



Department of Justice Ministère de la Justice
Canada Canada

TECHNICAL REPORT

A MULTIDIMENSIONAL MODEL FOR SERVICE IN DELIVERY IN CANADIAN CRIMINAL LEGAL AID

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1997

TR1997-8e1

UNEDITED

**Research and Statistics Division/
Division de la recherche et
de la statistique**

Canada

**Policy Sector/
Secteur des politiques**

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**Ideas Expressed in This paper Do Not Represent the
Views of the Department of Justice**

Abstract

The mixed model debate in Canada has always been central to the issue of cost-effective delivery of legal aid. The mixed model concept has evolved from the “staff lawyer versus judicare” debate to a more multidimensional concept of mixed model of service delivery. The multidimensional mixed model concept provides a more versatile framework for developing a systematic approach to controlling legal aid costs.

The Traditional Concept of Mixed Model Delivery

The concept of mixed model service delivery has been the orthodoxy in Canada since notion was given a favourable assessment by the National Legal Aid Liaison Committee of the Canadian Bar Association in its 1987 report, Legal Aid Delivery Models: A Discussion Paper.¹ However, the meaning of the term mixed model, especially as it applies to criminal legal aid, has changed since the publication of the CBA report. Tracking this change points to important changes which are currently emerging in the delivery of criminal legal aid, and toward a useful concept of mixed model delivery for the future.

With the exception of student legal aid clinics, mixed model delivery has been in place in two legal aid plans in Canada for the delivery of poverty law legal aid. In Ontario, criminal and family legal aid have been delivered by means of certificates to private bar lawyers through the Ontario Legal Aid Plan, while civil legal aid, including family legal aid, has been delivered through a system of clinics, numbering 71 throughout the province in the mid-1990's. In British Columbia, the Legal Services Society has operated Community Legal Offices and Native Community Legal Offices, which have mainly delivered poverty law or civil legal aid. Until very recently, criminal and family legal aid have been delivered almost entirely by means of private bar lawyers working on the basis of legal aid certificates.²

As the CBA report acknowledges, as of the mid-1980's, the delivery of criminal legal aid services was through judicare, staff lawyer, or what was referred to as mixed system staff/judicare models.³ In the context of criminal legal aid, mixed model meant some blend of staff lawyer and judicare delivery. With respect to the delivery of criminal legal aid, up until recently, which will be discussed below, Alberta, New Brunswick, Ontario, British Columbia, Yukon Territory, and the Northwest Territories operated judicare delivery systems. Nova Scotia, Prince Edward Island, and Saskatchewan operated staff lawyer delivery systems. Manitoba, Newfoundland, and Quebec operated mixed staff lawyer/judicare systems.

Cost-effectiveness of Staff Lawyers and Judicare Delivery

¹ Canadian Bar Association, Legal Aid Delivery Models: A Discussion Paper, Ottawa, 1987.

² At present the B.C. Legal Services Society is conducting an experiment in the delivery of criminal and family legal aid using staff lawyers. At present, staff lawyers account for approximately twenty per cent of total delivery.

³ Canadian Bar Association, 1987. p. 18.

A debate had raged for years in Canadian legal aid circles about the cost-effectiveness of staff lawyer and judicare delivery. This was, in my view, largely a case in which an ideological battle was being played out on empirical grounds. Over the years, the results of various studies accumulated showing that staff lawyer delivery was less expensive. Although all of the studies had their own methodological limitations, this series of research studies conducted at different times, and in different places, all pointed in the same direction. For researchers, this consistency of findings represented a strong body of research, all pointing in the same direction. The proponents of judicare delivery rejected these findings on the basis of whatever methodological problems could be found with the various studies. In one case considerable effort was expended by legal aid interests in one province to discredit an evaluation of the legal aid plan of another province, which provided evidence of greater cost-effectiveness of staff lawyer delivery.⁴

The evidence relating to the relative cost effectiveness of judicare and staff lawyer criminal legal aid delivery goes back to the Burnaby public defender study in 1981. That study revealed that the average cost of staff lawyer cases in the experimental project was \$235., compared with an average cost of \$225. for Burnaby judicare lawyers and \$264. for Vancouver judicare lawyers (Burnaby is a suburb of Vancouver).⁵ A major concern with these findings centered around productivity. About twenty per cent of the staff lawyers' time was spent on duty counsel work. Without the duty counsel work, staff lawyers could have increased their case loads by fourteen per cent.⁶ If there had been an increase of just four cases per month, the staff lawyer cost per case would have dropped to about \$192.⁷ The Brantingham report also provided data on province-wide staff and judicare costs for 1980. These average costs per case were about \$110. for staff lawyers and \$177. for private bar lawyers.⁸ This is a much greater difference than that found in the experimental study.

