

LEGAL AID: MODELS OF ORGANISATION¹

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Executive summary

This paper reviews the various considerations in ways of organising publicly funded legal services, making reference to the experience of various jurisdictions.

The implication of the paper is that the following are the key questions to be answered by policy-makers evaluating any particular model of organisation in their jurisdiction:

- (a) what mandatory duties does your jurisdiction accept in relation to publicly funded legal services under
 - (i) The European Convention on Human Rights;
 - (ii) EU mutual assistance provisions;
 - (iii) Your domestic law?
- (b) What discretionary services do you wish to provide?
- (c) What criminal services do you wish to provide? In particular, what services do you wish to provide prior to a suspect being charged and during interrogation by the police?
- (d) In relation to civil cases, how much of family, private, public and poverty law claims do you wish to cover?
- (e) How do publicly funded services interrelate with other forms of funding services or different ways of resolving a dispute?
- (f) Do you wish legal services to extend beyond representation to advice?
- (g) Do you accept a need to provide information and public legal education?
- (h) Do you wish to incorporate funding for public interest litigation and casework? If so, how?
- (i) What test of means do you envisage for criminal cases?
- (j) What test of means and merit do you envisage for civil cases?
- (k) Who will administer the tests of means and merit? Do you trust the providers sufficiently to do this or do you want some form of third party certification?
- (l) How do you envisage criminal services being delivered? Do you favour private practitioners, salaried practitioners, some form of 'public defender organisation' or some combination of delivery? What are the advantages and disadvantages of each system?

¹ This paper was written for a conference of the European Forum on Access to Justice held in Budapest on 5-7 December 2002.

- (m) Whatever your means of delivery for criminal cases, does it meet the determinants of good services set out in the paper?
- (n) How do you envisage civil services being delivered? Do you favour private practitioners, community law centres, national agencies or some other model?
- (o) What body will manage publicly funded legal services?
- (p) How will responsibilities for management and policy be divided?
- (q) Which government department will be responsible for legal aid policy and how will you ensure that it obtains sufficient information about what is the effect of policy on the ground?
- (r) What will be the mechanisms for accountability of the managing body?
- (s) Do you value the co-operation of the existing legal profession and, if so, how will you obtain it?
- (t) What provisions do you envisage to assure quality?
- (u) How will you ensure that your policy on legal services integrates within a wider access to justice policy?
- (v) How big is the budget? And how will you demonstrate value for money?

Introduction

1. The organisation of publicly funded legal services in different countries is affected by local culture and history. These differ enormously. For example, the US and the UK have very different experiences even though both common law jurisdictions. The US has made much more use of salaried lawyers employed by legal services and public defender organisations. UK provision has been dominated by private practitioners. In the US, civil legal services have been seen, at least in part, within a highly politicised context that has been largely absent from the UK. I am conscious that, within central and Eastern Europe, there will be different traditions that dictate different levels of available resources, different priorities in provision and a different preferences in the type of provision.
2. Different experiences breed different prejudices and a somewhat parochial support of the local model. Most countries with well developed systems of publicly funded legal services tend to believe that they have the best model. A number might even make that claim with a degree of reasonableness – especially if they had a little additional resources. Among them would be the Dutch, the US, the Canadian state of Ontario, Scotland, England and Wales, Sweden and so. Yet, practice is very different in these jurisdictions. The lesson is that there is no right answer only optimum provision for individual circumstances.
3. There is only one constant. Good public legal services equate with high levels of funding. This is, alas, inescapable. In the 1970s, the Canadian state of Quebec probably had the best system in the world.² By the 1990s, eligibility and resources had fallen so low that coverage was relatively minimal. Similarly, resources have been stripped out of legal aid in Australia, reducing provision in once relatively well-funded states such as New South Wales and Victoria. Many, even of the best funded jurisdictions, face angry practitioners who assert that levels of payment have fallen unacceptably low. Dutch lawyers have been on strike; Ontario's legal aid lawyers have recently been in dispute over payment with their government; English lawyers have threatened to give up legal aid work with sufficient credibility to raise the concern of the Legal Services Commission which reported in its last annual report:

We are picking up intelligence ... that up to 50 per cent of firms are seriously considering stopping or significantly reducing publicly funded work.³

The price of maintaining good services is eternal vigilance against understandable governmental pressures to reduce or maintain costs.

