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## PARALEGALS AND LEGAL AID ORGANISATIONS

Mary Anne Noone\*

### INTRODUCTION

Paralegals are workers who, although not admitted to practice, often perform legal tasks which are also performed by lawyers. Normally paralegals work under the supervision and control of lawyers. To date little attention has been given to the role of paralegals in Australia. In contrast the use of paralegals is crucial to the delivery of legal services in other parts of the world, both in the private profession and legal aid services.

In November 1986, I undertook a short study tour to England, the province of Ontario in Canada and the east coast of the United States of America.<sup>1</sup> The subject matter of the tour was the use of legal assistants/paralegals/community legal workers in the delivery of legal services and in particular their role in community legal centres and legal aid agencies.

I gathered information on the nature of the work performed by paralegals; the training undertaken and available for paralegals; and the status and role of paralegals within the legal system.

This article outlines the findings of the study tour and discusses some of the current issues involved in the use of paralegals in legal aid agencies and looks at the potential for the development of the paralegal sector in Australia.

### OVERVIEW

The role of paralegals in the private profession and government has been documented<sup>2</sup> and it is clear that law clerks, legal secretaries and

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1 This was funded by Victoria Law Foundation, Australia.

2 Q. Johnstone & J. Flood, *Paralegals in English and American Law Offices*

legal assistants play an important part in the delivery of legal services. The trends in Canada and the United States indicate that this role is on the increase. Commentators suggest that more attention should be paid to the "rational use of paralegals" as a means of making "law offices more cost and quality effective".<sup>3</sup> They conclude that "to a greater extent than most lawyers recognize, their future may be linked to that of their support staff, paralegals in particular".<sup>4</sup>

In all three countries, it is clear that legal aid organisations utilise paralegals for a broad and diverse range of tasks.

The Australian legal aid system is a mixture of salaried lawyers employed by state commissions, 'judicare', and community legal centres. Paralegals in legal aid agencies have been used as interviewing officers<sup>5</sup> (intake workers), assistants in criminal matters, general legal assistants, community educators and advice workers.

The South Australian Legal Services Commission commenced operation in 1979 with a commitment to the use of paralegals. They are used in the Legal Advice Section and in the Assignments Section. Of the 18 staff employed in these sections only 7 are qualified legal practitioners.<sup>6</sup>

The Aboriginal Legal Services employ field officers who act in a paralegal role<sup>7</sup> and the staff at community legal centres also includes community workers.

Generally though, the concept of paralegals as integral to the work of legal aid agencies is not prevalent in Australia.

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Windsor Yearbook of Access to Justice, 1982.

Q. Johnstone & M. Weglinsky, *Paralegals, progress and prospects of a Satellite Occupation* Greenwood Press, 1985.

W.P.. Statsky, *What Have Paralegals Done?: A Dictionary of Functions* National Paralegal Institute, 1974.

J. Abbott, *Lawyers Outside Private Practice and Paralegals*, The Law Foundation of New South Wales, September 1977.

3 Johnstone & Flood, *supra*, note 2 at 190.

4 *Ibid.*

5 S. Armstrong, "The Future of Legal Aid" in J. Goldring, ed., *Access to Law* at 205.

6 F. Regan "Paralegals - Little Past and Big Future" (Paper to the National Conference of Community Legal Centres, Sydney, 1988).

7 G. Lyons, "Aboriginal Legal Services" in P. Hanks & B. Keon-Cohen, ed., *Aborigines and the Law* (1984) at 137.

## WORK OF PARALEGALS

The term paralegal is used interchangeably in this article with legal assistant, non-lawyer and community legal worker. The term generally refers to workers who are not admitted to practice as lawyers and who perform tasks which are also performed by lawyers. These people normally act under the supervision and control of lawyers.

The work performed by paralegals ranges from ordinary clerical work to work which is little different from that of a solicitor. In 1986 a position paper prepared by a Standing Committee of the American Bar Association included this definition of legal assistant:

"A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task".<sup>8</sup>

In England, senior paralegals in private solicitors' offices "commonly interview clients and in some instances handle cases through to completion without intervention of a qualified solicitor".<sup>9</sup> In Canada, the Law Society of Upper Canada (the governing body for lawyers in Ontario) recently stated that law clerks or paralegals "are a significant part of the practice of law in almost every field".<sup>10</sup> In the United States paralegals are used extensively by the private profession in the delivery of legal services, especially assisting in the preparation of litigation and research. Their numbers have increased dramatically in the last twenty years.

