

## THE OTHER SIDE OF THE MOUNTAIN

### ***An assessment visit by a team organised under the auspices of the Danish Centre for Human Rights to the Overberg Justice Project 9<sup>th</sup> to 15<sup>th</sup> December 2001***

*“You can’t eat human rights”*

*Wilfred Palmer, paralegal, Development and Advice Centre.*

*“We the willing, led by the unknowing, are doing the impossible for the ungrateful.”*

*Walter Wessels, paralegal, Lawyers for Human Rights, Stellenbosch*

*“Each one teach one”*

*Muriel Kroulson, Educator, Riviersonderend DAC*

### ***Introduction***

In the proud, new South Africa, quietly shedding its past, transformation of access to justice is taking place. Efficient allocation of resources through newly emerging “Justice Centres” is opening up legal access to more people in the rainbow nation. Early concentration on criminal defence is broadening to other issues of social welfare (labour law, eviction, family and consumer) justice. Links between Advice Offices out in the community in rural areas and the new Justice Centres provide essential avenues to legal access for the rural poor; farm workers and their families.

This report on the Overberg Justice Centre (“OJC”) is based on the findings of a team visit taking place between 9<sup>th</sup> and 15<sup>th</sup> December 2001. The methodology of the review, the composition of the team and the objectives of the assessment are set out below. A review of the academic literature then places this assessment in the context of developments internationally and the South African scene.

Earlier phases of the project are explained in order to recount the progression leading to the present stage. The Overberg Justice centre is then reviewed some four months after opening and suggestions are made for the future success of this project and the integration of advice ethos and paralegal services into access to justice.

### ***Methodology***

The assessment review of the Overberg Project was organised through the commission of a review team operating on a consultancy basis for the Danish Committee for Human Rights. The team was assisted by two officers of the Danish Committee and also by two existing members of staff of the Overberg Project and the immediate past Co-ordinator of that project. The team members and assistants were, as follows:

#### **The evaluation team:**

Avrom Sherr (Woolf Professor of Legal Education, Institute of Advanced Legal Studies, University of London)

Aymone du Toit (Community Agency for Social Enquiry)

**The team was assisted by:**

Karin Poulsen (Danish Centre for Human Rights)

Fergus Kerrigan (Danish Centre for Human Rights)

Ingrid Lestrade (Project Co-ordinator)

Walter Wessels (Assistant Project Co-ordinator)

Vanja Karth (Attorney, Immediate Past Project Co-ordinator)

Short biographies of the consultants appear in Appendix 1. The Terms of Reference of the review are set out in detail in Appendix 2. A list of documents considered by the review team appears in Appendix 3.

The review method involved:

- a) Consideration of project descriptions, reports and previous reviews of earlier phases of the project.
- b) A review of the academic literature.
- c) A programme of interviews with national, regional and local bodies who were stakeholders, funders, employers or contractees of the project.
- d) A programme of meetings with employees of the project and employees of an advice office feeding into the project.
- e) A programme of meetings with local and regional people and organisations affected by the project including clients, magistrates, prosecutor, local attorneys etc.
- f) A programme of visits to the sites of the Overberg Justice Centre, the Riviersonderend Advice Office, the Caledon Magistrates Court, Prosecutor's Office, Lockup etc.
- g) Consideration of case files in the OJC and the Riviersonderend Advice Office.
- h) An interview with another NGO operating a similar project with quite different structure, management and monitoring systems, for comparison.
- i) Discussions and feedback among the consultants, those assisting the project, and with staff and others on initial findings and considerations.

Telephonic and contact interviews were conducted by team members and those in assistance. Interviews with the Director of Lawyers for Human Rights and Justice Centre staff were conducted by the team members only. Interviews with clients were conducted by no more than two people to prevent clients from feeling intimidated by the presence of a large group. Travel to the Justice Centre and Riviersonderend Advice Office provided

members with the opportunity to assess the infrastructure and environment of these offices. A draft report was compiled for circulation among interviewees and stakeholders.

### ***Programme of the Review***

- ***Sunday, 9<sup>th</sup> December 2001***
  - 19.30 – 20.30 Organisational meeting and introductions
  
- ***Monday, 10<sup>th</sup> December 2001***
  - 9:00 – 9:30 Shadrack Gutto, Department of Justice, Legal Aid Transformation Team – telephonic (lost connection with him in North Africa)
  - 10:00 – 10:30 Vinodh Jaichand, Lawyers for Human Rights, National Director - telephonic
  - 11:00 – 11:30 Ingrid Lestrade, Project Co-ordinator and Walter Wessels, Assistant Project Co-ordinator
  - 11:30 – 13:00 Viewing video and press clippings on OJC launch
  - 14:00 – 15:00 Discussions on, and consideration of, case database and system with Walter Wessels
  - 15:00 – 15:30 Cheryl Loots, Department of Justice, Legal Aid Transformation Team - telephonic
  - 16:00 – 16:30 Martin Monyela, NCBPA, CEO – telephonic (cancelled - family bereavement)
  - 19.30 Dinner meeting to review the day.
  
- ***Tuesday, 11<sup>th</sup> December 2001***
  - 8:00 – 9:30 Drive through to Caledon
  - 10:00 – 12:30 Interviews with three Overberg Justice Centre staff members (Shane Samson, Hilda Edwards and Colin Lekay)
  - 14:00 – 14:30 Interview with Zueastrid Kiewitz, candidate attorney and her supervising attorney
  - 14:45 – 15:15 Interview with Machell Jacobs, candidate attorney
  - 15:20 – 15:40 Interview with Basson & de Villiers
  - 15:45 – 1700 Interview with three clients of the Overberg Justice Centre
  - 18.30 Team feedback and discussion session
  
- ***Wednesday, 12<sup>th</sup> December 2001***
  - 8:30 – 9:30 Interview with Messrs. Le Richie and van Wyk, magistrates in Caledon
  - 9:45 – 10:15 Interview with Mr Engelbrecht, prosecutor in Caledon
  - 10:30 – 11:30 Interview with Philmacs Bugenhagen, candidate attorney at the Overberg Justice Centre
  - 11:30 – 12:15 Travel to Riviersonderend Advice Office
  - 12:15 – 14:15 Interview staff of Riviersonderend Advice Office (Isak, Ben, Wilfred, Muriel and Iva)
  - 14:00 – 15.30 Interviews with clients of the Advice Office
  
- ***Thursday, 13<sup>th</sup> December 2001***
  - 8:00 – 11:00 Travel to Stellenbosch
  - 11:00 – 12:00 Interview with Cordelia Robertson, principal attorney, Legal Aid Board - Stellenbosch
  - 14:00 – 15:00 Interview with SCAT fieldworkers in Cape Town, (Joanne, Linda, and Clynton)
  - 15:00 – 15:30 Interview with Mr. Vincent Saldanha, Legal Resources Centre
  - 16:30 – 17:00 Interview with Achmat Simaar, National Cluster Co-ordinator, WESCOPA
  - 19.30 – 22.30 Team feedback and discussion session

- ***Friday, the 14<sup>th</sup> of December 2001***
  - 9:00 – 15:00 Team meeting, Report writing, Discussion
  - 15:00 – 15:30 Interview with Odette Goldenhuys, Head of Access To Justice, Legal Aid Board – Pretoria
  - 15.30 – 18.00 Discussion, Report Writing
  
- ***Saturday, the 15<sup>th</sup> of December 2001***
  - 9.00 – 23.15 Debriefing, Report Writing, Review and Discussions

## ***Literature Review***

The provision of State funded access to legal services is quite well covered in academic literature dealing with Common Law countries and the Netherlands. There is less information and study and research available in relation to “legal aid” in Civil Law countries. South Africa’s legal family roots span both Common Law and Roman-Dutch law, together with some areas of customary law and the effects of the new constitution. The legal aid system inherited from the pre-1994 government was largely based on the “judicare” model in which private attorneys were funded out of the government Legal Aid Board funds to carry out work within particular subject categories for poor litigants. Civil work was awarded to attorneys on application and criminal work by a form of rotation from the courts. The new constitution clarified, to some extent, the responsibility of the State in relation to access to justice (see below), but the legal aid system remained relatively unchanged until a new Legal Aid Board was appointed in August 1999.

The new Legal Aid Board under the chairmanship of Mr Justice Navsa has begun the modernisation of the delivery of state funded legal services in South Africa through a set of changes in the legal aid delivery system. “Justice Centres” (in terms used in the international literature, a cross between law centres and public defenders) operated by teams of staff attorneys and others, will provide the main delivery of legal services under the new legal aid system. Eventually, an archipelago of new justice centres would cover the country, but until that occurred private attorneys in some towns would still have to take cases on a much reduced judicare fee. Ideally also there would be some links between the more haphazard pattern of Advice Offices situated in rural community areas which could feed more serious civil issues up to the justice centres.<sup>1</sup>

The most comprehensive and complex legal aid systems in the Common Law world have gone through considerable redevelopment in the last fifteen years. Most have been visited by a growing “managerialism”<sup>2</sup> controlling both the outlay of funds and the process of the work. “Quality” has become a major issue for all legal aid provision, at times of

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<sup>1</sup> Legal Aid Board 3<sup>rd</sup> Draft Business Plan for 2000-20003. The cluster system, which incorporates advice offices, is set out on page 32 but it is noted that the possible implementation of such a system in respect of civil legal aid will depend on the funding available to the Legal Aid Board, the priorities established by it in relation to the provision of legal aid and the legislation and accreditation systems put in place by the State.

<sup>2</sup> See Goriely, T. *Debating the Quality of Legal Services: Differing Models of the Good Lawyer*, (1994) International Journal of the Legal Profession, 159 and, more generally, Harden, I., (1992), *The Contracting State*, (Buckingham, Open University Press).

financial restraint.<sup>3</sup> The Neighbourhood Law Centre movement started in the 1960s in the United States as a result of the “War on Poverty”<sup>4</sup> and then moved to the United Kingdom in 1970 with the establishment of the first law centre in North Kensington.<sup>5</sup> Zander charts in great detail the English and Wales Law Society’s major opposition to such changes and subsequent movements to try and incorporate these into its own control.<sup>6</sup> Law centres still exist in different forms and in many parts of the world,<sup>7</sup> despite some early resistance.<sup>8</sup> Of more recently growing interest is the importance of the “not for profit” advice agencies in England and Wales which began to be funded by the Legal Aid Board (now Legal Services Commission) as a part of the new “franchising” and “contracting” environment, employing salaried staff to work on advice and assistance cases. In a recent study it was found that the quality of such advice and assistance was better in the not for profit advice agencies, operated by paralegals, than in the solicitors’ firms funded to do similar work. The outcomes of their cases were better in terms of money obtained for clients and action prevented by third parties.<sup>9</sup>

Public defender systems began in the United States also in the 1960s. More recent work has shown how important it is for public defender systems to have some element of *judicare* continuing alongside them, in order to set up a level of comparison and competition between the two systems.<sup>10</sup>

Assessing legal need and prioritisation, an area which received some attention in the literature of the 1970s, has also become important recently<sup>11</sup> and recent books on what people do about going to law have also assisted in understanding the different “Paths to

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<sup>3</sup> See, e.g. *Competence and Quality Issues in the Legal Profession*, Guest Editor, Alan Paterson, Volume 1, No. 2, 1994 issue of the International Journal of the Legal Profession and *Legal Aid in the New Millennium*, Editors Sherr, A. and Paterson, A., Vol 33, No 2 (2000), University of British Columbia Law Review and Sherr, A.H. with Paterson, A., *Quality Legal Services: The Dog That Did Not Bark*. Chapter 10 in *The Transformation of Legal Aid, Comparative and Historical Studies*, Regan, F. et al, 1999, (Oxford University Press).

<sup>4</sup> Earl Johnson Jr. *Justice and Reform*, 1974, (Russell Sage, New York).

<sup>5</sup> See Zander, M., *Legal Services for the Community*, 1978, (Temple Smith, London), pp 59-100.

<sup>6</sup> *Ibid*, page 64-88.

<sup>7</sup> See, e.g. Zemans, S. *The Community Legal Clinic Quality Assurance Programme: an Innovative Experience in Quality Assurance in Legal Aid*, (2000), University of British Columbia Law Review, p. 243 and Richardson, J. *Law Centres Experience of Information Work in Shaping the Future – New Directions in Legal Services*, ed. Roger Smith, published by Legal Action Group, 1995, p. 113.

<sup>8</sup> See, e.g., Stephens, M., *The Law Centre Movement: Professionalism and Community Control* in Bankoski and Mongham, *Essays in Law and Society*, RKP, 1980, p.127 and Cooper, J., *Public Legal Services – A Comparative Study of Policy, Politics and Practice*, Sweet & Maxwell, London 1983.

<sup>9</sup> Moorhead R., Sherr A. et al, *Quality and Cost, Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot*, (Stationery Office, London 2001).

<sup>10</sup> Goriely, T. (1997), *The Legal Aid Delivery System: Which Offer the Best Value for Money in Mass Casework? A Summary of International Experience*, Research Series 10.97, Lord Chancellor’s Department, London; see also Goriely, McCrone, Duff, Knapp, Henry, Tata, Lancaster and Sherr, *The Public Defence Solicitors Office in Edinburgh, an Independent Evaluation*, Scottish Executive, 2001.

<sup>11</sup> Opie, A. and Smith, D., *Needs Assessments: Knowing Disadvantaged Communities in Aotearoa/New Zealand*, (2000), University of British Columbia Law Review, p. 405 and Orchard, S.M. CBE, *Needs Assessment and Prioritisation of Legal Services in England and Wales*, (2000), University of British Columbia Law Review, p. 447.

Justice”.<sup>12</sup> In addition, many recent studies have considered how lawyers and clients interact and how best clients can be served.<sup>13</sup>

Legal Aid in South Africa is as much affected by politics and funding, as in other countries.<sup>14</sup> Budlender noted<sup>15</sup> in 1995 the massive-development of community based advice offices throughout the country, run by paralegals under the direction of local community groups<sup>16</sup>. He suggests that a few hundred advice offices existed in 1995 with approximately 1,200 paralegals operating in 400 organisations and projects. He notes that a number of NGOs provide training assistance and backup and that the financial assistance which came from “anti-apartheid” money before 1994 was drying up leaving the movement in a financial crisis.

He concluded:

“The advice office movement is the only part of the system of advice and assistance which provides a reasonably national coverage. It is a rich but dwindling asset in the provision of advice and assistance”.

As a result he advocated, “a broad base of publicly funded advice and assistance” organised through the paralegals in advice offices.<sup>17</sup> Paralegals began by referring about fifteen percent of their cases up to lawyers in the Legal Resources Centre, but with the development of skills and experience that figure came closer in 1995 to 2%. He thought it would cost, “just two million pounds per year” to provide the support necessary for those advice offices which as a system could act as the base for all legal services provided they were “organically connected” to a legal service to which (they) can refer cases for litigation. Public funding for such organisations would prevent political “capture” by a particular political, or other, group and could help the organisation of training, certification and integration of paralegal services with other publicly funded legal services. Budlender’s prescient account clarifies the exact position aimed for by the project.

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<sup>12</sup> Genn, H., *Paths to Justice*, (Hart Publishing, 1999) and Genn, H. and Paterson, A., *Paths to Justice Scotland*, (2001). See also, Curran, B., *The Legal Needs of the Public*, Chicago, American Bar Foundation, 1989.

<sup>13</sup> See, *Synthezing Research on Lawyer-Client Relations*, Plenary by Professor WLF Felstiner at the W.G. Hart Workshop, June 2001, Institute of Advanced Legal Studies; *Client Care for Lawyers: An Analysis and Guide* (2<sup>nd</sup> Edition) Sweet and Maxwell, London 1999, Sherr, A.H. (1999); Sarat, A., and Felstiner, WLF., (1995) *Divorce Lawyers and their Clients – Power and Meaning in the Legal Process* (OUP, Oxford).

<sup>14</sup> Budlender, G., *The Politics of Legal Aid in South Africa in Shaping the Future – New Directions in Legal Services*, Ed., Roger Smith, Legal Action Group, London 1995.

<sup>15</sup> *Ibid*, p. 132.

<sup>16</sup> Paralegal practitioners and advice offices started practising during the late apartheid era. Advice Offices and paralegals have traditionally performed a quasi-legal function, and include a development and welfare component in their work. Originally, they developed to assist victims of discriminatory laws and practices.

<sup>17</sup> *Ibid*, pp. 133-4.

## *The Three Phases of the existing project*

### **Background to the Overberg Justice Centre Project**

The project is now in its third phase. Understanding its progress so far is important in evaluating its current success.

#### **Phase 1:**

A project funded by Danida was launched in 1996 in the Overberg region with particular emphasis on primary legal service delivery. It was organised in response to the need for transformation of South Africa's justice system in keeping with the 1994 transition to democracy. The aim was to pilot a viable and effective government-sponsored rural legal aid system. The project aimed to attract black law graduates to the target area and set up an appropriate primary legal service for marginalised citizens at a cost affordable to the state.

The government has a constitutional obligation to provide access to justice for the country's citizens (see below). The 1996 system of legal aid relied heavily on qualified lawyers who were paid on a per case basis ("judicare"); a financial burden in excess of government funds. Legal aid for the most part only provides assistance regarding litigation, and not advice on rights relating to interaction with the state bureaucracy, employment or other contractual relationships. Private attorneys are out of reach for most people in terms of cost and there is limited access to the small number of black attorneys practising in the rural areas.

**Target groups:** The immediate beneficiaries of the project included the rural litigants and advice seekers within the target magisterial district (see map). The project also provided direct benefits to the target advice office by providing training and skills development.

**Activities:** This phase consisted of two components: paralegals operating from community-based advice offices, funded through the project; and candidate attorneys operating from existing firms of attorneys, funded by the Legal Aid Board. These two components operated independently from each other but with co-operation facilitated by the Project. Advice Offices from the region were able to make use of the candidate attorneys' services, many of whom spent up to one day a week at the advice offices.

This new model of legal aid delivery was an important success. Legal aid applications in some jurisdictions increased by as much as a hundred percent. The Legal Aid Board calculated it to be the most cost-effective model at less than one third of the national average per case (excluding the costs of the paralegal services). It was felt that a large part of the success resulted from the collaboration between the candidate attorneys and paralegals and the project team calculated the cost at still well below the national average per case when including the paralegal costs.

**Management:** The Stellenbosch Lawyers for Human Rights office was financially and administratively responsible for the project. The project was managed by a project co-ordinator based in the Stellenbosch office and assisted by a management committee made up

of four representatives of the Overberg secretariat, two other LHR staff members and a Wesscopa representative.

**Challenges:** It was clear to observers at this stage that there was some tension between government policy as reflected in the Justice Ministry's Vision 2000 and the role which the Legal Aid Board envisioned for itself. It was evident that the Legal Aid Board would be the implementing agency for any transformation of legal aid, but that the Board itself was not in complete agreement with government on how this process would evolve. The transformation of the Legal Aid Board itself was in process. Parliament had passed legislation to change the composition of the Board itself and make it more representative but government delayed promulgating the relevant clause.

The situation was highly frustrating for those involved in the sector who wished to see the rapid practical implementation of the Vision 2000. The Legal Aid Board was asked to enter into a second partnership with the project on a Phase 2 model. Despite indications of support and ongoing discussion, the Board ultimately decided to wait until after the Legal Forum, which was finally held in January 1998, before committing to any further projects.

## **Phase 2:**

**Objectives:** Based on the success of the interaction between the advice offices and the candidate attorneys, the aim for the next phase of the project was to extend this to include a Justice Centre staffed by paralegals and attorneys. This would combine with the continuation of the network of services provided by the satellite advice offices in surrounding towns and the candidate attorneys.

The Legal Aid Board would continue to fund the candidate attorneys and the goal was that they would take over the funding for this network of services, including the advice offices once it had proved to be a successful model.

**Target groups:** Again, the immediate beneficiaries of the project included the rural litigants and advice seekers within the target magisterial district.

**Activities:** Transformation of the justice system continued during the project period. A new Legal Aid Board was appointed in August 1999. Following this, a process of drawing up a business plan for the Legal Aid Board for the period 2000-2003 commenced. Part of the plans of the Board included the establishment of Justice Centres (and included the Overberg model) in both rural and urban areas – either as state run institutions or as independent centres in which the Board would enter into co-operation agreements with other organisations.

