 for divorces with custody and maintenance issues. The contribution policy went into effect August 4, 1987.⁴⁹⁸

Minister Schmidt was not opposed to fees for some legal aid clients who could afford it. In the legislature, he said, "Surely the prostitutes of Regina and drug dealers who have capital to deal in drugs can come up with a little bit of money towards their defence."⁴⁹⁹ He was also of the opinion that the legal aid system would be more efficient if staff worked longer hours and gave up earned-days-off.⁵⁰⁰ Justice Minister Bob Andrew said the legal aid fees made "the service a bargain compared with prices charged by lawyers in private practice."⁵⁰¹ At a news conference, legal aid advocates handed out a report that showed less than 400 of 11,400 charges handled by SLAC in 1984-1985 were drug-related. There was no indication of any prostitution charges.⁵⁰²

A group of Saskatoon lawyers, articling students and law professors, including Roger Carter, formed a committee, Lawyers for Equal Justice, to spearhead a campaign against the contribution policy. Though the contribution policy did not apply to anyone on social assistance, they pointed out that young offenders were not on social assistance, and the homeless often were not eligible for social assistance or sometimes did not bother to apply. These people could easily fall through the cracks.⁵⁰³

The group was concerned the fees would act as a deterrent to those who would otherwise be eligible for legal aid. They argued the policy changed the eligibility criteria because a person who was once eligible but could not afford to pay the

⁴⁹⁸ *Fry (Elizabeth) Society of Saskatchewan Inc. v. Legal Aid Commission (Sask.)*, 1988 CanLII 5217 (SK CA).

⁴⁹⁹ "Hookers, dealers should pay own defence bills: Schmidt" *Saskatoon Star Phoenix*. Saskatoon, SK, July 25, 1987, p 6.

⁵⁰⁰ *Ibid.*

⁵⁰¹ Greenshields, Vern. "Tories reject plea to kill Legal Aid fees" *Saskatoon Star Phoenix*. Saskatoon, SK, August 5, 1987, p 3.

⁵⁰² Blackwell, Tom. "Legal aid clientele unfairly portrayed" *Regina Leader Post*. Regina, SK, August 6, 1987, p 5.

⁵⁰³ Blackwell, Tom. "Half of Legal Aid clients will have to pay part of fees" *Regina Leader Post*. Regina, SK, July 25, 1987, p 3.

fee would no longer be eligible.⁵⁰⁴ They took the position that the fees were “user fees” and could be challenged under the *Charter of Rights and Freedoms*, *The Legal Aid Act* and the Federal/Provincial Cost Sharing Agreement.⁵⁰⁵ Speaking for the group, Barry Singer opined that with the *Charter* right to counsel, legal aid should be expanded, not contracted. The group began looking for a test case to challenge the policy in court.⁵⁰⁶

The Commission pointed out that almost every other legal aid plan in the country charged its clients something, raising on average three per cent of its revenues that way.⁵⁰⁷ For about six years, Manitoba had implemented a \$35 flat fee for legal aid services but the legal aid board in that province had dropped the fee, mainly for philosophical reasons. Manitoba went back to a contributory plan where those that were just above the eligibility guideline could still receive services by paying a portion of the cost.⁵⁰⁸

According to the director of Ontario’s legal aid system, despite calls for user fees from time to time, they had never been implemented because of the potential they would be a deterrent. Similar to Manitoba’s plan, Ontario’s plan provided for contributions for people on the borderline of eligibility. They could receive assistance for sums they were able to pay.⁵⁰⁹

The Canadian Bar Association - Saskatchewan Branch (which represented about 80 per cent of the approximately 1,000 Saskatchewan lawyers) also expressed opposition to the fees, stating that if someone’s income was low enough to qualify for legal aid, they shouldn’t have to pay user fees.⁵¹⁰ The Saskatoon Criminal Defence Lawyers’ Association threw its support behind Lawyers for Equal Justice.⁵¹¹ Seventy lawyers attended a Lawyers for Equal Justice meeting in Saskatoon at the beginning of August.⁵¹² In Regina, representatives from the John Howard Society, the Regina Transition House, and the University of Regina Women’s Centre held a press conference to voice their concerns about the fees.⁵¹³ Other groups that publicly opposed the fees included the Canadian

⁵⁰⁴ Jackson, Paul. “City law group battles legal aid user fee proposal.” *Saskatoon Star Phoenix*. Saskatoon, SK, July 22, 1987, p 1.

⁵⁰⁵ “Lawyers’ group says it will challenge fees” *Saskatoon Star Phoenix*. Saskatoon, SK, August 1, 1987, p 3.

⁵⁰⁶ Blackwell, Tom. “Lawyers’ group wants inquiry into legal aid system, funding” *Regina Leader Post*. Regina, SK, August 8, 1987, p 4.

⁵⁰⁷ Blackwell, Tom. “Half of Legal Aid clients will have to pay part of fees” *Regina Leader Post*. Regina, SK, July 25, 1987, p 3.

⁵⁰⁸ Yanko, Dave. “Legal aid fee plan called ‘draconian’ by B.C. official” *Saskatoon Star Phoenix*. Saskatoon, SK, July 31, 1987, p 3.

⁵⁰⁹ *Ibid*.

⁵¹⁰ Blackwell, Tom. “Lawyers’ group not happy with Schmidt’s remarks” *Regina Leader Post*. Regina, SK, August 12, 1987, p 5.

⁵¹¹ “Lawyers’ group says it will challenge fees” *Saskatoon Star Phoenix*. Saskatoon, SK, August 1, 1987, p 3.

⁵¹² Burton, Randy. “Cost to administer new Legal Aid fees ‘limits the savings’” *Saskatoon Star Phoenix*. Saskatoon, SK, August 6, 1987, p 6.

⁵¹³ “Attack on legal aid fees widens” *Regina Leader Post*. Regina, SK, August 7, 1987, p 4.

Rights and Liberties Association, Saskatchewan Action Committee on the Status of Women, and the Saskatchewan Association of Human Rights.⁵¹⁴

Lawyers for Equal Justice met with Minister Schmidt. The meeting ended when the minister called the lawyers “left-leaning” and in favour of “socialized law.” After the meeting he told the press, “My theory is that those people who can afford to pay something should pay something.” The Lawyers for Equal Justice committee was offended by the minister’s remarks and told the press they had attended the meeting in good faith on behalf of a large segment of the Saskatchewan legal profession, and with the support of the Canadian Bar Association - Saskatchewan Branch.⁵¹⁵

The Commission discussed the contribution policy and procedures at its November 20, 1987 meeting. Based on data about the contributions assessed and received and those that were receivable, the policy appeared to be working. The Commission’s general counsel, Harold Pick, advised that user fees were universal and not appropriate under *The Legal Aid Act*, but what the Commission had done was enhance the plan’s existing contribution scheme which was sanctioned by the Act. Commissioners decided to continue the contribution policy and undertake a major review of it before the end of the fiscal year.⁵¹⁶

Before the year was out, the Elizabeth Fry Society filed a motion in the Court of Queen’s Bench for a declaration that the Saskatchewan Legal Aid Commission had exceeded its legal authority by implementing the contribution policy and procedures. In January 1988, Roger Carter and Barry Morgan⁵¹⁷, a Saskatoon lawyer who’d been an outspoken participant in Lawyers for Equal Justice, argued that the policy changed the eligibility rules since people who would be eligible could be denied service if they could not pay the fee. Since the Commission did not have power to determine eligibility (only the government could prescribe eligibility rules) the policy was illegal.⁵¹⁸ The motion was dismissed, but the Elizabeth Fry Society appealed the decision.⁵¹⁹

The Canadian Bar Association - Saskatchewan Branch had originally opposed the legal aid fees, but in February 1988 said they hadn’t decided if the payment scheme was a user fee or a contribution system. There was no evidence the fees

⁵¹⁴ “Attack on legal aid fees widens” *Regina Leader Post*. Regina, SK, August 7, 1987, p 4.

⁵¹⁵ Blackwell, Tom. “Lawyers’ group not happy with Schmidt’s remarks” *Regina Leader Post*. Regina, SK, August 12, 1987, p 5.

⁵¹⁶ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, November 20, 1987.

⁵¹⁷ Barry Morgan was appointed Queen’s Counsel in 2003, and to the Provincial Court of Saskatchewan in 2005.

⁵¹⁸ *Fry (Elizabeth) Society of Saskatchewan Inc. v. Legal Aid Commission (Sask.)*, 1988 CanLII 5043 (SK KB).

⁵¹⁹ *Fry (Elizabeth) Society of Saskatchewan Inc. v. Legal Aid Commission (Sask.)*, 1988 CanLII 5217 (SK CA).

were stopping people from using the service, but since the Commission had refused to provide statistical information showing what effect the fees were having, the Canadian Bar Association (CBA) was left to rely on studies from Manitoba and Nova Scotia that indicated legal aid fees discouraged people from using the service. At the CBA National Council meeting in March, executives passed a motion asking the province and the Commission to stop levying the fees where it restricted access to justice or imposed hardship on recipients. In deference to the Commission and the Canadian Bar Association - Saskatchewan Branch, who both called the fees contributions, the National Council had refrained from calling the fees user fees. Though the Commission was using discretion in charging the fees, the CBA was still concerned that the fees were required upfront and could act as a deterrent to legal aid access.⁵²⁰

In March 1988, SLAC undertook an analysis of the contribution policy and procedures and found, between August 1987 and February 1988, 14 per cent of all full-service applications had been assessed a fee. The overall average fee was \$68, and 58 per cent of those fees had been collected.⁵²¹ During the first eight months of the policy the Commission had raised \$143,000 in fees.⁵²² The Commission decided to continue it.⁵²³

Wilson had retired at the end of June 1987 after serving as the Commission's chair for almost eight years,⁵²⁴ but it wasn't until June 1988 that the government appointed Don Morgan as the permanent new chair. Morgan was initially hesitant to take the role. He'd been in private practice in Saskatoon for 10 years, with a focus on corporate and commercial law, though he'd practiced criminal law early in his career. He was not looking for a change. But when he was approached by Minister Schmidt to fill the role, he decided it would be an interesting and different challenge. He agreed to take it up.⁵²⁵

Shortly after beginning his tenure, Morgan told the press he wanted to examine the contribution policy and its effects. He'd been told it was successful in terms of raising revenue but he wanted to know whether the policy was effectively denying some people services.⁵²⁶ At his new post, Morgan pored over the

⁵²⁰ "Bar association softens stance on Legal Aid fees" *Saskatoon Star Phoenix*. Saskatoon, SK, March 1, 1988, p 27.

⁵²¹ Of those fees, 75 per cent were \$60 or less and 25 per cent were more than \$60. Saskatchewan Legal Aid Commission. *Memorandum: Contribution Analysis August 1987 to February 1988*, March 30, 1988.

⁵²² "Bill to allow legal aid user fees introduced" *Regina Leader Post*. Regina, SK, July 11, 1989, p 4.

⁵²³ Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, April 29, 1988.

⁵²⁴ Ian Wilson was the longest-serving chair up until that time, and the only non-lawyer to ever head the Commission. Quentin Agnew, Q.C. (Agnew had been a Commissioner since November 1979) took over as acting chair until February 1988. Agnew wrote that under Wilson's leadership the Commission had stabilized and "functioned in a most productive, responsible, effective and efficient manner, bearing in mind the constraints of the budget." *Thirteenth Annual Report*. Saskatchewan Legal Aid Commission. 1986-1987.

⁵²⁵ Don Morgan, K.C., August 2, 2023 personal interview.

⁵²⁶ "Morgan says his new job not patronage appointment" *Regina Leader Post*. Regina, SK, June 25, 1988.

Commission's financial records and, along with Laura Lacoursiere, the Commission's director of administration, visited each of the area offices to chat informally with staff and meet with area directors. He came to the opinion that, though the Commission could do a better job budgeting, they were somewhat underfunded, especially on a per capita basis as compared to some of the other provinces. He noted that the federal government funded mostly criminal law, while provincial funding went mostly to family law, a practice he found sexist since males made up the majority of criminal law clients, while females were the main family law clients. He set about lobbying for increased funds and advised both the federal and provincial governments of the sexism inherent in the funding structure.⁵²⁷

The contribution policy was again under the scrutiny of the judicial system and the media when the Elizabeth Fry Society appeal was decided in December 1988.⁵²⁸ The Saskatchewan Court of Appeal found that the Commission's ability to require contributions only came into play after an individual had met the eligibility requirements, with the result that legal services were to be provided to the person. After that, the Commission had the discretion to determine if some of the cost was to be borne by that person. If the person did not pay, the Commission had the power to sue the person, but could not refuse service as that would have the effect of establishing conditions of eligibility, a power the Commission did not have. The court unanimously allowed the Elizabeth Fry Society's appeal, granted an order that the contribution policy was beyond the legal authority of the Commission to impose, and a further order quashing the Commission's decision to implement it.⁵²⁹

In response to the court's decision, Morgan told the press the Commission believed "there should be some form of contribution by some of the people who use legal aid."⁵³⁰ SLAC began drafting regulations to allow for contributions based on a debt system instead of pre-payment. The only grounds to refuse service would be "extraordinary circumstances," such as someone with the ability, but who refused, to pay.⁵³¹

⁵²⁷ Don Morgan, K.C., August 2, 2023 personal interview.

⁵²⁸ According to the *Regina Leader Post*, Justice C.F. Tallis, who had defended David Milgaard at his trial, wrote the appeal court's decision. Doskoch, Bill. "Legal-aid fight may not be over" *Regina Leader Post*. Regina, SK, December 15, 1988, p 1.

⁵²⁹ *Fry (Elizabeth) Society of Saskatchewan Inc. v. Legal Aid Commission (Sask.)*, 1988 CanLII 5217 (SK CA).

⁵³⁰ MacDonald, Heather. "Legal aid fee may be reintroduced" *Saskatoon Star Phoenix*. Saskatoon, SK, December 17, 1988, p 12.

⁵³¹ Doskoch, Bill. "Legal aid group drafts new rules for charging fees" *Regina Leader Post*. Regina, SK, December 30, 1988, p 3.

Chapter 12

Legal Aid's Expert Advocates: 1988-1992

Not surprisingly, the Federal/Provincial DPA Group Inc. evaluation, completed in the spring of 1988, found that Saskatchewan's legal aid system no longer met its original mandate due to underfunding. The working poor, people not on social assistance but who couldn't afford a private lawyer, and those who met the financial eligibility requirements but whose legal problems fell outside of the Saskatchewan Legal Aid Commission's range of services, were falling through the cracks.⁵³²

The Commission received a modest one per cent funding increase in the 1988-1989 budget, and a 3.2 per cent funding increase in the 1989-1990 fiscal year, an amount that was sufficient to maintain staff positions, but did not take into account increasing caseloads or broadening the legal aid program.⁵³³ Legal aid lawyers working in Saskatoon's provincial court were overtaxed and did not have the opportunity to interview people who were just arrested and appearing on the morning docket. In early 1989, the Saskatoon Criminal Defence Lawyers' Association began a voluntary duty counsel program to supplement SLAC's work, since its duty counsel program was unlikely to expand. Forty-five of the Association's lawyers volunteered one morning a week, every nine weeks.⁵³⁴

Despite being overworked, or close to it, due to heavy caseloads, and despite a "quick and dirty" approach to cases, SLAC lawyers maintained good to excellent quality of work. The judiciary and members of the criminal justice system had a high degree of respect for them. Many judges saw no difference in quality between legal aid and private bar lawyers, though only 40 per cent of private bar lawyers, the sole group with a less positive view of SLAC's quality, believed the Commission's work was good to excellent.⁵³⁵ Legal aid lawyers themselves suffered from low morale, partly due to budget cuts, the government's failure to appoint a permanent replacement for Ian Wilson for almost a year, and the general feeling that those in power did not value their services.⁵³⁶ Still, despite the problems, the Federal/Provincial DPA Group Inc. evaluation report was generally supportive of how legal aid was being delivered

⁵³² Kyle, Anne. "Underfunding cost Legal Aid its original mandate: report" *Regina Leader Post*. Regina, SK, March 30, 1988, p 9.

⁵³³ *Sixteenth Annual Report*. Saskatchewan Legal Aid Commission. 1989-1990.

⁵³⁴ Macdonald, Heather. "Volunteer lawyers easing anxieties of court appearance" *Saskatoon Star Phoenix*. Saskatoon, SK, January 16, 1989, p 7.

⁵³⁵ Blackwell, Tom. "Report reveals discontent with financing of legal aid" *Regina Leader Post*. Regina, SK, September 1, 1987, p 4.

⁵³⁶ Kyle, Anne. "Underfunding cost Legal Aid its original mandate: report" *Regina Leader Post*. Regina, SK, March 30, 1988, p 9.

in Saskatchewan and found the Commission was supplying “good services at low to moderate cost.”⁵³⁷

According to a 1988 National Council of Welfare report, almost 20 per cent of Saskatchewan’s citizens were living in poverty, a number second only to Newfoundland.⁵³⁸ Saskatoon lawyer Larry Kowalchuk, who sometimes volunteered his services to the poor, found that anytime it became public that there were people prepared to assist the poor, the phone rang “off the wall 24 hours a day.”⁵³⁹ Professor Ken Norman asserted that “giving citizens a sense that they have a voice is an essential part of giving them that capacity to be vigilant” about protecting the democratic process.⁵⁴⁰ He and others maintained that the legal aid system should help the poor with a range of legal problems from landlord and tenant disputes to welfare appeals. Don Morgan doubted SLAC lawyers would get back into landlord-tenant disputes. He noted the poor could approach the rentalsman or ombudsman for help. But he would have liked the plan to tackle other poverty law cases such as bankruptcies and foreclosures, though there were no plans to do so.⁵⁴¹

For his part, Morgan, in addition to lobbying for increased funding, did what he could to boost morale and combat any perception that legal aid lawyers were not “real” lawyers. He participated in a radio talk show to provide background information on the law and legal aid and take calls from people in an attempt to elevate the image of legal aid lawyers who, he saw first-hand, were working as hard as they could. As chair, he was responsible for personnel and discipline matters, a job he described as one of the easiest you could want. The only issue he had to deal with was periodic complaints that the lawyers were doing work outside the range of services – for example, a client with a custody problem, who then also had a matrimonial property issue the legal aid lawyer had taken on. If the property issue turned out to be fee generating, it was outside the range of services. He would have to talk to the particular lawyer, who would understand the problem and would often request to take a week of vacation time or unpaid leave in order to help their client.⁵⁴²

Though times were extremely tight, one discretionary item he fought for was air-conditioned cars. At the time, judges and prosecutors had them, but legal aid lawyers still did not, and they also had to show up in court wearing a suit and tie and look just as professional. Morgan took the request to the Treasury Board.

