

THE NOVA SCOTIA LEGAL AID EVALUATION REPORT:
ENTERING THE THIRD "GENERATION"

A SUMMARY VERSION

25 May 1983

Dale H. Poel

THE NOVA SCOTIA LEGAL AID EVALUATION PROJECT

The Nova Scotia Legal Aid Commission & The Federal Department of Justice

in cooperation with

Evaluation Research Associates & Dalhousie University

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TABLE OF CONTENTS

TABLE OF CONTENTS - - - - -	i
LIST OF FIGURES - - - - -	ii
EXECUTIVE SUMMARY - - - - -	iii
ACKNOWLEDGEMENTS - - - - -	x
I. INTRODUCTION - - - - -	1
II. ACCESS TO LEGAL AID IN NOVA SCOTIA - - - - -	3
A. Client Eligibility and Legal Needs - - - - -	4
B. The Accessibility of Legal Aid Services - - - - -	8
III. THE WORK OF NOVA SCOTIA LEGAL AID - - - - -	10
A. The Scope of NSLA Services - - - - -	11
B. The Quality of Work Done by NSLA - - - - -	14
1. Perceptions of quality - - - - -	14
2. Quality -- strategies and outcomes - - - - -	15
3. The impact of NSLA on the justice system - - - - -	17
IV. THE ADMINISTRATION OF NOVA SCOTIA LEGAL AID - - - - -	19
A. NSLA Management Practices - - - - -	21
1. Policy management: the place of the Commission - -	21
2. Program management: decision-making and administration within NSLA - - - - -	22
3. Resource management within NSLA: staffing and offices - - - - -	24
4. Management information systems - - - - -	26
B. Program Finances and Costing - - - - -	28
1. Current budgeting practices and Federal cost- sharing of legal aid - - - - -	28
2. Issues in the Federal support of legal aid - - - -	29
3. The costing of legal aid services - - - - -	29
4. Alternative sources of revenue - - - - -	30
V. CONCLUSIONS FOR THE THIRD "GENERATION" - - - - -	31
APPENDIX: SELECTED FIGURES FROM THE NOVA SCOTIA EVALUATION REPORT	35

LIST OF FIGURES

<u>Figure</u>	<u>Title</u>	<u>Page</u>
1	THE NSLA FINANCIAL ELIGIBILITY CRITERIA COMPARED CANADA ASSISTANCE PLAN INCOME AND FAMILY SIZE GUIDELINES - - - - -	4
A1	NSLA CLIENT CHARACTERISTICS BY OFFICE AREA - - - - -	36
A3	ESTIMATES OF PERSONS FINANCIALLY ELIGIBLE FOR THE NSLA OFFICE AREAS, PERCENTAGES OF TOTAL POPULATION AND RANGE - - - - -	37
A5	CASE TYPES BY OFFICE FROM THE EVALUATION CASE ANALYSIS - - - - -	38
A8	THE DISTRIBUTION OF LEGAL NEEDS SCORES BY NSLA OFFICE AREAS AND THE CURRENT AND PROJECTED DISTRIBUTION OF NSLA STAFF - - - - -	39
A10	REGIONAL DIFFERENCES IN NSLA CLIENT PREFERENCES FOR A PRIVATE LAWYER VERSUS A LEGAL AID LAWYER (FROM THE <u>CLIENT SURVEY</u>) - - - - -	40
A20	AVERAGE CASELOAD PER LAWYER BY OFFICE FOR FULLY SERVICED CLIENTS, FULLY SERVICED CLIENTS PLUS MINIMAL SERVICE CASE CLIENTS, AND TOTAL APPLICANTS, 1979-80 - - - - -	41
A24	SHOULD NSLA BE GIVEN A SPECIAL MANDATE AND FUNDING TO PURSUE CLASS ACTION SUITS, PUBLIC INTEREST ADVOCACY LAW REFORM, AND PUBLIC LEGAL EDUCATION (<u>NOVA SCOTIA LAWYERS AND NSLA WORKING PAPER</u>) - - - - -	42
A30	NSLA STAFF LAWYER SKILLS IN CRIMINAL, FAMILY, CIVIL, AND ADMINISTRATIVE LAW COMPARED TO OTHER LAWYERS IN AREA OF THE PROVINCE (FROM THE <u>NOVA SCOTIA LAWYERS AND NOVA SCOTIA LEGAL AID WORKING PAPER</u>) - - - - -	42
A33	PLEADING GUILTY OR GOING TO TRIAL -- CASE DECISIONS FOR NSLA AND B.C. PUBLIC DEFENDER AND NEW BRUNSWICK CLIENTS - - - - -	43
A36	CLIENT AND NSLA LAWYER REASONS FOR GOING TO TRIAL (CLIENT SURVEY AND CASE ANALYSIS WORKING PAPERS) - -	44
A37	THE USE OF PRELIMINARY HEARINGS (<u>COTCA</u>) - - - - -	44
A54	NSLA REVENUE FROM GOVERNMENT SOURCES WITH PERCENTAGE INCREASES/DECREASES - - - - -	45
A56	AVERAGE COSTS PER CASE BY AREA OF LAW - - - - -	46

EXECUTIVE SUMMARY

I: INTRODUCTION

Nova Scotia Legal Aid is a staff-lawyer plan which delivers comprehensive services through 10 law offices located across the province. By 1980 about 13,000 individuals annually received legal services from NSLA staff lawyers. The services were primarily in criminal and family law, but also included other areas of civil and administrative law.

The Federal Department of Justice and the Nova Scotia Legal Aid Commission have collaborated in a comprehensive evaluation of this legal aid plan. The central evaluation questions focus on (1) access to legal aid services, (2) the work of NSLA both in terms of its scope and quality, and (3) the administration of NSLA. Questions included:

- How is NSLA client eligibility determined and is legal aid accessible to eligible persons?
- Does the scope of services given conform to the provincial mandate and the objectives federal-provincial agreement, and the legal needs of potential clients?
- What is the quality of service provided by the staff lawyers? Does it meet professional standards and client expectations?
- What is NSLA's impact upon the justice system, in terms of both quality and efficiency?
- Does NSLA have appropriate management tools and practices to adequately interact with other agencies and to administer its own work?
- What is the role of the NSLA Commission? Is it sufficiently independent from the government of the day to satisfy the norms of legal justice and to serve, if necessary, as an advocate of NSLA within governmental and professional circles?

This report brings forward answers to these questions based upon the results of a multi-project evaluation of legal aid services in Nova Scotia. The evaluation research began in the Fall of 1980 and consisted of seven projects. The projects included:

- the NSLA staff interviews;
- a study of legal needs, eligibility criteria, and client population estimates;
- a case outcome, time and costing analysis;
- interviews with professionals from NSLA's immediate working environment;

- a survey of Nova Scotia lawyers;
- a client survey; and
- a management and organization study.

The evaluation report reviews the analysis of these projects within the framework of three chapters: Access to Legal Aid in Nova Scotia, The Work of Nova Scotia Legal Aid, and The Administration of Nova Scotia Legal Aid.

II. ACCESS TO LEGAL AID IN NOVA SCOTIA

Access to legal aid is reviewed from two perspectives. Access can be determined by (1) formal eligibility criteria and their application and (2) client problem-solving strategies and community and professional referral patterns.

The NSLA financial eligibility criteria are pegged by regulation to social assistance levels used by the Nova Scotia Department of Social Services. This formal linkage has kept the eligibility guidelines at levels which will include the Nova Scotia population most in need of legal aid. The guidelines include from 20 to 40 per cent of the Nova Scotia population within their minimum/maximum ranges.

Very few applicants are formally rejected. The client population has been limited, however, by three factors. First, caseload pressures in some regions have resulted in financially qualified applicants being turned away when the case is a summary offense matter. Second, the minimum publicity given the eligibility criteria has kept the upper client income levels well within the actual guidelines. Third, during the evaluation period NSLA did not consistently publish, internally for staff or externally, the new guidelines as Social Services increased its social assistance benefits.

Most in NSLA's professional constituency, both with day-to-day working relationships and the Bar at large, were satisfied with the existing criteria. NSLA clients also expressed satisfaction with the criteria as it applied to themselves.

The reservations expressed above, combined with information on the province-wide distribution of legal needs, lead to this conclusion. Existing NSLA staff resources are not capable of serving the legal needs of financially eligible persons. If financial eligibility criteria continue to increase with levels of social assistance (as the regulations require them to) and staff resources remain the same, that area of law or nature of case will increasingly be used as an eligibility criteria. This would be necessary to continue services called for under the federal-provincial arrangements for criminal legal aid.

Access to legal aid is also influenced by client problem-solving strategies and patterns of referral. There are strong professional and

community referral networks leading those with pressing legal needs to NSLA offices. Client preferences for legal counsel do not act as a barrier to legal aid. Most clients preferred representation by NSLA staff lawyers. The reputation of NSLA is very well established at both the professional and community levels. This facilitates access to legal aid for those with clearly defined legal needs.

III. THE WORK OF NOVA SCOTIA LEGAL AID

The work of NSLA is reviewed in terms of both scope and quality. The scope of services reflects the patterns of access just discussed as application decisions create NSLA's caseload. The quality of work is assessed using client, professional, and staff perceptions of quality as well as actual case strategies and outcomes. The strategies and outcomes also determine NSLA's over-all impact on the justice system.

NSLA was the only legal aid plan in Atlantic Canada providing a comprehensive range of legal services on a province-wide basis during the evaluation period 1979-82. The evaluation case analysis showed a caseload consisting of 47 per cent criminal law matters, 34 per cent family, and 18 per cent other civil or administrative law matters.

Approximately 50 per cent of staff lawyer time was given to criminal law matters. There were important differences between full service, minimal service (advice only), and duty counsel cases. The average caseload per lawyer was 290 full-service cases per year. It was 360 cases per year when minimal service cases were included. One third of full-service cases showed case times of one hour or less. Minimal service cases were defined as those with 20 minutes or less time and no activity other than advice.

