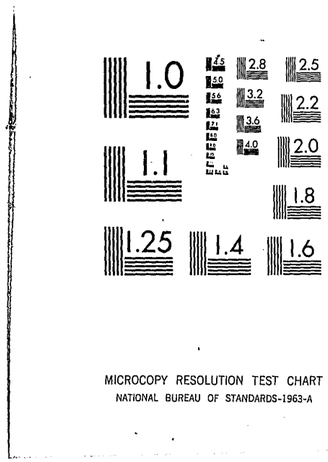

PUBLIC SECTOR PARALEGALISM IN CANADA TODAY

National Workshop on Paralegalism,
Vancouver, March 1978.

A CONFERENCE SPONSORED BY THE DEPARTMENT OF JUSTICE OF CANADA

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PUBLIC SECTOR PARALEGALISM: DEVELOPMENTS, TRENDS, CHALLENGES

by Roland PENNER*

I - INTRODUCTION

The general use of a non-lawyer as an assistant to the lawyer in private practice is by no means a new phenomenon. What is new in paralegalism generally is the "professionalization" of the paralegal. This is taking place in terms of role definition, training, the accreditation of training institutions and - although still much in its infancy, the certification of the paralegal. (It is assumed that certification, if it comes, will be by a statutory licensing body, perhaps the provincial law society, and that the statute will carry prohibitions against the use in certain areas of non-certified legal assistants.) But what is even newer, specifically, and of concern to me in this paper, is the development of a totally new class of legal assistant, the "public sector paralegal".

The public sector paralegal is almost exclusively a product of the contemporary legal aid movement, or at least that branch of it concerned with community legal services. The ideological basis of public sector paralegalism developed in the United States in conjunction with the new neighbourhood law offices. These offices which first appeared in the mid-1960's were, in the main, the product of the Legal services program of the Office of Economic Opportunity (O.E.O.). The O.E.O. was the centre for the Johnson administration's famous, albeit

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* Mr. Roland Penner is professor of law at University of Manitoba and the past president of Legal Aid Services Society of Manitoba. This article is based, in part, on a speech delivered by the author at the National Workshop on Paralegalism (Vancouver, March 29-31, 1978). The introduction is, essentially, additional material, some of which first appeared in an evaluation done for the Department of Health and Welfare of three demonstration legal aid clinics, Dalhousie, Parkdale and Pointe St. Charles, (1977), (Unpublished).

unsuccessful, "war on poverty". The ideological basis, as I understand it, developed from the notion of the "civilian perspective", a notion elaborated in the main by Edgar and Jean Cahn (1). They urged, in the first instance, that the new neighborhood law offices should be developed as an adjunct to the war on poverty; that is, not just a reactive or defensive mechanism dealing solely with individual problems, but one playing an active role in the over-all movement for social change. And, most importantly, they urged that this concept required the provision of a structure and resources through which the community in general and the client groups in particular could exercise real control over the strategic decisions taken by the neighborhood law offices. The Cahns were concerned that a legal service agency which was based on what they termed a donor-donee relationship between the professional and the client would become "a means for perpetuating dependency rather than terminating it". Their proposals went beyond the public relations rhetoric of "citizen input" to urge that the community have "effective power to criticize, to dissent, and where need be, to compel responsiveness". Being aware that, in general, the client population in the community usually lacked the resources for leadership, communication, organization and "other forms of leverage", they proposed the training of indigenous (to the community) leaders "capable of articulating the demands and concerns of their "constituency".

The practical application of the concept, as it developed in Canada, was first modelled by four demonstration legal aid clinics funded by the Department of Health and Welfare in the years 1971-75. It was here, particularly in Dalhousie and Parkdale, that the many-faceted role of the public sector paralegal was first developed. It was here that problems concerning the relationship of the paralegal to the neighborhood law office, to the staff lawyers, to the governing boards, to the clients and to the communities were first encountered and dealt with. I do not propose to repeat here what I have said elsewhere about

the formative years, but there is no doubt that one of the key contributions of these clinics to the contemporary legal aid movement in Canada was to prove the effectiveness of the "community legal worker" as an integral part of the community legal services team.

In parallel with the operation of these demonstration clinics, and heavily influenced by them, the various provincial legal aid plans were entering their formative years. Space does not permit me to trace all aspects of the development of the modern legal aid movement in Canada, but it may be said for the present that in most provinces in Canada today legal aid services are provided by systems which combine elements of judicare (2) with community legal services based on neighborhood or community law offices employing staff lawyers, articled law students, and, increasingly, community legal workers (3).

II - CURRENT DEVELOPMENTS AND TRENDS

Although the use of community legal workers as part of the legal aid service delivery team in community law offices is scarcely six years old in Canada, I believe the time has come to re-assess their role in the light of some fairly startling developments in legal services generally.

There can be little doubt that the size of the "legal agenda" has increased enormously in the last twenty-five years. Government by agency and by administrative tribunal has proliferated. Co-extensively the "rights movements" - the movements to give effective expression to women's rights, children's rights, the rights of the institutionalized poor, consumer rights, native rights, human rights with respect to discrimination on the basis of sex, age, religion and so on - all combine with a number of other factors to produce what some commentators have aptly termed "the legal explosion".

But, as Packer noted a few years ago:

> Almost all developments in the law and legal process move in the direction of increasing the need for legal services, yet those services are out of the practical economic reach of the major part of our population. (4)

To this I would add that such services, in addition to being economically out of reach, are geographically, psychologically, culturally and socially out of the reach of a major part of the population as well.

Nor is the accessibility problem simply a supply problem capable of being resolved, simplistically, by increasing the number of lawyers to be graduated from our law schools.

In a tongue in cheek article in the New York Times a year ago, Russell Baker wrote as follows:

> Toss a beer can out of any college dormitory in America and chances are you will hit somebody struggling to get into law school. There's been a sad falling off here. A few years ago when its highest aspiration was to hold the dean for ransom, youth looked as though it might grow up to be something. Instead it now wants to be lawyers.

In Canada as well we are turning out more lawyers than ever before and turning away more law school applicants than ever before; but in the face of a demonstrated and an acute need for the extension of legal services, it seems that more and more law graduates are finding it difficult to establish themselves in practice or to find employment. Why this apparent dichotomy between the growing and, substantially, unmet need for legal services, and an apparent surplus of young lawyers? In part, it is a distribution problem: too many law graduates want to practice in the big cities where the beguiling music of the

cocktail circuit invites them to dance to an urban - and very expensive-tune! Too many of them, I venture to suggest, think that being the hired guns of the rich is not such a bad idea after all. Recent figures (1976) shows that in the United States, there is, generally, one lawyer for every 530 people. But in the poor communities, the ghettoes and areas of rural poverty the ratio is 1:7,000! I have no doubt that a similar analysis in Canada would demonstrate the same disparity, the same skewed distribution.

In part the disparity between the supply of and demand for legal service is a cost-price problem. The very high cost of becoming a lawyer and the lawyer's life-time income expectations related thereto, demand that the lawyer put a price tag on legal services which those who most need them can ill afford.

There have been a number of responses or, at least, the beginning, of responses to the problem. Let me list just some of them:

(i) With respect to the legal needs of the very poor, the rise of the modern legal aid movement has been dramatic, so dramatic that its meteoric rise often blinds us to its continuing inadequacy with respect to the unmet legal needs of the poor. The general inadequacy of legal aid is now being accentuated by restraint policies. Policies of restraint are, typically, unevenly distributed and fall most heavily on the backs of the poor. Where once the modern legal aid movement purported to open the court house door, fiscal conservatives in government seem busily engaged in removing the front steps. (Or as I said recently in Manitoba where the reduction of the legal aid budget was extreme - the "war on poverty" seems to have become the "war on the poor"). Nevertheless, the basic infrastructure of the legal aid response remains, and hopefully will remain.

(ii) Another response is the development of prepaid or group legal services: in contemporary society middle income earners are, it is said, not quite wealthy enough to afford the traditional access to legal services - i.e. fee for service - and not poor enough to be eligible for legal aid. They have been called "the new legal indigents". In the United States the movement to meet that particular need by prepaid group plans is much further advanced than in Canada, with an estimated two million persons being covered by such plans. It was recently (June, 1977) announced for example that the United Auto Workers will provide group legal services to no less than 150,000 Chrysler workers and retirees, in a pilot program. Some commentators now see prepaid legal services as the negotiated fringe benefit of the future. The Canadian response has been painfully slow. A committee of the Canadian Bar Association has been agonizing on the issue for several years, with no indication however of any immediate initiatives to be taken.

(iii) The example of Don Jabour in B.C., and others in Toronto, in opening up private legal clinics will undoubtedly be followed very quickly across Canada. Such clinics are designed to offer fairly standard legal services on a high volume, low-cost basis. (In part they depend for their successful existence on advertising, an issue still bedeviling the profession in Canada).

(iv) Self help on both an individual and a group basis has had some considerable development in Canada in the past decade, fed in part by community legal education programs conducted by some of the legal aid plans. Large interest groups (consumers, women's rights, native claims) may employ professional assistants at some levels but generally concentrate on political and mediated solutions through their own efforts.

In my view, an analysis of those responses shows a growing need in such programs for a new kind of low cost legal practitioner (a need shortly to be re-enforced, in my view, by what Larry Taman (5) refers to as the "almost certain disappearance of that reliable beast of burden the articled clerk"). As Packer (6) stated it:

> As a necessary response to the crisis in the availability of legal services we see a cluster of developments coming to make legal services more efficient and less expensive, and hence far more generally available. The development of sub-legal and paralegal personnel, or group legal services and of certified specialists are primary responses to the crisis. (Emphasis added. R.P.)

At this level the rationale for the paralegal seems almost purely economic. Legal aid plans seeking to maintain levels of service on reduced budgets; private legal clinics seeking to package and sell legal services at supermarket prices based on the low-cost production of standard products; group legal services seeking to operate within acceptable premium levels - all must, in my view, turn over more and more of the fairly straightforward, fairly routine legal services to paralegals.

These then are some startling developments, mostly of the last ten years all leading to the recognition that legal services need not, indeed cannot, continue to be confined to the expensive services of expensively-trained lawyers. (Not unexpectedly, and certainly paradoxically, the increased use of paralegals as a pool of relatively cheap legal service labour, in the face of decreasing job opportunities for law graduates, at least in the cities, will undoubtedly create enormous pressure on the organized bar to preserve its traditional and costly monopolization of legal services. It will likely do so by insisting on a level of accredited training and on a process of certification for the paralegal both of which are bound to limit the supply and increase the cost of paralegals in general).

III - PUBLIC SECTOR PARALEGALISM

In my view, the rationale for the use of paralegals in the public sector is much more than purely economic, although economic considerations are by no means unimportant.

It seems to me, however, that the development of and trends in "public sector paralegalism" are far more significant and innovative than has been the case in the private sector, and have a much broader rationale than the purely economic.

As mentioned earlier, probably the most pervasive and important influence on the modern legal movement was the work of the Cahns, particularly in developing the theory of the "civilian perspective". The use of that term you will recall related to the much-publicized "war on poverty" with which, the O.E.O. sponsored legal services offices was associated. These offices were not seen as a mere extension of conventional legal services, but as an adjunct to the war on poverty, a legal resource for the thousands of local and community initiatives associated with the war on poverty. In fact that Legal Service Program was a unit within the Community Action Program of the O.E.O.

The Cahns were concerned with the developments of indigenous leaders for such community initiatives, people "capable of articulating the demands and concerns of their constituency". They wrote about the community self-help groups in terms which saw them as fully autonomous:

> These groups may be organized with the assistance of the neighborhood or community law office and some of their leadership trained to act as lay advocate, but they must exist on their own. (Emphasis added ... R.P.) (7)

In Canada the four federally funded legal aid clinics previously referred to demonstrated the viability of this approach (8). The Dalhousie clinic (9) under the leadership of Ian Cowie, Harvey Savage, and presently Richard Evans developed both general training programs for

paralegals and programs associated with specific projects which the clinic helped organize in an autonomous basis.

In Parkdale (10) under the leadership of Fred Zemans and, more recently, Ron Ellis, the development of law advocacy before tribunals and community work on housing and immigration issues provides an excellent example of a new kind of legal service, "community legal service" in which the paralegal operates only secondarily as a legal assistant in the traditional sense, but primarily as a community legal worker, a vital and independent member of the legal service team.

In Pointe St. Charles (11), in working with organizations such as the Maison Quartier, Co-operative d'Habitation de Pointe St. Charles, Pointe Action Citizens Council and some forty-five other community groups, the community law office acted primarily as a legal resource, that is encouraging and assisting in the training and development of an indigenous leadership for fully autonomous organizations, preparing self-help manuals and, but only where the services of a trained lawyer were required, representing such groups at hearings or in court.

In looking back at the demonstration goals of the four clinics and at their achievements and impact, it must be asserted that they created in Canada the model for the future development of the community legal worker. It seems to me that subsequent developments in the use of community legal workers (12) in Canada whether as legal assistants, lay advocates, community organizers, indigenous community leaders, communicators of legal information (13), and whether within or without the official provincial plans, make catch phrases like "access to law" and "accessibility of legal services" much more of a reality than they would otherwise be (14).

I attach considerable importance to these innovative developments in public sector paralegalism. It is almost trite to say, but it must be said nevertheless, that the structural sources of poverty and of injustice go well beyond the legal system and are found within the socio-economic system itself:

> The problem of unjust laws is invariably a problem of the distribution of political and economic power, the rules merely reflect a series of choices made in response to these distributions. If a major goal of the unorganized poor is to redistribute power, it is debateable whether the judicial process is a very effective means to that end. This is particularly true of problems arising out of disparities of wealth and income. There is, generally, not much doctrinal or judicial basis for adequately dealing with such problems, and lawyers find themselves developing cases whose outcomes are peripheral to the basic issues that these problems raise. (15) (Emphasis added)

This approach recognizes, for example, that the enforcement of rent control legislation, and the improvement and enforcement of housing standards laws - all things which the legal aid movement can and should do - do not provide housing for the poor. Indeed, arguably, they may contribute to a reduction in the available or on-stream supply of low-income housing. Poverty is not justiciable: the law by itself cannot be used to change the sources of social injustice, nor in my view, can the legal services movement. Indeed I do not think that that is its job, certainly not in any direct sense.

If, as has so often been said, the poor are not just the rich without money, but are people unable to change the course of their lives either individually or as a group because of powerlessness, then, in my view, problems of redistribution of power are, ultimately, to be resolved in the political, not the legal, arena.

However, an approach to community legal services which concentrates an appreciable part of its resources on the formation and

support of local organizations around specific issues among those most adversely affected by social and economic injustice - those who, characteristically will not only be the most disadvantaged but equally the most powerless - such an approach is already as much concerned, in a very real and often a very effective sense, with the redistribution of power, as it is with the redistribution of resources (16).

And it is here on the frontiers of justice where community legal services is most innovative and most significant, that community legal workers are beginning to play role the long-term significance of which should not be underestimated.

In the recruitment, training and development of public sector paralegals there are, obviously a variety of roles which might be assigned, including the fairly conventional and by now well-established role of legal assistant. But it is primarily in their role working in or with poor people's movements that the community legal workers come into their own as a new breed, adding a new dimension to the notion of legal services.

If I lay particular stress on the work of community legal workers in and with special interest groups in the communities it is because, in the first instance, that work is so important in changing the quality of legal services to the poor, so important in the long-term and, in the second instance, because I am very much afraid that in responding to restraint legal aid plans will priorize in a way which drives us back to conventional case by case work. There have already been significant indication of this in B.C., Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia (17).

In my view it would be regrettable if the "politics" of restraint (in my view it certainly cannot be the "economics") forced the closing

of community legal service programs and the dismissal of community legal workers. I have no quarrel with community legal workers doing some case work: my argument has been not only can they be effective doing broader community legal services, in some ways they can be the most effective part of a balanced legal service team in such areas. No doubt many community legal service workers would be more than happy to accept the narrow role of functioning as "mini lawyers", becoming part of a pool of underpaid quasi-lawyers. In my view that would be a mistake. The long-range future for community legal workers is, I suggest, in the front line of community legal services.

FOOTNOTES

(1) Edgar S. and Jean Camper CAHN, "The War on Poverty: A Civilian Perspective", 73 Yale Law Journal 1317 (1964).

(2) "Judicare" as I employ the term, means the delivery of conventional legal services by lawyers in private practice who are paid on a fee-for-service basis. It was pioneered in Canada by the Ontario Legal Aid plan which came into existence in 1967.

(3) Much of the debate concerning the relative merits of judicare and community law office systems misses the point that, fundamentally, the two systems are not just different ways of doing the same thing: They are, at bottom, different programs with different goals and, I believe, can be made to complement each other in a "mixed system". The conceptual basis of judicare is, simply, to make the law that is, good for those who hitherto could not afford legal services. It has been called by some a "due process model". The community legal service model has been termed the "social welfare model". Its goal is, as mentioned above, to utilize legal services for the poor as an adjunct to the broader movement for social justice. Both concepts have serious shortcomings (and see R. PENNER, "Law, Social Development and Legal Services in a Time of Economic Restraint" - published as part of the proceedings of the June, 1976 Canadian Conference on Social Development). However, as indicated, there has developed in Canada a kind of peaceful co-existence of the two systems. (And see the speech of Roy McMurtry, Attorney-General of Ontario, to the Tenth Anniversary Banquet of Ontario Legal Aid in May, 1977, in which the Attorney-General stated that community based law projects "have a vital role to play in the future development of Ontario's legal aid system"). (Unpublished document).

(4) Herbert L. PACKER and Thomas ERLICH, New Directions in Legal Education (A report prepared for the Carnegie Commission on Higher Education), McGraw-Hill, 1972.

(5) Associate Dean, Osgoode Hall Law School.

(6) See footnote 4.

(7) Op. cit., footnote 2.

(8) The principal demonstration goals of the clinics were as follows: (a) to make legal services available; (b) to involve the poor in some fundamental way in the provision of those services; (c) to go beyond conventional legal services by developing preventive law programs (including therein community legal education programs), law reform activities and group legal services, and (d) to expand the legal service team by the use of law students and paralegals.

(9) Dalhousie Legal Aid Service (DLAS), Halifax.

(10) Parkdale Community Legal Services, Toronto.

(11) Community Legal Services Inc. Pointe St. Charles, Montreal.

(12) The names used to designate such workers varies from one province to another including, e.g., euphemisims such as "legal information counsellor" which may be employed for political rather than definitional reasons.

(13) E.g. in B.C.; and, as well, in such novel programs as "Law Phone-in", a federally-funded (Department of Justice) program in Manitoba run by the University of Manitoba Faculty of Law in conjunction with Legal Aid Manitoba. In this program two paralegals with the assistance of volunteer undergraduate law students answer approximately one thousand phone calls a month!

(14) Other papers in this collection will furnish current examples of what has been a burgeoning movement in public sector paralegalism. e.g.: In Saskatchewan the thirteen clinics employ some twenty-four community legal service workers, doing everything from handling cases and appearing before tribunals to dispensing legal information; in B.C. the Community Legal Offices established by the Legal Services Commission (to supplement the Legal Aid Offices administered by the autonomous, but provincially-funded, Legal Aid Society) employ some thirty Legal Information Counsellors with eleven offices and three Native Programs Offices. (In only five of these offices are there full-time staff lawyers.) It is difficult to establish a figure, but there may now be over one hundred community legal workers employed in different programs across Canada.

(15) Gary F. BELLOW: "Reflections on Case-load Limitations" contained in Zeman's ed. Community Legal Services in Perspective pub. by Osgoode Hall Law School, York University, Toronto, at p. 117.

(16) One of the essential criteria in the "new social work" (sometimes called the community development approach to social services) is to assist individuals towards a maximum degree of personal autonomy in making personal decisions on the assumption that a low level of personal autonomy is related to most "social pathologies" such as alcoholism and crime. Although individualized, there is a similarity in approach here to the one I have sketched out for community legal services.

(17) Some of the recommendations of a special government "Task Force" on restraint in legal aid in Manitoba included "the immediate discontinuance of all 'outreach' programs", the elimination of duty counsel services to juveniles, and limiting the supply of legal aid

THE INTERFACE BETWEEN THE PARAPROFESSIONAL AND THE PROFESSIONAL: SOME REFLECTIONS ON THE LAWYER AND THE COMMUNITY LEGAL SERVICES PARALEGAL WORKER

by Neil GOLD*

PREFACE

Paraprofessionalism has generally developed in order to provide professionals with skilled assistance. Nursing is perhaps the prototypical paraprofession. With lengthy training and special expertise professionals feel that their clientele are better served - i.e. more efficiently and more economically - when professional services are rendered only as required. In general the paraprofessional has been employed to do such work as he is practically able to do thereby freeing the professional for the "more serious" tasks.

While in some sectors this work distribution process has resulted in lower or maintained costs, in others it would appear to have been a vehicle for raising profits. Much the same may be said of technical advances in office equipment.

For the most part a typical discussion of the working interface between the lawyer and the paralegal worker would focus on the way in which work is allocated between them. This indicates a subsidiary 'assistance' role for the paralegal worker. This paper presumes a wide range of possible paralegal worker roles including that of an independent legal agent in some fields of community legal services work. A premise of this paper is that role definition is only a factor to be considered in describing the points of interface between the professional and paraprofessional. Similarly, while there are clearly many interesting observations respecting the working relationship of lawyers and paralegals, they are most clearly observed in the private practice setting. In community legal services it may well be said that paralegal workers provide unique services in a unique manner where lawyers have never or rarely served before.

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In the ensuing pages you will find a brief overview of the nature and development of professionalism. The essential elements of a profession are set out and analyzed with reference to the lawyer and the community legal services paralegal worker. Some tentative comments are offered on the value and place of professional attitudes to paralegalism, or as the editor of this book suggests, perilegalism. Thereafter the paper considers the area of unauthorized practice, strictly speaking the legal interface. Finally some tentative views are suggested about the future of the paralegal movement in community legal services.

INTRODUCTION TO PROFESSIONALISM

We tend, perhaps unfortunately and inaptly, to think of the legal profession in monolithic terms. We speak of the legal profession and lawyers without at all reflecting on the profession's history, development and growth. There have been historically a number of legal professions carrying out a myriad of separate or overlapping roles within the formal legal system (1). Our modern view of the Legal Profession is, however, descriptively quite accurate, even if it fails to tell the whole story. Although Quebec maintains two distinctly separate professions (2) the rest of the country operates with a unitary or fused profession whose members are entitled by licensure to do any act which constitutes the practice of law (3). Persons who are not members of the profession are prohibited from practicing law, with statutory exceptions in British Columbia, where Notaries Public have a quasi-professional status and some authority to transgress the traditionally sacrocanct boundaries of legal practice and in Saskatchewan where paralegals working in legal aid offices under the supervision of a lawyer are immune from prosecution (4).

The legal profession in Canada is relatively modern in development (5). While the development of the profession in England produced a proliferation of legal specialities and professions (6), Canadian development was of a single prototype - the general practitioner.

Canada was a colonial under-populated wilderness, and could neither support the various professions of the motherland nor attract their members to its shores. The rugged, early days of the frontier in Canada were hardly the place for powdered wigs and the bright costumery of judge and barrister (7). There was no place for the specialist lawyer either. Throughout this period there must have been a host of non-lawyers carrying out what today could only be done by a qualified practitioner. But by and large these disorganized untrained practitioners (8) have had no histories written about them and certainly little real place in the scheme of things. While the English lawyers successfully whittled the professions to two we continued to develop a single, all pervasive, self governing monopoly for the dispensing of legal services (9).

It may well be simply a professional conceit to consider professional membership as the right of passage to practice. Surely general competence in law or medicine has long been mythological at least. The Soviet medical model is an interesting comparative (10). Their doctors are trained for practice in limited areas of medicine. They are not permitted to engage in general practice. It may have been the Renaissance or at least the modern glorification of the "whole" or "renaissance man" which spawned our belief in the ability of one person to master a complete range of greatly varying tasks (11). Professional education has done much to underscore this thesis, apparently training lawyers and doctors for problem solving and healing on a wide scale (12).

Yet the clear contemporary trend in the helping professions is towards specialization (13). As medicine has progressed through alchemy, witchcraft and barbershop remedies to science and technology the healer has gone from mystic to scientist and technician. The modern general practitioner is surrounded by specialists, and while all medical specialists in North America are generally trained first, few who have been away from general practice for very long will consider themselves

competent to do a general practice. Psychiatrists present the archetypical example.

The same development may be on the horizon for lawyers. The early lawyers were task-oriented in their specialization and only lately have they developed subject matter expertise as a basis for restricting or narrowing practice. Specialization recognizes the need for sophisticated and developed expertise within narrow fields of application. Subject matter and task specialization will change the face and force of the profession within a short time.

One aspect of specialization has resulted in the development of the paraprofessional model in the helping professions. There have been, and will continue to be many persons capable of and trained for the carrying out of specific tasks in the legal system: court clerks, sheriffs, legal secretaries, bailiffs, conveyancers, articled law students, police officers, etc. These persons are not professionals; for the most part persons carrying out these roles are simply non-lawyers who facilitate or support some sort of legal work on one way or another. Undoubtedly loose categorization would place a number of these vocational roles in the category of the paraprofessional; but for the word to have meaning, "paraprofessional" should denote something approximating or falling just short of what is traditionally considered to be professional. That is, we cannot know all that is meant by paraprofessional until we define professional. It is the points of interface between the professional and the paraprofessional which give the paraprofessional a status separate from that of non-professional legal vocations (14).

The term professional has been used in many ways. Sometimes it is used as an antonum to amateur. In this context, anyone who is paid for what others do casually is considered to be a professional. With the greatest of respect to Joe Namath, he is not a representative of any profession for our purposes. At times professional is used to connote quality as in "he really did a professional job". On occasion professional is employed to describe an attitude or frame of mind. This is another aspect of quality and someone acting professionally is seen as being competent, smooth and objective.

While some or all of these attributes may be part of the professional character they are too simplistic and general to be accurate for present purposes. In addition they fail to describe what is meant by a "learned profession". It is only from social theory that it is possible to derive a useful definition of profession or professional.

Generally speaking, members of professions are persons with substantial formal education. Graduates of professional schools must comprehend a substantial amount of theoretical knowledge and have a high degree of intellectual ability. It is not generally a matter of skill or artistic creativity, but rather a matter of intellectual ability. Most often, the professions hold an economic monopoly and are self-regulating (15). Not only does the profession licence its members but it also disciplines them. Professionals carry out work which is concerned with fundamental human values: physical and mental health, liberty, equality and the value of human life. In the result those who seek professional help are often vulnerable and deeply concerned. Finally, the core of the professional's work life is a crucial inter-personal relationship between his client or patient and himself (16).

Succinctly put, all professions seem to possess the following: 1. systematic theory; 2. authority; 3. community sanction; 4. ethical codes; 5. a culture (17). As we experience each of these characteristics, we will be able to see the points of interface between the roles of professional and paraprofessional. For the most part this discussion will contrast the lawyer and the paralegal worker in a legal aid setting.

SYSTEMATIC THEORY

Here, theory must be distinguished from skills, or techniques. What is central to the professional is the presence of an organized body of knowledge which attempts to order apparently unrelated concepts and facts. From these ideas, and based upon policies which require application or institutionalization, are derived theories. Law is full of theory and has a burdensome body of knowledge. It is considered necessary that this knowledge form the basis of the lawyer's learning experience. While law practice itself is concerned with skill - drafting, advocacy, legal method - such skills have no place without knowledge of theory first and rules which are the applications of theory to particular situations. Whatever may be the essence of law, its content is crucial to its ultimate application. This is the conventional wisdom. It may be possible to act as some sort of technician without this knowledge, the theory goes, but the whole picture is required for adequate lawyering.

There may have been a time when this holistic approach was both possible and desirable. Given the complexity of modern society and its concomitantly perplexing and complex legal system it seems doubtful that it is any longer possible to create such a whole professional. In any event, the social and economic cost may be too great even to try.

Nevertheless, it is important for the confident professional to have a sense of the legal system in process, its institutions, its rules, its procedures, its mechanisms, its goals, its values, its purposes. For the technician this may not be necessary. But other sorts of adequate paraprofessionalism also may require a more holistic view. After all, paralegal roles run the gamut from technician to assistant to advocate to social engineer.

But what is the nature of this body of knowledge, this theory? Is it science or is it fantasy? For the lawyer the law often has quasi-religious overtones. It is in the nature of a pervasive, binding and ruling force. It is of value and an end in itself. It is authoritative and authoritarian. The mysticism of the law is not at all either wholly accidental or intentional. Lawyers know things they are unable to describe. There is also a certain acquired sense which exceeds intuition but defies definition. The ability, for example, to prophesy a judge's reaction to a case is a learned sense. This elusive quality, that of the initiated, is certainly an aspect of professionalism. And while it is an attribute to the professional character, it is also relevant to the discussion of the professional culture which will follow this paper.

The mystical quality of the learning of the law is probably anathema to most paraprofessionals. Many public sector paralegals would likely condemn such mysticism as alienating of people and as a mechanism to keep the public out of the legal system. The Paralegal's view of the body of legal knowledge is practical and functional. The Paralegal sees that knowledge, not as doctrine to be guarded and dispensed by acolytes but as information rightly belonging to the public. Paraprofessionals are distinguished, then, not only by the extent of the knowledge they are expected to have, but by their attitude toward that knowledge.

PROFESSIONAL AUTHORITY

The fact that most lawyers keep their legal knowledge to themselves has a drastic impact on the nature of the lawyer-client relationship (18). The lawyer must often take responsibility for choices. In his view it is often he who is in charge of the relationship, not the client (19). While lawyers often argue that they lay out alternative courses of action to their clients, they as often as not will not act on instructions contrary to their own advice. As a matter of ideology the public paralegal may well opt for a more shared relationship, allowing the informed client to determine what is best for him. The "legally best result" may not meet the client's personal interests for a variety of reasons. Allowing the client to take responsibility may smack of unprofessional conduct to the lawyer, but may be simply humanistic behaviour to the paralegal. The surrender to professional authority carries with it subordination of decision-making for the client and often the client is unable to assess the professional's decision-making or his competence (20). This is, of course, consistent with both the concepts of self-government and monopoly of services: only a professional can judge another professional's competence and only a member of the group is competent to serve the public.

The lawyer-client relationship has come under concentrated study recently (21). Legal educators are concerned with training their students in "The Human Arts of Lawyering" (22). Several books have been produced in recent years concerned with educating lawyers in the skills necessary for effective inter-personal relations (23). Furthermore, humanistic approaches to law, lawyering and the legal profession are in various stages of development (24). For the public paralegal these developments may seem to be too little effort too late. In any event, humanism is not necessarily synonymous with economic sacrifice and commitment to the servicing of the poor. Public paralegals have often

argued that lawyers mistreat their clients, communicating roughly and ineffectively. For many lawyers a concerned, empathetic demeanor is coddling, soft and unprofessional. The paralegal might justly argue that his approach is more client-oriented and positive in approach. The nature of the paraprofessional relationship may indeed be more humane and sensitive than the professional relationship due to divergent views of what constitutes a quality, working relationship with the client. The client perspective holds in favour of the humanistic approach (25), but the profession would appear to be looking elsewhere for support for its approach.

In the late 1960s and into the 1970s, Jean and Edgar Cahn (26) and Stephen Wexler (27) among others, called for an activist, social and legal reform orientation to the delivery of legal services. For them the client was seen in broad terms: organized according to interest groups such as neighbourhood associations, welfare recipients, blacks, consumers, etc. The call to lawyers was for a leadership role both in raising awareness of rights and remedies and in attacking the causes and effects of poverty. The perspective was distinctly civilian in its approach (28); while lawyers have long acted for certain types of organized groups, such as profit and non-profit corporations, societies and associations, they have not been leaders in diagnosing social and legal ills and prescribing for the remedy. The lawyer as an organizer is and was a concept with which the Bar has considerable difficulty. Is it a lawyer's professional role to seek out the problem and the client? Does he have expertise for such purposes? Are there not ethical difficulties of solicitation or even the tort of maintenance? Besides, if the lawyer acts as initiator, who is in charge? While these are knotty problems they do not defy resolution.

The public paraprofessional might well consider the public interest of the poor to be his client, and every individual and collective concern with the socio-legal problem related to poverty to be

his client group. For most public-minded supporters of community development, the client group is in charge of the relationship with the worker as expert and resource. Here again the lawyer and paralegal differ. The social concerns of the paralegal are considered non-legal by the lawyer, yet for the paralegal, the social-legal interface is itself a problem clearly reflected in the human mirror. For many paralegals there is a commitment and a zeal for change. Identification, it is often said by lawyers, blurs objectivity and hampers representation. Commitment can go a long way to help the client know that the helper cares and is interested in his well being. Nor need this commitment be blind or irrational. Lawyers and paraprofessionals can share in the pursuit of causes without imperiling effective representation. Awareness of oneself, one's motives and one's aspirations can clarify direction while building commitment. For some public paralegals or lawyers, self-awareness may be elusive, but it is not beyond possibility. For the paraprofessions, activists' roles may be both consistent with goals, objectives and values and valid behaviours directed at change. This may well be a healthy sign which is developing among paraprofessionals and may contribute to the well-being of society. In any event, there is neither a real nor perceived constraint to paraprofessions taking such activist commitments head-on. (e.g. rules against solicitation)

COMMUNITY SANCTION

The great power and influence of the professions comes quite clearly from their authority to self-regulate and monopolize the delivery of specified services. While some of these powers and privileges are derived from legislation, many are derived from custom and simple deference. With self-regulation and monopoly come the powers of accreditation of educational centres and the certification of their graduates. These powers are ceded to the professions because it is believed that they alone can assess competence and qualification. While

judges and juries utlimately determine when a lawyer has been negligent, this is based on evidence of the community standard of competent behaviour as presented by co-professionals (29). In Canada only a communication with a member of the legal profession is privileged from revelation without the client's approval in a Court of Law (30).

The professions have been undergoing scrutiny (31). Some of the assumptions about the need for self-regulation and monopoly are challenged. The professions steadfastly argue that social interest is best served by self-regulation and monopoly. The human interests served by the professions, - health, freedom, equality, - are said to justify extensive specialized education and careful regulation by those in the know. However, skepticism abounds in the community. Many wonder whether it is not self-interest that is at the heart of the professional's desire to maintain a monopoly and be self-regulated. After all, licensure is a certain way to limit the number of potential practitioners in any field. In addition, it may indirectly be a mechanism for dispossessing some people of services they already have or guaranteeing that such persons will never get them. Licensure is likely to bring claims for increased earnings by the licenced, and the potential for developing an elite among those obtaining the practice ticket.

The public paralegal is a member of no professional group in these terms. There is no body with which to affiliate formally and no regulation apart from that done by the various Law and Bar Societies to prevent unauthorized legal practice (32). There are no basic educational institutions which public sector paralegals must attend (33) nor are there any examinations which must be written and passed. Qualifications for the job vary from place to place and from role to role.

While the subject of training, roles and certification is being discused elsewhere in this Book of Essays, a few tentative perspectives

are offered here. First, education is necessary. Whether it be formal, informal or mixed, as in the case of most vocations. Competence for the job is what matters. Extended education often overtrains and embitters the educated person and leads to higher costs all around. Paralegal training simply need not emulate professional education in order to qualify paralegals for certain kinds of practice. Second, role definition is still a matter which is not clear and cannot be clear for some time. Licensure at this stage might stifle development and growth in the paralegal role while carrying with it the other ills mentioned earlier. Third, certification both legitimates and rarefies. It may create a class of competent persons but limit the services and service providers. For now at least more service rather than less is what is required. There is no evidence whatsoever that there are public sector paralegals operating in the field providing substandard or incompetent service. For the time being the risk of no service is far greater than the risks involved in allowing the service to develop as it has.

A REGULATIVE CODE OF ETHICS (34)

Unlike other vocations, professions uniquely have laid at the cornerstone of their edifice a regulative code of ethics to govern their affairs, and guide the conduct of their members (35). Such a code sets professions apart from the host of occupational groups that are not so governed and guided. At the heart of this ethical code is a concept of professional morality and right behaviour. The code will usually attempt to clarify the maze of responsibilities - in the case of the lawyer, to client, to community, to profession, to the State, to truth and justice, to oneself - which the professional must adhere to and priorize. In addition it will usually set out group responsibilities to the society which the profession serves.

The code essentially admonishes each subscriber to discharge responsibilities to society. It is the public interest (36) which must be served first and foremost. It is this public service aspect of

professionalism which justifies self-regulation and monopoly. If the professional alone can do the job, regulate his fellow's work and determine behavioural norms, then these matters must be dealt with by an orderly, accessible code. The service ideal proferred for public acceptance by the profession is supported by the tenets and provisions of the regulative ethical code.

Clearly the public paralegal can claim no regulative ethical code. While no group would wish to deny the importance of adhering to high principles to guide behaviour, in the short run a code of ethics might carry with it undue restriction for a developing group. It is probably clear that codes, like all bodies of rules, tend to follow change rather than lead it. Even in the long run ethical codes and rulings can at times become outdated and may on occasion be seen as destructive of the goals of public service. If ethical guides are to be mindful of current concern they must be constantly scrutinized. History may be its own worst enemy among the professions: time-honoured conduct, while continuing to attract professional approval may ultimately meet with public disrespect. A case in point relates to the advertising of professional services.

The Law Society of British Columbia has sought to discipline one of its members, Don Jabour, for having breached the Society's regulation respecting advertising. As former chairman of the Legal Services Commission of British Columbia, Mr. Jabour had learned that not only the poor of his province were inadequately served by lawyers, but also the lower middle income earners as well. Upon leaving his post at the Legal Services Commission he sought to open a clinic which would charge moderate prices for relatively routine legal work. To create such a practice, advertising is essential, but advertising is forbidden by the Law Society of British Columbia. The Society was approached by Mr. Jabour for advice and assistance but was decidedly reluctant to aid him. Not wishing to risk his own financial security further he could

not wait for the Society's ultimate direction. He opened the North Shore Legal Clinic in North Vancouver and advertised his services in a modest newspaper advertisement and descriptive pamphlet. Although he never actively sought media interest, Mr. Jabour attracted much public attention. The Law Society of British Columbia convened a committee to hear the question of his breach of regulation as a disciplinary matter. The committee recommended his suspension from practice for six months! Legal entanglements have resulted in his suspension being itself suspended for the time being. This is not the time and place to debate the pros and cons of legal advertising. The point is simply this: where the legal profession refuses anachronistic public needs (37) it often relies on encrusted, anachronistic rules of conduct to support its continued commitment to the status quo. The paraprofessions so far have not developed rules of conduct. In spite of the attraction of codifying the ideals, values and aspirations of paraprofessionalism, such a step may unduly restrict the way in which services can be rendered. For lawyers and other professionals the real concern ought to be with retaining ideals, aspirations and values while developing consistent and practical behavioural norms.

The public expression of these higher values is, however, always necessary if values are to be recognized, perpetuated and evaluated. It is useful for all persons to ascribe to the values implicit in serving the public interest. Paralegals in the public sector have often espoused the need for committed action for social and legal reform. In addition they have argued strenuously that lawyers do not serve people well. Much good could come from a concerted effort to write about these things in order that conduct consistent with these values might be promoted.

THE PROFESSIONAL CULTURE (38)

As the profession develops, a community of interest grows around it. Its communal characteristics include:

1. Its members are bound by a sense of identity;

2. Once in it, few leave, so that it is a terminal or continuing status for the most part;
3. Its members share values in common;
4. Its role definitions vis-a-vis both members and non-members are agreed upon and are the same for all members;
5. Within the areas of communal action there is a common language, which is only understood partially by outsiders;
6. The Community has power over its members;
7. Its limits are reasonably clear, though they are not physical and geographical, but social;
8. Though it does not produce the next generation biologically, it does so socially through its control of the selection of professional trainees, and through its training processes it sends these recruits throughout an adult socialization process. (39)

What tends to happen among members of such communal associations is the development of strong identification not only with the values but with the accepted behaviours of the group. The process of socialization or acculturation carries with it an adherence to local conventions and a form of informal self-regulation through peer pressure. Through the lay community's recognition of the members of professions as authoritative and powerful, professionals gain public prestige and a sense of self-importance. Almost from the time students enter the Law School they are socialized as would-be members of the nobility of the law. The affinity which comes with the sense of fraternity binds lawyers together both for self-protection and against the intrusions of others. So strong is membership in the Bar and so strong are the formal tentacles that enwrap each member that it is often impossible to leave the profession without the permission of the governing body (40). The shared values of lawyers include truth, justice, equality, fraternity and many other high concerns. But the profession equally embraces individualism, capitalism and elitism.

While lawyers may well be equipped to carry out many roles, the profession's view of what a lawyer is is generally limited by what can be engaged in during private practice. In fact, in order to gain membership in the Bar of British Columbia, law students may serve their

apprenticeship only in specific kinds of legal situations, the concern being that without private practice or similar experience, one does not become qualified as a "lawyer".

Needless to say, lawyering carries with it a language of its own, often complex and befuddling to lawyers and judges, but certainly mysterious to the lay public. This is similarly true of other professions and disciplines; but apart from medicine, few professionals deal so intimately with such a wide array of lay people as do lawyers. All of these factors and those cited above serve to separate the lawyer from the society which he serves. As Dean Arthurs has said:

> But if lawyers understand nothing, they do understand the logic of enlightened self-interest. The Bar has instinctively grasped the possibility of compromise, of yielding a little form in exhange for keeping much substance, of yielding some substance rather than losing all. (41)

Certainly the Law Society of Upper Canada has taken great pains to protect itself.

> The legal profession has long been attached as a group of purveyors of self-serving, incomprehensible practices taking place in a labyrinth of technicalities and a morass of fiction-based procedures ... Indeed, all professions are presently viewed with a great deal of suspicion by the lay population and by governments, as well as by other non-member professionals. Increasing professional income (and fees), coupled with publicly perceived poorer service, have yielded an unsatisfactory public relations image. Partly in response to recommendations by the Honourable J.C. McRuer, and at the same time foreseeing inevitable government action, the Law Society undertook to redraft the statute constituting it. Combined political and governmental pressure might have led to revision by the government,

> and this possibility was potentially not in the best interests of the Law Society self-interest. An arresting new provision in the Act dealt with the creation of a Law Society Council composed of laymen and specified officials to make reports to the Benchers and the Provincial cabinet. The power of the Council seemed doubtful; its function in theory, bona fide, in fact, questionable: to create the impression that lawyers had opened the door to a formerly closed shop. The net effect was therefore, from the point of view of the Law Society, very positive; virtually all power was retained, at little expense. The Council is now defunct. By agreement of its membership the Council recommended its abolition on account of its unwieldy constitution. This recommendation has been accepted.
>
> In response to increasing demands for a legal aid system, The Law Society undertook to draft appropriate legislation for a scheme to be managed by the Law Society and administered by a Committee of same, upon the approval of the Minister of Justice and Attorney-General. Once again, it appeared that the Law Society was the underlying force and inspiration for revolutionary legislation. In fact, it was merely foreseeing a potential bombshell and forestalling detonation. Even the MacKinnon Committee Report (a study of Legal Education in Ontario) was largely responsive to threats of governmental interference with legal education.
>
> This ability for perceiving and doing the necessary acts for self-preservation is not completely contemptible; for some positive strides have been made. One would simply have hoped that the initiative would have come from within the Society. (42)

What seems most important is a sense of belonging, of identity, of being a part of the social elite which is the profession. And the legal culture tends to enforce a sense of conformity among its members. Those who do not conform are made to feel quite uncomfortable while others tend to establish a counter culture (43). The battle for self-preservation and the skirmishes within the battle for self-preservation are the forces which ultimately bring change to an ancient profession.

The public sector paralegal, however, has no such paraprofessional identit . There are of course certain values and behaviours which are espoused by paralegals. There is also a developing jargon which it would appear sometimes has the capacity to interfere with communication with lay people. Nonetheless, there is no real community of public paralegals with power over its members, formally or informally. For the time being at least, even the social bonds among paralegals are tenuous.

The public paralegal is in no present danger of organizing a paraprofessional culture dedicated to self-preservation and conformity. But the future is not so clear. Strength comes from homogeneous view-points and an organized community of members together with a well defined manifesto of purpose. Just as the community organizers preach that strength arises out of unity so must public sector paralegals realize that their power can only derive from a developing coalition of their number dedicated to common goals and organized to achieve them. There must be power and influence to exercise if change is to be effected. In the process of acquiring power and influence there is some danger that a sub-culture of public paralegals will be developed which will itself be potentially non-dynamic and self-serving.

The points of interface between lawyer and paraprofessional are many; clear definition of the two roles is difficult. The similarities are as obvious as the disimilarities. The one difference which is simple, obvious and over-riding, is that the paraprofessional is not a licensed professional. In the next pages we will look at the present state of the law respecting unauthorized practice and prosecutions initiated by the legal profession respecting alleged incursion into its preserve. It is noteworthy that the legislation forbids practicing law for money only. A skeptic might argue that law practice is defined as that for which there is a reward! In the public sector it is valuable to note that what the public is allowed by way of legal services is what

government pays for. Here then legal services are defined in terms of what the public purse provides. Both approaches fail to deal with either legal needs or competently provided services.

PARALEGALS AND THE UNAUTHORIZED PRACTICE OF LAW

Perhaps the key question in any discussion of paralegals, particularly public sector paralegals, is how far a non-lawyer can go to assist his client before running headlong into the prohibition against practicing law without a licence. In all jurisdictions one finds more or less broadly worded statutes which would appear, on their face, to prohibit much of the work of paralegals, at least insofar as the work is done for a fee or reward (44), direct or indirect.

The B.C. provisions (45) are not untypical. There is a general prohibition against any person, other than a member of the Law Society in good standing, engaging in the practice of law (s. 72), with certain listed exceptions which do not include paralegals. In section 1 the practice and law is defined:

> "practice of law" includes
> (a) appearing as counsel or advocate
> (b) drawing, revising, or settling
> (i) any petition, memorandum or association, articles of association, application, statement, affidavit, minute, resolution, by-law, or other document relating to the incorporation, registration, organization, reorganization, dissolution, or winding-up of a corporate body;
> (ii) any document for use in any proceeding, judicial or extra-judicial;
> (iii) any will, deed of settlement, trust deed, power of attorney, or any document relating to any probate or letters of administration, or the estate of any deceased person;
> (iv) any document relating in any way to proceeding under any Statute of Canada or the Province:

(v) any instrument relating to real or personal estate which is intended, permitted, or required to be registered, recorded, or filed in any registry or other public office;
(c) doing any act or deed or negotiating in any way for the settlement of, or settling, any claim or demand for damages founded in tort;
(d) agreeing to place at the disposal of any other person the services of a barrister or solicitor;
(e) giving legal advice;
but it does not include any such act if not done for or in expectation of any fee, gain, or reward, direct or indirect, from any other person; and does not include the drawing or preparing of any instrument by a public officer in the course of his duty, or the lawful practice of a Notary Public; (emphasis added).

It must be clear that unless a public sector paralegal works as a volunteer, he is constantly in breach of these provisions. Clients come to community law offices to receive legal advice, to be assisted with the drawing of their wills, to have documents prepared for use in small claims actions, to find someone to represent them as advocate before various tribunals. Admittedly the work of paralegals in these offices is usually supervised, at least in theory, by qualified lawyers - but there is no saving clause in the legislation which would make supervised work acceptable. In fact the legislation often proscribes the lawyer from assisting in such work unless it can be considered his own work (46). Unless the paralegal can be described as a public officer acting in the course of his duty, then this work, prima facie, is prohibited by law (47).

What is the purpose of such statutes, if they apparently have the effect of hindering the provision of legal services to the public? The stock answer is found in R. ex rel. Smith v. Mitchell (48) and it is said to be twofold. First to protect lawyers against "wrongful infringement by others of their right to practice their profession", and second, "to protect the public against persons who, for their own gain, set themselves up as competent to perform services that imperatively require the training and learning of a solicitor" (49). The trouble

with the latter reason is, of course, that it is tautological, and therefore meaningless. The legislature has defined what activities are forbidden to non-solicitors, without any convincing demonstration that all of these activities "imperatively require" the learning of three arduous years of law school and a year of apprenticeship under articles. As Saskatchewan's Premier Alan Blakeney commented in an address to a Canadian Bar Association meeting (50),

> ...we effectively insist that a client, to be represented on a charge under a Highway Traffic Act, must engage the services of a man able to deal with the Rule in Shelley's Case, the doctrine of contributory negligence at sea enunciated by Lord Birkenhead in the Admiralty Commissioners v. S.S. Volute case, and the intricacies of contract law flowing from the decision in Carlill v. Carbolic Smoke Ball.

Lawyers tend to react to criticisms that these statutory prohibitions exist only to preserve the professions' comfortable niche, by pointing out, justly, that the profession is in fact actively engaged in and supportive of efforts to provide legal services to the poor. Moreover, they point out, there have been no prosecutions of paralegals working under supervised conditions in neighbourhood offices. These things are true; but the fact remains that prosecutions are possible, and the cynic would say that the paralegals will only be spared attack as long as they continue to do only that work which lawyers themselves are not interested in providing. In fact, one public paralegal worker in Toronto has been under investigation. The cases do seem to show that any attempt to invade such profitable areas as conveyancing, or incorporating companies, will be met with resistance. Perhaps a brief examination of these cases is in order.

In R. ex rel. Smith v. Mitchell (51) a notary public was convicted of contravening an Ontario Statute which warned non-solicitors not to "practice or for gain or reward act as a solicitor" (52). The

notary had been engaged in conveyancing, and in the process he had of course given opinions to his clients on the state of the title of their properties. In reading the decision one is struck by Laidlay J.A.'s comment that the notary

> conducted himself in transactions for the sale and purchase of real estate in the same manner as any duly qualified solicitor with the single exception that he did not actually use the title. (53)

One is tempted to add that he appeared to do as competent a job as any duly qualified solicitor. Was this his real sin? There is little in the case to suggest that Laidlaw, J.A.'s object was to protect an unsuspecting public from the mishandling of their affairs by a rank incompetent.

This latter concern is voiced, however, in a case involving a "do-your-own divorce" service (54). Quoting from an earlier case, Judge Fitzpatrick said:

> ... a divorce under the terms of the Divorce Act is fairly complicated, requiring the skill and knowledge of a qualified solicitor. It involved rights of individuals and the meaning and interpretation of complex legal phraseology. Questions of custody and maintenance may be of great significance. Rights of parties may be lost forever if not dealt with properly. Good legal advice is imperative in divorce proceedings. (55)

Perhaps one should not argue with the sentiment expressed here, that the more complex the legal issues are, the more dangerous it becomes to allow untrained people to give legal advice. However the bald assertion of the legislators is that all giving of legal advice for reward is offensive, unless done by a qualified solicitor. There is indication that it depends on the complexity of the statute to be construed or the rights to be untangled.

Complexity would hardly seem to be the real issue when it comes to the incorporation of small private companies, most of which are handled by lawyers' assistants and secretaries as a thoroughly routine manner (and, one might add, in possible contravention of these same statutes). Yet we betide the accountant who seeks to invade this field! In the recent Alberta case of R. v. Nicholson (56), Legg D.C.J. appeared to take a very technical view of what constituted the practice of law. Having decided (with the help of a dictionary) that a "solicitor" was a person who, among other things, "framed documents intended to have a legal operation", he was able to conclude that Nicholson was practising as a solicitor when he selected documents from pre-existing form books and made the necessary minor alterations to fit the particular client's case. This approach is equivalent to saying that once solicitors have "occupied a field" of economic activity, all other persons are automatically barred. There is no attempt in the case to argue that Nicholson's activities were of a type that "imperatively required" a thorough legal education (57).

The other notable activity which has given rise to prosecutions for unauthorized practice is that of collection agents. This development, ironically, is more the result of pressure from consumer groups rather than from the various Law Societies. The typical situation is that an individual or corporate collection agent takes an assignment of a debt from a trade creditor, or the understanding that he will retain only a percentage of any moneys recovered, and pay the remainder back to the trade creditor. The collection agent, or an officer of the (corporate) agent, then files documents commencing action in Small Claims Court, and appears personally to argue the case.

This was the situation in Valley Credits Ltd v. Key (58), a recent British Columbia case. One should observe first which arguments of the debtor were rejected. The first was that an assignment of this nature, which passes little more than the bare legal chose to the agent,

and is subject to a trust in favour of the assignor, is not such an assignment as the legislature had in mind when it gave the assignee the right to sue in his own name. The Court found, however, that there was nothing wrong with the assignment, or the authority of a strong English Court of Appeal decision in Comfort v. Betts (59).

The second objection raised by the debtor was that since the collection agency plaintiff was a corporation, it could only appear by solicitor, and that any appearance by its officer rendered proceeding thereafter a nullity. This seems to have been an unexamined axiom of uncertain origin in Anglo-Canadian procedural law related to Corporations. In recent times it has been doubted (60), and Barnett Prov. J. in the Valley Credits case rejected the proposition (61). In British Columbia, a corporation has the right to appear "in person" by its duly appointed officer, without seeking the services of a solicitor.

The third argument for the debtor was, however, successful. This was that the collection agent, in taking such an assignment and proceeding with legal action was in fact, (if not in legal form), practising law without a licence. The assignment was said to be nothing more than a mechanism to allow the agent to appear in Court on behalf of the assignor, which can only be done by a lawyer. Barnett Prov. J. relied on various United States cases to reach this conclusion (62). There is a refreshing substance over form air to the reasoning which causes one to wonder whether the decisions would be upheld on appeal. It appears to be in contradiction to the legalistic spirit of the English cases on such assignments, and ignores totally the 1931 Alberta Court of Appeal decision of R. v. Cook (63) which came to the opposite conclusion on sufficiently similar facts. If British Columbia collection agents were to alter their practice slightly by paying for the assignment in advance, and leaving no equitable interest in the assignor, it is hard to imagine that another court would hold that they are practising law when they subsequently pursue their debtors in court.

