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Legal Aid Ontario:
Experimentation, Reform,
and Issues in Staff Service
Delivery Models

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Sidney Linden and Angela Longo

Introduction

Historically since 1967, Legal Aid Ontario has relied on the judicare model as its main system of delivering criminal and family legal services (McCamus, 1997). In recent history experimentation with alternative forms of delivery modalities began with the implementation of the Refugee Law Office in 1994. The McCamus Report of the Ontario Legal Aid Review (1997) gave further impetus to testing other forms of service delivery and developing a continuum or range of services to complement the judicare model. More recently, as fiscal and cost control pressures emerged, the relevance and necessity of service delivery alternatives and service delivery reform has come to the fore and is supported by new legislation, *The Legal Aid Services Act* (1999). In sum, the organization was under external pressure to implement cost saving forms of service delivery. The introduction of new legal intervention methods in a judicare based system was complicated further by a level of uncertainty and skepticism regarding staff lawyers and staff models. Concurrently, as new pilot projects were introduced other major organizational changes occurred including a new legislative mandate. The new “client-centred” mandate established a priority for need-based service delivery and is transforming views about service delivery models. In this sense, the environment has played a significant role in shaping the identities and definitions of service delivery models from cost saving strategies to more comprehensive strategies of providing a continuum of legal interventions that are

responsive to the needs of clients and communities. This evolution of philosophy and approaches to legal aid service delivery is the dynamic background of this paper.

This paper is organized for a section of the 2001 International Legal Aid Group Conference session about the “Merits of Salaried Lawyers Employed by Legal Aid”. It will focus on the learnings and results to date of testing a variety of staff service delivery models and provide insight into the duty counsel reform presently underway. For the purpose of this paper descriptions of services will include references to “staff” oriented services; however, it is noted that there is a deliberate intent at Legal Aid Ontario to minimize the competitive nature established in comparisons between staff models and *judicare* or *per diem* models. There is instead a focus on the service aspect of the model regardless of how personnel are remunerated. The underlying assumption is that comparable costs are associated with each delivery method; therefore, the decision to use a particular model is based on a comprehensive understanding of the type of need and is not decided solely on the basis of cost. This assumption supports the direction of testing a model of mixed service delivery methods – a continuum of services responsive to need. Legal Aid Ontario, however, is “finding its feet” in this regard as it attempts to answer “What mix is the right mix?” and “What criteria will be used to judge the right mix?”

Overview

The Refugee Law staff office pilot project reviewed in this paper is now a completed experiment. The Family Law staff office pilot projects discussed are fully implemented, operational and midcourse in their terms while the duty counsel reform is in its initial phase of implementation. Under the section “Law Office Staffing Models”, the Refugee Law Office will be reviewed using quality of service, cost efficiency of service, and alternative roles of a staff model as the focus. Three staff

models in family law will be outlined and central topics discussed with respect to best practice, complexity and the comparison of cases and collaboration with the community. Under the section “Duty Counsel Models”, projects and directions will be reviewed including the concept of an “expanded” duty counsel model and, second, the duty counsel staff model as an anchor for service delivery. The paper is intended to provide a description of the experimental models, to highlight learnings from the experience of model testing and service delivery reform, and to identify for discussion issues of relevance to the effective management and evaluation of alternative staff service delivery models.

Background

The historical perspective of the Refugee Law Office is unique and separate from the more recent development of family law staff models identified in the Pilot Projects Final Report (1998). A brief background of each staffing model will be presented as the context for the description and discussion in the respective sections.

Law Office Staffing Models

A. The Refugee Staff Model

The Refugee Law Office (RLO) opened in March 1994 as a pilot project and the first staff office in Ontario. The mandate of the office was to provide quality representation in a cost-effective manner for refugee claimants before the Immigration and Refugee Board (IRB) and in appellate matters resulting from decisions of the IRB. The RLO has undergone 2 evaluations: May 1998 covering the period from 1994 to 1997 and November 2000 covering the period from 1998 to March 2000.

The original RLO model design included a staff of 6 lawyers, including a Director, 6 paralegals and 3 support staff. When the RLO initially opened, it was staffed with 4 lawyers, 6 multilingual paralegals and 3 multilingual support staff.

Languages spoken by staff were Arabic, Azari, Farsi, French, Spanish, Swahili, Tamil and Turkish. Three of the paralegals had been lawyers in their countries of origin (Sri Lanka, El Salvador and Sudan). The RLO anticipated hiring lawyers to reach the full complement of 6 as their caseload developed. Caseload expectations included every lawyer conducting 3 hearings per week and paralegals conducting 3 expedited cases per week. For the full complement office this translated into annual targets of 936 cases for lawyers and 936 expedited cases for paralegals – a total of 1872 cases or approximately 7% of the refugee certificate¹ program.

The Quality Factors

The definition of quality of service encompasses a spectrum of concepts. The understanding of quality is a work in progress - a dynamic definition - articulated in this report through retrospective lenses. The definition of quality is shaped in varying degrees by common routine and practice, organizational need, and the political climate. Quality of service is also manifested in a variety of levels described as case specific indicators, program specific strategies, and organizational protocols or process indicators.

Case Specific Quality Indicators

Quality benchmarks in Refugee law specific to the case or client include both content and process indicators such as:

- thoroughness of individual case details and country research
- the amount of file documentation
- use of consultation and expert witness testimony
- evidence of collateral reports
- adequate client identification documentation
- breadth of issues covered
- quality of information provided to the client
- client preparation for the hearing
- the quality of representation of a refugee claimant before the IRB
- and, client satisfaction

¹ Certificate program is synonymous with judicare.

Program Specific Quality Indicators

Over the course of this pilot, program strategies changed in response to needs of clients that reflect improvements to the quality of service. Program strategies regarding quality of service relate to removing barriers to the application process and, directing staff to provide specific service. The definition of quality in this sense is often described as access to justice, access to service, or ease of access. Examples of program strategies designed to improve quality are illustrated in the January 1995 decisions of the Legal Aid Committee to expand its geographic boundaries and also expand its mandate to conduct externally generated judicial reviews from failed refugee hearings. Further evidence of quality consciousness is demonstrated in the January 1998 decisions of the Legal Aid Committee to enhance the development of the RLO by adding coverage of detention reviews at two locations in Toronto. The number of languages spoken by the staff can also be interpreted as an original insight into establishing a high quality of service in a multicultural province.

Other examples of indicators used to determine the quality of service include outreach and consultation to non-governmental organizations serving the refugee population; their level of satisfaction with services provided; and, engagement with clients in the community context. Quality of service in this sense extends beyond the typical parameters associated with an individual case. It includes the process of engaging an applicant from a referral source and following up with a referral source after a client has received service. It also includes establishing a level of service with the community to better understand and serve this specific population.

Not included in the definition and monitoring of quality from a program perspective are aggregate measures such as consistency of reporting and representation across cases and average measures of length of service. The average

number of hours per case was used as a comparison with the certificate program. The difference between the average number of hours per case of the private bar, 19, and the average number of hours per case of the RLO, 25, was reflected in the evaluations as contributing to the quality of service. Although more hours per case may indicate a difference in quality other factors may also be represented in the experience level of the lawyer and the amount of time spent with a client by lawyer and paralegal.

Organizational Quality Indicators

Examples of organizational indicators of quality are seen in the decisions of the Legal Aid Committee in 1998 to direct unrepresented refugee applicants to the RLO; and, having staff from the RLO assist in the application process by interviewing clients. Directing clients to the office was a controversial decision as it conflicted with the operating principle of the Law Society of Upper Canada of individual “choice of counsel”. Improving access, however, by streamlining procedures and making it easier for clients to secure legal intervention expediently are forms of quality in motion versus more static forms of quality manifested in outcome measures.

It could be argued that these strategies were a response to minimal caseloads and under-utilization of staff in the RLO – which is also the case; however, the net result from a client, program and process perspective is an increase in the numbers of clients served, clients served expeditiously and an improvement in the client process to receiving service.

