

1976-234

HV685
N935

REPORT
OF THE
ADVISORY COMMITTEE ON LEGAL AID

REPORT
OF THE
ADVISORY COMMITTEE ON LEGAL AID

Committee Members:

Judge W.A.D. Gunn - Chairman
Mr. Arthur J. Mollon
Mr. John A. MacKenzie
Ms. Pat Dietz - Secretary



ATTORNEY GENERAL
NOVA SCOTIA

Halifax, Nova Scotia
B3J 2L6
June 9, 1976

J.W.E. Mingo, Esq., Q.C.
President
Nova Scotia Barristers' Society
The Law Courts
1815 Upper Water Street
HALIFAX, Nova Scotia

Dear Mr. Mingo:

The Honourable Leonard L. Pace, Q.C., Attorney General, has now received from Judge W.A.D. Gunn, Q.C., his Advisory Committee's report on legal aid in Nova Scotia and I have been authorized by Mr. Pace to make the report available to you and members of the Nova Scotia Barristers' Society.

In making the report available, the Attorney General welcomes any comments which you or any member of the Bar may have. He would be obliged to receive them at your earliest convenience so that they will be available to him when he considers the recommendations of Judge Gunn's Advisory Committee.

Yours very truly,

Gordon F. Coles
Deputy Attorney General

encl.



**Nova Scotia Law Reform
Advisory Commission**

P. O. Box 1116
Halifax, Nova Scotia
B3J 2L6
Telephone (902) 424-4031

1801

May 27, 1976

The Honourable Leonard A. Pace, Q.C.
Attorney General
Province of Nova Scotia
Halifax, Nova Scotia

Dear Mr. Pace:

The Advisory Committee on Legal Aid appointed by your predecessor, the Honourable Allan E. Sullivan, Q.C. to determine the impact of Legal Aid on Nova Scotia, is pleased to report that it has completed its work and hereby submits its final report of recommendations.

Cognizant of the serious constraints placed on your time, the Committee has opted to provide only a summary of the most pertinent observations and recommendations made by individuals, groups and organizations throughout the Province.

If and as you require more detailed commentary on any of the areas covered, the Committee will be pleased to do so.

For our part, we, at this time, should also like to express our appreciation to all those individuals, groups and associations throughout the Province who took the time and effort to make a contribution.

Sincerely yours,

W.A.D. Gunn
Chairman
Advisory Committee on Legal Aid

WADG:sj

In the month of May, 1975, your predecessor, the Honourable Allan E. Sullivan, Q.C., established a Committee composed of Judge W.A.D. Gunn, Mr. Arthur J. Mollon and Mr. John A. MacKenzie, to determine the impact of Legal Aid in Nova Scotia.

During the period May 1975 to January 1976, the Committee travelled extensively throughout the Province meeting with individuals, groups and organizations who wished to make oral or written presentations respecting some aspect of the Legal Aid Program as provided by Nova Scotia Legal Aid, Dalhousie Legal Aid and/or Family Rights. Public meetings though poorly attended, were held in Halifax, Dartmouth, Sydney, Truro, Cheticamp, Dingwall, Kentville and Annapolis Royal. Interviews were held with some 124 groups and organizations working with low income individuals and families throughout Nova Scotia. In addition, several meetings were held with individual barristers, the Provincial and several local Barristers' Societies and members of the Judiciary. Field visits were made to Montreal and Toronto to review other Legal Aid Systems.

The two major themes forthcoming from all individuals, groups and organizations addressing the Committee were:

- (1) subsidized Legal Aid is an essential service and must be continued and expanded;
- (2) The Nova Scotia system for 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 only dissenting voices came from individual lawyers and some local Barristers' Societies who felt we should be moving closer to the judicare model.

The major areas of concern with our present system of Legal Aid related primarily to the need for wider coverage in terms of legal problems and financial eligibility. There was general consensus on the need to update financial eligibility requirements in line with the increasing costs of living and to extend legal representation in criminal, civil and family matters. Many groups questioned the cost effectiveness of lawyers determining financial eligibility for clients and felt this task might be more effectively and efficiently carried out by persons trained in this specific area. Several of the outlying or rural areas expressed the need for more regular accessibility to legal counsel and felt offices should be located closer to their home areas.

The legal staff employed with Nova Scotia Legal Aid expressed the need for security of tenure, adequate fringe benefits and a career ladder within the present system which would make Nova Scotia Legal Aid a desirable option beyond the first two or three years of practice.

All individuals, groups and organizations made reference to the need for more work to be done in the areas of preventive law and user education. Many expressed the need for more local citizen involvement in the administration of Legal Aid offices and some, in fact,

... felt that Nova Scotia Legal Aid should be set up as a separate Commission.

There was general agreement, at least among the non-legal aid groups, that our Legal Aid program should make much more extensive use of paralegals and that courses should be developed through the Dalhousie Law School to prepare such individuals to carry a supportive role to the staff lawyers.

On the basis of the representations received from individuals, groups and organizations, the Committee is pleased to make the following recommendations:

- (1) That control and administration of the Provincial Legal Aid Plan should be vested in a statutory commission named the Nova Scotia Legal Aid Commission composed of five (5) members as follows:
 - 2 members appointed by the Governor in Council on the recommendation of the Attorney General;
 - 2 members from the Nova Scotia Barristers Society;
 - 1 member from the public-at-large appointed by the Commission.
- (2) That Dalhousie Legal Aid be funded by the Province of Nova Scotia and administered by its own Board of Directors who shall work in close liaison with the Nova Scotia Legal Aid Commission.

- (3) That the Family Rights Demonstration Project now operational in the Halifax and Sydney Family Courts be continued as an integral part of the Nova Scotia Legal Aid Program.
- (4) That each permanent Nova Scotia Legal Aid Office be administered by a committee of three (3) citizens from the areas served by the office. The appointment of such local committee members will be made by the Nova Scotia Legal Aid Commission.

These local committees will be responsible for enforcing Provincial policy and will work in close liaison with the Nova Scotia Legal Aid Commission.

