

# JUSTICE

## RESEARCH NOTES

### Making the Justice System More Accessible to Canadians

by Albert Currie

Public Law and Access to Justice  
Research Section

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

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

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

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

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

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

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

No. 4

April 1992

### IN THIS ISSUE

New Manitoba Program .....	2
Paralegal Workers .....	5
Canadians and the Law .....	11
How to Foster Compliance .....	14
Borders of Privacy .....	17



# New Manitoba Program Makes Legal Aid More Accessible to Low- Income Working People

---

by Lynne Dee Sproule  
Public Law and Access to Justice  
Research Section

**F**inancial eligibility for most legal aid plans in Canada is based on Statistics Canada's low-income cutoff points (income levels that are often regarded as Canada's official gauges of poverty). However, providers of legal aid increasingly observe that these criteria exclude people whose wages are low but whose income exceeds the cutoff levels. This might be said to effectively deny some people access to justice, particularly those who have to abandon their cases because they cannot afford legal services. The alternative for such people may be to place themselves and their families at serious financial risk in order to make use of the services.

Is it possible to make legal services more accessible to those in need by expanding eligibility limits,

*Justice Research Notes* is produced by the Research and Development Directorate of the Department of Justice. Its purpose is to provide, in summary form, results of projects carried out under the Department's program of research into various areas of justice policy, as well as information and articles on other socio-legal matters.

For further information, call (613) 957-9593.  
For permission to reproduce articles, call (613) 957-2687

Published by authority of the Minister of Justice  
and Attorney General of Canada

by

Communications and Public Affairs  
Department of Justice Canada  
Ottawa K1A 0H8

©Minister of Supply and Services Canada 1992  
Printed in Canada  
ISSN 1181-9243

while at the same time keeping costs within existing levels? Legal Aid Manitoba has shown that it is.

## A Pay-back Program that Works

In June 1989, with funding from the Department of Justice Canada, Legal Aid Manitoba introduced an "Expanded Eligibility Program," in recognition of the need to reach people disqualified from the service because of their income levels. Shortly after the program began, an evaluation was conducted by Prairie Research Associates of Winnipeg, under contract with the Department of Justice. The report was prepared in April 1991.

As in regular legal aid procedures, clients accepted into the Expanded Eligibility Program are issued a certificate that authorizes a lawyer to proceed with the case. The range of criminal and civil law services covered by this certificate is the same whether clients are eligible under the expanded program or under regular legal aid.

The key difference is that clients in the expanded program *repay* the costs of the legal services they receive. They enter into an agreement with Legal Aid Manitoba that outlines a payment schedule and fixes a monthly payment. The advantages of the program are these:

- ▶ Since the client is paying the Legal Aid Manitoba tariff for services, the costs are much lower than those of privately secured services — an average of 25 percent to 35 percent of the total fee.
- ▶ There is no retainer.
- ▶ Disbursement costs are generally lower, as Legal Aid Manitoba is able to buy some services at a reduced cost.
- ▶ Payment by fixed monthly instalments allows a person with limited income to budget for legal costs rather than having to cope with large and irregular invoices.

Because the intent of the program is to have clients ultimately pay their own legal costs, Legal Aid Manitoba incurs only the costs of administering the program and costs related to default on payments. The evaluation consultants determined that the average administrative cost per client was \$191.98; not counting the costs of default on payments, the amount was \$115.11.

## Findings and Recommendations of the Evaluation

The study team was asked to examine the Expanded Eligibility Program primarily to determine the following:

- ▶ The degree of improved access to legal services.
- ▶ The overall cost-efficiency of the program and, in particular, the effects of default on payments and costs associated with attempts to collect debts.
- ▶ Client satisfaction and attitudes toward repayment.
- ▶ The relationship between the program and the private bar.

The evaluation process involved a detailed administrative review and file analysis as well as interviews with a sample of clients of the program, a sample of legal aid applicants rejected before the introduction of the program, representatives of the private bar, and staff of Legal Aid Manitoba.

## Clients and Client Satisfaction

The consultants found that the program was clearly serving low-income working people. Between June 1989 and August 1990 — the period for which data were collected for the study — Legal Aid Manitoba issued 748 eligibility certificates under the program. As expected, clients had income levels higher than regular legal aid clients, though they were still notably lower than Manitoba averages. Clients also tended to be older than regular legal aid clients.