The situation with collection agent practices is still uncertain in British Columbia. But throughout Canada such practices are widespread, having long gone unchallenged sometimes because the authority of agents to appear is specifically set out in the legislation. It is not unfair to suggest that collection agents, like paralegals, operate largely in areas ill-served by lawyers, and are therefore tolerated by the legal establishment, a lawyers' services tend to be too costly or unavailable for such cases. However, the Valley Credits case demonstrates the uncertainties endemic to paralegal occupations. Under the current statutory requirements does one have to wait until a powerful toe is stepped on, before the legality of one's occupation is decided? Surely the time has come to re-examine the legislation and to rewrite it with the public and hence the paraprofessional in mind.

The paralegal occupations are here to stay is not seriously in doubt. The increasing complexity and legalism of our society, a product of advancing government involvement in our economic and social affairs, has resulted in a workload for legal agents that lawyers will never be able to satisfy. The result is that the more disadvantaged segments of society are increasingly aware of the relative unavailability of legal services of a type and price which they can afford. It was to fill this gap that the concept of the neighbourhood office was born, and the non-lawyer staff members of such offices are now sufficiently numerous and established as to be on the verge of establishing a "profession" of their own.

It is right that this should have happened. But the time is ripe, either to make explicit the area on which these para-lawyers can legally act, or to abolish the uncertainties and vagaries which confront the paralegal's work. One can do little better than to quote Mr. Justice Douglas at the United States Supreme Court in his famous dissent in Hackin v. Arizona (64).

> The so-called 'legal' problem of the poor is often an unidentified stand in a complex of social, economic, psychological and psychiatric problems. Identification of the 'legal' problem at times is for the expert. But even a 'lay' person can often perform that function and mark the path that leads to the School Board, the school principal, the welfare agency, the Veterans Administrator, the Police Review Board, or the urban renewal agency... (65)
>
> Legal representation connotes a magic it often does not possess - as for example, the commitment procedure in Texas, where, by one report, 66 seconds are given to a case, the lawyer usually not even knowing his client and earning a nice fee for passive participation ... If justice is the goal, why need a layman be barred here?
>
> Broadly phrased unauthorized-practice-of-law statutes such as that at issue here could make criminal many of the activities regularly done by social workers who assist the poor in obtaining welfare and attempt to help them solve their domestic problems. (66)

Mr. Justice Douglas was arguing against the conviction of a layman who represented, without charge, and indigent pensioner at a habeas corpus application. The indigent had been unable to obtain qualified counsel. The case displays only too clearly the dangers of maintaining such statutes in force, even if they are not commonly invoked against laymen who assist the poor. The threat of sanctions as his Honor pointed out, may defer well-meaning assistance just as effectively as the imposition of sanctions (67).

Such a judicial 'showdown' at some stage in the future is almost certain to emerge, if the legislation is not re-examined, it behooves the legal profession to take up the issue with the paralegals in a cooperative manner, and to carve out some areas where the paralegal's training may be more appropriate than the lawyer's, and where paralegals can be recognized as competent to operate, with or without 'supervision' by lawyers. Unauthorized practice legislation should at the same time be altered in such a way as to allow constant development and reexamination of the boundaries of the different legal professions or paraprofessions. There are many possible ways of doing this, but

perhaps one way would be to create a new exception, (like the exceptions for notaries public, for articled students, or public servants) to the general prohibition against practicing as a solicitor. This exception would cover those paralegals who have an approved training or work experience, and who are working in a legal role approved by regulation from to time promulgated. The points of interface between lawyer and paraprofessional are many; clear definition of the two roles is difficult. The similarities are as obvious as the dissimilarities. The one difference which is simple, obvious and over-riding, is that the paraprofessional is not a licenced professional.

CONCLUSION

The recent conference on public sector paralegalism in Canada at Vancouver brought together lawyers, planners and public sector paralegals working in the field across Canada. Once together, the paralegals were able to appreciate their common values and interests. They sought to organize themselves and develop mechanisms for effective communication.

Organizing among paralegals is probably an important first step to the regularization of their role and the development of power and influence over the way in which legal services are delivered to the poor and the manner by which social reforms are affected. There can be little doubt that some kind of organizational structure will have be be developed if concerted efforts are to be possible. Not surprisingly, the public sector paralegals who attended the Conference seemed to view the Conference planners and animators as "on the other side" or at least not mindful of their needs and concerns. To be sure the Conference planning committee should have been composed not only of lawyers but also of more paralegals. The very way in which the program was planned may signify to the paralegal that the prospect for change within the system is being confined to the work of a few forward looking and influential lawyers.

The clear desire of the paralegals attending the Conference to come together to share their interest among themselves was heartening. Their resolve to insure that their interests were protected, promoted and preserved was a positive sign of coming strength and sense of purpose. The willingness of the program planners and utlimately the editors of these essays to engage directly with the paralegals points to signs of connection and common interest between lawyer and paralegal, but nevertheless underscores the points of interface as well.

The public sector paralegal seems committed to social and legal reform on a broad scale. He/she is committed and zealous, energetic and intelligent. For the most part these people wish to remain unemcumbered by the mystique and elitism normally associated with professionalism. They see their roles as distinct from roles played by lawyers, and they wish to keep them that way. As those engaged in processes for change in law and society approach the frontiers of meaningful development, they approach it hand-in-hand with the public sector paralegal. Should they let go of the hand, the public sector paralegal may well lead the way.

FOOTNOTES

(1) A brief summary of the history of the English legal profession can be found in several works. See, for example, T.F.T. PLUCKNETT, A Concise History of the Common Law, 5th ed., London, Butterworth's, 1956, chapter 12. A more lengthy study is that of Michael BIRKS, Gentlemen of the Law, London, Stevens & Sons, 1960.

(2) Advocates and Notaries. Section 128 of the Bar Act Stats. Que. 1966-67, c. 77, defines those acts which are the exclusive preserve of advocates, including giving legal advice, pleading before any court and most boards, preparing court documents, wills, documents incorporating, reorganizing or winding up corporations, or documents for the registration of businesses and partnerships. Notaries are governed by the Notaries Act, Stats. Que. 1968, c. 70 of which states: "Notaries are legal practitioners and public officers whose chief duty is to draw up and execute deeds and contracts, to which the parties are bound or desire to give the character of authenticity attached to acts of the public authority and to assure the date thereof. Their duties shall also include the preservation of the deposit of the deeds, executed by them en minute, the giving of communication thereof, and the issuing of authentic copies thereof or extracts therefrom.
Sections 9 and 10 prevent anyone other than notaries or advocates from operating in their (overlapping) fields of endeavour.

(3) The statutes which allow the provincial law societies to licence and discipline practitioners, and which define the unauthorized practice of law, are cited infra, at footnote 44.

(4) The Notaries Act, R.S.B.C. 1960, c. 266, is the governing statute. Section 15 sets out the powers of a notary public, which include drawing up deeds, contracts, and certain classes of wills; attesting commercial instruments and administering oaths. But in fact the powers of a notary public are very limited. He is not even a pale imitation of the Quebec "Notaire".
- also see British Columbia's Legal Services Society Act 1979 Bill 275.9

(5) From W.R. RIDDELL, The Legal Profession in Upper Canada in its Early Periods, Toronto, L.S.U.C., 1916, one discovers that the first serious attempt to establish a sufficient number (16) of licensed lawyers to practice before the Upper Canada Court of King's Bench came in 1794, with the Act establishing that court (34 Geo. III, c. 4 (U.C.)). By 1840, there were only 267 lawyers in practice in Upper Canada of which 119 were solicitors only, but most of the rest were both attorneys and barristers. An attempt was made to separate the professions in 1841, but the Bill was never passed. The pressure was in the opposite direction, and in 1857 the Act, 20 Vict., c. 63 (Can.) placed the Law Society in full control of both groups and required all lawyers to become both Attorneys (or Solicitors) and Barristers.

In the New France of the early 18th century it is reported that lawyers were forbidden in the colony, because of their rapacious reputation. Drawing up of contracts was done by notaries. (W.J. ECCLES, The Government of New France, Historical Booklet No. 18, Can. Historical Ass'n.). However by the time of the conquest this had changed. There was a brief period during which Roman Catholics were barred under the newly imposed English system, but since there were no English barristers or attorneys in the Province who understood French, this restriction was lifted by an ordinance of 1766. See also the sketch of this period in J.D. ARNUP, "Fusion of the Profession", (1971) 5 L.S.U.C. Gaz. 38.
The West, of course, was without a legal profession until considerably more recently. The first 'Supreme Court' with jurisdiction over Vancouver Island was established in 1853. The first two lawyers arrived with the gold rush in 1858. At the time, the unorganized mainland had neither bench nor bar; it was still under the nominal jurisdiction of the courts of Upper Canada. (F.W. HOWAY, British Columbia From the Earliest Times to the Present, v. 2, c. 37, Vancouver, S.J. Clarke, 1914).

(6) Task-oriented specialists such as serjeants, barristers, advocates, solicitors, attorneys, proctors, notaries, scriveners, and so on. The major difference between some of these categories was simply the court before which they practiced. See M. BIRLES, Gentlemen of the Law, London, Stevens & Sons, 1960.

(7) Judge Matthew Baillie Begbie, the famous 'hanging judge' of the Cariboo gold rush days in British Columbia is reported to have always observed the niceties of court dress, no matter how incongruous the situation. "Whenever he held court, whether it was in the official court house, in a barn, or astride his horse in the open air, he managed to create the atmosphere of an English court of law." He carried his robes with him and was always clad appropriately to the court over which he happened to preside." ("Judge Begbie in Action", (1947) XI B.C. Historical Quarterly 113, at p. 142). Nevertheless the same observance of form was required of the lawyers. In the Supreme Court Act, Stats. B.C. 1903-4, c. 15, s. 112, it was stated that barristers need not wear customary wigs. By 1905 wigs were actually forbidden (Stats. B.C. 1905, c. 16, s. 2), a prohibition which continues to the present day. (R.S.B.C. 1960, c. 374, s. 82).

(8) H.W. ARTHURS, Brian D. BUCKNALL, Bibliographies on the Legal Profession & Legal Education in Canada, Toronto, York University, Law Library, 1968, lists only 95 biographies and autobiographies of Canadian lawyers, and 104 on Canadian judges. Needless to say few of these contain more than passing comment on the untrained practitioners of the frontier days.

(9) J.D. ARNUP, "Fusion of the Professions", (1971) 5 L.S.U.C. Gaz. 38 in a short readable history of the development of the fused profession, and the few half-hearted attempts to 'unfuse' it in Upper Canada. An article proposing that it be unfused was written by J. SEDGWICK, (1955) 33 Can. B. Rev. 499, but apart from giving rise to a small flurry of letters in subsequent issues, little notice was taken of it.

(10) John FRY, W.A.J. FARNDALE, International Medical Care, Oxford, MTP, 1972, c. 6 'Medican care in the U.S.S.R.'. There are some 75 medical specialities recognized in the U.S.S.R., in four broad groups: therapy, paedriatics, hygiene and public health, dental surgery. No doctor is trained as a general practitioner. See also Gordon HYDE, The Soviet Health Service, London, Lawrence & Wishart, 1974; M.I. ROEMER, Health Care Systems in World Perspective, Ann Arbor, Health Admin. Press, 1976, c. 15.

(11) Glendon College of York University chose the "Whole Man" as the symbol of future graduate educated in the liberal arts.

(12) The Standard Curriculum of the C.B.A. Committee on Legal Education, (1920) 5 Proc. C.B.A. 250, which dominated Canadian Law Curricula for 30-40 years, was as follows:
STANDARD CURRICULUM: As Amended and Adopted, Annual Meeting, Ottawa, September 1st, 1920.
First Year. - It is recommended that the following subjects form part of the first year's curriculum: Contracts; Torts; Property (Real and Personal) 1; Constitutional History; Criminal Law; Practice and Procedure (Civil and Criminal) Elementary; History of English Law.
It is suggested that the following subject might also find a place in the first year's curriculum: Jurisprudence (if not taken in the third year).
Second Year. - It is recommended that the following subjects form part of the second year's curriculum: Equity 1; Wills and Administration; Evidence 1; Sale of Goods; Bills and Notes; Agency; Corporations and Partnership; Insurance; Practice and Procedure, (Including instructions as to the use of law reports, digests and text books); Property (Real and Personal) 2; Landlord and Tenant.
Third Year. - It is recommended that the following subjects form part of the third year's curriculum: Constitutional Law; Equity 2; Evidence 2; Practice and Procedure (including criminal procedure); Conflict of Laws; Mortgage; Suretyship; Practical Statutes; Rules of Interpretation and Drafting; Shipping and - or - Railway Law; Domestic Relations.
It is suggested that the following subjects might find a place in the third year's curriculum according to the varying needs or choice of the different provinces and Schools: Public International Law; Jurisprudence (If not taken in the first year); Legal Ethics.

Developments in Curricula in the last 20 years have been in the direction of greater flexibility and a wider range of choices. Nevertheless students have not been encouraged to specialize. See J.S. MCLAREN, Curricular Development in the Law Schools of Common Law Canada. Paper Presented at the U.B.C. Conference on Legal Education, Nov. 1974. Several major reforms came in 1968 with the development of the optional senior years' programme. Now there appears to be some momentum to a more formal programme. See Draft Proposals of the Sub-Committee of the Legal Education Committee, L.S.U.C., July 1973, also see Communique No. 77, L.S.U.C.
The Bar exams in most jurisdictions still require competence in a wide range of subjects. In British Columbia the list includes Criminal Law and Procedure, Real Property, Commercial Law, Domestic Relations, Trust Accounts and Law Office Management, Civil Procedure, Professional Responsibility, Executors and Trustees, Company Law, Creditors.

(13) See the tentative steps towards recognizing specialization represented by the Report of the Joint Committee on Specialization to the Law Society of British Columbia and the B.C. Branch of the C.B.A., April 1977, and the "Estey Report" of the Law Society of Upper Canada Special Committee on Specialization in the Practice of Law, 1972. The latter report is typical of legal thinking in recommending that specialization not be permitted too soon. The generalist should remain the dominant factor in the profession, it is said. Nevertheless the medical profession has passed through a surprisingly quick process of specialization in this century to the current situation where some twenty specialities, with their own training and certification procedures, are recognized in most technically advanced countries.

(14) The following is a dictionary definition of "interface": 1: a surface of two bodies, spaces or phases 2a: the place at which independent systems meet and act upon or communicate with each other b: the means by which interaction or communication is effected at an interface. WEBSTER's Seventh New Collegiate Dictionary, Springfield, Mass., G. & C. Merriam Co., 1971.

(15) See the various Legal Profession or Law Society Acts listed in footnote 44, infra.

(16) R. WASSERSTROM, "Lawyers as Professionals: Some Moral Issues", (1975) 5 Human Rights 1, examines the moral criticism of lawyers that the lawyer tends to dominate the relationship with his client and treat the client in a paternalistic, impersonal fashion.

(17) Ernest GREENWOOD, "Attributes of a Profession", (1957) 2 Soc. Work 44. Excerpted sub nom 'The Elements of Professionalization' in H.M. VOLLMER, D.L. MILLS, Professionalization, Englewood Cliffs, N.J. Prentice-Hall, 1966, at p. 10.

(18) See D.E. ROSENTHAL, Lawyer and Client; Who's in Charge? N.Y., Russell Sage Foundation, 1974, the author discusses the traditional model of the relationship in which the client trustingly delegates all responsibility of their problems to the professional.

(19) Ibid.

(20) E.S. CAHN, J.C. CAHN, "'Implementing the Civilian Perspective - a Proposal for a Neighbourhood Law Firm", Excerpt from 'War on Poverty - a Civilian Perspective', (1964) 73 Yale L.J. 1317; "Power to the People or the Profession? The Public Interest in Public Interest Law", (1970) 79 Yale L.J. 1005.

(21) An article which stresses the importance of teaching law students the fundamentals of their relationship with clients, and their future role as professional is A.S. WATSON, "Lawyers and Professionalism: A Further Psychiatric Perspective on Legal Education", (1975) 8 U. of Mich. J. Law Reform 248.

(22) G.S. GOODPASTER, "The Human Arts of Lawyering: Interviewing and Counselling", (1975) 27 J. Legal Educ. 5.

(23) A.S. WATSON, The Lawyer in the Interviewing and Counselling Process, N.Y., Bobbs-Merrill, 1976; T.L. SHAFFER, Legal Interviewing and Counselling, St-Paul, Minn., West, 1977; H.A. FREEMAN, H. WEIHOFEN, Clinical Law Training, St-Paul Minn., West, 1972; G. BELLOW, B. MOULTON Materials for Clinical Instruction in Advocacy, Mineota, N.Y. Foundation Press; D.A. BINDER, Legal Interviewing and Counselling; a Client-Centered Approach, St-Paul, Minn. West, 1977.

(24) Columbia University is currently sponsoring "The project for the Application of the Study of Humanistic Education in Law".

(25) FREEMAN & WEIHOFEN, op. cit., footnote 23, p. 9.

(26) E.S. CAHN, J.C. CAHN, op. cit., footnote 23.

(27) S. WEXLER, "Practising Law for Poor People", (1970) 79 Yale L.J. 1049.

(28) CAHN and CAHN, op. cit., footnote 16 (Civilian Perspective).

(29) "A defendant charged with negligence can clear his feet if he shows that he has acted in accord with general and approved practice". Vancouver General Hospital v. McDaniel et al., (1934) 4 D.L.R. 593 (J.C.P.C.), per Lord Alness at p. 597; quoted with approval in an action against solicitors, in Winroh & Winrob v. Street & Woolern, (1959) 19 D.L.R. (2d) 172 (B.C.S.C.), per Wilson J. at p. 175.

(30) Even the legal professional privilege is of a limited character. Wheeler v. Le Marchant, (1881) 17 Ch.D. 675 at p. 681. That there is no common law rule protecting communications between, for example doctor and patient, or priest and penitent, is clear from the cases cited in the Can. Enc. Digest (Ontario), 3d edition, v. 11, SS. 916, 917.

(31) H. Allen LEAL, "The Regulation of the Professions: The Professional Organizations Committee of the Attorney-General of Ontario", in L.S.U.C. Special Lectures 1977, The Professions. The Professional Organizations Committee was formed in 1976 to review the legislation covering architects, lawyers, notaries, engineers and accountants, and to study, among other things, the possible creation of new professional and 'paraprofessional' groups within or outside the existing professions.
In Quebec, the introduction in 1973 of a new Professional Code (Loi du Québec 1973, c. 43) was the result of a reassessment of the value of total self-government in the profession. As Bill 250 in 1972 it created a storm of adverse comment, from lawyers in particular. See "Le Barreau du Québec veut être exclus des Professions visées par le Bill 250", (1972) 3 C.B.A. 21, or "Editorial on Bill 250", (1972) 38 Man. Bar News 295.
At the opening ceremonies of the new Faculty of Law, University of Victoria, B.C. in April, 1976, the subject matter chosen for the Convocation was "The Changing Role of the Professions".

(32) The statutory sections governing unauthorized legal practice in Canada are listed infra, in footnote 44.

(33) Although there are numerous programs, offered at community colleges and similar institutions across the country, which train students in legally related subjects, there is little uniformity of curricula or goals, nor do the Law Societies in general require any particular education prior to starting as a legal assistant in the private sector.

(34) Some interesting readings on this topic include WILENSKY, "The Professionalization of Everyone?", (1964) 70 Am. J.Soc. 136; MACIVER, "The Social Significance of Professional Ethics", in VOLLMER & MILLS (edr.) Professionalization, op. cit.; and H.W. ARTHURS, "Code of Professional Ethics" contained in his unpublished materials for a course on the Canadian Legal Profession at Osgoode Hall Law School, 1976-77.

(35) The C.B.A. 'Code of Professional Conduct' 1974 is not of universal application in Canada, since some provincial societies have not yet adopted this Code, and still retain their own codes, in general based on the 1920 C.B.A. Canons of Legal Ethics. (B.C. is an example).

(36) The paramountcy of the public interest is stressed in the preface to the C.B.A. Code of Professional Conduct.

(37) Imagine Legal Aid as a child of the last quarter century while law stands as the second oldest profession.

(38) For readings on this topic one might refer again to H.W. Arthurs' unpublished Osgoode Hall materials, op. cit., footnote 34, and the article by W.J. GOODE, "Community within a Community: The Professions", (1957) 22 Am. Soc. Rev. 194.

(39) W.J. GOODE, op. cit., footnote 38.

(40) Section 30 of the Ontario Law Society Act, R.S.O. 1970, c. 238, provides that a member must apply to resign from the Society, and that "Convocation may accept the resignation". See the similar effect of s. 42 of the B.C. Legal Professions Act, R.S.B.C. 1960, c. 214, as amended by Stats. B.C. 1976, c. 28, s. 10.

(41) H.W. ARTHURS, Barristers and Barricades: Prospects for the Lawyer as a Reformer, Catriona Gibson Memorial Lecture, Queens Univ., 1974 (unpublished).

(42) N. GOLD, "Continuing Legal Education. A New Direction", (1975) 7 Ott. L.Rev. 62, at pp. 63-64.

(43) H.W. ARTHURS, op. cit., footnote 38.

(44) Law Society Act, R.S. Nfld. 1970, c. 196. Legal Profession Act, R.S. Sask. 1965, c. 301, s. 5. Barristers & Solicitors Act, R.S.N.S. 1967, c. 18, s. 4. Barristers' Society Act, Stats. N.B. 1973, c. 80, s. 15. Law Society Act, R.S. Man. 1970, c. L100, s. 48. Legal Professions Act, R.S. Alta. 1970, c. 203, s. 92. Law Society & Legal Profession Act, R.S. P.E.I. 1974, c. L-9, ss. 19-21. Legal Professions Act, R.S.B.C. 1960, c. 214, as amended, ss. 1, 72, 76. Legal Profession Ordinance, R.O.N.W.T. 1974, c. L-3, ss. 11, 12. The Solicitors Act, R.S. Ont. 1970, c. 441, s. 1. The Law Society Act, R.S. Ont. 1970, c. 238, s. 50.

(45) See, footnote 1.
Also see new B.C. Legal Services Society Act, 1979, Bill 27, s.9.

(46) Lawyers can of course supervise others who do their work.

(47) Legal Professions Act, R.S.B.C. 1960, c. 214, as amended, ss. 1. See exception in Saskatchewan cited in footnote 4, supra.

(48) (1952) O.R. 896 (C.A.)

(49) Ibid., at p. 905. The latter quote is from R. ex rel. Smith v. Ott, (1950) O.R. 493, at p. 496.

(50) Hon. Alan BLAKENEY, "Should lawyers keep their Monopoly?", (1973) 4 Jo. C.B.A. 23 at p. 26.

(51) Op. cit., footnote 48.

(52) The section 6 of the Solicitors Act, R.S.O. 1970, c. 368. The equivalent section now is S. 50 of the Law Society Act, R.S.O. 1970, c. 238.

(53) Ibid., at p. 905.

(54) R. v. Engel & Seaway Divorcing Service, (1976) 29 C.C.C. (2d) 135 (Ont. Prov. Ct.).

(55) Ibid., at p. 148.

(56) (1978) 5 Alta. L.R. (2d) 98 (D.C.).

(57) On the subject of incorporations, see also R. v. Ott. (1950) O.R. 493, and R. v. Ballett, (1967) 1 O.R. 690, (1967) 3 C.C.C. 21.

(58) (1977) 2 W.W.R. 422 (B.C. Prov.Ct.).

(59) (1891) 1 Q.B. 737 (C.A.).

(60) See the cautious doubts expressed in Risby v. Revelstoke Steel Fabricators Ltd. (1964) 47 W.W.R. 638 (B.C.S.C.).

(61) His position on this issue has been recently confirmed by the B.C.C.A. in Vernrose Holdings Ltd v. Pacific Press Ltd. (not yet reported), Vancouver registry June 29, 1978.

(62) Notably Bay County Bar Ass'n. v. Finance System Inc. (1956) 76 N.W. (2d) 23 (Mich. S.C.).

(63) (1931) 3 W.W.R. 707 (Alta C.A.).

(64) 19 L. Ed. (2d) 347.

(65) Ibid., p. 350.

(66) Ibid., pp. 351-352.

(67) Ibid., p. 352.

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"PROFESSIONALIZATION" OF THE PARALEGAL

QUO VADIS?

by Victor SAVINO*

INTRODUCTION: THE ISSUES

> "If it is agreed that the emergence of legal para-professionals in large numbers is inevitable, then the professionalization process that is so prominent in our society will lead towards demands for 'professional status' and even independence from the lawyer." (1)

The question of what system of professional accountability to apply to the emerging legal allied professions evokes more acrimony and heated debate than any other question in the field of paralegalism. This became quite apparent in the sessions of the National Workshop on Paralegalism sponsored by the Federal Department of Justice from March 29-31st, 1978 in Vancouver. It is also the most complex of paralegal questions as it involves consideration of a whole range of "control mechanisms" including the accreditation of paralegal training programs, the relationship between lawyers and paralegals, whether or not to require paralegals to have some form of "licence" or "certificate", the accountability of paralegals both to the lawyer for whom they may be working and to the client whose problem they may be working on and the most difficult question, whether or not the paralegal is encroaching on that sacrosanct territory reserved to the legal monopoly , - the unauthorized practice of law.

A threshold question, of course, is whether or not "professionalization" of paralegals is necessary or even desirable. The large majority of paralegals in the public sector, particularly those

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designated as "Community Legal Workers", oppose any move toward professionalization, in part because of the tarnished image of professional societies in the 1970's and in part because they feel that accountability and control are accomplished through the community control mechanisms that operate in community legal services offices (2). On the other hand, "legal assistants" or "law clerks" in the private sector advocate the formation of professional or quasi professional associations of legal assistants, the development of accredited two year law clerk programs at Community Colleges and the issuance of graduated levels of certificates for law clerks in specialized areas (3).

This difference of opinion is simply an extension of the very distinct roles of legal assistants/law clerks and Community Legal Workers, a distinction which calls for different treatment of the "professionalization" issues so far as the two groups are concerned.

Implicit in this debate is the question of whether paralegals should be a separate independent profession or a sub or para-profession, dependent on the legal profession for professional standards and supervision. It is clear, that in Canada, "paralegalism" is by no means monolithic in nature and is therefore not definable as one "profession" or "sub-profession". Rather, there are several distinct branches or categories of paralegalism, each definable as an "allied profession" in its own right.

The issue that raises the most ire in conferences, panels and discussions on "paralegalism" is the dependence/independence dichotomy. The dichotomy is based on the assumption that one profession (in this

case the legal profession) has to be dominant, while the other profession is subservient. Is this kind of vertical professional structure really necessary, or might it not be more desirable to characterize the relationship as one of <u>interdependence</u>, where no one profession is master of the other, but rather, each depends on the other for its existence? This response leans towards the "team approach" in the delivery of legal services, and it would seem that lawyers and paralegals are moving more in this direction as they begin to better understand one another (4).

What is sometimes overlooked, in this debate, however, is the fact that the <u>fundamental</u> dependency issue has to be the recognition that any service profession depends for its continued existence on the public - the "market" for the services the profession delivers. The position is often advanced that there should be a certification or licensure process, perhaps combined with accreditation of training programs to assure the public that those delivering the professional services have met certain minimum prerequisites before being allowed to inflict themselves upon the public. This in turn leads to a consideration of what those minimum prerequisites might be and who ought to determine what they are. It is important to note at the outset that the only really justifiable basis for this "professionalization" process is the protection of the consumer of legal services.

Even assuming that the most important consideration is the public interest, and that any other rationale such as controlling the market is questionable, it is probable that the political realities in the delivery of legal services are such that some kind of professional standards for the different branches of paralegalism will be deemed necessary. Questions such as "unauthorized practice" and what standard of client - professional ethics and client-professional confidentiality arise here.

One has to assume that the advocates of professional controls will predominate. It is necessary, then, to consider the process of implementing those controls. Some controversial questions arise, such as who determines what those controls will be? The alternatives seem to be the legal profession, paralegals themselves, the public through the client communities that are serviced by paralegals, the public through the state or some combination of these alternatives. Another controversial question is at what stage of the development of paralegalism should these controls be implemented? Controls can have a prophylactic effect on the development of paralegal roles and functions and this must be considered. Also of some concern is the question of how many levels of controls there should be - i.e. Should there be different standards for different job functions?

This brings us back to the opposite positions of legal assistant/law clerks vis a vis community legal workers. However, even within these two larger groups there is developing a great deal of specialization. Within the rubric of legal assistant/law clerk, there are those who specialize in real estate, others who specialize in corporate law, still others in collections, wills and estates, divorce law, etc. Under the rubric of community legal workers we have specialists in worker's compensation (5), others in landlord and tenant law (6), others in legal problems peculiar to Native People (7), and still others who are not specialists at all, but who because of a shortage of lawyers in rural areas and a lack of lawyer expertise in areas of law uniquely affecting poor people, have to offer a complete range of legal and quasi legal services for hitherto neglected client communities.

With occupational controls will come the demand for the standardization or accreditation of training programs. Again, if different levels of occupational controls are necessary, then different

levels of accreditation may be necessary as well. This raises some difficult questions:

> Do we want a training entity that will help to professionalize the legal paraprofessional? What is the relationship between credentials and job performance? How concerned must we be with the careers and the job security of the legal paraprofessional, and how does this relate to the quality of the training program? At present we simply do not have all the answers to these questions. They do illustrate, however, how educational issues are almost inevitably confused with the mythologizing process of inaugurating, developing and sanctioning an occupation. (9)

The "professionalization" issue is a very complex one, laden with a good deal of rhetoric, confusion and mythology. It is within this context that we must try to come to grips with the problem. Perhaps a good place to begin is to attempt to clarify some of the terminology of "inaugurating, developing and sanctioning" of an occupation. From there we can move to a look at some of the options available in the field of occupational control and then to a look at the "legal environment" in Canada so far as the status of paralegals is concerned.

In doing so, however, the importance of not confusing the objects of "professionalization" with the objects of monopolizing the delivery of services cannot be overstressed. In the established professions, law, dentistry, medicine, the original objective of ensuring that the public was guaranteed a minimum quality of service and accountability often seems to have been replaced with the economic objective of controlling the market. This was never more clearly stated than at the 1978 meeting of the Canadian Medical Association held in Winnipeg when the outgoing President of the C.M.A. called upon all of Canada's

assembled doctors to wrest away from the medical paraprofessions those areas that the paraprofessionals have moved into in recent years. The clear message in the address was that the paraprofessionals represented an economic threat to Canadian doctors and they should be stopped. This results in the narrow view that admits of no competing or complementary professions and the characterization of such developments as "unauthorized practice".

I - THE DIAGLOGUE OF PROFESSIONAL CONTROL - SOME OF THE MYTHS AND REALITIES

The most commonly used terms in the area of professional or occupational control fall within two categories. The first category is related to the "credentialing" issue - i.e. the processes that are available for giving paraprofessionals professional credentials. The key terms here are "certification", "licensure" and "accreditation". The second category is related to the interprofessional question of dependence (independence) or interdependence. Here the key terms are "supervision", the "unauthorized practice of law", "legal ethics", "client-professional confidentiality" and "professional liability" or "financial accountability" of the professional to his client for negligent acts of the professional. This is the "Dialogue of professional control". We will further examine some of the Myths and Realities.

A. Credentialing

> Certification is a form of recognition in which possession of the certificate, while not required for employment, serves the public and employers by identifying those individuals who meet minimum requirements.

> ••• Occupational licencing involves the prohibition by law against practicing an occupation unless a state licence has been granted.
> ••• Accreditation of training programs certification of graduates and ultimate licensing of practitioners, while quite different processes are linked and related as phases of a single trajectory. As a result, the agency which establishes standards for the accreditation of training will have a substantial impact on certification and licencing." (10)

Essentially, the rationale for advancing these concepts is twofold. Protection of the consumer of legal services is offered as one justification. The other justification (advanced by the bar and legal assistants who would be employed by the bar) is that lawyers can recruit paralegals more easily, knowing that they have met certain prerequisites. However, there is one consideration in the advancement of "credentialing" concepts that seems to override all the others:

> It is true that any professional society or group, no matter how socially oriented, will tend to develop barriers to protect itself. As in human anatomy, there is a group psychological reaction to create protective mechanisms... (11)

An example of this "group psychological reaction" is the address by the outgoing President of the Canadian Medical Association Annual Meeting held in Winnipeg in June, 1978. The past president of the C.M.A. was calling upon all of Canada's assembled doctors to wrest away from the emerging medical paraprofessionals those areas that the paraprofessionals have moved into in recent years. The clear message of the address was that the paraprofessionals represented an economic threat to Canadian doctors and this should be stopped. Thrown into this call, of course, was the old professional chestnut that the paraprofessionals were delivering inferior services because they were not trained and certified as doctors.

Another example of the "group psychological reaction" is the current attempt by the American Bar Association to control paralegal credentialing in the United States. The move for control has come in America from the private bar for two very traditional reasons - the protection of the lawyer job market and the increased profitability of law practice through the volume business in routine areas that the utilization of legal assistants permits (12). In the process, the purported objective of protecting the public seems to have been lost, except for the traditional position that any legal services delivered to the public must first be approved by the Law Society or Bar Association.

The protection of the lawyer job market is becoming an increasingly important consideration in the credentialing debate in the United States. There is every reason to believe that it will be equally important in the Canadian context. In Ontario, there is an Association of Unemployed Lawyers. In Manitoba, fully one-third of the graduating class of 1978 are having difficulty finding employment. The Law Society of Manitoba is having to exert tremendous pressure on law firms to hire articling students enrolled in the Bar Admission course. Clearly, the "employment crisis" is beginning to impact upon the legal profession in Canada. In this environment, we can expect a more aggressive stance from Provincial Law Societies in establishing the criteria for occupational control of legal assistants and other areas of paralegal activity.

But how valid is the position that advocates credentialing of paralegals in order to regulate the laws of supply and demand to ensure that there are always enough jobs for <u>lawyers</u> to meet the demand for legal services?

> A more telling response to the lawyer surplus argument ... is that it results more from inefficiency and high cost. If anything like 200,000,000 citizens need

> access to lawyers, and the profession nonetheless has a manpower surplus, there is something wrong with the delivery system. The legal profession is not geared to serve a majority of the population and if it were, there would surely be jobs for all the lawyers we expect to produce and more. (13)

At the same time as we have a so-called "surplus" of lawyers in Canada's major urban centres, we have a dearth of lawyers working in Canada's vast semi-rural and rural remote areas (14). At the same time as we have a surplus of lawyers serving the legal needs of those who can afford it - businesses, governments, corporations, the well-to-do middle class, we have a dearth of lawyers serving the legal needs of the poor - whose contact with the legal system is more likely to be in the areas of unemployment insurance, welfare, workers' compensation, landlord and tenant law, rather than in the areas of real estate, wills and estates, collections, etc.

So long as the legal needs of rural people and the poor continue to remain unserviced by certified lawyers, the lawyers surplus argument pales in the face of the vast areas and populations that continue to be denied access to justice in the Canadian legal system. However, the lawyer surplus argument <u>is</u> a consideration in the areas of legal practice being delegated to legal assistants working for private law firms, and perhaps explains why this branch of paralegalism sees a more pressing need for the formal recognition and sanctioning of law clerk/ legal assistant activity through a credentialing process.

The struggle for control of the private sector paralegals is on the immediate horizon in Canada. It is important that the economics of the situation not be totally dominated by the competition for legal business but that factors such as increasing the efficiency of the delivery system and reducing the costs of legal services enter into the debate.

In fact, there is no evidence in the United States or in Canada that the present uncredentialed or semi-credentialed paralegal movement has in any way been injurious to the public - with the exception that cost savings have not been passed on to the public. This problem may eventually be resolved by a related development, the lifting of the advertising ban on legal services. The "restraint of trade" aspect of Law Society bans on advertising was recognized in the United States with the historic Supreme Court decision in Goldfarb v. Virginia State Bar (15). Since that decision all kinds of innovations in the delivery of legal services and advertising the availability and cost of those services have swept across the nation. It remains to be seen how much these innovations will improve the efficiency and reduce the costs of legal services in the United States, but the potential is certainly there.

In Canada, the lifting of the ban on advertising has been more gradual, but two developments in 1978 are hastening the demise of the "traditional insistence that speaking about oneself in a tone louder than a whisper is unethical" (16). The first is Donald Jabour's battle with the Law Society of British Columbia regarding the operation of his North Shore Neighborhood Legal Clinic in Vancouver. Jabour has defied the traditional ban on advertising and advertises his services and his fees both in the media and in his windows. His advertised fees in many cases undercut the tariff of fees of the Law Society of British Columbia. It is significant to note that in some areas where Jabour is charging a reduced fee, he is utilizing the services of trained paraprofessionals to offer volume services at lower cost.

Jabour's case has every likelihood of becoming the Canadian Goldfarb decision. He is relying on amendments to the Combines Investigation Act which prohibit monopolies in the delivery of services. The issues are not very different from those involved in the conflict of American Anti-Trust legislation with the monopolistic nature of Bar Association controls over the delivery of legal services.

The second important Canadian development is the historic decision of the Benchers of the Law Society of Manitoba to permit lawyers to advertise both their services and their fees, so long as it is done in a "dignified" manner (17).

In the face of the Anti-Combines legislation, the growing controversy over the Jabour case, the public demand for more competitive prices for legal services, the public statements of long-time members of the bar in support of permitting advertising and the growing glut of unemployed lawyers, the Benchers of the Law Society of Manitoba, in an unprecedented move, voted on June 26th, 1978 to permit advertising - both by the Law Society itself for lawyer referral services, Public Legal Information and Education programs, etc. and by individual practitioners. This move drew the immediate ire of the Law Society of British Columbia, but in view of recent statements by the Federal Minister of Consumer and Corporate Affairs, it would seem that the Law Society of Manitoba was wise in concluding that discretion was the better part of valour. As the Jabour battle progresses (with the aid of the Federal Government to establish fair competition policies in the delivery of legal services), similar moves by other provincial law societies can be anticipated in the next few years.

The relaxation of advertising restrictions could have a tremendous impact upon the improvement of the legal services delivery system in Canada. Competition will force lawyers to consider means of reducing their fees, particularly in routine "legal assistant" areas such as real estate, uncontested divorce, etc. This will be of obvious benefit to the private sector legal assistant/law clerk paralegals as lawyers compete for previously unserviced markets by bringing in lower cost more efficient methods. This will inevitably increase the pressure for the credentialing of legal assistant specialists and the accreditation of training programs.

As the pressure mounts, however, it is important to acknowledge the clear distinction between the legal assistant/law clerk para-professions and the Community Legal Workers specialists and generalists. A rush by the Law Societies and the Law Clerks organizations to certify and control private sector paralegalism has the dangerous potential of ignoring this important distinction.

Disadvantages of Credentialing for the Public Sector Paralegal

The public sector paralegals in the United States oppose monolithic credentialing of paralegals on three major bases:

It is premature at this time. The paralegal role has to be further developed in the public sector in order that it can be exploited to the best public advantage in meeting the legal needs of those who do not have adequate access to legal services - people in rural and remote areas where there are not sufficient lawyers and the poor, whose legal problems differ substantially from other segments of society.

Better measures of control and credentialing have to be devised for the public sector than the tradition of "restrictive trade practices" of the private bar.

Credentialing standards, if and when necessary, must be the product of equal participation by lawyers, educators, paralegals and consumers of legal services (18).

1. Premature Credentialing

American Bar Association guidelines in the United States would only permit the credentialing of paralegals who have been trained in the two or four year college programs designed according to A.B.C.

guidelines to produce "legal technicians" for private law practice. There is no recognition in the A.B.A. guidelines of the other distinct streams of paralegal activity prevalent in the public sector, the lay advocates and the Community Legal Workers.

This approach would have the effect of cutting off and outlawing the many programs in the public sector that are providing a benefit to the public. In the result, premature credentialing would have the direct effect of cutting off legal services to needy clients.

The parallels for the Canadian paralegal movement are obvious. Experimentation is still continuing in the development of non-law clerk paralegal roles. Some specialties have emerged as a result of specialized legal needs of particular client groups. Other more general roles are not yet fully developed. Training programs to prepare paralegals to meet these special needs are just beginning to develop. A monolithic credentialing system based on the requirements of private bar law clerks would be disastrous for the public sector paralegals.

It may not be too soon for credentialing in the private sector where roles are becoming fairly clearly defined and training programs in community colleges are becoming better developed. But this credentialing process must be limited to that stream of paralegalism. Credentialing guidelines must recognize the existence of the other streams of paralegalism and must not be applied to those streams at this time. Law Society of Law Clerk Association credentialing processes must be opposed by the public sector to the extent that the processes would attempt to cover non-law clerk paralegal activity.

2. Too Narrow Credentialing Criteria

The danger here is that academic requirements for paralegals will be set too high. This will have the effect to excluding from the paralegal occupations those who are from ethnic minorities, the "new careerists" who have not had the educational opportunities of the middle class and the public sector specialists who have developed a good deal of expertise through inhouse training, a sound knowledge of the community within which they are working and on-the-job training (e.g. Native Courtworkers in the N.W.T.).

This is not to say that there should be no standards for this grouping of paralegals, but it is to say that unrealistic credentialing criteria should not be imposed upon them. For there is no evidence that such a move will benefit either the paralegals or the public they serve:

> Licensing has only infrequently been imposed upon an occupation against its wishes. Unwelcomed licensure has indeed occurred, as when stockbrokers were brought under federal regulation in response to the financial scandals of 1929. In many more instances, however, licensing has been eagerly sought - always on the purported ground that licensure protects the uninformed public against incompetence or dishonesty, but invariably with the consequence that members of the licensed group become protected against competition from newcomers. That restricting access is the real purpose, is not merely a side effect, of many if not most successful campaigns to institute licensing schemes can scarsely be doubted. Licensing imposed ostensibly to protect the public, almost always impedes those who desire to enter the occupation or "profession"; those already in practice remain entrenched without a demonstration of fitness or probity. The self-interested proponents of a new licensing law generally constitute a more effective political force than the citizens who, if aware of the matter at all have no special interest which moves than to organize in opposition. (19)

So what is the alternative for public sector paralegals? Occupational licensing has usually brought higher status to the producer of services at higher cost to the public,

> it has reduced competition; it has narrowed opportunity for aspiring youth by increasing the costs of entry into a desired occupational career; it has artificially segmented skills so that needed services, like health care, are increasingly difficult to supply economically; it has fostered the cynical view that unethical practices will prevail unless those entrenched in a profession are assured of high incomes and it has caused proliferation of official administrative bodies, most of them staffed by persons drawn from and devoted to furthering the interests of the licensed occupations themselves. (20)

Some credentialing of paralegals is probably beneficial and inevitable in the long run. But in the public sector some alternative to "exclusory credentialing" i.e. a process by which the bar or credentialing agency can fix the nature and amount of training one needs to be a paralegal, rather than determine who is best qualified to be a paralegal, must be found.

The alternatives would seem to be competency based testing, permissive certification and mandatory licensing.

Competency based training is probably the most important "accreditation" option for the public sector (21). Essentially it involves defining the role and functions of the paralegal in terms of individual skills necessary to perform the job and then testing those basic skills no matter what environment the paralegal was trained in. This avoids the need to set academic standards of so many years in a college or university or so many courses in such and such an area, but at the same time, it sets basic standards of competency which can be measured and applied. The challenge for the future in paralegal training programs is to develop competency based testing methods for public sector paralegal jobs.

Permissive certification is an occupational control option which can be invoked when some objectively measureable degree of skill is a genuine precondition of a person's claiming an occupational status. Certification of this kind,

> does not wholly withdraw occupational opportunity from person who, though unable to meet all the requirements of certification (for example formal education), may be competent. (22)

Thus a certification system might be established for example, for Native Courtworkers with at least two bases for certification, either a formally recognized education program for Native Courtworkers or a competency test which could be taken after on-the-job training, self-study, etc.

Mandatory licensing is a far more comprehensive option for occupational regulation. It simply involves the registration of anyone who wishes to receive a particular occupational license, with the issuance of a license upon registration. Engaging in the occupation without a licence would be an offence. Any agency would be set up to receive complaints against licence holders, investigate them and if unacceptable conduct was found, there would be a procedure for the revocation of the license. This option could, for example, distinguish between the legitimate activities of Community Legal Workers in delivering specialized quasi-legal services in areas such as Unemployment Insurance, Welfare, Workers Compensation, Landlord and Tenant, and Immigration matters and the exploitative and unsavoury activities of, for example, some immigration services which purport to offer legal services to immigrants in major Canadian centres (23).

3. Ensuring that Consumer Interests are Represented in the Credentialing Process

One of the main reasons why professional regulatory bodies can tend toward monopolistic self interest is that the tradition in professional regulatory bodies is for the professionals to regulate themselves. Consumers, educators and government have little if any role in the establishment of credentialing criteria or standards of conduct.

It is important in the credentialing and regulation of paralegal services that the processes be worked out with the participation of all interested parties, the allied professions, the user of the services, the educators responsible for training programs and the public at large. Regulatory bodies should have representation from all of these quarters. For example, credentials and standards for Community Legal Workers in a Legal Aid system like Saskatchewan's, would involve participation from the trade union representing C.L.S.W.'s, officials from the Community Legal Services Commission, the agency responsible for the administration of the Legal Aid plan, the Community Boards which are responsible for service policies in each community Law Office and from clients' associations. Such a procedure for credentialing will ensure that policies established would be designed not only to benefit the occupation of paralegal workers, but also the consumers of the services.

B. Dependency

The second major aspect of the dialogue of professional control is that which deals with the "legal environment" of law practice. The "legal environment" can limit the occupational status of the legal paraprofessional and the extent to which he or she can function within the framework of the legal community. In this regard there are three

key areas: Supervision and the Unauthorized Practice of Law; Legal Ethics and Client-Professional Confidentiality; Professional Liability and Financial Accountability.

1. Supervision and the Unauthorized Practice

The "practice of law" in all provinces in Canada is restricted to those people who are qualified as lawyers and who have been admitted to the bar of that province. The scope of a paralegal's ability to function will depend in every case on the interpretation of the term "The practice of law" in the law practice statutes in each province. If the functions of a paralegal encompass what may be considered as the practice of law,

> a strict and literal reading of most unauthorized practice legislation would suggest that a lawyer should do everything that relates to his practice by himself, including his typing (!) (24)

Of course, present day law practice is just not such that a strict interpretation of practice statutes would be appropriate. Courts have tended to regard the unauthorized practice legislation as having two objectives:

(a) Protection of the Public

> ... to protect the public against persons who for their own gain, set themselves up as competent to perform services that imperatively require the training and learning of a solicitor. (25)

(b) Protection of the Profession

> ... it is to protect members of the legal profession who have been admitted, enrolled and duly qualified against wrongful infringement by others of their right to practice their profession. (26)

It is within the context of these policy objectives of unauthorized practice legislation that the courts have on occasion

convicted non-lawyers for breach of the prohibitions. There have been no cases involving the use of paralegals performing legal tasks under a lawyer's supervision. Nor have there been cases in Canada involving the citizens' advocates or Community Legal Workers delivering services that lawyers, for reasons of unprofitability, or geographical remoteness from urban centres, will not deliver.

Present day paralegal practices are not likely to run afoul of the policy objectives of unauthorized practice legislation. Paralegals working under the direct supervision of lawyers can be viewed as being an extension of the lawyer himself. These paralegals are neither "setting themselves up as competent to perform services" requiring a lawyer, nor are they doing it "for their own gain". Furthermore, if the profession employs paralegals, it can hardly be argued that their "right to practice their profession" is being wrongly infringed.

For those paralegals working independent of or only peripherally with lawyers, the situation may be different. There are certain functions here that are clearly not unauthorized practice - for instance, representation before administrative tribunals. Most tribunals have provisions for representation by non-lawyers in their enabling legislation, and one province has passed across the board legislation that allows for lay representation at administrative hearings (27).

As has been pointed out, however, a very strict interpretation of unauthorized practice legislation could seriously hamper the activities of paralegals. This would be particularly so in those situations where paralegals were regarded as an economic or political threat to the established bar (28). When unauthorized practice legislation was enacted, the legislators could not have foreseen the widespread use of paralegals as being an everyday aspect of law practice. As time goes on, the use of paralegals will inevitably become more widespread, and the legislation will have to take account of these fundamental changes.

Against this background, however, we have to consider the present state of unemployed lawyers in some urban centres which are a bit of embarassment to Provincial Law Societies. Will this pressure Law Societies into launching more unauthorized practice prosecutions? Will the Law Societies move to oust paralegals from the Administrative Tribunals and lobby governments to include such representation in the rubric of "unauthorized practice?" Will the federal Anti-Combines legislation prevent the Law Societies from attempting to oust low cost paralegal representation at Administrative hearings?

These questions remain to be answered. It seems unlikely, however, that such initiatives would be undertaken at this point in time by the Law Societies. For one thing, it just would not make any economic sense. Most clients who are represented by lay advocates could not afford the services of a lawyer without Legal Aid assistance. And in the present environment of acute government restraint in spending for social services in the face of huge government deficits, such an extension of services at a higher public cost is highly unlikely. More necessary, is the extension of government funding to make low cost paralegal services more available for administrative tribunal proceedings. But this too is unlikely in the present era of restraint.

One result of the failure of government to extend administrative tribunal representation by paralegals might be the formation of specialized paralegal services that charge a comparatively small fee for advocacy services which are not available from lawyers. Would the Law Society prosecute in such circumstances? Would the paralegal service be liable for prosecution? Probably not in Ontario because of the Statutory Powers Procedures Act allowing representation by agent (29).

One model to avoid such problems might be the organization of specialized paralegal services under the auspices of a law firm which could advertise such services and the fee. Fees could be kept low through doing volume business with paralegals under the supervision of the law firm providing the bulk of the service. This model might still, however, be subject to sanctions or prosecution by the Law Society. The example points out the need for eventual legislative reform to recognize the validity of paralegal services. Restraint minded governments would be faced on the one hand with a conservative Law Society position opposing such legislation on the basis that it infringes upon the professional monopoly of lawyers or is "undignified" and on the other hand by the argument that such services are vital and necessary to give the average citizen access to justice at a reasonable cost - a cost which government is not prepared to bear. With the rapid changes in the practice of law triggered by restraint of trade legislation and the relaxation of advertising prohibitions, these issues are likely to loom large in the future.

2. Legal Ethics and Client-Professional Confidentiality

The Law Societies as professional associations are self-regulating in so far as the "ethical conduct" of their members is concerned. The standards for this self-regulation are contained in the "Code" or "Canons of Ethics". The code does not contain much with regard to paralegals per se, other than a contemplated recognition of the delegation of tasks within a law office, with lawyers retaining the ultimate responsibility for the conduct of their affairs.

The ethics question for paralegals boils down to one crucial question - the relationship of the paralegal to his client. Under the "code" of the legal profession, information with regard to a client's

personal or legal affairs is regarded as privileged information, protected by a legal relationship of confidentiality between the lawyer and his client. A question arises as to whether the lawyer-client relationship is as well protected as between the client and a paralegal. Of course, where a paralegal works in a law office, he or she can be considered as an extension of the lawyer's practice, and in all likelihood the lawyer-client relationship would be protected. In those cases, however, where a paralegal alone is acting on behalf of a client (e.g. Administrative Hearings) or where paralegals are operating more or less independently (e.g. citizens' advocates), there is some doubt as to whether confidentiality is protected by law. Given that this issue is one that is very much concerned with the protection of the collective client community of the public, it may not be too soon to extend by legislation the protection of confidentiality. Of course, this is an important issue for other fields of social work as well.

3. Professional Liability and Financial Accountability (30)

Quite apart from the criminal prohibitions of unauthorized practice legislation and the professional sanctions of a code of ethical conduct, the professional is subject to civil liability in tort for any harm caused to clients by the negligent actions of the professional. The normal standard of care for negligence involving the delivery of services is that of a reasonable prudent person under the same or similar circumstances. A professional will be held to a higher standard of care as he or she undertakes to exercise the skill, knowledge and good judgment normally possessed by other practising members of the profession.

As a general premise, we can probably assume that the standard of conduct for personal liability in negligence for paralegals will fall

somewhere in between that of the normal person and that of a lawyer (31). As we have seen, however, the functions of paralegals are diversified, and the standard of care or the source of liability may vary, depending on the particular job functions of the paralegal. A "legal assistant", for instance, who is merely an extension of the lawyer insofar as the client is concerned, may not be held to be liable at all for negligent actions. In this type of case, vicarious liability may flow to the lawyer who utilizes and supervises the paralegal. If the negligence occurred in the normal course of the paralegal's duties, the supervising lawyer could be held to be vicariously liable.

In addition, the supervising lawyer may be held liable for his or her own negligence in improperly using or supervising the paralegal:

> The liability may arise from improper selection of the paraprofessional, inappropriate delegation of specific tasks to him or inadequate supervision of his work.
>
> The lawyer who employs a non-lawyer to provide legal services has a duty to scrutinize and control his work. The degree of supervision required will vary with the nature of the work involved... The establishment of standard procedures that are periodically reviewed as well as a regular examination of the paralegal's work product, should satisfy the requirement of adequate supervision. (32)

These principles only apply, of course, to those situations where the paralegal is regarded as an employee of and subservient to the lawyer. Their application also depends upon the "customary practices" of the profession which have yet to become clearly defined.

On the other hand, where paralegals are working outside of a law office or where they are performing tasks that are not "customary" practices of the legal profession, an entirely independent standard of

care, that of a paralegal of like training and experience in like circumstances may have to be developed. It is apparent that the professional liability standards can only be developed after the functions and responsibilities of paralegals have come more clearly defined. In time, the standard of professional conduct expected from paralegals will be delineated but this must be preceded by the full development of paralegal functions and appropriate training program.