⁵³⁷ *Fifteenth Annual Report*. Saskatchewan Legal Aid Commission. 1988-1989.

⁵³⁸ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 452.

⁵³⁹ Spencer, Beverly. “Legal aid system stretched to the limit” *Regina Leader Post*. Regina, SK, May 30, 1989, p 8.

⁵⁴⁰ *Ibid.*

⁵⁴¹ *Ibid.*

⁵⁴² Don Morgan, K.C., August 2, 2023 personal interview.

They wrestled with it but eventually agreed. It was a small amount of money as new cars were brought into the rotation, but it seemed to Morgan like a good sign that government officials understood the reality of SLAC lawyers.⁵⁴³

Morgan also pointed out to the province's justice minister that Queen's Counsel (Q.C.) designations⁵⁴⁴ were never given to SLAC lawyers. The Commission's criminal defence lawyers did a substantial number of the province's serious cases, including murder cases. By that time, some of them had been with the Commission for 10 or 15 years. They were just as skilled and knowledgeable as any, some even better than most of the lawyers in the province. He was of the view that at least one Saskatchewan Legal Aid Commission lawyer should receive a Q.C. each year. He advocated for Peter Kolenick, who had worked as a staff lawyer in the Yorkton office since 1977, to receive the honour. In December 1990, Kolenick was the first SLAC staff lawyer to receive the Q.C. designation.⁵⁴⁵

Morgan had watched David Andrews, one of the best courtroom lawyers he'd ever seen, in action.⁵⁴⁶ Andrews ran many jury trials, but the most rewarding came in 1990. As is almost always the case, the file arose out of tragic circumstances. In October 1990, four children between the ages of four and six died in a Regina house fire. The couple living in the house lost their son, two daughters and a nephew in the incident. When the fire broke out, in the early morning hours, they had been next door drinking and playing cards. Both the parents were distraught at the scene, the father so distressed that he rushed into the house and told a firefighter he knew where the kids were. The firefighter escorted him out where he was subdued and placed in handcuffs.⁵⁴⁷

The parents were charged with failing to provide the necessities of life and abandoning children under 10 years of age thereby causing their death. Andrews represented both, and both elected trial by a jury which took place over the course of three days in February 1992.⁵⁴⁸ There were various theories about what caused the fire and when it started but, according to Andrews, the

⁵⁴³ Don Morgan, K.C., August 2, 2023 personal interview.

⁵⁴⁴ King's Counsel, as they are called today, designations are made by the provincial Minister of Justice through a selection process that includes consultation with the Law Society of Saskatchewan, the Canadian Bar Association and the Courts. Candidates must have practiced law for at least 10 years, demonstrate superior legal ability, show proof of good character and integrity, contribute as a legal professional to the community, contribute to the community generally and contribute to the legal profession: <https://www.lawsociety.sk.ca/for-lawyers-and-students/kings-counsel-nominations/>

⁵⁴⁵ In 1994 Peter Kolenick served as president of the Law Society of Saskatchewan and in 1996 he was appointed to the Provincial Court of Saskatchewan.

⁵⁴⁶ Don Morgan, K.C., August 2, 2023 personal interview.

⁵⁴⁷ Dосkoch, Bill. "Charred chair might be key fire evidence" *Regina Leader Post*. Regina, SK, February 25, 1992, p 1.

⁵⁴⁸ Dосkoch, Bill. "'Backdraft' may have occurred in fatal blaze" *Regina Leader Post*. Regina, SK, February 26, 1992, p 3.

key to the whole thing, was that the parents were Indigenous. If they had been white, living in a middle-class area instead of north central Regina, they likely would not have been prosecuted. Andrews couldn't say that out loud to the jury. Instead, he came up with an analogy when he was with his son, who was playing in a hockey tournament, at a hotel in Saskatoon just before the trial started. As is common, the parents of the hockey players gathered in the hotel's hospitality room down the hall from the guest rooms. Between games, the parents socialized and drank in the hospitality room while the kids slept or did their own thing in their rooms. How, Andrews put it to the jury, is that different from the terrible accident that had befallen his clients? If there'd been a fire in the hotel, would the hockey parents have been prosecuted?⁵⁴⁹

The jury deliberated for several hours. Though juries are forbidden from discussing their deliberations, Andrews' analogy, one the jury could relate to since they were mostly white, middle-class citizens, likely hit home. The parents were acquitted. After the trial, the mother's sister told the press the father did not want to have any more children and the mother had "changed for the worse." Andrews told the press, "The accused were to a great extent the victims in this case."⁵⁵⁰ After the verdict, the parents disappeared out of the west door of the Regina courthouse and Andrews never saw or heard from them again.⁵⁵¹

Most of SLAC's criminal law work flew under the radar but was important to clients and to the development of the law and administration of justice in the province. One example of many, came in the case of *R. v. Bird*. Dennis Claxton, a staff lawyer in the Prince Albert office at the time, represented Mr. Bird, who was Cree and spoke virtually no English. At his preliminary inquiry in April 1989, Bird applied for an interpreter at the Crown's expense. The judge denied the application. Bird then moved in the Court of Queen's Bench for the appointment of an interpreter pursuant to the *Canadian Charter of Rights and Freedoms*. The Court granted an order requiring the Provincial Court to supply an interpreter to translate from English to Cree at the preliminary inquiry, at no cost to Mr. Bird.⁵⁵²

After the evidence was in at the preliminary inquiry, the judge asked if Bird had anything further to say in answer to the charges. Claxton responded that his client did not. The judge asked Bird if that was correct, and Bird responded with an incriminating statement. In the Court of Queen's Bench, the court held that

⁵⁴⁹ David Andrews, July 18, 2023 personal interview.

⁵⁵⁰ Doskoch, Bill. "Cleared in deaths" *Regina Leader Post*. Regina, SK, February 28, 1992, p 1.

⁵⁵¹ David Andrews, July 18, 2023 personal interview.

⁵⁵² *R. v. Bird*, 1990 CanLII 7423 (SK KB)

where an accused is represented by counsel, the response may be made by counsel on behalf of the accused.⁵⁵³

Bird's trial in the Court of Queen's Bench did not go ahead because there was no interpreter. When his trial was next set, five months later, Bird brought an application to stay the proceedings against him, arguing his *Charter* right to be tried within a reasonable time had been violated. Justice Irving Goldenberg⁵⁵⁴ wrote, "The accused stands before the court charged with a criminal offence. The accused stands before the court innocent of that charge. He is entitled to understand what is being said. He is entitled to hear what is being said [Bird was also hard of hearing]. He is entitled to defend himself on the charge." Justice Goldenberg found that what should have been provided to the accused by the administration of justice was not provided. He attributed the trial delays solely to the Crown's actions, or lack of them. As a result, Bird's right to a trial within a reasonable time had been violated and the proceedings against him were stayed.⁵⁵⁵

While these issues are well settled in 2024, Claxton pointed out that in 1989 they were not. The vast majority of people coming before criminal courts were not able to afford a lawyer at their trials, let alone the cost of taking issues to a superior court. In 1989, according to Saskatoon lawyer Larry Kowalchuk, it was difficult to find lawyers to argue *Charter* cases on behalf of the poor. He told the press, "Quite frankly the number of violations of legal rights of the poor is phenomenal."⁵⁵⁶ The fact that some of these were redressed was largely due to the Saskatchewan Legal Aid Commission.⁵⁵⁷

Criminal defence lawyers were not the only highly competent, hard-working legal aid lawyers. Most practiced a mix of criminal and family law, and family law cases required as much hard work and legal strategy. In one such case, a single mother applied for maintenance from the man she claimed was the father of her child. Since he was living in Ontario, she applied for a provisional order under *The Reciprocal Enforcement of Maintenance Orders Act* in Unified Family Court.⁵⁵⁸ Though it wasn't necessary to decide the paternity issue in order to obtain the provisional maintenance order, the mother would eventually have to prove paternity under s. 34 of *The Children of Unmarried Parents Act*⁵⁵⁹ in order

⁵⁵³ *R. v. Bird* 1990 CanLII 7447 (SK KB)

⁵⁵⁴ Irving Goldenberg, who had been an advocate in the creation of the Saskatchewan Community Legal Services Plan, and general counsel to the Commission, was appointed Justice of the Court of Queen's Bench in 1985 where he served for over 26 years.

⁵⁵⁵ *R. v. Bird*, 1990 CanLII 7423 (SK KB)

⁵⁵⁶ Spencer, Beverly. "Legal aid system stretched to the limit" *Regina Leader Post*. Regina, SK, May 30, 1989, p 8.

⁵⁵⁷ Dennis Claxton, August 23, 2023 personal correspondence.

⁵⁵⁸ Unified Family Court was a division of the Court of Queen's Bench. It is currently called Family Law Division, and deals with all family law matters.

⁵⁵⁹ RSS 1978 c. C-8

to obtain support. Saskatchewan Legal Aid Commission staff lawyer Al McGuire asked the superior court's Justice Mary Carter⁵⁶⁰ to hear his arguments that s. 34 violated the *Charter*. She agreed.⁵⁶¹

Section 34 provided that the evidence of a single woman could not be sufficient proof of the paternity of her child unless it was corroborated by other evidence implicating the alleged father. McGuire argued that the corroboration requirement was based on a stereotype of women and put single women on unequal footing as compared to married women, and married or unmarried men, who did not have the burden of corroboration when proving paternity. Justice Carter found it was clear that even if the court believed the mother and her witnesses, and did not believe the alleged father and his witnesses, the judge still could not make a paternity decision without independent corroborative evidence. The underlying assumption for this was that single women might pick and choose a father for his ability to make maintenance payments, blackmail an alleged father or hide the paternity of another. Since the necessity for corroboration was based on this stereotype, she found s. 34 violated the mother's *Charter* right to equality under the law, and declared it of no force or effect.⁵⁶²

But that was not the end of SLAC's involvement in the demise of *The Children of Unmarried Parents Act*. In 1988, on the heels of McGuire's success, Betty Lou Huculak,⁵⁶³ another SLAC staff lawyer, applied on behalf of her client, a single mother, for a paternity and maintenance order in the Unified Family Court. The mother gave evidence of paternity alone, without corroboration. Justice Dickson granted the paternity order. The father appealed the finding of paternity to the Saskatchewan Court of Appeal based on the lack of corroboration. The Court of Appeal found that Justice Carter had carefully considered the corroboration requirement in *L.M.B. v. T.H.* By unanimous decision, the Court of Appeal agreed with her reasoning and declared s. 34 of no force or effect.⁵⁶⁴

Huculak was not yet finished with *The Children of Unmarried Parents Act*. Also in 1988, she brought an application in the Unified Family Court, on behalf of her client, an unmarried mother, for an order declaring the respondent to be the father of her client's child, born July 30, 1983, and for custody and maintenance for the child. But s. 9 of *The Children of Unmarried Parents Act* imposed a one-year limitation period on unmarried mothers to bring paternity proceedings. Huculak's client was four years too late to bring her application, but Huculak

⁵⁶⁰ Roger Carter's spouse.

⁵⁶¹ *L.M.B. v. T.H.*, 1987 CanLII 4591 (SK KB)

⁵⁶² *Ibid.*

⁵⁶³ Betty-Lou (Bria) Huculak was appointed to the Provincial Court of Saskatchewan in January 1992.

⁵⁶⁴ *Gorzen v. Litz*, 1988 CanLII 5370 (SK CA)

argued that s. 9 violated the equality provisions of the *Charter*. Married mothers and married or unmarried fathers seeking child support did not face a limitation period. Except for single mothers, parents could bring an application for paternity, and child support, anytime, but single mothers were prevented from bringing the same application as soon as their children were one year or older. The court agreed with Huculak and declared s. 9 to be of no force or effect.⁵⁶⁵

The father appealed, but the Court of Appeal found s. 9 reflected “the same stereotypical view of a single woman who has borne a child: she is somehow morally untrustworthy so that innocent men must be protected against her claim by requiring that it be brought within one year.” Since the married mother and the father seeking maintenance for a child did not face the same limitation period, unmarried mothers claiming maintenance were treated differently from all other parents claiming maintenance. That, the Court of Appeal held, violated the *Charter*. Not only did s. 9 violate the unmarried mother’s equality rights, but the court also found it discriminated against the “illegitimate child.” Legitimate children, under *The Infants Act*, were entitled to maintenance from both parents without any limitation upon time of commencement of proceedings. But “illegitimate” children were precluded from obtaining any maintenance from fathers unless someone brought proceedings against the father within one year of the birth of the child, and the child was “entirely helpless in the matter.”^{566,567}

The first substantial wave of *Charter of Rights and Freedoms* cases had hit the Supreme Court of Canada in March 1985 when judges of that court agreed to hear four appeals rooted in the new constitutional guarantees.⁵⁶⁸ In February 1990, the Supreme Court of Canada decided the *Brydges* case, a *Charter* case that would have a significant impact on legal aid programs across the country. When Brydges was detained by police and questioned about a murder, he asked for legal aid since he couldn’t afford a lawyer, but police continued their interrogation. The trial judge found Brydges had been under the impression that his inability to pay for a lawyer precluded him from retaining one. The Supreme Court of Canada unanimously agreed with the trial judge’s finding and were of the opinion that, in the circumstances of the case, the police had a duty to inform Brydges of the existence of legal aid and duty counsel. Since they had not, Brydges’ right to counsel under s. 10 of the *Charter* had been breached. A majority of the court went further and expanded the scope of the police duty to inform an accused of his right to counsel to include the duty to inform him of

⁵⁶⁵ *D.S.W. v. R.H.*, 1988 CanLII 5134 (SK KB)

⁵⁶⁶ *D.S.W. v. R.H.*, 1988 CanLII 5247 (SK CA)

⁵⁶⁷ In December 1990, *The Children of Unmarried Parents Act* was repealed. It was replaced by *The Children’s Law Act*, S.S. 1990, C-8.1 and *The Family Maintenance Act*, S.S. 1990, c. F-6.1 Those acts abolished the differentiation between children of unmarried parents and children of married parents.

⁵⁶⁸ “Charter-based appeals to be heard by top court” *The Globe and Mail*. Toronto, ON, March 22, 1985.

the existence and availability of legal aid and duty counsel systems.⁵⁶⁹ The court gave police forces a 30-day grace period to implement the ruling.⁵⁷⁰

The decision was a recognition of the fact that most people who end up before criminal courts are indigent and must rely on legal aid or duty counsel systems, and an acknowledgment of the fundamental role legal aid plays in the administration of justice. As one commentator at the time said, “If you do not inform the detainee about Legal Aid, you are not really informing him/her about the right to counsel.”⁵⁷¹

Brydges did not impose a constitutional duty on legal aid plans, but the Commission recognized that, practically speaking, it would have an effect on legal aid programs across the country to provide duty counsel 24 hours a day.⁵⁷² The Saskatchewan Legal Aid Commission did not have the staff to take on this extra and unexpected work. It was work that would require someone to be on call after normal business hours, and those working conditions were not part of SLAC’s collective bargaining agreement. Morgan had a phone line installed in his home and began taking the after-hours calls, which by mid-March 1990, were about 40 per week.⁵⁷³ Many of them were from people facing possible drunk driving or refusal to blow charges, but some were from people facing much more serious charges, including murder. Often the person was highly intoxicated or under the influence of drugs. Morgan kept a pad of paper near the phone to record notes of the calls in case he was later subpoenaed in connection with a call. The Commission was able to obtain additional funding, hire additional staff, and create a rotation of legal aid lawyers willing to take the after-hours calls. Morgan put himself on the rotation.⁵⁷⁴

The service, which became known as the *Brydges* services, requires legal aid plans to provide temporary and informal advice from duty counsel to any person arrested or detained in the province, at any time of day or night, regardless of that person’s financial status.⁵⁷⁵ In August 1990, the Commission entered into a contract with a private law firm to supply the service.⁵⁷⁶ Today, most provinces have a formal *Brydges* service as part of their legal aid plans.

⁵⁶⁹ Bruce P Elman, Supreme Court of Canada in *Brydges* Expands Right to Counsel, 1990 1-3 *Constitutional Forum* 15, 1990 CanLII Docs 436, <<https://canlii.ca/t/7jlw8>>

⁵⁷⁰ *R. v. Brydges*, 1990 CanLII 123 (SCC), <<https://canlii.ca/t/1ft0k>>

⁵⁷¹ Bruce P Elman, Supreme Court of Canada in *Brydges* Expands Right to Counsel, 1990 1-3 *Constitutional Forum* 15, 1990 CanLII Docs 436, <<https://canlii.ca/t/7jlw8>>

⁵⁷² Saskatchewan Legal Aid Commission. *Minutes of a Meeting of the Saskatchewan Legal Aid Commission*. Saskatoon, SK, March 16, 1990.

⁵⁷³ *Ibid.*

⁵⁷⁴ Don Morgan, K.C., August 2, 2023 personal interview.

⁵⁷⁵ *Sixteenth Annual Report*. Saskatchewan Legal Aid Commission. 1989-1990.

⁵⁷⁶ *Seventeenth Annual Report*. Saskatchewan Legal Aid Commission. 1990-1991.

Chapter 13

Wild-Eyed Radicals

Premier Grant Devine called a provincial election for October 1991. The NDP, led by Roy Romanow won, taking 55 seats in the legislature. Once in power, the new government realized they faced provincial debt of almost \$15 billion. Premier Romanow made it his priority to tackle the debt and balance the budget.⁵⁷⁷

Janice MacKinnon became the new Minister of Social Services. In January 1992, she dismissed Don Morgan as chair of the Saskatchewan Legal Aid Commission and appointed Jane Lancaster as acting chair. Minister MacKinnon told the press the government was looking for a new direction for legal aid.⁵⁷⁸ Morgan told the press that his one regret about his time as chair was not bringing in more funding which would have enabled the Commission to hire more staff lawyers and reduce caseloads. He noted Lancaster's long legal aid career⁵⁷⁹ and cautioned that anyone taking on the chair position "should be prepared to sacrifice some of their ideals in order to deal with budget constraints."⁵⁸⁰

Minister MacKinnon ordered a committee to review Saskatchewan's legal aid system. She appointed Ian Wilson and Roger Carter⁵⁸¹ to "assess, review and report on the mandate and functions of the Saskatchewan Legal Aid Commission."⁵⁸² She told Carter and Wilson to keep the province's financial straits in mind, and told the press, "I wouldn't be surprised that professor Carter and Mr. Wilson might come back with some tough choices for us."⁵⁸³

In their report,⁵⁸⁴ released in November 1992, Wilson and Carter noted that SLAC's caseload had "increased much more significantly than the supportive funding." In the six-year period between 1985-1986 and 1990-1991 the

⁵⁷⁷ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 458.