An indication of the scope of the functions performed by legal aid paralegals is given by the classifications adopted by the United States Legal Services Corporation in 1977. They included case investigator,

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8 Memorandum from Chairman of Standing Committee on Legal Assistants to State and Local Bar Association, 14 April 1986 American Bar Association.

9 Johnstone & Flood, *supra*, note 2 at 177.

10 Law Society of Upper Canada, *A Submission to the Attorney General of Ontario on the Provision of Legal Services by Unsupervised Persons* 3 October 1986.

generalist, information and resource specialist, intake interviewer, lawyers assistant, litigation specialist, education and community education worker and paralegal co-ordinator.<sup>11</sup>

The information gathered suggests that the work of the legal aid paralegal is often identical to that of a lawyer. The major distinguishing feature is that paralegals frequently do not have a right of appearance. Usually paralegals in legal aid agencies and community legal centres are employed for their specific skills, particularly their experience within the community. Any training is normally obtained 'on the job.' Although training courses exist, the completion of such a course is not thought to be a necessary requisite by employers. Instead the paralegal's ability to relate to the client community was viewed as a more important attribute.

## UNSUPERVISED PARALEGALS

A clear distinction should be drawn between those paralegals who act under the supervision and control of lawyers and those that do not. In all three countries there is an increasing number of paralegals who work unsupervised and charge a fee for their services. Professional bodies in these countries have been concerned about this fact and addressed the issue.

### CANADA

In Canada it was the activities of certain former police officers who were offering their services to represent clients in traffic violations hearings that prompted the introduction of Bill 42, a private members bill to regulate the activities of paralegal agents.<sup>12</sup>

Although the Law Society of Upper Canada regularly prosecutes offenders under its unauthorized practice provision, there has been a huge growth in the number of paralegals offering expert service (e.g. immigration consultants, simple divorces and wills) at a fee lower than those of lawyers. This has caused a great deal of public debate

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11 Legal Services Corporation, First Year Summary Report on Paralegal Training and Career Development 2-5 (1977).

12 Bill 42 *An Act to Regulate the Activities of Paralegal Agents* First Reading 22 May 1986 (Ontario Legislature).

13 Canadian Bar Association Ontario, Committee to Respond to Bill 42: *An Act to Regulate the Activities of Paralegal Agents. Report to Council* September 1986.

and led to a Canadian Bar Association (C.B.A.O.) report<sup>13</sup> as well as a submission to the Attorney General of Ontario by the Law Society of Upper Canada on the provision of legal services by unsupervised persons.<sup>14</sup>

The C.B.A.O. report concluded that a preferred course of action "was for the creation of a licensing scheme for designated groups of paralegal agents who would be permitted to perform specified legal services independently of lawyer supervision" and it recommended that a task force be established to research and develop new arrangements for regulating legal workers in the public interest.<sup>15</sup>

The Law Society believes that the public is better served by lawyers than by unsupervised persons but it would not object if appropriate legislation was enacted to allow unsupervised people to represent people in matters relating to: minor traffic offences; the civil division of the Provincial Court; "those administrative tribunals where it can be shown that in the past, the public interest has not been put at risk"; Federal and Provincial labour relation matters; so long as they were subject to strict controls.<sup>16</sup>

#### UNITED STATES

Paralegals in the United States are commonly called legal assistants and they are distinguished from lay advocates by the fact that they perform their work under the supervision and control of lawyers.

The American Bar Association (ABA) Committee's position paper which was the result of three years of extensive study and many formal and informal meetings among lawyers, legal assistants and representatives of their professional associations recommends against licensure for legal assistants.

The paper concluded that licensure of legal assistants would not have any benefits to the public, to the legal profession or to the legal assistant and that certification of minimal legal assistant competence does not have benefits that would justify the time, expense and effect of its implementation. It did suggest that the "most favorable method of

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14 Law Society of Upper Canada, *supra*, note 10.

15 *Supra*, note 13 at 24,40.