- (5) That the present approach to delivering legal services - namely, lawyers employed on a full-time basis in community offices - continue as the principal method for delivering legal aid in Nova Scotia.
- (6) That the judicare method for delivering legal aid be adopted only in those situations where it appears --
 - (a) such a system can operate more effectively and efficiently;
 - (b) the current legal aid system cannot function adequately in the interests of justice.
- (7) That members of the Nova Scotia Legal Aid Commission, the local committees and the Dalhousie Legal Aid Board members receive a per diem payment and travelling expenses to be determined by Order-In-Council.

- (8) That full-time offices be opened in Baddeck, Port Hawkesbury, Inverness, Guysborough, Liverpool and Annapolis Royal.
- (9) That part-time offices be opened in Louisburg, Ingonish, Cheticamp, Canso, Tatamagouche and Springhill.
- (10) That additional legal and support staff be employed to adequately staff these new full-time and part-time offices.
- (11) That training programs be established to prepare paralegals to take a more active role in the provision of legal aid services.
- (12) That legal aid offices, particularly in the City of Halifax, be upgraded and distributed throughout the metropolitan area to more adequately serve their clientele.
- (13) That legal aid lawyers and support staff be afforded the same employee benefits now available to regular Civil Service personnel.
- (14) That a career path be established for legal and support staff with the Nova Scotia Legal Aid Commission which will encourage long term tenure with the Commission.
- (15) That all lawyers seeking employment with Nova Scotia Legal Aid be screened before appointment to ensure a reasonable level of social consciousness - i.e. to ensure they have some understanding of and sympathy for the social and legal problems facing the low income clientele they will serve.
- (16) That eligibility for legal aid in criminal matters will be subject to guidelines as set forth in the Federal/Provincial Agreement.
(See Appendix "A").

- (17) That the rules respecting financial eligibility be standardized, revised and updated to reflect increases in the cost of living since they were originally introduced in 1972.
- (18) That the present income test be replaced by a needs test using a pre-added budget for all items except shelter which will be actual to reflect variations in costs throughout the Province. (Appendix "B" outlines the proposed new financial eligibility test).
- (19) That determination of financial eligibility be carried out by staff specifically trained for this task and not by staff lawyers as is now the case.
- (20) That an applicant refused subsidized legal aid be permitted to appeal such a decision to a board of review established by the Nova Scotia Legal Aid Commission.
- (21) That subsidized legal aid be extended to community groups and associations where 50% or more of the registered members would individually qualify.
- (22) That an educational program be carried out to inform the citizens of Nova Scotia about the legal aid program.
- (23) That provision be made in rural and remote areas of the Province to allow for collect calls, transportation and have visiting by staff when such arrangements are necessary to ensure adequate legal representation.

- (24) That all legal problems - both civil and criminal - be accepted by legal aid.
- (25) That the Nova Scotia Legal Aid Commission be required, at least annually, to submit recommendations to the Law Reform Commission respecting changes it deems appropriate in the laws of Nova Scotia.

Cognizant of your time constraints, the Committee has not attempted to deal with the history of or current practice with respect to Legal Aid in Nova Scotia or to provide copies of the many written briefs that have been presented. Rather, background papers concerning these areas are available if and as you require them.

Realizing the need to revise and update our financial eligibility criteria, which has not changed since 1972, we have appended, for your consideration, a new financial eligibility determination process.

Finally, your Committee is very much aware of the climate of fiscal constraint facing all levels of Government today and the fact that it may be impossible or imprudent, given the other pressing commitments of Government, to implement the total package of reforms being proposed in this report. If such should be the case, your Committee would strongly recommend that immediate consideration be given to the establishment of a separate Nova Scotia Legal Aid Commission.

The cost of establishing such a Commission would be minimal (i.e. per diem and travel costs of members) and the impact, in terms of establishing Legal Aid on a solid independent basis, would be maximized.

Such a Commission, the Committee contends, is essential to the development of a uniform and comprehensive legal aid program in Nova Scotia. The first task of the Commission could be to prepare detailed proposals respecting many of the recommendations contained in this report.

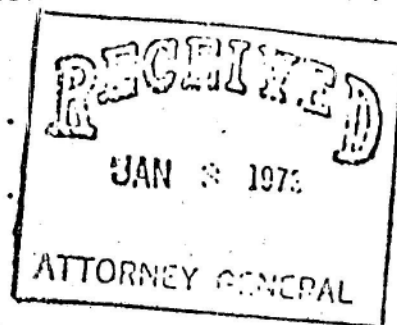
APPENDIX "A"

503
14
MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA



MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA

OTTAWA, Ontario.
K1A 0H8
January 3, 1973.



The Honourable Leonard L. Pace, Q.C.,
Attorney General of Nova Scotia,
Provincial Building,
Halifax, Nova Scotia.

Dear Mr. Pace:

I wish to acknowledge your letter of December 7, 1972 in which you set out your general position concerning the draft agreements on legal aid in matters related to the criminal law and compensation for victims of certain crimes which I sent to you at an earlier date.

As I understand your concerns about the legal aid agreement, they are four and relate to (a) the tenor of the agreement which appears to you to favour the "judicare" approach to legal aid to the disadvantage of, and possible conflict with, the Nova Scotia "salaried lawyer" approach; (b) the provision of the agreement dealing with the time at which funds would be paid over to the Province by the Federal Government; (c) the amount of Federal funds which would be available to Nova Scotia under the terms of the agreement and (d) the guidelines set out in the agreement for determining the financial eligibility of an applicant for legal aid.

Before dealing with these matters, I would first indicate to you the several changes of substance that have been made in the agreement recently as a result of representations made by other provinces. Section 2 has been amended to restrict the Attorney General's selection of a nominee to represent him on the agency to members of the provincial Bar. Section 3(1) has been expanded in paragraph (b) to broaden the discretion of the provincial agency in dealing with applications for legal aid in summary conviction offences and juvenile delinquents proceedings, and has been contracted, in the case of one province, in paragraph (e) to remove the discretion of the appellate court to request appointment of legal aid counsel. Section 4(1) is clarified

by modifying the term "circumstances" with the word "financial". Section 4(2) is changed to allow the provincial agency an increased flexibility in determining contributions by and recoveries from recipients of legal aid funds. Section 5(2) has been changed to limit the free choice of counsel to only those cases where the possible penalty upon conviction is either life imprisonment or capital punishment.