Following the release of the LAB business plan, which was delayed until April 2000, invitations were sent out nationally to all NGOs involved in the legal field to submit proposals for co-operation agreements for the delivery of legal services to the indigent. The Board also held a one-day workshop with these organisations in Johannesburg in July 2000, detailing its plans and criteria for proposals. Submission dates for these



proposals was the end of July 2000. The project submitted a revised proposal adapted to meet the Board's criteria. The major changes to the planned pilot and in line with the Legal Aid Board's criteria, was that the Justice Centre would become a Lawyers for Human Rights (LHR) office with all staff, including the paralegals, in the Centre being LHR staff. The satellite advice offices would remain members of the national paralegal association.

Government had also been working on the inclusion of the paralegals into the formal legal system. A draft Legal Practice Bill was drawn up and circulated for comment in August 2000 as part of the consultative process regarding legislation to regulate legal practice. It followed the National Legal Forum on Legal Practice which took place in Pretoria in November 1999 and is based on the consensus reached at that Forum. For the first time, paralegals were to be included and recognised as legal service providers in this Bill.

In November 1999 the Legal Aid Board reduced the tariffs paid to attorneys for legal aid work and reduced the scope of provision in civil cases. This had a vast impact on the provision of free legal services to the poor as many attorneys stopped taking on legal aid cases. It highlighted again the desperate need for the provision of accessible and effective legal aid as well as auxiliary services to ensure access to justice for the poor. In order to address the shortages the project provided training for the paralegals during this time in areas of civil law such as maintenance and divorce.

At an internal level, there were certain developments that affected timeous implementation. The project commenced operation with the paralegals at National level as the partner organisation. Within the funding period it became apparent that the paralegal association at National and Provincial level, lacked the capacity and resources actively to promote and engage in the project. It would seem that their greater focus was the realisation of the inclusion of paralegals into the Legal Practice Bill. There is no overall plan for the immediate need for sustainable funding from other government sources for advice offices at this stage.

The project therefore adapted its strategy for the next phase to focus on capacitating the paralegals at local level within the Overberg, to develop a local funding plan.

**Management:** A strategic planning meeting was held to reconsider the management structure of the project. An assistant co-ordinator, seconded from the NCBPA was placed in the Stellenbosch office to work alongside the LHR co-ordinator. The Management Committee would continue to guide the project. LHR also began a process of centralising its finances and administration. The project funds were now held at Pretoria and disbursements made monthly to the project office.

It became clear later during this period that the Management Committee was not working as an effective management structure. Towards the end of 1999, the project had encountered problems with certain members of the OCBPA withdrawing from the project as well as a lack of commitment from some advice offices to fulfilling their obligations

under the co-operation agreements. Those offices were also the offices headed by the individuals who were on the Management Committee and therefore the Management Committee was disbanded and the co-ordinator and assistant co-ordinator managed the project with regular reports going to the NCBPA, LHR national and Wesccopa offices.

**Challenges:** Although the Board approved the project proposal in September 2000, there was a lengthy delay from that decision to the actual production of the co-operation agreement for signing. Any practical implementation was dependent on the pace of the Board. Without the signed document, the planned establishment of the Justice Centre could not go ahead, delaying in turn the activities needed to prove the efficacy of the model. The document was produced by the Board for signing on 31 May 2001, and would be valid for a period of two years, commencing on the 1 June 2001 till 31 May 2003. The Legal Aid Board committed itself to an amount of R778 406, 20 annually.

Besides challenges faced from state developments, the project also faced challenges at local level. LHR Stellenbosch went through staffing changes, leaving the project largely unmanaged until September 1999 when the new project co-ordinator was appointed. Historically, the project had relationship problems and conflicts between the paralegal component and the LHR office. The project felt that until these problems were sorted out and a healthy working relationship established between all the role-players the project could not progress at any real level. Towards the end of the 1999 it became clear that it was only certain elements within the paralegal association that wanted to obstruct the progress of the project. At the same time it emerged that there was mismanagement and lack of financial accountability within certain advice offices. The project together with the NCBPA launched an investigation into the Overberg forum as a whole as well as the individual problematic offices. The Caledon Advice office was closed down and the Overberg Community based paralegal association (OCBPA) forum disbanded, as much of its leadership had been responsible for the problems. This coincided with the disbanding of the Management Committee.

The project then scheduled regular bi-monthly meetings with representatives of each advice office as well as the candidate attorneys as a replacement structure for the Management Committee. This forum continues to meet regularly and is successful. In early 2000 a new advice office was opened in Caledon with new staff members and by the third quarter of the year a new OCBPA forum established. The Viliersdorp Management Committee was replaced and the one staff member removed from the office.

Since all of these changes were put into place, the working relationship between the two partners in the project improved immensely and there was an improved output in activities and goals. A new Overberg Forum was constituted late in 2000 and there now exists a strong partnership between the two project partners.

### **Phase 3:**

**Objectives:** The project was on the point of achieving the establishment of a Justice Centre, but without adequate time to test the model and prove its efficacy. In order to ensure continued funding from the Legal Aid Board for the Justice Centre component, it was critical to provide ongoing reports and statistics rewording activities and interaction between the Justice Centre and satellite advice offices.

This project is currently the only model of a rural Justice Centre that actively works with advice offices in the surrounding towns at this stage, and thus the only model that can effectively evaluate and monitor the interaction and outputs of the Justice Centre and satellite advice offices. This was particularly important because of the apparent lack of an alternative plan for ensuring sustainable funding for the advice offices and demonstration of their efficacy as a model for possible replication nationally.

It was also the only model for creative partnerships with other government partners in order to ensure sustainable funding for the services provided by the advice offices. As well as this, the project intends to explore the possibility of co-operation with the advocates of the Cape Bar in order to obtain their services for the clients of the Justice Centre when necessary.

This phase was conceptualised as a joint initiative of LHR and the Overberg Community Based Paralegals (OCBPA), and while the Justice Centre would be run in partnership with the Legal Aid Board, the project would attempt to find other government partners to come on board to fund the advice offices.

It also aimed to capacitate the Overberg paralegals to establish their own funding sources within government as well as setting up a central office for the co-ordination and monitoring of their activities on a sustainable basis.

**Target groups:** The immediate beneficiaries of the project would again include the rural litigants and advice seekers within the target magisterial district. The project would also provide direct benefits to the target advice offices and Overberg paralegals as a whole in that it would capacitate them to seek and source sustainable funding as well as to capacitate them to manage and oversee the advice offices within the region in a professional manner.

**Activities:** The project office set up a Justice Centre in August 2001 in Caledon . The centre is staffed by paralegals, candidate attorneys and a principal attorney and serves the magisterial districts of Caledon, Villiersdorp, Riviersonderend, Bredasdorp and Hermanus. The centre has links with four advice offices in the area<sup>18</sup> and with the other candidate attorneys based in other law firms<sup>19</sup>. The Justice Centre was officially launched in October 2001.

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<sup>18</sup> Napier, Genadendal, Villiersdorp, Riviersonderend

<sup>19</sup> Basson in Napier (Jean Roman); Claughton and Wehmeyer in Grabouw (Analyze Abrahams); Basson & de Villiers in Caledon (Machelle Jacobs), and Guthrie & Theron in Caledon (Zuastrid Kiewitz)

The assistant co-ordinator worked with the OCBPA to produce a funding proposal and a change in structure of the OCBPA from being a voluntary association to a Trust in order to fulfil the requirements of the new Non-Profit Act.

**Management:** The project continued to be managed by a co-ordinator and assistant co-ordinator while the finances and main administrative functions are fulfilled by LHR national office.

**Challenges:** One of the biggest challenges facing the project at this stage is the depletion of donor funds to some of the advice offices. Two of the participating advice offices had their funding cut making it difficult fully to test the model of interaction between the advice offices and justice centre. At the same time it would appear that the goals of the project in this final phase are not receiving adequate attention and support from the NCBPA and LHR at a national level.

### ***Foundation of the Overberg Justice Centre***

The Overberg Justice Centre was established in August of 2001 and opened formally on October 23 of 2001. The OJC is based on a model of legal service delivery different from previously existing models. It is the subject of a Co-operation Agreement between Lawyers for Human Rights and the Legal Aid Board. The Legal Aid Board funds a principal attorney and a candidate attorney inside the office. Lawyers for Human Rights fund two paralegals that also work inside the OJC. There is also a secretary/administrator/assistant in the office. Details of staff are to be found in Appendix 4.

Funding for the paralegals currently comes from the Danish Centre for Human Rights. The cooperation agreement states that the funding for the paralegals will be taken over by the Legal Aid Board when the Danish funding ceases in 2002. There is therefore great urgency in assuring the sustainability of this project.

The model involves relationships with four outlying advice offices in rural areas in the Overberg. The theory of the model involves paralegals in those advice offices carrying out work for the local population in areas of their competence including labour disputes, evictions and some family law issues. The theoretical model provides for a relationship between these outlying advice offices in rural communities which refer cases to the lawyers at the OJC when necessary.

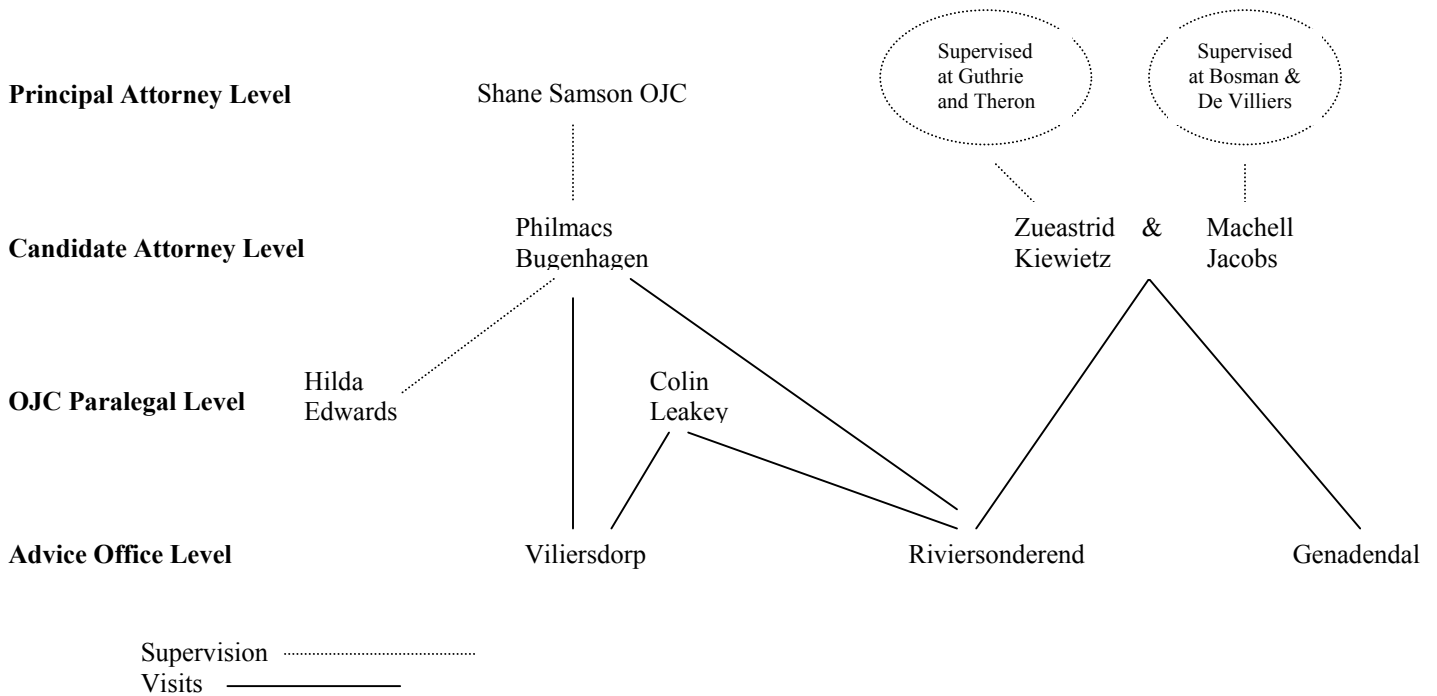
In order to provide the links between the advice offices and the OJC, the candidate attorney from the OJC attends at two of the advice offices each week. He visits Villiersdorp on Tuesday mornings and Riviersonderend on Thursday mornings. Staff at the advice offices set up consultations with the candidate attorney on behalf of advice

office clients on these days. One of the paralegals from the OJC also attends the advice offices at Riviersonderend and Villiersdorp occasionally in order to give advice.<sup>20</sup>

Currently, but only during the next nine months, a parallel system exists funded through the Legal Aid Board for black candidate attorneys in local white attorneys' firms. The system is organised in such a way that each candidate attorney takes at least ten criminal cases per month and is paid a salary by the Legal Aid Board. The principal in the firm in which the candidate attorney works is also paid an administration and supervision fee for that candidate attorneys' work. During the continuation of this parallel process (which is part of an earlier phase), one of the candidate attorneys placed in a firm in Caledon has been supervising and assisting the advice offices in Riviersonderend and Genadendal every Thursday morning and Thursday afternoon respectively. The other candidate attorney whom the team interviewed was formerly assigned to the Caledon advice office but when this office closed, she was not reassigned to another advice office.

This parallel element will be phased out during the course of the next nine months to one year. In the new phase, all candidate attorneys will be supervised within the justice centre and will carry out similar work (but perhaps different proportions) from within the OJC.

***Organogram in December 2001***



<sup>20</sup> He had been to Riviersonderend three or four times and at Villiersdorp twice since the centre opened in August.

This organogram shows the relationships between the paralegals in the advice offices, the paralegals and candidate attorney in the OJC and the supervising attorney in the OJC. It also shows the existing relationship of the candidate attorneys placed in local law firms and the advice offices. Work is fed through from the advice offices, where they are not able to handle cases going to court, onwards to the OJC, which acts as an attorneys' office providing any court services necessary. It is also available for second tier advice and back up to the advice office paralegals when necessary.

### ***The Overberg Justice Centre in reality***

The OJC is set up close to the business centre of Caledon. It is a building comprising an attractive office, well organised and designed, providing an open and inviting environment for clients to obtain information, advice, assistance and education in relation to a vast range of areas of enquiry. The centre is stocked full of leaflet information on human rights in numerous areas of life. Posters adorn the walls demonstrating the needs for awareness of human rights. Leaflets on AIDS/HIV are everywhere. Pleasant and interesting pictures completely unrelated to the law and rights are also to be found in the offices and in the waiting area. It has the feel of both a working and a welcoming environment, which is well maintained and professional, yet easy to access.

During the visit, the premises appeared spacious enough for all those who worked in it to carry out their work and also have some clients waiting. Apart from the supervising attorneys' office, the rest of the premises were largely open-plan. Even the supervising attorneys' office opened out to a separate area, which was used for education purposes, but was only divided from his office by a set of curtains. The ethos of the office is openness, yet confidentiality might be important for some, if not all, clients. An "open door policy" appeared to be an important element of the work of the Centre. But it may also be necessary to organise places where clients can feel less exposed to the ears and eyes of others. These are, however, cultural issues also and it may be that the decision of the Centre to organise its atmosphere and conditions in this way is in fact appropriate. This must be a decision for the staff and for the community, rather than an outside assessing body.

It is very early to provide any assessment of the work of the centre barely four months since it began. However, some defining elements already appear. The major work of the principal attorney and the candidate attorney in this initial four months has been centred around the local magistrates' court in Caledon and magistrate courts in the rural towns. The predominant aura of these two legal staff is defending criminal cases in the atmosphere, and as part of the engine, of the magistrates' court. In addition to the supervising attorney and candidate attorney, one of the paralegals attends each Monday morning to organize the legal aid applications in the court for defendants who have been detained over the weekend. This larger number of defendants needs a third person to sort out and organize so that they are not detained any longer than necessary.

The results from this concentration of work are evident. The courts and the magistrates are extremely happy with the OJC. Defendants might previously have been detained for

two to three weeks whilst waiting for legal aid to be settled, an attorney to be allocated, a consultation to take place and a date for court return to be set. In the new system all this can take place within the span of ten minutes, according to the magistrates. The rather slow system of the court clerk operating legal aid application and allocation has been taken over by the OJC lawyers and paralegals, in order to ensure that defendants are not left waiting in detention for longer than necessary. All of this speeds up the process and makes more obvious an easier access to criminal defence. All elements of the system appear to be pleased with its success. The prosecutor is enabled to deal with pleas and bargaining, the magistrates are content with the quality of defence and the speed of the court. The defendants are dealt with in “ten minutes”, rather than two-three weeks. In summary, a slow cranking process involving a haphazard allocation of cases among local attorneys’ offices has been immensely assisted by (what amounts to) a public defender system administered and organised by the OJC.

This obvious success and its first blush of achievement is enormously important for the continuation of a new Justice Centre and a new project. The supervising attorney and the candidate attorney in the OJC and the candidate attorneys from the earlier phase in other attorneys’ offices all must be congratulated on providing a highly important service both to the criminal defence clients and to the operation of the criminal judicial system. This core of achievement will provide guidance for the building of other centres in a similar model throughout the country, utilizing Legal Aid Board funds in a more efficient and effective way than the previous judicare system and enabling the court to operate in a speedy and effective manner.

Later in this analysis, we will consider what future lessons may be learned in relation to this area of the OJC’s work. However, it is essential to understand how crucial the operation of such core services are for the criminal defendants, the judicial system and the new Centre.

In addition to this core of criminal work undertaken by the attorneys, the work of the paralegals in the OJC has also taken off with corresponding success. The two paralegals working in the office are concerned mainly with labour and dismissal cases, but also some welfare benefit and pension issues, some family law issues and some consumer cases. A large throughput of both “walk in” and longer cases has already been built up during the first four months. These cases cover a wide area of activity including labour, divorce, maintenance, social welfare, civil matters, workman’s compensation and eviction. There is a steadily growing through put in each of these areas throughout the four months of operation. A statistical summary of cases carried out in the first four months of operation as reported to LHR and the LAB is found in Appendix 5. This caseload is a considerable achievement by itself. Whereas the criminal cases are present and ready inside the Magistrates’ Court, the civil, labour and family work of the office is generated only by public awareness, reputation and knowledge of the access available at the OJC. It appears that this workload has been both immediate and continuing. Clients, satisfied with the way in which they were dealt with and the outcomes of their cases, gave tributes to the work of the individual paralegals at the office. The team also considered

files of the paralegals. There was evidence of a high level of competence and a degree of zealous advocacy on behalf of clients shown in these files.

It is a clear tribute to the work, reputation and esteem of the paralegals in the OJC that this level of civil legal work has been attracted and that the cases have been carried out to the satisfaction of clients and generating good outcomes in the form of results.

### ***Who “owns” the Overberg Justice Centre?***

*“This is the people’s justice centre. This is your justice centre. You pay for it.”*

(Minister of Justice, Mr Penuel Maduna, opening speech addressed to the people of the Overberg at the launching of the Overberg Justice Centre, Caledon, October 2001)

This model of legal service delivery involves a group of stakeholders in its organisation and control. The original funders appear to allow local conditions to set their own pattern of management and control. The Danish Committee for Human Rights adds knowledge and experience to the project, generating the conditions for strategy development. It closely monitors progress and mediates between the different players, but tries to avoid interference with those working on the project. The main players in terms of management must therefore be the employers of those working in the Centre, the Legal Aid Board and Lawyers for Human Rights. The principal involvement in organising the Centre and its ethos appeared to be the staff that works within it. It may well be that there should also be some wider community involvement in the management, organisation, and decision making for the OJC. At present its workload, aura and systems come from the mixed backgrounds of professional lawyers and advice offices. The effect, as explained above, is welcoming and pleasant. Yet each of the two elements might learn a little more from the other background. A community involvement in managing the centre, or at least in providing advice to those who work in the centre would be an added enhancement to its future sustainability and its success.

The OJC has many institutional stakeholders. Among them are the Legal Aid Board, Lawyers for Human Rights, and the local judiciary and prosecution. Then there are the poor people of the Overberg, whom the Centre is mandated to serve – farm workers, women, children. The interests of the latter are voiced mainly by the paralegals at the Advice Offices in the region. How are the competing claims of these stakeholders as well as those of the staff to be weighed against one another? What should be the priorities of the Centre in determining how the resources of the Centre should be allocated?

A first question could be put in terms of the balance between criminal and civil legal aid. There are legal claims made on the OJC by the Constitution, through the obligations it lays down in Articles 34 and 35 regarding the provision of legal aid in civil and criminal cases. Article 35 requires that legal assistance be provided free of charge in any case where substantial injustice might be done to someone who cannot afford it. These words have been interpreted in the courts to mean that a combination of criteria, including the



complexity of the case, the severity of the sentence, and the vulnerability of the accused must be taken into account in the decision whether or not to grant legal aid to an indigent person. In practice, the LAB in its internal guidelines says that assistance should be provided free of charge to indigents where an offence carries a penalty of more than three months imprisonment.