In connection with an evaluation of the Saskatchewan legal aid plan⁹, a costing sub-study designed to examine any financial advantage to moving to partial staff lawyer delivery was conducted.¹⁰ About ninety-eight per cent of all cases are handled by staff lawyers. The costing substudy estimated that total legal aid costs would rise by thirteen per cent if one third of all criminal legal aid cases, and by sixty-four per cent if all criminal legal aid cases were referred to the private bar.¹¹

The evaluation of legal aid in Manitoba also produced data related to the cost of staff lawyer versus judicare delivery. The Manitoba plan delivers about thirty-five per cent of the service by means of staff lawyers, and sixty-five per cent with private bar lawyers by means of certificates. The average staff lawyer cost per case reported in the evaluation was about \$197., compared with \$308. for judicare lawyers. Costs were further broken down into percentages of cases handled at various average cost thresholds. Staff lawyers completed twenty-five per cent of their cases for

⁴ T.P. Pristupa, A Critical Assessment of Legal Aid in Manitoba: An Evaluation Report, Toronto, 1991.

⁵ Patricia Brantingham, *et. al.*, The Burnaby, British Columbia Experimental Public Defender Project: An Evaluation Report, Department of Justice Canada, Ottawa, 1981. , Report 1, p. 9.

⁶ *Ibid.*, Report 7, p. 15.

⁷ *Ibid.*, Report 3, p. 64.

⁸ *Ibid.*, Report 3, p. 69.

⁹ The DPA Group Inc., Evaluation of Saskatchewan Legal Aid, Department of Justice Canada, Ottawa, 1987.

¹⁰ The DPA Group Inc., A Costing Substudy of the Saskatchewan Legal Aid Evaluation, Department of Justice Canada, Ottawa, 1989.

¹¹ *Ibid.*, p. v.

an average cost of \$48. or less compared with \$201. for the private bar. Fifty per cent of staff lawyer cases were conducted for \$110. or less compared with \$263. for private bar lawyers. The point at which seventy-five per cent of all cases were taken into account by the analysis produced average costs per case of \$241. for staff lawyers and \$310. for private bar lawyers.¹²

In 1993 the Legal Aid Society of Alberta implemented a three year pilot project to deliver young offender criminal legal aid by means of a staff lawyer clinic approach. Two clinics were established, one in Edmonton and one in Calgary, the two largest cities in the province. The evaluation of the staff lawyer clinic experiment concluded that the staff lawyer model was more cost effective than the judicare approach.¹³ In 1996, the average cost per case for staff lawyers was \$353. compared with \$500. for private bar lawyers. This represents a difference of \$147., or 71 per cent. The clinic staff lawyers provided duty counsel service, as well as full service legal aid representation. The evaluation concluded that staff lawyers were more effective in dealing with matters at the early stages of the criminal justice process as duty counsel, than were the private bar lawyers. The cost savings that resulted from duty counsel disposing of cases at the early stages of the process were estimated at \$2.4 million over the entire period of the evaluation. This is because of about 4800 certificates that were not created because the matters were dealt with by duty counsel.¹⁴

An entirely different type of cost research designed to identify factors driving the cost of legal aid produced findings which corroborate the research above.¹⁵ That study assembled sets of variables which were expected on theoretical grounds to affect legal aid costs. The three categories of variables were social system variables, justice system variables, and legal aid system variables. The study showed that cost per case decreased as the proportion of staff lawyer delivery increased.¹⁶

The empirical research which has been carried out in Canada points to date points overwhelmingly to the conclusion that staff lawyer delivery is less expensive than private bar or judicare delivery. This conclusion rests on the results of several studies carried out in different places at different times. Each may have had certain methodological limitations, as one expects of all empirical research. However, with all of the research pointing in the same direction, the conclusion is difficult to avoid.

The Quality of Service Issue

Any concessions on the issue of the greater cost-effectiveness of staff lawyer delivery are often immediately qualified with concerns about quality of service. This is expressed in terms of fears that work loads of staff lawyers will inevitably grow to unmanageable levels, and quality of service will suffer. The evidence does not support the proposition that any quality of service differences exist between staff and judicare lawyers.

¹² R.L. Sloan and Associates, Legal Aid in Manitoba: An Evaluation Report, Department of Justice Canada, Ottawa, 197. p. 171.

