PUBLIC SECTOR PARALEGALS IN BRITISH COLUMBIA: AN ANALYSIS OF THE DIFFERENCES BETWEEN PARALEGALS AND LAWYERS IN THE PROVISION OF SUMMARY ADVICE

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Public Sector Paralegals in British Columbia:
An Analysis of Differences Between Paralegals and
Lawyers in the Provision of Summary Advice

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ABSTRACT

This thesis was designed to explore the differences in the overall quality and legal accuracy of summary advice provided by lawyers and paralegals in the delivery of public legal services. An exploratory, quasi-experimental research design was employed. Pseudo-clients were utilized to elicit the summary advice. The sample consisted of four Legal Service Society offices that employed staff lawyers for client services and five offices that employed paralegals for these services. These offices were located in the Vancouver Lower Mainland and Vancouver Island. Only those offices that had consented to be involved in the study were included.

Four pseudo-clients were hired and extensively trained. The pseudo-clients each had a defined, specific legal problem which they presented as they walked into each participating office, asking for summary advice. Immediately after the interview, the pseudo-clients were debriefed as to the advice they reported being given by the paralegal or lawyer. This debriefing was tape-recorded and later transcribed. The advice was then assessed for overall quality and legal accuracy by a panel of lawyers.

The specific hypotheses tested by this study were:

1. Paralegals in the sample would be viewed as being more concerned and helpful than the lawyers in the sample.
2. For the purpose of providing summary legal advice on a one-time visit, the paralegals in the sample would provide

the same quality of legal advice as the lawyers in the sample.

The results supported the first hypothesis but only partially supported the second. Generally, paralegals were perceived to be more concerned and helpful than lawyers. Paralegals were assessed as giving more accurate legal advice than lawyers on one problem type (Family Female), while there were no differences in the legal accuracy for the other three problem types (Family Male, Civil Male, and Civil Female). In terms of the general overall quality of the advice provided, paralegals were assessed as giving a higher quality of summary advice for one problem type (Family Female), while lawyers were assessed as giving a higher quality of summary advice for another problem type (Civil Female). The remaining two problem types (Family Male and Civil Male) showed no differences between lawyers and paralegals.

DEDICATION

In Memory

of

Dubbie

whose strength and passion for life

will always be remembered

QUOTE

The law, in its majestic equality,
forbids the rich as well as the poor
to sleep under bridges, to beg in the streets,
and to steal bread.

Anatole France (1844 - 1924).

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I. INTRODUCTION

One of the fundamental tenets of our justice system is the idea that everyone should be afforded equal protection under the law and that all are equal before, and under, the law [1]. If everyone is to be equal before, and under, the law, then all must have access to legal resources. As Larry Taman has stated:

> If the legal system is central to a functioning society, the individual must have access. He must be able to learn of his existing rights and duties, he must be able to enforce them, and he must be able to exercise some influence in the constant process of law reform. His ability to do so is the measure of his ability to effectively participate. Indeed, if the legal system does represent a statement of society's values, the man who has no access to that system has no voice in society--he is disenfranchised, and that disenfranchisement will lead to further aggravation of his social and economic circumstances. Access then is vital (Tamen, 1971, p. 6).

Prior to the 1960's, access was viewed as a function of financial limitations only. If there were no monetary barriers, then all would be able to obtain legal services. This was the premise on which government-funded legal aid schemes in the United States, England and Canada were based (Garth,1980). The assumption was that the role of legal services was to provide free or subsidized legal representation to needy individual

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[1] Constitution Act 1982, Part I, Canadian Charter of Rights and Freedoms ; 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical diability.

clients. With the formation of free legal services, it was assumed that all other inequalities would become irrelevant and justice would be seen as being readily accessible to the poor.

In the United States, during the 1960's, a new concept for the provision of legal services to the poor emerged. This concept grew out of the Johnson administration's "War on Poverty", and the development of the "civilian perspective" rather than a professional perspective on the "War on Poverty". One of the weapons in this war was the system of Neighborhood Law Offices (NLO), which was based on the notion that financial limitations were not the only reason poor people did not seek out lawyers (Garth, 1980).

This concept was that, overall, lawyers are trained primarily in business and corporate law, and are not educated in the areas of law that affect most poor people: landlord/tenant, welfare, UIC, small claims, and consumer law (Osler, 1974). Further, it was thought that the majority of the poor did not recognize these problem areas as being legal in nature. It was felt that geographical, cultural, educational and social differences between the community and the legal profession made communication and interaction difficult. Legal terminology, as well as the mystique surrounding lawyers, both aided in further separating the justice system and lawyers from the average person.

According to this perspective, lawyers only served a small proportion of the population and

> for the most part the legal profession is not available for, or skilled at handling the multitude of problems confronting the majority of the population (Zeman, 1979, p. 154).

The idea was that legal services were to be used as a vehicle for the redistribution of goods, facilities, and services, as poverty was seen to be caused by a maldistribution of these items. Justice was to be pursued through community development and organization, law reform, and class action. As Wexler has stated:

> the traditional model is not what poor people need; in many ways it is exactly what they do not need. . . .If poverty is stopped it will be stopped by poor people and poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves (Wexler, 1970, p. 1050).

These two approaches were distinguished by the Cahns in terms of one being a service function, and the other, a representative function. The service function was seen as providing free legal services to those in need and the second was seen as providing represention to: "individuals and groups in cases which have broad institutional implications and widespread ramifications" (Cahn and Cahn, 1964, p. 1346). This second function became known as one of "unmet need".

Access was subsequently viewed in a more proactive light. The view emerged that one can only have access if certain conditions were met: if one recognizes the problem as a legal one, if free legal service is available, and if social, cultural, and geographical differences do not prohibit the use of these services. Because the concept of unmet need went beyond

the mandate of simply providing free legal services to the poor, the use of paralegals or lay personnel in the provision of legal services was seen as an alternative to the traditional lawyer-operated office. Paralegals were seen as an alternative which would greatly increase the accessibility of these services to the poor by reaching out to the community in order to discover and deal with its various problems.

The rationale behind the use of paralegals in the delivery of legal services was somewhat different depending on whether one was referring to the private or public sector. Primarily for economic reasons, the private sector began accepting the use of paralegals in law firms as part of the staff. Much of the repetitive legal drafting tasks, legal research, and as well, investigative and interviewing tasks were found to be more economically and efficiently delegated to paralegals. The economic advantage of using paralegals was also a relevant factor in the public sector; however, there were many other more important factors at work, such as increasing the accessibility of the legal system to the poor. This thesis focuses solely on the use of paralegals in the public sector.

In British Columbia, the use of paralegals in the public sector was originally part of the community-based, problem-solving philosophy of the New Democratic Party government, which came to power in 1972. This philosophy was similar to that of the United States paralegal and Neighborhood Law Office movement. The central idea was to take the law to the

people, educate them about their rights, engage in preventative legal education, and organize sections of the community to take group action (Legal Services Commission, 1976). The use of paralegals was perceived to be the way to increase the accessibility of legal services to the poor. Paralegals could take a more proactive stance, and since paralegals were community members with no professional standing, clients might feel more comfortable with them and, therefore, more likely to use their services.

Unfortunately, with the successive cut-backs in legal aid funding which were implemented in 1976 with the election of the Social Credit government, this philosophy was never tested in British Columbia. The press of individual cases was too great to allow community organizing and development to evolve. Increasingly, paralegals in British Columbia have taken on the tasks of lawyers, to the point where individual case work forms the bulk of the tasks they perform.

How well paralegals perform these services has only been superficially analyzed. The limited amount of literature concerning the subject of paralegals largely consists of subjective and impressionistic arm-chair musings. There have been two evaluations (one was quite comprehensive in scope) of public legal services in British Columbia. However, neither of these incorporated any direct quality analysis of the legal advice provided by paralegals (Morris and Stern, 1976; Brantingham and Brantingham, 1984). This type of assessment

would seem important, as the Legal Services Society Act of 1979 places few restrictions on the type of legal tasks paralegals are permitted to perform. As a result of the liberal scope of the LSS Act, the role of public sector paralegals in British Columbia has been to fulfill and expand the functions of lawyers in specific legal areas.

It is the purpose of this thesis to compare the quality of service provided by lawyers in the public sector with that of paralegals also employed in the public sector. The analysis is limited to the provision of summary advice only. The method used to evaluate this service was through the use of researchers posing as clients who requested summary advice for predetermined legal problems. The advice elicited was then assessed by a panel of lawyers. Consent was received from each office included in the sample prior to implementation of the study. A study of this nature has (to this author's knowledge) never been attempted before. Therefore, the design is of an exploratory, quasi-experimental nature.

The rationale underlying this project emerged from a number of different sources. The central idea for the study evolved from an evaluation of Legal Services in British Columbia, undertaken by the Department of Justice and the Legal Services Society in 1982 (Brantingham and Brantingham, 1984), for which this author was employed as a research associate. This evaluation will be subsequently referred to as the LSS Evaluation.

One of the components of the LSS Evaluation was a client satisfaction survey. The sample in the survey included 173 clients, who went to a Branch Office or a Community Law Office (CLO) for summary advice or information, rather than for representation. Clients were asked a variety of questions which included: what was the advice given, and what was their level of satisfaction with the services they received. Overall, the satisfaction levels were high. However, the satisfaction levels were higher for those clients who went to CLOs rather than those who went to Branch Offices for summary advice. Owing to the time lapse between the office visit and the telephone interview, few people could recall the advice they were given in detail. Therefore, it was not possible to obtain any direct analysis of the quality of advice provided.

The question of why clients of CLOs would rate the services more positively than clients of Branch Offices became of interest to the author. There were two aspects to this question: were there substantial differences in the way lawyers and paralegals interacted with the clients which might create a difference in satisfaction levels; and was the quality of advice provided by paralegals better than the advice provided by lawyers, thereby producing a higher level of satisfaction?

In addition to the client satisfaction survey, interviews with paralegals and lawyers working in CLOs and Branch Offices were conducted as part of the LSS Evaluation. These interviews indicated that there were perceived differences in the nature of

the interaction between clients and lawyers, and between clients and paralegals. Through these interviews, it was found that, on the whole, paralegals felt that because they were from the community and lacked the formal aura of lawyers, they were more approachable and created less social distance from the client. Consequently, the paralegals felt that clients were more comfortable with them than with a lawyer and, therefore, were more likely to return for additional help, thereby rendering paralegal services more accessible.

Quality of legal advice is an important issue with respect to both lawyers and paralegals. As the advice is coming from an individual who is in the role of dispensing legal information, most clients of legal services unquestioningly accept the advice as correct and often have no way of assessing the accuracy of the advice they receive. The issue of quality becomes crucial in relation to the provision of summary advice, since clients tend to base whatever action they take, if any, on the advice they receive during a single interview.

The quality of legal advice becomes an even more critical issue when paralegals are providing the advice as, on the whole, paralegals have little formal legal training. If one accepts the premise that paralegals represent an improvement over the traditional approach to meeting the legal needs of the poor, then one is faced with the question "do paralegals provide the same quality of summary legal advice as lawyers?".

This thesis focuses on two questions:

1. Is the quality of summary legal advice given by lawyers and paralegals significantly different?
2. Is there a significant difference in the approach of paralegals and lawyers to their clients?

It attempts to analyze the nature and quality of summary advice provided by paralegals and lawyers in Branch Offices and Community Law Offices in the Lower Mainland and on Vancouver Island.

The following hypotheses were derived from an examination of the LSS Evaluation's client satisfaction survey and its interviews with paralegals and lawyers:

1. Paralegals in the sample would be viewed as being more concerned and helpful than the lawyers in the sample.

2. For the purpose of providing summary legal advice on a one-time-visit, the paralegals in the sample would provide the same quality of legal advice as the lawyers in the sample.

Paralegals have been referred to by a number of different titles including legal assistant, legal paraprofessional, sublegal, community legal worker and legal information counsellor (LIC). However, for the purpose of this thesis the

term "paralegal" will be used to encompass all of these. A paralegal is defined as someone who:

> (1) is not a licensed attorney; (2) is not a law student clerking for a lawyer during his law school years; (3) is not a legal secretary, at least to the extent of a legal secretary's typing and appointment-keeping functions; (4) is engaged directly or indirectly in an agency relationship designed to respond to the actual or potential "claims" of third parties that arise out of that broad arena called "the law;" (5) performs activities that hitherto were performed by lawyers; (6) undertakes activities that lawyers have hitherto failed to undertake but we "normally" would have expected lawyers to perform; (7) may be an employee of, or otherwise responsible to, a lawyer; and (8) may operate independently of a lawyer (Haemmel, 1973, p. 104).

The following chapter of this thesis outlines the emergence of the paralegal movement in the United States, Canada, and British Columbia. It is through the discussion of the development of this movement that the philosophies and concepts underlying the use of paralegals in the public sector will be explored.

Chapter Three summarizes the results of the recent LSS Evaluation which examined the roles and function of paralegals as opposed to lawyers. The discussion will focus on the actual tasks of paralegals, as well as the levels of supervision and training of public sector paralegals. The interviews with both paralegals and lawyers are reviewed and the differences in the perception of their respective roles are examined.

Chapter Four will then describe the design, methodology and results of the study that form the substance of this thesis. The final chapter will address the limitations of the study and make suggestions for future research. It will also offer

recommendations and conclusions concerning the future use and training of paralegals in British Columbia.

II. HISTORY OF THE PUBLIC SECTOR PARALEGAL

United States

The use of nonprofessionals in the delivery of legal services is not a recent phenomenon. In fact, it was not until the nineteenth century that lawyers were accorded the exclusive right to practice law (Brickman, 1971). During colonial times, there was a general distrust of lawyers because they were viewed as part of the English tradition and, as a result, laymen would often engage in the practice of law (Brickman, 1971). After the nineteenth century, when lawyers established control over the practice of law, laymen were employed as assistants, clerks, secretaries and other office personnel (Brickman, 1971).

Economics and efficiency have since dictated the use of trained paraprofessionals who perform more than secretarial or clerical duties. The growing use of paraprofessionals in the delivery of legal services has sparked controversy over whether or not these laymen are infringing on the lawyers' monopoly over the provision of legal services.

The Bar has traditionally opposed the encroachment of paraprofessionals on what it has seen as the sole domain of lawyers (Brickman, 1971). However, industrialization and population growth have increased the number and complexity of

legal problems. As a result, especially in the lower income groups, there has been an increasing degree of unmet need for legal services. This need prompted the Bar to examine the issue of legal paraprofessionals.

In the 1960's, the American Bar Association (ABA) became concerned with the issue of expanding legal service delivery and concluded that the use of nonprofessionals could be beneficial (ABA, Code of Professional Ethical Responsibility, 1969). Lawyers realized that much routine, repetitive work could be delegated to these nonprofessionals. This delegation would allow law firms to expand their service delivery systems and produce more profits.

After studying the use of trained laypersons in other fields such as health and dentistry, the ABA established very loose guidelines for paraprofessionals' work. Basically, the scope of paraprofessional work was left to the discretion of the individual supervising lawyer as long as proper supervision was maintained.

> A lawyer often delegates tasks to clerks, secretaries and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete responsibility for the work product. This delegation enables a lawyer to render legal services more economically and efficiently (ABA Code of Ethics, 1969).

As can be seen, the authorization was a very broad one and did not specifically prohibit the counselling of clients by lay personnel. These guidelines were an important step in the acceptance of the use of paraprofessionals in the delivery of

legal services and reflected the increasing employment of lay personnel to assume lawyers' tasks.

The use of paralegals in the provision of legal services received its major impetus from President Johnson's "War on Poverty" of the early 1960's. The nerve center for Johnson's war was the Office of Economic Opportunity (OEO), which was established in 1964, with a mandate to:

> eliminate the paradox of poverty in the midst of plenty in this nation by opening up to everyone the opportunity...to live in decency and dignity (Congressional Statement of Findings and Declaration of Purpose as a Preamble to the Act, 1964).

As part of this War on Poverty, a national legal assistance program was inaugurated and large sums of money were made available for an OEO project to expand legal services for the poor. The legal service delivery model chosen to implement this program was the Neighbourhood Law Office (NLO).

Initially, the legal services arm of the OEO was under the administrative control of the local Community Action Program (CAP). Under the OEO, CAP was to be a central organizing agency of the community, whose mandate was to develop innovative ideas to assist low income people in their communities. In 1969, however, the legal services program and their Neighbourhood Law Offices were given full independence within the OEO program (Johnson, 1974).

After the inauguration of the Legal Services Program in 1965, communities could request consultants from the OEO to aid in organizing and preparing proposals for law offices which

would be responsive to community needs. The OEO Act required that any law office funded by the OEO must be:

> developed, conducted and administered with the maximum feasible participation of residents of the area and members of the group served (Section 202 (a)(3)).

The ideology behind these Neighbourhood Law Offices was eloquently expressed by Edgar and Jean Cahn in their attack on traditional service-oriented public programs (1964). The Cahns maintained that the war on poverty, with its militaristic organization, only served to perpetuate dependency and helplessness in the poor.

> Poverty in America is not just a lack of material goods, education and jobs but also a sense of helplessness, a defeatism, a lack of dignity and self-respect, all of which are externally confirmed in varying degrees(Cahn and Cahn, 1964, p. 1321).

The principal feature of the militaristic approach to combating poverty was, "a war fought by professionals" for the civilians that would create donor-donee relationships which, in turn, would give the professionals a monopoly over the power. Basically, the Cahns stated that, in typically service-oriented programs, professionals enter a community and define what the priorities for service to that community should be. These decisions concerning priorities are handed down from the top of the hierarchical structure and often bear little resemblance to the issues that the community itself views as important. Again, it is a case of the professionals using their power and authority to dictate the needs of the community. This does nothing to alleviate the innate helplessness and powerlessness

of the poor, especially in light of the fact that traditionally these professionals have been very reluctant to take any course that could harm the higher authorities in any way or cast unfavorable light on the programs themselves (Cahn and Cahn,1964).

The Cahns argued for the inclusion of a civilian perspective as an adjunct to the War on Poverty.

> Thus, the civilian perspective requires that the promotion of neighbourhood dissent and criticism be an avowed goal of the war on poverty, that its organizational structure make provision for the establishment of groups and institutions with the independence, power and express purpose of articulating grievances, that the natural incentives to absorb, stifle or undermine dissenters be countered with the creation of incentives to nurture, promote and heed criticism, and that the elimination of poverty be understood as comprehending spiritual as well as physical substance and as involving the assurance of civic as well as economic self-sufficiency (Cahn and Cahn, 1964, p. 1331).

One of the main prerequisites for the civilian perspective was that the relationship between the community and professionals must be one of mutuality of obligation. The client should see the benefits as deserved rather than as charity. Emphasis must be placed on the dignity of the individual recipient.

One vehicle, that the Cahns perceived as a way of addressing the civilian perspective, was the Neighbourhood Law Offices. These offices were seen as institutionalized advocates of dissent and grievance with a mandate to champion the causes and issues the community viewed as being of high priority. These law offices would be staffed by lawyers, legal secretaries and

community legal workers.

These Community Legal Workers would be individuals indigenous to the community and would provide a vital link to that community. They would also be individuals, who had the trust and respect of the community and who were able to articulate the demands, needs, concerns, and grievances of the neighborhood. One of the goals of these law firms and community legal workers would be not only to function as a reactive mechanism to problems (such as a case-by-case approach) but also to serve to educate the community about their rights and the procedures for asserting those rights.

One option, mentioned by the Cahns, was to affiliate these offices with a local university that could aid in the recruitment and training of indigenous leaders from the community. These offices would be governed by Boards of Directors, which would be representative of the community. Residents of the community, civil leaders, and local educators would sit on the board, as well as lawyers. The community legal workers could then in turn

> disseminate not simply legal knowledge, but, more vital, could impart the spirit of hope, dignity, militant citizenship and contructive advocacy which together comprise the civilian perspective (Cahn, 1964, p. 1352).

What the Cahns envisioned as the role of the Neighborhood Law Offices had already occurred in New Haven, New York, and Washington, D. C. (Fry, 1984). The Cahns' unique contribution was the idea that the neighborhood law offices could act as the means by which a lower income community could exert influence

and control over agencies such as the Community Action Agencies who were responsible for distributing income and opportunity to that community (Fry, 1984).

It is difficult to assess just how closely the OEO Neighbourhood Law Offices followed the Cahns' "civilian perspective". However, if one can judge by the level of training and education of the paralegals employed by the OEO, one could conclude that there was an attempt to hire indigenous community individuals rather than trained professionals as paralegals. A survey, conducted by the National Paralegal Institute in 1973, showed that 127 out of 280 legal services offices funded by the Office of Economic Opportunity (OEO) had paralegals on staff and that very few of these paralegals had any formal training before entering the Legal Services Program (Fry, 1974).

Some of the projects had in-house training programs and others made use of on-the-job training provided by individual lawyers. These paralegals performed a wide variety of duties which included interviewing clients, doing investigative work, negotiating with government agencies and undertaking representative work at administrative tribunals (Fry, 1974).