Although paralegals do not, as a rule, personally handle large amounts in trust funds or act for clients on large claims, they do, nevertheless, become involved in clients' financial affairs. And although the amounts may not be objectively substantial, to the clients involved (usually the poor), it represents substantial amounts. At present, unless paralegals are acting as agents of a lawyer, and covered by his insurance, clients who are the victims of negligence or unscrupulous practices have no real recourse other than to look to the courts. Although the problem has not yet arisen (which says something of the high calibre of paralegal performance to date), paralegals are going to have to deal with this problem and provide the clients with adequate recourse. Paralegals are not, however, unaware of the problem:

> Clearly, there may in the future be a need for the establishment of a fund to which recourse might be had for compensation by an aggrieved person. This kind of collective responsibility could be achieved either by C.L.W.'s (Community Legal Workers) themselves, by their trade union, by the community boards, or by these groups in combination with each other. The means employed might be a compensation fund to which C.L.W.'s in a particular area would be required to contribute or by requiring each C.L.W. to maintain adequate insurance. The source of funds for the contributions or premiums would have to be worked out by the groups referred to, in conjunction with those participating in the funding of community-based legal clinics. (33)

The need for financial accountability is more pressing at this time than the need for credentialing or accreditation programs. In fact, the responsible implementation of a system of financial accountability by groups of paralegals could very well alleviate the pressure for premature credentialing of the still developing streams of paralegalism.

Dependence/Independence and Expanding the Role of the Paraprofessional

The dependence/independence issue "permeates the entire discussion of "professional control". As a general rule, the medical profession paraprofessionals have taken a "dependent" position, with flexible supervision and control requirements. This development has been viewed by some observers of the medical profession as a positive one:

> By taking a legally dependent position, the physician's assistant has been able to assume far more responsibility than he could have if he had attempted to work independently. (34)

This is contrasted to the unfortunate example of some nurses organizations which have tried to assert themselves as an independent medical profession (35). It is said that role enlargement and paraprofessional independence often work at cross purposes, for two major reasons:

1.- The "profession" will vehemently oppose independence of paraprofessions;

2.- The public will not accept it.

Of course, these are essentially political arguments, concerned with the realities of the political power wielded by the members of a profession in the regulation of the delivery of professional services. If public opposition does exit, it does so largely because the mythologizing process engaged in by professional associations (36). The question must be asked as to whether it is really desirable to continue

with the "mythology" of professionalization in the development of alternative methods of delivery of essential services.

Although the independence question cannot be ignored, it can be overrated. The traditional concept of "subservience" or "dependence" must be replaced with one of cooperation and interdependence. The welfare of the client community must be the first priority, not the welfare of one group of professionals over another. A preoccupation with "definitions" can only hinder the development of a viable delivery mechanism. The central question should be "does it work" not "is this in conformity with the traditions of a 'profession' delivering a service". In the result, we can be looking at such questions as how to best devise the "delivery team", and what institutions we can set up to deliver the best possible service, using all the manpower available to its maximum efficiency.

II - THE LEGAL ENVIRONMENT IN CANADA: THE APPROACHES TO DATE

Paralegals have been employed in Canada in both the public and the private sectors for some time now. In the case of private sector legal technicians, there have been no changes in the regulations concerning law practice. Lawyers seem to be proceeding on an informal "delegation" formula through direct supervision of paralegal activities by lawyers. The exact level of supervision is very difficult to determine, but it is apparent that the "unauthorized practice" bogey has been employed to limit the functions and responsibilities of paralegals in private practice (37). There has also been a rather informal sanctioning of two year community college training programs as an educational "ticket" for legal technicians in Ontario, with similar developments on the horizon in Alberta.

No recorded problems of "unauthorized practice" have arisen where the paralegal is working directly under the supervision of a lawyer in a law office. However, where a person goes out of the law office and attempts to deliver essentially legal services (i.e. those within the billing tariffs of the Law Society), prosecutions for unauthorized practice have been quickly initiated.

To date, the activities of citizens' advocates, Community Legal Workers and public service paralegals have not been challenged. This probably is related to the fact that the areas of activity engaged in by these persons are not areas that lawyers consider as their "bread and butter". The right of the "advocate" to appear before administrative tribunals has been more or less recognized. But if lawyers felt they could profitably deliver services before administrative tribunals, this situation could change very dramatically (38). It is important in future years to examine the alternatives for regulation of "advocate" activity with the objective of making available to the public, the most effective delivery mechanism at the least cost.

In the case of legal aid paralegals, the situation is in a great state of flix. In most cases, paralegals working in community law offices can rely on the "piggyback" authority of "delegation" so far as their legal tasks are concerned and the tacit recognition of their legitimacy so far as their community advocacy role is concerned. However, two provinces have now recognized the role of the paralegal in the delivery of legal aid services.

Section 30 of the Saskatchewan Community Legal Services Act (39) states:

> 30. The commission or a board may employ any person who is not a solicitor to provide services under this

> Act provided the person is supervised by a solicitor; but such employee shall not appear as counsel in any superior, district or surrogate court.

This would appear to mean that community clinics may hire whomever they wish to deliver legal services, so long as he or she is supervised by a lawyer. The extent of the supervision is not defined, nor does there appear to be any limit on the number of paralegals that may be supervised. The paralegals can do anything that their supervising lawyers let them do, except appear in courts above the magistrate's court level. It is significant that in Saskatchewan, paralegals can and do represent clients in Magistrate's Court in show cause hearings, speaking to sentences and bail applications (40). No other Province has yet extended this privilege to paralegals.

Section 30 of the Act is further buttressed by Section 29 which states:

> 29. Nothing done by the commission, a board or by any person pursuant to the provisions of Sections 11, 15 or 30 of this Act shall be deemed to be a contravention of the Legal Profession Act.

This covers the "unauthorized practice" problem. So long as the paralegal is acting within the confines of the Section 30 authority, he is not engaged in the unauthorized practice of law nor is the supervising lawyer in breach of the Legal Profession Act.

The Saskatchewan Act goes one step further and explicitly protects the paralegal-client confidential relationship. Section 28 states:

> 28. Any information disclosed by an applicant to any member of the commission or employee thereof, or to a

> board of employee thereof, that would be privileged if disclosed to a solicitor pursuant to a solicitor and client relationship shall be privileged to the extent as if it had been disclosed to a solicitor pursuant to a solicitor and client relationship.

In Manitoba, The Legal Aid Services Society Act (41) goes some way towards recognizing paralegals as part of Neighbourhood Legal Aid Centres but not as explicitly as the Saskatchewan legislation does. Section 8 of the Act empowers the Legal Aid Services Society of Manitoba to employ an executive director "who shall be a solicitor" and "such office staff and other employees as may be required for the society's purposes". Section 21 covers the "unauthorized practice" and the "solicitor-client relationship" problems:

> 21. (1) All information and communications in the possession of the society relating to an applicant and his affairs, is deemed to be privileged to the same extent that privilege would attach to information and communications in the possession of a solicitor.
>
> 21. (2) Notwithstanding subsection (1) and notwithstanding the provisions of the Law Society Act, the society, in carrying out its objects, is not deemed to be practising law within the meaning of that Act.

Presumably, these general provisions referring to "the society" would also cover employees of the society, including paralegals. However, a more explicit recognition of paralegals as protected employees of the society along the lines of the Saskatchewan legislation would probably ensure that paralegals would be legally recognized in the Legal Aid Plan.

The Saskatchewan and Manitoba Acts contain the only general legislation in Canada bearing directly on the legislation of paralegal activities (with the possible exception of the Ontario legislation

allowing lay representation before administrative tribunals). It will be noted that these provisions are very broad and general in their scope allowing the employing boards of directors supervising lawyers and paralegal employees maximum latitude in their abilility to develop the paralegal r[illegible] (42).

CONCLUSION

From a discussion of the "credentialing" or "professionalization" questions, there are several immediate and long term concerns that arise. Of immediate concern are such questions as the protection of the paralegal client relationship, the legal authorization of "paralegal practice", the extent of legal liability and financial accountability for paralegal activity and most important, the continued development of the role of the paralegal in the delivery of legal services. Of longer range concern are issues such as the boundaries of "ethical" conduct for paralegals, the development and recognition of adequate training programs and the working out of the relationship between paralegals and the legal profession and paralegals and the public.

The one factor that emerges from the experiences of the health professions and of the emerging legal paraprofessions in Canada and the United States is the need for a well-thought out system of controls that is not so rigid as to hinder the development of paraprofessional roles and functions yet is clearly enough defined so as to accomplish the two-fold goals of expanding the legal services delivery mechanisms and protecting the public from unqualified or unscrupulous persons. The key factor throughout is the need of the community for quality legal services and not the need of the "profession" to monopolize the delivery system.

Such a system requires a great deal of time and consideration in developing. In the initial stages, flexibility is the key. A "monolithic" view of paralegals just will not work in our multi-faceted delivery system. Participation of all interested parties - the client public, lawyers, paralegal educators and paralegals themselves is also of crucial importance in the development of professional "controls". Implicit in this is the need for the recognition of the legal services delivery team, with lawyers, paralegals, other legal services employees and clients all sharing responsibilities in the delivery of legal services. The teamwork approach can and must be accomplished without the legal profession exercising complete dominance and control over the paraprofessions.

The legal services delivery system in Canada is in a mess. It is suffering from an acute case of obsolescence. Its continued failure to provide meaningful remedies for the common man in his relations with his governments, his landlord, his finance company, his welfare worker and the list goes on - will result in a hardening of the arteries. The delivery system needs new vitality and new blood. Vitality is easing its way in through reformed legal aid plans, gradual deformalization of the legal process, better public legal education programs, relaxation of the bans on lawyer advertising and examination of group legal services and other innovations. But new blood is hard to come by. It is coming in driblets from today's law schools where a few individuals see the need for and work toward substantive reform in the delivery of legal services.

The system, however, is in need of a transfusion. Widespread development of paralegal service programs may provide that necessary transfusion. Hopefully a speedy recovery will result - if not, radical surgery may be necessary.

In arguing the case of paralegalism it must never be forgotten that the most important purpose of our legal services delivery system is to provide citizens with access to justice and to the legal system that purports to deliver it. Without that access, "freedom" continues to be a sham for a large number of Canadians. In this era of economic upheaval and restraint on government and corporate spending, the numbers of Canadians who are denied access to legal and social justice continues to climb. Failure to provide that access will further exacerbate the plight of the have-nots in our very affluent society. This can only lead to further social upheaval with the increasing danger that growing numbers of have-nots will turn to more desparate means to obtain social justice.

Paralegalism is certainly not the panacea for Canada's social ills but it does represent an avenue through which more social justice will be accessible to Canadians. This country can no longer afford "Cadillac justice". The continued growth of paralegalism and other initiatives to expand citizen access is essential to the development of a free and democratic society in Canada (43).

FOOTNOTES

(1) L. BRICKMAN, "C.L.E.P.R. Hosts Paraprofessional Conferences", C.L.E.P.R. Newsletter, Vol. IV, No. 10, March 1972.

(2) This is the position advanced in Community Legal Workers in the Delivery of Legal Services, a paper prepared by Injured Workers Consultants as a Brief to the Ontario Professional Organizations Committee and distributed at the National Workshop on Paralegalism held in Vancouver from March 29-31, 1978 (Unpublished).

(3) The Law Clerks Institute of Ontario takes this position. It is discussed in Fred Zemans' and in Harvey Savage's papers. In addition, see Roger WALKER's Status Report on the Law Clerk Program at Red Deer College presented to the Vancouver Conference, for a discussion of two year Community College programs and accreditation. (See Appendix A)

(4) Boyd Ferris, in an address to the Canadian Bar Association Annual Meeting in Winnipeg in August, 1976 urged Canadian lawyers to recognize the importance of the allied paraprofessionals and to work with them rather than against them. Bill Statsky made the same plea to paralegals in his address to the Vancouver Workshop in March, 1978. (See Mr Statsky's Paper, pp. 267ss.) See also The Interface Between Paralegal and Lawyer, a paper by W.J. WALLACE, Q.C. for the National Workshop on Paralegalism, Vancouver, March, 1978. (See Appendix B).

(5) See Community Legal Worker at Injured Workers Consultants - Job Description, a paper prepared by Bill ROBINSON, Injured Workers Consultants, for the National Workshop on Paralegalism, Vancouver, March, 1978 (Unpublished)*.

(6) See Associated Tenants' Action Committee, a paper prepared by Dave SCANLON, Housing Advocacy Service Worker for the March, 1978 Vancouver Workshop (Unpublished)*.

(7) See Native Paralegals in Remote Areas, paper prepared for the March, 1978 Vancouver Workshop by Dennis PATTERSON, Director, Maliiganik Tukisiiniakvik, Frobisher Bay, N.W.T. (See Appendix E).

(8) See A Report on Paralegal Activities, a paper prepared for the Vancouver, March, 1978 Workshop by John SIMONS, Legal Information Counsellor, Legal Information Centre, Kamloops, B.C. (Unpublished)*. See also Community Legal Service Workers in Saskatchewan, a paper prepared by Olive PIROT, Betty DONAVER and Shirley FARIS, C.L.S.W.'s for the March, 1978 Vancouver Workshop (Unpublished)*.

* Note from the editor: A paper was requested from acting paralegals and published in this issue, p. 202; this paper canevass various aspects of the roles of paralegals.

(9) W.P. STATSKY, "The Education of Legal Paraprofessionals: Myths, Realities and Opportunities", (1971) 24 Vanderbilt Law Rev. 1083, at p. 1124.

(10) From The Paralegal Review, a quarterly publication of the National Paralegal Institute of Washington, D.C., Editorial, Spring, 1975.

(11) William SELDEN in A Study of Accredited Health Educational Programs, Part 1: Working Papers, 1971, quoted in Paralegal Review, supra, note 10.

(12) See the Paralegal Review, supra. See also "The Credentialing and Licensing of Paralegals and Paralegal Training", 6 Clearinghouse Review, 1973, pp. 664-667, article by the National Paralegal Institute.

(13) 1974 statement of the American Association of Law Schools. The statement is quoted in the editorial in The Paralegal Review, supra, note 10.

(14) See John Simmons' paper quoted in footnote 8, supra. See also Dennis Patterson's paper cited in footnote 7, the Community Legal Service Workers' in Saskatchewan paper cited in footnote 9 and for a complete report on the lack of legal services in the N.W.T. see Legal Aid in the Northwest Territories: Recommendations for the Future, Department of Justice, Ottawa, June, 1977 (Unpublished).

(15) 421 U.S. 773 (1975); for a comment on Rees decision see 7 Loyola Univ. Law Journal 254 (1976).

(16) Walter GELLHORN, "The Abuse of Occupational Licencing", 1976, University of Chicago Law Review, pp. 6-27.

(17) Minutes of the June 26th, 1978 meeting of The Benchers of the Law Society of Manitoba.

(18) See The Paralegal Review, supra, note 10. For a complete analysis of the U.S. public sector position on credentialing see National Paralegal Institute, "The Credentialing and Licensing of Paralegals and Paralegal Training", 6 Clearinghouse Review, 1973, pp. 664-667.

(19) Walter GELLHORN, "The Abuse of Occupational Licensing", 1976, The Univ. of Chicago Law Rev. pp. 6-27 at pp. 11-12.

(20) Ibid., at pp. 17-18.

(21) William P. Statsky, in his address to the National Workshop (see, p: 267) on Paralegalism outlined the development of competency based testing in the U.S. as an alternative to accreditation of training programs. In the private sector, the program at Red Deer College is employing this method now. See Roger WALKER, supra, note 3 and see Appendix A.

(22) See GELLHORN, supra, note 19.

(23) See paper prepared by Injured Workers Consultants for the Ontario Professional Organizations Committee, supra, note 2, for some discussion of these illicit activities.

(24) I.B. COWIE, The Legal Paraprofessional in Canada, a Pilot Training Scheme, Dalhousie Legal Aid Services, 1972, p. 65.

(25) Rex ex rel. Smith v. Ott, (1950) O.R. 493 (Ont. C.A.) per Robertson, C.J.O.

(26) Regina ex rel. v. Mitchell, (1952) O.R. 896 (Ont. C.A.) per Laidlaw J.A. aff'd Regina ex rel. Smith v. Glass, (9153) O.W.N. 450. See also R. v. Campbell and Upper Canada Business Administrators Ltd., (1974) 45 D.L.R. (3d) 522.

(27) See The Statutory Powers Procedure Act, Statutes of Ontario, 1971, c. 47. SS. 10 and 11 allow representation before "administrative tribunals by counsel or "agent". The "agent" is taken to refer to non-lawyers. S. 23 for example allows the tribunal to exclude an "agent" who is a non-lawyer if it finds that the person "is not competent to properly represent or advise the party or witness or does not understand and comply with the duties and responsibilities of an advocate or advisor."

(28) A recent example of such a case is the successful prosecution by the Law Society of Upper Canada of a do-it-yourself divorce service in Toronto. See "That's Practising Law; Divorce Advisors told as Appeals Dismissed", The Toronto Globe and Mail, November 21st, 1975.

(29) See footnote 27, supra.

(30) See generally, J.W. WADE "Tort Liability of Paralegals and Lawyers Who Utilize Their Services", (1971) 24 Vanderbilt L.R. 1133 and I.B. COWIE, The Legal Paraprofessional in Canada, supra, note 24.

(31) In Injured Workers Consultants, paper prepared for the Ontario Professional Organizations Committee, supra, note 10, the Ontario C.L.W.'s assume as standard of care equal to the lawyer standard.

(32) WADE, supra, footnote 30, p. 1147.

(33) Community Legal Workers in the Delivery of Legal Services, paper prepared by Injured Workers' Consultants, Toronto, for the Ontario Professional Organizations Committee and distributed at the National Workshop on Paralegalism, Vancouver, March, 1978. (Supra, note 10).

(34) Alfred M. SADLER, Jr. and Blair L. SADLER, "Recent Developments in the Law Relating to the Physician's Assistant", (1971) 24 Vanderbilt Law Rev. 1193, at p. 1209.

(35) Ibid. The example cited is the New York State nurses who lost their battle for recognition.

(36) See for example the references supra, note 4, to the statement of the past President of the C.M.A. in Winnipeg in June, 1978.

(37) This may begin to change now with the Jabour controversy and the relaxation of lawyer advertising rules which will encourage lawyers to develop more high volume cost services.

(38) See the discussion supra under Unauthorized Practice regarding some possible scenarios in the delivery of advocacy services at Administrative Tribunals.

(39) Stat. Sask. 1974, c. 11.

(40) See Community Legal Service Workers in Saskatchewan, paper prepared by Olive PIROT, Betty DONAVER and Shirley FARIS for the National Workshop on Paralegalism, Vancouver, March, 1978. (Unpublished)*

*Note from the editor: A paper was requested from acting paralegals and published in this issue, p. 202; this paper canevass various aspects of the roles of paralegals.

(41) Stat. Man. 1971, c. 76, cap. L-105

(42) There are many specific legislative provisions allowing representation by "agent" - e.g. The Criminal Code for some summary conviction offences. Another e.g. is Manitoba's Rent Stabilization Act permitting parties to be represented by non-lawyers.

(43) The last few concluding paragraphs are taken from the writer's Master's Thesis Paralegalism In Canada: A Response to Unmet Needs in the Delivery of Legal Services, completed in April, 1976. The writer feels that the concluding remarks are even more applicable in 1978 than they were in 1976.

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PUBLIC SECTOR PARALEGALISM ON THE CANADIAN LANDSCAPE: AN ANALYSIS OF TRAINING

by Harvey SAVAGE*

Since the appearance of two seminal works several years ago (1) there has been very little writing on the kinds of issues which should underly any training programs for public sector paralegals nor any indepth analysis of specific programs which address themselves to these issues.

Those earlier works, particularly that of Cowie, dealt with a phenomenon which was in its very early stages. In fact, Cowie's work is entitled "A Pilot Training Scheme" since it was his own proposed training program in this study, the Dalhousie Legal Aid Service Legal Assistance Training Program, which at the time was the most elaborate and extensive program of its kind in Canada (2).

In the period between the writings of Cowie and Savino to the present day, paralegalism in Canada in the public sector has undergone major developments. Legal Aid programs, particularly in Manitoba, Saskatchewan and British Columbia have each provided for the funding of public sector paralegals as a core element in the delivery of legal services (3).

The Quebec Legal Services Commission, though premised largely on the lawyer model in legal aid offices, has made provision for the role of paralegal in the legal delivery team (4). The role of the public sector paralegal in Nova Scotia has expanded significantly beyond the innovative vision of Cowie in 1973 (5). The Northwest Territories has a legal services clinic serving the Eastern Arctic from Frobisher Bay, and employing Inuit paralegals (6). Ontario has entered the realm of funding independent community-based clinics which rely considerably on community legal workers (7) and by virtue of this, has seen a

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substantial expansion in the numbers of community legal workers since 1976 (8). In addition to paralegals funded by or under the auspices of a legal aid plan or commission, there has been in the past several years a proliferation of the use of paralegals in various consumer organizations such as tenants' associations (9), associations for the mentally retarded (10), unions (11), etc. Finally, some of the most energy has been derived from native courtworker programs which revolve around the concept of employing native counsellors to provide a variety of assistance and referral services to native people affected by the criminal justice system (12).

Thus in terms of quantity and certainly kinds of activities engaged in, public sector paralegalism warrants another look. It has grown like topsy and while this reflects positively on the surrounding need, the problem exists that the rapid expansion has overtaken the capacity to share information. This article will attempt to make a modest beginning in this regard. It draws its focus from a recent article by Fred Zemans which concluded that "...there is a need to examine the existing paralegal training programs. The training of lay advocates and community animators has received limited funding and critical examination" (13).

The recent National Workshop on Paralegalism provided an excellent opportunity for public sector paralegals to meet and exchange information. It also generated a number of background papers which will be used as reference material in this article.

The following study in a decidedly Canadian perspective although references to United States programs and sources are embodied when relevant. Its focus is also that of the public sector, that is, community-based clinics and voluntary consumer groups, although by way of comparison there will be some references to training for the private sector, such as community college legal assistant programs and private law clerk institute programs.

The study itself is two-fold: an examining of underlying threshold issues and concerns, followed by a consideration of some of the kinds of training currently offered. In this way the study hopes to serve as a clearing house in terms of issues and programs explored.

PART I - THRESHOLD ISSUES

1. Training for Whom?

Prior to any discussion of training vehicle or methodology, it is crucial to look at the person who will be performing a particular service. The term "paralegal" has taken on an unfortunate coinage among many individuals working in the public sector. Although the dictionary meaning of the prefix para is "beside", "near" and "beyond", it has too often taken on the connotation of "beneath" and "less than". This has led at least one commentator, Bill Robinson, to make a studious distinction between the term paralegals as used in the accustomed coinage to refer to private sector legal assistants and public sector lay advocates, and the very different species of community legal worker whose role is set apart from that of "paralegals" by three main activities engaged in: law reform, preventive legal education, and organizing (14). In another paper presented at the Conference (15), Zoya Stevenson talks about the role of community legal worker as a generic entity, encompassing lay advocacy, casework, summary advice, negotiation, drafting, informal and formal advocacy, community education, and law reform.

In all likelihood, the term paralegal has acquired such a poor profile from its use by lawyers who often view "paralegals" as menial adjuncts to lawyerly functions (16).

But this is a misuse of the term. As though to give weight to the adage that "a rose by any other name, etc." a number of terms have

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had their day: legal paraprofessional, community animator, socio-legal worker, lay advocate, community service legal worker, community legal worker, welfare housing advocacy service worker, etc. There is no commonly accepted coinage among the various clinics and other public sector organizations in Canada. It is more important to focus upon a function which gives meaning to a role than upon an actual term upon which there is no common ground. Thus the word "paralegal" will continue to be used in this study in the context of training discussion but entirely in the generic sense of encompassing of the possible descriptive terms which were canvassed at the National Conference, in the absence of a single agreed upon final term.

Thus the public sector paralegal performs many diverse and individualistic functions. A careful consideration of his/her role in this generic sense demands a philosophy of training which goes well beyond the "legal assistant" connotation, a connotation which was clearly enunciated as a role definition of a law clerk in a paper by Roger Walker:

> "A law clerk is a trained specialist, capable of doing independent legal work under the general supervision of a lawyer in order to relieve the lawyer of routine legal and administrative matters and to assist him with the more complex ones. A law clerk does not give legal advice, appear in court, nor give undertakings" (17).

An appropriate training program should give heed to several excerpts from a paper presented by the coalition Action on Legal Aid:

> "Community legal workers have an independent base of skills and knowledge which they use to respond to changing conditions in the community".
>
> "As community legal workers in these organizations, we have learned that a one-on-one approach to handling quasi-legal problems is not the only way, but rather organizing, law reform, community education, preventive law, are the means of helping people in the areas of law with which we deal".

> "A CLW's skills and expertise develop around the needs of the community they serve. Most CLWs have expertise in one or more of the following areas: landlord and tenant law, welfare, unemployment insurance, workmen's compensation, small claims court actions, and so on depending on the needs of the community" (18).

Training of whatever form must acknowledge a role which often has developed quite independently of the legal profession, as a response to the needs of a community whose real needs cannot be properly served by lawyers. The public sector paralegal may well work as part of a team (19) but as a skilled worker who is not subservient to any member of that team. Training must be aimed then as leading to independent judgement-making in a number of areas affecting a client. This involves a particular philosophy of training which is not present in the kind of training aimed at a role which is largely procedural, accustomed to obtaining specific delegated instructions from lawyers, feeling at all times the reins of close supervision by a lawyer, and performing largely routine tasks which are ancillary to the lawyer's role: analyzing issues, predicting results, making judgments. All of the latter are germane to the public sector paralegal and should be considered backdrop to the planning of trainings in this area.

But if training is to be geared towards a role accustomed to making independent judgments and often performing independent functions, how does one approach the inter-relationship between a lawyer and paralegal from a training perspective? A private sector point of view would perceive the paralegal as being delegated tasks as determined by a lawyer and under the latter's strict supervision. Translated into training, this would involve learning of essentially procedural matters, how to perform the many and various routines capable of delegation. Roger Walker illustrates this effectively in his paper in outlining eight essential steps involved in litigation "routine" for a law clerk:

> "a. Collecting and assembling evidence.
> b. Taking statements from witnesses.
> c. Assist with pre-trial proceedings.
> d. Attend trial to assist counsel.
> e. Arrange schedules for witnesses.

f. Make arrangements for taxation.
g. Prepare draft bill of costs.
h. Foreclosures, etc." (20).

Any training directed at the above role would seek to reinforce that role. The lawyer, seen or unseen during the training, would have to be the major dramatis persona. Similarly, training directed at a paralegal who works alongside the lawyer but not "under" a lawyer would have to be trained in that key. However, even if the relationship can be characterized more as collegial than subservient, public sector training should ideally involve both the lawyer's role and paralegal's role as different but inter-relating parts of the legal spectrum. Somehow, each should experience the other's role as well as their inter-relationship in a training program. It is difficult to see whether this is adequately ensured in the particular "apprenticeship" program described in the Action on Legal Aid presentation (21), as reinforced by Bill Robinson in his paper on "Community Legal Worker - A Job Description" (22). That methodology, though admittedly intended as orientation and different from formal workshops occurring at a later stage (23), at best sees the lawyer's involvement as a possibility (24). It is submitted that this tentative statement is not enough at the important orientation stage of a paralegal's training. A lawyer's complementary role and functions should be part of the training, not because of any supervision aspect, but simply because in the fullest sense lawyer and paralegal are complementary and interrelating components of a legal services team, whether operating side by side in the same office or otherwise (25).

2. Training in What?

Public sector training must always start from an initial concern as to the boundaries of authorized practice. This is because of the tremendously wide-ranging diversities of the activities engaged in (26) and also because of the narrowing view which Law Associations tend to

take as to what constitutes the unauthorized practice of law. Although this topic will be more thoroughly explored elsewhere in this text, it is important as a threshold issue to training to give some thought to two central matters relating to authorized practice:

1. What different regional restrictions prevail (27)?
2. How does training adapt itself to unmet needs, the servicing of which might constitute unauthorized practice (28)?

Beyond some consideration of any restrictions which may be imposed upon the performing of certain activities, training in what involves some early considerations as to what to priorize in terms of actual skills.

On this subject, there is considerable diversity of opinion. Statsky selects as a paramount skill "the ability to read carefully and to write clearly" (29). Native courtworkers in Ontario, in an evaluation of training programs recently conducted, stressed the importance of "fleshing out" the many aspects of their roles, as well as demonstrating how they could interact with community and social agencies (30). Native paralegals functioning in a newly developed community clinic in Thunder Bay emphasized the need to assimilate writing skills and effective office procedure during the first stage of a three week orientation program, and informal and formal advocacy techniques during the latter stage (31). In his writings, Statsky repeatedly cautions against a too early exposure to the law in all its substantive heaviness. He writes that "... if the beginning of the training includes courses in our legal system and an introduction to the law of the area of the trainee's work responsibility, the effect may be two-fold: it may turn the student off, and it may cause him to become dependent on knowing the obstructions in order to perform his job. This dependence may be at the expense of the student's drawing on his own

resources in the performance of his job which, as any good clinical experience does, enables the student to identify his frustrations" (32).

Elsewhere Statsky also writes that "prior life experience may be more important educationally to the paralegal advocate than any amount of formal training" (33). This kind of "pre-requisite" training was no more eloquently stated at the National Conference than by Hilda Towers in her background paper (34). In 1966, she found herself alone, pregnant, and the sole provider for five children. A party to a collapsed marriage, she became a welfare recipient with grade ten education and no marketable skills. Her entry as a paralegal with a community law office in Winnipeg was preceded by an evolution of what "client power" meant in all its implications as seen through the eyes of a single parent welfare recipient. Through activity in organizing the Winnipeg Tenants' Association, Welfare Rights Organization and the Winnipeg Council of Self Help Inc., she judged that "the common ground of agitation in all of these groups was the need for legal services for the poor" (35). As an active "lay advocate" paralegal today, she concludes that "...I feel that I am better able to help the clients that attend our office because of my background and training. These are two very important factors that are not taught in law school" (36).

Training in what is a threshold issue, then, as to how and when to priorize skills. The background one brings into training should be utilized as part of the teaching (37). Practical and legal skills must be added to these in the appropriate measure. Neither Hilda Towers nor any of the other foregoing trainees referred to could object to the formulation by Statsky, that "... a paralegal's education comes from a combination of prior experience, general schooling and the specific training received in legal skills and concepts" (38).

3. Training by Whom?

Who should provide an actual training cannot be separated from the issue of where the training should be provided.

It is apparent that at present much training is "on the job apprenticeship" (39). However, it is equally apparent there are also a number of "outhouse" programs, where training occurs as not part of the day to day routine. Such programs are developing especially in British Columbia, Alberta, and Ontario. They encompass trainings under the auspices of community boards, legal aid commissions, native courtworker associations, universities, and community colleges. The various programs will be described at a further juncture as well as the advantages and disadvantages of "inhouse" training compared with "outhouse" training.

However, as a threshold issue it is important to consider who should be providing the training. Should it be primarily more experienced paralegals instructing less experienced paralegals? If legal personnel are used - lawyers, judges, etc. - what is the most effective way to use them? What considerations should be given to sharing instruction with workers in other disciplines - health caseworkers, children's aid workers, alcohol and drug counsellors, probation workers, unemployment insurance officers, welfare workers, etc.?

It is the writer's contention that public sector paralegalism is not a skill in a vacuum. It should not fall into the mistaken path of legal education which seeks to instruct the law student, via the case method, as though the lawyer operated in a solitary context as a professional. In fact, legal problems are usually parts of multi-problems, as most family law lawyers and all poverty law lawyers know. But the law student, instructed qua law student by law

professors, is seldom oriented in that direction. Paralegal trainings should be wary of a similar shortfall.

This is not to deny that paralegals should be involved in the instruction of other paralegals. In fact, in at least one community clinical program, paralegals have regularly been involved in the instruction of law students (40)! On the premise that experience best imparts information and knowledge, one would be hard pressed to contradict Bill Robinson and confreres that other paralegals be the primary guides in the instructional process, especially during an orientation program. But, so as not to perpetuate the "education in a vacuum syndrome", other related roles should be involved in the training. There is no reason why the lawyer's involvement should be reduced to delivery of dry how-to-do-it lectures or to service on yet another panel. S(he) could be used as a resource person who participates in a critique of a demonstration of trial techniques, preside at a mock trial and apply various legal principles in the judgment which could be analyzed thereafter, or himself/herself assist in the demonstration of the varieties of courtroom etiquette. Similarly, the role of the service provider in other agencies or community groups could be creatively employed in the context of paralegal training. In a recent training conducted in Thunder Bay, in one segment the District welfare administrator added his own dimension of observation to conclusions reached by the group in various role playing situations whereby some trainees acted out different aspects of welfare denial situations. In another segment the District human rights officer sat in on a mock Board of Enquiry Hearing, and after listening to the evidence presented and to the decision rendered by the Board, added his own perspective from that of an experienced human rights officer (41). Yet another program set up the concept of "clinic table hopping" whereby various agency resource people sat at different locations and made themselves available to trainees who "shopped around" seeking particular information about a certain agency (42).

A most interesting model which illustrates the functional mix of different disciplines to be used in training is that of the York Community Services Association in Metropolitan Toronto. It is one of the few multi-service organizations which actively seeks to integrate skills and functions on a daily basis. Each day its social workers, community workers, paralegal, community health nurse, protective service worker, two staff physicians, and part-time psychiatrist engage in discussion as to the most effective way of integrating various relevant functions to the benefit of the client. A conversation with the director indicated that the staff, in continually analyzing their own skills in relation to actual files and roles in this manner with one another, were encountering a daily training (43). In terms of its emphasis upon active interdependence the York Community Services model could be a useful paradigm for other trainings.

4. Should Trainings be Accredited?

The accreditation of a paralegal training is strongly related to the issue of professionalization and that latter issue is discussed in another segment of this text. Accreditation of training yields difficult questions. Who would be in charge of the accreditation? For whose ultimate benefit? Of what value would training accreditation be to the paralegal in the public sector?

Statsky poses the questions in a related way:

> "Do we want a training entity that will help to professionalize the legal paraprofessional? What is the relationship between credentials and job performance?
>
> How concerned must we be with careers and job security of the legal paraprofessional, and how does this concern relate to the quality of the training programs? (44)

With the proliferation of community college "credit" programs for the training of private sector legal assistants, Savino perceives the political overtones lurking behind the facade of according legitimation to certain established trainings. He sees the real issue as the overriding self-interest of law associations - to monopolize as much as possible the delivery of "legal" services. He cites as example the American Bar Association proposals which would only certify paralegals who had been trained in the two or four year college programs designed according to A.B.A. guidelines to produce "legal technicians" for private law practice. He concludes that this would have the effect of cutting off and outlawing the many programs in the public sector that are providing a benefit to the public (45).

If training credentialization leads to professional credentialization with the attendant non-recognition of "non-members" (which in its ultimate form takes the guise of exclusionary legislation) then this kind of issue bears careful, critical analysis in the future.

5. Trainings to Prevent Burn-Out

Much has been written on the subject of the burn-out syndrome among clinic staff, be it health clinics, legal clinics, etc, (46). Can training be regarded as a preventive measure to minimize this?

Although fully recognizing that "burn-out" of clinics staff is due to many factors - poor salaries, overstrained facilities and resources, intense inter-personal involvement, etc. - is not case management one of the factors? Inordinately heavy caseloads imposed upon too few man-hours is surely an important contribution to burn-out. It may be that training could involve a certain strategic approach to the more efficient management of cases and how to deal with problems in general. Gary Bellows discusses such a self-help approach in a recent article (47). He refers to the need to "focus" on certain target

institutional groups - such as the public housing authority for the state of disrepair in rental accommodations, the welfare office for its high rate of refusals, etc. - and to represent "group" cases which experience similar problems in respect to a given administrative practice. All strategy would be focused on attempting to obtain a remedy or effect a practice which would apply to all members of the group (48).

Bellows' technique would seek to concentrate actively on several major administrative areas and attempt to obtain results for many more individuals than otherwise possible in a random, individual case approach. This approach to case management could possibly be incorporated into a training which would seek to develop a strategy of operation so as to avoid ultimate burn-out. Another equally effective approach could be instruction in the self-help methodology, whereby the clinic staff serve in many cases primarily as guides in order to assist clients in the handling of their own problems (49).

6. Trainings for Community Boards

In any analysis of trainings for public sector paralegals it is important to consider the issue of trainings for community boards of directors. A central concern of community-based clinics employing paralegals is the independence of community boards of directors. The argument is often mooted that the boards, as employers, must set all the major policy tone for the clinic. However, in order to provide effective policy direction to staff, board members must possess prerequisite knowledge of what their actual roles and functions are. In order to relate to this knowledge, the board must fully understand the actual role of a clinic in its community, the day to day work function of staff, the underlying philosophy of the services of a clinic as an alternative to other kinds of more traditional services, etc. An effective community board of directors must add to its grass roots

legitimacy by acquiring information in these areas. Thus any training aimed a public sector paralegals must consider as well the needs of the board which will employ them. Obviously those needs are different, being more policy-oriented than day-to-day service oriented, but to properly get at an understanding of a policy role, some of the same ground may have to be covered as is covered in the paralegal trainings.

There have been examples in Canada of trainings for community boards. The Legal Services Commission of British Columbia has facilitated such trainings, particularly through its Native Programs Division, for several years. In Ontario, more recently, several board trainings and workshops have been conducted (50), and more are presently being planned. Trainings to date have included descriptive commentary of the province's legal aid structure, analysis of the role of the public sector paralegal, of the clinic in the spectrum of the delivery of legal services, of other related resource people in the community, and of role playing sequences to illustrate the agenda of a board meeting, which effectively underlines the difficult policy decisions which boards often might make.

7. Special Interest Training

In writing of the kind of education which a native paralegal ought to receive for his/her role, Dennis Patterson writes that "the native paralegal must be imbued with a sensitivity for the failings and foolishness of a transplanted system of justice. They must identify laws based on values not shared by their people and expose the real resons why Anglo-American processes for dispute settling or truth seeking so often abysmally fail the native person" (51).

Patterson's comments regarding a need to be sensitized to the peculiar background of the client group applies of course to every clinic. The real problems of the poor, native or non-native, are most

of the time legal only in a symptomatic sense. The problems which never disappear regardless of how many evictions are successfully avoided, repair orders obtained, welfare appeals won, or arrears orders enforced are the problems of being born into, or being victimized by, poverty in a system where only those of some material substance have any meaningful control over their destinies. Generally speaking, even community development, law reform or preventive legal education, the highly espoused activities of many public sector paralegals seldom enable the poor to become more self-sufficient, more comfortable, more in control in any real sense. A training must come to grips then with the special interest that is poverty in much the same way as a sophisticated corporate law practice must understand intimately the milieu in which its own clientele operate - the good restaurants, the greening golf and country clubs, the board rooms. The culture must be understood and assimilated before one can really hope to achieve any common ground at all with a special interest, be it the interest of the rich or of the poor. What must, perhaps, be conveyed to public sector paralegals who have not had such previous exposure are the following: well-grounded understanding of the causes of poverty, insight as to how law can be used in its most creative capacity to assist groups acquire greater self-sufficiency not just in the sense of solving their own "legal" problems, but in the economic and social sense as well (52), understanding of the inherent limitations of law, sometimes no matter how creatively used, towards the ultimate solution of the problems of being poor, and awareness of the inability of the traditional legal system to deliver in appropriate fashion legal and paralegal services to the poor.

Returning to Patterson's comments, if poverty as a general characteristic invites special considerations in a training, what, then, of poverty in the context of a group remote from others in society, often by factors which are geographical and cultural?

Many native people, both Indians who are status and non-status, and Inuit, are people who are not merely separated by vast geographical distances; there is a vast cultural difference as well - the solutions of problems, not by adversarial means but by consensus; the hidden language of silence which if often at play and often misunderstood by non-natives, including many judges and lawyers; the special communal attitude to property; and the, at times, quasi-religious feeling towards "the land" as a provider in need of conservation, which is such a basic factor in the gulf between natives and non-natives in land claims disputes.

As Patterson writes, native people particularly those in remote areas, are continually affected by process and laws which are products of values not shared by them. The native paralegal can identify more readily with these problems than the non-native paralegal; optimally, s(he) would have enough understanding of these dynamics through both experience and training to go beyond casework delivery under non-native rules, and "if necessary (to) resurrect the traditional values and processes by which social order and peace was maintained before the imposition of the white man's laws, suggesting ways with which those values and processes can be married with what is good of what we have now" (53).

8. The Connection Between Recruitment and Training

The question of adapting training to recruitment and vice versa is an important threshold issue. As Statsky writes, if this kind of issue is not properly addressed at the outset, the trainers may well be apt to blame the recruiters for selecting poor trainees and the recruiters are apt to blame the trainers for failing to do the job of training (54).

Directors of boards of programs employing paralegals must have a certain philosophy towards recruitment. What kinds of qualifications are needed as pre-requisites, and what kind of socio-economic or life experience background is preferred? Sometimes, funding criteria determine this kind of issue as was the case in Manitoba in 1974, when the Legal Aid Services Society of Manitoba in conjunction with New Careers (a Division of the Department of Continuing Education) trained people with a grade 9 education or less who would not otherwise qualify for civil service positions, to be paralegals with the Legal Aid Services Society of Manitoba (55). On other occasions, there is deliberate recruitment by the program planners of individuals of a particular background to service the objectives of the program. This was the situation in 1969 in the Program for Legal Service Assistants of Columbia Law School (56). Low income ghetto residents who presumably had much empathy with "low income community residents" were selected. As a group they were lacking in formal education requirements but were still selected if they possessed at least one basic formal skill - the demonstration of sufficient reading ability to enable them to assimilate reading materials.

The trainee profile included:

1. An income eligibility assessment near the poverty line;
2. Grade mathematics evaluation by basic tests;
3. Demonstrated success in group and individual sessions to select those who seemed the most articulate, mature, and perceptive.

How does one wed training to a particular policy of recruitment, in this instance, recruitment from more disadvantaged backgrounds? There is no single answer, but several different approaches have been attempted.

First, Statsky emphasizes that the most significant recruitment criteria is one geared to the capacities of the training program (57). If the training program has built in the capacity to provide remedial assistance to the trainees in addition to imparting the "content knowledge", then this would take into account recruitment of members of minority or disadvantaged groups, themselves lacking some of the communication skills. In a teaching manual in advocacy, Statsky outlines the elements of such a remedial training (58).

Secondly, especially when teaching individuals who may be rich in life experience but lacking in formal education, the program must draw firmly from elements of the trainee's life experience which can enhance the teaching. If it is lay advocacy which is being trained, the trainees must understand that the starting point is their own experiential framework - their confrontations with the school teacher over their child's not getting enough attention, with the children's aid worker and ultimately the court, in trying to obtain return of children, with grocery clerks who have overcharged, etc. All of the formal skills of letter writing, negotiations, and presentation can be built upon this groundwork - the groundwork of prior advocacy experiences. In this way, the trainees from less formal education background can actively contribute to the training on a quid pro quo basis - life experiences in exchange for life skills. This certainly appears to accord with Hilda Towers' own experience (59).

Finally, a strong component of on-the-job exposure combined with an almost eyeball-to-eyeball trainer-trainee relationship appears most effective. The Columbia Law School Program for Legal Service Assistants was fortunate in being able to combine a six week training course with the delegation of cases to the trainees by neighbourhood legal service attorneys. Whatever had been instructed by way of "how to do it" procedure by law students and law professors was supplemented in a practical way by the clinic lawyers. Thus the blend of procedural

theory with "real life" problems produced the following kind of training experience in welfare law during the practical phase of the program:

a. Represented office clients at administrative hearings;
b. Prepared welfare budgets;
c. Drafted preliminary court paper appealing administrative decisions;
d. Negotiated with welfare centre in order to avoid hearings and court action;
e. Trained other legal paraprofessionals in welfare law (60).

The Canadian experience would also appear to substantiate the need to provide a strong overlay of practical on-the-job learning to trainees who are lacking in formal educational credentials. This is evident from training programs conducted by the Canadian Civil Liberties Education Trust for native lay advocates in Northwestern Ontario (61), by the Haida Counselling and Legal Assistance Society (62), in training native paralegals for Queen Charlotte Islands, and the Maliiganik Tukisiiniakvik clinic in training native paralegals for Baffin Island (63).

PART II - TRAINING PROGRAMS

The foregoing has been an attempt to articulate issues which must be addressed prior to embarking on trainings for public sector paralegals. The following is a selection of some trainings, both recent, past, and ongoing, which have dealt with various of the foregoing issues. The selection is deliberate, programs with which the author is somewhat familiar and which the author judges to have wrestled with some of the above issues. In this respect, what follows is a selective analytic inventory. Although the focus is on Canadian programs, where relevant, reference is made as well to United States trainings.

On-the-Job Training

On-the-job training is in many ways the predominant mode of training. There are strong underlying reasons for this. The Action on Legal Aid brief to the Ontario Professional Organizations Committee states that "taking part in the day-to-day functioning of the clinic with the close guidance of other staff... the CLW (community legal worker - ed.) learns the substance of the work and the nature of the decision making which it requires" (64).

Training as traditional apprenticeship is a common theme among a number of clinics. Statsky describes various reasons prevailing in the United States prior to the early 1970's when most paralegals were trained on-the-job. First, there was the suspicion voiced of obtaining any kind of formal degree. Secondly, very few of any kind of formal programs existed for paralegals. Finally, the informality and flexibility of on-the-job training was in line with the tendency of employers not to know what a paralegal did until (s)he actually did it (65).

This kind of rationale is aimed more at expediency than at any positive philosophical choice by paralegals themselves to commit themselves to on-the-job training. The expediency stems largely from a lack of alternative "more formal" trainings, and from an employer's (usually a lawyer) tendency to train on-the-run, by day to day assignments and monitoring, in addition to providing his employees with precedent materials, forms, etc. as their "reading material". The trust is that of a private sector employer-focused on-the-job training.

This rationale born of expediency can be contrasted with the strong personal choice for on-the-job training as articulated in the Action on Legal Aid brief. This particular rationale is rooted in the conviction that "each community legal clinic establishes its own

requirements when hiring CLWs and assesses what training CLWs must have to be able to work efficiently in the existing framework" (66).

The brief contains a good summary of a general pattern followed by a number of clinics in on-the-job trainings:

> "The new employee must be exposed to the workings of the clinics. Although each clinic will develop their (sic) own variations there does exist a method of passing on skills. First there is always a host of reading material that must be digested by new employees. One important aspect of the job is to always know where to find relevant information. Secondly, before one can give out information one has to comprehend what will be asked and have built up a reservoir of knowledge on the subject. This is attained by working alongside another staff member in dealing with the public. At the onset it is mostly listening to the problems and answers, followed by discussion. A gradual transition takes place where the trainee begins to isolate the problems and formulate possible solutions under the observance of other staff members. After the person has gone through these primary stages their (sic) awareness of the biases of the law is reinforced and they become more committed to the need for change" (67).

Examples of on-the-job trainings are found throughout the country. In Saskatchewan the Provincial Association of Community Legal Service Workers arranges for workshops to be conducted in the clinics themselves. At these workshops, sessions are held in various legal subject areas, and "training" occurs through the mutual sharing of experience (68).

In the New Careers Program with community legal offices in Winnipeg the major thrust of the training was on-the-job under a supervising lawyer, which training often consisted of observing interviews, and then doing follow up work (69).

In Ontario, a prominent example of on-the-job training involves the Injured Workers' Consultants clinic. New staff members participate

in a kind of "apprenticeship" during which they study a specially prepared training manual, the Workmen's Compensation Act, the clinic's precedent file, and other appropriate documents as they gradually phase in to handling some cases under the guidance of an experienced paralegal (70).

Although there are undoubted advantages to the kind of first-hand exposure in a working context which on-the-job training offers, there would appear to be at least two major drawbacks to this method.

Firstly, on-the-job training in a busy clinic is often done voluntarily by other more experienced staff carrying heavy caseloads. Accepting the invaluable worth of experiential training, it may still be queried whether this type of atmosphere by itself can fully satisfy the need for reflection which a less busy atmosphere would facilitate as well as provide sufficient time to deal with all possible questions in the trainee's mind. Included in this kind of catalogue might be a felt need by the trainee to have his/her own case strategy fully analyzed, a developed capacity to test how skills are assimilated and simply a potential need, at least at the beginning, to obtain constant feedback. A busy staff person, no matter how well intentioned, may justifiably fall short of fulfilling a number of important learning objectives which the paralegal would like to meet.

Secondly, on-the-job training seems to be premised upon a more experienced staff person (lawyer or paralegal) "guiding" the trainee. In an established clinic, given the above suggested limitations, this is feasible. However, inexperienced staff of a newly established clinic must obtain training either on another clinic's premises, which, for the degree of intensity required, is impractical, or seek training by means of some kind of orientation program.

Thus on-the-job training, as learning which grows organically with exposure to the work of an established clinic, is the basic training. It goes on all the time, in one form or other, but it is by no means a complete approach to training needs or learning objectives. One must look elsewhere on the training spectrum for other options.

Inter-Clinic Trainings

Training programs provided by or sponsored by a particular clinic or coalition of clinics, are a growing phonomenon. They provide a useful supplement to possible gaps in an on-the-job training system in that they can serve the purpose of more sophisticated advanced training in a given area, following basic exposure to files, office procedure, the relevant statutes, etc. They can fulfil a similar function to the various continuing legal education programs offered to lawyers in North America. A good example of such a program was the workshop sessions on workmen's compensation law which were sponsored early in 1978, conducted by the Injured Workers' Consultants clinic in Toronto. These were specialized sessions of a technical nature dealing with detailed analyses of relevant sections of the Workmen's Compensation Act, documented presentations of advocacy procedures involved in dealing with the WCB administration and appeal levels, judicially reviewable matters, etc. (71).

The workshop sessions were aimed at both and Introductory and Advanced level (72). Paralegals attended from other organizations.

An advanced seminar in tenant advocacy was sponsored in August, 1977 and October, 1977 by the Metro Tenants Legal Services clinic of Toronto. It consisted of a week of intensive sessions on aspects of the law, mostly around landlord and tenant law and rent review law: the workings of administrative tribunals, the use of evidence in court, case analysis and statutory interpretation, the rules of civil procedure in

Ontario, legal research and negotiation techniques (73). Although the seminar was listed as an advanced seminar, inexperienced paralegals of several newer clinics attended.

Inter-clinic training is a healthy occurrence. At present it is in a kind of ad hoc nascent stage, relying for the most part upon a corps of experienced, busy staff working within various clinics.

Provincial Legal Aid Trainings

Provincial legal aid or service commission programs can provide a kind of centralized training. The training role here differs markedly from that provided within individual clinic frameworks. There is not the element of a community base, of training needs peculiar to a certain community determined by a board of directors. Rather, the provincial organization can take an overview. It can provide resources and facilitate trainings in subject areas common to a number of clinics. It can respond to requests for training from new clinics. It can develop a capacity to research curriculum needs, skills, teaching methodology, continuing education needs, etc. In addition, it can facilitate the ingathering and distribution of information and precedent materials among clinics.

Perhaps the most singular advantage to assigning a training role to a central provincial organization such as a legal aid or services commission lies in its ability to develop training units which do nothing but this particular function, and are not enmeshed in casework. They are not substitutes, but rather complementary to the on-the-job training and even inter-clinic training programs.

The Quebec Legal Services Commission has an independent resource support body with it own budget, staff and library. Its functions are various: development of extensive precedent materials and legal

decisions, both reported and unreported, for legal aid office staff, distribution of legal opinions, acting as an in-house legal counsel unit to legal aid staff seeking ad hoc advice on a particular case. The Quebec system is aimed more directly at staff lawyers than at paralegals. Nonetheless, by means of its centralized output of materials and opinions, all of which are continually updated, it provides an effective example of the advantage of some centralized role in training and resource support.

Recently, the clinical funding unit of the Ontario Legal Aid Plan has retained an educational consultant, largely in response to requests from new clinics for orientation training. As of this writing, two different kinds of trainings have transpired. An intensive two-week orientation program was conducted in Thunder Bay for staff of the newly formed Thunder Bay District Native Legal Counselling Services. In attendance as well were local native courtworkers and native community workers and counsellors. The program consisted of introductory talks on particular areas such as the sources of law, interviewing techniques, office procedures, selected subject matter areas of law, etc. These were interspersed with frequent interaction with outside resource people, on-site visits to community and social agencies, role playing episodes and subsequent analyses, group discussion of possible strategy relating to a rent review case referred to the clinic, and discussion of roles and skills by means of videotaped situations. A second one-week phase is planned following six weeks "on-the-job". This second phase will involve the staff acting out a factual situation, from initial interviewing and notetaking through strategy sessions and settlement negotiations, culminating perhaps in a trial before one of the local judges (74). The second kind of training has been in the form of a two-day workshop, dealing with office procedures and employment law areas at the request of several of the smaller clinics and community information centres.

Perhaps the most ambitious province-wide program in terms of potential ramifications is that contained in the proposal of the British Columbia Legal Services Commission to develop a co-ordinated training program for public sector paralegals in the province. Working with a Planning Committee struck from a variety of organizations (75), the Commission is directed at introducing a relevant and effective pedagogical approach which can relate to a legal services framework. In pursuing this objective the project would seek as much input as possible from paralegals as to the basis skills required to carry out their functions. Individual backgrounds, including formal education and degree of life experience, would be important factors in attempting to determine the kinds of skills required by an individual paralegal to assume competency in the field (76).

The proposal suggests that the project's first phase will develop curriculum for basic orientation programs for new staff members in the following subject areas:

1. Understanding of legal process.
2. Understanding of criminal justice and legal system.
3. Understanding of family law.
4. Understanding of procedures before administrative tribunals.
5. Thorough grounding in legal research techniques.
6. Introduction to advocacy techniques, including rules of evidence and court procedures.
7. Introduction to negotiation and informal advocacy techniques.
8. Public speaking skills.
9. Office skills, e.g. keeping files, writing letters, reports (77).