¹³ RPM Planning Associates, Evaluation of the Staff Lawyer Pilot Project, Edmonton, Alta., 1996. p. 78.

¹⁴ *Ibid.*, pp. 71 to 73.

¹⁵ Paul Brantingham, Patricia Brantingham, and Stephen Easton, Predicting Legal Aid Costs, Department of Justice Canada, Ottawa, 1993.

¹⁶ *Ibid.*, p. 73.

The quality of service issue may be addressed with three types of indicators; outcomes, client satisfaction, and peer review. In terms of outcomes data, the Burnaby Public Defender Study produced a number of findings concerning outcomes. Public defender clients were more often released after the bail hearing than clients of judicare lawyers. Clients of public defender and judicare lawyers had the same overall rate of guilty outcomes; sixty per cent. On single charges, forty per cent of guilty judicare clients received imprisonment, compared with thirty per cent of staff lawyer clients. There was no difference in the rate at which sentences of incarceration were received for multiple charges. Public defender clients received sentences of probation more often than clients of private bar lawyers.¹⁷

The evaluation of the Manitoba legal aid plan showed that for three of four high volume cases - possession of a weapon, theft over, and break and enter - staff lawyer clients received jail sentences less often than judicare clients. The proportions of staff and private bar clients facing jail sentences for assault charges were nearly identical.¹⁸

Summarizing all of the available Canadian evidence, Patterns in Legal Aid, 2nd edition states that staff lawyers spend less time per case than private lawyers, tend to plead clients guilty earlier and more often than do private lawyers, similar proportions of staff lawyer and private lawyer clients are convicted, and staff lawyer clients draw fewer jail terms than the clients of private bar lawyers.¹⁹

The Canadian Bar Association report on delivery models concluded that “it appears that the staff model is capable of delivering the same service for lower cost than the judicare model or slightly better outcomes for the same cost.”²⁰

Client satisfaction with legal aid services in Canada is uniformly high for both staff lawyer and judicare delivery models. Levels of client satisfaction measured in legal aid evaluations have been consistently high. In summary these are: seventy-four per cent in Saskatchewan, eighty-seven per cent in Manitoba, eighty-six per cent in British Columbia, eighty-two per cent in Quebec, eighty-nine per cent in Nova Scotia, and ninety-six per cent for unconnected clients in New Brunswick.²¹ The high ratings were for lawyers in both staff and judicare delivery models. In another Department of Justice study, client satisfaction with full service duty counsel lawyers, regular staff lawyers and private bar lawyers was measured. The results were consistent with the findings reported above. They showed that lawyers providing service within all three modes received consistently high client satisfaction ratings.²²

The Alberta young offender staff lawyer pilot project showed no overall advantage of staff lawyers or private bar lawyers with respect to quality of service. Some of the differences between staff and private bar lawyers are as follows. Staff lawyers tended to plead clients guilty before the trial date, whereas private bar lawyers tended to plead on the day of the trial (thus taking

¹⁷ Patricia Brantingham, *et. al.*, *et. passim*.

¹⁸ R.L. Sloan, pp. 188 and 190.

¹⁹ Patterns in Legal Aid, 2nd edition, Department of Justice Canada, Ottawa, 1994. pp. 34 and 35.

²⁰ Legal Aid Delivery Models: A Discussion Paper, Canadian Bar Association, Ottawa, 1987. p.230.

²¹ Patterns in Legal Aid, 1994. p. 39.

²² A. Currie, The Legal Aid Manitoba Expanded Duty Counsel Project: An Evaluation, Department of Justice Canada, Ottawa, 1996. Chapter 10.

advantage of the 1/2 day trial fee under the tariff).²³ Cases handled by the private bar showed a longer period of elapsed time to disposition.²⁴ Clients of staff lawyers were more likely to receive sentences of probation or community service²⁵, and staff lawyer clients tended to receive more sentences of open custody, compared with the clients of private bar lawyers.²⁶ Private bar lawyers were rated better on certain client relations factors, such as returning telephone calls promptly, and communicating with parents, compared with staff lawyers.²⁷ Crown Prosecutors rated staff and private bar lawyers generally about the same in terms of performance. In particular, Docket Crown Prosecutors rated staff lawyers better at reviewing particulars from disclosure before plea. On the other hand, private bar lawyers were rated more highly on discussing sentencing options before plea.²⁸

