

**U.S. Department of Justice
National Institute of Justice**

140426-
140429

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by
Department of Justice Canada

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

JUSTICE

RESEARCH NOTES

Making the Justice System More Accessible to Canadians

by Albert Currie
Public Law and Access to Justice
Research Section

In this issue of *Justice Research Notes* we highlight some of the recent work of the Research Section on access to justice and public law, touching on topics that range from providing better legal services for people in the remote reaches of Canada's north, to making regulations on activities such as pollution control acceptable to corporations and individuals.

The first broad area, access to justice, covers a number of current issues in which the Department has been active over the years — such as improved access to legal aid and the provision of legal information to the public. We present three such articles here: one examining a program to make legal aid more accessible to low-income working people; another presenting the results of a survey aimed at helping to identify the public's legal information needs; and a third studying the use of paralegal workers in remote regions.

Another avenue of access-related research is the alternative resolution of disputes of all kinds, focussing on community-based, as well as court-based, techniques. In the past we have initiated projects on various procedures for divorce mediation, for example, and recently we have begun work on the question of alternative dispute resolution in general. In the 1970s, pilot projects on unified family courts were conducted which, for the first time, brought together provincial and federal court systems to resolve marital property and other issues

in divorce proceedings. We look forward to reporting on the results of our dispute-resolution work in future issues of this newsletter.

Public law research embraces the many complex socio-legal issues surrounding the application of the *Canadian Charter of Rights and Freedoms* and regulatory law.

Recently, a major focus for research has been the relationship of the Charter to national unity issues. The Department has been actively seeking ways to improve Canadians' understanding of the implications of the Charter for their rights and responsibilities as citizens. Research is ongoing on such topics as the use of extrinsic evidence in Charter cases (social science data-analysis material, for instance, which is now considered relevant by the courts) and the impact of the Charter on the policy-making process.

Research on regulatory law has concentrated on compliance with regulations, particularly the exploration of "positive compliance" techniques that avoid the traditional command-penalty approach to enforcement. A comprehensive study of these techniques in three countries (the United Kingdom, Australia, and the United States), with implications for improved Canadian systems, has recently been published and we are pleased to present a summary here.

No. 4

April 1992

IN THIS ISSUE

New Manitoba Program	140426	2
Paralegal Workers	140427	5
Canadians and the Law	140428	11
How to Foster Compliance	140429	14
Borders of Privacy		17



New Manitoba Program Makes Legal Aid More Accessible to Low- Income Working People

by Lynne Dee Sproule
Public Law and Access to Justice
Research Section

Financial eligibility for most legal aid plans in Canada is based on Statistics Canada's low-income cutoff points (income levels that are often regarded as Canada's official gauges of poverty). However, providers of legal aid increasingly observe that these criteria exclude people whose wages are low but whose income exceeds the cutoff levels. This might be said to effectively deny some people access to justice, particularly those who have to abandon their cases because they cannot afford legal services. The alternative for such people may be to place themselves and their families at serious financial risk in order to make use of the services.

Is it possible to make legal services more accessible to those in need by expanding eligibility limits,

Justice Research Notes is produced by the Research and Development Directorate of the Department of Justice. Its purpose is to provide, in summary form, results of projects carried out under the Department's program of research into various areas of justice policy, as well as information and articles on other socio-legal matters.

For further information, call (613) 957-9593.
For permission to reproduce articles, call (613) 957-2687

Published by authority of the Minister of Justice
and Attorney General of Canada

by

Communications and Public Affairs
Department of Justice Canada
Ottawa K1A 0H8

©Minister of Supply and Services Canada 1992
Printed in Canada
ISSN 1181-9243

while at the same time keeping costs within existing levels? Legal Aid Manitoba has shown that it is.

A Pay-back Program that Works

In June 1989, with funding from the Department of Justice Canada, Legal Aid Manitoba introduced an "Expanded Eligibility Program," in recognition of the need to reach people disqualified from the service because of their income levels. Shortly after the program began, an evaluation was conducted by Prairie Research Associates of Winnipeg, under contract with the Department of Justice. The report was prepared in April 1991.

As in regular legal aid procedures, clients accepted into the Expanded Eligibility Program are issued a certificate that authorizes a lawyer to proceed with the case. The range of criminal and civil law services covered by this certificate is the same whether clients are eligible under the expanded program or under regular legal aid.

The key difference is that clients in the expanded program *repay* the costs of the legal services they receive. They enter into an agreement with Legal Aid Manitoba that outlines a payment schedule and fixes a monthly payment. The advantages of the program are these:

- ▶ Since the client is paying the Legal Aid Manitoba tariff for services, the costs are much lower than those of privately secured services — an average of 25 percent to 35 percent of the total fee.
- ▶ There is no retainer.
- ▶ Disbursement costs are generally lower, as Legal Aid Manitoba is able to buy some services at a reduced cost.
- ▶ Payment by fixed monthly instalments allows a person with limited income to budget for legal costs rather than having to cope with large and irregular invoices.

