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JUSTICE

RESEARCH NOTES

Making the Justice System More Accessible to Canadians

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In this issue of *Justice Research Notes* we highlight some of the recent work of the Research Section on access to justice and public law, touching on topics that range from providing better legal services for people in the remote reaches of Canada's north, to making regulations on activities such as pollution control acceptable to corporations and individuals.

The first broad area, access to justice, covers a number of current issues in which the Department has been active over the years — such as improved access to legal aid and the provision of legal information to the public. We present three such articles here: one examining a program to make legal aid more accessible to low-income working people; another presenting the results of a survey aimed at helping to identify the public's legal information needs; and a third studying the use of paralegal workers in remote regions.

Another avenue of access-related research is the alternative resolution of disputes of all kinds, focussing on community-based, as well as court-based, techniques. In the past we have initiated projects on various procedures for divorce mediation, for example, and recently we have begun work on the question of alternative dispute resolution in general. In the 1970s, pilot projects on unified family courts were conducted which, for the first time, brought together provincial and federal court systems to resolve marital property and other issues

in divorce proceedings. We look forward to reporting on the results of our dispute-resolution work in future issues of this newsletter.

Public law research embraces the many complex socio-legal issues surrounding the application of the *Canadian Charter of Rights and Freedoms* and regulatory law.

Recently, a major focus for research has been the relationship of the Charter to national unity issues. The Department has been actively seeking ways to improve Canadians' understanding of the implications of the Charter for their rights and responsibilities as citizens. Research is ongoing on such topics as the use of extrinsic evidence in Charter cases (social science data-analysis material, for instance, which is now considered relevant by the courts) and the impact of the Charter on the policy-making process.

Research on regulatory law has concentrated on compliance with regulations, particularly the exploration of "positive compliance" techniques that avoid the traditional command-penalty approach to enforcement. A comprehensive study of these techniques in three countries (the United Kingdom, Australia, and the United States), with implications for improved Canadian systems, has recently been published and we are pleased to present a summary here.

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Paralegal Workers Improve Legal Aid Services to People in Remote Areas of Canada

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The problems of providing legal services in northern and remote communities in Canada — compounded by enormous distances, widely scattered population, hostile climate, and cultural complexities and conflicts — are well known to providers of the services and to residents themselves, particularly native people. In the last 10 years, these problems have been documented in a number of research and evaluation studies on legal aid programs and public legal education and information. They have also been brought to the fore in reports of recent inquiries into aboriginal justice matters.

The following are some of the more commonly cited problems:

- ▶ On circuit courts, Crown attorneys and defence counsel face almost impossibly short periods of time to meet with defendants and witnesses and prepare their cases.
- ▶ Difficulties arise from attempting to translate one cultural viewpoint into the terms of another. It is often observed, for example, that accused aboriginal people will hasten to plead guilty, regardless of their guilt or innocence, just to get the court experience over with.
- ▶ There are no resident lawyers, except in rare instances, and even then they are only available for a short time.

- ▶ Travel time, relative to service time, is high for legal service providers, which makes the services quite costly.
- ▶ Services are intermittent.
- ▶ There is an imbalance between the availability of criminal and civil legal aid services, in favour of the former. This particularly affects services to women, who more often require access to civil, rather than criminal legal assistance.

*Paralegals ... have been used
for almost two decades
in urban and rural offices*

Legal Aid Manitoba and the Legal Services Society of British Columbia began to address these problems in the late 1980s by hiring paralegal workers in or very close to remote communities. An evaluation study of the B.C. project describes the introduction of paralegal workers to these two northern regions as follows:

Paralegals (in B.C. the formal term is "legal counsellors") have been used for almost two decades in urban and rural offices of legal services organizations, under direct or indirect supervision of a lawyer. In northern Manitoba a project was begun in 1987 by Legal Aid Manitoba that extended this concept.... A year prior to the Manitoba project, Fort Nelson Legal Information Services was established (by the Legal Services Society of British Columbia) to test the concept of a one-person paralegal service in a remote setting.

Both projects were established with funding support from the Department of Justice Canada, which also funded the evaluation studies discussed in this article, *Northern Paralegal Project Evaluation, Final Report* (Manitoba) and *An Evaluation, Fort Nelson Legal Information Services* (British Columbia).

