

ILAG 2001

P

a

p

e

r

s

International Legal Aid Group

Alan A. Paterson

Community Legal Services:
An Inter-Jurisdictional
Comparison

Melbourne
Australia
13-16 July

Community Legal Services – An Inter-Jurisdictional Comparison

Professor Alan A. Paterson

Introduction

There is no one accepted definition of what a Community Legal Service is or might be. The phrase has been legal aid parlance possibly as far back as the Office of Economic Opportunity's War on Poverty in the USA of the 1960s.¹ There it meant loosely the work of neighbourhood law offices in serving their local communities. In this sense it spread to England and Wales and the early law centres there and on to the community legal clinics of Ontario and the community legal centres of Australia. These centres sensed that traditional legal aid provided by the private profession was too individualistic in its focus and often came too late in the process. What was needed, as research has continued to demonstrate,² is good early diagnosis³ and community initiatives and awareness, tasks in which community legal education has a key role to play. Indeed, one of the earliest appearances of "community legal services" as a term of art, is in the Discussion Papers on Legal Aid Policy published by the Australian National Legal Aid Advisory Committee⁴ in 1989. There, its meaning was restricted to preventive legal services and community legal education.⁵ Much of this work at the time was done by the community legal centres and the Papers were not optimistic that much funding would go to community legal services if there was insufficient funding for the actual provision of legal services. Their solution was to suggest that preventive legal services should be funded by the Government but not from the legal aid budget. The Committee's final report, *Legal Aid for the Australian Community*⁶ also favoured preventive legal services but defined this as including advice and information about the law, community legal education and participation in the law reform processes. The first of these they strongly supported. Community Legal Education,⁷ however, they divided between general public education about the law and

¹ See E. Clinton Bamberger, "The Legal Services Program of the OEO" (1966) 41 *Notre Dame Lawyer* 847.

² H. Genn, *Paths to Justice*, Hart Publishing, Oxford, 1999. Genn's work for the Nuffield Foundation shows graphically that justiciable problems tend to come in clusters and that there is often a cascade effect whereby a minor problem e.g. relating to debt, can escalate into a series of increasingly more serious problems, unless nipped in the bud at an early stage. Genn's findings have been replicated in a Nuffield foundation funded study of justiciable problems in Scotland, by Genn and the author (forthcoming, 2001)

³ In Richard Susskind's memorable phrase, it is better to have a fence at the top of the cliff than an expensive ambulance at the bottom.

⁴ *Funding, Providing and Supplying Legal Aid Services*, NLAAC, Canberra, 1989.

⁵ The latter was defined as "providing individuals and groups within the community, accessible and appropriate information about legal rights, related interests and remedies intended to empower those individuals or groups in relation to governments, law and the civil, criminal or administrative justice systems".

⁶ National Legal Aid Advisory Committee, Canberra, 1990.

⁷ This time defined as "making known information about the law and legal system and access to justice with the purpose of enabling members of the Australian community to more effectively control their lives by understanding when they have a legal problem and how to minimize its consequences". Given the difficulties associated with discussing "legal problems", it may be that the Discussion Paper's definition is to be preferred.

legal system which they did not see as part of legal aid and the provision of information and advice about the law in particular cases which they considered to be part of legal aid. Certainly, preventive law and community legal education have continued to feature in the work of community law centres around the world.

In recent times the term emerged again as a term of art in the speeches of Paul Boateng, when a shadow minister for the Lord Chancellor's Department in England and Wales, in the mid 1990s. Thereafter it came to form part of the Labour Party Manifesto for the 1997 election, but its meaning remained somewhat opaque, even after the election had been won. Curiously, the first significant attempt to flesh out the bones of what such a Service might look like came, not from the political parties but from the National Consumer Council in a Consultation Paper, "A Community Legal Service" published in 1998. In their view what was needed was "joined up legal services" – the elimination of the unnecessary duplication between competing providers of legal services, the establishment of early effective diagnosis and referral services and of a co-ordinated network of providers. Interestingly, this mirrored closely the conclusion of the NLAAC final report, *Legal Aid for the Australian Community*⁸ which called for the establishment of community based networks for the giving of legal advice by paralegals involving the legal aid commissions, community legal centres, the Department of Social Security, the Department of Community Services and other bodies. The other significant development as community legal education and "joined up legal services" have evolved, has been the use of new methods of delivery, particularly to provide information and advice in remote rural communities. This paper accordingly focuses Community Legal Services in the sense of "joined up legal services", community legal education and innovative methods of delivery.

England and Wales

England and Wales is probably the most developed jurisdiction today in terms of "joined up legal services", though in relation to community legal education it lags behind Canada and Australia and in relation to innovative methods of delivery it is at a similar stage to several other jurisdictions. The first blueprint for "joined up legal services" came, as we saw earlier, from the National Consumer Council (NCC). Building on their own survey of a representative sample of 1,000 adults in England and Wales who had been involved in a recent civil dispute,⁹ and on the Woolf Report on *Access to Justice*¹⁰ the NCC argued for the creation of "joined up legal services". This might involve:

- 1) a generalist first port of call to act as the sifting mechanism to channel inquirers to the most appropriate sources of information and/or advice;
- 2) a co-ordinated network of affordable, good quality services for addressing legal problems;
- 3) an effective system for matching people's needs to services and equipping people to make the best use of them, and;

⁸ National Legal Aid Advisory Committee, Canberra, 1990.