The criteria to be applied in civil cases are less clear. There is as yet no clear South African jurisprudence on the issue. Practice elsewhere would lead to the conclusion that there is an obligation to provide legal assistance where the denial of it would amount to a denial of fundamental rights, including the right of access to a court. The seriousness of the issues at stake for the life and well being of the party seeking legal aid, the complexity and difficulty of the case, and the vulnerability of the indigent in question should be relevant. It is incumbent on the state to provide adequate resources to meet these needs, and, represented by the Legal Aid Board, to ensure that the resources made available for legal aid are used in such a way as to maximise, in quantity and quality, the legal assistance available to poor people.

The LAB, in determining eligibility for non-criminal legal aid currently operates with three groups of vulnerable (and indigent) persons who are entitled to preferential treatment: women, children and homeless and landless people. A fourth group will probably be added in the 2002 – 2003 financial year: those affected by HIV/AIDS. There is clear value in, for example, promotional campaigns targeting particular vulnerable groups. However, an approach based on vulnerable groups rather than fields of law or kinds of case could be difficult to operate. Should the Justice Centre take any case, of whatever nature, as long as the applicant fits into the vulnerable group? Should a clearly indigent person who does not fit into the group (for example a man living in his own shanty who has been the victim of unfair consumer loan practices) not be entitled to assistance? An additional problem may be that the members of these target groups may not necessarily be the ones approaching the Justice Centre. These observations are based on the limited knowledge the team was able to gain of the Legal Aid Board's guidelines and practice. It is likely that more detailed guidelines are to be found with the LAB, and these may clarify these issues further.

At present, the lawyers at the OJC seem to be able to handle all of the cases which reach them, both civil and criminal<sup>21</sup>. If, at some point, the burden becomes too heavy, it will be necessary to prioritise. It is important that this prioritisation should be explicit and thought out, rather than occur by default – where labour, ESTA, “consumer” and divorce cases may simply sink to the bottom of the pile.

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<sup>21</sup> The Agreement between the Legal Aid Board and Lawyers for Human Rights signed by the parties in May 2001 refers, on page 4, to several legal services which fall within the Project but are excluded from Judicare, such as family violence matters, maintenance matters and non-litigious advice. Note that one of the paralegals in the Justice Centre was under the impression that the Centre could not handle maintenance matters. There may need to be some clarification on the ambit of work which the OJC may undertake.

There appeared to be some uncertainty as to the possibility of initiating claims sounding in money<sup>22</sup> and problems of litigating such claims without a trust account. A barrier to the litigation of claims sounding in money may be presented by the absence of a trust account held by the OJC. The Legal Practice Bill should make provision for establishment of trust accounts by Justice Centres, or for some other arrangement more appropriate for a public organ, which would enable the JC to take monetary claims on behalf of its clients<sup>23</sup>. The Principal Attorney at the OJC, Shane Samson, explained that the courts had agreed to make monetary awards payable directly to claimants, thus obviating the need for trust accounts. However, this may not always be possible.

In order for the words of the Minister about ownership of the Justice Centre to be made a reality, we think that consideration should be given to the establishment of a Consultative Board which should include representatives of the client communities and advice offices as well as existing partners in the project and their staff. On such a body the various stakeholders could meet on a regular basis and discuss issues related to the management and work of the centre.

### ***Constitutional provisions, Legal Aid Board Policy and The Role of Advice Offices***

The Legal Aid Board in its third draft Business Plan covering the period 2000 to 2003 notes two of the Constitutional sections which establish a role for the State in the provision of access to justice.

*Section 35(2) Everyone who is detained, including every sentenced prisoner, has the right-  
(c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly.*

*35(3) Every accused person has a right to a fair trial, which includes the right-  
(g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly.*

These provisions relate to the rights of detained and accused persons in criminal matters. However, the Constitution also makes provision for access to the law in a broader context. The Access to Courts section provides that:

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<sup>22</sup> Although Legal Aid Board policy excludes these cases from the realm of judicare, it is unclear whether the same applies to the Justice Centre. While there may be grounds for this exclusion in the context of private attorneys who may obtain costs out of a settlement, the same rationale would not apply in the case of the Justice Centre.

<sup>23</sup> Since the initial drafting of this report, provision has been made by the Law Society for Justice Centres to operate such accounts.

34. *Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.*

This section has been used in several instances by the courts to declare legislation which constitutes a barrier to access to the courts unconstitutional<sup>24</sup>. In one such matter, the court considered the constitutionality of legislation which prohibited legal representation in civil proceedings before certain courts which apply customary law. It held that the right of access to court and of having justiciable disputes settled by courts would be rendered entirely nugatory if there were no right to legal representation<sup>25</sup>.

Although it is unclear what the full implications of this right are for legal aid in the context of civil disputes, the right to have a justiciable dispute resolved by a Court could amount to some form of right to legal representation in civil matters.

Similarly, the Equality clause provides that:

9. (1) *Everyone is equal before the law and has the right to equal protection and benefit of the law.*

Jurisprudence on this section relates predominantly to the issue of discrimination by the State and private bodies but it may also have implications for the question of legal aid. The use of the word ‘benefit’ in addition to ‘protection’ may be taken to imply a right which goes beyond the defensive situation to include a right to enforce law as an initiator/plaintive. This would find application in civil matters.

Finally, section 28(1)(h) provides that every child has the right to have a legal practitioner assigned to him or her by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.

The limitations clause would be of application to these rights and the limited financial capacity of the State may be seen to justify their limitation. However the sections indicate that access to law is envisaged in a broad sense in the Constitution.

At present the Legal Aid Board provides legal services to indigent persons through Clinics, the Public Defender’s System, the Overberg Pilot Scheme and the Judicare System. Although the clinics also handle civil matters most of their time is occupied by

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<sup>24</sup> Examples include provisions providing statutory expiry periods for the commencement of civil actions; a rule of court which obliged an applicant for rescission of a default judgement to furnish security for costs as a prerequisite to being able to make the application. (an order overturning a judgement obtained by default, for example, if the defendant did not furnish pleadings in time and the plaintiff has received default judgement in his or her favour as a result)

<sup>25</sup> *Bangindawo & others v Head of the Nyanda Regional Authority & another* 1998 (3) SA 262 (TK) at 277 E-G. Parliament’s amendment of many pieces of legislation with the *Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996* which removes provisions constituting a barrier to access to the courts is also along the lines of this section.

criminal cases<sup>26</sup>. The Public Defender System, currently established in Johannesburg, involves the employment of professional staff by the Legal Aid Board to attend to matters on behalf of indigent people. Although its work has since been expanded to family matters and general legal advice, its focus is also criminal law.

The judicare system which involves giving instructions to legal practitioners on behalf of persons who satisfy a means test, covers civil, criminal, constitutional, labour and other matters. However, this system is being scaled down and seemingly phased out in favour of the Justice Centre model. In a circular issued by the Legal Aid Board<sup>27</sup>, it is provided that 'no legal aid instruction shall be issued to any legal practitioner in private practice before it is ascertained by the legal aid officer whether a Justice Centre, either in the magisterial district concerned or any adjoining magisterial district, has the capacity to take on the matter. If a Justice Centre has the capacity to take on the matter, the legal aid instruction in question will be issued in favour of the Justice Centre.'

Furthermore, judicare instructions in respect of the institution or continued prosecution of any personal injury claim or any other claim sounding in money have been stopped. New tariffs in respect of civil matters are drastically reduced. For example, in respect of taking instructions and submitting a report on the merits of the matter to the head office of the Legal Aid Board a legal practitioner shall be entitled to a fee of R110,00 excluding VAT.

The reason given by the Legal Aid Board for moving to the Justice Centre Model is to provide all embracing legal assistance centres for the indigent, rural poor and landless to receive a one-stop service. The Justice Centres are to provide advice, mediation and arbitration services, legal representation in court, dispute resolution and other services. Under the judicare system the practitioner performed the work specified in an instruction. The idea is that practitioners at the Justice Centres will provide a fuller service to the client.

In its Business Plan the Legal Aid Board sets out that this transformation of Legal Aid must achieve several things including assisting the State in meeting its constitutional obligations, ensuring that the indigent, disadvantaged, women and children get access to legal aid, ensuring that the rural areas get proper access to justice and that quality services are rendered<sup>28</sup>.

It is in this context that the work of the Justice Centres should be measured. Staff dealing with non-criminal matters in the OJC should be properly supported<sup>29</sup>. There is primarily one paralegal in the Justice Centre who is currently responsible for the labour and security of tenure matters. The attorney in the Justice Centre felt that she does not need

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<sup>26</sup> *Business Plan 2000-2003, 4 (draft)*

<sup>27</sup> Changes to the Judicare Scheme and Consequential Amendments to Legal Aid with Effect from 1 November 1999 as amended by Circular No.1 of 2001 WEF 1 April 2001

<sup>28</sup> As noted earlier, the Legal Aid Board recognises three priority groups of vulnerable persons which it intends to target including women, children, homeless and landless people. To these a fourth group might be added in 2002 - HIV/AIDS sufferers.

<sup>29</sup> The majority of women litigants, for example, would be seeking non-criminal assistance.

much supervision or support since she is well trained and competent but he will provide assistance when she asks for it. This paralegal has a matric certificate and a certificate from a paralegal training course conducted by LHR and the University of Stellenbosch. The course comprised 90 days of full-time instruction covering areas such as labour law, constitutional law, family law, the role of paralegals and advice offices. She has worked as a paralegal since 1994.

However, she indicated that although she manages well with the work which comes her way (about 4 walk-in clients per day or 100 per month), she feels that she would benefit from further training in the areas of labour law and extension of security of tenure legislation. It is also important that the formally qualified practitioners in the Justice Centre give adequate attention to the civil matters which come to them from the paralegal in the OJC and from the advice offices for litigation.

In addition, the output of the Justice Centre should not be measured by the Legal Aid Board in such a way as to favour the litigation of criminal matters, which may be completed more cheaply and more quickly than more complex non-criminal matters. It is also in this context that the work of advice offices, which form part of the present model, is important. The work of community based advice offices is in large part determined by the need in their areas. Not only are they situated close to the source of the problems in many cases, but to the extent that there are proper links with a Justice Centre and other sources of qualified assistance in more complicated matters or matters which require litigation, they ensure that the work of these bodies and people is informed by the need on the ground. If these links are strong enough, their presence may prevent Justice Centres from becoming only “engine rooms” for criminal matters being heard in the magistrate’s courts.

Secondly, the services provided by advice offices at community level are diverse. In many instances, an advice officer’s role is simply to telephone a government department on behalf of someone who is illiterate or unsure of how to solve a particular administrative problem and to act as a mouthpiece for the client. An advice officer’s role may simply be to enquire about a late pension pay out. The importance of this service should not be underestimated. It goes towards the practical realisation of certain of the socio-economic rights in the Constitution. Although the Justice Centre is capable of performing a similar role, advice offices are able to deal with a range of issues without having to refer clients to a Justice Centre which may be some distance away.

Several cases in Riviersonderend Advice Office, which the team visited, are illustrative of the role which they play in the Overberg model. In one matter, a farm worker who had allegedly been assaulted by his employer and then dismissed, was advised first to approach the police station to lay a charge<sup>30</sup>. When the farmer laid a counter charge, the advice officer handed the case to the candidate attorney from the Justice Centre to handle. However, the advice officer also wrote a letter to the farmer and referred the matter to the

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<sup>30</sup> In a similar matter, the client was not taken seriously at the police station until staff from the advice office accompanied him.

CCMA. Inspection of this file revealed detailed attendance on the matter and at the time of researching the report, confirmation of a date from the CCMA was being awaited.

Much of the work of the Riviersonderend Advice Office involves the mediation of disputes between local parties and assisting clients with consumer related cases. It assists with completing Small Claims Court referrals, applications to the Department of Home Affairs, and applications for disability grants. Education programmes also form an important part of the work of the office. One of the paralegals interviewed believes that many people are still not aware of their rights and he has been involved in conducting workshops for farmworkers on surrounding farms.

Apart from the Justice Centre, the Riviersonderend Advice Office also refers clients to the Centre for Rural Legal Studies and the Department of Labour. The candidate attorney from the Justice Centre comes once a week before going to the magistrate's court and a candidate attorney placed in one of the firms also comes to the office once a week to pick up referred cases. Although these candidate attorneys currently help mainly with criminal cases, there are several instances in which the Advice Offices have referred civil matters<sup>31</sup>.

It was difficult to gain a picture of the number of cases referred by the Advice Offices to the Justice Centre, noting also that some of the cases are referred to the candidate attorneys placed in law firms in the area. The collection of statistics needs organisation and clarification (see below). According to the supervising attorney at the OJC, about 2% of the OJC cases come from the advice offices but this figure may be higher and Budlender estimated 15% (see above). It is unclear what proportion of the work of the advice offices this represents. The closing down of two of the participating advice offices also made it difficult to assess the links between the Justice Centre and the Advice Offices at this point.

That the links between the Advice Offices and the Justice Centre should be strong is important because the quality of the services provided to the public is dependent upon ready access to practitioners who may litigate and provide assistance in complicated matters. These links are crucial for the avoidance of a two-tiered system of justice amounting to only under-qualified assistance being offered to the poor.

The co-ordinator of the legal section in the Riviersonderend Advice Office (a paralegal) believes that the relationship with the Justice Centre has improved the services which the Advice Office offers because clients may consult with the candidate attorneys who attend weekly.

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<sup>31</sup> The OJC candidate attorney cited a case involving the threatened eviction and dismissal of a farm worker which has been referred to him by the Viliersdorp Advice Office.

Despite the fact that community-based advice offices play an important role in the State's fulfilment of its broader Constitutional obligations as well as the Legal Aid Board objectives, they currently face a funding crisis.<sup>32</sup>

The Head of the Access to Justice Programme at the Legal Aid Board indicated that the Board has a budget for co-operation agreements but that the question of whether it should enter into co-operation agreements with Advice Offices is still undecided. To do so would have many implications since there are many Advice Offices throughout the country and there would have to be criteria for the decision to fund or not. Although she recognised that one of the strengths of the Overberg Justice Centre is its links to the Advice Offices in the region and stated that the Legal Aid Board would try to foster similar links, she did not expand on the ways in which this would be done.

### ***The continued involvement of private firms in achieving access to justice***

With the phasing out of *judicare* in favour of the new Justice Centre model, the role played by private legal practitioners in the provision of legal services to the poor is being curtailed. While there are clear advantages to the new system, there should be scope in policy for the continued participation of private law firms in the struggle to make access to justice a reality for the poor. This is for two reasons. First, as pointed out in the literature review, recent international work has shown how important it is for public defender systems to have some element of *judicare* continuing in order to set up a level of comparison and competition between the two systems. A similar case could be made in respect of non-criminal work. The continued participation of private legal firms in providing legal services to the poor at state expense may go towards preventing a two-tiered system of justice from developing.

Secondly, private firms and practitioners have significant capacity to contribute to the transformation of the legal system. Indeed, there exists a professional duty on private legal practice in this regard. There should be scope for firms in which the will and capacity exist, to contribute to the massive task faced of ensuring that rights on paper are translated into a reality for poor people. Progressive forces in private practice should be drawn into this task as they represent existing infrastructure and expertise.

This issue arose in two interviews conducted by the team. The principal of one of the attorneys placed in a local law firm in the second phase of the project stated that he had both expertise and real interest in this area and hoped to be involved in cases when the attorney at the Justice Centre was conflicted out or occupied elsewhere. The interview with Cordelia Robertson at the Legal Aid Board in Stellenbosch also raised this issue. We were told that the competence of such private practice lawyers was variable, but some would continue to be used.

Small firms with a history of human rights work in a non-criminal context and a large amount of litigation experience in these areas would effectively be excluded from

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<sup>32</sup> One foreign donor (ICJ Sweden) pulled out of 60 advice offices last year and will pull out of another 60 this year.

continuing with this work if Legal Aid no longer pays for the poor rural client. Existing goodwill which is not utilised may atrophy. There is value in the example which these firms set and the effect of such peer-pressure should not be underestimated.

More importantly for the purposes of this report, the placement of candidate attorneys from disadvantaged backgrounds in white firms in phase two of the project yielded interesting results and this type of arrangement has continued potential. The barriers presented by a two-tiered system of training and service provision are eroded by such arrangements. Some candidate attorneys felt that they were overworked and that they did not receive good training or support but in other instances both the firm and candidate attorney felt that they had benefited from the experience. One of the candidate attorneys interviewed believed that the training she had received had advantages over the training which she would have received in the Justice Centre. She felt that the work she received was more varied and that she was exposed to areas of work not covered in the Justice Centre.

There were also ramifications from the point of view of the rural client. The agreement between the Legal Aid Board and firm sets a minimum of 10 criminal matters a month. She also receives walk-in clients who have labour and divorce issues. Clients at Advice Offices in Genadendal and Riviersonderend had heard that she was placed in the firm and came to seek assistance. Whereas these clients may never have entered the doors of a law firm, they now did, knowing that there was someone there to whom they could turn for help.

This model of legal aid delivery, which included paralegals operating from Advice Offices, was an important success. Legal aid applications in some jurisdictions increased by as much as one hundred percent. The Legal Aid Board calculated it to be the most cost-effective model at less than one third of the national average per case (excluding the costs of the paralegal services). This success resulted largely from the collaboration between the candidate attorneys and paralegals. The cost was calculated at well below the national average per case when including the paralegal costs.

In future, candidate attorneys will be placed in the Justice Centre. However, it may be sensible to consider continuing with a parallel model of candidate attorneys in existing firms. This may also have value in those areas in which Justice Centres do not yet exist<sup>33</sup>.

Finally, it should be monitored how much non-criminal work the candidate attorneys take on since the quota relating to criminal cases does dictate a priority for criminal matters and may discourage candidate attorneys from taking on other work. Legal Aid Board

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<sup>33</sup> Problems which would have to be addressed if this model were to be replicated are first, the fact that the project found it difficult to find applicants who were willing to relocate to a rural area. Secondly, the Legal Aid Board was paying only R1750 on average as a monthly salary to the candidate attorney whereas the Law Society of the Western Cape recommends R3000 for the first year. Thirdly, there is a shortage of availability of accommodation for rent in rural areas and lastly, the community outreach component of the scheme is limited if the candidates do not own a vehicle - Lawyers for Human Rights 'An overview of the status of legal services for the indigent in the Caledon magisterial district including legal aid, candidate attorneys and paralegal advice offices' For the Period January 2000 – May 2000, July 2000.



policy and its interpretation of its constitutional obligations towards the rural poor in the delivery of access to justice can make a large difference in this work area.

For most people, it is law in its non-criminal guise which has real significance for their lives and there must be support given to the woman who is evicted from her home without due process; to the unfairly dismissed labourer who is the sole bread winner; to the illiterate consumer who enters an extortionate credit agreement. The litigation of test cases is essential. But the ultimate difference will be made for the rural poor when ordinary matters brought by ordinary people are successfully litigated so that law on paper begins to have meaning for the people it seeks to protect. And this in turn will prevent the need for any drift into criminality by attacking social problems at an earlier stage.

### ***What is a paralegal?***

The definition of a “paralegal” is currently in a state of flux. Presently, anyone may call themselves a “paralegal”. The Legal Aid Board Director in Stellenbosch referred to a Legal Aid Officer, having tasks of completing legal aid applications, conducting basic interviews and referring cases to lawyers, as a “paralegal”. One staff member of the OJC who has completed his LL.B is occupying a paralegal post. In the Advice Offices, or among those who have come from the “paralegal movement”, one hears frequent references to “a certified paralegal”, and occasionally to an “associate paralegal”.

Achmat Simaar, National Cluster Co-ordinator of the National Committee for Paralegals and Wescopa representative, explained that different categories of paralegals will need to be considered along the lines of the South African Qualification Authority as a result of the aim to professionalise paralegals. There will be three levels of paralegals: a) fundamental/basic training (present), b) core/certified training (present) and c) diploma status (future). The latter will grant paralegals the right of representation in lower courts. It is currently being considered that they do away with the basic training. In the move towards professionalisation, paralegals who hold a vast experience but less training may be excluded, he explained. Elsewhere, it has been possible to find ways of accrediting experience through forms of portfolio assessment. It is hoped this might be a way of passporting good, experienced paralegals into the system.