The National Paralegal Institute was the first national training program for public sector paralegals. The Institute was founded in 1972 for the purpose of representing, organizing and training public sector paralegals. During the first few years, the main focus was on designing training programs and training paralegals to work in the various Neighborhood Law Offices. The

Institute designed training packages and its staff traveled to the different OEO law offices to train the local paralegals. Despite losing OEO funding, the Institute has continued to exist relying on private contracts to train paralegals. However, its role as the primary trainer of public sector paralegals has diminished considerably (Fry, 1974).

Aside from the National Paralegal Institute, there were other training programs for public sector paralegals. In 1968, the Denver College of Law initiated a number of programs for paralegals. Law students provided the training for specific areas of law such as welfare, consumer, employment, family, and criminal. These classes were small but it was a first step in training lay people in poverty law (Statsky, 1973).

The Columbia Program for Legal Assistants started a six week course for minority students to become legal assistants in the neighborhood law firms in 1969. This course was again taught by law students with supervision from legal services attorneys. It was a very general introduction to landlord/tenant, family and welfare law.

The third initial training program was at Boston National Consumer Law Center in 1971. This program provided a brief introduction to law for individuals who would be hired by the city as community-based advocates (Statsky, 1973).

The Office of Economic Opportunity ceased to exist in the late 1970's, near the end of the Carter administration, and the Legal Services Corporation (LSC) took its place. The Legal

Services Corporation is a federally funded corporation which has eleven directors appointed by the President with a mandate to provide civil legal aid to the poor via a network of local legal service agencies (Legal Service Corporation Annual Report, 1981). Through these agencies, the Legal Services Corporation employs approximately 1,500 paralegals but the emphasis is geared to specific poverty law areas rather than community organization.

At present, the Legal Services Corporation has left the responsibilty of training paralegal staff directly with the local programs. After the demise of the OEO, the LSC decided that it was not within its mandate to provide any kind of financial support for training paralegals (Fry, 1984). In the United States, although there are over 300 programs for training private sector paralegals there is only one program directed towards the public sector paralegal. This one program is offered at the Antioch School of Law (Statsky, 1984). The lack of programs for public sector paralegals means that the majority of training must occur on-the-job.

Under the Reagan administration, there has been a sharp decline in the number of public sector paralegals and Neighborhood Law Offices. As a result of economic restraint and a philosophic disagreement over providing support and advocacy for the poor to challenge government decisions, much of the funding for community legal services has fallen to the various states rather than to the federal government (Fry, 1984).

The Legal Services Corporation has been in a state of flux since Reagan became president. In 1981, Congress considered completely eliminating the Legal Service Program or greatly reducing it, but opted to continue with the program with a vastly reduced budget (LSC Annual Report, 1981). Since that time, the Reagan nominees to the LSC Board have been viewed as individuals who are opposed to the concept of federally funded legal assistance. Since taking office, Reagan has had difficulty achieving confirmation of his nominees, thereby having to rely on interim appointments to run the corporation.

There has also been a definite move away from community participation. This has been evidenced by the adoption of strict Board meeting rules which give the chairman the right to decide who can ask what questions and when. Board members have been known to change the location of meetings without informing the public of the change (N.Y. Times, July 16, 1984). All of these factors would tend to limit severely any community participation and silence any criticisms.

From the inception of the Neighborhood Law Offices and the corresponding use of paralegals in those offices, there were two major themes intertwined with the promotion and growth of the public sector paralegal movement. One, as expressed by the American Bar Association, was economy and efficiency. Paralegals were considered to be an innovative way of meeting the growing need for legal services and dealing with the concurrent unequal distribution of legal services for the poor. The second major

theme was to make the Neighborhood Law Offices responsive and accessible to the communities they were meant to serve.

These themes carried over into the Canadian setting. The concept of the public sector paralegal is completely intertwined with the concept of Neighborhood Law Offices or Community Law Offices (as they became known in Canada). It is impossible to discuss the birth of one without discussing the emergence of the other.

Canada

The concept of the Neighbourhood Law Office was introduced in Canada, in the early 1970's, as a result of a series of Federal Health and Welfare grants that allowed certain universities (such as Dalhousie and Osgoode) to set up Community Law Offices using both lawyers and law students. As in the United States, the idea was to reach the people, especially those in poverty stricken areas who were not being serviced by the larger Legal Aid system.

These offices were situated within the community, thereby increasing client accessibility, and were open during the hours in which working people could utilize their services. Staff in these offices were supposed to develop a rapport with the disadvantaged, thus paving the way for greater use and access to legal advice and representation. One of the potential obstacles to developing this rapport was the middle class image of

professionals. Lawyers (often being middle class) may behave in ways that a poor person may not comprehend, thus reinforcing the lack of trust in and fear of the law (Parkdale Community Legal Services, 1972).

As a result of the perception of unmet needs, Parkdale Community Legal Services developed a paralegal program. The paralegals were recruited from the community itself and trained on the job. These paralegals dealt with a wide variety of legal and social problems and provided representation before tribunals. As well as engaging in case work, paralegals served as a mechanism for liaison between the community and the law office and ensured community control and input into office decision-making (Savino, 1976).

Dalhousie Legal Aid Service started training its paralegals, in 1972, as a response to the high demand in certain specific legal areas such as divorce. The first training program was conducted by law students who were supervised by the Director of the program (Cowie, 1972). This initial program trained five full-time paralegals and 15 volunteer paralegals. Since this initial paralegal training program, there have been several more paralegal programs developed and put into operation. The paralegals performed a number of functions from community development to case litigation (Savino, 1976). These demonstration clinics were just the beginning of a new wave of legal services delivery that would soon spread across Canada.

British Columbia

The movement toward the use of paralegals in the public sector in British Columbia was also closely connected to the evolution of Community Law Offices. In the late 1960's, the first storefront Community Law Offices opened in Vancouver. These were started and staffed by law students under the supervision of lawyers in connection with the University of British Columbia Law School. For the most part, these clinics provided free legal advice and information. Paralegals were not incorporated into these offices until after the Vancouver Community Legal Assistance Society (VCLAS) was established in 1971.

VCLAS was the first federally funded Community Law Office in British Columbia that had salaried staff. In 1973, VCLAS hired two paralegals and developed a paralegal program (Savino, 1976). During this same period, the federal government also funded a number of agencies, such as Elizabeth Fry and John Howard, which provided legal advice and information to the public free of charge. Most of these service were provided by lay people under the supervision of lawyers.[1]

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[1]During this same period, the John Howard Society of British Columbia hired and trained the first native courtworkers. These courtworkers were required to aid the accused in any way possible, which included: obtaining legal aid for the accused; explaining courtroom procedure and nature of the charge; explaining to the accused his/her legal rights, and referral to an appropiate agency (Zeman and Richards, 1977). Because courtworkers and similar lay personnel providing assistance to individuals involved in the legal system are prohibited from giving specific legal advice, they are not considered paralegals

The next major impetus to the utilization of paralegals in the public sector in British Columbia came from the Justice Development Commission, which was created in 1973 by the Provincial Government to examine and plan the future of the justice system in British Columbia. One branch of this commission, which was headed by Peter Leask, produced a report (Leask, 1974) that recommended the use of decentralized Community Law Offices that would be staffed by lawyers, secretaries, paralegals and possibly other professionals. It was suggested that these offices be controlled by local boards of directors drawn from the community, which would include both professionals and laypersons.

The concept was virtually the same as that proposed by the OEO and the Cahns. It was hoped that local communities would be the best judges of what their particular problems were and of what would be the best manner of addressing these problems. As a result of the Leask report, the Legal Services Commission was created to be the overall administrative structure that would finance, provide information, and otherwise assist these Community Law Offices (Welsh, 1977).

In order to facilitate the community control of these law offices, it was felt that relying upon nonprofessionals would assist the process of encouraging the office to be responsive to

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[1](cont'd) for the purpose of this thesis. The roles and functions of native and other courtworkers are a complex topic unto themselves and are not within the scope of this thesis. This thesis focuses specifically on those paralegals employed in Community Law Offices and Legal Information Centers.

the community. What was desired was an alternative to the traditional lawyer-oriented casework approach. It was thought that this could be achieved by the use of nonprofessionals from the community, who would have organizational experience or at least knowledge of the community. It was left to the individual boards to set up their own criteria for hiring and supervising their paralegals. Aside from the paralegal staff, each office could hire additional staff or consulting lawyers to handle other services and more complicated legal matters (Welsh, 1977).

Although, during this period, a training program was developed for the new paralegals, the greatest part of their training came from on-the-job experience. As a result, legal expertise and competence grew slowly. It was also during this period that the Legal Services Commission training staff responsible for the paralegals were fired, owing to financial restrictions. Consequently, the paralegals were left in a vacuum in terms of training.

Overall, the majority of the training took place on-the-job through day-to-day experience. There was very little systematic training, and no precedents for the job. Paralegals had to create their own approaches to their work and learn "on the hoof" as it were (Welsh, 1977).

The initial idea of the JDC was for these paralegals to go beyond case work and include community development and education within their mandate. However, from their inception, the CLOs began operating on a courtwork-oriented basis. This was seen as

one method of establishing the office within the community and to act as an indicator of community problems. The more general tasks of community development and education were harder to define and so were incorporated into the paralegal's role at a much later date (Welsh, 1977).

During these early years of their development, paralegals were restricted in the tasks they could perform by their lack of training and experience. Therefore, paralegals:

> began as sources of summary legal information and referral and built from that level as their competence increased, and the political sophistication of their employers, the boards, increased (Welsh, 1977, p. 4).

Roles and Functions of Paralegals Prior to 1979

Generally speaking, the functions of paralegals were seen to be individual casework, courtwork, legal education, and community development. Paralegals handled a wide variety of cases that included: family law, consumer problems, debt counselling, separation agreements, wills, unemployment insurance, welfare, landlord/tenant, workers' compensation, immigration, and certain criminal matters (Welsh, 1977).

The courtwork performed included such tasks as processing legal aid applications and making referrals to lawyers, explaining courtroom procedures to clients and appearances before tribunals (Sanderson, 1977).

Paralegals were also involved in the implementation of Public Legal Education programs (PLE). These usually took the form of workshops, lectures, community radio and television programs, and publications (Sanderson, 1977). Public Legal Education was viewed as one method of disseminating information about the law and legal rights to the public. Paralegals would organize lectures and seminars inviting local experts to speak on various areas of the law. Community radio and television programs took the form of call-in talk shows or talk shows with a lawyer who had expertise in the area being discussed. However, financial limitations severely restricted this type of activity (Sanderson, 1977).

Community development took the form of speaking to community groups, publishing community newsletters, assisting in test cases and certain types of political lobbying. These were more difficult tasks to come to terms with. Many paralegals felt that, if a community group approached the office requesting help in organizing, they should do whatever was possible to assist. However, most paralegals felt uncomfortable in going out into the community and 'shaking things up'. It was felt that:

> community development is a delicate political issue and Community Law Offices in small, conservative centres would perhaps only damage their credibility - and thus their usefulness to the town - if they engaged in very radical undertakings (Sanderson, 1977, p. 125).

As a result of the amount of time spent on individual casework and the cautious approach to community development, any organizing work has been of small proportions (such as assisting

in organizing food or housing co-operatives) (Welsh, 1976).

In 1976, an evaluation of Community Law Offices and Legal Aid Branch Offices in British Columbia was conducted by Pauline Morris and Ronald Stern for the Attorney General. Their conclusions created an uproar among the paralegals working in those CLOs. Although Morris and Stern readily admit and warn their readers about the limits and problems with the study, they nevertheless concluded that:

> CLOs are failing to provide the services which they are contracted to provide. More importantly, and we consider this crucial, the stated philosophy underlying the setting-up of CLOs is either not understood by those running them and working in them or, where it is understood, the constraints thought to be imposed by the local community, by the Bar, by certain Board members, and to a lesser extent by budgetary concerns, result in this philosophy being ignored and being replaced by an inefficient, confused and generally very traditional model of service delivery (Morris and Stern, 1976, p. 73).

Morris and Stern then proceeded to make even more negative criticisms and evaluative generalizations concerning the various inadequacies of the CLOs staff, Board, and the Legal Services Commission, all the while cautioning that: "We cannot stress too strongly that the information included in this section be interpreted with the greatest of caution" (Morris and Stern, 1976, p. 52). This was only one of the many warnings the researchers stated throughout the report.

One can only speculate why researchers would use such suspect data, if they felt that so many cautions were necessary. Further, if the researchers felt that their data were to be interpreted carefully, then why would they proceed to make such

extensive generalizations based on that data? One of the major problems with the study was failure to answer or address three of the four goals Morris and Stern set out for themselves. They set out to determine the goals and objectives of the CLOs and to compare these with the goals and objectives of the Legal Services Commission. However, they did not address any of the goals and objectives of the CLOs. In addition, they completely failed to provide any kind of demographic data on the communities being serviced by the CLOs, which was another stated goal. Moreover, they ignored the developmental history of the CLOs that could have provided some insights into the functioning of the various offices. Some of these offices were in their intial stages of development.

Their results were based on extremely impressionistic and subjective data. They strongly criticized the case by case approach of the CLOs without realizing that it is one method of tapping into the various problems of the community. As Marks has stated:

> Direct service is the door to the people, the window on their problems, the instigator of any possible community-level action and the reality check on where and how far we are heading (Marks, 1977, p. 19).

A few of these problems are rather serious and it was on these shaky grounds that Morris and Stern drew their conclusions. The reactions of the paralegals to the Morris and Stern study was extremely negative and created suspicion and pessimism towards any future research.

Limits of Paralegal Activity

One of the major problems that confronted paralegals during these formative years was their lack of any kind of legal status. The Legal Professions Act prohibits the "practice of law" by anyone other than "a member of the Society in good standing" (Justice Development Commission, 1975). The scope of the "practice of law" in the Act was quite wide. Generally speaking, if the Act were strictly interpreted, most paralegals (who were performing the legal tasks they were hired to do) were constantly violating the Legal Professions Act. However, the Law Society never prosecuted any paralegals, working in the public sector, for contravening the Act. Instead, the Society seemed to ignore this rather blatant contravention of the Act. It has been suggested that this was related to the

> fact that the areas of activity engaged in by these persons are not areas that lawyers consider as their 'bread and butter'. In most cases, paralegals working in community law offices can rely on the 'piggyback' authority of 'delegation' so far as their legal tasks are concerned and the tacit recognition of their legitimacy as far as their advocacy role is concerned (Gold, 1979, p. 81).

The only defense available to paralegals, if one of them had been prosecuted for violating the Legal Professions Act, would have been their status under the supervision of lawyers. However, there were few cases addressing the necessary limits of supervision (Justice Development Commission, 1976). This tenuous situation was viewed by one paralegal as:

> a Sword of Damocles suspended over the heads of both

> paralegals who attempt any sort of comprehensive case services, and their consulting lawyers (Welsh, 1977, p. 26).

There was also a problem in that the client-solicitor relationship was not extended to paralegals. This created a situation whereby a paralegal could be subpoenaed to court and forced to reveal confidential information regarding his/her client (Sanderson, 1977). Further, there was a problem of liability for negligence of paralegals. The paralegals employed in the various CLOs without staff lawyers did not have any kind of legal liability insurance. This was considered quite a "sore point" among paralegals (Welsh, 1977). Some of these problems have been rectified since the amalgamation of the Legal Aid Society and the Legal Services Commission.

The Legal Services Commission and the Legal Aid Society were merged in 1979 to form the Legal Services Society of British Columbia. The merger was requested by the Attorney General to promote a unified and cohesive system of delivery. At this time, the Society took over the funding of the Community Law Offices. After the amalgamation, a number of Community Law Offices merged with the local Legal Aid Offices, which resulted in some of the CLO's losing their Boards of Directors and becoming directly responsible to the Legal Services Society. The Legal Services Society funded some paralegal projects after the amalgamation. These projects were incorporated into multiservice community offices in North Vancouver, Richmond and Langley. The funding for the North Vancouver and Richmond projects was later assumed by the Law Foundation.

Since that time, restraint measures have forced the closure of several Community Law Offices, thus reducing the actual number of paralegals working in the public sector in British Columbia. As in the United States, the political climate in British Columbia has had a major effect on the use of paralegals and Community Law Offices. Restraint measures, introduced by the Social Credit government, have placed the future of Community Law Offices and civil legal services for the poor in jeopardy.

III. PUBLIC SECTOR PARALEGALS IN BRITISH COLUMBIA TODAY

Legal Services Society and Funded Agencies

Present day public legal service delivery in British Columbia emerged from two different philosophical positions: the traditional Branch Office/judicare approach which had a reactive case-by-case philosophy, and the more proactive CLO approach. The Branch Office approach functions on the assumption that economic accessibility is the major problem in the provision of legal aid to the poor. According to this approach, if economic barriers are eliminated, equal justice will be attained. CLOs, on the other hand, based their philosophy on the principle that lack of funds was not the only reason poor people did not seek out lawyers for their legal problems. Financial resource

> represents only one element in a complex social process leading an individual to seek out and obtain legal representation. At least four steps are involved: (1) awareness or recognition of a legal problem as a legal problem; (2) willingness to take legal action for solution of the problem; (3) getting to a lawyer; and (4) actually hiring a lawyer (Carlin and Howard, 1965, p. 423).

According to this philosophy, there are many reasons people are hesitant to seek out legal help for a problem. Often they do not recognize the problem as a legal one or they are suspicious and intimidated by both lawyers and the judicial system. Poor

people do not usually view the legal system as a means to an end but rather as a weapon to be used against them.

Many of the legal problems facing poor people are civil in nature, such as welfare appeals, U.I.C. appeals, landlord and tenant problems, and so forth. These areas of law are not traditionally handled by the private bar whereas CLO's, who approach the problem from a different perspective, do attempt to deal with these areas of poverty laws. The Community Law Offices have tried to increase accessibility by "taking the law to the streets". Their aim has been to demystify the law, educate people about their rights, teach people how to deal with legal problems without the aid of lawyers, and often to solve problems before they become serious legal issues. The primary objective of the CLOs was to provide legal services to those individuals not eligible for legal aid.

In spite of the philosophical differences between the two systems, they were merged in 1979 to form a complex hybrid system of legal service delivery called the Legal Services Society (LSS). The LSS uses three main office structures to deliver legal services: Branch Offices, which are directly responsible to the Society; Community Law Offices that work under contract with the society; and Area Directors who process applications and work on a per interview basis.

Since this thesis is concerned with the differences between lawyers and paralegals in relation to the provision of summary advice, the only offices that will be discussed will be Branch

Offices as, they employ staff lawyers, and Community Law Offices, as they employ paralegals. The following section will cover the responsibilities and functions of the Branch Offices and CLOs.

Branch Offices

The Branch Offices of the Legal Services Society, whose employees are paid directly by LSS, are responsible to Head Office for their directives and policy. These offices usually employ two or more lawyers, as well as a secretary/receptionist and/or a legal assistant. Branch offices are responsible for administering the tariff program for which they assess eligibility, accepting and processing legal aid applications, and providing client services either directly or through referral to the private bar. In addition to the tariff program, when time permits, the staff lawyers provide duty counsel services and legal services not covered under the tariff program. The staff in these offices also provide summary advice and legal information to the public. Anyone who walks into a Branch Office for assistance is entitled to at least summary advice from a staff member.

Community Law Offices

The Community Law Offices are managed by independent boards of directors that contract annually with LSS and the funding for each office is administered by a local board. This board is normally made up from members of the Bar as well as individuals from the community. The Board is responsible for setting policies and priorities for services. The staff is responsible to the local Board and usually consists of one or more paralegals, secretarial staff, and a consulting lawyer who is responsible for the supervision of the paralegals. The staff provide summary advice, legal counselling and information about both the law and public legal education, as well as legal services for those individuals not eligible for legal aid. Their caseload tends to consist primarily of civil law cases.

Limits of Paralegal Activity in British Columbia

The limits of paralegal activity in British Columbia are prescribed by the Legal Services Society Act of 1979. This act supersedes the Barristers and Solicitors Act (See Appendix A) in terms of who may provide services normally provided by a lawyer. The LSS Act stipulates that:

> Notwithstanding the Barristers and Solicitors Act, the society or a funded agency may employ, with or without remuneration, an individual who is not a lawyer or an articled student to provide services that would ordinarily be provided by a lawyer so long as the

> individual is supervised by a lawyer, but the individual may not appear as counsel in a court except with leave of the court (1979, 15).

This Act gives a very broad mandate for paralegal activity in the public sector in British Columbia. In fact, this Act contains "one of the most expansive views of the role of paralegals to be found in any common law jurisdiction" (Brantingham and Brantingham, 1984, p. 329). The LSS Act has been interpreted to mean that, with proper supervision by a lawyer and leave of the court, a paralegal employed by LSS or one of their funded offices is able to do any legal task that could be done by a lawyer. As a result, paralegals across the province

> provide legal advice, prepare and file legal instruments, represent clients before a range of administrative tribunals and quasi-judicial bodies, and represent clients as duty counsel before Provincial courts (Brantingham and Brantingham, 1984, p. 329).

