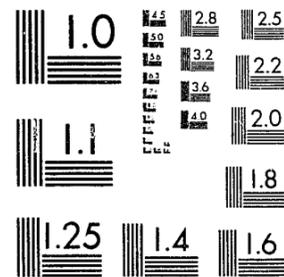


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THE BURNABY, BRITISH COLUMBIA EXPERIMENTAL PUBLIC DEFENDER PROJECT: AN EVALUATION REPORT

REPORT VII : DISTRIBUTIONAL IMPACT ANALYSIS

PATRICIA L. BRANTINGHAM

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REPORT VII

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PUBLIC DEFENDER PROJECT: AN EVALUATION**

DISTRIBUTIONAL IMPACT ANALYSIS

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DECEMBER 1981

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NOTE

THE BURNABY, BRITISH COLUMBIA EXPERIMENTAL
PUBLIC DEFENDER PROJECT: AN EVALUATION

IS REPORTED IN SEVEN DIFFERENT VOLUMES:

- I PROJECT SUMMARY
- II EFFECTIVENESS ANALYSIS
- III COST ANALYSIS
- IV CLIENT SATISFACTION ANALYSIS
- V TARIFF ANALYSIS
- VI PUBLIC DEFENCE/COURT RELATIONSHIP ANALYSIS
- VII DISTRIBUTIONAL IMPACT ANALYSIS

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PREFACE

So many people were involved in providing information and assistance during this project that it is impossible to mention all of them by name. Special mention must be given to members of project staff who spent many long hours. Mention should also be made of the cooperation received from staff of the Legal Services Society of British Columbia. Final thanks must be given to the members of the Private Bar in British Columbia who, through interviews and written comments, provided information necessary for the design and execution of this evaluation.

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Table of Contents

Project Summary.....1

 Description of the Evaluation.....1

 Summary of Effectiveness Analysis.....3

 Summary of Relative Costs.....3

 Summary of Client Satisfaction.....4

 Summary of Time/Tariff Analysis.....5

 Summary of Public Defence/Court Relationships.....5

 Summary of Distributional Impact.....6

 Overall Summary.....6

 1. Summary of the Distributional Impact Analysis.....8

 2. Introduction.....9

 3. Characteristics of Legal Aid Offices.....10

 4. Characteristics of the Burnaby Criminal
 Defence Office.....11

 5. Distribution of Cases in Burnaby.....12

 6. Distribution of Criminal Legal Aid Cases
 Across Courts.....16

 7. Distribution of Cases Across Regional Offices.....17

 8. Distribution of Criminal Legal Aid Cases
 Across Lawyers.....24

 8.1 Number of Criminal Legal Aid Cases
 Handled by Lawyers.....27

 8.2 Number of Cases by Lawyer in Selected Regions.

.....	27
8.3 Number of Cases by Lawyer Across Several Regions.....	28
9. Distribution of Payments.....	30
10. Characteristics of Judicare Counsel Practices...	31
10.1 Professional Experience.....	32
10.2 Judicare Office Characteristics.....	37
10.3 Summary.....	38
11. Impact of a Limited Number of Small Legal Defence Offices.....	38
11.1 Projection of Staff Criminal Cases.....	39
11.2 Potential Public Defence Counsel.....	43
11.3 Reduction in Private Bar Cases.....	46
11.4 Economic Impact of Conversion.....	49
12. Impact of Introducing a Major Criminal Defence Office in Vancouver.....	51
13. Conclusion.....	53

Project Summary

Description of the Evaluation

During 1979 and 1980 an experimental public defence office was established in Burnaby, British Columbia. The office was run by the Legal Services Society of British Columbia, an independent society with the mandate to deliver legal aid in British Columbia. The office was set up to determine the feasibility of introducing staff criminal defence offices within the Province. Currently most criminal legal aid in British Columbia is delivered by private lawyers paid under a fee for service tariff. Payment for legal aid under a fee for service tariff is generally called a judicare mode of delivering legal aid.

The experimental public defence office was structured within an evaluation framework. The project was evaluated throughout the two year experimental operation prior to the opening of the office an evaluation was designed. The office was run under an on-going evaluation strategy. Information was collected during the two years of experimental operation. This report presents some of the results of that evaluation.

There were six major goals in the evaluation:

- Analysis of the relative effectiveness of a public defence mode and a judicare mode of delivering criminal legal aid;
- Analysis of the relative costs of delivering legal aid under the two modes;
- Determination of client satisfaction with public defence counsel and judicare counsel representation;
- Analysis of the time spent by lawyers providing criminal legal aid and an analysis of the existing possible alternative tariff structures;
- Determination of the relationships which develop between criminal staff counsel, Crown counsel and judges.
- Projection of the impact on the private bar of the

introduction of a broader network of criminal defence offices.

The results relating to each of the major goals in the evaluation analyses, and an overall summary, are presented in separate reports and are available upon request. A list of the titles of the reports are given at the beginning of this report.

This report describes projected effects on the private bar of expansion of criminal defence offices to selected areas of British Columbia. A brief summary of the actual evaluation experiment and the results of the other major segments will be presented before the distributional impact analysis is reported.

The Public Defence Office was a small criminal legal aid office set up near the provincial court in Burnaby. The office staff included three full-time staff lawyers, a paralegal and a secretary. The office functioned as a general, non-specialized, criminal defence office. All lawyers handled all types of criminal cases. All lawyers handled all appearances, from first appearance through to disposition. All lawyers provided duty counsel services. The paralegal supplemented the lawyers' duties by interviewing clients, assisting lawyers, and providing entry point social services for clients by making referrals to social agencies.

The office structure was representative of the structures which most likely could be set up in other cities in the Province if the public defence mode of delivering legal aid were more widely adopted. Most cities in British Columbia could only support small offices such as the office in Burnaby.

The evaluation of the public defence operation involved a comparison of public defence counsel cases with cases handled by judicare counsel in the Burnaby, New Westminster, and Vancouver Courts. The public defence counsel primarily represented clients in Burnaby Provincial Court. To a lesser extent, they acted for clients in the County and Supreme Court in New Westminster. For comparison purposes, two groups of judicare cases were used. The Public Defence Office in Burnaby did not handle all criminal legal aid clients in Burnaby. Some clients were referred to private counsel. The cases referred to private counsel were used in the evaluation. These cases were heard in the same courts, Burnaby Provincial Court and New Westminster County Court,

as the cases handled by public defence counsel. Cases handled by judicare counsel in Vancouver Provincial, County and Supreme courts were also used for comparison purposes.

Summary of Effectiveness Analysis

Clients of public defence counsel and judicare counsel received guilty outcomes at about the same rate, but there were differences in the procedures which were used to reach a determination of guilt. Public defence counsel pleaded their clients guilty more frequently than judicare counsel. Judicare counsel went to trial more often. However, when guilty pleas and determinations of guilt were combined, there was little difference in the overall rate of guilty outcomes for the two modes of delivering legal aid.

There were differences in the patterns of sentences received by public defence and judicare counsel clients. Public defence counsel clients received fewer jail sentences than clients of judicare counsel. As something of a balance, judicare clients received more stays of proceedings or withdrawals of charges.

Public defence counsel engaged in more discussions with Crown. The discussions resulted in more guilty pleas and Crown recommendations for sentences. The overall pattern of justice under the public defence mode was one of more negotiations, more guilty pleas, but fewer incarceration sentences than under the judicare mode. Differences in pleas, negotiations and sentences occurred within generally similar total patterns of guilty and non-guilty outcomes.

Summary of Relative Costs

Under the experimental structure in Burnaby, the average costs per case for public defender cases was \$9 more than for judicare cases in Burnaby, but \$25 less than judicare cases in Vancouver. The average cost for judicare cases in Burnaby was \$225. In Vancouver the average was \$264 per case. The average cost for public defender cases was \$235.

The Burnaby Office was a three lawyer office, a size similar to what could be set up in other British Columbia cities if the public defence mode of delivering legal aid were expanded. Because it was a small office, average case

costs were susceptible to fairly large variation with small changes in caseloads. If Burnaby public defender case flow figures were increased on case a month there would be no appreciable difference in average costs per case for the two modes of delivering legal aid. In fact, the public defence mode would be marginally less expensive. It should be noted that, if caseloads fell much below the level the office experienced during the experimental operation, the operation would become cost inefficient. Caseloads fluctuated some month to month. The fluctuation in caseload in the Criminal Defence Office in Burnaby was the result of internal management decisions and some variability in application rates. The Public Defence Office did not handle all criminal cases in Burnaby, some were referred to private counsel. The decision to refer was made when the director of the office believed the staff lawyers were fully booked or when co-accused conflicts occurred or when another lawyer was already acting for an accepted applicant. Caseloads could be increased or decreased. For a small public defence office to remain cost efficient, at a local level of analysis, caseloads would have to be maintained.

Analysis was also performed to project costs under increased tariffs and under projected staff salary increases. Generally the staff model of delivering legal aid was found to be cost competitive with the judicare mode under expected tariff increases.

A small public defence operation appears to produce similar case costs to judicare delivery of legal aid. A staff operation permits monitoring and predictions of cost. If caseloads are maintained there is no apparent cost reason for the Legal Services Society to choose one mode of delivery over the other. As noted in the effectiveness summary, there were differences in how cases were handled by the judicare and public defence counsel. Public defence counsel clients were given terms of imprisonment less frequently than judicare clients. If correctional costs are considered, the public defence counsel mode is much less expensive. For every 1000 legal aid cases, the correctional saving produced by reduced incarceration costs could be over \$200,000.

Summary of Client Satisfaction

Clients of public defenders and judicare lawyers were both reasonably well satisfied with the performance of their lawyers. Neither mode of delivering legal aid presented

major problems in client satisfaction. If anything, clients of public defence lawyers were marginally more satisfied with the services they received.