To turn to your concerns about the agreement, I wish to assure you that it is not the intent of this agreement to suggest a preference for any particular method of providing legal services in relation to the criminal law. Indeed, I think the wording of section 5(1) makes it clear that the method or methods employed is a matter for the province to determine and the scope of this choice by the provinces is extended by the amendment mentioned above regarding section 5(2). My only concern in relation to this latter provision is that in very serious criminal offences the accused be entitled to seek counsel of his choice where he so desires.

To the extent that the wording in the agreement may reflect the values of the traditional method of providing legal advice and representation, it is only because these words are more readily understood than concepts such as "community legal services" or "public defender". However, I assure you that your Government's experimental program, based as I understand it largely on legal services provided by state-salaried lawyers, will receive equal treatment under the provisions of the agreement with a plan that is "judicare" oriented. In particular, as I have explained to other provinces where your approach to providing legal services is also either under experimentation or being employed, the definition of "fees and disbursements" set out in section 1(b) of the agreement, when read in conjunction with the definition of "legal aid" in section 1(c) and the provisions of section 5(1), is clearly broad enough to include the salaries of lawyers employed by a provincial agency to provide legal aid in matters related to the criminal law, the office overhead costs such as secretarial salaries, rent, supplies, utilities, etc. incurred by lawyers while so employed and all of the normal and reasonable expenses that would be incurred by these lawyers on behalf of clients. Not included, regardless of the method of providing legal services chosen by a province, are the administrative costs generated by the management of the provincial legal aid scheme, such as salaries or honoraria of the directors, administrative officers and other personnel and the office overhead costs of running the provincial plan.

I trust the foregoing explanation will allay your fear that implementation of the agreement would result in a dual system of legal aid services in Nova Scotia. Apart from the limited restrictions of section 5(2), the province is free to devise its own system.

Your second point concerning the payment period set out in section 6(1) of the agreement is one that has already been considered at some length in my Department. While interim payments to the Province by the Federal Government are understandably your preference, I am of the opinion that, until we have gained some experience in administering the financial provisions of the agreement, it is desirable that the payments be on an annual basis. In light of experience, which neither level of government has at this time, we would be prepared to reconsider the prospect of adopting a more flexible arrangement for payment over of funds.

The matter of the amount to be contributed by the Federal Government for the legal services required to be provided by the provincial agency under the agreement was, of course, one of very careful consideration both by this Department and by the Government. On the basis of figures which we examined, related to present and projected expenditures by the provinces for legal aid in matters covered by the agreement, we arrived at the financial formula set out in section 6(1). This formula reflects what the Federal Government considers to be an equitable allocation of the costs of providing such legal aid between the two levels of government. In this regard, I would note that it was never the Federal Government's intention to assume responsibility for the full costs of any legal aid program related to criminal law matters.

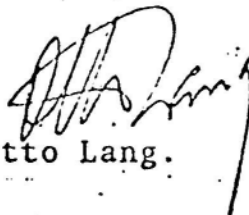
As for the concern you express about the financial eligibility test set out in section 4(1) of the agreement I am somewhat surprised to have it described as "unreasonably general" since the purpose in drawing the guidelines broadly was to permit the province a reasonable degree of flexibility in establishing and applying its rules for determining the financial eligibility of applicants for legal aid. In other words, in legal aid applications arising in relation to matters covered by the agreement, we are simply requiring that the provincial agency, in formulating its rules for determining eligibility, not apply any arbitrary "means" test but rather to "take into account" the financial circumstances of the applicant in a reasonable fashion. I concede that the flexible guidelines may be more difficult to apply

in a particular case, but it is my view that the flexibility is essential if applicants for legal aid are to receive equitable treatment by the agency.

On the matter of compensation for victims of certain crimes, I have the point that you raise about the amount of the contribution by the Federal Government under consideration and I would hope to be in a position to communicate with you on this subject before long.

Meantime, I am enclosing copies of the revised agreement respecting legal aid in matters related to the criminal law which I am now prepared to sign. You will note that this revision does not delete the provision in section 3(1)(e) whereby the appellate court is empowered to request appointment of legal aid counsel. However, I am agreeable to making this amendment, as I have done in the case of one other province, if you so desire. I would hope that you will shortly be in a position to sign this agreement so that we can implement it at an early date.

Yours sincerely,



Otto Lang.

Encl.

1972.

BETWEEN:

THE GOVERNMENT OF CANADA,

Of the First Part

- and -

THE GOVERNMENT OF THE PROVINCE
OF NOVA SCOTIA,

Of the Second Part

WHEREAS the Government of Canada and the Government of the Province of Nova Scotia are desirous of entering into an agreement respecting the provision of legal aid in matters related to the criminal law to eligible persons in need of such aid, and for the allocation of the costs thereof;

NOW THEREFORE, this agreement witnesseth that in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto covenant and agree each with the other as follows:

1. In this agreement,

- (a) "eligible person" means any person in the province who seeks legal aid and who is approved as a recipient thereof as provided in subsection 4(1) of this agreement;
- (b) "fees and disbursements" means payments made or authorized to be made by the provincial agency to a member of the Bar of the province for legal aid rendered by him;
- (c) "legal aid" means legal advice and representation provided by a member of the Bar of the province in a matter related to the criminal law;

- (d) "matter related to the criminal law" means any of those matters enumerated in subsection 3(1) of this agreement;
- (e) "province" means the province of Nova Scotia; and
- (f) "provincial agency" means the agency or agencies designated by the Attorney General of the province for the purposes of this agreement.

2. The Attorney General of Canada shall be entitled to designate a member of the Bar of the province to represent him on the provincial agency.

