

**MANAGEMENT OF LEGAL AID CLINICS**

**IN SOUTH AFRICA**

**BY**

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**DISSERTATION**

**Submitted in part fulfilment of the requirements for the degree of Master of Administration in the School of Governance in the Faculty of Law, Economics and Management at the University of Durban-Westville**

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**DEDICATION**

**TO MY DEAREST HUSBAND**

**ASHLEY SUBBAN**

**WITH LOVE**

**Much appreciation and gratitude goes to you  
for your support towards completion  
of this dissertation.**

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M Subban

January 2001

## DECLARATION

I hereby declare that except where acknowledged, this research is, entirely my own work, that all sources used or quoted have been acknowledged and that this dissertation has not previously been submitted for a degree or diploma at another tertiary educational institution.

Mogesperie Subban

January 2001

# THE MEANING OF LIFE

## *Law's miraculous wonders ...*

*How we toil with matters legal,  
Just to earn our Chivas Regal,  
All we really need is boredom and a suit,  
For our purpose in creation,  
Is to draft a sequestration,  
Just to earn ourselves a name of some repute.*

*Oh! The pleadings that we draw,  
Are transcendently a bore -  
Though we must do so with ultimate precision,  
Should we settle? Should we fight?  
But we know we're in the right!  
Let the lawyer agonise with that decision!*

*And the trials and tribulations,  
And the petty altercations,  
With each zealous client just waiting on the phone ...*

*Heaven forbid you should be out,  
You're an undeserving lout,  
Rest assured you will be contacted at home!*

*Let me grovel on my knees,  
Let me scrounge and scrape for fees,  
Let me wade through files,  
And just do things by rote,  
For were you not aware ...  
That life's purpose is right there,  
So crystal clear in every debit note?  
Like an infant you will suckle,  
On your Mag Court Jones and Buckle,  
You will eat and drink and sleep on every rule;*

*But if you argue your rendition,  
And you use the wrong edition,  
You're a stupid, useless, feckless, no good fool!*

*For your wits have been extended,  
As the rule has been amended,  
And you feel that things are bad as they can get.*

*You indulge in true contrition  
For you're erred by grave omission,  
You forgot to check on yesterday's Gazette!*

*A point in living  
Will cause your nerves to fray,  
No one told us we would end up so defiant!*

*They just tell us the elation  
is beyond all contemplation  
When a magistrate awards  
attorney-client!*

*If a lawyer had some taste,  
Then his life he would not waste -  
Instead he would be lying on the beaches,*

*Yet he chose to spend his days,  
In a superfrenzied craze,  
Getting ulcers about contracts and their breaches.*

*You retire with a pension,  
Having lived life fraught with tension,  
And you wonder - is there merit in sobriety?*

*Oh!*

*To conquer the affliction,  
Of that stuff called jurisdiction?*

*Under bar is having been ...  
Under guillotine!  
You postpone feeling unnerved  
When costs become reserved!*

*With anguish I am fraught ...  
As I scurry off to court!  
Was I meant to meet my fate,  
before some Randburg magistrate?*

*Should I triple-check that clause?  
Should I make costs in the cause?*

*How composesures simply flee ...  
If they raise a special plea!  
And you're always feeling vexed,  
so tortured and perplexed!  
And pleading out of time  
Is worse than any crime.*

So ...

*Your self-esteem is perched,  
On that opinion you've researched,  
And your flair and sense of style,  
Depends on how you run your trial ...*

*And your days just seem to roll on,  
Midst a double spastic colon ...*

*STOP! Things aren't that bad ...  
At times though you might seethe,  
You're still allowed to breathe!*

*When it comes down to the crunch -  
Your breakfast becomes lunch,  
Though you're truly ineffectual,  
They still think you're intellectual.*

*God forbid I should ignore,  
All the wonder found in law!*

*For you survive beyond the frights,  
Of your client's wretched rights.*

*And you feel beyond ecstatic,  
When you deal with bureaucratic ...*

*And statue you adore - yes,  
You yearn and ache for more!*

*And you mill around a foyer,  
And you know you are a lawyer!*

So ...

*Next time you're filled with anguish and strife,  
Remember - it's only for the rest of your life!  
Do seek some solace and consolation -  
in heaven He'll give you a different vocation!*

*Those people on earth you detest and abhor -  
Their souls will be subject to the practice of law  
While yours was only for a lifetime you see -  
Their hell is for all eternity.*

*And you'll never have to admit to defeat,  
For true justice is so exquisitely sweet -  
At least on earth you could still charge a fee -  
In heaven they'll have to do it for free!*

*Janine Zaidel  
Attorney: Kallmeyer & Strime,  
Johannesburg  
De Rebus, Mei 1995*

***“Management is like a war in one respect, if its ground strategy is correct, any number of tactical errors can be made and yet the enterprise proves successful” (General Robert E Wood, quoted in Pearce and Robinson 1989: 120).***

***“The maxim “managing means looking ahead’ gives some idea of the importance attached to planning in the business world, and it is true that if foresight is not the whole of management at least, it is an essential part of it” (Fayol 1949: 121).***

***“Planning, of course, is not a separate, recognisable act ... every management act, mental or physical is inexorably intertwined with planning. It is as much a part of every managerial act as breathing is to the living human” (George 1972: 121).***

***“Today the bewildering array of fads pose more serious diversions and distractions from the complex task of running a company. Too many modern managers are like compulsive dieters, trying the latest craze for a few days, then moving relentlessly on” (Byrne 1986:666).***

***“One of the most important resources possessed by the nation is its managerial skills. Ideas can easily be turned into wealth when combined with effective management. The ability to create more wealth is vital if the growing expectations of society are to be met. Those services which spend the wealth must also be well managed to ensure the maximum benefit from the resources available” (British Institute of Management 1987: 650).***

## **SYNOPSIS**

### **MANAGEMENT OF LEGAL AID CLINICS**

#### **IN SOUTH AFRICA**

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This study evaluates the management of legal aid clinics and explores new managerial and strategic approaches for efficient and effective delivery of legal aid services. Legal aid institutions carry out their activities in a constantly changing environment, and as new legislation is passed, new ideas gain prominence. The provision of legal aid as envisaged in the 1996 Constitution places tremendous demands on the State. A demand for skilled personnel is also highlighted in this study, placing emphasis on effective and efficient utilisation of management skills and practice in legal aid. Whilst reviewing the experiences of legal aid clinics, this dissertation describes and explains the management principles and techniques applied, and offers recommendations for improvement. It examines guidelines to be followed and pitfalls to be avoided.

The analogy of trees is used to describe the status of legal aid clinics in South Africa. The trees of legal aid in South Africa are growing but some are still saplings and there are unfortunately many diseases and disorders to which they still remain prone.

This research not only examines the saplings, but also the ailments from which they suffer. In the final analysis, it aims to get a good view of the wood used, and the forests beyond its borders (Gordon 1974: 11).

Legal aid clinics function as public legal firms striving for efficiency and effectiveness in legal representation. All line and staff functions must be performed in terms of the dictates of the public administration and management approach and by strict adherence to the normative factors of public administration.

The management of legal aid is an enabling process offering guidance and direction to the practical aspects of legal representation. Legal aid clinics must take cognisance of the fact that all functions in regard to provision of legal aid to communities must be performed in terms of the generic administrative and managerial processes of policy-making, organising, financing, staffing, determining procedures and exercising control. In view of these processes, respect for human rights, fairness and reasonableness, requirements of administrative law and the maintenance of public accountability are vital in promoting community satisfaction. One experienced practitioner and legal aid manager in Strong & Clark (1974: 7), acknowledges freely that he is merely:

*“a midwife at the birth of a new concept for lawyers. How better and more profitable to practice law through optimal utilisation of non-lawyer personnel and the adoption of the 'systems approach” .*

The theory and practice of public administration and human resources are strongly emphasised, and are primarily recognised in this study. It is noted that legal aid managers, who are practising attorneys, do not have an in-depth knowledge of the principles and theories of public administration, as is evidently reflected in this study. Very little research has been undertaken on the management of legal aid clinics in South Africa, proposing a public management model for efficient and effective delivery of legal aid. There has been some research in this area, but not much focus has been on the management approach envisaged in this dissertation. It is, therefore, by no means exhaustive and should stimulate for further research in the field.

If law is to be practised as a service to society, then the study of legal aid should be a vital ingredient in the legal curriculum of every university. The subject of legal aid has three factors concentrated on its field of activity - legislative, judicial and academic that can be blended while aiding litigants and defenders involves dealing practically with the problems of society's needs. The empirical study revealed that the provision of legal aid needs to be increased on a much wider scale. The majority of people are either unemployed or engage themselves in menial jobs and cannot afford legal services in a private professional capacity. Therefore, the increased role of the State, the private sector and international donor agencies are crucial towards ensuring the continued provision of quality legal aid in South Africa. The study of legal aid management in theory and practice and the study of comparative systems would allow for the exchange of work methods and procedures, growth and improvement.

**The following recommendations have been highlighted in this study:-**

#### ☛ **Legislative Measures**

Further clarification and updated communication regarding the rulings and parameters within which legal aid clinics are required to operate needs to be communicated to them on a regular basis.

Application of the means test conducted by various clinics differs. There needs to be greater standardisation when testing who qualifies for legal aid.

#### ☛ **Policy and Strategic Issues**

Legal aid clinics must engage in regular strategic planning exercises and involve their body of jurisdiction to improve management and administrative competencies. The need is to assess continuously the vision and mission of legal aid clinics and improve its operational techniques where necessary.

## ☛ **Human Resource Management**

Support for adequate staff to handle the operational and management structures within clinics. The acquisition of skills-based training, focussing on inter alia, information technology is highly recommended.

## ☛ **Procedural Aspects and Management Information Systems**

The development of legal aid manuals focussing on the various procedures to be followed within clinics ought to be addressed urgently. The introduction and development of information systems to store and retrieve information in modern technological manners. Access to and support for networking facilities to ensure that clinics are interacting and exchanging information regularly. Information development evidently is severely lacking in most legal aid clinics as discovered through this study.

## ☛ **Organisational Arrangements**

The overall management of legal aid offices is usually concentrated in the hands of legal aid directors. An important recommendation is that further support, capacity and training be afforded to administrative staff through normative models and systems to facilitate the organisational arrangements relating to legal aid. The frequency of reports differs between the various clinics consulted. It is imperative that reports are constructed at least on a quarterly basis to ensure more efficient planning and organisation.

## ☛ **Public Relations and Networking**

The creation of a central network system is essential to link up with each other on a regular basis. It is imperative that clinics have e-mail facilities for information dissemination. Provision and maintenance of a web site to enable clinics to become fully acquainted with the latest rulings relating to their activities of jurisdiction is of operational

necessity.

An increased support for fellowship exchange programmes regionally, nationally and internationally is highly recommended.

## ☛ **Funding**

As clinics receive subsidised funding either from the State or donors, the question of financial resources places a huge burden on the continuation of clinics. The provision of increased financial support through the State, donor agencies and international organisations to maintain provision of quality legal aid services continues to pose threats to the viability and sustain ability of legal aid clinics. There needs to be greater financial support to ensure the continuation of legal aid.

## ☛ **Control, Monitoring and Evaluation**

The creation and maintenance of performance measurement systems to ensure that the activities of clinics are monitored and evaluated on a regular basis. The need for public accountability and transparency in public decision-making must be acknowledged at all times. The introduction of a report card system whereby clients can rate the services received from clinics, which can in turn, serve as useful indicators for improving the quality of services rendered.

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## CHAPTER ONE

### DEMARCATON OF THE STUDY FIELD AND RESEARCH METHODOLOGY

#### 1.1 INTRODUCTION

Public Administration is a generic term for the entire range of activities that are involved in the establishment and implementation of policies. It involves the utilisation and management of programmes in providing services to the community. The management of legal aid services involves the knowledge, skills and practice of public administration, and could be classed as a branch of public administration. The primary objective of legal aid clinics is the provision of legal aid to disadvantaged and indigent communities. Of particular relevance to this dissertation is the management of legal aid. Among the many challenges facing South Africa over this decade and beyond, into the new millennium, there exists a need to meet rising expectations.. To this end, the role of legal aid clinics in the delivery of legal services for the rural poor and other disadvantaged communities is vital.

Legal aid services currently available to indigent persons must be revisited and expanded considerably to meet the needs of the majority who cannot otherwise afford the services of attorneys in private practice. Within the legal profession, this goal is considered to be a sub-goal, namely the provision of community welfare through legal aid. The main goal is one of a profit motive.

South Africa has undergone fundamental transformation to ensure democratic and accountable governance at all levels. The primary focus is inter alia, on increasing access to services and structures of the state. New challenges are posed on the state through the processes of reconstruction and development, the principles of Batho Pele, the tenets of the 1996 Constitution, the Bill of Rights and the Legal Aid Act, to contribute in providing excellent service within the dynamic South African context.

This research focuses on the management of legal aid clinics in South Africa, within a legislative framework, comparing first and third world countries.

## 1.2 BACKGROUND OF THE STUDY

University-based legal aid clinics are the power-houses of their universities in terms of realising an important element of their mission statement. For example, the mission statement of the University of Durban-Westville, espouses the establishment of programmes to address specific needs and problems of society and is committed to community outreach and social welfare programmes. This involves public participation in community-based projects, social redress and the identification of initiatives which will make the necessary resources of the University available to the wider community. The legal aid clinic is the medium for publicising such activities and the services of the clinic are necessary for and incidental to the University's overall objectives.

The provision of legal services for the socially and financially disadvantaged communities gives rise to an ongoing debate on legal aid in South Africa on a national and international level. The recent memorandum prepared by the Association of Law societies of South Africa and the General Council of the Bar Association of South Africa made the following comments (Pretorius 1983: 86):

*“The purpose of legal aid is to provide essential legal services to persons who are unable to pay for them. These services should not be seen as a luxury, nor should the provision of such services be seen as an act of charity. These are essential services, the provision of which is necessary to ensure that the legal system functions properly”*.

Legal aid clinics, like other institutions, are responsible for creating and implementing plans, organising, supervising and controlling legal operations on a daily basis. As such, legal aid forms part of an integral part of the administration of justice, as enshrined in the Constitution of 1996. It involves the management of clinic activities, students engaged in practical legal education and management of database of clients' cases. It is a system which cannot be left to fend for itself but must be efficiently and effectively managed.

Therefore, the principles and practice of *par excellence* are applicable for the proper functioning of the scheme and the utilisation of such skills cannot be overemphasised.

The dissemination of legal information and effective and efficient management of legal aid clinics can only be done through sound management skills and practices. Administration forms a major component of the tasks performed by legal aid clinics. Law schools and legal aid clinics may implement intensive and sophisticated clinical programmes, but, it must be borne in mind that these clinics are confronted with an unlimited volume of administrative and management tasks. It is only through the implementation of core generic public management practices and structures that the success of a clinic can be evaluated. Legal aid clinics provide an array of legal services and often beyond legal representation through disseminating information, research on specific legal matters, skills and orientation programmes, law libraries on clinical legal education and student/staff internships. Therefore the management demands can become considerably onerous and voluminous. Public administration plays an important role in providing the functions and skills necessary for effective and efficient delivery of legal services.

This is highlighted through the words of the following author concerning the importance of clear guidelines through the knowledge and application of public administrative principles.

As Hicks (in Gross 1976: 8) aptly states:

***“In the first place an effective administrative machinery is required for the control of expenditure and as a check upon the efficiency; in the second place, clear policy objectives must be developed and followed, in order to determine both the limits of expansion and the correct priorities between competing claims on national resources”.***

These words emphasise the necessity for careful planning, management and organisational systems in legal aid.

### 1.3 JUSTIFICATION OF THE STUDY

This study is highlighted at a time in South African Public Administration and Politics when the Government has committed itself to fundamental transformation of our system of governance. The following pieces of legislation protect and promote the general welfare of communities: South African Constitution of 1996, (Act 108 of 1996), the Bill of Rights, Skills Development Act of 1999, the Legal Aid Act, and other pieces of legislation that promote and protect the disadvantaged communities in our country. The democratisation of our country has enabled the political and constitutional mechanisms to produce social justice and stability for all people of this land.

Devenish (1998: 82) submits in section 34 of the 1996 Constitution that:

*“everyone has the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a court, or where appropriate, another independent and impartial tribunal or forum, is an unusual one, its inclusion in the Bill of Rights as a substantive right, available to resolve justiciable disputes, struck a sympathetic chord among all negotiating parties”.*

These words are contrary to the history of the South African legal system. In the past significant legal obstacles obstructed an unqualified access to the courts of law in South Africa, making it difficult for persons to obtain justice through the legal system. This inhibited the courts from dispensing justice to all without fear and favour.

Legal aid clinics are at the cutting edge of provision of basic legal services and representation to the disadvantaged communities, and in so doing, are contributing to the broad overall objective of government ie. community outreach. As a result of the unlimited cases deserving legal representation, legal aid clinics have a huge volume of administrative and management tasks to contend with. This research has been undertaken as a result of a lack of proper management processes in some clinics, whilst a necessity for streamlining an already existing system in others.

It was evident that resources are severely lacking in these clinics, ranging from human, technological, financial and structural. This is highlighted by Steenhuisen (1998: 2):

*“It has become fashionable for critics of modern legal education to compare it unfavourably with medical education. The young doctor is depicted as capable of stepping right into practice with complete medical know-how skills, while the young lawyer is depicted as being totally unable and unfit to practice after graduation from law school. Therefore comes the proposal to cram practical, administrative, managerial and supervisory skills to ensure efficient and effective service delivery”.*

The above quotation emphasises the necessity for efficient and effective management structures in legal aid clinics, as a significant reference to practice management skills for lawyers has been put forward.

The State has a moral and statutory obligation to provide legal aid to disadvantaged and impoverished communities as part of its social welfare programme. In so doing, the general welfare of the community is being addressed. It is therefore an important link in the relationship between the state and civil society, and the social and political accountability of the state.

#### **1.4 OBJECTIVES OF THE STUDY**

**The core objectives of this study are to:**

- ➡ provide an historical and current overview of legal aid management in South African clinics, in comparison with selected first and third world countries;
- ➡ evaluate the administrative and management tasks involved in the administration and management of justice in clinics;
- ➡ identify the problems currently experienced by legal aid clinics and to devise a public management model for implementation of effective administration and management of services;

- ➡ identify the types of evaluation criteria used to measure the quality of services rendered; and
- ➡ to draw conclusions and make recommendations in relation to this study.

## **1.5 RESEARCH METHODOLOGY**

In relation to the objectives as outlined in this study, the research methodology comprised of the following aspects:

### **1.5.1 RESEARCH SEARCH AND RESEARCH MODEL CONSTRUCTION**

A literature study of available material comprising national and international books, journals, dissertations, acts, white papers, legislation proposals, law society publications, legal aid board materials, research reports, internet documents, magazines and newspaper articles were undertaken.

### **1.5.2 EMPIRICAL SURVEYS**

Surveys were conducted by distributing questionnaires to the directors of legal aid and community law clinics within the provinces. The questionnaires were designed to ascertain the manner of administration and management currently used by legal aid clinics and the nature and extent of services conducted. The questionnaires were also designed to obtain information relating to the perceptions of public managers in relation to the effectiveness and efficiency of legal service delivery.

### 1.5.3 DATA INTERPRETATION

The data interpretation determined values pertaining to the established criteria emerging from the surveys conducted thereby transferring the coded data onto a computer database.

### 1.6 RESEARCH AIMS

**The research intends to answer the following questions which formed the basis of this study:**

- ☞ What is the meaning of legal aid management in the context of public administration?
- ☞ What management structures currently exist in legal aid clinics?
- ☞ What public management principles and practice should be applied to ensure efficient and effective management of legal aid clinics?
- ☞ What legislative measures are necessary for the practice of legal aid?
- ☞ The staffing ratio necessary to administrate and manage the tasks and the type of training provided to effect quality service delivery?
- ☞ The level of information technology used in streamlining management practices within these clinics?
- ☞ What networking / public relations exist between and amongst clinics?
- ☞ What training manuals and procedures exist for managing services efficiently and effectively?
- ☞ What staff development policies exist for improving the capacity of directors as public managers?
- ☞ How are clinics funded and how can they remain sustainable?
- ☞ A comparison of 1st and 3rd World clinics in terms of the nature and extent of administration and management. How can the comparative experiences of First and Third World countries serve as useful lessons for the future of legal aid clinics?

## 1.7 LIMITATIONS OF THE STUDY

The following aspects serve as shortcomings in this study:

- ☛ Some legal aid directors complained that they were extremely inundated with volumes of case loads and meetings. As a result, they did not sufficient time to devote to the survey. Some directors felt that their requests for more support and resources to manage their clinics more effectively was not taken seriously by the relevant authorities.
- ☛ Some directors expressed an unwillingness to comment on all aspects of the questionnaire, and only chose questions that required less complex information..
- ☛ Some directors felt that information relating to strategic planning and financial budgets are deemed confidential information and were unwilling to co-operate fully in this regard.
- ☛ Some of the returned questionnaires were inadequate and comprised incomplete or poorly answered responses.
- ☛ In light of the above responses, simplified statistical analysis was used to interpret the data received..
- ☛ None of the clinics used in this study use a report card system to evaluate their services by clients.

The researcher indicated an intention to interview clients, but many were not willing to comment for the record. Reasons provided indicated that they were afraid to be part of an evaluation as this might jeopardise their assistance from the clinics, or felt intimidated by the process overall.

## **1.8 ETHICAL CONSIDERATIONS**

In any research, there is a moral or ethical code to consider. Throughout the process of data collection, the problem of persuading participants to co-operate with the researcher was ever present. The research had to consider the ethical aspects of confidentiality and legal obligations to clients. Lack of co-operation led to non-response, to incompletely filled-out questionnaires and unreliable results. The researcher had to respect the participants right to refuse to participate. Some generally accepted ethical concerns include: privacy or voluntary participation, anonymity and confidentiality. The ethical considerations in this study include:

- ◆ legal knowledge and actions of managers;
- ◆ the confidentiality of information received; and
- ◆ weaknesses and threats confronted and perceived.

## **1.9 OVERVIEW OF CHAPTERS**

The chapters in this research are organised in the following manner:

### **1.9.1 CHAPTER 1: DEMARCATION OF STUDY FIELD AND RESEARCH METHODOLOGY**

This chapter demarcates the field of study and outlines the research methodology of the dissertation. It outlines the philosophy of the research process undertaken. The chapter also includes the formulation of the research objectives and study goals, as well as an overview of the proposed study.

In order to obtain a wide spectrum of the present status of the management of legal aid clinics, a study of various local centres was made. A review of some international legal aid management practices and delivery of legal services for the rural poor and other disadvantaged groups in Sub-Saharan Africa and First World countries was examined.

The Third World countries that were reviewed were Africa, Chile, Bangalore - India, Sub-Saharan Africa: Rwanda and Cambodia. The First World countries included Australia, America, China, British Columbia and Canada. Communication was made internationally and locally to appreciate and understand the nature of legal aid management within legal aid centres. Interviews and field trips were undertaken to local clinics to obtain as much information as possible.

## **1.9.2 CHAPTER 2: LEGAL AID MANAGEMENT: A CONCEPTUAL FRAMEWORK**

This chapter reviews legal aid clinics as service providers on behalf of the State. It examines legal aid management as one of the specialised sub-fields of public administration. It also examines the locus and focus of legal aid management within the broader framework of public administration. This chapter focuses on a review of the traditional approach of public administration vis-a-vis the public management approach. Of necessity is the combination of the two approaches thus acting as the means to achieving the end result of effective legal aid management. For the purposes of clarity, the research incorporates both the theory and practice of public administration. However, reference made to public administration as an activity also relates to the discipline Public Administration.

Of importance is access to justice through a democratic society based on equality before the law, respect for human rights and justice for all. Every citizen has the right to defence through judicial recourse. The respect for human rights and equal justice are fundamentally entrenched in our final Constitution, Act 108 of 1996. Legal aid clinics operate within a statutory framework and are bound by legislation to operate within the parameters of the Constitution, the Bill of Rights and the principles of the Government's Reconstruction and Development Programme.

This chapter also focuses on section 195(1) of the 1996 Constitution which enumerates the basic values and principles governing public administration. Public administration must be governed by transparency, democratic values, efficiency and effectiveness as enshrined in the Constitution.

The normative guidelines serve as an important checklist by which public managers ought to evaluate their actions in accordance with norms and values such as humanity, honesty, justice, reasonableness, freedom, truth, decency and integrity. This chapter therefore examines the pursuit of high ethical norms and standards in a heterogeneous society, thus highlighting that legislation contains provisions which support and subscribe to the societal values of communities.

The conduct of public officials and legal aid managers rendering a public service must always be in the public interest in order to promote the community's interests. The public sector is more in the public eye than is the private sector. The public sector's right of existence lies in the rendering of services to the public, and high demands are placed on public managers and officials. Accountability and responsibility are expected of their actions. The usage of public monies and public confidentiality are high moral issues in rendering community services.

This chapter therefore explores the pursuit of high ethical norms and standards in a heterogeneous society, thus highlighting that legislation contains provisions which support and subscribe to the societal values of communities.

### **1.9.3 CHAPTER 3: NATIONAL AND INTERNATIONAL TRENDS IN LEGAL AID MANAGEMENT**

People underestimate the importance of the management function of legal aid clinics. The tendency is to place emphasis on legislative procedures and clinical legal education as vocational training for candidate attorneys, and little attention to the management side of things. When one closely examines legal aid in South Africa, it is attributed to the massive influx of immigrants from rural to urban areas. Legal aid was seen as an aid to facilitate the adjustment of migrants. The state recognised the need for improvement of delivery of legal aid to the poor and disadvantaged communities and to extend the service to all persons, as part of their basic human rights.

On comparing legal aid management from a South African perspective, third world and the international arena, one finds greater emphasis on information technology on an international level. South African legal aid clinics operate under severe financial constraints, and face numerous limitations in terms of infrastructure and technological skills. Networking of the various clinics is much neglected, thus requiring a shift in priorities. Legal aid in Sub-Saharan African countries are beginning to develop, and currently operate with very limited resources. There is an urgent need to promote capacity building, skills empowerment and greater financial support to meet rising demands of the poor. The unprecedented poverty in Southern Africa calls for urgent and effective action. To this end, the United Nations Development Programme declared 1996 to be the International Year for the eradication of poverty in its bid to raise awareness of the plight of one of the world's poorest nations. A focus on the South African perspective, viewed against the backdrop of international experiences, incorporating the necessity to focus on developing and managing basic legal services for the poor. It is imperative that satisfying the needs of the poor should be at the core of the development process. There are numerous lessons to be learnt both from the South African experience of legal aid clinics, African countries and the international experiences.

#### **1.9.4 CHAPTER FOUR: PRACTICES WITHIN LEGAL AID CLINICS**

This chapter focuses on the need for legal aid clinics and its growing importance on behalf of the state to realise national priorities. It also focuses on current practices within legal aid clinics in selected institutions. This chapter highlights the many issues that makes this research study relevant and highlights the necessity for further research into the nature and scope of activities performed and the suggestions and improvements presented herein.

As one approached the new millennium, the use of information technology as part of legal aid management has become undoubtedly one of the core aspects without which clinics will become totally ineffectual. This chapter also explores the basics of computer hardware and software, future planning, electronic mail and research, advanced computer networks, information security, data base, presentations and year 2000 compliance as essentials for managing towards excellence.

Computerisation in legal management is vital as it facilitates speedier dissemination of information. Computer systems should adapt to the needs and methodology of the practice, thus allowing a legal aid clinic to deliver a better service to its clients and improve the level of efficiency and effectiveness.

Wacks (1989: 178) asserts that:

*“the widespread use of computers facilitates incomparably speedier and more efficient methods of storing, retrieving and transferring information than is possible with conventional manual filing systems.”*

The above quotation highlights the effects of development in modern information technology on the management of legal aid clinics. New technology not only affects how management operates to achieve existing goals, it also opens up new potential for what management can hope to achieve. A focus on what public administration does is equally important to the concerns of information technology, as is highlighted in this chapter.

#### **1.9.5 CHAPTER FIVE: RESEARCH METHODOLOGY**

This chapter outlines the research design that informed this study, the methodology used and the statistical analysis of information gathered.

Simplified statistical processes and models were used to compute and report the findings.

#### **1.9.6 CHAPTER SIX: PRESENTATION AND ANALYSIS OF RESULTS**

This chapter focuses on the empirical data and the presentation of such data is compiled. The researcher examined the data and provided an exposition of the present status of administration and management of clinics.

## **1.9.7 CHAPTER SEVEN: CONCLUSION AND RECOMMENDATIONS**

This chapter contains general conclusions and recommendations arising from the empirical research. Recommendations contained in this study are central to the research. Concrete plans for the implementation of such suggestions should be formulated by the research participants to ensure not only quality legal aid services, but also efficient and effective management of clinics generally. The final conclusions have been integrated within the theoretical framework of public administration and management. The integrated model of public administration and management serves as a useful framework to provide skills-based training to legal aid managers within the legal profession.

## **1.10 DEFINITION AND TERMINOLOGY**

It is important to give an explanation of certain term(s) used in this dissertation. As a result of different legislative bodies that control the activities of legal aid clinics and the differences in their legal mandates, it is necessary to draw a distinction between them. The following require clarification:

### **1.10.1 Legal Aid**

Free legal assistance for poor, disadvantaged, indigent people given via Legal Aid Board funded clinics and university-based legal aid clinics.

### **1.10.2 Legal Aid Board**

This body is financed by the State and is responsible for providing Legal Aid to poor people.

### **1.10.3 Legal Aid Clinic**

Non-profit making organisations created by virtue of the Legal Aid Act and operating through statutory guidelines of the Legal Aid Board in the provision of legal assistance to indigent communities.

### **1.10.4 Law Clinic**

A non-profit making organisation usually situated in a public institution, under the auspicious of a university, and which law students under the supervision of qualified lawyers, give free legal assistance to poor people. Law clinics operate under statutory guidelines from the Natal Law Society.

### **1.10.5 Law Society**

The statutory body in each province which controls the conduct of attorneys and the activities of law clinics are subject to provisions of the law society.

### **1.10.6 Management**

The chief characteristic of management is the integration and application of the knowledge and the analytical approaches developed by numerous disciplines. Management identifies a special group of people whose job it is to direct the effort and activities of other people towards common objectives. Management gets things done by other people (Massie 1987: 4).

Management as a concept involves inter alia, planning, organising, leading and controlling as key concepts for goal attainment.

### **1.10.7 Public Administration**

Since legal aid management can be regarded as a functional activity of public administration, it is necessary to define the context of public administration.

Public administration is defined as: that system of structures and processes. operating within a particular society as environment, with the objective of facilitating the formulation of appropriate legal and legitimate governmental policies, and the effective efficient and productive execution of the formulated policies (Schwella 1996: 5).

Public administration is an enabling process for the realisation of societal goals and objectives. Public administration is therefore a process carried out by public institutions for the general welfare of the community.

#### **1.10.8 Public Interest Law Firm**

A firm of lawyers specialising in taking cases which affect large numbers of people. These firms usually help disadvantaged people in society. The best known examples are the Legal Resources Centres and the Centre for Applied Legal Studies.

#### **1.10.9 Strategic Management**

Strategic management can be described as a plan of action to enable an organisation to move from where it is now to where it wants to be at a future date. Managers need to know about where they want the organisation to be in the future, and the route it is going to follow to get there. If managers do not have a strategic plan, then the old cliché can apply: According to Hannagan (1998: 120):

*“If you don't know where you going, how will you know when you have arrived?”.*

#### **1.10.10 Means Test**

An assessment carried out to determine a person's income, assets and liabilities, for the purpose of deciding whether he or she qualifies for legal aid or a social pension.

(A sample of a means test extracted from the Legal Aid Guide is attached to the research).

### **1.10.11 'Batho Pele'**

A Sesotho adage meaning 'People First'. The community are the first priority and their needs must be placed before the personal interests of the policy-makers.

### **1.10.12 Para-legal**

Any person who delivers legal services of any nature whatsoever, and who is not registered as a legal practitioner; or any person who delivers legal services to the public other than in the employment of the State, under the supervision of a legal practitioner.

## CHAPTER TWO: LEGAL AID MANAGEMENT: A CONCEPTUAL FRAMEWORK

### 2.1 INTRODUCTION

Legal aid management is a sub-field of public administration because it involves the theory and practice of the field of public administration in the basic delivery of legal aid services. The specialised areas of public administration reflect largely on the theory and practice of managing basic legal services to indigent persons. The efficient and effective delivery of legal aid depends on modelling techniques and intrinsic knowledge of public administration both as an activity and discipline.

Public administration involves the provision of public services for the improvement of the quality of life of communities. This is, in turn, directed through the three spheres of government. In terms of section 40 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), there exists three spheres of government, viz.:

- ❑ Central or national;
- ❑ Provincial or regional; and
- ❑ Local or municipal.

Each sphere of government is directly or indirectly involved in the provision of services, which are implemented through legislation, policies and procedures. The activities in its entirety are collectively known as public administration. Since the practice of public administration is constantly influencing people, the execution of policies for legal aid services must be planned, organised, directed and controlled by legal aid managers. Legal aid management is part of the broader context of public administration since it involves the execution of legal aid policies for the general welfare of disadvantaged communities.

Public managers of legal aid clinics are responsible for the direction, leadership, motivation, control, responsibility, and accountability of the basic operations and services rendered. It follows then, that, legal aid management is part of the greater field of activity known as public administration.

In recent years many theorists and practitioners have considered the changes in the organisation and the management of public services, and have sought to reflect those changes by using the term 'public management'. However, it can be noted that public management is part of public administration.

The following serve as important areas for consideration regarding the management of legal aid clinics:-

- ☞ What constitutes "good" management of legal aid clinics?
- ☞ How can "good" management be achieved by legal aid managers?
- ☞ How can the principles and practice of public administration contribute to effective legal aid management?

In attending to these questions, the aim is to heighten one's awareness of the subject, and the necessity for proper legal aid management within clinics. Legal aid managers ought to respond to changes as do public organisations if they are to survive and prosper. These changes may be caused by commercial or legislative processes and managers ought to adapt policies towards improving service delivery.

The constitution is an all-embracing piece of legislation from which the need for legal aid is legislated. The constitutional framework follows:

## 2.2 CONSTITUTIONAL FRAMEWORK

The concluding resolution of the 1993 Constitution bears relevance to create a legal framework for democracy and development as outlined in De Rebus (1997: 10) as follows:

*"(t)his Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex".*

Figure 2.1 presents a schematic representation of the 1996 Constitution.

FIGURE 2.1

CONSTITUTION OF THE  
REPUBLIC OF SOUTH  
AFRICA, ACT 108 OF  
1996



The Constitution is therefore, of paramount importance in realising the future of its citizens. The pillars of the bridge were democracy, human rights, peaceful coexistence and development opportunities for all. It flourishes where there is a vibrant society in which diverse views are aired and diverse interests are pursued.

In the preamble to the Constitution of the Republic of South Africa, Act 108 of 1996, the following are significant:

*“We, the people of South Africa ... adopt this Constitution ... so as to ... establish a society based on democratic values, social justice and fundamental human rights.”*

With these words the Constitution has given the vision of South Africa's new legal order more clarity and made an express commitment to values such as human dignity, equality, freedom, the rule of law, democracy, accountability, responsiveness and openness. The Constitution also adds clarity to substantive issues such as discrimination, reproductive freedom, environmental rights, etc. Section 35 of the 1996 Constitution creates a right to legal representation whenever substantial injustice would otherwise result. The new Constitution embraced the democratic ideals of the entire nation, and provided for the protection of individual human rights. It sought to establish a set of enduring values befitting a civilised society and outlined a social pact through which reconstruction and development could be genuinely promoted involving all sections of the community. The new Constitution has invigorated our entire body of legal science. Whereas previously under the apartheid regime our best public law writings were almost all in the nature of protest actions against an unjust and oppressive order, legal publications dealing with constitutional matters over the past few years abound with enthusiasm and exuberance.

This was against the backdrop of prevailing discussions in the South African legal community concerning the restructuring of the legal system. Restructuring to better serve the legal needs of the nation's poor, to ameliorate the crisis of legitimacy inherent in the legal system which had served to oppress, rather than to provide justice to the South African majority, and to transform the judiciary and legal profession so that it accurately reflected the country's richly diverse population (Gilbert 1993: 2).

More than four years after the historic democratic election of 27 April 1994 the concept of a rainbow nation is not without substance and remains a commanding and inspiring ideal. This idea by its very nature takes into account that the 1996 Constitution and its Bill of Rights must be applied and developed in an African political and social context in a country where the vast majority of the inhabitants of South Africa are African people with an indigenous culture that must inevitably influence the manner in which the Constitution finds expression.

Unless there is a meaningful delivery of social and-economic services, democracy and the philosophy and practice of human rights cannot survive in South Africa. The Reconstruction and Development Programme provided a vision and a plan for social and economic upliftment for the disadvantaged communities of this country. If South Africa does consolidate and maintain its democracy and create a human rights culture involving social and economic justice it will be commended to manage its goals despite the obstacles of a large multicultural heterogeneous population, a paucity of resources, great poverty and deep social divisions. Democracy and constitutionalism need to take its root in the native soil of South Africa. The fact that South Africa has an exemplary Constitution that expounds the great values of liberty and equality and reflects a commitment to social justice is no guarantee that constitutionalism will be sustained and triumph over threats to its integrity and viability.

As Robert Dahl observed in Devenish (1998: 348):

*“To assume that a country has remained democratic because of its Constitution seems ... an obvious reverse of the relation, it is much more plausible to suppose that the Constitution has remained so because the society is essentially democratic”.*

The courts of law have the responsibility of boldly, fearlessly and impartially interpreting and applying the Constitution and all other laws of the Republic. The function of the courts is to resolve conflicts in the community in accordance with the Constitution. The meaning of a provision of the Constitution is therefore not to be located in the intention of the drafters, which is a decoding of the written text. The interpretation is not concerned with the psychological intention, what is relevant is an 'institutional intention' since the legislature is a composite body and not an individual. Constitutional interpretation is involved with giving expression to the universal ethical and moral values that are encapsulated in the Bill of Rights.

The Constitution recognises and enshrines the right of accused persons to a fair trial, which includes the right to be provided with legal representation where substantial injustice would otherwise result. It is generally accepted that being sent to prison after a trial without the benefit of legal representation amounts per se to substantial injustice. According to the Department of Justice Report (1992: 5), hundreds of thousands of South Africans - some 648 000 in 1992 appeared for criminal charges in the lower courts without any representation. Not all of them face possible prison terms, it is true, but a sufficient number do to create the prospect of substantial injustice on a very wide scale.

Section 34 of the Constitution states that everyone has the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a court, or where appropriate an independent tribunal or forum. This is demonstrated even through legal aid clinics as avenues for indigent persons. There are establishments of international standards for human rights. Within the South African context, the final Constitution and Bill of Rights set an ethos for the advancement and protection of human rights. The provision of free legal assistance for indigent persons is advocated by Olivier (1991: 38) as:

*“... the demand for the protection of human rights is a demand for justice. The concepts of fairness and justice are part of man's deepest moral perceptions . . . A Charter of rights is simply the external manifestation of that universal demand for justice. It is the result of a strong and ineluctable demand for justice . . . “*

Following the words of the quotation, the new Constitution augmented by the decisions of the Constitutional Court has rejuvenated legal thought across the whole spectrum of legal teaching and research. The provision of legal aid on behalf of the state is firmly entrenched in the Constitution. The Constitution forms the basis and foundation of public administration and management. Therefore there exists a strong link between the basic provisions of the Constitution and legal aid.

The restructuring of the legal system and the forms of service delivery have their roots in the Constitution of the Republic of South Africa, Act 108 of 1996. Legal aid clinics are open doors to justice for the majority of South Africans who emerged from repression, domination and the denial of legal and human rights. There exists a great shortage of legal services for the growing poor and disadvantaged communities in South Africa. One of the elements of the government's

Reconstruction and Development Programme is to re-develop the social structure and in the process provide work, expand access to education and provision of legal aid for indigent persons. The provision of legal aid renders a significant contribution to the quality of life of communities. To this end, The Bill of Rights, Government's Reconstruction and Development Programme, the principles of Batho Pele, the Legal Aid Act of 1969 and the tenets of the 1996 Constitution contain a significant focus on community service. To emphasise this focus, it is necessary to comment on the following:

### 2.2.1 THE BILL OF RIGHTS

The final Constitution contains a bill of rights of every South African citizen. The Bill of Rights ensures the provision of legal services to all indigent persons, free from any form of discrimination. The Constitution also addresses the horizontal application of the Bill of Rights. (See Annexure 10).

Section 8 (4) of the Constitution states:

*"A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person."*

Section 8(1) of the Constitution ensures that the Bill of Rights will apply:

*"to all law and binds the legislature, the executive and the judiciary and all organs of state".*

The Constitution has become the lawyer's spectacles through which one views the entire body of law and examines any act performed within the legal system. The Constitution can be likened to tinted spectacles with lenses which darken when exposed to oppressive light. Many laws and acts, state or private, will appear the same when viewed through the Bill of Rights and its underlying values of human dignity, the achievement of equality and advancement of freedom. It may not change the moral views held by judicial officers and practitioners. It may not by itself create the society that people envision. However, until repealed, the Bill of Rights will stand as a perpetual filter between practitioners and the tools of their trade. In order to understand those tools better and to use them more successfully, practitioners will have to acknowledge and indeed try to understand the role of that filter and its prescription in every sphere of their profession (Henderson 1997: 348).

## 2.2.2 RECONSTRUCTION AND DEVELOPMENT PROGRAMME (RDP)

The Reconstruction and Development Programme (RDP) is a large-scale strategy of the Government of National Unity to address the problems facing the country. It is an integrated socio-economic policy framework that strives to mobilise citizens and the country's resources to build a democratic, non-racial and non-sexist future. The RDP outlined the government's vision for the future. One of the cornerstones of the government's policy of RDP was community-outreach. Legal aid is viewed as an excellent instrument in realising that principle of the government. The RDP requires communities to become involved through the formulation of development forums. These forums could serve as a means of facilitation and negotiation concerning identifiable needs of the community.

The involvement of indigent people at grass roots level is very important. Development in the community leads to community-building. As a result of the legacy of apartheid, poverty and degradation existed side by side with modern, technological and commercial infrastructure. South Africa faced economic, social, political, moral and cultural environmental issues. The RDP provides a framework for addressing these issues. It is an expression of the confidence placed in the wisdom, organisational abilities and determination of South Africa's people (Waldt & Du Toit 1997: 309).