A significantly higher proportion of clients in the program had civil or domestic cases, compared with regular legal aid clients (67 percent compared with 40 percent).

Most clients interviewed for the study were satisfied with the services their lawyer provided and with the quality of representation they received. Nearly half, however, indicated some kind of negative reaction to the Expanded Eligibility Program agreement, the payment contract between the client and Legal Aid Manitoba. The most common complaints were that payment amounts were unfair, or that the agency did not take into account all the relevant factors — such as debt load — when determining eligibility.

The consultants recommended improvements in the process of screening applicants, suggesting that the type of financial assessment used by banks warranted consideration. They concluded, on the basis of interviews, that applicants would likely be amenable to providing information of this nature.

It was recommended that clients be encouraged to request adjustments to their payment levels when these were found to be too burdensome. (Although clients complained about payment levels, almost none had tried to make different arrangements.)

It was also suggested that lawyers might be encouraged to provide better estimates of projected total costs for the client, though some clients might mistakenly interpret such estimates as contracts. In the interim, a possible alternative would be to reveal ranges in those cases in which there has been little variation in costs.

## Cost-Effectiveness and Program Administration

The program's administrative function was found to be well executed, albeit stretched to its limit. Measures were therefore recommended to strengthen administrative and personnel systems.

The overall default rate — that is, the proportion of accounts delinquent by more than 120 days —

was around 14 percent. This was judged to be acceptable; indeed, it was lower than Legal Aid Manitoba had anticipated. Nonetheless, the consultants identified a number of ways to reduce the default rate further through closer monitoring and stricter cancellation policies for high-risk clients. They concluded that clients were more likely to default when they had minor criminal cases and when they resided in northern regions.

The consultants pointed out that the initial year of the program may well have been atypical, but that with additional case information, Legal Aid Manitoba's management information system should be able to become more precise in predicting which clients are likely to default. They suggested improvements to the accounts receivable/payable system in general.

## **The Private Bar**

Members of the private bar who were interviewed gave a mixed review of the Expanded Eligibility Program. Their overall feeling was that it was good for clients — and many strongly endorsed the improved access to legal services — but not very good for lawyers.

In general, those who handled criminal cases tended to be positive about the program, since they were paid for services rendered regardless of who paid. Those who handled civil cases were less supportive. They believed that the program had tended to upset the usual financial arrangements they would make with clients and had therefore reduced their incomes; most said they had problems collecting from clients who pay on an instalment basis. Many revealed that they were unsure of the differences between the Expanded Eligibility Program and regular legal aid.

Although the consultants did not make any specific recommendations in this area, they did offer some cautionary remarks. They observed that as client load increases, lawyers may come to view

the program as competition. In their view, Legal Aid Manitoba must maintain close contact with lawyers who supply this service, to ensure that there will be adequate capacity to meet increased demand.

In another vein, the consultants noted that any plans to expand Legal Aid Manitoba to serve more clients of this program with staff lawyers would also require close consultation with the private bar.

## **Legal Aid Manitoba Staff**

The staff of Legal Aid Manitoba expressed support for the program and believed it was appropriately targeted. There were, however, concerns about the difficulty in changing an operation in which service is provided without a fee into one in which fees are demanded and payment is monitored. The new mode, which requires staff to examine clients closely and monitor their payment history, is troubling to some — though this is balanced, of course, by the fact that the scheme provides services to those who would otherwise be disqualified.

## **Program to Become Self-Sufficient**

Legal Aid Manitoba has demonstrated the potential of initiatives such as the Expanded Eligibility Program to extend legal services to low-income working people without imposing an unreasonable burden on the public purse.

Funding from the Department of Justice Canada will continue until October 1992. At that time, Legal Aid Manitoba plans to have modified the program on the basis of the recommendations of the evaluation report so that it will be self-sufficient.

▼▼▼

*Evaluation of the Legal Aid Manitoba Expanded Eligibility Project*, by Prairie Research Associates, Winnipeg. Department of Justice Canada, April 1991. (Copies of 25-page summary now available. Full report to be available in 1992.)