The Patterns in Legal Aid study assessed the peer review aspect of quality of service. That study summarizes the issue as follows. “In Saskatchewan, almost three-quarters (73 per cent) of respondent lawyers said that legal aid work is as good as or better than work done by the private bar for private clients. Crown Prosecutors in Manitoba rated legal aid staff lawyers better than private defense counsel. In Nova Scotia, 89 per cent of private bar respondents said that legal aid staff lawyers were as good as, or better than, private lawyers at criminal defense; 88 per cent said that legal aid staff lawyers were as good as, or better than, private lawyers family law matters; 53 per cent said that legal aid staff lawyers were as good as, or better than, private lawyers at administrative law; but 58 per cent said that legal aid staff lawyers were not as good as private lawyers in their handling of civil matters.”²⁹

Before proceeding on to a more recent formulation of the mixed model concept, it is worth making a few points about the staff lawyer - judicare debate. The first point returns to the concern about productivity raised by Brantingham in her early study of staff versus judicare costs. At a general level, comparisons of the cost-effectiveness of staff and judicare delivery are a function of three variables which interact. These are the level of the tariff, the salary and benefit costs of staff lawyers, and the productivity of staff lawyers. If the level of productivity of staff lawyers is low, staff lawyer delivery will obviously not be cost-effective. If a legal aid plan is prepared to *squeeze* the tariffs paid to the private bar to a point lower than what is already the case, judicare delivery might be more cost-effective. The Burnaby Study made this point clearly.

This leads to a second point. Cost-effectiveness must be achieved through management. It does not come about through some mysterious mechanism akin to the *hidden hand* bringing the greatest good to the greatest number in Adam Smith’s economics. Staff lawyer delivery has proven to be more cost-effective in the places in Canada where it has been utilized as a delivery mode. But this cost-effectiveness has to be engineered. And it has to be done so in the context of a set of variables in the environment.

²³ RPM Planning Associates, p.18.

²⁴ *Ibid.*, p.22.

²⁵ *Ibid.*, p. 21.

²⁶ *Ibid.*, p. 22.

²⁷ *Ibid.*, p. 23.

²⁸ *Ibid.*, p. 23.

²⁹ Patterns in Legal Aid, 2nd edition, 1994. p. 39.

Apart from cost-effectiveness, a staff lawyer component of any mixed or multidimensional service delivery model has an important advantage as a management tool. Even a small staff lawyer component gives legal aid managers a mechanism to gain direct experience about service delivery costs and other related conditions. In existing staff-judicare mixed models delivery systems in Canada, this knowledge has proven extremely valuable in two ways. One relates to setting realistic fees within the tariff, and for structuring the tariff to reflect the actual nature of the components of legal work. A second benefit derives from being able to move work from the private lawyer certificate stream (or from staff lawyers to the private bar side) as changing demands for service or other factors may require. Using the staff lawyer component as a constraint on demands from the private bar for tariff increases, or using the availability of the private bar to deliver the service as a constraint on the salary demands of staff lawyers are strategies that are not novel to legal aid managers.

Finally, any consideration of staff lawyer delivery or, for that matter, any form of delivery apart from the traditional judicare certificate model, will run up against the *right to choice of counsel* issue. Generally, the organized private bar in various Canadian jurisdictions has defended the legal aid clients right to choice of counsel as an article of faith. There is no basis for a right to choice of counsel in Canadian jurisprudence³⁰, so long as clients are provided with effective counsel. And logically, there appears to be no grounds for believing that clients are able to exercise informed choice of counsel in any case.³¹ However, the issue is of considerable importance with respect to the politics of legal aid when considering staff lawyer service delivery.

A Multidimensional Concept of the Mixed Service Delivery Model

The staff lawyer versus judicare debate, and that bimodal concept of the mixed model, has been gradually replaced by a more multidimensional mixed model concept. In large measure, the grim fiscal realities of the 1990's have driven legal aid managers away from their orthodoxy's, forcing them to look at practices in other jurisdictions for innovative delivery models.

Beginning a few years earlier, other approaches to delivering legal aid which have attempted to more specifically match delivery modes with delivery problems in order to maximize cost-effectiveness have begun to appear in the more innovative legal aid plans. Among the earliest signs of what one might call the *post-modern era* of the mixed model concept appeared in the Manitoba legal aid plan. There have been elements of more elaborated mixed model approaches in other legal aid plans, for instance in the Northwest Territories.³² However, Manitoba provides a good example of the evolution of the more elaborated mixed model approach contained in one legal aid plan. For that reason, and for illustrative purposes, I will concentrate on the legal aid system in that province.