⁹ National Consumer Council, (1995) *Seeking Civil Justice: A survey of people's needs and experiences*.

¹⁰ The Rt.Hon. the Lord Woolf, (1996) *Access to Justice: Final Report*, HMSO.

- 4) accessible and understandable information covering rights and resolutions.

The co-ordinated planning which these proposals would entail, would come from a series of Regional Legal Services Committees spread throughout England and Wales. The funding for the Service would come from a partnership of central and local funders including the Legal Aid Board, local authorities, the National Lottery and Charitable Trusts.

In the event the Community Legal Services model enshrined in the Access to Justice Act 1999 and currently being implemented by the Legal Services Commission (the successor to the Legal Aid Board) bears a reasonable resemblance to the NCC proposals. The Lord Chancellor's Department and the Legal Services Commission recognised that the obstacles to "joined up legal services" included, a plethora of ad hoc and unco-ordinated services,¹¹ a lack of central planning, an absence of a universal culture of referral amongst existing service providers, inadequate needs assessment, funding not always following need, no common database of advice providers, a lack of quality control and a general lack of legal information. Accordingly, since April 2000 the Legal Services Commission has been establishing a network of geographically defined Community Legal Services' (CLS) Partnerships under the umbrella of the existing national network of twelve Regional Legal Services Committees. The CLS Partnerships are locally based arrangements for joint working between the principal funders of legal and advice services and other stakeholders in the field. By October 2000 there were 142 CLS Partnerships involving 265 local authorities covering over two thirds of the population of England and Wales and by the end of April 2001 it had risen to 183 partnerships, 322 local authorities and 85% of the population.¹²

Judged by a quick and very limited survey of the existing partnerships the most numerous members are funders (local authorities, the legal services commission, and charitable foundations e.g. Northern Rock Fund, Age Concern, Mind, etc) followed by providers (CABx, FIAC, Law Centres, Advice Centres and private solicitors' firms). Curiously solicitor's firms are less likely to members of partnerships than advice centres. Unusual members (in the sense of scarcity) include Family Mediation services, a Society for the Blind and Partially sighted, a Disabled Persons Association and the Distance Debt Unit of a DSS Regional Office.

The purpose and function of the CLS Partnerships includes improving the co-ordination between funders and suppliers in the provision of legal services through:

- 1) better mapping of the supply of legal, advice and information services in the area;

¹¹ In England and Wales legal services and legal advice and information is provided not just by the private profession, or community law centres but by thousands of different advice agencies of which Citizens Advice Bureau are but the best known . Many are funded by local government.

¹² This exceeds the target set by the Lord Chancellor of achieving 66% coverage by April 2001, and has encouraged the LCD to believe that the CLS will achieve the Government's target that 90% of the country should be covered by Partnerships by March 2002

- 2) better assessment of the relative need for these services in the area, and
- 3) bridging the gap between the two, in part through the development of effective referral systems between suppliers of legal and advice services, and in part through the rationalisation of funding resources.

To date the best published information on the operation of the Partnerships comes from the work done by Richard Moorhead for the Lord Chancellor's Department on the six initial or Pioneer Partnerships during 1999.¹³ Moorhead's research highlights the need to distinguish between a number of levels of advice and assistance including "signposting", "information", advice, assistance, specialist assistance and representation. He points to the relationship between these levels and the Quality Framework of the Legal Services Commission and provides valuable lessons as to the size and make up of geographic areas which lend themselves best to Partnerships. He also casts light on the relative complexity of each of the Partnerships tasks and much helpful advice as to best ways of tackling these tasks. Thus his section on supply mapping not only highlights the vital importance of identifying the appropriate geographic area for reporting on the supply, it also discusses the issues of level, volume, quality of services, subject category, staff etc.¹⁴

Moorhead's section on needs assessment highlights the different strategies adopted by the Pioneers to assess need. Some used the existing Legal Aid Board models, others used local authority deprivation indices and others still started from scratch by using proxies such as the proportion of Council Tax Benefit claimants in a given area. While useful, the Moorhead research in this area is much less detailed than that contained in a report by Pascoe Pleasence of the Legal Services Research Centre entitled the *Legal Needs Project*.¹⁵ This report was commissioned to provide definitive guidance to CLS Partnerships as to how best to assess legal needs in their area, and drew on the expertise of most UK scholars working in the field. Pleasence surveys the literature on needs assessment and the principal studies completed around the world in legal needs assessment. Pleasence, like Moorhead, appears to share the widely accepted view that needs are subjective, relative, contingent and socially constructed in nature. In this school of thought there are no "real", objective or "true" needs waiting to be found like buried treasure, if only we would use good enough instruments or search for them more diligently. Assessments of legal need are always, therefore, policy or value judgements which can be contested. Pleasence, nevertheless considers that defensible proxies for need can be developed in the legal services field. While this is probably the case, some critics consider that the more complex the statistical formulae for estimating need, the more tricky the multivariate analysis required to separate out differing "needs", the harder it is to remember that such formulae are essentially tautologous ways of "discovering" need. Similarly, attempts to compare the correlation between needs formulae and deprivation indices or to assert that one is a "more accurate" method of needs assessment, sometimes seem to rely on reasoning which appears slightly circular. It may be that, as the Hughes Commission on Legal Services on Scotland observed, the only escape from the

¹³ R. Moorhead, *Pioneers in Practice*, LCD, March 2000.