Moreover, with the leave of the specific court, paralegals may represent clients before County Court, Supreme Court or the Court of Appeal.

Roles and Functions of Public Sector Paralegals in British Columbia

The most recent and comprehensive information concerning paralegals in the LSS delivery system was provided by a major evaluation of Legal Aid in British Columbia in 1984. This evaluation was funded jointly by the Department of Justice and the Legal Services Society and was conducted by a research team

from Simon Fraser University headed by Patricia and Paul Brantingham. This evaluation will hereafter be referred to as the LSS Evaluation.

During the time of the Legal Services Commission, there were a small number of articles published concerning the issue of the role of paralegals in the delivery of legal services in British Columbia. However, since the amalgamation of the LSC and the Legal Aid Society in 1979, there has been nothing written about the roles and functions of public sector paralegals in British Columbia, except for the LSS Evaluation. Therefore, the above-mentioned evaluation is the major source of information for this chapter.

As part of the LSS Evaluation, a detailed analysis of the roles and functions of paralegals was undertaken. Information was collected in a number of different ways. Interviews were conducted with both lawyers and paralegals in Branch Offices and CLOs across the province which asked questions regarding what task each performed and how much time was devoted to each task. Paralegals were questioned as to their education, background, training and levels of supervision. There were questions dealing with how lawyers and paralegals perceived the tasks of paralegals and if they saw these tasks as being appropriate for paralegals. In addition, there were questions concerning whether there were any tasks that could be performed more effectively by lawyers or paralegals, as the case may be. Included in this survey was a question asking if the respondents felt that

lawyers' and paralegals' interactions with clients differed.

A second method used was a Delphi[1] exercise given to all Head Office staff, Branch Office and CLO staff as well as various individuals from other outside agencies, who were familiar with the legal aid system. The Delphi exercise is a technique used to ascertain attitudes and opinions of large groups. This was another method of ascertaining staffs' perceptions of the roles and functions of paralegals in the delivery of public legal services.

In addition to these two methods, a survey was conducted with members of the British Columbia Law Society which included questions regarding their perceptions of the work of paralegals.

Paralegal Interviews

The actual working patterns of paralegals emerged from structured interviews conducted in the late spring and early summer of 1983. A total of 15 paralegals and 21 staff lawyers were asked to estimate the proportion of time spent on each task they performed each month. The LSS Evaluation broke down the variety of tasks performed by lawyers and paralegals into seven

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[1] "The original Delphi technique was formulated by the Rand Corporation in the early 1950's as a method of eliciting and refining collective opinions. It was initially designed to avoid the problems of face-to-face confrontations in group decision-making. When there are conflicting opinions, face-to-face attempts to resolve them often fail, merely masking unresolved conflicts within the dynamics of interpersonal confrontation" (Brantingham and Brantingham, 1984, p. 109).

general categories that were further broken down into 19 separate tasks. The seven general categories were:

> direct representational services; non-representational advocacy; advice and information for individuals; public legal education; interviewing clients; legal research; and office and administrative tasks (Brantingham and Brantingham, 1984, p. 356).

Direct representation services included representation before a court or tribunal. It was found that lawyers reported spending 20% of their time appearing before a court. Of this court work, 43% involved criminal law, 23% involved debt and foreclosure, 16% involved family law and 8% involved contract law.

On the other hand, paralegals reported spending only 5% of their time appearing before a court. Of this time, the majority (72%) involved criminal law (as duty counsel), 10% involved contract law, 9% involved family law and 8% involved tort law. It is apparent that lawyers reported devoting much more time to court work than paralegals but both reported spending a substantial part of their time in court on criminal matters.

Lawyers reported that only 3% of their time was spent appearing before tribunals. Of this tribunal work, lawyers represent clients in worker's compensation matters (47%) with landlord/tenant being the next most frequently mentioned area (16%), and welfare law involving 13% of their time. Paralegals reported spending 2% of their time representing clients before tribunals. Over 50% of their tribunal practice involved welfare law with worker's compensation claims and unemployment insurance

compensation contributing equally to the balance of time. Neither lawyers nor paralegals were involved to any great extent in representing clients before tribunals. There was very little difference in the amount of time they spent in tribunal practice; however, the areas of law that they dealt with did differ. Surprisingly, paralegals estimated that they spent more time in court than they did in tribunals although, overall, they spent very little of their time in direct representation.

Non-representational advocacy included such things as drafting documents or legal instruments, preparing wills and estates, registration of real property, and short services which include such tasks as writing letters and making phone calls for clients. Lawyers spent almost 30% of their time providing non-representational advocacy. Forty-three percent of this time was spent in the area of civil pleading, with wills and estates, family law, criminal law, contracts, worker's compensation, corporations, landlord/tenant and immigration contributing to the remainder of their time spent in relation to non-representational services.

Generally, lawyers spent slightly over 8% of their time providing short services to clients. Seventy-three percent of the lawyers reported civil law as a major area of short services with 40% mentioning debt, and 33% mentioning both family and criminal law. Only 13% mentioned unemployment insurance compensation or worker's compensation as areas for short service while 20% mentioned welfare law.

Paralegals reported spending close to 36% of their time on non-representational advocacy. Of this time, 45% was spent on family law, 19% was spent on wills and estates, and only 18% involved civil pleadings. Other areas mentioned by paralegals were: real property, contracts, immigration, and small claims and affidavits.

Paralegals reported a very different pattern from that of lawyers in the area of the delivery of short services to clients. Paralegals stated that they spent 13% of their time providing short services to clients, slightly more than that reported by lawyers. Sixty-seven percent of the paralegals mentioned criminal law, family law and welfare law most frequently for short service work. Unemployment claims were mentioned by 50% of the paralegals, while worker's compensation, consumer law, and debt were mentioned by 42%. Landlord/tenant, labour and small claims were areas mentioned by 33% of the paralegals.

Overall, the amount of time lawyers and paralegals spent on non-representational services did not differ greatly, although the areas of law within which they provided these services did differ. Both lawyers and paralegals spent a considerable amount of time providing non-representational services to clients.

Advice and information was the next category examined. Paralegals estimated that they spent 1/4 of their time per month providing legal advice and general legal information to clients. They tended to spend more time providing general legal

information and less time giving advice than lawyers.

Eighty-two percent of the paralegals said that family law was the largest area for which they provided general legal information. Other major areas mentioned were criminal law (60%) and landlord/tenant (60%). Forty percent of the paralegals also mentioned consumer law, small claims, and debt.

Family law was also reported to be the largest area for legal advice mentioned by 82% of the paralegals. Seventy-three percent of the paralegals stated that they provided advice for criminal law, 55% mentioned landlord/tenant, and 27% mentioned welfare, debt, and wills and estates.

Lawyers had difficulty distinguishing legal information from legal advice and so were unable to provide separate estimates. Eighty-eight percent of the lawyers reported that they provided advice for criminal law and 76% reported providing advice for family law, debt, bankruptcy, and foreclosure. Other civil areas mentioned by lawyers included contracts (41%), torts (35%), and real property (29%). It was also found that paralegals spent less time than lawyers on legal research but more time interviewing clients.

As for Public Legal Education (PLE), paralegals tend to do more than lawyers but, overall, they spent less than one day per month on this activity. Lawyers spent not more than half a day per month providing PLE.

It was found that for CLOs, almost all of the assessments of eligibility for legal aid were undertaken by paralegals.

Eligibility determination for legal aid coverage in criminal matters requires that:

> in addition to an assessment of financial situation, the decision-maker assess the legal quality and character of the applicant's case in the light of local sentencing practices in order to determine the probability of incarceration in the event of conviction (Brantingham and Brantingham, 1984, p. 362).

This is an interesting point, in that eligibility assessment can be a very complex decision-making process. It is one that necessitates an extensive understanding of the legalities of the client's problem as well as the sentencing patterns of the local courts. In civil and family matters, CLOs must make an eligibility assessment if the case requires more time and work than can be conducted in the first interview. For family cases, eligibility determination requires that an assessment of the urgency of the problem be made. These kinds of legal judgements require the ability to assess the merits of an applicant's case and demand a substantial knowledge of the law.

Paralegals also provide some duty counsel for different areas of British Columbia. Fifty percent of the CLOs reported that paralegals attend court as duty counsel. Of these 50%, one office reported that for its area, paralegals were the only source of laborpower for duty counsel in several courts and in the Greater Vancouver area, there were two offices that used paralegals as duty counsel. In general, however, it was found that staff lawyers and paralegals provided duty counsel services on a "50/50 basis".

In 1970, when Morris and Stern (1976) conducted their evaluation of legal services, they found that there were no paralegals acting as duty counsel and few filling the role of courtworker. This change could be the result of the wide berth paralegals were given in section 9 of the aforementioned LSS Act of 1979.

Perceptions of Paralegal Activity

The results of the interviews with the staff of CLOs and Branch Offices as to how they actually spent their working time, differed greatly from the results of the Delphi assessment which measured what tasks paralegals were perceived to be doing.

The results of the Delphi showed that, overall, views about the roles and functions of paralegals were consistent. Paralegal's major role was seen as being nonrepresentational advocacy - such as writing letters, making phone calls, filling out forms and preparing for tribunal appearances. Other major areas of service for paralegals mentioned were the provision of legal advice and information and screening applicants for referrals. LSS staff perceived paralegals as being least involved in community development and direct representation before courts and tribunals.

Included in the 1983 staff interviews of 21 lawyers and 15 paralegals were questions addressing each individual's perception of the functions of paralegal activity. Although four

of the 21 lawyers did not answer these questions, the information obtained does elucidate the Delphi data. Lawyers' perceptions of the roles and functions of paralegals varied with their involvement with paralegals. In general, however, lawyers most frequently mentioned:

- Cost effective delivery of legal 6 advice/information (n = 7)
- Tribunal representation (n = 6)
- cost effective means for the delivery of legal services to rural areas (n = 3)
- Community outreach work (n= 3)

as the roles that paralegals play in the provision of legal services. There did not seem to be a consensus among staff lawyers as to the predominant roles of paralegals.

When the actual working patterns of paralegals were compared with the perceived roles of paralegals, two important differences emerged.

> First, LICs/paralegals report doing little more tribunal work than lawyers. Moreover. . .they do much less tribunal work than is generally assumed. Second, although LICs/paralegals are generally believed to spend much more time than lawyers in interviewing, advising, and counselling clients, neither the amount of time reported as spent on such functions as interviewing clients, providing advice and information, and giving short services, nor the mixture of subject matters reported as commonly dealt with by paralegals support this belief (Brantingham and Brantingham, 1984, p. 365).

The results of the interviews also showed that paralegals engage in all areas of the law. They spend more time on family, criminal, and welfare law than do staff lawyers. Generally, they do more drafting of legal instruments and spend more time giving legal information than lawyers. On the whole, paralegals do very little in the area of community development and public legal

education. This could be a consequence of lack of time and resources.

Both lawyers and paralegals were asked whether there were some tasks that only lawyers could perform. Ninety-four percent of the sample responded in the affirmative (100% of the lawyers and 87% of the paralegals). There was, however, no consensus on what these tasks were. Over 62% of the lawyers and 46% of the paralegals stated that only lawyers could represent a client before a court and many of the lawyers had the mistaken belief that paralegals were prohibited by law from providing representation before a court.

Other areas mentioned by lawyers, that were perceived to be within their exclusive domain, were in order of frequency mentioned: civil litigation, serious criminal matters, in depth legal advice, drawing pleadings, family matters and all cases where the other side had retained a lawyer. Two lawyers stated that there were no tasks usually performed by lawyers that paralegals could do.

Paralegals mentioned real property, civil litigation, serious criminal matters, drawing contracts, large property settlements, and appeals as falling within the sole domain of lawyers. Three of the paralegals questioned responded that there were:

> no legal tasks that could not be performed by a properly trained and supervised LIC/paralegal (Brantingham and Brantingham, 1983, p. 352).

When paralegals and lawyers were asked if there was any task a paralegal could perform better than a lawyer, there were differing opinions. Although forty-three percent of the lawyers stated that there were no tasks that a paralegal could do better than a lawyer, all of the paralegals and 57% of the lawyers (75% of the sample) reported that there were some tasks a paralegal could do better than a lawyer. Both lawyers and paralegals generally agreed as to what these tasks were:

> Overall, the respondents agreed that LICs/paralegals are better at assessing the client's legal problems in the context of some broader set of social and economic problems and of providing advice and assistance designed to meet the full set of problems (Brantingham and Brantingham, 1984, p. 353).

As well, 48% of both paralegals and lawyers agreed that paralegals were better at tribunal work. Other tasks that paralegals were seen to perform more effectively, and that were mentioned by a few lawyers, included: preparing routine and standard documents, empathizing with clients, and dealing with welfare and family law. Paralegals mentioned: mediation to avoid court appearances, the giving of general legal information in cases where there was no actual legal problem, specialized areas of law such as small claims, as well as empathizing and counselling clients as tasks they could do better than lawyers.

Another perception held by both lawyers and paralegals was that paralegals were thought to have better working relationships with other governmental agencies, such as: probation, Ministry of Human Resources, family court, social workers, and other social agencies. Lawyers were thought to have

better relationships with Crown counsel, police and the private Bar. Although both paralegals and lawyers held this perception, the findings from the interviews showed that the actual pattern of contact between lawyers and paralegals were quite similar.

Experience and involvement with paralegals helped to explain the differences in lawyers' perceptions of paralegal ability. Of those lawyers who worked with paralegals, over 80% said that paralegals could do some things better. Of those who had no contact with paralegals, 60% said that there were no tasks better performed by paralegals.

Another item on the office survey, addressing the differences between lawyers and paralegals, was a question asking if the interactions with clients of lawyers and paralegals differ. This was of interest to this researcher as it formed the basis of one of the hypotheses of this thesis.

Overall, both lawyers and paralegals agreed that the nature of their client interactions differed. Eighty-six percent of the sample responded in the affirmative to this question while only 8% stated that the interactions did not differ.

> There was a strong consensus across all lawyers and LIC's/paralegals about <u>how</u> client interactions differ. Seventy-seven percent or 24 out of 31 persons interviewed said that LIC's/paralegals take more time with clients than lawyers do; that LIC's/paralegals explore the legal problem in the context of wider human and personal problems while lawyers focus on the resolution of legal issues; and that LIC's/paralegals provide a lot of <u>social</u> counselling while lawyers do not (Brantingham and Brantingham, 1984, p. 354).

In addition, 10% of the sample stated that they felt there was less social distance between paralegals and clients than was the

case with lawyers.

> Paralegals had more open and informal interactions with clients, while lawyers had formal, legally focussed interactions with clients. (Brantingham and Brantingham, 1984: 354)

Some of the comments made by various paralegals interviewed in response to the question concerning interactions with clients, were:

1. Paralegals appear less formal and more relaxed so clients feel more at ease and not so rushed, therefore the information obtained from the client is more detailed and thorough.
2. Paralegals spend more time with clients, counselling them in relation to not only the legal problems but also the personal and social problems. In other words, paralegals view a client's legal problem in a wider context.
3. Paralegals deal on a more personal level. They eliminate the stigma attached to the lawyer/client relationship.
4. Paralegals attempt to teach the client how to resolve legal problems themselves rather than removing the problem from the client.
5. Paralegals are more empathetic to clients and closer to the concerns of the community.
6. The social standing of lawyers intimidates a lot of people. There is less social distance between clients and paralegals than with lawyers.

Background and Training of Public Sector Paralegals

Presently, in British Columbia, there are no standards or minimum hiring requirements for paralegals. During the interview stage of the LSS Evaluation, information was gathered on the background and education/training of fifteen paralegals working in funded agencies of Legal Services. This information showed that the backgrounds and education of the paralegals interviewed varied greatly.

Forty percent of the paralegals interviewed had no post secondary education, 27% had two years of University, and 33% had a Bachelors of Arts degree prior to being hired as paralegals. In terms of past working experience, 33% had been social workers, 25% had been secretaries or legal secretaries, 20% had been teachers, and the remainder had no relative working experience. Almost all of the paralegals interviewed did not have any specific training as paralegals prior to being employed by LSS.

Since the formation of the LSS in 1979, the training department has held a series of training workshops. The original objectives of the training department were to:

1. be effective advocates for poor people
2. help clients with law related problems
3. understand and be able to explain the legal system and the system of government, particularly with respect to social assistance
4. use lawyers effectively

LSS organized twelve specialized workshops and one introductory workshop between January, 1982 and March, 1984. In 1982, there

were 9 workshops (1 introductory and 8 specialized). In 1983, the number of workshops dropped to 2 (both specialized) and, in 1984, there were 2 workshops held in the first quarter (both specialized).

A total of 69 people attended at least one workshop between January, 1982 and March, 1984. Forty-nine of these were paralegals. Paralegal participation in the LSS workshops ranged from four paralegals who attended no workshops to one paralegal who attended eleven workshops. The most frequently attended workshop was on family law. Fifty-four percent of the paralegals, who were interviewed, attended this workshop. Forty-six percent attended workshops on criminal and family law and 31% attended workshops on administration. Other workshops mentioned by the paralegals included: civil procedure, contract and debt, and legal research. Of the paralegals interviewed, 60% had attended the introductory paralegal workshop and 40% had not. Thus, almost half of the paralegals had not taken the basic introductory course.

The workshop that the paralegals rated the highest was one on contract law and debt whereas the lowest ratings were given to the family law workshop and the torts and civil procedures workshop. The varied backgrounds of paralegals and their different levels of previous training made it difficult for LSS to determine the level and content of the courses.

The primary form of training for paralegals was on-the-job training. Of those paralegals interviewed, 87% had received such

training. The methods of training these paralegals varied from office to office. Of the 87% who received on-the-job training, 77% trained under the close supervision of a supervisory lawyer. Fifty-four percent of these paralegals mentioned that, in addition to supervision, detailed discussions about specific areas of law were included in their training. Other forms of training mentioned by them included the use of assigned readings and lectures given by their supervisory lawyer. In some instances, a senior paralegal would supervise the training rather than a lawyer.

Paralegals were asked what their perception was of the adequacy of the training provided by LSS. Eighty percent of those paralegals questioned said that they felt that their training was not adequate. Most of those, who said that the training was adequate, were the paralegals with a Bachelor of Arts. The majority of the paralegals interviewed maintained that LSS should develop standardized training programs.

One innovative idea put forward by some of the paralegals was to develop a satellite training group, which could give lectures and workshops on specialized areas of law. Another idea was to develop a degree program in conjunction with a local college that would give an Associate of Arts degree upon completion. When the paralegals were asked about training priorities for the future, some areas mentioned were:

1. Criminal procedure

2. Civil procedure

3. Administrative law

4. Family law

5. Advocacy skills

6. Legal research skills

7. Negotiation skills

8. Interviewing skills

An earlier survey of paralegals, conducted by the LSS training department, mentioned areas which were consistent with those areas named in the LLS Evaluation.

Since the cutbacks in legal aid funding, paralegals are taking on much more court work and giving more legal advice on criminal and family law. The current economy in British Columbia has increased the caseload of paralegals, especially in areas such as debt, foreclosure and bankruptcy. This shift has changed the nature of the paralegals' need for additional training in substantive law and their need for developing skills in representation, litigation and research. The Evaluation recommended the following :

- development of a systematic, comprehensive entry level training course which all new paralegals must complete (or waive through completion of an acceptable college paralegal diploma course) prior to commencing work. This should be required of paralegals hired by funded agencies as well as by those working directly for the LSS.

- development of a systematic paralegal training syllabus including courses and required reading lists that will be taught on an established cyclic basis.

- use of innovative teaching techniques to cut costs and increase participation rates. Special attention should

be given to the use of programmed learning modules and to the use of the province's special facilities for remote, two-way teaching via educational satellite television links. Consideration should also be given to having instructional teams travel out to offices or regions, rather than gathering all paralegals in a single location.

- training activities should be undertaken in consultation with a number of major educational resources, including the Schools of Law at the University of British Columbia and the University of Victoria, and the continuing legal education staff of the Law Society of British Columbia (Brantingham and Brantingham, 1984, p. 342).

Supervision

According to the LSS Act of 1979, with proper supervision, a paralegal can do any legal work a lawyer can do. Therefore, supervision becomes an extremely important factor in the delivery of legal services by paralegals. There has been no case law concerning the scope of supervision required by lawyers but the LSS Policies and Procedures Handbook does set out guidelines as follows:

1. All non-lawyers when providing services ordinarily provided by a lawyer must be supervised by a lawyer.
2. The supervising lawyer shall determine the level of review required for each non-lawyer in each area of law.
3. The levels of review shall be:

   A. Minimum Review

      Minimum Review shall include the following:

      i) review of all superior court documents before filing,
      ii) review of all files before closure and all advice given,
      iii) answering any questions posed in relation to

supervised files.

B. Partial Review

Partial Review shall include the elements of minimum review and shall also include:

i) review of all inferior court documents before filing,
ii) review of all administrative tribunal documents within a reasonable time after filing,
iii) review of all legal memoranda, opinions, letters and other documents within a reasonable time after release,
iv) review of proposed advocacy work in detail before appearance.