Access to justice

4. There is one further preliminary point. This forum is based around the notion of 'access to justice'. It is worth noting that, in origin, 'access to justice' was developed as a motivating concept in the late 1970s by those arguing that more money for legal services was too narrow a response to injustice. Two of them prefaced a world study of access to justice provision by explaining:

The access to justice approach tries to attack ... barriers comprehensively, questioning the full array of institutions, procedures, and persons that characterise our judicial systems.⁴

² See Legal Action Group *A Strategy for Justice* 1992.

³ Legal Services Commission *Annual Report 2001/02* HC949, para 2.7

⁴ Cappelletti and Garth *Access to Justice: Volume 1* Sijthoff and Noordhof, 1978, p124.

5. The idea of an access to justice approach has a concrete lesson in terms of the mandate of the body managing legal aid. It should be sufficiently wide to encourage a broad view of the services it should provide. The failure to do this was, for many years, a deficiency in the management of legal aid by the Law Society in England and Wales. Valuable feedback on the provision of other government services can be obtained from monitoring the subject matter of publicly funded cases.
6. The stress on an access to justice approach to publicly funded legal services is a reminder that these must always be considered together with legal procedures and, indeed, the substantive law. For example, one of the UK's important pieces of legislation in relation to criminal justice was the Police and Criminal Evidence Act 1984. This regularised police powers to hold a suspect in custody before charge; regulated interrogations and pre-charge treatment of suspects through the introduction of codes of practice; changed the administrative arrangements within the police station; led to the introduction of tape-recording of interviews (initially opposed by the police but subsequently appreciated); and also led to statutory funding for solicitors and their representatives who attended suspects in the police station prior to charge. It was actually an almost text book example of legislation following a holistic 'access to justice' approach – though, at the time, was widely seen as highly controversial.

Managing legal aid: the value of a commission/board/corporation

7. Most governments have found it helpful to establish an intermediate body, closely linked but formally independent of government, to administer legal aid. The advantage of such an arrangement is that it helps to preserve the independence of decision-making in individual cases and distances government from political attack in cases that are controversial eg the grant of legal aid to a person accused of grisly serial murders. The Dutch were one of the last large jurisdictions into the fold, creating regional legal aid boards in 1994. In the UK, the three domestic jurisdictions were among the first to establish national legal aid schemes after the Second World War: they were initially managed by the Law Societies (the professional bodies for solicitors) which had conceived the idea. However, in England, the Law Society was replaced by a Legal Aid Board by the Legal Aid Act 1988 which was 'to achieve a central strategic role for legal aid'.⁵ The board had a membership which included nominated places for various stakeholders, particularly the professional bodies. In its turn, it was replaced by a Legal Services Commission set up under the Access to Justice Act 1999.
8. A commission or board is a widespread mechanism used to manage legal aid. Quebec has its Commission des Services Juridiques formed after the model of the US Legal Services Corporation (though this has only a civil engagement). Ontario, where legal aid was managed by the legal profession until transferred to Legal Aid Ontario by the Legal Aid Services Act 1998, may have been the latest to switch. Most provinces in Canada have similar arrangements. Likewise in Australia. South Africa has a Legal Aid Board.
9. The 'commission model' involves a government department responsible for resources and policy; an independent but government appointed commission responsible for implementing that policy to a greater or lesser extent depending on local circumstances; practitioners who are paid directly or indirectly by the commission. Jurisdictions take different views about appointment of

⁵ *Hansard HL Debates* 15 December 1987, col 607.

commissioners or board members. Some create reserved places for stakeholder groups, as was the case with the English Legal Aid Board. Others give greater discretion. The provisions in the English Access to Justice Act 1999 are a good example of wide powers given to the appointing minister:

- (3) The Commission shall consist of –
 - (a) not fewer than seven members, and
 - (b) not more than twelve members;but the Lord Chancellor [Minister of Justice] may by order [change either number]
- (4) The members of the Commission shall be appointed by the Lord Chancellor; and the Lord Chancellor shall appoint one of the members to chair the Commission.
- (5) In appointing persons to be members of the Commission the Lord Chancellor shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of-
 - (a) the provision of services which the Commission can fund as part of the Community Legal Service [effectively civil legal aid] or Criminal Defence Service [effectively criminal legal aid];
 - (b) the work of the courts;
 - (c) consumer affairs;
 - (d) social conditions; and
 - (e) management.⁶

10. The highpoint of direct stakeholder representation probably came in the Legal Aid Commissions of New South Wales and Victoria in the early 1990s. Their constitutions allowed places for the professional bodies, consumer groups, legal centres etc. Both were, however, wound up and replaced by smaller bodies with members appointed by government with less strings. A tighter approach is evident in Israel's Board of the Public Defender which has five members: the Minister of Justice, a retired Supreme Court judge, a criminal lawyer selected by the national Bar Association; a criminal lawyer appointed by the Minister of Justice with the consent of the chair of the Bar Association, and a criminal law scholar.