⁵⁷⁸ Wyatt, Mark. "Legal aid chairman fired" *Regina Leader Post*. Regina, SK, January 23, 1992, p.2.

⁵⁷⁹ Jane Lancaster articulated, and then was a staff lawyer in Melfort from 1975 until 1979, then legal director until 1985. From 1985 to 1989 she was the Young Offenders Service Coordinator at head office and from 1989 until 1992, legal director of the Saskatoon City office. She received Queen's Counsel designation in 1994.

⁵⁸⁰ Wyatt, Mark. "Legal aid chairman fired" *Regina Leader Post*. Regina, SK, January 23, 1992, p 2.

⁵⁸¹ Ian Wilson and Roger Carter both agreed to donate their time to the review, at no cost to the province, except for expenses incurred to complete the review. "Sask. Legal aid to be reviewed" *The News - Optimist Total* February 2, 1992, p 14.

⁵⁸² Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992.

⁵⁸³ Wyatt, Mark. "Legal aid chairman fired" *Regina Leader Post*. Regina, SK, January 23, 1992, p 2.

⁵⁸⁴ Ian Wilson and Roger Carter began their review by writing to everyone in the province who they expected might have had some contact with the Saskatchewan Legal Aid Commission to seek their "comments, criticisms and suggestions." They received written or in-person feedback from more than 20 judges from all levels of court, 10 Indigenous organizations, the Law Society of Saskatchewan, the Criminal Justice Section of the Canadian Bar Association - Saskatchewan Branch, PLEA, Provincial Association of Transition Houses, Elizabeth Fry Society, SLAC employees, and all legal directors. They also travelled to the La Ronge office (as well as four others) and on circuit to Buffalo Narrows and Wollaston Lake.

Commission's gross revenue had increased by 16.6 per cent, but the number of approved legal aid applications had grown by 30.5 per cent. Total staff decreased from 137 to 119. All but one of the positions (a lawyer position) that had been cut were support staff and paralegal positions.⁵⁸⁵ They also compared the cost of Saskatchewan's system to other Canadian systems⁵⁸⁶ and found Saskatchewan compared "reasonably well with other jurisdictions."⁵⁸⁷

Their review explored the quality of services provided by the Saskatchewan Legal Aid Commission, dedicating several pages to direct quotes from the judiciary, Crown prosecutions, RCMP and the Law Society of Saskatchewan. The comments from these groups were uniformly positive, pointing not only to the high capability of legal aid lawyers as advocates for their clients, but also their sensitivity to the needs of those they served, and their dedication to the work under challenging circumstances brought on by an "almost inhuman workload," as one member of the judiciary called it. Legal aid lawyers had become specialists in criminal defence, and in the areas of family law included in SLAC's range of services, such that they often had better results than private bar lawyers. In addition, as the Law Society pointed out, the legal aid tariff was so low that many experienced private bar lawyers had taken their names off the legal aid list, with the result that the panel was largely made up of younger, less experienced practitioners.⁵⁸⁸

Generally, the Committee found the employees of SLAC to be "highly dedicated, very intelligent, and hard working." They were also impressed with the "apparent quality" of work by administrative and secretarial staff, as well as the interest they showed in their work. They expressed the view that the quality of services provided through the legal aid system was "something which the public [could] be rightly proud of."⁵⁸⁹ They recommended that the "status, salaries and benefits of employees of the Commission be brought in line" with Saskatchewan Department of Justice employees. Noting that some lawyers were carrying such heavy caseloads that their ethical duty to provide competent

⁵⁸⁵ Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 17.

⁵⁸⁶ The per capita cost of Saskatchewan's legal aid plan was \$4.33 in 1990-1991. Ontario's program cost was the highest at \$9.28 per capita. New Brunswick's was the lowest at \$1.07. Prince Edward Island, Newfoundland, Nova Scotia and Alberta also all came in at a lower cost than Saskatchewan. However, as Carter and Wilson pointed out, the range of services and eligibility rules of each province varied, sometimes significantly. Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 20-22

⁵⁸⁷ *Ibid.*

⁵⁸⁸ *Ibid.*, p 23-28.

⁵⁸⁹ *Ibid.*, p 28.

services could be compromised, they recommended that funding be provided to increase the number of SLAC staff lawyers.^{590,591}

Wilson and Carter observed that the major client group of SLAC was “people of Aboriginal ancestry.” They stated that this group should “play a significant role in the governance and operation of the system.” One of the ways to increase their participation was to implement an employment equity program.⁵⁹² However, Wilson and Carter noted that, across Canada, there were only 230 lawyers of Indigenous ancestry, and only eight of them practiced in Saskatchewan. The “hard fact” was that a Canadian lawyer of Indigenous ancestry was in “high demand” and could “look forward to exciting work that paid well.”⁵⁹³ They suggested the Commission attempt to enter into term contracts from time to time with Indigenous lawyers in the province. There was, however, a high need to increase paralegal staff, and here, they found, was an opportunity to significantly increase Indigenous staff.⁵⁹⁴

Likewise, Indigenous organizations encouraged increased participation in the Commission by Indigenous people in various ways including employment and representation on the Commission and local Indigenous advisory bodies. The Federation of Saskatchewan Indian Nations (as it was called then) suggested SLAC be decentralized to tribal councils and some communities were looking to self-government, and separate, Indigenous justice systems altogether.⁵⁹⁵

Wilson and Carter noted the Commission imposed the same policy and restrictions on the northern area as the rest of the province, but geography and the population in the area (roughly half of the people living in the north were of Indigenous ancestry) gave rise to unique challenges. They urged the Commission to acknowledge the northern area as a “distinct society” and “agree to the North’s emancipation from the constraints of existing regulations covering eligibility and range of service and instead rely on the professional judgement of staff.”⁵⁹⁶ They recommended separate regulations governing eligibility and range

⁵⁹⁰ Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 51.

⁵⁹¹ Other recommendations included employment of a general counsel (Howard Pick had retired and he had not been replaced) to provide professional assistance to lawyers (not act as counsel to the Commission) and encouraging the Law Society of Saskatchewan to promote short term articling student assignments at SLAC, recruit junior lawyers to accept legal aid referrals, and arranging for its members to provide pro bono legal services in certain areas outside the range of services. Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 52-53.

⁵⁹² This strategy had been recommended in the *Report of the Saskatchewan Indian Justice Review Committee* chaired by Her Honour Judge Patricia Linn.

⁵⁹³ Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 32-38.

⁵⁹⁴ *Ibid*, p 49.

⁵⁹⁵ *Ibid*, p 32-38.

⁵⁹⁶ *Ibid*, p 39-42.

of services in the north, special fiscal and human resources provisions that would exclude the north from the “rationalization of resources elsewhere in the Province,” and that *The Legal Aid Act* be amended so SLAC could establish a “Northern Saskatchewan Legal Aid Advisory Council” made up of Indigenous members (at least 10 of the recommended 12 members) “to advise the Northern office and the Commission about problems experienced by residents and about strategies to enhance services.”⁵⁹⁷ Though the vast distances between communities still presented challenges, those could be met with more paralegal support, local community liaisons (who could be paid an honorarium) and telephone, as well as in-person, meetings of the proposed advisory council.⁵⁹⁸

The structure of the Commission had changed dramatically since its beginnings when there were nine Commissioners, three of whom were government appointees, three were appointed by community boards, one by the Law Society of Saskatchewan and one by the federal Attorney General. The final member in 1974 was the Commission’s provincial director, a lawyer who was appointed by the Commission itself. In 1992, the Commission was made of 11 members, eight of whom were government appointees. The number of lawyers had increased from three to five. Through its stakeholder consultations, Wilson and Carter found a consensus that eight government appointees out of eleven were too many.⁵⁹⁹ They were concerned the high number of government appointees could impact both the perceived and actual independence of legal aid practitioners.⁶⁰⁰

The Committee had canvassed SLAC staff for interest in the return of the community board system. They found no clear consensus on this issue and speculated that the lack of consensus was due, to some extent, to early experiences with local boards, some of which had “worked well” and others that had been “little short of disaster.”⁶⁰¹ They doubted a return to the original local board system was possible due in part to what they perceived to be a “fundamental change in public attitudes since 1973.” Back then, the public had been more aware of, and concerned about, the “problems of the poor.” That concern had been reflected in the Carter Committee’s General Conclusions.

⁵⁹⁷ Other recommendations for the northern area included: regular Queen’s Bench sittings in La Ronge, Department of Justice to provide funding for the “employment of local community representatives in legal aid to assist, on a part-time basis, in the arrangement for, and provision of, legal services in isolated areas,” and the Department of Justice, through Court Services, to provide a cadre of competent, trained interpreters to act in those areas in the north where there is a significant concentration of Indigenous People. Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 50-51.

⁵⁹⁸ *Ibid*, p 39-42.

⁵⁹⁹ *Ibid*, p 43.

⁶⁰⁰ The Committee had received anecdotal evidence of interference in family law cases by members of the Department of Social Services. Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992. p 29.

⁶⁰¹ *Ibid*, p 30.

Twenty years on, Wilson and Carter stated, “some people would no doubt regard [the General Conclusions] as revolutionary.” They further noted that the members of the Carter Committee “could hardly be denounced as a bunch of wild-eyed radicals.” They quoted Canadian novelist, Timothy Findlay, to sum up the ethos in 1992:

We live...in Never-Never-Land: never offer a hand when you can withdraw it; never stand beside another person whom you can walk away from; never give when you can take; never open a door when you can close it. (The Canadian Forum, September 1992)⁶⁰²

Given the change in societal attitudes, Carter and Wilson doubted there were people at the local level, as there had been 20 years previous, who would be willing to “devote some of their time and energy, without pay, to the provision of legal aid for poor people.” Nonetheless, they felt it important to find ways to increase community (and decrease government) participation. To this end, they recommended appointments to the Commission by the FSIN, Métis Society of Saskatchewan, community organizations like the Elizabeth Fry and John Howard Societies, as well as four regional “community representatives” drawn from the “four quadrants in southern Saskatchewan (for example, the northwest, northeast, southwest and southeast). Under this proposed make up, government appointees would be limited to two of 15.⁶⁰³

Wilson and Carter noted that the eligibility guidelines had not been changed since the inception of the plan in 1974.⁶⁰⁴ Without exception, they found SLAC staff expressed concern that the eligibility regulations were at fault for “not making sensible provision for legal assistance to the ‘working poor’.”⁶⁰⁵ They recommended eligibility be extended to include the “working poor” under a system of appropriate contribution, as well as, at the discretion of the commission, to non-profit organizations concerned with the problems of poor people.⁶⁰⁶

The “overwhelming consensus” among SLAC staff was that the range of services should be significantly widened. They saw a “very clear need” for services beyond criminal and family law matters. In addition, some staff felt that

⁶⁰² Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 44.

⁶⁰³ *Ibid*, p 43-47.

⁶⁰⁴ A person was financially eligible for legal aid if they were in receipt of social assistance or eligible for it, or if obtaining legal services outside *The Legal Aid Act* would reduce the person’s financial resources to a level where they would be eligible for social assistance. Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 14. Visit Legal Aid Saskatchewan’s website for current eligibility guidelines.

⁶⁰⁵ *Ibid*, p 29.

⁶⁰⁶ *Ibid*, p 49.

extending the range of services would “make life in the system more exciting and, accordingly, to some extent relieve the stress flowing from case overload.”⁶⁰⁷ Carter and Wilson recommended:

- a) as soon as possible, expanding the range of services to include certain designated “poverty law” areas such as social aid appeals, workers’ compensation appeals, unemployment insurance appeals;
- b) as soon as possible, providing service in “cases deemed to be of special, broad public interest” (such as certain issues arising under the *Canadian Charter of Rights and Freedoms*); and
- c) eventually providing a full range of services, both criminal and civil, except for fee-generating cases.⁶⁰⁸

Wilson and Carter opined that Saskatchewan’s commitment to the legal aid plan was sound but heavy caseloads, long hours and continuing stress were “negative phenomena” of the system. A conscious effort of government will to increase funding was required.⁶⁰⁹

Premier Romanow, however, had learned from his political apprenticeship in the Blakeney government, a government that had continually balanced its budget. But, the economic climate in Saskatchewan no longer allowed for the kind of expansion Blakeney had pursued, and Romanow “drew inspiration from the practices of past CCF governments under Douglas and Lloyd, which had placed balancing the books ahead of new programs.”⁶¹⁰

MacKinnon became the Minister of Finance and, in 1993, revealed a budget with deep spending cuts. The Saskatchewan Legal Aid Commission escaped the cuts and even received a modest four per cent increase. Lancaster, by that time the permanent chair, wrote that the increase allowed SLAC to slightly enlarge its staff in offices most affected by increased caseload, but did not allow for any expansion of services.⁶¹¹ The Commission continued to receive modest funding increases, and the number of staff grew to 126 in 1993-1994⁶¹² and 131 in 1994-1995,⁶¹³ where it stayed in 1995-1996.⁶¹⁴

⁶⁰⁷ Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 30.

⁶⁰⁸ *Ibid*, p 48.

⁶⁰⁹ *Ibid*, p 19.

⁶¹⁰ Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 459.

⁶¹¹ *Nineteenth Annual Report*. Saskatchewan Legal Aid Commission. 1992-1993.

⁶¹² *Twentieth Annual Report*. Saskatchewan Legal Aid Commission. 1993-1994.

⁶¹³ *Twenty-first Annual Report*. Saskatchewan Legal Aid Commission. 1994-1995.

⁶¹⁴ *Twenty-second Annual Report*. Saskatchewan Legal Aid Commission. 1995-1996.

By 1995, sooner than expected, the Romanow government tabled a balanced budget. But, by that time, the optimism that had characterized the province following the end of World War II was “replaced by a cheerless sense of duty to try to restore the fiscal credibility” of the province “for the sake of future generations.”⁶¹⁵ And SLAC had crystallized, more or less, into its current form, a clinical staff system providing certain criminal and family law services to the most economically disadvantaged population. Still, SLAC staff, and the organization as a whole, continued to innovate and implement their ideals, to advocate for an expanded range of services for a larger swath of the lower income population, as much as they could within budget constraints.

⁶¹⁵Waiser, Bill. *Saskatchewan: A New History*. Fifth House Ltd., 2005, Calgary, AB, p 458.

Chapter 14

Expanding Technology, Cultural Responsiveness and Family Law Services: Legal Aid in the 1990s

As new technologies emerged and law firms embraced automation, the Saskatchewan Legal Aid Commission was also looking for advances in office technology to streamline data management and employee workflows. In January 1990, recruitment of an accountant led to the hiring of Jerome Boyko. In addition to being a Chartered Accountant, Boyko was also keen on information technology, and led the Commission's modernization efforts.

At that time, the organization used a computer system⁶¹⁶ called the Legal Aid Management Information System, or LAMIS,⁶¹⁷ to collect data. To assemble statistics, each area office entered information in a computer database, printed it, and sent it to head office for tabulation. The Commission applied for a Law Foundation of Saskatchewan grant to computerize the organization. In addition to various statistical requirements, the diverse geographical locations of the SLAC offices meant computerization would be time consuming and expensive. But it was necessary. The Law Foundation granted SLAC's \$489,500 request to fund automation.⁶¹⁸

With the Law Foundation grant in hand, planning for, and implementation of, automation, along with staff training, took place throughout 1991 and 1992. Between April and November 1992, the Commission installed computers, software⁶¹⁹ and laser printers in each area office. Thirty-seven additional computers, printers and related equipment, and six area office networks were also installed.⁶²⁰ The Commission also focused on system-wide discussions about standardization of administrative procedures, forms and statistics that would lead to increased efficiency and better client service.⁶²¹ In addition, SLAC wanted to work towards consistency in data collection and analysis to realize a fair allocation of resources to staff offices and began work on a customized case management system.⁶²²

⁶¹⁶ In June 1987 the Canadian Centre for Justice Statistics released a feasibility and requirements study for SLAC's computerized management information system. The report recommended that the Commission expand its hardware and software capabilities, but due to financial restraint the project was put on indefinite hold.

⁶¹⁷ LAMIS was fully implemented in the 1984-1985 fiscal year.

⁶¹⁸ *Eighteenth Annual Report*. Saskatchewan Legal Aid Commission. 1991-1992.

⁶¹⁹ Software included DOS 5.0, Windows 3.0, WordPerfect 5.1 and tutorial on Personal Computing. Saskatchewan Legal Aid Commission. *Final Report to the Law Foundation of Saskatchewan Regarding the Grant for the Legal Aid Support System (SLASS)*. Saskatoon, SK, May, 1993.

⁶²⁰ *Ibid.*

⁶²¹ *Eighteenth Annual Report*. Saskatchewan Legal Aid Commission. 1991-1992.

⁶²² *Twentieth Annual Report*. Saskatchewan Legal Aid Commission. 1993-1994.

In 1993, SLAC introduced its first computerized case management system, CMS, in all offices. CMS provided data that allowed management to make important decisions concerning allocation of workloads, consistency and standardized office procedures.⁶²³ In CMS, individual staff members tracked client data, including gender and type of case (family or criminal). Information was exchanged by transferring data onto floppy disks each month, which would then be sent to head office through interoffice mail, where the data would be uploaded to a central tracking system. Back-ups were done at each area office.⁶²⁴

Between 1996 and 1999, SLAC received another Law Foundation grant and purchased computers for all remaining staff. The organization also completed installation of Local Area Networks in all offices,⁶²⁵ implemented a redesign of CMS, and updated certain workstations to a Windows based platform, to ensure any Y2K computer problems were addressed.⁶²⁶

Workload issues continued to plague SLAC employees and attracted public attention once again in the late 1990s.⁶²⁷ The provincial government⁶²⁸ commissioned a study, under the guidance of the Commission's Needs Assessment Steering Committee, to review SLAC's resource requirements.⁶²⁹ Don Rosten delivered his Strategic Needs Assessment in October 1999. The report found that SLAC provided good value for the money it received. It had the fourth lowest cost per capita of all Canadian legal aid plans, the second lowest cost per approved application and it accomplished this even though it had the third highest rate of approved applications.⁶³⁰

Rosten's report highlighted the need to track information to improve services and accountability and, therefore, move the organization forward in the future.⁶³¹ He recommended an increase in the use of technology and implementation of a control and measurement system to better monitor workloads and costs. He noted all other provinces had some type of system, usually consisting of monitoring and recording time spent per file, similar to billable time in private practice.⁶³² The system Rosten suggested for the Saskatchewan Legal Aid Commission would monitor, on an ongoing basis, the

⁶²³ *Twenty-first Annual Report*. Saskatchewan Legal Aid Commission. 1994-1995.

