

to a highly developed system of liaison between NEFA and the police and to the formation of Lawyers for Forests.

But it does raise some interesting ethical dilemmas. How far should officers of the court go in providing advice to those who are probably breaking the law? Should these people be lawyer-free in situations where they are at real risk and where the presence of a lawyer seems to make a difference? How can we effectively represent people when there is a real risk of being a witness to the proceedings oneself?

Of course one can intellectualise some clever responses — lawyers in such circumstances are not participating in a criminal activity, just observing, communications are privileged, representation and observation are assigned to different lawyers. But in the end the personal, the political and the professional are merged and a commitment to the environment overwhelms. If you would like to join Lawyers for Forests and have some experience in criminal or environmental law, contact Lawyers for Forests, c/- David Heilpern, PO Box 157 Lismore 2480.

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Day four at the blockade and the Minister has just ordered a cessation of logging in the whole area pending an investigation into how such a 'tragic error' could have been made. NEFA has succeeded in protecting yet another stand of our native forest — for now. So, back to the office to catch up.

David Heilpern teaches law at Southern Cross University. He is also Solicitor for Nimbin HEMP and the founder of Lawyers for Forests.

LEGAL AID

When will lawyers ever learn?

CASSANDRA GOLDIE examines the threat to community legal education in Western Australia.

In October 1995, the Commonwealth and State governments commenced a joint review of legal aid in Western Australia. Both the Law Society, as representative body for the private profession, and Law Access¹ made submissions. Each of these bodies recommended to the Review that Legal Aid WA should reduce, and if necessary, abandon its community legal education (CLE) activities.² They argued that Legal Aid's core function should be to fund litigation.

The Commonwealth recently announced a \$120 million cut to national legal aid funding. Is this an opportunity for these recommendations to be taken on board? Is CLE on its way out?

This article warns against that approach. It argues that CLE is critical to the success of an effective, more humane and less costly form of access to justice for disadvantaged people. It suggests that the recommendations from the private legal profession are retrogressive, and contrary to current international thinking.

The development of CLE

Traditionally, Legal Aid WA gave little emphasis to CLE.³ The reasons are complex, but are linked to the nature of the legal profession as a whole, which has seen its role as providing people with legal advice and representation, one on one. The lawyer's job was to take over the client's problem, typically by negotiation, leading to litigation when a settlement could not be reached. Legal Aid WA saw its role as supporting that traditional approach by responding to requests for advice and representation and providing assistance when people could not afford to pay for it themselves. Legal Aid WA did not actively seek out its clients but would wait for them to apply for help.

This approach was similar to the traditional public health system. People only went to the doctor when they got sick. The doctor took responsibility for getting the patient better. People had little awareness of how to keep healthy, and were often kept in the dark about their illness and treatment.

However, there is evidence in public health that government and the profession have taken on the challenge to find a better way, recognising that it was not in the community's interest to spend public money supporting an expensive, crisis-driven health system.

In the last decade, there has been a significant shift in the nature and extent of public health awareness. There is public education about iron counts, HIV/AIDS, eating better foods, and the importance of exercise. People are encouraged to see their doctor early, and to understand ill-health prevention.

The solution-oriented approach to legal aid delivery

The previous Commonwealth Government commissioned several enquiries into access to justice,⁴ driven by a recognition of the failure of the existing system to meet community needs. Broadly, these enquiries supported a paradigm shift in the delivery of legal aid, analogous to that in public health.

In particular, the National Legal Aid Advisory Committee (NLAAC), challenged legal aid bodies to help disadvantaged people to avoid and resolve legal problems early and without confrontation and litigation. This was also the recommendation of a 1993 Churchill Fellowship study into legal aid⁵ and remains a theme, it would seem, of the Federal Attorney-General, Darryl Williams, QC.⁶

In order to achieve this paradigm shift, NLAAC recommended that legal aid intervene earlier through the provision of timely legal advice. It also supported education directed to 'imminent or probable needs of individuals or people with a common interest to protect or assert legal rights and interests'.⁷

Legal Aid WA has sought to implement early intervention in a range of ways, including a CLE program targeted at disadvantaged groups. The CLE program concentrates on community workers, who are uniquely placed to recognise legal problems early and support their clients in getting legal help before they are in crisis. This approach can be demonstrated by an example.

Legal Aid WA provided a training course for workers from women's refuges. The very next day, one of the workers called Legal Aid — for the first time. One of her residents, illiterate and petrified, was facing warnings about her children being apprehended by the Department of Family and Children's Services. Legal Aid provided a grant of aid for advice and negotiation with the Department. The advocacy

for this woman (at an estimated maximum cost of \$600) may result in an early resolution of the issues. It has avoided the woman coming to Legal Aid WA, after the event, in need of expensive legal representation in formal court proceedings, at an average cost of \$1750-\$2200 for a 3-5 day trial.

