

'Teenager Build 'UK's First Robot Lawyer' To Give Public Free Legal Aid – Huffington Post

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EDITORIAL

Welcome to the Autumn edition of the ILAG newsletter. This will be the last but one before the conference in South Africa in June next year. Some themes emerge from the articles grouped below. First, a relatively new influence on the delivery of legal aid is the emergence of international treaties requiring certain levels of service. The EU, as you will see below, has followed the UN in guidelines for criminal legal aid - these will be legally enforceable in the countries of the Union, which have not exempted themselves. Second, the onward march of technology is manifest in the experience of Canada, in particular BC's MyLawBC programme based on the Dutch Rechtwijzer, also transposed by Relate into England and Wales. Third, countries are also beginning to get behind Online Dispute Resolution with recommendations to this effect in reports in England and Wales and the Australian State of Vitoria. Fourth, the constraints of funding are forcing jurisdiction towards the more holistic approaches heralded in the access to justice movement of the 1970s - even if governments like my own prove rather shy of using the language and fully deploying the approach.

I hope you enjoy the contributions that follow. Contributions for the next edition should be with me by the beginning of February.

Roger Smith

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GOVERNMENT RESPONSE TO PRODUCTIVITY COMMISSION IGNORES SUBSTANCE AND SIGNIFICANCE OF THE PROBLEMS FOR ACCESS TO JUSTICE IN AUSTRALIA

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Laws affect us all. They affect much of what we do; from the moment, we have breakfast until the moment we sleep at night. Laws and regulations affect the quality of what we eat the safety of our streets, our workplace conditions, the buildings we live in or rent and our access to essential services. The rule of law, a fundamental condition for democracy requires, that the law be applied equally and fairly, so that no one is above the law and that the law is capable of being known to everyone, so that everyone can comply. Access to legal advice and confidence in the laws administration are key elements of adherence to the Rule of Law.

On 30 April 2016 the Federal Government released its long overdue 'response' to the Productivity Commission's (PC) Final Report on 'Access to Justice' in the pre-budget discourse and the election flurry so that its late response was buried. To clarify, for those in different jurisdictions, the PC is a statutory body set up by the Parliament of Australia as the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. It is considered locally as quite conservative in its approach. This is why its recommendations highlighting the barriers to access to justice were salutary. The PC's report tabled in September 2015 consisting of 968 pages and 24 recommendations (each had sub points making up further recommendations).¹ In excess of 364 submissions were received and there were public hearings. Many resource stretched agencies took time to write submissions and compiled significant numbers of case studies from clients. The Government's 'response' was only seven pages long. In effect the PCs seminal report has fallen on deaf ears. Why is this important?

For some, from lower-socio economic contexts government policies and laws affect every element of life from income security to the habitable condition of public housing provided by government, access to health services and their pension. In Australia, this group is 70 times less wealthy than someone in the highest wealth group.² They have little choice, fewer options and limited income is mainly spent on essentials with often little or nothing to spare. Often they have not had consistent schooling, experience multiple problems and barriers. This has not only been detailed in a number of recent empirical studies in Australia but was a significant finding of the Productivity Commission's (PC) Final Report on 'Access to Justice'. The legal system assumes knowledge of the processes, knowledge of the law and legal rights and confidence to take action, which is often absent for these groups.³ We rarely see governments thinking carefully before enacting laws and being accountable.

¹ Productivity Commission Inquiry into Access to Justice Arrangements Report, No 72, 5 September 2014, Australian Government, Canberra, http://www.pc.gov.au/inquiries/completed/access-justice/report

² ACOSS, (2016) 'Inequality in Australia', http://www.acoss.org.au/wp-content/uploads/2015/06/ACOSS-POVERTY-IN-AUSTRALIA-FACT-SHEET_FINAL-WEB-July-7-2015.pdf accessed 27 May 2016.

³ Coumarelos, C., MacCourt, D., People, J. McDonald, H.M., Wei, Z., Iriana, R. & Ramsey, S. (2012) Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia', (Sydney, Law and Justice Foundation of New South Wales). Available at: http://www.lawfoundation.net.au/ljf/site/templates /LAW_AUS/\$file/ LAW_Survey_Australia.pdf, accessed 10 June 2014 & Curran L and Noone M

It is left to community agencies like legal assistance services and those of us undertaking evidencebased research to try to relay client experiences.

Recent empirical research reveals the disadvantage have not only one legal problem but multiple legal problems often because they have multiple disadvantages and complex needs e.g. poor health, disability or victims of family violence. Only 13-16% of these groups are likely to seek or find legal help. There are some new innovations, which see lawyers in multi-disciplinary practices where the poorest are most likely to turn. Many of these initiatives initially not funded by government, are evaluated as effective, and find difficulty gaining ongoing funding. ⁴ When you reduce funding for a service already stretched and which already relies heavily on volunteers, even a small cut can have a significant impact on services.

Cuts to funding of legal assistance service (who help the most disadvantaged) are estimated to see 160,000 people turned away from service as nationally. Some services have already closed their regional offices, limited their court and other support services. In a context of limited resources some are adopting strategic approaches resulting in real changes, going beyond the immediate client's problem and reforming the system to prevent further cases improving the administration of codes of conduct and regulation to better protect citizen's rights.⁵ As acknowledged by the PC in its report⁶, these effective, targeted initiatives see efficient outcomes, improvements in practice, save money and also assist individual clients with their problems as well as groups of clients with the same issues recurring but they are not a replacement for individual cases with people represented and receiving early advice.

⁽²⁰⁰⁸⁾ Access to Justice: A new approach using human rights standards' *International Journal of the Legal Profession*, Vol 15 (3) pp 195-229.

⁴ Curran, L (2015), 'Holistic approaches to reaching and assisting clients experiencing vulnerability or disadvantage - Health Justice Partnerships in Australia and beyond - with a focus on the emerging value of secondary consultations', International Legal Aid Group Conference, Scotland, Conference paper June 2015. http://www.internationallegalaidgroup.org/index.php?option=com_content&view=article&id=180:2015-sessionpapers&catid=2:uncategorised&Itemid=101 ; L Gyorki (2013) 'Breaking Down the Silos: Overcoming the Practical and Ethical Barriers of Integrating Legal Assistance into a Healthcare Setting', Inner Melbourne Community legal centre and The Churchill Trust Fellowship, (https://www.churchilltrust.com.au/media/fellows/Breaking down the silos L Gyorki 2013.pdf) accessed 26 May 2016 and Curran L, (2015) 'Why Didn't You Ask?' – Evaluation of the Family Violence Project of Loddon Campaspe Community Legal Community Legal Centre', Loddon- Campaspe Community legal centre and the Legal Service Board.