⁶²⁴ Jerome Boyko, August 16, 2023 personal interview.

⁶²⁵ *Twenty-third Annual Report*. Saskatchewan Legal Aid Commission. 1996-1997.

⁶²⁶ *Twenty-fifth Annual Report*. Saskatchewan Legal Aid Commission. 1998-1999.

⁶²⁷ *Twenty-sixth Annual Report*. Saskatchewan Legal Aid Commission. 1999-2000.

⁶²⁸ The government transferred responsibility for the Saskatchewan Legal Aid Commission back to the Department of Justice in 1996.

⁶²⁹ Rosten, Don. *Strategic Needs Assessment for the Saskatchewan Legal Aid Commission*. October, 1999, p. 1.

⁶³⁰ *Ibid*, p 37.

⁶³¹ Jerome Boyko, August 16, 2023 personal interview.

⁶³² Rosten, Don. *Strategic Needs Assessment for the Saskatchewan Legal Aid Commission*. October, 1999, p 43.

performance of the Commission as a whole, and area offices and their staff members on both quantity and quality of work.⁶³³ Rosten's report was lengthy and comprehensive, but the Commission began implementing the recommendations as resources allowed.⁶³⁴



Cultural sensitivity had always been integral to the Commission and its work, and in the 1990s steps were taken to formalize a more diverse team. SLAC committed to Roger Carter and Ian Wilson's recommendation in the 1992 *Report of the Saskatchewan Legal Aid Review* to recruit more Indigenous professionals. In September 1993, the Commission received approval from the Saskatchewan Human Rights Commission for an interim Affirmative Action Plan⁶³⁵ with a goal of achieving a workforce with Indigenous employees comprising 12.2 per cent.

Carter and Wilson also recommended that "efforts to heighten sensitivity towards Aboriginal clients and their needs be part of an internal program within the legal aid system."⁶³⁶ The Commission had already taken steps in this direction by holding a seminar in 1990 on intercultural communication, co-conducted by an Indigenous woman, that spent "significant time on Aboriginal communications." Gerald Morin, at the time an Indigenous lawyer, presented a workshop on cultural issues to SLAC staff in 1991 and in 1992 the Commission set aside a full day to deal with cross-cultural issues.⁶³⁷ Following Carter and Wilson's review, the Commission continued its efforts at cultural sensitivity training. In 1993-1994 the Commission developed and held a seminar for all staff focusing on racism, sentencing circles and a historical perspective of Indigenous development in Saskatchewan.⁶³⁸



⁶³³ Don Rosten also noted SLAC was using outdated word processing software and much of the current hardware was unable to support a lot of the new software that was available. He recommended that the internet and email be accessible to each computer user. Other key recommendations included increased staff to handle the existing caseloads and an increase in the private bar tariff. Rosten, Don. *Strategic Needs Assessment for the Saskatchewan Legal Aid Commission*. October, 1999, p 2-9.

⁶³⁴ Jerome Boyko, August 16, 2023 personal interview.

⁶³⁵ The Comprehensive Affirmative Action Plan was approved by the Human Rights Commission in 1994 for other target groups: visible minorities, persons with disabilities and women in management and non-traditional roles. *Twentieth Annual Report*. Saskatchewan Legal Aid Commission. 1993-1994.

⁶³⁶ Roger Colenso Carter and Ian James Wilson. *Report of the Saskatchewan Legal Aid Review Committee*. November 23, 1992, p 49.

⁶³⁷ *Ibid*, p 34.

⁶³⁸ *Twentieth Annual Report*. Saskatchewan Legal Aid Commission. 1993-1994.

In 1992, Claude Fafard was a Provincial Court Judge in La Ronge. The demands of the job were high, resources limited,⁶³⁹ and, he had noticed throughout his 15 years on the bench the punishment-oriented justice system was not working very well.⁶⁴⁰ Jails were beyond capacity and the majority of inmates were Indigenous people who were not likely to be rehabilitated serving time in jail time.⁶⁴¹ Judge Fafard turned to Judge Barry Stuart, a Yukon territorial judge who'd attempted sentencing circles in the Yukon.

Sentencing circles are a modern form of sentencing based on traditional Indigenous forms of justice. Though he did not like the analogy to sentencing circles, Sakej Henderson of the Native Law Centre at the University of Saskatchewan, described traditional Indigenous healing circles as community courts used to address a community member's bad behaviour with the goal of healing the torn relationship between the offender, the victim and the community.⁶⁴²

Judge Fafard was not the only one frustrated with the over incarceration of Indigenous people. Native leaders, lawyers, academics and even police espoused the opinion that society could not afford not to try sentencing circles.⁶⁴³

Under the leadership of Judge Fafard, the first sentencing circle in Saskatchewan took place in Sandy Bay in July 1992. Early on, SLAC quite often took the lead in setting up sentencing circles,⁶⁴⁴ coordinating with participants and justice officials and making sure the right people, which, along with the offender, could include victims, family members, community members, lawyers, police and other justice system officials, were present at the circle.

This first sentencing circle was held in the basement of the Sandy Bay Catholic Church and included an inner circle for the main participants, and an outer circle for anyone interested. SLAC staff lawyer, Sidney Robinson, represented the two offenders who'd stolen money that had been raised for a prize purse for a canoe race. Everyone in the inner and outer circles participated. The circle went well and resulted in a probationary outcome for the offenders.⁶⁴⁵

⁶³⁹ Pauls, Carmen. "Judge of the people" *Western People*. June 3, 1999, p 3,

http://www.pen4hire.ca/portfolio/justice/judge_of_the_people.pdf

⁶⁴⁰ Parker, James. "Gov't tall on talk, short on cash for Native justice initiatives: judge" *Saskatoon Star Phoenix*, Saskatoon, SK, June 18, 1996, p 5.

⁶⁴¹ Hoffman, Donella. "Easy time?" *Saskatoon Star Phoenix*. Saskatoon, SK, September 19, 1995, p 1.

⁶⁴² *Ibid.*

⁶⁴³ *Ibid.*

⁶⁴⁴ Sidney Robinson, August 10, 2023 personal interview.

⁶⁴⁵ Sidney Robinson, August 8, 2023 email correspondence

Bria Huculak spent 14 years as a SLAC staff lawyer and had become increasingly doubtful about the ability of criminal courts to prevent re-offending. Offenders often suffered from poverty, addictions and lack of education and, in this context, prison sentences often seemed counter-productive. In the court setting there was little opportunity to hear detailed circumstances of the offender, the victim and the impact of the offender's actions. And no way to facilitate reparations. When she was appointed a Provincial Court Judge in 1992, she joined Judge Fafard and other judges, including Linton Smith and Ross Moxley, who were appointed Provincial Court Judges in 1979, facilitating sentencing circles in Saskatchewan. At first, participants had to make it up as they went along, learning from their mistakes, but eventually, guidelines and procedures emerged, some set out in court cases. The process became a mixture of victim/offender mediation, traditional Indigenous peace-making circles and democratic discussion.⁶⁴⁶

By 1995, an estimated 150 sentencing circles had been conducted in Saskatchewan, mostly in the north where communities were small and mostly Indigenous.⁶⁴⁷ The Lac La Ronge Indian Band had used sentencing circles in several less serious cases. When band member Billy Taylor was convicted of the more serious offences of sexual assault and uttering death threats, the band decided to take the case on as a sentencing circle challenge because the traditional court system was not working.⁶⁴⁸ Taylor received one of the more innovative sentencing circle sentences: a one-year banishment to a remote location, followed by three years' probation.⁶⁴⁹ Community and women's groups expressed outrage that the punishment did not fit the crime. The Crown appealed the sentence. Morin, who, along with Robinson, represented Taylor at the Court of Appeal, explained that in the sentencing circle, people discussed the fact that jail was not the answer. It reinforced the cycle of violence, instead of breaking it, by pushing problems aside.⁶⁵⁰ Lillian Sanderson, a member of the sentencing circle, explained that traditionally, banishment was one of the highest forms of discipline. Offenders who had served similar sentences had emerged as changed men.⁶⁵¹

In a unanimous decision, the Court of Appeal upheld the banishment sentence, though one of the judges wrote a highly critical opinion of the sentence. He was

⁶⁴⁶ Hartill, Rosemary. "Justice in the round" *The Guardian*. May 9, 2001, <https://www.theguardian.com/society/2001/may/09/crime.penal>

⁶⁴⁷ Hoffman, Donella. "Easy time?" *Saskatoon Star Phoenix*. Saskatoon, SK, September 19, 1995, p 1.

⁶⁴⁸ Goulding, Warren. "Man banished for sexual assault" *Saskatoon Star Phoenix*. Saskatoon, SK, May 30, 1995, p 22.

⁶⁴⁹ *Ibid.*

⁶⁵⁰ Cordon, Sandra. "Sentencing for banished man should be harsher: prosecutor" *Saskatoon Star Phoenix*. Saskatoon, SK, April 20, 1996, p 3.

⁶⁵¹ Goulding, Warren. "Man banished for sexual assault" *Saskatoon Star Phoenix*. Saskatoon, SK, May 30, 1995, p 22.

of the view that it was not enough and that using a sentencing circle in the case of a “vicious rape” was not appropriate.⁶⁵² The case attracted media attention and criticisms of sentencing circles. Some felt they were a “soft touch” but Judge Smith pointed out that the decision to hold a sentencing circle was never taken lightly, they created a lot “emotional turmoil,” and communities were “very exacting of their members” and followed up to make sure rehabilitation was happening.⁶⁵³ Morin pointed out that sentencing circles were “one step toward giving Native communities more control over crime and punishment issues, something authorities don’t always want to give up.”⁶⁵⁴

Judge Fafard expressed his belief that sentencing circles worked, and that they would be “more effective if the province compensated aboriginal participants for their involvement and provided better follow-up services for victims and offenders.”⁶⁵⁵ Judge Smith echoed Judge Fafard’s call for more resources, stating he’d been told there was a real fear in some First Nation communities that sentencing circles would fail, not for a lack of goodwill, but that there was no way communities that were putting significant efforts into organizing circles could continue doing so without adequate resources.⁶⁵⁶ Robinson, who participated in sentencing circles as SLAC defence counsel and later as a Provincial Court Judge, found they were generally a positive experience, but he also noted they took a half or full day of court time that wasn’t readily available on a busy, full docket day.⁶⁵⁷

The use of sentencing circles expanded throughout the province in the 2000s⁶⁵⁸, but the frequency of their use declined.⁶⁵⁹ Reflecting on the early enthusiasm for them, Judge Huculak noted that they were all community-assisted, nobody was paid and it was a lot of work, leading her to speculate that part of their decline was due to community burn out. Though justice sector costs, such as prosecutions and courtworker programs, were funded by the courts, offenders and communities were mainly responsible for organizing sentencing circles,

⁶⁵² Blevins, Kevin. “Court of Appeal upholds decision to banish rapist” *Saskatoon Star Phoenix*. Saskatoon, SK, December 20, 1997, p 12.

⁶⁵³ Parker, James. “Gov’t tall on talk, short on cash for Native justice initiatives: judge” *Saskatoon Star Phoenix*, Saskatoon, SK, June 18, 1996, p 5.

⁶⁵⁴ Cordon, Sandra. “Sentencing for banished man should be harsher: prosecutor” *Saskatoon Star Phoenix*. Saskatoon, SK, April 20, 1996, p 3.

⁶⁵⁵ Parker, James. “Gov’t tall on talk, short on cash for Native justice initiatives: judge” *Saskatoon Star Phoenix*, Saskatoon, SK, June 18, 1996, p 5.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ Sidney Robinson, August 10, 2023 personal interview.

⁶⁵⁸ Adam, Betty Ann. “Sentencing circles fall out of favour” *Saskatoon Star Phoenix*. Saskatoon, SK, January 2, 2014.

⁶⁵⁹ Sentencing circles are still used today, but to use them with any regularity depends on having the right set of facts and the right mix of personalities and resources, including defence counsel who are willing to put in the time to make the application to have one, a Crown prosecutor who’s willing to take a chance and put the time into one, a judge who’s willing to do it and a functioning justice committee or Tribal Council who can do all the background work to set up the circle. Deanna Harris, November 20, 2023 personal interview.

sometimes with help from community justice or court workers. Costs such as the facility (if it was not a courthouse), transportation, sustenance and elder support are also usually the responsibility of the offender and the community.⁶⁶⁰



The 1990s was also a time of renewed focus on family law services.⁶⁶¹ In 1994-1995, 28 per cent of legal aid applications were for family law matters, and most of those applicants were single mothers. SLAC received additional funding for family law and hired more professional and support staff. Area offices met with women's shelters and reorganized waiting rooms to be more child friendly. The organization streamlined production of family law documents and reviewed intake procedures to try to reduce waiting times for family law clients.⁶⁶²

One of the main difficulties of providing family law services had to do with access, particularly in rural offices.⁶⁶³ Family law matters that fell under provincial statutes could be heard in provincial court, which was held more often in rural areas, but those matters were often left until the end of the criminal docket. Many family law matters, like divorce, custody, access and maintenance, fell under federal law and could only be heard in the Court of Queen's Bench. In larger cities, litigants had regular access to these courts, but in rural areas, a superior court judge would travel to court points less often, sometimes twice a month or monthly. In addition, distance from a legal aid office could also be a limiting factor for some clients. SLAC had no control over access to courts, but the organization increased private bar appointments by 20 per cent in areas where this difficulty existed.⁶⁶⁴

Until the mid-1980s, custodial parents were responsible for enforcing their child or spousal maintenance orders, at their own expense. Often, the parent required to pay could not be located, or they found ways to shield their income and assets. In too many cases, the level of difficulty collecting maintenance under court orders was unacceptably high, with dire consequences for children and their custodial parent, who was usually the mother.⁶⁶⁵

⁶⁶⁰ Adam, Betty Ann. "Sentencing circles fall out of favour" *Saskatoon Star Phoenix*. Saskatoon, SK, January 2, 2014.

⁶⁶¹ *Twentieth Annual Report*. Saskatchewan Legal Aid Commission. 1993-1994.

⁶⁶² *Twenty-first Annual Report*. Saskatchewan Legal Aid Commission. 1994-1995.

⁶⁶³ Jane Lancaster, K.C., May 27, 2024 personal interview.

⁶⁶⁴ *Twenty-first Annual Report*. Saskatchewan Legal Aid Commission. 1994-1995.

⁶⁶⁵ Canadian Centre for Justice Statistics. *Maintenance Enforcement Programs in Canada: Description of Operations 1999/2000*. Statistics Canada. 2002, p 23.

The Government of Saskatchewan passed *The Enforcement of Maintenance Orders Act*⁶⁶⁶ in 1985 and established the Maintenance Enforcement Program in 1986. The director of the program was given substantial powers to enforce maintenance orders, alleviating the pressure on the custodial parent. Over time, amendments to the Act broadened these powers, as well as restricted the payor's ability to shield funds and assets,⁶⁶⁷ making it easier for SLAC lawyers to obtain maintenance orders for their clients. In the 1994-1995 fiscal year, each area office set goals for increased numbers of maintenance orders. The number of maintenance orders increased by 50 per cent, but, more importantly, approximately 1,670 children were benefitting from them.⁶⁶⁸

⁶⁶⁶ SS 1984-85-86, c E-9.2

⁶⁶⁷ Canadian Centre for Justice Statistics. *Maintenance Enforcement Programs in Canada: Description of Operations 1999/2000*. Statistics Canada, 2002, p 23.

⁶⁶⁸ *Twenty-first Annual Report*. Saskatchewan Legal Aid Commission, 1994-1995.

Chapter 15

Redefining Identity & Trailblazing Justice Services: Legal Aid in the 2000s

The 2000s was an era of redefining for the Saskatchewan Legal Aid Commission. In August 2000, amendments to *The Legal Aid Act* separated the roles of CEO and chair. Later, in 2008, a rebranding effort established a new name for the organization – Legal Aid Saskatchewan (LAS) – to better distinguish the Board of Commissioners from the organization that provides legal services.

In 2001-2002, SLAC finalized its first strategic plan. The plan included six main goals, one of which was to enhance capacity for and access to family law services. A committee of legal directors was set up to determine the degree to which family law services were hampered by factors such as geography, conflicts and the lack of availability of private bar lawyers to take legal aid referrals.⁶⁶⁹

SLAC's ability to obtain maintenance orders for legal aid clients had waned by the early 2000s. The annualized value of maintenance orders the Commission had been able to achieve reached a peak of \$4.2 million in 1998-1999,⁶⁷⁰ but had dipped to \$2.6 million in 2001-2002.⁶⁷¹ One factor in SLAC's ability to obtain results for their mainly female family law clients was related to a significant increase in self-represented men. The cost of legal services had gone up and many men, though they were not eligible for legal aid, could not afford to hire their own legal counsel. SLAC staff lawyers representing female single parents, along with other justice system officials including judges, must take extra care to make sure the unrepresented person clearly understands the proceedings and is fairly treated. This puts additional strain on the legal aid system adding significantly more complexity and time to these cases.⁶⁷²

The use of negotiation and mediation to resolve family law matters began to increase significantly as well. While negotiated or mediated settlements can often result in more satisfactory results, it can take additional time to resolve matters this way. Going to court can be a faster route to obtaining a maintenance order.⁶⁷³

⁶⁶⁹ *Twenty-eighth Annual Report*. Saskatchewan Legal Aid Commission. 2001-2002.

⁶⁷⁰ *Twenty-fifth Annual Report*. Saskatchewan Legal Aid Commission. 1998-1999.

⁶⁷¹ *Twenty-eighth Annual Report*. Saskatchewan Legal Aid Commission. 2001-2002.

⁶⁷² Jane Lancaster, K.C., May 27, 2024 personal interview.