Overarching all of the above is the dire problem of poverty and acute inequality that persists in South Africa. There exists a fundamental building block of the RDP philosophy, as echoed by (Burkey 1993: 48) as:

*“Development involves changes in the awareness, motivation and behaviour of individuals and in relations between individuals as well as between groups within a society”.*

The African National Congress also recognise the process as multi-dimensional and interrelated changes from within the society. The following words are significant regarding developing communities ANC (1994: 5):

*“Development is not about the delivery of goods to a passive citizenry. It is about active involvement and growing empowerment. In taking this approach, we are building on the many forums, peace structures and negotiations that our people are involved in throughout the land”.*

Legal aid clinics are a vital instrument in attaining the objectives of the Reconstruction and Development Programme. The provision of legal services to the indigent is viewed as that which is desirable to strengthen the Rule of Law. The stark fact is that the bulk of those who appear in South African courts are simply unable to afford the high cost of legal fees. Legal aid clinics are the 'engines' for 'driving' the provision of legal services for the indigent. These clinics are poised to provide much needed services within the consideration of racial, ethnic and social backgrounds of clients.

As Beinart states in (1962: 118) that:

*“... legal aid is a benefit conferred and not a right denied ...”.*

This benefit is achieved through public administration enabling the general welfare of society to be realised by implementing national policy. Society's problem of unlimited legal problems and representation is realised within the concept and rationale of the basic principles of public administration. Public institutions have a responsibility to the public they serve. They have to honour their respective responsibilities. Government institutions are responsible for the creation of an environment in which the public they serve can prosper and create their own wealth. Public institutions are largely dependent on a variety of resources to render their functions, viz. financial, human, natural, structural etc. Public institutions through their public managers must administer and manage all the resources efficiently and effectively. This administration and management requires synergy between structures and their interrelations, resources and sound management practices. Therefore public managers must possess the necessary knowledge, information and sensitivity to address critical issues and challenges pertaining to service delivery in our democratically transformed country (Du Toit & Cheminais. 1998. 1).

During the 1994 Parliamentary debate, it was stated that the budget for the Department of Justice was less than 1% of the total budget. The portion of the Justice budget applied to the Legal Aid Board was only a small portion. The changes of allocating new funds to expand activities was substantially small at that stage. Additional funds to provide proper representation and expansion of legal aid projects was much needed. Today this perspective is gaining momentum through the Department of Justice and the representation of the Legal Aid Board to redirect funds towards the

attaining of this goal. After transformation and democratisation of state structures, there has been overwhelming support for the creation and funding of legal aid both from the private sector and donor agencies for and behalf of the State. Many attorneys in private practice are being sought to enter into contractual agreements through organised bodies such as the Legal Aid Board and through university-based legal aid clinics via rules of the law societies of different provinces to provide legal assistance

The Batho Pele is a significant document in terms of government 's commitment to improving the status of communities and contributing to their quality of life.

### **2.2.3 BATHO PELE**

The term 'customer' is used in the context of improving service delivery because it embraces certain principles which are as fundamental to public service delivery as they are to the provision of services for commercial gain. Access to decent public services is no longer a privilege to be enjoyed by a few; it is now a rightful expectation of all citizens, especially those previously disadvantaged. This is linked to the guiding principle of public service transformation and reform - 'service to the people'.

**'Batho Pele'** implies People First. It is a relentless search for increased efficiency and the reduction of wastage within the Public Service. All citizens are to be treated with courtesy, respect and dignity. The aim is to progressively raise standards of service, especially for those whose access to public services have been limited in the past and whose needs are greatest (Skweyiya 1997: Govt Gazette). Batho Pele serves as framework that frees the energy and commitment of public officials to introduce more 'customer-focussed' ways of executing their functions and doing their work. The basic principle is optimum service delivery at optimum cost in order to realise its ultimate goal of creating a good quality of life for every citizen. This is aided by the creation of a framework for the delivery of public services that treats citizens more like customers and enables citizens to hold the responsible public officials accountable for the delivery and the equity of public services (Gildenhuys & Knipe 2000: 135).

The framework consists of eight service delivery principles. A brief discussion of these principles follow:

### **2.2.3.1 'CUSTOMER' PRIORITY**

It is recognised that meeting customer needs is the foundation of legal aid clinics. This is depicted by Robert in (Management Today 1994: 25) as:

*“The virtual corporation seeks to meet customer needs in the shortest possible time by continual adaptation”.*

This is ensuring that there is customer-focussed service delivery, adapting and making sure that the promised level and quality of service is always of the highest standard.

This view is advocated by the President of Hewlett-Packard (1985: 5) as:

*“In today's competitive environment, ignoring the quality issue is tantamount to corporate suicide”  
“... continually meeting agreed customer needs' or 'what it takes to satisfy the customer”.*

Legal aid clinics need to understand their customers in order to meet those customer needs efficiently and effectively. Managers are charged with the responsibility for establishing the boundaries and the culture in which the community can work successfully and creatively.

Heller (1994: 34) submits that:

*“If words were deeds, the remaining 1990's would be the Years of the Customer, and 2000 would usher in a whole century of customer worship. But management science is the study of the gap”.*

This emphasises that public servants and officials should always understand that they are there to serve the general welfare of communities - who are entitled to receive the highest standards of service.

### **2.2.3.2 TRANSFORMING SERVICE DELIVERY**

The White Paper on the Transformation of the Public Service published on 24 November 1995 sets out eight transformation priorities, amongst which Transforming Service Delivery was the key. The intention was to provide a policy framework and a practical implementation strategy for the transformation of public service delivery. Therefore the *Batho Pele* approach was used.

The Government's macro-economic strategy called Growth, Employment and Redistribution (GEAR) calls, amongst other things, for the reduction of unnecessarily government consumption and the release of resources for productive investment and their redirection to areas of greatest need. This means that government institutions must be reoriented to optimise access to their services to all citizens, within the context of fiscal constraints and the fulfilment of competing needs. The improved delivery of legal services is viewed within the context of Chapter 10 of the 1996 Constitution embracing the principles of public administration, the Bill of Rights and the framework of the White Paper on Transforming Public Service Delivery. These strategies will need to promote continuous improvement in the quantity, quality and equity of service provision. The White Paper sets out a practical agenda for transforming the services. The policy framework and practical implementation strategy for the transformation of service delivery serves as important indicators and a basic guideline for the legal profession to make the law more accessible to the poor. The principles of Chapter 11 of the White Paper on Transforming Public Service Delivery are significant and has useful relevance for legal aid. There is a close correlation between the principles and the vision and mission of the State in the provision of legal assistance.

### **2.2.3.3 PRINCIPLES OF SERVICE DELIVERY**

Improving the delivery of legal services means redressing the imbalances of the past, including the objectives of welfare, equity, efficiency and effectiveness. The core areas include, *inter alia*, identifying the 'customer', establishing needs and priorities, establishing current service baselines, improving the gap, setting service standards, gearing up for delivery, announcing service standards and monitoring those services. Batho Pele is the adage that is synonymous with the main goal of legal aid, "service to customers"..

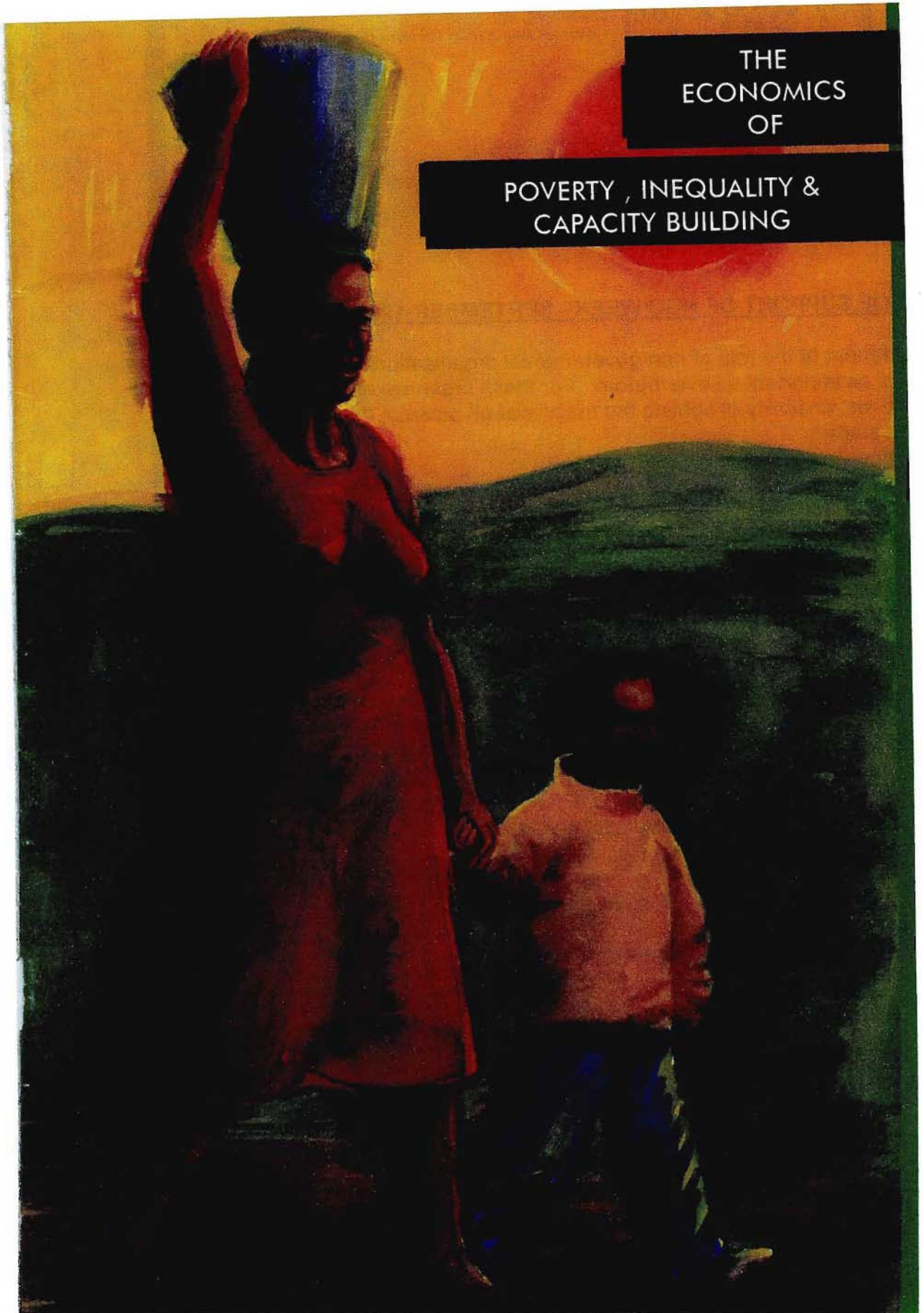
**Figure 2.2** illustrates the economics of poverty and inequality, and building capacity at community level.

The Batho Pele principles are symbolic for the provision and maintenance of legal aid.

The following principles are significantly noted: consultation, service standards, access, courtesy, information, openness and transparency, redress and value for money.

There is an inter-relationship between the Batho Pele, Constitution of the Republic of South Africa of 1996, the Bill of Rights and the Legal Aid Act concerning public service delivery.

Figure 2.2



### **2.3 RELATIONSHIP BETWEEN BATHO PELE, CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 108 OF 1996, BILL OF RIGHTS AND THE LEGAL AID ACT, 22 OF 1969**

There exists a close relationship between the Batho Pele principles, the tenets and legal requirements of the constitution, the legal rights of persons as contained in the Bill of Rights and the mandate of legal aid clinics in terms of the Legal Aid Act. The core objective is community service as a basic human right.

Legal aid clinics are independent, non-profit making public interest law firms. Their primary objective is to provide comprehensive legal services to indigent members of the community who would otherwise be unable to enforce their legal rights. All activities within the clinic must be directed primarily at achieving its goal ie. delivery of legal services. The provision of legal services and the advancement of learning the practical aspects of law are the cornerstones of its policy. Policy is determined by statutory guidelines as contained in the Attorneys' Act of 1979 and the Legal Aid Act 22 of 1969. The vision and mission of university-based legal aid clinics is incorporated into the overall mission statement of the institution, ie. community outreach, development and promotion of disadvantaged communities.

The judicial functions are allocated to courts of law staffed by persons qualified in law and appointed by the governmental institutions and functionaries. To satisfy the requirements of the tenets of democracy, the law-courts are usually empowered to perform judicial functions of law interpretation and enforcement free from interference by the government and administrative executive institutions. The judiciary plays a significant role in bringing about accountable functioning by public institutions and public administration (Cloete 1996: 128-131).

Legal aid clinics are obliged by law to provide legal aid within the parameters of the Legal Aid Board and the Natal Law Society, thus realising the overall objectives of the state. The 1996 Constitution makes provision for all basic human rights to be sustained and exercised in accordance with the conditions as laid down in the Constitution. Legal aid clinics must respect the rights, culture and dignity of all people within the framework of the Bill of Rights, as enshrined in the Constitution, and enhancing race and gender equity (adhering to the spirit of 'Ubuntu').

The State plays an integral role in the mandate within which legal aid clinics operate. Therefore, it is necessary to highlight the role of the State.

### 2.3.1 THE ROLE OF THE STATE

The State's role in rendering legal aid may be justified on the grounds that legal aid is a form of social welfare. Therefore, just as the State provides other forms of welfare to individuals who are unable to provide and cater for themselves, so it should participate in the provision of legal aid. The state's involvement in the provision of legal aid is based on the submission that legal aid forms an integral part of the administration of justice. This indicates a number of avenues in which legal assistance can be made available to the 'man in the street'. The provision of legal aid may be viewed as falling within the scope of the State's duty of securing internal justice for its citizens. All agree that the provision of legal aid is the duty of the State. The State's role is simply the elimination of equality before the law, and the guaranteeing of all persons, irrespective of affluence, could obtain legal services. One must provide a scheme which satisfies the need for legal assistance and at the same time is self-funding but which while providing general legal assistance discourages abuse.

The State has a difficult role to play in the provision of legal aid. Should legal aid be viewed as the administration of justice, then the delivery of such a service must be viewed as an entitlement rather than favour. This lends itself to the service as a public service function on behalf of the State. The aim and focus will thus be one of satisfaction of a basic need as opposed to generosity of some kind.

The following quotation reinforces the above by Smith in Gross (1976: 48):

*“ ... the administration of justice might be likened to an automobile, in which the law represents the engine, the judge the control, and the attorney the gasoline. To give to two men exactly the same type of car and supply one with gasoline and the other with none and then to expect a fair race is obviously preposterous”.*

The historical perspective of legal aid is borne out of the necessity for representation, and one of the primary roles of the State in providing access to and administration of justice. A number of private and partially-funded organisations have provided legal aid over the years. The first legal aid bureau was established in 1937 called The Johannesburg Legal Aid Bureau. An attempt to set up a national legal aid scheme in 1962 under the auspicious of the Department of Justice failed. Finally in 1971 the provisions of the Legal Aid Act (Act 22 of 1969) was implemented. A recent development has been the introduction of the institution of legal aid clinics at most universities, and the establishment of legal resources centres in Johannesburg and Durban (McQuoid-Mason 1982: 3-5).

Today legal aid clinics have become part of the State structures to provide for the general welfare of communities. Most universities, both locally, nationally and internationally have legal clinics set up and attached to the institutions, popularly known as “campus law clinics”. These clinics contribute to the vision and mission of institutions of higher learning, contributing to the ethos of community outreach and service delivery.

The Legal Aid Board whose head office is in Pretoria, has also been instrumental in creating the conditions for legal aid clinics. These clinics are funded by the State via the Legal Aid Board as its statutory board through the Legal Aid Act, 22 of 1969 and operate under the auspices of the Board itself.

Furthermore, Hutchinson, Deputy Director of the Legal Aid Board (1995: 10-16) outlined the need for further investigation and discussion on the scope for legal aid outside the ‘legal’ fields which could be done by ‘para-legals are persons outside the legal profession ie. not traditional legal practitioners, but renders assistance to persons requiring advice of legal issues.

It is believed that there are some 1 200 para-legal organisations in South Africa and they form loose organisations and operate on a number of different levels of competence for legal representation. The University of Natal (Durban) and the University of Rhodes both operate a certification course for community-based legal advisors and this is a useful step in the direction of

establishing a standard in which para-legals can inspire and against which the users of their services can be assured. The employment of the services of para-legals through organisations such as the Legal Aid Board, to act on an agency basis for the fulfilment of duties on behalf of the Board in rendering legal advice services under the constitution was applauded. The Legal Aid Board. It has become the vehicle for channelling funds to them on a structured, contractual and organised basis. The provision of legal aid is financed primarily from subsidised funds from the state and donor agencies. As the demands increase dramatically, the concerns for ever-increasing funds to continue this service is threatened (Hutchinson 1995: 10-11).

According to Cloete (1994: 159), in addition to the Constitution, there ought to be further legislation on financial affairs to direct the financial activities of the executive institutions. Only if resources are not wasted, will there be efficiency in rendering goods and providing services to the community and fulfilment of the expectations of the legislators. In developing countries such as South Africa, claims on resources are much less elastic than in developed countries. Available resources are usually insufficient in relation to the demands placed on them. The state acquires sources of income which it uses to fulfil its social obligations towards the communities (Erasmus & Visser 1997: 49).

It is customary that the provision of legal aid services be prescribed in procedures and guidelines to be followed by public officials. The provisions are provided for and contained in the legislative requirements as set out by the Department of Justice and other jurisdictional bodies (Legal Aid Board, Law Societies) concentrated on service delivery. According to Cloete (1997: 1), the objectives of transformation of the government will be attained only if tried and tested principles and practices are adopted and applied meticulously. Existing institutions and their work methods should not be abolished merely because they were previously misused for the attainment of disdainful objectives. Every institution and practice should be challenged and changed or rejected as required.

Clearly the State will not be in a position to provide funds for the full extent of legal services as will be demanded by the community. It will therefore be necessary to seek other sources of funding. Parliament must ensure that adequate funds are dispersed to legal aid clinics via universities and other avenues to allow the continued and sustained delivery of efficient and effective legal representation of rural and poorly disadvantaged sectors of the population.

In spite of a legislative framework, the provision of legal aid has become one of more independence from the State and greater control by the profession. The legal profession is playing a more active role in legal aid, thus realising the educational value of legal aid clinics towards the predetermined objectives of the State. In the final analysis, if legal aid clinics intend broadening their access to advance and improve the lives of disadvantaged communities thus combatting poverty and inequality, successful legal aid programmes in South Africa can be achieved if the activities of the state, Legal Aid Board, universities, the legal profession, the law societies and other legal aid agencies co-ordinate their activities within a legislative framework.

The White Paper on Transformation of the Public Service, published on 24 November 1995 explores the importance of public service delivery which sets eight transformation priorities, amongst which transforming service delivery is the key priority. The notion is that of improved service delivery as the ultimate goal of the public service transformation programme.

The expectation that the delivery of basic legal services to indigent persons be conducted in an ethical manner should be seen against the background of the nature of the activities of legal aid clinics as public institutions. The need for legal protection and access to justice are amongst other things, the basic rights of communities. Poor and disadvantaged communities are obliged to turn to the state and public institutions for provision of basic legal services. They are therefore dependent on public institutions for provision of certain essential requirements. However, these people are not only dependent on the State, but also individuals, statutory bodies, principles based on the bill of rights, the provisions of the Constitution, the Rule of Law and public administration.

Communities are dependent on the State for the following:-

- (i) to develop an awareness of the ethical issues and problems when providing legal services;
- (ii) to build analytical skills in ethical decision-making;
- (iii) to cultivate an attitude of moral obligation and personal responsibility to community outreach; and
- (iv) to help managers understand the discretionary power of their role, which is another dimension of developing moral judgment.

Public interest is considered the most important ethical standard. Public interest values should constitute as one of the core areas of focus when dealing with rendering of legal aid services.

The National Association of Schools of Public Affairs and Administration have emphasised the importance of incorporating ethics into public service delivery and education through the following by NASPAA 1974 in the Public Administration Review (1988: 890):

*“Found under this clarification are the values to which a public manager should be committed in conducting the public's business, . . . (to) distinguish the field of public administration. They include a pervasive understanding of democratic institutions and practices of the ways whereby the public interest is effectively and efficiently served. Equally important, public interest values involve the ethics so essential to the quality and integrity of public service”.*

The locus of rights and justice through the State is emphasised by Strong (1970: 17) as:

*“The state exists, said Aristotle, not merely to make life possible, but to make life good”.*

The State has an obligation towards its citizens to enable them to measure up to the demands it makes of them, from time to time. A viable and comprehensive public service requires the commitment of resources. One could ask the question as to why the State should be prepared to play a role in the provision of legal aid: service delivery by the State through public administration is both a consequence and part of the rights of persons. The theory of rights is a cornerstone of social contract theory, the latter being a theory about the origin of the State. It is the State through public administration, which renders services to its citizens (Freysen in Wessels & Pauw 1998: 3).

The real core of public administration is the basic services which is performed for the public, such as police services, the protection of property, administration of justice (Nigro in Hanekom 1987: 11). Services are due to the citizens by virtue of the rights they hold. The functions of the State and the rights of its citizens cannot be separated. Service delivery is not only a consequence of the rights of persons, it is simultaneously part of the rights of persons. The provision of legal aid is a basic human right as encapsulated in the final Constitution of 1996. Section 36 provides that the fundamental rights in the Bill of Rights may only be limited by a law of general application to the extent that such limitation is reasonable, and justifiable in an open and democratic society based on human dignity, equality and freedom (Government Gazette No 17678 1996). The Bill of Rights espouses the rights of communities to enjoy safe and secure environments, including the protection of their basic individual rights. Governmental institutions are continuously called upon to render with even greater intensity a large number of public services (Cloete 1978: ii).

It is necessary to outline the legal framework upon which clinics operate.

## 2.4 LEGISLATIVE FRAMEWORK

Legal aid clinics are two fold:

- (i) university-based legal aid clinics, otherwise known as campus law clinics; and
- (ii) Legal Aid Board funded clinics.

The former is bound by the Law Society in its area of jurisdiction, as a statutory body which controls the conduct of attorneys. Rulings from the Law Society governing law clinics is attached to this study - **see Annexure 9**).

The latter is bound by the statutory body known as the Legal Aid Board, based in Pretoria, which is the central controlling body for legal aid clinics. The Legal Aid Guide serves as a policy document for legal aid clinics and is attached as **Annexure 8**).

## 2.4.1 LEGISLATION PERTAINING TO LAW CLINICS

University based law clinics are bound by Ruling 9 and Sections 57, 58 and 59 of Act 53 of 1979.

In terms of Ruling 9(1) Law Clinics are:

*“Subject to and conditional upon adherence by a Law Clinic, as defined in the Act and approved by the Council for the purpose of the Act, and its employees to the guidelines set out below, the following Rules and Rulings of the Society are suspended and modified in respect of members of the Society acting in the course and scope of their employment with such Law Clinic”*

(A full description of Ruling 9 pertaining to law clinics is attached as **Annexure 1**.)

The following rules apply with regard to managing university clinics:

In terms of Ruling 20 and 21, attorneys are required to keep proper accounting records of all matters dealt with by law clinics.

Ruling 5(1) deals with the question of ethical concerns.

In terms of Ruling 7(6) there must be adequate supervision of staff.

The terms of these rulings are embraced in the normative principles of public administration as stipulated in Chapter 10 of the final Constitution, 1996.

The Natal Law Society plays a prominent role regarding the focus of university-based clinics. It is therefore necessary to highlight the objectives of the Society in this regard.

The objects of the society are:-

- (i) to maintain and enhance the prestige, status and dignity of the profession;
- (ii) to regulate the exercise of the profession;
- (iii) to encourage and promote efficiency in and responsibility in relation to the profession;
- (iv) to deal with all matters relating to the interests of the profession and to protect those interests;
- (v) to uphold the integrity of practitioners;

- (vi) to uphold the improve the standards of professional conduct and qualifications of practitioners;
- (vii) to provide for the effective control of the professional conduct of practitioners;
- (viii) to promote uniform practice and discipline among practitioners;
- (ix) to encourage the study of the law;
- (x) to initiate and promote reforms and improvements in any branch of the law, the administration of justice, the practice of the law and to draft legislation;
- (xi) to represent generally the views of the profession;
- (xii) in the interests of the profession in the Republic, to co-operate with such other societies or bodies of persons as it may deem fit.

In terms of the above rules, university-based law clinics are bound by statutes in their areas of jurisdiction. They operate within the confines of the regulations of the law societies and their respective public institutions.

#### **2.4.2 LEGISLATION PERTAINING TO LEGAL AID BOARD CLINICS**

Legal aid clinics that are governed by the Legal aid Board are bound by the Legal Aid Act, 22 of 1969. Section 3 of the Legal Aid Act serves to highlight the provision of legal aid to poor and disadvantaged people. It is as important a part of the creation of an equitable and decent society, as is the provision of education and medical services to those in need. It is essential to the establishment and maintenance of a constitutional state.

The recognition and necessity for legal aid in South Africa has let to a dramatic increase in government's funding of the Legal Aid Board in recent years. The Department of Justice's request to the Legal Aid Board to give effect to the state's responsibilities in terms of Section 35 of the final Constitution and Section 25 of the interim Constitution.

The Act aptly prescribes the following:

*“To provide for legal aid for indigent persons and for that purpose to establish a Legal Aid Board and so define its functions, and to provide for other incidental matters”.*

The significant extract from the Constitution, as referred to, forms the basis on which legal aid in South Africa is legislated. The objective of the Board is to render or make available legal aid to indigent persons as widely as possible within its financial means. It is therefore necessary to expound on the objectives and powers of the Legal Aid Board. The following serve as objectives of the Legal Aid Board:-

- (i) The Legal Aid Board is an autonomous statutory body established by the Legal Aid Act, 1969.
- (ii) The Legal Aid Board's mission statement is to render legal aid to as many indigent persons as possible.
- (iii) Every person is entitled to equality before the law. The Legal Aid Board therefore endeavours within its means, to balance the scales of procedural inequality in an independent and impartial manner.
- (iv) Owing to the financial implications, the Legal Aid Board is compelled to restrict the aid it provides and in certain instances must decline to offer assistance. Other than these exclusions and provided funds are available, the Legal Aid Board will fund legal assistance to all persons complying with the means test in all criminal, civil and labour matters provided that, in the opinion of the Director, the applicant's cause has a reasonable prospect of success.

The provision of legal aid to indigent persons should be viewed as a form of empowerment. When one examines empowerment in the Third World, it can be concluded that powerlessness is identified as a crucial factor. Poor people lack the power to influence decisions in their favour. The benefits of development and empowerment should be seen as a political process of democratising decision-making in society. Empowerment goes beyond politics. It includes capacity building and equity. The acquisition of skills and knowledge is a form of empowerment, so is access to resources and opportunities to the underprivileged (Monaheng 1998: 36).

The Association of Law Societies plays a pivotal role as a collaborative body for legal aid. This is highlighted as follows:

### 2.4.3 ROLE OF THE ASSOCIATION OF LAW SOCIETIES

The Association of Law Societies is the umbrella body and mouthpiece of the legal profession. It represents the provincial societies, as well as the old tradition of law forums, which is deeply rooted in our legal heritage. It emphasises the steadfastness of justice. The Association aims to promote on a broad national basis, the common interests of members of the profession and the welfare of the profession, having regard at all times to the broader interests of the public which the profession serves. The Association also endeavours to reconcile where they may conflict, the interests of the profession and the public.

The functions and aims are:

- to promote the interests of the profession,
- to act as spokesman to its negotiations with other bodies; and
- to promote legal training.

The Association is an umbrella body and mouthpiece of the attorneys profession. It represents more than 13 500 practising attorneys, non-practising attorneys and candidate attorneys in South Africa. The ALS was established in 1948 by the four provincial law societies to, *inter alia*, promote the common interests of attorneys.

Schools for legal practice offering practical legal training courses for prospective attorneys are offered throughout the four provinces. Course development and study material includes, *inter alia*, courses in office and record management, line and staff function skills, practice management and administration, human rights practice and professionalism. The contents of these courses emphasises the importance of planning, decision-making, allocating resources, motivating, coordinating and controlling every facet of a legal aid office (Association of Law Societies Annual Report 1995).

A survey relating to legal representation was conducted during 1990-1993, and significant information relating to the dire shortage of legal aid services was highlighted from the findings. **Table 1.1** represents an analysis of legal representation undertaken by the Legal Aid Board during the period 1990 - 1993.

The analysis was conducted and compiled to determine the percentage of persons unrepresented in the:

- ✎ District Court
- ✎ Regional Court
- ✎ Combined

The study revealed that:

- ❖ an average of 90% was unrepresented in the District Court;
- ❖ an average of 60% was unrepresented in the Regional Court;
- ❖ and a combined average of 16.5% was unrepresented with jail sentence.
- ❖ The significant conclusion was that an average number of persons granted legal aid for the period 1990 to 1993 increased from 23,71% to 52,76% respectively.

The cost implications of legal representation is significantly high, as is evident from the survey undertaken.

Table 1.1

### Analysis of Legal Representation 1990-1993

	1990	1991	1992	1993
<b>DISTRICT COURT</b>				
Trial Accused	5 31,259	7 06,753	7 03,455	6 71,995
Represented	52,434	68,222	72,289	76,953
<b>Unrepresented</b>	<b>4 78,825</b>	<b>6 38,531</b>	<b>6 31,166</b>	<b>5 95,042</b>
% represented	9,87	9,65	10,28	11,45
<b>% Unrepresented</b>	<b>90,13</b>	<b>90,35</b>	<b>89,72</b>	<b>88,55</b>
<b>REGIONAL COURT</b>				
Trial Accused	56,073	69,329	85,294	82,408
Represented	17,656	24,219	32,214	33,243
<b>Unrepresented</b>	<b>38,417</b>	<b>45,11</b>	<b>53,08</b>	<b>49,165</b>
<b>% Unrepresented</b>	<b>68,51</b>	<b>65,07</b>	<b>62,23</b>	<b>59,66</b>
<b>COMBINED</b>				
Trial Accused	587,332	776,082	788,749	754,403
Represented	70,09	92,441	104,503	110,196
<b>Unrepresented</b>	<b>517,242</b>	<b>683,641</b>	<b>684,246</b>	<b>644,207</b>
Legal Aid Board Representation	24,57	37,91	41,37	52,78
<b>Unrepresented with jail sentence</b>	<b>not available</b>	<b>121,004</b>	<b>113,548</b>	<b>not available</b>
%		17,7	16,59	
<b>LEGAL AID GRANTED</b>				
In both divisions	16,615	35,042	43,228	58,157
%	23,71	37,91	41,37	52,76

However, **Table 1.2** reveals that the longer a person is detained in prison, the larger the cost of legal services. However, legal representation will speed up release, but also reduce the cost implications for keeping prisoners. **Table 1.2** highlights significant savings and manpower reduction with legal representation as apposed to persons awaiting trial.

The study highlights the growing need for representation of indigent persons and the necessity for continued legal assistance on behalf of the state, other organised structures and donor agencies.

**Table 1.2 follows.**

Figure 1.2

## Cost Implications on Legal Representation

Assumptions:

- |   |         |
|---|---------|
| 1. Daily prison population after conviction - average | 90,000  |
| 2. Daily awaiting trial population - average          | 25,000  |
|   | 115,000 |
3. The cost of keeping one prisoner per year is R16,000

Total Daily Prisoner Population	115000	115000	115000	115000	115000
Savings with representation	10% reduction	20% reduction	30% reduction	40% reduction	80% reduction
Savings in persons	11500	23000	34500	46000	92000
Detention costs @ R16000 pa	R184,000,000	R368,000,000	R552,00,000	R736,000,000	R1,4472,000,000
Cost implication of representation assuming average sentence is 1 imprisonment					
Judicare representation @ R750/case	R8,625,000	R17,250,000	R25,875,000	R34,500,000	R69,000,000
P.D representation @ 60% of judicare	R5,175,000	R10,350,000	R15,525,000	R20,700,000	R41,400,000
Community service at PD @ R175/case	R2,012,500	R4,025,000	R6,037,000	R8,050,000	R16,100,000
Average cost @ R459/case	R2,875,000	R5,750,000	R8,625,000	R11,500,000	R23,000,000
SAVINGS @average	R181,125,000	R362,250,000	R543,375,000	R724,500,000	R1,449,000,000
Cost implication of representation assuming average sentence is 4 months imprisonment					
Average cost @ R459/case	R8,625,000	R17,250,000	R25,875,000	R34,500,000	R69,000,000
SAVINGS @ average cost	R172,500,000	R345,000,000	R517,500,000	R690,000,000	R1,380,000,000
MANPOWER REQUIREMENTS	40% reduction	60% reduction	80% reduction	90% reduction	100% reduction
TRAIL MATTERS					
Calculated @ cases/lawyer/year & a total of 644,207 persons charged in trail matters	1288	1933	2577	2899	3221
CONSULTATION MATTERS: COST	R20/consultation	R30/consultation	R50/consultation	R70/consultation	R90/consultation
Calculated @ 1,500,000 persons arrested per year (no provision for administration costs)	R30,000,00	R45,000,000	R75,000,000	R105,000,000	R135,000,000

## 2.5 FROM PUBLIC ADMINISTRATION TO LEGAL AID MANAGEMENT

The management of legal aid is no easy task. It involves a multi-disciplinary approach of public administration and management. The functional field of legal aid management includes *inter alia*, the following:

- managing the provision of legal aid within statutory guidelines;
- maintenance of financial information management systems and budgets;
- managing ethical and professional discipline, including handling of public complaints;
- building, managing and updating an information base which relies on modern technology;
- provision and maintenance of internships for exchange of skills-based training;
- regulating and controlling the conduct of public personnel management;
- the need for creative problem-solving;
- utilising public management functions, applying the necessary skills and technology to operate efficient legal aid services.

The list is by no means exhaustive, as it is becoming increasingly important for public managers to be exposed to public management as a discipline to enable them to provide knowledgeable, skilled significant contributions to the communities they serve. It must be emphasised that legal aid managers are facing tremendous pressure from the community to provide citizen-oriented services. The management techniques, values and practice of legal aid is intrinsically dependent on the notions of public administration. Public administration lays the foundation for productivity and serves as a “catalyst” for service design and delivery, organisational structures, management issues of strategy, managing performance and other valuable output strategies sought after for legal aid.

The administration and management of legal aid is largely dependent on a variety of resources to function effectively and efficiently, viz. human, financial, technical and legal resources. It is imperative that these resources are administered and managed wisely, and organised in such a manner that they will ensure the greatest possible success to satisfy communities’ needs. The provision of legal aid is regulated by promulgation of legislation, however it is the process of public administration and management that enables the management corps in a legal aid clinic to manage

the way in which the exploitation and utilisation of resources are executed. The administration and management of functions in legal aid clinics are important not only for the utilisation of resources, but also for the achievement of its stated objectives. Legal aid clinics include the performance of legal managers on live cases or problems, the mastery of legal skills, the implementation of professional responsibility, and the application of substantive and procedural law, amongst others.

These are achieved through:

- representing or assisting clients in judicial, administrative, executive or legislative proceedings;
- undertaking factual investigations, empirical research, policy analysis and legal analysis on behalf of clients;
- the provision and maintenance of a diary system to control the volume of clients consulted and to heed to the dates of court appearances and prescriptions.

The provision of legal aid is dependent upon the enabling functions such policies set out by the Legal Aid Board and the Natal Law Society respectively, personnel, funds, technology and measures through the actions of legal aid managers as controlled and monitored. The maintenance of legal aid is by means of suitable public management practices, which is highlighted in this chapter. Public managers have a moral, political, legal and administrative responsibility and are publicly accountable for their actions. The emphasis therefore, in this chapter, is on results, ie. the outcomes of effective legal aid rather than on processes, and the outcomes should be measured in human terms through the dictum of public administration.

Legal aid management is one of the specialised sub-fields of public administration. The provision of services for the general welfare of the community, the efficient and effective use of scarce resources, the necessity for adherence to professional ethics and respect for Rule of Law and dignity for all, are fundamentally emphasised within the framework of public administration. Insight into the executive, administrative and managerial aspects of legal aid contribute to the professional practice of community outreach in South Africa. South African public administration has undergone many changes recently, *inter alia*, focussing on management of information,

technology, managing cultural diversity and policy evaluation. The legal profession has experienced similar transformation, whereby, more support is given for the creation and support of these clinics. The provision of free legal assistance to indigent persons by the state contributes to the overall definition of public administration.

Legal aid clinics face tremendous pressure, in a rapidly transformed society, to increase the level of service provided to disadvantaged communities. Transformation of these services is guided by the availability of financial, human, technological and structural resources within the dominant notion of public administration. Legal aid management ought to emphasise public management as a technique for addressing service delivery, efficiency, effectiveness, accountability and constitutional obligation to society. What is proposed is not the traditional generic administrative process approach to an open system, but rather, a development-oriented approach which could among other substantial benefits, also facilitate citizen participation, thus providing service with excellence. The fundamental issues regarding the state are viewed from a public administration context relating to social contract, justice and service rendering. Legal aid managers need to be equipped with the intellectual insights and skills of public administration, so as to meet the challenges of the rapidly changing society one lives in.

This chapter further examines the locus of legal aid management within public administration. It examines the underlying principles that public legal services places a heavy burden on managers to operate their clinics within a framework, thus taking cognisance of the dynamic environment, using work methods and processes and functions within public scrutiny and accountability. A fundamental awareness of values and beliefs within the Rule of Law is espoused. The core activities, principles and values of public administration serve as a means to achieving the end result of effective legal aid management. The chapter examines the public administration and management model and conceptualises the management approach to effective legal aid management.

The focus is on the public management model emphasising the environment in which public management functions, the public management skills necessary for effective goal attainment, applications to assist public managers in the execution of functions and skills and use of supportive technology and techniques. For the purpose of this study, the principles of management are confined to legal aid clinics within a public administrative dimension. The development of skills

and knowledge for legal aid managers striving to deliver quality services for indigent communities is no easy task. Legal managers must be sensitive to the poor, recognising the need for services to be delivered efficiently and effectively, and be responsive to the needs of the poor. Improving the performance of managers is one way of achieving this goal. **A common failure in management is to offer prescription before description.** In describing the present situation, one is able to distinguish the issues for review. Managing is of a holistic nature and managing is not the exercise of discrete incompetence, rather it is never static and new competencies may be required. Of necessity is a combination of professional legal expertise and managerial competence. The concern to become better managers pervades all levels and all parts of the public service. The necessity for generic management skills by legal aid managers is of paramount importance and cannot be overemphasised.

The concept of the nature and functions of legal aid clinics contributes to a significant discussion that follows.

### 2.5.1 CONCEPT OF PUBLIC ADMINISTRATION

There are a plethora of definitions of Public Administration.

Van der Waldt and Du Toit (1997: 13) write that:

*“... public administration is concerned with handling public matters and the management of public institutions in such a way that resources are used efficiently to promote the general welfare of the public.”*

Hanekom & Thornhill (1985: 76) define public administration as:

*“a comprehensive and peculiar field of activity comprising of numerous functions performed by public officials in public institutions and is directed at achieving the national goal of community welfare by producing the necessary goods and services.”*

Both definitions stress the importance of achieving community welfare. It can be deduced that public administration involves a holistic approach to the delivery of goods and services for the benefit of the community it serves (Pillay 2000: 32). Public administration serves as an “enabling or facilitating” for government to carry out its activities.

## **2.5.2 DISTINCTIVENESS OF PUBLIC ADMINISTRATION**

Public administration is a distinct field of activity and the functions performed to create and manage public institutions became known as public administration (Cloete 1994: 61). Public administration displays very distinct activities related to the nature and extent of services provided, as opposed to private and inter-sectoral management..

This distinctiveness can be further illustrated by the following definitions:

## **2.5.3 PUBLIC MANAGEMENT**

The field of public management is defined by Fox, Schwella & Wissink (1991: 2) as:

*"that system of structures and processes, operating within a particular society as environment, with the objective of facilitating the formulation of appropriate governmental policy, and the efficient execution of the formulated policy".*

According to Fox, Schwella & Wissink (1991:2), the activity of public administration in government institutions is much wider in scope and nature than management in government institutions. Management is merely a facet of public administration in government institutions. One can therefore say that management in government institutions cannot take place if the outputs (results) of public administration do not enable those in managerial positions to manage.

According to Du Toit & Van Der Waldt (1997: 45-46), once the process of public administration enables public managers to manage, the managers can determine the managerial functions such as formulating internal policies, organising their staff and functions internally, motivating their staff, training and developing their staff. Therefore management should be seen as a continuation of public administration so that specific products and services can be provided to society, for example. the provision of legal aid.

It is also stated in Hansard 1983: cols. 5496 that:

*“Effective government is impossible without an effective public administration. Without an efficient and effective public administration, the government will not be able to put its policies into effect and hence the interests of the people will not be properly served. Public officials can, in fact, make an indispensable contribution to the prosperity of the country, promoting the well-being of its inhabitants”.*

These words emphasise the necessity for the theory, context and practice of public administration in the delivery of legal services. Legal aid, in addition to other public services rendered by the State, for example: pension, defence, policing and education, can be referred to as functional activities of public administration.

#### **2.5.4 LEGAL AID MANAGEMENT**

The term “legal aid management” includes all the generic aspects and management functions of public administration, and can be regarded as one of the specialised activities of the discipline. Legal aid management is therefore part of a broader field of activity of public administration. It is necessary for the general welfare (socially and legally), contributing to an acceptable quality of life of all communities. The management of legal aid clinics, like public administration, is also a comprehensive field of activity. It involves the generic, auxiliary and functional activities, and the skills and technology necessary for legal aid. Legal aid management is mainly concerned with the provision of free legal services for the poor underprivileged and unemployed communities.

The nature and extent of services is governed by legislation enacted through Parliament. It is thus necessary to outline the South African legal system. The legal system is the result of the composition of all kinds of laws and legal aspects that have developed over the years. The democratic principle of the rule of law is strongly evident in our legal system. The main goal of the judicial authority is to guarantee the rights and freedoms of the individual and to preserve the sovereignty of the law. The tasks of the courts of law is to interpret and apply the law. The judicial authority is independent, impartial and subject only to the Constitution and the law. No person and no organ of state may interfere with judicial officers in the performance of their functions (Van Der Waldt & Du Toit 1997: 147). As a result of the political environment, the South African hierarchical structure comprising the three spheres of government exists. The Constitution plays a pivotal role in laying the foundation for the creation and provision of legal aid. To place the subject of legal aid in perspective, it is necessary to view the history of legal aid briefly.

### **2.5.5 THE NATURE AND FUNCTION OF LEGAL AID CLINICS**

In order to understand what a legal aid clinic is and what it does, its nature and functions have to be explained.