3. (1) The provincial agency shall authorize the provision of legal aid to eligible persons in relation to:

- (a) Offences contrary to an Act of Parliament punishable by way of indictment;
- (b) Proceedings under the Juvenile Delinquents Act and all summary conviction offences for a violation of
 - (i) an Act of Parliament, or
 - (ii) a Regulation made pursuant to an Act of Parliament

where, in the opinion of the provincial agency, there is a likelihood that upon conviction there will be a sentence of imprisonment or the loss of means of earning a livelihood, or where, in the opinion of the provincial agency, special circumstances exist that warrant the provision of legal aid;

- (c) Proceedings pursuant to the Extradition Act and the Fugitive Offenders Act;

- (d) Appeals by the Crown in any of the matters referred to in paragraphs 3(1)(a), 3(1)(b) or 3(1)(c) of this section; and
- (e) Appeals by an accused in any of the matters referred to in paragraphs 3(1)(a), 3(1)(b) or 3(1)(c) of this section where, in the opinion of the provincial agency, the appeal has merit or where the court appealed to requests the appointment of counsel on behalf of the appellant.

(2) The provincial agency shall take all reasonable measures to ensure that an eligible person who has been arrested or detained is given the opportunity to retain and instruct counsel without delay.

4. (1) The provincial agency shall determine the financial circumstances under which an applicant for legal aid may be approved as a recipient thereof, but in so doing it shall apply flexible rules which take into account whether the applicant can retain counsel at his own expense without him or his dependents (if any) suffering undue financial hardship such as incurring heavy indebtedness or being required to dispose of modest necessary assets, and a person shall not be disqualified from receiving legal aid on the ground that he is not ordinarily resident in the province.

(2) The provincial agency shall require a recipient of legal aid to contribute toward the cost thereof to the extent that in its opinion the recipient can do so without him or his dependents (if any) suffering undue financial hardship such as incurring heavy indebtedness or being required to dispose of modest necessary assets and to the extent that the provincial agency is of the opinion that it is administratively economic to seek such recovery.

(3) The provincial agency shall require a recipient of legal aid who recovers costs in proceedings for which the legal aid was provided to pay such costs to it in an amount not exceeding the sum spent by the provincial agency on behalf of the recipient. }

5. (1) Subject to subsection (2) of this section the provincial agency shall determine the method or methods by which legal aid shall be made available to an eligible person.

(2) Where legal aid has been approved for an applicant who has been charged with an offence the penalty for which is either life imprisonment or capital punishment, he shall be entitled to retain and instruct any member of the Bar of the province who is prepared to act for him as a recipient of legal aid.

6. (1) The Attorney General of the province shall submit to the Attorney General of Canada no later than the 31st day of May in each year a statement in such form as the latter may require signed by the provincial auditor certifying to the amount expended by the provincial agency for fees and disbursements for legal aid during the 12 month period ending the 31st day of March immediately preceding the said 31st day of May, and the Attorney General of Canada, upon being satisfied that the fees and disbursements have been expended for legal aid in accordance with the terms of this agreement shall approve payment to the province of an amount which is the lesser of

(a) 50 cents per capita of the population of the province as estimated on the 1st day of June by the Chief Statistician of Statistics Canada during said 12 month period, or

(b) 90% of the actual amount expended by the provincial agency for fees and disbursements for legal aid during said 12 month period.

(2) The Attorney General of the province shall from time to time provide the Attorney General of Canada with such further information relating to legal aid under this agreement as the latter may request.

7. The Attorney General of the province shall take all reasonable steps to give publicity to the availability of legal aid throughout the province as is necessary to ensure that the public will be adequately informed in this regard.

8. The financial terms of this agreement shall be reviewed by the Parties at the termination of each three year period and may be renegotiated at that time.

9. In the event of any controversy arising between the Parties to this agreement in respect thereof, either Party may submit the controversy to the Federal Court of Canada for determination.

10. This agreement shall come into force and shall bind the Parties from the 1st day of January, 1973, and shall continue in force thereafter until terminated by either Party giving to the other Party at least one year's notice in writing.

IN WITNESS WHEREOF, the Honourable Otto E. Lang,
Attorney General of Canada, has hereunto set his hand on

behalf of the Government of Canada, and the Honourable
Leonard L. Pace, Attorney General of Nova Scotia, has
hereunto set his hand on behalf of the Government of
the Province of Nova Scotia.

Otto E. Lang,
Attorney General of Canada.

Leonard L. Pace,
Attorney General of
Nova Scotia.

APPENDIX "B"

FINANCIAL ELIGIBILITY DETERMINATION PROCESS

FOR

LEGAL AID

Paper Prepared By:

The Social Research & Planning Division
Department of Social Services
Province of Nova Scotia.

Date:

February 9, 1976

Public Archives of Nova Scotia
HALIFAX, N. S.

FINANCIAL ELIGIBILITY

I. INTRODUCTION

In considering a program to determine financial eligibility, the Commission reviewing Legal Aid in Nova Scotia was faced with two general criticisms respecting the present eligibility determination procedures:

- (1) The present eligibility criteria are too vague and hence loosely applied;
- (2) The present eligibility criteria lack uniform application throughout Nova Scotia.

The Commission recognized further that the present eligibility criteria were inadequate in that

- (1) Partial support for legal services is not provided; and
- (2) The original income levels used to determine eligibility are somewhat out of date.

For a number of reasons, not the least of which are high costs and administrative complexities, we decided to maintain the "either-or" status of eligibility. The precise income levels permitting eligibility would, however, be updated.

We have considered two approaches which could be used to determine eligibility:

- (1) An Income Test would be used whereby family eligibility for free legal services would depend solely on family net income, family size and family assets.
- (2) A Needs Test would be used whereby family eligibility for free legal aid would depend on an assessment of basic family needs, family income available to meet such needs, and family assets.

We are recommending implementation of the second approach.