⁵ Curran L (2013). *The Strategic Approach to Legal Problem Solving problems –: Examples, processes & strategies,* Consumer Action Law Centre, Footscray Community Legal Service & ANU Legal Workshop, Australian National University College of Law, http://www.plelearningexchange.ca/database/solving-problems-strategic-approach-examples-processes-strategies/ and http://consumeraction.org.au/new-report-solving-problems-a-strategic-approach/ accessed 27 May 2016

⁶ Above note i, Volume 2, 696-700.

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There was expectation after the PC Report that Government would better understand the barriers to justice and adopt the considered, practical recommendations. However, the government's response is heavy on rhetoric, light on substance when matched against the actual recommendations and ignores most. The PC's calls for the separation out of ideology from funding, more connectedness between government and those who deliver the services informed by independent research and involvement of legal services in systemic reform (something the Commonwealth has actively discouraged and is sticking to in its funding and service agreements⁷). All are ignored including the PC recommendation for an injection of \$200 million into the sector. In 2017 the real cuts kick in.

Don Watson in describing the decay of public language in his book 'Death Sentence'⁸ cautions about 'weasel words': sly words that do not mean what they appear to ... It is not a language for serious inquiry or explanation, or even thinking.' For example, of obfuscation using 'weasel words', in response to PC recommendation 12.1 asking for 'just, quick and cheap resolution of disputes' the Government states, 'The question of compliance with Directions, including the Model Litigant Obligations is a matter between the Attorney General and the relevant Commonwealth agency.... where an individual is unhappy with the handling of a compliant by an agency, they may seek review by the Commonwealth Ombudsman.' The Government states it's a matter for government agencies and if individuals are unhappy it's up to them to take it further completely ignoring the detail in the PC Report about barriers to the public doing so and problems inherent in government agency handling of matters that are impediments to justice.

I am astounded by the Federal Government's lack of genuine response to the Productivity Commission as an expert academic/practitioner who has delivered services to some of the most vulnerable for two decades and having provided evidence -based data and literature to this Inquiry which was cited heavily in the PC report. The Government's response ignores the reality of a difficult to navigate legal system. It ignores barriers and continues to deny resources that enable innovation and enhanced responsiveness to the most excluded.

⁷ L Curran, 'Attorney General George Brandis Set to Silence CLCs' The Saturday Paper, 14 June 2014 https://www.thesaturdaypaper.com.au/opinion/topic/2014/06/14/attorney-general-george-brandis-set-silence-clcs/1402668000 accessed 27 May 2016.

⁸ Watson D, (2003) 'Death Sentence: The Decay of Public Language', Knopf, Random House, NSW, 22.

VICTORIA COMPARED WITH ENGLAND AND WALES

Roger Smith

The Australian Commonwealth government may have disappointed as in the contribution above but Victoria, at least to an outsider several thousand miles away, has done rather better - particularly when compared with England and Wales, a jurisdiction (see below) which self proclaims itself the 'envy of the world". Victoria has become the latest jurisdiction to advocate the principle of putting small claims online. It has done so in an Access to Justice Review, which provides yet one more implicit rebuke to the approach of the Ministry of Justice of England and Wales in its Transforming our Justice System Vision Statement. The Victorians place their recommendations firmly within a consultative access to justice framework lacking from the English document.

The Victorian review followed the national Productivity Commission Inquiry Report discussed above. This had a brief from the Commonwealth Government that included the assertion that 'for a well-functioning justice system, access to the system should not be dependent on capacity to pay and vulnerable litigants should not be disadvantaged'. The English paper expressly excludes the affordability of costs and the implications of widespread the demise of legal aid. Accordingly, it did not take an approach dominated by the need to provide access to

justice. It simply asserted that we had a legal system, which was the envy of the world. It made not a single reference to escalating court fees; decreasing court usage or legal aid cuts. The Victorians, by contrast, are clear that access to justice underpins their whole justice provision: 'Access to justice is fundamental to the rule of law ... Government has a central role in providing an accessible justice system to support the rule of law ... Government also has a role in informing people about their rights and responsibilities.' The Victorians advocate 'four key strategies': better information: more flexible and integrated services; making better use of technology; and stronger leadership, governance and linkages. The review acknowledges, as ours does not, that 'while the system is not broken, it is under considerable strain'.

The whole tone of the Victorian document is completely different from anything that has come out of our Ministry of Justice for decades. For a start, the Victorians profess an interest in empirical research: they want to know what is happening - 'there are significant gaps in data, research and evaluation ... particularly in relation to legal needs'. And they are prepared to establish a diffused and decentralised way of finding out. Courts and tribunals. which have 'underdeveloped' capacities to produce meaningful information about their users and role, but, the Review also wants to develop the Victorian Law Foundation as 'a centre of excellence for data analysis, research and evaluation on access to justice'. (There may be nothing like being shown up by the success of the equivalent body in a neighbouring jurisdiction – in this case, New South Wales, which has exactly this kind of law foundation.) A little extra funding is even envisaged. Meanwhile, Victoria Legal Aid – the kind of statutorily created legal aid administrative body abolished in England and Wales (but not Scotland) – is volunteered for the task of being the 'primary entry point for legal information and legal assistance'.

The Victorians also want to join the world of Online Dispute Resolution – though not quite on the gung-ho basis advocated in the English document: 'The Review recommends that the Victorian Government provide pilot funding and, subject to evaluation, ongoing funding for the development and implementation of a new online system for the resolution of small claims claims in Victoria'. Note the emphasis on piloting and evaluating – functions in which our Ministry sees no purpose. Furthermore, the Review specifically considers the issue of 'the affordability of application fees'.