For paralegals to play a role in the provision of services in a transformed system of legal aid, two concerns must be reconciled: firstly to conserve, recognize and develop the tremendous resource which is represented by the Advice Offices as an initiative which has sprung from marginalized communities themselves, which are close to these communities, and understanding of their needs,<sup>34</sup> and secondly, to ensure that legal services provided to these poor communities are of a high quality. As Achmat Simaar, put it, “with recognition must come regulation”.

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<sup>34</sup> See also Budlender *op cit*.

On one hand, there is a tendency among the traditional legal profession and magistracy to disparage the quality of advice and assistance provided by the Advice Offices. On the other, an argument is made among progressive lawyers that the poor and marginalised should not receive “discount” justice, that the poor are entitled to the same quality of legal advice, assistance and representation as the rich. This high level of legal service is unquestioningly equated with the paraphernalia of the lawyer.

Both of these approaches lead to the same marginalizing of the role and usefulness of the Advice Offices, a tendency which the team views as very unfortunate. Experience from other countries,<sup>35</sup> and the observations we have been able to make of work carried out by paralegals in the Overberg give the firm view that paralegals can provide some legal services more appropriately, cost effectively, and at least as well as lawyers.

In the OJC, the Principal Attorney, Candidate Attorney, and (legally educated) paralegal, all told us that they routinely refer to, and ask the advice of their paralegal colleague in all labour and related matters.

The comparative advantages of paralegals, properly qualified and structured, include these characteristics:<sup>36</sup>

- trusted by the community;
- accessible to the community, geographically and culturally;
- time to listen;
- real understanding of, and empathy with, the community’s problems;
- able to achieve community based mediation of problems;
- experience of handling cases in particular subject areas not necessarily considered as “legal areas” by the lawyers;
- involved equally in handling problems and educating people to handle their own problems;
- ability to know their own limits and refer onwards cases they cannot handle;
- ability to identify community wide issues for test case or policy work;
- cheaper.

Paralegals (whether so called or not) specialized in particular legal fields are now a common and respected feature of legal systems in most western countries, often with rights of representation / appearance before certain courts and tribunals. This Report wholeheartedly endorses such similar arrangements in South Africa as are currently proposed in the context of the Legal Practice Bill.

The training given to the paralegals encountered by the team generally consisted of a basic course, introducing the notion of a paralegal, and providing instruction in basic skills (such as interviewing and basic legal writing), and a more advanced course concentrating more on particular areas of the law. While these courses appear to be

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<sup>35</sup> See above, *Quality and Cost, op cit.*

<sup>36</sup> See also Budlender, G., *op cit.*

rigorous and well conducted, they are not regulated or recognised by the South African Qualification Association although we have been informed that the NCBPA has been negotiating in this direction.

Most interlocutors agreed that the ideal overall framework for paralegal training would enable the paralegal to gain credit for such courses and certificates towards an LL.B qualification. In this respect, the involvement of universities, such as the University of Stellenbosch, in conducting such courses, already provides a useful building block.

There also seemed to be an acceptance of the possibility that a paralegal could, by obtaining qualifications and accumulating certifiable experience, gain rights of appearance before certain tribunals or courts, (such as the Labour Court) and/or in certain matters (such as divorces).

When regulation of an “articling” or professional apprenticeship for paralegals is considered, it is recommended that a lawyer should be able to serve as a “principal” for paralegals. This would link up well with the justice centre model, where both paralegals and lawyers work together.

Incorporating paralegals, the paralegal movement and the Advice Offices into the formal structure for the delivery of legal services is a mission which cannot be completed overnight. Current needs make it essential to use all existing experience to its utmost limit. It is necessary to train those with experience who have no qualification. It is necessary to train further those with both basic qualification and experience to be able to work to the full extent of their ability and competence. The three level system for training and qualification of paralegals now under consideration, and mentioned above by Achmat Simaar, seems both reasonable and appropriate. But it is essential to incorporate existing experience if existing and medium term needs are to be met. Qualification systems must be determined which will include experience, casework, a portfolio of teaching materials, cases and other papers etc., as has been utilised within many post experience qualification systems for vocational work in other countries.

It is not useful to deny a large section of the population the benefit of such experience by suggesting that the work of paralegals may not be as good as the work of lawyers. It is a particularly baseless argument when lawyers would not be carrying out their work anyway and this client group would have no access to justice.

The way to guarantee the quality of legal work is through external monitoring systems coupled with training qualification and management. Even lawyers can be well qualified and perform badly. This is a long-term aim but sewing the seeds for such a system should begin early.<sup>38</sup>

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<sup>38</sup> See “Lawyers – The Quality Agenda” Sherr et al 1994, HMSO and “Quality and Cost” Moorhead et al 2000, The Stationery Office.

In the interim phase during which paralegal qualifications will be developed before full recognition and regulation, some hard decisions will need to be made in relation to experienced paralegals without qualification. Some, with management experience, will be exceptionally useful in managing the early years of transformation. Some will be excellent in training others but may need to be brought more within formal training systems, in order to do so. Others will be happy to remain as advisers but should have recognition of their experience through portfolio, case record and diary systems, as above mentioned. Yet others may find the time right for moving on to other jobs or to retirement. This will be a difficult time for the paralegal movement and in order to ensure the growth of the whole garden some weeds may need to be pulled. But it is also a time for development, growth and transformation. Delay in organising a system for training, qualification, recognition and regulation will only further unsettle an already complicated and difficult period.

Once through this time of uncertainty, the future for paralegals in South Africa must be excellent. The provision of legal services cannot be undertaken without them. Their clients bear witness to the excellent work they can achieve. The cost of providing their service is so far less than that of lawyers on judicare, that they must be considered, if access to justice is to be made a reality. Professionalising the service will provide a professional discipline, a level of competence and a certainty which the justice system needs, and which competent paralegals already deliver.

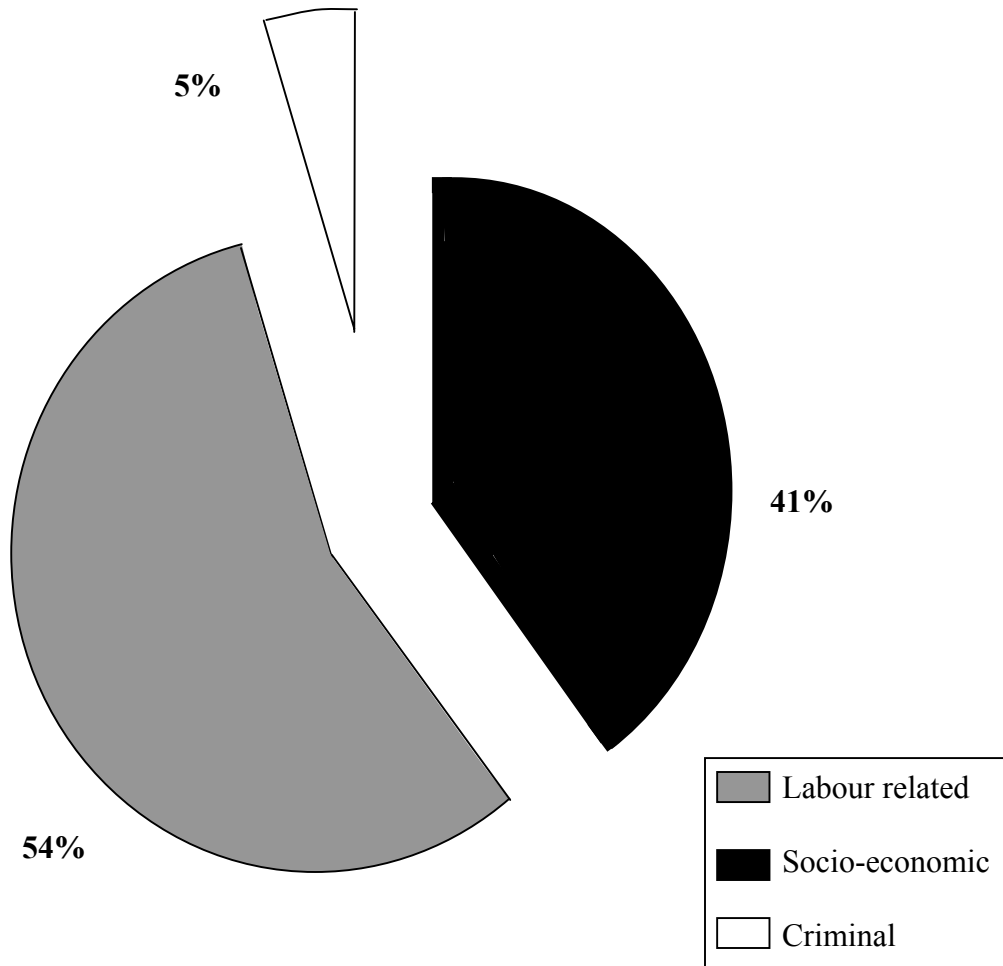
Paralegal qualification should also be considered as a step towards qualification as an attorney, in the same way as legal executives in England and Wales, and paralegals in other countries with further training and qualification may so qualify. It is especially important in the context and history of South Africa that advisers with skills and experience, but lacking education and qualification, should be given that opportunity.

### *The emphasis on non-criminal matters by paralegal advice officers*

The following data reflects casework sheets of Riviersonderend, Genadendal and Villiersdorp for the period January 2000 to May 2000.

Each Advice Office deals with an average of 25 cases per month. These statistics refer to the cases in which a file for the person has been opened (no telephonic or once-off advice giving). Fifty-four percent (54%) of matters are labour related, forty-one percent (41%) are socio-economic and five percent (5%) are criminal. Of the criminal matters handled by the advice offices, 85.2% of them are legal aid problems. 20.4% of all socio-economic matters are related to issues of family violence, divorce and maintenance.<sup>39</sup>

See pie chart beneath.



<sup>39</sup> Information taken from Lawyers for Human Rights 'An overview of the status of legal services for the indigent in the Caledon magisterial district including legal aid, candidate attorneys and paralegal advice offices'. For the Period January 2000 – May 2000, July 2000.

## ***Some issues for consideration for the future***

### *1. The proportions and mix of work: crime and civil and administrative law*

As noted above, the major focus of work for the legally qualified supervising attorney and candidate attorney in the OJC is crime. This accords with current public perceptions of social need and governmental reaction to the moral panic attending the growth of crime, both urban and rural. It also reflects the concentration of the Legal Aid Board on criminal matters and the ethos of the attorneys involved. Additionally, it provides a major and immediate change to the Magistrates' Court, its functioning and its efficiency in the Caledon magisterial district and in outlying towns.

However, the sources of crime are inevitably poor conditions of work and living for the rural poor. Some of these issues may be attended to through civil, labour, eviction and family work, catching the people and the problems at an earlier stage and preventing any slide into criminality as a result. The work of the Magistrates' Court is a magnet to lawyer interest and though its importance cannot be minimized, this must be set against the importance of involvement in the wider area of non-criminal work and the responsibility of the Justice Centre in this regard.

The OJC lawyers have managed so far to avoid the image of being owned by the "state" and being simply part of the court "engine" rather like the magistrates and the prosecutor. But, continued concentration and involvement in criminal work in this manner may not avoid the state image for too long. Involvement of the community in assisting the staff in making decisions of what their mix of work could involve may be helpful in pointing out the major legal problems of the area.

Although in the early days of the Overberg Justice Centre it has been essential to create a good image with the magistrates, the court and the prosecutor and also to take over the burden of legal aid allocation from the court, in the fullness of time it may be sensible to reorganize work and not take on less serious offences. One of the magistrates at the Caledon Magistrates Court suggested that the Justice Centre should not take on certain routine matters, for example, maintenance or traffic cases or any matter for which an acknowledgement of guilt fine is set.

Finally, the community based Advice Offices may have an important role to play in the context of non-criminal work, both in their own right and in informing the work of the Justice Centre through referrals.

### *2. Advice offices need to be seen to be part of the whole "community".*

Budlender notes the importance of widening the constituency of the advice offices.<sup>40</sup> In order to achieve this end it may be necessary to demonstrate a de-politicisation of those involved in the offices. The important past history of paralegals and advice offices within

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<sup>40</sup> See Budlender, *op cit.*

the community has led some to believe that they are “trouble makers” rather than advisors, mediators, or representatives, trainers and advocates. Whilst the fighting zeal of paralegals in their community on behalf of their clients must be maintained, it may be necessary formally to ensure that it is realised in all quarters that the objectives and purposes of paralegals in community advice offices in the new South Africa has moved on from an historical image.

*3. Providing a system of legal services for entire communities needs a complex structure of different forms of agency, venue, process and operation organised in web formation with clear links in between the different elements.*

In particular, it must be clear to paralegal advice workers in communities when they should take individual cases, when they should refer the matters to others, when they should start training campaigns and when they should take action on the political stage in relation to different issues. Similarly attorneys and other staff in the Justice Centres must be clear that they have obligations to review and take on cases on referral from Advice Offices. They need to be clear on their obligations to attend on rural communities and to be available for second tier advice and support to first aid level advice workers. The strands of the web need periodic visiting and attention in order to ensure that they are well maintained. Passage along the strand needs to be two way and communication must be expected, open and rewarding between all parties.

An excellent example of this was found at the OJC which was about to be implemented. The visiting team was informed that a system has been organised to handle detailed information on referred cases so that an account can be given back to the referring organisation as to what has happened with regard to the case and their client. In this way both sides will be more aware of the importance of each other in this process and follow up can be given to the individual clients. Knowledge and understanding of how cases might progress can also be properly considered for any subsequent similar cases in the future. Such positive referral systems are an example of best practice in maintaining the web of contacts, which ensure a competence in legal service delivery. Organisations need grass roots, middle management and top leadership. So do systems for legal service delivery. If any one of these elements is lacking then the system cannot work properly. The connections between the different elements are crucial nodal points in the working of the system.

*4. It seems to be important to have the right people selling what you want in Pretoria.*

The games played amongst the leaders of the national organisations, are different from those that are played at the grass roots and management levels. This report considers the issue of the involvement of paralegals in the framework of access to legal services for the future of South African justice. The involvement of paralegals in advice offices is considered in the context of a new Justice Centre funded by the Legal Aid Board in a complex co-operation agreement with Lawyers for Human Rights, involving currently both external funding and agreement of the NCBPA and others.

The complexities of these relationships clash with the simple need to provide a clear network and framework of legal services with elements of advice and assistance and elements of litigation and criminal defence. The legal need is considerable and obvious but the difficulties of transition sometimes get in the way of provision. The message which needs to pervade even cultural differences and political niceties is the importance of this network of provision and the responsibility to fund and control it.

Representatives of the stakeholder interests, including the Legal Aid Board, Lawyers for Human Rights, the NCBPA and OCBPA, should be able to represent their interests speedily and positively in order to arrive at workable solutions to short term difficulties in order to provide access to justice, especially for the rural poor. If external funders can assist in easing such conditions for relationships between the main players to progress, we would heartily endorse that possibility. It would be more important and more useful for such meetings to occur of their own accord in the knowledge of future need.

##### *5. Reporting Information, Statistics and data*

Currently the Overberg Justice Centre and the advice offices each have to provide their own systems of statistical accountability in relation to the cases they cover, depending on the nature and identify of their particular funding body. Where there is more than one funding body, often more than one form of statistical or monitoring report is needed. Bodies funded by the Social Change Assistance Trust (SCAT), for example, have to provide extensive monthly reports and also six monthly reports in a particular form in order to allow close monitoring in terms of cases and case types as well as financial accountability.

The Justice Centre presents its reports on the basis of a “summarised monthly activity report”. This includes numbers of cases opened in each month and numbers of cases closed. In relation to closed matters there is also a calculation of the cost and the average cost per case for each month. Additionally the number of consultations per month and their total cost is also reflected in the activity report. Subsequently, for each month, the numbers of finalised matters is broken up into subject categories and the total cost of those matters is also presented. The categories are: labour, divorce, maintenance, criminal, social welfare/UIF, social welfare/pensions, civil matters, workmen’s compensations, and ESTA.

There is an activity report for “consultations” and also for consultation costs per month together with a note of the minimum cost, also divided into subject categories. In this case they are: divorce, civil, criminal, maintenance, other matters, ESTA, and labour. Four months of reports are annexed at Appendix 7 including August, September, October and November of 2001.

The Activity and Financial Report of the Riviersonderend Development and Advice Centre which it sends monthly to SCAT and also summarises on a six monthly basis is rather different. Instead of simple statistics it includes a narrative format, noting the main events and issues of the month and then goes through a list of headings providing



background on what has been done in different areas. For October 2001 by example, this includes programme support activities, meetings attended, staff capacity building, programme activity, “know your rights” training project, learning centre, youth development project, lobbying activity, women development, financial report, and conclusion. This element is signed by the Centre Co-ordinator.

A detailed section then follows for the legal advice assistance and training programme detailing in short form the sort of work carried out under case work headings such as consumer, family, justice, safety and security, labour, land and housing, and other. This too is signed by the project leader.

Next the “Know Your Rights Training Report on Farms” mentions the aims and objectives of the programme in full and then shows which farms and how many workers on farms have been trained. Some details of the actual training are mentioned. Once again this item is signed at the end by the responsible individual. The financial report is detailed showing both inflows and outflows and a final reconciliation. The full report for October 2001 is also presented in Appendix 8.

Each of these reports has a different purpose, and each might learn a little from the other. It is essential that the reports are organised and presented for the purpose of satisfying the monitoring agency or funder. Once this has successfully been achieved, it would be useful to be able to present information from the OJC, for example, in a form which would also be attractive to the community and accessible for comment and review.

Collecting statistics can be an immense chore. It is essential to do so for funding and monitoring purposes, but it may also provide essential management information for the direction of the legal services concerned. Noting a growth in cases regarding a particular subject area, or coming from a particular geographical area may indicate a more general need than the individuals, or the individual issues concerned. Such a need might generate training programmes, involvement of local people in a campaign, or thoughts on some form of test case or other targeted activity.

Statistics that present numbers of cases open and closed provide a basic form of monitoring that work carries on and that files are completed. However, a more detailed system of monitoring in which the results of cases are gathered may provide a much more satisfactory exemplification of the case load, competence of staff, quality of work and satisfaction of clients. Particular subject areas, which provide good results, may be thought more worthy than others, which need a different form of action (such as referral to the Legal Resources Centre for test case activity).

In relation to criminal cases Shane Samson agreed a set of possible “results” headings, which might be also useful:

- Withdrawal after our intervention
- Withdrawal
- Withdrawal after formal representations

Acquittal without leading defence evidence  
Acquitted  
Convicted:-imprisoned – no. months  
-fine Rands ?

These may need further consideration by both Shane Samson and others. However, they could provide a growing system of useful clarification of success in those criminal matters taken by the OJC.

A similar system, appropriate to each subject area needs to be developed for the areas of non-criminal work. Appendix F shows a set of “end points” and a set of “results” headings used in recent work in England and Wales. End points of a case are very different from results but also assist somebody reading the statistics to have some understanding of the progress of cases and what normally happens with clients.

The nature of the results is a difficult question in all cases. For example, one lawyer might think that it was good to receive R10 000 for a client injured in an assault and another lawyer might say that R 50 000 was more appropriate for such a settlement, and closer to the amount obtainable in court. Any system of monitoring results cannot go as far as considering the details of the case such that each individual case might be assessed through such statistics. However, collecting such statistical information will provide over time a comparison of amounts of money obtained, actions stopped or incurred, people assisted to carry out their own cases, test cases which provide a more pronounced outcome than individual results, and other levels of success. Months can be compared, as can quarters, half years and annual figures. Similarly, the figures for different venues can also be compared.

This would allow, over time, a clear consideration of the proper directions for legal services in different areas, sensible and efficient lessons for allocating different resources through different systems, different programmes and different forms of advisor or attorney. In any legal services system in which funds and resources are limited, considerations of efficiency should be monitored at all times. Numbers of cases crunched through may not equate to a good legal and advice service. Numbers by themselves will not prove either the efficacy or efficiency of the service unless some indication of results is also available.

Odette Geldenhuys of the Legal Aid Board in Pretoria explained that a new statistical monitoring system would be available from the end of March 2002. If there is time to consider some of the above issues in that new system, it may be found useful to incorporate the above elements.