The evaluation reports conclude that the RLO was perceived by both clients and community organizations as providing consistently high quality, expert, conscientious, client-centred services in a multicultural setting; whereas, perceptions of quality among the private bar lawyers were more varied. Stakeholders indicate the RLO provides exemplary quality legal services for refugee claimants. The RLO staff

facilitates the refugee determination process; the RLO contributes to the quality of services provided by the private bar by providing consultation and country information; and, the RLO enhances the ability of community organizations to serve refugees through consultation and a willingness to engage with a client in the community.

The Dollar Conundrum

What the Numbers Say

The RLO referral numbers illuminate the demand patterns and highlight the vulnerability of RLO cost efficiencies driven by external supply and demand forces. Table 1 below illustrates the supply and demand dependency of the RLO by considering the relationship between intake referrals and cost efficiency of the RLO over the past 2 fiscal years.

Table: 1

RLO Case Count and Average Case Cost Comparison

1998/99		1999/00	
Cases	Average Cost per Case	Cases	Average Cost per Case
178	\$2438	280	\$1720

Note: Average case costs include all related expenses within the RLO

As the caseload increased from 1998/99 to 1999/00, costs decreased proportionately. Similar patterns have occurred over the six-year operation of the RLO. A 30% difference in average case cost is realized based on the number of cases available in 1998/99 compared with 1999/00. An increase of 102 cases in 1999/00 decreased average case costs by \$718. The numbers shown in Table 1, however, do not account for other factors that may affect the caseload and efficiency of a staff office. Caseload potential is also effected by the complexity of a case. Anecdotal

evidence indicates that private bar members and Refugee Claims Officers refer cases to the RLO because of the difficulty associated with certain cases and the limitations of tariff hours available for refugee cases of this nature. The number of difficult cases referred to the RLO and the potential additional hours associated with these cases would directly influence the RLO caseload potential.

- Staff models require formulas to account for variances in case mix.

The complexity issue also challenges the notion of a fixed tariff. Are static tariffs client sensitive and, more profoundly, are static tariffs a form of systemic discrimination – limiting hours in cases where clients and circumstances contribute to the complexity of the case?

- Staffing models in this context may respond and compensate with more client-centred practices than traditional judicare models.

The dollar conundrum exacerbates two points of discussion with respect to staff offices. First, previous criticism regarding the lack of consideration for case mix in comparisons between judicare and staff models compels us to developing formulas to account for variances in case mix. What will constitute an adequate formula to explain and adjust for the variances in case mix? Second, the comparison question goes beyond the staff/judicare debate. Staff models also draw us to developing formulas to account for variances of case mix within staff models. For example, a staff office with 6 lawyers in one location is compared to a staff office of 3 lawyers in another location. In the absence of a formula to consider case mix, can adequate comparisons or conclusions be drawn about the efficacy of either model? Taking the argument another step also gives us reason to consider the case mix between staff lawyers. Can performance appraisal on any individual staff about quality or quantity of service delivered be judged without consideration of the case mix? If an organization emphasizes quantity of service, then what is a reasonable caseload? If an

organization emphasizes quality of service, then what is quality for cases with varying degrees of complexity and anomaly? Case mix aside the following section considers the costs between the judicare and staff model.

Judicare and the RLO: Which Costs More?

During its first year of operation the RLO’s average cost per case was 70% higher than private bar cases. By 1998 cost differences were reduced to 26% and in 1999 differences were reduced to –4% in favour of the staff model. Table 2 illustrates cost effectiveness of the RLO in comparison to the private bar over 2 fiscal years. Given the costs associated with the private bar and the RLO it can be concluded for the year 1999/00 that the RLO is cost competitive with the private bar.

Table 2:

Completed Average Case Cost Comparison: RLO and Private Bar

1998/99			1999/00		
Private Bar (5200 cases)	RLO (178 cases)	% Difference	Private Bar (5142 cases)	RLO (280 cases)	% Difference
\$1787	\$2438	26%	\$1793	\$1720	-4%

Note: The RLO currently operates with three lawyers and three paralegals. The RLO provincial administrative costs per case in the present staffing/caseload ratio are assumed to be equal with the certificate program administrative costs per case

From Table 2 it can be concluded that:

- The RLO staff model is comparable in cost efficiency with the private bar

At the present stage of learning it is difficult to explain the relationship case mix has to cost efficiency. LAO is also considering how specialized services provided by staff offices are factored into a “value added” model.

Other factors influencing cost efficiency may include the impact of lawyer experience, the organization of the staff office, staff mix, management of the office and personnel, and protocols and procedures designed to promote efficiency. The limitations of evaluations to date did not allow for an in-depth analysis of referrals, complexity of cases, a formula to determine the optimum number of cases in a staff model, or the impact of management on efficiency. Factors relating to complexity, case mix, staff mix, experience levels of lawyers and paralegals, use of paralegals, hours allotted per case, management of staff, and management intervention are important considerations as alternative service delivery models continue to be appraised.

The Tensions Between Quality, Quantity

Strategically, LAO Management determined quality of service delivered in the RLO to be a high priority. No restrictions were placed on RLO to perform within tariff guidelines in order that the quality of service was not impeded. The 1998 review of the RLO indicated there was evidence of a high quality of service in RLO and that quality of service was also manifested in higher average costs per case. Quality may correspond with higher case costs; however, many factors account for quality legal services.

There is a reasonable tension, however, in maintaining quality of service and at the same time being cost efficient. The RLO has provided an experiential base in testing out this tension between quality and quantity. The RLO has demonstrated

consistent quality service over the course of time and more recently has achieved cost competitiveness with the private bar at the 99/00 RLO caseload numbers and mix.

Two important functions performed by the RLO increase referrals. The RLO's involvement in the intake function at the Toronto Area Office for refugee applicants provides a point of first contact and engagement with a client. This appears to contribute to the quality of interaction with refugee applicants because language barriers are sometimes removed given the abilities of the RLO staff. There is also a natural affinity between the applicant and the role of the RLO staff in the process of obtaining legal aid services. Engaging with a refugee applicant at this point in the application process has contributed to an increase in referrals to the RLO.

Second, the RLO outreach activities to community organizations raise the profile of the office and enhance the ability of the RLO to attract clients. The RLO's ability to attract clients from a variety of community organizations, therefore, is central to the maintenance of its caseload.

What is undetermined at this point specific to a productive tension between quality and quantity is the relationship between the corporate office and the staff office regarding accountability for maximum caseload. From experience both parties have made contributions to the caseload; however, the decisions regarding caseload have emanated from the corporate body. The ultimate role and identity of the staff office may help to clarify accountability. If the role of the office is to provide an alternative method of service delivery to judicare, the function of caseload efficiency rests with the office as it is more reflective of a private bar model. On the other hand, if the role of the office fulfils more corporate functions, the responsibility for caseload rests with the corporate body. In both cases formulas are required to support a productive tension between efficiency and effectiveness outcomes.

Productive tension between quality and quantity is reflected in a balance between priorities. No tension may indicate a single priority is determined, and destructive tension may manifest itself in staff burnout. Discovering, achieving and maintaining the balance between quality and quantity in staff models is a perpetual challenge.

Functional Analysis and Prospectus on the Role of the RLO

Typically service delivery models focus exclusively on the interventions available to clients. This discussion includes both the legal intervention function and broader organizational functions that have an indirect effect on client service. The organizational functions discussed evolve from a perspective that views this alternative model as beneficial to the management of LAO.

The identity and role of the RLO have evolved over its six-year history. Formal and informal functions collectively form the operational mechanisms of this system.

This section delineates the potential of the RLO from a broader organizational view integrating the present and possible roles of the RLO. Three central functions of the RLO are presented in random order. Organizational priorities will determine the importance and preference for any or all of these functions. Each function can be seen as an individual mandate for the RLO or any combination of functions interpreted as a collective mandate.

The descriptions of each function provide a cursory overview of the objectives of each function and some examples of activities and performance measures.

The three central functions include:

- The RLO as a Management Tool for organizational diversity and excellence

- The RLO as an Organizational Leader in Refugee Law: Provincial, National, and International
- The RLO as an Advocate for Clients: ensuring service is accessible, expedient, and of high quality

The RLO as a Management Tool

The concept of a staff office as an alternative service delivery is relatively new in comparison to the judicare model of legal intervention. The concept of a staff office model in Ontario as one tool to manage the judicare program and the staff office as complementary and supportive of the judicare system is also new. The operation of staff offices presents a new set of dynamics and challenges to LAO in terms of “business” versus “discipline” priorities, acceptance of alternative service delivery models as legitimate, and management structures to support the alternative models.