Legal Aid Manitoba Assigns Paralegal Workers to Four Northern Communities

In 1987, Legal Aid Manitoba hired two paralegal workers, both from the region and both fluent in Cree and English, to serve the four Cree communities of Cross Lake (population 2,000), Norway House (3,000), God's Lake Narrows (1,000) and Shamattawa (600). The latter two communities are accessible only by air. All are in the Legal Aid Northlands Administrative Area of the province, north of the 53rd parallel, which runs roughly through the northern end of Lake Winnipeg. In common with other aboriginal communities in Canada, the four communities have extremely high rates of unemployment and average family incomes that are seriously lower than the Canadian average. Not surprisingly, 90 percent of clients from these communities served by Legal Aid Manitoba are unemployed.

The workers were hired to improve the quality of legal services in circuit courts and assist in interviewing clients in a range of civil and family matters. They also operated drop-in clinics in the four communities to provide initial advice and make referrals to Legal Aid Manitoba. Each worker was assigned to two communities. Both were based in Thompson and travelled regularly to their communities, typically for one or two days in the week before the court party was due to arrive and also when court sessions were being held.

Study Confirms Effectiveness of the Paralegal Project

The evaluation began shortly after the project was initiated. For a period of 18 months, the program was monitored and interim progress reports were issued. The main objectives were to provide a basis for decisions about the future of the project; to prepare progress reports that would enable management to address problem areas expediently; to

generate the information needed to ensure accountability; and to produce a data base, evaluation approach, and findings that could be used in future projects.

The consultants reviewed Legal Aid Manitoba's administrative files, community courts docket information, and RCMP crime statistics. They also interviewed legal aid staff, community leaders, and legal aid clients, and conducted mail surveys, with follow-up, of court party members and representatives of social agencies. The paralegal workers were interviewed frequently.

Legal aid lawyers ... appreciated the bridging role that the paralegal workers played

Overall, the consultants concluded that the project a) increased access to legal services; b) improved communications between lawyers and clients and between courts and clients; c) effectively expanded the use of civil and family law services; d) dramatically increased the number of users of drop-in and telephone advice; e) seemed to reduce the number of people on the criminal dockets; and f) reduced the time required by Legal Aid Manitoba lawyers for each *criminal* case.

► **Increased access:** In the period under review, legal aid applications from the four communities increased and the number of files closed because of lack of client contact declined. The volume of services provided by Legal Aid Manitoba lawyers in Thompson grew at a much greater pace than in the rest of the system after the paralegal workers took up their assignments.

► **Improved communications:** Legal aid lawyers reported that they appreciated the bridging role that the paralegal workers played between the

"system" and individuals in need of legal services. Both the lawyers and the paralegal workers claimed that clients were more willing to come forward and speak to lawyers and to the court once they had a better understanding of the legal process. All legal aid clients in the four communities reported being satisfied with the assistance they received.

***Women are now more likely
to use legal aid services than they
were before the project***

► ***Wider use of civil and family law services:*** Legal aid staff observed an especially large increase in the volume of civil certificates issued since the beginning of the paralegal project. Although the number of civil certificates increased by 28 percent in the Thompson office, it dropped by 27 percent in The Pas and rose by only eight percent in the rest of the province (outside the project area). The amount of time spent by the lawyers on civil certificates doubled, as did time spent on certificate work with youths and "informal" civil files — that is, those that would not proceed to court. This would suggest that *women* are now more likely to use legal aid services than they were before the project. Traditionally, men have formed the greater part of the client group for criminal legal aid; women need legal aid most often for family law or civil cases. Many have argued that this is one example of gender bias in the justice system, because legal aid is generally much more available for criminal than for civil cases.

► ***More people seek legal advice:*** The number of people attending the drop-in clinics and telephoning for information and advice increased by 70 percent in the Thompson office, substantially

more than the 21 percent increase in The Pas, to the south. Legal aid staff elsewhere experienced a decline in the provision of drop-in and telephone advice.

► ***Fewer people on the criminal dockets:*** Although the number of youths and adults appearing in criminal courts increased in other northern Manitoba Cree villages, there was a *decline* of 37 percent and 19 percent, respectively, within the four project communities as a whole. This was the case even though crime rates in these same communities were at least as high as those in other communities. It is suggested that this reduction was the result of better screening and preparation of criminal cases by the paralegal workers, and consequently fewer remands.