The theory and practice of legal aid is dependent on its functions.-

The functions of legal aid clinics are:

- ✍ the primary focus on legal aid rests on the needs of the deserving individual. The aim is to place the individual indigent in a position approximate to that of the fee-paying client. Legal reform work must be provided as an ancillary objective;
- ✍ training law students and social activists to appear before judicial and quasi-judicial forums to represent disadvantaged groups;
- ✍ monitoring the implementation of judicial orders and directions in public interest cases and studying the impact on poverty jurisprudence and access issues;
- ✍ undertaking training of para-legals who work among disadvantaged groups, educating them about their rights, providing necessary assistance to secure their rights and take proceedings on their behalf;

- ✎ training lawyers to understand the problems of disadvantaged groups and playing a role in bridging the gap between lawyers and disadvantaged groups. Also encouraging the disadvantaged groups to make more use of the law, lawyers and courts to assert their rights;
- ✎ the provision of linkages between disadvantaged groups, non-governmental organisations and government agencies.  
Government must continually recognise that legal aid clinics help government by reducing social inequalities and tensions as well as enhancing respect for the rule of law; and
- ✎ organising of seminars and exchange visits to facilitate sharing of experience in conducting legal services programmes.

From the above exposition, it is evident that these clinics are mandated to achieve excellence in professional legal education, and to disseminate legal knowledge for the welfare and development of human beings everywhere. The challenge today is to maximise the content of legal education to all parts of society, and inculcate constitutional and human rights values among law students through legal services activities thus providing opportunities to learn new skills for better delivery of legal services

It is necessary to briefly explore the term 'public' within the context of legal aid.

According to the Oxford English Dictionary, 'public' has the following meanings (Murray 1961: 1558 - 9):

- ✎ pertaining to the people as a whole; that belongs to affects, or concerns the community or nation; common, national, popular;
- ✎ devoted or directed to the promotion of the general welfare.

From the above meanings, it is evident that 'public' involves the community at large, it is open to general scrutiny and is used to refer to organised groups such as public authorities or agencies (Funk & Wagnall 1946: 919).

Institutions are establishments for the promotion of public or general utility, religious, charitable, educational, eg., school college, hospital, mission and the like. As maintained by and receiving financial support of public funds (Funk & Wagnall 1946: 693).

From the above definitions, it could be deduced that an institution is an establishment or body especially created for public benefit and receiving financial support from the state. Public institutions provide goods and renders services to satisfy the national goal of community welfare (Moodley 1987: 13). Public institutions are usually established to promote the general welfare of society, in other words, to ensure the greatest measure of spiritual and material well-being for the citizens (Cloete 1986: 7). From the afore-going, legal aid clinics can be classified as public institutions established by an Act of Parliament, to render legal aid on behalf of the state, for the general welfare of society.

A management study was undertaken by a cabinet office on the service offered by government in the United Kingdom and it revealed the following through the Cabinet Office (1998: 2):

*“The public sector position is more complicated and in many instances distinctly different. In general, the reasons for providing a service in the first place, the nature of that service and the manner in which it is delivered, are not dictated by markets. In these circumstances, the balance between public expectations and the level of service to be provided is decided on the basis of political judgements about economic and social priorities. Those who execute public service functions have a professional responsibility to do so to the highest standard of service possible, within the given level of resources, and this is what civil servants were to achieve”.*

## **2.5.6 THE CHANGING LOCUS OF PUBLIC ADMINISTRATION**

A number of approaches to public administration have put forward by writers in the subject field. There is however, a need for greater openness in how government operates, greater involvement for clients and users, increasing flexibility to meet needs of communities, improved physical access to government and more information about government. Therefore, a transition from traditional approaches to innovative or perhaps more radical alternatives for quality service delivery must be considered.

For the purpose of this discussion, two specific approaches of public administration are examined, viz:

- ☛ the traditional approach as advocated by Cloete (1998: 86 - 87);
- ☛ the innovative / flexible approach by Fox, Schwella & Wissink (1991: 2).

It is necessary however, to comment on the fact that both the Cloete and Fox, Schwella & Wissink approaches utilise the basic rationale of the systems theory as a point of departure.

#### **2.5.6.1 THE SYSTEMS MODEL**

- ➔ The systems model states that public institutions exist to provide goods and services for society as a whole, and that public administration in South Africa is a system comprising many public institutions that interact with its environment.

The systems model or approach is regarded as one of the most valuable tools for analysing policies. The systems model can provide perspectives on aspects such as the influence of the environment on political policy and vice versa, the success or ability of the political system to convert demands into public policy, the effectiveness of the feedback process, and the extent to which information (results, impacts and consequences of policies) is incorporated in the adoption of existing or new policies (Hanekon 1987: 81).

The systems model provides a valuable framework for policy-making. Wissink (Fox et al 1991: 32) goes further in describing these elements as policy inputs (initiation and information generation), policy conversion (consideration and decision-making), policy outputs (publication and statement) and policy feedback (inputs from the environment).

Wissink notes that the value of the systems model lies in the framework it provides which describes the relationships between the demands, the political system and the results or outputs in terms of stabilising the environment or triggering new demands (Cloete & Wissink 2000: 39).

In the systems model, the elements of the system are ongoing and form interdependent relationships with each other.

The Systems Model is illustrated in **Figure 2.3** as follows:

# The Systems Approach

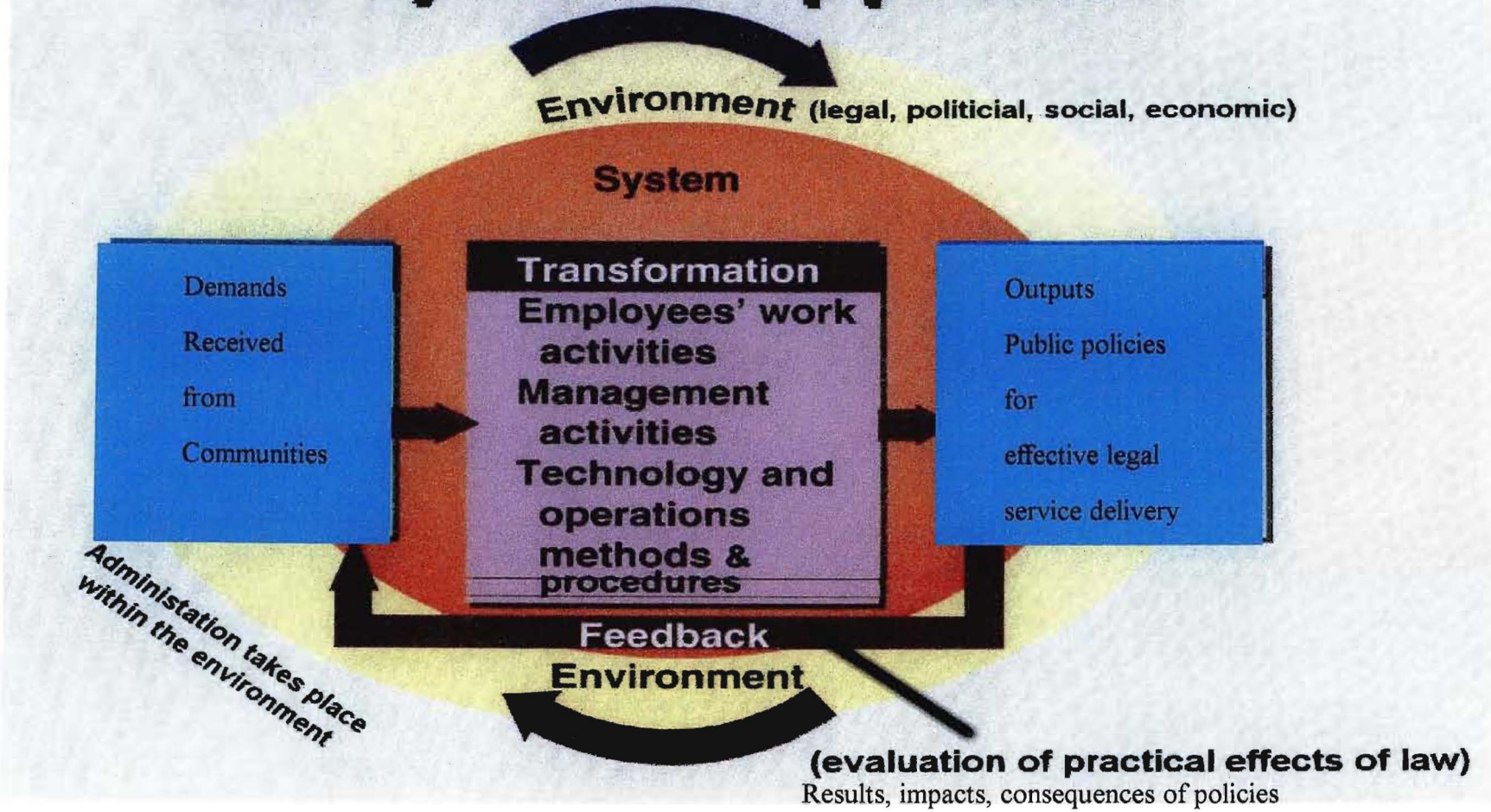


Figure 2.3

As all parts of the body are inter-related and become significant together, so too, are the phenomena in the social sciences. According to Easton (1965: 24-5), what forms the basis of the analytical model underpinning much of the theory of public administration in South Africa, is a system comprising the many public institutions that interact with the environment in such a way that it remains able to authoritatively allocate values in a society over time. This model is closely related to the well-known input-output model of David Easton, which focuses on the response by the political system to the demands and needs of interest groups.

A typical disadvantage of the systems model is that it fails to describe how the actual transformation of inputs into outputs takes place, viewing this part of the process as a 'black-box'. It does not address the power relationships in decision-making or the various role-players in the policy process. It tells one very little about political change and why certain policies evolve as a result of change. It implies that the policy process is logical and orderly, when in fact, it is characterised by multiple factors and processes which often have a direct bearing on policy decisions (Cloete & Wissink 2000: 41).

It raises the concerns of whether the systems approach does not lead to a distorted view of the world. Instead of being a useful way of getting a handle of how the world works, it is simply assumed that there is only one handle and that disciplines such as public administration grasps onto that focus (March & Simon in Bayat & Meyer 1994: 89). The systems theory is illustrated schematically.

Although Cloete does not acknowledge fully the environment in which public administration operates nor its influence on the quality of services rendered, the cyclical process of community demands converted into output and fed into the community exists within an environmental context.

According to Fox, Schwella & Wissink (1991: 25)

***“Public administration is a complicated and dynamic social phenomenon consisting of a system of structures and processes operating within society at the environment”.***

This system has the following objectives:

- ❖ facilitating the formulation of appropriate governmental policies;
- ❖ catering for the diverse needs of the society; and
- ❖ Effective and efficient execution of these policies.

The systems theory is poor at coping with complexity and dynamism, according to Ashford (1992: 378). Therefore, the systems theory is overtly reductionist and consequently misleading. It reduces the complex societal phenomena of public administration to a linear process of causal consequence, systems theory in the form in which it is encountered in public administration in South Africa appears to be neither academically nor professionally adequate or possibly even relevant (Erasmus in Bayat & Meyer 1994: 89).

From the afore-going it has become necessary to depart from the systems theory and provide a fusion of both the Cloete and Fox, Schwella & Wissink models, thus providing a streamlined approach for improved service delivery, and taking cognisance of the challenges facing public managers today.

An exposition of the Cloete and Fox, Schwella & Wissink models are examined below.

## **2.6 CLOETE MODEL: TRADITIONAL APPROACH**

This approach became a popular and much-supported approach both by theorists and practitioners of public administration. The traditional approach emphasises that everything happening in a public institution focuses on the six generic processes. This is denoted by the following words:

Cloete (1981: 4) asserts that:-

*“public administration refers to the administrative processes ... which must be carried out and which are inextricably linked with the functional activities of the various public institutions, namely policy-making, organising, financing, staffing, work methods and procedures and the exercising of control”.*

According to Cloete (1997: 1) public administration is a distinctive field of activity which consists of all the functions undertaken by officials in public institutions to provide the community with public services and goods.

These functions can be arranged into the following distinct groups: namely:

- Generic Administrative Processes (Conceptual and Management);
- Auxiliary and Instrumental Activities; and
- Functional or Line Activities

Specific knowledge, skills and behaviour attitudes are needed for the performance of these functions or activities. **Figure 2.4** illustrates the Cloete model, wherein the groups of functions are discussed.

Cloete emphasises that work entrusted to public officials and public institutions usually consists of a combination of generic administrative functions and functional activities in the performance of work, in which a variety of auxiliary functions can be performed.

In the following discussion the aforementioned processes will be explained according to Cloete (1997: 2 - 3):

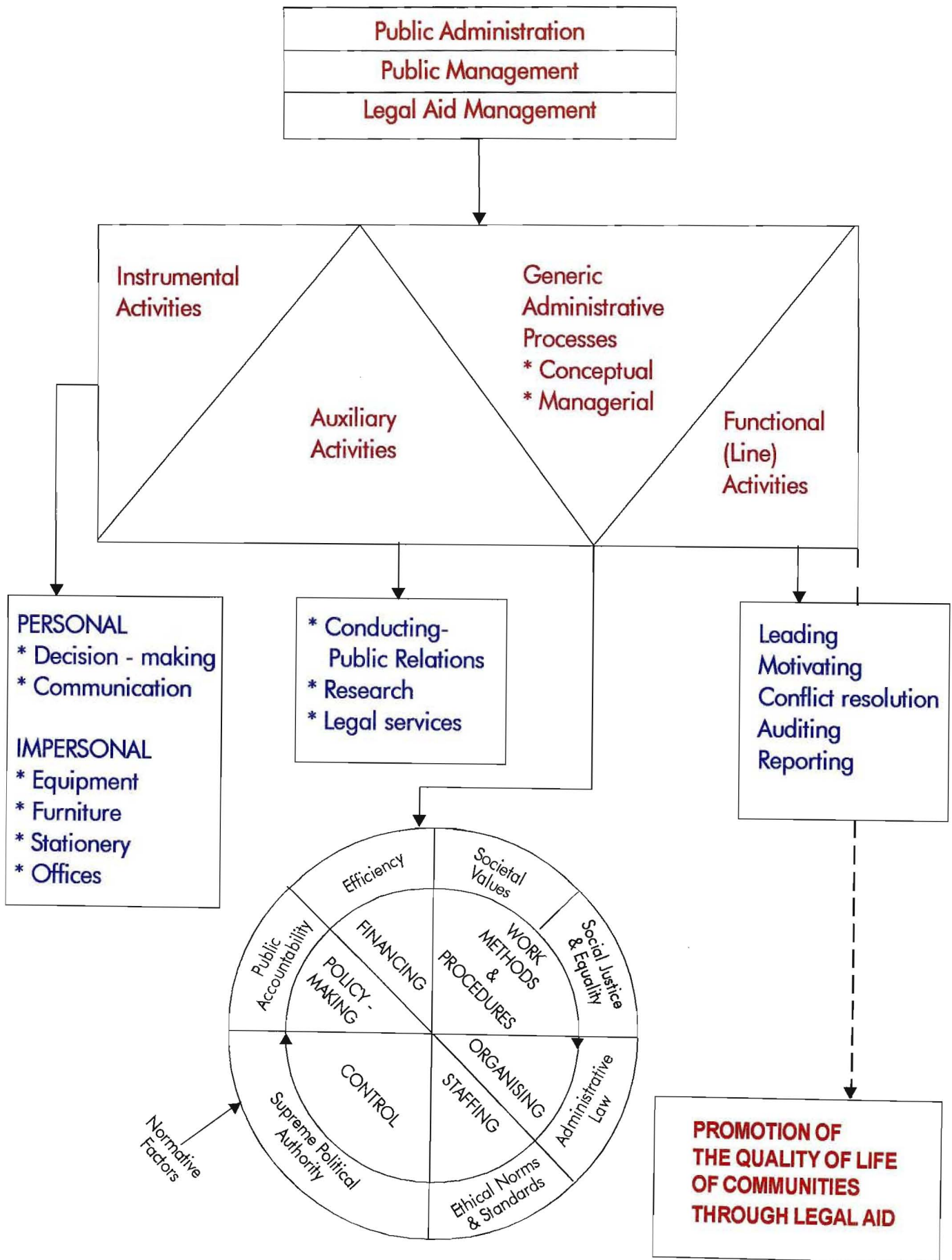
### **2.6.1 AUXILIARY AND INSTRUMENTAL ACTIVITIES**

Cloete (1997: 3) stresses that for each type of work suitable tools for performing the work were invented. Specific functions have to be performed for the application of tools and aids, known as auxiliary and instrumental functions: viz:

Auxiliary functions are enabling functions that aid in the provision of the necessary support to legal aid clinics so that efficient and effective services can be rendered to the community. The following aspects are within this group of activities in Cloete (1990: 50):

- ➔ conducting public relations
- ➔ research
- ➔ legal services

Figure 2.4 Cloete Model  
(Generic Administrative Functions)



(Model adapted from Cloete 1998: 86-87)

The auxiliary functions are useful to ensure that legal aid clinics engage in research on a continued basis to improve the quality of services from time to time.

The instrumental activities may be regarded as tangible because they are performed in conjunction with both the administrative and functional activities (Cloete 1991: 223).

These include:

Personal -   ↳ decision-making  
                  ↳ communication

Impersonal - Provision of   ↳ Equipment  
                                      ↳ Furniture  
                                      ↳ Stationery  
                                      ↳ Offices

It must be emphasised that the line and auxiliary activities can only be executed simultaneously with or after the administrative functions (Cloete 1982: 9).

The generic administrative activities, functional / line and auxiliary / instrumental functions are necessary to achieve effective management of legal aid services.

## **2.6.2 FUNCTIONAL OR LINE ACTIVITIES**

Functional work must be performed in each public institution to provide public services (eg. Legal aid). A public institution exists to render one or more services. Functional activities are peculiar to specific services, *inter alia*, education, providing legal assistance, health services, defence, water and electricity. According to Cloete (1988: 86), the functional activities are determined by the physical and social conditions prevailing in a public institution.

According to Cloete (1988: 86-87), the functional activities include:

- ➔ leading;
- ➔ motivating;
- ➔ conflict resolution;
- ➔ auditing; and
- ➔ reporting.

### **2.6.3 GENERIC ADMINISTRATIVE PROCESSES (CONCEPTUAL AND MANAGERIAL)**

Cloete (1998: 85) asserts that the generic functions can be sub-divided into two categories:

- ➔ **conceptual:** dealing with policy-making and analysis by policy-makers;
- ➔ **management:** dealing with policy implementation by public managers

**The skills required at different management levels is illustrated in Figure 2.5.**

Management skills can be further sub-divided into:-

- ☛ human skills; and
- ☛ technical skills

Managing a legal aid office requires both intuitive and decisive human skills, and the effective utilisation of technical skills as management tools.

As these functions must be undertaken in all public institutions irrespective of the line functions of the institutions, they are referred to as generic functions.

# Skills Needed at Different Management Levels

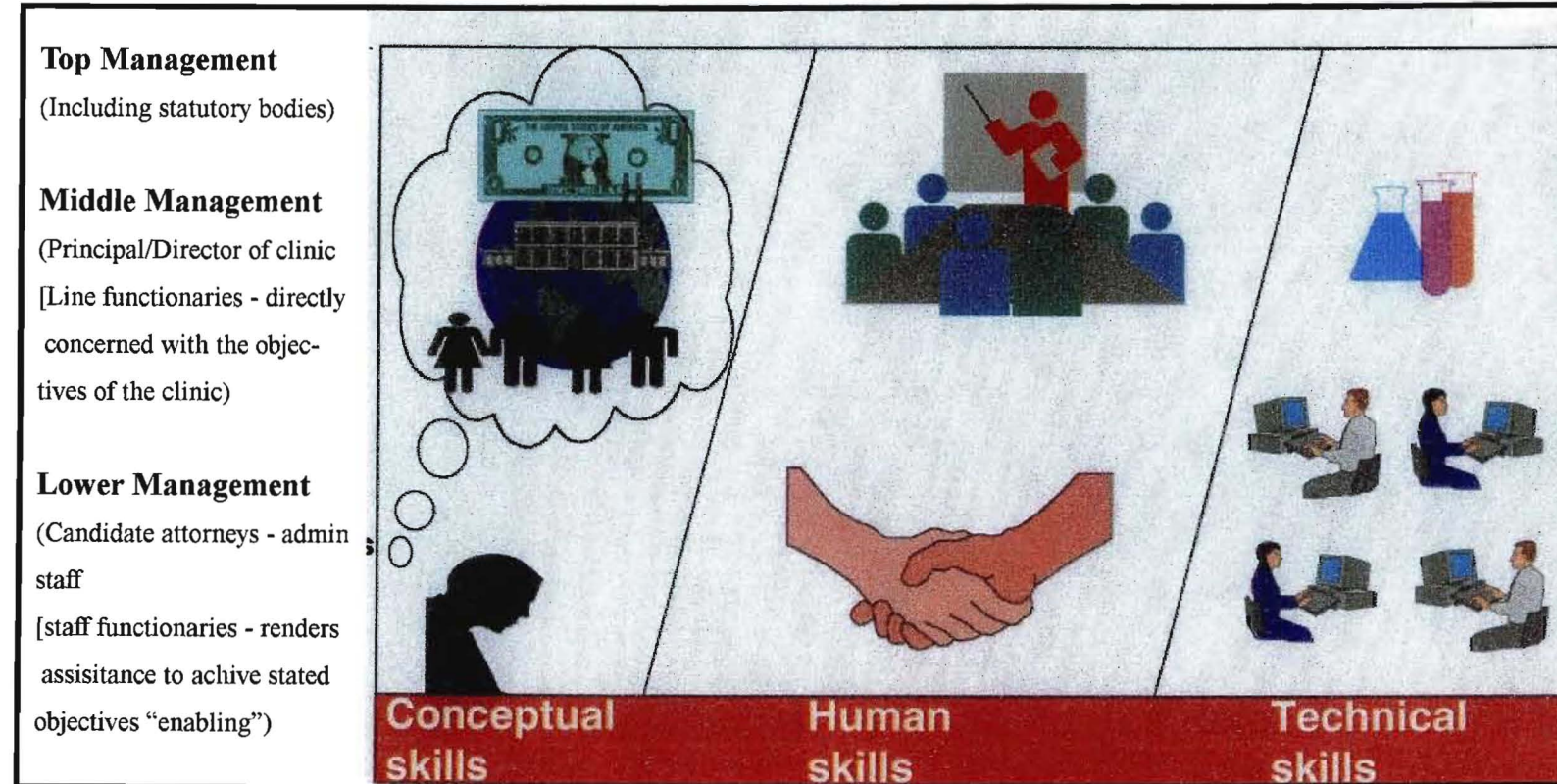


Figure 2.5

They can be classified into six categories:

- > policy-making;
- > financing;
- > organising;
- > staffing;
- > determining and rationalising work methods and procedures; and
- > control and evaluation

#### **2.6.4 CRITICISM OF CLOETE'S MODEL**

Cloete's model of the administrative process approach had become the popular approach to the study and practice of South African public administration by theorists and practitioners alike. However, this approach was not without problems and shortcomings. Through much evaluation and widespread discussion, several criticisms arose from this approach.

These include the following criticisms:➡

##### **2.6.4.1 ☹ Reductionism**

Public administration is a universal or generic science, which is, in essence, static and therefore does not allow for renewal. One of the factors that prevented the old South African administrative process approach from moving forward was that it was based on a non-South African administrative process approach, and was deemed to be perfect ie. universal, unchanging and generic, and was considered completely unsatisfactory. It stifled deeper investigation into the problems of both public administration and the civil service. The administrative process approach actively resisted an infusion of new ideas (Marais in Bayat & Meyer 1994: 103).

Cloete explained that the civil service consisted of objectives or functions as well as administration. Within the study of public administration, however, Cloete deliberately ignored functions. He divided administration into six universal or generic processes (Cloete 1967: 1). The administrative process model reduces the complexity of public administration to merely the administrative process and therefore the administrative functions of policy-making, organising, financing, personnel provision and utilisation and control (Schwella in Wessels & Pauw: 1999: 334).

#### **2.6.4.2 ☹ Reification**

This criticism was put forward by elevating theoretical constructs and concepts to the level and status of reality, thus elevating one approach, being the generic administrative process to the status of reality. This approach dealt with ‘how’ a civil servant performs his functions, and was consequently a closed-ended and prescriptive approach. Its prescriptive nature allowed no deviation and was therefore intellectually restrictive in the extreme (Marais in Bayat & Meyer: 1994: 110). The need to question what the civil service does, in reality, was never challenged.

#### **2.6.4.3 ☹ Relevance**

Where it is clear that the generic administrative approach was lacking in relevance because it did not reflect the serious problems in the systems of governance and administration in the South Africa of the past. As this approach is systematically bias towards internal aspects of bureaucracy rather than the relationships between the system of public administration and its complex societal environment, it will also not reflect on present and future problems in South African governance and administration in a critical way (Groenewald 1992: 68-71).

The very nature of the generic approach inhibits critical and relevant theorising about the relationship between the system of public administration and the society in which it operates. It does not take into account the ever-changing and troubled environment (political, economic, social, cultural and technological) of a society and the way in which this environment influences administrative activities (Schwella in Pillay 2000: 41).

## 2.7 FOX, SCHWELLA & WISSINK'S PUBLIC MANAGEMENT MODEL: INNOVATIVE APPROACH

Fox, Schwella and Wissink's public management model emphasises a paradigm shift both in the pedagogy and practice of the discipline. This is emphasised by the following words:

McLennan & Fitzgerald (1991: 8) state that:

*“... public administration teaching and theory in South Africa is experiencing a paradigm shift. There is an attempt to move from a descriptive, academic approach which emphasises processes to a value-orientated public management approach”.*

Public administration serves as a significant framework for managing governmental policies within the dynamic environment.

This is highlighted by Schwella (1991: 2) as:

- that system of structures and processes;
- operating within a particular society as environment; and
- with the objective of facilitating the formulation of appropriate governmental policy.

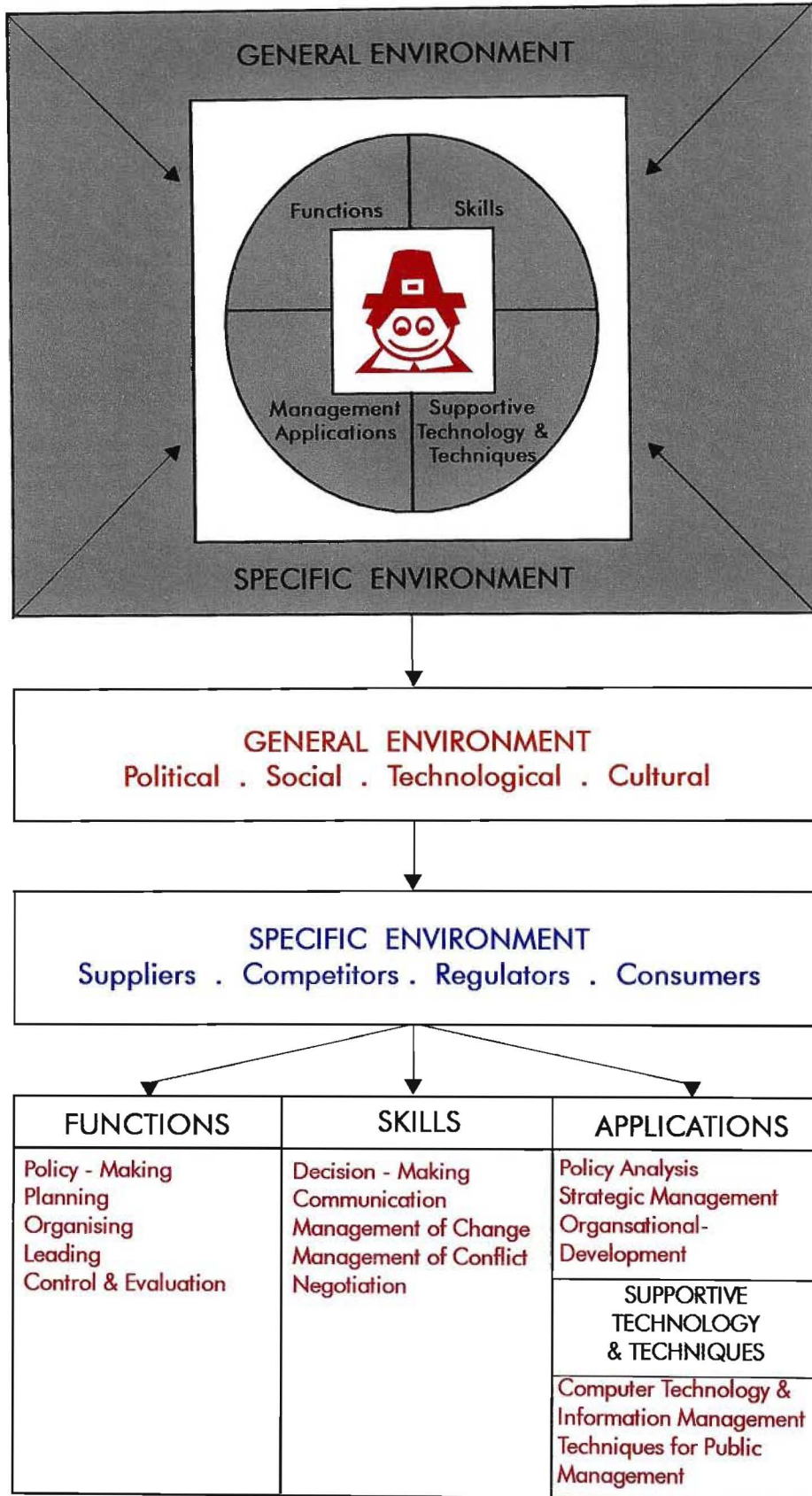
Public administration is concerned with the management of public programmes and policies for the general welfare of society. The public management model emphasises the environment in which the activities are influenced and carried out, and therefore serves as a useful tool for evaluating the activities of public administration and public managers respectively. The public management model comprises the functions, skills, applications and technology for public managers within the specific versus general environment. From the aforementioned exposition, the public management functions and managerial skills should be constantly assessed in terms of the public management environment, which exerts an influence from time to time on the quality of service.

Public institutions are expected to continually render ever-increasing goods and services to communities within the constraints of limited public funds and scarce resources. The task of public managers are to marshal the resources of the public institutions optimally and thus ensure that the communities receive efficient public services (Du Toit, van Der Waldt 1998: 172).

The Public Management Model, as depicted by Fox, Schwella & Wissink (1991: 4) is indicated in **Figure 2.6**.

An exposition of the innovative public management model follows:

Figure 2.6  
 FOX, SCHWELLA & WISSINK APPROACH: PUBLIC MANAGEMENT MODEL



(Designed by Fox, Schwella & Wissink 1991: 4)

### **2.7.1 THE GENERAL ENVIRONMENT**

The general environment is defined as everything external to the organisation, and it influences the management of the an organisation constantly. It is only possible to observe and experience the general environment after it has been mediated through the specific environment. However, it is imperative that public managers devise instruments for identifying and coping with trends in the general environment. It comprises the political, economic, social, cultural and technological components.

### **2.7.2 THE POLITICAL ENVIRONMENT**

According to Hodge and Anthony (1984: 205), the political system has a major impact on organisations within the society and should be considered by managers. Public institutions are governed and managed by policies, which operate within a political milieu. Political parties, structures, powers, interest and pressure groups will, from time to time, exert influences on public management functions within organisations.

### **2.7.3 THE ECONOMIC ENVIRONMENT**

According to Hodge and Anthony (1984: 6) the economic system of a society is the way in which the society creates and distributes wealth, and the system which allocates scarce resources to competing individuals ad groups. Both national and international economic factors impact on the stability of the economy or otherwise.

### **2.7.4 THE SOCIAL ENVIRONMENT**

According to Joubert (1980: 57) the social environment can be seen as patterns of interaction of interacting social roles and institutions within a particular society. The following factors influence the social environment: demographic characteristics, population, urbanisation, housing, education, training and human development. Policy-makers and public managers must take cognisance of these factors when formulating policies.

## **2.7.5 THE CULTURAL ENVIRONMENT**

According to Hodge and Anthony (1984: 64) the cultural system of a society is the society's basic beliefs, attitudes, role definitions and interactions. It is the force by which society perpetuates and transfers beliefs. The cultural values and norms held by a society are of importance when assessing needs.

## **2.7.6 THE TECHNOLOGICAL ENVIRONMENT**

This environment is one of the most important ones in the practice of public administration today. The technological environment should encourage public managers to inter alia,

- cope with the changing technological environment by understanding the nature of change and broadening skills to handle these changes;
- monitor change patterns and impact on other policy areas;
- actively explore the link between technology and public policy as one of the dominant issues of the future which will require unique skills and understanding.

## **2.7.7 ► THE SPECIFIC ENVIRONMENT**

The specific environment is that part of the environment which directly influences the availability of resources to the organisation. These components are observable and directly experienced by the organisation.

Schwella has conceptualised the specific environment in terms of the following components:

### **2.7.7.1 REGULATORS**

They mediate, control or regulate the relationships between the organisation and its suppliers, consumers and competitors. They are usually vested with some form of authority and are often described in statutory provisions. They have a profound effect on the structures and functions of public organisations.

### **2.7.7.2 SUPPLIERS**

They produce, mobilise and allocate various kinds of resources to particular organisations. An important resource to note is the financial one through taxes, levies or service charges in accordance with policy priorities. Societal institutions acting as suppliers of financial and political resources to public organisations include legislative bodies, such as Parliament, the electorate and the tax payers. Administrative and executive bodies acting as suppliers include the Cabinet and the Treasury. As a result of the nature and scope of public activities and the availability of resources, public managers must identify important resources with circumspection.

### **2.7.7.3 CONSUMERS**

This is constituted by the users of the products or services. They include voluntary and compulsory consumption. Consumers are often suppliers of economic or political resources as taxpayers or the electorate. Therefore public organisations derive their reason for existence from the needs of their consumers. Legal aid clinics need to take the necessary actions to create diverse opportunities to meet legal needs of different communities (Public Management 1998: 16). It is therefore imperative for public managers to analyse their preferences thoroughly. This is linked to the quality of life of communities. Social values and norms shape the level of thinking.

Managers are confronted with continuous changes in society, therefore they should take cognisance of divergent values within society. Also operating within the decisions, spirit and framework of the Constitution is an integral component of the social factor when working with communities. Since the delivery of legal aid is directed to the general welfare of communities, public participation in the process is imperative. Legal aid clinics must develop a culture of governance that shifts from representative aid to participatory aid, and for this purpose encourage and create conditions for communities and other stakeholders to participate in the affairs of legal aid.

This is highlighted by the following issues:

- ☞ conduct its business in manner that is comprehensive to the public;
- ☞ articulate the objectives and policies regulating its main activities in such a way that they could be understood by the public and monitored and evaluated by stakeholders;
- ☞ ensure that the rules and legislation are understood by and accessible to the public; and
- ☞ keep communities and other stakeholders informed about its main activities (adapted from chapter 3 of the Local Government Municipal Systems Bill, 1999: 11).

From the afore-going, it is highlighted that communities play an integral part in the decision-making process and in the delivery of legal aid. They should be part of the process and not just receivers of the service. The strong community initiative is apparent in this quotation.

According to Korten (1986: 22-23):

*“The time has come to devote ourselves to explicit strategies for democratic structural changes that will enable people to liberate themselves from appropriate social structures which perpetuate their dependency and their powerlessness - including those of many of our public bureaucracies. Only in this way can we build societies with resilience and a capacity for autonomous creative and continuous redefinition - the condition essential for survival in a crowded, competitive and rapidly changing world”.*

Therefore, a learning process is created by building capacities for action. By building capacities for action, a development milieu is created in which communities become the subject of their own experiences rather than the object of other people’s worlds. The practice of public management emphasises the significant role of community participation.

#### **2.7.7.4 COMPETITORS**

The competitor component competes for scarce resources with public organisations. Privatisation and deregulation may create economic competitors for the services they deliver. Public organisations are always in competition with each other, and have to identify the competitors and design strategies to deal with competing alternative service providers of products and services.

The environment in which public administration operates is dynamic. It is made up of the political, economic, social, cultural and technological factors that impact on the quality of services and influences basic operations. Similarly, legal aid clinics operate within the constantly changing environment, changing legislation, rulings of law societies and legal aid boards. Legal aid clinics operate within a political milieu, serving the interests of communities within a political mandate from the state. The communities are heterogenous and multicultural, therefore legal aid managers must be sensitised to the culturally diverse people they represent. The pace of technology is advancing rapidly towards automated systems and electronic media. This provides valuable access to legal aid management. The general environment is equated to that which is depicted in the model, as these factors influence the quality and quantity of services rendered.

Within the specific environment legal aid clinics as the suppliers, are referred to as the state, Department of Justice, Legal Aid Board, university-based clinics, community law centres, para-legals non-governmental organisations. They ought to regulate and evaluate their conduct and activities in terms of statutory requirements of the law. The Rule of Law must be upheld in the administration of justice when rendering legal aid.

Competitors are attorneys in private practice and donors both nationally and internationally. The regulators would include the legislature, the Legal Aid Board, law societies of the different provinces and public institutions.

The consumers are the disadvantaged communities who rely on the state for legal assistance. Public organisations derive their reason for their existence from the needs of consumers (Schwella 1991: 22).

One of the primary goals and criterion of government services is community upliftment and development. This is best realised through community law centres, as organised rendering of legal services by advocates and/or attorneys, either in the nature of consultation and advice or in the nature of representation in court or before administrative tribunals, in civil and criminal matters to persons who are in need of legal aid.

Legal aid clinics are directed and managed by public managers who are entrusted with the administration and management of services. They are required to plan objectives, lead, motivate, and control activities utilising competent skills and applications towards accomplishment of legal representation.

### **2.7.8 ► PUBLIC MANAGEMENT FUNCTIONS**

The public management functions include policy-making, planning, organising, leadership and motivation, control and evaluation. The functions provide a useful framework for analytical and systematised knowledge when conducting public activities.

### **2.7.9 ► PUBLIC MANAGEMENT SKILLS**

Public management is a professional and practical effort at reaching objectives efficiently, and requires not only theoretical knowledge but also practical management skills. Public managers of today are confronted with many challenges in a complex and dynamic environment and are required to utilise their competencies wisely.

The following are to be particularly noted: decision-making, constructive negotiation, management of conflict and change and skilful bargaining.

Public managers must ensure that they utilise the management skills to ensure effective team work. Some of the characteristics of effectively working together to achieve the overall objectives are illustrated by **Figure 2.7**.

#### **2.7.9.1 CHARACTERISTICS OF EFFECTIVE LEGAL TEAMS**

In order for legal aid clinics to operate effectively, they must operate as teams. The following core elements are useful indicators:

- a joint or unified commitment to serve the community;
- good communication and feedback to clients;

# Characteristics of Effective Legal Teams

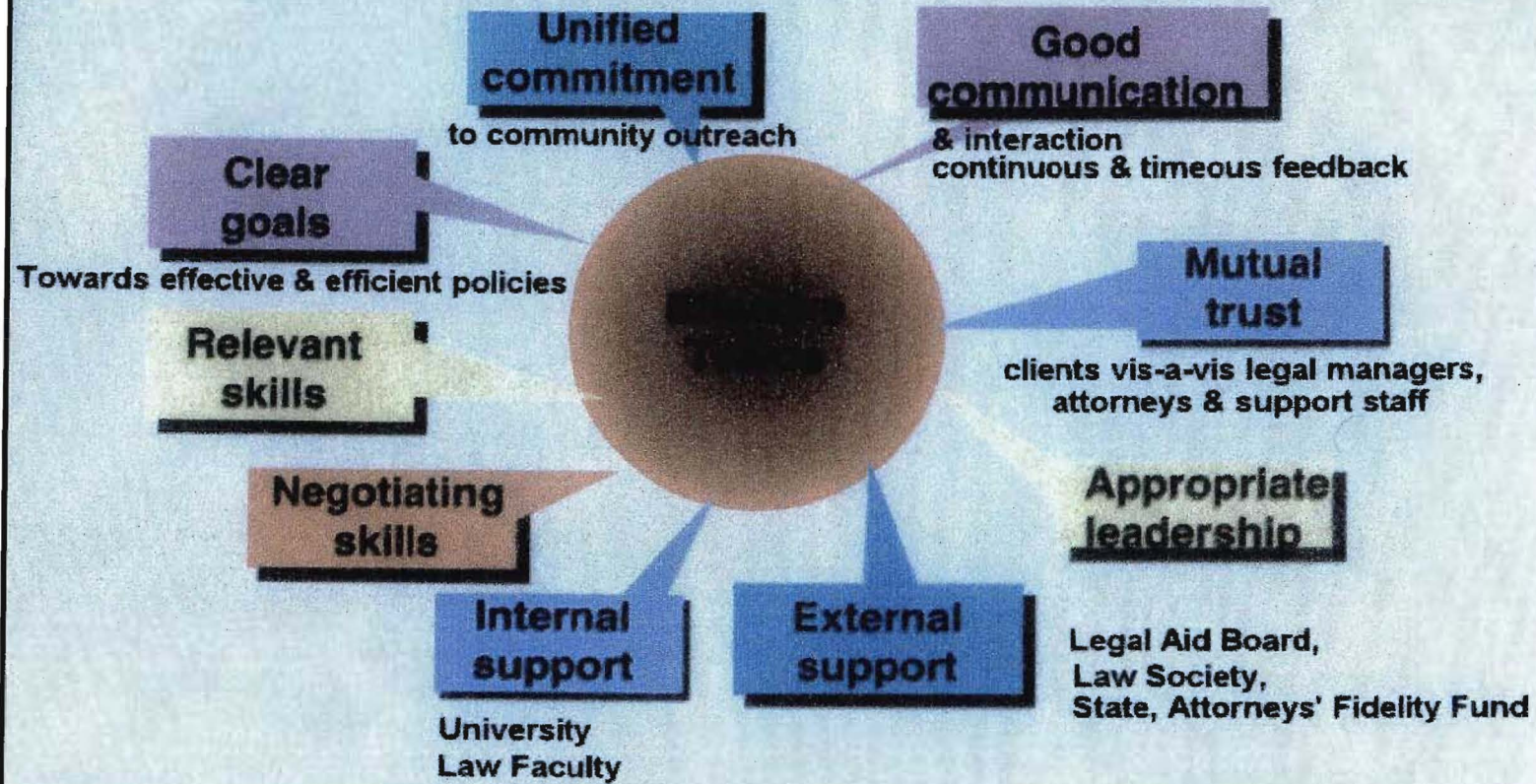


Figure 2.7

- developing mutual trust between clients and managers;
- exercising leadership skills;
- relying on external support from the Legal Aid Board, Law Societies, the State, and other donor agencies;
- in case of law clinics, relying on support from the universities and law faculties;
- displaying sound negotiating skills;
- possessing the relevant administration and management skills for the practical application of the law;
- clearly defined objectives and goals with policy frameworks.

A team effort ought to exist between legal managers, the community and the profession in fostering the best interests of the communities.

#### **2.7.10 ➤ MANAGEMENT APPLICATIONS**

In view of the overwhelming challenges facing public managers of today, they are required to consult systematised applications in exercising their functions expeditiously. Aspects include policy analysis, strategic management, organisation development and project management. The utilisation of these applications enables public managers to address current and future issues and challenges pro-actively.