Reviewing the RLO experience is a useful strategy for informing decision-makers about competing and complementary values of the judicare and staff models, the quality of service and cost comparisons between the judicare model and the staff model, and the management strategies required to integrate a mixed service delivery model.

How can the RLO be used as a management tool? Five strategies listed and briefly described below illustrate the potential for management impact. The examples of performance measures provide some insight into the benefits of each strategy.

1. A window into refugee law service delivery programs

The operation of the RLO provides a base of information and knowledge about how refugee law is implemented “on the ground”. The routines, protocols, and nuances of any system are difficult to appreciate without first-

hand experience. Engagement with the refugee law community and system strategically locates the RLO as a source of information and knowledge.

As a window into the Refugee Certificate program the RLO performance measures might include:

For Service Providers

The quality of legal work carried out by the RLO is recognized as above average. Sharing of this expertise may contribute to the quality of the work presented by the private bar lawyers who access the RLO as a resource. Performance measures might include:

- Develop two low-volume country packages annually for distribution to members of the private bar.
- Host a Refugee Law symposium annually.
- Organize two professional development days annually for the private bar.
- Conduct a focus group annually on a specific topic of interest or concern.
- Meet with the Refugee Advisory Committee twice annually

For Community Organizations/Referral Sources

The NGO community has also been able to use the RLO as a resource for advice and support in servicing its client population. The RLO has assisted NGO's with advice about the legal process in the refugee determination system and other legal avenues available, as well as providing guidance for NGO's who assist refugees and immigrants

with applications which are outside the services covered by Legal Aid.

Performance measures might include:

- Conduct an annual survey of Refugee related community organizations to evaluate the RLO, stay abreast of changes, and maintain strong connections.
- Provide information sessions for community organizations
- Provide client and issue specific consultations to community organization staff
- Monitor referral patterns from all sources and provide an annual summary of referral trends

For Clients

Some stakeholders recognize the RLO as a potential resource for the private bar in the areas of precedents and novel or test cases. The RLO has the capacity to utilize staff resources for country research and development of novel arguments. Development of precedents and test cases would require the diversion of some resources away from casework where there has been an emphasis on casework in an effort to maintain cost effectiveness.

Staff models may also provide specialized services in response to client need such as the Detention reviews presently completed by the RLO. Performance measures related to clients might include:

- Target two test cases annually
- Complete a client satisfaction survey annually to determine what is important to refugee claimants

2. A benchmark of “Best Practice” and quality assurance resource

Performance measures for benchmark practice might include:

For Organizational Competence and Accountability

The articulation and maintenance of “Best Practice” principles, behaviours, and tasks in Refugee Law for:

Lawyers – staff and private bar

Paralegals – staff and private bar

Staff Office – procedures, protocols, and practices

As a Quality Assurance Resource

As part of a Quality Assurance program in LAO conduct 10 file audits annually.

Conduct “en vivo” audits of presentations at IRB hearings.

Provide two professional development days annually for the private bar.

For Quality of Service Enhancement

Provide 10 half-day advice clinics at each community organization.

Pilot an on-site application/intake at two community organizations.

Provide two professional development days annually for the private bar.

3. A benchmark of cost efficiency: a complex formula

The cost comparisons between service delivery models must consider variables that directly impact cost including the basis for claim, complexity of case, the number of applicants on a certificate, and the difficulty of substantiating a claim, to name a few.

The RLO provides a controlled setting to determine more accurate ways of describing and calculating cost comparisons. The staff model concept is an integral model developer for management.

The next section illustrates two conceptualizations related to cost efficiency.

4. A control mechanism for expenditures

Performance measures for expenditures might include:

Maintain expenditures within 2% of the targeted budget.

Productivity levels of the paralegals (reducing overall case costs)

5. A cost saving alternative

Although projective models based on hours per case and the increased use of paralegals indicate the potential for cost savings, it is not a certainty that staff models over time will reduce costs. The present intent of staff models at LAO is to be a complementary service along a continuum of services that are organized to respond to a variety of needs.

The RLO as an Organizational Leader in Refugee Law

The existence of the RLO opens the potential for greater leadership capacity in Refugee Law at the Provincial, National, and International levels. The RLO has direct involvement and influence with the Immigration and Refugee Board and is in a valuable position to advise and assist legal aid staff, the Board, and the IRB on matters related to refugee law.

1. Liaison and influence with policy-makers and decision-makers

Ensure membership and presence on formal committees.
Organize formal proposals, events, and strategies to influence policy-makers.

The RLO as a Client Advocate

The RLO is a response mechanism to special needs. The time of half a paralegal and half a lawyer are devoted solely to conducting detention reviews. This service was undertaken by the RLO in 1998 to fill a gap left by the private bar. Tariff limitations on detention reviews resulted in the private bar refusing to accept certificates. The private bar is largely unwilling to take on these cases for a number of reasons. The travel time required to reach the detention centres is not paid for and the three-hour time limit for preparation is considered by some to be insufficient to meet

with the client and make arrangements for a bonds person or other form of release. The result was that detained persons, some who are refugee claimants and others, persons awaiting inquiry or removal, found it difficult to obtain legal representation at detention reviews.

The advantage of the RLO in conducting these cases relates to the efficiencies of scale which can be achieved as most of the detained persons are held together. The RLO staff may be able to meet with more than one client and conduct more than one detention review with each trip to the detention centre.

Detention review cost analyses were beyond the scope of this evaluation as was a review of the quality of service related to detention reviews. Value added benefits of a staff function providing continued access to justice in detention reviews compared to the cost/benefit of enhanced tariffs may be a future model consideration.

Detention reviews continue to be a necessity and costs related to detention reviews are a present reality that will require attention in the presence or absence of the RLO. The time and related expenditures devoted to this function have been excluded from the cost formulas to represent an accurate picture of certificate related costs. The formulas used to calculate RLO case costs are included in the Appendix.

Low-volume or “orphan” countries from which very few refugees apply each year, generally require more time and effort than the high-volume cases. The RLO may serve a unique role in developing low-volume country background files, understanding the conditions in order to determine the grounds for establishing a refugee claim, developing contacts for additional information or supportive evidence (in Canada and in the country of origin), collecting supportive documents, and sharing this information with the private bar on behalf of these claimants.

B. The Family Law Staff Models

In February 1998, the Law Society of Upper Canada approved several family law staff pilots. The over-riding objective of the pilot project initiative governed the course of model development and the structure of the service delivery evaluation.

Pilot Projects' Objective:

To test alternative service delivery models to determine whether a different mix of delivery models can serve more clients with better service.

Currie (1999) presents a definition of a mixed model that reflects the intent of experimentation at LAO. He suggests that,

A complex mixed model is an integrated set of delivery modes (staff lawyers, private bar lawyers on fee-for-service certificates, expanded duty counsel, contracting) and structures (clinic) that are targeted at specific service delivery problems. The complex mixed model rests on the recognition that no one delivery mode is the best for all purposes, without qualification. Complex mixed models use a variety of delivery approaches in an integrated fashion to address some particular service delivery need (14).

The definition allows for flexibility in determining a mixed model as a response to delivery problems, for example, cost reduction; and as a response to delivery need, for example, a specialized service.

The Pilot Projects Final Report (1998) identified additional questions to be answered in the staff model evaluations:

Can access to services be improved?

Can services be provided more cost efficiently?

Can the quality of service be improved?

Can control be exercised over the selection and qualification of service providers?

Can services to clients be monitored more closely?