The several issues concerning NSLA's scope of services were (1) the need to better capture the full record of the work, distinguishing type of cases, (2) the need to review the area of duty counsel in which NSLA does considerable work with little formal recognition, (3) the largely reactive nature of NSLA's caseload, and (4) options for public legal education and law reform activities within NSLA's mandate. The criminal law coverage specified in the federal-provincial agreement is clearly being met.

NSLA staff lawyers are delivering a high quality legal service in criminal, family, and administrative law. The standards of quality are those of the Nova Scotia Barristers' Society -- what lawyers expect competent lawyers to do in comparable legal situations. Both professionals from NSLA's immediate working environment and the general membership of the Bar consider NSLA lawyer's work to be equal to or better than other lawyers in their region. Client satisfaction with the quality of service and with case outcomes is also high. Areas of criticism were not system-wide, were not related to the staff-lawyer system of delivering services, and are susceptible to remedial strategies by NSLA administration and staff.

The over-all patterns of case decisions clearly show that staff lawyers are pursuing a balanced criminal practice. The level of guilty pleas is comparable to that of other legal aid plans. Clients did not suggest any lawyer pressure to plead guilty. The plea and election decisions taken by NSLA lawyers with their clients are making a major contribution to both the quality of justice in and the efficiency of Nova Scotia courts.

The over-all impact of NSLA upon the justice system was seen as very positive. The most frequently mentioned contribution to Family Courts was the restoration of a balance of resources between parties, especially when one party is the province acting through its agencies.

IV. THE ADMINISTRATION OF NOVA SCOTIA LEGAL AID

From 1977 to 1982 the NSLA staff size, office locations, and range of services have remained essentially the same. During that same period, however, the NSLA administration has had to confront changes in several areas. The NSLA staff maintained a commitment to the plan, stayed, and become increasingly senior. The police, prosecutorial, and court systems of Nova Scotia expanded, generating new demands for services. The resources to be administered remained essentially the same; the environment within which NSLA delivers its services continues to change in many ways. The evaluation review of administration dealt with management practices and program finances.

A. Nova Scotia Legal Aid Management Practices

Policy management is an assignment of the NSLA Commission. The provincial government has significant statutory powers of appointment, direction, and funding such that the Commission is afforded little insulation from possible intervention. Especially the directives powers of the Attorney General are inconsistent with the principles of an independent Commission. Until 1982, however, the Commission's independence was threatened more by neglect -- the neglect of not filling Commission vacancies, including the appointment of a Commission Chairman.

The recently, fully-appointed Commission can represent NSLA in political, professional, and community circles. NSLA staff and justice system professionals affirmed its role in presenting a "legal aid perspective" on a variety of fronts.

The day-to-day program administration is the work of the Executive Director, three Deputy Directors, a program administrator, an administrative secretary, and senior lawyers in each NSLA office. The areas of responsibility for the deputy director and senior lawyer positions have not been clearly stated and communication through the system has been minimal. This results partly from the de-centralized structure of regional offices which, in some ways, has been a strength of the plan. NSLA would, nonetheless, benefit from a more clearly articulated administrative structure, especially in the assignments for the deputy directors and office heads.

A staff guide is recommended to communicate program priorities, policies, and procedures to NSLA legal and secretarial staff. A Newsletter could also assist in communication to staff, the Commission, and other interested parties.

Many NSLA lawyers have viewed legal aid as a career, a commitment. The evaluation research concludes that seniority, specialization, and experience are an asset to the program and should be encouraged in the context of a reasonable level of staff turnover. The restraint experience of the past year has de-stabilized some staffing patterns.

Recruitment of new lawyers, when vacancies can be anticipated, should involve open advertisement and should include the respective Office Head in the review process. Staff evaluation should be implemented on an annual basis. Initial appointments should be probationary and be concluded with a performance evaluation.

The present classification and salary scheme, as specified in the NSLA regulations and existing during the evaluation period, was sound within the context of a professional organization which does not operate on a fee-for-service basis

The evaluation analysis argues that NSLA is currently understaffed and requires up to 12 additional lawyers from the present 31½ full-time equivalents to provide basic and qualitatively equal services across the province. Halifax, Sydney, Truro, Amherst, and Kentville office areas most clearly require additional lawyers.

NSLA cannot adequately capture, describe, or analyze its legal services with its present information system. Significant improvements can be achieved without major expenditures or new technology, but both could produce the most satisfactory option in management information systems.

B. Program finances and costing

The process of zero-based budgeting as applied to NSLA with the context of the provincial Attorney General's budget puts in question the independence of the NSLA Commission's work. Regardless of whether there is a breach of priorities, there is an appearance of such when NSLA programs are prioritized within the over-all program of the Attorney General.

The year 1982 brought a radical change in NSLA's budget. Provincial budget cuts had a major impact upon staffing and services delivered. At the same time, the availability of new Federal monies for civil legal aid increased total Federal support for legal aid services by 74 per cent over the 1980-81 year. In addition, Health and Welfare Canada accepted a sizeable retro-active claim for civil legal aid delivered from 1877 through 1981.

The recent budgetary decisions demonstrate the bluntness of the existing federal-provincial agreements as policy instruments. The

provincial financial restraints came in complete disregard of the new Federal initiatives in cost-sharing civil legal aid.

The costing of legal aid services was done using "full time" costing. For 1981-82 this figure came to \$37.07 per lawyer's hour. These costing levels were comparable to those reported in a recent Quebec Legal Aid evaluation, and were lower than those reported in British Columbia and New Brunswick studies.

There is considerable professional pressure to increase the hourly rate and tariff for certificate cases. The current fee schedule was introduced as early as 1972. The current hourly rate is \$25.00. The Full Time Costing figure might be used as a guide for revising the certificate fee schedule, following the current period of restraint.

Three options for additional revenue derived from clients were considered and none were thought promising in terms of significant potential revenues. Research and experience in other provinces has documented the administrative difficulties and the potential deterrent effect of user fees. Increases in the client income distribution could be obtained within existing eligibility guidelines without reaching the point at which partial fees would be appropriate.

V. CONCLUSIONS

Through both periods of criticism, neglect, and quiet the Nova Scotia Legal Aid plan has continued to deliver quality legal services on a province-wide basis. The de-centralized office structure has limited the spill-over effects of problems when they occurred. NSLA lawyers have serviced with a community-focused sense of purpose. As individual lawyers, they were also guided by their own sense of professional responsibility.

NSLA has destroyed several common myths about legal aid services. The clients, in the main, are highly satisfied with the services and with the individual lawyers. The professionals working daily with NSLA and the private bar, in general, both strongly affirm NSLA's presence and contribution to the justice system and give staff lawyers high marks for performance. The staff lawyers are experienced lawyers, many operating with a long-term commitment to legal aid practice. The evaluation research has documented the over-all high quality of services rendered by NSLA lawyers. The plan is benefitting from the experience of its lawyers and receiving on a province-wide basis professional recognition for its work and major contributions.

The evaluation has generated a wide range of baseline information regarding the size and distribution of caseloads, the nature of clients, client eligibility, and legal needs. It has also sorted out the ongoing information requirements of the system and assessed the challenge of implementing changes in the NSLA management information system.

The evaluation brings forward concerns for the continuing development of NSLA staff lawyers. The research affirms the benefits of experienced lawyers and counters the myth of legal aid lawyers as young, inexperienced, and short-term. In the coming years, the Commission should aim to strike a balance between moderate levels of staff turnover and career development opportunities within NSLA. In times of restraint, career development opportunities are probably even more important -- important enough to trade off quantity of services for quality of services and staff development.

A final evaluation concern is for the independence of the NSLA Commission and its ability to serve its mandated functions. The long periods of Commission vacancies, the absence for a period of a Chairman, and the resulting direct working relationships between NSLA and Attorney General administrators pre-empted the policy and program planning function of the Commission. These conditions eliminated the buffer against interference that was the very reason for an independent Commission.

ACKNOWLEDGEMENTS

Our proposal research for this evaluation began in the Fall of 1979. The Federal Department of Justice was represented by Avrim Lazar and Paul Lordon; the Nova Scotia Legal Aid Commission by F. B. (Ted) Wickwire, Chairman, R. Gordon Murray, and Albert Bremner; and Evaluation Research Associates by Peter Aucoin, Richard Conway, and Dale H. Poel. Each individual made a unique contribution to the feasibility study, Nova Scotia Legal Aid: A Review and Proposal for Evaluation (1980) and to the direction of the evaluation research.

Peter Aucoin assumed primary responsibility for the Management and Organization study and assisted in some staff interviewing. Richard Conway contributed to the design an interim pilot project, reported in Legal Aid Applicants, Application Criteria and Application Outcomes (1980), and continued with the evaluation team, working in the design of the Client Survey questionnaire and contributing to the Management and Organization study.

Carol Charlebois joined Evaluation Research Associates in the Fall of 1980 as a full-time Senior Research Associate. She assumed research management responsibilities for the case analysis project and client interviewing, shared in the staff interviewing, contributed to our discussion of management information requirements, and carried out the analysis and writing of the NSLA Staff Interviews and Case Outcome, Time and Costing Analysis project papers.

Stephen Strople joined as a research assistant. He both found and prepared for analysis the demographic and justice system information for the Legal Needs study. He also developed the Probationers, Inmates, and Women Offender Surveys that were part of the Legal Needs study. In this he received excellent cooperation from the Nova Scotia Correctional Services of the Department of the Attorney General.

Dieter Hoehne contributed to the design of the Nova Scotia Lawyers' questionnaire, put the questionnaire into the field, and brought the findings to an analysis-ready stage.