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

by Lynne Dee Sproule and Phyllis Doherty  
Public Law and Access to Justice  
Research Section

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

The following are some of the more commonly cited problems:

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

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

---

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

---

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

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

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

## Legal Aid Manitoba Assigns Paralegal Workers to Four Northern Communities

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

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

## Study Confirms Effectiveness of the Paralegal Project

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

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

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

---

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

---

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

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

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

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

---

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

---

► ***Wider use of civil and family law services:***

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

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

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

► ***Fewer people on the criminal dockets:***

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

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

## **Recommendations for Improved Effectiveness**

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

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

### **Legal Information Project in Northern British Columbia**

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

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

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

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

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

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

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

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

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



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

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

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

---

### ***The project dramatically improved client access to services***

---

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

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

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

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

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

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

## Points to Consider in Setting Up Paralegal Programs in Remote Regions

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

---

### *Good relations must be built and maintained with the community*

---

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

## Solutions to Complex Justice Issues Still Need to be Found

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

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

▼▼▼

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

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

### Erratum:

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

# Canadians and the Law: Assessing Knowledge and Information Needs

by Lynne Dee Sproule  
Public Law and Access to Justice  
Research Section

**W**hat do Canadians know, or need to know, about the law? In particular, what do people in low-income and minority groups need to know?

Given that citizens in our increasingly complex society need to know a great deal, how do we develop means to meet these needs, and what are the barriers preventing the provision of such information? To help answer these questions, the Department of Justice Canada, with additional funding from the office of the Attorney General of British Columbia, commissioned the study *Focus Groups on Public Legal Information — Needs and Barriers to Access*. It was conducted by Gallup Canada Inc. and published in 1990.

Since the inception of the Department's Public Legal Education and Information (PLEI) program, various research activities have provided a view of the possible range of methods used; but, as the consultants pointed out in their report, the impact of these methods has generally not been considered. Moreover, they observed that organizations funded by the Department under this program generally have not based their work on adequate or methodologically sound assessments of need.

It is critical for the development of national policy in this field that we know more about PLEI needs across all jurisdictions and segments of the population, and that we understand the effectiveness of various methods.

## Seven Population Groups Surveyed

The Gallup study represents a preliminary step in identifying PLEI needs in Canada and suitable ways to meet these needs. It provides qualitative

data collected through a series of 12 discussion groups, called "focus groups," conducted in Halifax, Montreal, Toronto, Winnipeg, Vancouver and Kamloops. The groups focussed on seven different sectors of the population: youth; the elderly; low-income people; aboriginal people; members of visible minorities; immigrant women; and working women.

In all, 110 people participated in the groups, three of which, by design, contained only women. The other nine comprised a total of 34 men and 47 women. One group was conducted by people who work with clients from disadvantaged sectors of the population.

## Study Findings Show Wide Variations in Awareness of the Law

► **General Awareness of the Law:** Awareness of the impact and importance of the law in everyday life was quite high among all focus group participants. The level of awareness of different aspects of the law varied according to the participants' range of personal experiences.

For example, many participants who were immigrants associated "the law" with government regulations, since they had dealt with government bureaucracies about their immigration status, unemployment and social benefits, student loans, and so on. Many of the single working women thought mainly in terms of family law and social welfare regulations. Participants from native communities in Winnipeg and Vancouver had extensive personal and second-hand experience with criminal law, and many felt that the law intrudes on their daily lives. The individuals who showed the lowest awareness of the impact of the law on their lives were teenagers in Halifax and elderly people in Montreal.

Areas of law most commonly cited included family law, employment standards, landlord and tenant law, and human rights. Less frequently mentioned were consumer rights and criminal law,

though participants often called attention to their perceived rights to public services and support from the income security system.

There was wide variation in awareness of beneficial laws or mechanisms to resolve legal problems, such as provincial ombudsmen, human rights commissions, small claims courts, and tenant advisory bureaus. Participants cited minor regulations and government bureaucracy as examples of “the law.”

► **Legal Aspects of Problems:** Participants identified the legal nature of problems in areas such as immigration, tenancy disputes, unresolved family maintenance situations, and apprehension by the police for suspected wrongdoing. Although most were aware of the legal nature of their problem from its beginning, in many instances their low level of general legal knowledge ultimately thwarted their interest.

For example, an immigrant woman said she had been refused an apartment because she had a child, and that this was unjust and possibly illegal. In fact, the landlord did have the right to refuse her in this instance. However, her *previous* landlord may have illegally forced her out of her apartment “because the property was being sold.”