Further chapters deal with legal aid, pro bono and assistant for self-represented litigants though perhaps demonstrating a bias towards the need for research over the promise of funding. What a pity that our Ministry of Justice cannot similarly follow an access to justice approach.

WIRED JUSTICE: AN OVERVIEW OF DIGITAL DEVELOPMENTS AND ACCESS TO JUSTICE⁹

Roger Smith

Canada and the UK are, at a general level, in the grip of a revolution likely to be every bit as profound as the industrial spurt that put Great Britain at the top of the tree and created modern Canada as one of its dominions. Like all revolutions, this has both a dark and a light side. Not every one benefits from the platform or gig economy and the uberisation of services. The impact of technology compounds the loss of steady and respected employment in mining, steel-production and manufacturing. It is a trend, which manifests variously - including in the protest phenomenon of a Trump or a Brexit campaign. Quite a lot of people want to stop the world and get off, go back to how it was: steady jobs, reliable pensions, ordered lives, settled communities, - and let's add - no immigration. But, of course, that isn't going to happen.

⁹ This is a slightly edited version of a keynote presentation to a conference of the Legal Aid Plans in Canada held in August 2016

In the field of legal aid, we need to be aware of the effects of these broader changes to society. Your potential clientele may change - more people may come in and out of poverty, some of the new poor may well be much better educated and literate than those we have traditionally served; those left behind may feel more disengaged than ever; physical communities may maintain less cohesion; the legal problems of those on low incomes may change as casualisation transforms the labour market and in countries like my own, private renting returns as a major housing provider; government budgets may be hit to varying degrees by cash flowing less accountably out of the economies in which it is earned. You do not need me to underline the pressure on your legal aid budgets.

But, one of the upsides of the current maelstrom of change is its energy. Canadian legal services are as good a place to see that as anywhere. British Columbia has no less than three world-leading organisations in terms of the application of technology: its own Ministry of Justice that is developing the Civil Resolution Tribunal as what should be the first online small claims court to become operational; the BC Legal Services Society with its Rechtwijzer based MylawBC which I believe to be a vision of the kind of interactive website that will sweep the board in the field of legal information and advice; and the Justice Education Society whose imaginative use, for example, of video avatars shows a future where the visual can be incorporated into the written in the communication of advice. Ontario provides the example of collaboration between a university, Ryerson, and the Ministry of the Attorney General in a competition for legal start-ups, a good instance of the very modern combination of the academic, political and commercial. And Ross Intelligence may now be based in California but the leading developer of IBM's artificial intelligence capacities in the field of law was started by students at the University of Toronto. In Quebec, you have the well-established example of the Cyber justice Laboratory at the University of Montreal as a university-based originator of research into the application of technology to law.

I want to raise two subjects for debate. The first is to develop some sort of overview of the forces at work driving change. The second is more specific: what should be the response of those responsible for legal aid administration to the challenge of technology.

There have been a number of attempts to summarise the different currents of activity of technological advance in legal services. One of the best was published last month by the American Bar Association's Commission on the Future of Legal Services, which I commend you to read - particularly the section dealing with new developments. One of its recommendations for a Centre for Innovation is already being implemented. The only problem with the ABA analysis is that it does not group new developments into coherent trends. It may help to get a grip on an overall understanding

of current developments by seeing them as grouped into separate currents which nevertheless interact but which are, at least partially, distinct. Doing this also emphasises that the drivers of change are not just technological: the technology gets its bite from the commercial and other forces by which it is being deployed.

Out in the lead is the drive for profitability by the large commercial firms. They led the way in the use of the cloud, case management software, outsourcing and the first wave of back office reform. They are leading the way in the deployment of artificial intelligence to processing the law itself and the data, which surround large commercial transactions. The English commercial firm in which I articled, for example, Allen and Overy is now in two partnerships for the development of AI provision. The cost of developing AI in the fields of poverty law would seem an overwhelming barrier at least for now but it will undoubtedly seep in - most likely as it is deployed by courtroom advocates in judicial hearings; in areas of law such as employment where there are diverse potential clients, some of whom are very well off; and as the technology cheapens.

Following the big commercial firms are the ones concerned with individual clients on low incomes. Practitioners wish - and need - to minimise their overheads and thereby give themselves an edge on the competition. The hunt is on for what future guru Richard Susskind called 'the latent legal market', those willing to pay something for legal services if the price were what they would regard as affordable, significantly less than has traditionally been the case.

The best examples of this probably come from England and Wales where the effect of new technology is augmented by new forms of regulation, which allow the third party ownership of firms. So, you have the arrival of venture capital to bolster models of provision, which are national, web-led and sometimes deploy varying degrees of unbundling. For example, we have the establishment of Co-operative Legal Services as an offshoot of a retail and wholesaling chain and Slater and Gordon, an aggressive Australian firm that is seeking to establish a national brand. Both of these have encountered financial difficulties on which apologists for traditional delivery have fallen with delight but they should not crow too early. These individual examples may fall but others will succeed.

There are a variety of ways in which practitioners without major capital funding can base themselves on a virtual presence and deal with clients remotely both in new organisational forms and old. The extension of video communication as an alternative to conventional meeting seems potentially revolutionary if it were widely deployed. It also destroys much meaning to any posited opposition between digital and face-to-face legal services. A firm like Epoch in England sells its services to legal expenses insurers and deploys the web, video, lawyers in a central location and document assembly software to produce wills for the clients of the insurers in a new way. Or video can be used within a firm or organisation in the way that New Mexico Legal Assistance held together its expert team on bankruptcy by using what used to be called the 'hub and spoke' model where a specialist team is fronted by outreach offices.

An important point here is that digital delivery is not necessarily an either-or proposition. A firm in England has developed a product called Siaro which asks a potential client to explain about their case in a series of guided alternatives and then provides a dashboard suggested what has to be done to the lawyer. The result is that the time in each individual initial interview is reduced significantly. This is such a simple application of guided pathways that it will be amazing if it does not take off more widely. It can help the user to identify the core element of their problem, prepare them for the answer and save the lawyer having to go through a standard time-consuming and repetitive interview process. It represents the win-win of a better service at a reduced cost.