These questions became the core of evaluation frameworks for each of the pilots implemented in addition to a series of succeeding geographic, delivery mode,

and model specific questions designed to capture the fullest detail. Site selection and service delivery model selection was based on a core principal of proximity to provincial norms. For example, management's first criteria for selection of family law offices indicated that locations be chosen on the basis of minimal variation from provincial average costs of the judicare program. This was based on the assumption that comparisons of costs between the staff models and the judicare program would be most fairly compared in a location that represented a provincial average. A second criteria used was the volume of cases available in a given area. Volume criteria were based on the principle of least disruption. The staff models were not intended to drastically alter the delivery of service in a given area; rather were intended to complement existing services. The least disruption to "business as usual" minimized the possibility of confounding the results. A matrix of other variables were also used in the selection process. These include such criteria as the type and number of courts in each area, the amount of demand placed on the duty counsel system, the case mix of certificates in each area compared with the provincial case mix, the impact on the local bar, the poverty level of the area, the available and representative sample size, and the number of unrepresented parties identified by area.

Although the staff models have been selected carefully and the frameworks developed with rigor to maximize generalizability, local dynamics and demographics across a diverse geographic province will present a challenge to determine the viability of implementing successful staff models based on the notion of generalizability. Decision models will need to be developed to adequately account for the diversity of communities in the assessment of staff models.

In family law, three different staff models were designed to test different hypothesis. The largest office (consisting of 6 lawyers (one to serve as Director), 3

paralegals, and 2 support staff) located in Toronto is also to test for economies of scale. The Ottawa pilot was organized as a medium sized office consisting of 3 lawyers (one to serve as a Director) 2 paralegals and a support staff. The original design included a staff duty counsel position; however, as the model was developed serious questions related to conflict became apparent. Although a case may be made on the grounds of maintaining professional discretion or creating a “Chinese Wall”, it was determined to maintain a neutral position regarding conflict and test the model as a moderately sized operation without the duty counsel position. The Thunder Bay office consisting of 2 lawyers (one to serve as a Director) and 2 paralegals and a support staff is to test the small staff office model in comparison to a typical private bar one or two-person law firm.

Comparing Apples and Oranges: Assessing Case Complexity

Long standing criticism against inadequate methodologies to fairly compare cases of varying degrees of complexity exists as a legitimate concern of administrators and evaluators alike (Poel, 1983; Pristupa, 1991; Crockett, 1994; Currie, 1999). How can “easy” cases be compared with “difficult” cases or how can cases involving clients with mental health issues be fairly compared with cases involving a large number of legislated statutes? Potential differences between the caseloads of the family law offices and the mix of cases handled by the private bar are critical issues in determining the efficiency and effectiveness comparisons between staff models and the judicare model. Case complexity in this regard is a key element in understanding similarities and differences. Comparative analysis of case costs and client satisfaction must take into account the characteristics of family law cases that contribute to varying degrees of complexity. In order to enhance the credibility of evaluative outcomes and comparisons between staff and judicare models Legal Aid

Ontario determined to develop a greater understanding of case complexity in the evaluation framework.

At the time of this writing (the mid-point of the staff office experiment) a selection of case specific variables that may influence case complexity have been identified. Case specific variables along with demographic variables will be used in an exercise of regression modeling toward the development of an evaluative and projective model that will assist in the comparisons of cases. Based on the literature, previous critiques, and anecdotal information available from our test sites there is adequate evidence to assume significant differences exist between cases of varying complexity. What is less clear is what specific variables will have the greatest effect in determining complexity and, if these variables can be used in a model to predict complexity.

In addition to typical demographic data 4 variables have been added that we anticipate will contribute to understanding case complexity. These variables are incorporated into the routine application process for a legal aid certificate as self identified characteristics and include the voluntary declaration of a disability (physical or mental), a language barrier, a visible minority status, and/or an Aboriginal status. It is hoped the efforts of this evaluative exercise will advance our knowledge about comparisons between cases and inform our decision making with respect to mixed service delivery systems. Other factors have been identified in a pilot test for complexity.

Complexity Pilot Test

In order to validate and refine the complexity factors a small-scale pilot test was conducted using a convenience sample. The purpose of this test was to develop a procedure to collect data from a sample of files of certificate cases completed by

private lawyers. File reviews and interviews were completed with 10 lawyers, covering 33 files. From this test a reasonable understanding of the factors contributing to the complexity of the cases was developed as a checklist for further data gathering in a file review of 500 cases. The elements of this checklist are listed below under 3 main categories: legal complexity, characteristics of opposing side, and context. A methodology for scoring, transforming and weighting the variables is presently in process.

Legal complexity

- **Custody.** Cases involving only custody may be simple, but in highly conflicted relationships, custody is often an issue which may require a psychological assessment to assist the Court in a determination of living arrangements for a child. Funding for such assessments in the private sector is typically out of reach for low income clients, and subsidized facilities (e.g., Family Court Clinics) across Ontario have long waiting lists and limited availability for legally-aided cases.
 - jurisdictional dispute
 - abduction
- **Access**
 - moving from joint to sole
 - denial of access
- **Child Support.** Child support issues have been simplified now that the federal Guidelines are in place. However, where a claim for add-on support is involved for a designated special expense, detailed financial statements are required and cross-examination may be held.
 - basic

- extraordinary expenses
- ❑ **Spousal Support.** Spousal support claims require the preparation of detailed financial statements. Some also involve lengthy cross-examinations.
- ❑ **Property Issues.** Given the low-income cut-off for financial eligibility, property issues may be modest, e.g., sharing the contents of the home. However, where the other spouse has assets which are subject to division under the *Family Law Act*, detailed financial statements and attendant cross-examinations are usually a factor.
- ❑ **Restraining Order**
- ❑ **Exclusive Possession**
- ❑ **Child Protection.** Where child protection issues are present in the family, clients have added concerns that would need to be addressed.
 - ❑ **Allegations**
 - ❑ **Supervision**
 - ❑ **Society Wardship – with or without access**
 - ❑ **Crown Wardship**
 - ❑ **Hard Line – zero tolerance by CAS**

Characteristics of opposing side

- ❑ **Represented by private bar or FLO**
- ❑ **Opposing counsel** – unreasonable, inexperienced, intransigent, slow, overworked unresponsive, lacking technical programs (to calculate hardship under Child Support Guidelines, or spousal support tax impact), pursuing frivolous claims
- ❑ **Failure to disclose financial information**
- ❑ **Late disclosure requiring adjournment**
- ❑ **Self represented**

- ❑ **Self employed**
- ❑ **Unemployed**
- ❑ **Province of Residence of Spouses.** Interprovincial matters, particularly in Ottawa, may further complicate legal issues where one spouse lives in Quebec (for example).

Context

- ❑ **Abuse.** Where domestic abuse is identified, claims for damages in tort may be required to be included as part of the Statement of Claim or Petition for Divorce. Where spousal abuse exists in the relationship, access to adequate support services may be required in order to enable the client to function more effectively.
- ❑ **Addiction issues / medication**
- ❑ **Social worker involvement**
- ❑ **Culture/language/communication barriers (visible minority status, impaired hearing, illiteracy, etc.).** In all three locations for the pilot staff family law offices, cultural issues provide further challenges to staff, as newer Canadians have to deal for the first time with the legal system, or where aboriginal/First Nation clients need their cultural concerns integrated into the manner in which their cases are handled.
- ❑ **Poverty Issues.** (no phone/address) Poverty issues themselves bring added complexity to handling legal matters. The client may be dealing with seeking access to affordable housing; to obtaining income and other assistance from Social Services; children may be suffering from emotional distress arising from the separation and resulting dislocation from home, school and community.
- ❑ **Emotional/physical state of client and/or spouse**

- ❑ **Extended family/friends involvement** – supporting affidavits, etc.
- ❑ **Lack of disclosure by own client**
- ❑ **Serial applications/layered legal issues**, i.e. Criminal, protection and family law
- ❑ **Previous relevant court actions** – need to get and review file, other evidence, etc.
- ❑ **Inherent court delays** – waiting time, adjournments, lost files, uneven application of Rules/procedures by counter staff
- ❑ **LAO** – limited hours for basic certificate, requirement to request discretionary increases, time constraints

It is anticipated this extensive list will be refined to a smaller, more precise set of variables and categories that demonstrate the greatest effect in determining complexity. Methods to determine weighting of variables in the analysis will require careful consideration and consultation to ensure that credibility of this model is not compromised in the process.