Because the intent of the program is to have clients ultimately pay their own legal costs, Legal Aid Manitoba incurs only the costs of administering the program and costs related to default on payments. The evaluation consultants determined that the average administrative cost per client was \$191.98; not counting the costs of default on payments, the amount was \$115.11.

Findings and Recommendations of the Evaluation

The study team was asked to examine the Expanded Eligibility Program primarily to determine the following:

- ▶ The degree of improved access to legal services.
- ▶ The overall cost-efficiency of the program and, in particular, the effects of default on payments and costs associated with attempts to collect debts.
- ▶ Client satisfaction and attitudes toward repayment.
- ▶ The relationship between the program and the private bar.

The evaluation process involved a detailed administrative review and file analysis as well as interviews with a sample of clients of the program, a sample of legal aid applicants rejected before the introduction of the program, representatives of the private bar, and staff of Legal Aid Manitoba.

Clients and Client Satisfaction

The consultants found that the program was clearly serving low-income working people. Between June 1989 and August 1990 — the period for which data were collected for the study — Legal Aid Manitoba issued 748 eligibility certificates under the program. As expected, clients had income levels higher than regular legal aid clients, though they were still notably lower than Manitoba averages. Clients also tended to be older than regular legal aid clients.

A significantly higher proportion of clients in the program had civil or domestic cases, compared with regular legal aid clients (67 percent compared with 40 percent).

Most clients interviewed for the study were satisfied with the services their lawyer provided and with the quality of representation they received. Nearly half, however, indicated some kind of negative reaction to the Expanded Eligibility Program agreement, the payment contract between the client and Legal Aid Manitoba. The most common complaints were that payment amounts were unfair, or that the agency did not take into account all the relevant factors — such as debt load — when determining eligibility.

The consultants recommended improvements in the process of screening applicants, suggesting that the type of financial assessment used by banks warranted consideration. They concluded, on the basis of interviews, that applicants would likely be amenable to providing information of this nature.

It was recommended that clients be encouraged to request adjustments to their payment levels when these were found to be too burdensome. (Although clients complained about payment levels, almost none had tried to make different arrangements.)

It was also suggested that lawyers might be encouraged to provide better estimates of projected total costs for the client, though some clients might mistakenly interpret such estimates as contracts. In the interim, a possible alternative would be to reveal ranges in those cases in which there has been little variation in costs.

Cost-Effectiveness and Program Administration

The program's administrative function was found to be well executed, albeit stretched to its limit. Measures were therefore recommended to strengthen administrative and personnel systems.

The overall default rate — that is, the proportion of accounts delinquent by more than 120 days —

was around 14 percent. This was judged to be acceptable; indeed, it was lower than Legal Aid Manitoba had anticipated. Nonetheless, the consultants identified a number of ways to reduce the default rate further through closer monitoring and stricter cancellation policies for high-risk clients. They concluded that clients were more likely to default when they had minor criminal cases and when they resided in northern regions.

The consultants pointed out that the initial year of the program may well have been atypical, but that with additional case information, Legal Aid Manitoba's management information system should be able to become more precise in predicting which clients are likely to default. They suggested improvements to the accounts receivable/payable system in general.

The Private Bar

Members of the private bar who were interviewed gave a mixed review of the Expanded Eligibility Program. Their overall feeling was that it was good for clients — and many strongly endorsed the improved access to legal services — but not very good for lawyers.

In general, those who handled criminal cases tended to be positive about the program, since they were paid for services rendered regardless of who paid. Those who handled civil cases were less supportive. They believed that the program had tended to upset the usual financial arrangements they would make with clients and had therefore reduced their incomes; most said they had problems collecting from clients who pay on an instalment basis. Many revealed that they were unsure of the differences between the Expanded Eligibility Program and regular legal aid.

Although the consultants did not make any specific recommendations in this area, they did offer some cautionary remarks. They observed that as client load increases, lawyers may come to view

the program as competition. In their view, Legal Aid Manitoba must maintain close contact with lawyers who supply this service, to ensure that there will be adequate capacity to meet increased demand.

In another vein, the consultants noted that any plans to expand Legal Aid Manitoba to serve more clients of this program with staff lawyers would also require close consultation with the private bar.

Legal Aid Manitoba Staff

The staff of Legal Aid Manitoba expressed support for the program and believed it was appropriately targeted. There were, however, concerns about the difficulty in changing an operation in which service is provided without a fee into one in which fees are demanded and payment is monitored. The new mode, which requires staff to examine clients closely and monitor their payment history, is troubling to some — though this is balanced, of course, by the fact that the scheme provides services to those who would otherwise be disqualified.

Program to Become Self-Sufficient

Legal Aid Manitoba has demonstrated the potential of initiatives such as the Expanded Eligibility Program to extend legal services to low-income working people without imposing an unreasonable burden on the public purse.

Funding from the Department of Justice Canada will continue until October 1992. At that time, Legal Aid Manitoba plans to have modified the program on the basis of the recommendations of the evaluation report so that it will be self-sufficient.

▼▼▼

Evaluation of the Legal Aid Manitoba Expanded Eligibility Project, by Prairie Research Associates, Winnipeg. Department of Justice Canada, April 1991. (Copies of 25-page summary now available. Full report to be available in 1992.)