¹⁴ For an example of supply modelling in Scotland, see A. Paterson and M. Turner-Kerr, (1993) "Research Report on the Distribution of Supply of Legal Aid in Scotland" Scottish Legal Aid Board. This study is currently being replicated by the Board in order to map changes in the supply of poverty legal services, since that date, including any decline in the number of outlets doing civil legal aid work.

¹⁵ P. Pleasence et al. Research Paper 7, Legal Services Research Centre, January 2001.

impasse is to stipulate when you consider a need to exist and then measure against that standard.

As Pleasence and Moorhead show, over time a wide variety of approaches have been taken to needs assessment. These have ranged from user surveys at local and national level, indicators of expressed need or demand, and supply modeling as a proxy for need on the one hand to census data based formulae or deprivation indices as proxies for legal and advice needs, on the other. Pleasence compares the CLS small area predictive needs models with the results derived from deprivation indices, favouring the former, although it is unclear that he has entirely escaped the tautology trap.¹⁶ Apart from stipulation (see above) a partial answer to the tautology problem may be that the proxies are (1) only indicators of relative need between different geographic areas and (2) only a rough starting point which the CLS Partnership is supposed to refine drawing on its local knowledge. Unfortunately, the alternative approach of looking at how well the needs model relates to demand or supply, does not solve the problem of the adequacy or accuracy of the model as a predictor of need.¹⁷

Pleasence also looks at the relationship between need and demand and between need and supply. His finding that over 70% of wards in England and Wales saw no delivery of legally aided advice level work of any description within them despite containing 60% of the population, clearly demonstrates that geographical patterns of service delivery may not necessarily reflect patterns of need. Pleasence reinforces this point with studies of “advice-seeking behaviour” (an issue also covered by Moorhead) which demonstrate the validity of the Department of Trade and Industry’s arguments in deploying Travel to Work Areas as geographic areas for the analysis of supply and need. Advice-seeking behaviour is also central to the Partnerships’ role in fostering referral networks to create a seamless local network of advisers. However, the Policy Studies Institute’s research on legal services provided by advice agencies in England¹⁸ pointed to a reluctance on the part of generalist agencies to refer cases elsewhere. Miller’s study of Advice Agencies in Scotland¹⁹ showed an equally low rate of referral combined with an “attrition effect” - 20% of referrals to solicitors never arrive - which suggests that it may be more important to concentrate on getting the client to the most appropriate agency, at the outset. To achieve this will require a better understanding of why clients choose the agencies which they do,²⁰ how rational these choices are²¹ and how far they are prepared to travel for different types of service.

Some light on these questions has emerged from the work of Professor Hazel Genn who was engaged by the Nuffield Foundation in 1996 to conduct a large scale national survey in England and Wales²² of people’s experiences of potentially legal

¹⁶ For a contrary, and possibly more objective viewpoint, see P. Pleasence and A. Buck, “Needs Assessment and the Prioritisation of Legal Services in England and Wales”, paper for the ILAG conference, Melbourne, 2001.

¹⁷ For a limited and flawed attempt at legal needs assessment and its relationship to supply in Scotland, see A. Paterson and P. Montgomery, (1996) “Access to and Demand for Welfare Legal Services in Rural Scotland”, Scottish Legal Aid Board.

¹⁸ J. Steele and G. Bull, *Fast, friendly and expert?*, Policy Studies Institute, 1996.

¹⁹ C. Miller Research, (1999) “Referrals between Advice Agencies and Solicitors”, CRU.

²⁰ E. Kempson, (1989) *Legal Advice and Assistance*, Policy Studies Institute.

²¹ A. Lindley, (1997) “Access to Legal Advice”, *Consumer Policy Review*, vol.7 no.4 July/August p.143.

²² Over 4,000 individuals were screened, with follow up interviews with 1,000 of them and in-depth

problems. In order not to prejudge the respondents' replies, the questionnaires administered in the study make no reference to law and the respondents were never informed that the researchers' interest lay in how they reacted to "justiciable problems" - ones for which the legal system, at least in theory, provides a remedy. The survey looked at the incidence of "justiciable problems" in the last five years which the respondents had found difficult to resolve, what people did about them, which agencies they contacted (if any) and why, their views on the service they received and on the result achieved. Genn found that around a third of the population had experienced at least one such problem in the time period and one in seven had experienced several such problems. Significantly, Genn found that problems appear to come in clusters e.g. thus those who reported having experienced money problems during the previous five years were likely also to have experienced consumer problems, problems with rented accommodation and employment problems. Often the cluster will be the result of a "cascade effect". Thus Genn describes how a "threatened repossession of the family home can lead to marital strain and breakdown, mental health problems, leading to difficulties at work and problems in caring for children".²³

Genn's research shows the patterns of advice seeking behaviour in England in greater detail than has been achieved hitherto. It suggests that the patterns have changed substantially in the last twenty years with far fewer people prepared merely to shrug their shoulders when confronted with a significant problem i.e. to "lump it", than in the past. It also suggests that the forms of help sought depend very much on the type of problem that has been experienced. Interestingly, Genn found no straightforward correlation between income and advice seeking. Thus respondents with the lowest income were as likely to obtain advice from a solicitor as those with the highest income. As Genn speculates, this might suggest that civil legal aid or advice and assistance is doing at least part of its job in England and Wales.²⁴ In terms of satisfaction, the majority of respondents found their first adviser to be very helpful and satisfaction rates did not vary substantially as between solicitors or advice agencies. However, satisfaction appeared to increase with the level of help provided and significant access problems were reported in relation to some advice agencies, particularly over the phone. Finally, the survey revealed that while those who took no advice from others were the least successful in resolving their cases, those who received more than merely advice and information e.g. representation, were 30% more likely to resolve their dispute than those who had only received advice and assistance from an advice agency.