Debra Kirkpatrick, Sheila Faure, Dale Trood, Christine Hoehne, Paul Burdette, and Clare MacIntosh also served as research assistants in several project areas. Kirkpatrick and Faure made special contributions in coordinating the data coding process of the case analysis project.

All of this work was carried out in the context of extensive collaboration between the team participants and the NSLA administration, especially R. Gordon Murray, NSLA Executive Director, and Albert Bremner, Deputy Director. Both individuals made major substantive contributions to the evaluation research and also facilitated its administration. The cooperation of NSLA staff lawyers and secretaries and the client interviewing conducted by NSLA articled clerks was also both very necessary and greatly appreciated.

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Special thanks must be given to Dalhousie University for providing the physical space, the administrative support, and interim cashflow to sustain the project. Dalhousie also supported the principal investigator with a sabbatical leave during the 1981-82 academic year. Its Computer Centre subsidized the project's computer usage and provided programming assistance.

Norinne Goodfellow Burgess served as Administrative Secretary to the project and was assisted in wordprocessing by Shirley Engbers. Norinne's administrative skills were essential to the flow of the work and the project's financial accountability.

A final word of deep appreciation must go to Carolyn Poel, my wife, for living with the domestic and professional impact of this project over its three year duration.

INTRODUCTION

The Federal Department of Justice and the Nova Scotia Legal Aid Commission have collaborated to implement a comprehensive evaluation of the legal aid system of Nova Scotia. The first phase was a feasibility and planning study which is reported in Nova Scotia Legal Aid: A Review and Proposal for Evaluation (1980). This study focused the evaluation on seven areas of concern: client eligibility, scope of services, program finances, the quality of services, access to services, NSLA management practices, and the impact of NSLA on the justice system. The central evaluation questions include:

- How is NSLA client eligibility determined and is legal aid accessible to eligible persons?
- Does the scope of services given conform to the provincial mandate, the objectives of the federal-provincial agreement, and the legal needs of potential clients?
- What is the quality of service provided by the staff lawyers? Does it meet professional standards and client expectations?
- What is NSLA's impact upon the justice system, in terms of both quality and efficiency?
- Does NSLA have appropriate management tools and practices to adequately interact with other agencies and to administer its own work?
- What is the role of the NSLA Commission? Is it sufficiently independent from the government of the day to satisfy the norms of legal justice and to serve, if necessary, as an advocate of NSLA within governmental and professional circles?

This report brings forward answers to these questions based upon the results of a multi-project evaluation of legal aid services in Nova Scotia. The evaluation began in the Fall of 1980 and consisted of seven projects. The projects included:

- the NSLA staff interviews,
- a study of legal needs, eligibility criteria, and client population estimates,

- a case outcome, time and costing analysis,
- interviews with professionals from NSLA's immediate working environment,
- a survey of Nova Scotia lawyers,
- a client survey, and
- a management and organization study.

The material from this research was used to address the areas of concern expressed in the evaluation proposal. The evaluation report summarizes much of this preliminary analysis and consists of three substantive chapters, plus conclusions. Chapter II, Access to Legal Aid in Nova Scotia, takes up questions of client eligibility, legal needs, and access to legal aid services. Chapter III, The Work of Nova Scotia Legal Aid, discusses the scope of NSLA services, the quality of those services, and NSLA's impact on the justice system. Chapter IV, The Administration of Nova Scotia Legal Aid, assesses NSLA's management practices and program financing.

The client group of the NSLA program is about equally divided between those with legal needs in criminal and civil law. In civil matters most work is in family law. Young people are a very important client group for NSLA. Just over one-half of all clients are under 24 years old. Seventy-one (71) per cent of criminally-charged clients are under 24. Family law clients are more likely between 21 and 40 years old. Criminally charged clients are more likely to be single and without dependents, but less likely to be receiving social assistance. About one-third of NSLA clients may be receiving social assistance and another one-third may be without income from any source.

How do these people qualify for legal aid services? How do they find their way to NSLA offices? Can NSLA provide services to those who financially qualify? These are questions of access to legal aid services.

II

ACCESS TO LEGAL AID IN NOVA SCOTIA

Access to legal aid involves more than the written regulations that spell out applicant eligibility for NSLA legal services. The application of criteria in the local offices, the attitudes toward eligibility by other system professionals, and citizen awareness and problem-solving strategies can also determine the over-all access to legal aid. Access to legal aid is discussed from two perspectives: (1) access as determined by formal eligibility criteria, their application, and their relationship to the distribution of legal needs, and (2) access as influenced by client problem solving strategies and community and professional referral patterns.

A. Client Eligibility and Legal Needs

From the first perspective our concerns can be focused by the following questions:

- What are the NSLA eligibility guidelines and what range of Nova Scotia residents have incomes within the financial eligibility levels?
- What is the relationship between the distribution of eligible persons and the distribution of legal needs within Nova Scotia?
- How are the eligibility criteria assessed by system professionals and NSLA clients?
- Should the current eligibility criteria be changed? Are the criteria too restrictive or too generous?
- Does NSLA have sufficient staff to respond to the legal needs of financially eligible persons?

The NSLA regulations specify the Nova Scotia Department of Social Services' levels of social assistance as the basis for legal aid eligibility. The financial eligibility scale used during the evaluation period (1979-82) is given in Figure 1.

FIGURE 1

THE NSLA FINANCIAL ELIGIBILITY CRITERIA COMPARED WITH CANADA ASSISTANCE PLAN INCOME AND FAMILY SIZE GUIDELINES

	NSLA (Revised January 1981)			CAP (1980-81)
	A	B	C	
One Adult	\$393.00	\$493.00	\$624.00	\$629.00
and 1 Child	485.00	685.00	846.68	791.00
and 2 Children	578.00	778.00	970.64	958.00
and 3 Children	644.00	844.00	1,058.64	1,089.00
and 4 Children	710.00	910.00	1,146.64	1,209.33
and 5 Children	776.00	976.00	1,234.64	1,330.00
Two Adults	532.00	732.00	909.32	795.00
and 1 Child	625.00	825.00	1,033.32	962.00
and 2 Children	691.00	891.00	1,121.32	1,092.00
and 3 Children	757.00	957.00	1,209.32	1,213.00
and 4 Children	823.00	1,023.00	1,297.32	1,333.67
and 5 Children	889.00	1,089.00	1,385.32	1,455.00

The three column range of figures begins with the foundation level of provincial social assistance (Column A) and goes to a maximum level (Column C) at which a person with income might still be in a position equivalent to a recipient of social assistance.

How large is the potential client population for the NSLA system based on these eligibility ranges? The answer is striking. An analysis of Nova Scotia population and incomes shows that 20 per cent of Nova Scotia's population is included at the lower eligibility range (A) and 40 per cent at the upper range (C). Higher unemployment in 1982 and 1983 have undoubtedly increased these percentages. The Halifax office area has the largest absolute number of eligible persons, but has the lowest percentage of its population, 26 per cent, at the C level. The Yarmouth and Amherst offices have over 50 per cent of the area's population within the C range of NSLA eligibility.

Clearly, not all these individuals have pressing legal needs or, if they did, the NSLA system would be overwhelmed with demands for service. The key question for the application of eligibility criteria and for an assessment of required program resources is not, in the end, how many persons are financially eligible, but how many of those eligible persons have legal needs which fall within the NSLA mandate. The NSLA offices' annual caseloads represent, on the average, about five per cent of persons financially eligible in a region.

The correspondence between persons financially eligible and levels of legal need is not a one-to-one relationship. The Legal Needs project presented an analysis which developed a "legal needs" measure based upon the interrelationship of 35 population and justice system indicators. The items were indicators of low-income population, levels of social assistance, criminal and family court activity, and police activity. They supported the creation of a summary measure of legal needs as distributed across Nova Scotia counties. A larger proportion of those financially eligible from the urban Halifax area and a smaller proportion from rural Nova Scotia have legal needs serviceable by NSLA.

The Legal Needs distribution is a better approximation of the distribution of NSLA clients and requirements for legal services than the distribution of persons financially eligible. The substantive basis of the Legal Needs score emphasizes the financial characteristics that define legal aid eligibility and emphasizes the legal matters which are predominantly the legal needs of the poor. The distribution of this score influences the implementation of NSLA eligibility criteria and is useful to project required staffing levels.

NSLA employs a multi-dimensional needs test to determine applicant eligibility. Both financial and legal case characteristics can be involved in the eligibility decision. The area of legal need may intervene to disqualify an applicant when caseload pressures define the legal need as not "sufficiently serious" or when the area of law is seen as one in which the direct action of a lawyer will not benefit the individual.

The review of the eligibility criteria and their application included the following conclusions:

- The pegging of NSLA eligibility criteria to provincial social assistance support levels has been a useful way of keeping the criteria apace with inflation.
- Because NSLA eligibility criteria include both income, area of law, and seriousness of case, eligibility decisions are shaping case distributions as well as the distribution of client incomes. Halifax, Bridgewater, and Kentville had a higher than average criminal law caseload. Other offices were above average in family or administrative law.
- During the evaluation period very few applicants were formally rejected. The province-wide average was nine (9) per cent rejected. Only one-half of these rejected applicants were rejected for financial reasons.
- At least 60 per cent of NSLA clients are not employed and a third are receiving some form of social assistance. During the evaluation period, there was a sharp drop in both applicant and client income at the \$800 per month level. This notching effect was short of potential maximum client incomes. It results, in part, from explicit eligibility decisions, but may also result from minimal publicity given to the financial eligibility criteria.