16 Law Society of Upper Canada, *supra*, note 10 at 2.

increasing legal assistant entry quality and continued proficiency is to increase the number of educational programs meeting ABA guidelines".<sup>17</sup>

There are approximately 350 educational institutions in the United States which offer legal assistant courses. The ABA runs a scheme by which these institutions can obtain ABA approval for their legal assistant educational programs. The ABA has approved ninety such courses. The process for approval is intensive and takes six months. The approval is valid for five years.

## ENGLAND

In 1985, the British parliament enacted legislation which removed the monopoly that solicitors had over conveyancing. The recommendations from the Conveyancing Committee, including the establishment of a governing Council for Licensed Conveyancers, the requirement of certain educational, skills and experience standards together with mandatory indemnity insurance and a code of conduct have now been implemented.

Independent conveyancers are now operating. The Law Society has reacted to these changes by loosening its own restrictions on advertising and other rules of conduct.<sup>18</sup>

## GROWTH OF PARALEGALS

In the United States there has been a rapid growth in the number of paralegals over the last 20 years. Although the number of lawyers is increasing the ratio of lawyer to paralegal is dropping. In a study of law offices in New York City, the paralegal to lawyer ratios varied from 1:93 for small firms to 1:35 for large firms.<sup>19</sup> Statistics indicate that the paralegal profession is one of the fastest growing in the United States. In the Federal Government arena, there has been a 65% growth of paralegals since 1976 compared with only a 16% increase of attorneys in the same time period.<sup>20</sup>

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17 Memorandum from chairman of Standing Committee on Legal Assistants to State and Local Bar Associations, 14 April 1986.

18 C. Selinger "Paralegals: The British Invasion", (1987) National Law Journal (16 November).

19 Johnstone & Weglinsky, *supra*, note 2 at 4.

20 C. Perko "Paralegals in the Federal Government", (1984) 4 Legal Assistants Update - ABA at 85.

There are two national paralegal organizations in the United States. The National Federation of Paralegal Associations (NFPA) formed in 1974 and the National Association of Legal Assistants (NALA) in 1975. NALA administers a voluntary certification examination enabling successful legal assistants to use the designation C.L.A. (Certified Legal Assistant) after their name. Both organizations seek to promote the occupation of legal assistants and further the interests of their members.

In contrast the number of paralegals employed in the English private profession was observed to be reducing as the numbers of articled clerks and associates listed was increasing. The work performed by the latter is similar to the work of paralegals.<sup>21</sup>

In 1976 it was estimated that there was 20,000 legal executives working in solicitors offices – a sharp decline since the mid 1960s. Law firms appear to be relying more on assistant solicitors and less on paralegals.<sup>22</sup> Historically the use of paralegals has been higher in England than in the United States, as indicated by a greater ratio of paralegals to lawyers.

There have been English paralegal associations since the turn of the century. Their primary concern has been the education of their members. The Institute of Legal Executive (ILEX) has an extensive educational and qualifying system and powers to discipline its members for unbecoming conduct.<sup>23</sup>

## PARALEGALS IN LEGAL AID AGENCIES

### ENGLAND

In English law centres paralegals are used in a variety of roles, specifically in the areas of social security, immigration, housing, women's rights, anti-racism, and broad information provision. These workers are involved in providing information, advocacy, advice, liaison, interviewing and research. A large proportion of their time is devoted to increasing people's access to tribunals and advocating for peoples rights.

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21 Jenny Levin, Head of Department of Law and Government, South Bank Polytechnic.

22 Johnstone & Flood, *supra*, note 2 at 174.

23 *Ibid.* at 173, 186.

Only 25% of employees in law centres are lawyers, the remaining 75% are a combination of community workers/paralegals and support staff.

In the report of an English Conference entitled 'Life Without Lawyers' held in 1978, it was stated that paralegals were not to be seen as handmaidens to the legal profession nor as a substitute for lawyers rather as advisors performing a fundamentally different role.

Although it was acknowledged that there were economic arguments for paralegals, the more positive advantages were preferred. Paralegals tend "to be more accessible than lawyers, more capable of understanding and working with ordinary people, less likely to distort the informal procedures of tribunals and more capable of providing a broad and flexible range of assistance, going beyond the immediate (and possibly superficial) legal problem".<sup>24</sup>

In both law centres and Citizens Advice Bureaux volunteers provide a substantial service together with employed paralegals. The 12,500 volunteers at Citizen Advice Bureaux<sup>25</sup> provide a broad range of advice and information to the community and a large proportion of this entails basic legal advice.

