



Integrated Legal Services: The Role of Law Related Education

“Social Exclusion: A Role for Law”

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Introduction

1. This paper weaves three key elements. They are – defining outcomes, defining access outcomes, and the role law education might play.
2. The central thread, however, is that of defining outcomes and finally poses the question whether different jurisdictions with different ways of doing things could evolve a common set of indicators against which to benchmark progress. That question is not answered – but I would like to know what you think.

A starting point

3. A main question is, why would the State want to intervene at all. Obviously market failure is one driver. It is only too evident in all jurisdictions that there are likely to be large numbers within the community whose economic, social and personal circumstances would render them out of the range of legal services without such intervention. This is just plainly axiomatic of the business we are in. But the question still remains. Why would the State want to intervene at all? And do the answers to that in any way affect the way we run our legal services business, the nature of the services, or how they are funded or delivered.
4. In common with many other sectors many motivations and purposes are espoused. They range from the political/philosophical to the pragmatic. While I do not pretend to present a strict taxonomy here, there are some themes where I have chosen to illustrate their range and the difficult discussion on where to pitch the focus. For instance,
 - a democratic society works best when:
 - it operates on social order
 - that social order operates within the rule of law
 - citizens operate within the rule of law
5. Fine. But such an approach assumes that those good citizens:
 - know their rights and responsibilities
 - have the capacity to effect them
 - have the commitment to do so
6. At that level, the provision of publicly funded legal services is inextricably intertwined with the social and economic fabric of society. Lofty but fairly obvious particularly when the services are targeted at the economically disadvantaged, and those receiving legal services can often be reflected as performing poorly in a variety of social indicators. For them, each indicator is not something to be taken as a single indicator, but an expression of the situation their lives are at in a particular time frame. Indeed, multiple appearances on the poor end of social indicators are likely to have a compounding effect.
7. This approach is the basis of two major strands in the public legal services sector seen by:
 - the need to ensure the empowerment of those receiving the legal services by the quality of the service itself, the way and/or setting in which it is delivered,

or of those delivering services to act as general advocates to remedy the underlying causes of the presenting social and legal problems (a notable driver in the community legal services sector)

- the need to examine the relationships between legal problems and their underlying social drivers with a view to designing a framework for integrated (legal) services
8. Such perspectives are high level and can be different from (although equally valid) considerations such as:
- unrepresented persons clog up the courts
 - unrepresented defendants put more people in jail
 - people who don't get their tenancy rights fixed could end up on the streets, or
 - if landlords think that people can't get their tenancy rights fixed up then some landlords will rip people off
9. The point is that there are a range (or even a hierarchy) of reasons for intervention. They range from the lofty to the pragmatic. They can be viewed differently. All suggest a sense of justice that permeates them to some extent.

Outcomes – moving in and pinning them down

10. The point of the above is to acknowledge that there can be a range of purposes for public legal services. Often those purposes are implicitly or at best encapsulated by legislation and/or policy statements in such statements as “promoting access to justice”, particularly for the most disadvantaged.
11. Can we define that purpose more concretely, and can we measure it? That discussion centres both around defining outcomes, deciding at what level should they be pitched, and working out how to measure outcomes.
12. In New Zealand, the public sector reforms of the late 1980's introduced the requirement to define outputs. Appropriation is by way of classes of outputs. This means that a core public sector department's total appropriation is the total of those appropriations for classes of outputs. Public measures such as quantity, quality and costs are often broken down into outputs or even sub-outputs.
13. The New Zealand Legal Services Agency is a Crown Agency. As such it has a large degree of independence in terms of its statutory functions but is subject to the requirements of the Public Finance Act 1988. Through Vote: Justice it is appropriated through two separate output classes:
- The administration of legal services (in effect the administration of the legal aid scheme)
 - The provision of and access to legal services
14. In addition the Agency receives the following revenues:
- community legal services (ie community law centres) – interest off nominated solicitors' trust accounts
 - law related education and research – interest off an Agency reserve