C. Full Review

Full Review shall include all the elements of partial review and also include:

i) review of each file as it is opened, and close monitoring of the progress of the file to completion,

ii) direct supervision of any advocacy work.

These three levels of review are only guidelines for the supervisory lawyer to follow. Since there are no minimum standards or requirements for individuals prior to employment as a paralegal, the paralegals employed have a wide range of experience and expertise. Therefore, ideally, the levels of review would start at a full review and decrease in intensity as the paralegal gains knowledge and experience and the supervisory lawyer comes to know the limits of the paralegal's ability.

There was very little variety in the level of supervision reported by the paralegals interviewed, although over half were under minimum supervision. Three patterns of supervision were discovered. These patterns were:

1. Seventy-eight percent of the paralegals reported directly to a supervisory staff lawyer or a consulting lawyer.
2. Two paralegals reported periodic review by a non-lawyer designated by the local Board of Directors. This included a periodic review of a sample of files by a lawyer for all areas of work.
3. Two offices reported no legal supervision at all. One office's Board of Directors had poor relations with the staff lawyer and the Board was not allowing this lawyer to review the paralegals' work at all. The other office, that reported no supervision, had a consulting lawyer, but it was left up to the paralegal to phone him when advice was needed. Other than upon this paralegal's request, this consulting lawyer never reviewed any files or performed any other supervisory task.

In total, 56% of the paralegals were under minimum supervision, 6% were under partial supervision, 28% were under full supervision, and two offices had no supervision.

The fact that the majority of the paralegals were under minimum supervision was not necessarily an unexpected finding as the average length of employment with LSS of the paralegals interviewed was 5.7 years.

Of those paralegals who reported minimum supervision, 50% were reviewed weekly and 50% were reviewed only at the paralegals' request. Of those who reported full supervision, 40% were reviewed daily, 20% were reviewed several times a week, and

40% were reviewed weekly. The supervisory lawyers interviewed generally found the work of the paralegals to be good.

The contact each supervisory lawyer had with the paralegals in the office varied. Almost 40% of the lawyers had daily contact, 38.9% had weekly contact, one lawyer had contact with the paralegal under his supervision approximately once a week, and two supervisory lawyers had only rare contacts with their paralegal which, were usually initiated by the paralegal.

Both lawyers and paralegals were asked if they felt the level of supervision was appropriate. Ninety-three percent of the paralegals and 70% of the lawyers felt that current practices were appropriate. One paralegal and two lawyers thought there was too little supervision and one lawyer thought there was too much supervision. When asked how supervision practices should be changed, most lawyers said that current practices already optimized supervision and that no changes were necessary. One lawyer thought that supervision should be reduced and two lawyers said that supervision should be increased.

In two situations, paralegals were providing legal assistance without <u>any</u> supervision. However, in general

> The supervision of LICs/Paralegals by lawyers seemed to be conducted in accordance with the requirements of the Legal Services Society policies and procedures in most offices around the province. Lawyers and LICs/paralegals appeared to have common understanding about the purpose, level and frequency of supervision. Lawyers and LICs/paralegals seemed to agree that current supervisory practices are working well (Brantingham and Brantingham, 1984, p. 347).

The LSS Evaluation concluded that LSS should develop and

incorporate a standard procedure for monitoring the supervision process for all offices that utilize paralegals.

Included in the LSS Evaluation was a survey conducted of the members of the British Columbia Law Society. A portion of this survey contained questions regarding the work of paralegals. The respondents to this survey did not believe that paralegals "generally attempt to provide services on matters more properly handled by lawyers" (Brantingham and Brantingham, 1984, p. 348). Additionally, over half of the respondents did not feel that paralegals were infringing on matters more appropriately dealt with by lawyers in comparison to only one-sixth of the lawyers who did feel that way. Furthermore, a majority of the respondents agreed that LSS should made greater use of paralegals. Apparently, the British Columbia Bar seems to be quite open to the idea of paralegals and are willing to allow them to engage in the tasks they are presently performing.

Unauthorized Practice and Tort Liability

Prior to the implementation of the LSS Act, paralegals were open to liability for unauthorized practice. Since the LSS Act of 1979, unauthorized practice has not been an issue in British Columbia. As previously mentioned, the section of the LSS Act dealing with paralegals gives them an extremely broad scope--paralegals may do any legal work that a lawyer can do provided there is proper supervision. Therefore, the only issue in British Columbia even remotely related to unauthorized

practice is that of supervision. It is unclear if the supervisory lawyer would be ultimately responsible for the actions and consequences of services provided by the paralegal.

As well as being given a broad scope for their involvement in legal activity, paralegals are also protected by the same solicitor/client privilege that is normally only accorded to a lawyer. Section 11 of the LSS Act deals specifically with this issue.[2] This protection covers any information given by a client to any employee of LSS or agent of a LSS funded agency. Although this privilege is covered in the LSS Act, it has never been tested in Canadian courts. This is an issue raised by a few writers in the area of paralegalism and is still a concern elsewhere in Canada and the United States (Welsh, 1977; Zemans, 1975; Fry, 1984; and Statsky, 1984).

Lawyers can be found liable to clients for damages if the lawyer's negligence has caused an injury to the client. The meager Canadian literature on the tort liability of paralegals would suggest that paralegals are governed by the same principles as those that govern a lawyer (Zemans, 1975). The issue of tort liability seems to revolve around the standard of care taken by the lawyer or paralegal. It has been suggested that in regard to paralegals this standard should be one in

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[2] 11. (1) Information disclosed by a client or an applicant for legal services to a director, employee or agent of the society or funded agency is privileged and shall be kept confidential in the same manner and to the same extent as if it had been disclosed to a solicitor pursuant to a solicitor and client relationship (Legal Services Society Act, 1979, p. 3).

which a client would expect knowing that he is dealing with a paralegal, i.e. not a full professional. Davis has stated that the rule of thumb is that:

> the lay assistant should be required to exercise the skill and knowledge normally possessed by other lay assistants under similar circumstances (Davis, 1973, p. 556).

This is very similar to the standard which is applied to lawyers, namely, that a lawyer should demonstrate the

> capacity to provide a quality of legal service at least equal to that which lawyers generally would reasonably expect of a lawyer providing the service in question (Canadian Institute of the Administration of Justice, 1978, p. 11).

Wade (1971) suggests that a paralegal can protect him/herself from being liable for negligence if he/she:

1. holds him/herself out only as a paralegal,
2. does not attempt to perform services outside the scope of those customary for paralegal personnel, and
3. conforms to the standard of care, skill, and knowledge normal for the paralegal.

However, if the paralegal does not make it clear to the client that he/she is a paralegal and attempts a legal task that far exceeds his/her competency, then the paralegal could be held to the higher standards applicable to a lawyer.

It would seem reasonable that, in addition to the individual liability of the paralegal, the organization or supervisory lawyer could also be held liable for damages. This liability would not be dissimilar to that of a hospital for their employees. Paralegals are allowed to perform the legal tasks they do only if properly supervised by a lawyer. If it can

be shown that there was improper delegation of tasks or insufficient or inadequate supervision, then the lawyer and/or the organization could be held liable for damages (Wade, 1971).

There is no case law concerning the issue of liability of paralegals. It has been suggested that this is a consequence of the reluctance to bring an action rather than lack of breaches (Justice Services Commission, 1975). In fact, in other jurisdictions and in the United States where paralegals have been prosecuted for unauthorized practice, it is always the Bar or another lawyer who is the plaintiff. However, even those type of cases are rare.

Bill Fry (1984), the director of the National Paralegal Institute in Washington, D. C., suggests that the relative lack of prosecutions for unauthorized practice can be attributed to the type of law and clients public sector paralegals deal with. Traditionally, the client is poor and the area of poverty law is of limited interest to most other lawyers (as there is little or no money involved), and the types of clients that these paralegals deal with are not inclined to sue or prosecute a paralegal if there is negligence or if damages are incurred. In fact, the client is most likely not even aware of that possibility.

IV. THE PSEUDO-CLIENT PROJECT

Introduction

As the previous chapters have indicated, the paralegal movement in the United States and Canada was primarily considered a cost-effective method of increasing the accessibility of legal services to the poor. Traditional legal services were not considered to be the appropriate vehicle for addressing the unmet need for legal services within the ranks of the indigent.

Paralegals were viewed as an economical method of legal service delivery. Lawyers, being professionals who have invested relatively substantial sums of money and time in their legal training, usually expect a just return for this investment. On the other hand, paralegals, who have minimal legal training, do not have the same expectations of financial gain. Therefore, paralegals can provide legal advice and assistance at a much lower cost to the public. The cost of public legal services is of prime importance, especially in times of recession and restraint, such as those we have been experiencing in British Columbia. The assumption of the economic benefits of utilizing paralegals is unquestioned in this thesis, based on the findings discussed in Chapter 3.

As well as being economical, it was thought that paralegals would increase accessibility of legal services to the poor by allowing clients to feel more comfortable in requesting legal services; since paralegals would essentially be considered "one of them", they could more effectively deal with the client's entire problem. This could be accomplished through legal information and advice, referrals to appropriate agencies, instructing the clients in ways of helping themselves, and by translating the often confusing legal jargon into a language that lay people could understand.

The contention that paralegals enhance the assessibility of legal services has never been adequately tested. The reasons for this are many. The usual method for assessing client satisfaction is the use of structured interviews with clients that include questions concerning levels of satisfaction with the services received.

Through this method of interviewing, one can determine the level of satisfaction expressed, in relation to different types of services. As mentioned in Chapter 1, the results of the LSS Evaluation found that, in terms of summary advice, clients of CLOs reported higher levels of satisfaction than the clients of Branch Offices. This in itself is an interesting finding; however, it does not tell us <u>why</u> the satisfaction levels differ. With limited information, one can assume that it might be a consequence of that office's typically informal atmosphere, or the lack of formality and superiority in the attitude of the

paralegals employed there. However, these possible explanations have never been tested.

Legal services has been an area that has resisted any attempt at direct quality analysis. The competence of lawyers has rarely been examined and is usually dealt with in terms of continuing education (Rosenthal, 1976). The quality of legal services is usually addressed only if a client brings a negligence suit against a particular lawyer. This is especially true of legal services in the public sector.

Very little has been written concerning the quality of legal services or the competence of those delivering legal services. There have been a small number of published studies that have attempted to assess directly the quality of legal services provided by lawyers (Rosenthal, 1976; Evans and Norwood, 1975; Vogt et al, 1976). All of these studies have focused on the performance of lawyers.

Two general approaches to measuring quality can be found in this literature. The first approach assesses competence in terms of successful and unsuccessful outcomes or court dispositions. One of these studies (Rosenthal, 1974) was based on interviews with a sample of individuals who were plantiffs in personal injury claims. A fact sheet was prepared for each respondent detailing all the relevant factors and then submitted to a panel of experts in the area of personal injury claims. These experts then put a monetary value on the claim based on the fact sheets and their assessments were then compared to the amount of actual

recovery. The results showed that in 77% of the cases, the respondent's actual recovery was much less than the experts had assigned.

Another study, that incorporated outcome data, was undertaken at the University of New Mexico, which attempted to assess the competence of two groups of advocates. One group consisted of seven private lawyers and seven public defenders and the other group consisted of law students supervised by a lawyer in a clinical training program. Several measurement criteria were employed, which included video-taped client interviews monitored by an expert panel, and the review of case files. The assessment of quality was based on the number of client contacts, whether the lawyer participated in the sentencing and how much time was spent on each case. They also reviewed the results of court proceedings and severity of sentence. The researchers found no statistical difference between the two groups (Evans and Norwood, 1975).

The limitation associated with the use of outcome data is the difficulty of relating any differences found in the outcome to actual differences in competence or quality of services provided. In some cases there are no clear-cut wins or losses, such as family cases or other civil cases. There are also many diverse variables to consider in examining a disposition and it is difficult to control for these extraneous factors.

The second approach is often called peer review or case-conferencing. With this approach, several case files of a

lawyer are examined by a panel of lawyers, who then determine an overall quality measure. The Legal Services Corporation in the United States has attempted systematically to evaluate their lawyers' performances utilizing this peer review system. In their evaluation, twenty-two experienced lawyers were trained to interview staff lawyers and private lawyers in various LSC project offices, and to assess the quality of the legal services provided. In teams of two, these lawyers visited each office, interviewed the lawyers and then assessed a sample of the office's cases. The cases were assessed in relation to twelve legal factors, as well as an overall quality rating. A total of 575 lawyers were interviewed and more than 3,000 cases were assessed. They found that, although some offices were below LSC standards, there were no differences found between staff lawyers and private lawyers (Vogt et al, 1976).

The technique of peer review is one method of evaluating performance. It does not, however, address the complexities and quality of the lawyer-client interaction and communication. It is an analysis that is undertaken after the fact and, only utilizes the information the lawyers received from their own perspectives. It does not have the same impact as direct observation.

Rosenthal stated that:

> Direct observation is certainly a better evaluative procedure than inspection of evidence after the fact (Rosenthal, 1976, p. 268).

He suggests that direct observation of lawyer-client

interactions and interviews with both participants would be the most productive form of research but he totally ignored an important factor known as the "Hawthorne" effect (Kerlinger, 1973). This is the principle that the knowledge that one is being evaluated by an observer during an interview is likely to have an effect on the nature of that interviewer's interaction and, as well, on the content of the advice and information one is giving. The effect of knowing that someone is observing and evaluating the interview is likely to bias the results:

> The measurement process used in the experiment may itself affect the outcome. If people feel that they are 'guinea pigs' being experimented with, or if they feel that they are being 'tested' and must make a good impression, or if the method of data collection suggests responses or stimulates an interest the subject did not previously feel, the measuring process may distort the experimental results (Sellting et al, 1959, p. 97).

Another difficulty associated with utilizing a research method of observing lawyer and clients is the issue of confidentiality. It intrudes on the privacy of the communication between the client and solicitor. This confidentiality of communication has been entrenched in our system of justice and it is doubtful that this type of research would be realistic since most lawyers would be hesitant to allow observers to sit in on their client interviews.

For the above stated reasons, the observational method was not considered an option for this study. The use of pseudo-clients was considered to be the best method of answering the questions set out in the introduction. The use of pseudo-clients not only eliminated the problem of client-lawyer

confidentiality, but also greatly reduced the possibility of biasing the results as a consequence of the interviewer being aware, at the time of the interview, that he/she was being evaluated.

Ethics

As the design necessitated that the researchers disguise their identities when they entered the offices, some comments need to be made about the ethics involved in this type of research. The design of this study incorporated the use of researchers posing as clients requesting summary advice for legal problems.

The use of confederates or disguised identities in social science research has generated vigorous discussion about the ethics of this technique. Probably the most well known example of what is referred to as "deception research" is the study done by Laud Humphries on impersonal sex in public places in which he disguised his identity and totally misrepresented the purpose of the research to his sample of respondents (Humphries, 1970).

Another study that caused debate over the methods used was the Rosenhan study. Rosenhan sent pseudo-patients to various mental hospitals in five different states. Unknown to the hospitals, the pseudo-patients gained admission, complaining of hearing voices. Based on the pseudo-patients' observations, Rosenhan came to the conclusion that:

> It is clear that we cannot distinguish the sane from the insane in psychiatric hospitals (Rosenhan, 1973, 257).

This study and its results caused a debate in the literature referred to as the "Rosenhan Debate". The ethical issues involved in that study, however, were not the primary focus for attack.

Sidney Crown makes the only statement referring to the distastefulness of such a design and stated that it could lower the esteem of the researcher in other researchers' eyes. The important issue here is that Rosenhan did not obtain consent from any of the hospitals in the sample. However, the ethical issue of consent or deception research did not concern many of Rosenhan's antagonists. Rather, they took exception to the fact, that from a study with serious methodological limitations, Rosenhan proceeded to make broad generalizations about the ability of psychiatrists to make accurate diagnoses (Weiner, 1975; Spitzer, 1975; Crown, 1975; Millan, 1975).

Erikson has summarized the ethical objections to studies that involve disguising or misrepresenting the identity of the researchers:

> it is unethical for a sociologist to deliberately misrepresent his identity for the purpose of entering a private domain to which he is not otherwise eligible; and. . .it is unethical for a sociologist to deliberately misrepresent the character of the research in which he is engaged (Erikson, 1967, p. 373).

Erikson felt that disguised research is the antithesis of fully informed consent.

The design of the present study in no way falls into Erikson's definition of what is considered unethical. First and

foremost, informed consent was obtain by each staff member of each office that participated in the study. If the office could not obtain a consensus from their staff, then the entire office was eliminated from the study. This was necessary as the researchers had no way of knowing who would be interviewing the pseudo-clients. As will be described in the section dealing with the issue of obtaining consent from the offices, a great deal of effort went into ensuring that each staff member fully understood what was involved in the study and what the objectives were.

The delivery of summary legal advice services by Branch Offices and CLOs is a public service open to everyone. It cannot be considered a private domain. The staff that participated in the study knew that, sometime in a period of four months, one of their clients would be a pseudo-client. They had no objections to this procedure. This researcher visited many offices and attended Board meetings to consult with the staff and to explain the project fully to them. There was never any attempt to distort or disguise any aspect of the research.

Methodology

Obtaining Consent from Offices

As mentioned, in a study of this nature it is ethically important to obtain informed consent from those individuals who

are being evaluated. After receiving the proper clearance from the executive director of the Legal Services Society (Steve Owen), a letter describing the study was sent to all Branch Offices and Community Law Offices in the Lower Mainland and on Vancouver Island. The individual offices were informed that, if an office consented to be involved in the study, four pseudo-clients would be visiting that office seeking summary advice during the next three to four months. Their reactions to the study ranged from extremely positive to very negative. There was a total of 15 Branch Offices, Community Law Offices, and Legal Information Centers in the study area. From this total, 9 offices consented, 5 offices declined, and one closed its doors due to lack of funding. The final sample included 4 offices which employed lawyers and 5 offices that employed paralegals.

Obtaining these consents was extremely time-consuming, as each office had to consult with its staff before making a decision as to whether to participate in the project. The Community Law Offices also had to consult with their Boards of Directors. The researcher personally attended the board meetings of several Community Law Offices to clarify the goals and objectives of the study.

The offices were given assurances of confidentiality and anonymity. They were told that the analysis would only be on the basis of the categories of paralegal and lawyer and that the results could not be traced back to any specific individual or office. Further, it was explained that Head Office would not

have access to any of the individual information.

Hiring and Training the Pseudo-clients

In hiring the pseudo-clients, an advertisement was placed in both the weekend Vancouver Sun and Province newspapers reading:

> Needed three women and three men, for research study, temporary full-time for one to three weeks in January. Although there will be some training, you must be able to role play, be observant, perceptive and have memory recall skills. if interested, please call 689-0741 Local 55 for an interview.

A total of 60 people responded to this advertisement, 45 of whom were interviewed. Each interview was approximately 20 minutes to one-half hour in length, and included the personal and employment history of the applicant, as well as, a session of role-playing. Six people (3 men, 3 women) were hired for the initial training. From this group, four were chosen to be pseudo-clients for the project. These individuals had been observed to display the most consistent and reliable responses and behaviors throughout the numerous sessions of role-playing.

During a 35 hour training period, video equipment was used to record the numerous sessions of role-playing that were performed. During the role-playing, simulated interviews were acted out with the researcher and her assistant acting as interviewers. The same legal problems that the pseudo-clients were to use for the office visits, were used during the

training. The pseudo-clients repeatedly role-played their particular problem scenario while being videotaped. This allowed the researchers to assess the consistency of response and behavior as well as the overall authenticity of the pseudo-client's role.

The legal problems designed for this study were discussed at length with the pseudo-clients, and many of their suggestions and personal facts were incorporated into the problems to allow them to feel comfortable in their roles.

As part of the training for the pseudo-clients, time was spent on conceptualizing variables used in the portion of the study that dealt with interactions between client and interviewer. As a group, we discussed the various terms and came to a mutually agreeable definition of what each of the variables meant. This discussion was quite extensive and thorough, and it was clear that all the pseudo-clients understood what was meant by each term.

The consistent interpretation of these terms was stressed throughout the training and the pseudo-clients came to be quite comfortable utilizing the agreed upon definitions. The following characteristics are only the ones that showed a significant difference between lawyers and paralegals.

1. Helpfulness: This was defined as meaning that the interviewer appeared to want to be of some assistance and came across as trying to help as much as possible.
2. Businesslike: This was defined to mean that an interviewer

was perceived to be formal, "to the point", very structured and dealt only with the specific legal issues with very little interpersonal interaction.

3. Concerned: This was defined to mean showing interest in the welfare of the client and acting as if the interviewer actually cared about the effect the legal problem was having on the client's life.

To complete the training, two final role-playing sessions were undertaken, one using a lawyer as an interviewer and one using a paralegal. These interviews were tape-recorded and the researcher and her assistant sat in as observers, taking notes on what occurred. Immediately after these interviews, the pseudo-clients were debriefed according to a set format. A comparison was then made between what the pseudo-clients reported, the taped interviews, and our observation notes to assess any variations.