Specialist paralegals have developed in a number of fields. These include:

- Welfare Rights Officers: workers who may be based at an advice agency providing information on social security matters and back up support for volunteers.
- Money advice workers: approximately 150 workers nationally who concentrate on financial problems in a similar manner to the welfare rights officer.
- Environmental Health Officers: a smaller number of workers dealing with environmental and health issues.

A recent development utilizing paralegals has been the establishment of Tribunal Units. These may be attached to either Citizen Advice Bureaux<sup>26</sup> or independent advice agencies. Their work entails tradi-

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24 Legal Action Group, "Life Without Lawyers" Report of a Conference held in January 1978 on 'Lay Participation in the Legal System', at 3.

25 National Association of Citizens Advice Bureaux, Annual Report 1985-1986, at 1.

26 The Chapeltown Citizens Advice Bureau has a Tribunal Assistance Unit which services not only the Bureau but also Leeds, Yorkshire and Hunikerside CABX and other advice agencies.

tional casework, training, consultancy and policy work. The workers are involved in representation at tribunals and give advice on complex matters of law.

Trade Unions also have officers who offer legal advice to their members and often represent members at Employment Appeals Tribunals.

A distinguishing feature of paralegal use in law centres and advice agencies is the concept of a team approach. Centres will be divided into units centred on areas of work e.g. immigration, crime, employment, women, housing welfare rights. The unit will consist of a lawyer and a number of paralegals who are experts in that particular area of the law.

At the Brent Community Law Centre there are four lawyers and four non-lawyers who work together on housing, education, workers rights and police issues. The centre has a philosophy that it should teach the community organizational skills as well as providing a legal service.

The centre uses group work methods as an effective way of implementing a strategic purpose and that purpose is to deliver legal services in deprived communities to the best effect with limited resources.<sup>27</sup>

Lawyers and paralegals work as a team on group projects. The paralegals, often employed for a specific project because of their expertise in an area (e.g. town planning), work in the community and use the lawyers as a resource when required. The paralegals are integral to the way the service is delivered and their position within the law centre is exactly the same as lawyers.

## TRAINING AND SUPERVISION

Paralegals in law centres do not receive any formal training. The Federation of Law Centres offers some limited training for law centres worker. Law centre paralegals are usually employed for the skills they already possess and receive training 'on the job'. There did not appear to be any direct supervision of the paralegals by the lawyers. Paralegals were thought to be experts in their own right.

In contrast the Citizens Advice Bureaux have a formal training program. New workers and volunteers must undertake a basic training

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27 Brent Community Law Centre Report 1983 at 5.

course and there is an expectation that they will participate in ongoing training. Two tertiary institutions visited offered advanced courses for Citizen Advice Bureau workers.<sup>28</sup>

The London office of the National Association of Citizen Advice Bureaux provides an information service for all bureaux, which is updated monthly. Bureau workers have access to community lawyers and private practitioners who will assist in an initial diagnostic interview and referral if necessary but there is no direct supervision of legal advice given.

### CANADA

In Canada legal aid is administered at a provincial level and the right to legal aid is defined by provincial legislation although the Federal Government does provide some funds. The Legal Aid Plans differ from province to province. Some schemes operate solely on a 'judicare' model; others have almost exclusively salaried staff; whilst other provinces have a mix of both models.<sup>29</sup> In addition Ontario has a network of Community Legal Clinics and in British Columbia the Legal Services Society funds a number of legal clinics staffed by paralegals.<sup>30</sup>

In the provinces of British Columbia and Ontario, community legal workers and legal information counsellors form an integral part in providing direct client services. The importance of their role is indicated by legislation which defines their role and provides for funding of paralegal services.<sup>31</sup>

In British Columbia, the Legal Information Counsellor Program is administered by the Legal Services Society. The legal information counsellors are paralegals who provide information and advice to clients while under direct or indirect lawyer supervision. Legal information counsellors also represent individuals in tribunals or lower courts,

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28 Brunel University offered a Masters program and South Bank Polytechnic offers a special course of CAB workers.