#### *6. Links between the Overberg Justice Centre and the satellite Advice Offices.*

The structure of the web of links between the Overberg Justice Centre and the Advice Offices in Riviersonderend, Napier, Genadendal, and Villiersdorp is clearly contemplated in the co-operation agreement and is well understood by the staff of the Overberg Justice

Centre, especially the Principal Attorney, Shane Samson. It is not clear that the existence of links has been sufficiently internalised in order to produce the desired objectives. The databases of cases carried out by the Advice Offices, referrals to the Justice Centre, or candidate attorneys in law firms covered by the co-operation agreement, and other instances of second tier assistance all needs to be collated on a monthly basis. It is suggested that the Project Office should ensure that this occurs. It will need careful agreement between the different parties in order to ensure that cases are not double counted and that each item has the same value for each part of the system. If this could be achieved, together with information on outcome, a much more successful system for monitoring and understanding the way in which the legal services framework is working will be available (see above under *Statistics*). The statistics so gathered should then be made available to all parties concerned including all the Advice Offices, the Justice Centre itself, Lawyers for Human Rights and the Regional Office of the Legal Aid Board.

The act of collating the material and the need to provide the data will by itself underline the importance of the links between the different parts of the system. Analysing the data over a period and comparing it with information from elsewhere will strengthen recognition of where legal service input needs to be made.

#### *7. The OCBPT*

The team was shown the Trust document setting up the local Overberg region Paralegal Organisation as a Trust, able to hold its own money and therefore also able to employ paralegal workers in the Overberg region. This appeared to be an important innovation in a difficult context. It would provide a structure within which it would be possible to control expenditure and also to maintain some independence. In general, structures are clearly needed in order to overcome the defensiveness of some of those in the paralegal movement and the vulnerability of the movement and its members in a changing environment. Automatic reactions need to be resisted in the contemplation of building more important frameworks for the future.

#### *8. Recommendations*

##### *Consultative Board*

The Overberg Justice Centre would benefit from the creation of a Consultative Board to whom it could look for both advice and direction. The Board should include the Director and two other members of staff of the OJC, one from the administrative side and one from the legal side.

Additionally, there should be three members of the Board from the local community in Caledon. This could include the Mayor or equivalent representative from the city local authority, a respected lawyer from the town and a representative from the client community.

There should also be one representative from each of the Advice Offices in the surrounding area, which feed cases into the OJC and for whom the OJC acts as a provider of second tier advice. In addition, representatives of the funding bodies should also sit on the Consultative Board, including Lawyers For Human Rights and Danida.

This would mean a board made up of between twelve and fifteen people, of whom about half might be expected to attend meetings. Meetings could be organised once a month and should consider, among other matters, any statistics and data regarding cases which the Justice Centre produces. The Consultative Board should also decide what data needs to be gathered for their purposes in order to carry out their functions properly.

### *The Mix of Work – Civil and Criminal*

Some advice and leadership should be obtained from the Consultative Board, as well as funders, on the question of the mix of the types of work which should make up the OJC's work product. It will be important to take into account the needs of the local communities in order to assess where the precious resources of the Justice Centre can best be allocated for most efficient and effective benefit of the community.

At present the principal attorney and candidate attorney spend the bulk of their case-handling time on the criminal work of the local magistrate's court. The bulk of the work carried out by the two 'paralegals' in the office relates to civil and family work. This has been especially useful in the first months of the Justice Centre, but it is now time to consider the needs of the communities more broadly and to allocate some time also for the attorney to work on civil cases in key areas, reflecting the nature of the work which comes into the community advice centres, or test cases and 'political' cases which need to go to court. Apart from the higher profile work of litigation, it is essential that strong, second tier advice is available to the Advice Centres in the communities in order to back up the excellent work they do in providing information, advice and negotiation on behalf of their client community.

Getting the mix of this work right will not be easy and depends on both political, financial and operational considerations. The final decision must be the responsibility of the principal attorney together with the staff, but it does need to take into account the needs of the community. Funding bodies must also take some responsibility for assisting with some of these difficult decisions where the amount of legal need is overwhelming. It will always be difficult to choose among competing interests and needs, but those choices must be made in a balanced way.

### *Organisation and Statistics*

The priorities during the first phase of the new OJC have been to get the actual Centre up and running and staffed, a through-put of cases and a system of work which guarantees a good output. The objectives in the next phase must also include a more sophisticated system for collecting statistical and other information and reporting on the work of the Centre. All of this is essential to provide proper management of resources, transparency

of information and work for funders and the members of the Consultative Board and the clarity of organisation of resources for the future.

Some detailed suggestions are made above as to how statistics should be gathered, although further help can be given with this, if necessary. There are a set of different needs: those of the funders, those of the community and those of the managers of the Centre. Each of these needs must be fulfilled in order to guarantee survival, proper use of capacity, effective management control and continued success of casework. In the light of recent information from funding bodies, the proper collection and presentation of statistical information becomes even more urgent.

### *Judicare and Justice Centres*

All previous recommendations have been largely in relation to the work of the OJC. The following recommendations are intended to have a wider audience.

It is entirely sensible for the remodelled Legal Aid Board to harness its resources relating to criminal defence by organising that much of its funded work be carried out by the new Justice Centres. However, it is clear from research elsewhere that public defender type offices also need some judicare 'competition' in order to ensure that their independence and status continues to be guaranteed. There is a continuing need for some judicare involvement in criminal and civil cases from the private profession. Great skills still exist especially among the criminal defence attorneys, and these should not be lost. There will always be cases where the Justice Centres will have a conflict of interest if they take all defendants on as clients. In such cases there will always be a need for the involvement of the private profession.

Beyond this, it is necessary to have a viable private profession able to take some of the cases, for the foreseeable future. This will not need to be the large proportion of criminal defence which has, until recently, been its caseload. But a significant proportion needs to remain, so that public defenders and public prosecutors will not be the only lawyers involved in criminal justice.

### *The Future of the Paralegal Role*

Paralegals in Advice Offices carry out the largest element of legal advice and information on behalf of the communities of South Africa. Although there are major considerations of education and training, qualification, politics and integration within a new framework for civil and criminal justice, their role must be preserved and full recognition given to the work they carry out. They are an essential element in the process of justice in the new South Africa.

Research elsewhere has proved that advisers in Advice Agencies and community based organisations are capable of giving as good advice as lawyers under public funds. Maintaining the paralegal networks and integrating them into the new Justice Centres will provide access to justice for both the rural and urban poor. Ignoring their importance and

failing to make proper use of them will cut off access to justice for thousands of people for the foreseeable future.

## ***APPENDIX 1***

### **Avrom Sherr**

Avrom Sherr is Woolf Professor of Legal Education at the Institute of Advanced Legal Studies which is part of the School of Advanced Study of the University of London. From 1990 to 1995 he was Professor of Law and Director of the Centre for Business and Professional Law at the University of Liverpool. He taught at Warwick University Law School from 1974 to 1990 and directed the research and teaching programme on legal practice there. He qualified as a solicitor in 1974 and was a commercial litigator at the firm of Coward Chance in the City of London.

Avrom Sherr's research work covers the sociology of the legal profession, the delivery of legal services, legal education, legal ethics and the management and organisation of legal services, legal aid and the legal profession. He has acted as a researcher and consultant to governments and the European Commission and also to the Law Society, the Bar Council, the Commission for Racial Equality, the Legal Aid Board, the Legal Services Commission and other professional bodies. Multi-disciplinary work has included work in the areas of sociology, psychology, economics and public health as related to law. His main interests are professional competence, procedural fairness, access to justice and academic independence.

His university administration work has included sitting on some 26 university committees at Warwick, Liverpool and the University of London. He has been a Higher Education Funding Council Reporting Assessor on teaching quality and on the QAA Benchmarking Group for Law. He has been involved in a number of committees of the Law Society, was a member of the Ethnic Minority Advisory Committee of the Judicial Studies Board and was appointed to the Lord Chancellor's Advisory Committee on Legal Education and Conduct. He has also been actively involved in organisational and charitable work within the community including school governorships, university chaplaincy committees and organisation of welfare rights services.

### **Aymone du Toit**

Aymone du Toit graduated with a B Bus Sci from the University of Cape Town in 1996 and an LLB (*cum laude*) in 1998. During 2000, she was articled to Chennells Albertyn in Stellenbosch and during 2001 performed contract research work for CASE, the European Union Parliamentary Support Programme and Roger Chennells (legal advisor to the South African San Institute). As a student, she acted as an advisor for the University of Cape Town Legal Aid Clinic from 1996 to 1997 and as Co-convenor from 1997 to 1998.

***APPENDIX 2***  
***Terms of Reference***



### ***APPENDIX 3***

- Project Proposal, Access to Justice Western Cape Rural Programme, July 1995
- Debriefing Note, Mid-Term Evaluation, 18-26 July, 1996
- Project Completion Report, Access to Justice Western Cape Rural Programme, June 1998
- Funding Proposal for 1999-2000, Access to Justice Overberg Pilot Project
- Mid-Term Report, Overberg Access to Justice Pilot Project, June 2001-11-15
- Major challenges to the implementation of the Overberg Access to Justice Project since Phase 3 – April 1999
- Project Proposal July 2001-July 2002, Overberg Access to Justice Project
- An overview of the status of legal services for the indigent in the Caledon Magisterial District including legal aid, candidate attorneys and paralegal advice offices, for the period January 2000 – May 2000
- Memorandum between the Legal Aid Board and Lawyers for Human Rights (Overberg Justice Centre)
- Legal Aid Board, Business Plan, third draft
- Draft Legal Practice Bill, third draft 2000
- Paralegal Practice, Part III (the latest version of the paralegal inclusion into the new draft bill)
- Debate around the Bill in the attorneys journal, de rebus
- Lawyers for Human Rights, Submission on the inclusion and future role of paralegals in the draft Legal Practice Bill (3<sup>rd</sup> draft)
- Access to Justice in South Africa: legal aid transformation and the paralegal movement, Community Agency for Social Enquiry (CASE)
- Lawyers for Human Rights, from the upcoming Danish Centre for Human Rights publication “Partners in Progress”, draft

***APPENDIX 4***

Details of Staff in OJC

Shane Sampson – Principal Attorney

Philmacs Bogenhagen – Candidate Attorney

Colin Lekay – Paralegal

Hilda Edwards – Paralegal

Heila Kloppers - Administrator

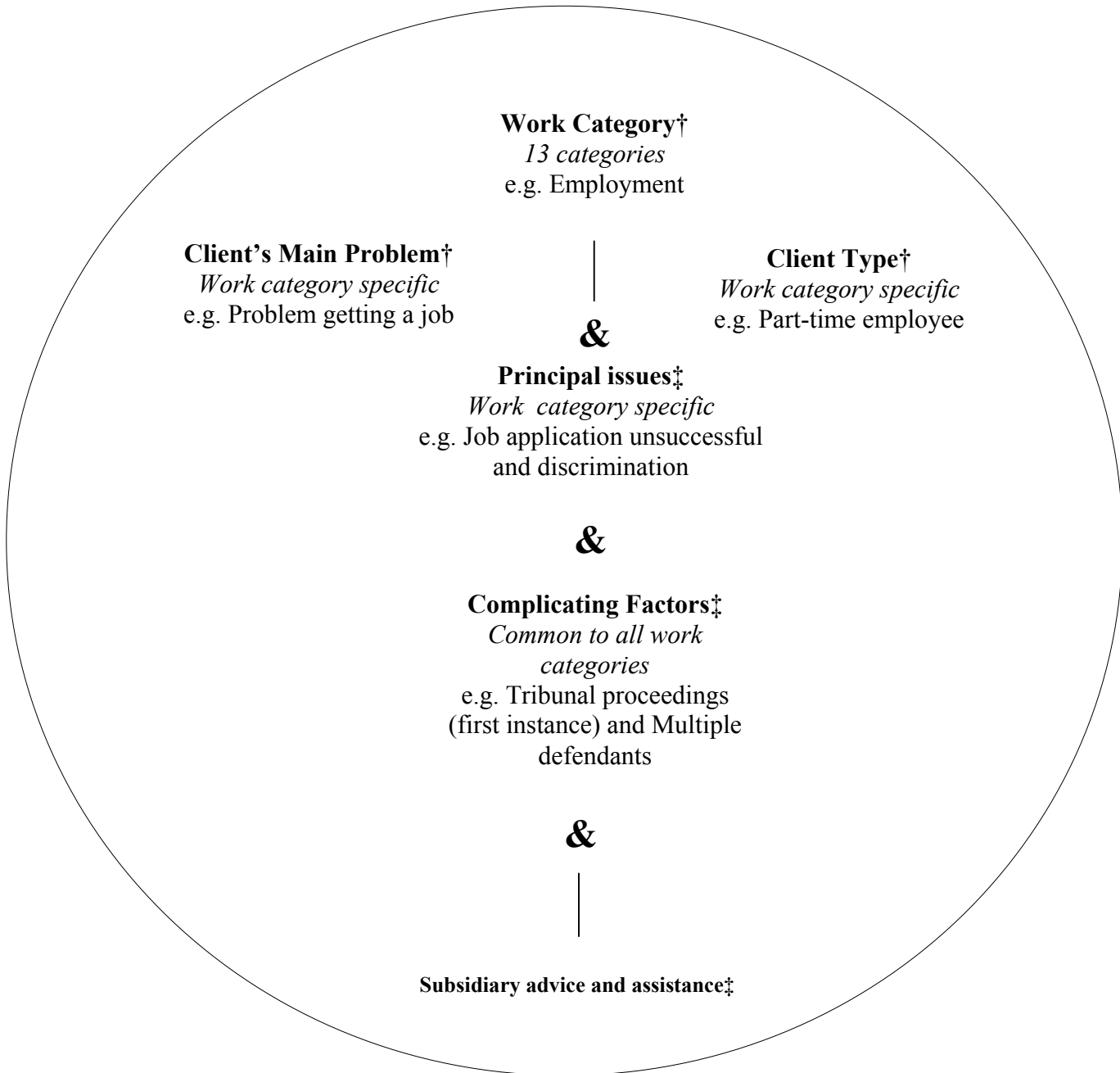
***APPENDIX 5***

Statistical summary of cases carried out by OJC in first four months of operation.

## APPENDIX 6

Extract from *Quality and Cost* (Stationery Office 2001) - “End points” and “results”

Chart 2: BriefCase System for Categorising Cases



† *Select one only*

‡ *Select as many as apply*

### **Endpoints and outcomes**

Briefcase was also designed so that the solicitor or adviser would state at what point the matter was ended under the contract. In other words, BriefCase noted whether the matter reached its conclusion under Green Form advice and assistance, and if not, why not. This helped to profile the limits of the work that was carried out under advice and assistance and the use of advice and assistance funding by legal aid suppliers. Advisers were asked to choose one endpoint that best described the end of the case from the following:

- Matter concluded under the contract
- Matter concluded beyond the contract without LAB funding
- Legal Aid application made and refused by the LAB
- Legal Aid application made and granted or offered
- Client advised and taking action themselves or with the help of a third party
- No further action could be taken after advising, negotiation and/or representation
- Client ceased to give instructions
- Matter was stopped on client's instructions
- Matter was stopped on legal adviser's recommendation
- Matter referred to another organisation

Results were coded separately from endpoints. Under BriefCase, a list of result choices were selected by advisers under BriefCase to describe the results they had achieved for their clients by the time the matter ceased under the block contract. Advisers were permitted to tick as many as appropriately described the results achieved from:

- Client receives lump sum payment
- Client received extra or new regular payment
- Client makes lump sum payment
- Client makes new regular payment
- Client received or retained property
- Client received other permanent benefit
- A relevant third party took some required action, beyond providing information or explanation, which benefited the client

- A relevant third party has taken some action or changed their approach as a result of this client's matter being taken which will/should benefit other clients in similar circumstances in the future.<sup>41</sup>
- Action by third party prevented
- Action by third party delayed
- Client enabled to plan/or manage their affairs
- Other result
- Outcome not known

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<sup>41</sup> This included as a rough indication of some 'public interest' benefit.

***APPENDIX 7***

Reports

***APPENDIX 8***

Activity and Financial report of the Riviersonderend Development and Advice Centre,  
October 2001



## ***APPENDIX 9***

### ***Interview Records***

#### ***Programme of the Review***

- ***Sunday, 9<sup>th</sup> December 2001***
  - 19.30 – 20.30 Organisational meeting and introductions
  
- ***Monday, 10<sup>th</sup> December 2001***
  - 9:00 – 9:30 Shadrack Gutto, Department of Justice, Legal Aid Transformation Team – telephonic (lost connection with him in North Africa)
  - 10:00 – 10:30 Vinodh Jaichand, Lawyers for Human Rights, National Director - telephonic
  - 11:00 – 11:30 Ingrid Lestrade, Project Co-ordinator and Walter Wessels, Assistant Project Co-ordinator
  - 11:30 – 13:00 Viewing video and press clippings on OJC launch
  - 14:00 – 15:00 Discussions on, and consideration of, case database and system with Walter Wessels
  - 15:00 – 15:30 Cheryl Loots, Department of Justice, Legal Aid Transformation Team - telephonic
  - 16:00 – 16:30 Martin Monyela, NCBPA, CEO – telephonic (cancelled - family bereavement)
  - 19.30 Dinner meeting to review the day.
  
- ***Tuesday, 11<sup>th</sup> December 2001***
  - 8:00 – 9:30 Drive through to Caledon
  - 10:00 – 12:30 Interviews with three Overberg Justice Centre staff members (Shane Samson, Hilda Edwards and Colin Lekay)
  - 14:00 – 14:30 Interview with Zueastrid Kiewitz, candidate attorney and her supervising attorney
  - 14:45 – 15:15 Interview with Machell Jacobs, candidate attorney
  - 15:20 – 15:40 Interview with Basson & de Villiers
  - 15:45 – 17:00 Interview with three clients of the Overberg Justice Centre
  - 18.30 Team feedback and discussion session
  
- ***Wednesday, 12<sup>th</sup> December 2001***
  - 8:30 – 9:30 Interview with Messrs. Le Richie and van Wyk, magistrates in Caledon
  - 9:45 – 10:15 Interview with Mr Engelbrecht, prosecutor in Caledon
  - 10:30 – 11:30 Interview with Philmacs Bugenhagen, candidate attorney at the Overberg Justice Centre
  - 11:30 – 12:15 Travel to Riviersonderend Advice Office
  - 12:15 – 14:15 Interview staff of Riviersonderend Advice Office (Isak, Ben, Wilfred, Muriel and Iva)
  - 14:00 – 15:30 Interviews with clients of the Advice Office
  
- ***Thursday, 13<sup>th</sup> December 2001***
  - 8:00 – 11:00 Travel to Stellenbosch
  - 11:00 – 12:00 Interview with Cordelia Robertson, principal attorney, Legal Aid Board - Stellenbosch
  - 14:00 – 15:00 Interview with SCAT fieldworkers in Cape Town, (Joanne, Linda, and Clynton)
  - 15:00 – 15:30 Interview with Mr. Vincent Saldanha, Legal Resources Centre
  - 16:30 – 17:00 Interview with Achmat Simaar, National Cluster Co-ordinator, WESCOPA

19.30 – 22.30            Team feedback and discussion session

➤ ***Friday, the 14<sup>th</sup> of December 2001***

9:00 – 15:00            Team meeting, Report writing, Discussion

15:00 – 15:30            Interview with Odette Goldenhuys, Head of Access To Justice, Legal Aid  
Board – Pretoria

15.30 – 18.00            Discussion, Report Writing

➤ ***Saturday, the 15<sup>th</sup> of December 2001***

9.00 – 23.15            Debriefing, Report Writing, Review and Discussions

***Vinodh Jaichand***

**Interview noted by Avrom Sherr, 10<sup>th</sup> December**

Vinodh Jaichand is the National Director of Lawyers for Human Rights. They have eleven offices, were opened in 1979, and have piloted new ventures in access to justice. Paralegals have been their main interest for more than eight years.

He said paralegals gained their legitimacy from being community based and fighting for community issues. They did not have legitimacy when they strayed into more mainstream legal work. It was not clear whether they were to be practitioners or a community service. It was difficult to engage with the NCBPA because they were not clear whether they were a funding body, a body to organise status for an emerging profession or a trade union for a set of workers. It was up to them to decide how to configure themselves. They must define clearly the areas in which they intended to work. There should be no confusion with the commercially based paralegals who did conveyancing etc. and who represented a threat to the existing legal profession through competition. When the organisation or its members over reach themselves there is confusion about their work. It was not possible to place all paralegals in one basket.