11. A compromise between executive power of appointment and some degree of professional input can be seen in the provisions for appointment to Legal Aid Ontario (the Law Society of Upper Canada is the Bar Association for the province):

The board of directors of the Corporation shall be composed of persons appointed by the Lieutenant Governor in Council as follows:

1. One person, who shall be the chair of the board, selected by the Attorney General from a list of persons recommended by a committee comprised of the Attorney General or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her and a third party agreed upon by the Attorney General and the Treasurer of the Law Society or persons designated by them.

2. Five persons selected by the Attorney General from a list of persons recommended by the Law Society.

3. Five persons recommended by the Attorney General.

⁶ S1 Access to Justice Act 1999.

Non-voting member

The president of the Corporation shall be a non-voting member of the board.

12. The commission model works relatively well. There are two potential areas of friction. First, there can be circumstances when the membership of the commission is not appointed by the current legislature or government and this leads to controversy. There was a difficult time in the United States when the membership of the Legal Services Corporation was appointed by the Clinton administration but encountered antagonism from the legislature. Second, whatever the formal arrangement of powers between the sponsoring government department and the commission, there can be a degree of rivalry between them. The commission always has the advantage of being close to developments because it is micro-managing the system. The government department has a broader view of the government's objectives but less knowledge of the detail. There has been a little of such rivalry in England between the Legal Services Commission/Legal Aid Board which really has been the motor for policy development rather than the Lord Chancellor's Department. This never reached a level, however, where it could not legitimately be described as a genuinely creative tension.
13. There may be jurisdictions where it is helpful to engage the legal profession in the management of legal aid despite the recent trend in well developed legal aid jurisdictions away from this model. The engagement of the profession has, for example, very much helped the emergence of at least a very basic form of legal aid in the developing country of Bangladesh. It has encouraged practitioners to provide low cost services as a professional duty where, otherwise, they might have not been prepared to do so.

Legal aid: which government ministry?

14. As far as government is concerned, there are a variety of arrangements as to which department has the policy responsibility for legal aid. In England and Wales, it is the Lord Chancellor's Department; in Ontario and federal Canada, the Ministry of the Attorney-General, both are roughly equivalent to a Ministry of Justice. In the USA, the picture is different. For example, responsibility for criminal legal aid services does not fit easily within the doctrine of separation of powers into legislature, executive and judiciary and there is some variation of practice. For example, in the state of Oregon, funding comes via the judiciary. In other jurisdictions, such as that covering Seattle in Washington State, funding comes through an Office of Public Defense located within the executive. Federal jurisdictions, such as Canada and Australia, present further problems of responsibility with split funding and responsibility.

Governmental responsibilities under the European Convention on Human Rights

15. Civil and criminal services raise rather different issues of policy. In the US, they generally are delivered completely separately. In the UK, the difference is indicated by the, as yet notional, creation of a separate Criminal Defence Service and a Community Legal Service. All European jurisdictions which have accepted the European Convention of Human Rights will acknowledge, at least in theory, the requirements of Article 6(3) and particularly 6(3)(c):
Everyone charged with a criminal offence has the following minimum rights:

....

To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

Thus, all European countries should all have legal aid systems for criminal cases. There is no express equivalent in the Convention for civil cases though it has been inferred by the European Court of Human Rights:

Where the assistance of a lawyer is 'indispensable for effective access to court' either because legal representation is compulsory or because of the 'complexity of the procedure or of the case'⁷.

16. It may be worth spelling out the implications of this analysis of the European Convention:
- (a) criminal legal aid should be available for the defence of all criminal offences;
 - (b) there may be a means test for criminal legal aid so that it can be refused if a defendant has sufficient means;
 - (c) a defendant who has insufficient means must receive criminal legal aid free and without payment of contributions (English practice was, until recently, in breach of this provision);
 - (d) there should be legal aid in civil cases where it is effectively indispensable, allowing a test both of means and of merits.