29 P.L. Brantingham & P.S. Brantingham, *Common Law Legal Aid Systems. A Comparison of Aspects of Canadian, American and English Approaches* (National Symposium on Legal Aid, Canadian Bar Association August 1985) at 7.

30 *Ibid.* at 9.

31 *Ibid.* at 16.

process legal aid application's undertake public legal education and sometimes are involved in community development activities.<sup>32</sup>

Legal information counsellors are used mainly in Community Law Offices and Native Law Offices. Both Community and Native Law Offices are independent agencies funded by the Legal Services Society of British Columbia which provide summary advice, counselling and information about the law and some extensive casework. They also have the responsibility for community development and public legal education.

Paralegals are often used in delivering legal services to remote areas or native populations. This is often because it is more cost effective and the paralegal is often better able to relate to the local community.

The Federal Government operates a program which is funded on a 50/50 cost share basis with the Provinces, to provide services to native people. Native court workers are employed by local organisations to explain to the natives the legal system and the procedures involved and also to make the appropriate referrals. These workers are not funded to do court representation but are supposed to remain impartial and work as friends of the natives.

Historically it appears that paralegals have a unique place in the delivery of legal services in Ontario's Community Legal Clinics. Community legal workers are integral to the establishment of clinics. One of the original objectives of the Parkdale Community Legal Service was to develop "the role of indigenous aides"<sup>33</sup> in the provision of legal services. A stated aim was to "train lay people to handle some of the legal services which were being handled by lawyers and law students;...to have lay advocates involved in the offices of the community education programme".<sup>34</sup>

The Ontario *Legal Aid Act* provides for "the payment of funds to a clinic to enable the clinic to provide legal services or paralegal services or both... on a basis other than fee for service".<sup>35</sup>

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32 P.L. Brantingham & P.S. Brantingham, *An Evaluation of Legal Aid in British Columbia* (Department of Justice, 1984) at 56.

33 F. Zemans, "The Public Sector Paralegal in Ontario: Community Legal Worker" (Prepared for delivery at 1980 Annual Meeting of the Law and Society Association, 2 June 1980) at 134.

34 *Ibid.*

35 *Legal Aid Act Regulations*, O.Reg. 59/86.

Community legal workers initially staffed clinics in Ontario and worked in areas not normally handled by the private profession and in which there was no specific lawyer expertise, e.g. tenancy, injured workers rights, environmental issues.

Currently community legal workers perform a variety of tasks and do not fit any one stereotype. They may be involved in summary advice, intake, casework, representation, law reform, legal education, community organising and development. At least half the staff at Clinics will be community legal workers. There is often little to distinguish the work of lawyers and community legal workers.

As a general rule it appears that community legal workers are employed for the skills they were able to offer the clinic. It was usual for the community legal workers to have either lived or worked in the community serviced by the clinic, often in a role involving community development work. This approach reflects one of the original stated aims of clinics: to provide a greater access to justice for the poor and to answer the specific legal needs of the poor on their own terms. It was thought that community legal workers, who had not been subject to a lawyer's training and conditioning, were usually 'closer to the people' and best suited to this purpose.

### Training and Supervision

The requirements for supervision of community legal workers are contained in the Rules of Professional Conduct of the Law Society of Upper Canada. Rule 20 allows community legal workers to perform tasks normally performed by a lawyer so long as the lawyer maintains a direct supervisor relationship with the client's case. This seemed to be adhered to by the periodic review of community legal workers files by the clinic's director (a lawyer).

In British Columbia, the Legal Services Society has established a system of supervision which caters to the differing levels of experience. Supervision occurs either directly in small offices by a lawyer or in a large office. "[T]he Board of Directors may designate a specific non-lawyer (typically a senior Legal Information Counsellor) to undertake direct personal supervision of Legal Information Counsellor work in specified areas of law".<sup>36</sup> The direct supervision is then divided into three levels of supervision which reduces from full to partial to minimum as the Legal Information Counsellor gains experience and the

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<sup>36</sup> Brantingham, *supra*, note 32 at 342.

supervisor comes to understand the legal information counsellor's working patterns.<sup>37</sup>

The training of community legal workers was non-existent on a provincial basis. The British Columbia Evaluation of Legal Aid also concluded that paralegal training was inadequate and haphazard. It recommended the "development of a systematic, comprehensive entry level training course which all new paralegals must complete prior to commencing work" and also "the development of a systematic paralegal training syllabus including courses and required reading lists that will be taught on an established cyclic basis".<sup>38</sup>

### UNITED STATES

In the United States, legal assistants are an integral part of the delivery of legal services. However the function of paralegals in legal aid agencies is quite different from that in the private profession.