This final role-play also allowed a consistency check as to how the pseudo-clients were utilizing and responding to the various adjectives used in the debriefing. As a researcher sat in on these interviews, a check was made as to whether each pseudo-client was operationalizing the items on the debriefing schedule in a consistent manner.

As a result of these final sessions of role-playing, we were forced to replace one of the pseudo-clients. His perceptions of the interviewer's behavior and attitude were significantly different from both our observations and the taped

interview. We hired and trained another applicant in the same format as the other pseudo-clients. This replacement did well in all the role-playing sessions, including the final sessions with the lawyer and paralegal acting as interviewers.

The pseudo-clients were told that this was an exploratory study designed to evaluate legal service offices. They were not aware of the objectives of the study. To this researcher's knowledge, the pseudo-clients had no previous experience with the legal system or legal services, and did not appear to have any preconceived ideas about lawyers or paralegals.

With the exception of one office that used law students as interviewers, the pseudo-clients did not know when they entered each office whether the interviewer was a lawyer or paralegal. Often, the interviewers introduced themselves and explained who they were, so the pseudo-clients knew that they were a lawyer or a paralegal. It did not appear to make a difference to the pseudo-client who they saw--they were only concerned with obtaining advice for their legal problem. As a result, there is no reason to believe that the pseudo-client had any kind of bias in favor of one type of interviewer over another.

The Legal Problems

The four problems, two civil and two family, were originally designed to elicit summary advice only. The civil and family areas chosen were representative of some of the most

frequently mentioned summary advice problems in the Evaluation of Legal Services Client Satisfaction Survey. These summary advice problems were welfare, debt, custody and separation. An attempt was made to design the problems to be typical of these major areas. This was accomplished in three out of the four problems but, owing to unforeseen circumstances[1], we had to change the welfare problem to one of wills and estates. Therefore, the four legal problems used in the project were:

1. Marital Separation: A married woman with two children and a potentially violent alcoholic husband wanted advice as to what to do should her husband become physically abusive (Family Female).
2. Custody and Access: A husband and father recently separated from his wife wanted advice as to what his rights were with regard to visiting his children and reducing support payments (Family Male).

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[1]During the course of obtaining each office's consent, I attended a meeting with employees of an office that was reluctant to participate. At this time, the pseudo-clients had been hired and trained. The four legal problems had been designed and tested. It was only a few days from the project start date. At this office meeting, in the process of giving an example of various problems that the staff confront each day, a staff member (who was definitely opposed to the project) proceeded to relate verbatim the welfare problem we had designed for one of our female pseudo-clients. It appeared that this staff member obtained information on the nature of at least one of the problems. The welfare problem had to be changed in case that office decided to participate in the project. In fact, that office decided not to participate in the project. However, by the time we were informed of this decision, we had already started the project with a different legal problem. Because of the lack of training time available, the legal problem chosen was one that the pseudo-client was already experiencing. This gave us confidence that she was familiar with the facts of the case and did not require additional training.

3. Debt: A husband and father, unemployed, has an outstanding car loan and needed information on what to do to appease the bank (Civil Male).
4. Wills and Estates: A woman whose father died intestate needed information on what her family could do about settling his estate as he had been living common-law with a woman for several years (Civil Female) (See Appendix B for further explanations of the legal problems).

Questionnaire and Debriefing

Each pseudo-client was accompanied by either the author or her assistant on every office visit. The pseudo-client entered the office alone while the researcher waited in the car. Immediately upon leaving the office, the pseudo-client was debriefed by the researcher according to a debriefing questionnaire. Some of the questions included in the debriefing questionnaire were:

1. What was the information and/or advice given.
2. How long was the wait.
3. How long was the interview.
4. What was the general attitude of the interviewer (See Appendix C for complete questionnaire).

The debriefing questionnaire was completed and the advice tape-recorded. The tapes were later transcribed.

Sample

The pseudo-clients walked into each office requesting advice for their specific legal problems. There were no previously arranged appointments. Therefore, who the pseudo-client saw for legal advice (a lawyer, paralegal, law student or legal assistant) could only be controlled in a limited way. This did not create a problem with the offices that employed paralegals only as interviewers. On the other hand, offices that had lawyers on staff may have had legal assistants, law students, or receptionists who could also provide summary advice to clients. Every attempt was made by the pseudo-client to see a lawyer in those offices by specifically requesting one. However, this was not always successful.

In total there were 13 lawyers, 15 paralegals, 1 legal assistant and 3 law students in the sample. There were four offices that had paralegals providing advice, four offices that employed lawyers and one office that had both in the sample. It is clear that the sample size is small; however, this project was intended to be an exploratory study to ascertain whether further evaluation would be warranted.

Interviews started January 20, 1984 and finished Febuary 28, 1984. Some offices, such as those on Vancouver Island, saw two pseudo-clients in the same day. This was a consequence of both time constraints and financial considerations. As well, because there were two researchers available to drive the

pseudo-clients to the different offices, there were days in which more than one office was visited.

The office visits were arranged so that there was a fairly even mixture of Branch Offices and CLOs over the period of data collection. Both types of offices were evenly intermixed during the visits so that one type of office was not clustered at the beginning or the end of the visits. The pseudo-client visits eventually resulted in legal advice covering four different legal problems.

Accessibility and Attitude of Interviewer

One of the main areas of focus for this study was the accessibility of legal services. Many of the issues associated with accessibility, such as office location and office visibility, were addressed in the recent Evaluation of Legal Services in British Columbia (Brantingham and Brantingham, 1984). Although many of the objective measures for accessibility were addressed in the Evaluation, it did not attempt to measure the more subjective social interaction that occurs between the client and the interviewer when the client goes to the office for legal advice and information. In order to measure this interaction, a questionnaire was designed to elicit the personal reactions and responses of the pseudo-clients to their interviewers. Included in the questionaire were items to determine how the pseudo-clients felt they were treated by the

interviewers, as well as the office staff, and how they felt before, during, and after the interview.

Of all the factors included in the issue of accessibility, one of the most important (and the most difficult to assess) is whether the client feels comfortable in seeking legal aid advice from a Legal Service Office or a Community Law Office. It is possible that, if the clients are made to feel that they are the recipients of a charity service, they could feel uncomfortable in seeking free advice. This, in turn, could have a negative effect on whether the advice was followed, or on the decision of those clients to return if additional information is required. Another important aspect, affecting the ease of client/interviewer interaction, is how the interviewer presents himself to the client - as a superior being with privileged knowledge or as someone from the community who is there to help if possible. In other words, the social distance the client feels from the interviewer would seem to have an effect on how accessible the service is to the community.

Quality of Advice

After all the data were gathered and the tapes transcribed, the advice and information provided by each participating office was sent to eight different lawyers, who are well respected in the area of poverty law. All but one of these lawyers had, at one time, been Legal Service lawyers but are presently either in

private practice or teaching. These lawyers had been approved by a few of the participating offices as lawyers who had their respect and who they felt would deliver a fair judgement. These lawyers were sent an outline of the project and a letter asking for their cooperation. At that time, all eight lawyers agreed to participate in assessing the advice. Each of these lawyers was then sent a packet containing a transcription of all the advice received by the pseudo-clients, the rating scales, and a letter explaining how to utilize the rating scales. After receiving the packet of advice and rating scales, one lawyer declined to participate in the project and another went on an extended vacation. Ultimately, we were left with five lawyers who rated all four problems and one lawyer who choose to rate only the debt problem. Each lawyer blindly and independently rated each piece of advice according to specific legal criteria set out for them by the researcher. In other words, the lawyers who rated the advice did not know which advice was from lawyers and which advice was from paralegals. The criteria used for the ratings included:

-the legal accuracy of the advice

-understandability of the advice

-practicality of the advice

-clarity of the advice

-an overall quality measure of the advice

For all the questions, except the first, an eleven point scale was used which ranged from very poor (0) to excellent (10). The

first question was measured with a yes, no, 50/50 response format. In addition, there was space available for each lawyer to add comments pertaining to the advice. (See appendix D for rating scales)

Limitations of the design

Financial and time constraints meant that the number of offices in the sample was small, as well as the number of pseudo-clients and problems used. Since the study was limited in this important respect, it was not possible to incorporate repeat measures into the design. Such measures aid in increasing reliability.

Another major limitation, owing to ethical concerns, was that it was not possible to use any kind of recording device to tape each interview. As a result, we were forced to rely on the memory of the pseudo-clients. In an effort to insure accurate recall, the training of the pseudo-clients included repeated measures of recall ability. However, it should be noted that, in many ways, what the client remembers of the advice is more important than the actual advice given, especially with summary advice clients:

> What the client (or rejected applicant) <u>thinks</u> he or she was told, rather than what the lawyer or paralegal actually said, is, pragmatically, the actual service delivered. In the delivery of legal aid, legal content is inevitably tied to the communication of information to the client (Brantingham & Brantingham, 1984, p. 289).

In light of the previously mentioned constraints, only four legal problems were used. These problems were designed to be as representative as possible of the wide variety of summary advice problems that Branch Offices and CLOs confront every day. The design of the problems was difficult because they had to be serious enough to warrant an interview rather than a simple referral to some other governmental or private agency, but not such that the pseudo-client would be accepted for representational services. As well, care had to be taken that further services, such as phone calls or letters, would not be initiated, thereby revealing the identity of the pseudo-client. Since there were only four legal problems presented in each office and no repeated measures with individual interviewers, an argument could be made that one of these problems might be the one weak area of the interviewer's legal knowledge. This could very well be true. However, these problems are areas of law in relation to which both paralegals and lawyers regularly dispense legal advice and information.

The ethical concerns dictated that only those offices which had consented be included in the sample. This meant that a random sampling procedure was not possible and, as a consequence, the results have limited applicability. However, because this project was designed to be an exploratory study to ascertain whether there were any major difficulties with the quality of advice provided to summary advice clients, these limitations were not considered insurmountable.

Analysis of the Debriefing Questionnaire

The crosstabulation of the debriefing schedule resulted in some interesting and significant differences between lawyers and paralegals. One of the first differences to emerge concerned whether the pseudo-clients were given eligibility forms to fill out when they requested summary advice from each office. In all the visits to the offices that employed lawyers, the pseudo-clients were given eligibility forms to fill out. In the offices that employed paralegals, just over half were given eligibility forms to fill out (See Appendix E - Table I). This was to be expected as Branch Offices which employ lawyers must have an eligibility form filled out by the client before any service is provided, whether it be advice or representation. In Community Law Offices, if the service is summary advice only, eligibility did not have to be determined; therefore, the form need not be completed. However, six of the paralegals did incorporate the eligibility forms in their procedures. This could have been a result of the request, initiated by Head Office after the restraint budget, that all offices including CLO's utilize the eligibility form for all services provided.

The second significant difference to emerge was the number of people waiting in the reception area for service. This was to be a measure of how busy each office was for that particular day and time. The offices that employed lawyers were much busier in

terms of client flow than were those offices that employed paralegals. In thirteen of the visits to offices that employed paralegals, there was not anyone waiting in the reception area compared to only four visits to the offices that employed lawyers. (See Table 1)

Table 1

Number of People in Reception Area

	0	3	4	5	10
Lawyer	4 39.8%	2 15.4%	3 23.1%	3 23.1%	1 7.7%
Paralegal	13 86.7%	0 0	1 6.7%	1 6.7%	0 0
Total	17 60.7%	2 7.1%	4 14.3%	4 14.3%	1 3.6%

chi square = 9.67 df = 4 p = .05

There was a also significant difference between these offices in how long each pseudo-client waited for an interview. There was a much longer wait in the offices that employed lawyers than those that employed paralegals. In fact, in one office, a pseudo-client had to wait an hour before getting an interview. It was later ascertained that this particular day was an unusually busy one for that office; therefore, the hour wait may not have been representative.

In the offices that employed lawyers, pseudo-clients had to wait approximately 15 to 30 minutes on 6 visits as opposed to the offices that employed paralegals, where most pseudo-clients had to wait only ten minutes or less for an interview on 14 of the 15 visits (See Table 2). In fact, it is interesting to note that for six of the paralegal interviews, the pseudo-clients did not have to wait at all. It should be noted that for all office visits, the pseudo-clients did not have pre-arranged appointments but rather just walked in to the different offices to ask for legal advice.

Table 2

Length of Wait for an Interview

	0	10 mins or less	15-30 mins	40-45 mins	60 mins
Lawyer	1 7.7%	3 23.1%	6 46.2%	2 15.4%	1 7.7%
Paralegal	6 40%	8 53.3%	1 6.7%	0 0	0 0
Total	7 25%	11 39.3%	7 25%	2 7.1%	1 3.6%

chi square = 12.34 df = 4 p = .02

There was also a difference between lawyers and paralegals in relation to the length of time of each interview. Over half of the interviews with lawyers were ten minutes or less, whereas

none of the interviews with paralegals were less than ten minutes. The remaining six interviews with lawyers were in the 12-20 minute range, and six of the interviews with paralegals were in that range. Seven of the paralegal interviews were 25-30 minutes long and two were 35 minutes or longer (See Table 3).

Table 3

How Long Was the Interview

	10 mins or less	12-20 mins	25-30 mins	35+ mins
Lawyer	7 53.8%	6 46.2%	0 0	0 0
Paralegal	0 0	6 40%	7 46.7%	2 13.3%
Total	7 25%	12 42.9%	7 25%	2 7.1%

chi square = 15.94 df = 3 p = .00

Generally, paralegals spent more time with each pseudo-client, the average length of interview being just over 19 minutes. The interviews with lawyers were approximately 6 minutes less than the overall average, and the interviews with paralegals were approximately 5 minutes longer than the overall average, controlling for the number of people in the reception area.

The length of the interviews differed greatly depending on the problem type. The longest interviews were for the Family

Female problem with an average of 23 minutes. The second longest interviews were for the Family Male problem with an average of 21 minutes. The average length of interview for the Civil Female was just over the grand mean of 19 minutes. The least amount of interview time was spent on the Civil Male problem which was more than 4 minutes below the average (See Tables 4).

Table 4

Multiple Classification Analysis
Length of Interview vs. Type of Interviewer and Problem Type
Controlling for Number of People in Reception Area

Grand Mean = 19.12

Variable and Category	N	Unadjusted Dev'n	Eta	Adjusted For Independents Dev'n	Beta
Problem Type					
1 Civil Male	42	-5.66		-4.75	
2 Family Male	30	2.88		1.65	
3 Family Female	45	3.33		3.31	
4 Civil Female	30	.05		.03	
			.37		.32
Interviewer					
1 Lawyer	69	-6.29		-5.35	
2 Paralegal	78	5.56		4.74	
			.59		.50

Multiple R Squared	.444
Multiple R	.666

F = 18.806 df = 8,138 p = .000

(See Appendix E - Table II for ANOVA Table)

Pseudo-clients were also asked if, after the interview, they were given any pamphlets or information sheets. All Legal Service Offices and Community Law Offices have racks of legal information pamphlets and booklets prepared by Legal Services and other organizations. Only one lawyer gave a pseudo-client pamplets as compared to 10 of the paralegals. In total, the pseudo-client received additional written information in only 11 of the 28 interviews (See Table 5).

Table 5

Were You Given Pamphlets or Information Sheets

	Yes	No
Lawyer	1 7.7%	12 92.3%
Paralegal	10 66.7%	5 33.3%
Total	11 39.3%	17 60.7%

chi square = 7.83 df = 1 p = .01

In addition, there were significant differences over items on the schedule that attempted to examine the interpersonal interaction that occurred between the pseudo-clients and the interviewer. The items asked questions regarding the overall attitude of the interviewer. The attitudinal items were measured

on a scale of:

1. not at all
2. somewhat
3. very

These questions resulted in a significant difference between paralegals and lawyers in three areas.

The first was helpfulness: "How was his/her general attitude in the following areas: helpfulness?" Lawyers were rated as 'somewhat' helpful in 6 interviews and as 'very helpful' in 7 of the interviews, while paralegals were rated as 'very helpful' in 14 out of 15 interviews (See Table 6). Overall, the paralegals were seen by the pseudo-clients as being more helpful than lawyers.

Table 6

General Attitude of Interviewer: Helpfulness

	Somewhat	Very
Lawyer	6 46.2%	7 53.8%
Paralegal	1 6.7%	14 93.3%
Total	7 25%	21 75%

chi square = 3.88 df = 1 p = .05

The second attitudinal item of significance was the item measuring how businesslike the interviewer was throughout the interview. Lawyers were viewed as being 'very' businesslike in 5 of the interviews, while none of the paralegals were viewed as being 'very' businesslike. Five of the paralegals were seen as 'not at all' businesslike as opposed to only 1 of the lawyers (See Table 7).

Table 7

General Attitude of Interviewer: Businesslike

	Not at All	Somewhat	Very
Lawyer	1 7.7%	7 53.8%	5 38.5%
Paralegal	5 33.3%	10 66.7%	0 0
Total	6 21.4%	17 60.7%	5 17.9%

chi square = 8.09 df = 2 p = .02

The third significant attitudinal item was whether the interviewer appeared 'concerned' about the client's problem. The lawyers were seen to be 'concerned' in only 6 of the interviews while paralegals were viewed as being 'concerned' in 13 of the 14 interviews (See Table 8).

Table 8

Did the Interviewer Appear Concerned

	Yes	No	Somewhat
Lawyer	6 46.2%	6 46.2%	1 7.7%
Paralegal	13 86.7%	1 6.7%	1 6.7%
Total	19 67.9%	7 25%	2 7.1%

chi square = 6.04 df = 2 p = .05

In spite of these significant attitudinal differences, there were many similarities between lawyers and paralegals. Both lawyers and paralegals were viewed by the pseudo-clients as being very respectful, polite, relaxed, straightforward, nonjudgemental and understanding, while pseudo-clients also had the same degree of confidence in both types of interviewers. In almost all cases, the pseudo-clients felt that they had enough time to explain all the details of their problem. They also felt, 85% of the time, that they were able to understand the advice they were given and, that the interviewers took enough time to explain all the details of the advice.

In most cases, the pseudo-clients were referred elsewhere after being given summary advice. The referral depended upon the

problem type. Some of the agencies the pseudo-clients were referred to included: transition houses; debtor's assistance; family court; lawyer referral; crisis line and private lawyers.

Over 80% of the pseudo-clients felt satisfied or very satisfied with the paralegals' efforts, while just over 60% felt satisfied or very satisfied with the lawyers' efforts.

Discussion

Overall, there were eight significant items on the debriefing questionnaire. The schedule also included many questions that were not as important as one might have anticipated. When the subjective portion of the study was designed, questions were included regarding the receptionists' behavior and attitude. The study showed that the attitude of the receptionist had little or no effect on how each pseudo-client felt he/she was treated during the office visits. The general attitude of the interviewer had the most impact on each pseudo-client.

It is interesting to note how infrequently lawyers utilized the information pamphlets in their offices. This finding conincides with the results of the Evaluation of Legal Services Client Survey. In that study, it was found that few individuals, who received summary advice, were given any written material but those who did receive pamphlets found them to be useful.

"The use of pamphlets by L.S.S. service offices was,

> apparently, infrequent, but when pamphlets were handed out people found them helpful" (Brantingham & Brantingham, 1984, p. 310).

The Evaluation report goes on to suggest that Legal Services might want to determine why the use of the pamphlets is so low. It would be of interest to discover if it is because of the quality of the material or a lack of initiative on the interviewers' part.

Paralegals are geared more toward self help than are lawyers; therefore, it would seem to follow that paralegals would tend to utilize the written materials more often. The pamphlets distributed by Public Legal Education are written for the person who knows little or nothing about the law or legal procedures. It seems important, especially in summary advice cases, that some kind of pamphlet (if applicable) be given to the client, since legal problems, in general, tend to appear complicated and confusing to the average layperson. Often an interviewer may cover many legal aspects of a problem in a short summary advice interview. Pamphlets would aid in clarifying some points for clients and also serve to help clients remember what they were told.

As Wexler has stated:

> Producing materials, however brief and poorly printed, which make the law accessible to poor people is a vital task, at times more important than speaking to groups in that larger numbers can be reached. Having a summary explanation of the laws which affect their lives means a great deal to poor people. It means that they have a weapon with which to fight back, and knowing that they have the weapon builds the security to engage in the fight. Many poor people do not even know that they have legal rights; very few know the substance of even their most fundamental rights (Wexler, 1970, p. 324).

It does seem important that more use be made of the legal information pamphlets. If the materials are available, they should be used.

The finding that lawyers were perceived to be more businesslike was not surprising, as law school education and training emphasizes formality and structure. Lawyers are generally from the middle and upper socio-economic classes. Therefore, their social interaction with individuals on the lower end of the economic scale could make communication difficult (Rosenthal, 1974). On the other hand, the philosophy behind the paralegal movement emphasizes the necessity for ease of social interaction with clients. Paralegals usually take a more active part in community affairs and are viewed as being more approachable.