Emergence of a Multidimensional Mixed Service Delivery Model at Legal Aid Manitoba

³⁰ National Review of Legal Aid, Ottawa, 1993 Chapter 3.

³¹ Legal Aid and the Poor, National Council of Welfare, Ottawa, 1995.

³² The legal aid plan in the Northwest Territories has delivered criminal legal aid by means of clinics in the more remote regions, and with both staff lawyers and private bar lawyers since the early 1970's. This might be considered a precursor of a more elaborated mixed model concept.

Legal Aid Manitoba was a *mixed model* system according to the *pre-modern* terminology of the mid 1980's. As noted earlier, the Manitoba legal aid plan was thirty-five percent staff lawyer, sixty-five per cent *judicare*. Beginning in the early 1980's the Manitoba legal aid plan began experimenting with a series of innovative projects designed to address specific service delivery problems. After nearly ten years of innovations in service delivery, these have added up to the best example to date of a fully elaborated mixed model of service delivery. This represents the second generation of the mixed model concept, following the earlier *first generation staff lawyer or judicare* version of the mixed model concept.

In 1982, Legal Aid Manitoba developed a Public Interest Department within the legal aid plan.³³ The objectives of the Public Interest Department were generally to deal with those cases which might have a social impact beyond the potential impact of case-by-case litigation. The evaluation report concluded that the Public Interest Department represented an efficient and economical approach to providing public interest advocacy and test litigation services. An advantage of being located within a legal aid plan was the increased accessibility for the segments of the population in which individuals eligible for legal aid are found.³⁴ The Public Interest Department proved successful during the evaluation period, and has continued its success in the intervening years as it has remained a part of the overall legal aid system in the province.

In 1987 Legal Aid Manitoba introduced the Northern Paralegal Project.³⁵ That project introduced paralegals in the delivery of both criminal and civil legal aid in four largely Aboriginal, remote, northern communities. The project was a response to improve access to legal services for native people, many of whom were very poor, with little knowledge of English in many cases, living in remote communities served by circuit courts. The paralegals were Cree-speakers and were residents of one of the communities that they served. The evaluation report concluded that the paralegal project greatly increased access to legal services in the remote north. It improved communication among legal aid clients, lawyers and the courts, and increased efficiency by reducing the time required by legal aid lawyers to complete cases.³⁶ Following the experimental phase, the paralegal project was incorporated into the legal aid system.

In 1989 Legal Aid Manitoba introduced another experimental project which was not a delivery mode, but rather an operational innovation which expanded service. However, it will be argued below that the multidimensional model of mixed model delivery should encompass both service delivery innovations and innovations in legal aid operations. Within this framework, the Expanded Eligibility Program is a fine example of this aspect.³⁷ The expanded eligibility program was a plan to provide legal aid to the working poor, who had incomes just above the normal financial eligibility guidelines, but were still far too poor to be able to afford a lawyer at market prices. The idea for the project emerged from the realization, through examining the appeals of rejected applicants, that many people who genuinely required legal aid services did not fall within the normal financial eligibility guidelines. Simply increasing the guidelines could not be contemplated within prevailing budget constraints. The program offered applicants from the

³³ William K. Greenaway, The Public Interest Department, Legal Aid Manitoba: An Evaluation, Department of Justice, Canada, Ottawa, 1984.

³⁴ *Ibid.*, p. 170.

³⁵ The Working Margins Consulting Group, Northern Paralegal Project Evaluation, Winnipeg, 1989.

³⁶ *Ibid.*, p. 2.

³⁷ Prairie Research Associates, The Coopers Lybrand Consulting Group, and Professor Rick Linden, Evaluation of the Legal Aid Manitoba Expanded Eligibility Program, Department of Justice Canada, Ottawa, 1991.

working poor category who would normally not be eligible for legal aid the opportunity to receive legal representation at legal aid prices, with no retainer required, and with a repayment plan spread over the duration of the case. The project proved a success, with administrative costs well within limits that could be recovered along with the payment for direct services. This project was successful and has been adopted as a part of the legal aid system.

Contracting out for services was introduced into the Legal Aid Manitoba system in 1992 with the Portage Legal Services Initiative.³⁸ The Portage experiment, named for the town of Portage LaPrairie in the area, was an attempt to provide legal aid services in a cost-effective way to the rural and sparsely populated Interlake Region of central Manitoba. Law firms in the area were invited to submit bids to provide duty counsel and legal representation services for that region. The project report indicated that under the contractual agreement with a local law firm, Legal Aid Manitoba was able to provide legal aid services for a lower price than would have been the case with staff lawyers or private lawyers under certificates, and this contracting out component remains part of the provincial legal aid delivery system. This is an example of contracting out to provide cost-effective service for a geographic area. In the example below, the legal aid plan in Manitoba contracted out services for a special client group.