Several others — such as a single parent and a young native man — gave examples of having submitted to questioning by authorities (police, game wardens) and later learning that they had in fact had the right to refuse to cooperate.

The identification of a legal problem also seemed to correlate to the perception of injustice. That is, if the individual felt that a situation was grossly unfair, then he or she would be more likely to search for a legal element in it.

► **Administration of Justice and Respect for the Legal System:** Although most participants thought that the law treated average Canadians fairly, very few saw themselves as average. Most did *not* feel that everyone is equal before the law. Money was seen as a guarantee of better treatment

before the law, buying connections, influence, and effective representation.

Many individuals and groups had a cynical view of the administration of justice. Canadian laws as they are written were considered fair, but the means by which those laws are applied were seen as flawed. For example, a woman who was ineligible for legal aid did not press divorce proceedings. A number of native participants talked about mistreatment by the police or corrections officials, with most concluding that it “wasn’t worth it” to pursue a formal complaint. Moreover, some research and probing with participants suggested that aboriginal cultures — or at least recent history and experience of these cultures — emphasize dealing with one’s problems oneself. According to this philosophy, public revelation of a personal problem, or revelation to a stranger, would result in a loss of face and would not be “the Indian way.”

---

***Many individuals and groups  
had a cynical view of the  
administration of justice***

---

A troubling aspect of the group discussions was the frequency with which participants assumed there was corruption within the court system. This extended to dealings with lawyers, who, as a whole, were perceived to be allied with the complex and often frightening court system, rather than being on the side of the individual. Complaints about lawyers included high fees, stereotyping of clients, callousness, and lack of person-to-person communication. On the other hand, participants sometimes betrayed unrealistic expectations of lawyers. Many had little understanding of the applicable laws or legal process, and saw hiring a lawyer as a panacea.

► **Sources of Legal Knowledge:** Participants' legal knowledge tended to be spotty and often inaccurate, showing little understanding of the structure and process of the law. Friends, relatives and social intermediaries already known to the participants were the most common sources of any legal information or referrals. Most respondents dismissed the police as being unreliable sources of legal information.

---

***Most people displayed little interest in gaining an overall understanding of the law***

---

Awareness of existing PLEI sources was very low. Most of the services and resources suggested for handling legal questions were, in fact, general counselling or referral services. Immigration counsellors, welfare social workers, Outreach counsellors, church pastors, school advocates, self-help groups for single parents, and native community centres were all mentioned in lieu of specialized legal information services.

► **Use of Legal Information Services:** Immigrants and low-income working women had the most experience in searching for and using various legal information services. They might be expected to be the ones who would make most effective use of a public legal education facility once they were aware of it.

Native people and low-income people appeared to have the greatest need for legal information and assistance. However, they seemed less likely than others to make use of outside resources other than legal aid.

Access to public legal education facilities, once they were known, was an issue. Social intermediaries suggested — and participants corroborated

the fact — that people categorized as disadvantaged often move in a very limited geographic area. Language difficulties, financial hardship, or apprehensiveness about those outside one's ethnic or minority group could mean that a single office in a downtown location is beyond the reach of many.

In general, advocacy rather than advice, and case-specific rather than general information, would be preferred. By and large, most people displayed little interest in gaining an overall understanding of the law. Although there was general agreement that knowing more about the law could help to ensure one's rights or to get what one deserves, most participants said they would be unlikely to learn about their rights in law until they were in trouble.

This predisposition to solving specific problems has implications for the level of resources, ways of identifying target populations, and types of approaches that might be required to significantly improve knowledge about the law among Canadians in disadvantaged groups.

Many focus group participants were surprised to hear about the Dial-a-Law and other PLEI services, and felt that these should be more widely advertised on television and in newspapers and through mass mail drops in the schools. Use of existing general counsellors to make referrals was also emphasized.

► **School Curriculum:** A few younger participants in each group had studied law as an elective subject in high school. However, most did not seem to feel that these courses had great applicability to the legal questions they would face in adult life.

▼▼▼

*Focus Group on Public Legal Information — Needs and Barriers to Access*, by Gallup Canada, Inc. Department of Justice Canada, Working Document [WD1991-1a].