Summary of Time/Tariff Analysis

The average time spent on a case by a public defender was 5 hours and 40 minutes. The average time spent by judicare counsel was around 7 hours. The major component of time spent was time travelling to, waiting at, and appearing in court. About 4 hours were spent in court-related activities by judicare counsel per case. About 1 hour was spent with clients; little time was spent in preparation or doing research.

The equivalent hourly rate (tariff payment/time spent) received by judicare counsel was \$34 per hour under the 1980 tariff. Lawyers received approximately the same equivalent hourly rate for major tariff services. Cases which ended by clients' "failure to appear", guilty pleas, stays and by trials were paid at the same equivalent hourly rate.

Summary of Public Defence/Court Relationships

It was generally felt by judges and Crown counsel in Burnaby that the presence of public defence counsel in the court improved the quality of justice for legal aid clients. Crown, in particular, felt that the presence of public defence counsel made their job easier. Both Crown counsel and the judges felt free to call upon public defence counsel to perform "on the spot" legal services for individuals. They saw them as part of the court system and their general availability as a major strength of a public defence office.

Public defence counsel felt that Crown was willing to give them good "deals" for their clients, better than the "deals" given for clients of judicare counsel. Crown, defence and judges all believed that this improved ability to communicate and obtain good sentences was the result of defence counsel being present in the court regularly, not the fact that the public defenders were staff counsel. However, during the course of the experimental operation of the office, Crown became aware of the fact that private counsel were not present in court as frequently as public defence counsel, so that a close working relationship could not develop with private counsel.

The public defence counsel, while acknowledging that Crown made them offers which were very good for their clients, gave the impression that they did not like the feeling that Crown or judges would call upon them for special services such as stand-in representation in court or impromptu discussions with accused persons. The pattern of open accessibility of the public defenders whenever in court which Crown and the judges liked was not uniformly liked by the public defenders.

Public defence counsel, if they are to remain independent, must have their independence continually reinforced by the Legal Services Society and must learn ways to limit their accessibility for general, non-duty counsel, court representation services. Under the current arrangements, it was generally agreed that the quality of defence had greatly improved, but that public defence counsel are likely to burn out rapidly.

Summary of Distributional Impact Analysis

It would be possible to set up several small public defence offices in the Province without having a major impact on the private criminal bar. There are about 1,000 lawyers in British Columbia who accept criminal legal aid cases. Most of these, however, handle only a few cases at a time. Only six lawyers in the whole province average as many criminal legal aid cases as staff counsel did in Burnaby. Only 1.4% handle more than 12 cases per month, and only 21% handled more than 1 case per month.

Small criminal legal aid offices could be set up in 10 communities in British Columbia without any substantial economic impact on the practices of most lawyers. A ten lawyer office could be set up in Vancouver without much impact on the criminal bar.

Overall Summary

The evaluation study found that:

- Public defence offices can be introduced in the Province in a limited way without disrupting the practice of most lawyers;

- Clients were generally well pleased with both public defence representation and judicare representation;
- Court personnel in Burnaby were well pleased with what was viewed as an improvement in the quality of justice in the court after the introduction of public defence counsel;
- The type of representation provided by public defence counsel differed from the type provided by judicare counsel;
- Under a public defence mode there were more guilty pleas and fewer trials. The overall guilty rates, (found guilty plus plead guilty) however, were similar, but clients of public defence counsel received fewer jail terms than judicare clients; and
- Under the fee for service tariff in operation at the end of the experimental period judicare lawyers received an effective rate of \$34 per hour. The tariff was increased after the experimental project ended.

A public defence mode for delivering legal aid within the Province could be introduced in a limited way. It would likely improve both judges' and Crown counsels' perception of the quality of defence representation in court. Based on the experience in Burnaby, clients would not be dissatisfied.

The introduction of a public defence mode of criminal legal services, however, would produce more negotiated justice and fewer trials. It would also most likely produce fewer jail sentences for those convicted.

Maintaining the cost-effectiveness of offices would require monitoring of caseloads and maintenance of minimum workloads. Small offices would rapidly become cost inefficient if workloads were not maintained. With a public defence system, the performance of staff counsel would also have to be monitored. With a more limited number of lawyers providing criminal legal aid, the presence of a staff lawyer

who received worse outcomes for his clients than other staff would have a more profound impact on criminal representation.

The introduction of a public defence office in Burnaby was seen as an improvement in justice by court personnel, including Crown counsel and judges. The introduction of criminal legal aid offices in other parts of the Province, if done within a more general judicare system and operated with the necessary monitoring, should improve the quality of legal aid representation generally.

DISTRIBUTIONAL IMPACT ANALYSIS

1. Summary of the Distributional Impact Analysis

This report describes projected effects on the private bar of expansion of criminal defence offices to selected areas of British Columbia. The analysis was based on the workloads, case flows, and numbers of lawyers and support staff in the pilot Burnaby Criminal Defence Office.

Eleven regions of the province could sustain public defender offices. The impact on the private bar in these regions of setting up offices would be minimal, particularly if public defence lawyers were drawn from members of the present criminal legal aid bar who handle a high volume of criminal legal aid cases.

If a large public defence office were opened in Vancouver, the broad impact on the criminal legal aid bar would be considerable. But, a smaller office of ten lawyers would have minimal impact, particularly if the highest volume criminal legal aid lawyers formed a pool from which public defenders were hired. The loss to individual members of the criminal legal aid bar in Vancouver if a 10 lawyer public defence office were opened would average less than \$800. If the office were staffed by the 10 highest volume lawyers, the number of cases lost to the legal aid bar would average less than one a year.

2. Introduction

The major goals of the evaluation included the determination of the relative effectiveness and relative costs of delivering criminal legal aid through staff counsel or through the private bar paid on a fee for service basis. The evaluation also included an analysis of client satisfaction, an exploration of the type of working relationships which developed between staff counsel and crown counsel, and an analysis of time spent by lawyers and their staff on cases. An integral part of the evaluation, presented in this report, was the analysis of the impact on the private bar of the introduction of an expanded public defence operation within the Province of British Columbia.

This report contains several major sections:

- A description of types of public defence offices;
- A description of the experimental office;
- An analysis of criminal legal and case flows in various courts and across the regional offices;
- An identification of potential locations which could, on the basis of case flows alone, support a criminal defence office;
- A description of staffing and caseload characteristics of criminal defence offices;
- An analysis of the distribution of criminal legal aid cases amongst lawyers who handle legal aid;
- A determination of how this distribution would change if criminal defence offices were introduced;
- An estimation of the economic impact on the private bar of the introduction of criminal defence offices in selected locations.

3. Characteristics of Legal Aid Offices

Criminal legal aid offices can vary greatly in size, internal specialization, and methods used for handling cases. Criminal legal aid offices can also vary in funding mechanisms, management structures, and the types of cases handled.

The size and methods for handling cases within an office are particularly important characteristics to consider in an impact analysis. The size of a legal defence office depends on the flow of clients, and the flow of clients varies over time. The number of applications for legal aid are not constant from month to month. In some months the application rate, and the number of accepted clients, is high. In others it is low. Small offices can be greatly influenced by variability in the flow of clients. If a lawyer can optimally open fifteen new cases each month, and the case flow varies from five to twenty-five new cases each month, the lawyer fluctuates between an excess of free time and forcibly reducing the amount of time spent on each case.

The impact of variability in the number of new clients decreases as office size increases. In larger offices lawyers who are less busy pick up new cases while the busy lawyers by-pass clients temporarily, or each lawyer makes small increases in workload, producing an aggregate increase in office workload. In addition to being less susceptible to variation in client flows, large legal defence offices make specialization possible amongst staff counsel. Lawyers may handle only certain types of cases, or may represent clients only at certain appearances, such as first appearances or trials.

This impact analysis considered two generic types of offices. The first type was a small office with a minimum of three lawyers, similar to the experimental office in Burnaby. (Ultimately it would be possible to have a one lawyer legal aid office. However, one lawyer offices would be extremely susceptible to variations in workload. The impact analysis was restricted to situations where three or more lawyers could be employed.) The impact analysis also considered large legal aid offices. Large offices could only exist near high volume courts, which in British Columbia limits office locations to Vancouver.

4. Characteristics of the Burnaby Criminal Defence Office

The Criminal Defence Office established in Burnaby, British Columbia was, and is, a small office. (The Public Defender Office is continuing, at least in the near future, as a non-expanding operation). The office was an experimental operation for a two and one half year period. It was evaluated over two years of the experimental period, from January 1979, through December, 1980. During this time the office staff consisted of:

- Three lawyers, one of whom acted as director;
- Paralegal staff member;
- Full time secretary; and
- Part time secretary, who worked for part of one year.

The office is located across the street from the Provincial Court in Burnaby. Staff lawyers represented clients in Burnaby Provincial Court and the County and Supreme Courts for the Burnaby region. The higher courts are located in New Westminster, an adjacent municipality.

The Burnaby office provided several major services to its clients. It functioned as a regional intake point, accepting legal services applications, assessing eligibility, and communicating with other legal services regional offices. The lawyers provided duty counsel services in addition to standard counselling and representation. The Public Defender operation functioned in most ways as a small legal firm specializing in criminal law.

The office did not displace private legal aid lawyers working in the Burnaby area. The director of the Public Defence Office referred cases to the private bar when he perceived that the staff lawyers, including himself, were unable to handle the case load, when co-accused conflicts occurred, when it was thought a case would last an extended period or when the accepted applicant already had a lawyer acting for him on another charge.

Cases were assigned to staff counsel by rotation and according to client request. The public defenders generally handled all aspects of an assigned case from first appearance to disposition. The experimental design allowed no specialization of lawyers within the criminal defence office. The public defenders reported some funnelling of more serious offences to one staff counsel. The number of such cases were small and the overall pattern was one of general criminal defence. All public defenders handled duty counsel functions, court work, preliminary hearings, trials, and speaking to sentence for all types of offences accepted by the office. Some limited appeal work was done, but not included in the analysis.