#### **2.7.11 ➤ SUPPORTIVE TECHNOLOGY AND TECHNIQUES**

Technological aids and techniques provides unlimited benefits for public managers. They provide a means of ensuring efficiency and effectiveness in government activities. Examples include the use of computers and management information systems, and are increasingly become the single most important resource in modern institutions.

### **2.7.11.1 THE USE OF INFORMATION TECHNOLOGY AND MANAGEMENT INFORMATION TECHNIQUES IN LEGAL AID MANAGEMENT**

This study examined the type of administration and management prevalent in the clinics. The use of information featured prominently in most surveys undertaken. However, due to lack of funds and limited resources, not all clinics utilised the most convenient modern technologies.

Owing to the nature and extent of information and activities that constantly change in legal aid clinics, technological and scientific development should be used to manage the processes effectively. Legal aid clinics, as public service institutions, are under increasing pressure to provide quality services to the public. Public managers must therefore continually seek innovative, technological, developmental, analytical and time-saving management tools and techniques to facilitate the huge array of functions entrusted to it.

Traditional accounting, manual statistics and basic word processing systems do not always address legal practice efficiency and professionalism. There are various supplementary systems, should one adapt to the system, or vice versa? This decision requires a broad knowledge of information systems, management and the unique requirements of legal practice. Information systems can be an expensive investment, more so if one considers the cost of consequential loss. General purpose integrated office systems, the use of electronic media for instructions, and the research and delivery of information enables legal aid clinics to manage their activities more efficiently and effectively. Most legal professionals prefer to stick to their briefs and leave the administration and technicalities to support staff. They still however, retain responsibility for their actions. The effective use of advanced computer systems and technology can improve the level of work and reduce the administrative workload of the legal professionals.

As one moves progressively toward the new millennium, the information explosion has increased the need for public managers to seek optimum systems for managing their organisations. Information technology has undoubtedly provided much needed information that has revolutionised management at an alarming rate. Information technology has a particular value as a powerful tool to help legal aid clinics meet the goals of the RDP by improving the use of human resources. It enables public managers to plan, control and monitor the organisation's activities and to take actions appropriate to the situations. The dissemination and retrieval of timely and

accurate information in the legal environment is undoubtedly one of the most significant. Tully (1985: 193) writing in the *Computer Journal*, refers to information as:

**“ ... essential to render human activity effective”.**

Scarrot (1985: 203) in the same edition argues that the function of information is to:

**“ ... control the actions of the components of an organised system”.**

Supportive technology is a means of ensuring efficiency and effectiveness in service delivery and organisational activities. It is a term used to embrace the following:

- ▶ computers (including management information systems),
- ▶ telecommunications (including faxes, telephones, etc),
- ▶ equipment (photocopiers, fax machines, etc).

Computers are used increasingly in the public sector as a tool to raise productivity in public institutions. Their most important functions, *inter alia*, are: to reduce costs and save on time; to improve the quality of service rendered to the public by reducing the possibility of human error; and keeping dependence on human skills to the minimum. Accounting systems, text processing, resource analysis, multi-listing services, bill of costs, prescriptions, filing and archive systems, general purpose indexing, precedent and master documents and databases are but a few of the essential ingredients to efficient and effective delivery of legal services. For example, prescription (the process by which legal claims lapse after a specified period of time) is an ever present danger to a legal aid office. The increased use of electronic media and automated systems ensures that legal aid clinics improve their level of efficiency and administrative workload of their support staff and management functions of the legal professional. Building and managing enormous information bases and being able to locate information quickly are critical issues in the legal profession. Computers have the miraculous functionality to track, search and locate agreements, correspondence, witnesses, statements, opinions and extract particulars of pleadings drafted years ago, instantaneously. When drafting new documents, one need not look too far to locate a precedent since an existing document involving the same principles would probably exist in the document pool. These are some of the myriad advantages from the 'paperless office' to 'technological legal set-ups'. According to the Gartier Group, (statistics survey), 95% of the information in the world is still in paper format. Within the next five years, this figure could be down to 30% (De Rebus 1997: 450).

Computers are accurate and time-saving tools and public legal managers cannot really do without them in carrying out their duties. As supportive technology, computers can store large quantities of information relevant to legal aid management. Legal aid managers must ensure that the most innovative legal software available is used and that hard and software capacity-building and skills development training is conducted by all users. A focus on what management does is more important than the technology itself (Hannagan 1998: 498). It is therefore important for public managers to be proficient in the management of information systems. It has become necessary to improve management effectiveness by satisfying information needs, thus developing information systems as an ongoing process (Niekerk, van der Waldt & Jonker 2001: 192).

### **2.7.11.2 LEGAL POWER THROUGH TECHNOLOGY**

As technology progresses on, legal aid clinics must be fully automated, whether one is changing draft after draft of contracts - redefining to mark changes from the last version, or revisiting professionally typeset briefs, the joy and relief of pleadings and precedents on disks is overwhelming. Legal power through technology is what can increase productivity and improve the quality of service delivery. Legal offices in general, are heavy users of word processing, after all, words are their livelihood (Chestek 1996: 2). Computers provide a perfect resource for anyone who works in a legal office, legal aid managers and support staff alike.

One of the most important functions of legal management is decision-making, which in turn can lead to successful attainment of organisational goals. Legal managers at all management levels are involved in decision-making. They therefore need accurate, timely, complete and relevant information which any legal practice must enjoy for efficient and effective delivery of legal services. The use of updated computer systems, total technology management portfolios and automated systems software for streamlining legal practice management are vital ingredients for sustain ability. There exists sophisticated legal software to improve control and management. Legal managers can use true value and manage time more efficiently for more effective planning. Legal software exists to even provide irrefutable proof to clients of time actually spent on specific matters. Prescriptions are an ever present danger to the legal firm. However, computerised interactive software can provide the facility of a standard time indication for the task and case at

hand through electronic office systems. Often dead files and archives remain a constant problem in the office, if not for retrieval, then for storage. Also precedent and master documents are similar areas where indexing and databases can prove useful to the practice (Tigby in De Rebus 1995: 490). Legal aid managers and practitioners should address practice and management efficiency, or confront the tedious administrative and practical workload. According to Schwella et al: (1999: 260), as public institutions and public managers respond to increasing pressure to improve performance and public service, they are increasingly forced to rely on information technology. To use this technology optimally, public managers must recognise and manage its inevitable impact on the public workforce.

Whilst computers have revolutionised the legal profession, it also poses much anxiety in terms of compliance relating to prescriptions and court dates. 'Year 2000 Challenge', 'Millennium Bug', 'New Year's Evil' - all these terms relate to the same big question: What would have happened to the world of computing once the clock struck January 1, 2000? Would massive chaos ensue when computers mistakenly interpret the year as 1900 or 1980 or some other, equally incorrect date? The Year 2000 problem posed significant liability risks for legal firms, both in private and public institutions, besides interrupting service delivery. All of this may seriously affect an institution's ability to deliver services. There are remedial measures that can be taken to ensure that the technological systems used are compliant. These include audits, upgrades and incorporating procurement of systems accordingly thus minimising liability (Neff 1998: 4). The challenge is to make available resources, some managerial and some technical to help the legal profession, amongst others, to meet the challenge. A key point is that this problem is as much a managerial issue as it is technical one. As one observer (Humphrey 1998: 5) comments:

*'Its like changing all the light bulbs in Las Vegas by January 1, 2000'.*

Legal aid clinics are to a large extent dependent on computerised software and legal packages to streamline the administration. The use of fully integrated suites of programmes that work together to provide true automation in the legal environment is a necessity. The use of sophisticated specialised legal programmes at one's fingertips from record keeping/accounting systems to litigation and time monitoring can provide efficient and effective services. If one's

production line is not running at full capacity, then the automation of the office will not improve productivity (De Rebus 1997: 376). According to Buys, a consultant, in (De Rebus November 2000: 33), the following serve as useful policies for legal practice management when one is dealing with technological support: upgrades and maintenance occupy a significant administrative and monetary risk on resources; legal aid clinics should provide the tools that are required to use the new product, train their staff effectively and switch over to a new product by cutting off the old; the introduction of any new software and hardware must be aligned with sufficient training for administrators and the delivery of legal services relies, to a large extent, on significant information technology investment.

Security of legal information and clients' personal details are essential hallmarks of any legal practice. Legal managers play an important part in ensuring that adequate control is exercised over confidential data and information stored on computers. A legal aid clinic is the custodian of information supplied by clients, relating to particular matters. Should this information be damaged or illegally used, the legal aid clinic may become liable for consequential damage suffered by the client, and in some instances, possibly a malpractice claim. Technology plays an important part in the security of information. When one examines the level of information technology in legal aid clinics, one is often faced with the thought that information systems have an interesting effect on lawyers. However, they are more accustomed to separating fact from fiction, and do not like looking over the technology abyss or up into cyberspace - they often get edgy as it all costs money and is difficult to pass on to the clients (Madden in De Rebus 1997: 387). However, the message is clear: the continuous search for sophisticated information technology is an indispensable tool to streamline the vast array of legal aid services.

From the afore-going, one can see that technology has advanced so dramatically thus enhancing the communication process beyond traditional means that people are often overwhelmed with too much information or the pace of development. Managers must be fully conversant with advanced information technology and possess sufficient skills and training to use them to the benefit of their public institutions. Since information is regarded as one of the most important resources in legal aid clinics, automated data processing is the most effective tool for managers to plan, design and implement integrated information systems. With computer-aided technology, there exists a

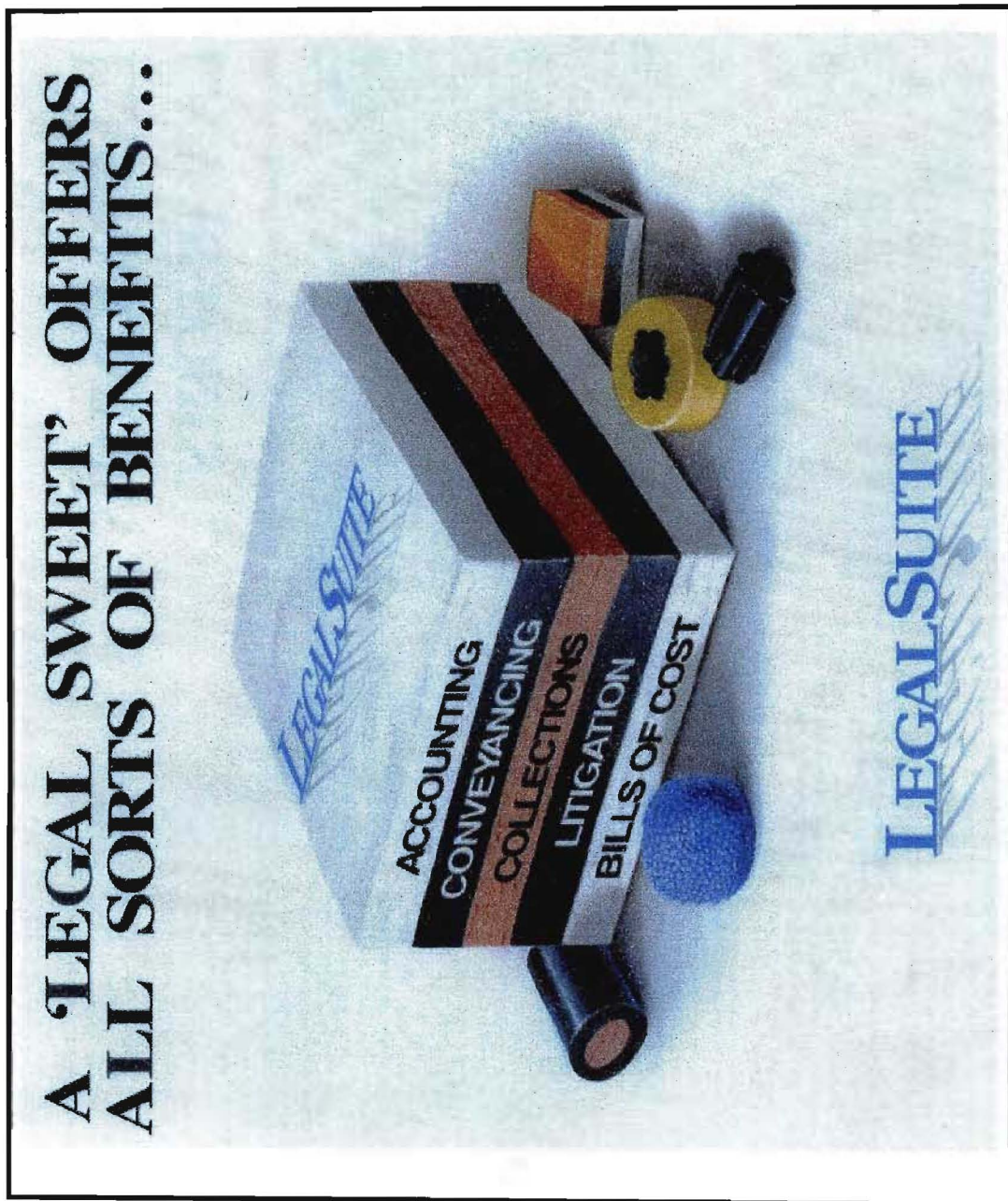
substantial curtailing of overheads while simultaneously increasing productivity and efficiency at a nominal cost. It cannot replace personal contact with the client, nor can it replace the legal aid manager's ability to take vast amounts of information and make sense out of it in terms of evaluation and control. It can, however, make it easier to integrate all the activities of the clinic, automate routine tasks, and generally allow the public manager more time to focus on the clients and on the quality of services rendered.

Legal Suite offers various legal software to enable effective practice management and serves as a useful aid for training support staff. An illustration of some legal practice software available for legal aid managers is presented in **Figures 2.8** and **2.9**.

Figure 2.8



Figure 2.9



From the afore-going discussions, a synergy between the Cloete and Fox, Schwella & Wissink approaches to the study of public management has developed. This synergy has led to a new integrated model defining the role, skills and strategies required by public functionaries and other policy actors to contribute meaningfully to the improvement and delivery of legal aid. An analysis of the practice of public administration provides for a combination of the aforementioned two approaches. Hence, this study takes into account the traditional, systems and innovative/flexible approach collectively.

## **2.8 MODEL FOR LEGAL AID MANAGEMENT: AN INTEGRATED APPROACH**

From the afore-going discussions, the following salient points are raised in these approaches:

- ➔ Cloete emphasises the generic administrative processes as the key performance indicators for realising the goals of public administration ie. policy-making, organising, financing, staffing, determining work methods and procedures and exercising control and evaluation.
- ➔ According to Fox, Schwella & Wissink, the environment (general and specific) is a decisive factor in shaping policies and actions of public managers.

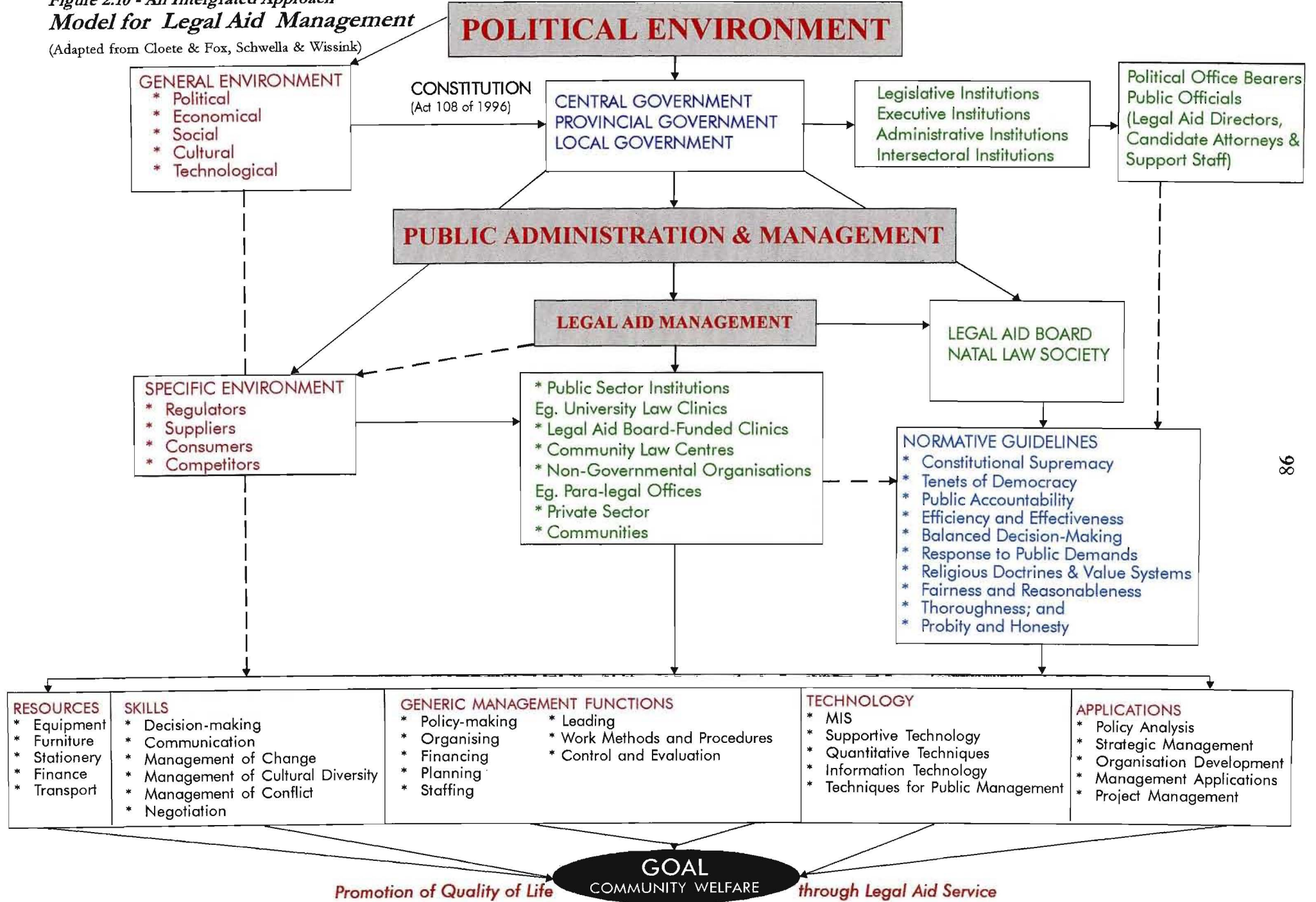
The emphasis of these approaches is synthesised and even more pronounced through an integrated model illustrated in **Figure 2.10**. The provision of legal aid for the purposes of this study is illustrated through this new model. The model for legal aid management is an integrated approach of both the Cloete and Fox, Schwella & Wissink models.

However, the model is an adaptation of the traditional and innovative approach to public management.

An exposition of the integrated approach follows.

**Figure 2.10 - An Intergrated Approach  
Model for Legal Aid Management**

(Adapted from Cloete & Fox, Schwella & Wissink)



Increasingly, it is recognised that the provision of legal aid is, of necessity, towards promoting the quality of life of underprivileged and indigent communities. As rationalisation of jobs increases and the levels of unemployment continue to increase, the need for legal representation of indigent communities becomes more complex and varied. This places enormous demands on the state and the justice system to develop and create sustainable reforms and legal representation in the quest for long-term development leading to improved service delivery to the public. Underprivileged communities demand greater responsiveness on the part of government and para-statal agencies to civil society, more especially to legal aid.

The integration of both the Cloete and Fox, Schwella & Wissink models present innovations and takes cognisance of the dynamic environment in which public managers operate. The skills required and performed by public managers are highlighted through the fusion of both approaches. The provision of legal aid demands that government together with the Department of Justice develop policies which satisfy the real needs and justified expectations of communities. It is evident that the current legal system has a proven record of reaching out to communities in need, even it was not able to satisfy all demands placed on it. However, it is simpler to modify the system rather than to replace it completely.

Therefore, new policies and variation and modification of the traditional roles in which legal services are expanded ought to be considered by the legal fraternity. These policies should complement the goals of government's Reconstruction and Development Programme (RDP) and the principles of Batho Pele.

Legal aid clinics require adequate resources in the form of financial, human, technological, infrastructure and equipment to meet their goals. Introducing further levels of legal representation results in a much larger utilisation of the legal resources of the country. Legal aid clinics must be organised systematically and careful thought must be given to the internal organisational arrangements, *inter alia*, channels of communication, delegation, unity of command, span of control and co-ordination aspects. Responsibility has always been an important concept in organisations and usually refers to the obligation or duty of a person to act in the best interests of the underprivileged persons. Barnard in (Massie 1987: 76) stressed the importance of

responsibility as the power of a personal code of morals to control the conduct of an individual. Organisational behaviour is affected by the entire moral framework of those within the organisation. Effective organisational activities depend upon common moral foundation.

The provision of adequate human resources is vital to ensure quality services and to meet the rising demands of communities. Public human resources play an important role in society in that employment actions, conditions of service and quality of service delivery have profound effects on society's economic, political and social systems. It is essential to utilise all available legal manpower in the rendering of the legal services which South Africa needs. It is however, just as important to assure the person in the street that the legal service received is of an adequate and proper standard (Hutchinson 1995: 15).

Public institutions and managers are faced with the overwhelming challenges of meeting unlimited demands with limited resources. This demand emphasises the necessity for public managers to be well versed in management skills and functions to ensure that the resources of public institutions are utilised effectively and efficiently for the general welfare of society at large. Similarly, it is imperative for legal aid managers to be fully competent with various managerial skills in ensuring that the rendering of legal aid as a public service to indigent communities is planned, organised, led, co-ordinated and controlled appropriately.

The following public management functions ought to be performed by legal aid clinics to ensure efficient and effective legal services:

The planning, organising, leading and controlling of activities in a legal aid clinic is represented schematically by **Figures 2.11 and 2.12**.

A discussion of the models follows:

Figure 2.11

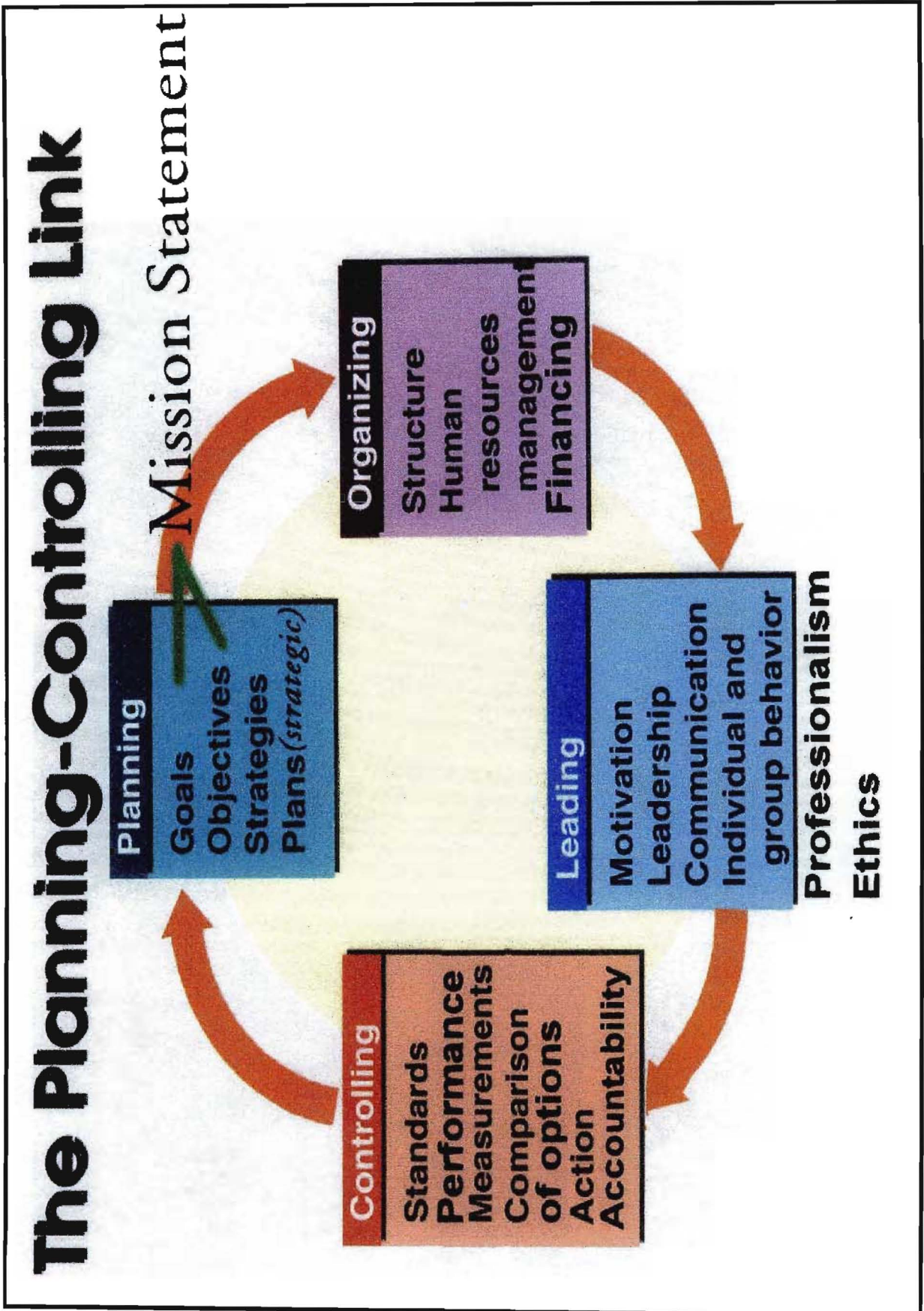
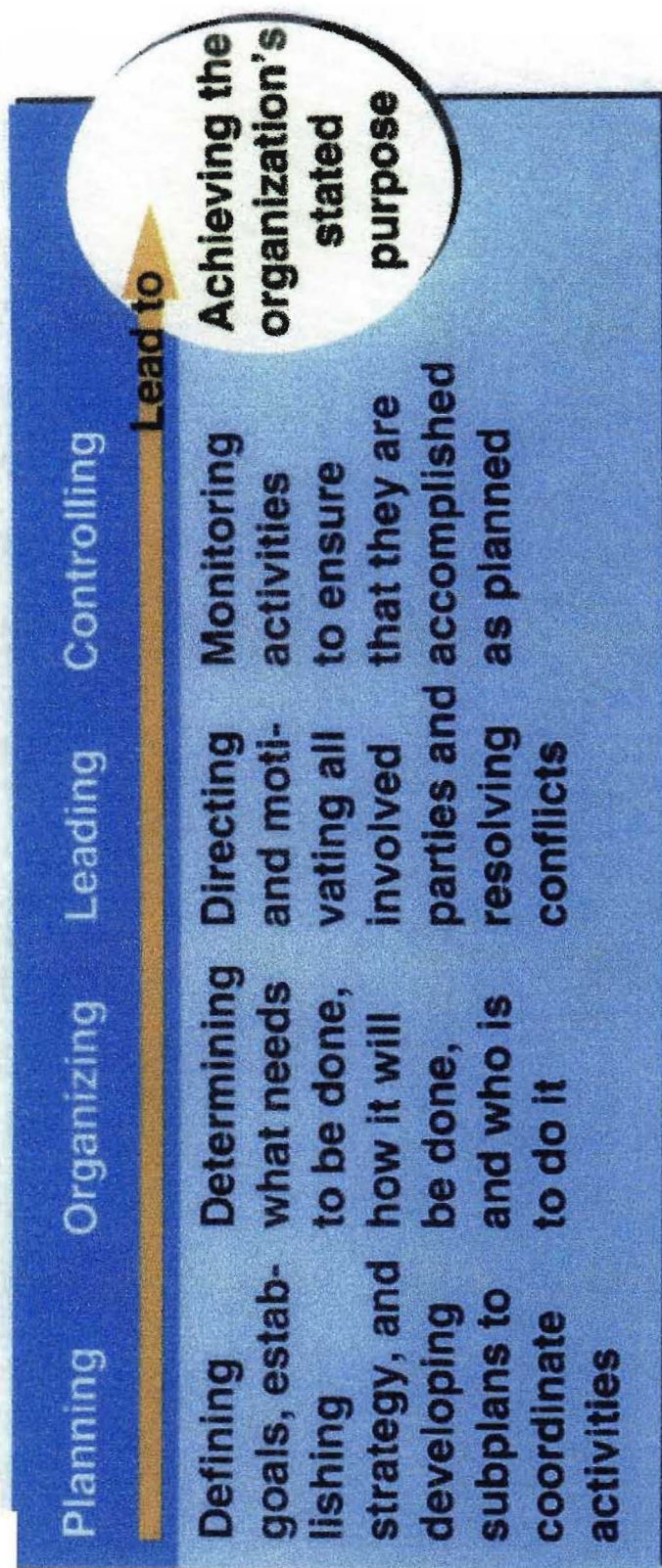


Figure 2.12

# Management Functions of a Legal Aid/Law Clinic



### **2.8.1 Planning**

According to Van Der Waldt & Du Toit (1997: 182),

*“planning is aimed at determining future circumstances and identifying the measures needed to realise them”.*

Legal aid clinics are faced with numerous tasks ranging from unlimited number of legal cases to volumes of paper work and filing. Legal aid managers are therefore compelled to develop a comprehensive hierarchy of plans to integrate and co-ordinate their activities.

### **2.8.2 Organising**

According to Benington & Hartley (1994: 15):

*“organising is an enabling activity and concerns inter alia, concepts and practices relating to organisational structure”.*

Public institutions operate within an organisational structure. Similarly, legal aid clinics operate within a specific framework, ensuring all sectors work towards the pre-determined objective of provision of legal services. The functions, positions in the office, the range of services rendered, the clients or communities who qualify for services, the formal legal requirements within clinics operate are a range of issues or components to be considered when legal aid managers set out the organisational plans.

### **2.8.3 Leading**

According to Robbins & Coulter (1996: 459), the challenge facing public managers is to lead people who are different from each other and to pull together in the same direction to accomplish organisational goals. Managers must possess leadership to influence, inspire and direct the actions

of all staff under their control. It is good practice for public managers to motivate staff towards effective performance. Public institutions must gear themselves to direct and co-ordinate their activities to ensure duplication and overlapping is eliminated. Since legal aid clinics operate intensive law offices, given the number of disadvantaged communities in need of free legal assistance, public legal managers must apply their minds analytically, and possess vibrant leadership skills, thus committing to par excellence service delivery.

#### **2.8.4 Controlling**

Robbins & Coulter (1996: 654) define control as:

*“the process of monitoring activities to ensure that they are being accomplished as planned and of correcting any significant deviations”.*

Public institutions are charged with the rendering of public goods and services to the community. In order to ensure that service delivery takes place, these institutions must utilise vast quantities of public resources, financed by public funds. It is therefore of cardinal importance, that proper control measures are instituted and all managers should be involved in the control system to ensure performance according to the desired system.

This is an ongoing process that follows the planning and organising process. Actual results obtained are compared with the planned results and corrective action is taken where necessary (Du Toit, Van Der Walddt, Bayat & Cheminais. 1999.189).

##### **2.8.4.1 PERFORMANCE MEASUREMENT OF LEGAL AID CLINICS**

The management of legal aid requires explicit standards and measures of performance. Management of competencies, development and training are core elements for ensuring goals are realised effectively and efficiently. The debate concerning performance measurement in legal aid clinics centres on a number of different issues.

These include inter alia:

☞ adaptability and responsibility are classified as:-

- community involvement - the community play a significant role in service delivery.
- marketing and customer feedback - it is significant that a clinic is widely publicised and allows for feedback of its services from the community it represents.
- identifying and acquiring resources - the need and acquisition of resource management is vital to sustain the services of clinics.
- accountability and political sensitivity - clinics operate within a political dimension and are accountable for the functions entrusted to them for and behalf of the State.

☞ staff involvement and development can be identified as:-

- training and development of support and managerial staff are integral in the operations of clinics.
- morale and team building ensures that all staff are motivated to give off their best performance.
- self-evaluation, peer review and action learning are important ingredients for improving service delivery.
- maximising human interaction and communication ought to be a continuous process amongst legal aid staff and communities.

☞ Stability and control can be classified as:-

In order to maintain stability in legal practice management, it is essential to adhere to the following:

- formal communication and co-ordination of activities would streamline the management of legal aid.
- management information and documentation ensures facilitation of the objectives and goals of justice through legal aid.
- control systems for finance, procedures and methods ensures effective performance management.

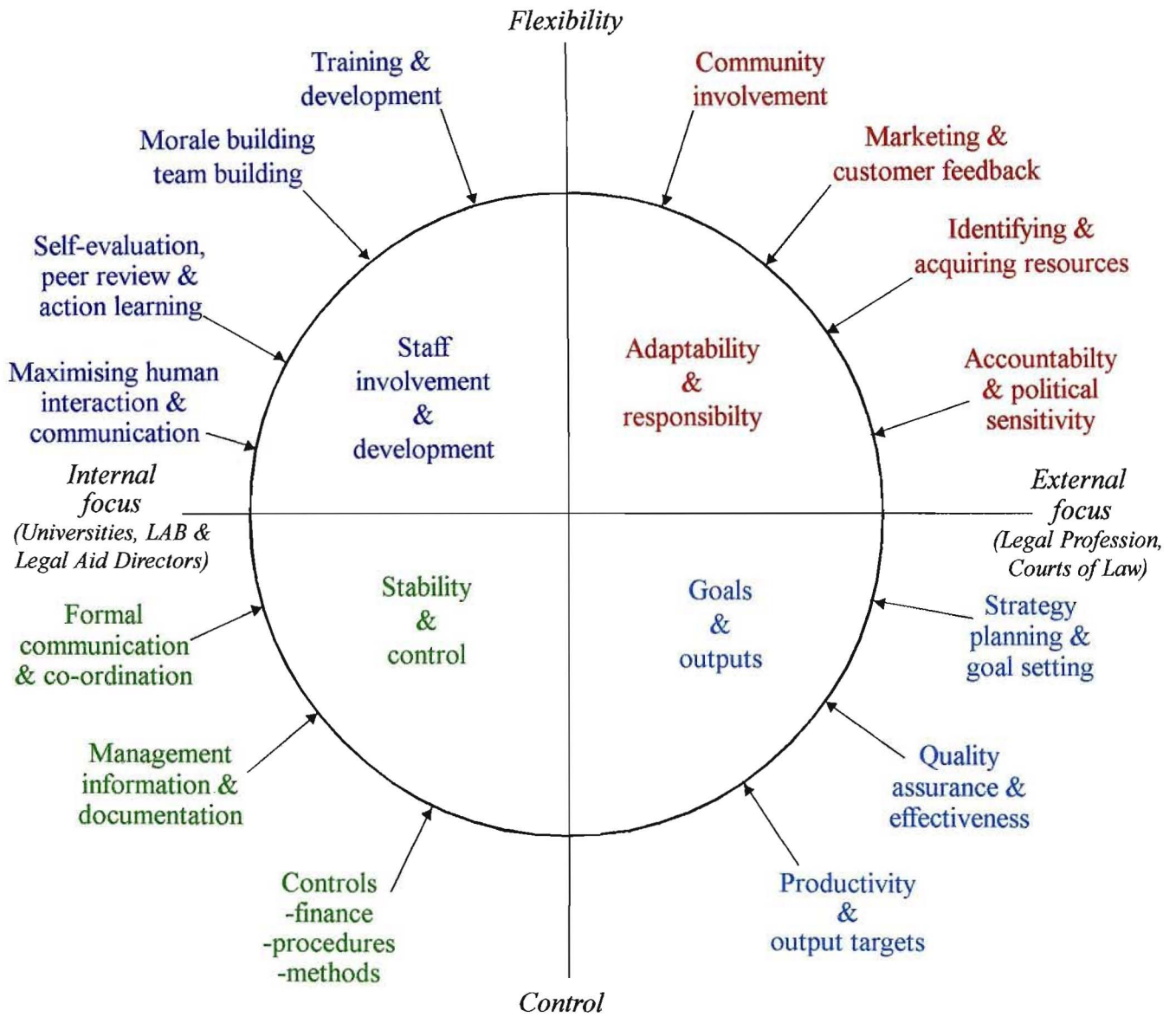
☞ The desired goals and outputs achievable include:-

- strategy planning and goal setting allows legal aid clinics to work within the parameters of legislation and towards predetermined objectives.
- quality assurance and effectiveness form the basis of par excellence service delivery.
- productivity and output targets serve to highlight that clinics ought to meet the legal expectations and claims requested of them by communities.

The above performance system can be applied to ensure performance-based management, both internally and externally in the legal profession.

**Figure 2.13** follows with an illustration of staff involvement, adaptability, stability and goals.

Figure 2.13  
**PERFORMANCE MEASUREMENT  
 OF LEGAL AID CLINICS**



## 2.9 NORMATIVE GUIDELINES THAT IMPACT ON LEGAL AID MANAGEMENT

Section 195(1) of the 1996 Constitution enumerates the basic values and principles governing public administration. Public administration must be governed by, *inter alia*, the democratic values and principles of transparency and efficiency enshrined in the Constitution. The following principles are important:

- a high standard of professional ethics must be promoted and maintained;
- efficient, economic and effective use of resources;
- public administration must be development-oriented;
- services must be provided impartially, fairly, equitably and without bias;
- people's needs must be responded to, and the members of the public must be encouraged to participate in policy-making;
- public administration must be accountable;
- transparency must be fostered by providing the public with timely, accessible and accurate information;
- good human-resource management and career-development practices, to maximise human potential must be cultivated;
- public administration must be broadly representative of the South African people with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation (South Africa - Republic 1996: Ch 10).

Chapter 10 of the 1996 Constitution espouses and influences the normative factors relating to legal aid, ie. inculcating an ethics awareness ethos. Therefore legal aid clinics must define their policies to give effect to the provisions of the Constitution. Public managers are called upon to demonstrate and adhere to ethical and moral standards in the administration and management of their functions. The normative values have a direct impact on society and its level of development. Public managers should display a certain degree of professional ethics, be accountable, representative and participatory, not forgetting fairness in applying the law. The normative guidelines provide a framework of behaviour that guides public managers to work. It also serves to motivate, direct and control their behaviour in public institutions thus providing

necessary guidelines in public decision-making. Public managers must be people-centred, accountable and transparent in their actions, being responsive to the needs and legal welfare of deserving communities. It must also be emphasised that the normative criteria inherent in public administration must *mutatis mutandis* be applied to legal aid management in public institutions. Because public managers render services to communities, and are remunerated from public funds, it is imperative that ethical norms must be used as a standard by which the actions of public managers are judged. The human element is the most important factor in the effective administration and management functions of legal aid clinics, therefore the normative factors play an integral role in public personnel corps and their interaction with communities.

Cloete (1988: 22) states that the normative guidelines serve as a framework within which officials can perform their duties. The normative guidelines include *inter alia*:

- ◆ 2.9.1 constitutional supremacy;
- ◆ 2.9.2 tenets of democracy;
- ◆ 2.9.3 public accountability;
- ◆ 2.9.4 efficiency and effectiveness;
- ◆ 2.9.5 balanced decision-making;
- ◆ 2.9.6 response to public demands;
- ◆ 2.9.7 religious doctrines and value systems;
- ◆ 2.9.8 fairness and reasonableness;
- ◆ 2.9.9 thoroughness; and
- ◆ 2.9.10 probity and honesty

The above normative aspects are briefly discussed hereunder:

### **2.9.1 CONSTITUTIONAL SUPREMACY**

Legal aid clinics function within a political milieu and are accountable for the quality of legal services rendered by virtue of legislation that binds their roles and powers.

### **2.9.2 TENETS OF DEMOCRACY**

According to Cloete (1994: 75), legislatures should be constituted in such a way and political office bearers arranged in such a manner that they cannot abuse the powers which have been entrusted to them to further their own interests or the interests of only a specific population group. The objective of democracy is to create conditions in which individuals will be able to achieve the greatest possible well-being. Therefore every effort should be made to compel or bind members of legislatures, political office bearers and officials to act honestly and in the interest of the general welfare of the citizens.

Democracy also includes generally accepted principles of fairness and justice. Human rights can also be defined as universal moral rights that belong equally to all people simply because they are human beings. Rights that belong to people regardless of their sex, race, colour, language, national origin, age, class, religion or political beliefs (McQuoid Mason, Brien & Greene 1991: 8-9).

The provision of legal aid is a basic human right for underprivileged communities and a public service on behalf of the state. Therefore it is incumbent upon the state to providing an environment that ensures the continued existence and effectiveness of legal service delivery, and promote the understanding that democracy confers privileges and responsibilities on each citizen.

### **2.9.3 PUBLIC ACCOUNTABILITY**

Political office bearers and public officials should display a sense of responsibility when performing one's official duties (Cloete 1991: 62). Political office bearers and officials have an obligation to be answerable or accountable to the community. Officials must be able to justify one's actions to the public (Reddy 1996: 120).

Accountability is defined by Isaac-Henry, Painter & Barnes (1997: 83) as: making those with delegated authority unanswerable for carrying out agreed tasks according to agreed criteria of performance. Legal aid clinics are accountable to the communities represented regarding the nature and extent of the application of the law.

#### **2.9.4 EFFICIENCY AND EFFECTIVENESS**

Efficiency may be defined as the desire to maximise the ratio of inputs to outputs in any process of management. Efficiency evaluates the ratio of inputs consumed to outputs achieved, whilst effectiveness refers to goal accomplishment (Robbins (1982: 317). When public managers have to expend scarce public resources, they have to obtain the best results at the least cost. Results are measured in terms of objectives reached effectively and benefits received by society efficiently (Fox, Van Wyk & Fourie 1998: 93). According to Cloete (1998: 110) public institutions exist for and behalf of the community. Therefore public institutions must utilise the scarce resources efficiently and effectively, thereby enhancing the quality of life of communities.

The concept of promoting efficient and effective service delivery was emphasised by the Justice Department's Policy Unit adviser at a National Community-based Para-legal Association last year. The limited human resources to meet unlimited legal aid demands has led to potential collaboration between para-legals and the Justice Department. The Justice Department is changing its focus from an administrative to a service-delivery orientated approach so as to prioritise the needs of members of the public who came into contact with the justice system. Para-legals could play a role in this by providing services at citizen advice desks at the courts. A partnership of this kind should be established to promote the sustain ability of community-based para-legal services in advice offices as a result of reduced international donor funds (De Rebus July 2000: 12).

#### **2.9.5 BALANCED DECISION-MAKING**

Legal aid managers and support staff are required to make balanced decisions and give careful thought to the legal issues when dealing with clients. The decisions taken must be in accordance with legal and moral requirements. This is demonstrated through the following model whereby public managers are required to possess analytic, conceptual, directive and behavioural skills to apply their minds logically when dealing with the practical and managerial issues relating to law.