- Summary offense cases, primarily in the Halifax office area and "conflict" cases in family law constitute the major areas in which financially qualified applicants are denied services. The latter situation has seriously increased in the post-evaluation period as NSLA responds to financial restraints. In other areas -- reference to family or spouse's income, repeat offenders, and non-residents -- NSLA has unwritten guidelines which favor the applicant.
- Very few, if any, ineligible applicants are accepted by NSLA. The over-all distribution of NSLA client incomes is so low that no one could reasonably accuse NSLA of being too generous with their services.
- The minimum publicity given to the eligibility criteria both within NSLA's professional constituency and in the public at large has kept the range of applicant and client income levels well within the actual eligibility levels and has helped NSLA cope with significant caseload pressures.
- Most of NSLA's professional constituency, both those with a day-to-day working relationship with NSLA and the general membership of the Nova Scotia Barristers' Society, are satisfied with the existing eligibility criteria. NSLA clients also expressed satisfaction with the criteria.
- The existing NSLA staff resources are not capable of servicing the legal needs of financially eligible persons. There has been no major expansion of the plan during the past five years. The past year has seen a cut-back in staff. The analysis of legal needs and staffing requirements shows that NSLA should have 44 lawyers to provide the minimum, remedial services in criminal and family law. NSLA presently has 31.5 lawyers (allowing for the administrative duties of Directors).

Access to legal aid services is, in a formal sense, determined by the written regulations drawn up to define eligibility and the NSLA staff's application of these criteria. In an informal sense, other factors can just as critically influence the accessibility of NSLA to potential clients.

B. The Accessibility of Legal Aid Services

Client awareness and problem-solving strategies, informal community and professional referral patterns, applicant pre-conceptions of NSLA and preferences for legal services, and within system caseload pressures can all act as barriers to legal aid services.

The review of client problem-solving strategies, barriers to legal aid services, and caseload impact on accessibility came to the following conclusions:

- There are strong, important referral networks leading those with pressing legal needs to NSLA, both within the justice and social service systems and at the community level. The network operates with a minimum amount of detail concerning the eligibility criteria, but general understanding seems mostly correct. There was very little evidence of "pre-screening" of potential clients. The pre-screening that does occur results from a lack of specific eligibility information or anticipates area of law/nature of case restrictions operative in some regions, especially in Halifax.
- Client preferences for legal counsel do not act as a barrier to the utilization of legal aid. Very few clients, 11 per cent, reported going to a private lawyer before coming to NSLA. Most clients preferred representation by a legal aid lawyer. Some thought the choice did not make any difference. Only 19 per cent expressed a preference for a lawyer in private practice.
- Most clients are coming into contact with their NSLA staff lawyer at an appropriate point in their case. A few offices had above average first client contacts in court.
- Unrepresented defendants' perceptions of the efficacy of legal counsel can act as a barrier to receiving legal aid services. This is noted in the expression that "there is nothing a lawyer could do."
- In regions with a higher proportion of unrepresented defendants, some judges were satisfied if a defendant had had the "opportunity" to seek counsel and were less likely to insist on counsel before accepting a plea.
- Current NSLA office caseloads only partially explain patterns of access to legal aid. Lawyer attitudes and office management practices are seen as equally important in determining waiting times and access to NSLA offices.

Should the existing eligibility criteria be changed? In a certain sense this question never has to be asked within the framework of existing NSLA regulations. The most common concern for eligibility criteria is that they not become outdated by inflation. NSLA regulations state clearly that an applicant is eligible for legal aid when he/she "has income equal to or less than that which he would be entitled to receive under Provincial Social Assistance." or would have his income reduced by the cost of legal services to such a point that the individual would become eligible for social assistance. This means that the eligibility levels for NSLA increase as Nova Scotia's Department of Social Services increases its level of support. The Department does this regularly.

Theoretically, individual NSLA lawyers could automatically respond to changes in Provincial Social Assistance levels by re-calculating the respective changes in the NSLA eligibility table. This has not happened in practice. The 1981-82 Annual Report shows "March 31, 1982" eligibility guidelines that were revised in January, 1981. If NSLA will make annual adjustments to their existing schedule and if they continue to apply a concept of "net" income, they will capture in their client population all those unable to afford services from lawyers in private practice.

Should the criteria be updated? In principal "yes", but not without additional staffing capacity to respond. The current distribution of client incomes is still below the range of existing criteria. Increased client populations could easily result from more systematic public information concerning legal aid eligibility. Existing staffing levels cannot service the legal needs of NSLA client populations without significantly redefining or restricting the mandate of the plan.

III

THE WORK OF NOVA SCOTIA LEGAL AID

This section reviews the work of Nova Scotia Legal Aid in terms of the scope of services and the quality of those services. In the first sense, we assess the scope of services rendered, analyze the salient characteristics of the NSLA caseload, and discuss several issues concerning the scope of services. In the second, the quality of NSLA's work is assessed using client, professional, and staff perceptions of quality and actual case strategies and outcomes. The section concludes with an assessment of NSLA's impact on the justice system.

A. The Scope of NSLA Services

The Legal Aid Act (1977) states very broadly that "legal aid may be granted to a person . . . in respect to any proceeding or proposed proceeding, including an appeal" in all courts. Information from the evaluation's case analysis showed that 47 per cent of NSLA's caseload consisted of criminal law matters, four (4) per cent of which involved provincial statutes. Family law constituted 34 per cent and civil matters 18 per cent of the NSLA caseload. Appeals were only one (1) per cent of all NSLA cases.

A review of case time showed NSLA lawyers spent approximately 50 per cent of their time on criminal law matters. The system-wide average from the case analysis time records and a one-month daily time log was very close to early, less systematically collected estimates of case time. The figures used in previous submissions to the Federal government are supported as system-wide averages by the time accounting available from the evaluation projects.

There are important differences between the range of services provided to NSLA clients. Until the evaluation period there was little distinction made in NSLA's formal reporting between clients receiving full legal services, minimal service clients receiving "advice only", the penitentiary inmates receiving services from the system's one para-legal, and duty counsel clients in Magistrates Court.

One-third of the NSLA cases, not including minimal service cases, showed a recorded time of one hour or less. Twenty-three (23) per cent of the criminal cases recorded one hour or less; 37 per cent of the family and 55 per cent of the civil law cases came at or under the one hour mark.

Information was presented on the distribution of the NSLA caseload figures across the nine offices. The average office caseload/lawyer figures were considerably higher than that reported in the British Columbia public defender study, but were lower than

caseloads reported in a recently published evaluation from Quebec Legal Aid. NSLA staff lawyers had an estimated annual caseload of 290 fully serviced clients in 1979-80. The addition of minimal service cases (20 minutes or less case time) brings this to 360 cases per lawyer annually. Finally, when an estimated of rejected applicants is added, the estimated average increases to 410 applicants per lawyer per year. We noted that Quebec's higher caseload figures are partially explained by shorter average case times in criminal law matters.

NSLA office caseloads are not necessarily a direct response to levels of over-all legal need, but lower legal needs in criminal law areas. Higher caseload figures tended to result from larger number of family and civil law cases involving shorter case time. The staff lawyers in offices with higher average caseloads are not putting in longer hours than other lawyers, but are completing more shorter cases. The shorter cases usually do not involve an appearance. For cases with appearances, family law matters take more time than criminal law cases.

Several issues concerning NSLA's scope of services were discussed. The first issue is the simple need to count the work that NSLA does in a way that is accurate and comprehensive. The quality of current case counting limits the NSLA Commission's ability to plan for the future or may have limited their ability to account for the past.

The second issue is a specialized example of the larger "counting" issue. NSLA is presently making a major contribution to the Nova Scotia justice system through the provision of duty counsel services and this work is not formally recorded. The activity is difficult to capture because of its spontaneous nature. Recording this work has not been a priority of the NSLA administration.

The third issue is whether NSLA takes a reactive or a proactive approach to case intake and scope of services. Almost all of NSLA's legal services consist of individual cases presented by individual applicants. Only a few offices are shaping their caseloads by applying

area of law priorities. Most offices are responding to legal needs as they are presented through individual applications.

The areas in which NSLA could take a proactive stance are usually shared responsibilities with other members of the justice system. Within the Barristers' Society there was strongest support for NSLA work in law reform and public legal education. There was less, but still substantial support for public interest advocacy and class action suits. Lawyers favoring greater NSLA initiative in these areas saw the current absence as a weakness in NSLA range of services. Client support, as in the Lawyers' Survey, was strongest for a NSLA contribution to public legal education.

We concluded that public education services are a potentially important contribution in both the short and long-term. The short-term situation of financial cut-backs threatens services in family and civil law areas and the publication of information could be an important alternative to legal counsel, if financially eligible persons must go without legal counsel.

B. The Quality of Work Done by NSLA

The standards for assessing the quality of NSLA's work are the practicing standards of the Nova Scotia Barristers' Society -- the level of quality that lawyers themselves would expect from a competent lawyer with a similar case.

1. Perceptions of quality

Professionals with day-to-day working relationships with NSLA lawyers clearly recognized the contribution to the quality of NSLA work resulting from NSLA practice specialization. There was differing opinion concerning the amount and quality of case preparation, but there was common agreement that NSLA lawyers are as or more prepared than lawyers in private practice with similar case work. Where comparisons in both criminal and family law were made, most of NSLA's professional constituency believed that the quality of services rendered by NSLA lawyers was equal to or better than that provided by the private bar.

Some note was made of staff fatigue or "burn out" and its impact upon the quality of services. These responses, however, were not volunteered system-wide. Some professionals suggested that NSLA client characteristics, specifically the ability to give instructions and take advice, can have an impact upon the quality of services possible.

The assessment by members of the Barristers' Society conformed to the positive assessment generally noted in the professional constituency interviews. Only six (6) and eight (8) per cent, for criminal and family law areas respectively, claimed that NSLA staff lawyers were "not as good as other lawyers in the area." Most Nova Scotia lawyers said NSLA staff lawyers had skills equal to or better than their regional peers. Seventy-two (72) per cent considered the "quality of NSLA staff lawyers" as a strength of the NSLA plan.