5. Distribution of Cases in Burnaby

The flow of cases through the Burnaby Public Defence office was used as a base to determine the case loads which could be handled by staff counsel. During 1979 the Public Defence office in Burnaby processed 1262 applications. Of these 964 (76.3%) were approved by Legal Aid. During 1980, 1195 applications were processed, and 896 (74.9%) were approved. Four hundred and two (41.7%) of approved cases were referred to private counsel during 1979, and 362 (40%) of approved cases were referred during 1980.

There was month-to-month variability in the number of cases opened by a staff lawyer. Cases tended to be opened by staff lawyers in batches. One month a lawyer would open a large number of cases. Because some cases take more than a month, the next month that lawyer would open fewer cases. Looking at the number of case openings month-to-month, there were months with many cases opening, and months with few case openings. There was also month-to-month variability in the number of applications. Sometimes the months when the staff lawyers opened a large number of new cases were months when there were many applications. Sometimes, high volume application months were months when staff lawyers did not open new cases. When the application flow was greater than the case opening rate cases were referred to private counsel. By using referrals as a mechanism to handle high client flows, Burnaby office staff were able to maintain a more constant workload. This procedure for handling case-flows has many practical advantages.

Table 5.1 shows the monthly variation in new cases and referrals to the private bar for the Public Defender Office. The pattern of acceptance of applications and referrals to

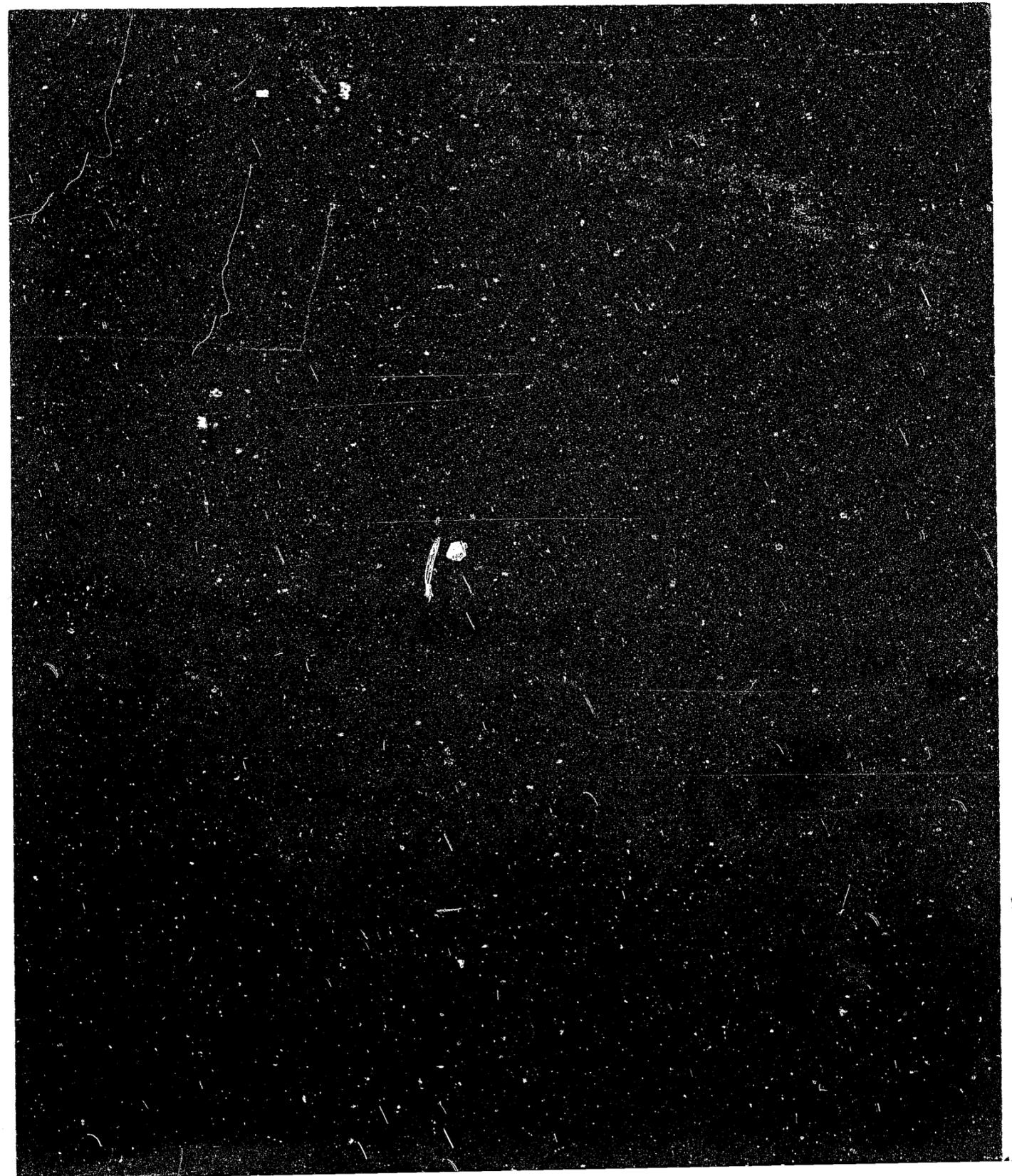


Table 5.1

Number of applications received, approved, and referred to the private bar at the
Burnaby Public Defence Office, 1979 - 1980

Date	Applications received	Applications approved	Number of cases referred to Private Bar	Percent of approved applications referred to Private Bar
1979				
January	126	99	18	18%
February	137	116	40	34%
March	119	95	32	34%
April	114	94	70	74%
May	92	62	43	69%
June	106	77	20	26%
July	89	60	16	27%
August	127	99	25	25%
September	73	53	27	51%
October	88	70	39	56%
November	105	72	29	40%
December	86	67	43	64%
TOTAL	1262	964	402	

Table 5.1 (continued)

Date	Applications received	Applications approved	Number of cases referred to Private Bar	Percent of approved applications referred to Private Bar
1980				
January	102	69	17	25%
February	124	93	41	44%
March	116	86	37	43%
April	110	89	31	35%
May	71	48	11	23%
June	117	82	26	32%
July	81	65	22	34%
August	74	56	13	23%
September	84	65	25	38%
October	118	95	23	24%
November	99	74	59	80%
December	99	74	57	77%
TOTAL	1195	896	362	

the private bar demonstrates one of the problems of a small legal aid office. Month-to-month variation in applications requires that during peak periods small offices either increase workloads or decrease time per case or increase staff (which may leave staff with insufficient work during slower periods), or refer cases out as was done in Burnaby. Large offices can handle month-to-month variation more easily. With many employees, each individual employee can make small adjustments to workloads. These individual adjustments, in the aggregate, make it possible to handle a moderate amount of month-to-month variability.

No external workload constraints were imposed upon counsel of the Burnaby Public Defender Office. The case load levels in Burnaby can be considered an estimate of unconstrained minimum case loads for a three lawyer criminal defence office in which lawyers handle as many or as few cases as they wish.

Approximately 20% of the staff lawyers' work time was occupied with duty counsel responsibilities. If they did not act as duty counsel and spent 100% of their time on casework, the staff lawyers in Burnaby could be expected to handle 14% more cases each month.

Given the case loads handled by the Burnaby staff lawyers, the legal aid case flows necessary to support various sizes of Legal Defence offices were calculated and are presented in Table 5.2. The average number of cases per lawyer was 183 for each of the two years of experimental operation. Of these a limited number were appeals. The criminal, non-appeal, caseload (based on closed cases) was 180 cases a year.

Given how people adjust their time to suit workloads, the breakpoints between cases handled by different sized offices are not sharp, but overlap. Using the data in the evaluation project it was not possible to estimate the degree of possible overlap. It should be noted, however, that workload overlaps do occur.

The time actually spent by staff counsel in Burnaby on courtwork and as duty counsel was collected through time logs. The Costing Analysis, (Report III), and Tariff Analysis, (Report IV) describe in detail the time log data and cost implications of caseloads in Burnaby. Within the distributional impact analysis, the average cases actually handled in Burnaby were used to project impacts. The average case load handled in Burnaby is a more conservative projection figure and is based on experience within an

operational office. A criminal legal aid caseload of 180 cases per year per lawyer was used as the basis for projections.

Table 5.2
Projected Office Size*

Number of Lawyers	Number of Cases Per Year
1	1 - 180
2	181 - 360
3	361 - 540
4	541 - 720
5	721 - 900
6	901 - 1080
7	1081 - 1260
8	1261 - 1440
9	1441 - 1620
10	1621 - 1800

*Based on 180 cases per year per lawyer

6. Distribution of Criminal Legal Aid Cases Across Courts

Historical records of case flows through criminal courts were analysed to identify locations with a sufficient number of cases to justify a legal defence office.

Criminal legal aid cases can be heard in any criminal court in British Columbia, but certain courts, as would be expected, hear more than others. Higher volume courts, not surprisingly, are usually located in larger cities. Legal Services Society maintains a network of sixteen regional offices in the Province. These are listed in Table 6.1 by Legal Service Society service regions. All centres have sufficient legal aid cases to support at least one legal defence lawyer.

Sufficient case flows are a minimum requirement for locating a public defence office but not all areas which can justify a criminal staff lawyer according to case volume have sufficient legal aid activity to justify setting up such an office. The support staff must be hired and have enough work to keep busy. Support staff requirements will be discussed in the next section.