**Figure 2.14** illustrates the use of decision-making styles for effective legal managers

An exposition of the discussion follows:

# Decision-Making Styles for effective Legal Managers

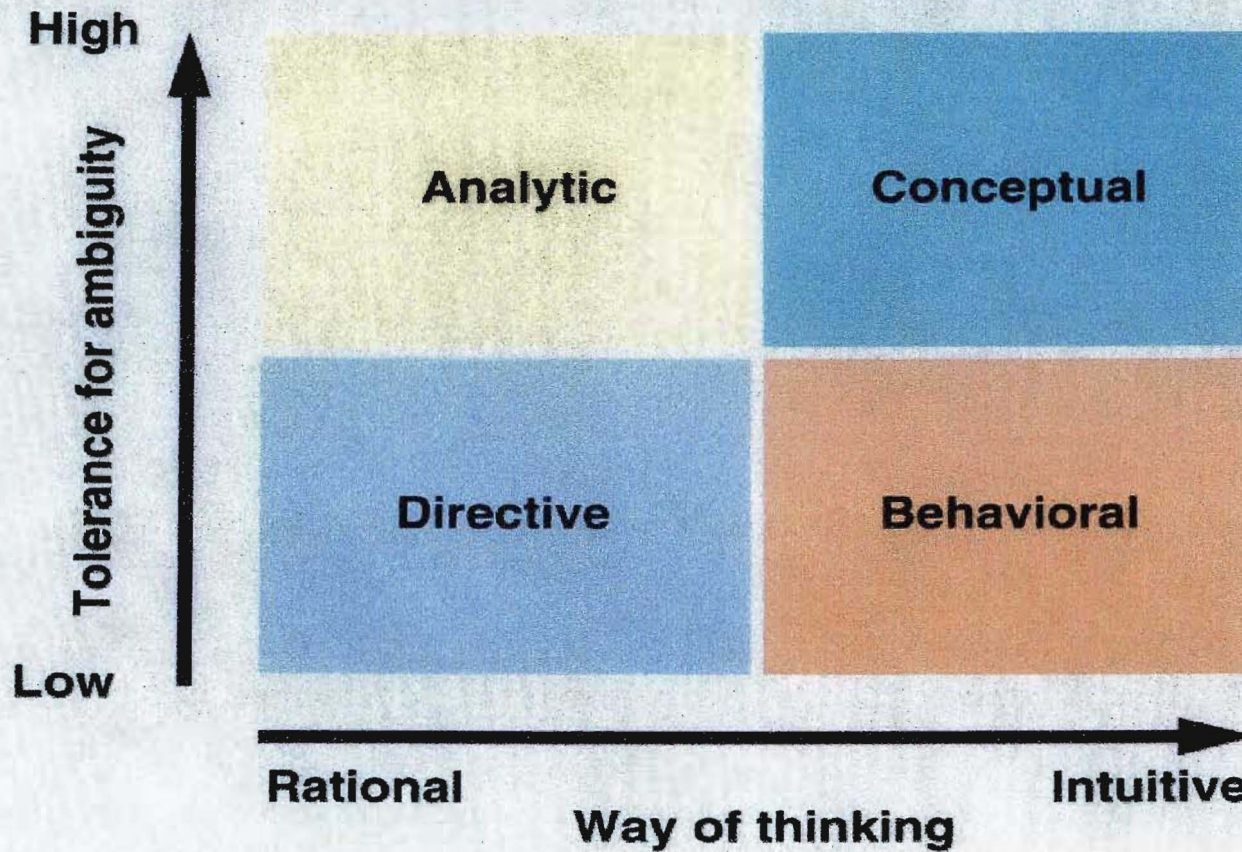


Figure 2.14

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## **2.9.6 RESPONSE TO PUBLIC DEMANDS**

Legal aid clinics must be responsive to the demands of the disadvantaged communities they serve. The clinics are the clearing houses for representing the legal welfare of communities.

## **2.9.7 RELIGIOUS DOCTRINES AND VALUE SYSTEMS**

The fundamental rights listed in the 1996 Constitution bind all legislative and executive organs of state at all levels of government to perform their functions with respect for life, dignity, freedom, religion and rights of every person. This value system could be based on generic religious doctrines which provide normative behaviour guidelines (Cloete 1998: 79). The image of the public sector is dependent on the quality of goods and services rendered and the values, attitudes and actions displayed by public officials. It is of fundamental importance that the normative guidelines be borne in mind when public services such as legal aid, is rendered.

It should be stressed that the rules of conduct for public functionaries should not be regarded as sufficient safeguards against malpractices, unaccountable actions and conduct by legislators, political executive office-bearers and officials. The conduct rules/codes of ethics should be embedded in the culture (values, beliefs, moral standards and manners which denote decency) of society.

According to Lawton (1998: 18), in deciding whether a particular action is ethical, public servants should consider whether the impact of the decision will be fair, whether the action is guided by responsiveness to the needs of the community and the government, whether they would be happy to have the action made public, and whether they could easily justify the action if called on to do so. Respect for and abiding by the different values, feelings, convictions and attitudes of heterogeneous groups of people is one of the cornerstones of modern public administration. Public administration underlies the principles of being sensitive towards the values of others. The abuse of other people's values and disregard for human convictions and feelings are bases for cases of state liability (Roux, Brynard, Botes & Fourie 1997: 273). Legal aid clinics in exercising the provision of legal aid services must subscribe to the societal values of the disadvantaged communities.

Management ethics in the public sector refers to the means of motivation which direct behaviour and conduct of personnel in public institutions. Legal aid managers must evaluate their ethical norms, *inter alia*, in accordance with their specific religious doctrine and cultural frame of reference. These include norms and values such as humanity, honesty, justice, reasonableness, freedom, truth, decency and integrity. It is important for legal managers to understand that they function within a moral ethical framework (Waldt & Helmbold 1995: 159).

When legal aid clinics render free legal assistance, the conduct of legal practitioners as public officials, must always be in the public interest in order to promote the community's interest. The public sector is more in the public eye than the private sector. The public sector's right of existence lies in the rendering of service to the public and high demands are placed on public officials, who have to render services. Accountable behaviour and reliability is expected of them. The demand for a strong conscience for ethics is vital in the legal profession. A national conference on ethics in the legal profession was held at the University of Pretoria on 18 and 19th July 1997.

The agenda included the following issues:

- √ Should attorneys have one set of norms for the whole country's attorneys, or not?
- √ Should attorneys formulate many rules of conduct or only broad principles?
- √ What should the sanction against unethical conduct be?  
A disciplinary procedure?, or an outside tribunal that has more legitimacy and can discipline attorneys?
- √ How can values be instilled in legal practice?

These aspects indicate the reconstruction of professional ethics in South African legal society is of necessity. The sentiments are echoed in the following quote by Radloff (1997: 357):

***“Let us make an honest and sincere attempt to retrieve our sense of kinship. Let us identify what makes us understandable about the way we do business nowadays. All the stops must be pointed out . . . We must ask ourselves whether we really like what we are becoming since we no longer seem to have a moral map”.***

### **2.9.8 FAIRNESS AND REASONABLENESS**

Public institutions should always be fair and reasonable in their dealings with each citizen. By doing so, public institutions will not only act within the law, but within the spirit of the law, and be above unethical conduct. Public functionaries should treat members of the public in a fair and reasonable manner (Cloete 1994: 79-80).

Public managers in providing legal aid must treat indigent communities fairly and reasonably.

### **2.9.9 THOROUGHNESS**

Legal aid managers must exercise the law with circumspection and interpret the acts and legal implications thoroughly. Decisions ought to be made in the best interests of the clients within legislative parameters.

### **2.9.10 PROBITY AND HONESTY**

The exercising of legal decisions must be conducted in an open and transparent manner, and legal aid managers must be of sober mind.

## **2.10 SUMMARY**

Legal aid managers are required to constantly keep abreast of legal developments, statutory changes and legal updates. They are required to continuously improve and contribute to the profession, thus increasing their proficiency as public administrators and practitioners. Legal aid managers are fundamentally accountable towards the community they serve, therefore the building of true professional competence becomes an ethical concern. Legal aid managers are required to maintain ethical and professional conduct in all their activities and interactions with both the legal profession and the community at large. Legal aid clinics can be categorised as public institutions as they have a moral responsibility to the public they serve. Quality legal aid management cannot

be achieved without public administration. Legal aid managers should not undertake what they are not competent to do, but rather strive to improve their performance and skills. Legal aid managers should strive to achieve quality service. The legal profession operates on confidentiality and trust which clients place in legal practitioners. Given the need for openness and public accountability in a democratic society, the professional legal administrator must act with circumspection in divulging information concerning legal matters. Information provided in confidence should be treated confidentially. The legal aid manager must use considerable discretion in dealing with withholding information of value to the client on the one hand, and the unjustifiable withholding of information of value to the client through excessive secrecy and confidentiality on the other hand. To err substantially in either discretion, could constitute unethical conduct on the part of the legal aid manager.

With the Constitution of 1996 that embraces respect for community values and emphasises public accountability and transparency in government and administration, it is inevitable that legal aid practitioners will be called upon to make public appearances and to interact with the media. The maintenance of professional integrity requires that the practitioner at all times acts with responsibility and circumspection in public appearances and utterances. The practitioner should work pro-actively in building a sound relationship with the profession for the administration and development of justice. What the legal practitioner does, is affected, influenced, facilitated, supported, directed and controlled by others to a certain extent. This interaction with other stakeholders in the profession has implications for the proper conduct of public administration.

Legal practitioners are professionally bound to conscientiously apply the law of the land. The crucial importance is that legal practitioners must be fully conversant with the principles embodied in the Constitution, legal prescriptions and statutory obligations of the South African legal system. The Constitution provides a sound foundation on which to build ethical and professional values. Legal practitioners should commit themselves to promoting and maintaining a culture of human rights and an ethical public administration to support such a culture. The principles, norms and culture expressed hereto all point to a fundamental responsibility demanded of the legal managers, therefore acceptance of this responsibility is a necessity for the achievement and maintenance of ethical public administration (Robson 1998: 146-156).

In South Africa the normative guidelines of equality and justice are of cardinal importance. There is an increasing awareness placed on social equality, respect for human dignity and justice. The spontaneous upholding of these phenomena can be considered to be a moral revolution (Roux, Brynard, Botes & Fourie 1997: 168). No amount of laws, codes of conduct and threats of punishment can force public officials to behave ethically and to promote just government. Unless public officials are guided by a sense of vocation, serving unto others, and accountability, it is impossible to expect a moral government. All political and administrative actions need to be based on some moral foundations if public trust and confidence is to be safeguarded, so that their conduct remains beyond reproach while performing their duties loyally, efficiently and economically. People holding public office ought to behave in a manner of protecting and defending the public in a moral way without allowing the resources to be impoverished (Dwivedi 1998: 63).

It is often assumed that public managers hold discretionary powers in authority. As a result, the public manager was considered a functionary removed from substantive value judgments resulting in a chronic neglect of the ethical foundations of the field and the absence of a coherent system of ethical standards to ground the management role. With the advent of the final Constitution and the Bill of Rights and the White Paper on Public Service Transformation, developments and interest on ethics is on the rise. The renewed interest must however, be sustained as a serious concern of the field. Legal aid managers should strive to promote and develop moral judgments and attitudes of moral responsibility towards the communities. The development of ethical decision-making skills within legal frameworks, ought to be a significant goal of the legal profession.

The supremacy of the Constitution cannot be taken for granted as it enshrines the concept and practice of human dignity, promotes the achievement of equality and the advancement of human rights and freedoms. The commitment to service delivery and to the protection and promotion of human dignity are indispensable in order to ensure sustainability of legal aid services. The respect for the Rule of Law within a democratic society is fundamental to the subject of legal aid. The Legal Aid Board, an independent statutory body entrenched under the Legal Aid Act, (Act 22 of 1969), renders or makes available legal aid to indigent persons and has the power to engage legal practitioners and lay down conditions for granting legal aid. University-based law clinics operate

a full fledged law clinic in a similar fashion under Ruling 9 of the State Attorney Act, (Act 56 of 1957) under the auspicious of the University Council. These clinics are bound by legislative measures to operate legal welfare programmes to the underprivileged communities at large. From the aforementioned discussion, it is clear that all functionaries involved with the execution of legal aid administration and management operate within a total process of public administration.

Upon analysis of the public administrative process, it is revealed that legal aid management is a sub-field of public administration, and that the framework of public administration serves as a 'means' to achieving the 'end' result.

The following chapter examines the national and international trends in legal aid management, using selected first and third world countries.

## CHAPTER THREE: NATIONAL AND INTERNATIONAL TRENDS IN LEGAL AID MANAGEMENT

### 3.1 INTRODUCTION

This research focuses on legal aid management in South Africa, and selected First World countries in comparison with selected Third World and African Countries.

In the beginning many members of the legal profession were sceptical about the value of legal aid clinics. There was much concern about touting, inadequate supervision, competition by the clinics for clients, and that much of the work would involve social welfare not law. Legal aid clinics appeared to be an unnecessary appendage to the existing national legal aid scheme, and would at best merely serve as clearing houses for the legal aid board. Much of the scepticism was due to the lack of the knowledge about the functioning of legal aid. The educational value of these clinics was also overlooked. By 1976 however, the climate improved, and it was suggested that clinics deserved the support and co-operation of the organised profession, as they could play a valuable educational role and supplement the national scheme. The recognition for law clinics has been won. The profession provides attorneys as supervisors for most campus clinics. Law clinics are here to stay and their importance as practical legal training and public interest institutions has been increasingly realised by the legal profession (Mason 1982: 164).

The tremendous importance given to university-based law clinics involving practical legal education to students, is strengthened by the following words of Reynitens in Zemans (1979: 36):

*“Students represent a cheap source of manpower, which in the presence of proper supervision reaches a standard at least equal to that of a young qualified lawyer . . . The well-supervised use of the law students will significantly ease the limitation under which most of the legal aid programmes in Africa now have to work, it is only through student programmes that there is any possibility in the near future for legal services becoming widely available to the public”.*

The above emphasises the growing need for legal aid and by extending the practical skills of law students, legal aid can be expanded and offered more widely to the community.

## 3.2 SOUTH AFRICAN PERSPECTIVE

Law clinics at South African universities and legal aid board-funded clinics operate within a legal, political and social milieu, serving the needs of poorly disadvantaged communities. They are the power-houses of the legal profession. They operate with limited financial and infra structural resources. South Africa being a developing country has both developed - urban areas and underdeveloped - rural areas which makes it a blend of First and Third World country. The South African Government through the Department of Justice is committed to improving the status of disadvantaged communities and to earmark larger sums of money for legal aid. To this end, the South African Minister of Justice, Dr Penuell Maduna called on lawyers to join in the global fight against poverty and contribute to legal aid services.

### 3.2.1 BATTLE AGAINST POVERTY

At the International Bar Association's biennial conference in the Netherlands in September 2000, Dr Peneull Maduna made a call to the world's lawyers to actively contribute to legal aid services. The separation of the Rule of Law from politics, human rights and development issues was no longer tenable. The challenge to lawyers who are seriously committed to promoting and strengthening the Rule of Law and human rights is to become aware of the social realities that condemn the vast majority, to abject poverty and to act consciously to eradicate poverty. The Minister urged lawyers that, in the current climate of globalization, their participation in the creation of relevant new legal concepts, techniques and institutions that shape the socio-economic environment is vital. The Minister reinforced the need for lawyers to contribute to community service by stating in *De Rebus* (November 2000: 9) that:

*"We should be concerned with the broader issues of poverty and inequality that prevail in our societies and take part in promoting measures to deal with their fundamental causes. The gap between the rich and poor countries have doubled over the past forty years."*

It was further highlighted good governance was crucial if developing countries were to achieve the necessary rates of growth and attract and retain investors.

The inter-relationship had been recognised in South Africa's Constitution which brought social justice to the fore and put it on a par with the Rule of Law and human rights. It must be significantly noted that in South Africa the Constitutional Court had taken judicial cognisance of the fact that the ability of the poor to enjoy basic rights such as access to quality legal representation in the courts was very limited (De Rebus November 2000: 10). It is evident that legal aid clinics do not operate with all the modern technology as attorneys in private practice do as a result of cutting down on costs and streamlining budgets. This problem allows for inefficient administrative systems and delays in decision-making. It is imperative that legal aid clinics be given the necessary managerial support and skills-based training to administrate and manage their departments with adequate and updated resources.

In South Africa, legal aid is provided through different mediums. They include the following:

### **3.2.2 UNIVERSITY-BASED CLINICS**

These are commonly known as campus law clinics inheriting the names of their respective institutions. Legal aid in South Africa is rendered via law clinics housed within Universities, operating under the auspices and overall mission statement of their institutions.

#### **3.2.2.1 HIERARCHICAL STRUCTURE**

Universities are public institutions created by legislation to provide for higher education and training. Consequently a university council is responsible for the government and administration of the university and must execute its functions within prescribed legislation. Therefore all university officials must carry out their functions in accordance with the relevant legislation as approved by Parliament and the Minister of Education (Moodley 1987: 86).

Consequently, legal aid directors must carry out the activities of the clinic within the parameters of the university council. Even the appointment of staff and the duration of their contracts is determined by council. Therefore one can say that legal directors must respect the supreme authority vested in the council of the university.

### 3.2.2.2 STATUS OF UNIVERSITY-BASED CLINICS

They do not enjoy sufficient and adequate facilities, as their major limitation is funding.. As a result of being under-resourced, they must continuously search for donors, both nationally and internationally, public and private sectors. Law clinics as public interest law firms and training bases for practical skills, are an integral part of the legal profession. To this end, the Ford Foundation has been a major donor to support the initiative of access to clinical legal education and services for the indigent poor. Today the trend is moving towards law clinics forming a collaborative body and setting up a trust for mutual benefit of all member clinics. As contrasted with most American law school clinics, who supplement government-sponsored legal services or public defender programmes, South African law clinics serve as indigent services alongside the Legal Aid Board-funded clinics, which are subsidised by the state. Most university-based clinics are in dire need of enhancing their staffing compliments. It is this shortage that could seriously impede the growth and development, and effective administration and management of the operations of the clinics. Continuity of funding and staffing is critical to the future of these clinics. They are not a permanent feature of their respective institutions, but are appointed on a contract basis, ranging from one to a maximum of three years. Community-based law clinics should be supported as efforts to extend indigent services as far as possible towards meeting the goal of supporting greater access to justice for the nation's poor. Many law clinics attached to universities, extend clinic branches in communities, off-campus to permit greater access to legal services for the poor in rural areas, in urban centres and in the townships and outlying areas. To this end, the Ford Foundation has worked with clinics to identify the priority items that required its support, and funding provided for the support of full operation of these rural clinics, with the expectation that their demands will increase over the years, as the concept of available free legal services for the indigent becomes more entrenched (Gilbert 1993: 17).

Through a survey of university-based clinics supported by the Ford Foundation and conducted by Shanara Gilbert, Associate Professor of the City University of New York Law School, consultant, in 1993, most South African law clinics expressed enthusiasm for country-wide training in clinical education methods, including clinical law office management, teaching and evaluation and supervision. To this end, suggestions were made and supported by the Ford Foundation to host management training workshops and clinical teaching methodology workshops to enhance the quality of legal aid managers.

Today most South African universities have law clinics attached to them, as part of realising their broad objectives of promoting professional, vocational training, and community outreach programmes for the socially disadvantaged communities.

There is definitely a need for more public funds to improve and enhance the quality and quantity of services, and to boost the infrastructure towards effective management.

### **3.2.3 LEGAL AID BOARD-FUNDED CLINICS**

The Legal Aid Act 22 of 1969 established a Legal Aid Board to provide legal aid for 'indigent persons'. The Act came into effect on 26 March 1969 and the legal aid scheme was implemented in South Africa on 29 March 1971.

The Legal Aid Board is a body corporate, capable of suing and being sued in its corporate name. The Legal Aid Board is an independent statutory body and has the power to engage legal practitioners and lay down conditions for granting legal aid. The objects of the legal aid board are "to render or make available legal aid to indigent persons' (Section 3) and to this end, it is empowered, *inter alia*, to obtain the services of legal practitioners and to fix conditions subject to which legal aid is to be rendered. On 10 March 1995 the Cabinet agreed to appoint the Legal Aid Board to be its agent for providing legal assistance under the Constitution where the State must provide free legal assistance to detainees, sentenced prisoners and accused in criminal cases if substantial injustice would result if they were not represented.

The Legal Aid Amendment Act, 1996 (Act 20 of 1996) adopted by Parliament in 1996, enabled the Board to fulfil this function in its own right, thus furnishing legal aid in terms of the Constitution. This amendment authorised the South African Legal Aid Board to furnish legal aid in all parts of the country, including the former TBVC states.

The constitution of the Legal Aid Board is determined by the Act, and provision is made for representation by the bench, the bar, the attorney's profession and several government departments. The Legal Aid Board is financed by the State and operates as a semi-autonomous

statutory body. It has an established legal aid guide which serves as a policy document for all legal aid board-funded clinics. The scheme is managed and administered by the board itself and the various legal aid clinics falling under its control are evaluated by annual reports, qualitatively and quantitatively through the principals appointed at each clinic, who serve as managers. The board is an extension of community-outreach to the South African legal and justice system.

### **3.2.3.1 COMPOSITION OF THE LEGAL AID BOARD**

The Legal Aid Board has 12 branch offices and approximately 24 legal aid clinics established in association with most universities. These clinics are staffed by qualified attorneys as public managers. Legal aid is also available at all magistrate's courts throughout the country where officials of the Department of Justice act as agents for the South African Legal Aid Board. The outline and structure of the Legal Aid Board is contained in **Annexure 8** of the Legal Aid Guide.

### **3.2.4 LEGAL RESOURCES CENTRES**

The Legal Resources Centres are 'public interest' law firms. This means that they provide legal services to communities or individuals where the case involves an issue that affects more than one individual. Examples of these cases involve land problems, consumer cases, labour cases and cases against municipalities or the state. The Legal Resources Centre is a non-profit making organisation and depends on funding from donor agencies. They also employ para-legals and supervise community advice offices (De La Hunt 1992: 9).

### **3.2.5 PARA-LEGALS**

Para-legals play a vital role in community advice centres and their role is three-fold:

- ☛ service role
- ☛ development role
- ☛ human rights role

A brief discussion of these roles follows.

### **3.2.5.1 SERVICE ROLE**

Para-legals directly serve the community by responding to day-to-day problems like maintenance, evictions, pensions and violence against women. Advice, counselling and social welfare programmes are considered here.

### **3.2.5.2 DEVELOPMENT ROLE**

Para-legals help to build services and resources which will improve the lives of ordinary people and give them more power and control over their own lives. They include building community resources, community education, training programmes, skills-training and policy formulation in relation to access to justice, social welfare and other related issues.

### **3.2.5.3 HUMAN RIGHTS ROLE**

Para-legals can help to build a respect for human rights such as the rights of persons, monitoring these issues, ensuring the violation of human rights issues are handled, campaigning and mediating on behalf of disadvantaged communities.

There exists a severe lack of funding and resources for sufficient para-legal services in South Africa. They continuously raise these issues for planning a more accessible justice and social welfare system for the future.

In the final analysis, legal aid is the 'vehicle' to stimulate actions of practitioners to meet the critical needs or problems of the poor which are common to a number of communities. Legal aid is a means to further the cause of justice among persons living in poverty by mobilising the assistance of lawyers and public interest law institutions, providing legal advice, legal representation, counselling, education, and other appropriate services. Funds ought to be constantly made available to implement the efforts initiated and to further the cause of legal aid in South Africa. Government has taken responsibility for improving access to justice and social

welfare or the majority of the population, who are not able to pay for legal services. It is a joint responsibility and the continuing and wider acceptance of this responsibility among all stakeholders is indispensable if the government, justice department and the legal profession is to accomplish its overall objectives collectively (Fine 1992: 3-4).

### **3.3 LEGAL AID IN FIRST WORLD COUNTRIES**

Some of the first world countries that were randomly identified for a comparative analysis are the following:

#### **3.3.1 LEGAL AID IN AUSTRALIA**

On scrutinising the legal profession in Australia, it was found that Australia contained virtually all the possible methods of qualification for the legal profession within the boundaries of one country. At a recent international conference of the Australian Professional Legal Education Council which invited speakers from all parts of the Commonwealth and the United States, the following were raised:

- 3.3.1.1 Attorneys should be educated to pay more attention to the interests of their clients rather than to their rights;
- 3.3.1.2 professional education should be skills-based, rather than transaction-based; and
- 3.3.1.3 candidate attorneys are often taught a great deal of material without ever having an opportunity to reflect on what they have been taught.

No one will dispute that a client's interests are often best served by settling a matter rather than seeking a final judgment.

While it is only with the benefit of experience and insight into business and social affairs that a practitioner will acquire the necessary wisdom to identify and promote the true interests of a

client, practical and managerial training courses must seek to accelerate the process of acquiring such insight (Boshoff 1997: 27). The discussion in Australian legal education placed considerable emphasis on skills-based training, one of which being administration and management - ensuring competent practitioners in the legal profession. This serves to heighten the discussion that the management ambit is one that deserves unlimited attention. To this end, in the United Kingdom, the Lord Chancellor's Advisory Committee on Legal Education has begun to search for the best way to achieve results with skills-based training which is much sought after in legal education. This is further strengthened by the South African experience since the first legal forum on legal education in April 1995 which emphasised the need for sound administration and management of legal services.

### 3.3.2 LEGAL AID IN AMERICA

The right of indigent criminal defendants to a lawyer is increasingly in jeopardy in America's fiercely adversarial legal system. In a landmark case 35 years ago, *Gideon v Wainwright*, a unanimous Supreme Court ruled that indigent defendants must be provided with a lawyer at state expense because there could be no fair trial in a serious criminal case without one. At the time, the decision was hailed as a triumph for justice, an example of America's commitment to the ideal of equality before the law. This is the image most Americans still have of their criminal-justice system-the fairest in the world, in which any defendant, no matter how poor, gets a smart-alert lawyer who, too often, manages to get the culprit off on a technicality. Nothing could be further from the truth. About eighty percent of people accused of a felony have to depend on a publicly-provided lawyer; but over the past two decades the eagerness of politicians to look harsh on crime, their reluctance to pay for public defenders, and a series of Supreme Court judgments restricting the grounds for appeal have made a mockery of *Gideon*.

Today many indigent defendants, including those facing long terms of imprisonment or even death, are treated to a **“meet 'em and plead 'em”** defence - a brief consultation in which a hurried or incompetent lawyer encourages persons to plead guilty or, if that fails, struggles through a short trial in which the defence is massively outgunned by a more experienced, better-paid and prepared prosecutor.

According to Stephen Bright, Director of the Atlanta-based Southern Centre for Human Rights, a legal aid and advocacy group, the following is expressed in *Economist* (1998: 20):

*“There exists a wealth-based system of justice. For the wealthy, it's gold-plated. For the average poor person, it's like being herded to the slaughterhouse. In many places the adversary system barely exists for the poor”.*

Many lawyers, of course, have made heroic efforts for particular defendants for little or no pay, but the charity of lawyers can be relied on to handle only a tiny fraction of cases. As spending on police, prosecutors and prisons has steadily increased over the past decade, increasing the number of people charged and imprisoned, spending on indigent defence has not kept pace, overwhelming an already hard-pressed system. At State level, where the vast majority of criminal trials are held, the situation is often far worse. An unlimited number of public offences are dealt with each year.

Often when there are lawyers willing to take on indigent cases, judges often appoint amateurs, or those they know will not vigorously contest a case. Most State judges are elected or subject to recall votes. Faced with crowded lists, they have little incentive to bend over backwards to ensure that the hundreds of impoverished defendants who pass through their courts, many accused of heinous crimes, are represented by well-paid or zealous lawyers. The most reliable method used to provide lawyers for poor defendants is to appoint salaried public defenders. However, public-defender offices are often grossly underfunded.

Training programmes for defenders are scarce. Inexperienced lawyers fresh out of law school are often buried under a gigantic caseload. The amount spent on defender offices is typically one-third or less that spent on the teams of prosecutors they face. This can be a disaster for any defendant. The innocent face wrongful conviction. However, even the guilty may suffer because their lawyer failed to raise mitigating factors which, by law, entitles one to a milder sentence. Once wrongful convictions because of lawyer error stood a good chance of being

overturned on appeal, especially in death-penalty cases. But Congress and the Supreme Court have recently made appeals far more difficult. In the *Economist* (1998: 21) the following report revealed some significant issues regarding legal representation:

In 1996 Congress eliminated all federal funding for death-penalty resource centres, which had handled or advised on most death-penalty appeals. Most of these centres have since closed. The same year Congress also passed an anti-terrorism law which included strict new procedural rules that make it much more difficult to mount an appeal in a death-penalty case, even when new evidence is found. The Supreme Court has ruled that appeals based on lawyer error must prove not only that a defence lawyer was incompetent, but that the incompetence changed the outcome of the trial. Proving such a negative is often impossible. Lower courts have used this ruling to uphold convictions, even in death-penalty cases, in which the defence lawyer was drunk, asleep during the trial or completely ignorant of the relevant law. As a result, most wrongly convicted poor defendants now face a catch-22: to prove their original lawyer incompetent, and must find a highly competent lawyer to navigate the bigger appeal hurdles recently erected, although behind bars the accused are in an even worse position to do that. Providing poor defendants with proper legal representation would cost money, but it is affordable. The estimated spending on indigent defence is less than 2% of total national spending on law enforcement, and only about 10% of spending on all judicial and legal services. Some states, such as Minnesota and Colorado, have found the money for a reasonably financed public-defender programme. Criminal legal aid is also starved of support systems and management in many other countries, but some, such as Britain and the Scandinavian countries, can find the money to do the job well.

### **3.3.3 LEGAL AID IN CHINA AND THE UNITED STATES**

The following is an accomplishment between the United States and China in the Summit - 29 October 1997.

The agreements reached by the United States and China in a broad range of areas would further cooperation towards a more stable, secure, open, and prosperous world for the 21st century.

According to the report of the Prime Minister (1997: 29), some of the key areas covered in the agreement relating to legal aid and human rights issues include the following:

The United States and China have fundamental differences in the area of human rights. The President raised U.S. concerns about prisoners of conscience in custody for the peaceful expression of their views and about other restrictions on expression, association, religious freedom, assembly, and the protection of cultural and religious traditions of Tibet.

China has taken the following actions concerning human rights:

China had invited a distinguished group of American religious leaders representing the Catholic, Protestant, and Jewish faiths to visit China to observe Chinese religious practices.

Non-Governmental Forum - The United States and China agreed to preparatory talks and established a Forum for U.S. and China NGOs and officials to discuss human rights issues.

United Nations Covenant - China has signed the International Covenant on Economic, Social, and Cultural Rights, which obligates parties to promote progressive development of these rights in their societies. China hosted a visit of the United Nations Working Group on Arbitrary Detention, which investigates detention of prisoners in circumstances that may violate internationally recognized human rights standards and recognition for legal aid. In promoting the Rule of Law the United States and China have a common interest in developing legal and judicial institutions that provide more predictability and protections both for economic interactions and for non-economic activity involving ordinary citizens.

In so far as strengthening legal aid institutions, the United States and China agreed to establish a joint liaison group pursuing cooperation on the rule of law, including in areas such as training of judges and lawyers (practical aspects of law and administration and management), exchanges of legal experts, administrative law procedures, legal aid, and commercial law and arbitration. This is a significant contribution towards promoting efficient and effective delivery of legal aid in both these countries.

With the Information Technology Agreement between the two countries, China has agreed to participate in the extensive use of computers, semi-conductors and telecommunications equipment. This will provide direct benefit through new learning for public managers, particularly that of legal aid practitioners, given the support for new and improved delivery of legal aid services in China. In the field of science and Technology the United States and China have a common interest in developing the technology of the future that will spur cooperation in areas of mutual interest such as space exploration, medical research, and efficient and effective delivery of public essential services (Prime Minister's and President's Magazine 1997: 31).

### **3.3.4 LEGAL AID IN THE BRITISH COLUMBIA (CANADIAN) MODEL**

A legal aid management system which does not provide an adequate level of management support, efficient and effective delivery of legal services, is failing the very purpose for which it is supposed to exist.

In September 1992 a comprehensive review of the legal services system in British Columbia, Canada was released for public discussion.

#### **3.3.4.1 HISTORY OF LEGAL AID IN BRITISH COLUMBIA**

Legal aid was first introduced in British Columbia in the 1930's. In 1952 criminal legal aid was established for first-time offenders. In 1964 the government initiated a modest honorarium scale to lawyers who handled minor offences and serious indictable matters. The Legal Aid Society was created in 1970. The Legal Aid Society was funded by the provincial government to provide criminal legal aid on a *judicare* model - private lawyers were paid through a tariff financed by the province. In 1973 the Legal Aid Society began to open branch offices. In 1974 the Attorney General of the province created the Justice Development Commission to plan the future development of the administration and management of justice in British Columbia. The Commission's mandate included the provision of legal services, the operation of legal aid programmes, and the funding of community organisations which provide legal or quasi-legal

services. In 1975 the Commission took on the management of public legal services and their funding - owing to the fact that the administration and management of legal aid clinics became an onerous task. The Legal Aid Society remained by far the single agency delivery legal services. An overlap of functions and funding shortages led to the merger of the Legal Aid Society and the Legal Services Commission in 1979, as the Legal Services Society. The Society was created by Statute (Craig 1992: 340). Section 3 of the Legal Services Society spelt out the objects of the society as follows:

3(1) The objects of the society are to ensure that:

- (a) services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons; and
- (b) education, advice and information about law are provided for the people of British Columbia.

Faced with dramatically escalating costs, the government decided to conduct a review of the whole system of legal aid in 1992. The major issues considered were the:

- availability, accessibility and quality of present services;
- the adequacy of service planning and the suitability of various service delivery models;
- the adequacy of the system's accountability, administration, management and leadership; and
- the costs of legal services, mechanisms to control and, if possible, reduce costs, and mechanisms to secure the highest quality, range and accessibility of services for the funds expended.

The report outlined a three-year process of restructuring of legal services delivery.

Approximately twenty-five percent of tariff work during the first two years was to be handled by staff lawyers in Community Law Offices. An increase to approximately-fifty percent in the third year. Currently, the legal service delivery contains 40 staff lawyers, 37 para-legals and 72 support staff. This would increase to 177 staff lawyers, 93 para-legals, and 193 support staff by year three. Clearly the large number of support staff is indicative of the need for excellent management and administrative support systems for efficient and effective service delivery.

The review of legal services in British Columbia is a useful examination of the complex system of legal services in that country. It illustrates the evolution of expectations regarding legal rights and society-supported legal services for the poor. A lot can be said about the nature of a society by its commitment to defending the rights of its poorer citizens. It is clear that the transformation in the British Columbian system ensured that more British Columbians in need gain access to the range of criminal, family and civil legal services to protect their basic legal rights, and the increasing importance of proper management and control over legal aid structures (Craig 1992: 343 -353).

### 3.3.5 LEGAL AID IN MINNESOTA

According to the National Review (March 24, 1997), Minnesota does not display very sophisticated legal aid services. There has been overheated rhetoric from those who want to kill legal aid services for the poor. The Republicans convinced themselves that in passing a long series of restrictions on its activities, there was finally a reformed effort. There was every reason to know better, because earlier efforts to rein in the program had been a complete failure.

Arguing for increased funding for legal aid, California Democratic Congressman Julian Dixon declared in the National Review (1997: 20):

*“In the face of new political realities, legal services advocates have been willing to bend over backward to accept far-reaching restrictions on attorney activities to ensure the continued existence of a viable core program”.*

The government of Minnesota is striving to ensure that the legal services program remains free of partisan political influence and involvement. While there exists an urgent and overwhelming need for rural legal aid services, at the same time, the legal services program administered and managed by defence attorneys is under scrutiny as a result of exploitation of community values and lack of transparency. The government has embarked on stricter controls over the activities of legal aid attorneys to ensure that the monies from trust accounts (the public purse) remains intact and used for the benefit of clients (the defended communities) only.

This is and remains the core issue: left-wing lawyers using the poor in pursuing their political agenda (Isaac 1997: 50).

### 3.3.6 WESTERN AUSTRALIAN EXPERIENCE

A review of the administration of public justice is highlighted by the following:

The Ministry of Justice, according to Grant (1995: 178), reflects the Government's desire to:

- (i) increase the capacity for policy analysis, policy development and co-ordination of strategic planning across the justice programme;
- (ii) enhance the co-ordination and streamlining of service provision across functional divisions;
- (iii) ensure improved public access to information;
- (iv) ensure access to efficient, cost effective and affordable justice systems.

According to Grant (1995: 179), the mission of Australia's legal aid is:

*"To ensure access to a fair and cost-effective system of justice which protects the rights of individuals and its response to community needs".*

The key initiative of the Ministry includes:

- (i) development of greater confidence in the justice system;
- (ii) access to an efficient and cost effective system for resolving legal problems;
- (iii) availability of timely and objective advice and information on justice and legal matters;
- (iv) adherence to the Rule of Law;
- (v) equity and access to service delivery;
- (vi) emphasis on the rights and needs of victims;
- (vii) value for money from available resources.

Reformation of the justice system in Australia in the early 1990's was a tremendously challenging period. The successful integration of the notion of service delivery to indigent persons promised significant long term improvement to the justice system. Underpinning this commitment in the government's pursuit of the management reforms necessary to ensure that the organisation is adequately positioned to deliver its mandate. Reforms included strategic planning which not only

led the government forward, but also served to represent the best views of the most valuable asset - the people. The Justice Ministry had vigorously implemented quality management principles as a means of improving and sustaining the quality of services being provided to the people of Western Australia (Grant 1995: 180 - 1).

### **3.4 ACCESS TO JUSTICE - CONSTITUTION OF SOUTH AFRICA, AUSTRALIA AND CAMBODIA - (Aspects of Similarity)**

**SOUTH AFRICA:** Section 34 of the Constitution states that everyone has the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a court.

**AUSTRALIA:** “To ensure access to a fair and cost-effective system of justice which protects the rights of individuals and its response to community needs”.

**CAMBODIA:** Section 38 of the Constitution states that every citizen shall enjoy the right to defence through judicial recourse.

The Constitutions of these countries embraces the democratic ideals and protection of basic human rights. It establishes a set of enduring values to preserve the dignity and freedom of all its citizens. This lays the foundation for the provision and inclusion of legal aid for disadvantaged communities.

### **3.5 LEGAL AID IN THIRD WORLD COUNTRIES**

There is an urgent need to meet the rising demand for legal aid in African countries, many of which are in varying stages of development. African countries do not operate very sophisticated legal aid systems mainly because of a severe lack of resources: financially, infra-structurally and regarding human resources.

At the Eighteenth Assembly of Heads of State and Government, June 1981 in Nairobi - Kenya, the African States members of the Organization of African Unity set out to prepare a preliminary draft on an African Charter on Human and People's Rights providing *inter alia*, for the establishment of bodies to promote and protect human and peoples' rights. There is a commitment to "freedom, equality, justice and legitimate aspirations of the African People".

The African Charter on Human and Peoples' Rights is similar to the South African Bill of Rights - affording the promotion and protection of human rights of all.

The following regional and international legal instruments are of utmost importance for Africa's Legal Aid work and mandate:

- The African Charter on Human and Peoples' Rights
- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights

### **3.5.1 AFRICA LEGAL AID OFFICES (AFLA)**

Africa Legal Aid (AFLA) was launched in Maastricht, the Netherlands in 1995. Since the establishment of Africa Legal Aid, many activities were undertaken to give recognition to human rights protection in Africa, such as fund raising, lobbying and human rights education as well as submitting cases to the African Commission on Human Peoples' Rights. This organisation acts as a support body for the many African countries offering legal aid, and provides support on human rights issues. AFLA counsels individuals and groups on human rights matters, promotes human rights awareness, researches human rights conditions in African countries, publicizes human rights violations, pressurizes States to comply with their human rights obligations, analyses human rights legislation and treaties and contributes towards the development of a human rights jurisprudence for Africa. This support aids African countries to better manage the administration of their legal aid services (Africa Legal Aid. Netherlands. 1995. 1)

### **3.5.2 LEGAL AID IN CHILE**

In Chile fewer lawyers engage in legal aid work, as many opt for more lucrative legal careers. Members of the profession come from middle and upper classes of society. Therefore there exists a lack of economic and human resources associated with legal aid practices. There also exists a lack of ethics in legal aid programmes. Emphasis is on quantity, rather than quality of services. Poor clients are apathetic about complaints in an open manner, hence poor quality services continue.

Client-centred clinics often are unable to adequately attend to administrative and management matters. However, proper management can determine the success or failure of clinical programmes. Where clinics provide an array of legal services beyond legal representation such as dissemination of legal information, research and the maintenance of clinical libraries, administrative and management demands can become especially onerous. Because of a need to provide clinical education, public relations becomes a necessary management function. A public relations/development department could publicise work of the clinic and seek out and negotiate financing for and on behalf of clinics. Management must be supported by efficient and capable administrative staff. The preparation of management meetings and the execution of decisions is vital to the efficient functioning of clinics. The choice of clinical staff and management must be carefully sought in terms of leadership qualities, dynamic, imaginative, competent and professional (Bates 1992: 157 - 9).

#### **3.5.2.1 CASE STUDY: CHILEAN CLINICAL LEGAL AID MANAGEMENT THE DEPAL MODEL**

A detailed study was undertaken with Legal Aid in Chile - the findings provide significant lessons for South African Legal Aid Clinics

According to Platt (1992: 355), this survey examined the educational value and social impact evaluation of legal aid. Every clinical programme and legal aid programme must contain an evaluative component so as to ensure that it responds to the aims and objectives laid down.

The Catholic University in Chile had implemented a programme which featured a form of clinical training known as 'Joint Practice'. The Joint Practice format consisted of a compulsory one year clinical course which was taken during the ultimate year of a student's career. By incorporating into the law curriculum a year-long practice course on real issues of indigent persons, Chile had offered future lawyers a better legal education and management training for effective and efficient delivery of services. There has also been considerable influence on the professional outlook as well as the roles that future legal practitioners can play in addressing the vital social problems of this century, especially where access to quality legal services are concerned. Organised and operated by the law faculty, the course featured neighbourhood and prison legal aid services. The programme was structured on a team concept basis: teams of students and teachers entered into an agreement with the Minister of Justice and community organisations to provide legal services.

A evaluative study was conducted to ascertain the impact of the clinical course on the study of law and the educational value of the clinic on students. A questionnaire was prepared and answered by 192 students. The study also took into account observations recorded on an ongoing basis by the clinical teachers for the purpose of learning from each other and improving the general experience and management functions of clinics. It became clear at the end of the study that more research was necessary in order to gain insights into the real social impact of clinical professional service, to explore new management styles for greater efficiency, with the possibility of improving them. On the educational side, students generally seemed to have a high opinion of clinical teaching in terms of its educational value.

### **3.5.2.2 REVIEW OF CASE STUDY RESULTS**

#### **(i) Age**

Sixty nine percent of the students were between 22 and 25 years of age and fourteen percent between 26 and 30. Hence the extreme cases of above 30 and under 21 are unrepresentative.