15. We have found it useful to distinguish between the “administration” stream and the “provision and access stream”. For the latter the Agency has taken the opportunity to view its operations from an output basis. The approach has certainly assisted in viewing the overall business from a more integrated perspective. For instance by concentrating on the across the board legal services, we are more easily able to cross the divides between the legal aid scheme, community legal services and possible new services.
16. The approach brings with it three further areas for development:
 - defining service (output) outcomes
 - defining outcome measures
 - defining interrelated output measures
17. The move to defining outcomes is a whole of government one. While pockets of the public sector have explored their own requirements, Government’s own expectations across the board have been growing to the extent to being an imminent requirement. The Agency has been part of that development.
18. It faces a number of issues:
 - where to pitch the focus (in terms of the level of societal impact discussed above)
 - where it fits within an overall justice sector (see below)
 - how to define those outcomes simply but meaningfully
 - how to measure them over time
 - how to differentiate between legal services and Agency outcomes (and is there a difference)
 - how to distinguish between static and dynamic outcomes (ie what is important overall: what is important now)
19. Two outcome statements have been promulgated for the whole of the justice sector. For the purpose of this discussion, one of them relating to criminal justice, will not be raised here. The relevant outcome statement is:
20. “A fairer, more credible and more effective justice system (being a system in which people’s interactions are underpinned by the rule of law, and justice services are more equitable, credible and accessible.)”
21. In terms of the earlier discussion, this outcome pitches at a level in which interventions are:
 - firmly focussed on the “justice system”, and
 - within the general control of those entities with responsibilities for aspects of that system
22. Thus the fulfilment of that outcome is assumed as being a major contributor to wider intended social outcomes.
23. It is within that context the Agency has considered the definition of its own intended outcomes. We have approached the initial development in three ways. They are, describing possible intended outcomes for:

- the legal services funded or provided
- accessing justice
- the Agency itself (This paper will not discuss these. They are set out at Appendix 1. They do, however, include the prioritisation of level needs, barriers to access and quality of services.)

Outputs – the legal services funded or provided

24. By setting aside, for a time, the day to day perspective of administering the legal aid scheme or funding community legal services, we are able to consider our business from the perspective of services delivered. In New Zealand they are quite standard and would be of little surprise to many jurisdictions. They are:
- legal representation
 - legal assistance
 - legal advice
 - legal information
 - law related education
 - community law reform and advocacy
25. There are finer cuts in the definitions and nature of these. For instance, a distinction may be made between the nature of legal representation and advice under the legal aid scheme as against that provided under community legal services. Nevertheless, we have found it useful to pare back to considering the services delivered from a generic perspective.
26. In the first instance, and we are reviewing them, we have formulated the following legal services outcome statements:
- people¹ who have the greatest need for legal services and who meet the eligibility requirements:
 - have their legal needs met
 - have their rights and situation fairly represented in a dispute or hearing
 - can resolve or progress their legal problem themselves
 - know the options for resolving or progressing their legal problem
 - people can find out easily:
 - their basic legal rights and responsibilities
 - whether they have a legal need and should seek further legal services
 - where and how to get the legal services they need
 - communities are represented on community legal issues
27. The approach distinguishes between people who have the greatest needs and people generally. Thus the provision of legal representation, assistance and advice is targeted at the “eligible” population while the provision of legal information and law related education is not necessarily so. In practice, however, legal information and law related education are intended in a strategic sense to be focussed on those with the greatest legal needs, the least opportunity to overcome barriers to access, and the least capacity to pay.

¹ People may include groups depending on the circumstance

Outcomes – accessing justice

28. Access to justice is a phrase adopted in many shapes and sizes in various jurisdictions. In itself it raises the question of relativities, which in turn may impact on defining access to justice outcomes. There can be many approaches and it can be complex. One simple approach we are exploring is as follows:
- eligibility – defining those persons for whom eligibility to receive a service is clearly defined and who are required to meet certain criteria before service will be provided (eg means and merit test for legal aid); or for those for whom the services are primarily intended or targeted (this could be for the whole population or for defined populations)
 - opportunity – the genuine opportunity for those defined in the eligible or intended population to access the relevant services. That genuine opportunity might relate to physical, social, cultural and personal factors.
 - take up – the degree to which the eligible or intended population who have genuine opportunity actually avail themselves of the services

Outcomes - general

29. Defining outcomes simplistically from both the legal services and accessing justice perspectives is seen as complementary. Implementing a simplistic measurement system is far more difficult. At this stage, thinking on measurement for legal services outcomes is only at the preliminary “work in progress” stage. It may be useful, however, to give some indication on progress with defining accessing justice and later, how that might apply to the so far silent character of this paper – law related education.