Coming in next is government. Its roles are many faceted. Ontario's government is backing its commitment to legal innovation by making sums available to facilitate the competition organised by Ryerson's LIZ. A good thing. The UK government is massively overhauling its social security system in the hope of producing one universal credit benefit, which will be administered and managed online. It hopes to make massive savings in staff and premises. In doing so, it is removing discretion from the benefit system and seeking to reduce decision-making, for example on matters relating to disability, to relatively simple algorithms based on point systems. This gives a veneer of objectivity, which can break down under the pressure of advocacy in individual cases. The Ministry of Justice in England and Wales is also pushing ahead with a major plan to move small claims courts online, following just behind British Columbia. The Ministry is under massive pressure to make savings by way not only of expenditure but also by selling off lucrative inner city court sites. The reforms have been heralded by an inquiry under a senior judge, Lord Justice Briggs whose report is worth reading and which accepts the need for physical assistance to litigants in person. However, the danger remains that these essential elements will be missing from the final implementation.

Online Dispute Resolution will be a major driver for online legal services in response. Voluntary schemes from which opt out is allowed will, no doubt, multiply. But mandatory online determination for small claims proposed both for BC and England and Wales and for the same reason - take up would otherwise be low and the financial savings less. Mandatory state backed determination online represents a change for ODR as it has developed. ODR traditionally has been more akin to ADR. So, we might perhaps distinguish it as ODD - online dispute determination. The Dutch experience with its Rechtwijzer programme suggests that this could extend to family cases as well as small claims. Sensitively managed, this could be a real boon but insensitively managed, it could simply

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open up further the digital divide between the empowered and un-empowered, posing a major challenge for legal services. In any event, ODD will be driver for online legal services.

It would be surprising if service providers are immune to the enthusiasm of the new technology. All around the world, providers are experimenting with what can be done on the web. Illinois Legal Aid Online, for example, has made a major step forward in upgrading its online triage provision. The Citizens Advice Bureau service is revamping its provision in England and Wales, turning in the process to a web-led presence supported by physical provision rather than the reverse.

But, the big breakthrough is the deployment of the guided pathway as developed by the Rechtwijzer and demonstrated in Canada by MyLawBC. In my experience, once you have seen how an advice site can follow the form deployed by an airline if you want to buy a ticket then the usual static website is massively out of date. This is web information 2.0. And, together with automated document assembly, guided pathways represent the perhaps belated introduction of interactivity into provision. Any process that ends in a document can usually be automated. The scope in law is huge. And it is not just the automation: it is the ability to put the software into a visual context like the A2J software developed by CALI on which you will hear a presentation tomorrow. We need to explore how far we can take the enormous potential here.

Let's leave the role and impact of legal aid administrators for a moment. I return to it below.

The final current for change that I want to identify is the drive of the entrepreneurs and businesses concerned. They are bubbling up to compete - often in highly competitive environments where everyone realises that most will fail. They are demanding to be heard in their assertion that they can do something here. That is what you see at the CBA's Pitch, the Ryerson competition, the development in the UK of apps for homelessness and domestic violence. In London, it has even been harvested by a community law centre in Hackney, which ran a successful hackathon. Traditional borders are being crossed here. The institute in The Netherlands, HIIL that developed the Rechtwijzer is now self-funding. Its continuing existence depends on selling its product. Hill leaders are scouring the world for potential clients to follow the Legal Services Society and Relate in London. Australia is said to look promising. Modria, which provides some of the background software, is an overtly commercial company on the hunt for business in a similar - but perhaps more traditional - way. We will hear from both tomorrow.

Now lets come to the role of legal aid administrations. At least in Canada, you generally have a freedom of movement, which may seem somewhat constrained to you but is significantly behind the Legal Aid Agency in England. This has become a part of the Ministry of Justice. You have not

inconsiderable budgets and a commitment to get the best bang for your buck in the field of access to justice. You have, of course, much of your money tied up in existing provision, which it may be foolhardy to threaten. How should you respond to this swirling activity? I have the following suggestions.

First, you are in a unique position to chart what is going on in your jurisdiction in whatever form you think is appropriate. Bar associations like the ABA and Law Societies like that in England and Wales produce papers on future developments, some of which (like the most recent publications from both) are very insightful. But, ultimately, a Bar Association or Law Society has to tread carefully around the interests of its members - some of whom will benefit from the future and others who will suffer. This is particularly because the advent of AI within the commercial sector is pretty well bound to reduce the need for commercial lawyers in the same numbers as now. That is a difficult message for a representative body to articulate. We will not see the end of lawyers - that was just Richard Susskind's catchy book title and, anyway, he always added a question mark at the end. But we are likely to see the diminution in the need for lawyers with a lot of difficult knock on effects in terms of the sustainability of representative bodies and, indeed, of the law schools which feed new entrants into the profession.

Review does not have to be at Provincial level: it can and should include the national and international. Law may be jurisdiction-based but technology is not. It may be that there is value in the kind of overarching forum that you have created in Canada for access to justice but, regardless of collaboration, you need, as legal aid providers, to have some assessment of the impact of new technology on your work. You need to know where new needs are developing, where new solutions are emerging, where new ideas are coming from that can be used in a Canadian context. As far as the international is concerned, this is one of the targets of the Legal Education Foundation for which I work. As far as the local and particular is concerned, only you will know that.

The point is to watch developments not produce wonderful reports. Were I a CEO of a Legal aid funder I would want quarterly short reports just on one side of A4 from my director of policy on relevant global developments and potential local needs. You need to know what is being done and what routine tasks might be transformed across the services that you offer or fund.

And sometimes discretion is the better part of valour. Thinking of installing ODR in a small claims court? My advice is to wait. Let the early adopters take the risks. My government will not listen, of course, but it will regret it. But let us quietly admit that a number of new initiatives will come to a sad end. It would not surprise me if we experienced a period of disappointment with some new projects -

and maybe the whole online direction - after an initial honeymoon. That should be expected: it will not affect the onward overall trajectory as we recognise and sort out problems.