Under the recommended program, family needs would be composed of two parts:

- (1) Family basic needs - exclusive of rent - would be taken as 75% of the total of such needs allowed under the Provincial Social Assistance program. This corresponds to a preadded budget dependent only on family size. It would be updated over time in line with changes in the Provincial Social Assistance budget allowances (currently indexed every

six months).

- (2) The family rent or mortgage and taxes would be taken to be their actual values minus heat, electricity and water where these are covered in the rent payment:

Where family net income is sufficient to meet such needs, the family would be ineligible for free legal aid.

Where family net income is insufficient to meet such needs, the family would be eligible for free legal aid.

This decision to use a needs test, with a pre-added budget component, was made bearing in mind the following:

- (1) Needs tests are fairly flexible in reflecting diverse family situations.
- (2) Needs tests are also presently used in Social Assistance programs offered at both the Municipal and Provincial levels of Government in Nova Scotia.
- (3) The use of a pre-added budget obviates the need for the collection and verification of detailed information on each client.

11. NEEDS TEST WITH PREADDED BUDGET

GENERAL

Financial eligibility would be determined as follows:

- (1) Those families where the sole source of income is
 - Provincial Social Assistance;
 - Municipal Social Assistance or PSA supplemented by MSA; or
 - OAS/GIS, including the spouse's allowance would be eligible for free legal aid.
- (2) All other families would be subject to the proposed needs test with pre-added budget.

DEFINITIONS

The following definitions will apply in determining financial eligibility:

- (a) The family is taken to be the nuclear family composed of the applicant, his/her spouse and dependent children. The number of such dependents with the applicant constitutes the size of the family.
- (b) Family income includes all income such as salaries, rents, interest, transfer payments, etc., but excludes casual earnings of dependents up to \$ 600.00 per year per dependent. Family income shall be determined on a monthly basis.

- (c) Family net income means family income less all mandatory deductions at source.
- (d) Family liquid assets means cash, bonds, debentures, stocks, etc.
- (e) Family rent shall mean actual monthly payments for rent or mortgage and taxes, less
 - \$27.00 where heat is included in rent
 - \$13.00 where electricity is included in rent
 - \$ 5.00 where water is included in rent.
- (f) Reference to a preadded budget shall mean 75% of the budget allowances permitted under Provincial Social Assistance for such family size:

<u>Family Size</u>	<u>Budget Allowances</u>	<u>75% of Budget Allowances</u>
1	\$152.30 /month	\$115.00
2	211.79	159.00
3	277.42	209.00
4	319.25	240.00
5	379.00	285.00
6	439.75	330.00
7	499.50	375.00

For each additional family member add \$ 45.00 per month. These allowances are taken to include food, clothing, miscellaneous personal, household supplies, transportation, heat, water and electricity.

The full budget allowances are calculated from average family composition as PSA actual needs vary by the age of children and the number of adults in the family.

Detailed definitions are provided in Appendix "A".

The following procedures occur when determining financial eligibility:

- (a) Where family liquid assets exceed --
\$500.00 for one or more persons plus
\$1,500.00, in trust, for each dependent child --
the family shall be ineligible for free legal
aid.
- (b) Gross family income will be determined.
- (c) Family net income will be determined.
- (d) Where the applicant or spouse is employed, a
deduction of
-- \$ 75.00 will be made from net family income
where one adult is employed full or part time;
-- \$112.50 will be made from net family income,
where two adults are employed full or part time.
- (e) The monthly family needs shall be determined as
the sume of:
 - (i) the appropriate monthly preadded budget
for the family size; and
 - (ii) the actual family monthly rent or mortgage
and taxes.

- (f) Where the family has incurred debts which, to the satisfaction of an Assessment Officer, were not incurred to qualify for legal aid; and where these debts are related to the necessities of life - actual monthly debt payments (up to \$100.00/month) shall be allowed as a deduction from income.

Such debts exclude those related to:

- (i) shelter - this is already included in the preadded budget;
- (ii) clothing, household supplies, personal miscellaneous essentials - these are already included in the preadded budget;
- (iii) food - this is already included in the preadded budget.

- (g) The family income as determined shall be compared to family needs as determined:

- (i) where family needs exceed family net income, the family shall be eligible for free legal aid;
- (ii) where family net income exceeds family needs, the family shall not be eligible for free legal aid.

Examples

1. A four member family with --

--monthly income of \$ 600.00

--monthly net income of \$500.00

--one family member employed

--allowed debt payments of \$50.00/month

--less than \$500.00 in liquid assets

--total needs of (i) \$240.00(from table); and

(ii) \$180.00(actual rent)

= \$420.00

Family income is \$500. - \$75. - \$50 = \$375.00

Family needs are 420.00

Family is financially eligible for free legal aid.

2. An eight member family with --

--monthly income of \$800.00

--monthly net income of \$680.00

--one family member employed

--allowed debt payments of \$30.00/month

--less than \$500.00 in liquid assets

--total needs of (i) \$375 + \$45 = \$420.00 (from table); and

(ii) \$200.00 (actual rent)

= \$620.00

Family income is \$680 - \$30 - \$75 = \$575.00

Family needs are \$620.00

Family is financially eligible for free legal aid.

3. A one member family with --

--monthly income of \$450.00

--monthly net income of \$400.00

--family member employed

--allowed debts of \$25.00/month

--less than \$500.00 in liquid assets

--total needs of (i) \$115.00 (from table); and

(ii) \$160.00 (actual rent)

= \$275.00

Family income is \$400 - \$25 - \$75 = \$300.00

Family needs are \$275.00

Family is not financially eligible for free legal aid.

These examples are chosen to represent the operation of the needs test and do not necessarily correspond to "likely" situations.

III. COMPARISON WITH PRESENT SYSTEM

Comparing the proposed eligibility determination criteria to the present eligibility criteria is confounded by the facts in the following chart:

<u>AT PRESENT</u>	<u>AS PROPOSED</u>
(1) Gross monthly income is used.	Net monthly income is used.
(2) No provision is made for employment.	Provision is made for employment
(3) Debt provisions are elastic.	Debt provisions are regulated.
(4) Family needs are not considered.	Family needs are an integral part of the test.

