Clinics in a Cold Climate: Community Law Centres in England and Wales

Roger Smith

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Clinics in a Cold Climate: Community Law Centres in England and Wales

Abstract
Legal aid clinics in England and Wales, known as law centres, have struggled since they were set up in the early 1970s. They overcame the initial protests of the private profession, which saw the centres as competition, and established an important presence in social welfare law during the 1970s and 1980s. In 1986, the government began implementing financial cuts to the system. Over the next decade, the increased cuts led to a race towards "contract culture" and the introduction of "franchising" within the legal aid system. The implications of fiscal restraint on the efficiency and the quality of the service are examined and suggestions are made for future reform.
CLINICS IN A COLD CLIMATE:
COMMUNITY LAW CENTRES IN
ENGLAND AND WALES®

BY ROGER SMITH*

Legal aid clinics in England and Wales, known as law centres, have struggled since they were set up in the early 1970s. They overcame the initial protests of the private profession, which saw the centres as competition, and established an important presence in social welfare law during the 1970s and 1980s. In 1986, the government began implementing financial cuts to the system. Over the next decade, the increased cuts led to a race towards “contract culture” and the introduction of “franchising” within the legal aid system. The implications of fiscal restraint on the efficiency and the quality of the service are examined and suggestions are made for future reform.


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I. INTRODUCTION

Community law centres in England and Wales have achieved nothing like the success in terms of funding and government recognition as compared to their equivalents in Ontario or Australia. Ontario’s clinics, for example, take about 13 per cent of the legal aid budget: the comparable figure for law centres in England and Wales is 0.25. Some part of the cause for that may lie in the different political experiences of each jurisdiction during the 1980s. While the United Kingdom has had a single, right-wing conservative administration from 1979 to 1997, Australian and Ontarian experience has been more varied.

A further difference may also lie in the fact that Ontario’s community legal clinics and Australia’s community legal centres developed in an environment where other publicly funded legal provision was scarce. By contrast, even by the 1970s, England and Wales had a reasonably advanced and fast-growing legal aid scheme, on the one hand, and a relatively active lay advice movement on the other; there was much less political space in which law centres could flourish as a distinctive form of provision. In addition, in the United Kingdom legal education does not follow the American post-graduate degree model, relying more heavily on training-on-the-job with practitioners, largely depriving law schools of the chance for the kind of role that Osgoode Hall Law School has played in Parkdale or the clinics based in law schools in the United States.

The history of law centres in the United Kingdom has been, therefore, very different. There are only fifty-two centres in England
and Wales for a population of 50 million. It should be said, however, that the term “law centre” is used in England and Wales to mean an agency with a relatively limited geographical catchment area: there are a number of other organizations delivering legal services for specialist constituencies. These are of two kinds. One is expressly formed on a law centre model, such as Immunity, a specialist centre dealing with legal problems relating to AIDS/HIV: this would be recognizable within Ontario as a specialty legal clinic. In England and Wales, however, many pressure groups, such as the Child Poverty Action Group, have employed lawyers to take on test cases or other briefs to advance their cause: these tend to be seen as within a different tradition. Northern Ireland has one law centre, covering the whole province. The Scottish Association of Law Centres deploys a wider definition than its English counterpart, the Law Centres Federation, and does not insist upon a narrow geographical catchment area. It currently has ten members and for domestic reasons seems to be expanding, in contrast to the position south of the border.

In England and Wales, law centres have struggled for survival since they were set up in the early 1970s. Initially, problems came from the private profession who saw competition in its capacity to undertake legal casework in competition to its interests. Once the law centre movement established that it was no such threat, opposition arose to the allegedly “political” approach of law centres, resulting in little support for their community orientation from the Royal Commission on Legal Services that reported in 1979.\footnote{See Great Britain, Royal Commission on Legal Services, \textit{Final Report}, vol. 1 (London: HMSO, 1979) (Cmnd: 7648) (Chair: Sir Henry, later Lord, Benson) [hereinafter \textit{Royal Commission}].} Until the early 1980s, law centres were the only major providers of advice, assistance, and representation in the fields of what we would call “social welfare,” and Canadians perhaps call “poverty law”: tenant, debt, immigration, social security, employment, and other similar matters impinging disproportionately on the poor. Now, however, law centres face competition in these fields from private practitioners and the advice sector movement just as the need for service has been established, largely through their own work. They may well be left behind in the race towards the “contract culture” which is taking place both in relation to legal aid and local authority funds.

From this situation, law centres may have relatively little to say that is helpful to the clinic movement in Ontario where the problem, at least from an English perspective, is more to defend relatively high levels of funding than to expand to a more viable national network. If there are any lessons at all, they probably can only lie in the issues that law
centres are facing in relation to their response to the expansion of the use of contractual terms to govern funding. On the other hand, the recent election of right-wing administrations in both Ontario and Australia may mean that some assistance in what are likely to be difficult future items can be drawn from the experience of a country which looks as if it might finally be coming to the end of seventeen years of one-party, right-wing government.

Like so much of English society, law centres can only be understood by reference to their history. This article looks at them from this perspective. Legal aid in England and Wales dates back to the publication of the report of the Rushcliffe committee in 1945. This can be reckoned to extend, quite precisely, until 17 July 1970—the formal opening date of the country's first law centre in London's North Kensington. A second period, from 1970 to 1986, saw a massive expansion of legal and an initial challenge by law centres to establish themselves as a major presence in the legal services' field but which led to a major check on their expansion. In 1986 came the implementation of cuts to civil legal aid eligibility in the first serious attempt to cut cost as well as the publication of an "Efficiency Scrutiny" report that argued for removal of the Law Society's administration of legal aid and the deployment of advice agencies to deliver legal advice from solicitors.

Following legislation in 1988, the Legal Aid Board duly took over on 1 April 1990. The board rapidly introduced a contractual approach with its providers, known (slightly confusingly) as "franchising," although it did not necessarily involve the degree of exclusivity usually conveyed by the term. During the period from 1986, legal aid expenditure in all areas, including social welfare law, continued to grow at a significantly higher rate than inflation. However, an increasingly desperate Lord Chancellor enacted more and more cuts, first to eligibility and then to remuneration in an attempt to hold down increases. The effect of this drive on social welfare law and salaried services has been complex. Law centres and the advice sector have provided the opportunity to government for services to be provided at a cheaper cost than by private practitioners. There has been some incentive to foster the not-for-profit sector in a way that might otherwise seem surprising.