The Genn research has had a signal impact on the implementation of the CLS in England and Wales.²⁵ Indeed, one of the final recommendations of the Pleasence research report was that the Genn questionnaire be re-worked and re-administered to place greater emphasis on general awareness of service providers and on advice seeking behaviour, and the choice whether to seek advice, from where and why. This

interviews with 40.

²³ H.Genn, (1999) *Paths to Justice*, Hart Publishing at p.35.

²⁴ Of course, that is not to say that legal aid is succeeding for the middle income. Moreover, Genn's interviews were conducted before the recent changes to civil legal aid in England and Wales were introduced.

²⁵ Professor Genn, together with the author, has carried out the same project with the same questionnaire and methodology in Scotland, also funded by the Nuffield Foundation. It is due to be published in October 2001. An earlier survey covering some of the same issues was published by the Scottish Consumer Council as *Civil Disputes in Scotland* in 1997.

will now form the basis of the Legal Services Research Centre's periodic needs survey which is designed to assist the LSC "to most effectively plan and operate a targeted legal aid scheme in the context of a controlled budget."²⁶

While the CLS has developed a national Directory of providers and CLS Partnerships have made considerable progress in relation to needs assessment and some progress in mapping supply and working on referral networks, they are struggling to rationalise provision in Partnership areas or to progress the pooling of resources. Understandably, some local authority funders of advice agencies have been suspicious of "rationalisation" while others have sought to use it as a way of reducing their funding bill. Some Partnerships have developed strategic plans which involve transferring resources from one agency to another or others, but these are still unusual to date. The role of the lawyer providers in Partnerships has also proved problematic. While the best Partnerships have an active input by the key solicitor's firms in the CLS, some have lost interest in the Partnerships once their contracts were allocated.²⁷ Other problems include getting the balance between central and local input correct, the lack of transparency in local government funding, the perception that "some partners are more equal than others" and the tension between the competing interests of funders and providers, and the balance that has to be struck between quality assurance standards and access to services.

In terms of community legal education and innovative methods of delivery and the Legal Aid Board, research by the Policy Studies Institute²⁸ into alternative methods of delivering poverty legal services in England found that the primary focus was on outreach services, telephone services and second tier services. Intriguingly, the internet does not feature significantly in the Report. However, a key part of the Community Legal Services is its website, Just Ask! (<http://www.justask.org.uk>). It contains a facility, Advice Search which provides information on 16 broad legal areas²⁹ (each with their own sub-categories) from any of the 300+ sites which the CLS have judged to provide useful and substantive advice and information. The sites can be searched by topic or sub-category or by free text search. However, Just Ask! is not yet interactive, although some of the sites contained in Advice Search are.

Australia

The notion of "joined up legal services" is not unique to England and Wales although they may have gone furthest in certain aspects of it e.g. the bringing together of the advice sector with the private profession in partnership schemes. In a number of jurisdictions e.g. Australia,³⁰ New Zealand,³¹ Canada³² and the Netherlands,³³ either

²⁶ See P. Pleasence and A. Buck, "Needs Assessment and the Prioritisation of Legal Services in England and Wales", paper for the ILAG conference, Melbourne, 2001.

²⁷ On civil contracts in the CLS see S. Orchard, "The English LSC's use of Contracts", paper for the ILAG conference, Melbourne, 2001.

²⁸ Jane Steele and John Seargeant, "Access to Legal Services" PSI, 1999.

²⁹ Actions against the Police; Clinical Negligence; Community Care; Consumer and General Contract; Crime; Debt; Education; Employment; Family; Housing; Immigration and Nationality; Mental Health; Personal Injury; Public Law; Welfare Benefits; Wills and Probate.

³⁰ John Walker (1999) *Legal Aid Funding Model*, Attorney General's Department, Canberra.

³¹ A. Opie and D. Smith, (1999) "Needs Assessments: Knowing Disadvantaged Communities" in J. Reilly, A. Paterson and W. Pue (eds) *Legal Aid in the New Millennium* papers presented at the International legal Aid Conference, University of British Columbia, June 1999 at p.145; G. Maxwell,

legal services commissions have been established with a strategic role, or legal needs assessments have been carried out and initiatives commenced to link more closely the work of the private profession funded by legal aid with the work of salaried lawyers in the poverty law sector

Australia in the 1990s were the first jurisdiction with a highly developed legal aid programme to move to a fixed annual budget. It therefore became imperative that the Commonwealth administrators came up with an acceptable formula based on relative need to allocate funding as between the States. They used two approaches, needs assessment based on proxies for demand and a survey of the “unmet needs” of the low-income population. Here, they catered for the “policy value” question by separately surveying the “felt needs” of the respondents for legal aid and contrasting them with the “normative needs” stipulated by the experts (providers, administrators and community groups).³⁴ Even before the introduction of the fixed cap on legal aid in Australia, the division of labour between the salaried lawyers employed by the legal aid commissions and the private profession has been an issue of considerable political sensitivity. Unfortunately the Australian study³⁵ comparing the relative efficiency and value for money of using these two types of lawyer generated more heat than light on the issue, even although its conclusion was that both had a role in the overall delivery of legal services in Australia. Reviews of legal aid in Australia have been supportive of greater use of para-legal advisers and not simply in community legal centres or private firms.³⁶ Even as early as the 1980s a consumer advice network operated in Victoria rather like a mini-Community Legal System:

“In the consumer network, financial counselors have provided specialist advice to consumers for 10 years. So effective is that advice that the Consumer Credit Legal Service (CCLS) and the Legal Aid Commission of Victoria use the network to service most finance-linked consumer inquiries before referral to a solicitor. Many financial counselors have a better grasp of consumer law than many of Victoria’s solicitors. CCLS solicitors are available to the network of financial counselors and other lawyers in assisting consumers. This involves giving telephone and written advice on cases and can extend to assisting with interviews and hearings, without formally taking conduct of the case.”³⁷

Community legal education, as we have seen has long been a part of the role of community legal centres in Australia. Innovative forms of delivery include telephone

C.Smith, P. Shepherd and A. Morris (1999) *Meeting Legal Services Needs*, Legal Services Board, New Zealand and Mitchell Research (1999) *Unmet Legal Need in the Taranaki Region*, Legal Services Board, New Zealand.

³² S. Poulos, M. Benton, F. Kraemer, C. McEown and D. Duncan,(1999) “Mixed Service Delivery: Lessons from British Columbia” in Reilly et al (eds) above; A. Currie, “The New Brunswick Aboriginal Duty Counsel Project” International conference paper, Peyresq, June 2000.

³³ P. Levenkamp, (1999) “Evaluation of the Dutch Legal Aid Act” in J. Reilly et al (eds) above; T. Goriely (1992) “Legal Aid in the Netherlands” 55 *Modern Law Review* 803.

³⁴ John Walker Crime Trends Analysis and Rush Social Research, *Legal Aid Funding Model*, Canberra, Attorney-General’s Department, 1999.

³⁵ G.Meredith, *Legal Aid Cost Comparison – Salaried and Private Lawyers* (AGPS, Canberra, 1983).

³⁶ E.g. National Legal Aid Advisory Committee, *Legal Aid for the Australian Community* (AGPS, Canberra, 1990).

³⁷ *Ibid.* p.226.

and outreach services. Thus Victoria Legal Aid provides clinic sessions at regional and outreach offices, including hospitals and prisons. Telephone advice with specialist family lawyers and mental health solicitors is also provided and a comprehensive information service is provide via a 1-800 phone number. Victoria Legal Aid also employs community education officers to go to country towns and they provide financial counselling and estate planning as well as legal information. VLA also puts on seminars to train community workers and will hold Law Weeks in particular areas. It is clear from some of the evidence provided to the recently completed parliamentary inquiry into legal services in rural Victoria³⁸ that there is some tension between the private profession and the salaried lawyers employed by VLA. On the other hand relations between the community legal centres and the private profession seem less tense, because CLC has never been a role for the private profession. The community legal centres work closely with VLA to eliminate overlaps, e.g. by ensuring that clinics are held on different days or by working together on community legal education programmes. Family and financial counseling plays a large part in their role also. Despite the apparent success of community law centres in Victoria, Victoria Legal Aid began an inquiry in February 2001 designed to ensure the consistent and equitable distribution of community law centres throughout Victoria bearing in mind the need to ensure that CLC services are accessible to persons most in need.³⁹ In the same month a group of community law centres and government departments in New South Wales announced that they were coming together to present a series of community legal education workshops to Aboriginal people in remote rural communities in NSW.⁴⁰

At the Federal level the Commonwealth government has established a new Law by Telecommunications services project⁴¹ designed to establish:

- a national call centre providing family law system and referral information;
- a rural and remote legal advisory phone service *via a 1-800 number* for people living in designated physically isolated communities;
- a comprehensive family law system and referral database accessible via a new family law web site; and
- a comprehensive web-based directory of Commonwealth and State legal resource currently available on the World Wide Web.

One example of a State initiative using the web is the Victorian Department of Justice's Legalonline, (www.legalonline.vic.gov.au) a website which contains a list of ten or so legal topics with 8-12 sub-headings each. This is free legal information on the Web. However it is not interactive. Austlii, (www.austlii.edu.au) one of the most

³⁸ www.parliament.vic.gov.au.

³⁹ www.legalaid.vic.gov.au.

⁴⁰ www.legalaid.nsw.gov.au

⁴¹ I am indebted to Joan Jardine of the Australia, Commonwealth, Attorney-General's Department for this information.

comprehensive global sites containing primary source data of a nation's legislation and case law, also contains a Community Legal Education section with a Directory of legal information sources for laypersons in all the Australian States.

