

HISTORY OF LEGAL AID IN NOVA SCOTIA

HISTORICAL OVERVIEW

Nova Scotia Legal Aid was founded on the philosophy expressed to the Attorney General in 1971 by a Committee struck to consider legal aid, under the Chairmanship of Mr. A. William Cox, Q.C.:

The provision of legal services is no longer a luxury for the person who can afford to pay; all persons must have access to lawyers in appropriate circumstances. Without the recognition of this proposition one may expect continuing and growing disrespect for the law and the obvious results therefrom.

The Committee recommended the establishment of "*a comprehensive publicly funded Legal Aid Plan*". The Province of Nova Scotia responded by enacting the *Legal Aid Planning Act*; and by an Agreement dated October 13, 1971, the Province and the Nova Scotia Barristers' Society established Nova Scotia Legal Aid. The Agreement called for the setting up of "local offices" throughout the Province for which lawyers would provide legal services to the extent resources permitted.

Funding for the Plan has always been by way of grant from the Provincial Government and no restriction was placed on the area of service delivered. At the same time, priorities developed in areas of service in 1973 when the Federal Government began to share in the cost of delivering criminal legal aid. The priority given to criminal legal aid remained unchallenged until 1982 when it became possible for the Province to make a claim to the Federal Government to share in the cost of providing civil legal aid under the terms of the Canada Assistance Plan.

Nova Scotia Legal Aid, as established in 1971, was to be experimental in nature and was designed to provide a comprehensive range of legal services to residents of the Province who were unable to afford a lawyer on their own. The service was to be provided by Staff Lawyers working in a network of community law offices throughout the Province; the service to be available to persons whose incomes were at the poverty level. The Plan was fully in place by the end of 1972 and consisted of an Executive Director and Staff Lawyers, along with support staff working out of ten

regional offices. From its inception to November 1977, the Plan was administered by a committee of the Nova Scotia Barrister's Society.

The experiment of legal aid was reviewed in the mid 1970's by another government committee under the chairmanship of Judge W.A.D. Gunn. The Committee found two major themes coming from all individuals, groups and organizations:

(1) Subsidized legal aid is an essential service and must be continued and expanded. (2) The Nova Scotia System of Legal Aid is the preferable system and judicare should only be developed in those situations where our current system cannot provide efficient and effective coverage.

The Gunn Committee concluded that the experiment with legal aid in Nova Scotia had been an unqualified success. A major recommendation of the Committee was that the Legal Aid Plan was much too important a service or program to be run by the Society and that control and administration should be vested in a statutory commission.

The Provincial Government acted on the Gunn Committee Report and passed the present **Legal Aid Act** which was proclaimed November 1, 1977. This Act governs the circumstances and conditions under which Legal Aid will be granted. The Act also created the present Commission and made it responsible for all matters relating to legal aid in the Province.

STRUCTURE AND ADMINISTRATION

The **Legal Aid Act** specifies the composition and powers of the Legal Aid Commission. Subject to this Act, the Commission is responsible for all matters relative to legal aid in the Province. According to Section 14, the Commission may appoint a barrister to be Executive Director of the Commission. Further, the Executive Director, subject to the Commission, is responsible for the general administration of the legal aid plan and staff in accordance with this Act and the regulations. The Act also outlines legal aid coverage, form and content of applications.

The Act calls for the Legal Aid Commission to have 17 Directors appointed for three-year terms and eligible for reappointment. Fifteen are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, who also names two non-voting members from the public service. Seven of the Directors are chosen from nominees presented by the Nova Scotia Barristers' Society. One of the Directors is appointed as Chairperson of the Commission. The Commission reports to the Minister of Justice of Nova Scotia for funding purposes.

The Lieutenant Governor in Council, on the recommendation of the Commission and the Minister of Justice, may make regulations regarding the effective implementation of the Act. Such matters include (but are not limited to) prescribing legal aid application procedures, setting rules for determining eligibility, determining matters which may be covered, the establishment and revision of all schedules, etc.

Currently, the Commission has the Internal Operations Director, Service Delivery Director, Chief Financial Officer and Director of Research, Analytics & Information Management to assist the Executive Director along with the Standing Committees. The current Standing Committees are: Strategic Planning, Audit Finance, Service and Operations.