► ***Provision of better information cuts time spent on criminal cases:*** Legal aid staff spent about one hour less on each criminal case (adult and youth) in the four project communities because of efficient information collection by paralegal workers.

Recommendations for Improved Effectiveness

The weaknesses of the project were described in the study and recommendations were made, focussing on three areas: a) the need for better "front-end" planning of the project, including its impact on the legal aid office in Thompson (increased workload but no additional office staff); b) the need for more training and supervision for paralegal workers, particularly in the first two years, and the provision of adequate supports for them — recognizing, for example, the time and care required to establish good community relations and the communities' desire that the workers spend more time with them; and c) the need to clarify the role and relationships of the paralegal workers with management, other legal aid staff, community leaders, the court party, and complementary service providers.

On the whole, the project is viewed very favourably by Legal Aid Manitoba, which has fully incorporated it into the regular work of its Thompson office. According to a recent communication from the Deputy Director, Legal Aid Manitoba plans to hire a paralegal worker with similar qualifications to undertake the same type of work for communities on The Pas circuit.

Legal Information Project in Northern British Columbia

Fort Nelson Legal Information Services was established in 1986 with the hiring of the region's first paralegal worker. The project was designed to serve Fort Nelson — a town of about 3,500 people in the extreme northeastern corner of British Columbia — and the surrounding area, collectively known as the Fort Nelson Liard Regional District. The total population of the region is about 5,000, the majority of which is non-native. Native people are estimated to account for between seven percent and 17 percent of the population; a mid-point estimate of 12 percent would place the number at about 600.

The paralegal worker was a woman who had grown up in the area and was fluent in both Cree and English. She was to provide direct legal assistance to clients on civil and criminal matters — such as intake interviews — and possibly summary advice, legal aid referrals on basis of eligibility assessment, and other free assistance as time permitted. She was also expected to conduct public legal education workshops.

Unlike Manitoba's northern paralegal worker program, the Fort Nelson project was not conceived solely or primarily to serve aboriginal people. In fact, the B.C. Legal Services Society and the project board were careful from the start not to invade the jurisdiction of the native courtworkers in Fort Nelson. Nonetheless, serving certain particular needs of native people and providing appropriate outreach services in legal areas not covered by native

courtworkers have always been important parts of the project. These activities were therefore considered by the consultants in their evaluation study.

Study Finds Marked Increase in Access to Services, Recommends Further Improvements

The Fort Nelson evaluation was begun well into the project's third year of operation and covered the period from July 1986 to February 1989. The study team looked at the context of the project; its establishment and activities; the mechanisms to develop quality; clients' accessibility to legal services; its impact and effectiveness; and the possible use of the project model in other jurisdictions.

The consultants analyzed data from the Management Information System of the B.C. Legal Services Society, project records, and other relevant documentation. They interviewed personnel of community agencies, the justice system, and the Legal Services Society, and surveyed clients of the project, participants in public legal education workshops, and recipients of social assistance to gauge awareness of the project and its services.

▷ *Volume and type of direct service:* The paralegal worker averaged 358 intake interviews a year, 75 percent of which dealt with civil matters (compared with 37 percent for British Columbia as a whole in 1988-89) and 25 percent with criminal matters (63 percent for the province as a whole). Women constituted 55 percent of all clients, compared with 20 percent before the introduction of the project. These findings emphasize the importance of the service to women, whose legal needs in family and civil matters had often gone unmet.

Twenty-seven percent of clients were native people, roughly double their proportion in the Fort Nelson population. Fifty-one percent of legal aid referrals were made on behalf of native people.

► *Profile of direct service clients:* The study noted that direct service clients tended to be young (60 percent were 30 years old or younger), to have attained low levels of formal schooling (77 percent had Grade 10 or less), and to be unemployed (72 percent).

There was a sharper male-female polarization among native people (female high, male low) in civil cases than there was for non-native people. In contrast, the polarization in criminal cases (male high, female low) was greater for non-native people.