Criminal legal aid: how to deliver

17. Criminal legal services can be delivered in a number of different ways, according to the demands of culture and/or resources. The main alternatives are:
- (a) private practitioners – employed on a case by case basis and often known by the US phrase 'judicare';
 - (b) salaried practitioners employed by the legal aid authority/commission, often referred to as 'in-house duty counsel';
 - (c) practitioners employed by an independent legal services organisation, often called a Public Defender office which may, or may not, double as the funding agency, known as the staff model.

There are, however, a myriad of variations on these three models.

18. Historically, commentators have divided provision between staff, salaried models and 'judicare'. Increasingly, this is becoming more complicated for two particular reasons. First, jurisdictions with advanced legal aid schemes, like Canada and England/Wales, are attracted to a 'mixed model' of provision incorporating elements of more than one or all three. Second, there has been an increasing amount of interesting in contracting services with a variety of different providers. This began in the US in ways that were often (though not always) criticised for funding low-cost, low-quality schemes. However, contracting has been developed by the Legal Services Commission in England and Wales quite precisely as a way of raising quality by incorporating quality assurance criteria into the contract.
19. There is no right answer as to the delivery of services. As can be seen from the appended paper, the English Legal Services Commission deploys a variety of delivery mechanisms in relation to civil cases.

⁷ K Starmer *European Human Rights Law* Legal Action Group, 1999, p365; *X and Y v Netherlands* (1975) 1 DR 66 – an obligation may arise in certain circumstances; *Airey v Ireland* (1979-80) 2 EHRR 305 – may be required to guarantee rights to court determination practical and effective (divorce case)

Different models of delivery: pros and cons

20. Each mode of delivery has its advantages and, additionally, there are advantages in having a mixed model. This gives policy-makers an opportunity to cross-check costs and effectiveness. It also provides an element of competition between providers. The establishment of other forms of delivery can be politically contentious where judicare is well established. Both Scotland and England have recently set up pilot public defender organisations. These are small groups of salaried staff effectively employed directly by the Legal Services Commission or the Scottish Legal Aid Board. In both jurisdictions, the public defender offices are taking only a relatively small proportion of cases. In these jurisdictions, there is some disdain and a lot of suspicion by private practitioners for public defenders.

21. The advantages and disadvantages of different types of provision include:

(a) Judicare

Definition – delivery by way of private practitioners funded on a case by case basis, often through some form of validated certificate

Advantages – funding by case so each decision can be strictly controlled; tends to need a largish bureaucracy to approve and process; does involve the private profession in the criminal justice system and, thereby, give them a concern with basic civil liberties and human rights; can be combined with rights for the defendant to choose their own lawyer and governing the availability of representation.

Disadvantages - can be quality control problems if quality left to practitioners; is usually the most expensive form of provision; can be difficult to control cost.

(b) In-house duty counsel

Definition – staff lawyers directly employed by the legal services authority to undertake duty representation

Advantages – can be cost advantages where a staff lawyer can be deployed to take on a lot of cases at one time eg duty lawyer at a busy court;

Disadvantages

can be quality problems because low status and interest of the work; can be difficulties for clients over splitting representation between different lawyers.

(c) Public defenders

Definition – delivery by salaried lawyers employed by the legal services authority or another agencies who undertake full representation of defendants

Advantages – can be cost advantages over judicare; can build up a high spirit and provide excellent services beyond court casework;

Disadvantages – can have low esteem in profession; can be subject to low funding; can lead to routine representation rather than high quality; rarely attracts real 'stars' of criminal defence work who prefer to work outside a bureaucracy; may not be much cheaper than judicare if properly funded; difficult to give incentives for speed and efficiency.

(d) Contracted services

Definition – services provided by practitioners or by organisations employing practitioners under a contract with the legal services authority ie any of the three models above.

Advantages – has been used to raise quality but needs express quality assurance criteria; makes cost control easier; gives service provider some certainty of funding; can be used to encourage services otherwise unavailable.

Disadvantages – can be used to drive down costs; can lead to lower quality; can encourage routine representation.