Table 6.1
Regional Offices

Region	City
1	Campbell River, Victoria, Nanaimo
2	Vancouver
3	Surrey
4	Burnaby, Chilliwack, New Westminster, Maple Ridge
5	Kelona, Vernon
6	Cranbrook
7	Kamloops, Williams Lake
8	Prince George
9	Prince Rupert

7. Distribution of Cases Across Regional Offices

The flow of criminal legal aid cases across Regional offices was analyzed to determine what support staff would be necessary at potential office locations identified in the previous section. Applications are usually made at a Legal Services Society Regional Office near the court of first appearance. The historical legal aid records identify the office where application for legal aid was initially received. There is some ambiguity in the historic records,

but generally the office recorded as the intake office is the regional office where the application was initially made. Historic records were used to determine application flows.

Applications reach the Legal Services Society offices in a variety of other ways. In areas without regional offices, clients may apply for legal services through Area Directors. Area Directors, of which there are nineteen, are private lawyers who serve as formal contacts with the Legal Services Society. In addition, individuals who are in custody can apply for Legal Services through Salvation Army personnel or lawyers acting as duty counsel.

Generally, a regional office or Area Directors' office handles clients for a local court. The New Westminster office, however, processes applications for several small provincial courts and was the administrative home of a Prison Service project which employed staff to take applications for legal services and to provide services for persons in prison. (The prison project is no longer housed in New Westminster, but the past presence of the project is reflected in historic records.) Applications through the prison program, which originated in diverse correctional institutions, were processed as applications from New Westminster.

The New Westminster regional office handles applications for several Provincial Courts. It is a truly regional office. If the flow through the New Westminster office is not considered, then the flow of applications through the offices is similar to the flow of legal aid cases through the local provincial courts. Because of the unique nature of the office in New Westminster it was excluded from subsequent analysis. Any introduction of a criminal defence office in New Westminster would potentially produce impacts on a wide variety of locations and should be analyzed separately.

Within a legal defence office structure, staff must be hired to handle the processing of applications and the non-legal administration of cases. The experimental Burnaby office employed one full-time secretary, and one full-time paralegal. One part-time secretary was employed for part of the experimental period. The part-time secretary was laid off when the work proved insufficient.

The secretaries performed the application intake and processing functions of a regular regional office, except that applications were limited to criminal cases. In other

regional offices applications are received for civil as well as criminal matters.

Both the paralegal and secretary in Burnaby performed several tasks in the office, some related to application management and others to case handling. As part of the evaluation, staff in the office kept time/activity logs. Based on these logs, the time required to perform specific tasks was calculated. The time/activity analysis is reported in depth in the Cost Analysis report. Table 7.1(A) reports the average time it took support staff to perform office duties. Table 7.1(B) contains projections of the estimated number of cases and applications non-legal support staff ought to be able to handle in a year.

Table 7.1(A)

Approximate Work Times for Full-Time Staff

Staff	Time per Application Interview	Time Per Referral	Time Per Case
Secretary	10 mins	36 mins.	1hr 35 mins.
Paralegal	31 mins		2hrs 17 mins.

Table 7.1(B)

Full Time Equivalent Workloads

Staff	Applications Per Year	Referrals Per Year	Cases Per Year
Secretary	6400	2100	690
Paralegal	2100		480

The numbers in Table 7.1(B) are full-time equivalents, that is, they are based on the number of cases, referrals or applications a staff member could handle if that staff person performed only one service. Thus, one full-time secretary could be expected to process over 6,000 applications if that secretary did nothing but process applications; or a paralegal working full-time interviewing

TABLE 7.2
 Full-time Equivalent Support Staff Required
 For Offices with a Different Number of Lawyers

No of Lawyers	No of Cases	No of Appli- ations	No of Inter- views	No of Secre- taries for cases	No of Secre- taries for Appli.	No of Para- legals for cases	No of Para- legals for Interviews	Total Secre- taries Needed	Total Para- legals Needed
1	180	240	74	.26	.04	.37	.11	.30	.48
2	360	480	148	.52	.07	.75	.23	.59	.98
3	540	720	222	.78	.11	1.12	.34	.89	1.46
4	720	960	296	1.04	.15	1.50	.46	1.19	1.96
5	900	1200	370	1.30	.19	1.87	.57	1.49	2.44
6	1080	1440	444	1.56	.22	2.25	.68	1.78	2.93
7	1260	1680	517	1.83	.26	2.62	.80	2.09	3.42
8	1440	1920	591	2.09	.30	3.00	.91	2.39	3.91
9	1620	2160	665	2.35	.33	3.37	1.03	2.68	4.40
10	1800	2400	739	2.61	.37	3.75	1.14	2.98	4.89

applicants could be expected to see around 2,000 applicants if the paralegal only interviewed clients. The numbers

represent cases, referrals or applications which could be handled in one person year of work.

In Burnaby, 75% of applicants were accepted for legal aid. Using this ratio, the number of support staff necessary for criminal defence offices of different sizes were projected. Table 7.2 presents these projections as fractional units, that is, 40% of one secretary is needed or 86% of a paralegal is needed.

Usually, secretaries and paralegals cannot be hired to work for fractional parts of a week. Secretaries can be hired easily for half-time or full-time work, whereas paralegals can be hired easily for full-time work, and probably much less easily for part-time work. Table 7.3 lists the personnel requirements in offices in half-time or full-time units for offices with different numbers of staff counsel. Projections were based on one lawyer handling 180 cases per year and 75% of applicants being accepted for legal aid.

Table 7.3
Office Size and Staffing
Requirements

Number of Lawyers	Number of Secretaries	Number of Paralegals
1	0.5	1
2	0.5	1
3	1.0	2
4	1.5	2
5	1.5	3
6	2.0	3
7	2.0	4
8	2.5	4
9	3.0	5
10	3.0	5

If paralegals were not used in an office and the duties which the paralegal performs relating to processing and interviewing applicants were taken over by a secretary, and the duties which relate to direct casework were taken over

contains projections of the staffing needs with, and without, paralegals.

The number of secretaries needed was calculated for half-time and full-time positions and the number of paralegals was calculated as full-time positions. A 10% margin was used in the calculations, so, for example, a need for .58 secretaries was converted to one half of a secretary. A three lawyer office needs one secretary and two paralegals, whereas a five lawyer office needs one and one-half secretaries and two paralegals. An eight lawyer office requires two secretaries and four paralegals whereas a ten lawyer office needs three secretaries and five paralegals.

Table 7.4

Staff Needed With and Without
Paralegals

Lawyers	With Paralegals		Without Paralegals	
	Secretaries	Paralegals	Secretaries	Lawyers
1	0.5	1	0.5	2
3	1	2	2	4
5	1.5	3	2	7
7	2	4	3	10
10	3	5	4	14

Without paralegals, the number of lawyers and secretaries would obviously have to increase. A one lawyer office would need two lawyers for the same case flow. A three lawyer criminal defence office would need four lawyers to provide the same services. A seven lawyer office might grow to ten lawyers, and a ten lawyer office might increase to fourteen lawyers.

These projections were based on all paralegal functions being taken over by secretaries or lawyers. It is possible that the elimination of a paralegal would bring about a reduction in the overall range of services provided in the legal aid office. Report III, Cost Analysis provides a detailed analysis of the activities performed by a paralegal. The paralegal in Burnaby investigated background of clients for speaking to sentence and provided entry level

social services for clients by directing them to appropriate agencies and making follow-up calls. Services such as these might be eliminated if paralegals are not part of a criminal defence office. If services are eliminated then staff size would be less. The paralegal averaged about one hour on direct court/legal services per case. Per case about 1.25 hours were spent on peripheral services which might be eliminated in a switch away from paralegal staff.

Independent legal defence offices, that is, self-contained operations, probably should have at least one full-time secretary. One full-time secretary is required in an office which must be available to the public during normal working hours. If application processing and representation of clients are both handled within the office, a three lawyer office would be the legal staff size minimum necessary to support one secretary.

In addition to Burnaby, there are eleven locations in British Columbia with sufficient application and case flows to justify three staff criminal legal aid lawyers and at least one full-time secretary. These locations are:

Vancouver	Chilliwack
Victoria	Kelowna
Prince George	Campbell River
Kamloops	Prince Rupert
Surrey	Williams Lake
Nanaimo	

The eleven locations listed above are places where a criminal defence office would have sufficient case flow to justify both staff lawyers and support staff. The introduction of offices in these locations would have variable economic impact on the legal aid bar. The impact on the private bar is explored in the next several sections of the report.

8. Distribution of Criminal Legal Aid Cases Across Lawyers

The practices of members of the criminal legal aid bar will be affected by any conversion to criminal defence operations. Even a partial conversion to a legal defence model would cluster cases into the staff practices of a limited number of staff lawyers. The number of legal aid cases handled by the rest of the criminal bar would decrease, consequently payments from Legal Aid to the private bar would decrease.

The aggregate disruption of the practices of the criminal bar depends on the actual distribution of cases across lawyers. If legal aid cases are distributed evenly across lawyers, concentration of those cases in a legal defence office with a limited number of staff lawyers would have a major impact on general practice patterns. If, on the other hand, a few lawyers handle most legal aid cases in an area, and the majority of lawyers handle only a few cases, conversion to the legal defence model would disrupt the practices of only a few lawyers and would have marginal economic impact on most. If cases are concentrated and lawyers who handle mostly legal aid cases become staff criminal lawyers, the disruption of practices would be still further minimized. An important step in the impact analysis is, therefore, an exploration of the existing distribution of cases across lawyers who accept criminal legal aid applications.

8.1 Number of Criminal Legal Aid Cases Handled by Lawyers.

In British Columbia, during 1980, there were nine hundred and ninety-nine lawyers who handled at least one criminal legal aid case. Table 8.1.1 presents a breakdown of the number of lawyers who handled various volumes of legal aid case loads.