Second, you are uniquely placed to encourage the transformation of web-based services, particularly information and advice. You want to watch MyLawBC like hawks, demanding to see the analytics of its use. It is setting a world benchmark. If you are not from BC, how does your assistance in the fields in which it is operating compare? MyLawBC makes the notion that an information website can any longer get away with simply putting a booklet online outdated. The information needs to be processed and made available step by step to the user who gets just what they need. There is the scope for massive value added. I am a bit surprised at how slow the take up is on this front. Our CAB service has notably failed so far to go in this direction. MyLawBC puts Canada in the front rank of web-based advice provision wider than that relating to family matters. I think it will be a soaring success.

There tends to be a rather sterile stand off between the technology hawks and doves. Can people use new technology or not? How many? In what way? My own view is that, unaided, only around half of the population potentially eligible for legal aid have the technological, cultural and literacy skills to resolve problems solely online. That has tremendous implications. It means that it is wrong to go for mandatory ODR or ODD. It means that online should be seen as supplementary to physical. It does not mean that we should not experiment with ways of assisting people - through self-help court centres or other advice provision - to work their way through the digital world. There are wealth of ways in which digital provision can be supplemented by individual assistance. We need to know what works.

And this takes us to the critical point of evaluation. There needs to be rigorous and publicly shared evaluation of innovative technology projects. There is a lovely piece of work from Victoria Legal Aid in evaluating an app on aspects of consent that it had funded. About 1100 versions were downloaded. If this had been a booklet that would have been the end of it. But actually almost a 1000 were subsequently deleted. There was an obvious difficulty: the app did not work on more advanced android phones. But to the credit of the VLA, it publicly accepted that the real reason was that an app was the wrong format for what it wanted to do. Much better material on child protection if available on the net, at least now - and for example from the National Crime Authority in England and Wales. Google Analytics applied to a website leaves very little place to hide. You can see success and failure over time with agonising precision. Whenever a funder resources a website as a source of assistance then it is really helpful- both to them and to the wider community around the world - if there is also a commitment to open publication both by agency and funder of the analytics of its use. This is how we will resolve the question of what it is that users can and cannot do.

My next role emerges from the others. Legal aid providers need an overall strategy. This both provides a framework for funding and the production of benchmarks. A good example is provided by the US Legal Services Corporation's Technology Summit in 2013. This prioritised the following six activities: '(1) Document assembly for self-represented litigants; (2) better "triage"—that is, identification of the most appropriate form of service for clients in light of the totality of their circumstances; (3) mobile technologies; (4) remote service delivery; (5) expert systems and checklists; and (6) unbundled services.' This gives a context to individual decisions made by the Corporation's Technology Initiatives Grant programme. It also invites periodic reconsideration of priorities. For example, I would now argue that guided pathway advice provision should be included. However you do and whatever level, the articulation of some form of strategic vision for the use of technology by legal aid providers seems an important and helpful provision.

Finally, legal aid administrators have to consider - but not be overwhelmed by - the downsides of digital. There are difficulties to the use of technology to provide legal services for those on low incomes. We do know the extent of people's technological, cultural, intellectual capacities to use technology - all of which are likely to be more formidable barriers than physical access to the net. That is to be resolved. We do not know the best way to combine individual and digital assistance. That is to be explored.

But, there is also fundamental problem, which needs at least to be acknowledged - if only in whispers in dark corners. I become more and more attached to the notion of defensible progress - something than can be missed by politicians and enthusiasts. Governments can be keen on online services when they hold the promise of reducing cost. They are less keen to pay for continuing upkeep and the constant upgrading which keeps commercial providers attuned to the new. More generally, online provision is a good deal easier to cut than physical services. Labour's initial attempt at online provision of the NHS was just eradicated by an incoming new government - which then eventually had to reinvent something inferior. That, for me, provides a very good practical reason for integrating online with offline and embedding the two together. It is also a good reason for being able to document exactly how useful online is and building support for it. It also means that project funding needs to be spent in a slightly different way that hitherto: you need to keep something back for tweaking and changing.

But I certainly do not want to end on a low note. I am excited about the possibilities which technology is opening up for us. It reminds me of the optimism of my youth in the 1970s as legal aid was expanding to recognise a wider range of the problems faced by the poor and the importance of meeting them.

TRANSFORMING OUR JUSTICE SYSTEM

Roger Smith

The Ministry of Justice in London has now followed pathfinder reports of the Court of Appeal Judge Lord Justice Briggs with its proposals for the digitalisation of court and tribunal procedures. Confusingly, it has published two documents, both of which have to be read together to understand the full scope of the proposals. There is a Joint Vision Statement of the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals. Please See:

- <u>https://www.gov.uk/government/public</u> <u>ations/transforming-our-justice-</u> <u>system-joint-statement</u> and;
- (2) A document entitled Summary of Recommendations and Consultation <u>https://consult.justice.gov.uk/digital-</u> <u>communications/transforming-our-</u> <u>courts-</u> <u>andtribunals/supporting_documents/co</u> <u>nsultationpaper.pdf</u>

The Vision Statement gets off to an embarrassing start for to an international audience. It proclaims: 'Our justice system is the envy of the world'. Interestingly, the other document is mildly more balanced: a minister in his personal introduction has our justice system as 'internationally revered as one of the finest in the world'. You might be able to justify the latter as the acceptably partisan view of the minister but you cannot really just proclaim the former. What is the source? No one could claim that our current family law provision is the envy of the world now that legal aid has been cut and nothing remotely like MyLawBC put in its place. And high levels of fees are restricting access by ordinary people to ordinary claims in tribunals and small claims courts.

The 'core principles' announced in the 'Joint Vision' statement - that the system be just, proportionate and accessible - are acceptable. But, the definition of 'accessible' - expressly limited by the paper to issues relating to availability, intelligibility and access to those with physical disability - is inadequate, and should include affordability. Cost is a major barrier to access to justice and ways have to be found for those with low financial resources nevertheless to have effective access to the effectively, exercise of what is. their constitutional right to resolution of disputes, criminal and civil, in tribunal and courts.

As a number of commentators have pointed out, it is little less than bizarre to promote the value of accessibility to the courts without any mention of legal aid and court fees. It verges on the dishonest and surely the drafters of the paper could not really hope to get away with such a gross sleight of hand even if Ministers are reluctant to concede the current lamentably state of legal aid. I would support digitalisation of the courts is precisely because it holds the hope of bringing down court and tribunal costs to affordable levels, Worryingly, this seems not have occurred to the authors.