New Zealand

Under the 1991 Legal Services Act, the New Zealand Legal Services Board established 19 District Legal Services Committees, each composed of eight lawyers and community representatives. At about the same time legal aid was reformed in New Zealand and each local district was charged with identifying the legal needs in their areas, monitoring the provision of legal aid and recommending improvements to the Board. This could have been the start of an early form of Community Legal Services, but due to a shortage of resources, the reform achieved little. This prompted the Legal Services Board to commission a nationwide survey of legal needs.⁴² Using the standard formula of a questionnaire with a list of common problems experienced in the last three years⁴³ the survey found about half of the respondents had had such a problem and the researchers deemed about half of them to be examples of an unmet need.⁴⁴ Unfortunately, the survey tells us little about the relationship between different types of providers of legal services, even although it is clear that CABx exist there. The survey does, however, endeavour to place its findings in a comparative context by juxtaposing them with the results from surveys in England, Australia and the USA. However, the authors rightly recognise that this is ultimately a rather fruitless exercise. Indeed it has become a matter of international consensus⁴⁵ that comparisons between legal needs surveys not only between jurisdictions but within them, over time, are of limited utility, because of differences in wording, design, methodology, time frame, problem areas and sectors of the population covered not to mention cultural differences between countries and the justice systems. The New Zealand research highlighted another drawback in the dominant form of legal needs study, the lack of nuanced, qualitative data which brings the national picture down to the ground.⁴⁶ Certainly, the Legal Services Board found it less helpful than they had hoped.⁴⁷ Their response was to follow an approach to establishing the existence of legal needs which had been pioneered by Johnsen in Scandinavia, namely, action research.⁴⁸ Pioneer projects were established in disadvantaged rural communities to provide legal education and information, but also to interview members of the local community with a view to providing a detailed account of the needs of that district.⁴⁹ Both of these initiatives fall under the definition of CLS being used in this paper. Interestingly, a recent report has called for the scope of such projects to be expanded to include the funding of

⁴² G.Maxwell, C.Smith, P. Shepherd and A. Morris, *Meeting Legal Service Needs*, Wellington, Institute of Criminology, Victoria University of Wellington, 1999.

⁴³ The problems were chosen to cover areas likely to have been encountered by the lower income individuals (not groups) which the researchers considered were amenable to some form of legal solution.

⁴⁴ Half the respondents were seen as having remediable information or access problems. The researchers' assessments of unmet need were, of course, judgements of policy value.

⁴⁵ Apart from the New Zealand researchers, Tamara Goriely in Pleasance (et al) *Local Legal Need* Research Paper 7, Legal Services Research Centre, 2001, Genn, *Paths to Justice* Hart Publishing, Oxford, 1999 and ABA (1994) have all reached similar conclusions.

⁴⁶ One critic described the New Zealand survey as access to justice from 10,000 feet up.

⁴⁷ See A. Opie and D. Smith, "Needs Assessments" in Reilly, Paterson and Pue (eds) *Legal Aid in the New Millennium*, UBC, 1999.

⁴⁸ Johnsen cite

⁴⁹ Mitchell Research (1999) *Unmet Legal Need in the Taranaki Region* and A.Pitman (1999), *A Needs Analysis for Legal Services in the Tai Tokerau Legal Services District*.

CABx to enhance their capability in respect of legal services and community organisations and lawyers who can show that they have the ability to address an unmet legal need for a specialist form of legal services.⁵⁰

The Netherlands⁵¹

An equally interesting jurisdiction on the topic of community legal services is the Netherlands. In most continental Europe there is no equivalent to the CABx or generalist advice agency. However, in the Netherlands there have long been a network of raadslieden or local information and advice centres. There are currently about 90 of these with a total of 250 or so paid workers (there are a small minority of volunteer workers) mostly with a legal or social work background. The bulk of their work is social security, tax, housing and education advice.⁵² The Dutch Ministry of Justice has not hitherto seen them as providing legal services and thus has not included them in their plans, which has led to the raadslieden calling for a more “co-ordinated approach”. Interestingly, a think tank in the Netherlands has recently advised the Ministry that in future legal aid should involve working with the legal and social advisers from other agencies.

On the other hand the Dutch pioneered many other aspects which are now expected in advanced legal aid jurisdictions. Thus they were amongst the first to embrace the notion of a mixed model of service provision using private and salaried lawyers. In 1957 they introduced a network of buros which employed private lawyers on a contract basis to provide legal advice and assistance. In practice the great bulk of their work related to divorce proceedings. The failure of the profession to provide help in employment, housing, immigration and social welfare cases prompted the universities and law students set up a range of “law shops” in low income neighbourhoods, with regular office hours, but specialising in these neglected areas. Before long their caseload outstripped that of the official buros. Between 1974 and 1980 the Government set up a new network of buros modelled upon the “law shops”. They were staffed by salaried, qualified lawyers who did not have rights of audience in the courts. In all 52 were established throughout the country with extension outlets in community centres and a mobile office based in a modified bus touring to remote areas (the “Jusbus”). At first these buros were restricted to giving advice. If representation was required the buros’ administrative staff would assess the eligibility of the client for legal aid and then refer the case to a private lawyer remunerated by legal aid. The scheme was highly successful. Even when economies were required during the eighties the buros continued to provide initial advice and information free of charge, refusing to collect a contribution even in situations where a private lawyer operating legal aid would be expected to do so.

In 1994 legal aid was transformed. Five regional legal aid boards were established to play a strategic role in administering their budgets. The rivalry between the staff lawyers in the buros and the private lawyers has begun to grow. Buros still predominantly do advice work but their staff have gained the right to do some representation work. For the

⁵⁰ J. Morris, *Women’s Access to Legal Services* (The Law Commission, Wellington, 1999). It is perhaps worthy of note that the legal aid scheme in New Zealand does not extend to the provision of legal advice in civil matters by lawyers.

⁵¹ I am indebted to Peter Levenkamp Director of the Legal Aid Department of the Dutch Ministry of Justice for much of what follows. Any errors of interpretation are mine.