Later phases will include more advanced, up-grading skills training in specialized areas and development of a handbook for trainers, outlining effective educational methodology. It is expected

that because each unit of curriculum of both the basic and the more advanced skills would be analyzed according to the general skills required, many of the units could be shared with other provincial jurisdictions.

In summary, more centralized provincial training for public sector paralegals has a role in the training spectrum. It is complementary to other forms of direct in-house of inter-clinic training. It possesses the advantage of occupying an overview position in that spectrum and can be facilitator for new orientation programs as well as for development of materials and skills for common usage.

Law School Trainings

Canadian law schools have been more directly involved in the clinical education of law students through university clinics such as Parkdale, Victoria, and Saskatoon Legal Assistance Clinic, than in the training of paralegals. However, since paralegals are often important components of such clinics, the feasibility of law schools as training vehicles deserves some consideration. One particular training program will be discussed since it remains one of the most extensively engaged in to date by a law school, and has been carefully analyzed in written form. This is the divorce and general family law program conducted in the summer of 1972 by Dalhousie Legal Aid Service in Halifax (78).

The need for the training was derived from the excessively high volume of family problems engaged in by the Dalhousie clinic. This, combined with a two - three month waiting period for eligible persons to have even uncontested divorces processed by the provincial legal aid staff, indicated a need to train lay personnel in both general family law procedures as well as divorce procedures. An interesting ancillary development to the training program was incorporation of the Matrimonial Counselling Association whose stated objective was "to provide free

counselling to indigent persons experiencing matrimonial breakdown in the Province of Nova Scotia (79). With the approval of the Chief Justice of Nova Scotia and the President of the Nova Scotia Barristers Society, M.C.A. utilized trained paralegals from the Dalhousie summer program to perform the counselling and administer specially designed divorce kits for self-use to financially eligible recipients.

The training itself consisted of a five-week period of workshops in three phases: Introductory Programme, Divorce Law Programme, and Family Law Programme. The introduction was in the form of seminars and materials on the Canadian legal system, with a particular perspective on poverty law and legal aid systems. The second phase, on Divorce, centered around the use of a designed divorce kit, and in scope covered all substantive legal areas of divorce as well as social ramifications and access to preventive counselling. Resource people included the Chief Justice of Nova Scotia and representatives of social service agencies. A mock divorce hearing was conducted via videotape. The final segment was general Family Law aimed at those trainees assuming full-time paralegal positions with Dalhousie Legal Aid Service. As well as ranging the spectrum of substantive family law areas, the trainees were given special emphasis in the training on interviewing skills and writing skills. A unique aspect of this phase of the training was exposure of the day-to-day operations of the clinic, and the ability to follow some of the lawyers and law students around in their respective caseload management.

During the following two summers, other intensive programs were conducted under the auspices of Dalhousie Legal Aid Service - emphasizing skills to be used in housing law (landlord and tenant, neighbourhood improvement, non-profit housing, etc.), the law and the mentally handicapped, and penitentiary paralegal services. The Dalhousie trainings were judged to be highly successful by both trainers and trainees. The trainers were primarily law students working under

the supervision of the clinic director. In this closing remarks on the divorce and family law projects, Cowie recommended for the future an expanded, more remedial program aimed at providing job opportunities for the poor, as well as the establishment of a central training institute, with responsibility for isolating needs, preparing materials, curriculum, and co-ordinating resources in a rational manner (80).

The Dalhousie trainings have not really been emulated in like degree by other law schools. This fact in itself may be the most telling commentary on the role of law schools in paralegal training. For one thing, they are probably expensive operations serving in one sense as summer employment for a number of law students. It is also open to serious question as to whether law schools have a monopoly on wisdom in all aspects of legal education: the team and integrated environment in which the paralegal works calls for skills and an orientation which law students or law faculty don't necessarily possess. Finally, although training in an academic environment lends a certain degree of prestige and acceptability to the role, the absence of any community-determined training needs detracts from the credibility of paralegals trained to serve a certain community of interests.

What the Dalhousie type of experience has demonstrated is that law schools can be extremely useful vehicles for the testing of innovative roles brought about by training (e.g. the administration of divorce kits and counselling services, a paralegal who specializes in the law and the mentally handicapped) since the research facilities exist through law school seminars to develop the concepts (81). Further, the law school training is given much greater relevance when combined with "on-the-job" exposure of the paralegal to the clinical law program.

The law school training experience in the United States is somewhat more extensive although not necessarily more successful. Paralegal training programs have been implemented at the Denver College

of Law, Columbia Law School, Boston College School of Law, and the Antioch School of Law in Washington (82). The most ambitious and most interesting training is the program which has been part of the Antioch School of Law curriculum since 1972. This was the first law school in the United States to integrate a curriculum for training paralegals within the school's law studies program. The school itself is a clinical law school whose central focus of legal education is student involvement in the legal problems of clients under supervision of lawyer/faculty members. Both the paralegal students and law students spend a large amount of "credit" time in the Urban Law Institute of Antioch working on cases selected from minority and poverty communities in the District of Columbia. Service to these communities is a fundamental commitment of the law school and one of the major reasons for its funding.

As teaching supplement to work in the clinic, the paralegal students receive training in client interviewing, law office investigation, legal research, drafting, formal hearing representations, etc. and enroll in a variety of courses (83).

Antioch notwithstanding, the general assessment is that most United States law school involvement in the training of paralegals has been inadequate (84).

Community College Trainings

Public sector paralegal training is for the most part absent from community college curricula. That is, there are almost no course offerings in public sector areas - community development, welfare law, landlord and tenant law, advocacy before administrative tribunals, community legal education etc. (85). This is understandable, given the fact that the offerings in these colleges almost without exception are designed to meet a need in the private sector - law clerks and legal secretaries for law firms, security law officers for police recruitment, etc.

An outstanding exception to this general pattern is that of the two-year community worker certificate program offered by George Brown College in Toronto. The program combines political and social theory with a very heavy concentration of field placements in various community settings. During each of the first two semesters, 240 hours are devoted to actual field work and 30 hours to field work seminar out of a total of 480 hours. During the last two semesters 360 hours of a total of 480 hours in each semester comprise field work and field work seminar. Field placements vary from community legal clinics to unions to tenants' associations, etc.

An interesting example of the program's attempts to integrate theory and experience emanates from one of the current students:

> "I would say that the bulk of most of our classes whether they have been directly connected to community work or to more theoretical areas like political science is based around discusions and talking things out and questioning. There is no real formal kind of teaching in the sense of a person lecturing. It is more or less- 'okay, here is what we think about community work' - what do you as students think? There is a lot of bringing in of personal experiences and saying, 'well hey! I don't quite agree with that, that has not been my experience, that's not where I have been at. But let's sit here and talk about it, let's kind of hash it out! In our field work seminar we take at least two hours to discuss our field work practice. What have we done well? What have we done badly? How does Parkdale feel about what we have done? Very much sharing of experiences and trying to help each other fill in the gaps" (86).

The George Brown experience is an anomoly in the community college attitude to public sector paralegalism. The program posits as criteria for admission "extensive life experience, belief in the involvement of people in decision-making, commitment to social change and previous community involvement. The ability to communicate verbally and in writing is essential" (87). The unique call for personal commitment to change, community experience, and communication skills

make the George Brown program an enviable training vehicle and a difficult act to follow for other colleges considering public sector trainings.

An example of an entire college dedicated to the principles of the single George Brown two-year course is that of the College for Human Services in New York City. Its overall objective is the creation of "new professionals in community agencies." It characterizes itself as: "an action-oriented educational institution, dedicated to experimentation with both curricular content and educational techniques. It is based on the belief that the needs of students from low-income communities are the same as those of all men and women, to achieve a purposeful life. The College structures its educational program to meet this need through preparation for community service" (88).

The program offered by the College is a natural training ground for public sector paralegals. In fact, it served as the major vehicle for the Columbia Law School Legal Service Assistants Program in 1969 (89). During the time that the trainees participated in the curriculum of the College for Human Services, the Columbia Law School provided legal training, while the adjunct legal services clinic provided field experience. It was clear from the outset that the College's major focus on social activism would provide the trainees with an excellent orientation to the kind of advocacy practiced in legal clinics which would be their placement during and after the two years at the College. The combined mix was a field placement in the clinic for approximately 60% of the program time, formal classes in legal principles and various paralegal skills at the law school for approximately 10% of the time, and College courses exploring topics such as the nature of groups, society and its institutions, and the dynamics of effecting change for approximately 30% of the program.

Both the College for Human Services and the George Brown Community Worker program are sparks on a vast landscape. The landscape itself, that of community college legal assistant curricula, is strewn with private sector training (90).

Private Training Institutes

There is very little evidence in Canada of private or independent training institutes for public sector paralegals. What does exist is primarily of two kinds - the ongoing training centre for particular special interest groups, and the ad hoc training which is of a brief duration and for a particular purpose.

Examples of the former are courtworker training institutes and trainings for advocates working with the mentally handicapped. Extensive courtworker training is provided under the auspices of the Native Counselling Services of Alberta, the Native Courtworkers' Association of British Columbia, the Friendship Centres of Saskatchewan, and the Ontario Federation of Indian Friendship Centres. Only the Alberta organization has a full-time co-ordinator. Training for citizen advocates to work with the mentally handicapped on a one on one basis is provided by the National Institute on Mental Retardation. Both kinds of trainings will be discussed in the next segment.

Short, ad hoc trainings are to be found on a sporadic basis. The Canadian Labour Congress and various provincial labour affiliates from time to time have conducted workshops in community education and human rights for members. In addition, several other, mostly human-rights oriented trainings, have transpired in the past several years. Two of the more interesting ones were the week long series of workshops conducted in 1975 at the University of Toronto for members of C.A.S.H.R.A., the Canadian Alliance of Statutory Human Rights Associations, and the two week long trainings of the Human Rights and

Civil Liberties Institute at the University of Toronto in 1975 an 1976. Both trainings were aimed at professionals such as human rights officers, union officials, staff of minority group associations, etc. working in an environment where human rights issues are always high profile. The trainings combined a theoretical framework provided by key resource people (91) supplemented by practical workshops for half of each day to enable the participants, through role playing, group discussion, etc., to engage in practical problem solving techniques. An innovative feature was the concept of "clinic tables" whereby the participants would approach the resource person, at a designated location, in his/her field of special interest and seek appropriate advice (92).

What Canada does lack is a central, independent institute aimed at training general skills for public sector paralegals.

Such central institutes are to be found both in England and in the United States.

In England, training courses for public sector paralegals are provided by the Legal Action Group. It is a registered charitable organization, composed of solicitors, barristers, advisory workers, social workers, and others who are concerned to improve legal services to the community, particularly to those living in deprived areas. Two of its important functions are publication of the monthly LAG Bulletin, a monthly journal of social and welfare law, and the organizing of courses aimed at all workers, lawyers and paralegals, working in the English community law centres. The April, 1978 edition of the LAG Bulletin lists one upcoming workshop on Family Law and two welfare workshops. The more extensive welfare workshop, a five day welfare rights course, covers "how to do it" techniques in a number of substantive areas and includes a videotape of a moch welfare appeal tribunal as well as several other hearings in which the trainees participate.

In the United States, the National Paralegal Institute in Washington has for some years existed as a training and materials resource centre for both private and public sector paralegals. Its technique is an interesting one, in which trainees enroll in specialized areas such as employment law for an intensive training of approximately one week's duration. The focus of the training itself is upon working on a simulated problem, from beginning to end. Along the way, skills of interviewing, advocacy, negotiations, drafting, etc. are conveyed. There is a strong emphasis on trainee participation. In addition to training, the Institute maintains an extensive publications and videotape library which is accessible to interested agencies, clinics, and other similar organizations.

Special Emphasis Trainings

There are a number of training programs in the public sector which lend special emphasis either to the refinement of a particular skill or to a particular interest group. The following is a brief listing of some of these programs:

Advocacy Trainings

"Advocacy" has been defined as the process by means of which an individual attempts to influence the behaviour of others according to pre-determined goals (93). Advocacy as such above all represents careful strategy, timing, understanding of procedural steps, and a sound grasp of communication skills, both written and verbal.

Prior experience is the foundation upon which the more formal elements of advocacy are taught.

Given the above framework, advocacy permeates all paralegal training. It is certainly fundamental to most public sector paralegal

roles. Therefore, to a degree advocacy training is present in virtually all training. However, there are some trainings which focus in upon advocacy itself, upon the actual process of "influencing the behaviour of others", and do not simply treat advocacy as an adjunct feature of other trainings.

In the United States, William Statsky has done extensive work, both teaching and writing, on the process and technique of advocacy (94). Statsky is a firm believer in the learner-focused approach. This rests on the premise that no training starts with a tabula rosa; every trainee has been and continues to be an advocate for himself/herself and others frequently. Being an advocate is a basic component of everyday existence - reasoning with a landlord over an excessively high rent increase, disputing a pricing error at the supermarket, contesting the interpretation of a government tax auditor, etc. - all they require are degrees of refinement. This could involve the application of strategy, understanding of legislation and regulations, bureaucratic policy, more effective communication skills.

The trainee begins with his/her own experiences and is requested to apply appropriate strategy as to how a more effective result could have been obtained. Part of this strategy involves careful understanding of civil servants and bureaucracies. It is Statsky's contention that "administrative agencies respond to pressure points; they are given to inertia and standardization which are often overcome less by citations to legal principles than by pressure exerted on a human, interpersonal label. The effective advocate is the insistent advocate who won't go away; who is not intimidated by bureaucratic policies and sub-policies; who keeps asking 'why not' when the agency refuses to make exceptions to rules... A paralegal who has this level of understanding of the dynamics of agency structure is in a good position to effect results" (95).

Much of the training in Statsky's informal advocacy emphasizes the above contention, and develops a "chain of advocacy" hierarchy of strategies around it. Concrete factual situations are used so that the trainees participate to the greatest possible extent.

An exciting Canadian application of this learner-focused advocacy training technique in the context of a native environment has been that of the Canadian Civil Liberties Education Trust Lay Advocacy Program in Northwestern Ontario (96). A unique feature of this training was the fact that the twenty-nine native trainees from various reserves worked on actual cases emanating from their communities as part of the training.

The chronology of the training was as follows:

A formal training was provided at the outset whereby the trainees received instruction in relevant legislation. Hypothetical problems were used extensively to illustrate the legislation.

During this formal period, much instruction was provided on the investigation of facts, documentation of evidence, writing of letters, and the conduct of discussions with government officials. During this phase as well there were numerous on-site visits to various government offices.

The next stage, and most important, was the handling of actual cases. As part of the training, the advocate conducted surveys on Indian reserves, and looked for and pursued "cases" in the results of the surveys. The cases became the raw material of the process by which techniques were analyzed and relevant legislation was applied. The cases also resulted in the obtaining of benefits for the clients, and as the advocates began to build their reputations in this manner, more and more Indian people became aware of their availability and sought them out (97).

There are other examples of advocacy training programs in Canada, such as the ones sponsored by Metro Tenants Legal Services and Injured Worker's Consultants discussed earlier (98) and an ambitious proposal by Legal Assistance of Windsor to train lay advocates from deprived financial backgrounds. In addition, an instructional manual on advocacy procedures before administrative tribunals (the "formal" advocacy stage) has been written by Andrew Roman under the auspices of the Consumers' Association of Canada (99).

Advocacy is a well cultivated art which starts with the experience of the trainee, refines it, and concludes with a dynamic process which can influence behaviour. The Canadian Civil Liberties experience demonstrates that the potential scope for this skill is as wide-ranging as the imaginative capacities of both trainers and trainees. It also remains a largely untapped skill (100).

Native Courtworker Trainings

Native courtworker trainings are effective illustration of an independent institute being involved in training. Courtworkers are public sector paralegals in a specialized sense. They are native people who are trained to assist other native people in the criminal justice system. The range of assistance is broad - pre-hearing interviews to identify need, referrals to lawyers, applications for legal aid, assisting at bail hearings, obtaining background information for the lawyer speaking to sentence, obtaining interpreters, assistance in the preparation of pre-sentence reports, visits with incarcerated offenders, etc. In fact, the scope which varies from province to province, and sometimes from courtworker to courtworker tends to be conditioned by only two factors - funding imposed criteria, and the degree of openness of a given local judge. Of necessity, training covers a number of skills and is practically oriented.

One of the most extensive trainings for courtworkers prevails in Alberta. It is conducted under the auspices of the Native Counselling Services of Alberta, an independent organization which administers the courtworker program throughout the province. In Alberta, the courtworker's role is perhaps the most extensive in the country, extending as it does to probation work, court appearances, and juvenile and family matters. Under a full-time training coordinator a series of orientation workshops and continuing education workshops are conducted throughout the year. Much emphasis is placed on the use of audio-visual techniques, since the Native Counselling Services has developed an audio-visual resource library. The emphasis is upon trainee participation through small group discussions as well as homework assignments. Training is provided by both lawyers and non-lawyer resource people, and carefully worked out lesson plans complete with specific goals, behavioural objectives, content outline, educational strategy, and evaluation forming a part of each lesson (101).

The Counselling Services lists three overall objectives for the training program:

- to train people as native courtworkers;
- to provide courtworkers with an awareness of the responsibility of individuals in the development of law and its administration;
- to provide awareness of alternative ways of resolving conflicts including traditional native ways (102).

A reading of a recent orientation program outline indicates the following areas covered: nature and sources of law: purpose of law; functions and procedures in the legal system; areas of law encountered by courtworkers; structure of the legal system; limits of the traditional legal system; courtworker skills in using the legal system (using statutes, using agencies, problem identification, advocacy,

reading and using forms, information gathering, negotiating); the role of etiquette in the legal system; detailed understanding of courtworker's role; dynamics of personal and pre-charge counselling.

The Alberta Counselling Services training scheme is instructive in that it covers a comprehensive range of training needs - orientation, continuing education, audio-visual resource library. This is an impressive array of educational functions engaged in by an in-house training unit.

Quite similar in scope are the diverse trainings offered in-house by the British Columbia Native Courtworkers Association. Under the direction of a full-time legal counsel, the Association offers a formal training to new courtworkers following two months on-the-job supervision, in addition to five regional sessions during the year in order for more experienced courtworkers to upgrade training.

The formal orientation training begins with a review of the courtworker's job description and roles performed. The training also outlines the following: division between provincial and federal jurisdiction; bail procedures; sentencing; use of the Criminal Code of Canada; understanding of legislative language; the judicial system; investigation of facts; interviewing techniques; family court procedures; and protection of children (103). The one-week session, which is offered three times yearly, culminates in a multiple choice test.

In terms of potential resource development and sound pedagogical techniques which can be aimed at diverse training needs, the courtworker trainings, particularly those of Alberta and British Columbia, might be "tolling the bell to call the other wits together". Surely, if one is to be at all concerned with a comprehensive range of trainings, it is essential that some thought be given towards design of an appropriate full-time vehicle. Particularly the Alberta Counselling Services model may provide some guidance.

Trainings for work with Mentally Handicapped Citizens

The Canadian Association for the Mentally Retarded, and its research component sister, the National Institute on Mental Retardation, have pioneered in the development of human service professionals whose work consistently involves them in legal matters. Two of the front-line roles in this regard are the citizen advocate, a volunteer capacity, and the protective service worker. The latter is generally a paid staff member of the Mental Retardation Services Divisions of the relevant government ministry (in Ontario, the Ministry of Community And Social Services) who undertakes services and activities on behalf of other individuals who are not fully able to act for themselves (104). Although the citizen advocate may perform some of the same functions as the protective service worker, the concept and ideological commitment underlying the role differs radically. The citizen advocate is not an agency paid staff, but an unpaid competent citizen volunteer, receiving special training and support from an independent citizen advocacy agency, and who, by means of one or several of many advocacy roles, represents - as if they were his/her own - the interests of one or two impaired person (105). Unlike the protective service worker who is most often an in-house advocate carrying a caseload, the citizen advocate is anti-caseload orented, directed towards a one-to-one relationship and provides a comprehensive range of advocacy functions: advice and assistance with daily problems such as signing apartment leases, opening bank accounts, shopping, administration of property and income (guardianship/trustee role), representing and lobbying for interests vis-a-vis agencies and the law, and ensuring the inclusion in appropriate services such as education, employment, training, etc.

Advocates in the mental retardation field are especially needed as "watchdogs" of agencies that serve their client/proteges, preventing such agencies from "passing the buck" and keeping them relevant, change-oriented, and honest.

Training for this unique special interest role requires a training which is sensitized to the ideological commitment which this kind of advocate must possess. That commitment is grounded on a firm understanding of the dynamics, new working principles which have evolved in recent years relating to the mentally handicapped. The most important and basic of these is that of the concept of "normalization", which is defined as the utilization of means which are as culturally normative as possible, in order to elicit and/or maintain behaviours and appearances which are as culturally normative as possible (106). Understanding all ramifications of this principle - basically recognizing the mentally handicapped person as an individual with a right to develop his/her potential to the fullest possible extent, and in as normative a way as possible - is fundamental to the working role of the advocate. It is the starting and continuing point of all training. In all the trainings provided for citizen advocates, protective service workers, and related human service professionals, if provided under the auspices of the Canadian Association for the Mentally Retarded, it is this kind of ideological commitment and understanding which is foremost and takes precedence over the "technical" training - understanding and use of legislation, advocacy, strategy, communication skills, etc. (107).

This emphasis upon underlying socio-culture dictates as basic to training reinforces a threshold issue - that of addressing the environment and ideals of the client community - and not simply the technical instruments needed to do the work. It brings back to mind the earlier stated perceptions of Patterson with regard to underlying cultural conditions of native people, and by extension of all disadvantaged individuals served by public sector paralegals.

Legal Awareness Trainings

It is almost truistic to say that not all paralegal training is, or ought to be, aimed at the service provider, regardless of the range

of services to be provided. It should be a basic tenet that disadvantaged people have a clear understanding of their situation/predicament. This involves analysis with an effective objective - in what way can reality be critically perceived such as to assist in changing distasteful life conditions? Paulo Freire expressed this kind of "education" with clarity when he wrote of "problem-posing education" that (it) "bases itself on creativity and stimulates true reflection and action upon reality, thereby responding to the creation of men as beings who are authentic only when engaged in enquiry and creative transformation (108).

In the context of legal awareness training this implies critically-oriented education workshops for the particular group affected by the legislation or laws - the Mental Health Act - vis-a-vis privacy, arbitrary confinement, appeals, etc.; the Family Benefits Act vis-a-vis philosophy towards social assistance as reflected in the Act, Regulations and administrative policies, etc.

A good working example of a legal awareness training which attempted to be effective was that of the "Tour of the Indian Act" workshops conducted by the Upper Skeena Counselling and Legal Assistance Society (British Columbia) for members of the Gitksan-Carrier Tribal Council of the interior of British Columbia (109). The need for a critical overview of the Indian Act was premised on a combination of two major factors: the years of neglect and both abuse and self-abuse experienced for many years by Indian people, and the concomitant self-help in areas of economics, community, and personal growth which was gathering momentum. A developing "information base" was helping people have a new look at their existences and how to overcome previous obstacles. This "information base" had already made progress in the area of Outreach Manpower programs for Indian people, Native alcohol and Drug Abuse programs, legal information provided by the Upper Skeena

Counselling and Legal Assistance Society, and Land Claims Co-ordination initiated by the High Chiefs of the region and by the Tribal Council. It seemed a logical extension of this "information base" that some detailed, critical awareness be provided to community leaders of the many provisions of the Indian Act so intimately affecting their lives. Instruction was provided by legal resource people, a prepared "kit", audio-visual equipment, and other materials. The entire workshop was video-taped for further use.

According to some of the evaluative comments, the following conclusions were some of those reached by workshop participants:

> "1. A good historical overview of the evolution of the Indian Act which reflected the attitudes of the Europeans during the continuous refinement of the Indian Act to what it is today.
>
> 2. The Indian Act addresses itself specifically to the control and management of Indian lands.
>
> 3. The Indian Act justifies the reserve system to further shrink Indian lands.
>
> 4. The Indian Act was preoccupied and concerned with Indian land for the Europeans' benefit, rather than for native peoples' benefit" (110).

A different example of affective legal awareness workshops was the month-long series of workshops conducted in Burns Lake, British Columbia, by the Burns Lake Community Development Association. It was premised on the documented observation that public legal awareness of the justice system was practically non-existent in the small community of Burns Lake. The objective was to train the major community resource people (welfare aides, welfare administrators, courtworkers, Women's Centre counsellors, probation workers, etc.) who in turn would inform their client constituencies in the town of the justice system resources available and their rights regarding those resources. Information could be recycled through various public legal education programs relating to the particular group. For example, the Women's Centre could put on workshops such as "Women and the Law" or "The Battered Wife".

Participants were trained during the month in areas such as the sources of law; introduction to legal materials and research; the working of different agencies and their respective legislative mandates; the courts and court procedure; native law; etc. Instruction was also provided in the organizing and conducting of workshops, the identification and use of teaching resources, motivation of public participation and project evaluation (111).

Although differing in perspective and design, both of the above legal awareness program indicate the potential benefits derived from these kinds of trainings.

CONCLUSION

It is virtually impossible to summarize the foregoing kaleidoscope of issues and programs. It would appear that public sector paralegal training is a developing art, with emphasis on the word "art". In a sense it is a period of ferment and excitement, which in the past several years has been many different vehicles for trainings. No one vehicle has encapsulated the art for what would be comprehensive training and that perhaps is as much a reflection of the current ferment as it is of the piecemeal manner in which trainings have generally been approached.

To reiterate earlier comments, the most basic and fundamental training, when aimed at service providers, starts from the experiences of the trainees, refines that experience with some formal theory and techniques, reinforces it with practical experience, and gradually crystallizes it with continued upgrading. It is difficult to achieve this total result through any one of the foregoing trainings. A creative on-the-job exposure is an excellent vehicle, but a busy clinical atmosphere would be hard pressed to provide the total range of educational experience. A more centralized training such as may be

provided by a legal aid plan or commission, or private institute, may be effective in facilitating orientation programs for new clinics, some upgrading trainings, and resources development, but it lacks the community base and day to day exposure to cases to be fully effective. Then there is the whole question of long-term planning - are there unmet needs, such as seen in legal awareness trainings, not currently met by any group? Should there be facilities for special interest groups from across the country to get together and share their skills information? Should there be a permanent, central library of all materials, course descriptions, tapes, manuals, and other effects developed through various trainings in order for new groups to be able to tap such resources? Should there be some catalytic facility which can attempt to assist various provinces in developing more comprehensive approaches to training, whether by co-ordination of efforts or introduction of newly researched pedagogical methods?

It is the author's recommendation that there be a central facility, somewhat along the lines of either the National Paralegal Institute in the United States or the B.C. proposal earlier discussed. Its role would be more that of support facilitator than implementor of programs. To recapture a phrase used earlier, it could serve as the bell which "calls the other wits together". It would be well publicized and readily accessible to any program contemplating, or in the process of, public sector paralegal training. Specifically, its functions could include:

1. Maintenance of a library of training materials, tapes, texts, and even of resource people for the use of groups or individuals.
2. Research into new training needs as may be articulated by various groups.

3. Facilitation of meetings or conferences to enable public sector paralegals to exchange and share experiences and skills.
4. Conducting, when requested, of trainings in areas of common ground - advocacy skills, federal legislation, etc.
5. Resource supports to provide, on request, expertise in areas such as trainings co-ordination to achieve a greater degree of comprehensiveness, and evaluation approaches to training programs.

Training is in general a sadly neglected art. So much attention is often focused upon client needs and roles and functions that one tends to forget that without competent and creative trainings at appropriate times the entire foundation, based upon the combination of ideological commitment and the application of learned skills, can easily crumble into that of well-intentioned but poorly delivered and administered services.

Towards the achievement of high quality, comprehensive training there can be no concluding statement. Only a firm hope that the brief dialogue begun here may continue on to some fruition.

FOOTNOTES

(1) See Ian Cowie, The Legal Paraprofessional in Canada: A Pilot Training Scheme, Dalhousie Legal Aid Service, Halifax, 1973, and the unpublished LLM thesis of Vic Savino entitled Paralegalism in Canada: A Response to Unmet Needs in the Delivery of Legal Services, 1975.

(2) Most of Cowie's survey of paralegal training programs in this study extends to the U.S. experience. The brief references to Canadian experiments, other than his own, point to training for the private sector, which was carried on at some community colleges "on-the-job" in law firms, and at private institutes such as the Institute of Law Clerks of Ontario.

(3) See the following legislative enactments on this subject:

1. The Legal Aid Services Society of Manitoba Act, Statutes of Manitoba, 1971, and Regulations particularly the following sections: Section 21(2) which states that "notwithstanding sub-section 1 (relating to privileged information - ed.), and notwithstanding the provisions of The Law Society Act, the Society (community legal office - ed.), in carrying out its objects, is not deemed to be practicing law within the meaning of that Act.", and Section 51 of Regulation 106/72, which states that, "each neighbourhood legal aid centre may, in accordance with the Act, employ such full or part-time staff as the Board deems advisable, including solicitors, graduates at law, social workers, and clerical staff; and the Board shall define the duties of such personnel and fix their remuneration".

2. The Community Legal Services (Saskatchewan) Act, particularly Section 29 which states that "certain functions described as activities of a clinic in a legislation are deemed not to contravene the Legal Profession Act, "and Section 30 which states that "the Commission or a Board may employ any person who is not a solicitor to provide services under this Act provided the person is supervised by a solicitor; that such employee shall not appear as counsel in any Superior, District, or Surrogate Court."

3. The Legal Services Commission Act of British Columbia, 1975, particularly Section 7 which describes the function of the Commission, as: "...(b) to consult with local and regional governments, educational institutions, community, neighbourhood, professional, and other groups having an interest in any aspect of the provision of legal services;", and, "(e) to develop and co-operate in experimental programs and projects respecting any aspect of the provision of legal services, and for these purposes, to employ staff necessary to initiate, develop and operate the programs and projects;..."

(4) See the paper entitled Report on a Project in the Youth Section of the Community Legal Centre of Montreal, delivered in Vancouver at the National Workshop on Paralegalism, March 29 to 31, 1978. (Appendix C to the present publication).

(5) In subsequent summers, Dalhousie Legal Aid Service has built upon the Cowie training model, and added paralegal specialties in housing law, consumer law, and in the area of the law and the mentally handicapped.

(6) For the history of this clinic, see the Submission from Maliiganik Tukisiiniakvik to the Northwest Territories Legal Aid Review Committee, and for good discussion of ongoing issues, see the recent brief submitted by Dennis Patterson on Native Paralegals in Remote Areas to the National Workshop on Paralegalism. (Appendix E).

(7) This term, used to describe a certain kind of public sector paralegal, has been in use in Ontario among clinics for some time prior to Ontario Legal Aid funding.

(8) Funding is provided through the Clinical Funding Committee, consisting of two nominees of the Law Society of Upper Canada, and one nominee of the Ministry of the Attorney General.

(9) For an interesting account of the creative role of a paralegal in one such organization, see the paper by Dave Scanlon entitled, Associated Tenants' Action Committee Inc. Report, prepared for the National Workshop on Paralegalism (unpublished).

(10) Paralegals used in this context are called either protective service workers or citizen advocates. In addition, recent Alberta legislation, The Dependant Adults Act, has created a new kind of paralegal role, called a personal guardian.

(11) An example of a union inspired paralegal service is the Unemployment Help Centre in Toronto. Unions have also been active in providing counselling and advocacy assistance to injured workers.

(12) The most ambitious native courtworker program is conducted by the Native Counselling Services of Alberta. Other extensive courtworker programs are located in the Northwest Territories, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Prince Edward Island.

(13) Fred Zemans, A Research Prospective on the Evolution of Legal Services in Canada, Canadian Legal Aid Bulletin, Vol. 2, No. 2.

(14) See the paper entitled Accreditation, Supervision and Professional Liability, by Bill Robinson, presented to the National Workshop on Paralegalism. (Unpublished - but see "Paralegal Worker" Bill Robinson et al. p. 213ss.)

(15) Community Legal Workers, Zoya Stevenson. (Unpublished - but see the Paralegal Worker - note 14, supra).

(16) This observation is also noted by W. Statsky at the beginning of his text, Introduction to Paralegalism, West Publishing Co. 1974, p. 1-2.

(17) Excerpt from a paper by Roger Walker on the Role of Law Clerks, the National Workshop. (See Appendix A).

(18) A brief by action on Legal Aid presented to the Professional Organizations Committee.

(19) Several of the briefs prepared for the National Workshop underline the "team approach". See particularly the following briefs:

The Legal Paraprofessional at Penitentiary Legal Services by Phil MacNeil (Appendix D).

Community Legal Services Worker in Saskatchewan by Olive Pirot, Betty Donaver and Shirley Faris (Unpublished)

Report on a Project in the Youth Section of the Community Legal Centre of Montreal. (See Appendix C).

(20) Roger Waler, op. cit. note 17.

(21) Action on Legal Aid, op. cit.

(22) Presented to the National Workshop. (Unpublished but see note 14).

(23) The Action on Legal Aid presentation refers to the advanced workshop in tenant advocacy sponsored by Metro Tenants Legal Services, where both lawyers and paralegals were prominent from learning and teaching points of view. Bill Robinson's own organization, Injured Workers' Consultants, recently conducted a series of advanced training in workmen's compensation law where, again, the inter-relationship between lawyers and paralegals was prominent.

(24) Action on Legal Aid Brief, op. cit., p. 22.

(25) For instance, Injured Workers' Consultants, a Toronto-based clinic specializing in workmen's compensation cases, retains a lawyer in private practice to act in an advisory capacity. Although not a member of its staff, he regularly reviews difficult files with the paralegals, renders legal opinions, and may eventually be retained

to review a decision of the Workmen's Compensation Appeal Board in the Divisional Court. It would seem constructive if this kind of complementary role could be built into any orientation program for paralegals.

(26) Both the papers, Community Legal Services Worker in Saskatchewan, and A Report on Paralegal Activities, by John Simmons, prepared for the National Workshop, provide excellent accounts of the wide-ranging activities of public sector paralegalism. These range from intensive casework in poverty law areas to innovative methods of community education and law reform activity. The two papers combined convey the excitement and variety of public sector paralegalism. (Unpublished).

(27) Both Saskatchewan and Manitoba legislation specifically allow paralegals to engage in activities delegated by, and under the supervision of a lawyer. In Saskatchewan, the paralegals also appear in Magistrates Courts, which functions there include show cause hearings, bail applications, and speaking to sentence.

Ontario has no such legislation which sanctions general activities. It does have legislation sanctioning specific activities, e.g. the Landlord and Tenant Act, providing for lay representation on applications in County Court Chambers under the Act, and the Statutory Powers Procedure Act, which allows representation before "administrative tribunals by counsel or agent".

(28) A good example of this is the recent Family Law Reform Act which does not specifically allow for representation by agents. Yet, support applications, arrears proceedings, and other Family Court matters often constitute a large portion of a clinic's caseload. It is difficult not to give instruction in this area with a view to the paralegal providing the relevant services. Certainly, it would be expensive and inefficient for only lawyers to perform these tasks under a legal aid certificate. Perhaps the best course is to impart instruction in these areas and at the same time to seek to persuade courts and the Attorney General that the activities of a paralegal should be legitimately recognized for the given area.

(29) W. Statsky, Introduction to Paralegalism, p. 168, op. cit. note 16.

(30) Evaluation reported to the author with reference to trainings conducted in March, 1977 and January, 1978.

(31) Expressed to the author by the trainees.

(32) W. Statsky, The Education of Legal Paraprofessionals: Myths, Realities, and Opportunities, 24 Vanderbilt Law Review 1083 (1971) p. 1100.

(33) Introduction to Paralegalism, op. cit., p. 168.

(34) Hilda Towers, Description of Roles and Functions of the Paralegal at Main Street Community Legal Services, prepared for the National Workshop. (Unpublished, but see note 14, supra).

(35) Ibid., p. 2.

(36) Ibid., p. 8.

(37) As will be described, Statsky implements this principle highly effectively in his advocacy training workshops. In addition, the George Brown Community College in Toronto has a very innovative diploma course for community workers which follows this principle.

(38) Introduction to Paralegalism, op. cit., p. 168. See note 16, supra.

(39) This point was clearly underlined in papers prepared for the National Workshop by Bill Robinson, Accreditation, Supervision, and Professional Liability; Hilda Towers, Description of Roles and Functions of the Paralegal at Main Street Community Legal Services; Action on Legal Aid, Community Legal Workers in the Delivery of Legal Services; etc. See note 14, supra.

(40) During the time that the author was clinical director of the Dalhousie Legal Aid Service, the law students enrolled in the clinic would regularly seek legal and practical advice on matters involving family problems, consumer problems, and housing problems from the paralegal staff of the clinic.

(41) Training conducted as orientation for the Thunder Bay District Native Legal Services Association, May 29 to June 9, 1978.

(42) Institute on Human Rights and Civil Liberties, University of Toronto, June, 1977.

(43) Author's conversation with Joan Milling, Executive Director of the Association.

(44) W. Statsky, The Education of Legal Paraprofessionals: Myths, Realities, and Opportunities, op. cit., p. 1124 - see note 32 supra.

(45) V. Savino in a paper entitled, Professionalization of the Legal Paraprofessionals, Quo Vadis? prepared for the National Workshop. (Unpublished but see Mr. Victor Savino paper p.57ss.)

(46) An excellent, insightful article on this is the following: The Staff Burn-Out Syndrome in Alternative Institutions, Herbert J. Freudenberger, Psychotherapy: Theory, Research and Practice, Vol. 12, No. 1, Spring, 1975.

(47) Gary Bellows, Turning Solutions into Problems: The Legal Aid Experience, NLADA Briefcase, vol. 34, No. 4, August, 1977.

(48) Some clinics in Canada, such as Metro Tenants Legal Services in Toronto, adopt this technique.

(49) A number of clinics actively engage in this methodology, notably Injured Workers' Consultants and Metro Tenants Legal Services in Toronto. In England, clinics such as the Newham Rights Centre and the Brent Community Law Centre have pioneered in this area.

(50) One was conducted in May, 1978, for the Halton Hills Community Legal Clinic Board of Directors, and another in June, 1978 for the Thunder Bay District Native Legal Counselling Services Association Board of Directors.

(51) D. Patterson, Native Paralegals in Remote Areas, p. 317- prepared for the National Workshop. Appendix E.

(52) Two striking examples exist in Canada to illustrate how public sector paralegals can play a role in this objective. In 1975, a paralegal/community animator at the Dalhousie Legal Aid Service was an instrumental catalyst in organizing a three-day workshop on community development corporations at Wolfville, Nova Scotia. In attendance at the conference were representatives of rural, undeveloped pockets of the Maritimes. Along with resource people from various backgrounds, they explored the various legal structures for CDC's such as co-ops, non-profit organizations, etc. but also the many economic and social spin-offs of these kinds of corporations for a rural community. Legal, economic, co-op, and life experience skills all coalesced in a discussion as to how individuals could develop greater economic and social self-sufficiency.
In 1974, the Indian people of Burns Lake, British Columbia, through intensive community development efforts, successfully negotiated with the then NDP government a package which included: equity in a major sawmill complex, capital for investment in projects ancillary to the sawmill project, education and training programs, preferential hiring of local residents, and funds to develop economic and social programs.

(53) D. Patterson, op. cit., p. 2. Appendix E.

(54) W. Statsky, The Education of Legal Paraprofessionals: Myths, Realities, and Opportunities, op. cit., p. 1090. (See note 32, supra).

(55) This is described in Hilda Towers' paper, op. cit. (Unpublished but see note 14, supra).

(56) Described in W. Statsky, The Education of Legal Paraprofessionals, et al. op. cit., p. 1108, 09. (See note 32, supra).

(57) Ibid., p. 1089.

(58) W. Statsky, Teaching Advocacy: Learner-Focused Training for Paralegals, (2nd ed.), National Paralegal Institute, see pp. 128-131.

(59) Op. cit., p. 8.

(60) W. Statsky, The Education of Legal Paraprofessionals, op. cit., p. 1609. (See note 32, supra).

(61) Described in a Report to the Donner Foundation, dated December, 1975.

(62) Described to the author in conversations with Keith Sero, Director of the Native Legal Programs Division of the B.C. Legal Services Commission, and Percy Gladstone, Chairman of the Board of Directors of the Haida Counselling and Legal Assistance Society.

(63) Described through conversation with Dennis Patterson, clinic director, and various active paralegals at the clinic.

(64) Op. cit., p. 22.

(65) Introduction to Paralegalism, op. cit., p. 170. See note 14, supra.

(66) Action on Legal Aid Brief, op. cit. p. 21.

(67) Ibid., pp. 22, 23.

(68) Community Legal Services Worker in Saskatchewan, op. cit., p. 2. (Unpublished).

(69) Description of Roles and Functions of the Paralegal at Main Street Community Legal Services, op. cit., pp. 3, 4. (Unpublished).

(70) Community Legal Worker - Job Description, op. cit., p. 3. (See note 14, supra).

(71) This description of the sessions is culled from a reading of materials prepared for the workshops.

(72) Community Legal Worker - Job Description, op. cit., p. 3. (Unpublished).

(73) From the materials prepared for the workshops.

(74) The foregoing description is taken from the author's own experience in working with the educational consultant on this training.

(75) The B.C. Legal Aid Society, the B.C. Native Courtworkers Association, the Elizabeth Fry Society, the Vancouver Community Legal Assistance Society, the Kamloops Civil Liberties Society, the Westminster Community Legal Services, and the Victoria Law Centre.

(76) Competency-based training was discussed by Statsky in his talk at the National Workshop as an important element in the training of public sector paralegals. The B.C. proposal seeks to integrate his approach into its research.

(77) All of the foregoing description is taken from the B.C. Legal Service Commission's Project Description to the Department of Justice and as a result of discussions with Ms. Penny Bain, educational co-ordinator with the Commission.

(78) This program is very well documented and assessed in Cowie's text, The Legal Paraprofessional in Canada. Descriptive references are taken from this. (See note 1, supra).

(79) Excerpted from its Memorandum of Association.

(80) It is interesting that, almost six years later, the B.C. Legal Services Commission proposal, supra, is advocating just such an institute on a provincial level.

(81) Many of the special interest trainings, (e.g. mental handicap law, penitentiary legal services) culminated from a Law and Social Problems seminar offered by the law school.

(82) These trainings are described in Statsky's text, Introduction to Paralegalism, op. cit., pp. 171-176. (See note 16, supra).

(83) Ibid., p. 175.

(84) Ibid., p. 176.

(85) Attached as Appendix F is a sample descriptive listing of various legal assistant/law clerk programs offered by most community colleges in Ontario.

(86) From a videotaped conversation with Ed Fontaine, community worker student at George Brown College.

(87) Excerpted from the George Brown College 1978-79 brochure of Post-Secondary Programs, p. 32.

(88) This excerpt and description of the program are contained in W. Statsky's, Paraprofessionals: Expanding the Legal Service Delivery Team, 22 Legal Journal of Education (1972), p. 397 and pp. 409 - 417.

(89) Supra, at footnote 56.

(90) Statsky himself writes that, "the only two-year college that has trained students... in the public area of poverty law has been the College for Human Services in New York City". See Introduction to Paralegalism, op. cit., at p. 179.

(91) Examples of keynote speakers were Alan Borovoy, General Counsel of the Canadian Civil Liberties Association; John Sopinka, frequent Counsel on Boards of Enquiry for the Ontario Human Rights Commission; Professor Harry Arthurs, expert in the field of labour relations and former President of the Canadian Civil Liberties Association; Her Honour Judge Rosalie Abella, active in many women's organizations and a family law expert.

(92) The foregoing description is taken from a conversation with Dr. Daniel G. Hill, co-ordinator of both institutes and from the author's experience as a resource person to both.

(93) See Introduction to Paralegalism, expecially chapters 15 and 16. (See note 16, supra).

(94) See especially supra, footnote 93; Statsky W., Teaching Advocacy: Learner-Focused Training for Paralegals, National Paralegal Institute (2nd Edition, 1974); Statsky, W. Paralegal Advocacy Before Administrative Tribunals, 4 University of Toledo Law Review, 439 (1973); Statsky W., and Lang, P., The Legal Paraprofessional as Advocate and Assistant: Roles, Training Concepts, & Materials, reprinted in Ader M., Editor, A Compilation of Materials for the Legal Assistant and Lay Advocate (National Clearinghouse for Legal Services, Northwestern University School of Law, 1971).

(95) Introduction to Paralegalism, op. cit., p. 595. (See note 16, supra).

(96) The following description is adapted from the Report on that program, submitted by the Trust to the Donner Canadian Foundation in December, 1975.

(97) The Report states that the advocates were involved in a wide variety of cases on unemployment insurance, family benefits, employment standards, consumer law, legal aid, workmen's compensation, human rights, criminal injuries compensation, etc. Financial results during the eighteen month training totalled more than $13,000. In other cases, the results were improvements in working conditions or living standards. And in still others, the result was simply a satisfactory explanation of what would have previously gone unexplained.
Two examples are excerpted from the many provided to illustrate some "cases": In January, 1975, an advocate at the Whitedog Reserve filed his own claim for Unemployment Insurance. The claim was successful and resulted in a payment of $1,258. Subsequently, the same advocate filed a claim on behalf of another man which resulted in his receiving $1,095.

A male Indian was charged $200 by a garage for repair work. Further problems resulted in his taking his car to another garage which informed him the work for which he had paid had not been done. He contacted one of the lay advocates from his reserve who investigated, took statements from the other mechanic, and told the first garage by letter that he would file a complaint under the Consumers' Protection Act if there was a failure to rectify. The advocate also provided the complainant with detailed written instructions as to procedures to follow to file a complaint on his own behalf. The offending garage complied by offering to do work on the client's car without charge.

(98) Supra, see pages 103-104.

(99) Guidebook on how to prepare cases for Administrative Tribunals, Andrew J. Roman, pub. by Consumers' Association of Canada, 1977.

(100) Although a number of Civil Liberties graduates demonstrated high degrees of competence in tested field experience and formal written examinations, none of the graduates have been placed in full-time positions. The as yet unimplemented Osler Task Force Part II, recommending resident paralegals on many Indian Reserves, was tabled publicly in 1975 at about the same time that the Civil Liberties training ended.

(101) To illustrate this, the following is a lesson plan from a lesson entitled, "Source of Law";

Goals
1. To provide participants with information about sources of law;
2. To outline the divisions of law-making authority in Canada;
3. To give students an understanding of the relationship between structure and sources of law.

Goal 1
1. To provide participants with information about sources of law.

Behavioural Objective
N/A

Content
1. British - common law
   - statutes of B.N.A. Act
2. Canadian - cases developing common law
   - statutes, regulations
3. Policy - e.g. social assistance

Strategy
1. Lecture

Evaluation
N/A

Goal 2
1. To outline divisions of law-making authority in Canada.

Behavioural Objective
1. Given a list of problems participants will correctly identify the level of government with law-making authority for each problem.

Content
1. British North America Act. 5, 91, 93
2. Municipal Government Act

Strategy
1. Lecture
2. Exercise
3. Handouts

Evaluation
1. Successful completion of behavioural objectives

Goal 3
1. To give students an understanding of the relationship of the structure and sources of law.

Behavioural Objective
N/A

Content
1. Grid of criminal, civil, administrative and common law, statute law.

Strategy
1. Lecture.

Evaluation: N/A

Supplies: 1. Handouts

(102) This statement of goals is taken from a recent training outline.

(103) As enunciated by the legal counsel, Harry Crosby, at a meeting of the B.C. Legal Services Commission Advisory Committee Meeting, held on April 13, 1978.

(104) In Ontario, at the present time these services are often contracted out by the Ministry to local associations for the mentally retarded.

(105) This definition is provided by Professor Wolf Wolfensberger in his text, A Multi-Component Advocacy/Protection Scheme, published in 1977 by the Canadian Association for the Mentally Retarded.

(106) This definition, a well-known one, and developed by Professor Wolfensberger, was articulated by him during his keynote address at the National Conference of the Canadian Association for the Mentally Retarded in Vancouver, 1970.

(107) The normalization goal and concept seems deceptively simple. Its implementation is actually quite complex and requires a high degree of competency on the part of the advocate in seeing it through to its implementation - especially in the general area of ensuring that each handicapped person, to the extent possible for his/her capacity, is integrated into society at the "right" time for him/her, and has access to a comprehensive range of services.

Seeing this through involves careful application of the normalization principle at several junctures - how is the fullest potential appropriately developed? When is the "right" time for each phase of development? When is the handicapped person being truly integrated and not just "dumped" into a program without ensuring appropriate support mechanisms? etc.

A strong indication of the pervasiveness of the particular ideology throughout the training program is in the following quote from a conversation with Professor Wolfensberger, printed in a monograph entitled, Education and Training of the Mentally Retarded, undated:

> "...through all our training we build in ideology. I see ideology and value orientation as the underpinning of everything. I think it is ideology that causes bad services, and ideology that can cause good services, and I think that ideology takes precedence over any technology or any methodology".

(108) Paulo Freire, Pedagogy of the Oppressed, the Seabury Press, New York, Ninth Printing, 1973, p. 71.

(109) The workshop was conducted in 1977. The description from it is taken from a report on the workshop prepared by the Upper Skeena Counselling and Legal Assistance Society.

(110) Ibid. p. 6.

(111) The foregoing description is from the report put out by the Burns Lake Community Development Association.

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AN OVERVIEW OF THE FUNCTION AND ROLE OF PARALEGALS IN THE DELIVERY OF LEGAL SERVICES

by Frederick H. ZEMANS*

Introduction

At the outset of an analysis of the role of nonlawyers in the delivery of legal services it is necessary to determine whether we are discussing "paraprofessionals", "sub-professionals", or "lay assistants", or whether we are witnessing the evolution of a new and independent breed of providers of legal services. It is the thesis of this paper that in both the private and public sector of legal services in Canada we are observing the development of adjunct professionals who are designated as para-professionals by the legal profession but who are, in fact, supplementing, and in some instances, supplanting the traditional roles of the legal profession.

The need for the new professionals as deliverers of legal services can be justified on the basis of two assumptions: one is that the demand for legal services has and will continue to exceed substantially the capacity and interest of Canadian lawyers. Despite the unauthorized conduct provisions of the Law Society Acts of all Canadian jurisdictions, we have noted, during the last decade, considerable development in the roles of both law clerks and community legal workers who have responded to the demand for services not met by the legal profession. The second major assumption is that the entrance and training requirements of the legal profession are too lengthy, and in many instances unnecessarily restrictive, for the tasks involved. It is my contention that ordinary persons, with a modicum of training can and should be allowed to perform many aspects of the spectrum of services.

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Both these assumptions can be debated; undoubtedly each raises problems. A discussion of the function and role of paralegals starts from a recognition that, to date, lawyers and law firms have occupied the legal services field. They are its theorists, designers, journeymen and labourers. Highly trained, with expectations of becoming specialists, lawyers function also as generalists often fulfilling tasks which could be more aptly handled by paralegals. Many would argue that the legal profession's monopoly has been unnecessarily protected by the onerous entrance requirements and the unauthorized practices legislation which together confer on the provincial law societies the right to regulate virtually every aspect of legal practice.

The statutory monopoly conferred by each provincial legislature on the provincial law societies allows them to control the admission, conduct and discipline of their members. Every lawyer must belong to his provincial law society which is governed primarily by lawyers pursuant to the concepts of professional self-government (1). One of the primary concerns of the law societies is setting criteria for admission to the practice of law. Admission standards have varied during the last century, but in Ontario they have not been substantially changed since 1957 (2). The requirement of training in law through a form of apprenticeship or clerkship followed the British immigrants to Canada; a 1785 ordinance prohibited anyone from practicing as a "barrister, advocate, solicitor, attorney or proctor-at-law" in Upper Canada who had not served a regular and continued clerkship for five years, and had not been examined by the Bar in the presence of the Chief Justice or two or more judges and been approved and certified by the judges to be of fit capacity and character. The Act for the Better Regulating of the Practice of Law (1797) authorized the formation of the Law Society of Upper Canada, and was interpreted to mean that all barristers, attorneys, and solicitors were required to join the Law

Society as a prerequisite of practice. The requirements of a lengthy education and training period, practical experience and good character have remained constants in the admission requirements of all jurisdictions (3).

Despite the various reviews of legal education (4), the period of tutelage prior to the call to the Bar in Canada makes our period of admission after high school one of the lengthiest in the world; considerably longer than that in the United Kingdom, Australia, New Zealand and most American jurisdictions. Notwithstanding the lengthy pre-law, LL.B., articling and Bar Admission courses, Canadian law school registration and graduates have increased at a rapid pace. From 1960/61 to 1975-/76, the enrolment in Ontario law schools increased by over 400% (5), from 904 to 3758, compared to a 25% increase in the general population. The membership of the Law Society in Ontario grew from 5300 to 11500 in the 15 years since 1952 (6), with the lawyer-population ratio dropping to approximately 1:707. These figures can be compared to similar statistics for the medical profession in Ontario where there are 16531 doctors registered with the College of Physicians and Surgeons, with one doctor for every 538 Ontario residents (7).

There is a growing concern in the legal profession that the existing market for legal services cannot absorb the numbers of young lawyers graduating each year. Despite this concern two new law schools have recently opened in Calgary and Victoria and Ontario continues to graduate approximately 900 lawyers from the Bar Admission Course each year (8).

In spite of this increase in the number of lawyers in Canada, the general availability of legal services has only marginally improved. The majority of lawyers continue to serve a small proportion of the population. Legal aid for criminal and matrimonial matters has provided

employment and an initial source of income primarily for younger lawyers, but lawyers and the general public recognize that for the most part the legal profession is not available for, or skilled at handling the multitude of problems confronting the majority of the population.