And a final point of general concern is the lack of detail about finance. The paper proudly proclaims that there will be an extra £970m for the courts, presumably on a one off basis. There is a reference deep in the summary paper to the alleged underuse of around half of the 400 courts still standing and the suggestion that 'many will be closed' but no detail. Presumably, the consequent sales are intended to meet the cost of the programme. In a document that trumpets the vale of transparency it would be helpful to have a bit of detail on the underlying financial assumptions. Perhaps, for example, if we knew the full story, more money could be made for legal assistance.

The paper proceeds to deal separately with the impact of the programme on different parts of the court and tribunal structure. A general observation would be much is somewhat too general. This is particularly so for family courts where, actually, ministers are not ready to say anything except that they are thinking about what to do. On crime, there is more detail – sometimes verging on the bizarre. Personally, I have no problem with a proposal that unauthorised angling be dealt with by a postal procedure similar to that, which applies for parking fines. I just would not think that worthy of mention in a high level report like this. The suggestion that fare dodging could be dealt with similarly needs a bit more examination. That is extending postal procedures to offences of dishonesty where conviction may have serious consequences e.g. for foreign travel. It may be that we now regard fare evasion as a breach of an implied contract rather than a crime but, if we do, then let us say so explicitly and decriminalise accordingly. There are proposals for more use of video evidence from vulnerable witnesses which experts in the field seem to agree are desirable. More liaisons between magistrates and Crown courts must be desirable but who would think that the radical proposal to merge the two has been hanging around for thirty years but rejected because of heavy Bar opposition? Even Lord Justice Briggs thought that he ought at least to mention this proposal even as he rejected it.

There is some discussion of the extent to which users are digitally literate enough to take advantage of digital court procedures. This is a vital issue in small claims cases, which often involve ordinary people on low incomes but there are no proposals as to how to overcome this. There is the general statement that there may be more need for assistance from agencies on the ground but no analysis of how this might be done and how this might be integrated with general advice provision. On tribunals, there is the suggestion that lay members may be reduced and procedures go totally online beginning with social security appeals. Really? What

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about all the contested cases relating to disability and employability? These cannot just be left to convenient algorithms. People need fair decisions and they need to understand that they are fairly taken For an organisation like ILAG, formed to promote a closer link between academics, researchers and policy-makers, the paper provides, alas, good material to illustrate why this integration is required.

LEGAL AID IN THE EUROPEAN UNION

Roger Smith

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The European Union has finally agreed a Directive on legal aid in criminal proceedings. This must be transposed into national legislation in all EU states except Denmark, Ireland and, of course, the fractious UK by May 2019. This is the European Commission's summary of its requirements:

Legal aid is granted swiftly

Legal aid will be granted at the latest before questioning, especially by the police, or before certain investigative or evidence-gathering acts, as set out in the Directive.

Clear criteria to grant legal aid

Member States apply different tests to determine whether to grant legal aid: a means test (related to the resources of the person concerned including income and fortune), a merits test (related to necessity to ensure effective access to justice in the circumstances of the case) or both. The new rules set out clear criteria to establish these tests:

- If a Member State applies a means test, it should take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, the costs of legal assistance and the standard of living in the relevant Member State. This will help them determine whether suspects or accused persons lack sufficient resources to pay for legal assistance.

- If a Member State applies a merits test, it should take into account the seriousness of the offence, the complexity of the case and the severity of the penalty at stake, in order to determine whether the interests of justice require granting legal aid.

Legal aid in European arrest warrant proceedings

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There will be a right to legal aid in <u>European arrest warrant</u> proceedings. This right will apply both in the Member State that executes such an arrest warrant and – in criminal prosecution cases – also in the Member State where it has been issued.

Better decision-making process on legal aid

The Directive ensures that decisions concerning legal aid are made diligently, and that people are informed in writing if their application is rejected in full or in part. It sets out rules on quality of legal aid and on training of staff involved in the decision-making process, including lawyers. In the event of a breach of the rights under this Directive, an effective remedy must be available.¹⁰

The successful conclusion of the Directive is very much a consequence of the commitment of the Open Society Justice Initiative - deploying the Justices European Rights Network¹¹ led by the Irish Council of Civil Liberties - which managed to marshal an impressive array of resources to keep it on track after a number of states sought to derail it.

RECENT DEVELOPMENT IN JAPANESE LEGAL AID: TOWARDS FURTHER PROMOTION OF LEGAL SOCIAL WORK

Teppei OnO, Chief Staff Lawyer, JLSC Akita Law Office

Japanese civil legal aid is currently facing a landmark change to its decades old system. The diet passed the draft of the revised Comprehensive Legal Support Act on 27 May 2016, which partially expanded the scope of civil legal aid and lifted the financial eligibility requirements for certain categories of vulnerable people, including elderly and disabled persons.¹²

The Japanese civil legal aid system has maintained its basic scheme for decades, where only persons meeting the strict financial requirements are eligible and the scope of legal aid is limited to court proceedings in principle. The Japan Legal Support Center (JLSC) was founded under the Comprehensive Legal Support Act in 2006, fully funded by the government. Prior to its establishment, it was recommended to the Japanese civil legal aid system that it should be further improved with regard to the limited scope of services and strict financial requirements, because the system was still inadequate from the standpoint of a substantial guarantee of the people's right of

¹⁰ http://europa.eu/rapid/press-release_IP-16-3366_en.htm

¹¹ http://eujusticia.net

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The author takes full responsibility for the contents and wording of this article.

¹² Sougouhouritushien Hou, Law No. 74/2004, as amended by Law No. 53/2016

access to the courts.¹³ Nevertheless, the JLSC has taken over the civil legal aid services from the Japan Legal Aid Association (JLAA) without improving these issues, after the enactment of the Comprehensive Legal Support Act.

The revised act was drafted after consideration of the report of the expert study group set up under the Ministry of Justice.¹⁴ It has significant meaning for the history of Japanese civil legal aid in that it partially changed its basic scheme by expanding the scope and lifting the financial requirements for specific persons.