In 1993 Legal Aid Manitoba began contracting out blocks of 50 Young Offenders cases in the Winnipeg area. With the proclamation of the *Young Offenders Act*, the Plan had experienced a large number of legal aid applications with mandatory eligibility requirement under Section 11 of the *Act*. Most of the cases were relatively simple, and probably would not have received legal aid service under the eligibility guidelines applying to adult offenders. It seemed as if legal firms could handle blocks of these cases expeditiously, at less cost than issuing certificates on a case-by-case basis. This has proven to be true. Although there has been no formal evaluation of the young offenders contracting initiative, Legal Aid Manitoba management information system data indicates that considerable savings have been realized through the contracting out approach.

The most recent example of innovation in legal aid delivery in Manitoba is the Expanded, or, what has now become known as the Full Service Duty Counsel Project.³⁹ Following the implementation of an automatic charging policy for domestic violence offenses in Manitoba, and the establishment of a specialized domestic violence court in Winnipeg, Legal Aid Manitoba experienced a dramatic increase in applications for legal aid in domestic violence offenses. In 1994, mainly in response to that situation, the legal aid plan introduced the expanded duty counsel project. The project was implemented first in the domestic violence court and for the custody docket, and one year later in the non-custody court. The main assumption underlying the project was that there is a large number of criminal cases which, although they may be serious in terms of risk of imprisonment, are relatively simple with respect to the facts of the case and the legal arguments. In terms of structure, the main feature of the full service duty counsel idea is *continuity* - continuity of assignments of duty counsel lawyers in the same court(s) for an extended period of time, and continuity of the relationship between the duty counsel lawyer and the client that allows the lawyer to retain the client from first appearance court through to screening or disclosure court when a resolution of the case, frequently by means of a guilty plea or a stay of proceedings can be achieved without issuing a legal aid certificate. The evaluation

³⁸ The Portage Legal Services Initiative, Project Report, Submitted to the Department of Justice, November, 1993.

³⁹ Albert W. Currie, The Legal Aid Manitoba Expanded Duty Counsel Project, Department of Justice Canada, Ottawa, 1996.

showed that considerable cost savings can be realized by achieving early stage dispositions with full service duty counsel, and with no compromise in terms of quality of service.⁴⁰

With respect to cost per case, it might be argued that it is not possible to compare equivalent cases between the full service duty counsel and certificate cases. The evaluation was able to demonstrate that there were no differences in crude measures of case complexity (prior record, presence of a breach of a judicial order, and presence of related charges), between those cases transferred out to the private bar and to staff lawyers and those retained by the duty counsel lawyers. However, the full service duty counsel project was designed to deal with cases more expeditiously than a private bar lawyer working on a certificate might do. No detailed analysis of the conduct of roughly similar cases, comparing private bar and duty counsel lawyers was undertaken. That would be the only way to examine costs and other matters for equivalent cases.

However, full service duty counsel represents precisely a situation in which case processing is managed, and not somehow left to the market forces of the legal services sector of the economy. In order to optimize cost-effectiveness and service delivery-effectiveness, one has to deliberately manage toward that end. One does not merely discover cost-effective practices sitting out there, these are achieved through management.

An Urban Aboriginal Staff Lawyer Clinic was implemented in Winnipeg in November 1995. This clinic was intended to service the marginalized urban Native population in the inner city. The project is still in the early stages of establishing a presence in the inner city and building a clientele. It is too early to assess the effectiveness of the project.

However, it is possible that the full service duty counsel program, which is already well-established in Winnipeg, is dealing with the same clientele as the urban Aboriginal clinic was intended to serve. This points out that the elements of a multidimensional mixed service delivery model are interactive.⁴¹ A multidimensional service delivery model has to be developed as a true system, assuring the complementarity of the various components

The series of innovative experimental projects introduced over the years by Legal Aid Manitoba illustrate the concept of a fully elaborated mixed service delivery model in which particular service delivery modes, or solutions, are applied to particular service delivery problems. This includes full service duty counsel to achieve cost savings through early dispositions, contracting out to achieve cost-effectiveness and efficiencies in remote or rural geographic areas or for special client groups, paralegals to provide special services for special needs groups and to generate efficiencies in the use of high cost lawyer time, staff lawyers in certain situations, and private bar lawyers for certain purposes.