Complexity: A Matter of Dollars for the Private Bar

The judicare model inherently promotes the notion of normal or typical cases through standardized tariffs. The standardized tariff is a reasonable strategy for setting limits on costs expended per certificate. The staff model, however, appears to be a method for the private bar to minimize their economic losses on difficult cases that would take them beyond the limitations of the tariff. A phenomenon that may be occurring at each of the experimental sites can be described as the “judicare dump.” Complex, difficult cases, particularly those cases where mental health concerns are evident, are often referred to the staff offices. It is general knowledge in the field that these cases require additional time to compensate for the complexity of the mental

health condition. Fixed tariff rates and discretionary increases may not routinely acknowledge these variations of complexity. In many instances these cases are referred to a staff model where the limitations of the tariff do not restrict the level of service required to adequately address the needs of clients.

Two central issues then emerge in this mixed model system. First, will staff models, by default, be used by the private bar as catch basins for difficult cases? In effect, the private bar may adjust the tariff by referring difficult cases to staff models. The private bar also identifies the role and identity of the staff office. It could be argued that this evolution of service is responding to both client need by using a staff model that accommodates complexity and to service provider need by paying average tariff rates for easy and moderate cases.

The second issue emerging with a mixed service delivery model is quality and cost comparisons. If staff models are to provide comparable service at comparable prices to the private bar it become increasingly important to have a formula and model of comparison that accounts for any differences in case mix. This dynamic for a staff model clearly illustrates the necessity for a level of supervision, monitoring and control of caseloads to maintain a balance of quality – doing the work well and, quantity – doing the work at a reasonable cost. It is a challenge to understand reasonable caseloads, the level of staff support for continuously working with difficult a population – offering some protection from burnout, and defending case costs that are likely to be higher. Experience in the Toronto site highlights this dilemma as the number of cases closed does not support a staff model from a fiscal perspective; but, the quality of intervention appears to get the “best possible outcome” for clients. Finding the balance between satisfied clients, productive staff, and satisfied funders is an ongoing issue.

How does complexity interact with the experience level of lawyers?

The experience factor is often equated with the notion of wisdom and cumulative expertise where the older, more experienced lawyers are seen as the “gold standards” since they would likely make fewer errors and are good at what they do. One might assume that experienced lawyers would focus more diligently on the salient issues of a case, deal more effectively with clients, hold the respect of colleagues and the judiciary in content and presentation, and ultimately deal with the case fairly and expeditiously. This would appear to be a reasonable expectation in a staffing model. In the choice of personnel for the staff offices management set high experience criteria as part of recruitment and hiring conditions resulting in a staff system that can be characterized as very skilled and experienced. Some preliminary evidence from the Ottawa site supports the notion that experience enhances efficiency. The average number of hours per case at 11.5 in the staff office is much smaller than the average number of hours on a certificate case.

On the other hand, experience levels in the certificate program manifest themselves differently. The experience factor in the judicare program works against the assumption that more experience is better.

Table 3 below illustrates the experience factor does not typically reduce the number of hours in the judicare model. More pronounced findings of the experience factor were evident also in the Refugee Law pilot.

**Table: 3 Experience as a Factor of Average Hours per Case – Private Bar
(Data from April 1, 2000 – March 31, 2001)**

Experience Level	Level One 0-4 years experience	Level Two 5-9 years experience	Level Three 10 plus years experience
Average Number of Hours per Case	18.3	20.6	18.4

It could be argued that tariff limitations set the parameters for how many hours are typically billed in the judicare model and therefore impose an artificial benchmark or standard for billing practice regardless of the case type or the experience level of a lawyer. It may also be argued that experience in a staff model may extend the number of hours and prolong the resolution of cases in the interest of getting the best deal for the client. Experience with the Toronto site demonstrates that cases remain open for extended periods of time. This is supported by anecdotal evidence that many cases are in holding patterns as a strategy to get a “better deal”. It will be important to capture the satisfaction level of clients with respect to the length of time a file remains open. Is a “better deal” more valued than a “fair and expeditious deal?”

Service Quality

The family law office evaluation will examine both “client satisfaction and case outcomes” as elements of service quality. A widely cited article on service quality in the *Journal of Marketing* by Parasuraman, Zeithaml and Berry (1985) provides a useful conceptual model for assessing service quality. The model proposed is premised on the idea that assessment of service quality hinges on an implicit comparison between expectations and performance, and involves both service outcomes and the processes followed to achieve these outcomes. Assessing the transactional aspects of relationships between clients and lawyers is one approach.

Process and outcome:

A recent program of research, headed by Professor Clark Cunningham at Washington University School of Law in St. Louis, developed a brief checklist of the transactional elements of legal services that might usefully be incorporated into a survey questionnaire for clients of both the FLOs and private lawyers on certificates.

This list consists of the following statements which clients rate on a five-point scale from ‘strongly agree’ to strongly disagree’.

My lawyer....

- 1) *Made me feel comfortable*
- 2) *Said things I did not understand*
- 3) *Treated me with respect*
- 4) *Did not give me straight answers*
- 5) *Was a good listener*
- 6) *Sometimes did not understand me*
- 7) *Explained things clearly*
- 8) *Was honest with me*
- 9) *Asked confusing questions*
- 10) *Was someone I could trust*
- 11) *Kept interrupting me*
- 12) *Did a good job*

Client satisfaction regarding the transactional processes with a lawyer and case outcomes are also supported in the theoretical literature related to attribution theory (Heider, 1958; Kelley, 1973), expectation theory (Helson, 1964; Suprenant, 1977; Sherif & Hovland, 1961) and “Total Quality Management” theory (Oakland, 1995). Empirical evidence on client satisfaction (Attkisson & Greenfield, 1994; McMurtry & Hudson, 1998) also supports the notions of measuring interpersonal dynamics as a form of service quality (see Appendix A for Client Satisfaction measures being considered). It is hoped that the client satisfaction and service provider satisfaction questionnaires will have utility across other pilot projects and application across services and programs of LAO in general.

The literature also indicates that family law cases do not lend themselves as readily to more traditional forms of case outcome analysis as do criminal cases. Some areas of family law, however, are potentially more amenable to case outcome analysis

than others, for example, child protection hearings, contested custody cases and paternity cases. It could be argued that case outcome is a subjective interpretation on the part of the analyst or the client. Given the subjective nature of outcomes in family law the outcome analysis will be limited to client reports of the extent to how satisfied they are with the outcome expected and the outcome achieved. Global scores on rating scales may also be analyzed as outcome data. The following list illustrates general categories being considered in the development of outcome constructs.

- What the client asked for was granted.
- What the client claimed was awarded.
- If a case doesn't get to the courtroom, all settlements are negotiated, meaning that not all that was asked for was obtained. In such cases, was none, some, almost all, or all of what the client was seeking, achieved as a result of this negotiation.
- Regardless of expected outcome what perception does the client have of the achieved result

Initial synthesis of the literature and formulation of service quality identified other dimensions of quality clients are competent to report on:

1. Reliability: Involves consistency of performance and dependability. It means that the firm performs the service right the first time. It also means that the firm honors its promises. Specifically, it involves:
 - Accuracy
 - Adequacy
 - Value
 - Timeliness
 - Appropriateness
 - Quality
 - Dependability
 - Consistency
2. Responsiveness: Concerns the willingness or readiness of employees to provide service. It involves timeliness of service:

- Mailing correspondence immediately
- Calling the client back quickly
- Giving prompt service (e.g., setting up appointments quickly).