⁶⁷³ *Ibid.*

Recognizing the issues and their complexities, the Commission continued to try to improve family law services as much as possible given the organization's mandate and resources. In September 2002, SLAC established the Enhanced Maintenance Order project. By the end of the year, the annualized value of maintenance orders had increased to \$3 million.⁶⁷⁴



In the early 1980s when Sidney Robinson and Greg Marchildon were staff lawyers in the Northern Area Office, they had often discussed the many difficulties of practicing criminal law in the north while they were traveling for circuit court with Judge Fafard. During these conversations, Judge Fafard proposed the idea of a court that would be conducted in Indigenous languages and be more aligned with the cultural traditions of Indigenous communities in northern Saskatchewan. They had discussed and debated how such an idea could be implemented, but it wasn't until the late 1990s when Marchildon became Cabinet Secretary and Deputy Minister to Premier Roy Romanow,⁶⁷⁵ that the idea began to unfold in practice. Marchildon proposed the idea to Premier Romanow, who gave him the green light to explore it. Marchildon, along with the Minister of Justice and other officials in the Department of Justice, then began lengthy discussions and negotiations with government and Indigenous stakeholders, as well as SLAC and the Provincial Court, to get everyone on side and work out the details.⁶⁷⁶ When it was ready for implementation, Robinson, who was by then the Northern Area Office Legal Director,⁶⁷⁷ worked with Saskatchewan Justice Department officials to help implement a Cree speaking court in the north.⁶⁷⁸

Gerald Morin was in private practice in Prince Albert at the time. He grew up in Cumberland House, Saskatchewan and spoke Cree fluently. He was appointed a Provincial Court Judge in 2001 and became the first judge in Cree Court when it began sitting in October 2001. In Cree Court, Cree-speaking accused people, victims and witnesses have the choice to receive justice services in their own language (or in English) and the services are delivered in a more culturally sensitive way. Shortly after his appointment, Judge Morin observed that

⁶⁷⁴ *Twenty-ninth Annual Report*. Saskatchewan Legal Aid Commission. 2002-2003.

⁶⁷⁵ Greg Marchildon worked as a staff lawyer in the Northern Area Office from January 1984 until August 1985 when he left to pursue doctoral studies in economic history. After teaching at Johns Hopkins University in the United States, he returned to Saskatchewan in 1994 to take up the post of Deputy Minister of Intergovernmental Affairs. He became Cabinet Secretary and Deputy Minister to Premier Roy Romanow in 1997, a position he held until 2000.

⁶⁷⁶ Greg Marchildon, September 16, 2024 personal interview.

⁶⁷⁷ Sidney Robinson was the Northern Area Office Legal Director from 1992 until 2000 when he was appointed to the Provincial Court of Saskatchewan, where he served until his retirement in 2018.

⁶⁷⁸ Sidney Robinson, August 10, 2023 personal interview.

“incorporating and legitimizing Cree in major institutions such as the justice system gives young Indigenous people a sense of pride and belonging.”⁶⁷⁹ The court’s circuit points are situated across northeastern Saskatchewan, including Sandy Bay, Pelican Narrows, Whitefish First Nation and Ahtahkakoop First Nation.

As an articling student in private practice, Brian Pfefferle’s principal encouraged him to get on the SLAC panel list, and though they were lower paying, take as many legal aid files as he could to learn criminal litigation.⁶⁸⁰ Early in his career, Pfefferle received a legal aid file scheduled for Cree Court in Pelican Narrows. His father-in-law, former SLAC staff lawyer turned Judge Peter Kolenick, told him Judge Morin was a fabulous judge who shared a love of hockey. Pfefferle looked forward to participating in Cree Court and meeting an esteemed leader like Judge Morin.⁶⁸¹

At the time, Pfefferle drove a car that could be started with a screwdriver. He was nervous that it could be easily stolen so whenever he parked it, he placed a Club on the steering wheel. Upon arriving in Pelican Narrows for his first Cree Court, Pfefferle parked next to the van carrying the court party and popped the Club on his steering wheel as always. He got out of his car, approached Judge Morin and introduced himself, but his efforts at an icebreaking hockey conversation did not go as planned.

Judge Morin waited until the rest of the court party left the parking lot, then asked if he could speak with Pfefferle privately. He pointed out that Pelican Narrows was beautiful country, but there was lots of trouble in the community and Pfefferle had hung a sign on the steering wheel of his car that said he didn’t trust members of that community. Pfefferle recalled Judge Morin’s sage advice: *Don’t put the Club on your steering wheel. If anything, leave the doors unlocked because you must earn the trust of people in this community and you won’t do it with the Club.* It was a life-changing moment for Pfefferle when he understood that trust was not a guarantee. It was something he had to earn. He also realized the importance of assuming the best of people in all circumstances, as Judge Morin had assumed the best of him.⁶⁸²



⁶⁷⁹ MacPherson, Alex. “‘He had the ability to make people feel comfortable’: Indigenous judge responsible for Cree court retiring after 17 years on the bench” *Saskatoon Star Phoenix*. Saskatoon, SK, December 6, 2018.

⁶⁸⁰ Brian Pfefferle, K.C., December 1, 2023 personal interview.

⁶⁸¹ *Ibid.*

⁶⁸² *Ibid.*

By this point in SLAC's history, many of the staff lawyers had developed unparalleled expertise in family law, criminal trials, speaking to sentences and bail hearings and were regularly sought out by clients. Some became the best in their fields. This expertise required not only litigation skills, but also dedication. In one case, Pat Reis,⁶⁸³ a legal aid lawyer, and Tim Brown,⁶⁸⁴ a private bar lawyer, knocked on apartment doors, went to a pool hall, an arcade and a mall to piece together the facts of a murder case involving several co-accused to prove their clients were innocent, even though false confessions were given.⁶⁸⁵

Their expertise also required an understanding of people and an interest in their clients' lives. Legal aid lawyers had to learn very quickly how to speak with people on their level to understand their personal circumstances and backgrounds and what was important to them. This was crucial to establishing trust. It was also a collection of information that may be needed later to conduct a bail hearing or speak to sentence on a guilty plea or conviction. SLAC lawyers became adept at presenting their clients' personal circumstances to judges who were grateful for information that would help them impose a fit and just sentence.⁶⁸⁶

Another strength of SLAC's staff system was the mentoring of younger staff and private bar lawyers. One of the first trials Pfefferle did as a newly minted lawyer was on a case with staff lawyer Don Mullord involving a legal issue related to unsworn statements. Mullord took a "gunslinger" approach to court, calm and ready to shoot using his intelligence to challenge the statements under the principled exception to the hearsay rule. Pfefferle worked with Mullord on the legal brief, one of the first true legal writing exercises he undertook. It was a tremendous learning experience that he hasn't forgotten.

On one occasion early in his private practice career, Pfefferle witnessed staff lawyer Kearney Healy⁶⁸⁷ argue in a youth court bail hearing against the prosecutor's suggestion that Healy's client should be under a condition to keep the peace and be of good behaviour. The condition was one imposed on many people and Healy had a stack of files to get through. There were many issues to argue about, but this one, Pfefferle thought, was not a hill to die on. If Healy's client was not keeping the peace he should be arrested. But as he listened to

⁶⁸³ Pat Reis was a staff lawyer at the Northern, Regina Rural and Regina City offices for nearly 30 years. In 2008, he was appointed Queen's Counsel. Reis was appointed to the Provincial Court of Saskatchewan in 2013.

⁶⁸⁴ Tim Brown handled many serious legal aid criminal files during his time in private practice. He was appointed Queen's Counsel in 2017, and is currently the Executive Director of the Law Society of Saskatchewan.

⁶⁸⁵ Judge Pat Reis, August 21, 2024 personal interview.

⁶⁸⁶ *Ibid.*

⁶⁸⁷ Kearney Healy was a staff lawyer from 1980 until 2013. Healy was appointed Queen's Counsel in 2013. He co-authored *Tough on Kids: Rethinking Approaches to Youth Justice* with Ross Green, who was a SLAC staff lawyer from 1988 until 2004 when he was appointed to the Provincial Court of Saskatchewan. Judge Green also wrote the book *Justice in Aboriginal Communities: Sentencing Alternatives* while he was a SLAC staff lawyer.

Healy argue, he became convinced it was an unreasonable bail condition. In 2020, the Supreme Court of Canada agreed. In a case out of British Columbia, *R. v. Zora*, the Court found, as Healy had argued 13 years previously, that conditions that may be appropriate for probation or conditional sentence orders are not required conditions for bail. A person being released on bail is presumed innocent. Any conditions attached to release must be as narrowly defined as possible, minimal in number and sufficiently linked to securing the person's future attendance in court, protecting the public and maintaining confidence in the administration of justice.⁶⁸⁸

These experiences shaped Pfefferle into a strong supporter of the staff lawyer system. On occasion he hears from clients that legal aid lawyers aren't "real lawyers" or fighting hard enough for them. But after spending time in the trenches, such statements come across as offensive. He doesn't hesitate to defend the staff lawyer system or advise those occasional clients that they have one of the best lawyers, a response he sees almost universally from the defence bar in Saskatoon.⁶⁸⁹

In addition to mentoring, SLAC's staff lawyers took a team approach to their work, covering for each other during illnesses and helping on each others' files. During one period of time, head office was struggling to find lawyers for people charged with murder. James Struthers⁶⁹⁰ and Reis, two senior staff lawyers (working together) volunteered to take on these files in other areas of the province (than where they were from) including Saskatoon, Estevan and Moose Jaw. This made each office, and the legal aid system stronger as a whole.⁶⁹¹



The justice system of the 2000s was evolving in recognition of the complexities of criminal behaviour. The first Domestic Violence Court (DVC) was established in North Battleford in 2003.⁶⁹² DVC is a specialized court that uses a therapeutic model to address the root causes and beliefs that lead to domestic violence. For those who are charged with intimate partner violence and willing to take responsibility for their actions, the DVC Treatment Option may be available. Participants in DVC complete a domestic violence program that may also

⁶⁸⁸ *R. v. Zora*, 2020 SCC 14 (CanLII), [2020] 2 SCR 3, <<https://canlii.ca/t/j89v2>>, para 85 and 86

⁶⁸⁹ Brian Pfefferle, K.C., December 1, 2023 personal interview.

⁶⁹⁰ James Struthers was appointed Queen's Counsel in 2005.

⁶⁹¹ Judge Pat Reis, August 21, 2024 personal interview.

⁶⁹² There are currently three Domestic Violence Courts in Saskatchewan, one each in Regina, Saskatoon and North Battleford.

include programming for substance abuse issues, and typically receive a reduced sentence.

Judge Clifford Toth played a defining role in establishing the first Drug Treatment Court (DTC) in Regina in 2006. Participants in DTC are eligible adults facing criminal charges linked to ongoing drug addiction who are willing to plead guilty and undergo a treatment program. The goal is to help the participant “find sustained sobriety and address other criminogenic needs to break the cycle of involvement in the justice system.”⁶⁹³

Judge Toth articulated at SLAC’s Moose Jaw office in the early 1980s. He then worked as a staff lawyer in that office for 18 years before being appointed to the Provincial Court bench. As a judge, he heard about people at their worst.⁶⁹⁴ But as a legal aid lawyer he had the opportunity to find out much more about his clients, sometimes meeting their families. When he was able to appreciate how his clients ended up in conflict with the law, and see that they were kind people, he recognized that sometimes the programming needed to help people get back on track was not available to them. He took this understanding with him to the Provincial Court bench. Andrew Hitchcock, former SLAC staff lawyer, said that “Judge Toth used his role in therapeutic courts to humanize the court.”⁶⁹⁵ Judge Toth’s work establishing therapeutic courts⁶⁹⁶ in Saskatchewan has had a “tremendously positive impact on the lives of many, many people — offenders, their families and, in an indirect way, all of us who live in the same community.”⁶⁹⁷

In 2009, Regina’s Drug Treatment Court team, including Legal Aid Saskatchewan staff lawyer, Jennifer Calderbank, received the C. Willy Hodgson Award given by the Law Society of Saskatchewan⁶⁹⁸ in memory of Willy Hodgson⁶⁹⁹ and in honour of her many contributions to advancing diversity and equity in the administration of justice in Saskatchewan.

⁶⁹³ <https://sasklawcourts.ca/provincial-court/therapeutic-courts/drug-treatment-court/>

⁶⁹⁴ Polischuk, Heather. “Time to pass the torch: Judge Clifford Toth retiring.” *Regina Leader Post*. Regina, SK, January 27, 2017, <https://leaderpost.com/news/local-news/to-run-with-weekender-time-to-pass-the-torch-judge-clifford-toth-retiring>

⁶⁹⁵ *Ibid.*

⁶⁹⁶ Judge Toth also played a pivotal role in the establishment of a Mental Health Court in Regina in the mid-2010s. Around the same time, Judge Sheila Whelan, who’d worked as a SLAC staff lawyer before being appointed to the Provincial Court of Saskatchewan, led the way in the formation of a Mental Health Support and Supervision Court in Saskatoon. Ehman, Amy Jo. *The Evolution of the Provincial Court of Saskatchewan*. Saskatchewan Provincial Court Judges Association, 2018.

⁶⁹⁷ Polischuk, Heather. “Time to pass the torch: Judge Clifford Toth retiring.” *Regina Leader Post*. Regina, SK, January 27, 2017, <https://leaderpost.com/news/local-news/to-run-with-weekender-time-to-pass-the-torch-judge-clifford-toth-retiring>

⁶⁹⁸ *Thirty-sixth Annual Report*. Saskatchewan Legal Aid Commission. 2009-2010.

⁶⁹⁹ See footnote 285, chapter 8.

Therapeutic courts were certainly a welcome innovation at Legal Aid Saskatchewan. However, the more specialized courts became, the more pressure it put on LAS to provide lawyers who have the expertise and ability to devote a significant amount of time following their clients through the programs. In DTC this can take a year or longer. There is no question that the outcomes can be positive and there was a level of satisfaction on the part of people participating in therapeutic courts. However, in contrast, and from a resource perspective, the time it takes to help a legal aid client who is charged with a drug offence, pleads guilty and is sentenced, might be as short as one afternoon. In this way, specialized courts provided a challenge for LAS, especially if the organization did not receive the additional resources needed to respond to an evolving justice system.⁷⁰⁰

In his 2008-2009 annual report message, Allan Snell, then SLAC's CEO, noted that if anyone were asked to characterize the previous year in a few words, fiscal restraint would likely be among the top phrases. It had been a challenging year with the subprime mortgage crisis in the United States. The late 2000s saw the downfall of some of the most stable institutions in the world, an erosion of personal worth and the slowing of economies globally. While spending slowed, the government maintained status quo funding for LAS that year. Snell noted that SLAC's value was seen because of the organization's experience with fiscal restraint — it had “played a constant game of fiscal tight-rope walking,” one that had made it particularly efficient and effective.⁷⁰¹

Though there would never be enough money, private bar or staff lawyers, or support staff to meet the demand, LAS continually looked for ways to do that much more. In the 2008-2009 fiscal year, the organization commissioned a report on the financial eligibility guidelines, but as of 2009-2010 had not been able to move toward expansion of eligibility due to financial stressors faced by the province. Still, the intention remained to revisit the issue as soon as circumstances would allow.⁷⁰²

⁷⁰⁰ Jane Lancaster, K.C., May 27, 2024 personal interview.

⁷⁰¹ *Thirty-fifth Annual Report*. Saskatchewan Legal Aid Commission. 2008-2009.

⁷⁰² *Thirty-sixth Annual Report*. Saskatchewan Legal Aid Commission. 2009-2010.

Chapter 16

Technological Development: From Gladue Rights to the Legal Aid Information Network – Legal Aid in the 2010s

In a 2012 decision, *R. v. Ipeelee*, the Supreme Court of Canada (SCC) acknowledged that the Canadian justice system had “failed the Aboriginal peoples of Canada.”⁷⁰³ In that case, the Court considered s. 718.2(e) of the *Criminal Code*, a sentencing provision that had been introduced into the *Code* in 1996 with the goal of correcting the over-incarceration of Indigenous people. But by 2012, the over-incarceration of Indigenous people remained a “well-documented reality based on abundant scientific and statistical documentation.”⁷⁰⁴ A 2017 paper by the Research and Statistics Division Department of Justice, Canada described the problem: “Compared to all other categories of accused persons, Indigenous people continue to be jailed younger, denied bail more frequently, granted parole less often and hence released later in their sentence, overrepresented in segregation, overrepresented in remand custody, and more likely to be classified as higher risk offenders.”⁷⁰⁵ The same paper noted that, while the overrepresentation of Indigenous incarceration rates was a national issue, the problem was more pronounced in the western provinces. For example, in Saskatchewan, the proportion of Indigenous inmates was roughly seven times higher than their representation in the provincial population, compared to Quebec, where it was double.⁷⁰⁶

Section 718.2(e) of the *Criminal Code* requires sentencing judges to consider all available sanctions other than imprisonment that are reasonable in the circumstances, for all offenders, and with particular attention to the circumstances of Indigenous offenders. In 1999 the Supreme Court of Canada considered the appeal of Jamie Gladue, an Indigenous woman who had pled guilty to manslaughter. The sentencing judge had considered s.718.2(e) but found that, since Gladue resided in an urban area, there were no special circumstances arising from her Indigenous roots that he needed to consider in sentencing her. He sentenced her to three years’ incarceration.

The Supreme Court of Canada⁷⁰⁷ found the sentencing judge had erred by limiting s.718.2(e) to Indigenous persons living on reserve or in rural areas and therefore not considering Gladue’s background or the systemic factors that may have contributed to bringing Gladue in conflict with the law. The Court

⁷⁰³ *R. v. Ipeelee*, 2012 SCC 13 (CanLII), [2012] 1 SCR 433, <<https://canlii.ca/t/fqg00>>, para 57.

⁷⁰⁴ Research and Statistics Division Department of Justice, Canada. *Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada’s Criminal Justice System*. September 2017, p 7.

⁷⁰⁵ *Ibid.*

⁷⁰⁶ *Ibid.*

⁷⁰⁷ *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688, <<https://canlii.ca/t/1fqp2>>

confirmed that sentencing judges have a statutory duty to give effect to s.718.2(e) and outlined a framework to guide judges when sentencing Indigenous persons. The framework included an individualized response to each Indigenous person before the court. Judges must consider individual background and systemic factors and the types of sentencing procedures and sanctions appropriate in each case based on the Indigenous person's heritage and connection to community. Community is to be defined broadly. The sentencing judge is not relieved of the duty to find restorative alternatives to imprisonment because an Indigenous offender lives in an urban area without community support. The court also confirmed that counsel has a duty to gather this information and present it to sentencing judges.⁷⁰⁸

In *R v Ipeelee*,⁷⁰⁹ in 2012, the Supreme Court of Canada made it clear that judges have a duty to take judicial notice of systemic factors leading to over-incarceration of Indigenous people, including the history of colonialism, displacement and residential schools, that continues to lead to lower education and income and higher rates of unemployment, substance abuse and suicide among Indigenous people.⁷¹⁰

The proper implementation of Gladue principles placed additional obligations on judges, defence counsel and prosecutors. Judges require comprehensive information about the background and personal circumstances of the Indigenous person they are sentencing, as well as the availability of appropriate alternatives to incarceration. Defence counsel and Crown prosecutors have an obligation to provide this information to the court.