The pseudo-clients perceived the lawyers as being more businesslike, less concerned and less helpful than the paralegals. Their reasons for these perceptions included such statements as:

1. "The interviewer seemed too aloof and cold and gave the impression he/she really didn't care at all."
2. "Too mechanical in his/her approach. It was almost as if you put a quarter in and out came the information. There was no feeling or expression shown."
3. "He/she was really fatalistic. He/she had the attitude of: 'You get what you deserve. There's nothing that can be done about it'."

4. "Too quick and rushed as though all he/she wanted to do was get me out of there."
5. "He/she didn't seem to give me any information at all."

Paralegals were perceived by the pseudo-clients to be more concerned and helpful. This could be the result of a number of factors. The pseudo-clients may have felt that, because the paralegals devoted more time to their problem, they were more concerned and considered the problems as serious. Also, the less bussinesslike and more informal approach of the paralegals may have made their concern more readily apparent. The first hypothesis was supported by the fact that paralegals in the sample were seen as being more concerned about the client's problem, than were the lawyers in the sample.

One interesting item to emerge from these office visits was how infrequently lawyers introduced themselves, or even informed the pseudo-clients that they were lawyers. Although the difference between lawyers and paralegals for this item was not statistically significant, 12 of the 15 paralegals did introduce themselves to the pseudo-clients and explained that they were paralegals and what that meant. On the other hand, only 5 of the lawyers introduced themselves and explained that they were lawyers. In the cases where the interviewer was a law student, receptionist, or legal information counsellor, rarely was an explanation forthcoming about their position. In fact, in one office where the pseudo-client specifically asked for a lawyer and was told that he would see one, the interviewer was actually

a law student, who only identified himself as such when questioned by the pseudo-client. This finding coincides with the results of the LSS Evaluation Client Survey, in which it was found that most of the clients interviewed did not know if they were interviewed by a lawyer, paralegal, legal information counsellor or secretary/receptionist (Brantingham & Brantingham, 1984).

Overall, the pseudo-clients were satisfied with the way they were treated by each interviewer as well as the amount of effort and work spent on their problem.

Analysis of the Legal Correctness of the Advice

In total there were 40 ratings for the correctness of the advice elicited by the Family Male problem; 50 for the Family Female problem; 35 for the Civil Female problem and 48 for the Civil Male problem. There were 69 ratings of correctness for the advice for lawyers; 78 rating for paralegals; 10 for legal assistants; 11 for law students; and 5 for articling students. The first item on the raters' schedule was the question: "Overall, would you consider this advice legally correct?". The possible responses were:

1. YES
2. NO
3. 50/50 OR HALF RIGHT
4. NO LEGAL ADVICE GIVEN

The term "legally correct" was not defined for the raters, but rather it was left to the individual rater to assess the advice correct or incorrect according to his own criteria of what was legally correct advice. This could be considered problematic if one was dealing with highly complex areas of law; however, the legal problems used are common problems seen frequently by Legal Service lawyers and paralegals and cannot be considered extremely complex from the legal point of view.

The Family Female problem was the only problem type to result in a statistically significant difference between the advice from lawyers and paralegals. The advice from lawyers for this problem was rated as 50% correct; 45% as incorrect; and 5% as half right or 50/50. The advice from paralegals was rated as 84% correct; 12% incorrect; and 4% half right or 50/50 (See Table 9). For both groups of interviewers, the Family Female problem resulted in 68.9% of the advice rated as correct, 26.7% rated as incorrect, and 4.4% rated as 50/50.

Table 9

Legal Correctness Rating by Lawyer or Paralegal for the Family Female Problem

	Yes	No	50/50
Lawyer	10 50%	9 45%	1 5%
Paralegal	21 84%	3 12%	1 4%
Total	31 68.9%	12 26.7%	2 4.4%

chi square = 6.43 df = 2 p = .04

The Civil Male problem resulted in over 66% of the 42 pieces of advice from both paralegals and lawyers as being considered legally correct by the raters, 23.8% was considered incorrect, 2.4% considered 50/50 or half right, and 7% were not rated.

The Family Male problem resulted in 90% of the advice being rated as correct, 6.7% rated as incorrect and 3.3% considered 50/50.

The advice for the Civil Female problem was rated as 50% correct, 16.7% incorrect, and 3.3% was not rated. In 26.7% of the cases the raters felt that no legal advice was given. When confronted with the Civil Female problem, some offices gave a simple referral to a lawyer or probate guide without giving any

actual legal advice.

In summary, the Family Female problem had the highest proportion of advice considered incorrect. The problem area that generated what the raters considered the most correct advice, was the Family Male problem.

Slightly over sixty-two percent of all the advice received from lawyers was rated as correct, 26.1% was rated as incorrect, 2.9% rated as 50/50 and 5.8% resulted in ratings of 'no advice given'. Advice from paralegals was rated correct over 75% of the time with 14.1% rated as incorrect, 2.6% rated as 50/50, 2.6% not answered and 5.1% was rated as 'no legal advice given' (See Table 10).

Table 10

Legal Correctness Rating by Lawyer or Paralegal for All Problems

Interviewer	yes	no	50/50	no answer	none given
Lawyer	43 62.3%	18 26.1%	2 2.9%	2 2.9%	4 5.8%
Paralegal	59 75.6%	11 14.1%	2 2.6%	2 2.6%	4 5.1%
Total	102 69.4%	29 19.7%	4 2.7%	4 2.7%	8 5.4%

chi square = 3.66 df = 4 p = .45

Although there was a 15% difference between lawyers and paralegals in regard to advice rated as correct, with paralegals being rated correct 15% more than lawyers, this difference was not statistically significant.

Discussion

The Family Female problem was the only problem type to result in a statistically significant difference in the ratings for legal correctness between lawyers and paralegals. The advice from paralegals was rated correct 34% more often than the advice

from lawyers for the Family Female problem. With regard to the poor advice given by lawyers, some of the raters made the comment that "All the the advice given is wrong."

This is a rather surprising finding and one that warrants further investigation. More detail is needed to understand why such a large portion of advice given by lawyers was considered legally incorrect by the raters for the Family Female problem. Unfortunately, the lawyers, who rated the advice, were not specific about why they thought the advice was wrong.

One of the more interesting findings of this study was the lack of agreement between raters. Although some disagreement over the emotional Female Family problem could have been anticipated, the lack of agreement over certain aspects of the advice on the debt problem was not anticipated.

The raters independently rated the advice and approached each problem from their own perspective as to what was considered legally correct or incorrect. The explanation with the advice packet merely informed them how to utilize the rating scales. This could explain the lack of rater agreement over certain pieces of advice. As previously mentioned, the raters were not aware of which advice was from lawyers and which was from paralegals.

All the advice rated by the raters was separated into individual interviews for each problem type, and crosstabulated with the legally correct question (See Appendix E - Tables III, IV, V, and VI). As the pseudo-clients saw each interviewer only

once, each individual interview represents one piece of advice for that specific problem. There were certain pieces of advice that made the disagreement among the raters obvious. One in particular, for the Civil Male problem, resulted in 3 raters assessing the advice as correct and 3 raters assessing it as incorrect. A second example was a piece of advice from a paralegal for the Family Male problem which resulted in 2 raters assessing the advice as correct, 2 raters assessing it as incorrect, and 1 rater assessing it as only half right.

The Family Female problem also divided the raters with some pieces of advice. Two pieces of advice, one from a paralegal and one from a lawyer, both resulted in three raters assessing the advice as correct and two raters assessing it as incorrect. With the Civil Female problem there were a number of raters, who gave the answer 'no response given'. This occurred in cases where only a referral was made or the suggestion was made for the client to obtain a self-help guide to wills and estates. (For an example of how the raters agreed and disagreed on different pieces of advice, see Appendix F)

When the legal correctness question was crosstabulated with lawyers and paralegals apart from the other types of interviewers, an interesting comparison emerged. For all lawyers and paralegals, 69.4% of the advice was rated as correct and 19.7% rated as incorrect. On the other hand, for interviewers other than paralegals or lawyers we have an overall rating of 69.2% of the advice rated as correct and 19.2% of the advice

rated as incorrect. As can been seen, the results are very similar. It is interesting to note that receptionists and law students gave very close to the same percentage of correct and incorrect advice as lawyers and paralegals (See Appendix E - Tables VII and VIII).

In general, the problem type that generated the most consistency among the raters was the Family Male problem. However, all of the problem types had at least one piece of advice that the raters could not agree on.

It is interesting that, when given little prior instruction, lawyers independently assessing a piece of legal advice cannot agree on what is legally correct and what is not. In the process of delivering legal advice on a specific topic, one or several aspects of the legality of a situation may be covered. It is possible that different raters focused on different aspects of the advice. As well, this inconsistency could be a result of the relatively small number of raters used in this study. In the future, it would be interesting to investigate this aspect further.

Analysis of the Quality of Legal Advice

The quality of advice was rated on an eleven point scale ranging from 0 (very poor) to 10 (excellent). There were four general criteria used which were:

1. the legal accuracy of the advice,

2. understandability of the advice,

3. practicality of the advice, and

4. clarity of the advice.

These were then broken down into specific questions (See Appendix A).

These scales addressed the various aspects of the summary advice apart from the specific legal correctness of the advice. Often in a summary advice interview, many aspects of the advice concern social and economic issues as well as legal issues. The legal correctness question addressed only the specific legal aspects of the advice while most of the quality scales addressed the various other issues inherent in any piece of summary legal advice. These issues included such things as knowledge of social agencies, practicality and clarity of the advice, whether one could reasonably follow the course of action suggested, and the appropriateness of the various options and alternatives offered.

Initially, a two way Analysis of Variance (ANOVA) was run on all the problem types. The results of this analysis showed a very strong rater interaction effect for all the problems. As the author was interested in determining if there was a significant difference between lawyers and paralegals in the quality of legal advice given to the four pseudo-clients, the rater interaction was considered important as it would tend to mask or influence any possible lawyer/paralegal distinction. Initially, an attempt was made to reduce this interaction effect by leaving out the pieces of advice that caused the most

dissention among the raters. This was not successful. As a next step, the data were standardized for each problem type. For each problem type, the individual rater's mean was subtracted from each problem's rating. This procedure resulted in a grand mean of 0 for each problem type. This standardization of the data successfully eliminated the rater interaction for each problem type. This technique of standardization is a common one that is often used to clarify deviations from the mean (Erickson and Nosanchuk, 1977). In this case, the standardization allowed a closer examination of the comparative differences between lawyers and paralegals.

After the data were standardized, a two way ANOVA was run again. The results of this analysis showed a significant difference between the ratings of advice given by lawyers and paralegals for two of the four problem types. Ratings for both the Family and Civil problems of the two female pseudo-clients showed a significant difference between lawyers and paralegals, while differences in advice for the Family and Civil problems of the two male pseudo-clients were not significant.

Civil Male

There was no significant difference in the ratings for advice given by lawyers and paralegals for this problem type. Lawyers were .15 below the mean while paralegals were .15 above the mean ($F = .76$, $df = 19,335$, $p = .744$) (See Appendix E - Tables IX and X).

Family Male

There was no significant difference in the ratings for advice given by lawyers and paralegals for this problem type. Lawyers were .2 above the mean while paralegals were .1 below the mean ($F = .946$, $df = 19,279$, $p = .946$) (See Appendix E - Tables XI and XII).

Family Female

There was a significant difference in the ratings for advice given by lawyers and paralegals for the Family Female problem type. Advice given by paralegals was rated .55 above the mean while lawyers' advice was rated .55 below the mean ($F = 1.825$, $df = 19,378$, $p = .019$) (See Appendix E - Table XIII). For this problem, the paralegals were rated as giving higher quality of advice than the lawyers (See Table 11).

Table 11

Multiple Classification Analysis
Quality Scales vs. Type of Interviewer
for the Family Female Problem

Grand Mean = .00

Variable and Category	N	Unadjusted Dev'n	Eta	Adjusted For Independents Dev'n	Beta
Quality Scale					
1 Substantive Law	39	-.02		-.01	
2 Procedural Law	39	-.30		-.29	
3 Who client should see	40	.43		.42	
4 What client should do	40	.18		.17	
5 What will be accomp	40	-.47		-.48	
6 Course of Action	40	.25		.25	
7 Easiest and most eff	40	-.07		-.08	
8 Available options	40	-.80		-.80	
9 Appropriate referal	40	.88		.87	
10 Overall quality	40	-.07		-.08	
			.18		.18
Interviewer					
1 Lawyer	200	-.55		-.55	
2 Paralegal	198	.55		.55	
			.22		.22
Multiple R Squared					.083
Multiple R					.288

Civil Female

There was also a significant difference in the ratings for advice given by lawyers and paralegals for the Civil Female

problem type. With this problem type, however, the lawyers' advice was rated significantly higher than the advice given by paralegals (See Table 12) (F = 3.705, df = 19,378, p= .019) (See Appendix E -Table XIV).

Table 12

Multiple Classification Analysis
Quality Scales vs. Type of Interviewer
for the Civil Female Problem

Grand Mean = .00

Variable and Category	N	Unadjusted Dev'n	Eta	Adjusted For Independents Dev'n	Beta
Quality Scale					
1 Substantive Law	12	.02		.23	
2 Procedural Law	11	.69		.86	
3 Who client should see	25	.49		.45	
4 What client should do	25	.69		.65	
5 What will be accomp	24	-1.40		-1.47	
6 Course of Action	24	.11		.11	
7 Easiest and most eff	24	.15		.15	
8 Available options	24	-1.50		-1.50	
9 Appropriate referal	24	.93		.93	
10 Overall quality	24	.16		.10	
			.35		.36
Interviewer					
1 Lawyer	82	.97		1.00	
2 Paralegal	135	-.59		-.61	
			.33		.33

Multiple R Squared	.235
Multiple R	.485

Dicussion

Of the four problem types, there were two in which there were significant differences in the ratings of quality of legal advice between lawyers and paralegals. As previously mentioned, these were the Family Female and the Civil Female problems. Lawyers' advice was rated significantly higher than paralegals' advice in relation to the Civil Female problem while paralegals' advice was rated significantly higher in relation to the Family Female problem. In regard to the other two problems - Family Male and Civil Male - there were minor differences but they were not statistically significant.

Comments made by the raters regarding the various advice given by paralegals for the Civil Female problem show the strength of the raters' views:

1. "Everything the interviewer said was totally wrong."
2. "Minimal summary advice was given."
3. "Not enough information about procedure."

The comments made by the raters concerning the lawyers' advice in relation to the Family Female problem, similarily show the strength of the views held by the raters:

1. "Confusing at best, no practical advice given."
2. "Few options given."
3. "No procedural advice given."
4. "More advice needed, not enough options and procedures covered."

5. "Total abdication of responsibility - no advice given."

6. "Legal consequences for suggested action not explained."

The advice from lawyers was rated more highly than the advice from paralegals for the Civil Female problem. The Civil Female problem was one of wills and estate which can be a complex and specialized area of law. Therefore, it generally can be handled more competently by lawyers who receive extensive education and training in such areas. Legal education generally focuses on issues of property.

The Family Female problem, a potentially violent family situation, might be seen more frequently by paralegals than lawyers. As one important aspect of paralegal work is to establish good contact and rapport with the different agencies and services to the community, as well as acquire knowledge of what each agency or service provides for the community, paralegals should have more extensive information in this area. Therefore, they may be better equipped to deal with the emotional and social, as well as legal aspects of the Family Female problem. Results of the LSS Evaluation show that public sector paralegals do not frequently deal with problems of wills and estates.

This difference in background and experience between lawyers and paralegals may explain the differences in the quality of advice given in these two areas. In addition, since the paralegals spent more time on the average with the pseudo-clients than lawyers did, they may have had more time to

go over any possible alternatives and options.

Summary of the Results

The first hypothesis (paralegals in the sample would be viewed as being more concerned and helpful than the lawyers in the sample) was supported. The results of the study showed that the pseudo-clients perceived the paralegals to be more concerned and helpful than the lawyers. It was suggested that this could be a consequence of the amount of interview time paralegals spent with the pseudo-clients as well as their attempts to address all possible options and alternative ways of dealing with the problem.

The paralegals were also seen to be less businesslike than the lawyers. This may have made the interview less formal and thereby allowed the pseudo-client to feel more comfortable and at ease.

The second hypothesis (For the purposes of providing summary advice, paralegals would provide the same quality of advice as lawyers in the sample) was not fully supported. This hypothesis was tested on two levels, the overall correctness of the advice and the quality of specific aspects of the advice.

For the question: "Overall, would you consider this advice legally correct?" paralegals rated more highly on one problem type, which was the Family Female problem. There were no significant differences generated between the ratings for

paralegals and lawyers in response to that question for the remaining three problem types. It was suggested that the paralegals' knowledge of various community agencies and services available for dealing with a problem, such as the Family Female problem, may have given them the ability to deal more competently and comprehensively with the different aspects of such an emotionally laden domestic situation. Although this may be true, it cannot be considered a full explanation, as the emotional aspect of a problem should not affect the legal correctness of the advice given.

The advice for all the problem types, for both lawyers and paralegals, was rated correct close to 70% (N = 102) of the time. As well, this rating of 70% (N = 118) correct remained constant for legal assistants, law students, and receptionists.

The analysis of the specific quality scales of the advice resulted in two out of the four problem types generating significant differences. These were Family Female and Civil Female. The advice from paralegals was rated higher on the Family Female problem while the advice from lawyers was rated higher on the Civil Female problem. It was suggested that this difference could be the result of the nature of the Family Female and Civil Female problems. Lawyers are trained in the area of wills and estates and, therefore, should be able to deal with that specific problem. On the other hand, the paralegals' rapport with service agencies, as well as their informal approach to the client's problem, may enable them to deal more

effectively with the emotional Family Female problem type.

In summation, Hypothesis one was supported. Paralegals were seen to be more helpful and concerned than lawyers. Hypothesis two was only partially supported. In relation to the legal correctness of the summary advice provided to the pseudo-clients, paralegals' advice was rated higher than lawyers' on the Family Female problem type, whereas the other three problem types showed no difference between ratings for lawyers' and paralegals' advice.

In terms of the specific quality scales, the advice from paralegals was rated higher for the Family Female problem type while the advice from lawyers was rated higher on the Civil Female problem type. The remaining two problems showed no difference between the ratings for lawyers' and paralegals' advice.

V. CONCLUSION

Since the topic chosen by the researcher was previously unexplored and there was no theoretical framework from which to draw hypotheses, the approach taken was exploratory in nature. As Babbie has pointed out, this approach seldom provides "satisfactory answers to research questions". Exploratory research can, however, "hint at answers and give insights into the research methods that can provide definitive answers" (Babbie, 1983: 75). This researcher believes that the research undertaken has indicated that a more detailed study is both feasible and necessary. It has also indicated where refinements in the design are necessary. Moreover, the researcher did manage to achieve approximate answers to the hypotheses tested.

As this thesis was designed as an exploratory study, some attention needs to be paid to the issue of how well both the design and the measuring instruments worked--in other words, how reliable were they?

Recommendations for Future Research

Measuring Instrument

There were instances of inconsistency in the raters' assessment of the legal correctness and quality of the summary advice provided. There could be several reasons for this phenomenon. One possible explanation could be that the lawyers on the panel had individualistic ideas as to how much should be covered and how detailed the advice should be, in the first and only interview. Perhaps some lawyers felt that all possible options, alternatives and consequences should be covered, while others may have been of the opinion that only the information required, at that particular stage of the problem, should be covered. Alternative approaches that could address this problem would include a method whereby the panel of lawyers meet, and through discussion and pre-testing of the rating scales, come to a mutually agreeable definition of what should be covered, and in what way, for each specific legal problem. Furthermore, through these discussions, they could come to a mutually agreeable decision as to how to utilize the rating scales. It may have been the case that the lawyers in the present study perceived the levels of the scales in different ways.

The alternative method proposed above would certainly increase the reliability of the rating instrument. However, if

this had been done in the present study, the fact that a group of experienced Legal Services lawyers, who had regularly dispensed summary advice on a variety of problems, expressed such different ideas as to whether a piece of advice is correct, would not have been discovered. The purpose of this study was not to develop a standardized testing instrument, or to train lawyers in the use of these instruments, but rather to explore whether such assessments are possible and to discover what the problems in such a design might be.

One would presume, however, that for the question, "Do you consider this advice legally correct?", this aforementioned individualistic interpretation would not be as evident. This researcher assumed that, in relation to a specific piece of legal advice, there would be agreement as to whether the advice was legally correct or not. This was the case with most of the pieces of advice that were rated. However, there were several rather blatant examples of complete disagreement among the raters, and this should be taken into account if any further research is to be done. It would appear that law is an even more imprecise area of study than was assumed, and this will continue to create problems of measurement. Furthermore, this problem of rater disagreement should be taken into account when designing the legal problems as the more legally complicated a problem becomes, the greater the possibility of rater disagreement will be. The legal problems chosen should be fairly straightforward and in areas of law where there is the least amount of legal

controversy. This should aid in allowing the raters to come to some kind of agreement over the legal correctness of the advice.

Sample Size

Another important factor in any study is the sample size. The sampling frame in this study was the entire population in the given area. Offices were then included based on whether they consented to be involved or not. This type of sample is not as reliable as a probability sample; however, since consent was required, it was the only type of sampling available.