The case load distribution is skewed, with most lawyers handling few criminal legal aid cases, and only a few lawyers handling a large number of criminal legal aid cases. Twenty-one percent of all lawyers who handled criminal legal aid cases during 1980 handled only one criminal legal aid case during the year. Fifty percent of all lawyers who took criminal legal aid cases handled six or fewer cases during 1980. Sixty-three percent handled fewer than twelve cases during 1980. Only 1.4% of the lawyers handling criminal legal aid cases

Table 8.1.1

Number of Lawyers Handling Different Criminal Legal Aid Case Volumes (1980)

	Number of Cases	Number of Lawyers	Cumulative Percentage of Lawyers
Under 1/month	1	209	20.9
	2-6	236	49.6
	7-12	112	63.0
1 to 2/month	13-18	70	71.2
	19-24	46	78.0
2 to 3/month	25-30	27	81.3
	31-36	30	84.8
3 to 4/month	37-42	14	86.5
	43-48	13	88.1
4 to 5/month	49-54	16	90.0
	55-60	13	91.5
5 to 6/month	61-66	8	92.5
	67-72	14	93.8
6 to 7/month	73-84	12	95.3
7 to 8/month	85-96	10	96.5
8 to 9/month	97-108	8	97.1
9 to 10/month	109-120	6	98.2
10 to 11/month	121-132	3	98.6
12 and over/month		12	100%

average twelve or more cases in a month.

Over twelve cases a year, or one a month, was considered a high volume legal aid practice, a practice which might be substantially impacted should criminal defence offices be introduced. For the purposes of the

impact analysis, a distinction was made between lawyers who handled twelve or more cases per year, a minimum of one case per month, and those lawyers who handled less than an average of one case per month. The economic impact on high and low volume legal aid lawyers was considered separately.

The average load of cases handled each month by the public defence counsel was compared to the average number of legal aid cases handled each month by those private counsel who accepted the largest numbers of legal aid referrals. Burnaby staff counsel handled cases and provided duty counsel services. Duty counsel services took up about twenty percent of their time. If they did not act as duty counsel, and duty counsel time was replaced with case related work, the three lawyers in the Burnaby Criminal Defence office would probably have handled fifteen or sixteen cases each month. In British Columbia, only five private counsel averaged more than fifteen criminal legal aid cases each month.

Table 8.1.2

High Volume Criminal
Legal Aid Lawyers (1980)

Number of Cases	Number of Lawyers	Monthly Average Number of Cases
191	1	15.9
194	1	16.2
208	1	17.3
248	1	20.7
269	1	22.4

Table 8.1.2 lists the case volumes and monthly average number of cases for the five lawyers handling the largest number of criminal legal aid cases.

8.2 Number of Cases by Lawyer in Selected Regions.

As discussed in Sections 4 and 5 of this report, the volumes of cases and applications are not sufficient in all courts or areas to justify legal defence offices. There are, however, several areas in the province where legal defence offices could be justified by case and application flows. It is the lawyers who handle cases in these areas who would feel the primary impact of any conversion to legal defence offices. The areas presented in Section 5 as likely to support legal defence areas were:

Vancouver	Chilliwack
Victoria	Kelowna
Prince George	Campbell River
Kamloops	Prince Rupert
Surrey	Williams Lake
Nanaimo	

Table 8.2.1 lists the number of lawyers who handled criminal legal aid cases originating in these offices during 1980, and the proportion of these lawyers handling twelve or more cases during the year. Campbell River had the lowest percentage, 11.8%; Prince Rupert had the highest, 37.5%. In Vancouver the rate was 28.4%. Generally, those locations where cases are spread evenly across the criminal legal aid bar would experience the greatest economic impact on the private bar if a conversion is made. Williams Lake, Vancouver, Kelowna, Prince George and Prince Rupert all had 25% or more of their criminal legal aid lawyers handling 12 or more cases a year in 1980.

Table 8.2.1
Lawyers with 12 or More
Criminal Legal Aid
Cases per Year

Location	Total Number of Legal Aid Lawyers	Proportion of Legal Aid Lawyers Handled 12 or More Cases
Vancouver	450	28.4%
Victoria	113	21.0%
Prince George	50	32.0%
Chilliwack	81	16.0%
Surrey	147	12.2%
Kamloops	83	20.5%
Nanaimo	67	22.4%
Kelowna	39	30.1%
Campbell River	34	11.8%
Prince Rupert	16	37.5%
Williams Lake	24	25.0%

8.3 Number of Cases by Lawyer Across Several Regions.

Lawyers potentially take cases which originate in several regions and which are heard in several courts. If a public defence office is introduced in only one court location, then only lawyers who handle cases in that court potentially experience decreases in their criminal legal aid case loads. If offices are opened in several locations, then lawyers with practices in each of these locations potentially would be affected by each new office. Lawyers who handle cases in several locations where public defence

Table 8.3.1
Legal Aid Conversion Impact

	Single Impact		Multiple Impact	
	Number of Criminal Legal Aid Lawyers	Number of Lawyers with 12 or More Cases per Year	Number of Single Impact Lawyers with 12 or more Cases a Year in Other Potential Locations	Proportion of Lawyers with Multiple Impact
Vancouver	450	128	12	9.0%
Victoria	113	24	None	-
Prince George	50	16	None	-
Kamloops	83	17	1	5.8%
Surrey	147	18	2	3.4%
Chilliwack	81	13	2	3.7%
Nanaimo	67	15	None	-
Kelowna	39	9	None	-
Campbell River	34	4	None	-
Prince Rupert	16	6	None	-
Williams Lake	24	6	1	16.6%

offices might be opened would feel the impact of the conversion from several courts. It is important to know the number of lawyers who would experience single and multiple impacts from any additional legal defence offices. To determine multiple impacts the distribution of individual lawyers' cases across several locations or courts was analysed.

For the eleven areas in which public defence offices might be feasible, Table 8.3.1 reports the proportion of lawyers who handled twelve or more legal aid cases per year in 1980 in other areas. Few lawyers have practices which span several courts. Consequently, the introduction of multiple offices would have little compound effect. The introduction of a public defence office in one city should not have much impact on lawyers located in other cities. Eightteen lawyers out of 999 criminal legal aid lawyers in the Province would experience multiple impacts if public defence offices were opened in all eleven locations. Twelve of these 18 lawyers are Vancouver based.

9. Distribution of Payments

Payments to individual private lawyers for handling criminal legal aid cases are made under a tariff schedule. The amount to be paid for specific activities is set down explicitly. The amount actually paid for any one case varies depending on services delivered. During 1980 the average payments to individual lawyers ranged from \$6,667.50 to \$15. The \$6,667 payment was an average for two cases handled by one lawyer. The second highest payment was \$5,225 for one case. The third highest average was \$2,768.93 and was an average over fourteen cases handled by one lawyer. Table 9.1 contains a list of the 10 highest average lawyer payments in 1980, and the number of cases handled by these 10 lawyers. Each sum represents the average payment to a lawyer, not total payments. The average payment for all cases in the Province was \$199.76. The average disbursement for expenses was \$21.31. The average disbursements and payment were calculated from the payments for all cases completed in 1980. During 1980 the criminal tariff payment schedule was increased about 8%. During 1981 the tariff was increased again about 8%. The average payments reported here represent payments for cases which were begun both before and after the tariff changes of 1980. The average should be increased by about 42 percent to \$283.66 to get an estimate of what the average billing has been since the tariff increase.

Table 9.1
Top Ten Average Payments, 1980

	Average Payment to Individual Lawyer	Number of Cases
Lawyer #1	\$6,667.50	2
Lawyer #2	\$5,225.00	1
Lawyer #3	\$2,958.85	13
Lawyer #4	\$2,676.36	11
Lawyer #5	\$1,530.00	1
Lawyer #6	\$1,485.00	1
Lawyer #7	\$1,210.00	1
Lawyer #8	\$ 915.00	16
Lawyer #9	\$ 805.00	14
Lawyer #10	\$ 795.00	1

10. Characteristics of Judicare Counsel Practices

Sections 8 and 9 of the Distributional Impact Analysis described the distribution of criminal legal aid cases amongst judicare counsel, and observed that a few judicare counsel handled a large number of criminal legal aid cases each year, while the majority of judicare lawyers handled very few criminal legal aid cases per year.

This section of the report presents the results of a survey of judicare counsel. A sample of judicare lawyers who handled criminal legal aid cases included in the evaluation completed a questionnaire describing their professional experience, the characteristics of their practice and their office or firm. Based on the average number of criminal legal aid cases handled by a lawyer per

month, the judicare lawyers were divided into 3 groups. Group 1 included those lawyers handling 12 or fewer criminal legal aid cases per year (1 per month); Group 2 included those lawyers handling 2 to 5 cases per month; Group 3 lawyers handled 5 or more criminal cases each month. Group 1 were low volume criminal legal aid lawyers, Groups 2 and 3 were moderate and high volume criminal legal aid lawyers. Thirty-nine judicare lawyers in the lower mainland responded to the questionnaire, a copy of which appears in the technical Appendix.

10.1 Professional Experience.

Seventy percent of criminal legal aid lawyers practicing in British Columbia graduated from the Law School at University of British Columbia (Table 10.1.1). The remaining 30% received their legal training from a variety of law schools across the country. The criminal legal aid bar in British Columbia is primarily a locally trained bar.

The criminal legal aid bar includes lawyers with a wide range of experience. The sampled lawyers included one who graduated from law school in 1928 and one who graduated as recently as 1979. Table 10.1.2 presents a list of the years when the sampled lawyers graduated from law school. Over 95% of the lawyers were admitted to the bar one year after graduating.

The lawyers sampled had practiced criminal law an average of 7.1 years. They engaged in civil litigation an average of 4.9 years and have done solicitors work for an average of 3.6 years. In each of these practice categories the range of years was great. The range of years practicing civil law was zero years to 50 years.

Table 10.1.3 presents summary statistics describing criminal legal aid practices.

Criminal legal aid lawyers sampled were not new lawyers with limited experience. They averaged over 7 years in criminal practice and more years of criminal law experience than civil law experience. Most interestingly, as a group, they had more years experience in general criminal law than specifically in criminal legal aid work.