Legal Services' paralegals are usually expert in their specific area of the law and do all the work to prepare a case except the actual appearance.

Legal Services have been innovative in their use of paralegals. They are not seen merely as appendages to lawyers but encouraged to act independently. Johnstone and Weglinsky in their New York study found that legal aid organisations utilise paralegals for a broad and diverse range of tasks.<sup>39</sup>

The present staff of the Legal Services Corporation agree that legal aid paralegals are distinct. They do more direct casework, advocacy, and community outreach. The Legal Services Corporation funds 325 legal services programmed throughout the states and the attorney to paralegal ratio is approximately 2:1.

The current policy of the Legal Services Corporation is that legal services should concentrate on dispute resolution and individual casework. Restrictions on lobbying by legal services have been imposed. This has curtailed the activities of those paralegals who receive funding from the Corporation in community education and development programs.

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37 *Ibid.* at 345.

38 *Ibid.* at 342.

39 Johnstone & Weglinsky, *supra*, note 2 at 53.

### Training and Supervision

During the late 1970's the Legal Services Corporation ran special training programmes for paralegals at local regional and national levels. The aim was to develop the advocacy skills of the community workers and others. This work of the Legal Services Corporation appears to have been instrumental in the development of the paralegal role in legal services.

Unfortunately, the change in policy and staff at the Legal Services Corporation together with funding cutbacks means that this support is no longer available. The emphasis is now on providing individual casework rather than encouraging community education programs, test cases or community development.

Consequently training of paralegals often occurs on the job. It was noted that a number of paralegals had tertiary qualifications in education, politics or social work. Others had completed a legal assistants course.

In a survey of New York paralegals, paralegals in legal aid agencies often had different qualifications and career lines than other paralegals. They often had close ties to and deep understanding of poverty communities, no formal education beyond high school, were older than average in the occupation, remain longer in the job and generally were more satisfied with their jobs than most paralegals.<sup>40</sup>

"Some of the earliest community paralegals were products of a special new careers training program in New York City that had as one of its principle goals providing new careers through affirmative action to persons from low-income minority neighborhoods".<sup>41</sup>

Although this training programme has disappeared, community paralegals are still an important part of the operation of legal aid offices.

Several people interviewed agreed that there was a class and race distinction in the paralegals working in legal aid agencies. Paralegals are more often non-white.<sup>42</sup> This was thought to be a good thing as it enabled disadvantaged groups to break into the legal system. Legal services were seen to have provided a mechanism by which people from poor and disadvantaged communities were able to work their way up through the system and then give back to their communities.

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40 Johnstone & Weglinsky, *supra*, note 2 at 97.

41 *Ibid.*

42 *Ibid.*

## AUSTRALIA – THE FUTURE

Although paralegals are employed by a number of Australian legal aid agencies, performing a range of activities, paralegals are not seen as integral to the delivery of legal services to the poor.

At a conference discussing 'Access to Law' in 19\_\_ there was a call for the increased utilization of paralegals both in the traditional sense and more innovatively in providing advice and advocacy.<sup>43</sup>

A further call for the development of lay advocates was made in June 1987. It was argued that advocacy should not be confined to the court or tribunal setting but encompass lobbying on behalf of others with government and taking part in consultative activities which can produce powerful results and benefits for the wider community.

"In tough times for consumer, welfare recipients and low-wage earners alike, it must surely be agreed that non-lawyers advocates should be encouraged to work in concert with their legal colleagues and to be more involved in appropriate areas of advocacy in their own right as a matter of some urgency".<sup>44</sup>

The National Legal Aid Advisory Committee<sup>45</sup>, established to advise the Minister for Justice on matters relating to legal aid is most concerned with the escalating costs of legal aid. One of the items on its agenda is the potential of paralegals in legal aid as a method of curbing legal aid expenditure.