3. Competence: Means possession of the required skills and knowledge to perform the service. It involves:

- Knowledge and skill of the contact personnel
- Knowledge and skill of operational support personnel
- Research capacity of the organization

4. Access: Involves approachability and ease of conduct. It means:

- The service is easily accessible by telephone (lines are not busy and they don't put you on hold)
- Waiting time to receive service is not extensive
- Convenient hours of operation
- Convenient location of service facility

5. Courtesy: Involves politeness, respect, considerations, and friendliness of contact personnel (including receptionist, telephone operators etc.). It includes:

- Empathy
- Assurance
- Fairness
- Helpfulness

6. Communication: Means keeping customers informed in language they can understand and listening to customers. It may mean that the company has to adjust its language for different clients - increasing level of sophistication with a well-educated client and speaking simply and plainly with a novice. It involves:

- Clarity
- Availability
- Use of plain language

7. Credibility: Includes trustworthiness, believability, and honesty. It involves having the client's best interest at heart. Contributing to credibility are:

- Company name
- Company reputation
- Personal characteristics of the contact personnel
- The degree of interactions with the client

8. Security: Is the freedom from danger, risk or doubt. It involves:

- Physical facility
- Financial security
- Confidentiality
- Privacy

9. Understanding / Knowing the client:

Means making the effort to understand the client's needs. It involves:

- Learning the client' specific requirements
- Providing individualized attention
- Recognizing the regular client

10. Tangibles: Include the physical evidence of the service:

- Physical facilities
- Appearance of personnel
- Tools or equipment used to provide the service
- Physical representation of the service
- Other customers in the service facility

It is interesting to note as an aside that instruments in present use for the purpose of determining client satisfaction are quite limited in their scope of questions. That is to say they do not address all of the constructs described in these lists. The exercise of instrument development, however, will determine whether the constructs may be reduced through statistical analysis to capture those elements most relevant to client satisfaction.

Duty Counsel Models

A. The Expanded Duty Counsel Model – Family Law

The three expanded duty counsel projects are to test designs with varying degrees of staff lawyer and private bar/per diem components. The 3 projects are providing a duty counsel delivery system that offers continuity of service and document drafting that aims to bring cases to completion. Continuity of service is first defined as the same duty counsel lawyer representing the same client over time. The staff model in this regard is flexible in relation to court scheduling allowing a staff lawyer to follow a case. The unpredictable nature of court scheduling and the

need to have some predictable order in scheduling per diem lawyers does not allow for continuity of service with per diem lawyers; however, a well organized file management system does promote continuity of file. In this second definition of continuity any per diem lawyer can rely on the client file to provide information on the case and proceedings and continue the work toward resolution.

The ability to produce court required documentation is also being tested as a strategy to assist unrepresented parties to participate in the justice system. Typically, duty counsel have not provided document production, as it requires a level of record keeping and filing procedures not established in the traditional role of duty counsel. In this expanded model document production is supported by computer technology and a record keeping system.

The Oshawa project is testing a 3-staff lawyer model, using a small per diem panel of 17 and 1 support staff. The per diem complement is used where conflicts of interest (staff lawyers representing both sides of a case) are evident. The London pilot is testing a 2-staff lawyer model using a per diem panel of 11 and 1 support staff position. The Hamilton model includes 1 staff lawyer, 1 support staff and a panel of 52 per diem lawyers. There is one staff at each location designated as a coordinator. This position is responsible for scheduling per diem lawyers based on the demands within the respective courts, over seeing the day to day operations of the service, and providing training for staff and per diems. The panel membership is self selected, however, training is essential before membership to the panel is awarded. Applying stricter criteria to the selection of panel members may increase the overall level of competence but it may also reduce the membership. Quality with respect to panel membership in this sense was restricted, as it was important to maintain an adequate number of panel members to provide the service particularly in London and Oshawa.

Shifting Philosophies: From Facilitation to Disposition

The traditional facilitative model of per diem duty counsel provides an immediate service for the client and the court. This may mean adjourning the case or referring the case to legal aid or the private bar. The number of cases on the court list also dictates that cases are dealt with quickly. In contrast, the shift in philosophy with the staff model is to a dispositive model or a model designed to move the case to resolution. In the staff model expectations to move the case forward on behalf of a client is the motivating force. The formula for this staff model allows for duty counsel to see 12 clients per day. It is anticipated that 6 of the cases will require 15-20 minutes of assistance each while the remaining 6 clients will require up to an hour of time each to assist with moving the case toward closure.

The model allows for a duty counsel to assume carriage of a case and represent a client over several court appearances; however, with some limitations. If a client is eligible for a certificate and the matter is a relatively straightforward, the case is retained by duty counsel. If a case is more complicated, it is referred for a certificate. A client who qualifies for a certificate but prefers not to proceed with a certificate may be represented by duty counsel.

Quality is improved by reducing the overall amount of time in the court system and spending focused, productive time with clients. Cost, however, at face value is increased because additional time is spent with clients and additional per diems are required for large court lists. It may be speculated, however, that cost to Legal Aid Ontario and the overall justice system is reduced because redundancy (adjournments, number of court appearances) is minimized and settlements are attained more quickly. Continual changes in the court system, such as the

introduction of “New Rules” for the processing of family cases and the increased use of mediators, make it difficult to determine the effect of a staff model.

From a management perspective, however, there are many advantages to a staff duty counsel model. On site monitoring of duty counsel performance, enhanced scheduling practice, enhanced accountability of per diem time, improved communication with individual court systems, and heightened awareness of the deficiencies and challenges of a per diem model are some of the advantages. From a service perspective there is also evidence of improved performance. Anecdotal comments, stakeholder and staff surveys, and client responses are ongoing indicators that speak to the success of this initiative.

There were no pre-test measures applied for client satisfaction of the traditional model; however, the first wave of client satisfaction surveys indicates there is a high rating of the service provided.

Perceptions of Change

Significant shifts in attitude were necessary in the implementation of this staff model. First, encouraging duty counsel to take ownership of cases and bring an early appropriate resolution was a hurdle in shifting the role of duty counsel from traditional practice. Second, the staff model provided a familiar face in the court on a daily basis. Judges began to see staff duty counsel as agents of the court in assisting the justice system with court lists and unrepresented clients versus seeing duty counsel as agents of the people and helping clients move their problems toward resolution. “Training” judges on the role and limitations of duty counsel was necessary in changing their perceptions and controlling their expectations. The anecdotal accounts and experience of these test sites in relation to these shifts in attitude has been positive. Moving cases to resolution has provided much more focus

for lawyers, which in turn is manifested in a higher degree of satisfaction with the court administration, judges and the clients.

The Qualified Unrepresented, The Self Represented, and The Unqualified Unrepresented

The number of unrepresented clients in the court system is a dilemma for the justice system and, at the same time, the essence of the role for duty counsel. Two issues emerge in this present reality in Ontario: can the existing duty counsel system support an increasing number of unrepresented and, can the courts adjust to the limitations of duty counsel?

The court system identifies unrepresented clients at the time they make an application for a court service. This is the first step toward having a matter processed through the court and often does not require the services of a lawyer to initiate this process. By the time an applicant reaches the stage of appearing in court a lawyer may have been retained and is acting on behalf of the client. This eliminates a number of the unrepresented clients; however, the court data system does not recognize that the client is now represented. Further, the numbers of unrepresented who are counted at the time of application have increased over the past several years. The counting procedure and the increase in numbers has placed some pressure on the duty counsel system to respond.

This may be an artificial pressure, however, as the number of applicants who are actually unrepresented in court and at what stage of the proceedings are they unrepresented is unclear and unrecorded. Although the court system does not officially recognize duty counsel representation, there are differences noted at a practice level. Definitions may vary from one jurisdiction to another and often from judge to judge. At one extreme, some judges insist that clients see duty counsel before appearing – hence if they have seen duty counsel they have had a form of

representation. At the other extreme, some judges will not allow clients into their courtroom without a lawyer who is willing to go “on record.” LAO policy also restricts duty counsel from acting at trials – hence, a client may have been represented by duty counsel through several proceedings and is unrepresented at trial. The variation of definition and practice complicate the problem of establishing a coherent and consistent role for duty counsel.

The dilemma of who are the unrepresented remains? The expanded duty counsel pilot has provided some insight into the identity of the unrepresented. Through financial eligibility testing of every client seen by duty counsel 3 distinct categories of unrepresented have emerged. Those who qualify for legal aid and do not have a lawyer or a certificate are the “qualified unrepresented.” This group in the pilot project constitutes about 50-60% of the clients on the court list on any given day. The second group are identified as the “self represented” litigants. These individuals for a variety of reasons choose to represent themselves instead of retaining a lawyer or using duty counsel. They may ask for some advice from duty counsel but believe they can be more effective by representing themselves in the courtroom. The last group are the “unqualified unrepresented.” These individuals do not qualify for legal aid and have not retained counsel. In many instances this group are not far above the criteria for financial eligibility but also in the position of not being able to afford a lawyer.