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2 Legal Aid Act 1988, (U.K.) 1988, c. 34.
II. 1945-1970: FOUNDATION

The foundation stone of post-war public legal services, published in May 1945, is the report of the Rushcliffe committee on legal aid and advice. Its main recommendations were:

* Legal aid should be available in all courts or tribunals where lawyers normally appear for private clients.
* Legal aid should not be limited to those “normally classed as poor” and should be extended to those of “small or moderate means.” In consequence, eligibility on income grounds was estimated to cover about 80 per cent of the population on establishment of the legal aid scheme in 1950.
* There should be an increasing scale of contributions payable by those with income or capital above minimum levels, below which legal aid would be free.
* In addition to a means test, there should be a test of merit to be judged by practitioners on a basis similar to that applied to private clients.
* Legal aid should be funded by the state, but administered by the Law Society. The Lord Chancellor would be the responsible minister, assisted by an advisory committee.
* Means investigation of applicants would be undertaken by the National Assistance Board (whose tasks are now subsumed within the Department of Social Security).
* Barristers and solicitors acting under legal aid should receive “adequate” remuneration.

Most of the committee’s proposals were implemented. Some, however, were not. The committee also argued in vain for a national, salaried advice to supplement the work of private practitioners. The Law Society wanted an extension of legal aid—not least, because it was concerned that its members would find it difficult to re-establish their practices after the war. In particular, the Law Society wanted to wind down the salaried divorce department which it had been forced to establish during the war. This represented too great a threat to the private practice model. In return for considerably more control of its members’ destiny—than was, for example, being offered to the medical profession in the newly proposed National Health Service—the Law Society offered a discount of 15 per cent on fees charged for legal aid costs.

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3 Report of the Committee on Legal Aid and Advice in England and Wales (London: HMSO 1945.) (Chair: Lord Rushcliffe).
Thus, the very origin of legal aid lay in a desire by the private profession to avoid a salaried scheme. In accepting the Law Society's proposals, the Rushcliffe committee specifically rejected various alternatives that had been placed before it that would have created a service delivered by salaried lawyers specifically oriented to the particular problems of the poor. Thus, out went the Haldane Society's plans to base legal aid on the thousand or so newly created citizens' advice bureaus—an idea that had to wait fifty years to resurface. Ignored also was the submission of the Poor Man's Lawyer Associations (lawyers who gave advice from the university-based settlements such as Toynbee Hall in the East End of London), which had called for greater priority to be given to workers' compensation, small claims, and hire purchase. This would have oriented legal aid specifically towards the areas of social welfare law.

A. Cost and Coverage: Slow Rises

In North American jargon, the civil legal aid scheme was, and remains, a "judicare" system—whereby representation is provided by private practitioners subsidised by public payment. It is intended to provide the same representation for low-income litigants that they would have if they could afford a lawyer. In 1960, the scheme was expanded to the county court (the lower civil court). At the same time, legal aid became available in the magistrates' courts. In 1969-70, at the end of this necessarily arbitrarily chosen period, the costs of criminal legal aid in the magistrates' courts were still relatively low. This reflected the beginning of a period of sustained increase in the availability of legal aid in the magistrates' courts. Family law accounted for the vast majority of civil expenditure.

Social welfare law was largely ignored in this first phase. A survey in 1969 of legal aid certificates in Birmingham found that only 9 per cent were for accident claims and under 5 per cent for other problems; the rest concerned family matters. This probably rather overestimated coverage in the country as a whole. There was, thus, virtually no coverage of matters such as landlord and tenant. The beginnings of an official unease could, however, be identified. In its 1969-70 annual report, the Lord Chancellor's Advisory Committee on Legal Aid argued for more attention to be given to the needs of people

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appearing before tribunals and called for “some form of ancillary legal services,” a cry largely ignored even today.

B. Law Centres and Legal Advice Centres: Emergence of a Challenge

The Advisory Committee’s call for greater attention to tribunals, and by implication the social welfare law that they administered, reflected pressures for change in the provision of services. An alternative model of publicly funded legal service was emerging from the United States. There, legal challenge had played an important part in the civil rights movement in the 1950s and 1960s; legal services also came to be seen as an integral part of President Lyndon Johnson’s “War On Poverty.” From the United States came word of wonderfully fulsome declarations of the explicitly political beliefs of a new generation of radical lawyers, of the following kind:

Our responsibility is to martial [sic] the forces of law and the strength of lawyers to combat the causes and effects of poverty. Lawyers must uncover the legal causes of poverty, remodel the systems which generate the cycle of poverty and design new social, legal and political tools and vehicles to move poor people from deprivation, depression and despair to opportunity, hope and ambition.6

This was heady stuff and deployed a profoundly different language from that in which debate, such as it had been, about legal aid had been conducted in the United Kingdom. The American experience filtered into Britain, was given a major boost by the Society of Labour Lawyers’ influential pamphlet, Justice For All, published in December 1968.7 In an appendix, Michael Zander, now Professor of Law at the London School of Economics, described the work of the United States “neighbourhood law firms.”8 The pamphlet argued for an extension of this model into Britain. In the same month, the Society of Conservative Lawyers published its own proposals, Rough Justice.9 Though considerably less radical, it also argued for more planning of legal aid so

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5 President Johnson “declared” this war, which was a main plank in the “Great Society” programs of the mid-1960s, during his annual state of the union address, 8 January 1964.


8 Ibid. at 63.

that, for instance, private practitioners would be encouraged to set up in poor areas by special additional payments.

The American experience was linked to domestic currents of development. The late 1960s saw a flowering of a hitherto missing political engagement: community-based groups sprang up; sociologists were "rediscovering" poverty; an expanding higher education system enabled a broader range of students to encounter law. A gathering movement of law students, academics, and practising lawyers, highly critical of the conservatism of the legal profession and the limitations of legal aid, became involved in a variety of informal legal advice provisions.

A flurry of legal advice projects sprung up, many using students or lawyers to give assistance in inner-city areas. From one of these, in North Kensington (a multi-ethnic area of inner northwest London) emerged the first law centre. A group of people, including founder-lawyer Peter Kandler, had worked with a community organization known as the Notting Hill People's Association, formed in part as a response to the "gentrification" of this cosmopolitan area of London's inner city. A successful advice project in a summer project in 1967 was eventually expanded into the first fully fledged law centre, which officially opened its doors on 17 July 1970, the day selected above to illustrate the shift to a new age of legal services.