As described at the beginning of this section, sampled lawyers were asked to answer a questionnaire. The responses to the questions were used to generate a picture of low, moderate and high volume legal aid practices. The questionnaire contained a series of questions about how the lawyers' practices were divided between civil and criminal law and solicitors work. The answers to these questions are

reported in the following sections.

Table 10.1.1

Law School of Graduation

Law School	Number	Proportion
University of British Columbia	27	70%
University of Victoria	1	2.5%
Dalhousie University	1	2.5%
Osgood University	2	5%
University of Manitoba	1	2.5%
U.C.L.A.	1	2.5%
University of Western Ontario	1	2.5%
University of Saskatchewan	1	2.5%
University of Alberta	1	2.5%
University of New Brunswick	1	2.5%
McGill University	1	2.5%
University of Windsor	1	2.5%
Totals	39	100%

Table 10.1.2
Year of Graduation

Graduation Year	Number of Lawyers	Proportion of Lawyers
1928	1	2.6%
1966	2	5.1%
1968	1	2.6%
1969	1	2.6%
1970	3	7.7%
1971	4	10.3%
1972	3	7.7%
1973	7	17.9%
1974	3	7.7%
1975	5	12.8%
1976	2	5.1%
1977	3	7.7%
1978	3	7.7%
1979	1	2.6%
	39	100%

The proportion of each sampled judicare lawyers' practice which was devoted to criminal law, civil litigation, and solicitor's work were reported as a percent of total time spent on a practice and as a percent of total case load in a practice (Table 10.1.4).

The sampled criminal legal aid lawyers reported spending about 56% of total practice time on criminal law cases. They reported about 28% of their total practice time spent on civil litigation and 16% of total practice time spent on solicitor's work.

When the sample of judicare practices was broken down into the three groups (high, moderate and low volume criminal legal aid practices), lawyers in the high volume group (60+ criminal legal aid cases per year) reported, as would be expected, significantly more time doing criminal law. The low and moderate volume groups reported a higher proportion of total case time in civil litigation than did the high volume group of judicare counsel.

Table 10.1.3
Experience by Area of Law

	Average No. of Yrs.	Maximum No. of Yrs.
Years Practice Criminal law	7.1	50
Years Practice Civil Litigation	4.9	50
Years Doing Solicitors Work	3.6	50
Years Civil Legal Aid Referral Work	2.9	11
Years Criminal Legal Aid Referral Work	5.1	11

Judicare lawyers with heavy criminal legal aid case loads devoted much more of their time to criminal law than did judicare lawyers with fewer criminal legal aid cases. Put another way, high volume criminal legal aid lawyers were high volume criminal lawyers and low volume criminal legal aid lawyers were low volume criminal lawyers.

In order to obtain an estimate of the number of cases that were legal aid referrals, the lawyers were asked to estimate how many civil and criminal case files they opened in an average month during 1980. The average estimate was 7.5 civil litigations begun per month, and 9.2 criminal files opened per month. The lawyers also estimated that 38% of their criminal and 11.5% civil cases were legal aid referrals.

Judicare counsel estimated their average weekly working hours during 1980. Their reported work week averaged 45.7 hours. The average working week for high volume criminal legal aid lawyers was 53.1 hours; for moderate volume legal aid lawyers reported 43.7 hours; the average for low volume legal aid lawyers was 45.7 hours.

TABLE 10.1.4
Criminal Legal Aid Bar Practice Patterns

Proportion of practice devoted to criminal, civil law and solicitor's work			
	Criminal Legal Aid Caseload Groups	Proportion of Time	Proportion of Cases
Criminal Law	Low	50.7	39.6
	Moderate	59.9	60.5
	High	78.1	68.1
Civil Law	Low	36.1	37.4
	Moderate	28.7	28.4
	High	10.1	7.9
Solicitor's Work	Low	19.4	18.4
	Moderate	11.0	10.7
	High	8.1	3.8

Table 10.1.4 shows the proportion of total practice time spent on each type of case and shows that the groups of lawyers with large criminal legal aid case loads spent proportionately more time in the practice of criminal law, while lawyers with smaller criminal legal aid case loads spent more of their time engaged in civil law. This should not be surprising.

10.2 Judicare Office Characteristics.

The average length judicare lawyers reported being with a firm was 4.8 years. Fifty percent of low volume legal aid lawyers had partners, while 56% of moderate volume legal aid lawyers reported partners, and only 32% of high volume lawyers reported having partners.

Of those lawyers who practiced in a firm, the average number of lawyers per firm was 4.4 for the moderate volume group, and 2.1 lawyers per office for the high volume group, and 2.6 for the low volume group. All three groups averaged around one (.9) articling student per firm. Within the firms the most common support staff were secretaries, bookkeepers, accountants, paralegals, and law students.

Lawyers with small case loads reported consulting other lawyers slightly more about their criminal cases than did lawyers with large criminal legal aid case loads. Since small volume criminal legal aid lawyers handle fewer criminal cases they may be less familiar with criminal procedures and need more advice. Seventy percent of consultations took place in the office or firm. The remaining consultations occurred primarily at the courthouse. Occasional consulting took place at the Law Society Library accounted for 18% of consulting time.

Legal research, not including time with clients and preparation for examination of witnesses, was done primarily at the courthouse. Those who conducted legal research in libraries outside their offices reported it added approximately half an hour to their weekly work hours.

The location of office/firm with respect to the various courts revealed some interesting although not significant differences. The average time to travel to the Burnaby Provincial Courthouse was reported as 19 minutes; to the Vancouver Provincial Courthouse 16 minutes; to the County Court or Supreme Court in Vancouver 14 minutes; and to the County Court or Supreme Court in New Westminster 31 minutes. Trips to Burnaby Provincial Court were primarily by car. Trips to Vancouver Provincial Court frequently involved

walking. These times were lawyers estimates of travel time and, as most estimates of travel time, are probably not accurate. The estimates do, however, give the preceptual feel for trip length.

10.3 Summary.

The sample size for drawing inferences about the judicare legal aid practices in British Columbia was somewhat limiting. It can, however, be seen that case volume and type of experience, case and work patterns, as well as legal office characteristics were related to the average number of criminal legal aid cases lawyers handled per year. It appears that those lawyers who had relatively large criminal legal aid practices tended to have a larger proportion of criminal cases, both legal aid and non-legal aid; they had larger criminal case loads; tended to work longer hours, work in smaller firms or on their own.

11. Impact of a Limited Number of Small Legal Defence Offices

Private counsel who handled legal aid cases would feel the impact of a legal defence office in their region as a reduction in the number of criminal legal aid cases referred to the private bar. With the existence of criminal defence offices a smaller number of lawyers, the public defence staff counsel, would represent most clients; the private bar would represent fewer criminal legal aid clients.

The potential impact of a public defence office in an area was calculated by estimating the number of private counsel who would feel a substantial reduction in their practices and the expected economic loss associated with the reduction. In order to perform the analysis several conditions were set. Impacts were only calculated for those lawyers who handle over twelve legal aid cases a year. While lawyers who handle one case or less a month would feel some economic impact if staff criminal legal aid offices were introduced. The impact would be minimal. With an average tariff payment of around \$200 per case in 1980, the economic impact would range from around \$200 for one lost case to \$2,400 for twelve lost cases. Under the current tariff (42% above the 1979-80 tariff), the range would be \$280 to \$3,360.

It was assumed, for the purposes of projections, that staff defence counsel in offices would be drawn from the ranks of the private bar who currently devote the largest proportion of their practice to criminal legal aid. If staff counsel are chosen from this group then the impact on the rest of the bar is reduced. If the highest volume legal aid lawyers become public defence counsel then their practices are not in fact reduced. The legal aid practices of lower volume legal aid lawyers are reduced, but since their volume of cases is lower the impact is less. If staff are selected from some other pool of lawyers then the potential impact increases. Impact was analyzed on the assumption that small criminal defence offices which would be established would be similar to the Burnaby Criminal Defence Office.

Eleven locations in British Columbia appear to have sufficient case flow to justify independent legal defence offices. These locations are: Vancouver, Victoria, Prince George, Kamloops, Surrey, Nanaimo, Chilliwack, Kelowna, Campbell River, Prince Rupert, and Williams Lake. The impact on the private criminal legal aid bar was estimated in each of these locations. The impact analysis consisted of four steps:

- projection of the number of criminal legal aid cases which could be handled by a public defence office.
- Identification of the pool of lawyers who would most likely be potential public defence counsel.
- Estimation of the reduction of criminal legal aid cases being referred to the private bar.
- Estimation of the economic cost to private lawyers of the lost cases.

11.1 Projection of Staff Criminal Cases.

Public defenders in Burnaby averaged 180 cases per year during the two year experimental period. The cases handled through the Burnaby office were a mixture of property, violent, drinking, drugs and other offences. Each category of offence required a different commitment of time from the public defence counsel. The Tariff Analysis, Report V, describes in detail the average time per case for different

categories of crime. Generally most categories of offences had associated average case times of around 4 1/2 to 5 1/2 hours. Violent offences, however, required more time, around 12 hours and drugs required less, around 2 1/2 hours. Table 11.1.1 contains a list of the average case times for six categories of offences for public defence counsel in Burnaby.

Table 11.1.1
Average Case Times
by Offence Type

Offence Type	Time (hrs:mins)
Violent	12:05
Property	5:37
Drugs	2:35
Escape	4:29
Alcohol	4:35
Other	5:44

The number of cases handled in Burnaby depended on the crime mix of cases. In other locations with other crime mixes, a public defence office might be able to handle fewer or more cases. Using the Burnaby times as a base and the crime mixes in the eleven potential office locations and expected caseloads were estimated. The crime mixes in the eleven potential locations are shown in Table 11.1.2. The crime categories were developed and used in the Effectiveness Analysis, Report II. A full description of the offences in these categories is in Report II.