Gladue reports are intensive investigations of the person's background and how they may have been affected by colonization, including the history of the person's community and family, residential school experiences, past physical or sexual abuse, and interactions with the child welfare system. They also include submissions related to alternative measures to incarceration. To facilitate the use of Gladue reports, LAS and the Saskatchewan Aboriginal Courtworker Program received funding from the Law Foundation of Saskatchewan for an introductory Gladue report training for lawyers, as well as training for courtworkers to assist them with making oral submissions during sentencing. The training sessions took place in January and April of 2014.⁷¹¹

⁷⁰⁸ *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688, <<https://canlii.ca/t/1fqp2>>

⁷⁰⁹ *R. v. Ipeelee*, 2012 SCC 13 (CanLII), [2012] 1 SCR 433, <<https://canlii.ca/t/1qq00>>

⁷¹⁰ Research and Statistics Division Department of Justice, Canada. *Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System*. September 2017

⁷¹¹ The Gladue Review Committee. *An Interim Approach to Gladue in Saskatchewan*. Fall 2017.

In 2014 and 2015, Legal Aid Saskatchewan used surplus funds to establish a pilot project for the preparation of written Gladue reports for young Indigenous people who did not have extensive criminal records, had reasonable prospects for rehabilitation and were facing serious criminal charges. The reports would be used to argue for non-custodial or reduced custodial sentences.⁷¹²

The pilot project resulted in 27 Gladue reports. James Scott, who evaluated the pilot, noted that the reports were useful to the offender and their family and tended to reduce incarceration time, but were time-intensive and expensive to prepare. The average cost per report exceeded \$4,000 due to training, editing and travel costs for out-of-province writers/trainers. LAS determined that in order for the program to be sustainable for the organization, permanent funding would be required.⁷¹³

Even with a robust Gladue report, many things must align before a person is able to break the cycle of incarceration. Persons who have had a full Gladue report may end up before the court again. It may take many tries, or only one, for a person to be able to turn a corner in their life. But the chances of having all the necessary elements align for that to happen are greatly decreased when supports needed to make the turn, such as community justice programs offering alternatives to incarceration, affordable housing or addictions treatment, are not available at the right time, or at all.⁷¹⁴

Around the same time as the Gladue report pilot project, Legal Aid Saskatchewan partnered with Keith Carlson, University of Saskatchewan history professor at the time, to create the Gladue Rights Research Database. The database project focused on “documenting, describing and interpreting the history of colonial incursions into Indigenous communities in order to create a foundational resource for [Indigenous] people and their legal counsel.”⁷¹⁵ Beginning in the summer of 2015, University of Saskatchewan history students undertook research of historical and secondary sources to combine scholarship and archival research to provide context for the unique systemic and background factors considered under Gladue.⁷¹⁶ Funding to create the database was provided by the Law Foundation of Saskatchewan (\$65,000) and Legal Aid Saskatchewan (\$40,000) over three years. The University provided substantial in-kind services and materials.⁷¹⁷ The database, the first of its kind in Canada was launched in 2018. Craig Goebel, the Commission’s CEO at the time, noted

⁷¹² *Forty-first Annual Report*. Saskatchewan Legal Aid Commission. 2014-2015.

⁷¹³ James T.D. Scott. *A report on the Legal Aid Saskatchewan Gladue Report Pilot Project*. September 30, 2016.

⁷¹⁴ Andrea Phillips, October 30, 2023 personal interview.

⁷¹⁵ Legal Aid Saskatchewan. *Getting to Know the Gladue Research Rights Database*.

⁷¹⁶ *Ibid.*

⁷¹⁷ Legal Aid Saskatchewan. Gladue Rights Research Database Memo. January 2019.

that the database would permit report writers and defence counsel to efficiently and effectively acquire information that could be submitted for judicial notice as part of sentencing submissions.⁷¹⁸



The push for technological modernization that began in the 1990s persisted 20 years later. LAS recognized that the organization could not continue to submit the same kind of funding requests as it had in the past.⁷¹⁹ Both the provincial and federal governments were increasingly asking for more accountability for the funds SLAC received, but measuring quality is no small task, especially in service organizations where outcomes are not easily defined.⁷²⁰ To continue to meet these expectations, Legal Aid Saskatchewan began revamping its case management system. It was an ambitious project to replace CMS, which had been in operation since 1993 but could only evolve so far. With funding from the Law Foundation of Saskatchewan, the Commission replenished computer hardware system-wide, and launched the Legal Aid Information Network, or LAIN, in November 2011.⁷²¹ At the same time, the organization expanded its technical environment to including hosting of several critical operating platforms in a virtualized hosted environment and hired in-house information technology support, rather than outsourcing all technical support, to build internal capacity.⁷²²

With LAIN, LAS management could more easily provide answers and report on the types of measures that provincial and federal funding bodies were increasingly asking for.⁷²³ To receive additional funding, for example, SLAC could be required to show certain parameters such as a larger population of Indigenous people or the percentage of criminal cases compared to other types of activities. With a push of a button, if someone asked, LAS could find out how many guilty pleas had been entered on a certain number of homicides.⁷²⁴

LAIN provided a more accurate description of client experience. It allowed management to keep better track of access to service statistics by extracting incisive and comprehensive reports. In 2011-2012, the first year of LAIN implementation, LAS started capturing more accurate information about who was being denied service and why, and found that more than 900 client files

⁷¹⁸ "U of S launches Gladue Rights database" *Saskatoon Star Phoenix*. Saskatoon, SK, May 16, 2018, p A2.

⁷¹⁹ Jerome Boyko, August 16, 2023 personal interview.

⁷²⁰ *Thirty-seventh Annual Report*. Saskatchewan Legal Aid Commission. 2010-2011.

⁷²¹ *Ibid.*

⁷²² *Thirty-eighth Annual Report*. Saskatchewan Legal Aid Commission. 2011-2012.

⁷²³ Jerome Boyko, August 16, 2023 personal interview.

⁷²⁴ *Ibid.*

were discontinued. Half of those were family law files, and a large proportion (40 per cent) of them were from rural areas. There were close to 1,800 abandoned cases — clients who had lost contact with LAS. They were not denied service, but “dropped off the map.” This was a key statistic that the organization had never before been able to capture.⁷²⁵ As a result, LAS created two new file statuses: discontinued and client abandoned.⁷²⁶ Management would use this new data to ensure legal aid services were as accessible as possible and began research to better understand the issues that led these clients to sever their relationship with Legal Aid Saskatchewan. The research would allow the organization to adjust and/or implement new processes accordingly.⁷²⁷

But LAIN was more than a database. It was an essential tool that could be integrated across the entire organization into the day-to-day tasks of staff members, a true network allowing multiple users and offices to actively manage the electronic version of a client’s file with the ability to share appropriate information, attach documents and export reports.⁷²⁸

Other initiatives to improve client experience included the creation of one of the world’s first online legal aid application forms in 2014, and the launch of the LAS Application Centre on October 1, 2018.⁷²⁹ Online applications can be made at any time of the day, in less than five minutes. If the online applicant passes the financial determination step, an eligibility officer reviews the application and contacts the applicant by telephone for follow up and verification of information. In 2018-2019, 16 per cent of applications were taken by phone or online.⁷³⁰ By 2020, that statistic had grown to 48 per cent.⁷³¹

In his 2017-2018 annual report message, Goebel noted that both the provincial and federal governments wanted more fiscal and performance accountability and were “assiduously settling definitions, measures and reports.” In that year, the planning and administration and finance and IT directors implemented improvements to the organization’s data system in the form of LAIN 2.0. With

⁷²⁵ *Thirty-eighth Annual Report*. Saskatchewan Legal Aid Commission. 2011-2012.

⁷²⁶ The abandoned status are those applications that were opened and approved and some level of legal service was provided but the client was responsible for ending the relationship either through dismissing the lawyer or through some other miscellaneous reason. The discontinued status are applications that were opened but the client only received administrative service, for example application forms and appointments with lawyers, but never received legal services before losing contact with the office. An administrative decision would then be made to close the file as discontinued. *Thirty-ninth Annual Report*. Saskatchewan Legal Aid Commission. 2012-2013.

⁷²⁷ *Thirty-ninth Annual Report*. Saskatchewan Legal Aid Commission. 2012-2013.

⁷²⁸ Jerome Boyko, August 16, 2023 personal interview.

⁷²⁹ *Forty-seventh Annual Report*. Saskatchewan Legal Aid Commission. 2020-2021.

⁷³⁰ *Ibid.*

⁷³¹ *Ibid.*

financial help from the Law Foundation of Saskatchewan, they also developed and implemented a new IT and equipment strategic plan.

A specific measurement LAS management wanted to track was the cost to the organization to complete particular cases – for example, a homicide case or a child custody case. In 2018-2019, LAS staff lawyers and family law legal assistants began recording time per file electronically. This allowed LAS to track time per file in LAIN and cost out a particular case.⁷³²

LAIN is still an integral and innovative initiative of LAS and has expanded beyond Saskatchewan's borders. The Northwest Territories legal aid plan is using this legal software specialized for legal aid, and the Newfoundland and Labrador legal aid plan adopted it in 2024.

⁷³² *Forty-fifth Annual Report*. Saskatchewan Legal Aid Commission. 2018-2019.

Chapter 17

Pandemic and Renewal: Legal Aid in the 2020s

The global COVID-19 pandemic created enormous pressure for the services of legal aid organizations and access to justice advocates. Despite the widespread lockdowns and preventative restrictions, Legal Aid Saskatchewan adapted its service delivery to ensure clients received help. Show cause (commonly known as bail) hearings were conducted in-person, by phone and by video for all new arrests. New applications were taken by phone and assigned to lawyers, who then conducted interviews over the phone as well. In-person trials were conducted as scheduled by the Court and in accordance with public health orders. Sentencing hearings were conducted in-person, over the phone and through video as scheduled by the Court, and urgent family applications were brought forward in accordance with the Queen's Bench Practice Directives.

Navigating the COVID-19 pandemic was made successful with the oversight of management and the determination of staff. LAS also worked with other partners in the justice system to improve communication between clients and lawyers. For example, improving phone access to individuals at correctional centres resulted in fewer adjournments and less stress for the accused, as did a pilot project for staff lawyers to make video calls to the correctional centres. There was also an increased use of conference calls for docket proceedings.

LAS introduced Microsoft 365 to support virtual meetings and collaborative work and made enhancements to LAIN so it supports better virtual communication with clients through built-in text messaging and email.

When Jayne Mallin stepped into the role of Legal Aid Saskatchewan's CEO in the spring of 2021, one of her first priorities was to work with management and stakeholders to create a new strategic vision and priorities to guide the organization through the next three years. After almost a year of planning, consulting, brainstorming and collaborating, the Saskatchewan Legal Aid Commission approved the 2022-2025 Strategic Priorities in June 2022.

This strategic plan incorporated priorities aimed at improving services to Indigenous clients, including culturally responsive services and advancing reconciliation principles in law reform. In 2021-2022, SLAC committed to the Truth and Reconciliation Commission's (TRC) Calls to Action, specifically those

related to child welfare, Indigenous overrepresentation in the criminal justice system and clients living with fetal alcohol spectrum disorder (FASD).⁷³³

One of the key components under the new strategic plan was to hire for the role of Indigenous Policy Counsel, responsible for developing an Indigenous strategy for the organization, developing and coordinating Indigenous consultative and advisory processes, developing policies and strategies to enhance Indigenous services within LAS, and facilitating initiatives in response to the TRC's Calls to Action, including the development of a law reform strategy for Indigenous overrepresentation in criminal law and child protection, and developing practice directives in the area of Gladue rights for staff.

Andrea Phillips stepped into the role of Legal Aid Saskatchewan's inaugural Indigenous Policy Counsel in November 2022.

Around the same time, the Commission formally constituted a Gladue Database Committee, consisting of scholars and practitioners,⁷³⁴ to keep the work relevant and focused on enhancing the practical experience of the Gladue Rights Research Database users and bringing in the voice of the Indigenous community.

The Database Committee formulated a renewed mission statement: "The database can be a one stop directory for lawyers, judges, and report writers to find links to everything from community histories, through census data, to community-based programming." Priorities and project objectives were revised to better align with the needs of stakeholders, legal practitioners and Gladue report writers. The pre-existing database was reorganized to create standardized Gladue information and practices in Saskatchewan.⁷³⁵

The Gladue database now contains a directory of links and information on culturally relevant, traditional, alternative and/or rehabilitative justice programs and resources within Saskatchewan. The committee ensures that the database is monitored regularly as community programs change, and looks to identify

⁷³³ TRC's Call to Action #1: Call upon all levels of government to reduce the number of Aboriginal children in care. TRC's Call to Action #30: Call upon all levels of government to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to monitor and evaluate the progress in doing so. TRC's Call to Action #31: Call upon all levels of government to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending. TRC's Call to Action #32: Call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences. TRC's Call to Action #33: Call upon all levels of government to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD). *Forty-eighth Annual Report*. Saskatchewan Legal Aid Commission. 2021-2022.

⁷³⁴ James Scott, Ben Ralston, Keith, Ben Hoy, Carl Swenson, Law Society of Saskatchewan – Alan Kilpatrick.

⁷³⁵ Legal Aid Saskatchewan. *Getting to Know the Gladue Research Rights Database*.

community options and programs that LAS may not be aware of. A key component of ensuring relevance is through the building of relationships with communities and nations.

The database is accessible to the public as requested by the University of Saskatchewan. The database committee is looking to the future with plans to develop community profiles to provide comprehensive histories for specific Indigenous communities – for example Lac La Ronge and Mistawasis – Indigenous cultures – for example Cree, Dene and Métis – and statistical profiles for Indigenous communities that include data on population, income, workforce, education characteristics and more.

LAS continues to offer education and training for its staff to ensure Gladue principles are incorporated into all sentencing submissions for Indigenous clients, and seeks new and innovative ways to bring Gladue principles forward. For example, around the same time LAS was developing its 2022-2025 strategic plan, Justice Jill Drennan,⁷³⁶ then legal director of the Regina Rural office, approached Mallin to advocate for an enhanced approach to Gladue submissions. She recommended a partnership with the Indigenous Justice Network (IJN) and the FASD Network, through Dr. Michelle Stewart of the FASD Network, to secure Gladue reports. LAS obtained around 30 Gladue reports per year through this partnership.

Changes are afoot in the area of child welfare. Cowessess First Nation was the first in Canada to enter into a coordination agreement with the province to exercise its right to govern matters relating to child welfare. The band implemented *Miyo-pimâtisiwin* (“striving for a better life”) legislation, a remarkable system taking a more traditional approach to dealing with matters that would have been put before a court and then required parents and children to remain apart while expecting parents to navigate their way through a host of conditions to have their children returned to them. Cowessess’ approach is non-adversarial. It does not involve courts. Rather, there is a tribunal of female Elders and Knowledge Keepers to consider specific cases of child welfare concerns.

In a few instances, a client/parent involved in a child welfare matter falling under Cowessess’ jurisdiction has requested Legal Aid Saskatchewan’s assistance. Through this experience, and with the support of counsel for Chief Red Bear Children’s Lodge (the agency responsible for the administration of *Miyo-pimâtisiwin*), LAS recognized the need to create an understanding of the role that LAS lawyers can and should play in *Miyo-pimâtisiwin*. A different

⁷³⁶ Justice Jill Drennan was the legal director at LAS’ Regina Rural office before she was appointed to the Court of Queen’s Bench in June 2022. In that same year she was elevated to the Court of Appeal for Saskatchewan.

approach and mindset to practicing in this area must be developed and encouraged. There is no room for lawyers to act as zealous advocates in the courts as they normally would. Instead, LAS lawyers advocate for the legitimacy of Cowessess' jurisdiction and Miyo-pimâtisiwin while providing guidance to clients moving through that system. LAS is developing practice directives and expectations for when child welfare matters are governed by a Nation.

LAS is also developing policy that applies to child apprehension matters before the courts. The policy is focused on the "minimum standards" set out in new federal legislation⁷³⁷ that emphasizes the need for child protection systems to shift from apprehension to prevention.⁷³⁸

Another tool in the child welfare toolbox is the integration of Opikinawasowin (OPIK), an alternative dispute resolution process that can be used in child welfare matters. LAS collaborated with two Elders responsible for the organization of OPIKs to provide training tools on the importance of their use and how the process works. Saskatchewan's Ministry of Social Services decides which process is appropriate for each child protection matter. Work is underway to build relationships and understanding with the Ministry. The potential partnership, between the Ministry, Nations, communities, and the legal profession could make a significant difference in the lives of the parents, children, and communities impacted by child apprehension issues.⁷³⁹

In recent years, Legal Aid Saskatchewan has invested expertise and time towards combatting miscarriages of justice. In December 2021, James Lockyer, a prominent lawyer who has worked extensively with Innocence Canada on numerous wrongful conviction cases, approached LAS with a funding request to help defray the costs of a ministerial review of Odelia and Nerissa Quewezance's convictions. The sisters had been convicted of second-degree murder and received life sentences with no chance of parole for at least 10 years. The youth co-accused, their cousin, testified at the trial that the sisters assisted him in the murder, and received four years in a youth facility. He has since said that he was solely responsible for the murder. For the Quewezance sisters, it has truly been life sentences. Even if they're not physically in jail, people sentenced to life in prison are subject to the Parole Board of Canada for the rest of their lives. Parole violations, addiction issues, poverty, under-education and other factors have led both of these women to be institutionalized for most of the 28 years since their convictions.⁷⁴⁰

⁷³⁷ *An Act Respecting First Nation, Inuit and Métis Children, Youth and Families*, S.C. 2019, c. 24.

⁷³⁸ Andrea Phillips, November 3, 2023 email correspondence.

⁷³⁹ Ibid.

⁷⁴⁰ Harris, Deanna. *Righting a Wrong: How a Legal Aid Saskatchewan Lawyer is Fighting to Undo a Historical Injustice*. Legal Aid Saskatchewan LinkedIn post, October 4, 2022.

LAS agreed to help fund the case, with the caveat that a staff lawyer work alongside the Innocence Canada lawyers to learn the process and build Legal Aid Saskatchewan's capacity to take on these cases in the future. Deanna Harris, legal director for the Melfort, Yorkton and South East offices, was assigned to the file.

In June 2022, the LAS/Innocence Canada team received notice that the Federal Justice Minister's Office was satisfied that there may have been a miscarriage of justice in the Quewezance sisters' cases. The finding triggered the rights of Nerissa and Odelia to request bail on the murder conviction. The news was a high point for them since, at that time, both sisters were in custody on parole violations.