The North Kensington Neighbourhood Law Centre was very much rooted in a practical response to the legal problems of its community and reflected the approach of Kandler, previously a solicitor in private practice. The centre, in a way that was to lead to conflict with the main tendency within the emergent law centre movement, saw itself as providing a high grade lawyer's service in hitherto ignored areas of law rather than within the paradigm of an organisation committed to social and community action. The centre's aim, as declared in its 1971 annual report, was to provide:

A first-class solicitor's service for the people of the North Kensington community; a service which is easily accessible, not intimidating, to which they can turn for guidance as they would to their family doctor, or as someone who can afford it would turn to his family solicitor.\(^{10}\)

The movement that had spawned North Kensington's law centre had sufficient strength to force some measure of official recognition of its arguments. The Lord Chancellor asked his Legal Aid Advisory Committee to respond to the two pamphlets. Its report, published in

\(^{10}\) North Kensington Neighbourhood Law Centre, Annual Report 1971.
January 1970, represented a temporary setback for law centres. The committee was swayed by the Law Society's submission and followed its counter recommendation for a new and flexible legal advice scheme, the beneficiary of which would be the private profession, and for law centres to be transferred to the direct control of the Law Society.

III. 1970-86: THE RISE OF LEGAL AID; THE RISE AND FALL OF LAW CENTRES

Legal aid expanded throughout this sixteen-year period, both in its range of schemes and in expenditure. In 1973, the Law Society got its improved advice and assistance scheme, generally known as the "green form" scheme, whereby advice on any matter of English law was available on the basis of a simplified test of income and expenditure carried out by the solicitor. It also gradually expanded its duty solicitor schemes in the magistrates' courts. Initially, these were voluntary, but were given a statutory basis in 1984. Then, in 1986, under the auspices of the Police and Criminal Evidence Act 1984, legal aid schemes for advice in the police station were established.

By 1986, total payments to the legal profession under all forms of legal aid was £419 million; the net cost to the Exchequer (excluding client contributions and other costs recovered) was £342 million. Thus, legal aid represented 6.6 per cent of the total fees of all solicitors in 1975-76; a decade later, in 1985-86, the equivalent percentage was 10.7. The Bar's dependence—estimated at 30 per cent in 1977 by the Royal Commission on Legal Services—was much greater. Just over one-fifth of the Bar's total income came from criminal legal aid. Thus, legal aid helped to fund a major expansion of both branches of the profession in the 1970s and 1980s; between 1971 and 1981, the Bar grew from 2,714 members to 4,685; the number of solicitors in private practice increased by 58 per cent during the 1970s.

A number of forces lay behind this expansion. Criminal work increased massively as representation in the magistrates' courts became the norm: in 1969, only one in five of defendants appearing on an indictable offence in magistrates' courts was represented under legal aid; by 1986, this had risen to an all-time height of over four-fifths. Another influence was a soaring divorce rate: in 1968, the divorce rate stood at

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11 U.K., 1984, c. 60, s. 58.
12 These figures include disbursements and VAT but exclude payments from legally aided clients and their opponents. Legal Aid Board Annual Report 1994-95 (London: HMSO, 1995) at 98.
3.7 per 1000 marriages; in the two years following the *Divorce Reform Act 1969*, it grew to 9.4 per 1000, and by 1986, it had reached 12.9 per 1000. Legal aid for divorce itself was withdrawn in 1977, but the number of "ancillary applications" relating to maintenance and children continued to rise.

Another factor was an increase in eligibility for legal aid introduced by the Labour government just before it lost office in 1979. From an initial 80 per cent of the population in 1950, eligibility on income grounds had slumped to 40 per cent by 1973. From this low point, eligibility on income grounds was increased to 79 per cent of the population in 1979.

A. Social Welfare Law

The green form legal advice scheme had been advocated by the Law Society as a way of encouraging solicitors into the fields of welfare law pioneered by the law centres. In fact, it was used largely to finance work in traditional fields of activity—crime and family. Between them, these accounted for half of the bills paid out in 1985-86. The slow move into welfare law is shown by the figures below. These indicate a growth from 27,000 to 172,000 of the number of green forms attributable to the "social welfare law" areas of landlord and tenant, employment, hire purchase and debt, welfare benefits, and consumer law. However, expressed as a percentage of all green forms this represented only a rise from 10.7 per cent to 16.6 per cent.

B. Law Centres Win Acceptance

The formation of the law centre in North Kensington was followed by others, initially in London, but also outside that began to operate in the early 1970s. The Law Society had hopes of controlling the emergent law centres by way of conditions attached to the terms on which law centre solicitors could work, through "waivers" of the professional rules then existing against advertising and sharing fees. In its 1973-74 report on the legal aid scheme, the Law Society savaged law

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13 *Royal Commission*, *supra* note 1, vol. 1 at paras. 36-47.

centres for “stirring up political and quasi-political confrontation far removed from ensuring equal access to the protection of the law.”

By 1975, the Law Society had worked itself into a position where it acceded to pressure from a group of local solicitors in Hillingdon outraged by the imminent funding of a local law centre. It tried to stop solicitors practising in the centre by refusing them the necessary waivers, on the ground that local solicitors met local need for services. The subsequent political impasse resulted in the intervention of the Labour Lord Chancellor, Lord Elwyn Jones, and the society’s undignified retreat under the threat of legislation.

The Law Society and the law centres reached an accommodation, negotiated under pressure from the Lord Chancellor and with assistance from the Legal Action Group, that suited both. Provided that the latter did not compete with private practice in its traditional areas—such as adult crime, matrimonial work, personal injury, probate or conveyancing—the Law Society would grant the necessary permission. By the time of its evidence to the Royal Commission on Legal Services in 1979, the Society had come around to the view that, far from being a threat, law centres generated work for private practice.

As one source of threat to the emergent law centre movement receded, another took its place. The second half of the 1970s saw steady growth overall in the number of law centres. All was not, however, well. From early on, there were danger signals in relation to finance. As early as 1974, soon after the election of the Labour government that was to last until 1979, the Lord Chancellor had instituted central government funding of eight centres which were in financial difficulties. Another major source of funds came from the various schemes for inner-city rejuvenation, involving a partnership between local authorities and the Department of the Environment. Numbers eventually peaked in the mid-1980s at 62. The Conservative government maintained the funding commitment of the previous administration to the eight centres then grant-aided but sought refuge from further commitment in the line that law centres should be funded by local authorities.

Thus, unlike the position in Ontario or Australia, law centres never became part of the mainstream of publicly funded legal services. They survived on the periphery, in relatively small numbers and with, in most cases, very low levels of local government funding.
C. An Advice Sector Emerges

During this period, non-lawyer advice services flourished. Citizens' advice bureaus (CABS), which had been established during the Second World War but thereafter had been neglected, re-established themselves. Between 1966 and 1986 their numbers almost doubled (from 473 to 869) and the volume of enquiries more than quadrupled (from 1.3 million to 6.8 million). In addition, several hundred independent advice centres were set up. Many grew out of community action projects. There was also a gradual development of largely local authority funded specialist services—giving advice on housing, social security and debt.