The main aim of the amendment lies in promoting "Legal Social Work", which has been committed in large part by full-time lawyers of the JLSC (staff lawyers) to help elderly or disabled persons with complicated problems. Influenced by the rapid aging of Japanese society, legal support for elderly people has been brought to increased attention in recent years. As more and more staff lawyers have devoted themselves to legal assistance for the elderly, the barrier particular to elderly people or persons with cognitive impairment has been revealed. An imminent barrier to pursuing a legal issue is a lack of awareness that the problems they are facing have legal resolutions. Now, it is generally accepted among Japanese legal aid practitioners that many elderly or disabled persons cannot be expected to access lawyers because they do not recognize their legal problems due to their cognitive impairment. If their problems are left unsolved, those problems can become more acute and threaten their lives. In order to overcome such a barrier, staff lawyers have committed themselves to promote a holistic approach in cooperation with welfare agencies. They have reached out to elderly or disabled persons instead of just waiting for them to visit their law offices and enhanced networks with welfare agencies to resolve their multi-dimensional problems from both legal and welfare aspects. Such an approach is called "Legal Social Work". Legal Social Work is expected to remove the barrier persons with cognitive impairment are facing, and promote their access to legal aid.

The expert group recommended that the elderly or disabled persons should be granted free legal counseling aid regardless of their financial resources, and legal representation aid should be expanded to include administrative procedures that have not been covered since they are not court proceedings, such as appeals against welfare decision and involuntary psychiatric hospitalization.¹⁵ The expert group indicated that the expansion of legal aid services for elderly and disabled persons

¹³ The Justice Reform Council, Recommendations of the Justice Reform Council: For a Justice System to Support Japan in 21st Century, 12 June 2001. For text see the Cabinet's website [available in English], < http://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html>, Chapter II, Part 7 (2).

¹⁴ The Expert Study Group, "*Jujitushita Sougouhouritusien wo Jissisurutameno Housaku nituiteno Yusikisyakentoukai Houkokusyo*" [Expert Study Group Report regarding measures to Implement Enhanced Comprehensive Legal Support] (2014)

¹⁵ The Expert Study Group, supra note 3, p. 3-4.

would promote the Legal Social Work. In particular, the partial abolishment of the financial eligibility requirement was considered to push ahead with Legal Social Work, because it would be rather difficult to confirm the financial resources in advance when lawyers reach out to persons with cognitive impairment, who do not recognize their legal problems and the necessities of legal assistance.¹⁶

Taking into account the recommendation of the study group, the amendment of the Comprehensive Legal Support has been achieved. The revised act has expanded the scope of legal representation aid to cover objections against welfare benefit decisions and lifted the financial eligibility requirements for legal counseling, in cases where legal aid recipients have difficulties in accessing lawyers due to their cognitive impairment.¹⁷ Although the revised act does not cover challenges against involuntary hospitalization, the amendment would make a significant impact on the history of Japanese civil legal aid. The revised act is to be enforced within two years of its promulgation¹⁸ and the JLSC has been in preparation for the launch of the new system.

NEWS

The news items shown below are largely compiled from articles on the internet, found on the basis of a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will obviously fail after a period of time.

Paul Ferrie, who is ILAG's Researcher and Online Editor, collates these news items. Paul, a graduate of the University of Strathclyde Law School, is also a solicitor with Scottish firm, Waddell & Mackintosh.

If you would like to suggest or write an article for inclusion in this newsletter or the ILAG website, please contact Paul by emailing paul.s.ferrie@strath.ac.uk. Paul can also be contacted via Twitter (@psferrie) – and LinkedIn (<u>http://goo.gl/I9cmNd</u>). Please note, Paul's work with ILAG is undertaken on a part time basis, and should you contact him, he will revert to you as soon as practicable.

Australia

¹⁶ Ibid, p. 6.

¹⁷ Revised Comprehensive Legal Support Act, supra note.1.article 30.1.2 and article 30.1.2.3.

¹⁸ Ibid, additional clause article 1.

Boost Legal Aid Funding With Levy On Alcohol, Gambling, Australian Bar Association Says – ABC Budget 2016: Lawyers To Rally Over Legal Aid Shortfall – Sydney Morning Herald Budget Oversight Leaves Legal Aid Fuming – Australasian Lawyer Government Considering Beefed-Up Role For Victorian Legal Aid – The Age Lack Of Legal Aid Funding For Domestic Violence Forcing Women To Drop Cases: Lawyers - ABC Legal Aid Funding Cuts Prompt Fears Vulnerable Will Be Turned Away - ABC Legal Aid Matters: Lack Of Government Funding 'Destroying Lives', Law Council Says – ABC National Legal Aid Calls For More Funding After New Figures Reveal Domestic Violence A Factor In 79pc Of Family Law Cases - ABC Victoria To Provide Legal Aid To Thousands Of Asylum Seekers Under New Initiative - ABC Western Sydney Centre Helping Asylum Seekers Access Legal Advice – ABC

Canada

Alberta's Legal Aid Desperate For More Funding In Face Of Increased Demand - CBC News Free Legal Aid Being Offered To Low Income Earners – CFJC Today Legal Aid Lawyers Demand Pay Equity - Newswire Legal Aid Lawyers Locked In Legal Battle With Province Over Unionization – The Star Legal Aid Lawyers Push To Unionize – Law Times Ontario Launches Free Legal Advice Program For Sex Assault Survivors – CBC News Ottawa Boosts Funding To National Legal Aid Programs – The Star Women Left Out Of Federal Money For Legal Aid: Lawyers – Global News

China

<u>Hong Kong Should Grant Legal Aid Only To Deserving Cases – South China Morning Post</u> <u>Legal Aid Group Presses China On Domestic Violence Laws - SBS</u>

England & Wales

Bid To Cut £2bn Legal Aid Bill Blocked – The Telegraph 'Gradual Fall' In Number Of Legal Aid Providers – Law Society Gazette Legal Aid Agency Contracts Chief To Leave – Law Society Gazette Legal Aid Cuts 'Causing Advice Desert And Homelessness' - BBC Legal Aid Cuts Creating Two-Tier Justice System, Says Amnesty – The Guardian Legal Aid Cuts Have Ripped The Heart Out Of Our Justice System – Politics UK Legal Aid Is A National Institution Like The NHS, So Why Is It Not Properly Funded? The Guardian Legal Aid 'Safety Net' Scheme Lawful, Appeal Court Rules – Law Society Gazette Moj Plan For Legal Aid Residence Test Thrown Out By Supreme Court – The Guardian Public Interest Lawyers' Legal Aid Contract Scrapped – Solicitors Journal