Efforts to understand the unrepresented and to consolidate the role of the duty counsel will require a strategic intervention. Do these different types of unrepresented groups require a differential treatment? Are other strategies for the unqualified or self represented required in adjunct to the role of duty counsel? The staff models are useful vehicles in helping to describe and understand the dynamics of these situations.

B. Duty Counsel Reform: A Staff Model as an Anchor System

Duty Counsel services in Ontario are performed by approximately 2000 members of the private family and criminal bars and 49 full-time duty counsel who are generally on contract for 2 years. Private bar members are contracted on a per diem basis, typically scheduled for 1-4 days per month.

Duty counsel are assigned to criminal, family, and youth courts to assist clients who do not have immediate legal representation. In criminal courts duty counsel functions include assistance in the request for adjournments, advice of client rights and representation for pleas and sentencing, assistance in applications for bail and representation at bail hearings. In family courts duty counsel functions include the representation of clients in negotiations, settlements, on motions, on adjournments, on show cause, and advice on process. Per diem duty counsel are also utilized in advice bureaus, in Family Law Information Centres located in the courts, and in advice roles in mental health institutions and prisons.

The per diem duty counsel model offers several advantages. In the context of a “professional” model where expectations of self-regulation are assumed, the per diem model has required minimal administrative intervention. The model is also flexible and responsive to the fluctuating demands of the court system. When demand is high more lawyers are scheduled. This flexibility also minimizes the cost of service as it is directly related to demand versus a staff model that has a constant cost regardless of the demand. The per diem model promotes the participation of a large number of lawyers with a wide range of expertise. Administratively, the organization has the advantage of drawing on a large pool of resources.

There are also inherent weaknesses in a predominantly per diem model. Experience demonstrates that professionals require a level of management

intervention to fulfil the organization's mandate. To be fair, recent changes in legislation have clarified the organization's mandate. Under the current mandate client focused service is paramount whereas in previous mandates the organization responded to three stakeholder groups: the Law Society, the Courts, and the clients. Quality of service is a challenge to monitor given the large number of per diem lawyers and the variations in court procedures and routines across the province. The nature of the present per diem model does not provide for continuity of service and is limited in scope to bring cases toward resolution. In the absence of a supportive infrastructure the per diem model is vulnerable to variations in the ability and commitment of the private bar to deliver a consistent, high quality service.

Given the inherent weaknesses in a per diem model and cost comparison data between existing staff position expenses and per diem expenses, a decision to use a mixed model of staff and per diem duty counsel was made. The staff duty counsel will provide a variety of functions: a coordinating function for scheduling per diem duty counsel; a training function to enhance consistency of practice and quality of intervention; a monitoring function to improve record keeping, docketing, and billing practice; a communication function to facilitate information flow from front line to management and management to front line; and a duty counsel function to promote and model best practice.

The implications of implementing a staff/per diem model across the province are a significant challenge. The addition of 50 new staff positions and the restructuring of the existing 49 staff positions are presently under way. The first phase of hiring and training 10 lawyers will be completed by late summer. At the same time the second phase of implementation is underway with an expected date of full implementation by spring 2002. Experience to date has generated a series of

questions to aid in the consolidation of the staff/per diem model. What level of infrastructure is adequate to support this program? What performance measures can be applied across such a diverse delivery system and geographic area? What contingencies are necessary to respond to the staff component dynamics? Can information technology strategies enhance the capacity of the staff/per diem model? What policies and procedures will be developed to support the staff duty counsel in their coordinating, supervising, and scheduling roles?

The shift from a predominant per diem model to a mixed staff/per diem model is more than a change of models. It involves a change in attitude and culture from the existing facilitative model to a dispositive model; and, from a professionally oriented, independent operation to a management directed and monitored system. This change will promote accountability of time and tasks along with a set of increased performance expectations. The change will also enhance the capacity of duty counsel to complete more work that has historically been handled by the judicare model. These changes amount to a transformation of the duty counsel system.

Conclusion

The introduction of the staff model pilots at LAO as a component of a mixed service delivery model demonstrates concrete evidence of Currie's (1999) notion of mixed models responding to "service delivery problems" and "service delivery need." His definition encompasses both organizational need and client need into a comprehensive understanding of a complex mixed model. The following examples, that were reflected throughout this paper illustrate the concepts of mixed models responding to client need and mixed models responding to organizational needs.

- an emphasis on quality of service may be seen as a response to client need or enhanced client service

- a staff model as a cheaper alternative is initiated from an organizational need to reduce costs
- an alternative service to fill a gap is a response to clients without access to legal service
- a staff model as a management tool responds to an organizational need for accountability
- a complementary service or a diversity of service speaks to client-focused approaches
- staff models providing a more sensitive response to clients with disabilities may be interpreted as a response to client need or may also be seen as an organizational response to discrimination

The descriptions, purposes, and outcomes of staff model service delivery as a component of a mixed model illustrate the flexibility and dynamic nature of such a definition and model. The concept of a mixed model of service delivery helps to broaden the scope of staff models beyond the restricted and competitive nature of the staff versus judicare debate. The question is no longer, “Which service is cheaper – staff or judicare?” Rather, the question is “What is the right mix of service delivery?”

References

- Crockett, A. (1994). Salaried Legal Services. Legal Aid Commission of Victoria.
- Currie, A. (1999). Legal Aid Delivery Models in Canada: Past Experience and Future Developments. In, J.Reilly, A. Paterson, W. Pue, (Eds.), Legal Aid in the New Millennium. Papers presented at the International Legal Aid Conference, University of British Columbia, June, 1999.
- Heider, F. (1958). The Psychology of Interpersonal Relations. New York. Wiley
- Helson, H. Adaptation-level theory. New York: Harper & Row, 1964.
- Kelly, H. (1973). The Processes of Causal Attribution. American Psychology, 28, 107-128
- _____ (1999). Legal Aid Services Act (1999). Queen's Printer, Government of Ontario.
- McCamus, J. (1997). Ontario Legal Aid Review. Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services. Ontario Government Bookstore.
- Poel, D. (1983). The Nova Scotia Legal Aid Evaluation Report, Entering the Third Generation. Department of Justice, Ottawa.
- _____ (1998). Pilot Projects Final Report. Legal Aid Ontario.
- Pristupa, T. (1991). A Critical Assessment of 'Legal Aid in Manitoba: An Evaluation Report'.
- Surpenant, C. (1977). Product Satisfaction as a Function of Expectations and Performance. In R.L. Day (Ed.), Consumer Satisfaction, Dissatisfaction and Complaining Behaviour. Bloomington, Indiana: Indiana University Press.
- Sheriff, M. & Hovland, C. (1961). Social Judgements: Assimilation and Contrast effects in communications and attitude change.
- Sidney Jourard, (1971). The Transparent Self. New York: Van Nostrand Reinhold.
- Parasuraman, A., Zeithaml, V., Berry, L. (1984). A Conceptual Model of Service Quality and its Implication for Future Research. Report No. 84-106. Cambridge: Marketing Science Institute.
- Zeithaml V. et al. (1990). Delivering Quality Service: Balancing Customer Perspective and Expectations. New York: Free Press.

E-mail References:

Queuing Theory: www.snc.edu/socsi/chair/333/quethry.htm

Total Quality Management: www.mapnp.org/library/Quality/tqm/htm

Privacy: www.anu.edu.au/people/Roger.Clarke/DV/Intro.html

APPENDIX A

CLIENT SATISFACTION QUESTIONNAIRE

Please help us improve our program by answering some questions about the services you have received. We are interested in your honest opinions, whether they are positive or negative. Please answer all the questions. We also welcome your comments and suggestions. Thank you very much: we really appreciate your help.