It is this writer's contention that there is a need for a variety of individuals with less training and lower economic expectations to handle real estate conveyancing; motor vehicle accident investigation; landlord and tenant disputes and labour-management disputes. In both the private practice of law as well as in the publicly-funded sector of legal services, nonlawyers have become in recent years an increasingly significant factor. The size of the legal services industry has grown; its role expanding with secretaries, law clerks, courtworkers, adjusters and community legal workers providing assistance directly or indirectly to various clients and groups. Although much of the expansion has been in ancillary support staff for the burgeoning legal profession, many of the law workers (to ascribe a neutral term) provide services to clients who have previously been denied access to the legal system. Examples of such "law workers" can be found within the native courtworker programs. The programs were funded by the federal and provincial governments during the last decade and were established because of the limited number of native lawyers and the high number of native Canadians being processed by the federal criminal justice and the provincial child welfare systems. These programs are aimed at bridging the gap between the defence lawyer and the alienated native client. Similarly, developing native advocacy programs are broadening the support and liaison roles of the native courtworker to include representation of native persons by well-trained and closely supervised native law workers.

If the need for greater availability of legal services at lower cost is generally recognized (9), the stumbling block lies in unduly restrictive, lengthy and class-oriented admission requirements of law societies. Most "law jobs" are restricted to qualified lawyers who have been admitted to a provincial bar. Unauthorized practice provisions are inherent in all professional monopolies serving not only to protect the profession's sacred preserve but also to effectively inflate the cost of legal services to the public (10).

In Abuse of Occupational Licensing, Walter Gellhorn, University Professor Emeritus, at Columbia University states:

> ... occupational licensing has typically brought higher status for the producer of services at the price of higher costs to the consumer; it has reduced competition; it has narrowed opportunity for aspiring youth by increasing the costs of entry into a desired occupational career; it has artificially segmented skills so that needed services, like health care, are increasingly difficult to supply economically; it has fostered the cynical view that unethical practices will prevail unless those entrenched in a profession are assured of high incomes; and it has caused a proliferation of official administrative bodies, most of them staffed by persons drawn from and devoted to furthering the interests of the licensed occupations themselves. (11)

Provincial unauthorized practice legislation has generally been broadly drafted and one writer has commented that a strict and literal reading of the legislation would suggest that a lawyer "should do everything that relates to his practice by himself, including his typing" (12). The courts have held that "every service which

imperatively requires the exercise of the skill and learning of a solicitor who had been admitted, enrolled and duly qualified" (13) must be performed by a fully qualified lawyer.

The drafting of wills (14), the incorporation of companies by qualified accountants (15), conveyancing (16), and the processing of uncontested divorces (17) have all been held subject to the prohibition. Moreover the courts seem determined to protect persons from the possible consequences of their own voluntary decisions to employ nonlawyers and have held that a person charged with unauthorized practices is precluded from the defence that he fully advised his 'client' of his status or the lack thereof (18).

Professional licensing legislation originated to prevent opportunists and charletans from acting as lawyers and offering poor quality legal services. Today one must question the legislation and ask to what extent the unauthorized practice provisions are relevant in view of developing paralegal movement in Canada. Dalhousie Legal Aid Service suggests that:

> When the unauthorized practice provisions were enacted, it is unlikely that the legislators foresaw the utilization of legal paraprofessionals in private practice or in a legal aid context... Ultimately legislation will have to be drafted appropriate to their special position. (19)

The 'special position' is characterized by two factors which distinguish the paralegal in both the private and public sector from the original object of unauthorized practice legislation. Law clerks in private law firms are usually under relatively close supervision of lawyers in the exercise of their specific tasks. They are qualified members of a legal services delivery team, not imposters trying to cheat clients and

members of the profession. The community legal worker ordinarily provides assistance for citizens who are too poor to seek out and purchase professional legal assistance. It is almost inconceivable that the paraprofessional is taking work from lawyers in either situation. The existence of paralegals does permit legal services to be delivered to a much larger cross-section of the population than would otherwise be the case.

Discussion of the function and role of paralegals begins with the recognition of a need to develop a less expensive model of legal services. I use the analogy which has been referred to in other contexts - the birth of the Volkswagen (20). In Canada we have a Mercedes-Benz model of legal services which has become more and more inaccessible to the vast majority of the population. In most instances only one model of legal services is available, which precludes many citizens, with a variety of problems, from obtaining legal assistance. If the Mercedes was the only form of transportation other than walking, then most citizens would be forced to walk. As long as the legal profession remained the only provider of legal advice then most citizens were unable to purchase legal assistance for their personal or business problems.

Many of the current providers of legal services have had no formal legal training whatsoever, yet they are adequately solving matrimonial disputes, and housing problems, and are assisting in the purchase and sale of private homes. The challenge is to develop "allied legal professionals" who will become specialists in specific sub-areas of the law. Such training becomes less expensive and more expeditious when we foresake the goal of training generalists and recognize the reality of training task-oriented specialists.

Three Allied Professional Roles

At the present time, there are at least three subgroups allied to the legal profession; they are distinct not only in the service that each provides but also in their general approach to the need for, and delivery of, legal services. The paralegal in the private sector works in a private law firm under the direct supervision of a lawyer and may be known as either a law clerk or legal secretary. The public sector paralegal is known as a "legal assistant" or a "community legal worker" and may be employed as social welfare officer, a tenant advocate or as a native courtworker. The community legal worker generally has less supervision from a qualified lawyer and deals with the problems of a previously unserviced clientele. There exist, as well, individuals who function outside of the legal system but who, nonetheless, provide law-related services within trust companies, labour unions, government departments or citizens' information centres.

Each of these groups have evolved its own independent role and relationship with the legal profession which has attempted to maintain a hierarchial authority over the allied professionals. For example, the question of title or designation has been the focus of considerable attention in Ontario, where in 1968 the Law Society of Upper Canada imposed the name "Law Clerks" on a newly formed group of paralegals composed primarily of former English legal executives and legal secretaries. Members of the Institute of Ontario Law Clerks, the outgrowth of this development, resent being referred to as "clerks" - a title which they associate with low level functionaries rather than one worthy of trained professionals (21).

1. Law Clerks

It is not possible to define all the tasks performed by legal paraprofessionals in absolute terms, but a review of current literature and professional studies provide us with descriptions of the tasks performed by the embryonic "allied legal professions". The Canadian law clerk, the American legal assistant, and the English legal executive are all individuals who work closely with lawyers and undertake tasks assigned to them by lawyers (22). Considerable emphasis is given in the American literature to the legal assistant as a component in a systems model of legal services. The legal assistant is described as an individual requiring less expertise and training than the lawyer as:

> Each component phase is further routinized as much as possible to allow the standardization of the task and the specialization of persons to the accomplishment of the task. The legal product could thus be replicated without regard for the personality of the trained operator. (23)

Law clerks have been employed by Canadian law firms in growing numbers during the last twenty years. The law clerk is both a liberating and economizing factor to the private practitioner; the clerk frees the lawyer from the repetitive routinized tasks of a corporate or litigation practice and provides legal manpower at an hourly rate of one-third to one-tenth that of a lawyer. There is little evidence that this cost saving in available time is passed on to the client. It is absorbed in the law firm's capacity to service a greater number of clients (24). The Taman-Zemans study for The Professional Organizations Committee of the Department of Attorney-General of Ontario indicates that there were approximately 50 law clerks employed by Ontario law firms in 1967. By 1977 there were an estimated 3000 law clerks in

Ontario (25). This phenomenal expansion cannot be readily explained but was partially the result of the up-grating of senior legal secretaries to law clerks, with the resultant increase in status and wages. The expansion of the legal labour force in the early seventies and the recognition of cost-saving benefits of effective law clerks have contributed to the increased employment of law clerks.

The practice of law in Canada has emulated prior English developments. As previously mentioned, many law clerks were former English legal executives or solicitors' clerks. The solicitor's clerk has a significant history in the English legal profession dating back to the early 19th century: in 1892 the Managing Clerks' Association was formed for law clerks with at least ten years' experience.

The number of solicitors' clerks increased to the point that by 1963, when the Institute of Legal Executives was established by the Managing Clerks Association, their number exceeded that of practising solicitors. Although the percentage of legal executives has declined during the last fifteen years to 25% of the total professional legal manpower, the considerable dependence on unqualified staff in English law firms remains. The Institute has attempted to upgrade the status of legal executives by emphasizing accreditation and creating three levels of membership - Fellows, Associates and students. In 1977, the entry requirement for students was raised from one "0" level (junior matriculation) in English Language to four "0" level passes at Grade C or three "A" (senior matriculation) level passes. To attain the status of Associate or Fellow, a student must successfully complete the prescribed courses either by correspondence or at a local polytechnic (26).

There is some indication that in England, legal executive wish to become the third branch of the legal profession. The Institute of Legal Executives in their submission to the Royal Commission on Legal Services asked for broader rights of appearance in county and magistrates courts and proposed that legal executives be recognized as 'legal representatives' in tribunals. More important the Institute proposed that solicitors should be allowed to enter into profit-sharing arrangements with legal executives and to place the names of Fellows on their letterhead.

Michael Zander in Legal Services for the Community indicates that if the role of the legal executive was further increased "the Bar might be said to be the upper-middle-class element, solicitors the middle-middle-class branch and the legal executives the lower-middle-class section of the profession" (27).

In Canada law clerks have generally been recruited from the internal ranks of law firms. Despite the growing number of community college programmes (28) for the training of law clerks, most law clerks are former legal secretaries, English legal executives or individuals with extensive experience in other disciplines (i.e. former bank managers, police officers and registry office employees).

As in England, a considerable number of Canadian law clerks are working in civil litigation. The majority of Canadian paraprofessionals in this field have been recruited from police forces, insurance companies and English solicitors' offices. There are a number of reasons for the concentration of law clerks in this area of the law. Legal executives have a significant role in civil litigation which is related to the roles of solicitors and barristers in English litigation and the unique role that the legal executives have created for

themselves in pre-trial proceedings (particularly in appearances before the Master). Canadian civil litigation has been concentrated during the last century in the resolution of motor vehicle claims in which factual and legal issues are often repetitive and the major litigants are insurance companies. The concentration of litigation in the hands of a small number of law firms has allowed for the development of specialized personnel and certain economies of scale. Some litigation departments have the caseload organized to allow factual investigations, preliminary legal research, pleadings, and quantum assessment to be handled entirely by an experienced law clerk who in turn supervises a legal secretary, an articling student and an investigator. This senior litigation clerk will often be responsible for the cases up to the time of examinations for discovery when the clerk briefs counsel (much as a solicitor would brief the barrister) and the lawyer attends on the examination for discovery. Counsel often do not enter the case again until the eve of trial or final settlement negotiations, with the law clerk assuming responsibility for summarizing pleadings, obtaining undertakings, launching appropriate motions, reinterviewing witnesses, and preparing the trial brief. Counsel may nominally be in charge of the case and clearly would be responsible to the client for any negligence or oversight but de facto responsibility rests with the law clerk whose primary responsibility is to keep the file moving towards settlement.

In one Toronto law firm (noted for its emphasis on law office management), the office manager is a former senior employee for an insurance company whose primary responsibility is to review all active files on a monthly basis to determine whether they are being "processed expeditiously" and to prod the lawyers, law clerks and investigators to proceed with their cases. This approach to civil litigation keeps the case moving towards settlement or trial and ensures that it is being effectively handled from both the client's and the law firm's perspective.

In examining the role of the paraprofessional in private law firms, there is a growing body of evidence regarding the functions such an individual performs. The American Bar Association's study of the training and use of legal assistants (29) indicates that the areas in which paralegals or legal assistants were employed were: litigation, estate administration, corporate law, real estate, income tax, legal research and domestic relations. The American survey reached conclusions very similar to those attained by the Professional Organizations Committee of Ontario (Taman-Zemans study) (30).

The two empirical studies undertaken in 1977 by the Professional Organizations Committee represent perhaps the most detailed analysis in Canada of the specific tasks performed by legal secretaries, law clerks and articling students. The firm survey was sent to all law firms in Ontario (approximately 45500 and had a fifty percent response rate). The survey was designed to better understand law firms' opinion of the nature of the work performed by their non-professional staff. To ascertain the staff perspective and to cross-check the results of the firm survey, a second similar questionnaire was sent to a sample of 643 legal secretaries and law clerks (31).

Both questionnaires asked which support staff, if any, was utilized for a series of eleven tasks in nine areas of law. In such areas of law as title searching, estates and probate, and civil litigation, respondents were asked if their non-professional staff: interviewed clients; gathered facts; prepared pleadings or legal documents; conducted negotiations; acted as advocates; dealted with lawyers from other firms; undertook legal research and analysis; searched public records; or prepared fees and disbursements. Only the responses of law firms which spent more than 30 percent of their billable time in a specific area of law were included in the analysis.

(The rationale for excluding firms that did not specialize to this extent was "that support staff were less likely to be trained to execute tasks in a specific area of law if firm activity in the area was minimal. As such, percentage utilization figures could be more accurately assumed to reflect the relative capabilities of the various support staff alternatives.") (32).

The anlysis of the responses to the two questionnaires indicated that Ontario law firms are using paraprofessionals to a lesser extent than either articling students or legal secretaries. It indicates that law clerks are being used for a limited number of specific tasks and are employed primarily by the larger law firm who have a high volume of work that allows them to employ legal and paralegal specialists (33). The largest single area of specialization is real estate - approximately 38% of the responding firms spent more than 30% of their billable time on real estate matters (34). The next largest areas of specialization were civil litigation, criminal litigation and collection work which each included approximately 6% of the responding firms.

TABLE 1: The Use of Non-Professional Staff by Ontario Law Firms Devoting More than 30% of their Billable Time to Real Estate (35)

	Secretaries	Articling Students	Law Clerks
Interviewing Clients	26%	11%	19%
Fact gathering	38%	13%	22%
Preparing Pleadings or legal Documents	46%	8%	10%
Letter Writing	71%	12%	12%
Filing Documents	53%	14%	24%
Negotaions	5%	5%	2%
Advocacy	3%	1%	0%
Dealing with Lawyers	44%	12%	18%
Legal Research and Analysis	2%	14%	6%
Search of Public Records	24%	18%	31%
Preparing clients' fees and disbursements	55%	7%	8%

Table 1 indicates how non-professional staff are being used by law firms specializing in real estate. The data reveals that secretaries are being used to a greater extent than either law clerks or articling students except for the task for searching public records. Articling students are used primarily for legal research and analysis. Law clerks are employed more extensively than articling students for interviewing clients, fact gathering, preparing legal documents, filing documents, dealing with lawyers, searching public records and for preparing clients' fees and disbursements.

Table 1 does not take into consideration the fact that many law firms may not employ a law clerk or an articling student. In fact, the study ascertained that 85% of the law firms specializing in real estate employ legal sercretaries, while 28% of these same firms employ a law clerk and only 15% employ an articling student (36). Unfortunately comparable statistics do not exist for ten (or even five years ago) to determine if there has been a significant increase in the employment and use of law clerks in the practice or real estate law and whether there has been any marked decline in the employment of articling students.

Although the statistics indicate that, in Ontario, the largest number of law clerks actually work for law firms specializing in real estate, only 28% of these firms actually employ such paraprofessionals, as compared to 32.4% of the law firms specializing in civil litigation and 30% of the law firms specializing in corporate and debtor-creditor law.

TABLE 2: The Employment of Paralegals in Ontario by Specialist Law Firms (37)

Family	14.1%
Wills	19.6%
Estates and Probate	19.6%
Title Searching & Conveyancing	28.2%
Corporate Law & Securities	30.3%
Collections (Debtor-Creditor)	30.7%
Taxation	10.5%
Civil Litigation	32.4%
Criminal Litigation	12.1%

Table 3 analyzes the various functions performed by law clerks in the specialist law firms that actually employ paraprofessional (38). The statistics indicate that the primary roles of the paraprofessional are to search public records and file documents. Both these tasks require law clerks to be removed from a law office and to acquire specialized knowledge of specific public filing systems. The data indicates that there are a significant number of law clerks who are dealing with lawyers and clients in the course of their employment. Law firms appear prepared to delegate to non-lawyers the crucial professional relationships with other lawyers and between solicitor and client. 45% of the law clerks who are employed in law firms specializing in real estate and 33% of the law clerks employed by law firms specializing in civil litigation are in contact with other firms of solicitors. Over one-third of the paralegals employed in real estate and criminal litigation and over 30% of the law clerks working in firms specializing in family law and civil litigation are involved in interviewing clients. Considering the significance of the client interview in family law, civil litigation and criminal litigation, these figures indicate the considerable confidence and trust that is placed in the law clerks by their employers. The utilization of law clerks in fact gathering is over 40% in family law, title searching and conveyancing, civil litigation and criminal litigation.

TABLE 3

PERCENTAGE OF FIRMS* WHO EMPLOY PARAPROFESSIONALS AND USE THEM IN THE FOLLOWING ACTIVITIES

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor - Creditor)	Taxation	Civil Lit.	Crim. Lit.
Interviewing Clients	30	16	21	34	5	19	0	32	35
Fact Gathering	50	16	22	42	18	18	0	43	41
Preparing Pleadings or Legal Documents	20	0	11	22	23	19	0	32	18
Letter Writing	30	5	20	28	18	16	0	37	35
Filing Documents	30	10	27	50	38	24	0	63	53
Negotiations	0	0	0	8	0	5	0	18	18
Advocacy	0	0	0	1	0	2	0	6	6
Dealing with Lawyers	20	5	16	45	12	13	0	33	29
Legal Research and Analysis	0	0	0	16	10	9	0	25	18
Search of Public Records	50	21	37	64	48	20	0	60	47
Preparing clients fees and disbursements	30	11	21	24	12	14	0	23	24
	N=10	N=19	N=19	N=246	N=40	N=44	N=2	N=45	N=17

(Note: includes supervised and unsupervised)

* Firms spending more than thirty per cent of billable time in each area.

Paraprofessionals were not generally found in the smaller law firms of one to five lawyers (39). In the larger law firms, however, (those with 10 lawyers or more), paraprofessionals outnumber legal secretaries and were performing functions often carried out by legal secretaries in the smaller firms. These firms employed a number of paraprofessionals who performed a variety of tasks in the larger firms as compared to their relatively restricted activities in smaller firms. The study determined that "the more extensive utilization of paraprofessionals in larger firms respresents the assignment of specific but different tasks to different paraprofessionals, as opposed to any one paraprofessional performing a variety of different activities". (40)

The second survey conducted by the P.O.C. surveyed law clerks and legal secretaries and confirmed most of the conclusions of the law firm survey except with respect to the degree of supervision of paraprofessionals. Law clerks indicated that the tasks that they most often performed are letter writing, filing documents, preparing invoices and most significantly, searching public records. Many law clerks reported that they were also involved in interviewing clients, fact gathering, preparing documents and dealing with lawyers (41). The responding law clerks were most frequently used in title searching and civil litigation; to a lesser extent in family and criminal litigation; and also in corporate law and securities, collection and estates.

The results of the survey of law clerks and legal secretaries revealed a surprising rivalry between law clerks and legal secretaries. The law clerks obviously considered that the legal secretary had less stature than they did within their firms. The study noted comments such as "a law clerk should be trained in the law whereas a secretary should be trained in producing the results of the law clerks' and lawyers' work". Or, "the legal secretary should act only on the instructions of her superior, lawyer or law clerk" (42). The P.O.C. report indicates

that this concern about status amongst paraprofessionals was stronger than their concern for their economic position. This was reflected in an apparently common desire on the part of law clerks to remain separate and apart and... "a clear step above the legal secretary" (43).

Supervision of law clerks was the one issue which generated differing results in the two Ontario surveys. A majority of the paraprofessional respondents stated that they worked independently in searching public records, filing documents, fact gathering and letter writing (44). Law clerks acknowledged that their work was most heavily supervised in family and litigation matters and supervised least in title searching, corporate law and securities, collections and estates. In contrast the number of law firms reporting that they utilized unsupervised support staff was so low as to be considered implausible.

> The paralegal survey confirms the firm survey results regarding the work functions of legal secretaries and law clerks. However, the reported degree of supervision of these personnel differs markedly between the two surveys. It has already been noted that the amount of supervision is likely to have been overestimated in the firm survey owing to notions of lawyer responsibility for all work performed. At the same time, legal secretaries and law clerks will tend to credit themselves, where possible, with more responsibility or independence rather than less, thereby exacerbating the discrepancies in the results. Moreover, the lack of symmetry in the wording of the two questionnaires may account for part of the reported difference in levels of supervision. Whereas the firm survey questionnaire asked lawyers to indicate if supervised or unsupervised manpower performed a variety of tasks, respondents to the paralegal questionnaire were asked if their work was closely checked, occasionally checked, or if they worked independently. The terms 'unsupervised' and 'work independently' may be interpreted very differently in the sense that a lawyer may feel he is operating in a supervisory capacity even though the employee is functioning independently. As such it would seem that the paralegal survey results are preferable as a means of indicating the amount of independent activity performed by the legal secretaries and law clerks. (45)

It seems justifiable to conclude that law clerks are being employed on an increasing basis in the private sector despite the growth in law graduates and articling students. As law clerks are being given highly specialized tasks such as title searches they are not being supervised on a day to day basis but rather their work product is being scrutinized before the solicitor certifies title or puts to use their factual research. We will find similar team approaches emerging in the public sector.

2. Community Legal Workers

For members of a community to participate fully in our society, they must have access to legal professionals and to the full range of their services. Citizens must be able to learn of their rights and duties; they must be able to enforce them; and they must be able to exercise some influence on the continuing process of law reform. The poor who are unable to pay for legal services, who are unaware of their rights and obligations, or who are intimidated by systems that they do not understand are often neglected at the very moment when their need for legal representation is greatest.

The denial of access to lawyering skills is a denial of the legal process. The legal profession is geographically, economically and psychologically inaccessible to most low-income citizens. The provision of legal services in remote communities or to previously unserviced sectors of the population has become feasible only since funding has been made available in the last decade for legal aid. Despite the mammoth outlay of public funds for legal aid (46), only a small sector of the low-income community's legal problems is currently being handled; the majority of the legal problems of the poor are defined by the legal profession as social problems and legal aid budgets are primarily allocated to criminal and matrimonial representation.

Private sector paralegals have been an established aspect of the legal profession for many years. Public sector paralegals, however, have had to await the recent provision of legal aid and public funding. The public sector paralegal programs have developed since the Federal Department of National Health and Welfare funded the first four community clinics in 1971 (47). Generally, public sector paralegals provide services to low-income citizens at no charge, or at a fee based on the client's ability to pay. Concurrent with the development of community law offices, the 1970s saw the development of law workers who have become specialists in administrative law, Workmen's Compensation, Unemployment Insurance, and Immigration as well as tenant and prisoners' rights.

The hesitant introduction of legal services for native people has been typical of the evolution of new models of legal services. Natives Canadians (Indians and Eskimos) are the most socially and economically disadvantaged group in Canada. Of the approximately 850,000 natives in Canada, 80% live below the poverty line and 50% of these earn less than $1,000 annually. Unemployment, dependency on welfare, disease and alcohol abuse are chronic in many rural and urban native communities. In helping to cope with and alleviate the effects of poverty, the special demands placed on the legal system are greater in providing legal services for native people. A cultural barrier between natives and the dominant society hinders understanding of the legal system and prevents meaningful native participation in Canadian society. Natives, especially those in urban centres, are often caught in a transition between modern and traditional life styles. Native culture has proven inadequate to the task of preparing individuals for economic, political and social interaction on an equal basis with whites. The legal system in particular is not understood. A native community has a practical approach to law, lacking abstract legal concepts and emphasizing oral

tradition rather than the written word. As most native societies were based on reciprocal sharing of resources, traditional laws conflict with modern concepts of property ownership. The adversary system itself is alien to native lifestyles, as are methods of dispute settlement which emphasize compensation to the victim rather than punishment for debts allegedly owed to society. The sense of right or wrong implied by not guilty or guilty pleas is a foreign concept. As a result, natives remain passive in court, precluding the proper functioning of the adversary system. Often they are uncritical of the advice they do receive.

Delivery of legal and social services is further hindered by language barriers. For example, one-third of northern Ontario natives speak only native languages and modern legal concepts do not easily translate into these languages. A great deal of diversity exists among natives themselves with the existence of eleven linguistic groups and seven major cultural areas. Simple administrative requirements, such as completing legal aid forms, create problems. The effect has been a communication gap which has not been effectively bridged and which has prevented access to and understanding of the legal system.

The remote geographical location of many native communities has also limited access to legal services. Few well-qualified lawyers are available in remote areas and travel to attend court or to attempt to seek legal advice is both expensive and time-consuming.

Natives are substantially over-represented in penal institutions. Studies indicate excessively high arrest rates for adults and juveniles, and show that natives most often offend against provincial and municipal statutes and regulations, particularly liquor and motor vehicle legislation. In addition, native people tend to plead guilty without fully understanding the charges.

The most significant programs providing legal assistance to Canadian natives are the native courtworker programs which have developed since 1970 in British Columbia, Ontario, Saskatchewan, Manitoba, Alberta, Nova Scotia and the Northwest Territories. Initially operated and funded by private organizations, most native courtworker programs are currently federally and provincially funded. The role of these organizations is to ensure that native people understand and exercise their rights before the courts and that justice is dispensed as fairly as possible to native people. Courtworker activity has been primarily concentrated in the criminal area with some recent expansion to include family and juvenile problems. Native courtworkers act as a liaison between natives in trouble and various facets of the criminal justice system - judges, Crown prosecutors, defence counsel, probation and after-care personnel, as well as the police. The duties of the native courtworkers have included familiarizing the accused with his legal rights, applying for legal aid and bail, interpreting the meaning and procedure of the law to the accused, assisting in the preparation of presentence reports, providing background information for the accused, acting as or finding interpreters, assisting the probation officer (or in some cases, acting as a probation officer), maintaining contact with imprisoned natives, assisting in the provision of after-care needs of parolees, developing and/or implementing preventive programs, working with existing community agencies such as Alcoholic Anonymous and the John Howard Society, and preparing submissions on suggested areas of administrative and substantive law reform.

Chester Cunningham is one of the pioneers of the native courtworker movement in Canada and as the executive director of the Native Counselling and Courtworker Services of Alberta was present at the March 1978 Vancouver Workshop on Paralegals. He indicated that the Albert program is expanding its original role of attending court and

ensuring that the defendant is informed of his rights to covering the total area of criminal justice, including preventive, rehabilitative, and after-care. The courtworker attends court two or three times a week in remote areas to assist the native to understand the court and vice versa. The native courtworker in Alberta works with legal aid staff and is able to appoint legal aid lawyers in emergency situations. Courtworkers have been involved with the John Howard Society, the Parole Board and other social agencies dealing with the criminal offender in an attempt to develop the most comprehensive referral counselling service possible for native people. Courtworkers are beginning to become involved with civil matters such as debtor assistance, welfare, workmen's compensation and human rights, as well as issues involving the native family and youth. Courtworkers in both Alberta and British Columbia are acting as liaison officers between native people in institutions and penitentiaries and their friends and families.

Another significant and recent development in the provision of legal services to native people is the training and employing of native paralegals by the British Columbia Legal Services Commission (48) and to a lesser extent in Ontario through funding provided by the Clinical Funding Committee of the Ontario Legal Aid Plan (49). The native paralegal is generally based in a community law office and assumes many roles which have been the traditional responsibility of the legal profession, including representation before welfare, housing, manpower and other administrative tribunals; drafting pleadings, letters and legal aid applications; interviewing and representing clients; and negotiating with social workers, probation officers, lawyers, landlords, creditors and police. Native paralegals have become involved in community education and development projects which go beyond a case-by-case approach to native problems. Native courtworkers and paralegals are examples of new career opportunities for low-income citizens where

the newly acquired knowledge of the paralegal has a radiating effect on his community. Although his work may be perceived as the offering of routine services, the native community legal worker is attempting to overcome the inadequate provision of legal services to the Canadian native community.

A difficult question was posed by David Patterson and M. Tukisiiniakvik, at the Vancouver conference, as to the ability of native paralegals and native courtworkers to deal with the problems of the transplanted system of justice based on values and concepts not shared by native people. They were concerned with the prospect of the native paralegal being co-opted and serving interests other than those of the native person:

> Because of the remoteness of the legal system, its anglo-saxon values and analytical, adversarial process, the native paralegal must never be co-opted as a device through which native persons may be processed, with a modicum of equality and humanity, through a legal system which is in many of its essential aspects repugnant to them. (50)

Community legal workers are faced with real questions about the nature of their work and their role within society. In few instances can this role be designated as specifically legal in the traditional context. Community legal workers are, by definition, involved in the ramifications of community conditions upon their clientele and most community legal workers would agree with Mr. Justice William O. Douglas that "the so called 'legal' problem of the poor is often an unidentified strand, a complex of social, economic, psychological and psychiatric problems" (51). The immediate concern may be the case before them yet community legal workers emphasize that their ultimate goal must be the familiarization of their clients and community with the operation of the legal system so that they may begin to use it to cope with the complexities of their environment. The case-by-case approach to the legal problems of the poor was considered by the courtworkers at the Vancouver conference to have done little to lessen their frustration and may have rather increased the low-income citizen's dependency on helping

professionals. Community legal workers emphasize the need to promote independence in clients as well as a sense of self-direction among their community.

In the Toronto Injured Workers Consultants clinic these problems have been dealt with in a straightforward manner which integrates the responsibilities of the community worker with the needs of his particular community. A community-based and community-selected management board is ultimately responsible for the direction of the office and its staff. The staff of the clinic recognizes its responsibility to provide options and data to the board and that the board ultimately is accountable to the community for the clinic's activities. This solution goes a long way towards remedying the natural conflict between the groups which community clinics are assisting and the traditional interests and procedures of the legal process (52).

Community legal workers are confronted with the same pressures on their time and difficult choices that have troubled full-time and part-time laywers providing legal aid. The community legal worker attempts three difficult and to some extent contradictory tasks: 1. The day to day problems which form the caseload of the clinic or community law office; 2. Preventive law by both advising the individual client as well as community education programs; 3. Community development and organizing projects.

The recent studies of neighbourhood law offices in Canada and the United States indicate that the full-time staff expend the majority of their time on caseload. The American experience is that clinics are often overwhelmed by caseload to the extent that they must periodically close their doors to new clientele (53). The community legal worker may assist the lawyer in handling those cases which do not require strictly

legal solutions, and, with adequate training and supervision, may assume responsibility for more sophisticated legal problems. Community legal workers have indicated that in many clinics they are fully responsible for handling clients' problems, including appearances in County Court on landlord and tenant matters and appearances before administrative tribunals with respect to W. mens' Compensation, Unemployment Insurance and Social Assistance claims. For the more complex and unique problems, the initial factual and legal research is done by the community legal worker. The difficult case may be referred to a staff lawyer or outside counsel who assumes the case on a voluntary or legal aid basis. It is the writer's opinion that the team approach is the most effective use of both the community legal worker's skills and the staff or independent lawyer's knowledge and time.

An example of the use of non-lawyers for legal aid cases is the hiring and training of community legal workers in Saskatchewan which is an outgrowth of the passage of Community Legal Services (Saskatchewan) Act in 1974 (54). Prior to 1976 all legal aid was voluntarily provided, with the exception of serious criminal cases where the Attorney-General would arrange payment. In 1967 Saskatchewan Legal Aid Plan (Criminal Matters) was enacted with relatively low fees paid to lawyers by the provincial government. In civil matters there was some legal aid available through the Needy Persons' Certificate under the Queen's Bench Rules of Court. The 1974 legislation was a response to the initiatives taken by the Saskatoon Legal Assistance Clinic which had been established in 1969 as the first community clinic and the recommendations of the Carter Committee on Legal Aid (55).

Since the introduction of the Community Legal Services Act, Saskatchewan has been divided into thirteen areas with one clinic in each area. Each clinic is staffed essentially by a legal director,

staff lawyers, community legal service workers and support staff. There are presently twenty-four legal service workers working in community clinics in Saskatchewan. The legal service workers (CLSW) "work in conjunction with lawyers on civil and criminal matters and CLSW's also handle their share of the individual caseload" (56). As well, in Saskatchewan the CLSW's appear in Magistrate's Court on show cause hearings, bail applications and speak to sentence. The relationship between lawyers and CLSW's appears to be quite harmonious in the Saskatchewan clinics with the day-to-day operation of the clinics a "team effort" (57). The clinics are each under the direction of the legal director but all staff perceive themselves as answerable to the clinic's Board of Directors:

> Only by working together and being accountable to the community Board of Directors, can the CLSW's and other clinic staff achieve the objectives of providing legal services to those unable to afford a lawyer in Saskatchewan. (58)

A novice community legal worker employed in a community clinic is dependent on lawyers for direction, supervision and guidance. The community paralegal who is working with a staff lawyer requires considerable instruction and supervision until the tasks, areas of law and responsibilities he will assume are clearly defined. Hilda Towers was employed by the Legal Aid Services Society of Manitoba in October 1974 pursuant to a two year program funded by the New Careers Division of the Manitoba Department of Continuing Education (59). The program was to provide training for citizens with a grade nine education or less, who would not otherwise qualify for civil service positions, to assume 'paralegal' positions in the new legal aid clinics. Much of the new careers training took place in the classroom; this Manitoba program stipulated on-the-job training to supplement the classroom experience and to allow the trainees to develop an effective role for themselves. Hilda Towers indicated in the description of her work prepared for the

Vancouver conference, that she was fortunate to have a "supervising attorney who felt I could be better trained on a one to one basis under the supervision of a staff lawyer" (60). Her role expanded as clinic lawyers and duty counsel encouraged her to initially assist them in interviewing, and ultimately allowed her to begin doing client interviews and completing legal aid applications on her own. She wrote:

> Basically for the first two years of training I was supervised quite closely by staff lawyers. However as my skills developed I undertook more complicated matters and represented clients on Licence Suspension Appeal hearings and Small Claims Court actions.
>
> After I graduated from New Careers, my role as a "paralegal" took a new turn. A new supervising attorney with whom I had worked previously came to our Community Office. He had very progressive ideas and I was given much more responsibility to the point where I no longer felt like an outsider looking in, but was part of the staff. The office ran like a normal law office, and I was given similar responsibilities to the articling students. I began to develop my own caseload, and was becoming much more of a lay advocate than a paralegal, but I enjoyed it and still do. I think, primarily because my role was less limited, I was able to go more deeply into the problem that the client was experiencing and provide more comprehensive service.
>
> In many instances I was convinced that I could provide greater support than a lawyer or articling student because I had been there - I was separated - I was on welfare - I was alone - and I knew what the client was going through. This new freedom in my role with the client had been with all the training; for now I could in some instances take the client from initial interview to completion of a licence suspension appeal including the preparation of documents, the obtaining of evidence and interviewing of witnesses, filing and service of documents. (61)

The presence of paralegals or lay advocates in a community clinic is regarded positively by staff and board members alike. But the training of new paralegal staff falls on the shoulders of already overloaded staff lawyers who are committed to a division of labour but are unsure of how to implement such a decision effectively. The staff

lawyer has generally had little or no experience in the training of unskilled personnel and is unsure how the untrained community member can be of assistance to him or his clients. In response to this dilemma, the community lawyer often retains control of all aspects of his caseload and resists the delegation of clients or tasks to the community legal worker.

The second major role that the community legal worker assumes is the vital but often neglected work of preventive law. This involves education, not merely of the individual client but of the community as a whole. Middle and upper class citizens use the law preventively (i.e. corporate, tax and estate planning), but the poorer person may consult a lawyer's office only when confronted with a crisis such as a criminal charge, an eviction, or a refused unemployment insurance claim. Canadian legal aid schemes have devoted minimal time to client education beyond the case at hand. There is a growing recognition of the need for community education and information programs which emphasize clients' rights and remedies.

It is essential that low income citizens know how to avoid legal problems and how to cope with those that cannot be avoided. The community legal workers have become sources of knowledge about the operation of government agencies such as the Unemployment Insurance Commission and the Workmen's Compensation Board, and through pamphlets written in various languages, video tapes and conferences, information is conveyed to both individuals and community groups. Community legal workers become a significant community resource by virtue of the education that they receive working in law offices or specialized clinics. The community legal worker who has connections in the community will press staff lawyers to allocate time to education of the community.

Injured Workers' Consultants, of Toronto, emphasizes the role of the clinic and of its employees in the education of its clients and injured workers generally:

> Over 60% of our clients have permanent disabilities, which implies a lifetime relationship with the WCB. We try to give injured workers a better understanding of the nature of their dilemma and legal workers material so they can provide more effective service. With this in mind, we participated in the development of a chapter on the WCB for the Employment Rights pamphlet which was published by the Toronto Community Law School. Members of our staff have cooperated with the University of Toronto's Student's Legal Aid Society in the production of a comprehensive multi-lingual Worker's Guide to Compensation. We are also involved in writing, the Community Law Manual, published jointly by the Student's Legal Aid Society and the Community Legal Assistance Student Programme. We have attempted in as many cases as possible to assist and educate other advocates requesting help. We have advised several lawyers, numerous MPP's assistants, trade union representatives, and law students in the past year. (62)

The Legal Information Centre of Kamloops, British Columbia has recognized the need for knowledge of the law to reach as large an audience as possible. In his report to the Vancouver conference, John Simmons, a Legal Information Counsellor with the Kamloops Centre, described some of his community education programs:

> My legal education programme has been as follows:
>
> A. A weekly (1/2 hour) series on CATV (Issues at Law) which has covered:
>
> 1. Unemployment Insurance
> 2. G.A.I.N.
> 3. Small Claims
> 4. Civil Liberties

> 5. Change of Name
> 6. Debts
> 7. Human Rights
> 8. Marijuana Reform
> 9. Family Relations Act (and proposed Amendments)
> 10. R.C.M.P.
> 11. Tour of Provincial Prison
> 12. Environmental Law
> 13. South Africa (case study - Human Rights)
> 14. R.C.M.P. scandal
> 15. Landlord/Tenant
>
> and others (some shows running in a short series)
>
> B. Hosting, occasionally, Niteline (phone-in) when relevant topics, such as the Uranium Mine proposal or R.C.M.P., are discussed.
>
> C. Appearing on radio phone-in, TV phone-in and TV interview/news shows, as often as possible, to discuss various topics and issues.
>
> D. Preparing for publication (at a very low price) booklets on Unemployment Insurance, G.A.I.N., Civil Liberties and Human Rights, and revising a booklet on Arrest.
>
> E. Schools Project which includes keeping law teachers and librarians informed of new, relevant books available, disseminating complimentary copies of such books, preparing law files, and speaking to English, Social Studies, Guidance and all Law classes on such topics as Juvenile Delinquency, Civil Liberties, Community Legal Resources, Landlord/Tenant, Adult Rights & Responsibilities, Contracts, etc.
>
> F. A monthly (irregular monthly) newsletter prepared by the staff of our office.
>
> G. Teaching at the Kamloops Peoples Law School.
>
> H. Preparing public workshops (with other staff) - Unemployment Insurance, Environmental Law, etc.
>
> I. Lectures, on various topics, to:
>
> 1. Seminars on Judicial Institute of B.C.
> 2. B.C. Association of Social Workers (Kamloops)
> 3. Kamloops Youth Workers' Seminar
> 4. Basic Training and Skill Development Class (Manpower)
> 5. C.L.O. Board Workshop
> 6. Citizen's Lobby for Jobs. (63)

There was a commitment by the community legal workers at the Vancouver conference to the dissemination of information about the law and most participants agreed with Zoya Stevenson, a community educator at Parkdale Community Legal Services of Toronto, who described her program as:

> ... Providing legal services in such a way as to encourage the client group's independence, self-respect, and competence in dealing with legal or social problems. (64)

The third function of the community legal worker is to participate in the creation of community organizations such as tenant associations and welfare rights groups. Although lawyers have recognized the effectiveness of organizing partnerships, corporate structures and ratepayer associations, lawyers are considered ineffective organizers of the poor because of their tendency to dominate low income groups rather than encouraging the development of local leadership (65).

The community legal worker is aware of and sensitive to the needs of embryonic community groups and recognizes that the most effective role is that of a research resource person rather than group leader. The community legal worker can encourage self-determination among members of the low income community. Most community legal workers at the Vancouver conference indicated that they had had a similar experience to that of John Simmons of Kamloops, and had not been particularly active in community development either because of the demands or because of the existence of a large number of other community groups. There is an inherent danger that, notwithstanding the commitment of community legal workers to community education and community development, their caseload may dominate their time, as has been the case with community lawyers. Simmons indicates his awareness of this problem:

> We have identified Welfare recipients and Tenants as two groups needing some organization and have begun to aim TV shows and workshops more heavily at these people, to bring them together and eventually (hopefully) lead them to self-help groups. (66)

The role that community legal workers can perform in community development is an unresolved issue. Can community workers performing "law jobs" and funded by government, organize for social change? Is it the role of a provincial legal aid scheme to assist welfare recipients, tenants or new immigrants to press government for reform or a more equitable distribution of wealth? How long can you bite the hand that feeds you before it decides to stop providing you with food?

This issue is being confronted in Ontario during 1978 where the Clinical Funding Committee of the Ontario Legal Aid Plan has terminated the funding of People and Law - a community legal clinic devoted to assisting low income groups to organize and educate themselves. People and Law evolved out of an experiment in community lawyering initiated by Thomson, Rogers (a large Toronto civil litigation law firm). When Thomson, Rogers terminated its relationship with a primarily low income immigrant community in Toronto, it attempted to turn the clinic over to the community. The law firm continued to act as a resource for the first year after its withdrawal and continued to contribute financially. People and Law has devoted itself to devising a program of self-help to train groups with respect to pertinent pieces of legislation. The People and Law training programs have emphasized non-litigous solutions to social problems and have de-emphasized the adversary system.

In January 1978, the Clinical Funding Committee of the Ontario Legal Aid Plan (67) decided that as of March 31, 1978 the clinic should no longer be funded by the Ontario Legal Aid Plan. The Clinical Funding

Committee did not consider that clinic's program as coming within the definition of legal aid, "citing... the clinic's concentration on organizing assistance to such agencies as the Blind Organization of Ontario and the using of self-help tactics, rather than on the provision of conventional legal help to individuals" (68).

Similar funding problems have developed in other jurisdictions. The Associated Tenants Action Committee was created in Winnipeg to improve housing conditions for low-income people after a January 1977 apartment fire that claimed eight lives. ATAC has worked with tenants' groups and successfully thwarted proposed rate increases by both the Greater Winnipeg Gas Company and the Manitoba Hydro. The housing advocates appear before the Manitoba Rentalsman with respect to violations of the Landlord and Tenant Act as well as before the Manitoba Rent Review Board on rental increases. The centre is both an advocacy and community education project and emphasizes the representation of tenants' associations and not individual tenants.

In addition to relieving concrete instances of shortage of legal services and underemployment of capable community representatives, the community legal worker movement has broader social and economic implications. Those who the Cahns call the "civilians" in the war on poverty (69) are often typified as so lacking in power they can only be passive recipients of social benefits. They need opportunities to flex their political muscles and demonstrate their capabilities in looking after their own interests. The emergence of the community legal worker demonstrates that low income communities do not have to remain dependent upon financial assistance or professional guidance but can begin to fight the battles from within their own ranks.

3. Independent Agents

I have discussed in some detail the use of non-professionals in the delivery of legal services through the private law firm and the various legal aid schemes. There is a third group of non-lawyers who provide legal advice and in some instances representation. The "independent agent" is unaffiliated with the legal profession and unlike the law clerk is not employed by a lawyer nor does he have a relationship with practising lawyers. The independent agent is not generally thought of as a paralegal but rather is involved in the legal system by virtue of his employment in positions such as a trade union steward or as a claims adjuster.

The independent agent is called upon to consider and handle legal problems in the course of his employment in such positions as civil servant (federal, provincial or municipal), as trust officer (trustees, banks and insurance companies) or as a freelance title searcher. As well many social workers counsel clients with respect to social welfare and family law issues which require them to acquire a knowledge of statute and case law. In most instances, the Canadian legal profession has not asserted its monopolistic claim and has not thwarted the activities of independent agents. Their low profit and their isolation from traditional legal activities has allowed the organized profession to ignore the independent agent in most instances. The exceptions to this complacency are the divorce-kit cousellors who openly were holding themselves out to the public in an area of law perceived by the profession as already occupied.

The independent insurance claims adjuster is an example of the third type of allied professional. In 1975 the cost of settling claims against automobile accident insurers in Ontario alone amounted to $64

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million. This amount, representing 14 per cent of the total payout, for that year, went to pay approximately 1,000 "independent (self-employed) adjusters" and an unknown number of claims experts by insurers.

Claims adjusters work largely without the benefit of lawyers' advice and determine whether insurers are liable under their contracts of insurance and in what amounts. Insurance claims are processed both by "independent", self-employed adjusters and the claims staff of insurance companies. Staff adjusters are exempted from the licensing requirements imposed on the independent adjusters. Adjusters attend at the scene of the alleged loss to determine initially whether there has been a loss. The adjuster will do a physical examination of the property and ascertain the extent of injuries from doctors' reports. He will also determine how the loss occurred and whether or not the loss is covered by the applicable contract of insurance. The claims adjuster investigates the details of the accident, obtains statements from witnesses and then determines whether or not it is an insured loss. The adjuster must also determine the amount of the loss and make an assessment of the strength of the doctor's, appraisor's and estimator's opinion. Adjusters will negotiate with claimants or with a lawyer and, depending on the amount involved, will settle the claim or recommend a settlement to their supervisors.

Although most claims adjusters' work involves the application of legal principles, particularly with respect to tort and contract law, to the cases present by claimants, most adjusters have little or no exposure to lawyers. Most adjusters are supervised by internal procedures including claims managers and examiners who will assess a selected number of files with staff adjusters. Independent adjusters are not supervised on the same basis as staff adjusters and the supervisory role is entirely exercised in that all their recommended settlements must be approved by the claims department.

CONCLUSION

This paper has discussed the growth of the role of non-lawyers in the delivery of legal services in Canada. I have particularly considered the significant roles played by law clerks in private law firms and those of native courtworkers and community legal workers within various legal aid schemes. The significant amount of advice provided by social workers in domestic and social security matters, and by accountants in corporate and tax areas, as well as the legal tasks performed by other professionals has been considered to be beyond the ambit of this paper. However, it should be noted that each of these groups of non-lawyers work within the parameters of the legal system and like agents in small claims courts and police officers in traffic courts provide significant amounts of assistance.

In concluding my analysis, it is important to underline the considerable change that has taken place during the last decade and continues to take place in the provision of legal services throughout the common law world. In the United States, where the Supreme Court held in 1977 that lawyers cannot be prohibited from advertising their fees, change has been accelerated even more. The Wall Street Journal reported in a front page story in October 18th, 1978 that: "The arrival of open competition in this tradition-bound profession threatens upheaval in the way many lawyers do business. For consumers, it promises a wider selection of legal services and sharply lower prices for routine legal work". As an example of the changes, the Wall Street Journal cites the legal clinics that are springing up in dozens of cities and offering routine legal services at cut rates made possible by the high volume of business and the introduction of streamlined procedures which utilize the services of paralegals. An example of this new middle income clinic is "Jacoby and Myers", who opened the first

commercially successful legal clinic in 1972 and now have 18 offices in the Los Angeles area. Jacoby and Myers hold costs down by doing a volume practice (more than 2,000 new clients a month); relying on paralegal aides and other staff; using preprinted forms and systems for routine aspects of a case; and sending specialists to the low-overhead branch offices. This system has allowed the law clinic to charge $195.00 for the simplest divorce (no property or custody issues), compared to $400 to $600 in traditional law firms. Similarly, change of name applications which previously cost $150 to $200 are being advertised in New York City for $75.00 to $100.00.

In Canada the changes have not been so dramatic although we may soon see lawyers advertising in Canada as well. (In fact the prohibition against advertising was removed by the Law Society of Manitoba in 1978 after proceedings were commenced by British Columbia Law Society against Don Jabour, former chairman of the British Columbia Legal Services Commission, for advertising the charges of his middle-income clinic opened in Vancouver in 1977.) The Canadian compromise with respect to legal aid (an uneasy, yet strengthening, marriage between the British judicare system and the American storefront law office) has signalled similar compromises in other areas of the provision of legal services, between the governing bodies of the provincial law societies and those pressing for change. The positions of the various parties are not clearly drawn or rigidly taken when we analyze the prospects of paralegals, or as I have preferred to refer to them - the allied professionals.

We have observed how the nonprofessional has flourished within the market for legal services during the last decade: a growth which has occurred in spite of the substantial increase in graduates from Canadian law schools. It is this writer's belief that the continued use and

employment of non-lawyers is inevitable and should be encouraged rather than thwarted. Thus the issue is not whether the non-lawyer will continue to participate in the provision of legal services but rather who is to decide what non-lawyers can and cannot do for the public? To ask the same question from another perspective - who is to determine the extent of the professional monopoly of the legal profession?

The provincial law societies express a continuing desire to administer all aspects of professional life, including professional ethics, malpractice insurance, unauthorized conduct and policing the unauthorized practice of law. It can be argued and many would urge that the community would be better served if the professional monopoly was abolished and citizens were given a full range of choices when purchasing the legal services that they require. Does a citizen require a Queen's Counsel or even to be represented by a lawyer on the purchase of a condominium? We have already noted the growing use of law clerks by law firms specializing in real estate law in Ontario and the similar developments in middle income clinics in the United States. There seems to be little doubt that there are numerous specialized tasks which could be more expeditiously and more economically handled by non-lawyers either with supervision by the legal profession or independent of supervision by a lawyer.

Should the elected representatives of the legal profession determine if the public interest is best served by having lawyers handle all real estate transactions or all aspects of civil or criminal litigation? In other professions (i.e. medicine) we accept that the citizen can determine the effective use of various types of professional manpower. The Boards of Directors of local hospitals have determined the most appropriate role of nurses, doctors and specialists. We no longer expect a doctor to attend to all aspects of medical treatment and

accept the nurse, the x-ray technician, the physical therapist and the nutritionist as significant members of the health delivery team. The comparisons to the emerging field of law practice are self-evident. It is to be hoped that the territorial in-fighting that has been all to prevalent in medicine (i.e. optometrists and ophtalmologists) will be avoided in the future relationship between lawyers and the emerging allied professions. It would seem inevitable that the decisions as to the qualifications, training and scope of practice will have to be made by independent provincial bodies appointed by the elected representatives. These public bodies will have to review many of the issues which we at this moment have only begun to explore.

In the private sector we foresee the continued growth in the use of law clerks. It is still unclear how extensively graduates of those training programs initiated in community colleges are being employed. There is, however, no doubt that the number of the non-professional employees performing specialist roles is increasing in private law firms. Most of these individuals remain loyal to the traditional professional model and do not advocate radical or even significant change within the existing structure of legal services. The law clerks or the legal executive may perceive himself as superior to the legal secretary but he sees himself as beholden to the lawyer for his livelihood. In England, legal executives have not asked that the professional monopoly over conveyancing be removed but rather urged that they be allowed to enter into financial relationships with solicitors. I foresee a similar continued growth of the team approach integrating the roles of the graduate legal specialist and the similarly specialized non-lawyer in such areas as real estate, civil litigation, probate and corporate practice. It is likely that specialization in tasks performed by lawyers and the graduate and allied professional will accelerate in the medium and large law firms, as they grow increasingly conscious of the economies of scale which larger partnerships allow.

At this time, it is impossible to predict the development of independent legal executives, even in areas such as civil litigation and conveyancing where the non-lawyer's role is well accepted and expanding. Neither the lawyer nor his legal assistants (clerk, conveyancer or executive) see independence to be in their respective professional or economic interests.

When one moves from consideration of the private sector to the public sector community legal workers, he becomes immediately aware of a change in role perception and social attitudes. A growing number of individuals, with varying degrees of formal training but considerable concern and commitment as well as useful, if unrelated experience, have begun working as advocates of the poor, and in this capacity, have become involved with legal system. Their expertise is with an element of society that has had little contact with lawyers and therefore is suspicious of the establishment values espoused by lawyers. The law clerk, legal executive and litigation investigator all perceive themselves as members of lawyer's professional team. In contrast to them, community legal workers have little desire to be perceived as a new breed of lawyer or for that matter as an extension of the legal profession.

Community legal workers argue that they are more responsive than lawyers to the legal and related problems of the poor. They suggest that the massive growth of new legislation, and of the new mechanisms to put the legislation into action, has been located outside the traditional legal system. These new procedures (which responded to the substantial development of state activity since 1945) have rarely involved the courts or the judiciary (except on appeal or by way of judical review of administrative bodies) and are on the whole quite

foreign to lawyers, although the form and function of new social welfare and public housing legislation can be described as quasi-legal (with formal proceedings, appeals on points of fact and law and various methods of determining eligibility and quantum).

The low-income advocate's first priority is his community, and his identification with and credibility within his community. Maintenance of such a continuing relationship is perceived as anthetical to the stigma attached to becoming a professional. At the Vancouver Workshop there was a united demand by the public sector legal workers for independence from the legal profession and freedom from certification and accreditation.

The legal profession may be distressed and disturbed by all the changes that are being demanded of it in the latter quarter of the twentieth century. After several centuries of a protected monopoly, suddenly its professional monopoly is being questioned. This writer feels that it is imperative that the provision of legal services be discussed in public forums and welcomes the growing interest of the media and the press in the administration of the legal profession and not only in the conquests of its great gladiators in court. There is need for a breath of fresh air to permeate behind the closed doors where the legal profession has traditionally determined policy which it has believed to be in the public interest.