The crime distributions are fairly similar across the eleven locations, but there are some differences. Given the differences, using average case times from Burnaby, which are the only available estimates of time public defence

TABLE 11.1.2

Crime Mix in Potential Defence Office Locations

	Violent	Property	Drugs	Escape	Alcohol	Other	
<u>Burnaby</u>	10.5	43.5	22.9	6.5	3.9	12.7	100%
Vancouver	18.1	41.7	21.1	2.3	2.9	13.9	100%
Victoria	13.2	47.67	22.0	3.5	3.5	10.2	100%
Prince George	14.2	44.2	24.0	7.2	3.4	7.0	100%
Surrey	18.8	46.5	21.4	1.2	3.8	8.3	100%
Chilliwack	18.5	39.1	22.4	4.2	7.0	8.8	100%
Nainaimo	15.7	39.7	21.8	3.0	4.8	15.0	100%
Kelowna	11.5	36.2	34.4	1.9	8.5	8.5	100%
Campbell River	10.3	42.6	26.5	0.9	6.2	13.5	100%
Prince Rupert	21.0	38.3	25.4	1.2	4.2	9.9	100%
Williams Lake	13.0	39.5	26.5	1.5	5.8	13.7	100%

counsel spend on a case, the number of cases defence counsel could be expected to handle in a year in these eleven locations were estimated. The averages differed somewhat from the average 180 in Burnaby. Table 11.1.3 contains a list of projected average number cases for eleven potential public defence office locations.

Table 11.1.3

Projected Cases per Public Defender

Location	Cases	Location	Cases
Vancouver	162	Burnaby	180
Victoria	173	Campbell River	188
Prince George	173	Prince Rupert	182
Kamloops	180	Williams Lake	159
Surrey	161	Nanaimo	177
Chilliwack	164	Kelowna	108

With expected average caseloads of this size the eleven possible locations could support public defence offices with three staff counsel to 46 staff counsel (Table 11.1.4)

Table 11.1.4

Office Size

	Number of Cases in 1980	Projected Number of Lawyers*	Cases per Lawyer
Vancouver	6583	41	162
Victoria	1353	8	173
Prince George	1217	7	173
Kamloops	999	6	180
Surrey	823	5	161
Chilliwack	714	5	164
Nanaimo	600	6	108
Kelowna	553	3	188
Campbell River	540	3	182
Prince Rupert	483	3	159
Williams Lake	475	3	177

*If a fractional number of lawyers is needed, say 4.3 lawyers, the projected number is the next largest whole number of lawyers. In this example five lawyers would be needed.

11.2 Potential Public Defence Counsel.

There are currently private counsel in all six areas who provide criminal legal aid, and are paid according to the fee for service tariff. For the eleven locations, Table 11.2.1 presents the total number of lawyers handling criminal legal aid and the number of lawyers handling, on average, more than one case per month.

Table 11.2.1
Lawyers Handling
Criminal Legal Aid Cases

	Total Number of lawyers	Number of Lawyers with more than 12 cases a year
Victoria	113	24
Prince George	50	16
Kamloops	83	17
Surrey	147	18
Chilliwack	81	13
Nanaimo	67	15
Kelowna	39	12
Campbell River	34	4
Prince Rupert	16	6
Williams Lake	24	6

In all eleven areas, there are many lawyers who handle a few criminal legal aid cases, and a lesser number of lawyers who handle a larger number of criminal legal aid cases. The cases handled by the highest volume criminal legal aid lawyers within these eleven communities represent a significant proportion of the total number of criminal legal aid cases distributed amongst lawyers available in the region. The impact analysis anticipated that some of the private counsel who currently represent legal aid clients would probably be hired as staff public defence counsel. Judicare counsel who handled large numbers of criminal legal aid cases, as described in section 10, have high volume general criminal practices and those practices are heavily legal aid. While the previous statement seems somewhat tautological, it emphasizes the dependence of high volume criminal legal aid lawyers on the legal aid system. These lawyers would be likely applicants for public defence staff positions.

If, in each location, the required number of staff lawyers were recruited from the pool of top volume legal aid lawyers, their current legal aid case load would only have to be supplemented to bring them up to expected case loads expected in public defence offices. The legal aid case loads currently handled by the top volume

TABLE 11.2.2
 Diference Between High Volume Legal Aid Lawyer Caseloads and
 Projected Staff Caseloads

	1980 Total Cases For High Volume Lawyers	Project Staff Size	Projected Number of Staff cases	Total Cases* Handled By Highest Volume Lawyers, 1980
Victoria	1079	8	1384	712
Prince George	1049	7	1211	856
Kamloops	791	6	1080	556
Surrey	436	5	805	229
Chilliwack	440	5	820	279
Nanaimo	392	6	648	148
Kelowna	335	3	564	196
Campbell River	154	3	546	148
Prince Rupert	270	3	477	220
Williams Lake	303	3	531	249

45

*Numbers in this column are the total cases handled by a number of highest volume private counsel equal to the projected staff size. The number of lawyers equals, in each location, the number of projected staff lawyers. So, for example, the total of 618 in Kamloops is the total cases handled in 1980 by the top 7 volume legal aid lawyers.

legal aid lawyers in the eleven locations, and the case loads which would be handled by the projected staff of a public defence office in these locations is presented in Table 11.2.2. The calculations in the following tables do not include Vancouver. Vancouver was treated as a special case and discussed separately.

11.3 Reduction in Private Bar Cases.

In all locations the required number of top volume private counsel do not, as an aggregate, handle as many criminal legal aid cases as the public defence offices would be expected to handle. In order to keep the public defence counsel busy in these locations legal cases would have to be drawn away from private legal aid counsel. The draw of cases away from private counsel is the estimated additional number of cases necessary to supplement the top volume lawyers' current legal aid case loads to make their case loads equivalent to projected number which staff counsel could carry. The estimated reduction in legal aid case loads which would be experienced by private counsel is presented in Table 11.3.1

The average predicted case load reductions vary markedly between potential public defence office locations, even between locations with similar case flows. The reductions are lowest when there are a few lawyers who handle many legal aid cases. In areas where criminal legal aid cases are not concentrated in the practices of a few lawyers, the impact of introducing an office can be minimized by adjusting the size of the office. The impact of introducing an office can be reduced by maintaining a smaller staff lawyer size than the maximum justified by case loads, and relying upon the referral process to handle excess cases. The impact of conversion in any area is also reduced to the extent that private counsel accepting legal aid cases would experience an increase in non-legal aid cases brought about by a reduction in the number of lawyers in private practice.

While Burnaby is the only criminal defence office in the province, existing regional offices do currently handle some criminal legal aid. Table 11.3.1 also lists the criminal legal aid cases handled by the offices in the eleven locations and the total of the number of cases handled by staff counsel. Several locations (Campbell River, Prince Rupert, Williams Lake and Chilliwack) have a high proportion of their criminal legal aid cases handled by Legal Services Society staff lawyers. These offices are already partial criminal defence offices.