**(ii) Work Situation**

69% said they were working and 31% said they were full-time students. This information confirms that there is less dedication to law studies and suggests that the students' evaluative opinions of the clinic are influenced by this fact. This information can be important in selecting the clinical design to ensure greater emphasis on practical legal training and management skills. Students were questioned about the link between their work and the law and were asked to give detailed description of their activities: 60% said their work was linked to the law; 18% said there was a partial link; and 13% said their work was unrelated to the law and to professional training. The most common form of work was that of legal assistant in private offices or public institutions. Questioned about their previous experience in court, 34% said they had none and 63% replied in the affirmative. Those who had court experience described a limited range of activities such as the drafting of legal documents, aid to clients in bureaucratic procedures, etc.

**(iii) Experience with poor communities**

51% said they were engaged in some form of work with poor persons of communities, whereas 48% said they had no such experience. Those who replied in the affirmative had given advice to community organisations, worked for political purposes or given sporadic aid in specific cases. This showed that for about half of the students the clinic is the first real contact with poor people.

**(iv) Evaluation of the clinical course**

The students were asked in advance about their expectations, ideas and knowledge as regards the clinic and their availability to attend it, so that their replies could be analysed and interpreted more clearly.

**(v) Previous knowledge of the course**

26% had no knowledge and 68% had slight knowledge.

These figures confirm the need to employ formal and informal methods of publicizing

both inside and outside the law schools the concept, objectives and values of clinical legal education. Also the necessity for same to improve delivery of legal services and provide sound administration and professional management.

**(vi) Expectations**

Even though their previous knowledge was imprecise, almost all the students 94% said that, as a result of the course, they hoped to learn how to apply their theoretical knowledge and to familiarise themselves with the practice of the profession. The importance of practical management skills and organisational strategies was also emphasised. The high figures indicate that clinical legal education creates a high degree of motivation and imparts meaning to the study of law and its professional skills. It has encouraged students entering the legal profession to appreciate the necessity for such a study and its importance to the disadvantaged societies.

**(vii) General Appreciation of the course**

Out of the categories 'very good', 'good', 'satisfactory', and 'bad', 45% of those questioned described the clinical experience as 'very good' and 55% as 'good'. In an initial general review, they assigned priority to the integration of theory and practice, deepening and extension of knowledge, professional experience acquired, contact with social realities and the need for strategic and operational management skills. The following were perceived as general limitations: the excessive number and repetition of cases, shortage of material resources, lack of proper information technology facilities, imbalance between time requirements and credits granted.

**(viii) Increase in theoretical knowledge**

58% said that in their clinical experience they had considerably increased their theoretical knowledge, 32% slightly, and 5% had not at all. This was an indication that confirmed the hypothesis that practice promotes a need to know and fixes the information more firmly in the memory.

The new theoretical knowledge relates to substantive legislation concerning problems of poverty, whose norms are not normally included in the curriculum, and to actual clinical matters such as interviews, lawyer-client relations, counselling, etc.

**(ix) Integration of theory and practice**

The integration of theory and practice in clinical legal education in Kinoy's view, 'the best and most fruitful of teaching methods' was recognised by 93% of the students consulted, which seemed a clear indication of the ability of clinical teaching to eliminate this false dichotomy and to provide a more complete picture of the law.

**(x) Contribution to professional training**

93% of the students described as 'considerable' or 'fairly considerable' the contribution of the clinic to professional training and 7% described it as 'satisfactory' or 'slight'. The contributions considered as most useful related to interviewing techniques, security in interpersonal relations and specific skills in court. Many replied that for the first time an opportunity of holding legal consultations, initiating and conducting judicial proceedings and the art of managing a legal aid office were explored. Others stressed learning how to prepare and draft documents and participate in hearings.

**(xi) Approach to social realities and problems**

DEPAL believed that the linking of the clinic with professional services was a natural way of bringing students closer to the social problems of the community. Questioned on the contribution of the clinical course to a knowledge and closer awareness of social realities, 85% of the students described this contribution as 'considerable'; 11% as 'slight' and 3% as 'non-existent'. The clinic, therefore, appeared to afford a broader view of the importance of social and human factors in the exercise of the legal profession. A number of students said that not only did the opportunity exist to defend certain cases as law professionals, but also the roles as family advisors and guides served useful. Many were able to get to know the reality of poverty and the different needs of poor people, especially for justice and equality before the law.

A student summed the experience as follows:

*'For the first time I felt I was useful to society',*

thus voicing the sense of effectiveness and ability usually generated by the clinical method. The information indicated the ability of the clinical method, combined with professional services, to help to reveal the inconsistencies between norms, institutions and realities. Questioned on what was understood by 'legal aid', 91% expressed the simple idea that legal aid consists of helping persons who cannot pay professional fees. 65% said that legal aid was insufficiently developed because of the lack of economic resources, incomplete legal education, poor or lack of management skills and a shortage of good lawyers providing legal services to the poor.

**(xii) Prospect of future professional practice in legal services**

The question was asked before and after the course and the replies varied significantly. Before the course, 90% advised they were ready to do follow the route. After the course, the replies were as follows: 42% positively, 43% negatively and 15% did not answer or gave conditional answers. Tentative explanations might be: material and moral poverty of certain environments in which legal services are provided for the poor; problems which have no legal solution for clients, difficult clients; lack of economic incentives; and lack of managerial skills and competencies. On being questioned on their perception of the operation of the legal system and whether the legal norms were appropriate or not, the opinions were reflected in the following manner:

<b>OPINION ON ADEQUACY OF EXISTING LEGAL NORMS</b>	<b>PERCENTAGE</b>
Adequate	6%
Partially adequate	69%
Inadequate	19%
Unanswered	6%

The opinions were reflected as follows:

<b>REASONS FOR INADEQUACY</b>	<b>PERCENTAGE</b>
Inadequacy during the application process	33%
Lack of connection with social reality	42%
Formulated in ambiguous terms	4%

Of the students, 65% said that the norms were not applied to all equally and 31% said that they were, because the courts are open to all and are impartial and independent.

The network of clinics and legal services with opportunities for critical reflection introduced students to an understanding of the relationship between law, society, the problems of legal services, managerial skills and strategic planning. Whether it demonstrated the importance of justice to society, a search for broad cultural backgrounds, interest in social sciences or an opportunity for testing managerial awareness to assist disadvantaged communities, the emphasis was both on theory and sound practice.

Some options gaged concerning the professional training of lawyers include:

<b>ALTERNATIVE</b>	<b>PERCENTAGE</b>
A greater theoretical than practical learning	6%
A greater practical work, including management and organisational skills	5%
A balance between theory and practice	87%
Other	1%
Unanswered	1%

## Opinion of the Need to Incorporate other Disciplines in the Training of Lawyers

(other includes: management, professionalism, ethics, human relations, etc)

OPINION	PERCENTAGE
Yes	71%
No	26%
Unanswered	3%

### Conclusion of Survey

The data gathered in this preliminary study suggested that students had a high opinion of the clinical course and that it came close to the complete fulfilment of their objectives.

- .Need to extend the clinical experience so that students can at least follow cases to completion, thus increasing practical knowledge of the law;
  - Need to programme introductory courses for professional and management skills;
  - Need to construct theoretical courses based on professional practice; and
  - Need for continuous evaluation and remedial measures for improvement of the system
- The real situation of the individual domestic servant in Chile: An empirical study, the results of which formed the basis for a legal reform project elaborated by DEPAL, aimed at improving the social, legal, economic and managerial skills of legal aid structures (Platt. 1992. 356-360).

### 3.5.3 LEGAL AID IN BANGALORE - INDIA

As long as it is legally and socially sustainable, better living conditions will prevail. Poverty must be addressed as a national issue and most redistribution and social welfare programmes need generous support. A 'report card' on public services is an innovative way to gather systematic feedback from citizens on the performance of a city's service. In 1993 in Bangalore, India, civic local groups used a report for services received.

A small group of people concerned about deteriorating public services enlisted a market research agency to survey citizens on the public services performed. The findings were used to present a report card that rated the performance of public agencies. The worst, the Bangalore Development Authority received a one percent satisfaction rating - but it won the highest rating for corruption. The objective was to create public interest and awareness and to pressure public agencies to respond positively to the citizen feedback (World Development Report 1999/2000: 154).

According to Dr Menon (1990: 11), in the 1980's the International Commission of Jurists (ICJ) organised a series of seminars in Asia, Africa and Latin America on the relationship between human rights and delivery of legal services for the rural poor and other disadvantaged groups.. One of the major conclusions of those seminars was that the poor and disadvantaged view law as a tool that is used to oppress and not as a tool that helps secure rights. In view of this, the ICJ sought to establish links with legal services organisations that worked with the poor and disadvantaged groups. In Asia seminars were organised on the subject of the legal services for the rural poor and other disadvantaged groups and the topics included the role of law schools in dealing with the problems of access to legal services of such groups. These seminars recommended that law school curricula should be reformed so as to awaken social concern in the students, to educate law students of their social responsibility as lawyers, and in particular to defend the disadvantaged and oppressed in society. Seminars were held to workshop the process and sensitise people relating to the much needed legal aid services for the indigent.

One of the most neglected areas in higher education at least in India has been legal education. Admittedly it aims to train lawyers for the professional practice of law and practice management. The challenge of professional legal education today is to maximise the social relevance of its content and to inject professional values and skills in its programmes. Following the seminar, the National Law School of India University took three major initiatives towards implementing some of the decisions. These include:

- (a) the launching of a community-based law reform competition for law schools on 'Women and Equal Justice',
- (b) the preparation of a manual on clinical legal education for use by teachers and students interested in managing legal aid activities,

- (c) introduction of a series of clinical courses which students may offer in which they combine service with education effectively.

The marginalisation of some sections of society in India from the legal system is a major concern, for it negates the very concept of the Rule of Law. This aspect of alienation of law and legal processes from the poor is posed in the following manner by Dr Menon (1990:13) as:

*“Has there been a collective institutional failure in denying justice to the poor? Or is it a failure of law itself to match up to the new values and aspirations of the Constitution? Or is it a deliberate refusal on the part of the poor to avail themselves of legal remedies even when provided free? Whatever be the answers to these questions, one thing is certain that the utilisation of the legal system by the poor has been marginal all these years”.*

In view of this the International Commission of Jurists, Geneva, sought to establish links with legal services organisations that help the poor and the disadvantaged to claim their basic rights. The National Law School of India University is committed to look at law as an instrument for social change and human well-being. The seminar served to provide a forum for exchange of experiences and based on the sharing to evolve strategies for providing legal services to the rural poor and other disadvantaged groups.

Conclusions and recommendations arising out of the seminar were the following:

Law schools have an obligation to promote and protect human rights and those constitutional principles that are in consonance with the international human rights standards. Therefore, law schools should provide or facilitate provision of legal services to disadvantaged groups so as to increase their access to justice. Integration of legal services programmes in legal education would enable law schools to meet the legal needs of the rural poor and other disadvantaged groups. Law schools while designing legal services programmes should take into account poverty as well as other handicaps that impede access to justice.

Factors that impede access to justice, *inter alia*, are:

- (i) socio-economic factors, eg. feudal system;
- (ii) persistence of in egalitarian agrarian structure and failure of agrarian reforms;
- (iii) violence perpetrated against disadvantaged groups to prevent them asserting their rights;

- (iv) geographical isolation;
- (v) legal illiteracy;
- (vii) complex and alien language of laws;
- (viii) lack of resources, including management, and support to overcome disabilities arising out of poverty;
- (ix) legal and other restrictions on mobilisation and involvement of the disadvantaged;
- (x) manipulation of political power by the elite;
- (xi) inadequacy of social and economic reforms;
- (xii) use of law by the rich to pursue their interests;
- (xiii) non-involvement of disadvantaged groups in formulating policies that are relevant to them;
- (xiv) lack of political will; and
- (xv) law schools face opposition and hostility from vested interests for helping the disadvantaged to assert their rights.

#### **3.5.4 LEGAL AID IN SELECTED SUB-SAHARAN AFRICAN COUNTRIES**

Legal aid in Sub-Saharan African countries is still in a process of development. As a result of wide-scale unemployment, poverty and the low level of economy, communities are impoverished and the quality of life of citizens are threatened.

Some of the selected African countries whose legal aid systems are examined were:

- ➔ Rwanda;
- ➔ Cambodia;
- ➔ Bangalore; and
- ➔ South Africa

The status of human rights and legal aid in Africa reflects that there is a job to be done in African countries. The overwhelming need for legal aid is increasing rapidly, however, there exists very little structures, far from sophistication, to render legal services to the indigent and disadvantaged

communities. The International Bar Association's establishment of a human rights institute in Sub-Saharan Africa was poised to offer special training and skills and the responsibility to identify human rights abuses and propose workable solutions.

The institute's declared objectives were the:

- promotion, protection and enforcement of human rights under a just rule of law;
- promotion and protection of the independence of both the judiciary and legal profession;
- adoption and implementation of standards and instruments accepted and enacted by the community of nations; and
- acquisition and dissemination of information concerning issues related to human rights, judicial independence and rule of law.

These it will seek to achieve in co-operation with law societies, bar associations and human rights organisations throughout the world. The world is looking to South Africa to provide moral leadership in Africa, especially in the field of human rights. Missions of inquiry have been set up to investigate suspect legal systems and procedures, observe and report on legal proceedings where grounds of concern exist for proper standards for the administration and management of justice. The opportunity exists for South African lawyers to demonstrate their commitment to the ideals expressed by the International Bar Association. The Association of Law Societies' efforts are to establish continuing legal education programmes in Sub-Saharan countries.

Continuing legal education focuses on the practical aspects of law, practice management, skills-based training and building competencies in the legal profession towards efficient and effective service delivery. The IBA intends using the skills of the Law Society of England and Wales, with its very active international human rights working party, the International Commission of Jurists and Amnesty International (De Rebus 1996: 3). There is much emphasis that much needs to be done in the rest of Africa regarding legal representation. This support is clearly indicated by Fowler (1995: 3), outgoing President of the Australian Law Council in the following words:

***“An attack on the rule of law anywhere is an attack on legal rights and freedom everywhere”.***

### 3.5.5 LEGAL AID IN RWANDA

The World Press Review (1997: 4) highlights that 5,445 in Gikondo prison in Kigali are among some 86,000 awaiting justice in Rwanda's teeming prisons and detention centres. Most stand accused of involvement in the genocide orchestrated by Hutu extremists that claimed the lives of between 500,000 and 1 million people, mostly Tutsi. Human-rights monitors are certain that the return of hundreds of thousands of Rwandan refugees from Zaire--Hutu who fled for fear of retaliation, among them those who committed genocide are bound to lead to more arrests and further burden the justice system. The system had already ground to a standstill.

According to the Review (1997:5), Javier Zuniga, head of the field operation of the United Nations Commission on Human Rights:

*“the situation will be more critical with the arrival of all these people”.*

In a society that seems to be collectively suffering a sort of post-traumatic stress disorder, justice represents the only hope of reconciliation. Human-rights monitors have complained that most arrests in the past have been done without warrants and were often carried out by the military or even by ordinary citizens. A simple denunciation is not enough. The system is not able to provide the sort of protection people deserve to have against arbitrary arrest.

Amnesty International has been monitoring the refugees' return. There are people in the government who are trying to make the justice system work. However, it is questionable whether there is the political will to turn this into reality. The end of the journey for some of the refugees who had returned to Rwanda thereafter was like prisoners of Gikondo. In late October, 16 detainees died during a panic in a packed centre in Kibuye. In May, 26 detainees died under similar conditions in another centre. Only a functioning justice system will begin to ease the strain on prisons and detention centres and heal the wounds in Rwandan society. But there are many hurdles to overcome before trials can begin. Canada and the United Nations Children's Fund are supporting a project to train judicial staff and identify prisoners. Another project focuses on training magistrates and lawyers for the administration and management of legal aid. Police investigators will have to be taught to compile evidence. Only 150 such investigators are training now; at least 500 will be needed.

A major challenge will be to provide a defence for those charged with atrocities. There are no lawyers in Rwanda with an interest in defending high-profile killers for the publicity. Quite the opposite. Prospective donors for this training project want a campaign to convince the public that the decisions of the courts must be respected. One idea is to establish a sort of legal aid office that would train and then assign legal agents to represent those accused. But agents would also be assigned to represent the families of victims.

This is significantly captured by the following words in the World Press Review (1997: 9):

*"That way, the legal agents ... will not always be representing the bad guys".*

It is evident that there is an urgent need for legal aid services in Rwanda. People are deserving and live in poorly disadvantaged communities. There exists no sophisticated legal aid, hence the creation of proper services and methods of operations and administration of justice are vital to ensure a system of justice prevails in strife-torn Rwanda.

### **3.5.6 LEGAL AID IN CAMBODIA**

:Legal Aid in Cambodia is a non-profit, non-governmental administered association of lawyers dedicated to serving the legal needs of Cambodia's poor in all types of civil and criminal matters. Founded in December 1995, Cambodia's non-governmental organisation (LAC)'s mission is to assist in the construction of a more civil society and a more just legal system based upon respect for human rights, equal justice and the rule of law, and to ensure that high quality legal services are made available to the most vulnerable segments of Cambodian society. Funding for the LAC comes primarily from Netherlands Organisation for Development Cooperation, the Dutch Ministry of Foreign Affairs Development Cooperation, Norwegian Save the Children and United Nations agencies (Legal Aid in Cambodia 1999: 1).

From 1975-1979 Cambodia's legal system was completely destroyed. Prosecutors, legislators, lawyers and judges were executed by the Khmer Rouge or perished as a result of starvation, disease or forced labour. Law books were buried and courthouses were converted to

slaughterhouses. Cambodia currently faces a severe shortage of lawyers and trained professionals that can provide legal services to the indigent. The scale of legal aid was very unsophisticated and therefore did not require much administration and management. As a result of this dire need, LAC launched an initiative to provide legal services for the poor. Since 1994 international organisations began to train legal defenders to represent the poor and imprisoned. These trained defenders provided the first public defenders services in over two decades. In December 1995 LAC opened its offices to professional legal services for the poor in both civil and criminal matters through its main offices in the Capital Phnom Penh, and eight permanent provincial offices were established. In 1996 over 690 cases were handled. In 1987 over 1 177 cases were handles. In 1998 over 1500 cases were handled. In January 1977 with the help of a grant from the United Nations Development Program, LAC established the country's first Juvenile Unit focussing on Juvenile issues and children in conflict with the law. Through funding from the United Nations and the growing capacity of trained and professional lawyers, Cambodia was able to train and empower its legal personnel in administering and managing larger legal aid practices.

To this end LAC's mission is to assist in the construction of a legal system premised upon principles of equal justice and the rule of law by ensuring high quality legal services are made available to the most vulnerable segments of Cambodian society.

Legal Aid Clinic's aims are:

- ☞ to offer high quality legal services to indigent individuals at no financial charge;
- ☞ to make legal services available to Cambodia with a focus on rural communities;
- ☞ to promote and facilitate the establishment of a legal system which guarantees equal access to legal representation;
- ☞ to empower and provide a professional cadre with skills-based training in administration and management skills; and
- ☞ to increase public understanding of and respect for the law and the profession (Legal Aid of Cambodia. 1999. 2-4).

### **3.6 EVALUATION AND LESSONS FOR SOUTH AFRICA**

The administration and management of legal aid clinics in third and first world countries differs considerably as a result of the resources and social status of communities. However, there are many lessons to be learnt for the South African experience, although the legal system in the various countries is not similar. The following serve as important issues for consideration:

#### **3.6.1 REPORT CARD SYSTEM**

South African legal aid clinics do not use report cards or any form of client evaluation of their services, except when clients require assistance or follow up on issues. The implementation of report cards ensures feedback and reinforces public accountability. Information gathered from such responses allows clinics to consider remedial measures in the administration and principles of managing service delivery.

#### **3.6.2 INTERNSHIP / FELLOWSHIP PROGRAMME**

The American and Canadian models of legal aid, together with some national legal aid offices have developed exchange programmes to allow legal aid managers to spend a reasonable amount of time in the public office of law on an exchange programme. This served as a useful programme for exchange of models of governance between and amongst the various clinics. As a result of donor shortages and threats of continued funding, the scheme is not fully operational in South Africa. Only a few clinics have participated in this programme on a very small scale. The internship / fellowship programme needs to be reinforced on a wider scale at South African clinics.

#### **3.6.3 CREATION OF PROCEDURE MANUALS, NATIONAL AND INTERNATIONAL DIRECTORIES**

It is operationally necessary to create and develop procedure manuals to serve as guidelines both for prospective attorneys, staff and legal aid managers. Currently, legal aid clinics in South Africa do not follow generic management and administrative procedures. The creation of such a system will create uniformity and assist staff to streamline the flow of work. An administrative and management systems model/framework will assist clinics when compiling reports both for accountability and funding purposes.

### 3.7 SUMMARY

It is evident that varying levels of development of legal aid exists in different countries ranging from First to Third World countries. The public sector in developing countries has enjoyed a broad mandate when it comes to legal aid in comparison with less developed ones. Obviously the more well-established legal aid clinics boast of more sophisticated administrative and management systems, whilst the poorly and less-developed ones resort to very basic practices. The British, American and CUNY law clinics operate on a more well established framework, engaging in the motto: 'Law in the Service of Human Needs'. Research indicates that a larger percentage of trained lawyers enter the legal aid profession from CUNY University than many of the other popular universities in London and New York.

South African legal aid has advanced in great strides over the past few years. The Department of Justice has been actively pursuing and advancing the interests of the previously under-represented sectors. The Legal Aid Board, universities, law societies and other legal aid agencies are increasingly placing more emphasis on managing and administering justice through more organised structures. Lawyers are expected to serve the poor as well as the rich, to work for reforms in the administration and management of justice, to be leaders in their communities. The responsibilities to the public may not be fully recognised by a young lawyer unless one is exposed to them at the early stages. The emphasis has been extended beyond the provision of justice to more technical and operational responsibilities of legal aid managers.

The Third World countries are gaining prominence in the administration and management of justice. South Africa has progressed considerably in the field of clinical legal education for young lawyers and improving access to legal aid for impoverished communities. However, the level of development needs to be expanded to include *inter alia*, the public defender system (increased access where the State has denied access), human resources and information technology..

Evidently whilst access to justice is being expanded at the state's expense, the shift in emphasis on provision of professional skills and from service to education is gaining momentum. The acquisition of vocational and supervisory skills provides a more reflective component towards quality services. There are lessons to be learnt, experiences to be shared, skills to be exchanged, that may prove useful for legal aid managers both locally and internationally.

## **CHAPTER FOUR: MANAGEMENT OF LEGAL AID CLINICS: OPERATIONAL PERSPECTIVES**

### **4.1 INTRODUCTION**

It has been established that legal aid management is a sub-field of public administration. Legal aid management comprises of specialised component activities such as legal policy-making, financial administration and management, planning, organising, staffing, work methods and control. Each of these fields requires that the generic administrative functions be adapted to suit the unique environment of the legal framework.

This chapter gives prominence to:

- ➡ the function of legal aid clinics;
- ➡ the nature and content of policy-making and planning within the content of legal aid;
- ➡ organising and administrative measures pertaining to legal aid;
- ➡ financial management and funding for legal aid clinics;
- ➡ staffing and skills of legal aid managers; and
- ➡ procedures and methods, monitoring and evaluation of activities.

This chapter outlines the need for legal aid, and furnishes a descriptive and critical perspective of the current practices within legal aid clinics in selected institutions. It includes the use of information technology and the management of legal aid clinics within a general framework..

### **4.2 MANAGEMENT PRACTICES WITHIN CLINICS**

An exposition of the management practices at various tertiary institutions is discussed hereunder.

#### **4.2.1 CLINICS UNDER REVIEW**

The following clinics are reviewed in this research:-

##### **4.2.1.1      ⇨      University of Natal (Durban)**

The University runs a campus law clinic and a legal aid board-clinic as well.. Both the clinics are

managed by one supervising attorney each, appointed as directors of the respective clinics. Furthermore, clinic branches in communities off-campus have been set up to permit greater access to legal services for the poor in rural and outlying areas. A clinic that serves a need in downtown Durban, allows access for the greater Durban area. The legal aid programmes and initiatives engaged by the clinic appear to be in a strong funding position with potential corporate donors.

The University of Natal legal aid clinic is the only clinic to have developed a legal aid manual with subject matter and training materials for use by students training to become lawyers. However, the manual focuses on practical aspects of law and legislative requirements to identify and solve legal problems of communities. The emphasis on management and administrative structures needs to be further developed. The legal aid clinic has been making ongoing attempts to establish formal referral and financial links with the Statutory Legal Aid Board to develop consistent funding for legal aid clinics. Provided that funding and other resources are made available, this clinic has a well-conceived plan for a comprehensive training and service program to be a model for other South African legal aid clinics.

#### **4.2.1.2      ⇨      University of Natal (Pietermaritzburg)**

The University offers legal aid to clients in the midlands and surrounding areas. Whilst the University runs a well-structured legal aid programme, it is also in need of additional supervising attorneys and support staff to continue the quality of service to the community - as with most other clinics. The need for additional financial resources and space is a priority.

#### **4.2.1.3      ⇨      University of Durban-Westville**

In 1991 the Centre for Clinical Legal Education was established. Today the clinic offers its services through a firmly entrenched legal aid programme headed by a director, assisted by a deputy director. The services include *inter alia*, legal aid to communities, training of candidate attorneys and satellite clinics at Chatsworth, Umlazi, and extended their services to several semi-urban and rural areas in the north and central Durban region. The clinic's director has also been jointly instrumental in the planning and initiating of an exchange programme for clinical directors

with American universities through the Ford Foundation funding proposals. It is envisaged that the project would continue but would need much financial support from donors and the private sector. UDW's clinic is a fast growing well-structured operation that could realise its full potential only with adequate funding and additional support staff. Clients are screened through the means test and are required to complete administrative documentation.

**Annexure 1 and 2** refers to the exclusion of liability and indemnity forms completed by clients at the Law Clinic of the University.

#### **4.2.1.4      ⇨      University of Fort-Hare**

The University offers legal aid services to the rural communities in its surrounding. The clinic is staffed by a supervising attorney as director. The clinic has embarked on expanding its legal services programme to include practical legal training courses for candidate attorneys. Therefore additional financial support will be necessary to expand the clinical programmes of the university and develop its management operations.

#### **4.2.1.5      ⇨      University of Cape Town**

The University of Cape Town's clinic offers its services to the greater part of central Cape Town. It is poised to render assistance to the community, train para-legals, offer training in course development materials, and interact with non-governmental organisations and the private sector. Managed by a legal director and assistant, the clinic's activities are administered by support staff. The need to participate in training sessions and supervision, clinical teaching methods and other clinical skills in exchange programmes is highly welcome. The major concern is the financial support for this project.

#### **4.2.1.6      ⇨      University of Stellenbosch**

The University's clinic is centred around community service, training and supervision of students for legal aid management. The clinic is well-positioned and structured, but expressed a desire to

increase its staffing component to manage the volume of case loads. Additional space is a priority for the growth of its services.

#### **4.2.1.7      ⇨      University of Port Elizabeth**

The clinic explores the different aspects of the legal profession. Staffed by a director and deputy director, the clinic concentrates on, *inter alia*, developing and teaching supervisory skills in the legal profession. The survey highlighted the need for continued financial support, support for the exchange programme and additional equipment for the centre.

#### **4.2.1.8      ⇨      University of Potchefstroom**

The University of Potchefstroom offers legal aid to the wider community in the centre for higher education in Potchefstroom. The clinic is managed by a supervising attorney, assisted by a deputy director and two support staff. The clinic is well-positioned and has a comparatively large volume of caseloads. The clinic enjoys a large and varied law practice and provides substantial training and skills to attorneys. Legal services are offered without charge to indigent clients from surrounding communities, whose eligibility for the clinic's representation is determined by a means test as set out by the law society. The survey provided the need for increased office space and equipment to meet the growing demands.

#### **4.2.1.9      ⇨      Rand Afrikaans University**

This clinic strives to provide a service to the communities in its surrounding. The clinic incorporates its activities and mission within the overall objectives of the university. As a result of offering clinical teaching, a shortage of staff exists to supervise legal problems and offer a pedagogy function simultaneously.

#### **4.2.1.10      ⇨      Rhodes University**

The University of Rhodes offers its services as a legal aid clinic to a number of communities in its area of jurisdiction. It is responsible for delivering legal aid to the disadvantaged persons and developing training programmes including lawyering skills for aspiring lawyers. The survey highlighted that space is generally considered by the clinic administrators to be inadequate, particularly as client and student demand increases. Overall, the clinic is proud of its service to the community and towards realising the objectives of its institution.

#### **4.2.1.11      ⇨      University of the North**

The legal aid clinic offers legal aid to communities in the surrounding areas. The region served is rural but densely populated. Illiteracy is abundant as is the ignorance of legal rights. The majority of persons appear in court unrepresented, and are exploited due to lack of protection under the law. The clinic faces much challenge to offer its services to this part of the community. The clinic is staffed by a legal aid director, a support staff and some members of the law faculty. The staffing component is very limited. At the time of the report, the clinic did not offer practical legal training to law students, but was in the planning stage. The director informed the survey that discussions were under way to accommodate a practical legal training component into the clinics programme of activities. There was an intention by UNITRA to expand on a satellite clinic following a campus clinic. The request for additional staff is crucial in ensuring the teaching and training component of the clinic. The library needs to be upgraded to ensure adequate materials for teaching and learning the management and practical effects of the law. Generous financial support would enable the University of the North to fulfil its great potential as a legal training centre and service centre in the Far Northern Transvaal.

#### **4.2.1.12      ⇨      University of Zululand**

The University offers legal aid through a law clinic. The clinic works within the vision and mission of the overall objectives of the University. The clinic is poised to offer its services to the rural sectors of the outlying area of Zululand.

The survey indicated that the clinic is in need of additional equipment and finances to expand its services to include clinical teaching to train lawyers in practical and management skills in the legal field. The continuation of funding from donors poses a threat to the continuation of the service.

#### **4.2.1.13      ⇨      University of Witwatersrand**

The Campus Law Clinic is well-established and has an organised model upon which emerging clinics at other South African universities have been built. Legal aid is offered under the auspicious of the University Law Clinic. Much thanks goes to the Ford Foundation who provided a grant and consultant services to the clinic, thus allowing it to expand both its services and practical legal training for law students. The clinic enjoys a large and varied law practice, and provides a substantial year-long curriculum component emphasising lawyering skills training taught by both experienced in-house supervising attorneys and practitioners from the private bar (private sector). The services are also extended to satellite offices and a legal aid board clinic.

The goals of the Wits Campus Law Clinic are:

- to improve the quality of legal education offered to its students,
- to enhance the prospects of employment of its graduates, and
- To improve the supply of legal services to the community.

A satellite rural practice is offered in the Wits Rural Facility in Umbabat, the Eastern Transvaal. Students are trained in the life and experiences of rural African communities and are challenged to offer law practices in that vicinity. Staffed by eight clinical supervisors (including a part-time staff member), the clinic represents an important experiment in successful management of a caseload comparable to a community legal service office. Clinicians at Wits Clinic expressed a desire to participate in training sessions in supervision and teaching methods, evaluation techniques and simulation development and co-ordination and administrative techniques utilised by other programmes at other institutions.

They also suggested the training of candidate attorneys as junior supervisors regarding routine administrative work and interaction with communities. In the final analysis, the Wits Campus

Law Clinic continues to be a model for other less developed clinics in South Africa. The clinic has earned the reputation as a legal services provider and a clinical education centre, which would enable it to assist other legal aid clinics in the country.

#### **4.2.1.14      ⇨      University of Western Cape**

The University of Western Cape interprets its role as a university to include a firm commitment to the development of the Third World communities in South Africa. By this means it aims both to serve its immediate community and to keep open the possibility of new options emerging for South African society.

The clinic provides comprehensive legal services to poor people in the Capetown metropolitan area and in Paarl, a rural area in Capetown's vicinity.

The University offers legal aid through the supervision of a director and assistant director, and offers its assistance through a satellite clinic in the outskirts of the Western Cape to communities at the place of their needs. Although the institution offers a structured programme of legal aid, it is in dire need of staff to manage the volume of caseloads and training offered to students. The clinic operations suffers from the lack of additional staff to support its burgeoning operations. A further concern is that of additional technological equipment and office space.

The campus law clinic (falling under the auspices of the relevant universities), and the legal aid board-controlled clinics (operating under the auspices of the Legal Aid Board) from the various centres listed above were sought.

Majority of the clinics operating within the confines of universities face huge constraints regarding resources, either shortage of staff or technologically. They are faced with huge case loads and are over-burdened with the tasks of providing legal access to the surrounding communities.

The legal aid board-controlled clinics expressed their concerns about the quantity of referrals and consultations, emphasising that the legal aid directors are inundated with managing unlimited cases, their overall offices and the supervision of candidate attorneys.

These concerns poses numerous challenges for legal aid managers.

Most legal aid clinics are housed within the premises of universities. As indicated in chapter 2, there are two categories of clinics, namely campus law clinics and legal aid board-funded clinics. The following outlines the current status within these clinics:

Campus law clinics have certain restrictions imposed upon them. They make legal representation in court with certain limitations and the conduct of attorneys is subject to the provisions of the relevant law society in their province of jurisdiction. Legal aid-board clinics ensure a much wider representation in legal matters, and the professional conduct of attorneys is subject to the code of conduct of the Legal Aid Board.

### 4.3 POLICY-MAKING AND PLANNING

Cloete states that one of the basic requirements of public administration is that each and every activity be directed to achieving a set goal. Consequently, an objective has to be set for each public institution, and has to be adapted continuously to meet changing needs and circumstances (Cloete 1986:56). Legal aid clinics help contribute to the objectives of public institutions. They adapt their activities within the parameters of the legal profession.

An exposition of the policy and planning aspects in the clinics follows:

All the aforementioned, except the Universities of Fort Hare, the North and Zululand operate two independent clinics.

The university-based clinics usually fall within the jurisdiction of the respective universities. The vision and mission of these clinics is derived from the mission statement of their respective institutions. Most universities have included in their mission statement “a service to communities”. Campus law clinics contribute to that mission statement by providing a service that contributes to the quality of life of communities.

The University of Durban-Westville and Natal, amongst others, have satellite clinics whereby legal services are rendered through organised community leaders and non-governmental organisations. These functions further emphasise and demonstrate the mission statements of their respective institutions. Satellite clinics are situated in *inter alia*, Chatsworth, Umlazi and the North Coast region - See Annexure 3 and 4 reflecting some satellite clinics of UDW).

Clinics falling within the jurisdiction of the Legal Aid Board work within the parameters of the objectives of the Board. The vision and mission of these clinics is derived from: the establishment and objectives of the Board, in Chapter 1 of the Legal Aid Guide, 1996, which reads as follows:

*“The Legal Aid Board’s mission statement is to render legal aid to as many indigent persons as possible. Every person is entitled to equality before the law. The Legal Aid Board therefore endeavours within its means to balance the scales of procedural inequality in an independent and impartial manner”.* (Legal Aid Guide, 1996).

The foremost policy of these clinics stems from their legal mandate obtained from the respective universities and law societies on the one hand, and the Legal Aid Board on the other. The goals and objectives of legal aid clinics must be in accordance with the rules and provisions afforded to them by their bodies of jurisdiction.

Legal aid clinics are not permanent features created for the establishment of service delivery for and behalf of the state. As a result of their tenure, they usually operate on a two to three year contract basis.

On evaluation of the activities of the various clinics indicated above, most clinics operate on a two-year contract. It must be pointed out that the tenure of clinics creates uncertainty and anxiety amongst the staff, and in some instances, creates an aura of disruption in the continuation of activities. Although public policies are future-oriented, public policy-making is not synonymous with planning. Whilst public policy-making is deciding on a desired future-course of action to reach an already visualised goal, planning is aimed at seeking alternative methods to obtain a future-desired situation.

The legal aid clinics consulted are primarily engaged in short, medium and long-term plans in the following areas:

- ↳ how to manage the diverse client base;
- ↳ training and capacity building of candidate attorneys;

- ✍ preparation and presentation of qualitative and quantitative reports on case loads;
- ✍ interaction with other clinical legal centres and the legal profession;
- ✍ motivation and business plans to donor agencies attempting to secure funding; and
- ✍ planning the preparation of clients for trial and other defence matters.

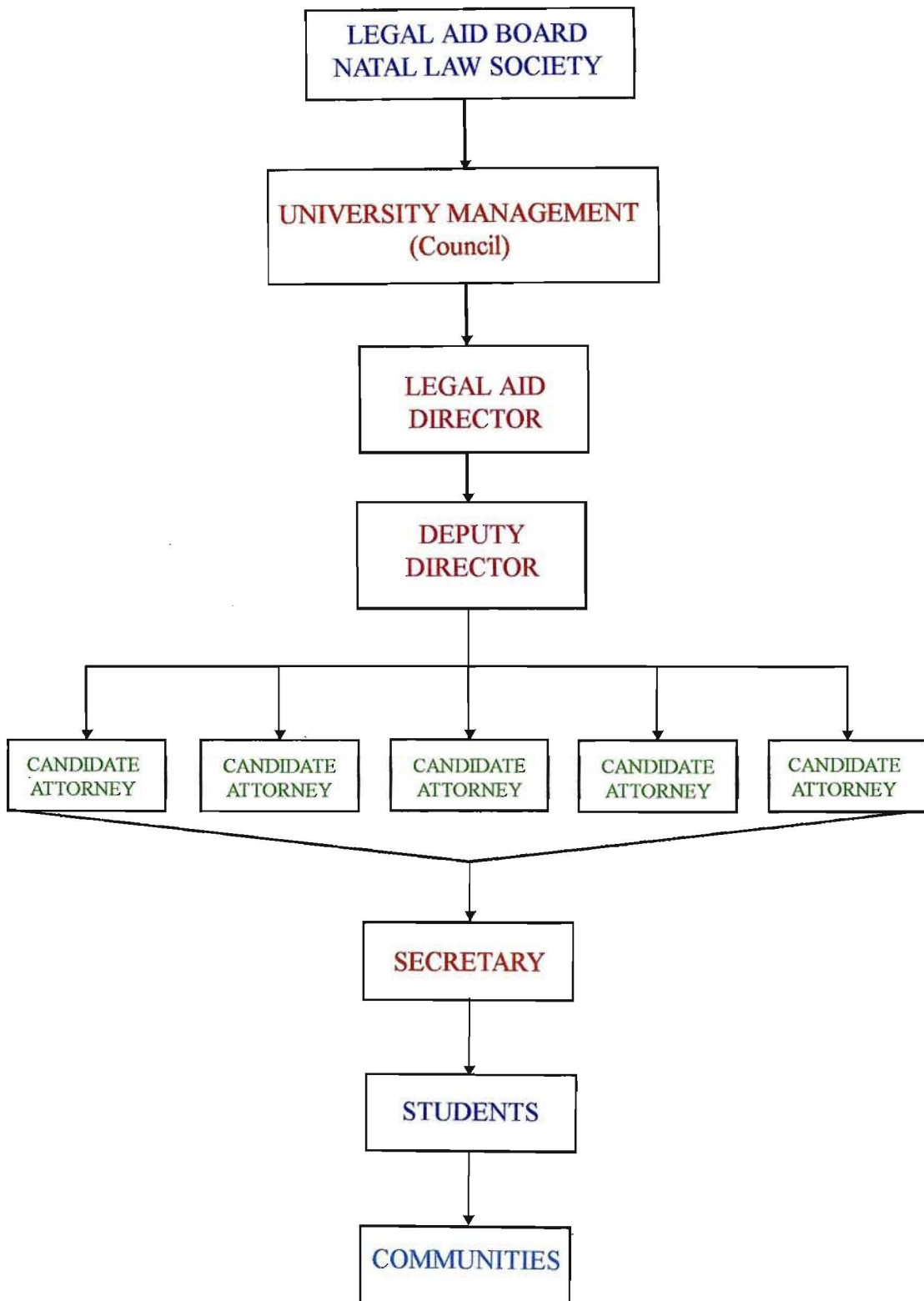
#### **4.4 ORGANISATIONAL STRUCTURE**

The legal aid clinics operate within a hierarchical structure. **Figure 4.1** depicts a typical organogram of a legal aid clinic. Most of the clinics consulted subscribe to the standard form of hierarchy and organisational arrangements. The type of organisational structure can influence public administration. According to Cloete (1991: 112), organising is grouping functions and allocating the groups to institutions and workers so that the functions are carried out and objectives are achieved.

This definition can be illustrated by means of an exposition of the hierarchical structure of a legal aid clinic.

An exposition of the hierarchical structure follows:

Figure 4.1  
Schematic Representation-  
A Typical Organogram of a Legal Aid Clinic



- ◆ The Natal Law Society and the Legal Aid Board are the bodies of jurisdiction which provides the legal mandate for the clinics;
- ◆ Campus law clinics are in turn, subject to the council of the respective universities. The appointment and rolling plan of the clinic is defended and dependent upon the council. Council approves the duration of the appointment of directors, assistants (line functionaries) and secretaries (support staff).
- ◆ The legal aid clinic is administered and managed by a legal aid director. In some instances, there are assistant directors appointed. Examples of these institutions are the University of Durban-Westville, Stellenbosch, Cape Town, Port Elizabeth and Rand Afrikaanse Universiteit.
- ◆ As a result of providing a training ground for the establishment of more qualified lawyers, legal aid clinics (both campus law clinics and legal aid board clinics) have been given the mandate to appoint and train candidate attorneys, as part of their in-service training. The number of candidate attorneys appointed in these clinics differs depending on the number of supervising attorneys ie. directors and assistant directors.
- ◆ The secretary acts in a support capacity (staff functionary) and is responsible for the day-to-day administrative duties related to the clinics' operations.
- ◆ A select number of final year law students enrol for practical legal training courses at legal aid clinics to equip them with the necessary practical applications of the law. This again serves as a training ground for potential lawyers.
- ◆ This function is ultimately delivered into the community as a service. The clinics face enormous challenges in that they assist huge volumes of clients who are deserving on a frequent basis.

## **4.5 FINANCIAL MANAGEMENT AND FUNDING**

The provision and maintenance of finance is crucial in securing quality service delivery and ensuring sustainable development of legal aid activities. As part of ongoing research into state and donor funding, new methods, procedures and mechanisms are constantly under investigation. As part of ongoing research into financial resources for legal aid, new methods, procedures and mechanisms are constantly under investigation.

The campus law clinics at the universities who engaged in this exercise, obtain their funding from the following sources:

US Aid, Ford Foundation and a trust account set up by the donor to sub-vent the financing of legal aid activities. The balance of their funding is obtained via the respective universities, who assist with the running costs and operational aspects.