⁵² In only a small minority of cases will they go beyond giving advice e.g. in 2% of cases will they accompany clients to tribunals. The raadslieden, however, do not keep extensive written records. See Goriely *op.cit.*

future the Ministry of Justice is in the process of formulating its own plans for a community legal service with a heavy reliance on new technologies:

Access to legal aid will in principle come through an electronic or virtual ‘counter’ open to every citizen who logs on. The counter will offer information on the quality and fee tariffs of legal firms, buros, civil-law notaries, mediators and other legal professionals. The counter will act as a kind of referral scheme, by assisting members of the public to find a suitable lawyer in their geographic location, if they qualify for legal aid. The required data will be exchanged electronically. The counter will check the salary of potential litigants with the tax authorities. The appointment with the lawyer will be made on-line. It is conceivable that clients who pay their own fees could also arrange an appointment in this way.⁵³ Legal expense insurers and their clients will also be able to use the counter. It is hoped that by involving paying clients and insurers in the project the proposal will be easier to justify in terms of public expenditure as well as avoiding the idea that the counter is only intended for the less well off. Using the counter will remain optional, thus clients will be able to contact lawyers or buros direct as they currently can;⁵⁴ in which case the lawyer will be able to apply for and receive legal aid electronically on behalf of the litigant.

The Dutch Ministry of Justice is faced with a substantial reduction in private lawyers who are willing to undertake legal aid work. Accordingly they are giving consideration to removing the distinction between law firms and buros – thus establishing a level playing field entailing that buros in future could be paid per case and able to assist paying clients.⁵⁵ This might enable the buros to maintain – and perhaps even expand – their network. The buros are keen to keep their image as easily accessible service providers. They may even set up a kind of franchise – the ‘McDonalds’ of legal aid. Such an organisation would probably also appeal to insurers. The differences between buros and law firms with respect to legal aid contributions could also disappear. In both cases, less affluent litigants would pay a lower contribution for more short-term advice than for full legal aid.

Finally, the legal aid boards could acquire a sort of ‘broker’ function. They would need to bring demand and supply together – electronically if possible, and safeguard the quality of the provision. Already they have begun to look at using contracts with private lawyers and with buros. These lawyers and buros may need to satisfy the boards that they can meet their quality criteria. The offices that meet the criteria would then receive accreditation. The Minister of Justice would fix a higher tariff for

⁵³ In North America there is a website on which litigants post information about their cases so that lawyers can respond, stating the fees they would charge for taking the case on. The Dutch Ministry of Justice sees this as a possible model to explore.

⁵⁴ Because for the moment not everyone has access to the Internet, the counter will also be approachable in person. The staff of the physical counter will probably be located in existing legal aid board offices or buros.

⁵⁵ It is unclear whether lawyers in buros will cease to be salaried.

these offices (roughly 25% more) and extra efforts would be made to simplify legal aid application procedures for them.⁵⁶ The advantage for the offices would be quality recognition, better payment and the assurance of a substantial number of cases. Offices that were not accredited would receive a lower reimbursement. There would be competition for a new contract every five years. The Ministry is also considering whether contracts should be restricted to private lawyers and buros or whether non-legal agencies might get contracts including the legal expenses insurance firms that employ their own lawyers.

Canada

Community legal education has very firm roots in British Columbia, where the Public Legal Education scheme is an integral part of the Legal Services Society's mandate there. The aim is to improve public access to – and involvement in – the law. It covers providing the public with information or self-help materials so that they can solve their problems without legal representation. There is also a wide range of publications in several languages with a particular emphasis on materials for the aboriginal community. The programme provides small grants to community groups and agencies to develop projects and materials which explain the law and the legal system to the community. It also funds an intercultural fieldworker to work with various community groups in BC to ascertain need and to provide public legal education. The Legal Resource Centre is a law library maintained by the Legal Services Society of BC which is available to the public and legal aid staff. In addition, a legal information telephone service (Law Line) is provided from the law librarians to the general public. No advice is given. The Electronic Law Library which is maintained by the LRC provides basic links to reliable legal information sites for the general public, including statute, court and government sites as well as others containing information on topics ranging from aboriginal law to young offenders. There were 188,000 hits on ELL in 1999/2000 (<http://www.bcpl.gov.bc.ca/ell>) as compared with 12,402 requests for telephone information via Law Line.

Legal Aid Ontario (<http://www.legalaid.on.ca>) has taken over responsibility for community legal clinics as well as legal aid from the private profession. It is also experimenting with expanded duty programmes. In the long term this may well offer opportunities for more “joined up legal services” between them. In terms of innovative methods of delivery it has opted for a second-tier approach. Thus through its on-line Research Facility it provides standard pleadings and memoranda to lawyers doing legal aid work in Ontario as well as (interactively) case specific research on criminal and civil matters. A similar facility is provided to the 72 community legal clinics operated by Legal Aid Ontario.

USA

The Legal Services Corporation considers that information technology offers the government unprecedented opportunities for higher quality services at lower cost. In a recent report (<http://oig.lsc.gov/tech/techdown.htm>) they concluded that order-of-magnitude increases in delivery system capacity could be achieved by:

⁵⁶ This is a similar approach to that taken by the English Legal Aid Board when it introduced franchising.

- increasing client self-help through the new delivery medium of public access kiosks
- providing information and legal assistance via the Internet;
- using computer-assisted client intake and legal assistance telephone helplines;
- and integrating these and other technology applications to help reshape the delivery of legal services.

