

# Community legal education

## Access to justice

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*In an increasing climate of conservatism, community legal education is examined in the context of broader and 'legitimate' legal services.*

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Justice is obtained by those in need through fair and effective application of the law, which requires the provision of legal aid services, including community legal education, legal assistance and law reform.

Since the Liberal Party came to power in Victoria, there have been rapid changes in a number of areas such as the abolition of the Victorian Law Reform Commission and the WorkCare Appeals Board, not to mention enormous changes to WorkCare and the industrial relations system. Many people are questioning the rationale driving such haste.

The change of government will mean a thorough review of the Victorian Legal Aid Commission and community legal centres in this State. In an article published recently in the *Law Institute Journal*, Jan Wade, the new Attorney-General has gone on record saying that:

Legal aid requires some changes. The Commission is not meeting the needs of people. They are turning people away who have quite a good cause of getting legal aid. Judging from the Commission's accounts, quite a lot of money has been spent on administration which might better go into legal aid.<sup>1</sup>

She goes on to say:

Legal centres will continue to receive support, but again I would like to be assured that the greater part of their money is being spent on actual legal services as opposed to educational and other activities.<sup>2</sup>

Such remarks, without a proper assessment and evaluation of extensive work done to date by both the Legal Aid Commission and community legal centres, are extremely worrying. They demonstrate a lack of understanding of the purpose and functions of these organisations and indeed of the whole concept of 'legal aid' in its broadest sense. They revive the notion that legal services provided by both organisations should be geared solely to direct service delivery and to little else. They ignore the progress which has been made over the last 20 years in redefining the notion of 'legal services' broadly, and take us back

to a conservative casework model as a resolution of people's legal problems while ignoring the value and the contribution which legal education and law reform have made to the legal profession as a whole. In addition, they ignore the current economic climate which has led to the rationalising of services to the community and the search for alternative modes of service delivery by both the Legal Aid Commission and community legal centres.

The provision of legal aid services should not be limited to any one approach to work practices. Any effort to limit or ignore the need for diverse but interrelated approaches to the delivery of legal aid services will result in increasing fragmentation, resource competition and ineffectiveness. It is argued that a full range of tactics and strategies are essential to achieve our objectives and provide full benefit to the communities or target groups served.

The tools and strategies employed to achieve our objectives include casework, education, community development, advocacy, direct action, lobbying and more. The approach taken in using these 'tools' to facilitate public access to the legal system is related to what outcomes are considered important. In addition, our practices must be related to the skills, expectations and needs of our clients and the broader community. There is a fundamental inter-relationship and intra-relationship between all of the 'tools' at our disposal.

Community legal education, as one tool, is a term with great potential for misinterpretation and mystification. This article examines community education's relationship to other aspects of legal aid provision, and the context in which it becomes meaningful.

The political and economic climate in which we all work is everchanging and, therefore, our approach requires constant review and evaluation. We offer these thoughts as part of an ongoing process to develop appropriate models for the effective provision of legal aid services.

### Functions of legal aid services

The legal needs of our communities are best served by the successful integration of three functions: providing legal assistance, providing legal education and information, and promoting reform of laws and procedures which inhibit justice. It is the successful mixture of these ingredients which will ensure that legal aid services provide remedies and reforms which are fair and just. What is the nature of these roles and functions?

**Providing legal assistance**

Legal assistance is provided in the form of direct service delivery primarily targeted at individuals. It is intended to meet the needs of people who do not have the financial means to employ private (fee for service) legal professionals.

Legal aid services include direct service in the form of duty lawyer services at court, casework, one-to-one assistance and advice for the resolution of individual problems. Mediation and conciliation have also proved useful.

**Providing information and education**

It is argued that information and education, while interrelated, are not the same. Information is a product; it is prepared, produced and disseminated in a variety of forms. Education is a process of delivering information and facilitating learning, which goes well beyond information provision.

The provision of legal information is essential to enable individuals to assess whether there are legal avenues available to them to resolve their particular problem and to understand their legal rights.

Public legal information and education also have a role to play in ensuring that some individuals are able to either avoid, or take early action in preventing, legal problems.