An overwhelming majority of NSLA clients, 89 per cent, expressed satisfaction with the quality of work performed by their staff lawyer. Most clients described their lawyer as helpful and most were satisfied

with the information provided them concerning the progress of their case.

These responses clearly indicate professional respect for the work of NSLA staff lawyers and satisfaction with the quality of services, a satisfaction which is concurred with by a large majority of the plan's clients. The criticism noted in the review of quality of services are either not endemic to the NSLA plan or a staff lawyer system or are counter-balanced by positive features. The areas of criticism, largely questions of case preparation and staff lawyer "burn out," are susceptible to remedial actions on the part of the NSLA administration and staff.

The perceptions of quality are important because they represent the application of the legal profession's standards to the work of NSLA lawyers. The actual work, however, can also be assessed by its own record. We reviewed the patterns of initial case decisions, case activities, and case outcomes.

2. Quality -- strategies and outcomes

NSLA lawyers entered a guilty plea for their clients in 70 per cent of the criminal law cases reviewed. This percentage was lower for single charge cases and higher for cases involving three or more charges. The average was also higher for cases involving charges of breaking and entering.

These levels of guilty pleas are higher than those reported in either New Brunswick or British Columbia, although the percentages of guilty pleas for multiple charges in British Columbia and Nova Scotia are close. The British Columbia Public Defender project reported 68 per cent guilty pleas for public defender cases involving two (2) or more charges. The Nova Scotia percentages are influenced, however, by the inclusion of some duty counsel work. With an estimate of duty counsel removed, the Nova Scotia figure comes into the 60 per cent range and is closer to that reported in the other two provinces. About one-fourth of

NSLA criminal cases proceed to trial. This was comparable to the British Columbia experience.

Responses in the Client Survey did not suggest any pattern of pressure from NSLA lawyers with respect to plea. Admissions of guilt and practical assessments of the lack of advantages in going to trial were most often given by clients as reasons for a guilty plea.

The over-all patterns shown in initial case decisions suggest that NSLA lawyers are pursuing a balanced criminal practice. The number of cases going to trial is comparable to other legal aid experiences. Clients did not complain of lawyer pressure to plead guilty. Staff lawyer reasons for going to trial reflected a mixture of instructions from their clients and lawyer determination of case merit.

Most NSLA criminal cases do not have a right to a preliminary hearing and in most of those cases in which the right was present, NSLA staff lawyers did not exercise that option. The plea and election decisions in NSLA cases are making a major contribution to the efficiency of Nova Scotia courts.

Case times were lower than those reported in the British Columbia project, but longer than those reported by Quebec Legal Aid. Within the evaluation cases which required an appearance, criminal law cases averaged three (3) hours and 18 minutes and family law cases averaged four (4) hours and 30 minutes.

The amount of case time given to client interviewing and case preparation is not high and averages one (1) hour and 24 minutes and two (2) hours and 12 minutes for criminal and family law cases, respectively. Almost all NSLA clients, however, felt they had "enough time to explain their situation or legal need."

In most criminal law cases NSLA lawyers reported some contact with Crown prosecutors. The significant office differences in this pattern were attributed to both lawyer skills and caseload pressures.

Negotiations with the Crown were most successful in cases leading to a stay or withdrawal of charges, next most successful where a guilty plea was entered, and least successful in cases going to trial. A large majority of clients who reported out-of-court settlements in their cases were satisfied with their lawyer's work.

Case time consisting of travel to and waiting at court was recorded on most NSLA cases. There were strong regional patterns on these two activities. Three offices serving courts spread over large geographic areas recorded over one (1) hour traveling time for 82 per cent or more of their cases. The differences for travel time were greater than for waiting time. Most offices reported plausible amounts of average waiting time.

The outcome for most NSLA criminal cases is some sentence because 81 per cent of NSLA clients either plead guilty or were found guilty. Forty-four (44) per cent of NSLA case trials ended in acquittal. The decision to go to trial did not result in more severe sentencing.

Most criminal and family law clients were satisfied with their case outcome. The resources of their NSLA lawyer and the facts of their case combined to be the two most common client explanations for case outcome.

3. The impact of NSLA on the justice system

The over-all impact of NSLA upon the justice system was commonly seen as positive. NSLA's immediate professional constituency saw NSLA contributions to both court efficiency and the quality of justice. Negative impacts were volunteered in the areas of plea and election and re-election, but the complaints were not system-wide and were frequently lodged against reasonable practice strategies. Other professionals complemented NSLA lawyers for careful use of plea and election decisions.

The most commonly mentioned contribution to Family Court was a restoration of balance between parties. Along with that balancing comes an improvement in the position of the judge and a sense of confidence and justice for clients. NSLA's presence in Family Court has ended the monopoly of professional resources held by provincial agencies.

NSLA clients tended to have favorable views towards the justice system and NSLA lawyers. Most said their views had not changed as a result of dealing with their legal problem through NSLA. Those whose opinion did change, about 27 per cent, were evenly divided between those whose perspective towards law and lawyers had become more positive and those whose opinions had become more negative.

IV

THE ADMINISTRATION OF NOVA SCOTIA LEGAL AID

The management practices and program finances of Nova Scotia Legal Aid constitute the two concerns of this section. Since its founding in 1971, NSLA has changed from administration by the Legal Aid Committee of the Nova Scotia Barristers' Society to direction by an independent Commission. It has had only two Executive Directors.

In the first year under the Commission NSLA's budget was near 1.5 million dollars; in the Fifth Annual Report of the Commission, 1981-82, expenditures approached three (3) million dollars. The increases in expenditures do not represent any significant program growth. They have simply kept NSLA within range of inflation.

Staff size, office locations, and the scope of services have remained essentially the same over this period. The 1977-78 Annual Report shows 35 lawyers working in nine offices. That configuration, with the addition of one more lawyer, remained in place through 1981. The 1981-82 Annual Report shows the first growth in staff, up to 41 lawyers working in 10 offices, but the reporting was pre-mature. NSLA was forced to respond to the province's call for financial restraint. Staff cuts in 1982 have brought NSLA below its 1977-78 starting point.

The NSLA administration has had to confront change, even while its own staffing, office, and service configurations remained essentially the same. Although staff size remained essentially the same, NSLA lawyers remained with the plan and NSLA benefitted from an increasingly senior staff. The seniority also created budgetary pressures as salaries increased.

The administration has also had to respond to the expansion of the police, prosecutorial, and court systems of Nova Scotia. New courts demand legal aid services. Increases in RCMP staff increases the number of charges laid. The Department of the Attorney General appointed a

new, full-time prosecutor for a recently created Halifax-area Magistrates Court the very month the same Department announced budgetary cuts for NSLA. The resources to be administered, then, have remained essentially the same since 1978; the environment within which NSLA must deliver its services continues to change in many ways.

A. Nova Scotia Legal Aid Management Practices

The place of the NSLA Commission in policy management, NSLA decision-making and administration in program management, NSLA resource management, and the management information system requirements for NSLA management in these three areas are assessed here.

1. Policy management: the place of the Commission

In the Fall of 1977 the Legal Aid Act created the NSLA Commission as the directing body of the legal aid plan. The Commission consists of 15 directors appointed by the Governor-in-Council on recommendation of the Attorney General. Seven (7) of the 15 directors are from individuals nominated by the Nova Scotia Barristers' Society. The Attorney General appoints the Chairman who counts as one of the directors.

The primary justification for an "independent" Commission lies in the need for independent and uncompromised advocacy by the NSLA staff lawyers, in both fact and appearance. The provincial government, however, has significant statutory powers of appointment, direction, and funding. The statutory powers held by Cabinet are such that the Commission is afforded little insulation from possible intervention. Especially the directive powers given to the Attorney General are inconsistent with the principles of an independent Commission. The Commission cannot ignore the financial position of a government, but policy and program decisions should not be made de facto by budgetary cuts nor should the Attorney General have such a direct, potential say in the management of NSLA. We return to this issue below in our discussion of program finances and budgetary practices.

For the first five years, and especially during the period from 1979 into 1982, the independence of the Commission was threatened more by neglect than by direct policy or program interference by the Attorney General. The power of appointment possessed by Cabinet is appropriate without our structures of government. What was experienced, however,

was a gross, if benign, neglect of this appointment responsibility. Commission vacancies were not filled and at two times for unreasonable periods the Commission existed without a duly appointed Chairman. The capacity to recruit new and active members would be enhanced by providing a per diem remuneration for all directors, not just the Chairman, and by re-structuring the Commission internally to encourage a creative role in performing its statutory functions.

A more active Commission could also represent NSLA to wider political, professional, and community circles. Both NSLA staff lawyers and justice system professionals called for a greater articulation of a legal aid perspective in Nova Scotia. The Commission was designed for such a role and would enhance the independence of NSLA by taking up the assignment.

2. Program management: decision-making and administration within NSLA

The day-to-day administration of NSLA is the work of the Executive Director, three Deputy Directors, a program administrator, and administrative secretary, and senior lawyers in the NSLA offices.

NSLA has reached a size and complexity of operation which requires more clearly articulated administrative responsibilities and division of labor. Changes could facilitate policy management initiatives to support the planning, evaluation, and budgeting roles of the Commission and program management initiatives to reduce the span of control required by the Executive Director. The first can be achieved by clarifying the assignments of the three Deputy Directors. The second can be achieved by redefining the position of "office head" in each NSLA office.

The undifferentiated assignments at the director level mean that the actual work done by the directors overlaps. Greater support to the Executive Director can be achieved by delineating areas of responsibility for each Deputy Director. We offer as a suggestion a management structure that would include:

the Executive Director,
Deputy Director: Planning and Evaluation,
Deputy Director: Civil Legal Aid, and
Deputy Director: Criminal Legal Aid.