Community based paralegals need to be clearly guided. The proportion of the LHR work coming from paralegal referral was about 20%, slightly less than this was coming in from advice offices at the Overberg project. He thought that a larger proportion of cases should be coming in but he had no figures to suggest what proportion of all cases handled by the advice offices this 20% of LHR caseload represented. Nor could he say what this proportion should be. There had been a number of occasions where there had been complaints of failure to resolve cases and of letting cases prescribe (go over the limitation period). (I did not ask how this compared with such complaints relating to qualified legal practitioners such as attorneys.)

The Legal Aid Board were not considering paralegals as “providers” and therefore a separate plan was necessary for them. Part of the reason is their lack of accountability and the lack of trust accorded them.

LHR work with NCBPA and NPI in terms of training. A smattering of training is not enough. The best engagement of paralegals is in the community based area.

There had been specific problems with the paralegals in the Western Cape. Access to justice had actually been impeded because a paralegal had said, “you are not going to get this case unless you pay our travel allowance or fund us” in some way. There are good reasons why ICJ Sweden pulled out. But now what they have there is a whole group of people waiting for work and that will make them very frustrated. The ICJ have only left 76 centres so there is no sustainability there.

He had heard that “the Danes” will fund the advice offices in the Overberg and that would be good.

What the paralegal movement needed was closer monitoring of statistics and results. There has to be a success story and the Overberg project could perform this function.

A structure needed to be created for channeling the information and the cases. There needed to be a clear channel of communication, a point to refer all cases, and good deal of training the trainers in the community. We need to know the numbers of cases, and “positive outcomes”. This meant an outcome which would affect more than just the individual served. A socio-economic outcome of significance. I pointed out how difficult it might be to define such an outcome and then label and monitor such outcomes.

The paralegal movement seems much more focussed now. LHR have gone a long way with Danida on this project.

### **Comment**

His view seemed to be “We all know what to do and they should do it – but it is up to them to decide.”

***Walter Wessels***

**Assistant Project Co-ordinator, Employed by National Community Based Paralegal Association.**

**Interview noted by Aymone du Toit, 12<sup>th</sup> December 2001**

**Types of matters:** The Law Society rules stipulate certain matters which would be excluded from the jurisdiction of the Justice Centre. In terms of Legal Aid Board policy, Justice Centre is permitted to take on a broader range of civil cases than a private attorney would be permitted to receive legal aid for.

**NCBPA and closure of advice office:** Grabouw office closed down. Was funded by SCAT. According to interviewee, the funder had a contract with the committee which employs the paralegals in the office. This committee is made up of community representatives and is a voluntary association. In the case of the Grabouw office, there was apparently mismanagement of funds on the part of committee. According to interviewee, this is why OCBPA needs to and is forming a Trust. Very insecure employment by the VA, says interviewee.

[Note that in subsequent conversation with Ingrid, Project Co-ordinator, these committees were again referred to. Many advice offices are run by such a committee. In a CCMA dispute between the paralegals of an office which was closed down and the NCBPA, the NCBPA argued that although they (the NCBPA) are responsible for paying paralegal salaries etc, they are not the employers of the paralegals and accordingly have no obligations towards them under labour law. Rather, the committees of the various advice offices should be seen as the employers. Ingrid is of the opinion that this is an inaccurate view on the part of the NCBPA. The mismanagement issue is also one which should rest squarely on their shoulders. They should be supervising the committees more closely.]

**Working environment:** Interviewee noted that he has found it difficult to operate in the present environment. He is employed by the NCBPA in Johannesburg but is situated in the LHR offices in Stellenbosch and his movements are controlled by LHR head office. He was not permitted to attend the AGM of the NCBPA. He feels excluded from the activities of LHR. He also feels let down by his own organisation. He says that he does not receive sufficient support from them. The regional structure, the OCBPA is much better. The LHR national director 'rules with a stick'. Interviewee is required to receive permission for performing basic activities. Interviewee wanted to do a comprehensive workshop over the week-end to train paralegals. Also wanted paralegals to receive computer training but came across resistance on the part of the national Director of LHR. When asked during this interview, whether he could approach his own organisation for funding, interviewee replied that the NCBPA would not be able to do this because they have no money.

1000 members belong to the NCBPA. There is a provincial office in Stellenbosch. But poorly resourced. Interviewee says that he worked well with Vanja (local LHR person – previous Project Co-Ordinator) in the end despite differences. Each time new person

employed by LHR, new difficulties but these can be sorted out. However, big problems with national director of LHR. These are both personal, says interviewee, and also systemic – big problems between the two national organisations.

**Other issues:** Walter believes that there is some stigma attached to a free service by local people. Re database, it took Ingrid one day to capture the work of two paralegals on the database (very time consuming). Training manual being prepared by database person for paralegals and CA's.

### **Comments**

Problems existing between the two partner organisations at national level might contribute to a disabling environment for people in local structures (especially Walter who belongs to the less well resourced national entity). It also seems that environment affected by leadership/management styles of both partners at national level vis a vis their people at local level. (In respect of LHR, subsequent conversation with Project Co-ordinator, reveals that she too has encountered resistance and also anger when she has suggested new ideas to her national director).

***Cheryl Loots***

**Ministry of Justice, Pretoria**

**Telephone interview recorded by Fergus Kerrigan on 10<sup>th</sup> December 2001**

Cheryl Loots is associated with the Centre for Applied Legal Studies at the University of Wits in Johannesburg. She was a member of the former Legal Aid Transformation Task Team in 1998 and is now working in an advisory capacity at the policy and planning unit of the MoJ, particularly on the Legal Practice Bill.

By way of introduction we told Cheryl that we wanted to discuss legal aid transformation and the Bill.

Cheryl believes that the kind of cooperation agreement represented by the Justice Centre, where the Legal Aid Board (LAB) cooperates with the paralegal movement, and NGOs like Lawyers for Human Rights, is essential to transformation of legal aid. In the LATT in 1998, they had agreed that cooperation between all actors in legal aid was vital, and she is very glad to see this being made a reality now. The Overberg project is a good pilot project in the move away from a strict *judicare* system to a more cooperative model. Its success would be a very valuable signal.

There are two main issues concerning paralegals currently under discussion in the process of drafting the latest version of the legal practice Bill :

- (i) Should we try to incorporate all paralegals into the scheme of the Bill ?  
(Most of the existing paralegals would not be recognized under some previous versions of the Bill;)

There is divided opinion on the question. NCBPA wants to include all paralegals within the regulatory framework of the Bill. Black Sash is concerned that their members will be excluded if a high threshold of qualifications is established in order to be able to call oneself a paralegal. The chairperson of the Task Team is of the view that only fee charging paralegals need to be regulated by the Bill. He is very concerned not to exclude all of the paralegals who have been doing positive work in communities, via Black Sash, churches etc. The Law Society, on the other hand, does not want to allow fee charging paralegals at all.

This is a difficult issue for the Task Team. While appreciating the value of paralegals, there is a gap in the provision of services. This can be seen in relation to the non-indigent poor, who would not approach a lawyer. How is access to justice to be guaranteed for them ? Paralegals are in fact already providing legal services to such people in an unregulated way. There is no resolution on this issue within the Task Team.

- (ii) The regulation of organizations providing paralegal services

In the latest draft of the Bill, we give the Minister the power to regulate paralegals. The (Legal Practice) Council will have a permanent substructure called the paralegal committee, which will make recommendations and give advice. There is general consensus in the team on this. This is very positive, as it provides a certain guarantee of funding and access to decision-making structures. The Minister will regulate on the basis of the recommendations coming to him from this source among others. The Minister will not be hampered in making decisions in the way the team has, as he will not have to secure a consensus. We have often been blocked in this by the Law Society.

The Minister is very positive about the role of community based paralegals, but much less so about fee-charging by paralegals.

### **Training and qualifications necessary**

The NCBPA suggest two levels of qualification : a one-year certificate and a two-year diploma. CL is hesitant to include this in the law itself, preferring to give the Minister the power to regulate the matter. Regulations will be much easier to change.

### **Funding of CBP Advice Offices by the LAB**

CL feels strongly that the Bill should allow the Legal Aid Board (LAB) to fund work by paralegals. It was the understanding of the ICJ- Sweden that the LAB would take over the funding of the community based paralegals. This has not happened; the LAB did not agree. CL doubts that all CBPs can be incorporated into the scheme. Swedish funding was given on the understanding that there would be cooperation with University legal aid clinics and paralegal advice offices.

Some of the training functions of the National Paralegal Institute (NPI) can possibly be taken over by the paralegal committee of the Council.

CL supports the idea of a differentiated definition of paralegals. In her view, a paralegal should be able to qualify to appear before some courts in particular matters by obtaining the necessary training, experience and qualifications. While this could be regulated by the Minister under enabling powers, it would be very wrong to permit this for a time and then later to withdraw it. Permitting this kind of representation could easily be a step towards allowing fee-charging by paralegals. (Lawyers argue that to permit paralegals to provide representation would amount to a form of discount justice for the poor. This argument is not very valid though, as a paralegal with qualifications and expertise in particular legal fields would not by any means necessarily be providing a lower level of service than a lawyer. Also, some service is usually better than none. AS refers to UK research showing that paralegals can provide better service than lawyers in some areas – promises to provide references / materials to CL on this.)

The Minister was previously cautious about employing paralegals, though his views have evolved on the subject. He is very positive about the shift towards justice centers from the pure judicare model. (Odette at the LAB has done much to promote this.)



The Deputy Minister is very keen on paralegals.

CL says that the Task Team will work on the latest draft this week. Most members agree on the main points. The Law Society however, is in complete disagreement on many issues, and is preparing its own proposed Bill. The Team hopes to formally present a draft to the Minister in January. CL will provide us with a copy if the Task Team head, Geoff Budlander, agrees.

Limitations in scope of legal aid as provided by the LAB

In criminal cases, limitations should follow the criteria in the Kanyeli (?) Case, which combine such elements as the complexity of the matter, the vulnerability of the accused, and the seriousness of the punishment (International criteria). The LAB has not always used this test in practice, instead simply giving legal aid in cases before the Regional Courts, and sometimes not before the District Courts.

In civil matters, CL would personally give preference to family law matters. No test currently exists. It would be good to have elements for one.

## ***Shane Samson***

**(Interview noted by Avrom Sherr, 11<sup>th</sup> December 2001)**

Shane Samson is the Principal Attorney at the Overberg Justice Centre and is in charge of the Centre, its staff, its property etc. Prior to this he was a prosecutor in 1993, did his articles 94-96, then he was a supervising attorney for 3 years till 2001 when he took up this job.

He holds informal meetings of staff once per week and signs all letters going out of the centre as a dual means of supervision. He has watched the candidate attorney a few times in court and has watched him in trials and vice versa and is available for assistance when the ca needs it. The other staff do not need much supervision or support or assistance since they are well trained and competent, but he is available when necessary for them. Also the magistrates are responsible for training the ca s in court in order to make the courts more efficient.

Shane does not supervise the paralegals in the advice centres, and about two percent of the OJC's cases come from those advice centres. They are about to organise a new accounting/monitoring system in order to report back to the advice centres on cases that have been referred. This will allow them to report back properly the effect of referral to the advice office and that may encourage more referrals.

Every Tuesday Philmacs Bugenhagen, the candidate attorney at the OJC, goes to Viliersdorp and every Thursday he goes to Riviersonderend in order to attend court. Before he goes into court he will go into the advice offices there for an hour to two hours in order to see if they need assistance. Colin Lekay and Hilda Edwards each go to the Advice Offices sometimes.

Philmacs is very competent because he did the extra six months Practical Law School. He does not need much supervision. Shane did not want him to drive the OCJ minibus because the roads over the passes were not very good and it might be dangerous or difficult for him. The bus was good to use for consultations with clients at the court as there were no consultation rooms there. The bus might need some curtains.

Shane's time was spent about 50% on court work and 50% on office work including any casework, administration of the office, any odd consultation/ walk in and the PR function. He meets often with the prosecutor and the magistrates, although he wants to be sure that people realise that this does not affect what happens in court.

Shane thought it would be a good idea to have a system for recording the outcomes of cases. The following "results" headings might work:

- Withdrawal after our intervention
- Withdrawal
- Withdrawal after formal representations
- Acquittal without leading defence evidence

- Acquitted
- Convicted – imprisoned – no. months

Shane thought that the most serious thing that could happen to the Centre is that he should be accused of something fraudulent in the handling of money. Even R100 would be devastating, as it would be over all the papers.

## *Interview with Hilda Edwards, paralegal*

### **Background**

Hilda completed her Matric exam, and has also obtained a certificate from a paralegal training course conducted by LHR and the Univ. of Stellenbosch (same one as Walter Wessels). She has been working as a paralegal since 1994, mostly in Bredasdorp, and mostly in the field of labour law.

The paralegal training course involved a total of about 90 days of full-time instruction, as well as homework assignments. It took place in two main periods, in 1997 and 1999. It gave theoretical instruction in the fields of labour law, constitutional law, family law, the role of paralegals and advice offices etc. The first course was better organized than the second. If she could receive more training, her main wishes would be for advanced training in labour law and the ESTA. Asked if she would like to become a candidate attorney, Hilda said that she would, if she could work in her preferred field - labour law. She would also dislike the prospect of becoming too cut off from the daily work of meeting clients. She would not like to spend all of her time in court.

### **General description of work**

Currently, Hilda is working on two pending court cases. One is a case of a farm worker who is dissatisfied with the award made to him by the CCMA, and wishes to take the case to the labour court. The other is an ESTA case.

Hilda receives clients on a walk-in basis at the OJC. She gets about 4 walk-in clients per day, or maybe about 100 – 110 per month. People can come at any time, as long as she is there, which she usually is. The clients come from all over Overberg. People do not have great difficulty in reaching the OJC, they can hitchhike or find other means. Many people know her or have heard of her from her former position in Bredasdorp. These clients often have a preference for her, as they know and trust her. Hilda says that the clients sometimes have more confidence in her than they would have in the local AO. They are also attracted by the OJC as an office where lawyers are also present. She agrees that in some cases the matters might be too complicated for the AO.

Most cases can be dealt with by simply advising the client, without taking any action. These “advice only” cases are also recorded. The caseworker makes a simple note, with details of the client and a short summary of the matter.

A file is opened as soon as an OJC employee takes any action in the case. This could be as simple as making a telephone call (often to the employer), but it could also consist of writing a letter on the client’s behalf, assisting the client to complete a form etc. Most cases in which a file is opened can be settled in a way that is favourable to the client by these simple measures. Occasionally, she asks the advice of Shane, or asks Shane or Philmax (candidate attorney) to take the matter further by going to court. (Both Shane and Colin agree however, that it is more often the contrary – i.e. that they are the ones who ask her advice in labour cases.)

Hilda gives examples of typical cases by mentioning one in which a worker was dismissed, which resulted in his family being evicted from their house on the farm. He was later assaulted by another farmer, from whom he sought work. When he complained to the police in Viliersdorp about the assault, they informed him about the OJC, whose assistance he then sought, two months after the dismissal. The OJC is seeking a “condonation” from the labour court (?), which is a permission to extend the period in which a complaint may be made.

Another pending litigation case involves an application for a condonation in a case resulting from a dismissal. The client had been assisted (or represented ? check) by a trade union representative. The latter did not inform the client of the date of the hearing however, and left the area. A condonation is now necessary in order to be able to pursue the case.

Most labour cases go to mediation / arbitration before the CCMA. No legal representation is permitted before this tribunal. After receiving assistance to complete forms etc, and receiving advice, most clients are well able to present their cases at the CCMA. If the matter goes to the labour court, most farmers would be represented by a lawyer. Hilda draws up papers to be presented at this court, with the assistance of Philmax and Shane. Hilda would very much like to be able to appear before this court.

### **Training activities**

Hilda enjoys carrying out promotional activities such as workshops, roleplays etc for various groups. She mentions recent ones on the law on domestic violence, workshops in juvenile prisons on HIV / Aids related rights. The farm workers themselves could benefit a lot from training in labour rights, ESTA etc. In the past the paralegals have done training of this kind. She would like to be able to do a lot more in this area, and says a training budget is necessary.

***Colin Lekay***

**Paralegal - Justice Centre in Caledon**

**Interview noted by Aymone du Toit on 13 December 2001**

**Background:** Went to University of Western Cape in 1993 and completed his BA and then LLB. Thereafter, interviewee looked for articles which were difficult to find and he volunteered at NICRO (NGO which supports women who are the victims of violence, obtaining divorces, protection orders etc). He then applied again for articles and waited for seven months. He states that 'if you know the right people' then it is easier to get articles. Otherwise it is very difficult and one needs excellent university results. He also volunteered for several months with a consulting firm in Cape Town and then gained employment with the Justice Centre.

**His work at the Centre:** Employees at the Justice Centre drew up their own job descriptions after a workshop and sent these through to the Head Office of LHR. On average, interviewee advises five clients but on a good day, 10 clients. On average, he sees 80 clients a month. These are mostly labour cases (60%), cases falling under the Extension of Security of Tenure Act (10%) and other civil cases (30%). Also accompanies the Candidate Attorney (CA) to the criminal courts and prepares files, takes down details from the accused etc.

The Justice Centre does not initiate litigation from its office but rather acts in a defensive role. Law used as a shield rather than as a spear, for example, protects the debtor in debt collection matters. When asked why, interviewee replied because the Centre does not have a trust account since this would increase the running expenses of the office.

**Training:** When asked whether he feels that he has enough training to deal with the types of matters which come to him, he replied that he does not. But also described that one learns from mistakes and also that workshops are useful, as well as reading in one's own time. He also asks the supervising attorney in the Centre for help as well as the other paralegal in the Centre on matters pertaining to labour and ESTA.

He has no family in Caledon. He says that this is ok.

**Future plans:** He hopes to be registered with the Law Society as an articled clerk. He hopes to gain experience working in the Justice Centre. After attaining his articles, he would continue with his current work except that he would spend one or two days in the criminal court to help the Candidate Attorney who is based in the Centre since the latter is overworked (opens approximately 20 new files a day and closes approximately five a day.)

Regarding the position of the other paralegal in the office who does not have her LLB: he says that they are waiting for the Legal Practice Act which would give paralegals the right of appearance in the lower courts.

**Stats:** Time spent is indicated on the files. Each file has a list with the number of minutes (it is not clear that this is the case at present – later conversation with Justice Centre attorney indicated that he hopes to begin doing this. The time spent on walk-ins is however being recorded at present.) Interviewee finds the formula for calculation of time to be difficult. (it was difficult to gain clarity on what he meant by this.)

**Relationship with advice offices:** First response was that he had, ‘Nothing to do with advice offices’, but then indicated that he has been to the offices at Riviersonderend and Villiersdorp, 3 or 4 times, and twice respectively since the Centre opened in August. This was in order to give advice.

***Zueastrid Kiewietz,***  
**Candidate attorney with Gurthrie & Theron**  
**Interviewed on December 11, 2001**

Zueastrid graduated in 2000 from the Stellenbosch University with an LLB. After that she worked as a volunteer in court in George but wanted to do her articles. She has been a candidate attorney since April 2001. The LHR advertised and did the interview together with the LAB and the PA of the Law firm.

She does primarily legal aid criminal cases (80% of her portfolio). She is obliged to do ten cases a month but in actual terms she does eighteen on average. Before August and the establishment of the Justice Centre, the legal aid cases came into the firm from the Magistrates' Court. After August the candidate attorneys go to the Justice Centre to obtain cases from the JC candidate attorney. She records her cases and faxes through the result every month (the 5<sup>th</sup>) to LHR in Stellenbosch (project office).

The remaining 20% of her portfolio consists of advice and other matters such as divorce cases. She also assists the law firm on matters of debt collection. She supervises and assists the advice offices in Rivieronsderend and Genadendal every Thursday (morning and afternoon respectively). She establishes narrative reports from walk- and phone-ins. She has approximately six walk- and phone-ins per day, referred to her by the paralegals in the two advice offices.

In terms of types of cases they fall primarily within the categories of labour and domestic violence.

She does not expect to stay on in the law firm after she has completed her articles although would like to become PA. The law firm is in general dissatisfied that the Legal Aid Board no longer pays the firm a fee for legal aid cases (judicare). They may not see the benefit of her stay. Hence she would prefer to be a candidate attorney in the Justice Centre. She would learn as much and she likes the atmosphere. She is the only candidate attorney in the firm but the network of four candidate attorneys in the Overberg works well. The firm receives approximately R1500 per month as admin. fee. She has not, however, been offered any training while at the firm except the training offered to the cluster of candidate attorneys by LHR.