# The Carrot, Not the Stick: How to Foster Compliance with Economic and Social Regulations

---

by Shirley Riopelle Ouellet  
Public Law and Access to Justice  
Research Section

Individuals and corporations in Canada concerned about regulation in fields ranging from occupational health and safety to environmental pollution will be interested in suggested new improvements to regulatory techniques based on a cooperative rather than an adversarial approach.

This approach, known as "positive compliance," is outlined in a recent report from the Department of Justice Canada. It is based on the conviction that the purpose of regulation is to prevent or redress harm (to people, to the environment) caused by non-compliance with regulations, and to create incentives that encourage those being regulated to act responsibly.

---

## *Prosecution is employed only as a last resort*

---

Under this system, the interest of the private sector is aroused in the regulatory procedure and the parties are continually involved. Enforcement then becomes continuous, and prosecution is employed only as a last resort. It is suggested that non-compliance results, in fact, not from ill intent but rather from lack of knowledge of regulations, unfairness within the system, and ineffective auditing by regulators.

The positive compliance approach, the report notes, is concerned with avoiding those unreasonable regulations which advocates of deregulation in Canada have sought to eliminate. It addresses the minimal (or non-existent) controls in the system and the gaps in implementation and enforcement that have traditionally plagued regulation in this country.

## Positive Compliance Programs in the U.K., the U.S.A., and Australia — How Much? How Little? How Good?

In an attempt to improve Canada's regulatory systems, the Department of Justice initiated in 1987 a Compliance and Regulatory Remedies Project, in cooperation with the federal Office of Privatization and Regulatory Affairs and the government departments administering regulatory legislation.

In line with the objectives of the project, particularly those for improving remedies, sanctions, and procedures in regulatory systems, the Department commissioned Professor Ellen Baar of York University to study the use and effectiveness of positive compliance programs in the United Kingdom, the United States, and Australia.

This study comprises two reports. The first report addresses the nature and goals of regulation and positive compliance, including discussions of the theory of control and its balance (too much control or too little); the role played by regulators under various programs; approaches taken in different regulatory sectors (such as occupational health and safety and consumer protection); and factors affecting the design of regulatory strategies. The study also includes an analysis of data such as interview materials and preliminary reports from leaders in the field of regulatory scholarship in the three countries. These materials were supplemented by telephone interviews with regulators and parties subject to regulation.

The second report, prepared by Liora Salter, consists of an initial inventory of more than 150 programs and other initiatives designed to achieve preventive or positive compliance with regulations. It provides a comprehensive survey of these activities in the three countries, including (where available) a brief description of each program and an assessment of its success.

Professor Baar's analysis of all areas of regulation for which profiles were developed for this study shows that the United States has given the most attention to developing incentives to encourage risk-creators to take responsibility for their actions. The British and the Australians, on the other hand, have devoted more energy to developing incentives to encourage risk-bearers, regulators, and employees of risk-creating firms to provide information on non-compliance. Only in the area of environmental regulation has the U.S. adopted the Australian and British approach.

### **In the United Kingdom — Public Participation Lacking**

The British model of regulation is one in which performance standards are valued over design standards and compliance is preferred to sanctions — that is, it is a self-regulation strategy. There is a “tight coupling” of regulators with the private sector, and minimal input from the public sector. Hence, the interests of the private sector override those of the public sector. In the author's view, the result is too little (or inappropriate) regulatory control, which is termed *undercontrol*.

In addition, the public is not given responsibility for overseeing the implementation of technologies and does not share in monitoring and development. Because of this lack of public participation, particularly in monitoring, the control of harm resulting from non-compliance may not be a first priority. In essence, the British system lacks the monitoring that would make its approach flexible and effective in enforcing standards and

achieving the goals of positive compliance. The British disregard for balance of control among the parties suggests that they do not, in theory or in fact, employ a positive compliance approach to regulation.

### **In the United States — An Accent on Monitoring and Enforcement**

Regulation in the United States has been characterized as a situation of *overcontrol* — too much, or inappropriate, control — and regulatory inspectors are used primarily to monitor and collect data on compliance. Consequently, resources have sometimes been diverted from the tasks of developing systems and standards to those of enforcement and monitoring. This, in turn, has resulted in adversarial relations among interested parties and the underdevelopment of standards and of control technologies. Despite these shortcomings, evidence suggests that the U.S. system has become more flexible over time and that innovative and varied enforcement techniques are being used. The research suggests that there is also a redirection of the focus on enforcement toward remedying harm resulting from non-compliance.