In the 1970s, the CABS service experimented with the employment of solicitors. The first combined CABS and law centre opened in Paddington in 1973, followed by a similar venture in Hackney in 1976. Community lawyers, who both advised on individual problems and trained lay advisers within the bureaus, were appointed to CABS in North Kensington, Lewisham, and Waltham Forest. By 1977, ten CABS-employed lawyers and the national association of CABS resolved to develop more posts. In the mid-1980s, however, it looked as if the advice sector and law centres had embarked on different courses. An early period of rivalry in the early 1970s had settled down to co-existence.

D. The Royal Commission of 1979: Attack on Law Centres from Another Front

The ferment of political activity and critical analysis of the legal profession led to the establishment in 1976 by the Labour government of a Royal Commission on Legal Services, to be headed by an accountant, Sir Henry (soon to be Lord) Benson. This had, in fact, been resisted by Lord Elwyn-Jones as Lord Chancellor because he saw it as a way of procrastinating on decisions about legal services. On the subject of the legal profession, the commission was certainly conservative. It argued essentially for no change to the division between solicitors and barristers.

On the matter of legal aid, the commission was generally worthy but dull. The Law Society should, it argued, retain administrative control: eligibility for civil legal aid should be raised. In relation to law centres and salaried services, the commission appeared almost actively hostile, at least to any notion beyond increasing provision for casework in social welfare law. Though sympathetic to the notion of locally-based
legal organizations specializing in social welfare law, the commission had considerable difficulties with the activist role asserted by the law centre movement as a whole. It clearly reacted badly to the strain of rhetoric that law centres had developed to articulate their case. This was exemplified by law centres' official statements of position, in particular *Towards Equal Justice*, first published in 1974 and reprinted in 1978.15

*Towards Equal Justice*, initially hammered out with some opposition from those attracted to the doctors' surgery model that had inspired North Kensington, took an unequivocal position:

> It is then the duty of those who seek to provide legal services in poor and working class communities to concentrate their resources on helping people of those communities to create organisations capable of helping their members with their collective difficulties.16

Quoting with approval a number of American exponents of such an approach, the law centre document took an unashamedly community-oriented, activist position.

The commission did not share the law centres' enthusiasm: “we consider it inappropriate for a law centre to devote its resources to taking part in political or community activities.” It acknowledged, however, that “the impact of law centres has been out of all proportion to their size, to the number of lawyers who work in them and to the amount of work it is possible for them to undertake.” Its overall position was, however, that “the time has come to move forward from a period of experiment to one of consolidation, characterised by continuity, orderly development, adequate resources and proper administrative and financial control.”

The commission could accept the notion of community law centres only if they were shorn of their politics and transformed into more manageable and managed “citizens” law centres (CLCs) with the following characteristics, designed to remove any political or community activist functions:

* “the main purpose ... should be to provide legal advice, assistance and representation to those in its locality, with special emphasis on social welfare law.”
* “It is not appropriate for a CLC itself to undertake community work and campaigns, but it may give legal advice to individuals in respect of such matters.”

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16 Ibid.
"Clients ... should pay for the service they receive on the same terms as legally-aided clients of private practitioners."

"There should be a small central agency appointed by government, but independent of it, to finance and manage CLCs."

"There should be a local advisory committee for each CLC or group of CLCs."

CLCs should be financed wholly out of funds provided by central government."17

The commission was conservative also on the role of the advice sector. As a representative of it, the CAB should stay in its place:

The division of function between the para-legal work of the CAB [Citizens Advice Bureau] service and the use of professional lawyers has hitherto been established on a sensible and practical basis and it should continue in this way. We do not think that a CAB should build up, as part of its staff, a team of lawyers to give legal advice to individuals.18

The demise of the Labour government meant that the commission's vision was never tested and we do not know whether it would have been implemented. The law centres were, as one might expect, singularly unimpressed. The commission's model, in the view of the Law Centres' Federation "spurns the experience of existing law centres and ... rejects the achievements of the law centres movement in favour of an awkward and unworkable alternative." The law centres' complaint, as set out in their federation's response to the commission's report, was particularly that the commission had failed to realise the benefits of local management control; the importance of a community orientation; the necessity of a free service and the potential for the role of the Law Centres' Federation.

Somewhat benignly, the incoming Conservative administration in 1979 did not take an overtly hostile view of the allegedly political role of the law centre. Instead, it insisted simply that funding responsibility should remain with local authorities rather than central government. Since Conservative local authorities were, largely but not exclusively, somewhat reluctant to fund law centres, they became increasingly identified with Labour local authorities and the most financially secure were to be found in authorities which remained Labour throughout the 1980s and 1990s. Some Labour councils were undoubtedly attracted to establishing law centres as a way of harrying the conservative government, particularly on matters relating to welfare benefits. Overall, funding was, unsurprisingly, safest in dyed-in-the-wool Labour

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17 Royal Commission, supra note 1.

18 Ibid. at 18.
councils. Thus, the north London borough of Islington has retained funding of two centres. Camden lost one in the early 1990s but still funds two. By contrast, centres funded by Labour administrations that subsequently changed hands often faced problems. Wandsworth council in South London was taken over by a right-wing Conservative administration that wound up three centres, although one (composite) survived by finding alternative funds. Brent, in a northwest London municipal authority that has swung between different parties and different factions of parties, has had a difficult time in maintaining its funding.

E. Sunset of an Era: The 1986 Efficiency Scrutiny

In the summer of 1986, the government instituted a Legal Aid Efficiency Scrutiny. This was conducted in the then fashionable style of a rapid review, timed to last 100 days, by three junior civil servants. Its recommendation that large areas of the green form legal advice and assistance scheme be transferred to the voluntary advice sector represented the first challenge to the legal profession’s dominance over all forms of legal aid.

In the end, after fierce debate, the recommendation was scuppered—by a reluctant, though tempted, CABS service—and the scrutiny resulted in only minor cuts to the green form scheme in relation to wills. But the agenda for more government intervention was set. So, too, although it did not appear so at the time, was the possibility for the advice sector that it would play a role in legal services. The upper management of the CABS service had wanted to accept the benefits of increased funding promised by the efficiency scrutiny. They were sold down the river only by a grassroots rebellion at the national association’s 1986 annual general meeting.