Lawyers alone are not in a position to determine what type of legal aid plan the public should have or what type of professional services will provide the public with the best legal services. Canadians recognize that medical services are a right of all citizens and that the provision of these services is the responsibility of the state. Contemporary governments have created agencies to determine who

can receive state conferred benefits such as social assistance or public housing. Provincial governments accept that industries like trucking should be regulated by administrative bodies such as the Ontario Highway Transport Board which issues licences after a public determination of what is in the public interest and the interest of the trucking or bus industry. The community would not tolerate one of Canada's largest trucking companies deciding who should be able to carry goods directly from Montreal to Vancouver or, for that matter, from Thunder Bay to Fort Frances.

Why then have we so willingly accepted that lawyers can independently decide that Canadians are best served by having lawyers administer legal aid schemes, or prohibit non-lawyers from representing citizens when they wish to obtain an undefended divorce? Does it not follow that provincial governments should establish an administrative agency to determine the most effective method of delivering legal services and to determine if various types of professional certification is warranted? Such a body public will have to recognize the unique contributions being made by the allied professionals. The relationship between the legal profession and other members of the delivery team will have to be examined. The body will have to determine whether it is necessary to be a qualified lawyer to undertake all aspects of the provision of legal services. In each instance thorough study will provide the best method of utilizing existing and developing resources to best serve and inform the broadest possible spectrum of society.

FOOTNOTES

(1) In Ontario there are forty benchers elected by the membership of the Law Society to convocation. Convocation (the governing body of the Law Society) was recently expanded to include four lay members, appointed by the Lieutenant Governor in Council to bring a non-professional perspective to the deliberations of the Society. There has been no perceptible impact on the decisions of Convocation or the public attitude towards the legal profession since the introduction of this innovation.

(2) Candidates for the call to the bar in Ontario must meet the following requirements: (a) a minimum of two years university training after senior matriculation; (b) the completion of a three year LL.B. program at an "approved" law school; (c) the completion of one year of articles of clerkship to a practicing lawyer; (d) the completion of the six month Bar Admission Course, conducted by the Law Society of Upper Canada. Because of the scheduling of the Bar Admission Course (which begins in September) two years are required for a student to be called to the Bar after the LL.B. Ontario is the only jurisdiction in Canada which requires a student to invest two years beyond law school in obtaining the call to the Bar. British Columbia requires students to article for twelve months with the Bar Admission Course running concurrently; Alberta requires twelve months of articles with a two week Bar Admission Course; Saskatchewan requires twelve months articling with a five to six week Bar Admission Course held during the articling period (after the first six months); Manitoba requires eleven and one half months articling with the Bar Admission Course held one day per week from September to June, concurrent with the articling period; Quebec requires six months of articles subsequent to the eight month Bar Admission Course which is taken immediately after the B.C.L.; New Brunswick requires a ten months articling period followed by a two month Bar Admission Course (students can begin articling after second year of law school but are required to have completed four months of articles prior to enrolling in the Bar Admission Course); Nova Scotia requires nine months of articles combined with a six week Bar Admission Course or twelve months of articling; Prince Edward Island requires only nine months of articles and does not have a Bar Admission Course; Newfoundland requires nine months of articling and concurrently a one week Bar Admission Course (there is a drafting error in the Law Society Act of Newfoundland which makes articling twelve months which is going to be changed).

(3) An Act for the Better Regulating the Practice of Law (1797), p. 17 Geo III, C. 13. See ARMSTRONG, The Honourable Society of Osgoode Hall, Toronto, Clarke, Irwin & Co., 1952.

(4) The most recent review of legal education - specifically the quality of articles and of the Bar Admission Course - was undertaken in Ontario in the early 1970s by a Special Committee on

Legal Education of the Law Society of Upper Canada under the chairmanship of B.J. McKinnon, Q.C. This Committee was composed of twenty-three persons, most of whom were senior members of the legal profession, benchers of the Law Society and judges. One member of the Committee was a judge of the Court of Appeal, one a Supreme Court judge, four law professors, thirteen Queen's Counsel and four were future Treasurers of the Law Society of Upper Canada. The Committee made two significant recommendations with respect to easing the entrance requirements to Ontario Law Schools. It recommended that the two year pre-law requirements should be waived in the case of mature students whose "age, experience, maturity and outstanding qualities as evidenced by their previous careers, merit an opportunity to study law". The Committee also urged law schools to encourage native Canadians (Indians and Inuit) to study law, underlining the low proportion of native lawyers to native people. The Committee attempted to find a method of shortening the duration of legal education by recommending that pre-law training be reduced to two years and that articling be abolished. The latter recommendation was rejected by the Law Society in face of considerable opposition from the profession. See the Report of the Special Committee on Legal Education 1972, The Law Society of Upper Canada, page 9 and 23.

(5) Statistics Canada, Fall Enrollment in Universities, No. 81-204 Annual.

(6) Communique of the Law Society of Upper Canada No. 64.

(7) The Health Ministry of Ontario testified before the Elgie Committee on the funding of OHIP in July 1978 that it is hoping to reduce the number of doctors to one doctor for every 585 residents in Ontario, Globe & Mail, July 11th, 1978, page 1.

(8) In 1977, 895 lawyers were called to the Bar and it was estimated by the Director of the Bar Admission Course that at least twenty-five per cent had no jobs at the time of the call. Globe & Mail, Toronto, Saturday, March 26, 1977, page 4.

(9) Professor Robert E. Oliphant, University of Minnesota Law School, quoted in "Paraprofessionals and Clinical Training", (1972) 5 CLEPR Newsletter, No. 3, vol. 5.

(10) See Milton FRIEDMAN, Capitalism and Freedom, (1962) p. 143.

(11) GELLHORN, "Abuse of Occupational Licensing", (1976) 44 The University of Chicago Law Review 6, at p. 16.

(12) See I.B. Cowie et al, The Legal Paraprofessional in Canada - A Pilot Training Scheme, Dalhousie, Halifax Legal Aid Service, 1972, p. 65.

(13) R. ex rel Smith v. Mitchell, (1952) O.R. 896 (C.A.).

(14) R. v. James, (1947) O.W.N. 340.

(15) R. v. Ballet, (1967) 1 O.R. 696.

(16) Supra, fn. 13. R. v. Glass, (1953) O.W.N. 450.

(17) R. v. Engel and Seaway Divorcing Service (1976), 11 O.R. (2d) 343.

(18) Ibid. A person charged with unauthorized practices was precluded from the defence that he fully advised his 'client' of his status or lack thereof.

(19) Supra, fn. 12, p. 67.

(20) Report of the Curriculum Study Project Committee of the Association of American Law Schools (AALS), "Training for the Public Professions of Law: 1971" (Colloquially the "Carrington Report", after Professor Paul D. Carrington, Project Director), 1971 AALS Proceedings.

(21) Preliminary Brief of the Institute of Law Clerks of Ontario to the Ontario Law Reform Commission, Professional Organizations Project, 1976, p. 8.

(22) SPROULE, "Use of Law Personnel in the Practice of Law", (1969) 25 The Business Lawyer 11, p. 25.

(23) Lester BRICKMAN, "Expansion of the Lawyering Process through a New Delivery System: The Emergency and State of Legal Paraprofessionalism", (1971) 71 Columbia Law Review 1153, at p. 1212.

(24) COLVIN, STAGER, TAMAN, YALE and ZEMANS, The Market for Legal Services, Paraprofessionals and Specialists, for the Professional Organizations Committee of Ontario, 1978, p. 222.

(25) Ibid., p. 223.

(26) Institute of Legal Executives Memorandum of Evidence to the Royal Commission on Legal Services, London, 1977, p. 49.

(27) Michael ZANDER, Legal Services for the Community, 1978, p. 315.

(28) In Ontario alone there are presently 10 community colleges offering some form of training for law clerks. The full time enrollment in law clerks' and legal administration courses in 1975 was 500, and in 1976 was 473. These figures were furnished by the Ministry of Colleges and Universities of Ontario from a survey of new entrants into law clerk programmes.

(29) American Bar Association, Special Committee on Legal Assistants: The Training and Use of Legal Assistants: A Status Report, 1974, p. 14.

(30) Supra, fn. 24, p. 409.

(31) Ibid., p. 261.

(32) Ibid., p. 237.

(33) Ibid., p. 260.

(34) 873 law firms were computed to spend more than 30% of their billable time on title searching and conveyancing which is approximately 38% of the respondents and six times as many as the 139 firms specializing in civil litigation and 141 firms specializing in criminal litigation. Ibid., pp. 240-242.

(35) This table was prepared by the writer by taking the percentage of firms using legal secretaries, students and law clerks in title searching and conveyancing from Table 1, Table 2 and Table 3 of the P.O.C. firm survey data. Ibid., pp. 240, 241 and 243.

(36) Of the 873 law firms who were calculated as spending more than 30% of their billable time on title searching and conveyancing, 744 employed secretaries, 130 employed law students and 246 employed articling students. See Tables 5, 6 and 7 of the P.O.C. firm survey data. Ibid., pp. 246, 247 and 249.

(37) This table was prepared by the writer from Tables 3 and 7 of the P.O.C. data. For example there were 139 firms who were shown as spending more than 30% of their billable time on civil litigation and Table 7 (Table 3 in this paper) indicates that 45 of these firms or 32.4% employ paralegals. Ibid., pp. 243 and 249.

(38) Table 3 herein is a duplication of Table 7 in the P.O.C. Report. Ibid., p. 249.

(39) Ibid., pp. 255-256.

(40) Ibid., p. 260.

(41) Ibid., pp. 264-266.

(42) Ibid., p. 235.

(43) Ibid., p. 236.

(44) Ibid., p. 264.

(45) Ibid., p. 267.

(46) We have seen the expenditure of public funds for legal aid rise to nearly $100 million with per capita expenditures varying from a high of $4.20 per person in Quebec to $1.12 per person in New Brunswick and Newfoundland to a low of $.58 per person in Prince Edward Island.

(47) Parkdale Community Legal Services in Toronto, Pointe St. Charles in Montreal, Saskatoon Legal Assistance Clinic in Saskatoon and Dalhousie Community Legal Assistance in Montreal were funded in the spring of 1971 by the Federal government.

(48) Annual Report of the British Columbia Legal Services Commission, 1976-77.

(49) See The Report of the Task Force on Legal Aid, published by the Ministry of the Attorney General, 1975, Part II. The Task Force was chaired by The Hon. Mr. Justice John H. Osler and its second report was on the Delivery of Legal Aid to Persons in Remote Areas and to Native Persons. In the 1977 Annual Report of the Law Society of Upper Canada, Ontario Legal Aid Plan at p. 18 there is an indication that the Law Society is responding to the Osler Report Part II and to proposals from the Canadian Civil Liberties Association and the Attorney General of Ontario by initiating a pilot project to deliver Legal Aid services to native Canadians in Thunder Bay. This project opened in the spring of 1978.

(50) D. PATTERSON, Native Paralegals in Remote Areas. Paper presented at National Workshop on Paralegalism, Vancouver, B.C., March 1978. (See Appendix D)

(51) Quoted in STATSKY, "The Education of Legal Paraprofessionals: Myths, Realities and Opportunities", (1971) 24 Vanderbilt Law Review 1083 at p. 1085.

(52) Bill ROBINSON, Community Legal Workers in the Delivery of Legal Services. Paper presented at the National Workshop on Paralegalism, Vancouver, B.C., March 1978. (Unpublished, but see pp. 213ss.)

(53) D. LOWENSTEIN, "Neighborhood Law Offices; The New Wave in Legal Services for the Poor", (1967) 80 Harvard Law Review 805, at p. 822.

(54) The Community Legal Services (Saskatchewan) Act, 1974, S.S. 1973-74, c. 11.

(55) For a more detailed description of legal aid in Saskatchewan, see: Frederick H. ZEMANS, "Legal Aid and Legal Advice in Canada", (1978) 16 Osgoode Hall Law Journal (to be published).

(56) Olive PIROT, Betty DONAVER, Shirley FARIS, The Community Legal Services Worker in Saskatchewan. Paper presented at the National Workshop on Paralegalism, Vancouver, B.C., March 1978. (Unpublished)

(57) Ibid., p. 2.

(58) Ibid., p. 2.

(59) Hilda TOWERS, Description of Role and Functions of the Paralegal at Main Street Community Legal Services. Paper presented at the National Workshop on Paralegalism, Vancouver, B.C., March 1978. (Unpublished)

(60) Ibid., p. 3.

(61) Ibid., pp. 4 and 5.

(62) ROBINSON, supra, footnote 52.

(63) John SIMMONS, A Report on Paralegal Activities. Paper presented at the National Workshop on Paralegalism, Vancouver, B.C., March 1978. (Unpublished)

(64) Zoya STEVENSON, Community Legal Workers. Paper presented at the National Workshop on Paralegalism, Vancouver, B.C., March 1978 (Unpublished). The Parkdale community education program has prepared seminars of a general nature to explain briefly specific areas of the law. A more intensive program is given for participants who want to develop advocacy skills in specific areas of the law. The third aspect of the Parkdale approach is to encourage education of clients in the course of handling their cases so that the experience is not one of blind dependency.

(65) Supra, footnote 53, p. 819.

(66) SIMMONS, supra, footnote 63, p. 5.

(67) The Toronto Globe and Mail, April 18, 1978.

(68) Ibid.

(69) J. and E. CAHN, "The War on Poverty: A Civilian Perspective", (1964) 73 Yale L.J. 1317.

THE PARALEGAL WORKER

INTRODUCTION

This chapter represents the collective effort of paralegal workers from across Canada. We came together in March 1978 at a conference on paralegalism in Canada, sponsored by the federal Department of Justice*. The conference was welcomed as a chance to meet other people interested in the development of community legal services, in which paralegal workers play an important part.

From the beginning of the conference it was fairly clear that the conference organizers had two main concerns: 1) the production of a specifically Canadian study of paralegalism to counter the apparently overwhelming impact of United States sources circulating among academic circles; and 2) the provision of a "data base" for funding and regulatory bodies for long-term planning. We were disappointed that there were few opportunities for paralegal workers to discuss such things as attacks on job security, problems of substandard wages and benefits and the encroachment over the work that clinics do, vis-a-vis the ideal of community control. We also found it most unfortunate that no effort was made in the planning of the conference to solicit clinics' input in developing the format**.

Fred Zemans, one of the conference resource people, suggested that we make a contribution to this book. Although the project was half-finished, we agreed and spent a short time at the end of the conference outlining our participation.

We decided that our chapter should addresss all the topics covered elsewhere in the book from the point of view of paralegal workers across the country. Our writing committee consisted of John Simmons and Sandy Tremblay from British Columbia, Shirley Faris from

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* National Workshop on Paralegalism, Vancouver, March 29-30, 1978.
** See Neil Gold's comments in his conclusion in this regard.

Saskatchewan, Gail Cyr from the Northwest Territories, Zoya Stevenson from Ontario and Bill Powroz from Nova Scotia. Later on, as the problems of long-distance writing became apparent, four other people from Toronto joined the team. They were Susan Atkinson, Lina Chartrand, Mary O'Donohue and Bill Robinson. Finally, we were given much assistance by Lesley Towers, an editor and friend, who was faced with the unenviable task of cleaning up our act.

We have tried to avoid any "Upper Canada" hegemony in our work, but it is probably quite apparent that there was a heavy involvement of Toronto-based paralegal workers in the writing of this chapter. Our focus is on "community legal workers" (CLW's), a role we have defined as being within the general category "paralegal worker". Lay advocates, native courtworkers and paralegal educators can best be understood as embryonic or partial manifestations of the functions performed by CLWs. Unlike the other chapters in this book, we will look at all the questions (role function, training, accreditation and interface with the legal profession) largely in an independent manner but with a few responses to the other authors' comments.

Community legal workers employed in publicly funded legal services offices across Canada are just beginning to form contacts and to learn about each other's interests, concerns and local circumstances. While our chapter cannot claim to be representative of all paralegal workers and community-based legal services, we have tried to develop an analysis of community legal services that we hope reflects their integrity, along with our concerns and aspirations as employees of those clinics. We are happy with the result and hope it will be as useful to others as its making has been to us.

Bill Robinson*
John Simmons

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* This paper as explained in the Preface to this book was requested after the Conference from Mr. Bill Robinson.

Sandy Tremblay
Shirley Faris
Gail Cyr
Zoya Stevenson
Bill Powroz
Susan Atkinson
Lina Chartrand
Mary O'Donohue

I - ROLE AND FUNCTION OF PARALEGAL WORKERS

by Bill ROBINSON et al.*

A. The Clinic Setting - Foundation of Public-Sector Paralegalism

A community legal clinic offers a variety of services to the clients within its community. The main ones are casework, education and community development. Although these services may in fact be delivered separately by different employees, one of the clinic's tasks is to integrate these services to produce a comprehensive approach to individual clients and the community's needs as a whole.

These functions are interrelated: through casework, the paralegal worker becomes aware of areas of concern that require legal education or community development, and through legal education and involvement in the community, people become more aware of the law and their rights, which often leads to more casework. By itself, one-to-one casework relieves only the symptoms; it does not tackle the problems facing the client or the community.

The use of non-lawyers in the delivery of legal services is usually justified on the following grounds:

1. the legal profession has not been able to meet the demand for legal services;
2. the training requirements of the legal profession are to a large extent unnecessary for many of the tasks involved; and
3. non-lawyers can provide many legal services much more economically than lawyers.

While these points are valid it is extremely important to emphasize the impossibility of discussing the function of paralegal workers in Canada without also looking at the social context in which paralegals work.

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* This paper as explained in introduction was requested after the conference from Mr. Robinson which in turn involved acting paralegals.

There has been a recent growth in the employment of paralegals in both the public and private sectors. But of course, trade-union organizers and government officials have long undertaken to provide legal advice and other law-related services. The fundamental distinction among the various types of paralegals stems from their alliance with either propertied and powerful interests, or the interests of the poor, the disaffected and the working people of our society.

Our experience as public-sector paralegals is inextricably tied to the day-to-day struggles of people to achieve a decent standard of living, adequate housing, employment and educational opportunities and human rights. Our work contributes to making the concepts of equality and justice a reality.

The employment of paralegals in the public sector coincided with the development of the community legal services movement in Canada and abroad. Spurred on by poor people and minority groups and the heavy pressures within the court system, lawyers of conscience joined and led the fight for greater public access to legal services and justice. The movement was a response to poor people's traditional inequality before the law and in society.

Although the prime concern of paralegal workers is to fight for justice, day-to-day experience proves that the legal system by and of itself cannot dispense justice to the clients (1). When a worker dies through proven negligence on the part of the employer, "justice" awards the family a small payment of compensation from the company (2). The current treatment of rape victims (3) and the disproportionately high number of Native Canadians serving jail sentences cannot be considered just.

A study commissioned by Indian Affairs in 1969 (4), which established a committee chaired by Dr. Gilbert Nonture, examined the

problems experienced by native people and issues surrounding the nationally disproportionate rate of incarceration of natives. This report exposed the social and economic problems plaguing Indian and Innuit peoples and asserted that native people did not have an inbred criminal mentality. It indicated that Indian and Innuit peoples were not regarded as part of the Canadian spectrum by non native people.

The fact that paralegal workers deal with such inequality on a day-to-day basis has proven that the search for real justice requires a more in-depth and long-term perspective. Without such a perspective, clinic workers would probably crumble before the enormity and endlessness of the problems facing their clients and communities. Norman Bethune's comments on minor reforms in the medical system are worth quoting in this context:

> Those palliative measures as suggested by most of our political quacks are aspirin tablets for a syphilitic headache. They may relieve, they will never cure. (5)

But the paralegal worker who varies from the Bandaid approach often faces serious conflicts with the funding body. This problem is discussed later. First we will describe some of the functions performed by paralegal workers across the country and the roles that develop from them.

B. Functions of a paralegal worker

1. Information giving aids clients who seek either general or specific information about various laws and agencies. The areas of questioning can range from landlord-tenant relations to family relations, from criminal law to administrative law. Generally speaking, the paralegal gives summary legal advice.

2. Assistance involves many activities - problem identification, investigation, research, procedural assistance, provision of precedent forms.

3. Advocacy can be broken down into informal and formal advocacy. Informal advocacy involves mediation and conciliation, performed by letter, telephone or attendance at meetings of the parties. Formal advocacy involves preparing documents and arguments and representing the client, usually in a formal setting such as before an Administrative Tribunal or court.

4. Public legal education involves numerous activities such as investigative casework, workshops, preparation of booklets (for example Suite Satisfaction or When I'm 64 by John McCosh of New Westminster, B.C.), newsletters and people's law schools which do general education with high school law teachers and students. Education can also include use of the mass media, such as radio spot ads, newspaper columns and television (for example, half hour weekly series Issues at Law by John Simmons of Kamloops, B.C.).

5. Community development is the organization of specific people into a viable group to more effectively address their rights, or to effect reform of the laws relating to their rights. Community development demands much skill and tact. The paralegal workers are usually not leaders but tools for developing unity. The identification of common problems, clarifying the legal issues and helping to develop strategies are possible tasks (6).

To the paralegal worker these functions are philosophically entwined, and usually all are performed as part of the job. The approach of client oriented casework gives an incomplete solution to the frustrations and demands of the socially or economically deprived.

C. Roles of paralegal workers

We have attempted below to categorize the major roles that evolve from the above functions and to explain their place in the overall operation of the publicly funded legal services offices. They can

mainly be broken down into lay advocates, native courtworkers, legal educators and community legal workers.

1. Lay advocates

Phil MacNeil, in describing his job as a lay advocate says:

> It appears that the role of the legal paraprofessional is limited mainly by the employer, the capability and training of the individual an the conservatism of the Barristers' Society. (7)

Even a very quick examination of the proposals of the Manitoba Legal Aid Task Force (8) indicates that a change in government can also have a disastrous impact on the role of legal workers.

Conference papers described the functions of community legal service workers in Manitoba (9) and legal paraprofessionals at Pennitentiary Legal Services in New Brunswick (10). Employees in both these situations appear to be strongly supervised and thus share many characteristics with private sector legal assistants, but the legal advice they dispense and their appearance in certain tribunals (such as Licence Suspension Appeals in Manitoba and Special Inquiries under the Immigration Act or Parole Board Hearings in New Brunswick) sharply differentiate them from the paralegal workers in the private sector.

In general such workers provide groups and individuals with case by case advocacy, which incorporates such activities as research and interviewing case analysis and preparation, and formal, as well as informal, advocacy.

2. Native courtworkers

The native courtworker has a wider mandate than the heavily supervised lay advocate. Without these courtworkers there would be no educational work done and only token representation of native clients.

This distinctive role is revealed by Dennis Patterson in his Paper on Native Paralegals in Remote Areas:

> The native paralegal must be more than an educator and translator on both sides of the cultural interface; the native paralegal must be imbued with a sensitivity for the failings and follishness of a transplanted system of justice. They must identify laws based on values not shared by their people and expose the real reasons why Anglo-American processes for dispute settling or truth seeking so often abysmally fail the native person. They must identify and if necessary resurrect the traditional values and processes by which social order and peace was maintained before the imposition of the white man's laws, suggesting ways with which those values and processes can be married with what is good of what we have now. (11)

The Monture Commission gave special attention to the Native Friendship Centres specifically in Manitoba and Alberta. Staff members circulated through the courts, assisting the native accused to understand their charges, providing interpreting services and obtaining legal counsel for them. This movement developed in the 60s before the advent of Legal Aid and gained recognition in the courts. The commission commended these workers (12) for their work which was the fore runner of the present-day native courtworker program.

Native courtworkers in remote areas like the Northwest Territories represent the Innuit client's only point of communication with the legal process apart from the courts and jails. Because of geographical distances and cultural remoteness, this worker's only link with supervision is often by telephone.

The Northwest Territories, Alberta, Nova Scotia and Prince Edward Island do not have native CLWs so courtworkers have much larger roles than in provinces such as Ontario, Saskatchewan and British Columbia which have both courtworkers and CLWs.

Because the native courtworker program grew from the needs of native people confronted with the criminal justice system, the criminal-

court related services were funded by the combined Federal/Provincial/Territorial agreements. Other needs, such as family and civil services were not provided for by the agreement. Some provinces, such as Alberta and British Columbia, provided funds to deal with these matters.

The native courtworker program is a paralegal service. Native courtworkers are specifically trained in the area of criminal law. Their job is to assist persons who are in conflict with the law. As can be imagined the criminal justice system requires a broad range of assistance. Assistance may begin at the pre-charge level and continue to the post-sentence stage. They explain charges, obtain lawyers through private means or legal aid, and they assist the defence by providing information on the background of the accused, participating in "show cause hearings" and preparing pre-sentence reports. In some jurisdictions, bail is supervised, courtworkers actively speak on sentencing, or assist in appeals and apply for a change in probation orders. Resident courtworkers frequently visit the convicted in the institutions, maintaining ties with the family at home, and work with any further legal problems, assisting in the development of post-release plans.

> The role of the native paralegal is comprehensive; indeed, in any situation which may arise in a remote community where quick decisions must sometimes be made ... the paralegal must analyze the problem, seek what aid can be obtained with often inadequate communications systems and mail service intervening, and take action on the spot. (13)

Not only must the courtworker bridge the communication gap and educate the clients, she must fully represent the native people before the courts and many native bodies.

> Although his work is perceived as the offering of paralegal services of a routine or even menial type the native community legal worker is actually called upon to overcome the inadequacy of the legal profession in dealing with the Canadian native community. (14)

The contradictions inherent in the role of a native courtworker are staggering. Few would deny that fundamental political changes are needed to guarantee natives the right to self-determination and the power to effect appropriate health and economic programs. As long as native peoples suffer from extreme poverty, disease and alcohol abuse problems, they cannot meaningfully participate in the state judicial system. They are indeed the most oppressed group in Canada. But the powerlessness of natives is chronic until political change takes place and although individual advocacy cannot be avoided, courtworkers must inevitably help and/or strongly identify with natives' struggle for their rights.

A brief prepared by the Northwest Territories Courtworkers' Association (15) suggests that native courtworkers, at least in the NWT, are re-evaluating their role within their communities. There is an expressed desire to expand the functions of the native courtworker to include some functions that other paralegal workers have in the delivery of legal services.

3. Legal educators

Some paralegal workers exclusively undertake legal education for groups of consumers, rather than for one identifiable community or group. In this capacity, paralegal workers are general educators in specific areas of the law. For instance, in Ontario, the Toronto Community Law Program provides handbooks and video films on how to buy a house, make a will, juvenile and young peoples' rights. Clinics hold public education programs regularly at libraries, schools and community centers.

In British Columbia, there are two legal educational services: the Vancouver People's Law School coordinates the school and publications, and the Interior Public Legal Awareness Society in

Kamloops coordinates the local People's Law School and provides speakers for schools and workshops in outlying areas.

4. Community legal workers

In their brief to the Professional Organizations Committee (16) community legal workers employed in publicly funded and community-based legal aid clinics in Ontario distinguished their role from that of law advocates undertaking tasks subsidiary to the duties of a lawyer. A more precise and acceptable description presented them as community workers trained in one or more areas of the law, whose independent base of skills and knowledge are used to respond to changing conditions in the community. Their broad approach includes organizing, law reform, community education, preventive law and innovative casework.

> A common approach of community legal workers is to keep the responsibility for decision making within the client community. Our role is advisory in the provision of options and skills. Unlike most lawyers to whom a client hands over his or her problems, community legal workers try to keep the client involved step-by-step as he/she is able, so that next time they will feel more able to do for themselves or transfer their past learning to another problem area. (17)

It is very important to recognize this "self-help" model of casework as an educative process which requires an acute sense of what tasks a given individual can or cannot handle. Vigorous follow-up is essential for this method to work effectively. In urban clinics such as Parkdale Community Legal Services in Toronto, some community legal workers function primarily as lay advocates; they provide legal services to clients on an individual case-by-case basis in the areas of social assistance and administrative law. Other community legal workers at the same clinic concentrate on group needs, such as landlord and tenant cases, advocacy and education. For the most part, community legal workers in Parkdale focus on the educational aspect of the clinic's services while direct casework is carried out by the 20 law students

from Osgoode Hall Law School who spend a term at the clinic. The education programs undertaken by the community legal workers include a speakers' bureau, a newsletter, legal information seminars and booklets. In addition, the Parkdale people do community development work with tenants' associations and are active participants in other local community organizations*.

In Manitoba, the Associated Tenants' Action Committee Inc. employs housing advocacy workers who represent tenants in violations of the Landlord and Tenant Act and appeals of rent increases. Besides this day-to-day work they lobby for better housing policies and improvement of low-income housing conditions, provide tenant education and organize around other concerns such as utility rates and milk price increases. They also assist low-income tenants with welfare and related problems and help form coalitions to fight against the removal of rent controls (18).

An example of the CLW's role at Dalhousie vis-a-vis the lawyer's is the "class action suit" of almost 40 members of the Coalition for Full Employment against the U.I.C. Here the CLW is working with the coalition and the lawyer pleading the case in court.

D. Publicly Funded Social Activism - A Conclusion or a Prelude?

Specialized clinics that service a defined constituency like native peoples, tenants or injured workers can effectively combine casework and law reform and successfully integrate education and organizing into all aspects of their work. This special approach to the law is defined as follows:

* See the Parkdale Community Legal Services Report to the Donner Canadian Foundation on Community Legal Education, 1978, for a fuller explanation.

> ... the paraprofessional as social engineer... In this model, the lawyer acts as an assistant to the advocate and as a consultant available to undertake litigation when necessary... This model has not provoked as much discussion or received the approval accorded (other roles) but it has been raised from time to time... And it is essentially this model which most closely approximates the community legal worker used by many Ontario (and other) legal clinics today. (19)

By working closely with organizations CLWs often develop new models of advocacy and representation. Recently, for example, a group of injured workers and supporters demonstrated at the Workmen's Compensation Board in Toronto and were physically attacked by police (20). A law student who tried to stop a policeman from beating a client he knew to be epileptic was arrested and charged with assault. By applying political pressure through demonstrating, the law student was providing crucial support to his client's struggle to effect a solution not only to his own problems, but to change the legislation affecting all injured workers.

Because community legal workers attach great importance to their involvement in social change, individual advocacy and general education become part of a larger perspective. But publicly funded social activism has certain limitations. Government agencies are unlikely to continue to fund such work if it becomes apparent that it runs counter to their own interests, or to the interests they represent.

So CLWs are pulled in contradictory directions; they are caught between the needs of their client community and the limits imposed by the funding bodies. This fundamental contradiction in their work has no easy solution. They must be as sensitive as possible to the needs of their client community. In addition, they must be very clear that ultimately the clients can and should control the work in spite of any current limitations on their ability to do so. The CLWs' strength lies in developing the capabilities of their communities but this organizing needs to be done carefully. Michael Welsh, a paralegal worker from British Columbia, warns of the pitfalls involved in a premature emphasis on community organizing and describes a realistic methodology that also respects the client community.

> The Community Law Offices were specifically modeled to be community based. The paralegals all realize the importance of development work as a part of this, but find great difficulty with their roles as community organizers. Casework is time-consuming and to limit it implies a reduction in service to those with immediate and critical legal problems. Even if the time is available, no community is going to accept a professional organizer who marches in to "shake things up" without reference to wishes of the community he (she) is trying to assist.... Consequently most paralegals have erred on the side of caution in this aspect of their jobs... The organizing work done has often been of small proportions; assisting other local groups to incorporate, revitalizing a local tenants' organization, or working with other groups on a food co-op, or a co-operative housing plan. The paralegal in these instances often becomes involved through the other aspects of his job. (21)

He concludes that it is difficult to evolve good community development programs and that a clinic's first priority should be the:

> Development and maintenance of a strong community base within their own groups ... (and that) they must limit their visions to manageable proportions. A confidence and credibility must be built... This can only be done if the Community Law Office and its allies undertake projects they are able to handle. (22)

It is most important that community legal workers realize their work can, at best, support progressive movements, not create or lead them (23). A community clinic is not a political party (24).

The question of social change is inextricably tied to the recognition that many people, mostly the poor and working people in this country, are disenfranchised as far as justice is concerned. As CLWs continue to direct their work (through active involvement with clients and their communities) toward social change, they do so with the hope that these inequities will be remedied. An important foundation of such a role is the learning of pertinent skills.

II - TRAINING AND ACCREDITATION OF THE PARALEGAL

To paralegal workers employed in publicly funded clinics, many thorny issues on the question of training need to be resolved. These issues spring from the relationship among the three main "actors" in the delivery of legal services: the legal profession, the paralegal and the client community. While the differing focuses from each group affect all the topics in the book, the tensions are most significant in the area of training, particularly in accreditation/liability.

All three actors would agree that the services offered must be high quality and that the event they are not, there must be some recourse. But training cannot be divorced from its purpose or from the setting where the skills are put to use. In this case, the community legal services office makes legal justice accessible to people not normally serviced by the private bar, people whose rights have traditionally been poorly advocated and protected. Working with low-income people who have often seen themselves as "underdogs" requires skills that go far beyond substantive competence in any one area of the law.

Hence, for particular skill requirements there are corresponding methods of training.

A. The Private Bar - Who is Training Who?

For our purposes, it is useful to distinguish between the private bar in general and lawyers with specific knowledge of community legal services. The main aim of training for the law profession is to instill the competency to advise and represent. Such skills are appropriate for lawyers. The emphasis is primarily on understanding statutes and regulations. Advice and representation depends on that knowledge, when it is applied within the traditional litigation model. This orientation

toward training based on legal competency springs from and leads to a preference for institutional courses, with standard requirements and testing.

Because public paralegalism is a rather new venture, it is somewhat of an enigma to the private bar. The bar views CLWs' qualifications with a certain amount of scepticism, quite simply because there is no required university, community college or other formal institutional training. On the other hand, the private bar sometimes sees this creature - the paralegal worker - actually performing tasks lawyers themselves perform daily and the reaction is sometimes annoyance. "You're cutting in on my turf". One automatic response on the part of the bar is to lobby for paralegals to undergo formal institutional training, as in the United States. Most paralegal workers employed in publicly funded community legal offices are not willing to restrict their jobs to that of law clerks, as might be implied through institutional training programs.

A knowledge of the actual scope of skills required by paralegal workers is almost impossible to determine without an understanding of the milieu in which paralegals work within the clinic. Many lawyers attached to the "clinic movement" have come to value the inclusion of paralegal workers in the clinic team. Only through commitment to the clinic movement have they recognized that an understanding of the inequality of the law is crucial to the training of a paralegal. This training requires a societal setting rather than an institutional one. The skills of organizing, education and law reform are as basic to the performance of a community legal worker's job as competence in whatever area of law she works in. It is mainly for this reason that we have emphasized "in-house" or "on-the-job" training as the nucleus around which paralegal workers must acquire skills.

This informal method is flexible and can be easily adapted to suit any setting from an urban centre to the Northwest Territories. The advantages of utilizing this method in legal clinics are that:

1. it allows for the cost of materials-classroom space and length of training to be kept to a minimum;
2. it can be easily adapted to fit in with the day-to-day operation of a clinic, thus allowing for the immediate application of knowledge learned in the areas of advocacy, communications, interviewing;
3. it can accommodate the training of individuals or small groups;
4. it permits people to learn skills aside from training by watching and learning from others; and
5. it permits the opportunity for people with life experiences but not necessarily a high degree of formal education to enter the clinic as employees. This particularly opens the way for the client community member to become a paralegal worker.

This last point is very important as clinics move increasingly toward involvement in the life and aspirations of their communities.

While members of the legal profession are of invaluable assistance to paralegal workers' ability to learn substantive law and the workings of the federal and provincial judiciaires, CLWs are also faced with the task of educating the private bar on the specific role played by community legal services. Gaining access to justice requires certain skills that fall outside the purview of the traditional legal profession. One of these skills, in fact, is the ability to demystify the legal system itself, which comes from facing clients as peers not as unapproachable experts.

B. Paralegal Workers - Against Cloning

Paralegal workers do not all perform the same functions. Some engage almost entirely in casework; others may concentrate on community education and organizing. Beyond the common, general orientation, each of these functions require different skills. One paralegal may learn

counselling and interviewing while another may focus on defining a legal problem, legal research, advocacy, administration, public speaking, interpersonal relations or group dynamics.

The methodology used for gaining these skills varies according to the specific objectives and resources of the individual clinic, as well as the needs of the client community.

One main criterion viewed as a skill is general background and orientation. Paralegal workers must bring to the job a desire to work with people whose rights, if they exist, are not protected and enforced. On-the-job training contributes as much to helping the trainee to solidify those ideas and apply them to specific areas of the law as it does to teach him/her how to deal with the law. The trainee observes other employees' attitudes toward clients and clients' problems. The philosophy and methodology of delivering legal services in community law offices differs greatly from that used in private law offices and, unfortunately, in most legal-aid certificate systems.

Because of the client community's general lack of access to the so-called "just society", the legal problems are often quite complex, involving more than one area of the law. Clients are included in the discussion of the relevance of laws to particular situations and evaluating possible strategies. They are encouraged to participate in choosing and implementing the most effective strategy.

Hence, because of the complexity of legal problems facing the clients in community clinics and clients' involvement in problem-solving and specialized areas of aid within each clinic, paralegal workers cannot be churned out from institutional training programs. Welfare mothers, for example, will have different attitudes toward themselves and the legal system than will injured workers; the paralegal worker who is assisting them will have to possess different interpersonal as well as other skills.

For this reason, a clinic, in conjunction with its clients and community can best decide the skills its paralegal workers need to acquire.

In many provinces that fund community legal services, there has been a tendency for the particular funding body to concern itself with training standards and skills development, a responsibility CLWs believe is the proper function of the clinic. The testing and measurement of the quality of these skills, once learned and used, should also be the property of the clinic and its community to a great extent.

One of the most fully developed models of in-house training is used by Parkdale Community Legal Services in Toronto. In addition to the on-the-job training, a resource centre containing visual aids and films has been set up as an aid to the training program. Besides written reports and materials that are easily available to a new paralegal worker, four weekly seminars are conducted in substantive law for Osgoode Hall law students, which the paralegal workers are also encouraged to attend.

Unfortunately, Parkdale Community Legal Services is not the norm; such training is not funded or possible in many community legal clinics.

Clinics of a sufficient size can, and have, provided their own training programs, often with the assistance of outside specialties. If funding were made available for training in clinics, the training process would be more comprehensive and could affirm the clinic's basic right to define which skills should be taught and when. Because training is usually not one person's sole responsibility, at present, experienced paralegals have to be available for time-consuming instruction and supervision. Of course, the same is true for staff lawyers, who would also be logical "trainers" for new paralegal workers without substantive knowledge of the legal system and its laws. In the

absence of particular staff assigned to that responsibility, training only adds to the burden of experienced staff, who have their own appointments, daily caseload and community commitments. With proper funding for training at the individual clinic level, or with some joint funding schemes, training could be designated as the job of certain individuals.

In Saskatchewan, members of the Association of Community Legal Service Workers used to hold regular provincial training seminars and workshops. Present budget restraints have caused the association to meet less frequently and have forced new paralegal workers to be trained solely by the in-house method in their clinics.

In the Northwest Territories, all programs have dealt with training as a very important component of the court work. To be effective in the field, the worker must be aware of the basics of the court system. Credibility in the program suffers if the clients do not feel confident of the worker's competence. Historically, native organizations have tended toward on-the-job training, rather than relying entirely on educational level. Some "testing" has been implemented in areas of law, but by far the most effective training has been the practically oriented skill-building technique. For example, in the Northwest Territories, the courtworkers were instructed in show-cause hearings and taught how to speak effectively on the issue of sentencing. Courtworkers acted on behalf of their clients in a series of most cases and video tapes were made of these cases. Although initially somewhat hindered by embarrassment, the native courtworkers progressed so rapidly that they seemed different people by the end of the workshop.

There is no teacher so thorough and demanding as life experience itself. Hilda Towers, in a paper presented at a workshop on paralegals in Vancouver, described her life before becoming a paralegal (25). Her

own experience has given her the credentials she required to work with people. Those who come from poor and minority groups are often made to feel insignificant and helpless. Giving an individual skills to teach others how strong they can be is often more useful than crossing all the "t's" and dotting all the "i's" on a legal contract.

Assertiveness training is another form of competence building. This is especially important in remote areas where workers have to work independently. Courtworkers or paralegals, having been given basic training in various areas of the law, must be able to determine and carry out remedial action. For example, with a client held in custody, the native courtworker insists that the client be able to see a counsellor or courtworker in order to have charges and the procedure of bail hearing explained. For a native courtworker, this process involves crossing a cultural boundary, addressing a professional authority figure from a "non-professional status" and explaining to the "professional" that his actions may cause a denial of individual rights. Teaching assertiveness to native courtworkers or paralegals is based on the knowledge that people do not know their rights and therefore do not exercise them.

Native courtworkers train on the job. New workers are usually placed with a senior worker, who will introduce them to various members of the court and the community. The senior courtworker will explain the court procedure, the roles of the various members of the court, the rights of an individual who is charged with an offense and how to use the Criminal Code and the Territorial Ordinances. The Native Courtworker Association produced a manual in its first year of operation which outlined arrest procedures, release procedures, the criminal court process and so forth. The manual also explained the roles of various community services and how an individual may make use of them. After observing the work for a period of time, the trainee is involved in a training session organized by the Association. Because of the basic

on-the-job acquaintance with the system that the worker receives under the guidance of a senior worker, the new worker finds the training sessions more useful.

We support increased availability of central resource facilities for on-going training. Such facilities should not, however, have prescriptive authority over the training of paralegal workers. They should exist to respond to the needs articulated by the community legal services and be controlled by them. Such facilities could include libraries, films, manuals, texts and resource specialists.

Another issue that stems from the methodology described above is quality control of paralegals' work. To achieve and advance standards, it is important to have a system of review and evaluation of the quality and effectiveness of services provided. Evaluation is a component of training. Unfortunately time and money are usually scarce commodities in clinics' budgets. Regular review sessions and weekend retreats, for example, are expensive undertakings, but should be supported by funding bodies.

Certain statutes that enable agent representation, such as the Landlord and Tenant Act, Part IV, in Ontario, place the responsibility of determining whether an agent is competently representing his/her client with the presiding judge. In Ontario, in the 1977-78 clinical funding year, the funding body restricted two clinics, from appearing in County Court. In this instance, the funding body assumed the authority designated by the government act to the presiding judge. We believe this action far oversteps the funding body's authority to determine the paralegal's scope and competence.

From this, and other experience, there has developed within the clinic movement a desire to define the relationship between clinic and funding body, particularly with respect to authority concerning training

and skill evaluation of community legal workers. We would posit that the client community provides both the basic and best milieu in which to determine training needs and to evaluate those needs. Any training that occurs without a background of dialogue and consultation with the client community is liable to produce irrelevent courses of no practical use. Sensitivity to the client community is essential to a successful training program. The involvement of the client community in the affairs of the clinic also yields the most thoughtful evaluation of the legislation with which paralegal workers work.

Knowing how laws should be reformed usually occurs when the client and the paralegal learn why such laws need reforming.

It is through community development and education that client communities will develop to the point where their participation in the clinic will be most successful in planning and organizing training programs. But this does not occur until there is a deeper understanding of the client community's relationship to the law.

In setting up training programs it will always be necessary to import experts in special technical areas. But if community legal services, through their daily work, can assist the client community's development as a crucial component of the on-going battle to improve the rights of low-income people, then the client community will effectively convey the non-technical skills that the paralegals learn.

C. Professionalism

The professionalism/accreditation of the CLW is a question with no apparent answer. Words like "credibility", "accountability", "consumerism", "autonomy" and "control" are bandied about, and there appear to be so many sub-issues within this main issue that it is often hard to see the wood for the trees.

One thing is clear, however: there is enormous pressure on paralegals to professionalize (26). Lawyers look on it as a method of defining and controlling a peculiar animal that has strayed into their territory (27). Some paralegals view it as a method of achieving credibility with the bar and the community at large.

Let us look at it first from the point of view of those who belong to the already established professions - the professional view of the "objects of professionalism". The major reason advanced is the protection of the consumer interest - the consumer of the service must be assured that those providing the service are competent to do so and have met certain requirements which indicate their competence. Professional societies accredit training required to practice, issue certificates enabling recipients to practice and oversee the professional and ethical conduct of their members.

By means of unauthorized practice legislation, professional societies also prevent non-members from practicing. Members are supposedly made accountable to public through the medium of the professional society.

Paralegals who advocate professionalism dislike the lack of job definition. Theirs is a new role in the community and both community and bar perception of this role are often confused. They feel that were that role defined and regulated, credibility with public and bar would improve. People would begin to perceive paralegal workers as "professional" workers with "professional" standards and "professional" code of ethics. Most of their clients are poor, often used to being passed on from agency to agency and therefore are resentful at being palmed off with the cheaper "second best" - the "barefoot lawyer" rather than the "real" lawyer. Paralegal workers pressing for professionalization feel that accreditation would reassure clients that the workers are trained, accredited people, competent to provide the

best service available - an alternative to a "real" lawyer, not second best. Such paralegal workers also feel that until their status is recognized by both government and public, the conditions of work and pay will remain relatively poor - "professionals" tend to make more money.

But, for a number of reasons, not all paralegal workers are in favour of professionalization. Professionalization is in conflict with some of the stated objectives of many community legal clinics. Paralegal workers see their work as a resource to the community. From this view, work on projects and casework with members of the community are conducted on a peer basis. This relationship is a goal and a challenge, it is not easy to achieve. Paralegal workers often come from different class and educational backgrounds than those of the community in which they work. The paralegal worker must constantly strive to alleviate the communication problems and the differences in values and priorities by concentrating on the development of interpersonal and group dynamics skills.

But the goal remains. Professionalization would interfere greatly with the development of this peer relationship in two major ways:

1. it would introduce or validate psychological and social barriers between client and worker that would discourage client participation in the work being done;

2. accreditation spells "exclusions", because regulation of entry into the profession would mean lower-income people and those with little formal education would be excluded.

Funding bodies that choose to fund some activities and not others and to improve unauthorized practice regulations chip away at access to community legal services and, hence, to justice. The power remaining with community boards should not be further limited by outside bodies seeking to impose uniform training and accreditation without reference to local needs.

The question of client interest should also be left to the community boards to decide. Some put the argument forward that the consumer interest is best served by the formation of a professional society to oversee such questions as competent service and professional ethics. However, the self-government of professional societies has traditionally left much to be desired. They have tended to become exclusive monopolies in the delivery of service; they have restricted entry to their ranks to all but a very small section of the population; they have introduced accreditation and certification with respect to educational background; and they have pursued their function of self-government entirely in the self-interests of their members.

"Consumerism" is not a factor that weighs very heavily with bar societies as their reluctance to allow their members to advertise indicates (28), and codes of ethics tend to preserve that status quo. Since their governing bodies do not carry large numbers of consumers relative to the numbers of members, they can hardly be said to reflect the interests of consumers. Through their monopoly position, their services have become very expensive, reflecting their concern with market control.

Paralegal workers in a number of Toronto clinics have chosen to deal with the difficulties of job definition and poor pay and working conditions through unionization rather than through professionalization.

Since paralegals define themselves as "workers" rather than as "professionals" they face their clients as peers, rather than as unapproachables accountable only to themselves.

Unionization resolves such issues as pay, job description, training and working conditions. In Ontario, there are problems in defining the clinic board as the employer, since the funding body, in its present form actually sets wages and benefits and also attempts to regulate job description. In Saskatchewan, this problem was dealt with

in the following manner: when the workers unionized, the community boards were named as the employers and while negotiating with the union, the Legal Services Commission consulted with the funding body. Negotiation was done on a province-wide basis, and the management negotiation team was made up of community-board representatives from across the province. A professional negotiator, a lawyer, was hired by the management team for the first contract, but proved so expensive that he was not used in negotiating the second contract. The final collective agreement was endorsed by the Legal Services Commission.

Paralegals should be regarded as professionals in that they must have a high degree of competence and ethical conduct, but this must be achieved by means other than by licensure certification.

Requirements for entry into training programs should include awareness of the socio-economic injustice experienced by clients, an ability to work with people of varying social levels and skills, motivation and self-descipline, confidence, community involvement, organizational skills, communication skills, intelligence (logic, identification of problems, application of concepts to real situations), research skills, interviewing techniques and conciliation skills.

Obviously, it should only be necessary to have the rudiments of the above qualities, all of which are developed in training and through actual experience.

After initial training there would be an internship, during which senior staff and the community board would observe and assist the paralegal to ensure that skills, qualities and specified knowledge were being adequately applied to the work situation.

The method adopted by some paralegals in the United States was the formation of a strictly professional group - state Community Legal

Workers' Associations - much like the Registered Nurses Associations.

This alternative is less appealing than a Joint Planning Committee, but far preferable to control by the legal profession. Some lawyers say: "If the paralegals do not organize themselves we will do it for them".

D. Training Resources

In-house training should be supported by other inter-clinic and province-wide resources. This kind of structure has begun to emerge in B.C. The training program is being developed on a provincial basis, but it shows concern for both local autonomy and the various paralegal roles that have been developed and continue to emerge. The Joint Planning Committee on Community Paralegal Training consists of a lawyer who represents the funding body - the Legal Services Commission of B.C. - three lawyer representatives of funded agencies (clinics), four paralegal representatives of funded agencies (clinics), two citizen representatives from Continuing Adult Education and a funded agency board. This group is developing training programs which provide all paralegals with general education as well as specific skills. Specific programs are supervised by committees of the Joint Planning Committee, whose job is to implement the programs. At present, periods of internship vary according to local clinic requirements, although an argument might be made for uniformity to ensure fairness.

The recent proposals to the Grange Commission (29) by the Association of Ontario Clinics (30) dealt with the question of province-wide training:

1. We submit that on-the-job training run by each clinic should continue to be the principal method of instruction. Resources and funding should be made available to the clinic for this purpose.
2. Additional resources should be made available to supplement this on-the-job training, especially for staff of new clinics and for topics of interest to particular clinics.

3. Any training developed should be based on the expertise that already exists within clinics; any persons planning or conducting training should be accountable to clinics themselves. Clinics should be encouraged and given adequate funding to form a joint body responsible for supplementary training programs.

4. This should not be considered as either formal or informal accreditation for any training program (31).

This proposal is similar to the program of the B.C. Joint Planning Committee, in that the representative body prepares kits for use by each clinic. The overall kit is supplemented by local training material and special seminars held in Vancouver. Although both try to respect specialized local needs, the centrally prepared kits in B.C. form the primary method of instruction while the Ontario proposal suggests that centrally prepared material supplement local training.

The job of paralegal accreditation cannot be left to the legal profession. They do not perform the same roles; nor are their methods and goals necessarily the same. The argument that paralegals work in areas previously reserved for lawyers is true only in so far as protective legislation states it. In practice, paralegals have filled a void which for various reasons has not been filled by lawyers.

In the B.C. Joint Planning Committee model, lawyers have a role, for no one denies that skills and knowledge acquired by lawyers, nor the politive input individual lawyers can supply. But so do other professionals like social workers and community organizers. Ultimately, the choice of programs must satisfy the skill needs and goals of paralegals.

Because of the changing roles of the paralegal, licensure or certification of paralegal workers is not only premature, but actually counterproductive. Ideally, paralegals in the public sector will continue to modify roles and deal with changing social and legal

conditions in a concerned, flexible and competent manner. Certification would define roles too rigidly and would probably place us in a niche from which paralegals could not expand and in which they could no longer be responsive to community needs.

This is why training programs and internship under experienced staff and a community board seem the most responsible approach. A supplementary training program, developed by a broadly representative body including paralegals, should be able to guarantee both general and specific training, in legal and social systems. With local boards and experienced staff handling the internship, clinics would be ensured both competence and responsiveness. Afte the training program is completed, the paralegal and the employer are responsible for guaranteeing competence, responsiveness and ethical conduct.

III - INTERFACE BETWEEN PARALEGAL WORKERS AND LAWYERS

A. "The Roots of the Problem - The Seeds of the Challenge"

Any discussion about the relationship between lawyers and paralegal workers must necessarily take place on two levels. There is a need to examine the role of non-lawyers in the delivery of legal services both:

1. in relation to the history, development and philosophy of the legal profession (32) and the legal system as a whole; and
2. in relation to situations encountered in working with individual members of the legal profession on a day-to-day basis.

At the risk of stating an oversimplified analysis of the development of the legal profession, it is nonetheless useful to briefly discuss the relationship between old and new forces at work in the legal system.

Although every society develops its own particular rule of law, the origins of the English-Canadian court system can be traced to the

feudal era in Britain (33). The first legal practitioners were clerics (34). With the growth of industry, the church's hegemony over the legal system waned (35).

Since the legal system reflects social and economic relationships in society, it cannot be viewed as an immutable or static force. However, some of the ideals used to justify the existence of a state legal system have been constant since the signing of the Magna Carta in 1215. "To none will we sell, deny or delay the right of justice" (36).

In fact, concepts of equality and social justice have existed since that time and have motivated movements for social change that seek to make these ideals a reality. Recognizing the inadequacy of the existing legal system in meeting these stated goals, the Ontario Joint Committee on Legal Aid reported in 1965 that,

> Legal aid should form part of the administration of justice in a broad sense. It is no longer a charity but a right. (37)

This thinking was instrumental in the establishment of most legal aid systems and represents a response to pressure applied to the legal system from those not properly served by it.

Alongside themes of equality, justice and freedom lies the reality that because legal systems are fundamental to the existence of modern states, they tend to be unequal and unjust. In the classical liberal view the state exists to keep "order" in societies rife with conflict between competing economic and social interests (38). As such, the state is an inherently oppressive entity. The state machinery, which includes the legal system, performs many oppressive functions as well as liberating ones like "option creating" and "conflict resolution" as described by Taman (39).

And while the concept of justice is integral to the training of the legal professional, a lawyer owes his first duty to the state.

> To maintain its integrity and its law, and not to aid, counsel or assist any man to act in any way contrary to those laws. (40)

This allegience is justified on the basis that the law is an impartial mediator and stands above those basis antagonisms in society that make the state oppressive. Most paralegals have concluded that the legal system is not an impartial mediator, but a system that continues primarily to serve propertied and powerful interests in our society. The lawyers' allegiance to the state and laws that protect the strong from the weak dates back to the early development of the profession.