Fiji

2016-2017 Budget: \$5m For Legal Aid Commission – Fiji Times A-G: Legal Aid Lawyers Highly Paid – Fiji Times EU To Make Announcement For Further Funding For Fiji – Fiji Village Government Committed To Ensuring Access To Justice, Says AG – Fiji Sun More Legal Aid Offices Open – Fiji Times

Gambia

A2 Justice Tournament To Promote Youths' Access To Justice - Observer Diabugu Batapa Captures EU Access To Justice Trophy – Allafrica

India

Access To Justice Is A Fundamental Right Guaranteed Under Article 14 & 21 Of Constitution: SC Constitution Bench – Live Law India 'Delayed Justice Affects Rule Of Law' – Times Of India Legal System Too Expensive For Most: Study – The Hindu Need To Ensure Access To Justice For All, Says Home Minister Rajnath Singh – NDTV The Long, Expensive Road To Justice – India Today Victims Lack Confidence In Legal Aid Lawyers: Justice Lokur – The Times Of India We Require More Than 70,000 Judges To Clear Pending Cases: CJI TS Thakur – The Indian Express Where Does India Rank In Terms Of Access To Justice? Bar & Bench You Can't Improve Access To Justice If The Courts Are Inefficient: Daksh Co-Founder Harish Narasappa - Live Law India

Indonesia

Indonesian Legal Aid, Activist Call For New Legal Process For Mary Jane - The Jakarta Post

Malaysia

Govt Legal Aid Scheme Allows Lawyers To Hone Their Skills – Free Malaysia Today Government Reviewing Who Gets Legal Aid, Minister Says Amid Smaller Budget – Malay Mail Online Govt-Sponsored Legal Aid Scheme Runs Into Financial Trouble – Free Malaysia Today New Approach For Legal Aid, Insolvency Depts To Provide Better Service – Astro Awani Online Legal Advice For Free – Free Malaysia Today

New Zealand

Fair Trials Undermined By Legal Aid System - Ex-Judge Radio New Zealand Fewer Lawyers Willing To Do Legal Aid – Radio New Zealand Govt's \$96m Legal Aid Boost Questioned – Radio New Zealand Loss Of Relationships, Knowledge Through Legal Aid Closures – Radio New Zealand Six Of Eight Legal Aid Offices To Shut – Radio New Zealand Taranaki Lawyers Concerned Access To Justice Will Be Limited By Shutting Legal Aid Offices – Taranaki Daily News

Northern Ireland

European Study Finds High Legal Aid And Judicial Spend In Northern Ireland – Irish Legal Northern Ireland Legal Aid Reforms 'Have Not Worked' – BBC Wisconsin Is A Warning Against Northern Ireland Legal Aid Cuts, Says 'Making A Murderer' Lawyer – Irish Legal

Pakistan

Access to Justice: Bar Leader Dvided Over Decision on New benches – The Express Tribune Gender equality: Calling for easing women's access to justice in Sindh – The Express Tribune Pakistani missions to set up legal aid cells in UAE – Gulf News

Republic Of Ireland

Free €15m Legal Aid Scheme Launched In Republic For Distressed Mortgage Holders – The Irish News

Singapore

Barriers To Singapore's Legal Market Fall – Lawyers Weekly

South Africa

South African Lawyers Discuss Needed Laws Reform – Channels TV

Scotland

Civil Court Fees Hike Could Deny People Access To Justice, Lawyer Warns - Herald Scotland Law Society Launches Survey On Financial Viability Of Legal Aid Firms – Law Society Of Scotland Scotland Needs A Wider Debate Over Environmental Justice - Holyrood Scottish Government Legal Aid Cuts A 'Risk To Justice' – The Scotsman Scottish Input In IBA Report On Children And Access To Justice – Scottish Legal News Support For Women To Expand After @Scotgov Boost For Anti-Violence Fund – Commonspace Women Facing 'Impossible' Tribunal Fees Barrier To Challenge Workspace Harassment – Herald Scotland

United States

American Samoa Bar Association Receives \$426,296 Under Bank Of America Mortgage Settlement - PR Newswire Baylor Law School Launches Program To Make Legal Aid More Affordable – Baylor Lariat California Legal Assistance Group Receives \$44.7 Million Under Bank Of America Mortgage Settlement - PR Newswire Children Deserve Better From Florida's Justice System – The Huffington Post Florida Chief Justice Joins White House Push For Legal Aid - Wfsu Illinois Pushes Legal Aid For Juveniles In Murder Cases – Fox 32

Kansas Bar Foundation Receives \$2.9 Million Under Bank Of America Mortgage Settlement – PR
Newswire
Legal Aid Clinic Helps Entrepreneurs Cut Through Chicago's Regulatory Red Tape – Chicago
Business Journal
Local Attorneys Recognized For Pro Bono Work – Pensacola News Journal
Local Bar Association Offers Free Legal Clinic For Veterans – Beaumont Enterprise
Mayor Grants \$1.8 Million For Legal Aid Of Unaccompanied Children – SFE Examiner
NY State May Fund Legal Aid For Poor Defendants – Democrat & Chronicle
Ohio Legal Assistance Foundation Receives \$12.9 Million Under Bank Of America Mortgage
Settlement – PR Newswire
Tenant Advocates Push For Legal Aid Bill In DC – Washington Times
Texas Legal Assistance Group To Receive \$32.3 Million Under Bank Of America Mortgage
Settlement – PR Newswire
The Civil Legal Aid Community Needs Its Own Affordable Care Act – The Huffington Post
There's A Devastating Shortage Of Lawyers In The US Who Can Help The Poor With Eviction Or
Child Custody Cases - QZ
This Woman Created The Uber Of Legal Aid – Forbes
'Robot Lawyer' Gives Free Legal Aid To Homeless People – The Huffington Post

For more information about the work of the *International Legal Aid Group*, please visit our website which can be found at <u>http://www.internationallegalaidgroup.org.</u>