## ***Machell Jacobs***

**Interview recorded on 11 December 2001**

Machell Jacobs has been a candidate attorney paid by the LAB under the Access to Justice project at the firm of Bosman & de Villiers since January 2001. Her formal graduation (several months after completing her studies) was in March 2001. After completing her legal studies at the University of the Western Cape, Machell attended the University of Cape Town practical legal training course for a further five to six months. Completion of this full time course allows the articling period for a candidate attorney to be reduced from two years to one. Machell will thus complete her normal articling period in January 2002, but she also has to pass two exams before becoming a fully qualified attorney. She will request a six-month extension of her period with Bosman de Villiers. After this, she hopes to be taken on as a candidate attorney at the OJC.

Machell obtained the position as an articling student under the project by applying for it after she saw an advertisement on the notice board at the University of Cape Town. Her salary was formerly paid by the LAB, but since August 2001, this has been done by LHR. There has been no change in the salary level.

### **Legal Aid related work**

Machell receives ten criminal cases per month, as per the agreement between the LAB and the firm. In addition to these cases, she gets walk-in clients on labour and divorce issues. She says that sometimes the clients know in advance of her presence at the office to give free advice. Some come from Genadendal and Riviersonderend, having been to the AOs there. However, she has had no systematic way of knowing or recording the factors that influenced the client in seeking help at the firm.

Machell estimates that about 50% of her time is spent on legal aid work, and 50% on private work for the firm. Most of the legal aid work is in the criminal cases. The other main areas are labour and divorce. In the divorce cases, she draws up summaries and files them with the divorce court. She cannot appear there, as it is at High Court level. Machell says that she gets about three walk-in clients per week. Machell receives the criminal cases from the OJC. Before the latter opened, she received them from the LAB.

Machell occasionally visits the Riviersonderend AO, but not often, as Zueastrid, the other project candidate attorney in Caledon, is assigned to this AO. Machell was formerly assigned to the Caledon AO, but when this closed, this part of her work more or less came to an end. She was not reassigned to another AO. The Riviersonderend AO is very good, she says. The paralegals there are well-trained. Overall, they are doing a very good job. It is only when they have a difficult case that they need the help of a candidate attorney. In such cases, the AO will make an appointment for the client to see the candidate attorney, who will visit the AO at the appointed time. The AO takes steps of an informal nature on behalf of clients, but if a formal step, such as sending a letter of

demand (warning that legal action will be taken if no resolution of the matter by the opposing party) needs to be written, they will call on a candidate attorney to do it.

### **Supervision & guidance**

Machell feels that, for the purpose of training, it is better to be at the firm than in a Justice Centre, as she gets a more rounded experience at the firm. The work is more varied, and the firm can sue, which the Justice Centre does not. She doubts that the OJC could sue for monetary damages on behalf of a client (Shane later told us that this could be done under certain circumstances). She also carries out work on contracts, wills, insurance claims etc, which a candidate at the JC would not do.

She usually gets guidance from Mr Smit (partner at the firm) in criminal matters, and from Mr Bosman in most other matters. The partners check her outgoing mail, and sign pleadings and summonses. Earlier, she often sought advice on some matters (especially labour) from the OJC staff. She still does this occasionally, but less than before.

Machell says that the candidate attorneys at justice centres have a bigger workload than she does.

*Hermanus Smit of Basson & de Villiers*

*Also Zueastrid's boss Theron*

**Interview noted on 11<sup>th</sup> December 2001**

Mr. Smit was very pleased with the project and having a candidate attorney in his firm. He wanted another one once Machell had finished her candidature. He would not be taking Machell on as a full attorney when she qualified since there was only work for 2 people in the office, especially since the collapse of legal aid/ judicare for the criminal work he used to specialise in. Part of his reason for wanting to keep another such ca in the office was that they would feed through some regional court cases which might come out of the magistrates court cases they would handle.

He would be quite happy to continue taking 10 criminal cases per month on legal aid and would particularly like to do the Regional Court cases when Shane was not available to do these. He had been given these in the past and would like to keep them if possible.

Legal Aid payments come in about 3 months or so after the dates of cases. As a result those judicare moneys he was used to from legal aid on criminal cases were only just beginning to dry up now (since they stopped in August) and his firm were certainly feeling the pinch. He used to have about 15 to 20 cases per month and that provided an income he now misses. He really likes the criminal work, is trained for it and experienced in it and would like to be able to continue.

At present he has two candidate attorneys with him, Machell who is paid for by the LAB and another ca who they pay for and who does a varied body of work.

It seemed that he supervised in some way, but not in a detailed fashion. He seemed satisfied with Marchelles work.

**Mr. Theron** was a little different in outlook. He also missed the criminal legal aid judicare work, but felt that now it was too poorly paid to be involved at all in this type of work. He would certainly not be taking on another ca when his present ca finished her articles. Nor would he be taking her on as a full attorney. He was annoyed that this area of work had dried up for his firm.

**NOTE** I thought that Zueastrid might be quite lonely out there once the other cas were qualified as she would be the last one to qualify. It might be more sensible to take her in to the Centre at that point and train and use her more beneficially.

***Carol, First Client at Overberg Justice Centre***  
**Interviews recorded by Aymone du Toit on 11 December 2001**

**Reason for seeking assistance:** A vehicle driven by a municipal employee reversed into the vehicle which interviewee's husband was driving causing substantial damage. She sustained back injuries. She wanted to receive money for pain and suffering but mainly for damage to the car. Municipality wanted quotes which she sent to them and they seemed to be co-operating. Repairs to the motor car cost her R15 000. After incurring this expense, she was told by the legal advisor of the municipality that the assessor had reported that the market value of the vehicle was lower than the cost of repairs and that the vehicle should have been written off.

**Experience at the Justice Centre:** Came for help in June of this year. Hilda (paralegal) took the matter up. She wrote a letter to the municipality sending a copy to the insurers of the municipality. (It was at this point that R5000 was offered? – this part unclear – R5000 may have been offered even before she came to the Centre.) Hilda was prepared to take the matter further but client decided not to pursue it and to accept the offer. Client wanted more money but seemed to be happy with the service which she had received. She claims that it was her decision not to pursue the matter and that if it were not for the Justice Centre, she would not have known where to go. She had approached a local attorney's firm but had received no help.

**Further details:** Client lives in Caledon. She knew about the office because someone told her.

## ***Second Client at Justice Centre in Caledon***

**Reason for seeking assistance:** Employee asked employer for permission to go to the Doctor. Employer gave him a day's wages and asked him to leave. Prior to this a co-employee of the client did not come to work on a particular day and on his return, the employer was angry that the client had not passed on the message that his co-employee would not be there. This is the real reason for the dismissal according to the client. He had been employed since January. The dismissal took place in November and in the same month, client approached the Justice Centre.

**Experience at the Centre:** Hilda (paralegal) faxed a letter to the employer. Employer did not respond. Hilda sent another letter which also received no response. Letter sets out the applicable sections and asks for a total of R1 400. This figure includes leave time and unpaid wages. It also asks for client's UIF card. Hilda has subsequently contacted the employer by telephone and a meeting has been set up for the employer to come to the Centre. This meeting to take place in next few days. Client does not wish to be reinstated but wants the money and his UIF card. He claimed to be happy with the service which he has received so far. He has also had another case with the Centre. He received free bail.

**Further Details:** Lives in Caledon in Bergsig. His brother-in-law sent him to the Centre and was also happy with service which he had received. He says that people in the area talk about the Centre and say that the services are acceptable ('aanvaarbaar').

### ***Third Client at the Overberg Justice Centre***

Mrs. Client gave a short background of the nature of the problem. Her daughter became pregnant at the early age of 14 years old. As the client had requested welfare benefits for the grandchild, the benefits authority had demanded a paternity test of the putative father. The boyfriend had a suspicion that he was not the biological father of Mrs. Client's grandchild. He went to do a paternity test at the local hospital. The results came out negative, which meant that he was not the grandchild's biological father. The medical expenses incurred were R750. He sued Mrs. Client instead of her daughter for the amount of R1500, which included the medical expenses, his transport to the hospital and the day's wages that he said he had lost in order to get the test done. The grand daughter is currently four years old and legally adopted by her grandparents. The daughter is nineteen years old and unemployed. The magistrate said that the daughter should be sued and not the grandmother only for the amount of R750, and the ex-boyfriend must make arrangements with the daughter. The status presently is that no one in the family heard anything from the ex-boyfriend.

Mrs. Client felt that she was treated and advised by Hilda Edwards, the Paralegal working in the Overberg Justice Centre, in a very efficient and professional manner. She received a very good quality of service from her and she feels that she was properly assisted.

***Magistrates Le Richie and van Wyk***

**Interview noted by Avrom Sherr on 12<sup>th</sup> December 2001**

75 % of the work of the court was criminal and the rest was civil. Van Wyk did entirely criminal and Le Richie a mixture of civil and criminal. Both were very enthusiastic about the opening of the OJC. The Centre did all the administration of Legal Aid Defence System now which had previously been carried out by the court and the court was able to use the individual who did this work on other activities.

The new salaried system meant that lawyers could not overcharge for this work. For the court and prosecutor and the defendant it was much quicker. Because the attorney is in court all the time the court does not have to postpone the case, hear an application for legal aid, find an attorney, come back to the court, find the client, let the client find the attorney who has been allocated, come back to the court etc. all of which could have taken 2-3 weeks during which time the accused could have been sitting in prison. Now all this was being done in 10 minutes.

Additionally the attorneys/cas were doing a great job, more people were being represented with better immediate access. The court's workload had doubled since 1995 with the same number of magistrates, although they were continually asking for more. This made a difference!

Under the old regime, the paralegals were the troublemakers, playing the gadfly. People needed them to pick up a phone or write a letter. The quality of their knowledge and experience is very low. They are really political influence figures like a shop steward. They should have some qualifications, not an LL.B. (some of us don't have that) but some qualifications. You cannot use a Rolls Royce in the Bush but you cannot make do with a bicycle either, perhaps a Land Rover service would be good.

99% of the people cannot afford lawyers. It helps if people are encouraged to plead guilty. Some of those paralegals working in advice offices were also our "clients" here at some time.

The attorneys at the Justice Centre should not have to do maintenance or traffic cases or any matter for which an acknowledgement of guilt fine is set. Other people such as social workers can help clients with these. There should be a filter so that the J Centre attorneys are not bothered with these cases.

As far as family violence is concerned these cases should not be assisted by the paralegals but they should go to court. Then the husband is in prison, she loses a breadwinner, he comes out and beats her up because she complained.

If half the people do not opt for legal aid it is not because we have not given them every chance. If the 1<sup>st</sup> person in the list doesn't opt the rest follow suit. Hermanus and Swollendam also need justice centres.

Nowadays you have to apply to become a magistrate. You used to start off as a prosecutor. There are about 250 magistrates court offices and 800 magistrates. This court has 50 cases a day. There are c. 112,000 people in the magisterial district of Caledon and about 500,000 in the Overburg.

Magistrates wear gowns with a red stripe. If new case have to do 100 hours of community service work it should not be in court because we will spend all our time training them.



***Interview with Mr Herold Engelbrecht***  
**Prosecutor of the Caledon court**

Mr. Herold Engelbrecht is currently the Prosecutor at the Caledon Magistrates court in Caledon. He studied a B Juris degree through the University of the Western Cape. He then started with his LLB degree, but got the opportunity to become the prosecutor at the Caledon Magistrates Court in Caledon and took that instead of finishing his LLB degree. Mr. Engelbrecht has been the prosecutor at the court for the past nine years.

In order to become a Prosecutor before 1994, one was obliged to attend a four week beginners training in Pretoria. Presently the trained Prosecutors are obliged to write an exam after attending the four week beginner course in Pretoria. An advanced prosecutorial course of four years are also offered in Pretoria, where the more advanced details and responsibilities of a Prosecutor are taught.

Mr. Engelbrecht prefers being a Prosecutor than anything else in the legal profession, because as he said in his own words that the core purpose of prosecuting is to make sure that justice is done. The type of people that Mr. Engelbrecht deals with in his day to day working environment, is mostly the poor people which makes out about 70% of the population of the Overberg region.

When he was asked on how he felt about the Overberg Justice Centre that has recently been established, he said that it started to play a very critical role in the Overberg region, especially in the criminal cases. The accused is provided with legal representation almost immediately when it is needed. A faster service is provided to the accused at the court, Philmax Bogenhagen (candidate attorney at the Overberg Justice Centre) and Shane Sampson (principal attorney at the Overberg Justice Centre). According to him, even the local police officers agree that a faster service is provided and that cases are being dealt with at a faster rate than before the Overberg Justice Centre was established.

The types of cases that are mostly dealt with, are theft and perlemoen. He dealt with about 50 of such cases as from the beginning of the year until presently. About 8000 cases are placed on the role of the court per year, whereby about 40 – 50 cases are referred to the District Court.

The governing body of the Prosecutors is the National Prosecutorial Authority. If a case is withdrawn by the prosecutor, an appeal can be made by writing a letter to the Director of the Public Prosecutor. If the matter cannot be settled at provincial level, the National Director of the Public Prosecutor. If the matter is still unresolved, it might be referred to the Minister.

When he was asked about what his thoughts are on the Advice Offices in the Overberg region, he talked about the fact that they launched a meeting at the local school whereby a mob trial was conducted by the children themselves. When he was asked the question of his knowledge of what Advice Offices are doing within the area, he at first said that he

sees them as his colleagues and that they advise each other, but then he realized that the Overberg Justice Centre is not the Advice Office. According to him, the Advice Offices should work closely together with the mayors of the towns, because they are contributing towards his or her salary. They should also participate in the local Police Forums.

In most juvenial cases, the accused are advised to get legal representation, but a large number refuses it. The reason for it is not known. A social worker as well as a community leader must be present at a hearing of a juvenial offender. During serious cases, Mr. Engelbrecht will ask the accused as well as the victim and other roleplayers to meet in his office whereby the accused have to write a letter stating his or her thoughts of the crime. The Social Worker will in most cases put the accused on a rehabilitation programme with the help of different organizations. The victims are included in this whole process. It was actually emphasized by the district procutor that all juvenile offenders must have legal representation and therefor it the role of the Overberg Justice Centre, according to the Prosecutor, is very important and critical.

## ***Philmacs Bugenhagen***

**Candidate attorney, interview noted by Fergus Kerrigan, 12 December 2001**

Philmacs feels that the work with the advice offices (AOs) carries a lot of responsibility. At the Viliersdorp AO, there are many cases concerning farm workers. One current one concerns a threatened eviction and compensation for unfair dismissal. The case has been referred to Philmacs by the sole staff member at the Viliersdorp AO. She will write an informal letter to the opposing party. If this does not result in a resolution of the case in the client's favour, Philmacs will pursue it.

Philmacs visits two AOs regularly: Viliersdorp (Tuesday) and Riviersonderend (Thursday). His visits take place before the district court hearings in these two towns. Court sessions start at about 10.30, so he visits the AOs for an hour or more prior to the sessions. Philmacs goes through the case notes prepared by the AO, and makes appointments for the following week when necessary. Philmac's impression was that the clients themselves decide and know when they need a lawyer, and when the AO paralegals can deal with their complaint. He says that they have a high level of sophistication on this question. Most of them can read and write, according to him.<sup>42</sup> Philmacs says that most of the work coming from the AOs consists of labour related cases, criminal cases, and divorce cases. In Riviersonderend, there are many cases involving claims for monetary compensation. Philmacs has issued letters of demand in such cases. If the matter goes to the Labour Court (in Cape Town), Shane takes care of it.

Philmacs is very happy with the supervision and guidance which he receives from Shane Sampson. He can usually discuss cases with Shane at the weekly meeting (Wednesday, 8 am) or informally with Shane at or on the way to or from the court. Philmacs very much enjoys criminal defence work. This is where he really feels at home, he says. He enjoys a very good relationship with the magistrates and the prosecutor. He does not feel that race is a problem in these relationships, but says that this is not always the case with the police. There is still some racism within the police.

Asked if he feels that there might be a danger of developing too close and friendly a relationship with the magistrates and prosecutor, when he has a professional duty to oppose the state's case, Philmacs thinks that this is being dealt with well. He and Shane have opposed the state in several cases, he says. He mentions two, the first of which concerned a case in which the prosecutor wanted a guilty plea, but he and Shane refused, saying they would see the prosecutor in court. The case was eventually dismissed by the judge without the defence having to present its defence (s. 174 – evidence insufficient as a matter of law). The second was a robbery case. Here again, the defence refused to plead

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<sup>42</sup> This must be contrasted with the information given by Isak Palmer at the Riviersonderend AO, which contradicts this view entirely. According to Palmer's rough estimate, about 60 percent of the clients are functionally illiterate. Without the guidance of the paralegals, the clients would have little idea of when a lawyer is necessary. Mr Palmer's view seems more likely to be correct and Philmacs probably has not realised how much filtering has occurred before his arrival at the AO.

guilty, thinking the prosecution's case was weak. They ended up losing this case however. Philmacs says that this is because the defendant refused to follow his advice.

### **Caseload**

Philmacs says that he deals with about 90 – 100 criminal cases per month, or perhaps about 4 per day. He usually has about thirty minutes to read the prosecution docket and discuss the case with the defendant before the hearing. In bail applications however, he has only the consultation with the client to base himself on, and it is often impossible to discuss the strength of the prosecution's case as an element in the consideration of the bail application. Generally, he feels that he has sufficient time to do his work properly, though the hours are long and hard.

Philmac says that he would like to become a principal attorney in the OJC. Later on, his ambition is to become a principal attorney, perhaps somewhere else. He is very keen on criminal law and wants to continue working in this area. He feels that he can make a difference, making the process more just.

If forced to prioritise in the OJC's work, Philmacs says that they could choose not to give representation in some of the criminal cases rather than cutting down on the work in labour related cases. He would like to be able to assist people in writing wills. Very few poor people do so, and the families often lose a lot of their property by not doing so. He says that it would also be very good if the OJC was able to give support to other AOs. At present however, they do not have the capacity to do so. Sometimes though, the OJC gets calls from these other AOs, and the OJC gives them the advice they need.

***Isak Palmer***

**Head of the Riviersonderend Advice Office (and also Chairperson of the OCBPA)**

**Interview noted on December 12, 2001**

Isak has been a paralegal for the past 16 years. Before the new dispensation the Tutu Foundation funded training of paralegals. He attended some of these training courses conducted by the UWC on matters such as criminal and civil law procedures and labour law – the old laws that is. Since then he has participated in numerous training courses offered by LHR and the NCBPA through the University of Stellenbosch on matters such as children's rights and media and the law. These courses correspond to the basic paralegal training. He finds that he has received sufficient training.

Isak left school after standard 3 (grade 4). He was 12-13 years old. He was evicted from school because his family could not afford the school fees.

The advice office is manned by 8 staff members, including Isak. Four paralegals (Isak, Ben, Wilfred and on an ad hoc basis David (who works on the children's project hosted by the office)). Isak is in charge of fundraising, lobbying and networking. Ben is head of the legal desk and Wilfred (who is the son of Isak) is a paralegal at this desk. Muriel is the manager of the learning centre which targets adult education (up to grade 12) and she is at the same time the book keeper in the advice office. Heedi is the administrator in the advice office and at the same time an adult educator at the learning centre. Iva is a receptionist (and a paralegal of background). Hermien is Isak's assistant. The advice office is planning to hire in an extra staff member who can speak Xhosa. The Overberg is populated by Afrikaans and Xhosa speakers and it is important to be able to assist a client in his/her own language. The advice office does not have any Xhosa speaking staff at present.

The Management Committee of the advice office has 8 members (it is supposed to have 10). The committee members come from the local community, including two teachers. The committee meets once a month and is the employer of the advice office staff.

The NCBPA is the national body of paralegals. Wescopa (covering the Western Cape) is the provincial body of paralegals. And the OCBPA (covering the Overberg) is the regional body of paralegals. There used to be 15 advice offices in the OCBPA. Some of them have had to close down due to a lack of funding and a lack of capacity (not professional). 60 advice offices have had to close this year country wide. There are today 10 advice offices still in operation in the Overberg, most of them funded by SCAT.

The OCBPA is at the brink of establishing a trust with a view to effect its own fundraising for the paralegals. A strategic plan and a fundraising proposal have been developed, spearheaded by Walter Wessels. The trust will hold the funds. The trustees will be 50% lawyers (such as Shane from the Overberg Justice Centre and Ricardo (a former candidate attorney in the Overberg) and 50% paralegals.