The U.S. has devoted considerable attention to improving the design of incentives for compliance, and in this area it relies extensively on administrative penalties.

### **In Australia — Monitoring by Private Citizens**

Australian regulatory agencies have developed a wide variety of procedures for authorizing non-standardized definitions of responsible action by regulated parties and for promoting broad public participation in the authorization process. This approach ensures that all interested parties participate in the regulatory process, thereby resulting in a balance of control. However, while the Australians have devoted a great deal of attention to authorizing custom-designed definitions of responsibility, they

have spent considerably less time on enforcement. This approach to regulation reduces the number of regulatory resources consumed by a given program, but it increases the probability that non-compliance will go undetected or be disregarded. The result is a state of *undercontrol*. Hence, private citizens rather than regulatory agencies must develop programs to monitor compliance. Although private monitoring helps in enforcement, it should supplement rather than replace regulatory monitoring.

## Heightening Regulatory Effectiveness

The research identifies a number of factors that must be considered in order to increase the effectiveness of regulatory measures.

- ▶ A clearer definition of the elements of regulation is needed — that is, whether it involves criminal law, civil law, or a combination of the two.
- ▶ There should be greater emphasis on monitoring effects and mitigating the harm resulting from non-compliance with regulation.
- ▶ Consideration of the type of liability, with an increased emphasis on procedural and substantive fairness, is essential.
- ▶ There should be more effective control of forgivable non-compliance, as well as consistent application of appropriate sanctions based on the level of risk and compliance history.
- ▶ Administrative penalties should be used to increase the consistency and certainty with which sanctions are employed and to speed up the response to non-compliance.
- ▶ Criminal sanctions should not be eliminated.
- ▶ Penalties for non-compliance should be graduated and should escalate rapidly. They should be employed with reference to compliance history and the severity of risk created

so that risk-creators can accurately calculate the savings to be realized from investing in prevention.

- ▶ Self-regulation should be viewed as a technique designed to supplement rather than to replace regulatory control.
- ▶ A range of measures should be employed as a means of promoting innovation.
- ▶ Public participation in the regulatory process is an essential element for increasing fairness.
- ▶ The public should have right of access to valid and reliable data on effects, and parties failing to provide such data should be held accountable.
- ▶ To exercise its responsibilities effectively, the public must have instruments available to curb lax control — such as temporary prohibition orders and court-ordered restructuring of activities for enforcement and for mitigation of harmful effects.
- ▶ The public at large should supplement public sector expertise and design capability, provide suggestions about how targeting might be improved, and engage in additional private sector monitoring and enforcement.

## Improving Canada's Regulatory System

The report concludes with a series of recommendations for consideration by Canadian regulators. Briefly stated, the author's views are that:

- ▶ Achieving positive compliance requires a fundamental change in the assumptions underlying federal regulatory design.
- ▶ The structure of incentives, inducements, and penalties promoting compliance needs to be redesigned, with substantial investment in monitoring effects.
- ▶ Positive compliance requires substantive reform designed to eliminate the traditional bias in



favour of risk-creators. Openness, substantive and procedural fairness, and improved accountability are needed to increase regulators' responsiveness to risk-bearers' concerns about ensuring effective reduction of harm.

Although the research did not include an examination of positive compliance programs in Canada, the experience with regulation in the three countries studied provides information about alternative approaches to regulation and ways to improve Canada's regulatory system.

The study concludes that positive compliance programs are unlikely to significantly reduce regulatory costs or intrusiveness. However, it demonstrates the potential of these programs for improving the quality of regulation by reducing the probability of both overcontrol and undercontrol. The research also suggests that positive compliance programs are likely to increase procedural and substantive fairness, thereby reducing the probability of outrage and litigious conflict.

▼▼▼

*Positive Compliance Programs: Their Potential as Instruments for Regulatory Reform*, by Ellen Baar. Department of Justice Canada, Working Document [WD1991-12a].

*An Inventory of Positive Compliance Programs in the U.K., Australia and U.S.A.*, by Liora Salter. Department of Justice Canada. Technical Report, 1991.