During the transition from a feudal society to an industrial one, the displaced landed nobility found a role for itself in the burgeoning state legal system. The long-held belief in the legal profession that the practice of law is a public service that should be open only to professionals can probably be traced to the feudal class origins of its early members (41).

The establishment of law societies to rationalize fees and eliminate competition within the profession protects lawyers as small businessmen. In addition, their organizational control over the education and final accreditation of young barristers and solicitors served to maintain the profession as an elite. Almost to date lawyers have controlled access to courts and tribunals whose activities are dependent on the adversary process. And lawyers continue to be centrally involved in the development and administration of the legal system. Therefore, it cannot be ignored that the virtual monopoly held by the legal profession in regard to the administration of justice was largely facilitated by now-questionnable pronouncements that professionalism was necessary to the provision of high-quality legal services.

This monopoly has existed since the early development of the legal system and has continued, in a somewhat altered form, until the present. But independent representatives such as trade unionists or people working in law-related fields have operated alongside and somewhat outside the organized legal system for a time. In a similar fashion, community legal services and their "lay" personnel have developed outside the mainstream of the legal profession. The birth, development and numerical growth of public-sector paralegal workers can be attributed primarily to the inability of the present legal profession to meet the demand for access to justice amid the considerably large population of poor people in this country. It is in this context that community legal workers represent a formidable challenge to the monopoly, control and practice of law as we know it.

For example, native courtworkers do not wish to be seen as an extension of an imposed system of values from another culture, where they are more of a facilitator for the judicial system, than for the community.

> They must identify and if necessary resurrect the traditional values before the imposition of the White man's laws, suggesting ways with which those values and processes can be married with what is good of what we have now. (42)

B. What Role for Lawyers?

In the Northwest Territories, the vast majority of lawyers work out of Yellowknife. There are two private offices in the Western Arctic, one being in Hay River, the other in Inuvik. In Frobisher Bay, Mr. Dennis Patterson is the Director of a community law office - Maliiganik Tukisiiniakvik - which employs two full-time paralegals.

Because of the high cost of office maintenance, staff salaries and the lack of private businesses, real estate transactions or any

other profitable source of clientele, lawyers would not be able to survive in the more remote areas, without being subsidized by the government. Once an office is subsidized, it is a question of finding a person who would move to a remote community. It took two years to find Dennis Patterson and locate him in Frobisher Bay.

Training paralegals or native courtworkers in the north ensures that the people of the north receive whatever legal assistance they need when they require it, no matter how inaccessible their community. Although not funded, services include public legal education and community development. The people must find their own solutions or methods of dealing with local problems.

The use of non-lawyers in the delivery of legal services is a two edged sword, particularly regarding their "professional" relationship with lawyer colleagues. As described earlier paralegal workers can develop and extend access to justice for the many members of our society who are currently desenfranchised. This can be done precisely because we are not members of the bar and under its inherent monopoly. We are not subjected to the strict codes of behaviour and procedure that our lawyer colleagues are. This provides a greater measure of freedom in the clinic's scope to develop a broad range of services including organizing and law reform; for such activities members of the bar could face disciplinary proceedings by the bar of law society.

Presently in Canada, B.C. has the only native courtwork program that employs a full-time lawyer. The Northwest Territories Native Courtworkers Association has considered obtaining funds to hire a lawyer. If so, the lawyer would not become the director of the program but an additional person to provide supervision to the paralegals in the field and assist in training goals. It is important to maintain the creativity of the workers to deal with the problems their clients face, but be able to turn to the lawyer for assistance and advice. The

present courtworkers have worked in the field long enough to have their own confidence in dealing with any number of problems, but the back-up of a lawyer on staff would be extremely beneficial. In the past, the association had a very good relationship with various members of the bar. Indeed, if the association employs a lawyer, it must maintain the present relationship with private members of the bar to coordinate the services rendered by all parties.

C. Liability and Unauthorized Practice

From the previous discussion flows the question of liability. We do not desire to be accredited, licensed or certified because:

1. the changing roles of public-sector paralegal workers means that any accreditation, licensing or certification would be unduly restrictive; and
2. our ethical approach is more concerned with accountability to our clients and clinic boards of directors than to a professional body related to the legal profession.

However, we are also committed to the concept that clients have the right to seek redress if they believe a paralegal worker has been negligent. Although there is no consistent method of dealing with complaints, generally clients should have access to the community board of the clinic, possibly a "grievance" committee composed for that purpose. The peer and community oriented philosophy underlying this approach has been outlined elsewhere in this chapter. Hence, the clinic not only provides legal services, but also has similar aims to those of the client. Therefore, if the client believes she/he has not received competent service from the clinic, it is in the worker's and the clinic's best interest, as well as the client's, to get to the cause of the complaint and to take the necessary steps to remedy it.

Since it may transpire that a paralegal worker was negligent, the question of liability insurance arises. While paralegal workers have been free of lawsuits for malpractice, there is general agreement that

some sort of independent insurance coverage is needed. It has been assumed that most public-sector paralegal workers are covered by the insurance made available to clinic lawyers, but this has never been put to the test, and many clinics have no lawyers.

Native courtworkers in the Northwest Territories would not recommend pressing for insurance for paralegals at this moment because such a step would require definite terms of reference they are not prepared to develop. They are still in a constant process of evolution.

In their 1978-1979 financing request to the Clinical Funding Committee, Toronto's Neighbourhood Legal Services included a 5,000 dollar contingency fund to cover the deductable under the staff lawyers errors and omissions insurance. As it has been assumed that paralegal workers are covered by that policy, it was also assumed that it would give them some protection. While this item was not allowed in the funding budget, the Clinical Funding Committee gave verbal commitment to cover any such liability should it become necessary until more formalized arrangements could be made.

The Action on Legal Aid brief to the Professional Organizations Committee recommended that this question of insurance:

> ... be best left at present to be worked out by the communities themselves. (43)

Their response to date is limited to the working paper prepared by Colvin, Stager et al. (44) which suggests the following:

1. that the regulation of the market for legal services be substantially loosened; and
2. that there be created a new regulatory authority to regulate certain aspects of this market. (45)

The reasons given for this are that:

1. the <u>prima facie</u> monopoly is an over-regulation of a market in which many law jobs are in fact performed by non-lawyers;
2. the lines differentiating among the occupational groups are too vague;
3. the courts cannot properly make such major public policy decisions; and
4. the Law Society of Upper Canada is an unsuitable body to enforce such policies (46).

This "de-regulation" should be effected by an authority independent of any of the groups involved with input from legal experts, economists, educators, manpower experts and consumers. Therefore, the specific types of control would operate under regulations rather than statutes.

An interesting scenario on the possible link between the questions of unauthorized practice and civil liability is outlined by E.P. Belobaba in his submission to the Policy-Setting Conference of Ontario Clinics.

> The staff lawyer's insurance policy is made explicitly inapplicable to any dishonest, fraudulent, criminal or malicious act or omission of the insured. This exclusion could cause problems where the client's loss is attributable to the lawyer's improper delegation of a legal task to the CLW. If it turns out that the CLW's handling of the legal task constitutes an "unauthorized practice" of the law (<u>Law Society Act</u>, R.S.O. 1970, C. 280, S.s.50) then the lawyer's acquiescence could be seen as "aiding and abetting" of a criminal offence. This would trigger the above-mentioned exclusion and would nullify the insurance coverage. (47)

Legislation concerning the legal status of paralegals in Canada is just beginning to come into focus along with a recognition of the role of the paralegal in the delivery of legal aid services. Section 30 of the Saskatchewan Community Legal Services Act allows the hiring of paralegal staff under the supervision of a lawyer, but restricts their activities regarding court work (48). In the Northwest Territories,

paralegals are involved in higher court activities - speaking to sentence or the preparation of pre-sentence reports (49). Section 29 appears to answer the question of "unauthorized" persons practicing law (50). The paralegal worker is acting under the authority of the lawyer on staff; she/he is not involved in an unlawful practice of law.

Paralegal workers must be exempted by statute from prosecution for unlawful practice. The unlawful practices provision exists to prevent opportunists and charlatans from benefitting from other people's inabilities or ignorance. The paralegal worker is paid a salary, accepts no income from clients and limits his/her practice to areas of law traditionally neglected by the legal profession and authorized by various provincial legal aid plans. The unlawful practices provision was not created to facilitate the intimidation of serious practitioners of public interest law as in the case of Atkinson, in Toronto (51).

D. Confidentiality

People who can afford a lawyer are guaranteed that their conversations with counsel are completely confidential because a lawyer cannot testify against a client. People unable to afford a lawyer or unable to find one to represent them and who consequently seek the assistance of a paralegal worker are denied the legal right of confidentiality, except in Saskatchewan (52).

There is no statute elsewhere in the country that guarantees paralegal worker-client confidentiality. Because of an unwritten agreement in the Northwest Territories the native courtworkers have, to some extent, enjoyed confidential relationships. To ensure the program credibility with the people, it was felt that a native courtworker should have some protection from being subpoened against his/her client. However, the staff have always been instructed to be very cautious when interviewing a person charged with a serious offence, like

murder or rape and, in fact, to instruct the client to speak to the lawyer, once appointed or selected, rather than to the courtworker.

The attainment of confidentiality in a statute would facilitate credibility with clients. But at the same time, it would make it even more difficult than at present for paralegal workers to put clients in touch with each other when case patterns indicate a necessity for collective action. Because this question touches on the issue of the unique role of paralegal workers and community legal clinics as a whole, it is too soon to insist upon a resolution of the whole issue of confidentiality at this time. However, it appears that as community legal services mature, standards in clinics will evolve. Perhaps one of the outcomes of this growth will be the development of appropriate standards for accreditation, confidentiality and liability that are more closely suited to the practice of public-interest law and access to justice.

E. Occupational Bridging

Law schools should recognize that work as a CLW, while developing a philosophical perspective different from the "traditional" law student, is an excellent training ground. The work trains CLWs to develop expertise in interpretation, interviewing and advocacy and anyone entering law school from this work should be given advanced standing. Allowing course credits in areas covered by the CLW is one possible equalization factor. Also CLWs with very little formal education should be given special consideration when applying for admission. Likewise, bridging from legal secretary and law clerk jobs to more complicated paralegal roles must be assured.

CLW skills such as interviewing techniques and the ability to relate to people of all socio-economic backgrounds and play a role wider than the strictly legalistic are not emphasized in lawyer training and the addition of these things to the curriculum should be seriously considered.

CHALLENGES

It should be apparent from the foregoing that the variety of jobs falling under the title of paralegal is very great and the demands can be overwhelming. Unfortunately, the threats are very great as well. The most recent example of this is the unauthorized practice complaint against the CLW in Toronto. It is very likely that nothing will come of the case itself, but it may speed up the process of legitimizing paralegal work through amended statutes.

Other developments are much more insidious.

> Next Year Country recently reported on the results of and attempt by native people in Prince Albert, Saskatchewan, to run the legal clinic themselves. Seeing the limitations of the legal assistant and lay advocate roles they tried to develop community legal workers. They opted not to have a legal director supervising their work. They also began educating the community as to the political causes of their poverty and the role of the legal system in perpetuating those problems. The commission pressured them to change and in June of 1977 forced the resignation of their community worker after they presented a brief of the parliamentary committee on the penitentiary system which said that the "prisons population dominated by Indians was a reflection of a racist, capitalist society. ...
> Prince Albert appears to be a case of CLWs demanding to engage in preventative legal education and law reform activity without supervision. In St-Louis the Commission refused to accredit the community controlled clinic in an attempt to transform it into strictly controlled "local bureau". When the clinic appealed the decision, their funds were cut and subsequently confidential files were confiscated. Here it was the accreditation and supervision of the clinic itself rather than simply CLWs but the role of the state was the same.
> The Clinical Funding Committee of the Ontario Legal Aid Plan has recently cut off all funding for People & Law. This, because they are "acting as a recourse body for groups wishing to seed social change". And what is this terrible "social change" referred to: simply assisting a blind people's organization with "information, education and training ... for client service, reading and interpreting legislation". (53)

In a Manitoba Task Force on Legal Aid headed by Frank Allen in March 1978 it was recommended that legal aid be eliminated for groups appearing before the Law Amendments Committee and that legal aid for groups appearing before administrative tribunals be discretionary. Severe financial reductions were proposed; the budgetary allowance for "meetings and seminars" was to be decreased from 6,985 dollars to 1,000 dollars and the 81,000 dollars earmarked for research and education was to be drastically reduced or eliminated from the budget (54).

The political climate seriously affects the clinics' potential for community education and limits the role of all legal workers accordingly.

In Saskatchewan, community legal services workers, along with other clinic staff, are presently threatened with financial cutbacks. Layoff notices were sent to 15 temporary workers in February 1978; the notices were recalled in June 1978, only to be re-issued on July 31, 1978. On top of these layoffs, each of the 13 clinics have had to share a clinical deficit of 237,508 dollars by reducing a further 8.91 percent from their 1978-79 budgets. Needless to say, cutbacks in the budgets have been in the area of salaries.

The Legal Services Commission of B.C. and the B.C. Legal Aid Society are attempting to amalgamate into a Legal Services Corporation to rationalize services (55).

The Attorney-General of B.C. has proposed eliminating both the policy-planning role from the commission and the independence of the CLOs by dissolving their community boards. The Attorney-General's proposal would eliminate "preventative law" - legal education and community development - thereby reducing the CLWs to either "junior lawyers" or to legal assistants, if they continue to exist at all.

This proposal is a retrogressive step, denying complete justice to the socially and economically disadvantaged, and reverts the system to the Bandaid approach to socio-legal problems. There will be no attempt to alleviate the problem that produced the casework, thereby guaranteeing a constantly increasing demand on the casework system.

By eliminating community boards the Attorney-General would obviously remove citizen participation in the justice system and draw the law back entirely into government's hands. With a Legal Services Corporation formed to implement government policy rather than develop policy, the legal system will not be responsive to the people, but vice versa.

The person charged with a criminal offence is guaranteed legal representation, but without community legal services the injured worker or the senior citizen is not. Without the assistance of a socio-legal oriented CLW, family problems are returned to the adversarial system.

Ontario paralegal workers feel increasingly threatened by the studies being done by the Professional Organizations Committee and the Grange Commission.

The success of the paralegal programs across Canada has shown two things. Law people can effectively become involved in legal matter. Also, programs of this nature do not have to be threatening, or "take on the role of a lawyer" in order to provide more extensive services to those who cannot afford to pay or those who do not know how to utilize the services available. There has been no evidence that lay people will provide a poorer quality of service. The quality of any service must be judged by how available it is to all. At present, those services provided by lawyers are not sufficiently available to poor people, or minority groups, or those in remote areas.

Community legal workers and clinics have been working long enough to prove that their value and feasability are no longer merely ideals. The fact that native courtworkers in the Western Arctic want to expand their roles into that of CLWs testifies to this. While most clinics are still struggling to make community control a reality the increasing number of initiatives that some boards of directors have taken independent of and even contrary to staff and funding body wishes shows their growing viability. Another sign of the maturity of these ideas is the emergent stability of the clinic work force and job descriptions.

People are staying longer and developing much more refined skills and greater knowledge. The dramatic changes in the kind of work done begins to fade as the most useful tasks become apparent. While it is still an incomplete process, the ability to change as conditions demand seems unaffected by this crystalization of function.

We have tried to show the various possibilities, limitations and interaction of various types of paralegal work. It is our contention that justice can only be served if all functions are accomplished in an atmosphere free of professional pretentions and control. While there are a number of technical and financial problems that may yet undermine our viability, it is still a period of dynamic exploration in a few provinces.

Like everything else, the key to this process is the interplay of people struggling to live their lives with dignity and elites attempting to maintain control over their property interests. It is the struggle against this minority that provides the challenge and ultimately the satisfaction of our work.

FOOTNOTES

(1) D.N. PRITT, Law, Class & Society (four volumes: 1. Employers, Workers & Trade Unions, 1970; 2. The Apparatus of the Law, 1971; 3. Law & Politics & Law in the Colonies, 1971; 4. The Substance of the Law, 1972), Lawrence & Wishart, London. Robert LEFCOURT (Ed.), Law Against the People, New York, Vintage/Random House, 1971. Richard QUINNEY, Criminal Justice in America, Boston, Little, Brown, 1974.

(2) Linda MCQUAIG, "Jury, Investigator Unheeded in Man's Death", Globe & Mail Toronto, 30 March 1976, pp. 1-4; "Atrolite Fined $3,000", Injured Workers Voice, Toronto, Jan/Feb 1977, p. 1.

(3) L. CLARK and D. LEWIS, "Rape, the Price of Coercive Sexuality", Women's Press, Toronto, 1976.

(4) Dr. Gilbert NONTURE, Commissioner, Indians and the Law, Indian Affairs, 1969.

(5) N. BETHUNE, "The Wounds", Alive Press, p. 3.

(6) For a report which deals in part with the role of community legal workers in relation to community legal education and development, see the Parkdale Community Legal Services Report to the Donner Canadian Foundation, 1978.

(7) Phil MACNEIL, The Legal Paraprofessional at Penitentiary Legal Services, unpublished paper presented at the National Conference on Paralegalism, 1978. (See Appendix D)

(8) Frank ALLEN, Summary of Task Force Recommendations - Legal Aid, Manitoba, March 1978.

(9) Hilda TOWERS, Description of Role and Functions of the Paralegal at Main Street Community Legal Services, unpublished.

(10) MACNEIL, op. cit., supra, note 7.

(11) Dennis PATTERSON, Native Paralegals in Remote Areas, See Appendix E.

(12) PATTERSON, Ibid., p. 5.

(13) PATTERSON, Ibid., p. 5.

(14) F.H. ZEMANS, An Overview of the Function and Role of Paralegals in the Delivery of Legal Services, Toronto, 1978, p. 23. Unpublished but see Mr. F. Zemans' paper, p. 161ss.

(15) Native Courtworkers Association, The Role of Paralegals in the Western Arctic, NWT, 1975, unpublished document.

(16) Action on Legal Aid, Community Legal Workers in the Delivery of Legal Services, unpublished.

(17) Ibid., p. 12.

(18) David SCANLON, Associated Tenants Action Committee Inc. Report, Winnipeg, 1978.

(19) Comments made by Phillip Lang at New Careers in Law, Conference, 1971, which are referred to in a paper by Nancy Peterson, a student at Osgoode Hall Law School, Toronto.

(20) Victor MALAREK, "Seven Arrested in Clash Over WCB Pensions", Globe & Mail, Toronto, 30 May 1978, pp. 1-2.

(21) Michael WELSH, What's a Paralegal, Vancouver, November 1977, unpublished, pp. 21-23.

(22) Ibid., p. 24.

(23) Jeffry H. GALPER, The Politics of Social Services, Prentiss-Hall, 1975. David JONES and Marjorie WARP, Community Work One, London, Routledge & Keagan Paul Ltd., 1974. Marjaleena REPO, "The Fallacy of Community Control" and "Organizing the Poor Against the Working Class", Transformation, Toronto, Vol. I, Nos. 3 and 4, 1972.

(24) "Local Organizers & Class Struggles", Guardian, (N.Y.), 5 July 1978. A Review of Community Class Struggle? by John COWLEY, Adam KANE, Marjorie Mary and Unice THOMPSON, Stage I Publishers, 1977.

(25) H. TOWERS, op. cit., note 9.

(26) Even Fred Zemans elsewhere in this volume refers to the "development of adjunct professionals".

(27) National Paralegal Institute, "The Credentialing and Licensing of Paralegals & Paralegal Training", Clearinghouse Review, March 1973, p. 664.

(28) At the meeting of the Benchers of the Law Society of Manitoba on June 26th, 1978, a decision was made that lawyers might now advertise so long as it was done in a "dignified" manner. Donald Jabour, a lawyer from B.C., has been convicted of unethical practice by the B.C. Law Society because he has advertised his services and his fees - which where, by the way, lower than those of the Law Society tariff. He has been suspended from practice for six months - but is appealing to the Supreme Court.

(29) Commission on Clinical Funding presided over by the Honourable Mr. Justice S.G.M. Grange, appointed July 1978, in Ontario.

(30) Multi-clinic Brief endorsed by 18 clinics and submitted 21 September 1978.

(31) Ibid., p. 4.

(32) By "legal profession", we mean lawyers.

(33) Feudal society was primarily an agricultural society in which there were strict master-servant relationships between the landowners and the serfs or peasants who worked the land.

(34) M. ORKIN, Legal Ethics, Toronto, Cartwright and Sons, 1957, p. 3.

(35) "The place of dogma and divine law had been taken by the law of man, the place of the Church by the state. Economic and social relationships... were now seen as being founded on law and created by the State. Since commodity exchange ... necessitates complex contractual relations ... and since competition - the basic form of contact between commodity producers - is the great equalizer, quality before the law became the grand rallying cry of the bourgeoisie": V.A. TUMANOV, ed., Contemporary Bourgeois Legal Thought, Moscow, Progress Publishers, 1974, p. 40.

(36) L. TAMAN, The Legal Services Controversy, National Council of Welfare, Ottawa, 1971, p. 12.

(37) Ibid., p. 13.

(38) F. ENGELS, The Origin of the Family, Private Property and the State, New York, International Publishers (E.B. Leacock editor), 1978 - for the radical view; and O. GORMAN, ed., Edmund Burke: His Political Philosophy, London, Allan and Unwin Publishers, 1973 - for the conservative view.

(39) TAMAN, op. cit., p. 3.

(40) M. ORKIN, op. cit., p. 29.

(41) The master-servant relationship in feudal societies had many paternalistic and self-justifying aspects to it.

(42) PATTERSON, op. cit., see note 11.

(43) Action on Legal Aid, op. cit., p. 29.

(44) COLVIN, STAGER, et al., The Market For Legal Services, a paper commissioned by the Professional Organizations Committee, Ontario, 1978.

(45) Ibid., p. 410.

(46) Ibid., p. 410-411.

(47) Conference held in Toronto on June 23-24, 1978, attended by 31 community clinics; E.P. BELOBABA, Civil Liability and Professional Malpractice Insurance, available from Parkdale Community Legal Services, Toronto, p. 3.

(48) "The Commission or a board may employ any person who is not a solicitor to provide services under this Act, provided the person is supervised by a solicitor; but such employee shall not appear as counsel in any superior, district or surrogate courts." Stat. Sask. 1974, c. 11, s. 30.

(49) Judge Tallis's speech at the National Native Courtworkers' Conference, Yellowknife, Northwest Territories.

(50) "Nothing done by the commission, a board or by any person pursuant to the provisions of Section 11, 15, or 30, of this Act shall be deemed to be a contravention of the Legal Profession Act". Stat. Sask. 1974, c. 11, s. 29.

(51) A complaint was made by a landlord's lawyer to the Unauthorized Practices Committee of the Law Society of Upper Canada. The complaint was that a CLW represented herself as a solicitor because she gave legal advice. There was an investigation by a private investigator hired by the LSUC. At the time of writing, there has been no decision on this case.

(52) "Any information disclosed by an applicant to any member of the commission or employee thereof, or to a board or employee thereof, that would be privileged if disclosed to a solicitor pursuant to a solicitor and client relationship shall be privileged to the extent as if it had been disclosed to a solicitor pursuant to a solicitor and client relationship." Stat. Sask. 1974, c. 11. s. 28.

(53) Bill ROBINSON, Accreditation, Supervision & Professional Liability, unpublished.

(54) ALLEN, op. cit.

(55) The Legal Services Commission in B.C. is responsible for the planning and implementation of legal services in B.C. It is the primary funding body of the Legal Aid Society, Community Law Offices (CLOs), native courtworkers, Native Friendship Centres, a Schools Legal Education Program, Legal Information Service and a Public Legal Education. The Legal Aid Society operates a number of offices, administering the Legal Aid tariff - criminal, family and civil Legal Aid offices are staffed by lawyers and do casework exclusively; the major emphasis is on criminal law. The community law offices employ primarily CLWs, a few have a staff lawyer and the rest have a consulting lawyer from the private bar. The community legal workers in most offices function under the supervision of the senior CLW. The CLOs and all other agencies (other than Legal Aid and the native courtworkers) have community boards.

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PARALEGALS IN THE UNITED STATES

by William STATSKY*

Since 1967 a great deal has happened in the field of paralegalism in the United States (1). This paper will explore these developments with an emphasis on paralegals in the public sector.

While it is true that we have had over ten years of very intensive activity in the field of paralegalism, the reality is that definitive answers to the basic questions still do not exist. Ten years ago, scores of local, regional and national conferences agonized over questions such as:

What is a paralegal (2)?

What is the difference between a paralegal and a lawyer?

Do paralegals complement or replace lawyers (3)?

When paralegals and lawyers work together in the delivery of legal services, what happens to the cost, the scope and the quality of the services (4)?

What is the best way to train a paralegal (5)?

What is the best way to evaluate a paralegal (6)?

What are the advantages and disadvantages of certification for paralegals (7)?

If there is to be certification, who will do it? The Bar? The Government? Paralegals themselves?

Should paralegals work as generalists or should they specialize in a certain area of law?

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As people discussed these issues at conferences and seminars, a great deal of rhetoric was generated. There were many individuals who were anxious to draw fighting lines between paralegals and lawyers (8). While such individuals can still be found in the United States today, there is considerably less turmoil over the "politics" of the field.

At one of the early conferences on paralegals in the public sector conducted by the Office of Legal Services of the now-defunct Office of Economic Opportunity (9), one of the members of the American Bar Association's committee on "law assistants for lawyers" (10) cautioned public sector paralegals to tone down its rhetoric. It served no purpose, he argued, to generate anti-bar association and anti-lawyer feelings (particularly anti-private sector lawyer feelings). Paralegals, for example, should not go around calling themselves "advocates" as opposed to "legal assistants". The use of the word advocate or advocacy would be interpreted as unnecessarily provocative. In other words, confrontation is probably as likely if not more likely to be caused by rhetoric than by reality (11). Many in the field took this wise advice.

Also, there was an abandonment of the explicit or implicit position that a blueprint of the lawyer-paralegal relationship could be mapped out simply by bringing together all the divergent factions. People continued to feel that it was useful for groups of interested parties to come together, but mainly for the purpose of sharing experiences rather than of solving all the problems that exist.

Starting around 1973, we went through a stabilizing period where the major preoccupation of the field became education, particularly in the private sector. There was a time when a substantial proportion of attorneys would have to ask the question: "What is a paralegal?" Today, there are very few attorneys who need to ask this question. While many may not have a clear idea of how to work with and supervise paralegals (12), almost all attorneys have at least a general conception of what a paralegal (or legal assistant) is and can do. As these attorneys think about hiring paralegals, the focus becomes one of training. Should paralegals be trained on the job? Should a hiring preference be given to graduates of paralegal training schools?

Within a short period of time, well over 150 formal legal assistant training programs emerged, mainly at the community college level. The central concern became: who should do the training; what kind of training materials should be used; should there be an internship program, etc?

Most of these training programs were directed to the private bar: training for employment in private law firms and corporate law departments.

A similar development, on a much less grand scale, occurred for paralegals who were employed in publicly funded legal services offices. The dire predictions of being swallowed up by the unauthorized practice rules of the private bar simply did not prove to be accurate. This is not to say that no one worries anymore about whether there are ethical and unauthorized practice concerns of the private bar. It is simply to point out that many of the early concerns were simply overstated. The unauthorized practice committees of the state bar associations did not launch a campaign to undercut the public sector paralegals.

Occasionally, state bar association has raised the question of whether paralegals in the public sector can "practice" before administrative agencies. If the agency in question is a federal agency (or one whose primary function is to distribute federal funds), the question is usually resolved in favor of the paralegal being able to continue to "practice", especially where federal regulations provide the authorization for it (13). If the agency is a state agency, the bar association might be able to stop the activities of the paralegal, but there is little indication that much conflict has arisen in this area. (14).

At the risk of overstatement, one might argue that the only major limitation or restraint operating on public sector paralegals is the

limitation of training - not any limitation imposed by the private bar as some had feared. If you can train a paralegal to do a task, the likelihood is that the legal services offices will find a way for the paralegal to be able to perform that task. While it is still true that paralegals cannot represent clients in court (15), there is still a vast arena within which they can function. If a paralegal has motivation and training opportunities, (both formal and on-the-job), there is very little that cannot be done.

It is anticipated that special legislation will be enacted which will expand the scope of what the paralegal can do. California, for example, came close to establishing a rule that would have allowed "certified" legal assistants to appear in court when the case involved an uncontested, ex parte hearing such as one concerning:

(i) guardianship proceedings (by the parent);
(ii) petitions for name change;
(iii) petitions for family allowance;
(iv) return of sale not subject to overbid;
(v) sale of securities;
(vi) step-parent adoptions (16).

While it is true that this rule never came into effect (17), the potential for such special legislation still exists. The principal reason given for the defeat of the California proposal centered on the composition of the board or committee that would do the certifying of the legal assistants. Public sector attorneys and paralegals were worried that they would not be represented and that the entire operation would be dominated by those in the private sector. The outcome of the debate did <u>not</u> turn on whether the proposal went too far in allowing paralegals to make court appearances in the limited areas specified.

While many do not realize it, the fact is that the best ally of the public sector paralegal is the private sector attorney. The private bar wants to increase the use of paralegals for economic reasons. Paralegals help lawyers run their offices more profitably. A recent study of Arizona attorneys, for example, reported that attorneys that used legal assistants earned almost 100% more than attorneys who did not (18). Law Office Economics and Management Committees of the Bar Association are constantly telling their membership that legal assistants should be used (19). It is for economic reasons that a bar association will support a proposal to expand the scope of paralegal activities such as the California proposal. Public sector paralegals can become beneficiaries of such proposals. While the private bar is acting to increase profits through an extension of what a paralegal is authorized to do, the public sector paralegal can take advantage of the expansion and be allowed to engage in the new arena of "practice".

If, however, the public sector paralegal continues to view the private bar as the enemy, the risk is created that attorneys will not proceed to broaden the scope of what paralegals can do, including those paralegals that work for the attorneys in the private sector. When confrontation is in the air, the focus is on the heat generated by the confrontation rather than on ways to increase the potential of paralegal activity.

This is not to say that the actions of the private bar will always have a benevolent side effect on public sector paralegals so long as the latter do not attack the bar. There is no guarantee that public sector paralegals will always become beneficiaries of what the private bar does in pursuit of the profit motive. Indeed, public sector paralegals must always be on their guard since there are private attorneys who would like nothing better than to see public sector paralegals and attorneys disappear altogether. The point, however, is that there is a strong momentum in the private bar generally to expand

the scope of what private sector paralegals can do. Public sector paralegals stand to gain from this momentum. Unfortunately, however, the momentum tends to fade when the public and private sector clash. The challenge of the public sector paralegal is to find a methodology and a vocabulary of protecting its interests without directly attacking the private bar.

As indicated earlier, one strategy is to focus on training. Quietly train the paralegal to perform a new task (or more accurately, allow the paralegal to train him or herself to perform the new task) and let someone else worry about whether the paralegal should be allowed to perform the task. Once you've got it, let someone try to take it away. Once it is demonstrated that the paralegal can do the task, let someone else try to demonstrate that he or she cannot do it. The reality, however, is that no one has the energy to try to undo what the paralegal is able to accomplish. As long as the public sector paralegal does not flaunt his/her advocacy skills and extensive involvement in the delivery of legal services, the scene will remain calm. The private bar and public sector paralegal will essentially leave each other alone.

This is not to say, however, that the private bar has been docile in the area, nor that everyone is happy with the position taken by the most active association - The American Bar Association. The ABA established a Standing Committee on Legal Assistants and began accrediting formal training programs for legal assistants (20). This move was substantially criticized. It was argued that the approval or accrediting of training programs for paralegals was an indirect form of certifying the paralegals themselves since employers might become reluctant to hire a paralegal unless he or she had graduated from a training program that had the stamp of approval of the ABA. To date, however, there is not a lot of evidence that this effect has resulted. While employers have begun to make inquiries into the quality of applicant's formal training program, if any, there is little indication

that the prospective employers are significantly concerned about or aware of the ABA accreditation process (21).

The other major criticism of the private bar centers on the potential conflict-of-interest issue. Since a major impact of paralegals is to help lawyers make more money (22), the lawyers have an obvious economic interest in the control and development of the paralegal field. This economic interest will arguably conflict with the bar's ability to guide this new career according to the interests of the public and of the paralegals themselves (23).

One important development of the last several years has been the organization of paralegal associations. Two national associations are now functioning:

The National Association of Legal Assistants (NALA)
The Federation of Paralegal Associations.

The Federation is made up of fourteen local paralegal associations (24). NALA has established its own certification program by which individual legal assistants are tested and pronounced "Certified Legal Assistants (25). The Federation has not been happy with this activity. It has criticized this certification program of NALA as well as the accrediting program of the ABA as premature (26).

A number of observations can be made about paralegal associations in the United States:

- their major focus and impact has been continuing legal education for the paralegal;
- their membership consists mainly of paralegals in the private sector;
- their membership consists mainly of women.

At the political level, it has been argued that the Federation and its constituent local associations has been largely responsible for holding back efforts by the American Bar Association and local bar association to further control the paralegal movement.

Unfortunately, paralegals in the public sector have not had much organizing success. They have done little or no organizing of their own and have not been active in either NALA or any of the local paralegal associations that comprise the Federation. Geographically, the public sector paralegals are widely dispersed over the United States (27).

In addition, public sector paralegals have experienced a high turnover rate (28) which has hampered organizing efforts. The turnover has been attributed to a number of causes (29):

1. Lack of Financial Security

Paralegals in legal service offices are paid an average of $7,500 - 8,500 annually (30). Such salaries, particularly when compared to salaries being earned by private sector paralegals (31), are considered a primary cause of turnover.

2. Burnout

Paralegals have heavy caseloads. This results in "feelings of frustration and inadequacy" (32) especially since they are usually supervised by attorneys with equally heavy and unrealistic caseloads. The result is paralegal burnout.

3. Lack of Opportunity for Profesional Growth

Until recently, there was no systematic training policy for paralegals in the public sector. The Office of Program Support in the

Legal Services Corporation has recently taken steps to implement such a policy.

Busy attorneys often do not have the time or skill to supervise paralegals. In some settings, attorneys receive more guidance and training from experienced paralegals that the other way around. Many attorneys continue to view paralegals as individuals on whom unwanted tasks can be "dumped". The resulting morale problem is obvious.

In short, a major reason for high paralegal turnover is legal service offices has been inadequate management of paralegal resources and potential.

While such problems are acute, it must be recognized that progress has been made. As indicated above, the Office of Program Support of the Legal Service Corporation has begun sophisticated training programs for public sector paralegals. This training has been at two levels: entry training for new paralegals, and more advanced and specialized training for more experienced paralegals. In addition to Legal Service Corporation funding for paralegal training and employment, other federal government agencies have also provided such funds, e.g., the Department of Health, Education and Welfare has funded senior citizen paralegal programs and the Department of Labour has funded Indian paralegal programs.

It is often said that program directors of legal service offices would argue that an experienced paralegal is worth "far more" to their programs than a new law graduate (33). In spite of all the problems faced by public sector paralegals, their numbers continue to grow. Between 1972 and 1975 there was an increase in paralegal employment of over 100% (34). There continues to be enthusiasm over the role of paralegals in legal offices. Every indication points to an ever expanding financial and political committment by the federal government

to the public sector paralegal. Almost two thirds of all legal service offices in the country employ paralegals. These paralegals are responsible for between 30% and 50% of their programs' total caseload (35).

While such progress has been impressive, a number of problem areas still need to be kept in mind:

- Public sector paralegals, as indicated above, have not always had smooth working relationships with their supervising attorneys. Too often the two groups are condescending toward each other. Not enough effort has gone into developing dialogue between them.

- Lawyers are sometimes criticized as being preoccupied with the big test cases at the expense of the day-to-day mundane legal problems of the poor. All lawyers want to find a cure for cancer with the result that no one is making house calls anymore. It was more thought that paralegals could solve this problem by handling the cases that were not glamorous and challenging enough for the lawyer. It has not quite worked out this way in every office. Paralegals can become as impatient as lawyers with "band-aid" legal services and tend to look for the broader issues.

- It was once thought that paralegals would become a catalyst for the development of new dispute settlement mechanisms such as community mediation centers. While some of this has occurred, progress in this direction has been minimal. Lawyers are subject to the criticism that by their very presence and method of operation, they create a dependence of the public on them and on outmoded legal institutions to solve problems. To a very large extent, paralegals follow the model of lawyers and there is cause for concern that they are adding to - rather than offsetting - the arguably unhealthy reliance the public has on our present legal institutions.

- Very little progress has been made at the level of community legal education - preventive law. It was perhaps unfair to have expected that paralegals would have done any better than lawyers in this area. The fact is, however, that we are still a long way from coming up with mechanisms to assist the public in avoiding legal problems. This is perhaps due to the fact that no one in legal services has considered adopting the "behavior modification" techniques that the commercial advertising industry uses so successfully to convince the public to buy soda and automobiles.

It is difficult to predict what the future holds for paralegalism in the United States. One promising development is in the area of competency based education (36). Most legal education for paralegals consists of survey courses where the teachers rush through the substantive topics of an area of the law in lecture fashion. Very little attention is given to the development of skills (37). Too many courses do little better than provide lip service to the necessity of learning how to use the knowledge or content of the law in performing specific tasks.

Unfortunately, very little competency based legal education is underway in the United States. In part, the reason for this is the planning time and effort that is needed to implement a competency based program. It's easier for a teacher to teach what he or she knows than to plan a curriculum around particular skills. It's easier for the teacher to conduct the class by telling "war stories" about his or her prior legal experiences than to identify learning objectives.

Suppose that a teacher wanted to implement a competency based course in the area of real property. The first step is to identify what is "do-able" in the time allotted for the course. The teacher must resist the temptation to cover everything from A to Z. A specific objective should be identified. For example:

- to be able to conduct a relatively uncomplicated title search in your state.

The central focus of the planning of the course would be: what would have to be taught in order to teach the student to achieve minimal competency in this skill? The teacher needs, in effect, to write the final exam first and then ask him or herself what he or she must teach in order to enable the students to pass that final exam. This is what is meant by teaching by objectives. It would not necessarily be inappropriate for the teacher to tell some "war stories" or to survey

some areas of the law - as long as the stories and the survey are calculated to further the narrow learning objectives.

The promise of this approach is not only the improvement of paralegal education, but also the development of relevant, competency based certification examinations when they eventually arrive on the scene.

FOOTNOTES

(1) For an overview, see, STATSKY, W., Introduction to Paralegalism: Perspective, Problems and Skills, (1974) and the 1977 Supplement to this book (West Publishing Co.).

(2) BROWN, H., "The Paralegal Profession", 19 Howard Law Journal 117 (1976). FRY, W., "A Short Review of the Paralegal Movement", 7 Clearinghouse Review 463, No. 8 (Dec., 1973).

(3) LERNER, S., "Paralegal Paranoia", 4 The Student Lawyer, p. 11 (Oct. 1975).

(4) FELLERS, J.D., "The Economics and Delivery of Legal Services", 58 Judicature (No. 3, Oct., 1974). HESSE, S., "General Practicioners and Legal Assistants: A Position Paper", 36 Unauthorized Practice News 1 (1971).

(5) American Bar Association, Special Committee on Legal Assistants, Proposed Curriculum for Training of Law Office Personnel, (April, 1971). American Bar Association, Standing Committee on Legal Assistants, Legal Assistant Education: A Compilation of Program Descriptions (1977). American Bar Association, Standing Committee on Legal Assistants, Survey of Non-Degree Legal Assistant Training in the United States, (1976). STATSKY, W., "The Education of Legal Paraprofessionals: Myths, Realities and Opportunities", 24 Vanderbilt Law Review 1083 (1971).

(6) American Bar Association, Special Committee on Legal Assistants, Certification of Legal Assistants, (1975).

(7) American Bar Association, Special Committee on Legal Assistants, Certification of Legal Assistants, 18-31 (1975) reprinted in 1977 Supplement to Introduction to Paralegalism, 235-243 (1978). The Special Committee conducted open hearings across the country on the question of whether certification was desirable. One of its conclusions was that the "occupation of legal assistant is in a dynamic stage of development and will likely undergo future changes." Id. at p. 242. Hence, even in 1975 there was an acknowledgement that the field was in a state of flux and full of unresolved issues.

(8) American Bar Association, Special Committee on Legal Assistants, New Careers in Law II, YEGGE, R., JARMEL, E., editors (June, 1971).

(9) American Bar Association, Special Committee on Law Assistants for Lawyers, Report to the House of Delegates (Feb., 1971). Soon after this Special Committee was formed, it changed its name to Special Committee on Legal Assistants.

(10) The conference was conducted for OEO by Blackstone Associates, a private research firm in Washington D.C. See infra, note 11.

(11) STEIN, J., To Develop a Coherent Policy for Using Legal Paraprofessionals, A Report of the Blackstone Associates-Office of Legal Services Conference on Legal Paraprofessionals (1972).

(12) STATSKY, W., "Techniques for Supervising Paralegals", 22 Practical Lawyer, 81 (June 1, 1976).

(13) See Sperry v. State of Florida ex rel the Florida Bar, 373 U.S. 379, 83 S.Ct. 1322, 10 L. Ed 2d. 428 (1963) and Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L. Ed 2d 718 (1969). See also, "Practice of Laymen", 15 Federal Bar Journal 227 (1955).

(14) STATSKY, W., Introduction to Paralegalism: Perspectives, Problems and Skills, 120 (1974).

(15) Some very minor exceptions are state statutes that allow non-lawyer representation in special courts such as a Justice of the Peace Court or a Small Claims Court. See, for example, Oregon Revised Statutes, 50.020 (1963), Montana Revised Statute, section 93-2008 (1964) and Idaho Code Annotated, section 3-104 (Supp. 1969).

(16) "Law Economics Committee Reports on Certified Attorney Assistants", 13 State Bar of California Reports 5 (No. 7, July 1973). See also STATSKY, W., Introduction to Paralegalism: Perspectives, Problems and Skills, pp. 157-159, 222-226 (1974).

(17) California Bar Association, Committee on Economics of Law Practice, Report re Certification of Legal Assistants (February 13, 1976). See also STATSKY, W., 1977 Supplement to Introduction to Paralegalism: Perspectives Problems and Skills, pp. 250-254 (1977) and, SEIGEL, N., "President's Column", 2 At Issue 1, (San Francisco Association of Legal Assistants, Feb., 1977, No. 2).

(18) BETHEL, B., "Economics and the Practice of Law: the 1976 Economic Survey of the State Bar of Arizona", Arizona Bar Journal, pp. 57 ff (Oct. 1976).

(19) See, for example, American Bar Association, Special Committee on Legal Assistants, The Utilization of Legal Assistants by Law Firms in the United States: Liberating the Lawyer (June, 1971).

(20) American Bar Association, Special Committee on Legal Assistants, Guidelines for the Approval of Legal Assistants Education Programs (1973).

(21) One major exception involved American Telephone & Telegraph Co. and the Paralegal Institute of New York. The latter school brought an anti-trust suit against the American Bar Association alleging that American Telehone & Telegraph was limiting its

paralegal recruitment to those paralegals who had been graduated from an ABA approved legal assistant training program. Paralegal Institute, Inc. v. American Bar Association, U.S. District Court, Eastern District of New York, (1977 Civ. 1478). The suit has not generated much interest and it anticipated that it will not have much of an impact in the field primarily because there are very few prospective employers who have recruitment policies similar to that of American Telephone and Telegraph Co.

(22) See Liberating the Lawyer, supra, note 19.

(23) CAPISTRANT, C., "Paralegal Training Program Accreditation: The Politics of Education Representation" in 1977 Supplement to Introduction to Paralegalism: Perspectives, Problems and Skills, pp. 257-266 (1977).

(24) As of 1978, the Federation was made up on the Dallas Association of Legal Assistants, the East Bay Association of Legal Assistants in California, the Georgia Association of Legal Assistants, the Illinois Paralegal Association, the Kansas City Association of Legal Assistants, the Los Angeles Paralegal Association, the Massachusetts Paralegal Association, the Minnesota Association of Legal Assistants, the National Capital Area Paralegal Association, the New York City Paralegal Association, the Philadelphia Association of Paralegals, the Rocky Mountain Legal Assistants Association, the San Francisco Association of Legal Assistants, and the Washington Legal Assistants Association.

(25) National Association of Legal Assistants, "Certification: Controversy of the Century", in 1977 Supplement to Introduction to Paralegalism: Perspectives and Skills, pp. 269-276 (1977).

(26) See "An Explanation of the Federation's Position on Accreditation", 2 National Paralegal Reporter, 4 (Nov. 1977).

(27) SARD, B., Analysis of Retention Problems and Proposals for Action (Legal Services Corporation, 1977).

(28) Public sector paralegals are most heavily concentrated in the following states: Arizona, California, Florida, Georgia, Illinois, Massachusetts, Michigan, New York, New Jersey, Pennsylvania and Washington, National Paralegal Institute, The Significance of Paralegals in the Legal Services Program (1975).

(29) LYBARGER, B., "Retention of Paralegals in Legal Services Programs: Initial Statement of the Problem", Clearinghouse Review pp. 858ff (February, 1978).

(30) Legal Services Corporation, Survey of Utilization of Paralegal Education Programs in Legal Service Programs (Oct. 1976). STATSKY, W., 1977 Supplement to Introduction to Paralegalism: Perspectives, Problems and Skills, p. 8 (1977). See also National Paralegal Institute, The Significance of Paralegals in the Legal

Service System (1975). In a 1977 study, paralegals with five years or more experience in legal service offices were paid an average of $9,490-10,595 annually.

(31) SARD, B., Experience and Salaries of Attorneys and Paralegals in Legal Services: Initial Findings and Analysis (Legal Service Corporation, May 6, 1977).

(32) LYBARGER, B., "Retention of Paralegals", supra, note 29, at p. 859.

(33) LYBARGER, B., "Retention of Paralegals", supra, note 29, at p. 859.

(34) From 451 paralegals employed in 1972 to 1,012 paralegals employed in 1975. National Paralegal Institute, The Significance of Paralegals in the Legal Services Programs, pp. 20-22 (1975).

(35) See Statement of E. Clinton BAMBERGER, Jr., Executive Vice President of Legal Services Corporation to the ABA Standing Committee on Legal Aid and Indigent Defendants in February, 1977, printed in 2 National Paralegal Reporter 5 (Nov. 1977).

(36) See DOLL, W. Jr., "The Role of Contrast in the Development of Competence", in Curriculum Theory pp. 50 ff, MOLNAR A., and ZAHORIK, J., editors (Association for Supervision and Curriculum Development, 1977). SPADY, W., and Mitchell, D., "Competency Based Education: Organizational Issues and Implications", in 6 Educational Researcher 9 (Feb. 1977). SPADY, W., "Competency Based Education: A Bandwagon in Search of a Definition", 6 Educational Researcher 9 (Jan. 1977). COBB, D., "Self-Instructional Law Course - Teaching by Learning Objectives", 40 American Journal of Pharmaceutical Education 1, 58-62 (Feb. 1976).

(37) On the distinction between knowledge and skills, see STATSKY, W., Domestic Relations: Law and Skills, 5ff (1978).

APPENDIX A

LAW CLERK PROGRAM
RED DEER COLLEGE*

OBJECTIVE

The purpose of this program is to train competent law clerks in such a way that specific graduate competencies will be developed to serve as the basis for further on-the-job training which will allow graduates to function as true paralegal personnel. The "graduate competency profile" and "role description" for law clerks attached as appendices 1 and 2, outline in some detail the specific competencies expected at these two operating levels. The essential difference between graduate and experienced law clerks are scope of duties, degree of supervision and amount of responsibility exercised.

One related issue deals with the distinction to be made between legal secretary and law clerk on one hand, and articling student and law clerk on the other hand. In my mind, a very clear distinction may be made, even between a highly skilled legal secretary and the law clerk. In this latter case, the legal secretary continues to perform the secretarial functions commonly associated with the title of secretary, while the law clerk does not, other than is required to meet his or her own needs - certainly not as a secretary to a lawyer. Furthermore, a law clerk competes procedures with some formally acquired understanding of the substantive law and therefore operates with a greater discretionary capability than the legal secretary. With respect to differences between articling students and the paralegal, the work done by the law clerk is routine and administrative in nature while that of the lawyer-in-training tends to focus on the full range of delivery of

* By Roger M. Walker, February 1978.

legal service to the client. The perspective differs as well: the articling student will likely be given a relatively short period of training related to the task areas of the law clerk in order to understand the mechanics of the processes which he ultimately will set in motion by his actions as a lawyer; the law clerk is a procedural specialist who facilitates those processes to assist the lawyer in attaining his ends.

A collateral issue of paralegal typologies was raised by Vic Savino in his masters-thesis, Paralegalism in Canada: A Response to Unmet Needs in the Delivery of Legal Services, prepared in April 1976 as part of his Master of Laws Program at Dalhousie University. Savino characterized paralegals as legal assistants, lay-advocates and community legal service workers depending on the nature of the duties performed and, to some extent, the institutional setting in which they operate. His thesis devotes 60 pages to the discussion of this issue.

A third, minor issue is that of paralegal nomenclature. I personally prefer the use of legal assistant to that of law clerk to represent paralegals working in the private sector. I feel that it is more acceptable to the profession, more understandable to the general public, and greatly more descriptive of the nature of the work performed by, and working status accorded to, the type of paralegal we are training.

The direcion taken by the original program proposal was based on information about paralegal roles as conceived in visits to Ontario Training Institutions, wide-spread Alberta based survey results, local lawyer and advisory council input, law society contacts, and discussion with Grant McEwan Community College personnel. The present graduate competency profile and law clerk role description attached as appendices 1 and 2 represent a reconsideration of this issue based on an expanded input field over a long period of time. They, however, remain simply as

working documents. Data gathered from field study evaluation questionnaires, and follow-up over the past two years, showed our prior role description to be both inaccurate and incomplete as to what the profession expected from a graduating student. The scope of responsibility appeared to be too broad, with too little emphasis on the general office and clerical duties. Student input, especially from those with considerable law office experience, indicated a broader range of possible activities after the graduate acquired sufficient experience beyond college training. This was reinforced by visits with paralegals, lawyers, and educators in much of Canada and the north-western United States. Input from our own instructors and advisory council also saw an expanded set of roles, very likely resulting in a "procedural specialist" as opposed to a "mini-lawyer" orientation for working paralegals.

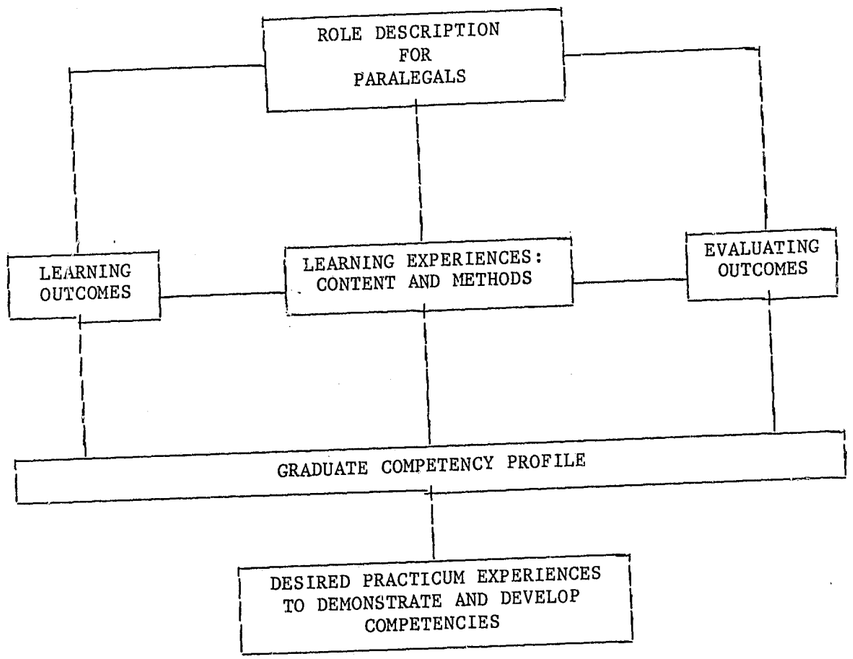
The outcome in reality rests with the profession as a market place for graduates. We are presently attempting to clearly define this market, almost on a co-optive basis, by pursuing an aggressive graduate placement strategy and by assisting the profession, through the paralegal personnel committee of the law society, to develop a formal set of policies and guidelines in the area of paralegalism.

It must be stressed that the needs of the profession vary with the setting, size, and nature of the practice, and that the profession itself is undergoing a period of change. The impact on role description is such that it must therefore be flexible in order to successfully evolve to meet the needs of the market.

A further complicating factor is the ad hoc approach to role definition, which to date has been characteristic of the manner in which paralegal issues have been handled across Canada. This contrasts sharply with the relatively well-planned consideration and implementation of private practice legal assistance training and

employment in the USA under the direction of the American Bar Association. We are hopeful that the national conference organized by the Department of Justice and further conferences and symposiums proposed on paralegal education and career in Canada for the Summer of 1978 will provide leadership in this respect.

The following model, developed by Joe Arbuckle and Roger Walker, attempts to show the relationship of the role description to other major training program components. Again, the primary importance of the role description is indicated as it allows for definition of competencies that should be expected of someone completing a formal training program.



Development of a graduate competency profile could be of great assistance to training institutions in their role of program development and delivery. Such a profile would lead to standardized skill levels upon graduation whether specifics of program content and delivery vary from one institution to another, and although such profiles and/or role descriptions might vary from one province to another, they could also serve as the basis of articulation at a student transfer or graduate recognition level within and between provinces. Both Alberta paralegal training institutions have entered an ongoing dialogue to deal with these issues on a pedagogical basis. The training issues are of broader concern and should be considered in the context of the needs and resources of the profession.