These clinics are facing tremendous pressure to ensure that they secure funding through donor agencies both nationally and internationally to manage their administrative and management portfolios. This poses further challenges as these clinics do not charge, in most instances, a nominal fee (extremely petty amount of approximately R50) to open a file and record all proceedings.

The clinics submit reports via their universities to the donors to ensure that funds are conducted in an accountable and responsible manner, whilst the legal aid board-funded clinics submit reports monthly to the Legal Aid Board in Pretoria for scrutiny and evaluation.

## **4.6 STAFFING**

As a result of the unlimited demands and inundated queries handled by legal aid clinics, it is imperative that sufficient personnel are appointed. A thorough knowledge of the legal profession and code of ethics must be observed by legal aid staff.

The major challenge confronting legal aid clinics today is the number of staff working at clinics.

#### 4.6.1 LIMITED HUMAN RESOURCES

It was discovered that the major common concern that legal aid managers expressed was a lack of sufficient staff to manage the work flow. All the clinics that participated in the evaluation have appointed one only secretary respectively, who acts in a fully-fledged support capacity. There is a vast number of persons who call on these clinics either telephonically or personally, on virtually a daily basis. Furthermore, the issue of prescription (due dates) is a significant factor to consider when dealing with legal matters. This in turn, creates an enormous volume of administrative work and preparation of documentation for proceedings and trials. Legal managers are dependant wholly on sound administrative support systems to ensure the expeditious flow of work.

One major stumbling block in most clinics is the issue of tenure. As a result of the contract nature of employment, staff are usually appointed for an approximate contract of two years. In fact, in letters of appointment to some of the university staff (including managers and administrative) it is stated as follows:

*“your appointment is for a two-year period, or until funds are depleted, whichever is the earlier”.*

As a result of the uncertainty of limited funding, personnel do not feel committed to their jobs, and the turnover poses difficulties. There sometimes exists not continuity in the training and empowering of personnel.

The experience of many clinics has been to raise the concerns of the ‘uncertainty’ and limited funding. Most universities’ response to the concerns is centred around the sub-vention of monies by donors. This in turn, places a financial burden on the universities to ensure the shortfall of financing the clinic’s activities.

#### **4.6.2 SKILLS, TRAINING & DEVELOPMENT**

They are dependent on a knowledgeable personnel corps for the implementation of decisions and the application of methods and procedures. To this end, career planning, training and development is encouraged. The Universities of Durban-Westville, Natal, Zululand, Cape Town and Fort Hare together with the University of Maryland and Cuny participated in a fellowship exchange programme. The Ford Foundation (prime donor of funds for legal aid at South African clinics at the time) initiated the programme whereby the legal directors of the respective clinics (both locally and abroad) spent a few months working and adapting to the different administrative and management systems of law. The experience was a valuable one that allowed for the exchange of management styles and techniques to improve the quality of service delivery. Many legal managers expressed much enthusiasm in the project and there was overwhelming support to continue the project. Needless to say, the challenge still remains to this day regarding the financial resources.

#### **4.6.3 PROCEDURES AND METHODS; CONTROL, MONITORING AND EVALUATION OF ACTIVITIES**

In legal aid clinics control is exercised in a twofold manner, namely, internal and external control. The monitoring and evaluation of legal aid clinic activities ensures control and to ascertain whether procedures are in fact resulting in the achievement of expected goals.

According to Fayol (1973: 103):

*“Control is the examination of results. To control is to make sure that all operations at all times are carried out in accordance with the plan adopted - with the orders given and with the principles laid down. Control compares, discusses and criticises: it tends to stimulate planning, to simplify and strengthen the organisation, to increase the efficiency of command and to facilitate co-ordination”.*

In the universities the power of executive and administrative authority is vested in the university councils, acting as controlling bodies. The council in turn delegates its control function to specific functionaries within the universities, namely the legal aid directors.

The legal aid directors work closely with the finance directors of the universities' finance division. Universities are subject to external control by virtue of specific legislative measures applicable to them. These reports are tabled in Parliament through the Minister of Education for scrutiny. It is therefore clear that universities as public institutions are accountable for their activities publicly (Cloete 1982: 192).

The experience of the clinics reveals that they administrate and manage from work schedules arising as a result of the type of cases handles, the duration of the cases and the generic administrative and management tasks undertaken from time to time.

Legal aid clinics are accountable to the communities they serve in as much as they are accountable to their bodies of jurisdiction. The behaviour and professional demeanor of attorneys is subject to the code of conduct of the legal profession. Attorneys are struck off the roll should they engage an unlawful activities including, the embezzlement of clients trust accounts.

#### **4.6.4 INFORMATION TECHNOLOGY**

A common concern expressed by most clinics is that they have insufficient technological equipment to manage the volume of tasks assigned to them or to expedite the storage and retrieval of information efficiently and effectively.

It was noted that the campus law clinics, housed at the various universities seem to have common concerns regarding the shortage of computers and network facilities. They rely on the university structures to support their infrastructure and equipment budgets. The shortfall places onerous burdens on the clinics to manage their resources adequately.

From the above discussion, the importance of adequate computers and other forms of technology, it is imperative that legal aid clinics are fully updated with recent information software and equipment to manage and administrate their legal output efficiently and effectively.

## 4.7 THE 1973 LEGAL AID CONFERENCE

According to McQuoid Mason (1982: 115-123):

In July 1973 the Faculty of Law at the University of Natal, Durban, held a conference on legal aid. The conference was sponsored by the Ford Foundation (primary sponsor of legal aid clinics at universities at that time) with a view to stimulating interest in legal aid in South Africa. The conference drew stakeholders both nationally and internationally associated with legal aid.

**The conference recommendations can be divided into four important points:**

### ➡ **Legal aid and the State**

- \* The scheme should be financed by the State but administered by the legal profession. At present the scheme is still administered by a State-appointed board, without relinquishing control to the profession.  
To date the profession is actively involved in the management of justice. To this end, the legal fraternity serves as important link with clinics and holds regular workshops on pertinent legal issues.
- \* A publicity campaign should be launched to inform and educate the public concerning legal aid. This has in fact, taken place several times, through legal forums and workshops. To this end, large sectors of communities are increasingly aware of access to legal aid clinics.  
Although legal aid is offered to the public, there exists a lack of sufficient publicity to communities thus informing them of their rights and privileges. A number of persons do not know their rights concerning legal aid.
- \* An independent watchdog body ought to be established to review the activities of the Legal Aid Board, thus contributing to public accountability. The Board is currently accountable to the Minister of Justice for its activities.

It is suggested that a 'local ombudsman' be established to monitor and control the activities of the legal aid board and university-based clinics, which could report directly to the Minister of Justice.

- \* The state should accept that in all criminal cases an accused has a right to counsel, whether or not the accused is indigent.

The South African legal system has been fundamentally transformed to ensure that all persons have a right to be represented, through the tenets of the 1996 Constitution.

- \* The parliamentary appropriation for legal aid should be substantially increased to make the programme more effective.

The recommendation for increased financial resources is still ever present due to the increased rate of unemployment.

- \* Decentralisation of the scheme (from Pretoria) by the creation of district, regional and provincial committees, together with the law societies. This is in fact, taking place, whereby the law societies bind the university-based law clinics together with the respective universities. The Legal Aid Board clinics still account to the centralised office in Pretoria.

Decentralised offices would speed up the decision-making processes and reporting structures.

- \* The means test should be continually revised in view of the mounting inflation. It has been reviewed on a fairly regular basis. However, a need for more flexible approaches could be considered, in order to cater for the underprivileged communities.

Currently there is no uniformity amongst the clinics in the application of the means test. It is necessary to standardise this process as far as possible. A copy of a typical means test is found in Annexure 1 of the Legal Aid Act.

- \* Universities should be given representation on the legal aid board.  
This is a highly contentious issue in view of the fact that university clinics fall under the jurisdiction of the respective law societies. However, the core component: provision of legal aid is common to both categories of clinics and there should be lessons to be learnt and exchanged between the two categories.
- \* Students should be used to supplement the manpower shortage in legal aid offices. This scheme is fully operational at most universities, whereby final year law students obtain practical legal training under guidance and supervision of practising attorneys and offer legal aid to communities.  
This process is fully operational and the service is offered by way of candidate attorneys. Both categories of clinics offer training to students through this process.
- \* Judges and magistrates should be required to ask unrepresented indigent accused whether they wish to apply for legal aid. At present, the indigent are referred to legal aid lawyers and assisted accordingly.  
Following this conference, this option has been subsequently exercised and is fully operational by the law courts.

➔ **Legal aid and the Profession**

- \* The profession should set up an independent committee on legal aid to act as a catalyst for change. A joint body of university-based legal aid clinics, the profession and the association of law societies has subsequently been set up to attend to the dynamic issues confronting legal aid and the profession.
- \* The profession should continue to press for control of the administration of the state-run legal aid scheme. A more decentralised system would be more flexible to local needs.

- \* The profession should play a larger role in propagating the cause of legal aid. To this day, the profession is actively involved and pro-actively pursues the cause of legal aid.
- \* Support for legal resources centres to be set up. A Durban and Johannesburg office has been set up. Subsequent to this conference, many universities have set up satellite clinics, thus offering legal aid in out of town areas to the rural sectors of the population.
- \* Actively assisting in supervising legal aid clinics. Some law societies have adopted a positive attitude towards the assistance of legal aid clinics regarding supervision. Law clinics need further support in terms of supervisory skills and workshops to improve the quality of their functional activities.
- \* Investigating the possibility of introducing 'student practice rules' to assist litigants unable to afford the services of a professional practitioner. This is actively in place by most universities involved in legal aid.
- \* Providing an information service for indigents entitled to legal aid. To this end, many press releases and publicity campaigns are initiated.
- \* Making it unethical for attorneys to charge an indigent client fees without first attempting to obtain legal aid. To this end, the means test acts as a form of protection for deserving clients.

➡ **Legal aid and the universities**

- \* Legal aid should be a compulsory curricula in legal studies at universities. To this end, the curricula today has made this subject compulsory. An effort to highlight the obligation and commitment by the state to support and continue with legal aid.

\* Universities should encourage research into the administration of justice and the need for, and effectiveness of legal aid.

The University of Cape Town has established an institute of criminology which carries empirical research into the administration of justice.

The Centre for Applied Legal Studies at the University of Witwatersrand also undertakes empirical studies in legal aid.

The University of Natal and Durban-Westville are pro-actively advancing the course of legal aid through their clinics.

Most South African Universities have legal aid clinics at their institutions. These operate in conjunction with their universities' mission statements and the respective law societies of their provinces.

The national legal aid scheme is still operating at optimum efficiency, even though there has been considerable increases in the number of legal aid applications and the annual budgets.

There is therefore, a need for more public funds. The per capita expenditure on legal aid in South Africa is about two percent of that spent per capita in Canada and five eighths percent of that in the United Kingdom. The state historically tended to regard legal aid as negative expenditure whereas an extension on legal aid could lead to a saving of funds spent on imprisonment.

The quest for redefining and refining the administration and management of justice continues.

#### **4.8 LEGAL AID BOARD'S PILOT PROJECT (ELECTRONICALLY)**

The Legal Aid Board intended launching a pilot project at the Johannesburg High Court in June 2000 to process all applications and instructions for high court criminal work electronically at the seat of the court. The Board viewed the pilot project as a way of streamlining the present system of payment of accounts in order to ensure accurate records and effect speedier payment to

practitioners. It envisaged that in due course all applications and instructions for high court criminal work would be processed electronically at the seats of the various high courts. The legal profession played an important role in the efficient delivery of legal services to the poor and payment of accounts by the Legal Aid Board is essential in order to ensure continued co-operation for and behalf of the State (De Rebus July 2000: 14).

#### **4.9 SUMMARY**

Legal aid management is part of the total process of administration and the same principles and concepts of public administration are applicable to it when providing a service. It is a service function that plays an integral part towards promoting the quality of life of communities. The study revealed that management of legal aid clinics represents an organised and systematised effort to bring legal services within the reach of individuals who would otherwise be unable to afford the costs of these services. Legislation is a visible manifestation of the public policies formulated for and behalf of legal aid clinics. Managing legal aid services is regarded as an integral part of the administration of justice in any country, in which all citizens are deemed to have equal access to the law.

The provision of legal aid is viewed as a public service which is receiving much priority within the transformation of a democratic South Africa. An essential component of this service is professional time, which is an expensive resource. Furthermore, as societies are becoming more advanced and complex, communities are increasingly demanding more and improved legal aid services. Legal aid clinics must, therefore, ensure that their limited human resources be utilised as optimally as possible, thus ensuring community satisfaction. Public management and organisational arrangements play a crucial role in contributing to the quality of goods and services rendered.

The current limited literature focussing on the management of legal aid services reflects that government is entrusted with a mandate to improve access to disadvantaged communities. In terms of the 1996 Constitution and the Bill of Rights, the aim of legal aid must be to place the

person receiving aid on an equal footing with the fee-paying client. Legal aid clinics must, therefore, ensure that their limited resources be utilised as optimally as possible, thus ensuring community satisfaction.

The empirical study revealed that many legal aid clinics operate their operations using simple and limited management systems in the provision of legal aid services. They do not have sufficient funds to expand their management systems, nor adequate human resources to manage performance, procedures and methods and evaluate the responses of clients, which serve as important indicators for quality services.

The threat of budget cutbacks and continued funding poses new challenges for increasing the level of services. Therefore, there is a need for central government to play a more decisive role in improving service delivery by providing greater financial support to meet the general welfare of the community. The subsidisation of funds from the state must be supported to ensure the sustain-ability of legal aid.

The public management functions, skills, applications and technology are essential to ensure the goals of legal aid are met. Therefore, legal aid clinics need to improve the performance of their management systems to contribute to effective and efficient service delivery. The handling of all administrative functions and routine legal matters in a legal aid office as efficiently, effectively and economically as possible depends on sound managerial skills and strategic management practices. Administrative structures and practices should be designed according to specific policies and procedures.

The shift in services of the public sector which were designed, controlled and activated by government, forces public managers to explore new avenues and resources. Legal aid is not only complex by nature, it is also costly. Since legal aid is the method adopted to ensure that no one is barred from professional advice and help because of a lack of funds, the private sector and other donor organisations can play a crucial role towards the provision of legal aid, and to ensure the sustain-ability of legal aid to indigent communities.

## **CHAPTER FIVE: RESEARCH METHODOLOGY**

### **5.1 INTRODUCTION**

The empirical investigation focuses on the administration and management of legal aid at selected South African universities' legal aid clinics and the Legal Aid Board's clinics. The study aims to examine and address the shortcomings experienced by legal aid clinics in the management and administration of justice. The efficient and effective provision of legal aid is highlighted as a means of contributing to the quality of life of the disadvantaged and underprivileged communities.

The purpose of this chapter is to demonstrate how the research was conducted, the presentation and analysis of information. The empirical study was undertaken in conjunction with the literature review, to examine the status of management and administration of legal aid. The method used was that of gathering information by directly asking respondents to express their views through mailed questionnaires and interviews. Approximately fifty questionnaires were sent out to various legal aid clinics, both university and legal aid board-funded ones. Only 20 clinics responded to the questionnaires enthusiastically, while others complained about the lack of resources to enable them to participate in the exercise..

### **5.2 OBJECTIVES OF THE STUDY**

The research was designed and conducted to obtain information relating to the following issues, as outlined at the outset:

- ☞ What is the meaning of legal aid management in the context of public administration?
- ☞ What management structures currently exist in legal aid clinics?

- ☞ What public management principles and practice should be applied to ensure efficient and effective management of legal aid clinics?
- ☞ What information technology is used in streamlining management practices within these clinics?
- ☞ What networking / public relations exist between and amongst clinics?
- ☞ What training manuals and procedures exist for managing services efficiently and effectively?
- ☞ What staff development policies exist for improving the capacity of directors as public managers?
- ☞ A comparison of 1st and 3rd World clinics in terms of the nature and extent of administration and management, and the lessons to be learnt from those experiences.

The responses to some of these questions forms the basis of the results obtained from empirical surveys of the management of legal aid clinics. The field work and investigation process will be outlined in this chapter.

In this chapter, possible answers to the above-stated questions will be based on the results of the empirical survey on legal aid management and its impact on legal aid services. The statistical tests used in this study will also be presented.

### **5.3 SAMPLING PROCEDURE AND TECHNIQUE**

Legal aid clinics were randomly selected from within the province of Natal, who fall within the jurisdiction of the Legal Aid Board and the Natal Law Society.

The study was undertaken with a sample of 20 legal aid clinics. The experiences of the clinics formed the basis of the survey.

As Kerlinger in Herbert (1990: 1) submits that:

*“Once the possibilities are known, intuitions can be followed and explored. Intuition and imagination, however, are not much help if we have little technical resources. On the other hand, good research is not just methodology and technique. Intuitive thinking is essential because it helps researchers arrive at solutions that are not merely conventional and routine. It should never be forgotten, however, that analytical thinking and creative intuitive thinking both depend on knowledge, understanding and experience”.*

Hence, this study concentrated not only on the literature review and mailed responses from clinics, but aimed to review the experiences and theoretical framework of legal aid, taking into account an interdisciplinary perspective of law and public administration

The following legal aid bodies participated in the survey:

### **5.3.2 JURISDICTIONAL BODIES FORMING PART OF THE SURVEY**

**Responses from the following jurisdictional bodies were drawn:**

#### **5.3.2.1 ⇒ Legal Aid Board, Pretoria**

The Legal Aid Board re-affirmed its support for the provision and maintenance of legal aid, and stressed that need for co-ordination and integration of the various clinics falling under the mandate of the Board. The outline is established in the Legal Aid Act of 1969 which spells out the terms of reference of the Board. The Guide is annexed to this study, and reference is made to provisions of the Act from time to time.

#### **5.3.2.2 ⇒ Natal Law Society**

In a discussion with the Chief Executive Officer of the Natal Law Society, it was highlighted that the law clinics located within the universities must work in accordance with the mandate of the Law Society. The code of conduct of

attorneys is regulated by the rules of the Society. Should attorneys engage in unprofessional and unethical conducts, for example, embezzlement of trust fund monies, or serious complaints from communities - attorneys may be struck off the roll in that they will not be allowed to continue practising as attorneys. This has serious implications for the future career of attorneys.

### 5.3.2.3      ⇨      **Law Society of the Cape of Good Hope**

The Society operates with a similar mandate as the Natal Law Society, and attorneys professional conduct are conditioned by the rulings of the Society at large. From time to time, amendments to the terms and conditions of employment of attorneys to be admitted, are revised. The Society updates its rules with the clinics on a regular basis.

These bodies provide the necessary information in relation to the legislative framework within which university law clinics operate.

Contact was made with the following international legal aid clinics which discussions assisted in the focus of this survey.

➤      Bar Council Public Services  
         (Legal Aid Bureau)

➤      Cuny Law School  
         (University of Maryland), USA

The late Professor Shanara Gilbert (who worked arduously towards the Public Defender System), provided valuable information on the justice system in the United States - whilst on a research visit to South Africa.

➤      Professor Peggy Maisel

c/o University School of Law, Cleveland, Ohio, USA

(Provided useful information and contacts while working on the focus and structure of clinical programs currently practising throughout the country.

Attempts were made to continue funding university law clinics in South Africa through the Association of University Legal Aid Institutions (AULAI).

- The National Law School of India University was accessed through its Director, Dr Menon, and a survey of the activities of legal aid was examined.
- Professor Karen Cipansky, a full-bright scholar from the University of Maryland, USA was on an exchange programme at the University of Durban-Westville in 1994 and worked closely with the UDW Law Clinic. Her input on the University of Maryland School of Law and the fellowship programme with UDW served most useful.

Contact was also made with:

- Africa Legal Aid Offices (AFLA)

The researcher was also funded by the Association of University Legal Aid Institutions (AULAI) in 1994 and presented a paper on this research at an international legal aid conference in Cape Town.

#### 5.4 DATA COLLECTION TECHNIQUES

According to Varkevisser (1991: 142) in Pillay (2000: 331):

*“Data collection techniques enable researchers to systematically collect information in order to answer questions in a conclusive way”.*

A survey is conducted to either answer certain questions, test certain hypothesis or serve an exploratory stud and it is essentially a method of obtaining information from a group of respondents by means of direct contact, namely, either through personal interview, telephone interview or self-administered questionnaires.

### **5.4.1 Mailed Questionnaires**

A mail shot was directed at the various legal aid clinics within the province of Natal. Questionnaires were also e-mailed to not more than five national and international legal aid clinics to obtain a diverse collection of information and materials.

### **5.4.2 Interviews**

Interviews were held with the Director of the Natal Law Society in Pietermaritzburg and the Director of the Legal Aid Board in Pretoria. Further interviews were held with directors of the legal aid clinics at the University of Durban-Westville, Natal (Durban), Pietermaritzburg and Cape Town. Field visits were made to several legal aid clinics to obtain the information requested and to collate the surveys.

### **5.4.3 Data Collection through In-Service Training**

The researcher worked for four years at the University of Durban-Westville Legal Aid Clinic and frequently interacted with directors of other clinics both locally and nationally. The administration and management of clinics was examined and analysed through periodic visits to other clinics and discussions held with various directors and other support staff. The knowledge gained from the experience of these clinics provided valuable insight and information towards completion of this survey.

#### **5.4.4 Questionnaire Design And Compilation (See annexed Questionnaire)**

The questionnaires were designed to obtain the primary information from the respondents. The aims and objectives of this research were considered by the researcher when designing the questionnaire. The questionnaire consisted of open and closed-ended questions.

The questionnaire was drafted and reviewed by both supervisors before distribution to the various clinics. The open-ended questions allowed the respondents to examine their responses in a flexible manner, whilst the closed questionnaires requested specific answers.

The questions were drafted very simply and the order of the questions was considered carefully. The respondents were made to feel confident with the simple questions, followed by questions of in-depth inquiry. A sample of the questionnaire is annexed to this research.

##### **5.4.4.1 Description of The Questionnaire**

The questionnaire was developed to obtain primary data from the respondents in the study. In designing the questionnaire, the aims of the study was borne in mind relevant to the stated objectives of the investigation.

**The core issues as outlined in the questionnaire include the following:**

##### **Section 1:**

###### **5.4.4.1.1 Policy and Strategic Issues**

It was important to gain a composite picture of the operation and mission of legal aid clinics. A swot analysis provided useful information. The researcher enquired on the strengths, weaknesses, opportunities and threats that confront the clinics. The information gathered was useful to ascertain the present status of the various clinics.

#### **5.4.4.1.2 Legislative Measures for Legal Aid**

It was necessary to understand the legislative framework within legal aid clinics function. Of particular importance was the rules of the Legal Aid Board which is prescribed in the Legal Aid Act, 22 of 1969, and the mission and vision of the campus law clinics of the various universities.

#### **Section 2:**

##### **5.4.4.1.3 Human Resource Management**

The aim of this section was to evaluate the level of resources available to legal aid clinics and the training and development currently existing in their operations.

The highlight of this section was to obtain information of the number of staff employed and in what capacity. Also the training and development needs of the staff and the management of human resources by the clinics overall.

#### **Section 3:**

##### **5.4.4.1.4 Procedural Aspects and Management Information Systems**

This section provided information relating to the use of information technology in expediting the flow of information and service delivery. Since technology plays an integral role in the administration and management of service delivery, it was necessary to evaluate the type of technology available to clinics and what improvements need to be effected in the future.

#### **Section 4:**

##### **5.4.4.1.5 Organisational Arrangements**

This section provided useful information on the current structures and management. An outline of who does what and in what manner the work is conducted. The internal organisational arrangements in the clinics is important for the purpose of this study.

## **Section 5:**

### **5.4.4.1.6 Public Relations and Networking**

The aim of this section was to identify and evaluate the level of interaction between and amongst the various legislative bodies and the clinics. Since legal aid clinics offer a public service, they are in constantly interfacing with communities and other public institutions, NGO's and donor organisations. The relationship is important to strengthen and unify, even the efforts of newly-established clinics.

## **Section 6:**

### **5.4.4.1.7 Funding**

It was imperative to analyse the financial and budgetary implications of legal aid delivery. The financial resource is the most crucial and is an overarching aspect of legal aid.

## **Section 7:**

### **5.4.4.1.8 Monitoring and Evaluation**

This section provided useful information relating to feedback from clients and the control systems within clinics. The performance measurement and analysis of clinics' activities is twofold:

- to improve the quality of services to communities;
- to account to the body of jurisdiction on the overall management of legal aid.

## **5.4.5 RETRO-DUCTIVE REASONING**

According to Mouton (2001: 118), the form of retroductive reasoning was used whereby inferences observations or data in order to construct or infer an explanation of such observations

was used. This is a common form of reasoning on the basis of observations that the researcher made and perceived patterns and trends in the observations. Therefore the hypothesis was considered to explain the observed events.

## 5.5 RESPONSES

The clinics who did not respond indicated that they were extremely short of resources ie. human and technological and that the overall concerns of other clinics in this regard are also applicable to themselves. Some directors chose not to participate.

## 5.6 ANALYSIS OF STATISTICS

According to Freedman, Pisani & Purves (1978: 1):

*'statistics is the art of making numerical conjectures about puzzling questions'.*

It is therefore submitted that research is the manner in which one attempts to solve problems in a systematic effort to push back the frontiers of human ignorance or to confirm the validity of the solutions to problems others presumably have solved (Leedy. 1985. 4). In light of this statement, appropriate statistical procedures were used to analyse the data and provide feedback on the tenability or otherwise of the information gathered. The results were presented in the form of:

- tables (such as cross-tabulations);
- graphs (such as histograms, bar diagrams, pie charts);
- statistical summaries; and
- selected quotations (obtained from interviews).

The importance of statistical analysis is highlighted by the following:

The modern business world has a hunger for facts and data. Well organised data improves one's understanding of problems, and helps one to make decisions wisely. Badly organised data is little

better than worthless. Unfortunately, most often one comes across data is not well organised. The meaningful analysis of data allows for proper interpretation of statistics (Owen & Jones 1990: 1).

For the purpose of this study, descriptive and inferential statistics were appropriate research instruments used to test the hypotheses formulated.

Descriptive statistics aimed to describe the data by investigating the distribution of scores on each variable, and by determining whether the scores on different variables are related to each other. Descriptive analysis was done first, as is usually, to help the researcher gain an initial impression of the data that was collected. The purpose however, was to determine whether relationships exist between variables. Hence, inferential statistics was used to draw conclusions about populations from sample data. Inferential statistics was used to test the hypothesis in order to decide whether variables are related to each other.

In achieving these aims, both descriptive and inferential statistics have a role to play in making principled argument. Both analyses help researchers make decisions about the nature of reality, and are thus central to the positivist enterprise of science (Durrheim 1999: 121).

## 5.7 DESCRIPTIVE STATISTICS

This type of information is obtained through descriptive research whereby a survey is conducted. The survey results in the collection of information on a wide range of issues, each to be investigated according to the aspect under consideration. The characteristics of location, spread and shape describe distributions. Their applications and formulae are included under the heading of descriptive statistics (Cooper & Emory 1995: 681 in Pillay 2000: 144).

Descriptive statistics is concerned with the description and/or summarisation of the data obtained for a group of individual units of analysis. If one variable is involved, it is called a *univariate analysis*, if two variables are involved, it is called *bivariate analysis*, and if more than two variables are involved, it is called *multivariate analysis* (Welman & Kruger 1999: 213).

### 5.7.1 MEAN

The mean is the arithmetical average (denoted by  $\bar{X}$ ) of a set of scores and it is computed by adding a list of scores and then dividing the total by the number of scores. It is the sum of the observed values in the distribution divided by a number of observations. The mean, median and mode of a distribution of scores are equal only when the distribution of scores are normal (Welman & Kruger 1999: 213).

### 5.7.2 MODE

One can use a variety of statistics to summarise the information in a frequency table.

The mode is defined as the most frequently occurring value in the data. Knowing the mode tells one very little about the data. Therefore it is necessary to examine additional information about the order of data values (Van Schaik 1997: 45).

The mode is usually used as a medium of central tendency for nominal data, and is simply the value corresponding with the biggest area of the pie chart or the highest bar of the histogram (Durrheim 1999: 105).

### 5.7.3 MEDIAN

The median is the middlemost score in a data set which has been ranked from lowest to highest. The median is usually used as a measure of central tendency for ordinal data or when scores are strongly positively or negatively skewed (Durrheim 1999: 105).

If one can meaningfully order one's data values from smaller to larger, one can compute additional summary measures. These measures are better than the mode since they make use of the additional information about the order of the data values. For example, the median is the value that is greater than half the data values and less than the other half. One can find the median by finding the middle value when values for all cases are ordered from smallest to largest. If there is an odd number of cases, the median is just the middle value. If there is an even number

of cases, the median is the value midway between the two middle ones. One can calculate the median very easily from a frequency table, but only when the data values are ranked from smallest to largest (Kirkpatrick & Feeney 2000: 45).

#### **5.7.4 VARIANCE**

The variance is an estimate of the average distance each score is away from the mean. It is the most important measure of variability because, just like the mean, every score in the data set contributes towards the estimate (Durrheim 1999: 106-7).

The variance measures dispersion and is the average of the squared deviation scores from the distributions means (Cooper & Emory 1995: 681 in Pillay 2000: 345). The mean, variance and standard deviation are the most important descriptive statistics as they form the basis of most advanced inferential statistical procedures.

### **5.8 INFERENCE STATISTICS**

Inferential statistics is the process of generalizing findings from a sample to the broader population from which the sample was drawn Bless & Smith (2000:154).

All inferential statistics share the same purpose. The inferential statistic pertains to an association of two or more variables or the difference between two or more groups on some variable. A correlation coefficient such as the Pearson  $r$  can be used to look for a measure of central tendency of two groups.

## **5.9 CORRELATION**

The relationship between two variables where change in one variable is accompanied by predictable change in another variable. The variables are said to 'covary' Bless & Smith (2000: 153).

Correlations are used to describe relationships between variables. Correlations estimate the extent to which the changes in one variable are associated with changes in the other variable. Essentially, a correlation coefficient ( $r$ ) is a number that summarises what we can observe from a scatterplot. A positive correlation reflects a direct relationship, one in which an increase in one variable corresponds to an increase in the other variable. Two variables which are inversely related would produce a negative correlation indicating that an increase in one variable associated with a decrease in the other (Welman & Kruger 1999: 281-9).

## **5.10 QUANTITATIVE ANALYSES OF DATA**

Information relating to the survey was collected from the directors of the various legal aid clinics, captured and analysed by the researcher through statistical software for the social sciences. The appropriate statistical techniques were applied to test the hypothesis.

## **5.11 SUMMARY**

As a result of government's focus on improved service delivery, an empirical investigation was undertaken in conjunction with the literature review of legal aid clinics at universities and that of the Legal Aid Board. The purpose of this study was to formulate and present issues for consideration to address the quality of service delivery and management techniques applied in legal aid management.

The Scientific Package for the Social Sciences was used to capture and interpret the data obtained, and the researcher was assisted by statisticians from the University of Durban-Westville and Technikon Natal respectively. The promoters of this research played a pivotal role in providing the necessary guidance as deemed necessary.

An evaluation of the present status of legal aid clinics was highlighted in this chapter. An exposition of the administration and management of legal aid with the given resources was presented from the surveys conducted. An investigation was undertaken to explore the legal phenomenon and arrive at a conclusion that integrated all available information to be justified.

## **CHAPTER SIX: PRESENTATION AND ANALYSIS OF RESULTS**

### **6.1 INTRODUCTION**

The research method outlined the procedures to be followed in the completion of the survey. The analysis of the results obtained enabled the researcher to present the findings in the following manner:

- Information on the present structures within legal aid clinics;
- Issues and concerns relating to service delivery.

The surveys conducted revealed that there are various stakeholders involved in the planning, administration and management of legal aid for and behalf of the State. The stakeholders are pro-actively involved either directly or indirectly with the provision and maintenance of legal aid. The list of stakeholders is illustrated in **Table 3.1**.

**TABLE 3: VARIOUS STAKEHOLDERS INVOLVED IN LEGAL AID**

The following stakeholders are either directly or indirectly involved in the planning, delivery, administration and management of legal aid:

☛	The communities
☛	The State (including Central, Provincial and Local Government)
☛	Business / Private Sector
☛	Non-Governmental Organisations
☛	Universities
☛	Community Law Centres
☛	Organised Labour
☛	Parastatals
☛	Legal Aid Board
☛	Law Societies
☛	Association of University-Legal Aid Institutions

## 6.2 DATA PRESENTATION

The researcher collected the data from the field, organised and presented the data using various statistical presentations.

### ☛ Bar Charts

Single bar charts representing each variable were drawn either vertically or horizontally, indicating the percentage of information obtained from the research process.

### ☛ Pie Chart

A pie chart representing information in the form of a circle divided into segments showing the relationship of parts to the whole was used to highlight the improvements to be noted by the clinics.

### ☛ Histograms

A graph that represents the variable scores. The heights of the respective bars represent the frequencies of the categories rather than of individual scores. They represent interval-level and ratio-level variables.

- ◆ Scanning the data: The researcher scanned the data for incomplete, inaccurate, inconsistent or irrelevant data.
- ◆ Organising the data: The researcher organised the information by arranging it in statistical formats. This required counting, describing, comparing and categorising the data for analysis.

The data was presented in different ways to show meaningful summaries of the information gathered. The researcher gathered the raw data and organised it into a frequency distributions so that it can be visually represented by various graphs, bars and pie diagrams.

Graphical representations were used because they have the advantage of allowing one to grasp immediately the main characteristics of the information. Comparison of the different components or fluctuations of numbers or percentages are clearly visible.

Therefore the research method of the study outlined the procedures followed by the researcher using various descriptive and inferential statistical techniques. The analysis of the results enabled the researcher to present the findings.

## **6.3 BIOGRAPHICAL DATA**

The data from the questionnaire was explained and represented in diagrammatic form relating to the key themes of the survey.

### **6.3.1 CATEGORIES OF CLINICS**

As is evident from **Figure 6.1** an overall number of twenty clinics formed part of the survey. Fifty percent of the clinics in the survey were university-based, and fifty percent were operating under the jurisdiction of the Legal Aid Board.

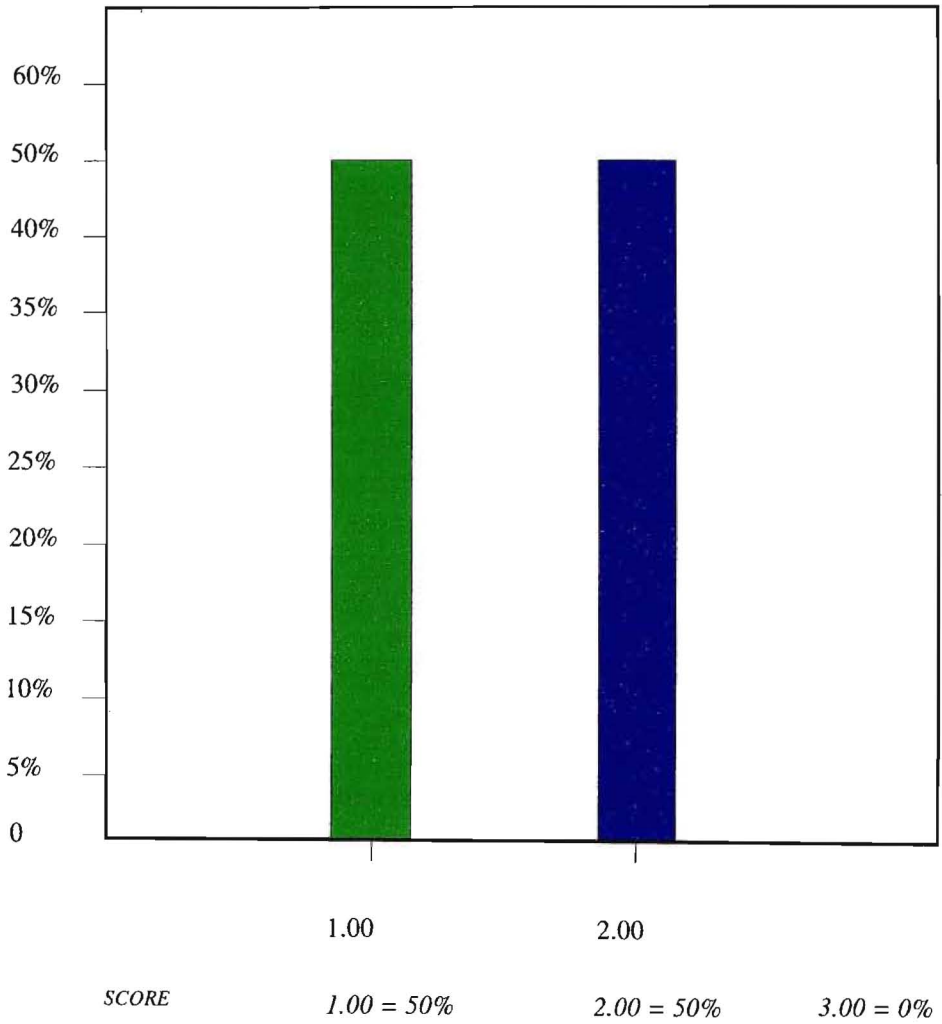
The common vision of all clinics is to speed up service delivery through streamlining their management structures thereby providing efficient and effective service delivery.

Both categories of clinics operate separately within their own jurisdictional bodies. However, it is recommended that they interface more closely with each other and form a combined association to meet the unlimited demands of disadvantaged communities. It is significant that a unified effort to provide access to justice be established, and in so doing, funding from state and private donors could be distributed more efficiently.

Figure 6.1 follows.



FIGURE 6.1

**CATEGORIES OF CLINICS**



**KEY:**

- 1.00 = UNIVERSITY BASED CLINICS
- 2.00 = LEGAL AID BOARD CLINICS
- 3.00 = COMMUNITY LAW CENTRES

-  - 50%
-  - 50%

### 6.3.1.1 Total Years of Experience at Clinics

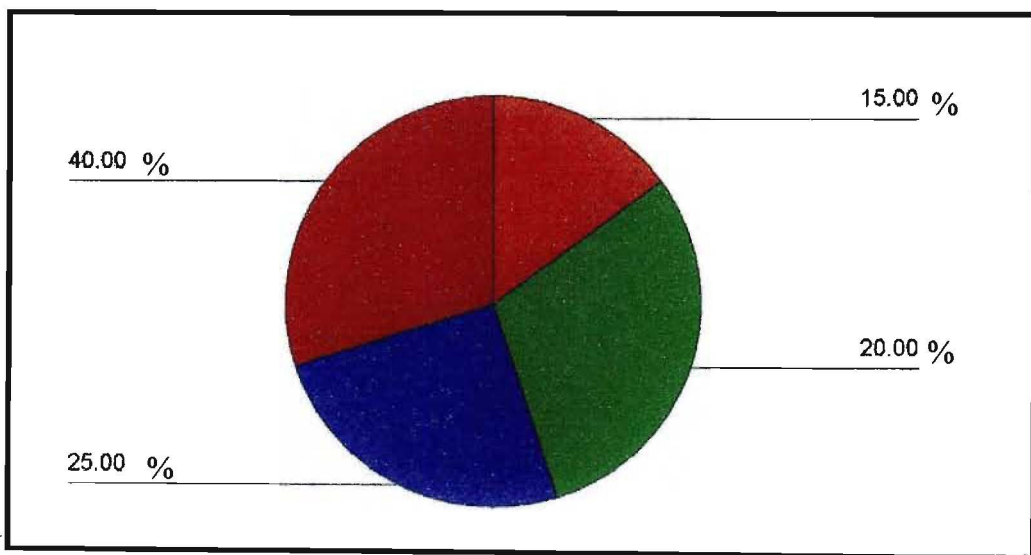
The accumulative experience is considered an important indicator for efficient and effective legal aid management.

Figure 6.2 reflects the total experience indicated by directors at various clinics:

Fifteen percent indicated	0 - 5 years
Forty percent indicated	6 - 10 years
Twenty-five percent indicated	11 - 15 years
Twenty percent indicated over	15 years

It is evident that legal specific qualifications are essential to render efficient and effective legal aid. The application of the rules of justice and legal representation requires the acquisition of legal qualifications and the admittance of attorneys and advocates.

FIGURE 6.2  
TOTAL YEARS OF EXPERIENCE AT CLINICS



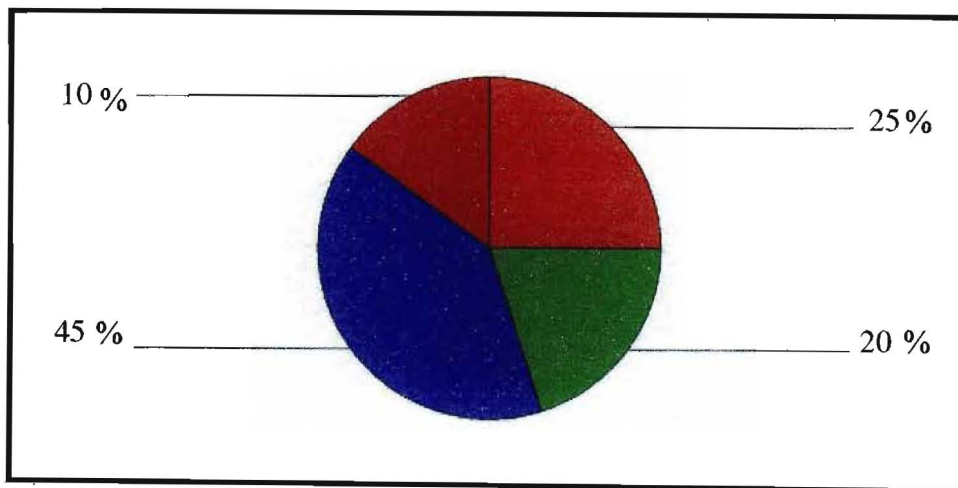
#### KEY

- = 15%
- = 20%
- = 25%
- = 40%

6.3.1.2 Experience at present clinics (at time of survey)

Figure 6.3 indicates that forty five percent of directors occupy their present jobs less than ten years. The significance of this result reflects that there is a high staff turnover as a result of the nature of appointments. Directors are usually appointed on contracts ranging from one to three years, and the security of tenure is threatened by the uncertainty of continued funding.