## CROSSING THE BORDERS OF PRIVACY

by Albert Currie *Research Section*

About 21 percent of the largest public organizations and private firms in Canada are involved in the international transfer of personal data. *Crossing the Borders of Privacy: Transborder Flows of Personal Data from Canada*, an exploratory study published in 1990 by the Department of Justice Canada, outlines the sectors from which international transborder flows of personal information occur; the type and volume of the information; the purposes for which it is intended; the practices of conveying it; and how the information is protected. The research is essentially descriptive, intended to document and describe the situation.

This study is one of the most original and best documented in the field of international transfers of data and the legal protections applied to it. Comparison with other studies suggests that Canadian firms are moderate exporters of computerized personal information. The main kinds of information transferred are the traditional personal identifiers such as name, age, sex, date of birth, and address. Social insurance and health insurance numbers are frequently transferred. Quite often, information about employment status and education is also exported. The information is used for personnel management, determination of eligibility for a service, and clientele management such as the production of statistics for marketing. In the authors' opinion, the data are well protected in most instances, but the scope of legal protection varies from country to country.

▼▼▼

*Crossing the Borders of Privacy: Transborder Flows of Personal Data from Canada*, by René Laperrière, René Côté, Georges A. Le Bel, Pauline Roy, and Karim Benyekhlef. Department of Justice Canada, 1990.

## Department of Justice - Research Publications Order Form

---

The following research reports have been described in this issue of *Justice Research Notes*. Please check off the items you would like to receive, and mail a copy of this form, along with your name and address, to: **Research Section, Department of Justice Canada, Ottawa K1A 0H8.**

- Evaluation of the Legal Aid Manitoba Expanded Eligibility Project*, by Prairie Research Associates, Winnipeg. Department of Justice Canada, April 1991. (Copies of 25-page summary now available. Full report to be available in 1992.)
- Northern Paralegal Project Evaluation, Final Report*, by Working Margins Consulting Group, Winnipeg. Legal Aid Manitoba, 1989.
- An Evaluation, Fort Nelson Legal Information Services*, by Focus Consultants, Vancouver. Department of Justice Canada. Working Document [WD1991-9a].
- Positive Compliance Programs: Their Potential as Instruments for Regulatory Reform*, by Ellen Baar. Department of Justice Canada, Working Document [WD1991-12a].
- An Inventory of Positive Compliance Programs in the U.K., Australia, and U.S.A.*, by Liora Salter. Department of Justice Canada. Technical Report, 1991.
- Focus Groups on Public Legal Information — Needs and Barriers to Access*, by Gallup Canada, Inc. Department of Justice Canada. Working Document [WD1991-1a].

The following item may be obtained by contacting Communications and Public Affairs, Department of Justice Canada, Ottawa, K1A 0H8.

- Crossing the Borders of Privacy*, by René Laperrière, René Côté, Georges A. Le Bel, Pauline Roy, and Karim Benyekhlef. Department of Justice Canada, 1990.

**For further information concerning these or other departmental research documents, please contact the Research Section at: (613) 941-2266.**

# Reader Survey

---

In attempting to better serve our readers, **Justice Research Notes** is asking you to take five minutes to complete this survey.

1. After receiving **Justice Research Notes**, do you:

- Throw it out unread
- Read it and pass it on to someone else
- Leaf through it and read parts of it
- Read many of the articles
- Save various articles for background research

2. How would you rate the appropriateness of the language or words used to convey the information to you?

- Difficult to understand
- Neither too easy nor too difficult
- Easy to understand

3. Do you find the length of the articles adequate for an understanding of the issues?

- Always
- Usually
- Sometimes
- Never

4. In general, do you find the articles relevant to your personal or professional interests?

- Always
- Usually
- Sometimes
- Never

5. Presently, **Justice Research Notes** is distributed quarterly. How often would you like to receive it?

- Monthly
- As is, quarterly
- Twice a year

6. Overall, how would you rate **Justice Research Notes**?

- Very good
- Good
- Satisfactory
- Poor

7. Do you have any suggestions to improve the quality and distribution of **Justice Research Notes**?

---

8. What is your position and title? \_\_\_\_\_

**Thank you for taking the time to complete this survey. Please return it to the Internal Communications Officer, Room 103, Justice Building, 239 Wellington Street, Ottawa, Ontario, K1A 0H8.**