The Nova Scotia Legal Aid Commission operates a staff model delivery system with the private Bar being retained on the basis of a Certificate to provide legal services to legal aid clients in situations of conflict or criminal choice of counsel homicide cases. The Commission is administered through an administrative office, 19 regional service offices and 3 sub offices. Legal services are normally provided by lawyers employed full-time with the Nova Scotia Legal Aid Commission. In cases where a conflict of interest exists and the applicant qualifies for legal aid, legal services are provided by lawyers in private practice on a fee-for-service basis. The client cannot choose his or her own counsel, except when as approved by Legal Aid, for matters for which they are charged with an offense punishable by mandatory life imprisonment. Although the Federal/Provincial agreement no longer requires that the client be given the choice of counsel for offences punishable by mandatory life imprisonment, the Commission continued to provide choice of counsel for such offences until July 2014 when the Commission started doing more in-house.

CHAIRS OF THE COMMISSION

F.B. Wickwire
1977-1981

Patrick Curran
1981-1982

Ross Archibald
1982-1985

J. Mark McCrea, QC
July 1, 1985 (Feb. 20/81 as Director)

Glen G. McDougall
January 15, 1996

Donald G. Harding, QC
November 28, 2002 to present

EXECUTIVE DIRECTORS OF THE COMMISSION

R. Gordon Murray, QC
November 1, 1977-June 30, 1994

Walter I. Yeadon (Acting Executive Director)
July 1, 1994 to September 29, 1994

William B. Digby, QC
September 30, 1994 to June 10, 1997

Walter I. Yeadon (Acting Executive Director)
June 11, 1997 to August 14, 1997

T. Gerard Lukeman, QC
August 15, 1997 to August 31, 2009

Karen L. Hudson, QC
September 1, 2009 to August 5, 2016

Anne Malick, QC (Acting Executive Director)
August 8, 2016 to December 13, 2016

Megan Longley, QC
December 14, 2016 to present

SPECIAL SERVICES

The Nova Scotia Legal Aid Commission provides funding of \$69,000 to the Dalhousie Legal Aid Service (DLAS) in the Halifax/Dartmouth area for providing legal services to applicants for legal aid. The Commission also provides a grant of \$7,500 to the Legal Information Society of Nova Scotia.

DUTY COUNSEL

In 1995, the Minister of Justice requested that the Commission establish an after hours duty counsel service for detained or arrested persons. After hours duty counsel has been available to arrested or detained person in Nova Scotia since October 17, 1995 on Saturdays and Sundays, and holidays and outside regular Legal Aid office hours of 8:30 a.m. and 4:30 p.m., Mondays to Fridays. This service is designed to satisfy the right to counsel under Section 10(b) of the Charter of Rights and Freedoms.

Until August 2000, duty counsel services for arrested or detained persons during business hours was provided through contact with the Legal Aid Office. As this resulted in delays at times, as of August 2000 all duty counsel telephone calls during business hours are made to one telephone number and our support staff take responsibility for locating an available Staff Lawyer anywhere in the Province to

provide free and immediate telephone legal advice to the arrested or detained person.

In 1998, the Commission initiated a pilot project in the Halifax Provincial Court to deliver duty counsel services to individuals appearing in custody at that Court. Duty counsel services would be provided for the bail hearing and for sentencing if a guilty plea is entered. All matters for trial would be referred to the staff lawyer office.

Our Duty Counsel, Provincial-Court based services has been a particular focus since 2010. We currently have 9 solely-focussed lawyers between HRM and Sydney and 5 Court Support Workers. Our Enhanced Duty Counsel (EDC) has gained national recognition and was showcased by the Executive Director at the National Criminal Justice symposium in 2013, has been cited in a 2012 BC Report to the Attorney General and has been noted in Canadian Bar Association (CBA) papers regarding Legal Aid Innovations.

CURRENT SITUATION

Publications such as the Strategic Plan, Business Plan and Annual Report can all be found on the Commission's website and provide an overview of the current situation at Nova Scotia Legal Aid. Please visit the website at www.nslegalaid.ca and the Publications page can be found at <https://www.nslegalaid.ca/about-us/legal-aid-publications/>