Indicators of unmet legal need

30. In planning service delivery based on targeting those with the greatest legal needs and the least capacity to pay, we faced some basic initial questions:
- how do we define relativities?
 - where are the “eligible” people?
 - how many of them are there?
 - what opportunities of access are there?
31. The New Zealand Institute of Economic Research² (NZIER) was commissioned to complete relevant data to assist and to produce that as a map of New Zealand.
32. Derived from census data, one means of presenting demographic data is by area units. Such units are not uniform and reflect sensible if not arbitrary boundaries. With a population of around 4m, around 1700 area units were used to explore the calculation of indicators of unmet legal need for each of them. The variability is demonstrated by the following ranges:

a. population: 8820 – 0

² Indicators of Unmet Legal Need: A Map of New Zealand. New Zealand Institute of Economic Research November 2002

- b. SQKM: 4833 – .1
- c. population per SQKM: 6436 – below 1

33. The underpinning point in terms of planning service delivery nationwide, is the recognition of that variability. It reflects the geographic and demographic nature of the country. The data reflects, I believe four themes that assist in considering the provision of public legal services. They are:
- a third of the population aggregated in relative density within a large greater metropolitan area (Auckland and beyond)
 - a relatively small number of further metropolitan and provincial cities
 - a relatively large number of smaller towns, a number of which are not necessarily within easy access to services (not just legal)
 - some large tracts of areas with small clustered and dispersed populations which may have some difficulty in accessing services
34. That said, the question is the degree to which the various communities, whether at the area unit level or aggregated further, might have need for legal services.
35. The starting point was low income, based on the assumption that that is the “key factor” to most barriers to obtaining appropriate assistance. To that base was integrated a range of variables. It is not intended to canvass the methodology here, but for those interested, NZIER used principal component analysis. The variables used were:
- the proportion of the population:
 - under 25 years
 - of Maori ethnicity
 - of Pacific Island ethnicity
 - not living in the home they own
 - who are sole parents
 - the proportion of the population 15 years and over:
 - with a gross income under \$20,000
 - with no qualifications
 - the proportion of the population over 15 years of age:
 - who are unemployed
36. The final analysis amended some original variables:
- proportion of population aged 70 and over – dropped lower legal need score, counter intuitive
 - proportion of the population identifying as Maori or Pacific Islander – grouped to give higher explanatory power
 - new migrant communities – dropped, had a weak loading
37. The result was this. Each of the area units was awarded a legal need score. The material was presented by deciles (in a subsequent presentation January 2003) in three ways according to their place on the legal need score scale
- decile x area unit

- decile x legal need score
 - decile x population
38. The relationship between the deciles for area units and population is reasonable; but not entirely. For instance, if we were to take an arbitrary decision that the target population were decile 7 and above, then the difference is in the order of 125,000 people.
39. The distribution of the legal need score among the population, however, is significantly variable. For instance, 20% of the highest legal need scores are attributed to 2% of population, with 20% of the least legal need scores attributed to 16% of the population.
40. This approach is a useful, but very blunt instrument. It does not tell us:
- the level of the population with high unmet legal need in area units with low legal need scores
 - the nature and type of legal needs and the type of legal service that would best meet them
 - the cut-off levels
41. What it can do, however, is set aside anecdote and provide some basis for determining that particular communities are likely to have legal needs needing to be met, the location of those communities and any particularities such as densely metropolitan or isolated rural.
42. We will be using this blunt instrument to progressively enhance the platform by:
- building up more defined demographic data on the target area (such as ethnicity)
 - local needs research
 - the accumulated knowledge of service providers
 - matching them against the availability of services providers

Summary so far

43. So what's this all got to do with law related education. In developing outcome statements for public legal services we started with two approaches – for the legal services themselves, and for the dimensions of access. The question then is how to get some meaningful measures; and this is explored below.