A. If we assume:

--no debt payments

--no deduction for employment

--average rent of \$150.00/month for one person

\$175.00/month for 2/3 persons

\$200.00/month for 4/5 persons

\$225.00/month for 6/7 persons

a general comparison by family size may be made.

<u>Family Size</u>	<u>Present Income Cut-Off</u>	<u>Proposed Needs Levels</u>
1	\$250.00	\$265.00
2	\$350.00	\$334.00
3	\$375.00	\$384.00
4	\$390.00	\$440.00
5	\$405.00	\$485.00

The proposed system is substantially more generous for all larger families.

B. If we assume:

--no debt payments

--deduction of \$75.00 for employment

--average rents as above

<u>Family Size</u>	<u>Present Income Cut-Off</u>	<u>Proposed Needs Levels Plus Employment & Debts</u>
1	\$250.00	\$340.00
2	\$350.00	\$409.00
3	\$375.00	\$459.00
4	\$390.00	\$515.00
5	\$405.00	\$630.00

The proposed system is substantially more generous for all larger families.

C. If we assume:

- debt payments of \$100./month
- deduction of \$75.00 for employment
- average rents as above

<u>Family Size</u>	<u>Present Income Cut-off</u>	<u>Proposed Needs Levels Plus Employment & Debts</u>
1	\$250.00	\$440.00
2	\$350.00	\$509.00
3	\$375.00	\$559.00
4	\$390.00	\$615.00
5	\$405.00	\$730.00

The proposed system is substantially more generous for all larger families.

We may conclude:

The proposed system(s) is substantially more generous for all family sizes except family size 2 where such a family has no employment income and no debts.

IV. ELIGIBILITY DETERMINATION PROCESS

- (1) The applicant for legal aid will contact a lawyer employed by Nova Scotia Legal Aid. The lawyer will determine whether the legal problem of the applicant is within the mandate of Nova Scotia Legal Aid.
- (2) The lawyer will direct the client to an Assessment Officer who will determine whether the client may receive legal services free of charge. The Assessment Officer may be an employee of the Nova Scotia Department of Social Services or the Legal Aid Commission. In either case he will be housed in the local Legal Aid Office.
- (3) The applicant for Legal Aid will be required to provide information sufficient to determine financial eligibility; viz:
 - (i) family size
 - (ii) such personal characteristics as are required
 - (iii) gross and net family income
 - (iv) nature and extent of debts
 - (v) employment status
 - (vi) actual monthly rent and whether such rent includes electricity, water, heat or taxes in case of mortgage.
 - (vii) nature and extent of liquid assets including trusts for children.

- (4) Where the client is found to be eligible for legal aid free of charge, the client will be referred back to the appropriate lawyer.
- (5) Where the client is found to be ineligible for legal aid, the client may make an appeal through a Review Board established by the Nova Scotia Legal Aid Commission.
- (6) Where the applicant is found to be financially ineligible for Legal Aid, and where, subsequently, changes occur to clients financial status or needs, the applicant may approach the Assessment Officer once again with a request to vary the original decision.

V. SPECIAL CIRCUMSTANCES

Notwithstanding the above -- if it is determined that the client will be unable to contribute to the costs of Legal Aid Services, the client may be declared eligible for Legal Aid...

- (a) where the applicant requires legal services in relation to a criminal action and in the opinion of the Director of Nova Scotia Legal Aid, cannot in fact obtain the services of a lawyer after diligent effort;
- (b) where, in the opinion of the Director of Nova Scotia Legal Aid, extreme circumstances warrant the extension of legal services in the public interest and in the interests of justice and the applicant cannot, in fact, obtain the

services of a lawyer;

- (c) where, in the opinion of the Director of Nova Scotia Legal Aid and the Assessment Officer, debts accrued over and above the normal living costs exist and the denial of legal services would lead to graver legal problems.

DETAILED DEFINITIONS OF TERMS

1. Applicant

The applicant for Legal Aid shall be present in Nova Scotia and shall be considered as:

- (a) the person who is
 - subject to loss of livelihood through a criminal action;
 - the named plaintiff or defendant in a reasonable civil action.
- (b) the parent or guardian or person in loco parentis for
 - a child under sixteen years;
 - a child seventeen years to nineteen years where such a child resides with the parent or guardian and where the parent or guardian will be responsible for payments assessed against the child.
- (c) Any child where the parents or guardian refuse to participate in the action involving this child.

2. Substantial Dependence

- (a) a child under sixteen years of age will be considered as substantially dependent on the applicant for livelihood.
- (b) a child seventeen to nineteen years of age will be considered as substantially dependent on the applicant where such a child has regular income of less than \$600.00 per year and resides with the applicant.

3. Spouse

Spouse means a husband or wife or a person with whom that person cohabits although not necessarily legally married to that person.

4. Family Unit

- (a) a family unit will consist of the applicant, his/her spouse and his/her substantially dependent children. The number of such persons shall determine family size. This is a nuclear family.
- (b) a person over nineteen years of age or a person aged sixteen to nineteen years who is maintaining an independent dwelling is considered to be a family unit.
- (c) any person under nineteen years of age where the parents are not prepared to provide financial support shall be considered to be a family unit. In such a case, the parents must be contacted by the Assessment Officer and requested to make a contribution. It may be desirable to make such a contribution mandatory by statute.

5. Liquid Assets

Liquid assets means cash, bonds, stocks, debentures and any other assets readily convertible into cash. Real property, over and above residence and necessary chattels essential to a reasonable standard of living, shall be included at the discretion of the Assessment Officer and at a value determined by the Assessment Officer.