The old issue of staff lawyer versus judicare delivery has not been entirely eclipsed, however. While the issue of the relative cost of the two delivery modes should no longer occupy much research attention, other questions about the most effective roles of staff and private bar lawyers in a multidimensional mixed model may be worthy of further examination. For example, it is usually assumed that staff lawyers are more cost effective in urban areas where case volumes are more concentrated and private bar lawyers are more cost-effective in the more rural areas. It is

⁴⁰ *Ibid.*, p. 71.

⁴¹ Information supplied to the author by Legal Aid Manitoba.

possible that the concentration of less experienced lawyers in urban areas would make it possible for a legal aid plan to take advantage of the supply and demand situation by driving down the price. Staff lawyers might really be uniquely cost-effective and efficient in high volume specialized clinic situations. Many interesting and useful research questions remain.

Multidimensional Service Delivery in the Northwest Territories

Criminal legal aid delivery in the Northwest Territories provides another example in which a multidimensional approach has evolved over the years, in this case to suit the circumstances of a vast remote area made up of small communities. Legal aid delivery in the NWT is accomplished by means of clinics in several remote settlements, with staff lawyers, private bar lawyers, and court workers who, provide various legal aid services from intake to representation in court in different areas.

There are eight legal aid offices; a head office in the territorial capital of Yellowknife, and five legal aid clinics in remote communities.⁴² In Yellowknife, legal aid is delivered by two staff lawyers and by means of certificates issued to the private bar.

In each of the clinics, there is a supervising staff lawyer who provides legal aid, as well as delivery by private bar lawyers. In at least one of the clinics, in the community of Iqaluit, court workers provide legal representation for simple matters such as bail hearings and speaking to sentence in the community of Iqaluit. In circuit courts served by lawyers and court workers operating out of Iqaluit and other communities, the court workers tend to carry out more conventional lawyer assistant-type of paralegal services. The exception to this is in Justice of the Peace courts. These courts are presided over by Aboriginal JP's, and they generally operate in a native language such as Inuktitut. The court workers in these courts may provide a range of paralegal and interpretative services because the lawyer(s) are most likely unable to speak the native language. Besides limited legal representation and some "lawyer assistant" paralegal functions, the court workers also provide legal information and other forms of assistance.

Other Beginnings

Manitoba has not been the only province in which the multi-dimensional mixed model concept has taken shape. However, as in with all phenomena of social change, the timing and the pace of change can vary greatly in time and place.

The Ontario Legal Aid Plan, which is generally a judicare plan, has for some time operated a staff lawyer duty counsel service in certain high volume courts in Toronto. This is a conventional duty counsel service.

The Saskatchewan Legal Aid Commission has used paralegal workers in various aspects of criminal legal aid for many years. The types of work range from intake, to assisting lawyers by gathering information and interviewing witnesses, to conducting bail hearings and speaking to sentence. The latter appears to occur with the permission of judges, and typically in remote areas only. The use of paralegals in the provision of criminal legal aid in Saskatchewan is unique among Canadian provinces, although paralegals are used in delivering legal aid in the Northwest

⁴² These are Cambridge Bay, Iqaluit, Pond Inlet, Rankin Inlet, and Tukoyaktuk

Territories. The managers of the Commission are satisfied that the paralegals are both cost-effective and service delivery-effective.⁴³ Unfortunately, however, no formal evaluation of the paralegal service delivery component has been conducted.

The New Brunswick Legal Aid Plan has for the past two years contracted for duty counsel and certificate legal aid services in one predominantly French-speaking area of the province. This was made necessary because of the difficulty of getting bilingual lawyers to accept legal aid certificates at the prevailing tariff rates in an officially bilingual province in which the services of bilingual and French-speaking lawyers are at a premium.⁴⁴

The Alberta, staff lawyer pilot project employed paralegals in the delivery of criminal legal aid. The Calgary office had one paralegal position (with eight lawyer positions) and the Edmonton clinic had 1.5 paralegal positions (with 6.5 lawyer positions). The work of the paralegals, in concert with the staff lawyers, expanded the normal range of services available through a legal aid clinic, and made possible several innovative efforts to meet the special needs of youth. Some of these were: baby sitting at a downtown church for the children of female young offenders; a program to provide public transit tickets to young offenders to encourage their appearance at court; recreational activities, employment counseling, and educational counseling aimed at crime prevention; and mental health assessments and counseling.⁴⁵ The Alberta young offenders staff lawyer provide good examples of specialized clinics which are able to make available a range of services to address the specialized needs of the clientele, and to reach beyond the routine criminal justice processing activities. These are interesting aspects of multidimensional mixed model delivery.