In 1995-96, Legal Aid WA involved about 3500 people in its CLE activities, providing various courses for workers in domestic violence, crisis and financial counselling, migrant issues, disability and mental health.

Legal Aid WA has conducted a number of evaluations to establish whether its program is on track.⁸ As part of the 1995 review of legal aid in WA, external consultants evaluated a sample course for migrant community workers. The results confirmed that participants had increased their confidence in assisting their clients, with improved knowledge of legal issues, and effectiveness in dealing with legal problems. As a *direct* result of the course, 85% of the participants had referred clients to Legal Aid WA, with 70% having referred clients to other legal services, as well. This direct referral increases Legal Aid WA's ability to intervene earlier and limit the trauma — and cost — involved in providing assistance.

Another indicator of the effectiveness of Legal Aid WA's CLE program is the number of calls subsequently received from participants regarding their clients' legal problems. In 1995-96, Legal Aid WA provided legal advice to 671 community workers over the telephone about their client's legal problem, representing a 479% increase from 1993-94. This increase indicates a growing legal awareness in the community, directly attributable to the CLE activities. Importantly, this trend improves Legal Aid WA's ability to resolve client problems early, ideally in the community setting, without the client needing to come to Legal Aid at all.

But how much is CLE costing? In 1995-96, Legal Aid WA spent less than 2% of its budget on CLE and development activities.⁹ By contrast, 89% was spent representing clients in court or providing one on one advice and assistance. This hardly represents a major shift away from traditional services.

1995 World Legal Aid Conference

Justice Bhagwati delivered the keynote paper at the 1995 World Legal Aid Conference in Malaysia.¹⁰ He argues that, at least in the developing country context: 'The traditional legal services program, which is confined only to giving legal aid or advice to those who come for it, can never succeed'. He points out that this kind of program relies on the false assumption that people are aware that they have a legal problem, and assertive enough to take action to deal with it.

Justice Bhagwati calls for a 'strategic' legal services program, which:

does not regard litigation as playing an important or even significant role in the life of the poor and hence refuses to consider the court as the centre of all legal activity.

He isolates a number of key features of the program, including education, decentralised services, and public interest litigation.

Justice P.N. Bhagwati argues that a *primary* objective of a legal aid system should be to increase the legal awareness and assertiveness of the disadvantaged. He suggests that the *best* method for achieving this is to provide education to 'different classes of social workers who work among the poor'.

This strategy is directly in line with the direction that Legal Aid WA has taken with its CLE activities in recent years. Legal Aid WA has recognised that, with the limited funds available, it must be more strategic in how it provides legal assistance, a lesson advocated by Justice Bhagwati in the developing world context where legal aid funding restrictions are extreme.

Conclusion

If the recommendation of the Law Society of Western Australia and Law Access to reduce or abandon the CLE program were followed, what would be the result?

Legal Aid WA would:

- return to the traditional legal service program;
- accept its role as a passive bureaucracy, waiting for people to come to it to 'apply' for help;
- reject any responsibility for increasing the legal awareness and assertiveness of the disadvantaged; and
- ironically hear from the *most* aware and the *most* assertive, rather than the most disadvantaged in our community.

Most importantly, Legal Aid WA would turn its back on the opportunity to minimise the costs — both human and monetary — associated with resolving legal problems. A CLE program is central to any early intervention strategy.

The position taken by the Law Society of Western Australia and Law Access represents a disappointing lack of recognition by the private legal profession of the critical role of CLE to access to justice.

This article does not suggest that litigation assistance is not important. Clearly it is critical. However, surely the issue here is not whether Legal Aid WA should be — or should not be — involved in education, but rather the wholesale inadequacy of the funding provided by government to support the essential functions of a strategic legal aid system — and a truly solution-oriented approach to access to justice.

That should be the real debate.

Cassandra Goldie is Community Resource Manager, Legal Aid Western Australia. The views expressed in this article do not necessarily reflect the views of Legal Aid Western Australia.

References

1. Law Access is a scheme of the Law Society of Western Australia, coordinating pro bono legal assistance in the private sector.
2. The Law Society recommended that: 'Funding of non-litigation approaches [which includes CLE] must take a lesser priority, and if necessary, be abandoned, given Legal Aid's scarce resources and the large and increasing demand for assistance in litigious cases': 'Legal Aid Review Submission', 1996, p.14. Similarly, Law Access submitted that: 'It is a nonsense for Legal Aid WA to pursue education and information resource programs if there is inadequate funding for the delivery of high quality legal advice and advocacy to the disadvantaged once you have informed them of the legal rights that they have . . .': Legal Aid Review Submissions, 1996, pp.19-20.
3. The article focuses on Legal Aid WA's community legal education activities. However, the author wishes to emphasise the equally important and complementary role played by community legal centres in the delivery of CLE to disadvantaged people.
4. See NLAAC: 'Legal Aid for the Australian Community,' 1987-1991; Access to Justice Advisory Committee: 'Access to Justice Report', 1994; Australian Law Reform Commission: 'Equality before the Law', 1994; Commonwealth Government: 'Justice Statement', 1995.