6. Preadded Budget

The detailed calculations for determining the relationship between family size and the preadded budget needs of the applicant are as follows:

Family Size

<u>One</u>	- heat, electricity, water	\$ 60.00	
	- food, clothing, miscellaneous essentials (one adult)	\$ 74.30**	
	- household supplies, transportation	<u>\$ 18.00</u>	
	TOTAL		\$152.30
<u>Two</u>	- heat, electricity, water	\$ 60.00	
	- food, clothing, miscellaneous essentials (one adult)	\$ 68.15**	
	average of (\$68.15 - adult) (\$51.35 - young child) (\$62.70 - child) (\$80.35 - adolescent) = \$65.64	\$133.79	
	- household supplies, transportation	<u>\$ 18.00</u>	
	TOTAL		\$211.79

<u>Three</u>	- heat, electricity, water	\$ 60.00	
	- food, clothing, miscellaneous essentials (one adult)	\$ 68.15**	
	2 x average of (\$68.15 - adult) (\$51.35 - young child) (\$62.70 - child) (\$80.35 - adolescent) = \$131.27	\$199.42	
	- household supplies, transportation	<u>\$ 18.00</u>	
	TOTAL		\$277.42

<u>Four</u>	- heat, electricity, water	\$ 60.00	
	- food, clothing, miscellaneous essentials (one adult)	\$ 62.00**	
	3 x average of (\$62.00 - adult) (\$47.00 - young child) (\$57.00 - child) (\$73.00 - adolescent) = \$179.25	\$241.25	
	- household supplies, transportation	<u>\$ 18.00</u>	
	TOTAL		\$319.25

Five or More Add \$59.75 for each additional family member.

**due to adjustments for family size, the same adjustment effects the amounts for children.

7. Employment

The applicant or the spouse of the applicant shall be considered employed where:

- that person is gainfully employed full time throughout the year;
- that person is gainfully employed part-time on a regular basis throughout the year where income from such employment exceeds \$2,000.00;
- that person attends university or other post-secondary school educational institution as a full-time student;
- that person attends a registered rehabilitation workshop.

8. Income

A. Family Income

Family income means gross income of applicant, his/her spouse, children under sixteen years, and other substantially dependent children.

Income means:

- (i) gross salaries, wages, commissions;
- (ii) gross business, professional (etc.); less reasonable expenses;
- (iii) gross rental income at 50%;
- (iv) gross investment income;
- (v) net payments received from WVA, WCB, UIC, CPP and OAS/GIS;
- (vi) actual alimony payments;
- (vii) regular payments from annuities, pensions, insurance programs.

B. Net Family Income

Net family income means gross family income less:

- CPP premiums or other pension premiums;
- UI premiums;
- Union Dues;
- Alimony payments;
- Income Taxes (as appropriate);
- Other mandatory deductions from income at source.

C. Calculation of Income

The family income will be determined as:

- (1) the monthly average of family annual income over the last twelve months where the family is in receipt of regular income;
- (2) the monthly average of family ~~annual~~ income over the last three months where the family is in receipt of irregular or variable income.

This calculation may be varied where there is reasonable evidence that future family income will be markedly different from at present. Factors to be considered in this variation only include those related to the present action; namely:

- (i) likely financial settlements arising from the action;
- (ii) likely jail terms; and the
- (iii) likely time-frame for the completion of the action.

9. Monies in Trust

Monies in Trust shall mean monies held in the name of a substantially dependent child; which monies are not available to the child or parents of the child until the child is nineteen years of age.

APPENDIX "C"

Forms which may be used in determining financial eligibility.

1. Application for Legal Aid
2. Personal and Financial Data
3. Determination of Financial Eligibility
for Legal Aid
4. Financial Information Consent Form

1. Application for Legal Aid

This represents the initial application for Legal Aid Services.

Copies of the form would be prepared for the following distribution:

1 copy to the Client

1 copy to the Department of Social Services
(for the Assessment Officer)

2 copies to the Nova Scotia Legal Aid



NOVA SCOTIA LEGAL AID
APPLICATION FOR LEGAL AID

Accepted
Rejected
Referred
Reasons: _____
Office: _____
Lawyer: _____

NAME: Mr.
Mrs. _____ Family or Last Name Given Name Initial(s)
Miss

SOCIAL INSURANCE NUMBER: _____

ADDRESS: _____
No. Street Apt. No. City, Town, County

MARITAL STATUS: Married Divorced
Widowed Common Law BIRTH DATE: _____
Separated Deserted Telephone: Home _____
Unmarried Bus. _____

Legal Aid is Required for the following purposes: _____ Name(s) of Person(s) who may assist: _____

Name
Address Phone
Name
Address Phone

If Criminal matter or Court Proceeding, what is the charge? _____ _____ Next Court Appearance: _____ Date Court or Judge: _____	Was Bail Granted	Yes	No
	Have you Elected		
	Did you Plead		
	Did you have Preliminary Hearing		
	Did you have a Trial		
	Were you Sentenced		
	Are you in Custody		

I have not previously consulted a Solicitor about the matter for which I now seek Legal Aid.

OR

I have consulted (a) Solicitor(s)

_____ on _____ about this matter _____ Name Date First Visit Payment Made	_____ on _____ about this matter _____ Name Date First Visit Payment Made
--	--

Applicant authorizes the Nova Scotia Legal Aid to represent and act for applicant in the matter mentioned or any related matter and further authorizes the Nova Scotia Legal Aid to take any necessary action or obtain required assistance.

Date

Signature of Applicant

2. Personal and Financial Data

This represents the instrument for gathering the necessary personal and financial data in order to apply the guidelines for determining financial eligibility for Legal Aid.