The scrutiny was not an entire failure. Its recommendation that legal aid administration be transferred from the Law Society was to be implemented in a Legal Aid Act passed in 1988.19

19 Supra note 2.
IV. 1986 TO DATE: COSTS, CHALLENGES, AND CUTS; LEGAL AID AND THE PRIVATE PROFESSION

Debate on legal aid since the mid-1980s has been increasingly dominated by its cost. The rise is, indeed, striking, particularly during the administration of a government pursuing an avowedly anti-public expenditure policy. Legal aid has suffered a "costs blow-out." In 1985-86, expenditure was £319 million plus administrative costs of £21 million. In 1995-96, it was £1.4 billion. Civil legal aid accounted for £675 million; criminal for £530 and advice and assistance £272 million.20

Such levels of expenditure make legal aid an important source of income for lawyers. For solicitors, overall receipts are even rising significantly higher than other areas. Legal aid appears to provide around 30 per cent of the total income of the Bar (27 per cent in 1989). Law Society figures suggest that legal aid contributes just under half of this proportion of solicitors' total income, 14.5 per cent in 1993-94 which is the last year for which figures are available. This statistic is subject to some methodological objection but is probably roughly right. Interestingly, the proportion assessed by the Law Society as coming from legal aid has risen by almost 50 per cent over six years.

Table I
Proportion of Solicitors' Gross Income Coming From Legal Aid*

<table>
<thead>
<tr>
<th>YEAR</th>
<th>LEGAL AID PAYMENTS</th>
<th>GROSS FEES</th>
<th>LEGAL AID AS % OF GROSS FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988-89</td>
<td>£430.3m</td>
<td>£4,455m</td>
<td>9.7 per cent</td>
</tr>
<tr>
<td>1993-94</td>
<td>£963.3m</td>
<td>£6,662m</td>
<td>14.5 per cent</td>
</tr>
</tbody>
</table>


Legal aid is very widely distributed among both solicitors and barristers. The Law Society records that "80 per cent of all solicitors' offices received at least one payment for legal aid work in 1994-95" and

the proportion is probably higher for barristers. Increasingly, however, the figures show the emergence of an elite group of legal aid firms that undertake most of the work. In 1995-96, 20 per cent of firms (some 2,407, of which over half were in London) received 71 per cent of all payments. In 1994-95, the highest-earning legal aid firm received £8.3 million in total from the Legal Aid Board, reflecting payment of large multi-party action cases. The top twenty firms earned £45 million between them. This was around 5 per cent of the total £910 million disbursed to all solicitors in that year. There remain, however, a large number of firms which do very little legal aid. Among the 11,999 offices that received any legal aid payment in 1995-96, 3,268 of them took less than £5,000. A similar concentration appears among barristers. Some 8,136 are recorded as receiving a legal aid payment from the Legal Aid Board in 1993-94 (intriguingly some 400 more than the total number of practising barristers, presumably indicating some statistical failing). 2,280 received more than £14,000 from the Legal Aid Board in fees for the year 1993-94: the Lord Chancellor estimated that the top fifty received more than £100,000 each (admittedly inclusive of vat and disbursements).

A. Social Welfare Law

Overall, legal advice given under the “green form” scheme has risen by around a half over the last decade. Between 1985-86 and 1995-96, the total number of bills paid rose from 1,038,805 to 1,506,073.21 Those covering social welfare law have expanded at a significantly higher rate:

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Table II
Legal Advice and Assistance:
Non-matrimonial Civil Cases*

<table>
<thead>
<tr>
<th></th>
<th>1985-86</th>
<th>1995-96</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immigration and Nationality</td>
<td>7,395</td>
<td>66,113</td>
</tr>
<tr>
<td>Consumer</td>
<td>20,216</td>
<td>31,144</td>
</tr>
<tr>
<td>Welfare Benefits</td>
<td>21,833</td>
<td>148,126</td>
</tr>
<tr>
<td>Employment</td>
<td>20,892</td>
<td>21,325</td>
</tr>
<tr>
<td>Hire Purchase and Debt</td>
<td>52,392</td>
<td>85,240</td>
</tr>
<tr>
<td>Accidents and Injuries</td>
<td>42,010</td>
<td>74,403</td>
</tr>
<tr>
<td>Landlord/Tenant, Housing</td>
<td>57,808</td>
<td>117,161</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>222,546</strong></td>
<td><strong>543,312</strong></td>
</tr>
</tbody>
</table>

*Source: Legal Aid Board, Annual Report 1995-96

For clients, this increase is generally good news since it represents a significantly higher level of services. However, there are allegations that some solicitors have been milking the system, particularly in relation to welfare benefits where low-level advice on entitlement has been given as routine.

B. Law Centres

Law centres did not share equally with the private profession in the increased volume of work undertaken in social welfare law over the last decade. In 1986, there were fifty-six law centres; in late 1996, there were fifty-four (fifty-three in England and Wales; one in Northern Ireland; these statistics consistently exclude Scotland, which is a totally separate jurisdiction). The amount of money received by law centres for green form has risen: from just over £1 million in 1990-91 to £1.9 million in 1995-96. This rate of rise has, however, been dwarfed by the increased funds received by agencies that would define themselves as within the advice sector but which have employed lawyers to take advantage of the ability to claim legal aid. Their income from legal advice and assistance has risen from £202,000 to £1.2 million. In addition, the Legal Aid Board dispersed another £2.6 million to advice agencies without lawyers as part of its non-solicitor agencies pilot
project. As a result, law centres no longer receive, as a group within the “not-for-profit” sector, the majority of legal aid funding. In 1990-91, law centres received £2.1 million out of the £2.4 million dispersed. By 1995-96, they received only £3.6 million paid by the board to not-for-profit organizations.

Within the fields of social welfare law, law centres now find themselves unable to claim a unique role as the major providers of casework services in the way that they could in the past. Any such assertion would be threatened on three fronts. First, private practitioners have rushed into the vacuum created by the low level of provision and the high level of need. Special interest groups, largely dominated by private practitioners, are now powerful forces within the field. Organizations such as the Housing Law Practitioners Group or the Immigration Law Practitioners Association have memberships overwhelmingly from the private sector. Leading experts in emergent areas of social welfare law, such as education or community care, are also to be found in private practice. Second, the advice sector is picking up speed and has clearly overtaken law centres in terms of legal aid volume. Third, high-level test cases, certainly in the field of public law, though still taken by law centres, have become much more a specialty of national not-for-profit pressure groups such as the Public Law Project, Shelter, the Child Poverty Action Group, and Liberty. These are organizations with national constituencies from which the law centres demarcate themselves by reference to their orientation within their local community.

Volume of casework never has been, however, the criterion by which the law centres themselves would generally judge themselves. An academic study of the use of the green form scheme, published in 1988, found that:

> Law Centres have a relatively low level of involvement with the green form scheme. Use of the scheme by Law Centres is indeed regarded with a certain ambivalence by the people who work in them. In the interviews conducted with Law Centre staff, it emerged clearly that, while green form work (and other legally aided work) provided a useful source of revenue, it was not regarded as a mainstream activity of Law Centres. It was even in some respects viewed as representing something of a diversion from the main work that staff wished to undertake [sic].