In July 1988 the National Conference of Community Legal Centres passed a motion which supported and sought to promote the value of the work of paralegal workers in both general and specialised fields of community legal work; in particular the strengths and advantages of the style of service delivery. A working party was established to consider and discuss the issues surrounding the work of paralegals including training and possible accreditation. There is no accreditation program for the few courses that are currently offered.

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43 J. Goldring, ed., *Access to Law* at 189, 266.

44 M. Roberts "Lay Advocacy – When Will the Sleeper Wake?" (1987) 12:3 *Legal Service Bulletin*.

45 *Commonwealth Legal Aid Act 1977* (as amended).

## ISSUES FOR THE FUTURE

It seems inevitable that the use of paralegals in Australia will grow both in legal aid agencies and the private profession.

Issues which will arise if the number of paralegals in Australia increase substantially will include licensing and certification, adequate remuneration, status with the profession, training and education.

In relation to the use of paralegals in legal aid agencies it is clear that paralegals should not be used simply as a substitute for lawyers because they are cheaper. Unless paralegals received proper training and are well remunerated, the poor may end up receiving a second class service.

Paralegals should be preferred because they can do the task better, have an ability to relate well with the client as well as being more efficient. If working in a team approach, they will often provide alternate strategies on solutions to a problem.

The tasks performed by paralegals are often called 'routine' or 'simple' but this is not always the correct classification and caution must be exercised. An initial intake interview may be critical in the identification of test cases or law reform strategies. Similarly if problem solving is left to a lawyer, the lateral approach of non-lawyers to solutions will be lost. "Making service functions routine greatly biases the service in favour of the *status quo* or already recognised claims".<sup>46</sup>

The solution to this problem lies in a non-hierarchical approach – lawyers and non-lawyers working as a team. The experience of legal aid agencies, who utilise paralegals effectively, supports this idea.

"In an ideal world, the role of non-professional advocates would not be determined by examining what legal tasks could be delegated to a person with less or different training, but by a broader functional view, including consideration of all the possible ways to handle, manage, or solve a problem and then identification of those groups of people who might best be able to perform those functions".<sup>47</sup>

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46 C. Menkel-Meadow, "Nonprofessional Advocacy: The 'Paralegalization' of Legal Services for the Poor", (1985) Special Summer Issue *Clearinghouse Review*.

47 *Ibid.* at 407.

As economic rationalism is applied to the Australian legal aid system it is important that paralegals are not used as a cheap alternative for providing services to the poor. They should be used rather as an attempt to answer the specific needs of the poor by seeking to increase their access to justice on all levels.

If paralegals are used as a cost saving measure by an organization that is already under-resourced, then the poor will only get services. Proper training, both initially and on-going are essential for the maintenance of a good service, as is adequate remuneration. Sound ideas must be fully implemented to be successful.<sup>48</sup>

It must also be remembered that the work of legal aid paralegals is often in areas of the law not normally serviced by the private profession. Consequently the use of paralegals cannot be seen as a cheap alternative to employing lawyers but rather as providing different legal services with an alternative method of service delivery.

Obviously, the reason that paralegals are seen as cost efficient is that their salaries are considerably less than lawyers. Although there are exceptions when comparing long servicing paralegals and newly admitted lawyers, generally paralegals have a much lower status and receive lower remuneration whilst doing substantially the same work as lawyers.<sup>49</sup>

This matter is of particular concern to women who form the majority of paralegals. Women paralegals are paid on average substantially less than men.<sup>50</sup> In contrast, some women saw their paralegal position as providing access to the legal system previously denied them.

If legal aid agencies are interested in delivering legal services in ways that are more appropriate to the poor then the use of paralegals is crucial. The concerns that this will lead to the poor receiving a second class service denies the fact that the legal needs of the poor may be very different from that of the rich and middle class.

The use of paralegals must be seen as part of an overall concept of delivery of legal services to the poor. If the aim of community legal centres and legal aid agencies is not only to provide to the poor, those

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48 J. Handler & L. Trubeck, "Introduction to Papers from the Conference: Poor Clients Without Lawyers: What Can Be Done?" (1985) Special Issue Summer *Clearinghouse Review*.

49 Johnstone & Flood, *supra*, note 2 at 180.

50 *Ibid.* at 181.

services available to the rich, but also to address the more specific and different needs of the poor in gaining access to justice the overseas experience would indicate that the involvement of paralegals will assist in that aim.