► *Volume and type of activity in public legal education:* Sixteen workshops were held between July 1986 and February 1989, eight of which were on wills and probate (the best attended) and four on family-related law. Others focussed on consumer law, employment standards, and the project itself and its activities. Attendance ranged from five to 25. Media resources were put to good use: 30 radio scripts on a variety of legal issues were recorded and played by the local station in 1986 and 1987, and articles appeared regularly in the local newspaper.

The project dramatically improved client access to services

► *Administration and time management:* Over the period studied, the paralegal worker spent 39 percent of her time on direct services activities, five percent on public legal education, 10 percent on professional development, and 46 percent on administration and miscellaneous activities. In light of this imbalance, the consultants recommended that a part-time secretary be hired to lighten the administrative workload.

► *Accessibility:* The consultants observed that simply by being situated in Fort Nelson, the project had dramatically improved client access to services, especially for civil matters. Access to intake service and short-term service, such as information-giving, is free to all clients, with no stipulations about eligibility under Legal Services Society guidelines, and accessibility has been further widened by some adaptation of these guidelines to reflect realities of northern life. Liberal use of the telephone in serving clients and the central location of the services in Fort Nelson's town hall complex have also enhanced accessibility.

The study recommended measures to improve access to legal services for members of the Fort Nelson Indian Band and communities outside Fort Nelson, as well as for clients of other social agencies based in Fort Nelson.

► *Impact and effectiveness:* Ninety percent of the surveyed clients said that they were satisfied, or very satisfied, with the direct services they received, and none felt that their confidence in the information was affected because the services were not provided by a lawyer.

Participants in public legal education workshops were also pleased with the experience (44 percent satisfied and 44 percent very satisfied), though they were not quite as unconditionally supportive as were direct service clients.

Respondents from the justice system were pleased with the services provided by the project and said they would like it to play an even greater role in some areas. They found it to be mainly effective in reducing (or being able to explain) the incidence of non-appearance of accused persons; smoothing out first appearances, thanks to better informed and prepared parties; reducing the need for adjournments, or making same-day adjournments more effective; and avoiding family court appearances by encouraging mediation.

Points to Consider in Setting Up Paralegal Programs in Remote Regions

Both evaluation reports contain helpful advice for those considering applying the paralegal model to other remote regions. Although much of what they say has to do with the context of the specific projects under study, they raise four key general points.

Good relations must be built and maintained with the community

- ▶ It is important to provide a comprehensive training program for the paralegal worker (including well supervised on-the-job training or, as one consultant called it, "apprenticeship"). This should be offered well before the incumbent assumes full job responsibilities.
- ▶ Strong support must be provided both from a field office and from a provincial legal services office, including substantial supervision and regular training for the worker during the first years of the program.
- ▶ There must be ongoing communication ("networking") with other agencies and services in the community, especially where those agencies provide complementary services that might appear to duplicate those of the program.
- ▶ Good relations must be built and maintained with the community, possibly by means of a mechanism for accountability, such as a local management committee or board. The community development dimension of a northern paralegal worker's task must be clearly understood, and time must be provided for it, especially where the communities being served are primarily composed of native people.

Solutions to Complex Justice Issues Still Need to be Found

Did the paralegal workers in these two innovative programs make a difference to the provision of legal services to northern residents? In both Manitoba and British Columbia, clearly they did. This work is especially promising in the extent to which it appears to improve access to legal advice and representation in civil and family-related matters, which means some improvement in the delivery of services for women.

Nevertheless, even though the paralegal workers program has brought about marked improvements in access to services, and though it benefits the justice system by helping to provide for smoother court sessions, it is not reasonable to expect the presence of paralegal workers to significantly change residents' generally negative attitude toward the justice system. Aboriginal and northern justice issues are sufficiently complex to require much broader and more far-reaching measures before effective accommodation can be found.

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Northern Paralegal Project Evaluation, Final Report, by Working Margins Consulting Group, Winnipeg. Legal Aid Manitoba, 1989.

An Evaluation, Fort Nelson Legal Information Services, by Focus Consultants, Vancouver. Department of Justice Canada, Working Document [WD1991-9a].

Erratum:

In Issue No. 3 (June 1991), on page 7, the last sentence of the second bullet should read: For convictions of aggravated sexual assault (Level III), almost every offender convicted was incarcerated.