The Law Centres Federation, representing the law centre movement, has always articulated casework as but one element in the range of services provided by law centres and often a minority one. A 1991

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document which answered the question “What is a Law Centre?” answered that:

Law Centres aim to make the most efficient use of their resources and so have developed several methods of work to achieve the best results. These include casework [but also] participating in the process of legal reform, campaigning, education work, development work and resourcing (providing ‘a valuable source of information and support for all sorts of agencies and groups’).23

To match such a flexible conception, law centres have developed flexible ways of working: “it is not only in methods of work but through new internal and management structures that law centres have aimed to differentiate their work from that of private practitioner solicitors.” Law centres, as a whole, have espoused collective working, self-servicing, skill-sharing and “community control” (even to the extent of using the word “managers” for members of their governing committees).

Law centres are not, in fact, quite as monolithic as the publications of their federation might suggest. Diversity of funding from a variety of different local authorities has brought a degree of diversity of approach. Local authorities in Kirklees and Derby which funded the most recent two centres, established in 1995, insisted on hierarchical internal management. North Kensington Neighbourhood Law Centre was itself rescued from some degree of internal difficulty by the appointment of a director. Diversity extends beyond hierarchical or collective methods of working, a long-running source of dispute. Some law centres do have secretaries and their lawyers are not self-servicing. Community management has proved not unproblematic: one east London law centre was torn apart by divisions within the ethnic minorities represented on its committee.

Internal differences are, however, considerably less important than those which relate to how centres operate in relation to their constituency. There is a wide disparity over the degree of legal work undertaken, increasingly related to the health of other sources of funding. One law centre, Hammersmith and Fulham, already has a legal aid franchise (see Part F, below) for some areas of work. Others will soon follow suit. Overall, an unofficial law centre federation estimate is that somewhere around 25-30 per cent of centres’ total income is now coming from legal aid casework.

For all their diversities and difficulties, law centres can still prove extraordinarily effective in areas which they have decided to prioritize. The struggle for internal equality and community control has not proved

easy, but law centre staff are notably much more mixed in terms of ethnic origin, certainly than private practice and probably even than most other organisations within the not-for-profit sector. Centres have given a high priority to serving ethnic minority communities that may otherwise find it difficult to find help. Particularly impressive, for example, is the statistic that no less than 47 per cent of all the 13,000 people advised by Central Law Centre were from Chinese or Vietnamese origin. Evidence of effective outreach of this kind can be found in many law centre reports. For example, a survey of North Islington clients found that 17 per cent were of Caribbean origin and a similar percentage African, as compared with local populations of 5 and 3 per cent respectively according to the most recent census information.

Furthermore, law centres can make striking use of the range of responses open to them. A superb example was provided by the poll tax, an unpopular tax introduced by the Conservative government which led in 1989 to a flood of cases in which those who, for one reason or other, had not paid the tax were threatened with imprisonment. Centres such as Leicester and Bradford mobilized on an impressive scale to provide representation; produce literature; and spearhead tactics.²⁴ The tax was eventually modified significantly. Examples of the coordinated use of test cases with effective campaigning also abound. The organization that in the course of the struggle became Humberside Law Centre successfully litigated and helped agitate over the benefit rights of seafarers made redundant in the mid-1980s.

Law centres are capable of impressive work in relation to significant cases, even though this has not been the emphasis of much of their attention. Particularly in specialist jurisdictions, they can combine a professional expertise unavailable elsewhere with a powerful political commitment allied to a degree of flexibility in their work that allows them to pursue cases more vigorously than would be possible by private practitioners. Two examples of this are provided by the work of Hillingdon Legal Resource Centre in relation to sexual discrimination in employment. The experience of its lawyers in this field has played a major part in two major test cases. First, Hillingdon provided support and research for a consortium of lawyers, largely of private practitioners, concerned with the problems of women dismissed from the armed forces because of pregnancy, the Armed Forces Pregnancy Group. At its peak there were over 200 solicitors concerned with the 5,700 women dismissed for this reason between 1978 and 1990. The argument was

that this was unlawful under the employment legislation in force at the
time. The campaign was successful and more than £55 million has been
paid in compensation by the government. Hillingdon had the flexibility
to provide research for the private practitioners that would otherwise
have been difficult to fund: it took one of the significant cases and co-
ordinated the work of law centres nationally, where they were acting for
around 60 women. Hillingdon also took another discrimination case in
relation to the right of workers not to be dismissed because they were
pregnant. It provided representation from the industrial tribunal, the
employment appeal tribunal and the court of appeal where it
consistently lost, to the House of Lords, which referred the matter to the
European Court of Justice and before which it was eventually successful
and became an important precedent in construing the effect of the
European Directive on Equal Treatment.

C. The Advice Sector

Operational flexibility, the deployment of an assertive and
challenging litigation role and an avoidance of high volumes of casework
still operate broadly to distinguish law centres from the rest of the not-
for-profit sector. Compared with law centres, the advice sector is
enormous. In 1995-96, 900 organizations were members of the
Federation of Independent Advice Agencies (FIAA). The CAB service
had over 700 separate bureaus as members, with over 1,000 outlets.
Even Shelter, the housing pressure group, had thirty local centres.

The national government grant for the National Association of
Citizens Advice Bureaus (NACAB) was £12 million, compared with a
Legal Aid Board grant to the Law Centres Federation of £67,000. The
volume of advice given is similarly high. CABS dealt with 6.5 million
problems brought to them by 5.3 million people. The advice sector in
general and the CAB service in particular is as diverse, within itself, as are
law centres. Agencies range from those with part-time managers and
opening hours to linked bureaus within a conurbation almost entirely
staffed by full-timers, some of whom may be lawyers.

Both FIAA members and full CABS are independent agencies with
management committees though many would profess a different rhetoric
from law centres in relation to community control. CAB agencies must
meet national standards. The national association pursues a lobbying
role with government in pursuance of what is known as its "second aim"
(the first being "to ensure that individuals do not suffer through lack of
knowledge of their rights and responsibilities ..."): "to exercise a
responsible influence on the development of social policies and services, both locally and nationally."  

NACAB produces publications like *Barriers to Justice* which detail the problems of ordinary people in using the courts.

**D. Cuts to the System**

The government's initial response to burgeoning demand and rising cost in relation to legal aid has been to cut eligibility for clients, particularly in civil and advice matters. Accordingly, eligibility has been cut substantially since 1979, when about 77 per cent of the population was legal-aid eligible, so that only 47 per cent were eligible in 1995, according to the former government's own figures.