It would have greatly increased the validity of the study if all, or at least a representative number, of the Branch Offices and CLOs could have been included in the sample. Unfortunately, because the nature of the design required consent from each office, a definite sampling bias was created. It is possible that only those offices, which were confident that the outcome of such a study would be favourable, agreed to participate. If this were true, then the differences found in this study may indicate that even greater differences might have been uncovered if all offices had participated in the study. There were four offices (out of the 15 in the study area) that refused consent. Since all the offices in the study area were not included, and the sample size was small, the results cannot be generalized to nonparticipating offices. Nor can the results be generalized to other offices throughout the province. The

Legal Services Society could incorporate a clause in its contracts with the various legal offices that would allow Head Office to perform this type of evaluative procedure without consent. It would be one method of maintaining quality throughout the various offices.

Pseudo-clients

The number of pseudo-clients was small because of financial and time constraints involved in conducting this study. These contraints did not permit any repeat measures of the interviewers. If possible, it would be ideal to incorporate a system in which each individual interviewer would be visited by at least two pseudo-clients during the course of the study. This would allow a kind of consistency check as to how the pseudo-clients perceived the interviewers. Another advantage of utilizing a larger number of pseudo-clients would be to increase the amount of advice received so that one could have more confidence in the results and allow generalization to the larger population.

Interview Debriefing

Another technique, that would greatly enhance the reliability of the results of a study of this nature, would be

to incorporate recording devices so that each interview could be recorded as it occurred. This technique would dispense with any recall problems that might arise by relying on the memory of pseudo-clients. On the other hand, this would probably make the task of obtaining consent from the individuals being evaluated more difficult. Moreover, as much as directly recording the interview might increase the reliability of the study, it must be kept in mind that in many respects, the advice the client remembers is much more important than what is actually said during the interview.

Difficulty Obtaining Consent

Another major problem with this type of study is the negative attitude of the sample population toward any kind of evaluation. It was this researcher's experience that, even with assurances of anonymity and confidentiality, it was very difficult, and in some cases impossible, to allay the fears of those staff members subject to evaluation, that the information would be used as a measure of individual competence to which Head Office would have access. Office staff were also given assurances that individuals would not be identified. Much of the apprehension appeared to have been generated by the earlier Morris and Stern study, which was completed in 1976. At the time of the Morris and Stern study, many of the CLOs evaluated were still in the embyronic stage, having been in existence a mere 5

months and were still developing their programs in their particular communities. Morris and Stern concluded with some fairly strong criticism concerning the functioning of CLOs and sweeping generalizations about the various inadequacies of the CLOs. The result was that the study seemed to have created an atmosphere of hostility and suspicion toward any kind of future evaluations.

This hostility was evident throughout many of the Board and staff meetings which the researcher attended in order to explain the study. More than once, the researcher was accused of secretly working for the Department of the Attorney General. These staff members made many allusions to the previous Morris and Stern study when discussing issues related to the present study. This is just one example of how previous research can affect future research. In this case, the effect was negative.

In summary, the major areas which require further development, if future research is to be undertaken, are as follows:

1. Training the panel of lawyers, who assess the advice, how to use the rating scales, and to have them come to an agreement upon a prototype of what would be considered high quality advice. These lawyers would also have to agree on what aspects of legal advice they would expect to be covered in a summary advice interview.
2. The sample size would have to be increased to allow generalization of the results. A province-wide sample would

be ideal. Consent is problematic as it precludes random sampling; however, this is one problem that probably cannot be avoided.

3. The number of pseudo-clients should be increased so that repeat measures of interviewers may be undertaken.
4. It was suggested that tape-recording devices could be used to record the actual interview. This would increase the reliability, but would also increase the difficulty of obtaining consent.
5. The design of the legal problems would have to be such that an assessment of the legal correctness of the advice can be made. The problems should be done in consultation with lawyers and limited to those areas of law that are not fraught with legal ambiguities.

General Recommendations

Although there were few differences in the quality of advice given by lawyers and paralegals, the non-standardized mean of quality was quite low. This problem, it would appear, could be rectified by a more extensive training program for paralegals.

There seems to be a problem with the adequacy of the training for paralegals employed in CLOs. Eighty percent of the paralegals interviewed stated that their training was not adequate for the job they were doing. In light of the cutbacks

in legal aid funding, paralegals are doing much more "in depth" legal work than they had done previously. Restraint measures have meant that fewer types of legal problems are covered under the legal aid scheme. As a result, paralegals are finding themselves providing advice for clients who would otherwise have been referred to a lawyer, providing representation more often, and basically doing the same legal work as a lawyer.

Many of these paralegals have been on staff for many years and seem to have a good working knowledge of the law and legal procedures; however, they still feel that their training was inadequate. More structured and more comprehensive training was called for by many of the paralegals (Brantingham and Brantingham, 1984).

The LSS Evaluation recommended that the Legal Services Society should review the training program it now offers and consider some alternate methods for training its paralegals. It was recommended that procedures be established that would assess paralegals' skill levels and highlight the weak areas of their legal knowledge. One of the suggestions made was the use of educational satellite links, with teams of instructors traveling to different offices to teach courses for paralegals. It was recommended that training be made mandatory for paralegals with minimum entry level requirements (Brantingham and Bratingham, 1984).

Given the diverse nature of the legal problems encountered by various CLOs throughout the province, and the geographical

distances between offices, some sort of educational correspondence program would be ideal. A correspondence program would alleviate the costs involved in transporting the various paralegals, from around the province, to Vancouver for training courses. These could include different levels of intensity (depending upon prior experience) and courses covering various areas of law. As different communities have different legal problems, this type of program could cater to differing community needs. This correspondence program could be designed in conjunction with the University of British Columbia Law Faculty and could include substantive areas of law, legal and court procedures, advocacy skills, legal research, negotiation skills and dealings with court documents. More structured and standardized exams should be incorporated so that assessments of the skill levels of the paralegals could be done. Since one of the problems in the present training system is the wide variety of skill and knowledge levels among the paralegals, exams could be used to highlight areas of weakness and to determine what courses or areas of law are needed. Exams would also aid in standardizing supervision patterns in accordance with levels of expertise among the paralegals.

Presently, the LSS does not make it mandatory to take the training it offers. This researcher is in complete agreement with the LSS Evaluation recommendation that training be made mandatory for all paralegals, and that the LSS provide the funding and the time for the paralegals to attend or take the

training courses. Furthermore, some thought should be given to instituting minimum requirements for the position of paralegal so that some kind of standardized entry level of knowledge could be formulated. Training is considered a high priority, taking into account the type and diversity of the legal work paralegals are undertaking and the haphazard way they are trained at present.

Summary

Considering that there are no minimum requirements to be employed as a paralegal, that training is not mandatory, and that the level of supervision is minimal, the paralegals in the sample can be said to have done well in comparison to the lawyers who do have extensive legal training. Paralegals were perceived by the pseudo-clients to be more concerned, helpful and less businesslike than lawyers in the sample. This may increase the ease of client contact and enable paralegals to provide more accessible legal advice than lawyers. The lawyers in the sample were seen to be more businesslike by the pseudo-clients. These results suggest that there could be very different client interaction patterns among lawyers and paralegals. One author has described this difference as one of paternalism versus mutuality (Rosenthal, 1976). If clients feel that they were getting a more personal level of service from paralegals, they might be more likely to use their services in

the future. If this is the case, then the use of paralegals would not only be an economically efficient method of delivering legal services to the poor but, as well, would increase the accessibility of legal services.

In terms of the "quality of the legal advice" analysis, paralegals were assessed as giving more correct, and higher quality of advice than lawyers, in relation to the Family Female problem type. This might suggest that lawyers in the sample either did not take the time or did not have the knowledge to deal comprehensively with this problem. This should definitely be explored further, as similar types of problems occur fairly frequently in our society. The very nature of that problem would usually dictate the provision of free legal assistance. This is a disturbing result and one that definitely requires further investigation.

Lawyers were assessed as providing a higher quality of advice for the problem concerning wills and estates. This should be considered when designing future training programs for paralegals.

The non-standardized mean for both paralegals and lawyers was, however, quite low. This indicates that, at the very least, more extensive research into this problem should be undertaken. If these results persist, then it would seem that it is not only paralegals who are in need of a more extensive and comprehensive training program.

General Comments

As Chapter Three points out, paralegals devoted little time to either Community Development or Public Legal Education. This was one of the strongest criticisms of the Morris and Stern (1976) study and still is the case. In this day of restraint and limited funding, the function of CLOs and paralegals has been to fill the gap caused by these cutbacks in legal aid. Paralegals are providing services to those who are not covered under the legal aid scheme. Presently, especially in British Columbia, recession and unemployment has meant that what previously was referred to as "the poor" is now encompassing a large portion of the working class. The effect of this on the demand for free legal services is already being felt. One can assume that this would serve to increase the caseload of paralegals. It was this researcher's impression, from the interviews with paralegals, that many are interested in spending more time and effort on Community Development and Public Legal Education but they are prevented from doing so because of a lack of time. It would appear that almost all of the paralegals' time is taken up with individual casework. As long as there are a substantial number of people with legal needs, that are not being met by the traditional legal aid system, paralegal activity in the areas of PLE and Community Development will be limited.

One of the ideological mainstays of the paralegal movement was the idea that paralegals and CLOs should be involved in

grassroots community organizing, legal education, and advocacy for law reform and change. It would appear however that, with the exception of a few offices, there is very little of this occurring. With limited staff, time, and resources there is no reason to expect this to change. It is one of the unfortunate consequences of restraint that, although PLE and Community Development could alleviate or prevent many legal problems from occurring, the heavy caseloads of paralegals allows no time for these activities.

Conclusion

The role of public sector paralegals in legal service delivery in British Columbia has been to address the unmet need for legal services among the economically underpriviliged segment of the community. Paralegals deal in an area of law not traditionally handled by the private Bar. Poverty law is an area that the mainstream Canadian Bar has neglected. In this respect, paralegals cannot be seen to be a threat to the lawyers' monopoly. This is evidenced by the overall accepting attitude to the use of paralegals on the part of the Bar in British Columbia. Paralegals in CLOs (in B.C.) are not viewed by the Bar as encroaching on their "turf" (Brantingham and Brantingham, 1984). This is primarily a function of the fact that, for the most part, the area of law and the type of clients encountered by paralegals are not of great interest to the general

population of private lawyers. There is no profit to be gained in poverty law.

The roles of paralegals and lawyers should be viewed as complementary. They work co-operatively to make the most out of each area of expertise. Obviously, paralegals could never replace lawyers as many areas of law are complicated and obscure, and require the specialized training of lawyers. However, Robinson has stated that the ability to:

> gain access to justice requires certain skills that fall outside the purview of the traditional legal profession. One of these skills, in fact, is the ability to demystify the legal system itself, which comes from facing clients as peers not as unapproachable experts (Robinson, 1979, p. 221).

It is maintained that paralegals have these skills. Both lawyers and paralegals have specialized skills that together can aid in meeting the unmet need for legal services.

In summary, paralegals are a necessary, and beneficial, adjunct to the legal service delivery system within the public sector. As Savino has stated, the use of paralegals reduces the cost, and increases the efficiency, of legal aid. More importantly the use of paralegals increases "the chance that the average Canadian citizen will obtain access to justice and the 'system' when he or she needs it" (Savino, 1976, p.349).

The use of paralegals cannot be seen as a panacea for the general lack of access to legal services. It is an alternative to the traditional approach which can only increase accessibility and enhance citizens' involvement in the process of justice.

APPENDIX A

The following are the pertinant sections of the Barristors and Solicitors Act for paralegals.

BARRISTERS AND SOLICITORS ACT (1979)

Chapter 26

Interpretation

1. In this Act

"practice of law" includes

(a) appearing as counsel or advocate;

(b) drawing, revising or settling

(i) any petition, memorandum of association, articles of association, application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body;

(ii) any document for use in a proceeding, judicial or extra-judicial;

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to any probate or letters of administration or the estate of a deceased person;

(iv) a document relating in any way to proceedings under a statute of Canada or the Province;

(v) an instrument relating to real or personal estate which is intended, permitted or required to be registered, recorded or filed in a registry or other public office;

(c) doing any act or deed or negotiating in any was for the settlement of, or settling a claim or demand for damages founded in tort;

(d) agreeing to place at the disposal of another person the services of a barrister or solicitor;

(e) giving legal advice;

Authority to practise law

77. No corporation and no person other than a member of the society in good standing shall, subject to the Court Agent Act, engage in the practice of law, except that

(a) a person may act on his own behalf in a proceeding to which he is a party;

(b) as permitted by the Court Agent Act;

(c) enrolled articled students may appear in Chambers or in court or before a master, referee or examiner to the extent permitted by the rules of the society;
(d) on the terms as the benchers may specify, a barrister of another province, which affords a similar privilege to barristers of the Province, may, in special circumstances and for a particular cause or matter, be permitted to appear as counsel in the courts of the Province, notwithstanding that he is not a member of and has not paid a fee to the society.

Prohibitions for members

78. No member of the society shall
(a) knowingly act as the agent of a person who is not a member of the society in good standing so as to enable that person to engage in the practice of law;
(b) permit his name to be used or held out as such an agent;
(c) send a process to that person or do any other act to enable that person to engage in the practice of law;
(d) open or maintain a branch office for the practice of law unless the office is under the personal and actual control and management of a member of the society; or
(e) engage in the practice of law, either directly or indirectly, while he is a Registrar or District Registrar of the Supreme Court, Registrar of a County Court, Registrar of Titles, Registrar of Companies or the deputy of those officials.

Practising law defined

80. Except as otherwise provided, a person shall be deemed to engage in the practice of law who
(a) does an act included in the definition of the "practice of law" in section 1;
(b) holds himself out in any way as being entitled or qualified to do, or who offers to do, such act.

Penalty

81. (1) A person who contravenes this Act commits an offence and is liable, on conviction, to a fine not exceeding $500 or to imprisonment not exceeding 6 months for each offence.
(2) No proceeding under this section precludes the taking of disciplinary action under previous sections of this Act.

APPENDIX B

DESCRIPTION OF THE LEGAL PROBLEMS

Civil Male

John Hanson is a 28 year old married male with a seven month old daughter. In February of 1983, he went to the Bank of Commerce and received a three year loan of $5,000 to buy a 1980 Honda Civic and to pay for his wedding. The bank placed a chattel mortgage on the car and his household furnishings for the loan. At that time John was working as a carpenter but in August, 1983 he was laid off from his job. Since being laid off, he has been on U.I.C. and foresees no job prospects until this summer. His wife is also unemployed and has no marketable skills. She speaks very little English and stays at home with the baby. John receives $840 per month on U.I.C. which barely covers the family's basic living expenses. In September, 1983, having paid regular monthly payments of $201 since February, 1983, John informed the bank of his financial position and made the one allowable "interest only payment". Since that time he has not been able to make any further payments on the loan. As a result, the bank has been telephoning the house and harassing the wife threatening to take the car and household furnishings unless John resumes payments on the loan. No other contact has been made with the bank, other than these phone calls, since September, 1983. John has no family or friends from whom he is willing to borrow money. He would like to be able to pay off his

debt to the bank, but owing to his financial situation, he finds this impossible. He originally paid $2,860 for the car but, as a consequence of high mileage and a few minor accidents, the car is now only worth approximately $1,000. He would like some information on what possible options are available to resolve this problem with the bank. First, he would like to know if he can sell the car on his own to obtain money for living expenses. Second, he would like to know if the bank can legally take the car and household furnishings without notice and how they would go about doing this. Third, he would like to know if the bank can force him to turn over the car which he has been keeping at a friend's house. Finally, what action can he take to stop the bank from harassing his family.

Family Male

Grant Butler is a 28 year old man with two boys aged two and five. He separated from his wife four months ago. The separation was intended to be a trial separation. He moved out of their rented house into his mother's house, leaving the children with his wife. There is no formal separation agreement. At the time of the separation they agreed verbally to a child support and maintenance payment of $350.00 per month and, at the same time, they agreed to a visiting schedule of one week night and one weekend day.

Grant is employed as a motor-winder at a local electrical plant. The plant has little work at present and recently his hours were reduced to three days per week. He lives with his widowed mother and splits the mortgage and food with her.

At present, with his reduced hours, he is taking home $960.00 a month. His basic living expenses, including child support and maintenance, rent, car payments, utilities and food, total $875.00 a month. He feels that he can no longer afford to pay his wife what he has been paying her as he also needs money for transportation, clothes, etc. His only asset other than the furniture in his wife's possession is a $3,000 car. His wife is a seamstress who does work at home and makes approximately $200-300 per month.

In addition, for the past few weeks, his wife has been making it very difficult for him to see the kids as previously agreed upon. Without any prior warning he will show up on his

appointed day and find no one at home. It seems that he only gets to see his children at the wife's convenience rather than the days agreed upon.

The communication between Grant and his wife has deteriorated quite a bit. She now has a boyfriend, who is at the house almost all the time and may be living there. Grant is upset about this, as he still hopes for a future reconciliation with his wife. He has started to worry that his wife might take the kids and move to Toronto where her parents live. This concern arose from a conversation he had with the youngest boy who asked his dad how far Toronto was and if the father would visit them if they ever moved. He tried talking to the wife about this matter and she totally denied it. He is asking advice on:

1. The possibility of getting the child support payments reduced to an affordable level--with the concern that she may withhold visiting rights if he does not pay the full amount.
2. Somehow formalizing the visitation privileges so he knows when he can see his children.
3. Is it possible not to pay her any maintenance as long as her boyfriend seems to be there all the time.
4. Is there anything he can do to stop her from leaving the province if she decides to?

Civil Female

Joan Baldwin is a 35 year old married woman who is seven months pregnant. Her husband is a musician who has sporadic employment with an income of approximately $800.00 per month. This is the total family income and their living expenses equal, if not exceed, this amount. Joan's father died intestate in December, 1983, leaving property valued at $68,000 which includes a car. He had been living common-law with the same woman for the past eight years since divorcing Joan's mother. The common-law spouse is threatening to cause as much trouble as possible over the estate unless she is adequately compensated for the years spent living with Joan's father. The members of Joan's immediate family--mother, brother and sister--are in a bad financial situation and none of them are sure about what to do regarding the division of their father's estate. Joan has come in to get information regarding the situation. She would like to know if there is any way that the family can settle the estate without hiring a lawyer. She would also like some idea of what to expect when dividing the estate and what the rights of the common-law spouse are. Can the common-law spouse contest the choice of executor of the will? How much of the estate is the common-law spouse entitle to? What type of demands can she make regarding the estate?

Family Female

Nancy Wright is a 26 year old female, married with two children--a son three years old, and a daughter, 14 months. She grew up and married in Ontario, following which she moved to Vancouver. She has never worked during her five year marriage. Her husband is an alcoholic with a violent temper who is a self-employed sign painter with a sporadic income. Recently, he has had little work and as a result his drinking has escalated. When he gets drunk he becomes very unreasonable--he yells at Nancy and also throws things in a violent rage. These violent outbursts are getting more frequent and more serious. As an example, recently he has kicked in the television set and punched a hole through a door. During one of these episodes a neighbour phoned the police but when the police arrived Nancy's husband claimed everything was fine and, out of fear, Nancy agreed that this was so. He is a very jealous and possessive individual who will not allow Nancy to go anywhere without him--he even insists that he go grocery shopping with her. Nancy has no money of her own and is unaware of the family income as her husband controls the finances. As a result of this confining relationship, Nancy has no friends of her own except her next door neighbour. Her family lives in Ottawa and she is embarassed to let them know the situation between her husband and herself. She is becoming concerned about the children--especially the three year old who is becoming quiet and withdrawn. Her husband has never struck the children in one of his rages but upon

intensive questioning, Nancy admits that he did on one occasion strike her. She has tried on one occasion to discuss with her husband the possibility of a separation, but he reacted very negatively and stormed out of the house. She is not sure what she would like to do about the situation and she is very hesitant to leave the marriage, although she is concerned that the violence will increase. She has come in to find out what her options are if she does decide to leave her husband. She would like to know if it is possible to get him out of the house, or would it be necessary for her to leave. Also, she would like to know, if she does leave, what options are available to protect her family and herself from any further possible harassment by her husband.

APPENDIX C

DEBRIEFING QUESTIONNAIRE

OFFICE NAME_____DATE_____

INTERVIEWER_____

TIME VISIT BEGINS_____TIME VISIT ENDS_____

Did you speak with a receptionist or secretary?

yes_____ no_____

Did she/he give you any forms to fill out?

yes_____ no_____

When you asked for assistance with the forms was she/he helpful?

yes_____ no_____

Was she/he polite?

not at all_____ somewhat_____ very_____

Did you explain your problem to the receptionist or secretary?

yes_____ no_____

Did she/he act attentive?

yes_____ no_____

Did she/he act interested?

not at all_____ somewhat_____ very_____

What did she/he tell you? (taped)

How long did you wait for an interview?_____

How many people were waiting in the reception area? _____

Did the secretary or receptionist make eye contact?

yes_____ no_____

What was her overall demeanor?

relaxed/calm_____ indifferent_____ hurried/busy_____

Who showed you into the interview room?_____

Did the interviewer stand up when you walked in?

yes_____ no_____

Did he/she shake your hand?

yes_____ no_____

Did he/she smile?

yes_____ no_____

Did the interviewer introduce himself or herself to you?

yes_____ no_____

What was the physical layout of the office?