22. The important determinant of how to deliver services is local culture. Some delivery mechanisms are more accepted on one country than another. Criminal services in England and Wales are now provided by way of contract to quality approved providers but on the basis of an open budget and no restriction as to numbers. Such a model makes sense for England with a long history of engagement in legal aid by a large number of private practitioners. It probably appears massively overcomplicated for a jurisdiction which is beginning to develop services. However, it may be interesting to look at the areas in which the English Legal Services Commission has been developing quality criteria (see para 26 of the appendix).
23. Those jurisdictions establishing a new criminal legal aid scheme, or reviving an old one, may be attracted to using private practitioners or salaried lawyers. The latter are generally cheaper per case, except perhaps in rural areas where numbers of cases may be relatively low. Salaried lawyers, in general, are better suited to running relatively routine or predictable cases because they can be better handled within a bureaucracy. The large number of negotiated plea bargains in the US relative to the UK would seem to be one reason why public defender organisations have thrived in the US but have only recently been deployed in the UK (albeit that another is the relative dominance of the private profession in legal aid). There may, however, be some advantage in using the private profession in terms of getting their co-operation and support.
24. A word of caution is needed over the phrase 'public defender'. It can mean very different things. In Israel, the office for the public defender contracts with private practitioners. In England and Scotland, public defender offices are small salaried experimental groups of salaried lawyers employed by the Scottish Legal Aid Board and the Legal Services Commission. They have been devised to be a totally different method of provision from private practice. In San Francisco, the public defender is elected by the people. In New South Wales, the post is a prestigious one concerned only with higher level advocacy. In many US states and in the US federally, it generally means an independent organisation that employs salaried criminal practitioners.

Criminal services: indicators of quality, whatever the delivery system

25. Whatever delivery system is deployed, the following determinants of good criminal services can be deduced from looking at examples of provision:
 - (a) high quality services need a high level of resources (see above);
 - (b) Contracting is best suited to routine caseloads and tends to lead to cases being treated as routine;
 - (c) The best schemes incorporate overflow arrangements for excess workloads;
 - (d) Disbursements and expert fees should come from a separate fund from representation;

- (e) The best results require a co-operative environment between funders and providers;
- (f) There should be objective standards of quality control and, perhaps, caseload maxima;
- (g) Care must be taken to provide for conflicts of interest;
- (h) Similarly, care must be taken to protect practitioners from undue media or political interference;
- (i) Jurisdictions take different views of the client's right to choose a lawyer;
- (j) Strong professional support is required to defend legal services against cuts in resources and improper political interference.

These are lessons taken specifically from a study of some criminal schemes in North America in the late 1990s.⁸

Civil

26. Civil legal aid schemes tend to cover four particular areas of work:
- (a) Family, including divorce and domestic violence;
 - (b) Public law claims eg in relation to enforcing rights under the European Convention on Human Rights;
 - (c) Private law claims, eg for personal injury;
 - (d) 'Poverty', 'administrative' or 'social welfare' law.
27. A particular issue arises over 'public interest' litigation ie litigation designed to use litigation in an individual case to test or to change the law for the benefit of the poor specifically or the generally. In the US, because of the history of legal services in the 1960s, this has, at least until recently, been seen as a major function of civil legal services (though it has led to fearful political debate). In the UK, there was historically no public funding for a public interest case as such – though an individual litigant might take a case with a high public interest. England now has a provision that allows legal aid to be granted where there is a sufficiently high 'public interest' and a special committee of the Legal Services Commission, the public interest applications panel, considers these and publishes its decisions on the commission's website.
28. A very efficient way of funding a degree of public interest litigation in a jurisdiction with limited funds is to provide the resources for a key agency that carries out this function. Thus, the South African Legal Aid Board provides funding for the Legal Resources Centre, one of the most impressive legal advocacy NGOs in the world.
29. The need for legal aid in relation to these categories will be different between jurisdictions and at different times. Traditionally, English legal aid focused on private law and family claims. However, as can be seen from the appendix, it is re-orienting itself towards public and social welfare law cases. Other systems, particularly those that made more use of community legal centres in one form or another, give more attention to social welfare law. Thus, this has been the case in the Netherlands, Australia and Ontario.
30. The extent to which family matters requires representation will vary according to local law and procedure. Legal aid was withdrawn in England and Wales from divorce in the late 1970s, though it remains for ancillary matters such as custody of children and maintenance. Some jurisdictions may require a lawyer's involvement to obtain a divorce: others will not. In almost all jurisdictions, it will be

⁸ See R Smith *Legal Aid Contracting: lessons from North America* Legal Action Group, 1998.

hard to avoid legal representation for domestic violence cases, though some have tried to shift these into criminal courts by a policy of mandatory prosecution.