In their view legal services kiosks could assist millions of additional clients at very low cost by channeling routine, repetitive cases to self-help kiosks. Users engage these interactive kiosks through a touchscreen, which employs intuitive icons, a carefully-structured script, and an on-screen video "host" who explains each step. Kiosks are already used in the USA, for example, for social security applications, to process vehicle registrations, to pay parking tickets, and to provide information on job vacancies and government services. QuickCourt, a kiosk system operated by the Arizona courts, demonstrated that legal assistance can be provided effectively by kiosk in many routine cases. QuickCourt provides information on small claims, child support payments, alternative dispute resolution, tenant rights, and referral services. It guides users through the completion of forms necessary to file for divorce and other legal actions. In the federal legal services program, envisages that similar public access kiosks could be used to dispense information to clients, to help them complete forms, for outreach in rural areas and for program intake. The Internet, the report concluded, could be used to disseminate information and efficiently provide legal assistance to millions of additional clients who could access the Internet at home, work, public libraries, community centers, or through public access kiosks in supermarkets, courthouses, or legal services offices. For example, to assist those victimized by domestic abuse, Internet-delivered software could provide legal and referral information, and guide clients through completion of forms needed to obtain an Order of Protection or seek its enforcement. The report identified other beneficial uses for the Internet in the federal legal services program. Some legal services grantees doubled the number of clients served by redesigning their intake process. The legal assistance helpline/intake systems feature attorneys or paralegals with telephone headsets, and on-screen case management and intake software. Its efficiencies derive from attorney specialization in quick-to-handle cases, the fact that telephone interviews take less time than face-to-face consultations, and from avoiding time-consuming tasks associated with traditional intake. Such an approach is of most use in cases which do not require the physical presence of an attorney. The report notes, however, that "these 'referral, advice only, and brief service' cases make up 68 percent of the legal services caseload. Information technology applications would enable the delivery system to reach out to those previously without access to legal assistance, and cut into the backlog of unmet legal needs."

Richard Granat, in a "think piece" in 1997 entitled "Creating A Network of Community-Based *Pro Se* (Self-Help) Legal Information Centers" (www.proselaw.org/resource/kiosk1.htm) also argued that rather than create free-standing kiosks placed in limited number of locations such as QuickCourt, the better policy is to use the Web to create a broad network of community-based *pro se* (self-help) legal information centers. The core element of this would be a Website organized as a set of libraries in major substantive areas, such as family law, consumer law, and landlord-tenant law. Each of these libraries would contain explanations of the law in lay terms,

legal forms, instructions on how to complete the forms, and step-by-step procedures on how to file the forms. The user would complete the forms directly on the screen and print out the forms on their local printer replicating the functionality of the stand alone kiosk.

In 2000 the Legal Services Corporation committed \$4 million on Technology Initiative Grants building on its Report in ways that Granat would approve. One project, “entitled ‘Computers That Speak of the Law,’⁵⁷ employs high-speed satellite connections and broadband lines to communicate with kiosks in remote offices in Utah, Arizona, and New Mexico -- all served by this Native American program. These kiosks will have touch-screen capability and will consist of monitor, computer, printer, and web camera. By touching symbols and text in Navajo, Hopi, and English, users and clients will select, view, and print community legal education information, [self-help] forms, and social services information from the project web site. The project will create digital video, audio and text files containing [self help] and community legal education resource materials, and will transmit this information, including updates and additions, to all offices simultaneously through the remote server in northern Arizona. Users will have access to this information without having to speak to attorneys.” Again, in California, the Legal Aid Society of Orange County is participating in a project entitled I-CAN (Interactive Community Assistance Network designed to make ‘self-help’ information available through a web site and through Internet interactive self-help kiosks. Clients accessing this multi-lingual system will view video clips explaining the law, complete court forms on screen, and then electronically file them in a variety of proceedings, including domestic violence actions. I-CAN will also be tied into the legal system's provider community to expedite access and referral. West Virginia is also running a pilot project under which legal aid applicants can do so on the web answering questions on eligibility and their answers will interactively generate self help materials at the same time as being filed with the appropriate office. Other projects relate to video-conferencing, instructional videos and toll-free legal help lines.

Richard Susskind has described people who would benefit from legal advice but cannot afford it as the ["latent legal market"](#). He envisages that the internet may be the best way of reaching them. “Unbundling legal services” is a concept developed by Forrest Mostyn in the USA which may also tap into this market. Essentially he argues that representation of a client can be split into a series of separate tasks (unbundling is also sometimes called "discrete task representation"). On this approach the client retains control of the case but parcels out parts of it to lawyers or paralegals where necessary. This reduces cost and focuses the appropriate expertise on the relevant parts of the case. It allows people to use a limited amount of legal service provision where it is most needed, without disempowering the client. As such it offers new opportunities both for clients and for providers. However, the concept has its critics, who point to the ethical and other difficulties that could arise with such an approach, not least if the initial diagnosis or unbundling of tasks is badly handled.

Conclusion

⁵⁷ Translated from the Navajo: Naalkidi bee haz'aanii yaa halne'

In a number of jurisdictions, including the author's own, consideration is being given to introducing some form of community legal service. The foregoing excursus suggests that there are lessons to be learned from other jurisdictions who have already begun to develop in that direction. The research of Genn and others points to the advantages of early, affordable, accessible diagnosis with a strong and effective referral culture as a starting point. The need to avoid unnecessary duplication amongst providers and funders suggests that "joined up legal services" are also a desirable feature of a CLS. Community legal education and preventive law have a part to play, but the advent of the internet may transform the current reliance on the phone and outreach programmes, allowing communities in highly remote areas, interactive access to advice and information for addressing their justiciable problems.