At the Quewezance sisters' bail hearing, the judge asked for a detailed release plan from defence counsel. The team went to work coordinating the plans for each woman with service providers, calling on connections at the Yorkton Tribal Council and the Federation of Sovereign Indigenous Nations to set up community supports such as counselling, possible employment, relapse prevention programming and cultural counselling with an Elder.⁷⁴¹ On March 27, 2023 Nerissa and Odelia were granted release, but it could take several more years before the Federal Minister of Justice completes the investigation into their case and makes a recommendation.⁷⁴²

It is difficult to obtain a miscarriage of justice finding. The current process is lengthy and cumbersome such that miscarriage of justice applications are only brought in the most serious cases – usually for first and second degree murder because those convictions result in life sentences.⁷⁴³ Though the frequency of wrongful convictions is unknown, they do occur, and Indigenous persons are still over-represented in the justice system.⁷⁴⁴ As a result, miscarriage of justice cases are important, especially for marginalized people.⁷⁴⁵

⁷⁴¹ Harris, Deanna. *Righting a Wrong: How a Legal Aid Saskatchewan Lawyer is Fighting to Undo a Historical Injustice*. Legal Aid Saskatchewan LinkedIn post, October 4, 2022.

⁷⁴² The Minister of Justice may find there was no miscarriage of justice, in which case the Quewezance sisters would have to surrender themselves and continue serving their sentences. If the Minister finds there was a miscarriage of justice, he could refer the case back to trial or to the Saskatchewan Court of Appeal. Deanna Harris notes that the current Minister, the Honourable Arif Virani, tends to refer cases to courts of appeal. Historically, when that happens, Crowns tend not to proceed, resulting in a vacated sentence.

⁷⁴³ In recent years, the Innocence Project and others have been advocating for a new law that would create an independent tribunal to review miscarriage of justice files, making the process less cumbersome and making it easier to review many more, and different types, of cases.

⁷⁴⁴ Public Prosecutions Canada. *Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada*. Report of the Federal/Provincial/Territorial Heads of Prosecutions Subcommittee on the Prevention of Convictions - 2018.

⁷⁴⁵ Deanna Harris, November 20, 2023 personal interview.



Technology is another theme of the 2022-2025 strategic priorities. During the 2022-2023 fiscal year, LAS underwent an organization-wide equipment refresh during which every employee received a new laptop. LAS is also integrating cloud technology, so this equipment refresh was done with zero-touch deployment – removing the need for a person to physically work on each laptop in order to set them up. All the laptops were set up and programs installed, remotely. In addition, by the end of the 2022-2023 fiscal year, every area office had a corporate and a guest Wi-Fi network in place.

The IT department also recently deployed Webex IBC for both Court services and IP phone mobility support. This video and audio app allows LAS staff to meet with, or talk to, anyone, anywhere, from anywhere, from their LAS laptop.

Through the years, Legal Aid Saskatchewan's relationship with its private bar panel members has been characterized by a sense of camaraderie. There are more than 200 private bar panel members ready to step in when conflicts arise or there are staff shortages. In September 2022, LAS hired a Director of Private Bar Services, and soon after launched the Private Bar Billing Modernization Project. The goal of the project is to streamline the system and present best practices for things such as standardizing approvals and payments to better ensure efficient and consistent decision-making, response, and payment to Legal Aid Saskatchewan's private bar providers. This project includes the development and implementation of an online payment platform/portal for private bar partners.

During Jerome Boyko's time at LAS, between 1990 and 2023, the organization's budget grew from less than \$10 million to over \$30 million. A large part of Boyko's job involved securing funding and protecting the organization's budget. He was known for being the tough guy who would say no even to a \$50 request that was not supported by a business case. When Crown prosecutions upgraded its cars to models with heated steering wheels, Boyko got a request from a legal director for the same. He considered the request, but could not find the money in the budget to justify it. Although he could not support the additional cost of that particular upgrade, he made sure safety of the staff was a priority and authorized a larger vehicle with more features. This vehicle became the envy of the justice community at that location.

One of the most difficult parts of securing funding occurred when Crown prosecutions would, at times, receive funding increases two or three times that

of Legal Aid Saskatchewan. Governments want to be seen to be providing safety, but the other side of the coin is that everyone is innocent until proven guilty. It is necessary to ensure defence counsel also has enough resources. The administration of justice and the maintenance of a democratic society depends on it, but that part of programming is more easily forgotten, and when it is, LAS has to fight for those funds in subsequent budget years.⁷⁴⁶

Recruitment of staff, especially in rural areas, is sometimes a challenge, though that may ease somewhat with increasing ability to work remotely. In addition, a recent analysis showed Legal Aid Saskatchewan staff lawyer salaries lagged Crown prosecutions by 11 to 31 per cent. This made staffing in LAS offices challenging. In the spring of 2024 LAS management went to the Treasury Board and was able to secure funds to increase salaries to a competitive level with prosecutions. This was a huge win in the recent round of bargaining between CUPE Local 1949 and SLAC. Staff lawyers will see a meaningful pay increase which will contribute to enhanced recruitment and retention. Generally, private bar services are more expensive, and LAS's private bar budget grew to 25 per cent of the total budget in the 2021-2022 fiscal year.⁷⁴⁷ The recent salary increases will help save money in the long term on both private bar referrals and costs related to the continual need for recruitment.

A lot of technological change and negotiation was required to achieve the growth of Legal Aid Saskatchewan, and a lot of hard work and strong partnerships with federal and provincial officials and other funding agencies. On his last day of work before retirement in June 2023, Boyko was still hard at work on the Commission's 2024-2025 budget request. They had a new pot of money from the federal government. Boyko knew if they didn't make it clear in their proposal that the provincial government needed to provide funding on the second pot of money from the federal government, they would think they were already providing the funding. Boyko sent the proposal then contacted his counterpart in the Ministry of Justice who would take the organization's proposal forward, and pointed out the extra money they were due. His counterpart replied that LAS had already received that money. At quarter to five on his last day of work, Boyko emailed back, explaining how the request had to do with a new pot of money. The light bulb went on and his counterpart acknowledged Boyko's explanation was correct. Boyko's last discussion with Mallin involved the importance of the need to secure that money because, as he'd known, it could be easily overlooked. In ways big and small, every day Legal Aid Saskatchewan continues to walk the fiscal tightrope, pursuing the

⁷⁴⁶ Jerome Boyko, August 16, 2023 personal interview.

⁷⁴⁷ Kassab, Jawad, A. *Private Bar Modernization: Sustaining Access to Justice*. August 3, 2022.

radical vision of a justice system that never closes a door, withdraws a hand or walks away from someone in need.

With as much as has been achieved in the past five decades, there is great anticipation for the future. The 50-year legacy of Legal Aid Saskatchewan is built every day by the committed staff, supporting communities, and collaborative agencies that strive for access to justice in our province.

Epilogue by Jayne Mallin

As the journey through the history of Legal Aid Saskatchewan draws to a close, one theme emerges with clarity: history, with all its complexities and challenges, has a way of repeating itself. Over the decades, Legal Aid Saskatchewan has evolved from its modest beginnings into a robust and vital institution, yet the echoes of its early challenges, as highlighted in the Carter Report, still resonate today.

From its inception, Legal Aid has navigated the delicate balance between local needs and the demands of provincial and federal accountability. This balance has not been without its tensions, as the relationship between Head Office and Area Offices has often reflected broader debates about the right approach to justice delivery. However, recent years have seen a marked improvement in these dynamics. Provincial-wide initiatives have begun to bridge the divide, fostering a more collaborative and unified approach to serving the people of Saskatchewan.

Office space, once a simple logistical concern, has become a symbol of the evolving nature of work at Legal Aid Saskatchewan. With the growing staff model and the shift toward a more hybrid working environment, the question of how to best utilize physical spaces has become increasingly pressing. The organization is now at a crossroads, striving to find the right mix of staff and private bar involvement to meet the needs of today while planning for the uncertainties of tomorrow. The private bar modernization initiative, in particular, represents a significant step toward ensuring accountability and quality in the services provided by external partners, further reinforcing the integrity of the legal aid system.

Yet, through all the changes and challenges, one constant has remained: the heart and soul of Legal Aid Saskatchewan is its people. Every individual who has governed, led, assessed, or worked within the organization has brought with them the best of intentions, a commitment to justice, and a passion for serving those in need. The varied opinions and approaches that have shaped Legal Aid's history, while sometimes in tension, have all contributed to the rich tapestry of its legacy.

As we look to the future, it is this harmony and balance – between local and provincial, staff and private bar, tradition and innovation – that will guide Legal Aid Saskatchewan. The lessons of the past, coupled with the dedication of those who continue to serve, offer hope that the organization will not only meet but exceed the challenges of the coming years.

In the end, the story of Legal Aid Saskatchewan is not just a history of legal services – it is a testament to the enduring spirit of those who believe in justice for all. This spirit, rooted in the past and growing toward the future, will continue to shape the organization for generations to come.

About the author

Darla Tenold has contributed nonfiction to magazines and an anthology. She is at work on the life story of a trailblazing female jockey from Saskatchewan and a collection of short stories, one of which was long listed for the 2024 Manitoba Writers' Guild short story contest. She earned a law degree from the University of Saskatchewan, articulated with Legal Aid Manitoba and worked as a lawyer for 13 years before pivoting to a writing career. She lives on Treaty Six Territory in Saskatoon, Saskatchewan.

Legal Aid Logos



The first logo adopted by the Saskatchewan Community Legal Services Commission in 1974. It was used until 2008.



The Saskatchewan Legal Aid Commission undertook a rebranding exercise in 2008. Staff were surveyed for a message they wanted communicated to the public. The prominent message was, "We are professional, we are experts, and we are experienced at what we do." A new logo was created to embody this message, and a new name was approved to better distinguish the Board of Commissioners and the organization: Legal Aid Saskatchewan.



During the summer of 2022, staff were invited to submit designs for a new logo that reflected the newly adopted vision, mission and values of Legal Aid Saskatchewan. With the assistance of Indigenous owned-and-operated Encore Graphic Design + Marketing, the result includes a golden feather (representative of Indigenous values of respect, honour, strength, courage and wisdom) supported by two cupped hands (indicating a balance and support for Indigenous values and the Saskatchewan justice system).

Provincial Directors, Chairs and CEOs Throughout the Years



Linton Smith

Provincial Director of the Saskatchewan Community Legal Services Commission (1974-1975; 1978-1979)

In June 1971, the Saskatoon Legal Assistance Clinic was one of three clinics in Canada to receive a \$30,000 grant from the federal government. This helped finance the hiring of Saskatchewan's first full-time legal aid lawyer (Smith).



Gerald Allbright

Provincial Director of the Saskatchewan Community Legal Services Commission (1975-1976)

Allbright was the Legal Director of the Regina Legal Assistance Clinic when he was appointed Provincial Director of the Saskatchewan Community Legal Services Commission.



Calvin Clark

Provincial Director of the Saskatchewan Community Legal Services Commission (1977-1978)

Clark was the first Legal Director of the South West Community Legal Services Society when it opened its doors in Swift Current in October 1974.



Ian Wilson

Chair and Provincial Director of the Saskatchewan Community Legal Services Commission (1979-1983); Chair and CEO of Saskatchewan Legal Aid Commission (1983-1987)

At the time of his appointment, Wilson was serving as Deputy Education Minister, becoming the only non-lawyer to head the Commission.



Donald Morgan, K.C.

Chair and CEO of the Saskatchewan Legal Aid Commission (1988-1991)

At the time of Morgan's appointment, the role of Chair had been vacant for four months. He was in private practice in Saskatoon at the time he became Chair and CEO.



Jane Lancaster, K.C.

Chair and CEO of the Saskatchewan Legal Aid Commission (1992-2000); CEO of the Saskatchewan Legal Aid Commission (2000-2006)

Lancaster was a 17-year employee with the Saskatchewan Legal Commission at the time of her appointment.



Allan Snell, K.C.

CEO of Saskatchewan Legal Aid Commission (2007-2008); CEO of Legal Aid Saskatchewan (2008-2012)

Snell worked as a staff lawyer for the Saskatchewan Legal Aid Commission from 1985 until 1988.



Craig Goebel

CEO of Legal Aid Saskatchewan (2012-2021)

Before his appointment as CEO, Goebel worked in private practice, with Legal Services Society of BC, and as Chief Executive Officer of the Law Society of Nunavut.



Jayne Mallin

CEO of Legal Aid Saskatchewan (2021-present)

Mallin worked with Legal Aid Ontario for years, starting as a staff lawyer and eventually Vice President of Clinic Law Services.

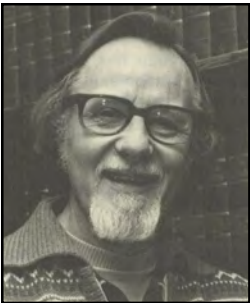
Board Members in the Early Years



Anne Baszucki (Saskatoon)

Consumer Help Officer and Chair of the Saskatoon Legal Assistance Clinic

Baszucki was a community representative named to the Saskatchewan Community Legal Services Commission. She served from 1974 until 1979.



Elton Davidge (Yorkton)

Community Worker and Chair of the Parkland Legal Assistance Society

Davidge was a community representative named to the Saskatchewan Community Legal Services Commission. He served from 1974 until 1983.



Silas Halyk, K.C. (Saskatoon)

Barrister and Solicitor

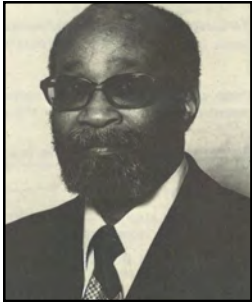
Halyk was the Law Society of Saskatchewan appointee to the Saskatchewan Community Legal Services Commission from 1974 until 1977.



David Neufeld (North Battleford)

Minister and Chair of the Battlefords and Area Legal Services Society

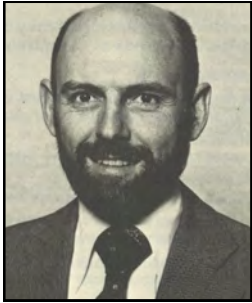
Neufeld was a community representative named to the Saskatchewan Community Legal Services Commission. He served from 1975 until 1983.



Colvin Peyson (Regina)

Psychologist and Chair

Peyson was a government representative (appointed by the Lieutenant Governor in Council) named to the Saskatchewan Community Legal Services Commission. He served from 1974 until 1980.



Nick Sherstobitoff, K.C. (Saskatoon)

Barrister and Solicitor

Sherstobitoff was a government representative (appointed by the Lieutenant Governor in Council) named to the Saskatchewan Community Legal Services Commission. He served from 1974 until 1980.



Robert Thompson (Regina)

Barrister and Solicitor

Thompson was appointed to the Saskatchewan Community Legal Services Commission by the Attorney General of Canada. He served from 1974 until 1978.



Mable Wagstaff (Hudson Bay)

Community Worker

Wagstaff was a government representative (appointed by the Lieutenant Governor in Council) named to the Saskatchewan Community Legal Services Commission. She served from 1976 until 1983.

Legal Directors and Management Throughout the Years



1994-1995

Back: Jerome Boyko, Adrian McBride, Jack Hillson, James Struthers, David Bright

Middle: Michael Ryan, David Andrews, Myron Weber, Barry Treacy

Front: Robert McCann, Laura Lacoursiere, Jane Lancaster, K.C., Doreen Schmidt, Mervyn Shaw

Missing: Sidney Robinson, Earl Kalenith, Dolores Ebert



1995-1996

Back: David Andrews, Dolores Ebert, George Thurlow, Laura Lacoursiere, Michael Ryan, K.C., Jane Lancaster, K.C., Earl Kalenith, Barry Treacy, Mervyn Shaw

Front: Jack Hillson, Adrian McBride, David Bright, Doreen Schmidt, Jerome Boyko, Robert McCann, James Struthers, Sidney Robinson, K.C.



1996-1997

Back: Robert McCann, Sidney Robinson, K.C., Adrian McBride, David Bright, James Struthers, Jerome Boyko

Middle: Michael Ryan, K.C., Doreen Schmidt, Jane Lancaster, K.C., George Thurlow

Front: Laura Lacoursiere, Barry Treacy, Janice Lawrence, Earl Kalenith, Katharine Grier

Missing: David Andrews, Mervyn Shaw



1997-1998

Back: Jerome Boyko, Mervyn Shaw, Earl Kalenith, Jane Lancaster, K.C., Laura Lacoursiere, Robert McCann, Michael Ryan, K.C., Darrell Blais

Front: James Struthers, Janice Lawrence, Sidney Robinson, K.C., Katharine Grier, David Andrews, Doreen Schmidt, David Bright

Missing: Barry Treacy, Adrian McBride



1998-1999

Back: Robert McCann, James Struthers, David Bright, Adrian McBride, Katharine Grier, Darrell Blais, Janice Lawrence, K.C., Mervyn Shaw

Front: Michael Ryan, K.C., Jane Lancaster, K.C., Barry Treacy, Laura Lacoursiere, Jerome Boyko, Pamela Cuelenaere

Missing: Sidney Robinson, K.C., David Andrews



1999-2000

Back: Jerome Boyko, Darrell Blais, Mervyn Shaw, Adrian McBride, Robert McCann, Pamela Cuelenaere, David Andrews, K.C., David Bright, James Struthers, Robert Mackenzie

Front: Katharine Grier, Jane Lancaster, K.C., Laura Lacoursiere, Michael Ryan, K.C., Janice Lawrence, K.C., Barry Treacy



2000-2001

Back: Mervyn Shaw, Janice Lawrence, K.C., Darrell Blais, Barry Treacy, David Andrews, K.C., Jerome Boyko, Katharine Grier, Laura Lacoursiere, Jane Lancaster, K.C.

Front: David Bright, Robert McCann, James Struthers, Pamela Cuelenaere, Adrian McBride, Robert Mackenzie, Michael Ryan, K.C.



2001-2002

Back: Adrian McBride, David Bright, Janice Lawrence, K.C., Dulcy McLauchlan, Donald Mullord, Jerome Boyko, James Struthers

Front: David Andrews, K.C., Roseanne Newman, Jane Lancaster, K.C., Laura Lacoursiere, Michael Ryan, K.C., Mervyn Shaw, Barry Treacy

Missing: Kimberly Earing, Pamela Cuelenaere



2002-2003

Back: Robert Mackenzie, Adrian McBride, Pamela Cuelenaere, Donald Mullord, Mervyn Shaw, Jerome Boyko, David Bright

Front: Laura Lacoursiere, David Andrews, K.C., Roseanne Newman, Janice Lawrence, K.C., Jane Lancaster, K.C., Michael Ryan, K.C., Barry Treacy, K.C., Heather Dootoff

Missing: Dulcy McLauchlan, James Struthers



2003-2004

Back: Mervyn Shaw, Donald Mullord, James Struthers, David Bright, David Andrews, K.C.