PROGRAM CONTENT AND DELIVERY:

The content of the program has undergone considerable review concurrent with efforts to more precisely and adequately define the role of the law clerk graduate. The latter has begun to serve as the point of departure for continued evaluation and development of the program content as the role description permits definition of the competencies that should be developed by the program. This approach to reviewing program content has produced some significant modifications to the original program:

- addition of instruction in the area of family and domestic practice;
- addition of topic material to provide a foundation in the legal system and its institutions;
- movement from general management courses to classes specifically oriented to law office management;
- emphasis on enhancing general oral and written communication skills to building those most directly applicable to a law office setting;
- review of the sequencing and relationship of both law and non-law forces to meet the educational objectives of the program more effectively;

- rationalization of the specific content of each series of law courses, litigation, contracts and commercial, corporate, real estate, wills and estates, and family and domestic law in order to develop a comprehensive, integrated and complementary package of courses;

- introduction of a general education option;

- further consideration being given to strenthening "legal research" content;

- shift in the proportion of substantive vs. procedural material covered to better reflect the eventual "procedural specialist" career orientation of graduates.

In order to meet the goal of providing highly skilled graduates, the program was designed to supplement the procedural aspects of the law with substantial exposure to substantive law in order to build a judgmental as well as a technical capability. Teaching of the law lends itself more readily to a classroom setting that does dealing with procedure, where opportunities for practice are important. Because of this, practicing lawyers have been hired to teach on a part-time basis. The day-to-day involvement they have in practice allows them to highlight the classroom exposure to procedure more effectively than the legal academic. The nature of assignments given and done in class also bespeaks this procedural orientation. Two other major components of the program used to build understanding of the law, the procedures, and practice are extensive field trips to Calgary and Edmonton and the field study placement required immediately prior to or during the second year of the program. Some members of the law society have suggested requiring a period of internship or articles for graduating students, particularly where no directly related experience had previously been involved.

Another aspect of our program delivery that began in September 1977 was the initiation of outreach courses on a cooperative basis with Mount Royal College, Calgary. Initial courses offering were limited to the first year classes in real estate and corporate law. The purpose of offering the courses in Calgary was to determine if the perceived need for inservice training in the province and in Calgary in particular, was great enough to warrant a five year phase-in of the program. Initial student enrollments were as follows:

	Fall - 1977	Winter - 1978
Real Estate	40	21
Corporate	32	18

Only three people registered in these courses were not or have not been legal secretaries. The majority of those not carrying on with the second term classes were less experienced that those who did stay. We are currently trying to determine interest in a somewhat expanded course offering for next year. A course monograph has been mailed to approximately 150 Calgary law firms and companies. A press release with similar information was also sent to the Calgary media. The information to make the decision about expanding, continuing, or eliminating the outreach courses should be available by mid-April. Requests for offering similar outreach courses have been received from Drumheller, Medicine Hat, Lethbridge and High River.

Our arrangement with Mount Royal College involved their provision of

- a contact person to provide information on the courses and the programs to the general public;

- career and course counselling;

- equivalency courses in the non-law areas.

The continuing education department at Red Deer College assumed the role outlined below:

- promotion of the program;
- registration of students;
- establishment of accounts and disbursement of funds;
- arranging for facilities;
- related administration of a nonacademic nature.

The role of the Law Clerk Coordinator at Red Deer College is to:

- ensure the quality and content of instruction are appropriate;
- maintain liaison between local and Calgary instructors;
- arrange for teaching materials, etc.;
- related administration of an academic nature.

Ongoing discussion between representatives of both institutions will continue to give direction to the joint offering.

There have been some major benefits to Red Deer College from participating in the program. We have been able to test and meet an apparently significant market demand at a lower cost than either institution alone could have done during a pilot phase. We have explored some innovative ways of delivering the program especially through the use of teaching teems involving both the practising paralegal and a practising lawyer in the classroom together. The opportunities for dialogue between local and Calgary instructors has given added insight to both in terms of instructional methods and, more importantly, instructional objectives. Our course content and role definitions have become much more precise as a direct result of this interaction, and in turn has allowed for a greater ability to coordinate the overall program.

We have also entered into a ongoing dialogue with Brian Murdoch and Lian Smith of Grant McEwan Community College to meet various articulation needs. At present we appear to be giving a greater exposure to both the substantive and procedural aspects of the law in the classroom. On the other hand, the Grant McEwan Community College program is more flexible, especially with respect to the non-law areas where law office management courses are recommended options as opposed to our required courses in this area. Both programs require an extensive field study placement which is closely evaluated by the practicum supervisors. Perhaps the most significant area of difference between the two Alberta programs is the availability of local community resources in Red Deer and Edmonton. The various departments of the provincial government (Land Titles Office, Companies Branch, Central Registry, etc.), the various courts, the legislature, the University of Alberta Faculty of Law, and a large number of corporate head offices and law firms in Edmonton all represent resources and opportunities much more accessible to G.M.C.C. students than to R.D.C. students.

There appear to be a few similar community college or post secondary training programs across the country. Capilano College, in Vancouver now operates a two level paralegal training program as a pilot project jointly sponsored by the Provincial Law Society and the B.C. branch of the Canadian Bar Association. In Saskatchewan, the Universities of Regina and Saskatchewan have also undertaken a pilot continuing education program with approval of the profession. Manitoba appears to have no formal paralegal training for legal assistants. Ontario, at this time, is the most advanced province with respect to acceptance of formal law clerk training program graduates. Eleven community colleges across the province presently offer law clerk programs similar to those of R.D.C. and G.M.C.C. in both content and delivery. Certification as an institute member is provided by the Ontario Institute of Law Clerks based on successful course completion, and the qualifying examination. Additional experience and examination

certify practising law clerks at two higher levels (associate and fellow) of responsibility and expertise. In Quebec, although the basic legal system differs somewhat, C.E.G.E.P. Ahuntsic in Montreal and C.E.G.E.P. Rimouski have formal "technique judiciaire" or legal assistant training programs. The Law Society and Canadian Bar Association both endorse these Quebec programs. I presently have no information relative to paralegal training programs in the Maritimes.

The formal diploma programs mentioned above are all two-year programs except the specialist option at Capilano College, which requires only one year. Instructors for the law courses in most cases are a mix of full-time and part-time faculty. Students tend to be mature students with several years (four to five) of work experience, most commonly as legal secretaries. Although outwardly similar, in many respects, there is great variation in program objectives, content and delivery and in paralegal acceptance and career opportunities across the country. As we gain experience in comparing performance on these program and career dimensions through conferences, student transfers, intra and inter-provincial placement, and discussions with certification and training institutions, we will be able to better assess the full extent of these apparent differences.

STUDENTS

The Red Deer College program did not have a large enrolment in its first year due to the lateness of program approval. However, student interest in the program as demonstrated in the charts below is very high.

APPLICATIONS FOR FULL-TIME STATUS

FROM	FALL '77 APPLIED	FALL '77 ACCEPTED	FALL '78 APPLIED (to Feb. 16/78)
Northern Alberta	4	1	2
Edmonton	5	0	0
Central Alberta	47	15	13
Calgary	19	6	7
Southern Alberta	4	0	1
B.C.	1	1	1
Saskatchewan	3	2	4
Northwest Territories	1	0	0
Ontario	0	0	1
Newfoundland	1	0	0
TOTAL	85	25	29

R.D.C. restricts first year enrolment to 25 students at the present time in order to not flood the market with graduates until the strength of the demand graduates is determined. G.M.C.C. also limits its initial enrolments for the same purpose, but at a maximum 40 students.

At R.D.C. the selection procedure takes place in two phases. Those having applied prior to April 1st are invited to spend the day at the college in groups of 7 to 10 people, during the first ten days of April, the morning agenda includes the differential aptitude test, the Strong-Campbell interest inventory, and the legal reasoning test. Lunch includes an informal opportunity to visit with the program coordinator and current law clerk students. The afternoon is spent in an orientation tour of the college and individual interviews with the coordinator followed by a question and answer session with the group as a whole. Test results and a brief personal report by the coordinator are added to the applicants file. The file already includes transcripts and a letter of application outlining the persons interest in the program, career goals and relationships of prior experience to the program and career statement. Prior related experience is viewed as a

factor in making selection decisions. From 17 to 20 of the 25 places available are filled by mid-April. The second phase fills the remaining places on the basis of comparisons of new applicants with present admissions, until no more places are available.

The procedure outlined above has produced high calibre students whether admitted on the basis of a high-school diploma or mature student status. (The recent high-school graduates had a mark average slightly under 75%. Other 1977 applicants had academic backgrounds ranging from grade 10 education to masters degrees). D.A.T. results in the verbal and general area and Strong-Campbell results were assessed by student counselling staff and a recommendation for or against admission made on the basis of interest compatibility and academic potential. This information was compared for consistency with high-school marks in the case of recent graduates. File comments about motivation, interest, attitude, personality, and social maturity were then checked. Information in application letters was reviewed. Any additional information including legal reasoning test results was then considered, and the decisions made. This procedure was not followed prior to the Fall of 1977, and student drop-outs and transfers were much higher: only two first year students dropped-out prior to January 1978; seven first year students left prior to January 1977.

STUDENT ENROLMENT TRENDS

ACADEMIC YEAR	FIRST YEAR STUDENTS				SECOND YEAR STUDENTS			OUTREACH COURSES
	FT*		PT*	FTE*	FT*	PT*	FTE*	(Part-time)
	APPLIED	SELECTED						
1975 - 76	6	6	-	6	-	-	-	-
1976 - 77	35	27	6	28	3	1	3	-
1977 - 78	85	25	10	17	15	2	15	72

* FT - Full time enrolments
* PT - Part time enrolments
* FTE - Full time equivalent: the number of part-time student enrolments are translated into an "equivalent to full time enrolment" figure for internal purposes.

Because of the low initial enrolment we have only graduated three students to date. Those three people have all been employed by Red Deer lawyers since their graduation. G.M.C.C. has graduated some thirty law clerks who are now employed primarily in Edmonton and Calgary. Employing lawyers appear to be satisfied with the performance of these formally-trained law clerks in both cases. Evaluations from student practicum supervisors also indicate presently enrolled students have developed a high level of skill in the basic competences outlined in our present roll description.

It is anticipated that fifteen law clerk students will graduate from Red Deer College in April 1978 and an additional fifteen to seventeen in April 1979, with a similar number graduating for G.M.C.C. in each of these years. Projections for the period 1978-83 indicate that over 200 students will graduate from these two Alberta law clerk programs. This will greatly increase the pressure on the profession to define with precision, and resolve the many outstanding issues in the area of paralegalism.

It is anticipated that there will be a continuing strong demand for graduates from this program at a rate of at least 15 per year over the next five years. We have pursued an agressive placement program with letters and accompanying information (graduate competency profile, student data, and program outlines) being forwarded to some 200 central and southern Alberta law firms as well as about 75 corporate and government legal departments. As a result of this placement program all of our students who will be graduating have been offered positions in law firms. As our graduates establish a reputation, it should be less difficult to place graduates, but we are forecasting on the cautious side until the profession has spoken strongly and favourably to the issues raised.

FUTURE DIRECTIONS

I feel that we are having an impact on paralegal education and career development at the provincial and perhaps at the national level. We feel that we are providing leadership in helping to define the state of the art by:

- developing new models for the delivery of paralegal education;
- promoting broader utilization of paralegal personnel and expanding their role definition;
- opening an active dialogue with the Law Society in order to mutually resolve relevant issues in the fields of paralegalism;
- expanding the range of learning opportunities and experiences through the program;
- participating in and hosting conferences for discussing paralegal training programs and career opportunities.

As the needs of the public change, we hope to continue helping the legal delivery system evolved in such a way that those needs are most adequately met. I think that this process has begun.

CONTINUED

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APPENDIX B

POLICY STATEMENT ON LEGAL ASSISTANTS
ISSUED BY THE LAW SOCIETY OF B.C. AND
THE CANADIAN BAR B.C. BRANCH

LEGAL ASSISTANTS IN LAW FIRMS

Attached is a copy of the Policy Statement on Legal Assistants issued by the Law Society of B.C. and the Canadian Bar B.C. Branch.

SAMPLE DESCRIPTION OF JOBS DONE BY L.A.s.

Litigation

Legal Assistants assisting Counsel in a litigation department would interview witnesses and prepare statements of facts, prepare Counsel Brief for Court, draft pleadings and generally assist Counsel in getting ready for trial. Some Legal Assistants also do legal research although this is not common at the present time.

Also, there are firms who hire Legal Assistants to handle specialty areas fairly independently, for example, a Legal Assistant may do foreclosure work exclusively or collection work.

Conveyancing

Legal Assistants usually handle the complete conveyancing file after the initial interview by the lawyer. Many Legal Assistants work in the conveyancing area at the present time and have done so for many years now. They often handle a conveyancing file (unless it is in a complex matter) from beginning to end with only minimal supervision by the lawyer.

Corporate

Legal Assistants in this area usually meet with the client after the initial interview by the lawyer. They prepare all the incorporation documents to incorporate companies, set up Records Office and keep the Company in good standing. In addition some legal Assistants in this area specialize in public companies and look after the preparation of Prospective and setting up and conduction the Annual General Meetings of these companies.

Probate and Estates

Legal Assistants in this area draft Wills after the interview of the client by the lawyer. They gather information on the assets and liabilities of estates and prepare all the necessary estate documentation to obtain Letters Probate.

POLICY STATEMENT ON LEGAL ASSISTANTS

The Joint Committee on Legal Support Services (the "Joint Committee") recommends that the Law Society of British Columbia and the British Columbia Branch of the Canadian Bar Association adopt the following Policy Statement with respect to legal assistants.

1. Definition of Legal Assistant

A legal assistant is a person specially recognized by reason of qualifications and experience as capable of the conduct of a legal matter under the supervision of a member of the Law Society who is responsible to the client for the work performed by the legal assistant.

2. Recognition of Legal Assistants

The profession recognizes that there are many tasks which can be performed by a legal assistant working under the supervision of a lawyer and that it is in the interest of the profession that the training and employment of legal assistants be encouraged.

3. Permissible Use of Legal Assistants

(a) Lawyers or law firms employing legal assistants may use legal assistants in the delivery of legal services under the direction and supervision of a lawyer;

(b) The responsibility for all tasks undertaken by legal assistants in the course of their employment rests on the lawyer or firm employing the legal assistant;

(c) A legal assistant may engage in legal functions including attending on clients, interviewing witnesses and drafting and filing documents; they may apply knowledge of law in the performance of legal procedures and in rendering assistance to lawyers engaged in legal research.

4. Restrictions on Use of Legal Assistant

(a) A legal assistant shall not give legal advice;

(b) A legal assistant shall not give a professional undertaking;

(c) A legal assistant shall not be held out as a lawyer and when communicating outside the law firm of employment must be identified as a legal assistant;

(d) A legal assistant shall not appear in court or participate in formal legal proceedings on behalf of a client except in a support role to the lawyer appearing in such proceedings.

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APPENDIX C

REPORT ON A PROJECT IN THE YOUTH SECTION OF THE COMMUNITY LEGAL CENTRE OF MONTREAL

by Marc BELANGER*

The contribution of paralegals to the provision of legal aid services has been discussed and experimented with in a variety of ways across the country.

The discussions held at conventions and other working sessions dealing with the question indicated that incorporating non-lawyers into legal aid services sometimes gives rise to disagreement on basic issues and leads to widely varying practical experiences.

In this context it seemed to me worthwhile to report on a three-year project undertaken in the Youth Section of the Community Legal Centre of Montreal. In order to situate precisely the Centre's work with regard to the Juvenile Court, it should be pointed out that the bureau's nine permanent lawyers represent about 5,000 young people or their parents annually. Files on these young people are opened in pursuance of either the federal Juvenile Delinquents Act or the provincial Youth Protection Act.

This report falls into three parts. First, certain of the author's basic personal assumptions are set forth. Knowledge of these assumptions will facilitate an undertaking of what has actually been done in the last three years as described in the second part of the report. In the last part, future prospects will be developed, in the context of legal aid services in Quebec.

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* Marc Bélanger, psychoeducator, is currently employed at the Community Legal Centre of Montreal.

ARE LEGAL SERVICES THE PREROGATIVE OF LAWYERS?

In our society in general, specialization is taken as far as possible. Such specialization has many advantages, but it also leads to problems.

In particular, specialization calls for advanced professional training. This sometimes leads the specialist to believe that his training alone is enough to enable him to provide the service in question, and, conversely, that anybody who does not have this training is unable to provide such service. For example: although it is correct to say that, in order to offer real professional treatment for a neurotic, specialized techniques must be mastered, it is nevertheless false to claim that a person who has not mastered these techniques can understand nothing about neurosis. It is also false to claim that a person who lacks the specialization in question can make no contribution to the personal development of a neurotic.

Above all it would be improper to claim that only specialists can legitimately and correctly make the social choices with regard to neurosis. Any enlightened citizen has something worthwhile to say on the subject, as do specialists in other areas.

Consequently, it is incorrect to claim that "psychological help" in the broadest sense is exclusively the prerogative of psychologists, in the same way, it is incorrect to claim that "legal aid", also used in the broadest sense, is exclusively the prerogative of lawyers.

Actually, the fact that one is competent in a particular field does not mean that one is capable of responding to all facets of a specific social and individual need. Nor is it suffucient to guide society's response to this need.

It is also essential to have a competent technical service adapted to provide an immediate response to the particular need in question. Such a service must take account of other variables which can be understood by looking at the problem from different points of view.

Thus legal aid remains essentially the business of legal specialists. It is the lawyers business in the sense that it is they who are responsible to society which finally pays for the whole operation.

It is also the view taken by the client who is obliged to uphold his rights in the context of legal proceedings.

However, the client is neither a case nor a file, he is a human being who must answer for an act or a situation before the Court and in this sense his legitimate demands are quite different from what books might have to say regarding his "case".

These preliminary remarks describe how I personally saw my position in legal aid.

Legal aid provides a unique professional service for the client involved with the Courts or with the law in general.

Both society and the client see the lawyer as being responsible for providing this service.

Nevertheless, in certain circumstances, the provision of legal services can require that the lawyer's professional services be complemented by those of a professional specialized in some other field. What the client requires, in fact, is a service within the

framework of a legal operation. Frequently the need is so complex or varied, however, that a person is not equipped by legal training alone to provide fully the service required.

This complementarity does not refer to the provision of psychological and social services jointly with legal services.

If the client requires social services as well as legal services, he will be referred to the appropriate organization. Legal aid must not become a social service in miniature, even if it does include social scientists in its regular staff.

The role of the latter seems to me to be an integral part of legal aid's exclusive mandate, which is to advise the client on the law and to represent him before the Court. The social scientist's role is to ensure both that the client is represented as fully and fairly as possible, and that he receives complete counselling for his specific situation.

The social scientist hired by legal aid is not there to serve the lawyer. In fact, both the social scientist and the lawyer are there to serve the client, not only by providing service on an individual level, but also by organizing the system as a whole.

Because of the nature of the job to be done and the other factors already mentioned, it is the lawyer who is responsible for co-ordinating and organizing the individual services.

ACTIVITIES DURING THE PAST THREE YEARS.

My gradual involvement with a legal aid bureau took place against the backdrop described above. The work accomplished could be grouped under the following headings:

1. Investigation of requests for protection under the Youth Protection Act

With respect to investigation of requests for protection, I am asked regularly to participate in case studies and/or preliminary meetings with clients.

The objectives are varied. Sometimes it is a question of helping the lawyer get a true picture of the situation so that he can provide appropriate counselling for the client, or in making the client realize the seriousness of the situation (already established in a well-documented file and the normal requirements related to the development of a child, especially at an early age. Under other circumstances, it is a question of having the social workers amplify significant elements in their file, or of preparing as well as possible the lawyer's interventions at the time of the judicial inquiry.

2. Filing of plea

On only a few occasions, I happened to be involved in the lawyer's activities when he had to choose the kind of plea to be filed. I think this situation is justifiable from all viewpoints: the client's expectations from a lawyer when he is charged, the technical knowledge required in order to make such a decision and the understanding of the lawyer's role in our society.

I intervened, at the lawyer's request, in cases where the latter did not know if his client had a good grasp of reality, although it was not a question of mental alienation in the strict sense.

3. Protective measures - handling of cases involving young offenders

There are several possible kinds of intervention: putting pressure on persons and establishments in order to speed up the decision-making process, suggesting an alternative to an existing line of thinking that, in my opinon and that of the client, is injustifiably restrictive, and putting pressure on community resources which, in turn, "pass the buck" when faced with a particularly complicated case.

In addition, the lawyer must ensure that the social worker who has responsibility for the same case, within his own sphere of competence, is qualified and well disposed toward the client. The social worker, however, works within a complex, bureaucratic and often inefficient system.

Consequently the lawyer sometimes submits problems concerning the accessibility of social services and the broad policies which govern the organization.

These requests sometimes lead to representations to the directors general of establishments or their immediate assistants. In order to maintain their effectiveness, such representations must not occur too frequently and must be based on well-chosen individual cases. The usefulness of a

joint approach by the lawyer and the social sciences expert when dealing with a very complex public administration cannot be too strongly emphasized.

Finally, the handling of cases involving young offenders usually involves the need to work jointly with the lawyer so that the client is made aware of his real situation and of how he can make the best of it in the immediate or long term.

In my opinion, all the above-mentioned interventions are related to the exercising of a client's right within a legal context. It is also clear to me that legal aid extends to the exercising of this right granted to the individual through legislation.

Section 4 of the Health Services and Social Services Act of Quebec stipulates that: "Every person has the right to receive adequate, continuous and personal health services from a scientific, human and social standpoint, taking into account the organization and resources of the establishments providing such services."

Legal aid has a fundamental role to play in Quebec in order to ensure that this right is in fact recognized and exercised. This role does not encroach on that of social workers.

4. Action taken by the lawyer

The type of intervention reported above was used in cases involving a young person and/or his parents, the Court or public or private establishments responsible for providing social services.

Many requests by lawyers are restricted to interaction between themselves and the social sciences expert. Whether for the purposes of studying the case and preparing a submission to the Court, or better understanding the attitudes, behaviour or statements of clients, the lawyer will consult, when necessary, his colleague in the field of social sciences regularly, in order to gain a more thorough knowledge of the case as a whole.

It is important to note in particular a certain kind of situation which is encountered by legal aid lawyers working in the Social Welfare Court. Because of the nature of the cases before this Court, the lawyer has regular contact with persons who have experienced great personal tragedy and whose behaviour is subject to examination by the Court. These clients sometimes develop expectations of their lawyer which are above and beyond the normal call of duty. The study of such situations in co-operation with the lawyer seems very useful, whether to give him the support required when dealing with a particularly disturbing client or to help define clearly the extent of his role.

5. Cases dealt with collectively

Of course, most of the lawyers' work involves individual cases which are submitted to them. It is, however, essential for the bureau's professional activities to be organized in such a way so as to allow the lawyers to study aspects common to a number of their individual cases, if they so wish.

The work carried out in the matter involving young persons referred to adult courts is the best example. It should be noted that in Quebec young law-breakers, up to the age of eighteen, are usually dealt with under the Juvenile Delinquents Act. However, exceptions to this rule are now becoming increasingly frequent. In Montreal alone, between January 1 and July 30, 1977, forty-six motions for referral of cases were placed before the Court. Legal aid lawyers regularly represent young persons subject to such a procedure and the phenomenon has become so widespread that legal aid decided to conduct a more thorough study of the situation.

Such a study requires close co-operation between the bureau's lawyers and the social sciences experts in order to co-ordinate effectively the legal and psycho-social aspects of the problem and to take all the considerations into account as much as possible. The contribution made by a social sciences expert who is more oriented toward research work has proved to be indispensable.

6. Team work

The activities of the social sciences expert were integrated with those of the lawyers in the following manner. At the outset, it was clearly agreed that the expert would be at the disposal of the lawyers whenever they required his services.

There was never any exception to this rule and none was sought. Even when new lawyers joined the bureau, there was never any question that, in such and such a situation (for example, their first referral) they must study the case with

their colleague in the field of social sciences. Such an approach seems preferable.

However, requests for legal aid have occasionally been sent directly to the social sciences expert. Such requests are received and directed, using the normal procedures, to one of the lawyers, who immediately enlists the help of his colleague.

Since February, 1975, this method of integrating the social sciences expert into the legal aid service has yielded positive results: on the whole, the lawyers have turned to these experts with varying degrees of frequency and for a variety of reasons, depending on their individual requirements.

As of July 1976, the number of requests for services was so steady that the hiring of a second person with university training in the social sciences was justified. In general, the duties of this second person correspond to those previously described.

FUTURE PROSPECTS

How should we see the future? What position will the paralegal hold in legal aid and what role will he play? Should the commonly used term "paralegal" be retained? Would it not be better to use the general term "support staff" where applicable and to simply use the appropriate title for the other professionals?

Is it advisable to maintain a large number of paralegals in the Youth Section alone? If this is done, do we not run the risk of reinforcing the impression that no real law is practised at the Juvenile Court? There are those who consider that the fact that the lawyers working at this Court are willing to put up with social scientists is already a strong indication that this is so!

The upcoming implementation of two new pieces of legislation affecting children and young people should also lead us to think about the future. (1)

There is no reason to believe that the caseload will decrease after the new laws are implemented. On the contrary, it is more likely that it will increase.

The establishment of the mecanisms for diversion will certainly lead to a decrease in Court appearances for minor offences. However, the changes will not affect the number of major charges, which make up most of the legal aid caseload.

On the other hand, the changes in the Youth Protection Act may very well lead to an increase in requests for legal aid. The reason for this is that the Act explicitly recognizes on the one hand the right of the individual in conflict with the law to the services of a lawyer and to a number of other privileges, notably the right to appeal and the possibility of help from administrative organizations created by the Act.

Moreover, the new Act goes to the very roots of socio-legal intervention. There is no need to prove this; one need only consider the emotions the proposed changes have aroused. Faced with such a

situation, it is very probable that the various people involved in the Court decision-making process will have a tendency to be guarded or even rigid, in order to protect their prerogatives both from inroads by outsiders and from new approaches.

In my opinion, it would be deplorable for legal aid to become involved in such pointless disputes. I do not mean to imply that the lawyer should sacrifice his client's individual interests in order to allow the system to develop at its own pace. I simply wish to emphasize that lawyers should take particular care not to add to the conflict. To achieve this end, they will no doubt need a thorough knowledge of developments in the system and of the mentality of those who will be called on to change their habits. The paralegal's contribution should be particularly useful in this area and help to make the right demands at the right moment.

Two other points should also be noted. First of all, the new Act spells out in much greater detail how the Social Centres may treat social cases and sets up the mecanisms for handling out of Court situations which up to now have automatically been brought before the courts (diversion). The Act couples these two new emphases with the explicit provision that the offender has the right to consult a lawyer at every stage of the process. It appears that the social scientists could make a very valuable contribution here, by ensuring that the advice given takes account of the most important aspects of the situation as experienced by the client.

In the second place, the introduction of the right to appeal Juvenile Court decisions, mentioned above, will occassionally substantially alter the application of the law in the Juvenile Court. It is not unusual for the Court's decisions to separate parents from

children, either temporarily or definitively, partially or completely. It is generally very painful for all those involved to accept such a decision, however much irresponsibility may have led to its being made. In such circumstances, how is one to establish the criteria justifying an appeal of the first judge's decision? In particular when there seem to be no reasonable grounds for an appeal, how is the lawyer to bring the legal aid client to accept this? How can he be made to understand, without appearing to pass judgment on him, that an appeal would serve no purpose? Similarly, what position should the lawyer take when faced with a client who is determined to appeal in any case, despite the fact that the lawyer can find no serious grounds? Since the difficulty of this situation is related to the very object of the litigation, an affective relationship between parents and children, it seems reasonable to assume that the social scientist's contribution would be almost indispensable.

In such a sensitive matter it is comforting to note that this new form of co-operation, which is particularly delicate, will be based on three years of more general experimentation with a joint legal aid service.

SUMMARY

For the last three years, legal aid services have no longer been provided exclusively by lawyers. The lawyers themselves solicit the contribution of the bureau's two social scientists, who in their turn act as their professional ethics and abilities dictate, within the context of a shared case. The final direction of the case is in the hands of the lawyer, who is the only one responsible for it in the eyes of the Court and the local administration.

The presence of social scientists does not involve the creation of a psychosocial consultation service within legal aid. Rather, makes it possible, when this seems desirable, to clarify the situation and the client's legitimate expectations within the framework of legal consultation or representation. Experience proves that such an arrangement frequently makes the client feel more secure, since it enables him to better understand his situation, his legitimate expectations, his rights and the socio-legal machinery he must face. In many instances, the fact that he can refer to the social scientist enables the lawyer to commit himself alone and in complete confidence to clients whose expectations seem to be disproportionate.

Although he is responsible for the legal aid case, the lawyer has no authority over the nature of the social scientist's contribution. In the case of major disagreement, the latter will simply withdraw from the case and leave the lawyer to continue it alone.

The experience of the last three years has been a stimulating way of providing continuing training for professionals. It has made it possible for those involved to acquire broader knowledge that can be gained within the framework of basic university training. For this reason alone, the addition of social scientists to a lawyer's office represents a profitable proposition.

FOOTNOTE

(1) Editor's note: The author is referring to Bill 24 (Quebec), the Youth Protection Act passed on December 19, 1977 and the federal bill concerning young persons in conflict with the law.

APPENDIX D

THE LEGAL PARAPROFESSIONAL AT PENITENTIARY LEGAL SERVICES

by Phil MACNEIL*

Penitentiary Legal Services is a project that provides a full-time legal service to the inmates of the Maritime federal penitentiaries. It began operations in September, 1973 on a grant provided by the Donner Foundation of Canada and continued its operations up to the present under joint funding by the Department of Justice - Special Projects, Legal Aid and the Department of the Solicitor-General.

The original staff included four Legal Paraprofessionals, a secretary and an Executive Director/Staff Lawyer. Due to staff attrition, the scarcity of trained personnel and the lack of funding, the staff now includes two Legal Paraprofessionals, a secretary and an Executive Director/Staff Lawyer.

The role or job functions of the legal paraprofessional have evolved greatly over the past years and have depended mainly on the ability and training of those employed in such a position. Initial training for the legal paraprofessional was provided in a seven week course taught by third year law students of Dalhousie Law School covering subject areas that would provide a background for those individuals who would eventually be employed with Penitentiary Legal Services and Dalhousie Legal Aid.

The role of the legal paraprofessional with Penitentiary Legal Services is to interview inmates who request assistance and after appropriate research, in conference with the staff lawyer, advise the

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* Mr. MacNeil, Paralegal, Penitentiary Legal Services Inc., Sackville, N.B.

inmate of his legal position. Of course, there are many problem situations that require more than just advising an inmate of his legal position. Many requests come from inmates who want assistance in keeping in contact with what is happening on the street. Problems such as keeping in contact with their lawyer who may be handling an appeal and negotiating with creditors are a few examples.

The majority of requests deal with determining whether or not an inmate has an appealable case. Penitentiary Legal Services performs many appeals of its own but the legal paraprofessional is often in contact with the inmate's trial lawyer of his or her opinion on the merits of an appeal and to determine whether the trial lawyer will initiate an appeal on behalf of the inmate. For those appeals that Penitentiary Legal Services undertake, the legal paraprofessional is often responsible for gathering the factual information surrounding the commission of the offence, contacting the inmate's trial lawyer, and in examining the case law. Quite often the decision whether or not to take on an appeal is based on the collective opinion of the staff lawyer and the legal paraprofessional.

Other problems that the legal paraprofessional handles are outstanding criminal charges, divorce, questions regarding the calculation of a sentence, inquiries concerning the interpretation of the Parole and Penitentiary Acts and complaints of an internal nature, e.g., medical treatment, loss of personal belongings and transfers to other institutions.

The legal paraprofessional can also represent an inmate in a Special Inquiry under the Immigration Act. Provision has also been made in the recent amendments to the Parole Act for an inmate to be represented before the Parole Board. In both these situations, the

"counsel" that the legislation provides is not restricted to a barrister and solicitor but can be performed by a legal paraprofessional.

It appears that the role of the legal paraprofessional is limited mainly by the employer, the capability and training of the individual and the conservatism of the Barristers' Society. At Penitentiary Legal Services the legal paraprofessional is given quite a broad scope in which to work and is encouraged to take on new responsibilities, but all under the direction of the staff lawyer. Of course, there are many areas that the legal paraprofessional has no training or background and thus finds some difficulty. At Penitentiary Legal Services the majority of work is performed in the criminal and correctional law categories and a solid background in these areas is essential. Since there are few lawyers in Canada who have any background in this area, finding a legal paraprofessional with any such experience is even harder.

In the Family Law area, the main type of inquiries are about divorce. The legal paraprofessional interviews the inmate to establish whether there are grounds for divorce and also whether the inmate has jurisdiction in the Province in which he is incarcerated to present a Petition for Divorce. Contact is usually made with the inmate's wife and, with the consent of the staff lawyer, a Petition for Divorce is prepared, filed with the Court and served on the Respondent. The paraprofessional can handle all aspects of the divorce up to the court date at which time the staff lawyer appears on behalf of the inmate.

The legal paraprofessional can handle all aspects of the delivery of a legal service to inmates except representing the inmate in a court. All cases are discussed with the staff lawyer and any action is expected to be performed by the paraprofessional. In this way a lawyer

can handle a large number of cases without having to interview every inmate.

The legal paraprofessional's input is also appreciated and solicited for such matters as the Board of Directors of a Community Residential Centre, as a committee member to the Citizen's Advisory Committee of one of the federal penitentiaries, on federal task force on the Role of Private Agencies in Corrections and in some training sessions of provincial and federal correctional personnel.

A large part of the administration of the office can be undertaken by the paraprofessional along with participation in the formulation of the short and long term policies of the organization.

The legal paraprofessional's role is invaluable in the delivery of legal services to disadvantaged groups by enabling a lawyer to handle large numbers of cases and by keeping the financial costs of the service lower than if only lawyers were providing such a service. The use of paraprofessionals in the Maritimes is very limited and none of the provincial legal aid schemes has thought it advantageous to employ them in the mainstream of the delivery of the legal service.

Presently, a two-year paralegal course is being offered by the Technical campus of St. Francis Xavier University, Sydney, Nova Scotia. The course teaches business administration subjects in the first year and mainly commercial law subjects in the second. There was much opposition to the implementation of this program by the Barrister's Society who argued that there was no need or demand for paralegals. In fact, there are many paralegals in Nova Scotia (although they may not be using that title) and the Sydney Campus of Saint Francis Xavier University have had encouraging response from prospective employers of these people.

In conclusion, the role of the legal paraprofessional can be as varied as the situation in which he or she is employed. There is a great need for this trained person in the delivery of legal services especially where financial considerations may limit the provision of such a service. The greatest benefits will be attained in situations where they assist in providing a legal service to disadvantaged groups whether it be the poor, the imprisoned or those uneducated to our legal system. The sooner the profession is established in such a role, the sooner will our legal system treat those who become involved with it in a more equitable way.

APPENDIX E

NATIVE PARALEGALS IN REMOTE AREAS

by Dennis PATTERSON*

The native paralegal in remote areas such as those inhabited by the Inuit of Canada's Northwest Territories is especially important because of the great distance between native people and the legal system.

The remoteness is firstly geographical. Lawyers and judges and courthouses and registries usually locate in a distant capital. If the "court party" does come to a remote region, it is for a brief period of time, and as strangers.

But the remoteness certainly does not end when a native person opens the door of a courtroom or a law office. There is the barrier of a native language, which often requires the painstaking "invention" of new words from old in order to make a legal concept meaningful.

There is a further factor of remoteness which even language cannot bridge, which is the barrier which must of necesity fall between men of very different cultures and value systems. This natural barrier is unfortunately exaggerated by the myths which are often relied upon to describe races of people, particularly natives in stock situations such as in conflict with the law. The glib myths must be dispelled, the preconceptions cast aside, before native persons can be understood by his lawyer and all the other people who administer justice.

An even greater barrier, however, faces the native person in communicating the legal system to himself. It is even harder for him to

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* Mr. D. Patterson's, director Maliiganik Tukisiiniakvik, legal assistance clinic - Frobisher Bay, N.W.T.

understand than for him to be understood, especially if it is the first time he has been confronted by the system. In such a situation, the paralegal is not just the "go-between", the native paralegal is the client's only point of contact with an utterly alien process. The paralegal provides credibility and comfort. His is the only familiar voice and face. As well, the native person knows that the paralegal, however experienced and confident, understands and even shares the loneliness and fear which often accompanies participation in strange rituals.

Because of the remoteness of the legal system, its Anglo-Saxon values and analytical, adversarial process, the native paralegal must never be co-opted as a device through which native persons may be processed, with a modicum of equality and humanity, through a legal system which is, in many of its essential aspects, repugnant to them.

The native paralegal must be more than an educator and translator on both sides of the cultural interface; the native paralegal must be imbued with a sensitivity for the failings and foolishness of a transplanted system of justice. They must identify laws based on values not shared by their people and expose the real reasons why Anglo-American processes for dispute settling or truth seeking so often abysmally fail the native person. They must identify and if necessary resurrect the traditional values and processes by which social order and peace was maintained before the imposition of the white man's laws, suggesting ways with which those values and processes can be married with what is good of what we have now.

Each factor of remoteness, beginning with geographical remoteness through to cultural remoteness, means that the native paraprofessional has an extra responsibility.

If he is far away from a lawyer or the regional office, he is, for the most part on his own. Supervision may be available partly by telephone, but if there is going to be a Justice of the Peace Court soon, if the paralegal doesn't defend his client in court, no one else will.

In Frobisher Bay, where 83% of criminal charges are dealt with in weekly Justice of the Peace courts as summary conviction matters, and even with an expensive but remotely-based legal aid plan; until there were resident paralegals located in the community, there was no representation available for people who went to Justice of the Peace Court, 80% of whom were Inuit. In settlements, of which there are twelve in the Baffin Region alone, where the circuit court, with its itinerant defence counsel, comes infrequently and only for indictable offences, the percentage of offences heard in Justice of the Peace courts locally, is even higher. If an accused person wants his day in court and the right to have a trial, only the paralegal can help. Indeed, in any situation which may arise in a remote community where quick decisions must sometimes be made, advice on plea for court, assistance requested during a police investigation, bail hearings, child apprehensions under the Child Welfare Ordinance, the paralegal must analyze the problem, seek what aid can be obtained with often inadequate communication systems and mail service interventing, and take action on the spot.

But even if the paralegal is fortunate enough to have a lawyer-supervisor handy, the crucial responsibility does not end there. There is no one to check on the quality of the translation of the lawyer's questions or instructions of the client. The paralegal bears the awful burden of somehow being expected to magically transcend huge gaps of language and cultural moral understanding. It is increasingly

apparent that clients are more trusting and comfortable if their contact with a lawyer, when they must seek legal advice, is as indirect as possible, even to the point of having as much of the interview as possible conducted by the paralegal with the lawyer accessible, but absent. In these situations, the responsibility which lies on the shoulders of the paralegal and his lawyer supervisor are very high, but the rewards in minimizing the intimidation with which may native people approach the law, are very great. Recently, a new legal aid system has been approved in principle by the NWT Government executive. The government has invited the NWT Native Courtworkers Association and Maliiganik Tukisiiniakvik to present proposals on the roles, responsibility, and accreditation of native paralegals.

In the Northwest Territories, where geographical, language, and cultural remoteness from the legal system are facts of life for most native persons, the need for definitions and status for native paralegals which will give them the most responsibility and flexibility as training and the limits of the law will allow will be crucial to the peaceful evolution of "the living law" in directions which will allow native people to participate in ways meaningful to them and respectful of their wisdom as a people.

APPENDIX F

SAMPLING OF LEGAL ASSISTANT TRAINING
OFFERED BY VARIOUS ONTARIO COMMUNITY COLLEGES*

1) Fanshawe College
London, Ontario.

LEGAL OFFICE ADMINISTRATION (1 year program)**

Program Description

This program is designed to prepare students to function as Law Clerks under the direction of lawyers in legal offices. The emphasis is on performing mechanical functions of the practice of law, such as searching titles, preparing briefs for trial, drafting estate plans, drafting corporation documents, and interviewing witnesses and in some cases clients. Law Clerks may also be called upon by their employers to make appearances in some of the lower courts such as the Small Claims Court, or to arrange trial dates, adjournments and remands.

** There is also offered at Fanshawe a two year program in law and security administration and a three year program in legal office administration.

Employment Opportunities

Most of the graduates of this program will be employed by lawyers; nevertheless the knowledge and skills acquired will fit them

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* Refer to footnote 85 of Mr. Harvey Savage, paper on Public Sector paralegalism on the Canadian landscape: An analysis of training.

for employment in other areas, for example: court, registry office, land titles offices, real estate, trust, mortgage, insurance companies, and banks, and the civil service of Federal, Provincial and Municipal Governments.

Year 1 Semester 1	hr/wk	Year 2 Semester 2	hr/wk
Real Estate Law and Conveyancing	5	Real Estate Law and Conveyancing	5
Domestic Relations	5	Real Estate Law Land Titles System	5
Commercial Law	5	Creditor's Rights	5
Civil Procedures	5	Company Law and Procedure	5
Surrogate Court Practice and Estate Taxation	5	Landlord and Tenant	5
Social Welfare Law	5	Estate Planning and Administration	5
Legal Surveying	4	Money Mangement in the Canadian Capital Market	3
	24-25		24-25

2) Niagara College of Applied Arts and Technology, Welland, Ontario.

LEGAL ASSISTANT PROGRAM

List of Courses

Corporate Law - 3 sessions per week
Credit Law and Banking - 4 sessions per week
Business Law - 3 sessions per week
Title Searching - 4 sessions per week
Family Law - 3 sessions per week

3) Durham College of Applied Arts and Technology, Ottawa, Ontario.

LEGAL OFFICE ADMINISTRATION (3 years)

First Year Courses

1. Legal Office Administration - 4 hours per week
2. Communications (reading and verbal skills) - 3 hours per week
3. Contracts - 3 hours per week
4. Economic Fundamentals (introductory economic theory and an understanding of the contemporary Canadian economic system) - 2 hours per week

5. Introduction to Business (an overview of different facets of business organizations in Canada) - 2 hours per week
6. Judicial Process (methods and processes of legal decision - making common to all areas of law) - 2 hours per week
7. Mathematics - 2 hours per week
8. Property (Examination of the development of various interests in land and the relationship to modern property law) - 3 hours per week

Second Year Courses

1. Business Communications - 1 hour per week
2. Commercial Transactions and Creditors' Rights - 3 hours per week
3. Corporation Law - 2 hours per week
4. Data Processing for Law (an overview of computer processing systems as used in business and the legal profession) - 1 hour per week
5. Psychology (the basic principles of psychology studied as background for the students involved in the business community) - 3 hours per week
6. Real Estate Practice (a working knowledge of real estate and mortgage transactions in Ontario, the development of real estate law from feudal times to early development of Ontario and modern concepts) - 3 hours per week
7. Torts and Litigation - 3 hours per week
8. Civil Procedure - 2 hours per week

Third Year Courses

1. Community Planning (an examination of conflicting interests in the use of land and an understanding of how the legal process attempts to deal with the problems that result) - 3 hours per week.
2. Criminal Law and Procedure - 2 hours per week
3. Family Law and Taxation - 3 hours per week
4. Office Administration and Legal Ethics - 1 hour per week
5. Language of Business (a study of the business organization as a communication network, an analysis of techniques or strategies) - 2 hours per week
6. Wills, Trust and Surrogate Court Procedures - 1 hour per week

4) St. Lawrence College, Brockville, Ontario

LAW OFFICE PROCEDURES (2 years)

The Rationale

The increasing complexity of modern-day law practice is creating many new and exciting employment opportunities for

properly trained lay personnel to assist a barrister and solicitor in his practice.

With the services of a law clerk to manage many of the routine procedures of a law office, under the careful supervision of the qualified lawyer, the time of the barrister and solicitor is largely freed for his/her primary task of advising and advocacy.

To meet this growing need, the St. Lawrence College Law Office Procedures Program was established. While specifically designed to develop paralegal personnel, the program also provides valuable training for those in related employment fields, such as financial institutions and some government agencies. Moreover, individual courses in the program can serve to upgrade employees or broaden the knowledge of interested citizens through exposure to particular areas of law. (1)

Course Highlights

English, Business Mathematics, Economics, Accounting, Law and the Legal System, Contract, Tort, Negotiable Instruments, Real Property, Oral and Written Communications, Conveyancing, Litigation, Federal Income Tax, Landlord and Tenant; Mortgages, Law Office Accounting, Creditor's Rights, Corporate Procedures and Financing, Trusts and Estates, Canadian Government, Local Government.

5) Humber Community College,
Toronto, Ontario

LEGAL ASSISTANT'S CERTIFICATE COURSE

This program has been developed for the person interested in paralegal training to provide a background suitable for business organizations and law offices:

CURRICULUM Course Name	PRE-REQUISITE COURSE Course Name
Elements of Law I	None
Elements of Law II	Elements of Law I
*Basic Typing	None
*Basic Office Procedures	Basic Typing
*Intermediate Typing	Basic Office Procedures
*General Office Procedures	Intermediate Typing
Introductory Procedures for the Legal Secretary	None
Real Estate Conveyancing I	Elements of Law I
Real Estate Conveyancing II	Real Estate Conveyancing I
Family Law	Elements of Law I
Elective Courses: Select 2	
Personnel	None
Wills & Intestate Succession	Elements of Law I
Hotel & Restaurant Legislation	Elements of Law I
Employee Benefits	Personnel
Labour Relations	Personnel
Basic General Insurance	None

*Satisfactory Secretarial skills may exempt you from this subject. Please see the Secretarial Program Co-ordinator.

6) Cambrian College of Applied Arts and Technology,
Sudbury, Ontario

LAW CLERK PROGRAM (2 semesters)

Program Description

The Law Clerk Program is a paralegal program, that is, one designed to train students to assist lawyers in almost every facet of the practice of law. Graduates will be qualified to search and report on the titles to real estate to their principals. They will learn to draft those legal documents which are most commonly encountered in law offices to the point where a practicing lawyer will have the maximum time possible left for him to actually complete the work entrusted to him by his clients. Given practical experience, they would be qualified to act as Office Managers to direct and co-ordinate the mechanical and routine aspects of a diversified law practice. (2)

Program of Study - First Semester

Conveyancing I, Litigation Practice and Procedures I, Corporate and Mercantile Law I, Estate and Probate Practice I, Insurance Adjusting Practice and Procedures.

Program of Study - Second Semester

Conveyancing II, Litigation Practice and Procedures II, Corporate and Mercantile Law II, Estate and Probate Practice II, Law Office Management, Introductory Typewriting.

FOOTNOTES

(1) Excerpted from 1978/1979 calendar description

(2) Excerpted from 1978/1979 calendar description

APPENDIX G

NATIONAL WORKSHOP ON PARALEGALISM

March 29-31 Du 29 au 31 mars

VANCOUVER

1978

FINAL LIST OF DELEGATES

CANADA

L.S. Fairbairn
Special Advisor on Legal Aid
Department of Justice

G.E. Williams
Chief of Native Programs
Department of Justice

A. Lazar
Consultant
Department of Justice

R.M. Nolan
Legal Advisor
Department of Justice

RESOURCE PERSONNEL

Chester Cunningham
Executive Director
Native Counselling Services of Alberta

Roger Walker
Co-ordinator
Law Clerk Program
Red Deer College, Alberta

Neid Gold
Faculty of Law
University of Victoria - British Columbia

Andy Anderson
Executive Director
Allied Indian and Métis Society - British Columbia

Victor Savino
Legal Aid Manitoba
Winnipeg, Manitoba

Roland Penner
University of Manitoba
Winnipeg, Manitoba

Richard Evans
Faculty of Law
Dalhousie University
Halifax, Nova Scotia

F. Zemans
Osgoode Hall Law School
York University
Toronto, Ontario

Harvey Savage
Provincial Director
Ontario Legal Aid Plan
Toronto, Ontario

Gerald Wright
Donner Canadian Foundation
Toronto, Ontario

André Saint-Cyr
Secrétaire
Commission des services juridiques
Montréal, Québec

Jean-François Boulais
Directeur du projet CNIRAJ
Centre de recherche en droit public
Université de Montréal
Montréal, Québec

William Statsky
Antioch School of Law
Washington, D.C.

ALBERTA

Douglas Heckbert
Native Counselling Services of Alberta

BRITISH COLUMBIA - COLOMBIE-BRITANNIQUE

Duncan Shaw
Chairman Legal Services Commission

Jack Kent
Executive Director Legal Services Commission

Penny Bain
Legal Services Commission

Keith Sero
Legal Services Commission

Bryan Ralph
Legal Aid Society of British Columbia

Harry Crosby
Native Courtworker
Counselling Association of British Columbia

Michael Welsh
Board Member
Westminster Community Legal Services Society

John Simmons
Kamloops Civil Liberties Society

John McCosh
Westminster Community Legal Services Society

Sandy Tremblay
Powell River Civil Liberties Society

Dick Underhill
Cummings, Richards, Underhill, Fraser, Skillings
Barristers and Solicitors

Theresa More
Elizabeth Fry Society

Val Richards
Legal Studies Program
Capilano College

Victor McCallum
Law Society of British Columbia

Margaret O'Brien
Legal Services Commission

Meg Richeson
Legal Services Commission

MANITOBA

Hilda Towers
Legal Aid

Dorothy Betz
Legal Aid

Dave Scanlon
Associated Tenants Action Committee Inc.

NEW BRUNSWICK - NOUVEAU-BRUNSWICK

Herman Saulis
Union of New Brunswick Indians

Phil McNeil
Penitentiary Legal Services

NEWFOUNDLAND - TERRE-NEUVE

Newman Petten
Provincial Director
Newfoundland Legal Aid Commission

Veryan N.G. Haysom
Co-ordinator

NORTHWEST TERRITORIES - TERRITOIRES-DU-NORD-OUEST

Marguerite Squirrel
N.W.T. Native Courtworker Board Member

Sharon Carpentier
N.W.T. Native Courtworker Board Member

Gail Cyr
Executive Director
N.W.T. Native Courtworker Association

Dennis Patterson
Director
Maliiganik Tukisiiniakvik

NOVA SCOTIA - NOUVELLE-ECOSSE

Bill Freeland
Dalhousie Legal Aid

B. Powroz
Paralegal
Dalhousie Legal Aid

ONTARIO

Cathy Beamish
Grand Council Treaty No. 9

Gary Stone
Ontario Federation of Indian
Friendship Centres

Mary O'Donoghue
Students' Legal Aid Society
University of Toronto

Zoya Stevenson
Parkdale Community Legal Services

Bill Robinson
Injured Workers Consultants

Susan Atkinson
Federation of Metro Tenants

PRINCE EDWARD ISLAND - ILE DU-PRINCE-EDOUARD

Quinton Roberts
Co-ordinator
P.E.I. Native Courtworker Program

QUÉBEC

Jean-Guy Leclerc
Area Director For Abitibi

Patrick Molinari
Faculté de droit
Université de Montréal

Marc Bélanger
Division jeunesse
Centre Communautaire juridique de Montréal

SASKATCHEWAN

Jean Maksymiuk
Saskatchewan Community Legal Services Commission

Paul Havemann
Assistant Professor
Human Justice Program
University of Regina

Vance Winegarden
Native Courtworker

Jeff Bugera
Department of Attorney General
Assistant Deputy Minister, Administration

Olive Pirot
Paralegal

Betty Donaver
Paralegal

Shirley Faris
Paralegal

YUKON

Doris McLean
Courtworker
Skookum Jim Memorial Hall

CANADIAN INTERGOVERNMENTAL CONFERENCE SECRETARIAT
SECRETARIAT DES CONFERENCES INTERGOUVERNEMENTALES CANADIENNES

Ann Vice
Secretary - secrétaire

APPENDIX H

NATIONAL WORKSHOP ON PARALEGALISM

AGENDA

Tuesday, March 28th

5:00 - 6:00 p.m.	Registration
8:00 p.m.	Reception

Wednesday, March 29th

8:15 - 9:00 a.m.	Registration and Completion of Questionnaire
9:00 - 9:30	Welcome Address Duncan Shaw, Chairman, B.C. Legal Services Commission Statement on Workshop Objectives and Format Lyle S. Fairbairn Special Advisor on Legal Aid, Department of Justice.
9:30 - 10:30	Workshop Animators will review and priorize paralegal issues raised in their discussion papers and by the delegates in the questionnaires.
10:30 - 10:45	Coffee
10:45 - 12:30 p.m.	The Function and Role of Paralegals Professor Frederick Zemans, Osgoode Hall Law School of York University.
12:30 - 2:00	Lunch
2:00 - 5:00	Paralegal Training Harvey Savage, Assistant Provincial Director, Ontario Legal Aid Plan (Coffee will be scheduled at an appropriate time during the session which includes a video tape presentation).

7:00 p.m.	Reception and Banquet Address: An Overview of Paralegalism in Canada Roland Penner, Q.C. University of Manitoba Law School

Thursday, March 30th

9:00 - 10:30 a.m.	Accreditation - Supervision - Professional Liability Victor Savino, Staff Lawyer, Legal Aid Manitoba.
10:30 - 10:45	Coffee
10:45 - 12:30	Accreditation - Supervision - Professional Liability (continued)
12:30 - 2:00	Lunch
2:00 - 3:15	Interface Between Paralegals and The Legal Profession Professor Neil Gold, Clinical Director, Law Centre, Victoria, B.C.
3:15 - 3:30	Coffee
3:30 - 4:30	Interface Between Paralegals and The Legal Profession (continued)

Friday, March 31

9:30 - 10:30	Paralegalism in the United States: A Comparative Analysis, William Statsky, Antioch School of Law, Washington, D.C.
10:30 - 10:45	Coffee
10:45 - 12:00	Summation

END