Law related education

44. In terms of our outcome framework, we have clustered law related education with legal information. The latter is defined as the provision of neutral information on a legal topic or elements of it in a manner that is best suited to those receiving it. Legal information may be provided:
- in response to a real or perceived legal problem
 - in response to a person wishing to locate appropriate legal services
 - to enable a person to generally know their rights and responsibilities (including just in case rather than just in time)

45. The provision of legal information may be undertaken in the context of the provision of legal representation, assistance and advice. Given that it also has the intended outcome of enabling a person to find out easily where and how to get the legal services they need, it has the potential to be an integrating influence on the public legal services regime.
46. The provision of legal information can be done in many ways – face to face, telephone, internet, leaflets. Given the diversity of the way that people are best able to receive, and understand information; and given the diversity of communities as demonstrated by the Indicators of Unmet Legal Need, it is apparent that the service development and delivery strategy for legal information needs to be multifaceted.
47. The associate of legal information is law related education. To an extent it is a form of legal information but differs in that it provides such detail, guidance, contextual information and advice to its audience so as to enable the audience to gain a greater understanding.
48. The New Zealand Legal Services Agency does not provide law related education directly to the public. Rather, it has adopted The Law Related Education/Legal Information Strategy, which has the following components:
 - the Agency will act as the repository and/or gateway to both legal information and law related education material
 - in acting as a gateway the Agency will:
 - utilise its website as the primary resource to access other sites and materials
 - pursue the setting of uniform standards of content and presentation
 - in acting as a repository the Agency will:
 - build up an inventory of material on core legal topics
 - establish uniform material to be used for both the provision of legal information and law related education
49. Underpinning the strategy, is the role of the Agency as an enabler of others and a means to integrate services. In effect for law related education, this means providing “training” material to those who are going to “train” others, who in turn may be directly providing legal information to those who need it.
50. By way of illustration – a community law centre undertakes a programme on legal matters associated with domestic violence, to representatives of community organisations who are likely to interface with those affected; or a group of doctors are taken through the implications of the power of attorney so that they may be better informed if such matters arise in the course of their medical practice.
51. The strategy is only at early development stages. It potentially has a number of benefits:
 - those wishing to get basic legal information can get it from people in their community that they feel most comfortable with or are generally accessible
 - the potential for a wide spread of access points

- those providing have a degree of knowledge that assists them to give the right information but also so they know their limits
 - they use material that has uniform standards
52. Website access would be an alternative access route for those who wish.
53. There are drawbacks
- drafting comprehensive training material linked to legal information material, has been resource intensive and slow
 - using a wide range of access points could result in a wide range of variability in standards
 - the map of indicators of unmet legal need has demonstrated that there are communities of high levels of legal need score that might not get adequate access
54. This suggests that the strategy may need to be refined. For instance on the legal information side we are reviewing the efficacy of call centre services; while for law related information the question of standards for those providing presentations is an area for future development.
55. That, however, is a matter of what we are doing or might do. The theme of this paper is the impact that such initiatives might have – and that relies on the development of measures.

Measures

56. In the near future, the Agency will be required to establish measures alongside its outcome statements. Earlier in the paper we suggested that there were two approaches – one for legal services; and one for accessing justice. Our preliminary view is that we should focus on the latter, and to keep it as simple as possible. In effect, this would mean constructing measures around eligible or intended populations/ opportunity/take up.
57. Such an approach for legal aid might be somewhat more tangible, than say, that for the provision of legal information derived from our law related education strategy. Nevertheless if we are able to make some assumptions around our intended populations, drawn from the map of indicators for legal need, then this would be a major start. But that is work in progress.