Single topic classes such as 'do-it-yourself' divorce and self representation workshops for minor traffic offences are examples of initiatives taken by legal educators to meet the overwhelming need for assistance in these areas in a more cost effective way than one-to-one service delivery. In this respect, education is able to relieve some of the demand on casework.

Legal education can occur in many ways including:

- in a casework setting;
- as written resources which support information given in an interview or distributed widely to the public;
  - at workshops or seminars designed to inform other professionals who are in contact with the public of specific legal issues;
- in schools, neighbourhood houses, health centres etc.

Community legal education aims to enable the community to evaluate the significance of the law to their particular circumstances and make informed choices about the legal options available to them.<sup>3</sup>

Legal education and information provision are fundamental in any program which aims to enhance access to justice. Legal education does not of itself increase the demand for legal services,

but reveals the enormous need in the community for an affordable, accessible and appropriate system of justice. It can also be argued that community legal education is preventive, although this is difficult to measure. There are obvious cost savings to the community if people have the knowledge to seek early help.

**Promoting reform of laws and procedure**

Activities which promote legal and procedural reform address the longer term needs of legal aid consumers. Cases which present residual problems and/or reflect anomalies in the law and legal practices are most effectively addressed through structural change. If we acknowledge and accept that many causes of legal aid consumers' problems reside with our societal structures, then reform and change are critical functions of an 'alternative' legal services sector.

**Different approaches**

While some legal aid services and workers see casework as paramount, others perceive community education and law reform as best meeting the long term needs of clients and the broader community. Some view casework as remedial and merely a short-term palliative and others are concerned that community education and law reform activities divert limited resources and energy away from the immediate needs of service users. Additionally, there is the often-voiced view that casework is inherently conservative, while non-casework activities are inherently radical.

These debates re-emerge from time to time, especially in difficult economic circumstances which constrict already limited resources: casework, community legal education, law reform — which approach should be taken?

These divergent views result to a large degree from the ideological perspectives of service providers, but also from a confusion between these perspectives, on the one hand, and the tools of their trade, on the other. The tools used are neither conservative nor radical in themselves — ideological perspective will dictate whether these tools are used in a 'conservative' or 'radical' way.

The social, philosophical and political value base from which services operate will affect the way situations are defined, and in turn dictate the strategies considered appropriate.

The dilemmas inherent in casework cannot be resolved simply by doing more and more of the same. They clearly point to the necessity to look to a broader approach to the provision of legal aid services.

Casework services are constantly faced with the need to respond to the same or similar problems over and over again; while the names of the service users may change, the problems presenting repeat themselves. Clearly, each service user has a right to a solution to, or redress for, the problem which they individually face. However, limited resources make it increasingly difficult for services to satisfy both the visible and hidden demand for individual casework.

The continuing demand for casework often results in growing levels of frustration for service providers, particularly when casework profiles clearly indicate the need for structural, legislative or procedural reforms.

**Where else can they go ?**

Community-based services and workers are renowned for not being able to say 'no'. It is extremely difficult for services such as the Legal Aid Commission and community legal centres to curtail their activities and to deny people access to casework (where else can they go?). Workers in both organisations are well aware that they may be the last resort for many service users.

Another tension confronting many workers, both within the Legal Aid Commission of Victoria and the community sector, be it in areas of health, law, welfare, financial counselling etc. is the dilemma raised by the relationship between the 'specialist' and the 'client':

It is one of the maddening facts of our time that people believe themselves incapable of dealing with the most ordinary human conflicts without the aid of a 'specialist'.<sup>4</sup>

Not only do service users perceive the lawyer, welfare worker or health professional as the expert, but often these workers *view themselves* as the expert and relate to 'their client' accordingly. Nor can it be denied that, in some cases, the service provider has greater knowledge about their particular area of work than does the service user.

Economic rationalism and a corporate management ethos are increasing the political and bureaucratic demand for more direct and immediate resolutions to problems — hence an increasing emphasis on the casework solution. Decreasing resources, especially in terms of the legal aid dollar, are both driving this push and exacerbating its impact on the provision of legal aid services. The establishment of performance indicators may make further demands on services to increase their casework commitments.

Further user demand, and pressure from government to increase casework provision may have serious consequences on service quality.