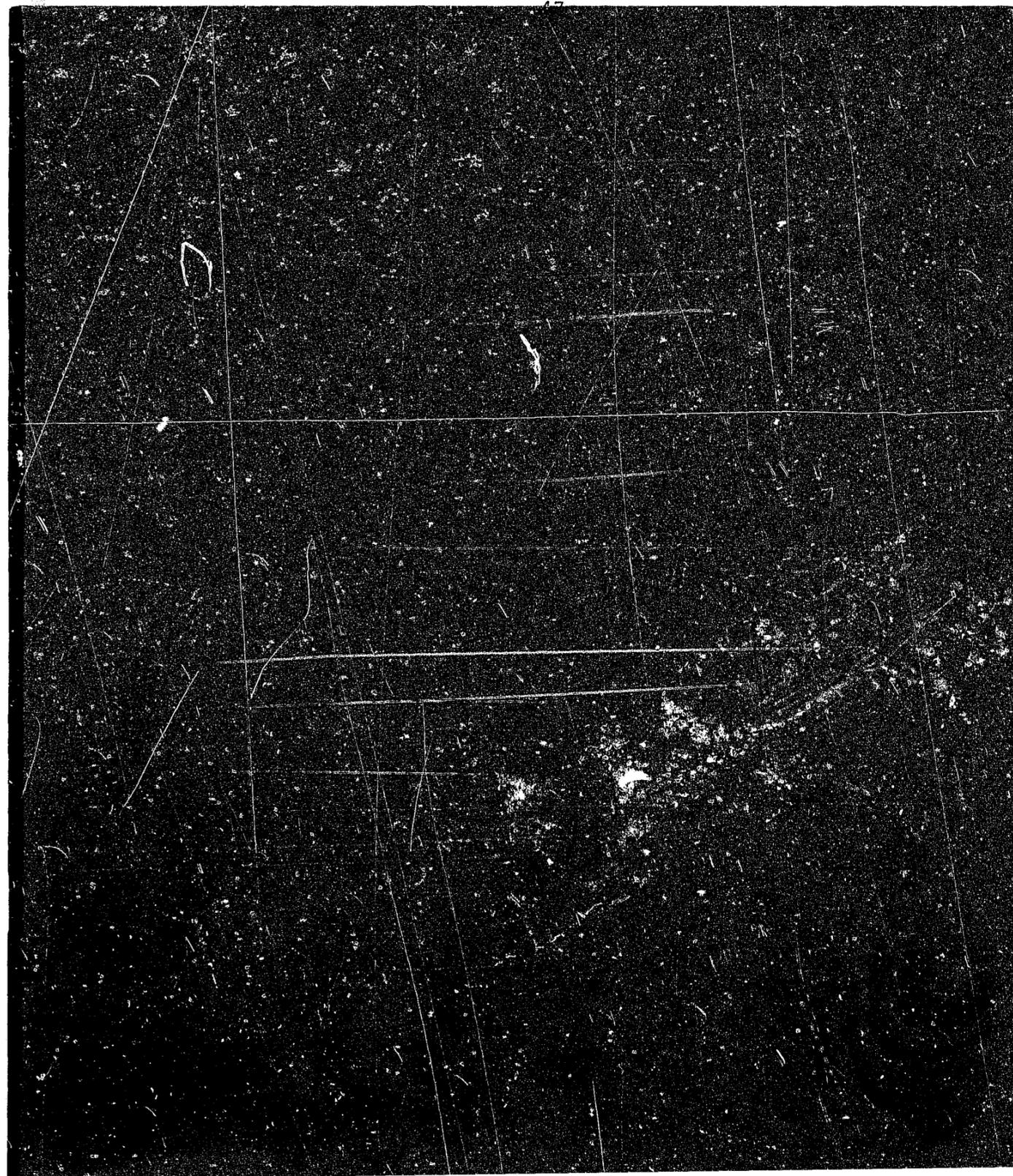


TABLE 11.3.1
Case Flow Reductions

	Cases Handled* by Highest Volume Private Counsel 1980	Staff** Cases 1980	Total Cases 1980	Case Flow Reductions
Victoria	712	2	1291	577
Prince George	856	154	1217	207
Kamloops	556	120	999	323
Surrey	229	48	828	551
Chilliwack	279	132	714	303
Nanaimo	148	99	600	353
Kelowna	196	145	553	212
Campbell River	148	308	540	84
Prince Rupert	220	183	483	80
Williams Lake	249	128	475	98

47

* Cases handled by the number of highest volume lawyers equal to projected size of office.

** Criminal legal aid cases already handled by staff counsel

In all but one location, there would be some high volume criminal legal aid lawyers (over 12 cases a year) who would have no cases after conversion. Table 11.3.2 presents a list of the expected numbers of high volume lawyers who would have no cases after conversion.

Table 11.3.2

Number of Impacted Lawyers

Victoria	16 lawyers	Nanaimo	9 lawyers
Prince George	9	Kelowna	9
Kamloops	11	Campbell River	1
Surrey	13	Prince Rupert	3
Chilliwack	8	Williams Lake	3

The range of numbers of lawyers who would be impacted is large. In Victoria, over 15 high volume lawyers would experience substantial case loss. In Prince George and Williams Lake, few lawyers would experience any substantial impact. In Campbell River, one lawyer would be impacted.

It should be noted that changes in systems produce chains of impacts. In the eleven locations under investigation there are legal aid staff counsel who already handle some criminal work. If these staff counsel become public defence counsel then fewer high volume criminal legal aid counsel could become defence counsel. If existing staff became public defence counsel, then other lawyers would have to be hired to do their family legal aid work. If existing staff counsel stopped handling any criminal legal aid work, then they could do more non-criminal legal aid work and possibly impact on other private lawyers. If private lawyers become staff counsel then their non-legal aid work is distributed across the rest of the bar. The chain of impacts can be difficult to trace. The projections in this report only look at the first order impact on the private bar of the creation of new criminal defence office. The results of the analysis point on direction of probable effects of change.

11.4 Economic Impact of Conversion.

Table 11.4.1 presents the projected economic impact of conversion to public defence office. For each of the eleven potential public defence office locations, the expected loss of cases by the private bar has been calculated. Table 11.4.1 contains the projected dollar impact in 1980 dollars on private legal practices in the eleven regions in the province being analyzed. The average billings in these locations vary from \$121.81 in Kelowna to \$187.23 in Victoria. The expected lost income is the average billing multiplied by the number of lost cases. For practices which averaged six criminal legal aid cases in 1980 the expected loss is around \$1,000. For practices which averaged twelve cases a year the loss doubles to \$2,000. For higher volume practices, eighteen cases a year, the expected loss is around \$3,000. However, a relatively small percentage of the private bar will experience these losses. Only around ten to sixteen percent of the private criminal bar will experience losses in the over \$2,000 range in 1980 dollars. As mentioned before these losses would be somewhat offset by cases redistributed from the lawyers who become public defence counsel. To gain current dollar estimates the figures should be increased by about 42%, the tariff increase since 1980. (Four percent increase to project to the end of 1980 and a 38% increase in 1981).

The economic impact on the private bar can be modified in two ways. If public defence counsel are not hired from the pool of local high volume criminal legal aid lawyers then more high volume legal aid lawyers will be affected by the presence of public defence counsel. If public defence counsel are hired from non-local areas or from low volume legal aid lawyers, there will be greater immediate losses of legal aid income. Non-legal aid derived income may be redistributed over time, but the initial impact will be more severe. If, on the other hand, public defence offices are set up which are smaller than the maximum size justifiable on case-flows alone, the economic impact on the private criminal bar will be reduced.

Within British Columbia there are ten locations where small criminal defence offices could be set up. In these locations there would be a minimum of three staff lawyers. If the staff lawyers are chosen from the local pool of lawyers who handle a high volume of legal aid cases, the economic impact on the local criminal bar would be relatively small, and would affect only ten to sixteen percent of the local higher volume (over 12 cases a year) legal aid lawyers.

TABLE 11.4.1
Economic Impact of Introduction of Criminal Defence Office

	Average Billing 1980	Average Loss of 6 cases a year	12 cases	18 cases
Victoria	187.23	1,123.38	2,246.76	3,370.14
Prince George	150.80	904.80	1,809.60	2,714.40
Kamloops	162.81	976.86	1,953.73	2,930.58
Surrey	161.00	966.00	1,932.00	2,898.00
Chilliwack	159.42	956.52	1,913.04	2,869.56
Nanaimo	139.52	837.12	1,674.24	2,511.36
Kelowna	121.81	730.86	1,461.72	2,192.58
Campbell River	138.63	831.78	1,663.56	2,495.34
Prince Rupert	168.16	1,008.96	2,017.92	3,026.88
Williams Lake	157.01	942.06	1,884.12	2,826.18

In areas which could support offices in the four to nine lawyer range, the economic impact could be reduced even further by setting up offices which do not handle all the criminal legal aid, but refer cases out to the private bar.

12. Impact of Introducing a Major Criminal Defence Office in Vancouver

Vancouver is the only location in British Columbia with a case flow high enough to support a large criminal defence office. The Vancouver Regional office handles over six thousand criminal legal aid applications in a year. A criminal defence office of up to 41 lawyers could be justified based on the productivity levels of the staff lawyers in the experimental office and distribution of offences in Vancouver (See Table 11.1.4).

There were four hundred and fifty lawyers who accepted criminal legal aid cases in Vancouver in 1980. One hundred and twenty eight of these lawyers handled twelve or more cases in one year (Table 12.1). Of lawyers handling twelve or more cases, twenty-seven percent (or thirty-four lawyers) handle over sixty.

Table 12.1
Distribution of Legal Aid Cases
in Vancouver

Number of Cases	Number of Lawyers
under 12	322
12 - 24	43
25 - 36	25
37 - 48	13
49 - 60	13
over 60	34

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49 - 60	13
over 60	34

Of the one hundred and twenty-eight lawyers, twelve (or 9%) also handled cases in other locations where a criminal defence office could be set up.

The impact of a total conversion to criminal public defence offices would be greatest on those lawyers who handle twelve or more cases. Even assuming that the staff counsel would be selected from this group of one hundred and twenty-eight higher volume criminal legal aid lawyers, there would still be ninety-eight lawyers in Vancouver or twenty-two percent of the lawyers who handle criminal legal aid who would feel a substantial economic impact.

The average billing in Vancouver in 1980 was \$225.89. The range of potential loss in income is, therefore, considerable. The thirty-four lawyers handling over sixty cases a year might be expected to have their incomes reduced by at least \$13,000 to \$14,000 in 1980 dollars. The expected income reduction for a lawyer who handled forty cases would be around \$9,000. Twenty cases would be equated with an average loss of \$4,500.

If, however, an office with less than forty-one lawyers were set up in Vancouver, the impact would be greatly reduced. For example, if a ten lawyer office were set up, the expected case-flow would be about 1620 cases a year. In a year when 6,000 cases are handled the average number of cases for the four hundred and fifty lawyers is 13.3. If 1,620 of these cases were handled by ten staff counsel, the average number of cases for the remaining private counsel would be 10 cases per year or an annual case load reduction of 3.3 cases. At \$226 per case this is an average loss of \$746. Under the 1981 tariff increase, the projected loss would be \$1,029.

If the ten highest volume criminal legal aid lawyers were hired as staff lawyers the impact of a moderate sized office would become minimal. In Vancouver the ten highest volume criminal legal aid lawyers jointly handled 1,165 cases. An additional 455 cases would have to be drawn from the case loads of the remaining 440 lawyers. This would result in a reduction of about one case per lawyer per year. Even if the reduction came totally from the lawyers who handle more than 12 cases a year, the average annual reduction would be just 3.9 cases.

If the staff lawyers were not hired from the pool of the top ten volume counsel, the impact over the long run would still be minimal. Lawyers who handle few legal aid cases, handle more non-legal aid cases. If lower volume

legal aid lawyers become staff criminal legal aid counsel then their non-legal aid cases would be distributed across the remaining bar.

In Vancouver, then, the introduction of a large criminal defence office would have a broad economic impact on the criminal bar. However, if a small office, say with ten staff lawyers were introduced the economic impact on the criminal bar would be marginal.

13. Conclusion

Public defence offices similar to the experimental office in Burnaby could be established in ten locations in British Columbia without having a marked distributional effect on the number of criminal cases available to the judicare bar. Of the ten locations, the economic impact to the bar as a whole would be least in Campbell River, Prince Rupert and Williams Lake. A moderately small ten man office could be set up in Vancouver with minimal impact on the practice of the criminal legal aid bar.

END