_____

_____

_____

_____

Where did the interviewer sit during the interview?

_____

_____

Was the eye contact throughout the interview

poor?_____ intermittent?_____ good?_____

very good?_____

How was his/her posture during the interview?

very tense_____ tense_____ relaxed_____

very relaxed_____

Was there any physical contact between you and the interviewer?

yes_____ no_____

What was the advice and/or information you received? (taped)

Do you feel you were given enough time to fully explain your problem?

yes_____ no_____

Were you able to explain all the details of your problem?

yes_____ no_____

Did the interviewer interrupt you while you were explaining your problem?

not at all_____ occasionally_____ constantly_____

How was his/her general attitude in the following areas:

Helpfulness -

not at all_____ somewhat_____ very_____

Respectful -

not at all_____ somewhat_____ very_____

Polite -

not at all_____ somewhat_____ very_____

Relaxed -

not at all_____ somewhat_____ very_____

Nervous -

not at all_____ somewhat_____ very_____

Businesslike -

not at all_____ somewhat_____ very_____

Straightforward -

not at all_____ somewhat_____ very_____

Sensitive -

not at all_____ somewhat_____ very_____

Judgemental -

not at all_____ somewhat_____ very_____

Understanding -

not at all_____ somewhat_____ very_____

Were you able to understand the advice given?

not at all_____ somewhat_____ all of it_____

Did you feel that you were rushed?

not at all_____ somewhat_____ extremely_____

Did the interviewer take time to fully explain what he/she was telling you?

yes_____ no_____

Did he/she appear to be concerned with your problem?

yes_____ no_____

(IF NO) Why not? What gave you that impression?

_____

_____

_____

_____

Did you have confidence in the interviewer?

not at all_____ somewhat_____ definately_____

Why? What gave you that impression?

_____

_____

_____

_____

Did the interviewer use unfamiliar terminology?

not at all_____ occasionally_____ frequently_____

Did the interviewer explain what was meant when asked to?

yes_____ no_____

Did he/she refer you anywhere?

yes_____ no_____

(IF YES) Where?_____

Were you given anything other than advice and/or information during the interview?

pamphlets and/or information sheets (which ones)

_____

_____

names_____ phone numbers_____

other (specify)_____

_____

Did you feel comfortable in the interview?

yes_____ no_____

(IF NO) Why not? What made you feel this way?

_____

_____

_____

_____

In terms of social distance as we have defined it, did you feel any social distance between you and the interviewer?

yes_____ no_____

(IF YES) was the social distance you felt between you and the interviewer

very apparent_____ apparent_____

not at all apparent_____

Were you satisfied with the amount of effort the interviewer put into discussing your problem?

not at all satisfied_____ somewhat satisfied_____

satisfied_____ very satisfied_____

Were you satisfied with the amount of time put in by the interviewer with your problem?

not at all satisfied_____ somewhat satisfied_____

satisfied_____ very satisfied_____

During the interview did he/she consult with anyone else?

yes_____ no_____

(IF YES) Who?_____

Was the consultation done outside or inside the interview room?

inside_____ outside_____

Did anyone else join the interview?

yes_____ no_____

(IF YES) To who?_____

Did the interviewer make any telephone calls while you were there?

yes_____ no_____

(IF YES) To who?_____

When leaving the interview what was said? (taped)

Did the interviewer shake your hand?

yes_____ no_____

Did he/she smile?

yes_____ no_____

Did he/she walk you out of the interview room?

yes_____ no_____

How long was the total interview?_____

APPENDIX D

QUALITY RATING SCALE

Assuming this is an accurate description of the advice given, how would you rate its legal accuracy, clarity, understandability, practicality, and overall quality?

A. Overall, would you consider this advice legally correct? _____Yes _____No

1. How would you rate the legal accuracy of this advice in terms of:

	very poor				adequate					excellent
	0	1	2	3	4	5	6	7	8	9	10
Substantive Law											
	0	1	2	3	4	5	6	7	8	9	10
Procedural Law											

B. How well does the advice describe:

	very poor				adequate					excellent
	0	1	2	3	4	5	6	7	8	9	10
1. Who the client should see											
2. What the client should do	0	1	2	3	4	5	6	7	8	9	10
3. What will be accomplished if the advice is followed	0	1	2	3	4	5	6	7	8	9	10

C. How would you rate the practicality of the advice in terms of:

	very poor				adequate					excellent
	0	1	2	3	4	5	6	7	8	9	10
1. Describing a course of action that the client could reasonably follow											
2. Describing the easiest and most efficient course of action	0	1	2	3	4	5	6	7	8	9	10
3. Explaining the available options extensively enough to address the problem	0	1	2	3	4	5	6	7	8	9	10

4. Referring to an appropriate source (if a referral was made)

very poor adequate excellent
0 1 2 3 4 5 6 7 8 9 10

D. How would you rate the overall quality of the advice?

very poor adequate excellent
0 1 2 3 4 5 6 7 8 9 10

COMMENTS (Please add any specific comments you think would be helpful in evaluating the advice)

APPENDIX E

Table I

Were You Given An Eligibility Form

Interviewer	Yes	No
Lawyer	13 100%	0 0
Paralegal	6 54.5%	5 45.5%
Total	19 79.2%	5 20.8%

chi square = 4.96 df = 1 p = .03

Table II

Three-way Analysis of Variance
Length of Interview by Interviewer and Problem Type
Controlling for Number of People in Reception Area

Source of Variation	Sums of Squares	DF	Mean Square	F	Signif of F
Covariates					
People in Rec	1112.912	1	1112.912	18.403	.000
Main Effects	5551.883	4	1387.971	22.951	.000
Interviewer	3072.387	1	3072.387	50.804	.000
Problem Type	1455.589	3	485.196	8.023	.000
2-Way Interactions	14.520	3	4.840	.080	.971
Explained	6679.316	8	834.915	13.806	.000
Residual	8345.527	138	60.475		
Total	15024.844	146	102.910		

Covariate	Raw Regression Coefficient
People in Rec	-.949

173 Cases were Processed.
26 Cases were Missing.

Table III

FAMILY FEMALE

Legal Correctness By Individual Interviewer

Interviewer	Yes	No	50/50
Paralegal 4	5 100%		
Paralegal 6	5 100%		
Paralegal 12	4 80%		1 20%
Paralegal 15	4 80%	1 20%	
Paralegal 16	3 60%	2 40%	
Lawyer 5	3 60%	2 40%	
Lawyer 7	1 20%	4 80%	
Lawyer 10	1 20%	3 60%	1 20%
Lawyer 13	5 100%		
Totals	31 68.9%	12 26.7%	2 4.4%

chi square 26.37 df = 16 p = .05

Table IV

FAMILY MALE

Legal Correctness By Individual Interviewer

Interviewer	Yes	No	50/50
Paralegal 2	2 40%	2 40%	1 20%
Paralegal 4	5 100%		
Paralegal 6	5 100%		
Paralegal 12	5 100%		
Lawyer 5	5 100%		
Lawyer 13	5 100%		
Totals	27 90%	2 6.7%	1 3.3%

chi square 16.67 df = 10 p = .08

Table V

CIVIL MALE

Legal Correctness By Individual Interviewer

Interviewer	Yes	No	50/50	Not Answered
Paralegal 2	6 100%			
Paralegal 4	3 50%	2 33.3%		1 16.7%
Paralegal 6	4 66.7%	2 33.3%		
Lawyer 1	3 50%	2 33.3%		1 16.7%
Lawyer 8	3 50%	3 50%		
Lawyer 10	5 83.3%		1 16.7%	1 16.7%
Totals	28 66.7%	10 23.8%	1 2.4%	3 7.1%

chi square 17.4 df = 18 p = .50

Table VI

CIVIL FEMALE

Legal Correctness By Individual Interviewer

Interviewer	Yes	No	Not Answered	No Legal Advice Given
Paralegal 2	4 80%	1 20%		
Paralegal 4	2 40%	1 20%		2 40%
Paralegal 6	2 40%		1 20%	2 40%
Lawyer 1	3 60%			2 40%
Lawyer 5	3 60%			2 40%
Lawyer 7	2 40%	3 60%		
Totals	16 53.3%	5 16.7%	1 3.3%	8 26.7%

chi square 18.45 df = 15 p = .24

Table VII

Legal Correctness Over All Problem Types for Individual Paralegals and Lawyers

Interviewer	Yes	No	50/50	Not Answered	No Legal Advice Given
Paralegal 2	12 75%	3 18.8%	1 6.3%		
Paralegal 4	15 71.4%	3 14.3%		1 4.8%	2 9.5%
Paralegal 6	16 76.2%	2 9.5%		1 4.8%	2 0.5%
Paralegal 12	9 90%		1 10%		
Paralegal 15	4 80%	1 20%			
Paralegal 16	3 60%	2 40%			
Lawyer 1	6 54.5%	2 18.2%		1 9.1%	2 18.2%
Lawyer 5	11 73.3%	2 13.3%			2 13.3%
Lawyer 7	3 30%	7 70%			
Lawyer 8	3 50%	3 50%			
Lawyer 10	6 54.5%	4 36.4%	1 9.1%		
Lawyer 11	4 66.7%		1 16.7%	1 16.7%	
Lawyer 12	10 100%				
Lawyer 13	10 100%				
Totals	102 69.4%	29 19.7%	4 2.7%	4 2.7%	8 5.4%

chi square 61.68 df = 48 p = .09

Table VIII

Legal Correctness By Individual Interviewers
Other than Paralegals or Lawyers

Interviewer	Yes	No	Not Answered	No Legal Advice Given
Law Student 3	4 80%		1 20%	
Law Student 9	5 83.3%		1 16.7%	
Legal Assis. 14	4 80%	1 20%		
Legal Assis. 17	1 20%	4 80%		
Receptionist 18	4 80%			1 20%
Totals	18 69.2%	5 19.2%	2 7.7%	1 3.8%

chi square 21.82 df = 12 p = .04

Table IX

Two-way Analysis of Variance
Relationship Between Quality Scales
and Paralegal or Lawyer for the
Civil Male Problem

Source of Variation	Sums of Squares	DF	Mean Square	F	Signif of F
Main Effects	86.324	10	8.632	1.402	.178
Quality Scale	77.774	9	8.642	1.404	.185
Interviewer	8.255	1	8.255	1.341	.248
2-Way Interactions	3.619	9	.402	.065	1.000
Explained	89.942	19	4.734	.769	.744
Residual	2062.052	335	6.155		
Total	2151.994	354	6.079		

360 Cases were Processed.
5 Cases were Missing.

Table X

Multiple Classification Analysis
Quality Scales vs. Type of Interviewer
for Civil Male Problem

Grand Mean = .00

Variable and Category	N	Unadjusted Dev'n	Eta	Adjusted For Independents Dev'n	Beta
Quality Scales					
1 Substantive Law	35	.56		.55	
2 Procedural Law	35	.73		.72	
3 Who client should see	36	-.09		-.09	
4 What client should do	36	.13		.13	
5 What will be accomp	36	-.45		-.45	
6 Course of Action	36	.19		.19	
7 Easiest and most eff	36	.19		.19	
8 Available options	36	-.98		-.98	
9 Appropriate referal	33	-.32		-.33	
10 Overall quality	36	.05		.05	
			.19		.19
Interviewer					
1 Lawyer	176	-.16		-.15	
2 Paralegal	179	.15		.15	
			.06		.06

Multiple R Squared	.040
Multiple R	.200

Table XI

Two-way Analysis of Variance
Relationship Between Quality Scales and
Paralegal or Lawyer for the
Family Male Problem

Source of Variation	Sums of Squares	DF	Mean Square	F	Signif of F
Main Effects	46.791	10	4.379	.870	.561
Quality Scale	37.974	9	4.219	.839	.581
Interviewer	5 745	1	5.745	1.142	.286
2-Way Interactions	7.327	9	.814	.162	.997
Explained	51.118	19	2.690	.535	.946
Residual	1403.522	279	5.031		
Total	1454.651	298	4.881		

300 Cases were Processed.
1 Cases were Missing.

Table XII

Multiple Classification Analysis
Quality Scales vs. Type of Inerviewer
for the Family Male Problem

Grand Mean = .00

Variable and Category	N	Unadjusted Dev'n	Eta	Adjusted For Independents Dev'n	Beta
Quality Scale					
1 Substantive Law	30	.09		.09	
2 Procedural Law	30	.02		.02	
3 Who client should see	30	.06		.06	
4 What client should do	30	.22		.22	
5 What will be accomp	30	-.18		-.18	
6 Course of Action	30	.06		.06	
7 Easiest and most eff	30	.29		.29	
8 Available options	30	-.98		-.98	
9 Appropriate referal	29	.37		.36	
10 Overall quality	30	.06		.06	
			.16		.16
Interviewer					
1 Lawyer	100	.20		.20	
2 Paralegal	199	-.10		-.10	
			.06		.06

Multiple R Squared	.030
Multiple R	.174

Table XIII

Two-way Analysis of Variance
Relationship Between Quality Scales and
Paralegal or Lawyer for the
Family Female Problem

Source of Variation	Sums of Squares	DF	Mean Square	F	Signif of F
Main Effects	200.972	10	20.097	3.432	.000
Quality Scale	79.847	9	8.872	1.515	.141
Interviewer	120.788	1	120.788	20.627	.000
2-Way Interactions	2.116	9	.235	.040	1.000
Explained	203.088	19	10.689	1.825	.019
Residual	2213.547	378	5.856		
Total	2416.635	397	6.087		

400 Cases were Processed.
2 Cases were Missing.

Table XIV

Two-way Analysis of Variance
Relationship Between Quality Scales and
Paralegal or Lawyer for the
Civil Female Problem

Source of Variation	Sums of Squares	DF	Mean Square	F	Signif of F
Main Effects	276.956	10	27.696	6.282	.000
Quality Scale	152.011	9	16.890	3.831	.000
Interviewer	130.157	1	130.157	29.522	.000
2-Way Interactions	33.419	9	3.713	.842	.578
Explained	310.374	19	16.335	3.705	.000
Residual	868.544	197	4.409		
Total	1178.918	216	5.458		

250 Cases were Processed.
33 Cases were Missing.

APPENDIX F

EXAMPLES OF ADVICE

This is a piece of advice that all the raters agreed was legally correct. All six of the raters considered this advice completely accurate.

Family Male

He told me that there was not much I could do to stop my wife from leaving the province although I might be able to stall her with various orders through family court. He recommended that I go to family court, see a counselor and get my access defined. He told me that it was to my advantage to let my wife apply for the maintenance order. He said that my wife would probably get custody of the kids even if I applied for it--judges usually give the mother custody even though it is not unnatural for the father to be granted custody. He told me that the maintenance I am currently paying is not tax deductible because there is no court order. He said access is reasonable. He said that the judge would decide when I could see the kids and my wife would have to comply. Again, he said that there was not much I could do about my wife leaving the province except a court order and then she would have to get another order to be able to leave, thereby eliminating the spontaneity of her departure. He said that she would not have any problem obtaining a court order to leave but that it would take time. He told me that my wife had no right to restrict access if I did not pay

maintenance--they are two totally separate issues--and if she made access difficult, I could take her to court. He said that the matters of access and maintenance did not have to go to court if there was a mutual agreement and that it would not cost anything through a family court counsellor. He said that the judge would take into consideration what was best for the kids when deciding on custody if it came to that.

This piece of advice resulted in a split between raters. Three raters considered it accurate and two considered it completely inaccurate. The raters that considered it accurate did make the comment that very little actual legal advice was given. One of the raters that had rated it as totally incorrect made the comment that it was a "total abdication of responsibility" as no advice was really given.

Family Female

He told me I had basically two options--to separate or to get help and stick it through. He said that once I left my husband, I was separated. When he heard that my husband was violent, he suggested a transition home even if it was only for counselling. He said he could not tell me what to do but he did go into the psychological reasons that people stay in an abusive situation--talk themselves into it, do not know how to get out, etc. He said that he thought coming to see him was the first step in realizing my problem. Although he did not actually tell me what to do, he did make it very clear that he thought leaving my husband was my best option. He did not want to go into the legalities of the situation until a preliminary move was made (i.e., me leaving my husband) but he did say that I could come back to him to get the legal work done. Basically, he outlined two options--to separate from my husband or get marriage counselling.

With this piece of advice, all but one rater agreed that it was essentially wrong. One comment made by a rater was that it was "completely wrong" aside from the referral to a transition house. The rater that rated this advice went on to rate the overall quality of the advice fairly high, above average.

Family Female

Initially he refered me to a transition house in the area and explained that they would direct me to MHR for financial assistance. He asked if there was any chance of some kind of counselling--specifically AA--that my husband would be willing to get. I said that it was possible. He explained that there is a 90 day period from the time my husband first goes for help in which I have to decide whether the counselling will save the marriage. In other words, if I stay with my husband through the 90 day period and then decide to file for divorce, I cannot use any previous incidence of violence as grounds. Staying with an abusive husband is seen by the courts as condoning his actions. He also said that if I decide to leave my husband or get him out of the house, it would be best to do it within that 90 day period.

This is a piece of advice that all the raters agreed was legally correct. In addition, they all agreed that it was very good advice--more than adequate.

Family Female

He told me about the transition home where he said my husband could not find me there. He said that I would have to deal with the immediate situation before I could get into property division, etc. He told me that I could have sole occupancy of the house, or have a court order entitling me or whatever. He did say that a restraining order is not very effective and suggested that it was not the avenue to take. He said that things for women were changing but, unfortunately, very slowly. He then went on to say that I could get social assistance through welfare seeing as it did not appear that I would get any support from my husband and that the transition house would direct me there. He went into full details about the transition house--what it would do for me, etc. He told me that there is no law against me leaving the house with my son. My husband cannot force me to stay although he could contest custody. He said that he was sure that there would be no problem for me to get custody but the most important thing for me to do is take my son when I left. He said that I could come back to see him once I had made my decision to leave, and that I should definitely leave the home environment as soon as possible. At a later date, I could decide to return to live with my husband if he changes his behavior. He mentioned my leaving might smarten

him up but not to count on it. He told me that family court would decide custody and that property division is generally a 50/50 split. He said that I should get some monetary assistance before I decide to leave town considering my situation. He said that a restraining order was fairly ineffectual and again directed me to the transition house giving me the phone number.

This is the piece of advice that generated the most dissension among the raters. Three of the raters considered this correct or accurate advice and three raters considered it inaccurate advice. The overall rating on this piece of advice was fairly low, below adequate which was consistent among the raters but they were split on the question of legal accuracy. One of the raters,who rated this advice correct, made the comment that it was essentially correct; however, because there was so little detail given as to how to go about taking action for the problem and the legalities involved that the advice was virtually useless.

Civil Male

I told him that they had talked about reposession and he said to let them have the car, it is not worth what the loan is worth. He also said not to worry about my credit rating as everybody has a bad credit rating now because of the economic times. He told me that they were going to either seize or sue but he did not elaborate on that. He just said that they would get a judgement against me. He told me of course I could not sell the car. He said just give it to them. He advised me to make a bank payment but when I told that I made the original interest payment in September and that they would not allow me to make a second, he said fine, let them have the car. When I asked him how they would go about suing, he just said that I would receive a writ. I would get a court date. He also said that the interest rate would be fixed at a low level if they

were suing.

All the raters agreed that the following advice was legally correct. One rater mentioned that there was one small error in that the client would owe the difference between the value of the car and the loan, however, he did mark yes for legally correct.

Civil Male

He looked up in the Provincial Codes for sales on condition on how they would go about repossessing my car. He informed me that if I had paid two thirds of the loan, they would not be in a position to repossess but as I had not paid that much they could repossess. He explained that B. C. has a sue or seizure law on such a sale and that if they were to seize, then they could not sue. Basically, he outlined three options. 1) To try and negotiate with the bank to dispose of the car to pay the back payments in hopes that I can make future payments. 2) To try and get the bank to seize the car thereby negating my debt. 3) He said the bank could sue and get a judgement against me. The interest rate on the loan would automatically change to 5% once the suit went through. They would take possession of the car and I would still owe the difference between what they got for the car and what I owed on the loan. He said that there was not much chance that I would be able to get them to take the car. He advised me to try and negotiate with the bank to see if I could sell the car myself and turn over the funds to the bank.

He said that because I did not have any disposable income I would not qualify for debtors assistance, OPD plan, debtors poos, etc. He said that a suit might be likely at this point and that he doubted that the bank would repossess the car because it would negate the total amount of the loan. He said that if I brought the contract in to him, he would see if there might be some legal way out. He said the bankruptcy option was open if I was being sued. He also said that they could not seize the car unless they could find it--that I was not obligated to turn it over to them.

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