The development of administrative assignments for these positions would serve to link the Commission and its administrative staff in a manner that would provide for increased specialization in the responsibilities of the senior officers. At the same time, it would clarify for NSLA staff lawyers the responsibilities of program administrators who will be asking them for information or for participation in NSLA activities. The costs associated with these changes would depend upon the proportion of legal and administrative work in the assignments of the Deputy Directors.

The second response to the task of program management calls for a reduction of the span of control of the Executive Director. We suggest that senior lawyers in each office be formally recognized as Office Heads and that Office Heads participate in a Consultation Committee. The Consultation Committee would meet regularly and would discuss the full range of management concerns, including proposals, requests for information, or complaints from the Commission and the NSLA legal and support staff. It would formally integrate the NSLA offices into the administrative and decision-making management process. It would be advisory to the Executive and Deputy Directors.

The primary formal communication link between NSLA administrators and staff lawyers has been the Annual Staff Meeting. We consider the Staff Meeting under-utilized as a mechanism to encourage staff morale and identity with NSLA or, more importantly, to contribute to NSLA initiated continuing legal education. We encourage the Commission to maintain the Annual Meeting as a budgetary priority.

At present NSLA does not have a formal "staff guide" which details program priorities, policies, and procedures established by the Commission and NSLA administration. The present level of of informality

does not support sufficiently program management. We recommend the preparation of a NSLA Staff Guide. The Staff Guide will serve to improve operations through the clarification of NSLA policies and procedures. In addition, it would assist in acquainting new staff to NSLA, promoting consistency and efficiency of operation across the NSLA system, noting areas in which local discretion is an option to province-wide consistency, and setting clear expectations regarding job performance.

Another suggestion for within system communication is a Newsletter for staff, Commissioners, and others interested in legal aid. The development of a Newsletter will require additional resources. Nonetheless, there are potential benefits. A common theme in our staff interviews was that NSLA was the largest group of lawyers in the province and that more advantage should be taken of this fact. To do so, the "firm" will have to communicate with itself in a more systematic fashion.

The federal-provincial agreement requires that "all reasonable steps be taken to give publicity to the availability of legal aid." The first two periods of legal aid (1972-77 and 1977-82) each took a turn at preparing an information brochure. NSLA should not ignore the needs for printed program information, even in times of restraint and already substantial caseload levels. The most recent brochure was a good return to public information concerns. It should be kept in print, more widely distributed, and revised as necessary.

3. Resource management within NSLA: staffing and offices

The management of NSLA's personnel resources involves three processes: (1) the recruitment and appointment of new staff, (2) the determination of the personnel complement for both legal and support staff in each office, and (3) the evaluation of personnel.

The NSLA administration takes a generalist perspective to legal training. It has preferred "good" lawyers as opposed to "poverty law"

or "legal aid" lawyers. Most staff lawyers share that view. The actual process of recruiting legal staff is controlled by the central administration. We have heard contradictory assessments of the process. Lawyers in some regional offices have complained about staff hiring decisions taken without adequate consultation with existing staff. NSLA administrators claim to have asked for local initiative or involvement with no significant consequences. At various times and places we have concluded that both conditions have prevailed.

Lawyers recruited to NSLA have tended to stay until the threats of recent financial restraints and the experience of staff cut-backs. NSLA experienced only moderate staff turnover in the past five years. Two-thirds of the legal staff have served the Commission for six (6) or more years. This seniority is a strong asset for the plan, but also creates budgetary pressures as an increasingly senior staff receives higher salaries. We concur with the value attached to experienced lawyers and encourage the Commission to explore options for continuing legal education, special assignments, and flexible administration that will foster staff development and support quality legal services.

Within the present classification and salary schemes, however, we see no major alternatives which would respond to the seniority/salary ceiling concerns expressed by the NSLA administration. The salary and classification scheme, as specified in NSLA regulations, is sound within the context of a professional organization which does not operate on a fee-for-service basis. The beginning salary levels and promotions keep staff lawyers within the range of most lawyers in private practice with similar years of experience. As seniority increases, NSLA salary levels will more closely approximate the upper-levels of professionals in the provincial civil service and less the salaries of some, but not all, lawyers in private practice. The relevant salary comparison for senior NSLA lawyers, then, is with highly trained, professional civil servants up to the deputy minister level, not the private bar.

The career patterns and character of a legal aid practice combine to make staff evaluation a significant concern. Initial

appointments to NSLA should be probationary and be concluded with a formal performance evaluation. Performance evaluation of regular staff on an annual basis should also be implemented to single out clear, and likely infrequent, instances of unsatisfactory performance and to give formal recognition to meritorious staff performance.

The evaluation of support staff should remain a responsibility of the individual offices and be implemented by the Office Heads through an annual report form that would be retained locally. The NSLA Staff Guide should clearly state the system-wide expectations and the evaluation criteria for these positions.

Is NSLA currently over-staffed, under-staffed, or neither? We noted that many professionals we interviewed thought their NSLA office was over-worked and under-staffed. A significant number in the Nova Scotia Lawyers' questionnaire also recommended additional staff. Our analysis from the Legal Needs study finds that NSLA is under-staffed and requires up to 12 additional lawyers from the present 31½ full-time equivalents to provide the basic, comprehensive, and qualitatively equal levels of service across the province. Halifax, Sydney, Truro, Amherst, and Kentville office areas most clearly required additional lawyers to offer the scope and quality of services which represented Commission policy before the 1982 budget cuts. The Legal Needs analysis does not settle the question of NSLA staff size requirements, but it does establish the starting point of the discussion.

4. Management information systems

Can NSLA adequately describe itself to those seeking or requiring information concerning its work? Does currently retained information permit NSLA to adequately describe itself for purposes of policy, program, and resource management? The answer to both questions is, "yes, in part, but not completely."

The evaluation experience showed staff lawyer's skills and habits were not finely honed with respect to program management

information needs. In addition, staff attitudes towards "forms" and information gathering, with some exceptions, have been ambivalent. Acquired habits are difficult to change, but staff lawyers must come to see the benefits of information about the work of NSLA. NSLA administration must provide examples of the benefits of improved information.

Two clusters of information items are recommended. They can be drawn from a revised NSLA application form and a new case form. The forms would be completed by both staff lawyers and lawyers in private practice who have accepted a NSLA client. The case analysis experience suggests the need to distinguish between fully serviced client cases, minimal service cases, and duty counsel situations -- both for staff evaluation and for planning policy with respect to the scope of services. Only cases of fully serviced clients would be carried through to a case form.

Major improvements can be achieved in the NSLA information system without major expenditures or new technology. NSLA should review the information items recommended and come to an agreement on the essential items for their system.

B. Program finances and costing

This section reviews the current financial administration and budgetary practices of NSLA. This includes an assessment of developments in federal-provincial cost-sharing arrangements, a costing of legal aid services, and a consideration of alternative sources of revenue.

1. Current budgeting practices and Federal cost-sharing of legal aid

For administrative reporting and budgetary purposes to date, NSLA is one component organization of the Department of the Attorney General. The very process of zero-based budgeting as applied to NSLA within the context of the Department of the Attorney General's budget raises questions of the independence of the NSLA Commission and its work. Regardless of whether there is any breach of priorities, there is an appearance of dependency when NSLA levels of effort are prioritized within the over-all program of the Attorney General.

There are several possible responses to this situation. One strategy for assuring NSLA independence in both fact and appearance would be to simply peg the NSLA budget to the expansion of the Attorney General's resources for court and/or prosecutorial staff and the Department of Social Services' resources for Family Courts. Having linked the budgets, NSLA could report to Cabinet through a Minister other than the Attorney General or Minister of Social Services.

The year 1982 brought a radical and, hopefully, temporary change in NSLA's budget. Provincial budget cuts had a major impact upon staffing and services delivered. At the same time, the availability of new Federal monies for civil legal aid for the 1981-82 year increased Federal support for legal aid by 74 per cent over the previous year. This Federal increase resulted in a 28 per cent decrease in provincial support for the year ending 30 March 1982. Health and Welfare Canada also accepted a sizeable retro-active claim for civil legal aid services delivered from 1977 through 1981.

2. Issues in the Federal support of legal aid

Several issues were discussed in this section. The recent provincial budgetary decisions demonstrate the bluntness of the existing federal-provincial agreements as policy instruments. The financial restraints placed upon NSLA came in complete disregard of the new Federal initiatives in cost-sharing civil legal aid.

A second issue is related. There is a significant lack of visibility or recognition of the Federal participation in this "provincial" program.

A third issue relates to NSLA's substantiation of its federal claims under the federal-provincial agreement. The counting of case time has been a contentious issue in Justice-NSLA relations. The evaluation research has generated a wide range of baseline information concerning NSLA caseloads and case times.

3. The costing of legal aid services

The analysis presents a case costing of legal aid services. For 1981-82 full time costing (FTC) was \$37.07 per hour. Average case cost comparisons were made between NSLA staff lawyer and certificate cases and between case costs in Quebec, New Brunswick, and the British Columbia Public Defender project. The costing levels of Quebec's staff lawyer cases were comparable to the FTC figures in Nova Scotia. Case costs were higher in New Brunswick and in the B.C. project.

The cost differences between staff lawyer and certificate cases were much less for family and civil law cases. We noted, however, that the comparisons were between 1980-82 NSLA program costs and an hourly rate and tariff which was introduced as early as 1972. There is considerable professional pressure to increase the hourly rate and tariff. Increases would tip the case costing even more in favor of delivery by staff lawyers. At present, however, certificate work has been cut, except for mandatory choice of counsel cases, in response to

the provincial budgetary restraints.

4. Alternative sources of revenue

Three options for additional revenue were considered and none were thought promising in terms of significant potential for revenue. Research and experience in other provinces have documented the administrative difficulties and the deterrent effect of user fees.