Copies of this form would be prepared for the following distribution:

1 copy to the Client

1 copy to Nova Scotia Legal Aid

2 copies to the Department of Social Services



NOVA SCOTIA LEGAL AID

PERSONAL AND FINANCIAL DATA

NAME: [Family Name of Applicant] [Given Name] [Initial(s)]

SOCIAL INSURANCE NUMBER: []

ADDRESS: [No.] [Street] [Apt. No.] [Town/City/County]

MARITAL STATUS: Married [] Divorced [] Deserted [] Widowed [] Separated [] Unmarried [] Common Law [] BIRTH DATE: [] Day [] Mo. [] Yr. [] SEX: Male [] Female []

PLACE(S) OF EMPLOYMENT OR EDUCATIONAL INSTITUTION(S) OR REHABILITATION FACILITIES: [Employer] [Address] [Applicant or Spouse]

DEPENDENTS: NAME OF SPOUSE: [] Table with columns: Names, Relationship, Age, Living with Applicant

(List Over)

Is PSA, MSA/PSA or OAS/GIS the sole source of family income? Yes [] No [] (If NO, complete remainder of this section):

I. A. Gross monthly family employment income Total mandatory deductions (UIC, CPP, Alimony, Inc.Tax) Net Monthly family employment income

Table with columns: Applicant, Spouse

TOTAL []

B. Gross Income from Rent @50% C. Net Profit from Business

D. Other Income:

UIB/WEB	PSA/MSA	Alimony
WVA	CPP	Other
OAS/GIS	DPA/BPA	

TOTAL

E. Total All Income

II. Assets:

<u>A. Bank or Credit Union (Name)</u>	<u>Acct.No.</u>	<u>Type of Account</u>	<u>Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. Other Assets:

Cash on Hand	_____	Motor Vehicle(s)	
Bonds	_____	Year/Make	Value
Securities	_____	Year/Make	Value
Monies held in Trust	_____		

C. If any of the above assets are owned jointly by the applicant and anyone other than his dependents, give details:

D. Real Property:

<u>Location and Description</u>	<u>Owned By</u>	<u>Market Value</u>	<u>Mortgage Payments</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

E. Have any assets been transferred within the past six months? Yes No

If Yes, give details: _____

III. Debts:

<u>To Whom Owed</u>	<u>Purpose of Debt</u>	<u>Balance</u>	<u>Monthly Payment</u>

IV. Are changes in income, assets, debts expected? Yes No

If Yes, give details: _____

Monthly rent or mortgage (if applicable): _____

Does rent include: heat water electricity

Does mortgage include: taxes Yes No (If Yes, taxes are \$ _____/month)

I declare that all information given herein is true and complete. I will furnish additional information as required. Applicant agrees to complete Financial Information Consent Form and will notify of any change in the information herein.

Date

Signature of Applicant

3. Determination of Financial Eligibility for Legal Aid

This represents the format for the Assessment Officer to determine the eligibility for Legal Aid based on information provided by the client on the Personal and Financial Data Form.

Copies of this form would be prepared for the following distribution:

2 copies to the Nova Scotia Department
of Social Services

2 copies to the Nova Scotia Legal Aid

NOVA SCOTIA LEGAL AID

DETERMINATION OF FINANCIAL ELIGIBILITY FOR LEGAL AID

NAME:
 Family or Surname Given Name Initial(s)

SOCIAL INSURANCE NUMBER:

1. Is sole source of family income MSA/PSA/GAS/GIS? Yes No
2. Family Assets:
- A. For an individual or family, liquid assets exceed \$500.00 Yes No
- B. Monies in Trust for children exceed \$1,500.00 per child Yes No

(Where either "A" or "B" is answered Yes, family is ineligible for Legal Aid).

3. Total monthly net income

If one adult is employed, deduct \$ 75.00
 If two adults are employed, deduct \$112.50

Family monthly net income for needs test [1]

4. Needs:

A. Preadded Budget Needs:

<u>Family Size</u>	<u>Needs</u>	<u>Family Size</u>	<u>Needs</u>
1	\$115.00	5	\$285.00
2	159.00	6	330.00
3	209.00	7	375.00
4	240.00	8	410.00

Add \$45.00 per family member for families over size 8.

Preadded needs:

B. Actual Rent/Mortgage \$

(If heated included, less \$27.00)
 (If water included, less \$ 5.00)
 (If electricity included, less \$13.00)

Rent for Purposes of Eligibility

C. Total Needs: [2]

5. Allowable Debts:

Debts allowed for purposes of determining eligibility.

<u>Debt</u>	<u>Amount Paid/Mo.</u>
_____	_____
_____	_____
_____	_____

Total } Minimum of
 \$100.00

6. Eligibility:

A. Where [1] - [2] - [3] is greater than zero (0) dollars:

Family is ineligible for Legal Aid.

B. Where [1] - [2] - [3] is less than zero (0) dollars:

Family is eligible for Legal Aid.

I, _____, an satisfied, having prepared and verified,
Assessment Officer
as deemed necessary, that _____, an applicant for Legal Aid, is
Client
(financially eligible/not financially eligible) (stroke out one) for Legal Aid Services.

Date

Signature

I, _____, declare that _____,
Director of Nova Scotia Legal Aid Client
an applicant for Legal Aid, notwithstanding the above, shall be eligible for Legal Aid
Services because:

Date


Signature

4. Financial Information Consent Form

This represents a legal instrument to allow for the verification of financial information provided by the client on the Personal and Financial Data Form.

Copies of this form would be prepared for the following distribution:

- 1 copy to the Client
- 1 copy to the Nova Scotia Department of
Social Services
- 1 copy to the Nova Scotia Legal Aid


NOVA SCOTIA LEGAL AID

FINANCIAL INFORMATION CONSENT FORM

I, _____ an applicant for Legal Aid under the Agreement between the Province of Nova Scotia and the Nova Scotia Barrister's Society, and I, _____, spouse of the above applicant, hereby
(complete where applicable)

authorize the Department of Social Services to have any of its representatives examine, for the purpose of determining the ownership and value of, any account or asset held by us severally or jointly in any financial institution or office of registry.

We also authorize any manager, or person in charge, of any financial institution or office of registry to supply the Department of Social Services with any requested information concerning our accounts or assets.

We further authorize our employer or employers to supply the Department of Social Services with any requested information concerning our employment and wages.

We understand such information will be treated as confidentially as possible and will be used solely to establish our eligibility or our family's eligibility to receive Legal Aid under the provisions of the Agreement between the Province of Nova Scotia and the Nova Scotia Barrister's Society.

Dated at _____, this _____ day of _____, 19__.

Witness: _____

Signature of Applicant

Signature of Spouse