Conclusion

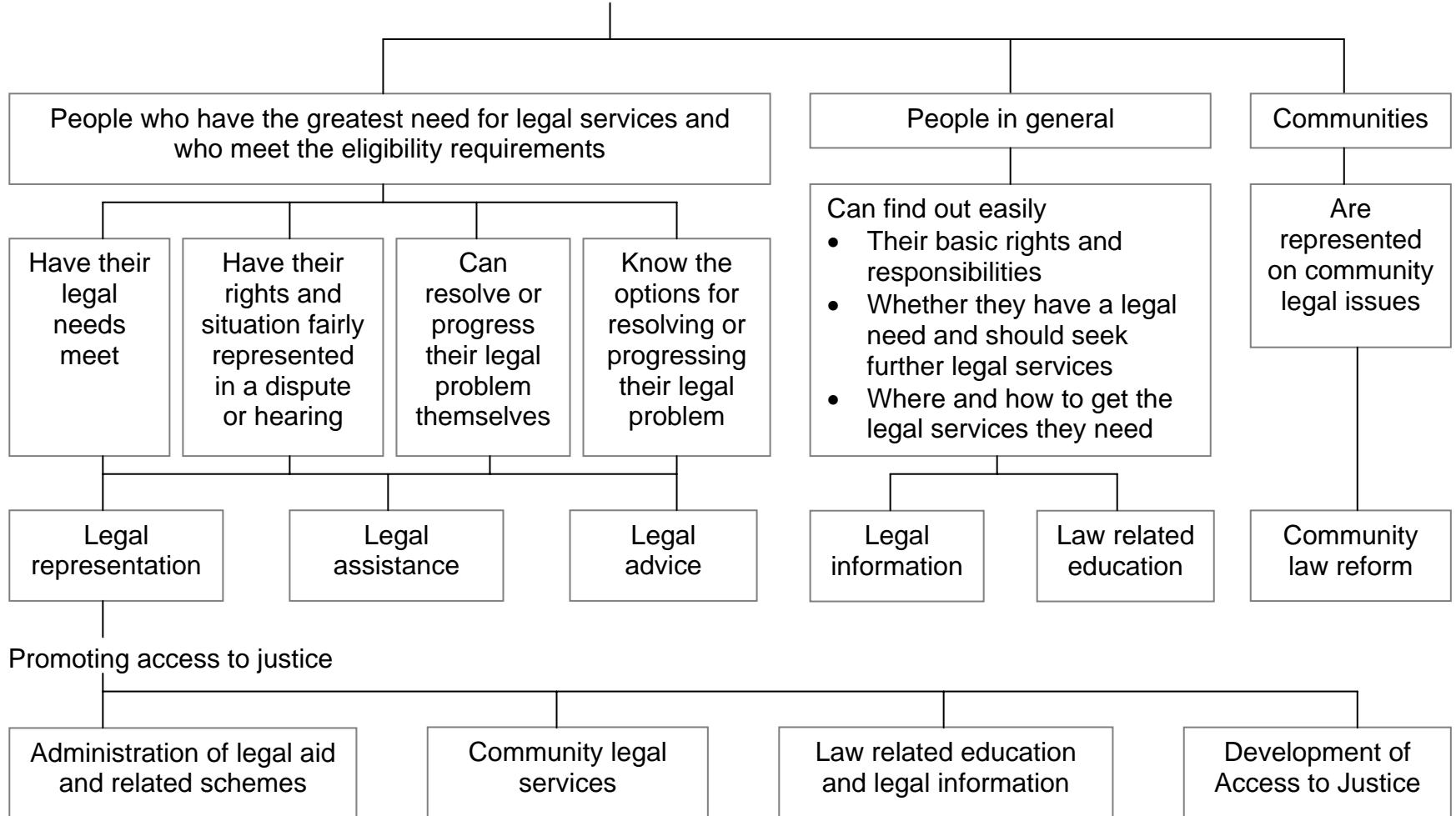
58. This paper has attempted to draw a long bow. It has covered:
- the issues of relating the provision of public legal services to the theme of social inclusion
 - the relationship of social to legal is better viewed at the outcome level
 - the degree that some assumption needs to be made about the contribution of justice outcomes to social outcomes
 - the establishment of legal services and accessing justice outcomes
 - the description of accessing justice outcomes in terms of eligible or intended populations, opportunity/take up

- the development of a map covering New Zealand in terms of legal needs scores and whether they might assist with defining eligible or intended populations
- the development of law related education as one enabler of the provision of legal information and the assertion that they provide a platform across all public legal services

Legal Services Agency Outcome Framework

Justice Sector A fairer, more credible and more effective justice system (being a system in which people’s interactions are underpinned by the rule of law, and justice services are more equitable, credible, and accessible)

Legal Services



Legal Services Agency

Brief profile

	2000/2001		2001/2002		2002/2003	
	Grants	Exp \$000	Grants	Exp \$000	Grants	Exp \$000
Criminal	44,404	31,069	44,702	33,845	40,109	35,192
Family	19,977	34,035	19,554	32,573	18,840	27,205
Civil	2,290	6,239	2,443	8,718	1,829	6,740
Duty Solicitor		4,508		4,839		5,330
PDLA		565		521		518
Total	66,671	76,416	66,699	80,496	60,778	74,985
Waitangi	43	4,438	62	5,581	37	7,298
Grand total	66,714	80,854	66,761	86,077	60,815	82,283

Listed providers 3,000

Community law centres 25

Funding 6.5m