Estimates by at least one independent statistician suggest an even more dramatic fall. There is evidence that legal aid is increasingly available only to those with income at the lowest levels. The percentage of recipients that are required to pay a contribution, which would reflect higher incomes, has dropped significantly over the last 30 years. Publicly funded legal advice and aid is increasingly becoming limited to those who are the poorest in society, in receipt of means-tested benefits.

**E. Legal Aid Administration and the Issue of Quality**

To prepare the way for better control over the budget and operation of legal aid, the government legislated to transfer administration of legal aid from the Law Society. The Legal Aid Board has very much become a force in legal services policy in its own right, particularly in relation to the issue of quality of service.

The board inherited, at its inception, the aftermath of the recommendation of the 1986 Efficiency Scrutiny to examine the possibility of using advice agencies to deliver legal advice. From this, it developed the idea of "franchising" legal aid provision, initially in relation to advice. This idea has changed over time and has now been

26 Written Answer, Hansard, 21 April 1994.
28 See letter from Lord Mackay of Clashfern, Lord Chancellor to John Pitts, the Legal Aid Board in Legal Aid Board, *Report to the Lord Chancellor* (London: HMSO, 1989) at 24, para. 12.
taken up by the Lord Chancellor. In its original form, it was presented as benignly non-exclusive, “a system that would involve identifying those who can satisfy criteria of competence and reliability and to assist and encourage them by freeing them from some of the restrictions now applying to legal aid.”

As the board developed its ideas, using a pilot project with solicitors’ firms in Birmingham, it identified three major areas in which quality could be measured. It described these in its 1991-92 annual report and they have changed little since, save for the beginnings of an additional concern with what are known as “outcome” measures on which consultants have been engaged to examine possible approaches (e.g., statistical comparisons of success, client satisfaction measurements). The three main measures are, however:

(a) ... the general management and organisation of the practice or agency, covering such matters as supervision, training, file management and recording systems etc.

(b) ... The quality of work submitted by the practice or agency to the Board, e.g. Legal aid applications, bills, etc.; and

(c) most importantly ... The work done directly for the client, that is in the collection of information from the client and the advice given in the light of that information.

The board has strenuously resisted any implementation of peer review for the reasons set out by their consultants:

[Peer review would be an expensive part of any quality assurance system. The use of lawyer assessors is likely to be prohibitive in cost terms. Furthermore, a uniform system of assessment would still have to be designed to articulate assessment criteria to be used by different lawyer assessors.]

Interestingly, this hesitancy contrasts with the approach of the CAB service. Its national association has undertaken two recent studies of the quality of the work undertaken by its bureaus. Both were highly critical of standards; both effectively questioned the extent to which advice agencies could provide adequate legal services; both were leaked into the public domain. However, both are important for all these reasons and because they demonstrated a different approach to quality measurement from that adopted by the Legal Aid Board. As a service provider, NACAB was concerned with the substance of its advice not only

29 Legal Aid Board, Second Stage Consultation on the Future of the Green Form Scheme (London: Legal Aid Board, 1989) at 6.

30 Ibid. at 24.

the observance of procedures. One study was on housing advice and the other on employment. In both, the researchers made a direct assessment of quality. The results and implication were noted in the study made on behalf of the Legal Aid Board:

Not only do these two studies shed important light on the quality of service actually provided and how advice workers go about the task of giving advice, but they also provide a different approach to assessing the quality of advice work:

The quality of advice in 319 cases was looked at by an employment lawyer with extensive experience of working with CABS. The cases were marked to a standard of competence that would be required to meet NACAB general advice standards and to protect against negligence. The cases were marked according to a scale of "good," "passable," "poor" and "very poor" and against specific criteria; diagnosis; accuracy; options, consequences and limitations; appropriateness; timeliness; effectiveness and information collection.32

Regrettably for the CABS service, the researchers found 40 per cent of all advice inadequate on this basis of study. The study, thus, has two important points to offer. First, it underlines the significant problems in seeking to use non-lawyers to deliver adequate legal services. Second, it is, in my view, a major contribution to the experience of how to measure quality. The two studies illustrate, in my judgment, the possibility of undertaking structured analysis of the quality of casework and are better, therefore, as ultimate indicators of judgment than the more indirect approaches favoured by the Legal Aid Board. The issue of quality assurance is, thus, live in an English context. Law centres, like any other organization or institution seeking legal aid funding, have no option but to be able to prove that they deliver services of an acceptable quality. This presents a particular challenge. Meeting criteria for casework will be hard enough and probably require some degree of internal reorganization, as it has for private practitioners and will for the advice agencies that participate in franchising. Devising criteria for other areas of work presents a particular challenge that has not yet really been addressed.

F. Franchising

The board originally argued for a scheme that would be non-exclusive, except where an expansion of services was to be delivered. As a result, any office that met the franchise conditions would get a franchise under which it would receive certain advantages, including

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more costs on account and higher rates of payment. The board would get the advantage of some assurance of quality and the benefit of being able to devolve decisionmaking on grant and refusal. Franchising has now been developed by the government into the idea of contracting (see Part G, below). The two ideas are essentially distinct

The Legal Aid Board has conducted two pilot projects into the use of not-for-profit agencies. The first was a relatively minor project using grants to law centres to explore various alternative methods of delivering services. This was really too superficial to provide much useful information. Money was spread around projects as diverse as a telephone consultancy service, an environmental project and assistance to a national pressure group in identifying test cases.

This research was somewhat underwhelming in its findings: it was not actually clear that the law centres had done very much with their money, perhaps because of the artificiality of the time-limited project. The researchers identified “critical success factors” as clear and realistic aims and objectives; thorough needs assessment; input from users/user groups; trained and experienced staff; effective management and organisational structures; appropriate planning and monitoring; the ability to be flexible and take opportunities; realistic timescales; and adequate and stable resources.33

The more important project, about to move into a second and larger phase, was an experiment to see whether advice agencies could, as recommended by the Efficiency Scrutiny in 1986, deliver legal advice. This has been claimed to be an enormous success and advice agencies are being wooed to continue their participation. However, the research on the pilot identified that legal advice eligibility is now so low that more than a third of the people interviewed by the forty-two pilot agencies were ineligible (only 62 per cent would have qualified).34 It is also apparent that they undertake relatively low level work. Of the closed cases in the pilot agencies, only the following percentage involved any assistance beyond giving immediate advice; welfare benefits nineteen; immigration ten; housing twenty-six; employment seventeen; debt forty-two; and consumer eight.35 The clear lesson was that specialist advisers were better value than generalists.