31. Some jurisdictions allow contingency fees or variants of them. These allow a lawyer to act on a 'no win, no fee' arrangement when the likely result of a case is likely to be a sum of money. These are routine in the US for money claims. In England, they have until recently been unlawful. England also has cost-shifting rules which have deterred the development of such arrangements (ie the loser has to pay the winner's costs of litigation). However, conditional fees (allowing not a percentage of damages but an uplift of a set percentage on costs otherwise allowable) are now allowed. As a result, a combination of conditional fee arrangements with insurance arrangements which allow a litigant to cover their potential liability to the other side (and sometimes disbursement costs) have now thrived and are a major source of income for lawyers in, for example, personal injury cases.

32. One way in which civil cases differ from criminal ones is that a citizen may find it harder to realise that they have legal rights which need to be enforced. There is a need for the supply of information and advice short of representation. Different jurisdictions address this problem in different ways. Some have always put considerable resources into public legal education of one kind or another. A leader in this field has been British Columbia in Canada where there is a Law Courts Education Society designed to publicise the courts; a People's Law School as an independent educational organisation; and the Legal Services Society (the 'commission' managing legal aid) has continued funding of public legal education despite fairly major recent cuts.⁹ England and Wales has only belatedly accepted the need for this kind of activity. An interesting development with future potential is the use of websites both to identify providers of assistance and to give preliminary information on the law. The statutory powers of the Legal Services Commission are widely drafted in a way which goes beyond the simple provision of representation and which provide a reminder of the wider brief that is desirable. The commission may concern itself with:
 - (a) the provision of general information about the law and legal system and the availability of legal services;
 - (b) the provision of help by the giving of advice in particular circumstances;
 - (c) the provision of help in preventing, or settling or otherwise resolving, disputes about legal rights and duties;
 - (d) the provision of help in enforcing decisions by which such disputes are resolved; and
 - (e) the provision or help in relation to legal proceedings not relating to disputes.¹⁰In addition, it has power to plan or co-ordinate services and to set standards (see appendix).

33. A system of civil legal aid, as opposed to criminal legal aid, needs to concern itself with two tests – of means and of merit. Many jurisdictions agree that a short amount of legal advice should be free of both tests – see the entitlement, for example, for a free half hour of advice in the Netherlands. Beyond that, the means test is for each jurisdiction to set at an appropriate level for its resources and needs. The merits test has been taken to some sophistication in England,

⁹ See eg Gordon Hardy 'Pioneers in public legal education' in R Smith (ed) *Shaping the Future: new directions in legal services* Legal Action Group, 1995.

¹⁰ S4(2) Access to Justice Act 1999.

measuring the percentage likelihood of success against estimates of cost. However, this is probably too complicated for most Central and Eastern European countries. The former test used to be 'the private paying client test' – would a private paying client take a case in such circumstances. If there is to be a test of means in criminal cases, then the court may present a good body to take responsibility since it will have an interest in minimising delay. In relation to civil cases, the managing body for legal aid provides the obvious source of approving means and merits test. If you trust your legal aid providers, then the test can be devolved to them.

34. Many jurisdictions take the view that those with poverty/social welfare law cases are automatically entitled to assistance without a means test, particularly those that employ law centres or law clinics, like those in South Africa, Australia or Ontario, as a delivery mechanism. The payment of contributions would contravene the ethos of the clinic or centre.
35. A number of jurisdictions have found that community law centres (as in the UK), law clinics (Ontario) or legal centres (Australia) provide a good delivery model for civil services. Their big advantage to funders is that they are funded by grants fixed in advance and should not overrun. With community boards or management, they are attuned to the needs of their communities and well capable of maximising the use of their resources. In addition, they can operate as a magnet for other funds or for free legal services provided by members of the legal profession.

Conclusion

36. From the above emerge a number of questions to be answered by anyone devising a legal aid scheme which it may be helpful to make explicit because this process will encourage debate. These are set out in the executive summary at the beginning.
37. The contradictory pressures of modern existence within Europe play themselves out in legal aid, as elsewhere. The European Union is making increased demands for state assistance with representation in relation, for example, to cross-border cases or criminal cases where the development of a European Arrest Warrant requires mutual recognition of procedures and, thereby, agreed minimum standards. On the other hand, all states are hit by pressure on their resources.
38. All states in Europe need effective systems of legal aid. The form that these can take will vary considerably. The bad news is that history shows that states, like Quebec, that were once at the forefront of the delivery of service can suffer deteriorating services so that they fall significantly behind those that they once led. The good news is that the opposite can happen. As Bob Dylan remarked: 'those that are last will later be first, for the times they are a'changing'.

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