The Province of British Columbia is moving at an accelerated pace from the older concept of mixed model as a staff lawyer and judicare mix to a multidimensional concept of mixed service delivery. Two years ago the B.C. Legal Services Society implemented its mixed delivery model on an experimental basis with a twenty per cent staff lawyer component. This was a move from virtually one hundred percent judicare delivery for criminal legal aid. The *mixed* model initiative is currently being evaluated, with respect to the relative cost-effectiveness of the two delivery modes. At the same time, however, other developments are unfolding. The Board of Directors of the Legal Services Society has created a Policy and Planning Council with representation from a variety of interests, and charged with the task of developing a range of operational and service delivery responses to reductions in the legal aid budget. Sub-committees of that Council are generating a range of proposed projects. These include service delivery modes such as full service duty counsel and contracting out for services, and a range of innovative legal aid operations including elements such as criminal case management. Plans are currently in place to implement a experiment in competitive contracting out for legal aid services on a large scale. The scale of the proposed contracting experiment, amounting to 40 per cent of criminal legal aid certificates, would place contracting as a major element in mixed model delivery, rivaling the staff and judicare components in importance. As well, the Legal Services Society in British Columbia plans to implement a criminal case management experiment to control costs. This pilot project would focus on one category of high cost cases, sexual assaults. The criminal case

⁴³ Personal communication with the Saskatchewan Legal Aid Commission.

⁴⁴ A. Currie, The Legal Aid New Brunswick Global Budgeting Scheme: Monitoring Report, Department of Justice Canada, Ottawa, 1995.

⁴⁵ Legal Aid Youth Offices: Special Initiatives, Alberta, n.d.

management experiment follows a very successful experiment with a family case management program.⁴⁶

Conclusion

Achieving cost-effectiveness and service delivery-effectiveness in legal aid involves facing a complex environment of service delivery needs, and ever diminishing budgets. This paper suggests that the basic framework required to address that task is what is referred to here as a multidimensional mixed service delivery model that goes well beyond the staff lawyer - judicare mixed model concept of the mid-1980's. This concept of a mixed model opens legal aid thinking and planning to a range of service delivery responses in which particular service delivery modes are developed to address particular service delivery problems. A multidimensional mixed model includes not only a variety of service delivery modes, but as well legal aid operations innovations such as criminal case management and expanded eligibility.

A further thesis that is being advanced is that the fine tuning of service delivery modes to service delivery needs within a multidimensional mixed model maximizes opportunities for cost-effectiveness, while retaining some ability to meet those basic needs for legal services. A multidimensional model provides a set of program management tools to address a range of factors driving legal aid costs, and to do so in an integrated way taking account of complementarities among service delivery modes within the mixed model.

Legal Aid Manitoba provides a good illustration of how the multidimensional mixed model is being developed to address the needs of one jurisdiction. Different jurisdictions which have different populations, geographic characteristics, and other factors will no doubt invent their own variants of multidimensional mixed service delivery models. These models might include elements which have not been attempted so far.

Fully multidimensional mixed service delivery models might, in some of their aspects, be built around linkages with other elements of the justice system. For example, the full service duty counsel mode works best with a properly functioning disclosure or screening court operating as a venue between first appearance court and trial court to allow the defense lawyer and the Crown Prosecutor to negotiate aspects of legal cases. As well, the scheduling of court assignments of Crown Prosecutors to mirror the continuity of court assignments of legal aid duty counsel lawyers might optimize the effect of full service duty counsel.

A multi-dimensional mixed service delivery model is a concept - a planning tool. Its development is recent, and its potential for improving access to legal services and achieving cost-effectiveness has not yet been realized. A good deal of research and development work is yet to be done, not only in experimenting with the cost-effectiveness of various elements of multi-dimensional mixed models, but in the way in which the elements might be articulated within mixed models in order to apply the most appropriate solution to the particular problem and to achieve overall cost-effectiveness and service delivery-effectiveness. The optimum mix of service delivery modes in a multidimensional service delivery model is emerging as an important issue in criminal legal aid service delivery.

⁴⁶ Legal Services Society, Family Case Management Program: Interim Evaluation: Two Years Post-Implementation, 1996