34 Steele & Bull, supra note 32 at 87.
35 Ibid. at 46.
The extent of further government finance for this development is unclear. So too is the attitude of staff at the CABS. They are concerned with the implications of a number of the government's legal aid proposals which may draw it into charging or discriminating between groups of its clients. Partly in consequence of these pilot projects, the legal aid payable to the not-for-profit sector has recently risen sharply.

G. From Franchising to Contracting and Back Again?

On 2 July 1996, the government published a white paper: *Striking the Balance.*[^36] This followed a consultative green paper published in May 1995, *Legal Aid: Targeting Need.*[^37] The tone of the two papers, and to a certain extent the content, is considerably different. This can be illustrated by their first sentences. The green paper began with the overall commitment that "the aim of the Government is to improve access to justice." Its successor was more prosaic and less open-minded: "The role of legal aid is to provide a reasonable level of help in legal matters to people in genuine need, who could not afford that help without some subsidy of guarantee from the public purse." The first paper proposed extending legal aid tribunals: the second rejected the idea.

The main proposals of the white paper were:

* An overall cap to legal aid expenditure, reflected in individual capped funds for criminal, family and civil (non-family) legal aid;
* Legal aid will not be restricted to assistance from lawyers but "will, in principle, be capable of providing any help—not just from lawyers—that can either (1) prevent court proceedings or questions that would demand a legal solution from arising, or (2) promote their settlement or other disposal, in accordance with the law and in a way that will produce an enforceable result."[^38] In particular and to begin with, contracts will be let for mediation services in matrimonial cases.
* Expenditure will be prioritized through the mechanism of directions from the Lord Chancellor to the Legal Aid Board; allocation by the board to regions on the basis of those directions; prioritization of the regional budget after advice from regional legal services committees;

[^38]: Supra note 36 at 49.
approval by the Lord Chancellor of a national strategic plan prepared by
the board.
* Most legal services will be provided through contracts with providers
that will include quality standards. Service providers will include advice
agencies as well as solicitors. Such contracts may be awarded on a basis
that allows “a measure of competition.”
* The merits test for civil legal aid will incorporate a test of
deservingness of resources and will be administered by providers.
* Fixed and further contributions will be payable by recipients of civil
legal aid. Any contributions payable will continue until the whole
outstanding amount of any legal aid costs has been repaid.
* Legally aided litigants may become liable to pay the costs of a
successful opponent.
* Criminal legal aid practitioners may be awarded contracts based on
providing “all necessary services to clients who chose them or who were
assigned to them at a duty session. So far as possible, contracts would be
for a fixed price based on the number of police and magistrates’ court
duty sessions covered.”39 Contracts for substantial work in the higher
courts would be based on an agreed price per case.
* The Legal Aid Board will “eventually” take over responsibility for the
determination of applications for legal aid together with means
assessment.
* Further contributions would be expected from legally aided defendants
making a second or further appearance in court.

A white paper is usually definitive of government policy. However, on the night of 1 May 1997 Labour won a landslide victory at
the polls. Lord Mackay was succeeded by Lord Irvine as Lord
Chancellor. His manifesto commitments on legal aid were light. However, the new Lord Chancellor announced the overall direction of
its policies in October. Civil legal aid was to be cut through greater
reliance on conditional fees (a modified form of contingency fee where
the supplement payable in the event of a win is a percentage uplift of the
costs otherwise payable rather than a percentage of the damages).
Labour also took over the Conservative plans for capping and
contracting legal aid, lock, stock and barrel. However, Lord Irvine also
announced that he would proceed to implement his party’s manifesto
commitment to a community legal service.40 The precise shape of this

39 Ibid. at 53.
40 See Lord Irvine of Lairg, The Lord Chancellor “Legal Aid and Civil Justice Reform”
Statement at an Adjournment Debate in the House of Lords” (9 December 1997); available on the
remains to be seen: consultations continue. It is, however, likely that the community legal service will emerge as some form of consultation of the franchising experiments with the voluntary sector. In that case, it will operate to extend the ambiguity over the future of law centres in England and Wales.

V. CONCLUSION

Ontario's clinics have achieved a degree of funding that our law centres can only envy. Indeed, LAG took Ontario as an example of best practice when it was reworking its policies on legal services in the early 1990s. Coverage of the degree of funding for clinics and social welfare law in Ontario may have helped to gain government acceptance for the latter, if not the former.

Law centres in the United Kingdom increasingly have to justify themselves to national and local funders who deploy a contractual paradigm of funding and who are familiar with ideas such as service level agreement. Nationally, the Legal Aid Board is developing contractual criteria with franchising: many local authorities are doing the same and, in the process, finding conflict with the demands of advice agencies and law centres for independence, professional responsibility, and confidentiality. Legal Aid Board contracts are likely to require, for example, 1,100 hours annually of casework per adviser hired in franchised not-for-profit agencies. This is the equivalent of the earning assumption made in relation to legally aided private practitioners.

Law centres will have to articulate a justification in detailed, objective terms. This presents three particular challenges. First, law centres hold political views of their purpose in terms of seeking change in society that are not necessarily those of their funders. Second, they have traditionally organized themselves in ways that gave greater weight to internal democracy than external accountability. Third, funders may now be much better able than in the past to state their demands and these are very likely to reflect countable casework than less tangible community activity.

Law centres can choose their response. In an English context, they could decline legal aid monies above a certain limit as involving too much individual casework at odds with their concerns. The problem

42 See, for example, C. Boswell, “Reviewing Local Advice Provision” (1996) Legal Action 1 at 6-7.
with such a strategy is that many centres have no option but to sign up for money tied to casework because, otherwise, they will fold. A further problem is that law centres now face competition from advice agencies that will, effectively, turn themselves into centres that undertake social welfare law with lawyers and advisers on staff but without the kind of political commitment that, for example, took Hillingdon Law Centre into major sex discrimination test cases.

Contractualization has gone so far in the United Kingdom that two law centres—the Legal Services Trust in England and Wales and the Legal Services Agency in Scotland—have been formed expressly on a commercial, if not-for-profit, basis to win contracts to provide services. In an English context, law centres may have to adapt to the contract age by playing to its rules and seeking formulations of their work which combine adequate description of their activity with the articulation of the performance measures by which it is fair for them to be judged by their funders. How this could be done is a real challenge. Whether it would be a valuable exercise for Ontario's clinics to address depends on your view of your future. Your one great advantage over England and Wales is that your clinics can claim to be the major providers of casework, as well as other social welfare law services. This, I hope, will help to put your clinic movement in a position where Parkdale has another quarter century and more to run.

Let me end on a personal note of appreciation. Parkdale, which I visited in 1991, struck me in the course of investigation into legal services for the poor in a number of jurisdictions in the world as one of the best examples of what can be done with the clinic model of provision. Good luck.