Because of the administrative cost of collecting what would amount to a very small portion of NSLA's over-all revenue needs and would act as a deterrent to the use of legal aid services, we do not recommend any significant changes in current practices with respect to user fees, costs, or disbursements. Some review of disbursements should take place to clarify the range of discretion lawyers currently exercise and the case areas where requests for disbursements are most reasonable. Client fees and disbursements, however, will never amount to a significant source of revenue without negatively affecting the character of NSLA services.

V

CONCLUSIONS FOR THE THIRD "GENERATION"

Nova Scotia Legal Aid has just entered its third "generation" -- not in the usual sense of thirty year periods, but in terms of significantly different professional and political contexts out of which the delivery of legal aid services are made. The first generation lasted from 1971 to 1977 during which time services were provided under the supervision of the Nova Scotia Barristers' Society through a system of regional offices with staff lawyers. The second "generation" began in 1977 when the NSLA Commission was created to assume responsibilities formerly exercised by the Society's Legal Aid Committee.

During the second generation, funding continued from the Provincial government with substantial cost-sharing of criminal legal aid services by the Federal government through its Department of Justice. With the appointment of the Commission, NSLA entered a period in which it functioned, more or less, as if placed into a trusteeship to the extent that substantive and/or professional interest in the work of NSLA by governments or the Bar was minimal. The NSLA administration pursued a course of action and style of services which sought to avoid "unwarranted" professional or political intrusion into its work.

The conclusion of the NSLA Evaluation Project and the implementation of any number of possible recommendations could well have signaled the beginning of the third "generation" of legal aid services. In fact, however, the third generation began with the announcement of provincial budgetary cuts in 1982. This announcement, along with the overdue appointment of a full complement of Commission directors, de-stabilized a pattern of development and administration that had characterized NSLA since the creation of the Commission. For the first time NSLA was faced with the threat and implementation of staff cuts. For the first time there was a serious challenge to the comprehensive scope of services offered by this staff lawyer system as caseloads were

forced to conform with system resources.

In the context of new pressures of financial constraint, it is natural to look to a comprehensive evaluation exercise for practical answers to immediate concerns. The evaluation research does offer some fairly specific responses to the current situation. The evaluation, however, was designed to have a much broader focus than providing responses to financial restraints alone.

From the outset both Justice and NSLA participants sought documentation of the quality of services provided by NSLA staff lawyers. The first Chairman of the Commission, Mr. F. B. Wickwire, and his Directors undertook this new initiative in the evaluation of Canadian legal aid confident that NSLA could benefit from the federally funded research. They believed the system they were opening for public inspection could stand the test and would benefit from "fine tuning." They will not be disappointed.

Through both periods of criticism and neglect, the legal aid plan in Nova Scotia has continued to deliver quality legal services on a province-wide basis. The de-centralized office structure has limited the spill-over effect of problems when they occurred. NSLA lawyers have served with a local, community-focused sense of purpose and responsibility. As individual lawyers, they were guided by their own sense of professional responsibility.

The work of NSLA has destroyed several common myths about legal aid services. The clients of NSLA, in the main, are highly satisfied with services and do not prefer the services of lawyers in private practice. The professionals working with NSLA lawyers and the Barristers' Society at large affirm NSLA's presence in the justice system and give individual staff lawyers high marks for performance. The NSLA lawyers are experienced lawyers, many working with a long-term commitment to a legal aid practice. They have not been junior, short-term, nor inexperienced.

The evaluation research has documented the over-all high quality of services delivered by NSLA lawyers. The plan is benefitting from the experience of its lawyers and is receiving professional recognition for its work. Almost all participants in the justice system recognized the major contribution NSLA has made to the quality of justice in both criminal and family courts in Nova Scotia. NSLA has also contributed to the courts in terms of efficient administration and in duty counsel services. Professionals not only recognized these contributions, but most saw NSLA as a necessary component of the judicial system. The courts, by the standards of justice required today, cannot function without legal aid services. This record can be noted regardless of current financial restraints.

Another major impetus for the evaluation was the information requirements of a major participant in NSLA, the Federal Department of Justice. In the first place, the evaluation has generated baseline information regarding the size and distribution of caseloads, client characteristics, client eligibility, and legal needs. In addition, the evaluation work has sorted out the ongoing information requirements of the plan and assessed the relative ease or difficulty of implementing changes in NSLA's management information system. An enhanced information system will increase NSLA's ability to conduct on a periodic basis its own internal evaluation in shorter periods of time and with less effort than required for this evaluation.

The evaluation planning and implementation in Nova Scotia was also the beginning of attempts to evaluate legal aid on a national basis. Nova Scotia participated in evaluation design work that is being replicated in other provinces. New Brunswick has completed its evaluation at the same time as Nova Scotia. British Columbia is at the beginning stages. Again, these information and design contributions stand with or without financial restraints. With restraints, an improved capacity to describe and analyze one's work will be even more important.

Another major evaluation concern that stands with or without

restraints is the concern for the independence of the NSLA Commission. During three years of interaction with the NSLA administration, we observed the careful guidance and shouldering of responsibilities by the current Executive Director. He worked through most of this period without an effective Commission due to unfilled vacancies. The long periods of vacancies, including the absence of a Chairman, combined with the resulting direct relationship between NSLA administrators and the Department of the Attorney General, (1) pre-empted the policy and program planning function of the Commission and (2) eliminated the buffer against interference that was the very reason for an independent Commission.

A final evaluation concern that stands with or without financial restraints is the concern for the continuing development of NSLA staff lawyers. Working for the NSLA Commission has been a career for most lawyers presently on staff. The research affirms the benefits of an experienced staff and counters the myth of legal aid lawyers as young, inexperienced, and short-term. The Commission should aim in the coming years to strike a balance between moderate levels of staff turnover and career development opportunities within NSLA for the experienced staff who remain. NSLA needs some significant percentage of experienced staff to have, either formally or informally, a mentor system comparable to larger law firms and to maintain the quality of its work. In times of restraint, opportunities for career development are probably even more important, important enough to trade off quantity of services for quality of services and staff development.

APPENDIX

SELECTED TABLES FROM THE NOVA SCOTIA LEGAL AID EVALUATION REPORT

A selection of key tables has been taken from the full version of the Nova Scotia Legal Aid Evaluation Report for presentation here. The figure number from the full version has been retained for cross-reference purposes.

FIGURE A1

NSLA CLIENT CHARACTERISTICS BY OFFICE AREA

	18 Years or Younger	Male	Not Married	With Zero Depen- dents	Un- employed	Zero Monthly Income	Rec'g Social Assist.
	21%	57%	38%	36%	60%	30%	31%
Yar 32%	Brdg 66%	Brdg 50%	Brdg 57%	Kent 71%	Kent 47%	Yar 46%	
Hfx 25	Hfx 63	Hfx 44	Hfx 45	NewG 63	Hfx 34	Kent 37	
Brdg 24	Kent 60	Kent 42	Amh 35	Amh 63	Yar 29	NewG 36	
Syd 21	Amh 52	Syd 37	Kent 33	Syd 62	Syd 27	Antgh 35	
Kent 21	Antgh 51	Yar 34	Truro 31	Hfx 60	Brdg 25	Syd 32	
Amh 20	Syd 50	Antgh 33	Antgh 28	Yar 60	Amh 24	Truro 30	
Truro 17	Truro 49	Truro 30	Syd 27	Antgh 55	NewG 24	Hfx 30	
Antgh 15	NewG 47	Amh 30	Yar 27	Truro 52	Truro 23	Amh 22	
NewG 13	Yar 45	NewG 24	NewG 20	Brdg 50	Antgh 17	Brdg 13	
MO* (1,014)	(158)	(382)	(963)	(645)	(824)	(1,138)	

*"MO" stands for "missing observations. The total number of cases for each column is 3,422. For example, there were 1,014 of the evaluation cases for which it was not possible to ascertain the client's age from the case record.

FIGURE A3

ESTIMATES OF PERSONS FINANCIALLY ELIGIBLE FOR THE NSLA OFFICE AREAS
(PERCENTAGES OF OFFICE AREA'S TOTAL POPULATION AND RANGE)

Legal Aid Office	County(ies) Served	Persons Eligible (%)			Range (000)
		A	B	C	
Halifax	Halifax	13%	21%	26%	38 - 77
Sydney	Cape Breton, Victoria	23	36	46	31 - 62
Kentville	Annapolis, Hants, Kings	21	33	42	23 - 46
Yarmouth	Digby, Shelburne, Yarmouth	29	47	59	19 - 37
Antigonish	Antigonish, Guysborough Inverness, Richmond	22	35	45	15 - 29
Bridgewater	Lunenburg, Queens	23	37	47	13 - 27
Amherst	Cumberland	33	52	66	12 - 24
New Glasgow	Pictou	20	32	40	10 - 21
Truro	Colchester	19	31	39	9 - 17
Province-wide Persons Eligible		20%	32%	40%	169 - 340

FIGURE A5

CASE TYPES BY OFFICE FROM THE EVALUATION CASE ANALYSIS

	Am-herst	Anti-gonish	Bridge water	Hali-fax	Kent-ville	New Glasgow	Syd-ney	Tru-ro	Yar-mouth	Total
CRIMINAL LAW*	38%	31%	60%	57%	56%	31%	39%	36%	37%	47%
FAMILY LAW	46	37	17%	30	30	46	42	34	47	34
CIVIL CASES	15	32	20	12	13	23	19	31	15	18
APPEALS	2	0	3	2	0	-	0	-	1	1
	100% (193)	100% (282)	100% (324)	100% (910)	100% (330)	100% (306)	100% (477)	100% (304)	100% (209)	100% (3335)

*The criminal law cases include provincial offenses. Separating the two shows 43 per cent of the cases involving the Canadian Criminal Code and approximately four per cent of NSLA's caseload involving provincial statutes.