The Overberg Justice Centre is distant from the farms and the advice offices are needed since they are closer to the farms. Legislation changes rapidly and the people need to be informed accordingly. Legal advice is hence not enough; training of the constituencies, i.e. the farm workers on farms, is necessary too. 40% of the population in the Overberg are illiterate. Today, there is a public primary school that is accessible by bus (a regular bus service). At secondary school level, a private school is the nearest one. People at times go to jail for not being able to pay the school fees at the private school which are R130 per month per child as a minimum (uniform and books). The fee raises concurrently with the salary.

The Legal Practice Bill provides for that paralegals can become legal practitioners provided that they are subject to certified and advanced training. Isak believes that few will do so. The Bill also provides for that paralegals can appear in court which they can't at the moment (they can appear before the CCMA). He is in general not happy with the Bill because it will not built on the experience generated by paralegals. He would like paralegals to be able to appear in court on civil matters related to family, maintenance and labour as well as arbitration. But he reckons that it will take long. Today, the lawyers do not take in for instance labour cases; they go where the money is unlike the paralegals who are not in it for the money.

Clients of the advice office who are employed are asked to provide a donation to the office. The office has raised R11.000 the last six months from local fundraising. Some white farmers and business people also come to the office. The paralegal code of conduct stipulates that the paralegals are not allowed to charge any fees for their work but merely to generate funds out of voluntary donations.

The advice office also engages in programmes with local government such as the development of an integrated development strategy (IDS) – where the office has recommended the establishment of multipurpose development centres – as well as the Justice Forum and the Labour Forum.

The nearest Department of Labour branch is in Sommerset West. Officials from this office come through to Riviersonderend once a month to cater for unemployment benefits.

***Ben Armstrong***  
**Riviersonderend Advice Office**

Mr. Ben Armstrong is working at Riviersonderend Advice under the supervision of Mr. Isak Palmer. He is the co-ordinator for the Legal Department within the office and work closely together with the Paralegals in the office. Mr. Armstrong started as a Paralegal in Riviersonderend Advice Office as a Paralegal almost ten years ago. As far as training is concerned, Mr. Armstrong attended the Basic Paralegal Training, the Intermediate and the Certified Training Programme that was organized by Lawyers for Human Rights and the National Community-based Paralegal Association in conjunction with universities such as the University of Stellenbosch. Apart from being the co-ordinator of the abovementioned department, he is currently the vice-secretary for the Overberg Community-based Paralegal Trust (OCBPT) and the vice-treasurer for the Western Cape Community-based Paralegal Association (WESCCOPA). The types of cases that his department deals with, is in most cases labour matters, consumer, land and housing (Municipal services), assisting with applications for the Department of Home Affairs and assisting in the application for a disability grant for example from the Department of Welfare.

The way of operation after the establishment of the Overberg Justice Centre, is that a candidate attorney, either Philmax Bogenhagen or Zueastrid Kiewietz will visit the Advice Office once a week, either on a Tuesday or Thursday. They will spent a whole day consulting with the clients in the Advice Centre, depending on how many clients are at the office on that specific day. On the question of who decides whether or not the case should be referred to the Justice Centre or to an attorney, Mr. Armstrong answered that he makes it of course after advising the client and receiving instructions from him or her to proceed in that manner. Most of the cases that is being handled by the candidate attorneys are criminal cases.

In case of the labour and illegal eviction matters of farmworkers for example, Mr. Armstrong will take handle wit it accordingly. Usually, by writing a letter and negotiating with the other party (in this case the farmer) the matter is resolved without going to court. In most of the unfair dismissal cases, the client is advised to be re-instated at his or her work, because Riviersonderend, like most other towns in South Africa, is suffering under a high unemployment rate. Information that the abovementioned letter contains, are the identification of the nature of the problem according to the client of the Advice Office, an extract from the relevant act (in case of unfair dismissals, a section (s) the Basic Conditions of Employment Act will be quoted) will be highlighted as well as the consequences of ignoring the Act. The other party is invited to the Advice Office to present his or her version of the case. In the past, farmers or employers refused to attend to these invitations, but presently they are more interested in negotiating and communicating to the Paralegals working the Advice Office.

The Black people are the major clients of the Advice Office and thus far only one white client was assisted by Mr. Armstrong. This matter was an unfair dismissal, but was

referred to Swellendam which was the closest office to the clients house. If they do not know what to do in certain cases, they contact the Centre for Rural Legal Studies, the Department of Labour, etc. About 100 cases are received every month by the Advice Office, whereby about 20 are legal aid cases of which about 6 are successful in their application, are referred to the candidate attorneys of the Overberg Justice Centre. About 75% of these cases are handled by the Paralegals themselves, while about 25% are being referred to the lawyers.

In terms of the question of how he felt about the establishment and working closely with the Overberg Justice Centre, Mr. Armstrong said that in his view services are better, because the clients can actual consultations from the attorneys. According to him, Hilda Edwards, the Paralegal of the Overberg Justice Centre, is on the same level as him.

According to him, clients are being referred to the Advice Office by the Magistrates at the Caledon Court as well. The most popular cases that they are dealing with on a regular bases are that of consumer, whereby the client does not read the small print on the summons at all. The Paralegals furthermore assist clients completing forms for example the Small Claims Court, legal aid application, etc. Every person walking into the Advice Office is recorded in their database, which is the old one that was produced. Currently, no stats are sent to the Overberg Justice Centre, because it had to wait for computers to be installed. The Advice Office is recording the stats regularly and includes it into their reports to the Management Committee and the Funders.

His suggestion on how the service can be improved was that one of the Paralegal must spent a short period of time (example three months) working in the Overberg Justice Centre to gain knowledge and experience from the Attorneys and Candidate Attorneys that work in the Justice Centre.



**Riviersonderend Advice Office**  
**Interview noted by Fergus Kerrigan, 12<sup>th</sup> December 2001**

(Interviewee's name unfortunately not recorded. A farm worker. Maybe Walter can help with the name, he interpreted.)

The client, a middle-aged to elderly farm worker, explained his case by saying that he had been living on a farm which was not the one where he worked, the farmer had permitted him to do so, he says. According to the client, the farmer had also allowed the interviewee's son and daughter to live there.

One morning, the farmer noticed him for some reason, and suddenly and with no provocation, struck him from behind (client does not know if he used his fists or an object). Client fell into a ditch, almost unconscious. When client came to, he went first to the AO. Isak Palmer took him to the Caledon hospital. Client was later transferred to Tygerboek hospital. He remained hospitalised for four months. The doctor advised him to contact the police to make a complaint in respect of his injuries. Client did so, but was not well received by the police. Client then returned to Isak at the AO, who accompanied him to the police station. This time, the complaint was taken seriously. According to the client, the case took place about two years ago.

Client appears as though he may still be suffering from the injuries received (he says he is). He says that he is now unable to do more than light gardening.

The case came up in Swellendam district court, where the farmer was fined. According to client's understanding the farmer also promised to provide him with flour, slaughtered animals and other provisions in the future, but the farmer has not respected this. It is unclear whether this was a court order or a simple promise from the farmer.

Client was very happy with the treatment and the assistance which he received from the AO. He says that he might not be alive now if it had not been for this help.

Client says that he was helped by an attorney.

The undersigned talked briefly with Isak Palmer to obtain clarifications concerning the case. Isak says that there was a private lawyer who helped the client as a paying client. There was an out of court settlement agreed between this lawyer and that of the farmer, amounting to R 15,000. R 1,000 was taken as the attorney's fee. Isak is not aware of a promise or order for support in the form of flour, slaughtered animals etc. He says there was only the once-off payment.

***Cordelia Robertson***

**Interview recorded 13<sup>th</sup> December 2001**

Cordelia Robertson is an attorney employed by the Legal Aid Board and also an administrator in Stellenbosch. She supervises and trains candidate attorneys largely on criminal cases. There are no judicare instructions from the Stellenbosch office. Cordelia is very much against providing judicare instructions to attorneys who do not do a good job on behalf of defendants. She is happy with the public defender model. She says that they ask for "her people" by name. She trained Shane who worked with her in the Stellenbosch office before he moved to the Overberg Justice Centre. Philmacks also sat in her training on divorce.

It was suggested to her that it may be sensible to have both the public defender model working side by side with the judicare model so that each keep each other "honest". Cordelia disagreed. She mentioned an unfortunate incident last year in which it was clear that a local attorney had completely let down the defendant who would not be informed about the consequences of pleading guilty to a charge of molesting a child, when he had had no contact of that sort with the child. Cordelia was not immediately happy about paralegals. She says that she had some poor experience with their quality of service and also their attitude from personal contact with a few of them. They were not properly trained and they did not know always how to behave.

However, she had been involved in some divorce training for paralegals. She thought there could be a future for them. She wanted a paralegal in Stellenbosch in her own office to do all divorces provided she interviewed them, trained them and organised them. She loved doing the training and was very happy to do it.

Unfortunately for some years nobody from among the paralegals had really approached her or spoke to her about the future of paralegals or the paralegal movement. She said she was very open to anybody to come and talk to her including especially the paralegal organisations. She said she was very prepared to go out and do training of paralegals as well. It was just a question of being approached and then trying to organise.

At the Legal Aid Board there is the beginnings of a move away from doing just crime. There is a move towards assisting the least advantaged groups/women and children. They were hoping to develop special fast track systems for pushing juveniles through the system quickly. They were also involved in considering work on ESTA and PIE. They were not involved in labour law but the student law clinic which was just across the hall took cases of that sort.

Cordelia was aware that LEAP and particularly Matilda Smith used to do some work on training in relation to all these areas. She was also aware that SCAT were involved in that sort of training.

It was then mentioned to Cordelia that candidate attorneys might all, under the new Legal Practice Bill, have to undertake some 100 hours of community service. What did she

think of using candidate attorneys who came from commercial firms and other places in this way. She said it would only be useful if they could come for about six months in order to work. It takes something like that before they can actually get on top of cases and do some useful work. In her view section 35(3) of the Constitution said that criminal matters should be dealt with in terms of defence on state expense. It was pointed out to her that section 34 also seemed to guarantee access to courts and justice in relation to civil matters.

The interview was extremely positive and helpful and the enquiry group came away feeling that Cordelia Robertson was an important player who ought to be used more in training paralegals and linking them in with the whole process.

***Achmat Simaar***

**National Cluster Co-ordinator, Wescopa Cape Town,  
Interview noted on December 13, 2001**

The paralegal movement is structured as follows: The NCBPA is a national body. The nine provincial bodies are affiliated to the NCBPA. The advice offices are affiliated to the provincial bodies. Hence, there is no direct contact between the NCBPA and the advice offices in terms of funding.

The National Paralegal Institute (NPI) is in the process of being established. It aims to build the capacity of paralegals in view of accreditation.

The draft Legal Practice Bill is still unclear as to the exact role of paralegals. The paralegal components of the Bill have been met by opposition from the legal fraternity.

The paralegals had considerable interface with the Department of Justice under the previous Minister of Justice, AM Omar. From 1995 and through to the Legal Aid Forum held in January 1998 where Achmat, who used to be part of the Overberg project, gave a presentation on the model. At this Forum, NADEL and BLA recognised the role played by paralegals in the provision of legal services. The importance of paralegals was also stressed in Justice Vision 2000 – the strategic plan of the Department of Justice. The paralegal movement has not lost sight of that.

Paralegals are the frontline structures in the communities. However, different categories of paralegals need to be considered along the lines of the South African Qualification Authority with the aim to professionalise paralegals. There will be three levels of paralegals. Those with a) fundamental/basic training (present), b) core/certified training (present) and c) diploma status (future). The latter will grant paralegals the right of representation in lower courts. It is being considered to do away with the basic training. In the move towards professionalisation, paralegals that hold a vast experience but less training may be excluded.

At present the paralegal movement is weakened. The reason is primarily the inability of the provincial paralegal structures to sustain themselves, for example WESCOPA. Funds have been cut. The Paralegal Training Project at LHR, which Achmat used to work at in Stellenbosch, aimed at exactly building such capacity of paralegals. The project provided the paralegals an opportunity to get together. This is not happening anymore to the effect that WESCOPA has not been able to participate in and contribute to the national debate as well as to democratise the national structure. These developments have retarded the process that was initially set in motion.

As far as the OCBPA is concerned, the Overberg is the only sub-region in the Western Cape in which the paralegals have met and meet regularly because of the work around the Overberg Justice Centre. Hence, the OCBPA is in an advanced position in comparison

with the other sub-regions. One should think that due to these circumstances that the OCBPA would be able to strengthen other structures like WESCOPA and the NCBPA. However, that has not been the case. The OCBPA is not participating in WESCOPA meetings. Furthermore, the Rivieronderend advice office is supposed to coordinate training of paralegals in the province under the auspices of WESCOPA. That is not happening either. Ben of the Rivieronderend advice office does not attend the executive board meetings as he was meant to.

The new cluster concept is aimed towards strengthening the provinces, including WESCOPA. The cluster concept saw the light of dawn at a national workshop held in September of 2001 at the NCBPA premises. The workshop authorized the establishment of a pilot in the Western Cape in the form of a metro human rights cluster. A memorandum of understanding has been signed between the involved parties which are the NCBPA, the University of Western Cape law clinic and the ICJ-Sweden that is funding this new intervention. The thrust of the concept is that the advice offices will get legal back up from the university law clinics. Michael Blake will be appointed soon as cluster co-ordinator at the level of the NCBPA. While in exile he had the opportunity to study and gain experience from the work of advice offices in the UK.

As far as the future is concerned, clusters will be set up in other sub-regions, rural as well. Partly, the programme will aim at impact litigation and partly at a shift in the work of the advice offices. Previously, the advice offices applied a generalist approach - for example labour. Today, it is necessary to identify and pursue focal areas and otherwise refer clients as far as generalist issues are concerned. In the Western Cape (the metro human rights cluster) three programme areas have been identified:

- housing and related rights (in the case of rural areas land will be added)
- HIV/Aids (Western Cape currently has the highest infection rate in the country)
- the right to just administration, such as fast tracking of grants and public participation in policy development - for example in the area of debt collection

In future, the programme will also aim at community oriented work.

As regards the justice centre model, Achmat finds that the paralegals have not received sufficient support. The centres primarily provide assistance in the field of criminal work. There is no support for civil matters - they still remain with the advice offices. Achmat feels that the paralegals have not been well treated by the Legal Aid Board. The Overberg Justice Centre operates in isolation from the four satellite advice offices. The LAB does not fund the advice offices - Danida did. The vision of the cluster model is also that the state will take over funding in future. So far, the advice offices that fall under the programme have been guaranteed funding by the ICJ-Sweden in 2002. Achmat notes, that the paralegals found more support with the previous Minister of Justice, AM Omar, than with the current minister, Penuell Maduna. On top of all this, Achmat finds that Lawyers for Human Rights has taken an unfortunate diversion in the project parallel to the "change of guard" as he states it. [read: Vinodh was appointed national director]. As he phrases it: "Vinodh is not keen on paralegals!".]

The constitution of the NCBPA stipulates that paralegals are not allowed to claim payment for their services. It is a non-profit approach. However, the discussion as to whether certain payments should be allowed are coming to the fore due to the general lapse of funding for the paralegals. The (so-called) commercialised paralegals are pushing for it - they form part of the (so-called) paralegal schools. Therefore, it is being "quietly spoken of" in the NCBPA. Achmat underlines, however, that the communities served by the advice offices are the most impoverished and that this should be kept in mind. Currently, this issue is in a state of flux. On the one hand, it would be naïve not to consider the possibility of payments. On the other hand, it is not a determined route. In sum, the paralegals are not being rewarded and sustainability is at stake.

Achmat believes that paralegals should not receive direct funding from government. They could run the risk of being turned into state organs, losing their independence and advisory role. Instead, they should receive (government) funding through a trust.

In respect of disciplinary structures, Achmat recognises the importance: "With recognition comes regulation" as he phrases it. NADEL and BLA could play a role in terms of building capacity as far as disciplinary structures are concerned.

## ***Odette Goldenhuys***

**Legal Aid Board, Access to Justice Section, Pretoria  
Telephone interview recorded 14<sup>th</sup> December 2001**

Asked about the plans of the Legal Aid Board (LAB) to include or exclude paralegals in / from LAB funding of legal aid in the future, Odette replied that paralegals certainly fitted into the LABs ideas of how to provide legal services. She mentioned that the LAB justice centres employ persons called Legal Aid Officers, who provide basic advice, complete application forms with the clients and make referrals to the candidate attorneys (Cas) or the principal attorney (PA).

In addition, the LAB budget has a provision of R15 million for cooperation agreements. The demand up to now has not been to fund the AOs, but rather to take them over. This is clearly impossible. Whether the LAB should enter into cooperation agreements with AOs is still undecided. The Board has not done so yet. To do so would have many implications – there are about 2000 AOs in the country, so there would have to be criteria for the decision to fund or not, and many other questions to settle.

### **LAB Budgetary context**

Odette said that it was important to understand the general budgetary context in which the LAB was operating. The annual budget of the LAB for 2001 is R312 million. It does not get funds from any sources other than the national budget. Until now, most of the funds have been spent on judicare. Judicare is being phased out, but there is a rollover time during which cases will have to be concluded and existing accounts settled. 50% of the 2001 budget will go towards settlement of judicare accounts, and a significant portion of the 2002 – 2003 budget will likewise be used in this way. Until the whole country can be covered by Justice Centres, a portion of the budget will have to go to judicare. The other two main portions of the LAB budget include allocations for cooperation agreements and a fund for impact litigation cases.

In the future, judicare will only be used in conflict of interest cases.

### **LAB Justice Centres**

Currently, there are 24 LAB justice centres in the country. An additional seven should be established before the end of the current financial year. A further 14 are to be established in the next financial year. Each of these will have paralegals working in them.

The JC paralegals generally have an educational level of Matric and some relevant additional study. While we look at the courses offered by the NCBPA, and others, we do not have specific requirements of particular certificates etc. The LAB does not train staff to become paralegals (Legal Aid Officers). Most of those in these positions have come through the LAB ranks, and have learnt things on the job (**meaning they probably have quite a different skills profile than a paralegal who has come from the AOs – FK**). As we increase the number of AOs, it will be necessary to recruit people externally, and to look at training, qualifications and experience.

### **Links between JCs and AOs**

Odette recognizes that the strength of the Overberg JC is its links to the AOs in the region. She says that the LAB centres will try to foster similar links. (Odette was not very clear on how the LAB should go about this, she said that the LAB would recruit someone in 2002 to work on this.) Odette referred to her own previous work as a staff attorney for the Legal Resources Centre, servicing AOs. The LAB would favour this model, with contacts by telephone or in person through visits, with the aim of empowering the AOs.

Odette thinks that through establishing solid working relationships between the JCs and the AOs, each would get to know one another, and know each other's strengths and weaknesses. To work together with the AOs on a large scale, it would be necessary to develop a manual, guidelines etc. The LAB has not done so yet. These plans have not yet been put into writing, but they will be a part of the new business plan of the LAB for the next financial year under the component of Access to Justice.

Odette has understood from discussions with Martin Mbonyela that there would be funding for the AOs for a further three years.

Asked if the JC's work in processing criminal legal aid applications at the courts, saving the court money, could be used as an argument to increase the budget of the LAB, Odette replied that she did not see much hope of this. The court clerk had done this as an extra task in the past, not as part of his general duties.

AS said that research on international experience shows that it is beneficial to retain some *judicare*, even with a public defender model. Some small amount of real *judicare* (i.e. not limited to the conflict cases) would serve as a useful and necessary check on the salaried lawyers, as well as preserving choice among the recipients. Allowing for a *judicare* component will ensure that the criminal defence capacity which currently exists among competent, experienced private lawyers will not be lost to the system. Odette said she would consider this.

Asked whether the LAB would continue to outsource legal aid services to NGOs like the LHR for the next two years. For budgetary reasons, no commitment could be given over a longer period than this, though the LAB would like to do so. The LAB had entered into cooperation agreements to establish JCs in areas where NGOs (only LHR at present) are better placed to provide legal services than the LAB is.

### **Priorities in Legal Aid Services**

Odette says that LAB internal guidelines stipulate that legal aid should not normally be given in simple, non-serious criminal cases. Legal aid should be available in relation to offences carrying penalties of more than three months.

In relation to non-criminal work, the LAB has three priority groups of vulnerable persons:



- women;
- children;
- homeless / landless people.

To these, a fourth group might be added in 2002 : HIV / AIDS sufferers.