References continued on p.299

Author's reply

Mr Stewart seems to have fallen into the trap of failing to distinguish between what he wanted to see in my article and what it was about.

My article discussed the ABS survey of the Australian Legal Services Industry for the period 1988-93. I focused in particular on the survey data in relation to growth in employment and income. But neither the ABS survey or my article discussed the period after 1993. It is possible that things have deteriorated dramatically since then as Mr Stewart suggests. In fact I commented towards the end of the article that 'This is not to say that the future may bring substantial change'. It is now up to Mr Stewart and others to demonstrate with hard data that things have deteriorated dramatically since 1993 as he suggests. But that was not the purpose of my article.

Francis Regan

Goldie references continued from p.297

5. Huxtable, P., 'An Examination of Some Foreign Legal Aid Schemes with Implications for Australia', 1993.
6. Australian Law Reform Commission, 'Reform', June/July 1996, p.26.
7. National Legal Aid Advisory Committee, 'Legal Aid for the Australian Community', July 1990, p.246.
8. Nilon, C., 'An Evaluation of the Effectiveness of the Child Support Forums operated by the Legal Aid Commission of Western Australia', 1988; LAWA: 'Armada Domestic Violence Intervention Project', 1994; LAWA: 'Pilbara Community Legal Service Project', 1994; LAWA: 'Migrant Worker Legal Information and Referral Training Evaluation Report', 1995; McKelvie, G. and O'Rourke, M., 'An Evaluation Study of the Legal Aid Child Access Forum Western Australia', 1995; LAWA: 'Community Legal Education in Tenancy Law', 1995; LAWA: 'Domestic Violence Information and Referral Training', 1995; Integra Pty Ltd: 'An Evaluation of the Legal Aid Migrant Workers Program', 1996.
9. This figure reflects staffing and disbursement gross costs associated with Legal Aid WA's live CLE and publication production and distribution, as well as its networking and consultation activities.
10. Baghwati, P.N., 'Legal Aid in Crisis — The Present and the Future', World Legal Aid Conference, 2-4 May 1995, Kuala Lumpur, Malaysia. Justice Bhagwati is known as the father of the legal aid system in India, and is a recipient of the International Bar Association Award for his contribution to the field of legal aid at a state and international level.

LEGAL AID CRISIS

The Federation of Community Legal Centres (Victoria) is looking at the impact of changes to Legal Aid Guidelines on access to justice. If anyone knows of cases where the refusal of legal aid has led to an injustice, or exposed clients to risk, please write and tell the Federation about it.

Contact: Liz Curran
Federation of CLCs (Vic.)
GPO Box 1139K
MELBOURNE 3001

Mr Stewart also raises the question of profitability measures. But perhaps he should read the survey rather than use the old line about 'statistical interpretation'. I merely discussed the ABS data that demonstrate conclusively that this was a very profitable industry in that period. On any profitability measure the profession was doing very well. Mr Stewart does not take issue with this overall conclusion. Even using the measure preferred by Mr Stewart (allowing for partners income to be subtracted from profits) the industry's profit level was three times that of non-farm businesses in the economy generally. The real issue here seems to be that Mr Stewart does not want readers to think that the profession is ever very profitable. He may like us to think this but the data does not support such a conclusion.

Huxtable article continued from p.275

References

1. Maital, S., *Executive Economics. Ten Essentials for Managers*, The Free Press, New York, 1994, p.233.
2. Porter, M.E., *The Competitive Advantage of Nations*, MacMillan, Hong Kong, 1990, p.71.
3. Thompson, A.A. and Formby, J.P., *Economics of the Firm*, Prentice-Hall, New Jersey, 1993, p.405, adapted from M.E. Porter; 'How Competitive Forces Shape Strategy', (1979) 57(2) *Harvard Business Review* 137-45.
4. Australian Bureau of Statistics, *Legal and Accounting Services*, Australia 1992-93, p.1.
5. National Legal Aid, 'Meeting Tomorrow's Needs On Yesterday's Budget', 1996, p.10; National Commission of Audit Findings, Report on Aboriginal and Torres Strait Islanders Legal Services, 1996, p.63.
6. Fife-Yeomans, J., *The Australian*, 5 October 1996.
7. Thompson, A.A. and Formby, J.P., above, p.410.
8. Maital, S., above, p.229.
9. Peter Huxtable undertook an extensive study of North American and European legal aid schemes, under a 1993 Churchill Fellowship.

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