FIGURE A8

THE DISTRIBUTION OF LEGAL NEEDS SCORES BY NSLA OFFICE AREAS AND THE CURRENT AND PROJECTED DISTRIBUTION OF NSLA STAFF

NSLA Office	Office % of Total Legal Needs Score	Staffing Levels in NSLA:		Staff Levels Based on Legal Needs
		During the Evaluation	After Restraints Fall 1982	
Halifax	46.9%	10	11	18.6*
Sydney	14.1	5	4	6.6
Kentville	9.8	4	4	4.6
Yarmouth	6.8	3	2	3.2
Bridgewater	5.9	3.5 ⁺	3.5	2.7
New Glasgow	5.6	3 ⁺	3	2.6
Truro	4.3	2	1	2.0 [#]
Amherst	4.0	2	1	1.9
Antigonish	2.9	2	2	1.3
Totals	100.0%	34.5	31.5	43.5

* An allowance is made in the Halifax area for the work down by Dalhousie Legal Aid Services. The DLAS work is assigned an equivalence to 3.2 NSLA lawyers. This is discussed in the Legal Needs paper.

⁺ Bridgewater and New Glasgow each have a lawyer (a Deputy Director and the Executive Director, respectively) whose responsibilities include more system-wide administration that client caseload work. A half of the Deputy Director's work is counted in the Bridgewater staffing component. The Executive Director is not counted in the New Glasgow office component.

[#] The projection utilizes the Truro Legal Need score percentage (4.3%) as the basis for a two-lawyer office. The other NSLA offices have staffing requirements projected from that base in the following way: $(\text{Office percentage} / \text{Truro percentage})^2 = \text{Office staffing requirement}$.

FIGURE A10

REGIONAL DIFFERENCES IN NSLA CLIENT PREFERENCES FOR A PRIVATE LAWYER
VERSUS A LEGAL AID LAWYER (FROM THE CLIENT SURVEY)

Per Cent Preferring a Private Lawyer		Per Cent Preferring a Legal Aid Lawyer		Per cent Saying "No Difference"	
33%	Kentville	68%	Yarmouth	47%	Bridgewater
21-22	New Glasgow, Sydney	57-59	Halifax, Antigonish	30-39	Amherst, Truro, New Glasgow, Sydney
17-18	Amherst, Antigonish, Bridgewater, Halifax	46-48	Sydney, New Glasgow Truro	24-26	Antigonish, Yarmouth, Kentville, Halifax
7	Yarmouth	43	Amherst, Kentville		
		35	Bridgewater		

FIGURE A20

AVERAGE CASELOAD PER LAWYER BY OFFICE FOR FULLY SERVICED CLIENTS, FULLY SERVICED CLIENTS PLUS MINIMAL SERVICE CASE CLIENTS, AND TOTAL ESTIMATED APPLICANTS, 1979-80 (* INDICATES NSLA AVERAGE)

Cotca--Fully Serviced Clients	COTCA Plus Minimal Service Case Clients	Total Applicants
		[Quebec (674)]
		Antigonish (630)
	630	630
	620	620
	610	610
	600	600
	590	590
	580	580
	570	570
	560	560
	Antigonish (561)	560
	Truro (552)	550
	550	550
	540	540
	530	530
	520	520
	510	510
	500	500
	490	490
	480	480
	470	470
Truro (456)	460	460
	450	450
	440	440
[Quebec (427)]	430	430
Antigonish (424)	420	420
	410	410
	New Glasgow (406)	410*
	400	400
	390	390
	380	380
	370	370
	360*	360
	Amherst (351)	360
	Sydney (346)	350
	Bridgewater (345)	340
	Halifax (337)	340
	330	330
	320	320
New Glasgow (306)	310	310
Amherst (290)	300	300
Sydney (286)	290	290
Bridgewater (278)	280	280
Halifax (273)	270	270
	260	260
Kentville (248)	250	250
	Yarmouth (253)	250
	240	240
	230	230
	220	220
Yarmouth (209)	210	210
	200	200
[B.C. (158)]		

FIGURE A24

SHOULD NSLA BE GIVEN A SPECIAL MANDATE AND FUNDING TO PURSUE CLASS ACTION SUITS, PUBLIC INTEREST ADVOCACY, LAW REFORM, AND PUBLIC LEGAL EDUCATION (NOVA SCOTIA LAWYERS AND NSLA WORKING PAPER)

	Class Action Suits	Public Interest Advocacy	Law Reform	Public Legal Education
Strongly Favor	10%	9%	15%	32%
Favor	26	29	42	38
Oppose	38	37	26	19
Strongly Oppose	26	25	17	12

FIGURE A30

NSLA STAFF LAWYERS SKILLS IN CRIMINAL, FAMILY, CIVIL, AND ADMINISTRATIVE LAW COMPARED TO OTHER LAWYERS IN THEIR AREA OF THE PROVINCE (FROM THE NOVA SCOTIA LAWYERS' AND NOVA SCOTIA LEGAL AID WORKING PAPER)

	Criminal	Family	Civil	Administrative
Better Than Other Lawyers in Area	21%	14%	01%	01%
The Same as Other Lawyers in Area	32	42	17	10
Not as Good as Other Lawyers in Area	06	08	25	10
Cannot Compare	41	37	58	78
	100% (364)	100% (364)	100% (364)	100% (364)

Figure A33

PLEADING GUILTY OR GOING TO TRIAL -- CASE DECISIONS FOR NSLA AND B.C.
PUBLIC DEFENDER AND NEW BRUNSWICK CLIENTS

A: NSLA Initial Case Decisions

Initial Process	One Charge	Two Charges	Three+ Charges	All Cases
Guilty Plea	65%	71%	83%	70%
Plea of Not Guilty:				
Stay/Withdrawal	13	8	4	10
Trial	22	21	13	20
	100% (704)	100% (272)	100% (237)	100% (1,213)

B. British Columbia Public Defender and New Brunswick Case Decisions*

Initial Process	British Columbia		New Brunswick
	One Charge	Two+ Charges	All Cases
Guilty Plea	47%	68%	57%
Plea of Not Guilty:			43
Stay/Withdrawal	18	0	
Trial	27	20	
	100% (n.a.)	100% (n.a.)	100% (1,165)

*The Burnaby, British Columbia Experimental Public Defender Project: An Evaluation Report -- Report II, Effectiveness Analysis and Evaluation of Legal Aid New Brunswick (draft copy, Table 23).

FIGURE A36

CLIENT AND NSLA LAWYER REASONS FOR GOING TO TRIAL (CLIENT SURVEY AND COTCA WORKING PAPERS)

Client Reasons	All Cases	NSLA Lawyer Reasons	All Cases
Innocent	51%	Client adamant	40%
Plea bargain failed	12	Reasonable doubt	26
Lawyer advised trial	8	Technical argument	18
Would "get off"	8	Weak crown case	14
Nothing to loose	4	Client not guilty	9
Trial is a right	3	Severity of charge	9
Other reasons	14	Other reasons	9
	100% (160)		100% (232)

FIGURE A37

THE USE OF PRELIMINARY HEARINGS (COTCA)

100% (1,194)	All COTCA criminal cases (1,194 + 323 missing observations = 1,517)
77% (924)	Preliminary was not an option
23% (270)	Preliminary was an option
78% (210)	Right to preliminary was waived
22% (60)	Right to preliminary was exercised
62% (37)	Committed to trial on original charges
17% (10)	Committed to trial on related or reduced charges
15% (9)	Case discharged
6% (4)	Other or missing observations
64% (30)	Cases committed to trial which ended with a guilty plea
36% (17)	Cases proceeded to trial

FIGURE A54

NSLA REVENUE FROM GOVERNMENT SOURCES WITH PERCENTAGE INCREASES/DECREASES

YEAR ENDING MARCH 30	TOTAL REVENUE FROM GOVERNMENT SOURCES (000)	INCREASE	FEDERAL SUPPORT (000)	INCREASE	PROVINCIAL SUPPORT (000)	INCREASE/ DECREASE
1978	1,435		685		749	
1979	1,765	23 %	774	13 %	991	32 %
1980	1,973	12 %	848	10 %	1,125	14 %
1981	2,243	14 %	938	11 %	1,305	16 %
1982*	2,577	15 %	1,033	10 %		
			600	64 %*	944	-28 %
1983	2,427	0 %	1,200	10 %	627	-34 %
			600			

*The year ending March 30, 1982, was the first in which the Federal Government cost-shared a portion of civil legal aid. This represented an additional \$600,000 of Federal support for NSLA. The federal figures for 1983 are estimates of anticipated Federal support.

FIGURE A56

AVERAGE COSTS PER CASE BY AREA OF LAW: NSLA 1980-81 AND 1981-82, NSLA CERTIFICATE CASES ASSIGNED TO PRIVATE LAWYERS 1980-81 AND 1981-82, AND QUEBEC STAFF LAWYER CASE COSTS 1980-81. (dollars)

	NSLA Staff Lawyers 1980-81 FTC*	NSLA Assigned To Priv Lawyers 1980-81	Quebec Staff Lawyers 1980-81	NSLA Staff Lawyers 1981-82 FTC*	NSLA Assigned To Priv Lawyers 1981-82
All Cases					
*Including a/o(2.9) appearance(3.9)	\$102 137	\$328	\$105	\$108 145	\$353
Criminal Law Cases					
Including a/o(3.1) appearance(3.3)	109 116	745	105	115 122	739
Family Law Cases					
Including a/o(2.9) appearance(4.5)	102 158	184	109	108 167	192
Civil Law Cases					
Including a/o(2.1) appearance(4.5)	74 299	357	65 84	78 315	251

*"Including a/o" indicates all cases including those noted as advice only matters, while "appearance" indicates only those cases in which a court or board appearance was involved. The number in parenthesis [e.g., (2.9)] indicates the average case time in hours.

*For 1980-81 FTC equals \$35.15/hour; in 1981-82 FTC equals \$37.07/hour.