This questionnaire is CONFIDENTIAL. You will not be individually identified, nor will your lawyer or the local Legal Aid office see your answers. Circle your answer:

1. How would you rate the quality of service you have received?

4	3	2	1
<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>

2. Did you get the kind of service you wanted?

1	2	3	4
<i>No, definitely</i>	<i>No, not really</i>	<i>Yes, generally</i>	<i>Yes,</i>

definitely

3. To what extent has our program met your need?

4	3	2	1
<i>Almost all my needs</i>	<i>Most of my needs</i>	<i>Only a few of my</i>	<i>None of my</i>
<i>have been met</i>	<i>have been met</i>	<i>needs have been met</i>	<i>have been</i>

needs met

4. If a friend were in need of similar help, would you recommend our program to him or her?

1	2	3	4
<i>No, definitely not</i>	<i>No, I don't think so</i>	<i>Yes, I think so</i>	<i>Yes,</i>

definitely

5. How satisfied are you with the amount of help you have received?

1	2	3	4
<i>Quite dissatisfied</i>	<i>Indifferent or</i>	<i>Mostly satisfied</i>	<i>Very</i>
	<i>mildly satisfied</i>		

satisfied

6. Have the services you received helped you deal more effectively with your problems?

4	3	2	1
<i>Yes, they helped</i>	<i>Yes, they helped</i>	<i>No, they really</i>	<i>No, they</i>
<i>a great deal</i>		<i>didn't help</i>	<i>make things</i>

seemed to worse

7. In an overall, general sense, how satisfied are you with the service you have received?

4	3	2	1
<i>Very satisfied</i>	<i>Mostly satisfied</i>	<i>Indifferent or</i>	<i>Quite</i>
		<i>mildly dissatisfied</i>	

satisfied

8. If you were to seek help again, would you come back to our program?

1	2	3	4

No, definitely not

No, I don't think so

Yes, I think so

Yes,

CLIENT SATISFACTION QUESTIONNAIRE (CSQ-8)

- Author:** Clifford Attkisson, University of California-San Francisco
- Purpose:** To provide efficient, sensitive, and reasonably comprehensive measures of consumer satisfaction with services received.
- Source:** Attkisson, C. & Greenfield, T. (1994). Client satisfaction questionnaire-8 and satisfaction scale-30. In M.E. Maruish (Ed.), *The Use of Psychological, Treatment Planning and Outcome Assessment*. Hillsdale: Lawrence Erlbaum Associates, Publishers.
- Description:** The CSQ-8 is an 8-item, easily scored and administered tool that is designed to measure client satisfaction with services. The CSQ- is unidimensional, yielding a homogeneous estimate of general satisfaction with services. The CSQ-8 has been widely studied and elicits the client's perspective on the value of service received.
- Scoring:** The CSQ-8 is easily scored by summing the individual item scores to produce a range 8 to 32, with the higher scores indicating greater satisfaction.
- Reliability:** The CSQ-8 has excellent internal consistency, with alphas that range from .86 to .94 in a number of studies.
- Validity:** Construct validity is enhanced by the high correlations ($r_s = .6$ to $.8$) found between it and other satisfaction instruments that use different strategies to measure the same construct. The CSQ scales have been used as comparison measures for several alternative approaches to assessing client satisfaction. Length of service provided was related somewhat to client satisfaction.
- The CSQ, translated into other languages using culturally sensitive translation methods (Roberts and Attkisson, 1983), performed equivalently across several national and cultural groups. The most extensive cross-cultural work has been done in Spanish with U.S. Latino populations (Robert and Attkisson, 1983; Roberts, Attkisson, and Stegner, 1983; Roberts, Attkisson and Mendias, 1984), in Dutch (Netherlands service recipients; de Brey, 1983), and in French (Quebecois using a mental health service; Sabourin, Gendreau and Frenette, 1987).
- Limitations:** The CSQ-8 offers only four response options (numbered 1-4) for each item, which eliminates the possibility of neutral responses as well as providing less sensitivity than a 5 or 7 point scale. Reverse coding on the scale may require careful attention on the part of the respondents. The scale's readability indicates it has a grade level equivalent of 7.2 (Kincaid Aagard, O'Hara & Cottrell, 1981). This may limit the scale's use with children or adults with educational deficits.

CLIENT SATISFACTION INVENTORY

This questionnaire is designed to measure the way you feel about the services you have received. It is not a test, so there are no right or wrong answers. Answer each item as carefully and as accurately as you can by placing a number beside each one as follows.

- 1 = None of the time
- 2 = Very rarely
- 3 = A little of the time
- 4 = Some of the time
- 5 = A good part of the time
- 6 = Most of the time
- 7 = All of the time
- X = Does not apply

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1. _____ The services I get here are a big help to me.
 2. _____ People here really seem to care about me.
 3. _____ I would come back here if I need help again.
 4. _____ I feel that no one here really listens to me.
 5. _____ People here treat me like a person, not like a number.
 6. _____ I have learned a lot here about how to deal with my problems.
 7. _____ People here want to do things their way, instead of helping me find my way.
 8. _____ I would recommend this place to people I care about.
 9. _____ People here really know what they are doing.
 10. _____ I get the kind of help here I really need.
 11. _____ People here accept me for who I am.
 12. _____ I feel much better now than when I first came here.
 13. _____ I thought no one could help me until I came here.
 14. _____ The help here is really worth it.
 15. _____ People here put my needs ahead of their needs.
 16. _____ People here put me down when I disagree with them.
 17. _____ The biggest help I get here is learning how to help myself.
 18. _____ People here are just trying to get rid of me.
 19. _____ People who know me say this place has made a positive change in me.
 20. _____ People here have shown me how to get help from other places.
 21. _____ People here seem to understand how I feel.
 22. _____ People here are only concerned about getting paid.
 23. _____ I feel I can really talk to people here.
 24. _____ The help I get here is better than I expected.
 25. _____ I look forward to the meetings I have with people here.

CLIENT SATISFACTION INVENTORY (CSI)

Authors: Steven McMurtry, University of Wisconsin-Milwaukee
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Purpose: To measure consumer satisfaction across a variety of clients and services.

- Source: McMurtry, S. & Hudson, W. (1998). *Client Satisfaction as an Outcome Measure: Validation Results for a Standardized Scale and Short-Form Version*. Unpublished manuscript, Steven McMurtry, School of Social Welfare, University of Wisconsin-Milwaukee, Milwaukee.
- Description: The CSI is a 25-item scale consumer satisfaction self report measure designed to overcome limitations of earlier instruments and for use across a variety of human service applications. Items and response options employ simple wording and require only fifth-grade reading skill as indicated by a score of 5.3 on the Flesch-Kincaid readability index (Kincaid, Aagard, O'Hara, Cottrell, 1981). Clients respond to each item via a seven point, category partition scale, in which responses range from 1 (None of the time) to 7 (All of the time). To lessen the likelihood of response bias, 20 items are worded in positive terms (where a response of "All of the time" indicates high satisfaction), and the remaining five items are negatively worded. All items are arranged randomly.
- Scoring: Total scores on each scale range from 0 to 100, with higher scores representing higher levels of satisfaction. Negatively items are reversed scored and $S = (\Sigma Y - N)(100) / [(N)(6)]$.
- Reliability: The internal consistency of the instrument produced a coefficient alpha of .93. In addition, the standard error of measurement resulted in a value of 3.16.
- Validity: Content validity was tested by an item analysis to determine whether the items on each contributed significantly to the total of each (Nunnally & Bernstein, 1994).

Item correlations were moderate to large with a mean item-total correlation of .57 (each correlation statistically significant at the .01 level). Mean correlations between CSI and other scales was much lower and in the opposite direction (GCS= -.10; ISE= -.09; IPR= -.12) suggesting good content validity.
Construct validity was also determined through a series of correlations with demographic data as well as a correlation with a short form version of the scale ($r = .94$).
- Norms: The mean is 85.3 and standard deviation 12.0. Age range of respondents was from 12-89 years with an average in the middle-age range. 77% of sample were female and the mean education was 13 years of school. 86% of the sample was white, 39% were married and 74% had at least one child.
- Limitations: the studies to date have used convenience samples and as such the representativeness of the results to a wider population is not known. Sampling error with regard to the mean and standard deviation cannot be determined and the information on norms is thus preliminary. The use of client satisfaction itself as an outcome measure is limited because of the subjective nature of the responses and their corresponding preciseness. Responses may be reactive and more susceptible to distortion. Concurrent validity of the scale is needed in which the clients' satisfaction with the services they received can be correlated with variables such as service continuity versus dropout.