### Role of community education

As we have already suggested, the role of the 'professional' can sit at odds with the role of the more 'radical' community worker. The relationship between service user and service provider is often not an equal one, characterised by an imbalance of knowledge, skills and power. Over the years attempts have been made to redress this imbalance by the development of casework processes which encourage greater equality in decision making and self-determination.

Such developments recognise both the need and the right of service users to be fully informed in relation to the problem being addressed and the actions to be taken, to benefit from an educative process aimed at achieving 'informed consent'.

The concept of informed consent as it applies to the medical/health sector is one which is worthy of consideration in the context of community legal education:

Since the legal right to consent cannot be satisfied by mere agreement, it must be informed to be valid.<sup>5</sup>

The guiding principles behind informed consent as stated in the *Health Services (Conciliation and Review) Act 1987* include:

- (d) the provision of adequate information on services provided or treatment available in terms which are understandable;
- (e) participation in decision-making affecting individual health care; and
- (f) an environment of informed choice in accepting or refusing treatment . . .

It does not require great mental gymnastics to adapt such principles to the area of law and the relationship of the legal practitioner to his/her client. If legal aid services wish to ensure 'valid' informed consent, then legal education is an integral component in the process.

Education is also important in assisting the service user to be aware of the socio-economic issues which have affected them, and to have an understanding of their place in the legal system and their rights in law.

### Other activities

At this point we must turn to other, non-casework activities undertaken by legal aid services which further facilitate people's access to, and equity within, our legal system, including activities which aim to change that system. These non-

casework activities are not presented as (cheap) alternatives to casework, but are complementary aspects of the provision of legal services.

### Law reform

The recent campaign for the reform of laws relating to rape and sexual assault in Victoria provides an illustration of the interaction between casework, education and reform. Issues and concerns arising from both legal and non-legal casework precipitated much of the demand for change. However, casework alone could not ensure that change. Education and awareness raising were crucial components of the ensuing campaign, resulting from casework, research and information collection. Education and awareness raising were directed at victims, the police and judiciary, government, other workers and the broader community. Legislative reform would have had little chance of success without all these activities.

The introduction of changes to the law and legal procedures requires legal education and training for both the community and legal workers. A process of informing and awareness raising is a necessity to enable service users and the broader community to initiate changes and to enable legal workers to support them.

### Research, monitoring and evaluation

Casework and law reform is greatly enhanced by comprehensive research into, and monitoring and evaluation of, laws and the impacts of changes to laws and legal procedures. Information about consumer access to, and the effectiveness of, services, about unmet and hidden needs, and about the various programs and initiatives being undertaken by community agencies and government are essential to program planning and implementation.

As highlighted above, education is an essential link between casework and reform. Roles and functions which are integral to legal education include research, evaluation, program development, information collection and dissemination, awareness raising on relevant issues and concerns, skill sharing, and training with both legal and non-legal workers.

Non-casework activities such as legal education and legislative and procedural reform are informed by a variety of indicators, including:

- casework (both legal and non-legal),
- research and development work, changes to legislation and procedures,
- statistical indicators,
- media reporting,
- hidden need, for example, women in prisons, incest, domestic violence, and

- demand for and access (or lack of access) to legal aid.

It is no doubt a truism to say that, without knowledge about legal rights and available services, people are not in a position to make use of those rights and services:

Without at least the rudiments of a legal education, direct access to the legal system is denied the vast majority of citizens.<sup>6</sup>

While there are limits to the preventive role education can play, improved knowledge of laws, procedures and consequences does contribute to people's ability to make more informed decisions about their actions and the exercise of their rights.

Education informs community workers and the public in the (affected) community of the nature and extent of certain legal problems and the redress available. If individual redress is an inadequate or unsatisfactory solution, the community is in a position to set in motion collective solutions.

In a paper delivered at the 'Legal Aid and Legal Access' conference, discussing the legal community, Julian Gardner stated:

The only solution is for the players to recognise their interrelatedness and accept a shared responsibility. This requires an acceptance that the goal of increasing access to justice is common to all concerned.<sup>7</sup>

Isolated solutions to problems remain just that — isolated; and an isolated problem-solving process, while important for a particular service user or group of service users, cannot in itself change the structural and socio-economic circumstances which gave rise to the problem. This approach further exacerbates the already limited and stretched resources of the Legal Aid Commission and community legal centres and no-one comes out the 'winner'.

### References

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