Middle: Jane Lancaster, K.C., Michael Ryan, K.C., Heather Dootoff, Dulcy McLauchlan, Barry Treacy, K.C.

Front: Laura Lacoursiere, Roseanne Newman, Adrian McBride, Pamela Cuelenaere, Robert Mackenzie, Janice Lawrence, K.C.

Missing: Jerome Boyko



2004-2005

Back: Robert Mackenzie, James Struthers, K.C., Pamela Cuelenaere, Jerome Boyko, David Bright

Middle: Michael Ryan, K.C., Jane Lancaster, K.C., Janice Lawrence, K.C., Laura Lacoursiere

Front: Donald Mullord, Barry Treacy, K.C., Roseanne Newman, Mervyn Shaw, David Andrews, K.C.

Missing: Adrian McBride



2005-2006

Back: Roseanne Newman, Kelly Soder, David Andrews, K.C., Laura Lacoursiere, George Combe

Third Row: Jane Lancaster, K.C., Michael Ryan, K.C., James Struthers, K.C., Kimberly Earing

Second Row: Pamela Cuelenaere, Adrian McBride, Donald Mullord, Jerome Boyko

Front Row: Val Doepker, Mervyn Shaw, David Bright, Dona Jones

Missing: Janice Lawrence, K.C., Barry Treacy, K.C.



2006-2007

Back: Val Doepker, James Struthers, K.C., David Andrews, K.C., David Bright, Jerome Boyko, Allan Snell, K.C., Adrian McBride, Donald Mullord, K.C., Kelly Soder

Front: Barry Treacy, K.C., Michael Ryan, K.C., George Combe, Dona Jones, Janice Lawrence, K.C., Mervyn Shaw, K.C.

Missing: Roseanne Newman, Pamela Cuelenaere, K.C., Kimberly Earing



2023 Senior Management Team

Robert Grimsrud, Olga Sadikova, Jerome Boyko, Jayne Mallin, Kyla Shea

Saskatchewan Legal Aid Commission Staff Photos



SASKATCHEWAN LEGAL AID COMMISSION

STAFF PHOTOGRAPH - NOVEMBER 1, 1990

- 1st Row - Kevin Glass, Charles Seto, Susan Sanderson, Barry Treacy, Bob McMann, Gerry Kelly, Gene Josephson, Pat Reis, Morris Morton
- 2nd Row - Iris Ritco, Joan Brewster, Betty Harle, Marilyn Whitrow, Jane Lancaster, Betty Lou Huculak, Laura Lacoursiere, Mike Ryan
- 3rd Row - Mavis McLean, Lorraine Reich, Elaine Kowalski, Rhonda Hofmann, Kim Tingley, Kathy Godson, Tracy McHenry, Barb Loader, May Kowalik, Ted Wiensz
- 4th Row - Margaret Martin, Maureen Kelly, Lynne Magnusson, Jim Crane, Shirley Faris, Wendy Fowler, Lynn Haskewich, Betty Beaton, Sabine Hoffmann, Cliff Toth
- 5th Row - George Thurlow, Marti Fietz, Vi Borkowsky, Ruth Pradzynski, Geri Larson, Merv Shaw, Trish Arendt
- 6th Row - Seiri Woodbury, Bernice Howie, Catherine Maloney, Earl Kalenith, Rick Mayer, Janet McIvor, Robin Ritter, Sharon Sudom
- 7th Row - Laurel Pethick, Shirley Siever, Kelly Lechner, Dan Dahl, Tony Orlowski, Gladys Johnston
- 8th Row - Robbie Newton, Joyce Beneteau, Olive Pirot, Janice Lawrence, Graham Dove, Ross Green, Roger Kergoat, Zandra Hill, Bruce Campbell
- 9th Row - Dennis Claxton, Les Cooper, Elliot Starer, Bill Brown, Cheryl Wood, Jerome Boyko, Cheryl Boechler, Grant Sudom
- Back Row - Dallis Winsor, David Andrews, Peter Kolenick Don Morgan, David Bright, Stephen Carter, Sid Robinson
- Standing Beside the Stairs:
- 1st Row - Helen Burgess, May Barr, Angie Secundiak, Betty Willms, Aline Zakowsky, Doreen Vancoughnett
- 2nd Row - Gloria Tkachuk, Lorraine Sebelius, Gail Binnie, Barb Tomkins
- 3rd Row - Rosemary Weisgerber, Jill McMahon
- Missing:
- Jack Hillson, Linda Mann, Alice Albert, Tom Buglas, Pauline Lavallee, Don Cameron, Bill McIsaac, Jim Johnson, Norman Bercovich, Philip Gee, Helga Glavas, Shieliah Knobbe, Shirley Miller, Brenda Berger, Pat Tondevold, Bruce Ritter, Verna Famulak, Brenda Gatterger, Michelle Gilchrist, Norma Sim, Cam Sinkiewicz, Al McGuire, Helen Pendell, Kearney Healy, Grant Crookshanks, Kathy Grier.



Above: SLAC employees at the 1992 staff conference in Saskatoon.



Above: SLAC employees at the 1997 staff conference in Saskatoon.



LegalAid
SASKATCHEWAN

September 27, 2012
Saskatoon



Left: LAS employees at the 2014 staff conference in Saskatoon. **Right:** LAS employees at the 2022 staff conference in Saskatoon.

Saskatchewan Legal Aid Commission 25th Anniversary Celebration



To celebrate its 25th anniversary, the Saskatchewan Legal Aid Commission hosted a banquet in Saskatoon for current and former employees and Commissioners, community organizations and supporters of legal aid, and members of the justice system. Approximately 300 people attended the event. Hosted by Robert McCann, the Honourable Roy Romanow, K.C. delivered greetings, and the guest speaker was Roger Carter, K.C. Funding for the celebration was provided by the Law Foundation of Saskatchewan.



Top left: Celebration invitation. **Top right:** Entertainment by St. Mary's Oskayak Song and Dance Troupe. **Middle right:** Roger Carter, K.C., Professor Emeritus, delivers his retrospection. **Bottom:** Employees of the Saskatchewan Legal Aid Commission.

Saskatchewan Legal Aid Commission Life



Left: The first Northern Legal Aid Services office was a small house rented by Lloyd Deshayé, located near the now shuttered Robertson Trading Store in La Ronge.



Left: The second Northern Legal Aid Services office was across the street in a mobile home. Initially, there was no running water, so the bathroom was used as a library space.



Left: After setting up office in the Anglican Manse and the old Acklands Building, the Northern Area Office moved to La Ronge Avenue.

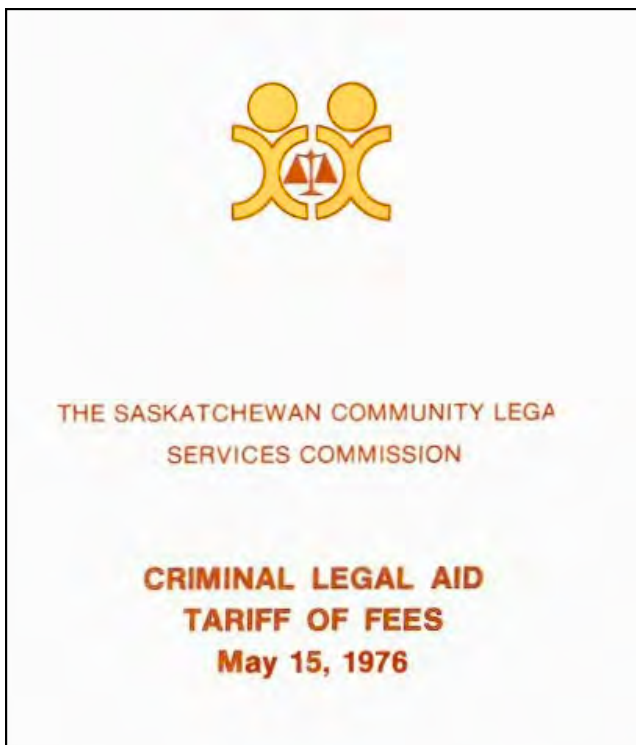


Left: Bria Huculak (former LAS staff lawyer, retired Judge) and Sidney Robinson (former LAS staff lawyer, retired Judge) aboard an aircraft during the northern court circuit (date unknown).



Today known as the Regina Rural Area Office, the Qu'Appelle Community Legal Assistance Society opened its clinic in June 1975 at 604 12th Avenue in Regina. The clinic served residents bounded by the Wynyard, Milestone and Last Mountain Lake areas. The building itself was a true legal storefront, and had a garage in the back that courier companies used to store their vehicles.

Left: Heather Bruce, Betty Harle, Sharon Sudom, David Andrews (Legal Director), Linda Hecker (1975)



The 1975 Criminal Legal Aid Tariff of Fees was designed to reflect fees that would customarily be paid by a client of modest means. Fees paid by offence:

- Summary conviction: max \$200/day
- Indictable offences punishable by imprisonment: max \$250/day
- Indictable offences punishable by life imprisonment: max \$250/day
- Indictable offences punishable by death: at the discretion of the Provincial Director



Above: The Northern Area Office's first corporate vehicle was this 1973 Chev.



In its first year of operations, the Prince Albert and District Community Legal Services Society employed eight people, including three lawyers. It operated satellite clinics in Big River, Spiritwood, Debden and Montreal Lake one day a month. A total of 994 client files were opened, 319 of which were family matters. This led the local board to suggest a family court system.

Left: Saskatchewan Community Legal Services Commission employee with office equipment in Prince Albert (1974).



Above: Court party in 2010 ready for the northern circuit. Judge Lloyd Deshayé, Judge Donald Bird, Maria Lynn Freeland (Crown prosecutor), Wade Rogers (former LAS staff lawyer), Pouria Tabrizi-Reardigan (Crown prosecutor), Judge Earl Kalenith, Barb Degenstien (LAS staff lawyer), Karen Srodulski (former LAS staff lawyer), Christa Moses (court clerk)



Above: Barb Degenstien (LAS staff lawyer) and Murray Pelletier (former LAS staff lawyer, current Provincial Court Judge) in 2010 at Al's Place in Stony Rapids.



Above: Local RCMP shuttle the court party (pictured here with the officers are Murray Pelletier, former LAS staff lawyer and now current Provincial Court Judge, and Ed Stephens, Crown prosecutor) around Stony Rapids. (2010)



Above: Outside the Stony Rapids court point. Court clerk, Barb Degenstien (LAS staff lawyer), Judge Wilfrid Tucker, Ed Stephens (Crown prosecutor) (2010)



Left: The Regina Rural Area Office loves a good Halloween party!

Middle: A Moose Jaw Area Office party with local RCMP officers.

Below: The Battlefords Area Office enjoys a picnic in the park.





Above: On June 21, 2022, the Honourable David Lametti announced the judicial appointment of Jillyne Drennan as a Judge of the Court of Queen's Bench for the Province of Saskatchewan. At the time of this appointment, Drennan was serving as Legal Director for the Regina Rural Area Office. Justice Drennan is the first Legal Aid Saskatchewan lawyer to be appointed to Queen's Bench during employment. In October 2022, Justice Drennan was appointed to the Court of Appeal for Saskatchewan.

Back: Eddie Sacher, David Andrews, K.C, Justice Drennan, David Couture, Adam Fritzler
Front: Lynda Bordessa, Val Lechner



Left: The Honourable Don Morgan and Jerome Boyko at Boyko's retirement party in June 2023. Morgan hired Boyko in 1990 during his tenure as Chair and CEO for Saskatchewan Legal Aid Commission.

Right: Stephen Carter's swearing-in ceremony. From 1984 until his appointment to the Provincial Court of Saskatchewan in 1995, Carter was a staff lawyer with SLAC in both Saskatoon and Prince Albert.



Right: Sheila Whelan pictured at her desk. Whelan served as a staff lawyer and Legal Director in the Saskatoon office before moving into private practice. She was appointed to the Provincial Court of Saskatchewan in 1996.



Right: Dolores Ebert, former staff lawyer in the Battlefords office and Legal Director in the Saskatoon office, first joined SLAC in 1991. Ebert was appointed to the Provincial Court of Saskatchewan in 1996.



Right: In 1998 Rosemary Weisgerber was appointed to the Provincial Court of Saskatchewan. Between 1986 and 1993, she was a lawyer with SLAC in Saskatoon. At the time of her appointment, Weisgerber served as a Crown prosecutor.





Above: Geri Larson, Denise Ploss, Mavis McLean, Susan Hagblom and Crystal Judd of the Saskatoon Legal Assistance Clinic Society in 1978.



Above: Harold Pick was hired as General Counsel for the Saskatchewan Community Legal Services Commission in 1979.



Above: In the spring of 2024, the Government of Saskatchewan announced the expansion of the Drug Treatment Court program in the City of North Battleford. Minister of Justice and Attorney General Bronwyn Eyre and Premier Scott Moe invited LAS' Jonathan Bodvarson and other invested community members to the announcement.



Right: Kearney Healy, Allan McGuire and Joe Johnston of the Saskatoon office (1989).



Above: The first employee recognition awards were presented during the 1998 staff conference. Recipients were Kearney Healy (staff lawyer, Saskatoon City Area Office), Rhonda Hoffman (administrative secretary, Central Administration Office), and Pat Reis (staff lawyer, Regina Rural Area Office). This initiative was to acknowledge employees who showed exceptional service to clients, to the community, or in innovation and service to the Commission.



Above: Cheryl Boechler of the Saskatoon City Area Office became the first SLAC employee to reach 25 years of service. She was recognized for her commitment at the October 1998 staff conference.

Right: Boechler was recognized again (right) at the October 2023 staff conference for her outstanding 50 years of service!





The Battlefords Area Office gathers for a group photo (1987).

Back: Jim Lawrence, Amy Pirot, Lawrence Woodbury

Middle: Alice Albert, Olive Pirot, Gail Collins, Jack Hillson

Front: Linda Mann, Janice Lawrence, Seiri Woodbury



Above: LAS staff lawyers Barb Degenstien and Susan Ryan in Stanley Mission in 2010.



Above: Joanne Khan (LAS Practice Management Counsel) at a career fair in fall 2023.



Above: The Regina Rural Area Office (team “Ice, Ice Baby”) took part in an igloo building competition as part of FROST Winter Festival 2023.



In 2022, LAS CEO Jayne Mallin was a recipient of the Queen Elizabeth II Platinum Jubilee Medal. Mallin was honoured to be amongst a distinguished group of citizens, including Saskatchewan’s oldest resident, Sophie Foster, former Senator of Canada Lillian Dyck, Saskatoon lawyer Michelle Oullette, Indigenous Scholar Harry Lafond, Senator David Arnot, and dozens more.

Left: His Honour the Honourable Russ Mirasty, S.O.M., M.S.M., fellow medal recipient Nancy Yee, Jayne Mallin, Taylor-Anne Yee (LAS staff lawyer).



Above: Shannon Stanley, Michelle Mazuren and Desirée Lalonde of the Meadow Lake Area Office donned ribbon skirts for the first annual National Ribbon Skirt Day on January 4, 2023.



Above: Cherie Jarock (former LAS staff lawyer), Tessa Santana (court clerk), Doreen Charles (former LAS legal assistant), unnamed police officer, Judge Robert Lane (date unknown)

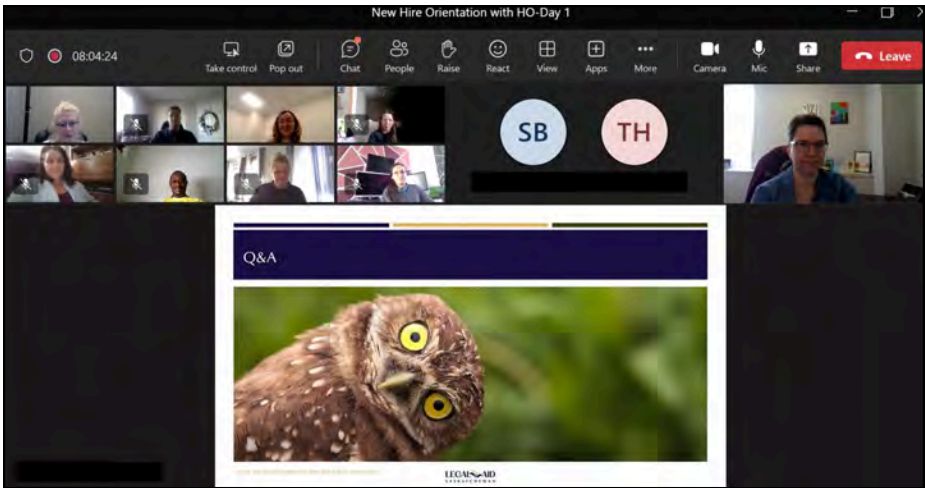


Above: Providing legal services to the people in Northern Saskatchewan requires creative ways to get there, like this helicopter preparing for takeoff (date unknown).



Above: Judge Sidney Robinson (retired), Jeanine Hill (court clerk), unnamed LAS articling student, Jody Laliberte (probation officer), Susan Ryan (LAS staff lawyer), Robert Mackenzie (Crown prosecutor, now retired Judge) (date unknown)

Left: Looking down at Wollaston Lake en route to court for the day.



Above: New employees receive virtual orientation training.

Left: The Head Office Social Committee hosts monthly group activities like the one pictured here (“puzzle time”).

Below: Legal Aid Saskatchewan employees gather for the 2022 All Staff Conference in Saskatoon. This conference was the first post-pandemic gathering for SLAC.



Legal Aid Saskatchewan marks its 50th anniversary in 2024!

The Saskatchewan Legal Aid Commission is pleased to present this comprehensive compilation of the notable events, people and stories to emerge from the past five decades.

"A provincial historical survey in its right, this book traces the 'why' of Legal Aid from its earliest days to the now established, important place that it holds and honourable role that it plays within our provincial legal system."

– The Honourable Bronwyn Eyre

"This is a well put together review of the history of Legal Aid in Saskatchewan. It brought back memories of some of the caring communities and great Legal Aid workers. There are lots of challenging times for Legal Aid. Getting both levels of government and the private bar to understand the challenges and what the obligations of the public purse should be, and where it will need to be in the future, is essential."

– The Honourable Don Morgan

"Everyone involved in the justice system has the right to a fair shake. Through the tireless and compassionate work of its lawyers and staff and private counsel when called upon, Legal Aid Saskatchewan has safeguarded that right for the people who need it the most. Here's how it happened. It's high time it was recognized."

– The Honourable Judge P. Reis

Be sure to read more about the history of Legal Aid Saskatchewan on our website at www.legalaid.sk.ca.

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