FIGURE 6.3  
YEARS SPENT AT CLINIC



- |                     |                     |
|---------------------|---------------------|
| ● 0 - 5 YRS = 45%   | ● 6 - 10 YRS = 25%  |
| ● 11 - 15 YRS = 10% | ● OVER 15 YRS = 20% |

## 6.3.2 POLICY AND STRATEGIC ISSUES

### 6.3.2.1 Mission Statement

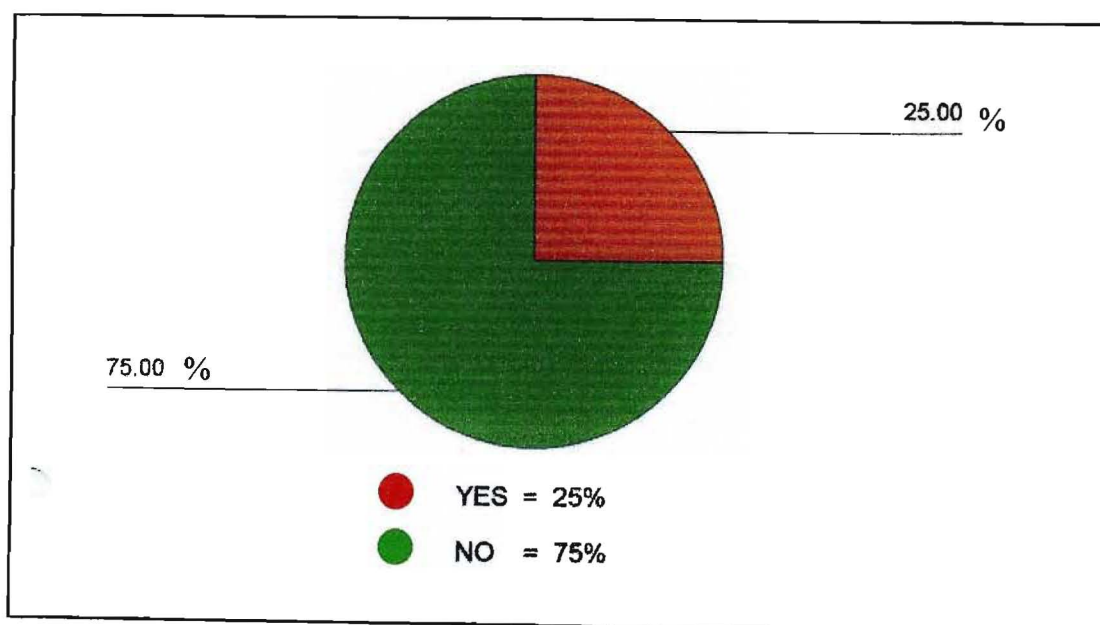
A mission is a formal statement as to the purpose of the venture. It defines the nature of the venture, what it aims to achieve and how it aims to achieve it. It articulates the vision and gives form to the vision. It also helps to distinguish those opportunities which belong to the venture and those which do not, also facilitating communication to potential investors defining the scope and focus of its goals Wickham (1998: 114).

Figure 6.4 above indicates a schematic representation that twenty-five percent of the clinics have their own mission statement, which vision is in accordance with the intent of government and their jurisdictional body.

Seventy-five percent of clinics indicated that they do not have their own mission statement in that they operate within the vision and mission of the university council and Legal Aid Board as their jurisdictional bodies respectively. They indicated that they did not find it necessary to highlight their own mission, if it is in accordance with the requirements of their mandate.

It is significantly recommended that clinics develop their own mission statement that encapsulates and articulates the goals and values of access to justice.

FIGURE 6.4  
POLICY & STRATEGIC ISSUES  
MISSION STATEMENT



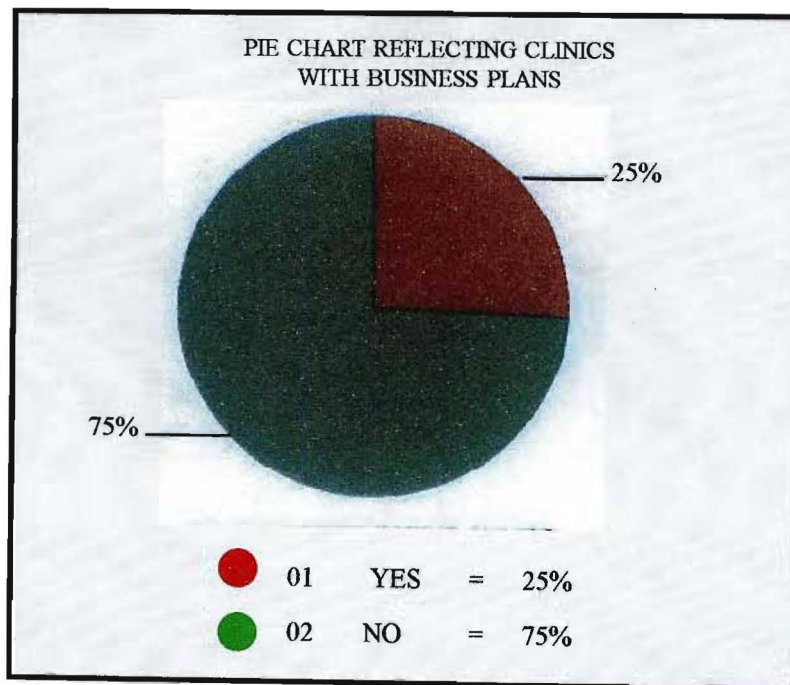
### 6.3.2.2 Business Plans

Business plans are essential tools for articulating the mission and goals of legal aid. A business plan can assist a clinic and guide the analysis, creating a synthesis for new insights, whilst communicating the potential of legal aid to interested stakeholders (donors) thereby promoting management action.

**Figure 6.5** reveals the response of clinics to effecting business plans.

Twenty-five percent of directors indicated that they draw up business plans to plan and direct the activities of the clinics accordingly. However, seventy-five percent indicated that they do not find it necessary to engage in business plans, as the universities' or Legal Aid Board's overarching business plan serves to complement their activities.

FIGURE 6.5  
POLICY & STRATEGIC ISSUES  
BUSINESS PLANS



### 6.3.2.3 Strategic Planning Exercises

Strategic planning is seen as focussed planning on activities which attempt to provide a broad directional framework for the future, thus serving as an important component for clear decision-making. Strategic planning has a crucial role to play in formulating effective policies for legal aid.

**Figure 6.6** indicates that thirty five percent of clinics engage in strategic planning exercises annually. Fifteen percent indicated that they conduct strategic planning in the administration of legal aid on an ad hoc basis (monthly) and as the need arises. However, it should be noted to what extent they involve strategic planning in the overall management of the clinics.

It is imperative that legal aid clinics engage in medium to long-term plans to streamline the administration and management of legal aid. The planning should include an integrated approach to management training so that legal aid is provided effectively. The quality of legal aid management is central to organisational performance.

### 6.3.2.4 Frequency of Strategic Planning

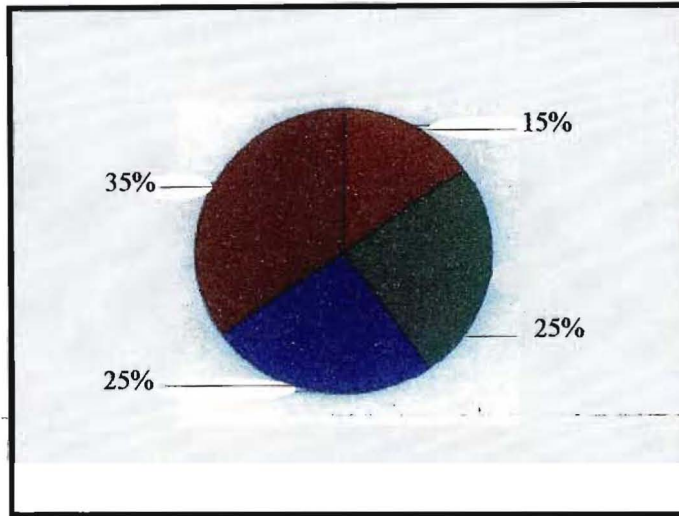
**Figure 6.6** shows schematically the frequency of strategic planning activities engaged by clinics. Thirty-five percent of clinics reflect on their activities annually, incorporating their mission and vision with that of their jurisdictional body.

It is significant that clinics review their activities on a more frequent basis, at least on a quarterly basis. Legislation is frequently updated and legal prescriptions are constantly reviewed, as a result, it becomes necessary to review the provision and maintenance of legal aid on a more frequent basis.

**Figure 6.6 follows.**

FIGURE 6.6

PIE GRAPH REFLECTING FREQUENCY OF STRATEGIC PLANNING EXERCISES



MONTHLY	= 01	QUARTERLY	= 02
HALF-YEARLY	= 03	ANNUALLY	= 04

- KEY:
- 01 Monthly = 35%
  - 02 Quarterly = 25%
  - 03 Half Yearly = 25%
  - 04 Annually = 15%

### **6.3.3 SWOT ANALYSIS**

#### **STRENGTHS, WEAKNESSES, OPPORTUNITIES & THREATS IN LEGAL AID CLINICS**

A swot analysis is an assessment of internal strengths, weaknesses, opportunities and threats that enable managers to identify an organisation's core competencies, and to determine what needs to be improved. Ideally, the key issues raised, regardless of their source, are addressed in the organisation's strategic plan Hellriegel, Jackson, Slocum & Staude 2001: 86-7).

A swot analysis was undertaken of the various strengths, weaknesses, opportunities and threats experienced by the legal aid clinics.

The full matrix of correlations among the various issues is as follows:

#### **6.3.3.1 Strengths of Legal Aid Clinics**

##### **a) Facilities**

Only twenty percent of clinics interviewed indicated that they had well-equipped office facilities to manage the flow of work expeditiously.

##### **b) Skills-based Training and Supervisory Skills**

Not only are legal aid clinics primarily equipped to provide legal aid to the indigent, but they also develop and instruct practical legal training within a teaching curriculum to prospective lawyers. Sixty percent of directors indicated that they possess the necessary pedagogical skills to equip candidate attorneys for the legal profession.

##### **c) Candidate Attorney Programme**

At least seventy percent of clinics who took part in the survey revealed that they have installed a candidate attorney programme to train and prepare students entering into the legal profession. This system serves as an ideal training programme to groom attorneys for the profession. Majority of students proceed to work at legal aid clinics.

### **6.3.3.2 Weaknesses of Legal Aid Clinics**

#### **a) Technology**

At least eighty percent of clinic directors complained about insufficient or updated information technology and infrastructure to expedite their work flow, link up with other clinics and keep abreast of the legislation. This problem is linked to limited funding.

#### **b) Funding**

Seventy-five percent of directors stressed the major concern that clinics face, ie. the threat of continued funding. Most clinics operate on a two-year cycle and funds must be mooted for each cycle on the basis of annual reports and business plans of the clinics current and planned activities for the future. Clinics face the threat of not being able to sustain their activities, as a result of limited financial subsistence from the state, followed by continuous efforts to obtain funds from the private sector and other international donor agencies.

#### **c) No Report Card for feedback from Communities**

All clinics who took part in the survey did not have any report card system for performance evaluation and feedback from the 'clients' whom they render a service to. The only time feedback is provided by an indigent person is when enquiries are made regarding the legality of issues. Legal managers are not subject to any formal feedback to ensure that services can be improved, and this is significantly recommended.

### **6.3.3.3 Opportunities of Legal Aid Clinics**

#### **a) Exchange / Internship Programme**

Legal aid clinics such as UDW, UND, University of Cape Town's Campus Law Clinic have embarked on a fellowship / internship programme. A few years ago, the Ford Foundation together with the University of Maryland initiated this project. Since then, a few clinics have participated in the programme. The programme has benefited not only the students of practical legal training, but also the network and exchange of methodologies and legal management proved to be a useful exercise. However, sufficient funds must be earmarked for this effort.

**b) Collaboration with private sector / Combined Association for Legal Aid**

There needs to be a closer collaboration between the various stakeholder bodies and the clinics who render the service.

Numerous opportunities exist for private sector involvement, thus ensuring that services are sustainable, in accordance with the vision and mission of clinics. Although the Legal Aid Board clinics are geographically located, in other words, positioned to attract the serve the populace, the university-based clinics are situated at satellite offices in the rural townships. It is recommended that an umbrella body be created (Legal Aid Board and University clinics) to serve the growing needs of the legal profession.

**6.3.3.4 Threats of Legal Aid Clinics**

**a) Funding**

The question of limited funds is a constant threat to clinics. Clinics must continue to look to new sources to secure their activities.

**b) Retention of Qualified Staff**

As a result of the insecurity of tenure, the turnover at clinics are rapid. People who are in the employ of a clinic after complain about the limited resources.

**c) Lack of Technological Training**

Public institutions are experiencing the information age where technology has replaced considerable workloads. At least thirty-five percent of clinics expressed that the staff are not fully equipped with the skill, and this could contribute to the quality of provision and maintenance of legal aid. Lack of technological information can lead to ineffective administration and management of legal aid. It is therefore recommended that skills-based and information technology training be offered on a continued basis to legal aid staff.

### 6.3.4 LEGISLATIVE MEASURES

It is mandatory for legal aid clinics to comply with the prescriptions of legislation governing legal aid. Attorneys must conduct themselves in accordance with legislative requirements and abide by the Rule of Law. When attorneys are found disobeying and violating the tenets of the legal profession, they may be struck off the roll. They would not be able to practise law thereafter. Attorneys who are employed by the Legal Aid Board are governed by the Legal Aid Act, 22 of 1969, whilst attorneys who are employed at university-based clinics are governed by the respective law society and their public institution.

Public institutions are also accountable to serving the needs of communities on behalf of the state. This is reflected in the Batho Pele document released by Government, which highlights ‘customer focus’ and ‘customer priority’ as core elements for public service delivery.

Clinics follow the legislative framework of the jurisdiction body that they are accountable to, for example, the legal aid board-funded clinics abide by the Legal Aid Act, and University law clinics follow the rulings of the respective law societies and their universities.

### 6.3.5 HUMAN RESOURCES MANAGEMENT

One of the most significant resources in any organisation is that of human resources, highlighting the development of core competencies and rewarding employees adequately. Public managers are constantly required to assess the effects of human resource policies in practice and to ensure that they are conducted effectively and efficiently.

In terms of the survey, as is reflected in **Figure 6.7**, thirty-five percent indicated that they have sufficient staff to manage the volume of administrative and managerial tasks, whilst sixty-five percent indicated a shortfall in staffing.

The impermanence of staff is also due to the lack of funding or the threat of continued funding. The overall perception noted was that of the provision of training relating to practice management and legal specific training relating to management.

Figure 6.7 follows.

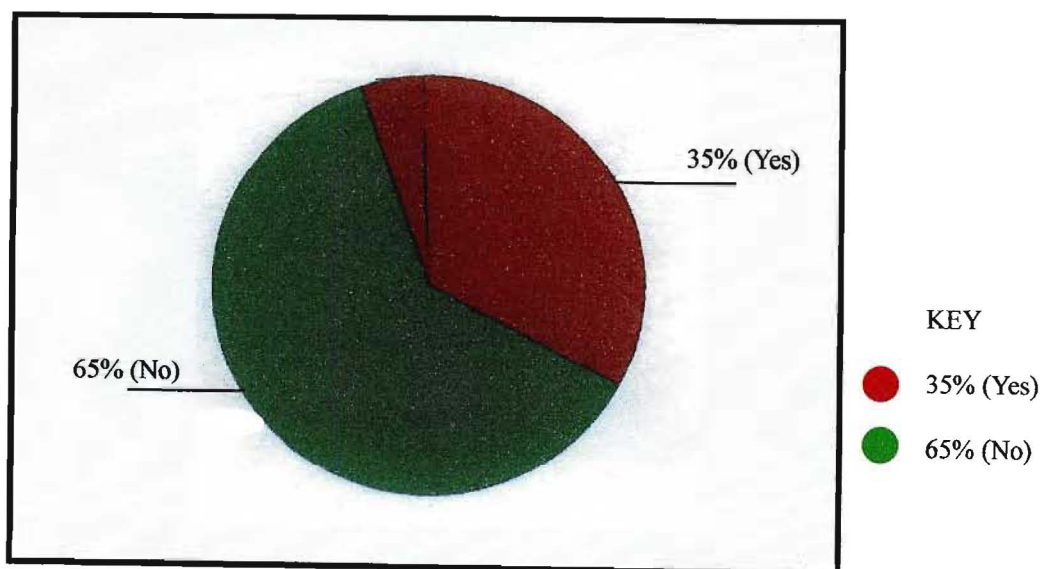
### 6.3.6 PROCEDURAL ASPECTS AND MANAGEMENT OF INFORMATION SYSTEMS

Public institutions rely on work procedures and manuals to guide the expeditious flow of work. In the legal profession, public managers are obliged by law to follow precedents and legislation and exercise the Rule of Law. They consult the statutes and legal acts from time to time.

However, the management of legal aid is equally important and requires effective and efficient organisational and management skills. At least seventy-five percent of clinics indicated that they do not possess a management practice manual and were anxious to contribute to the formulation of such a tool.

It is also necessary for uniformity in the implementation of procedures as many clinics engage their own systems of management. Uniformity of procedures will facilitate exchange and in-service training. It is significantly recommended that clinics work towards this learning curve.

FIGURE 6.7  
STAFFING (Sufficiency of staff)



### **6.3.7 ORGANISATIONAL ARRANGEMENTS**

The organisational arrangements contribute significantly to the administration, management and development of legal aid. Majority of clinics devise their own organisational arrangements to manage the work load. The directors who serve as public managers are usually responsible for devising a system for managing the office. Annual reports are usually prepared by the legal aid managers, but assistance is offered by the clinic's administrators.

### **6.3.8 PUBLIC RELATIONS & NETWORKING**

It should be noted that the two categories of clinics (Legal Aid Board and University-based) do not work together, but rather in isolation from each other. Although they have the common concerns of access to justice for the needy, their location and target groups differ considerably.

As indicated in **Figure 6.8**, sixty-five percent indicated that they interact with other clinics regularly, whilst fifteen percent indicated that they do not interact with other clinics.

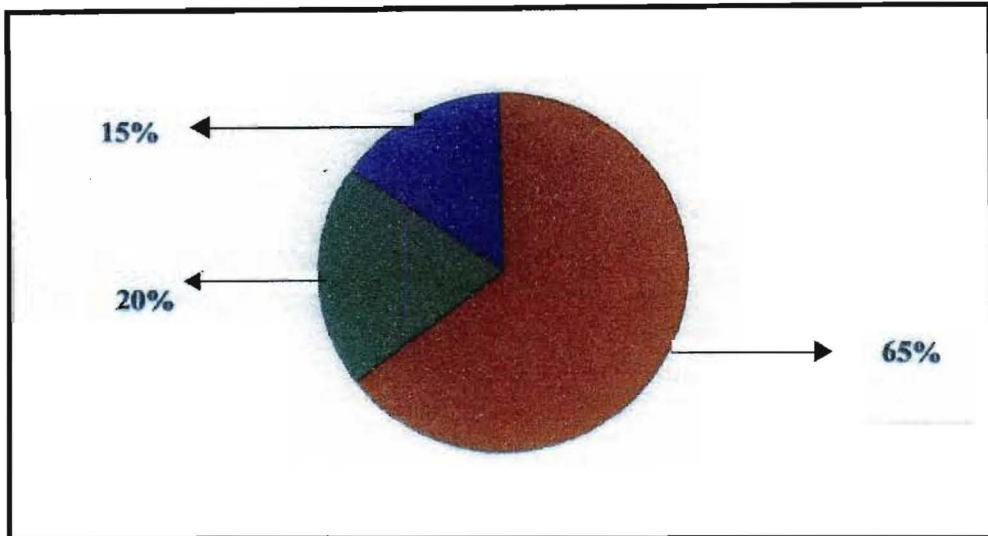
The percentage of networking impacts on the quality of service delivery in that experiences and lessons can be exchanged, and new ideas and innovations can be shared between and amongst the various clinics.

It is recommended that the clinics interact on a more frequent basis, via technological means and internships.

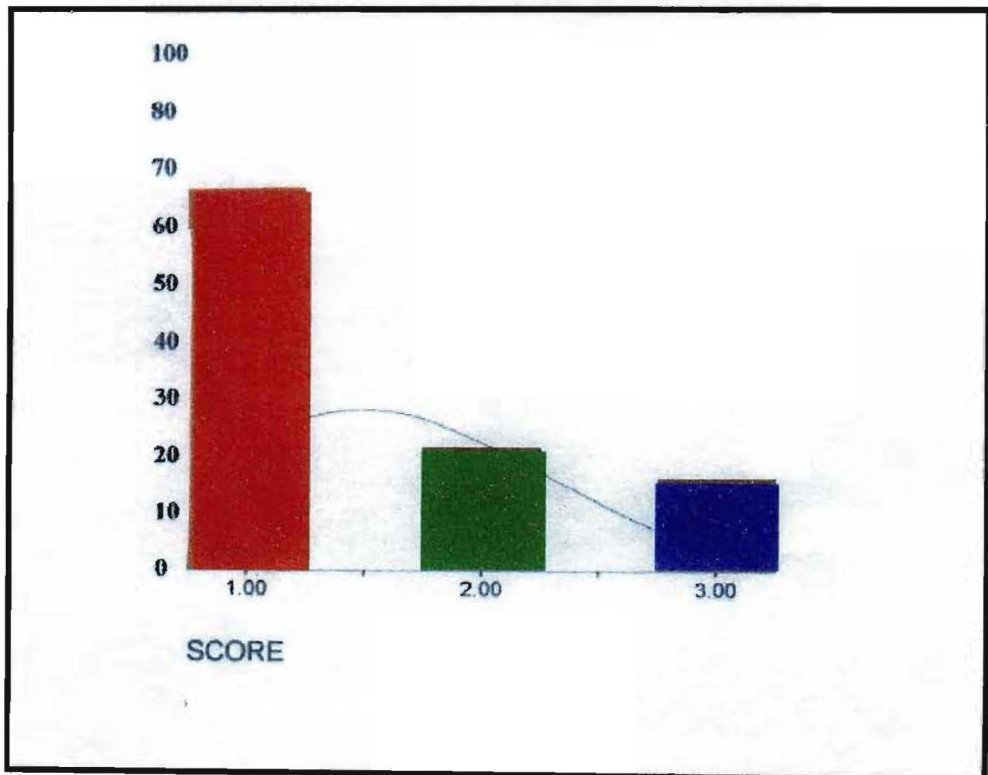
Figure 6.8 follows.

**FIGURE 6.8**  
Public Relations and Networking

Graphs reflect percentage of contact time with other clinics

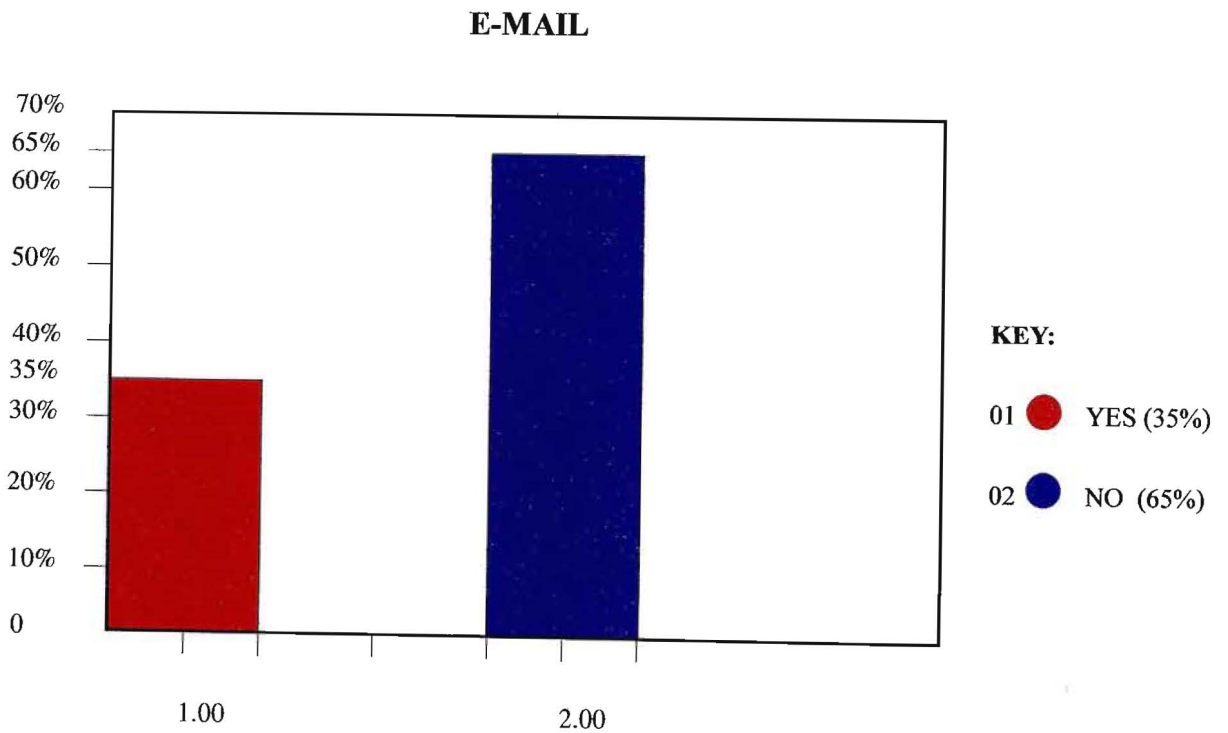
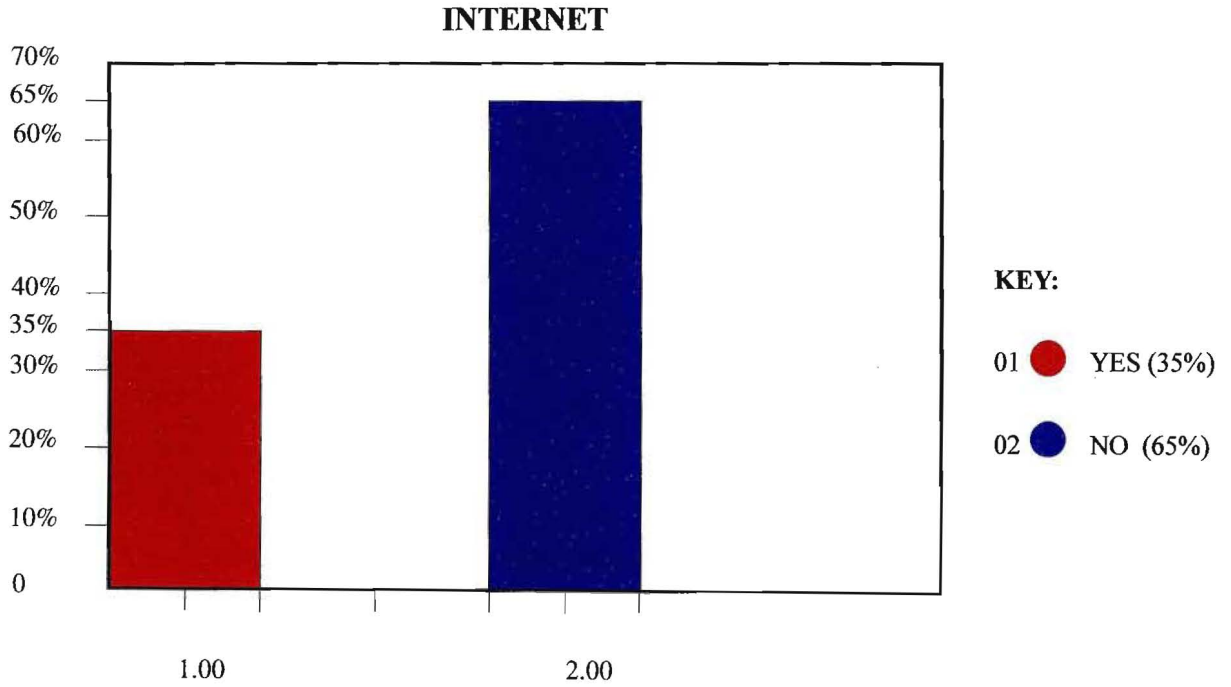


01	:	REGULARLY	●	65%
02	:	OCCASIONALLY	●	20%
03	:	NEVER	●	15%

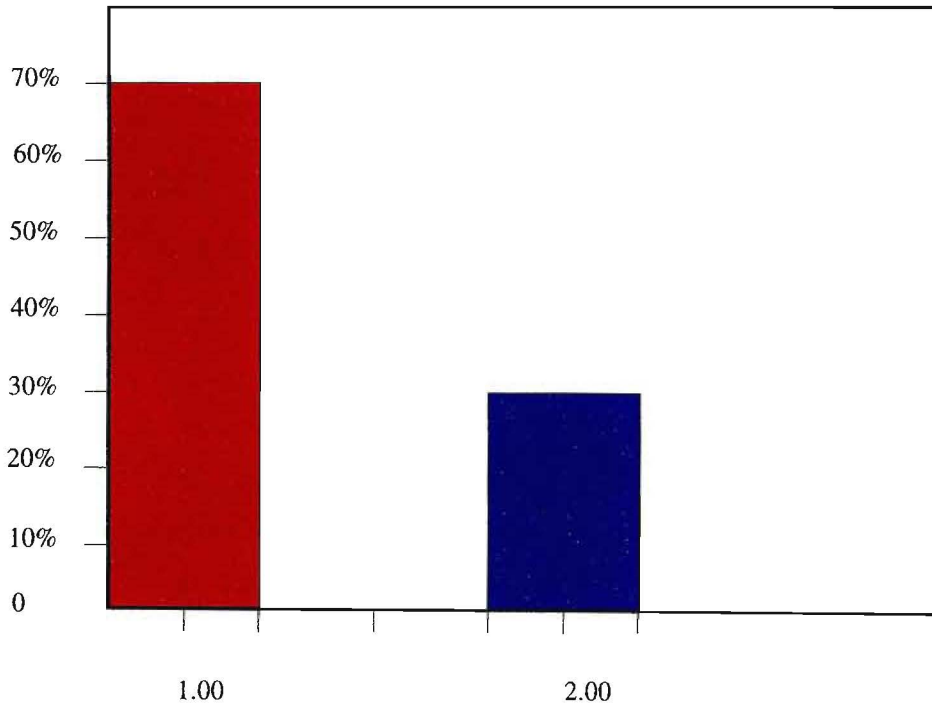


**FIGURE 6.9 PUBLIC RELATIONS & NETWORKING**

Figure 6.9 indicates that only thirty five percent of clinics have access to internet & e-mail facilities



**SOFTWARE**  
**(Figure 6.9 continued)**



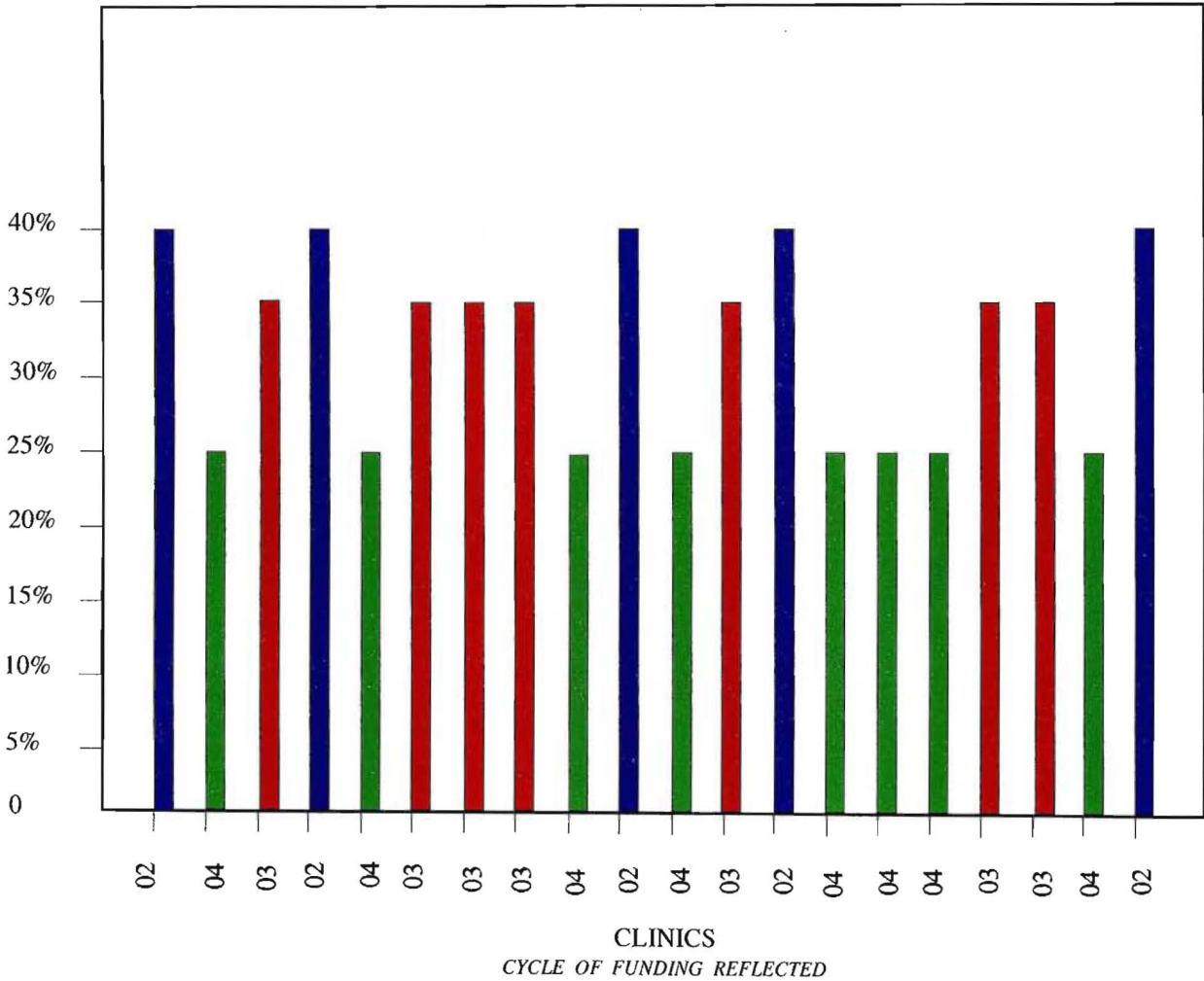
**KEY:**

01 ● YES (70%)

02 ● NO (30%)

FIGURE 6.10

**FUNDING**



**KEY:**

- 04 = 1 Year
- 03 = 2 Years
- 02 = 3 Years
- 01 = Other

- 02 - 40%
- 03 - 35%
- 04 - 25%

**6.3.9 FUNDING**

Legal aid clinics are faced with the enormous threat and challenge of securing funds and sustaining the development of their activities. They are required to present reports and business plans to potential donors to ensure funding. The cycle of funding is mostly over 2 to 3 years.

From **Figure 6.10**, it is evident that only forty percent of clinics who participated in the survey obtain funding for a period of three years.

It is recommended that more funds be allocated by the State for legal aid, and more donors invest in the scheme to provide access to justice.

### 6.3.10 CONTROL, MONITORING AND EVALUATION

Control serves as important function to monitor and evaluate activities of departments on a regular basis. The control function provides an awareness of the problem areas that require attention, thus ensuring accountable service delivery.

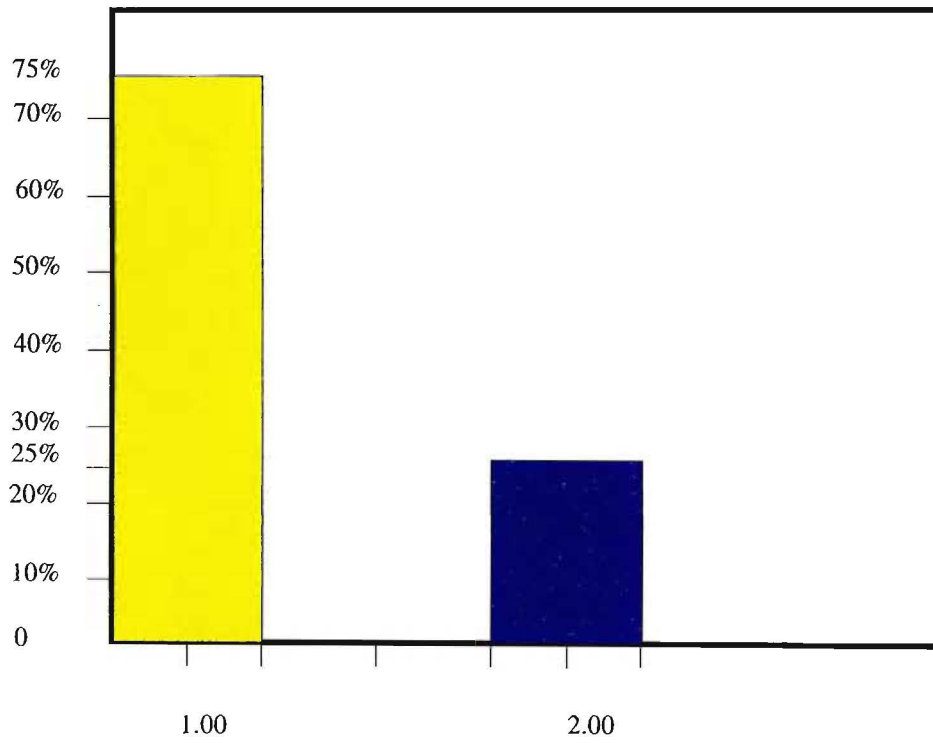
**Figure 6.11** reflects that most clinics (seventy five percent) indicated that they engage in formal control systems whereby annual reports are submitted to the management or executive authority of the clinic. However, none of the clinics that participated in the survey indicated any form of formal evaluation system by their clients. It was assumed that clients are given feedback on the progress of their cases either through written correspondence or consultations by appointments. No formal questionnaires or survey is conducted by clinics to ascertain the quality of service received by clients.

It was therefore recommended that clinics initiate a report card system whereby clients are able to express their response when receiving legal aid. This mechanism would assist clinics to evaluate the level of service delivery.

Figure 6.11 highlights the level of control and internal evaluation by clinics.

## CONTROL MONITERING & EVALUATION

Figure 6.11



**KEY:**

01 ● YES (75%)

02 ● NO (25%)

#### **6.4 LIMITATIONS AND DETECTION OF POSSIBLE ERRORS**

The researcher critically reviewed the data to detect any errors of measurement and bias which could have distorted the description of the research under study. There was an element of bias introduced by unresponsive participants, a few uncooperative ones answering at random, and a few answered on the basis of a misunderstanding of a question or word. Some respondents chose to provide a minimum response, thus not expressing themselves in supporting motivations.

The importance of administration and management cannot be overemphasised in the efficient and effective running of legal clinics, especially since their overall objective is in the interests of the public.

#### **6.5 SUMMARY**

There exists little literature on the administration and management of legal aid clinics in South Africa, or for that matter, from a general perspective. It is assumed that legal aid managers possess the necessary administrative and management skills needed for managing effectively. This is fact may be true to a certain extent. However, not much thought is given to a formal, orderly, generic system of managing a legal practice of this nature. The researcher discovered that very little emphasis was placed in literature on this subject, but focussed on the importance of sound legal principles be applied in the application of legal aid. The purpose, therefore, of this research, has been to fill a gap in the knowledge and to point out the importance and relevance of sound administrative and management systems. The knowledge and practice of public administration has proved to be a valuable link in legal aid management. This was evidently highlighted in discussions and interviews held with legal aid managers of the various clinics. The nature of this research has aroused much interest and enthusiasm in most of the managers that were consulted. Notably, much emphasis is placed on the legal profession, but less attention is focussed on management systems and improved technologies.

Finally, the contributions made by this research has been to contribute to the methodology of research in public management and administration, and to act as a stimulus to constructive discussion of the paradigms and methods adopted by legal aid managers in the administration and management of justice. The conclusion is that this subject is not given as much attention by legal aid managers as it ought to, and the lack of procedure manuals for newly created legal aid clinics poses a threat to skills-based training.

## CHAPTER SEVEN: CONCLUSION & RECOMMENDATIONS

### 7.1 INTRODUCTION

In the final analysis, legal aid clinics are founded with a con-commitment effort to the preservation of the values and integrity of representing the needs of indigent communities, and a dedication to the promotion of efficient and effective management of legal services. To fulfil the spirit of this commitment, donor agencies (Ford Foundation, Attorneys' Fidelity Fund) and the Legal Aid Board have worked to maintain and enhance public trust and confidence in the legal profession, to achieve equity and social justice, to affirm human dignity, and to improve the quality of life for the individual and the community at large. Public interest lawyers and legal managers must dedicate themselves to the faithful stewardship of the public's trust and embrace the legal welfare of communities through management by excellence.

The aims of the study, as indicated in chapter one were to outline:

- ☛ What is the meaning of legal aid management in the context of public administration?
- ☛ What management structures currently exist in legal aid clinics?
- ☛ What public management principles and practice should be applied to ensure efficient and effective management of legal aid clinics?
- ☛ What legislative measures are necessary for the practice of legal aid?
- ☛ The ratio of staffing to administrate and manage the tasks and the type of training provided to effect quality service delivery?
- ☛ What information technology is used in streamlining management practices within these clinics?
- ☛ What networking / public relations exist between and amongst clinics?
- ☛ What training manuals and procedures exist for managing services efficiently and effectively?
- ☛ What staff development policies exist for improving the capacity of directors as public managers?
- ☛ How are clinics funded and what financial support exists for the future of legal aid?

- ☛ A comparison of First and Third World clinics in terms of the nature and extent of administration and management.

## 7.2 CONCLUSION

The foundation of this research study is that the principles and practice of public management and administration is a prerequisite for overall legal aid management. All legal aid managers should explore and adapt the strategies and practices of public administration, thereby adding value to the management of clinics. A broad spectrum of the study of legal aid management is enhanced in the chapters as follows:

In chapter one, definition of key terms relating to legal aid management was provided. This chapter highlights the field of legal aid management, thus giving effect to the necessity for legal aid.

In chapter two, it is accepted that legal aid management is one of the specialised branches of public administration. The core aspects of public administration reflect largely on the principles and practice of legal aid management. An insight into the concept of legal aid management and the legislative framework governing it was outlined. The relationship between legal aid and organised forms of governmental structures was presented. The functions, skills, application of public management principles and technology necessary for effective legal aid were analysed. Effective management skills and techniques are necessary to enable legal aid clinics to achieve the objectives at the highest level of productivity. The tools of management are essential to direct clinics towards effective achievement of their objectives. The actions of public legal managers must constantly strive to act in a way which will lead to the improvement of the quality of service delivery. Effective management ought to be the main resource of well established legal aid clinics, and the most sought after resource for developing ones. From a close examination of the resources available to legal aid clinics, effective management is necessary to utilise the limited resources optimally. The futuristic trends are based on the recommendations put forward regarding legal aid managers and the role of legal aid clinics as demonstrated in this study: The environment in which legal aid managers operate is dynamic and subject to environmental influences on a continuous basis. In order for legal managers to meet the challenges that will

probably have to be met, it is necessary for them to note these changes taking place in the legal profession and in public administration generally. These aspects created an environment for greater understanding and provision of information, which in turn leads to better service delivery. The role of communities interfacing with legal aid institutions is vital for feedback purposes. Finally, a generic approach to legal aid management was presented with integrated functions and policies for effecting quality service delivery.

Chapter three evaluated legal aid management in selected first and third world countries. It was highlighted that a lack of resources and infrastructure contributed to poorly developed systems or a lack thereof. The provision of legal aid was viewed from a regional to national and international perspective, and there were many lessons for the South African experience from these comparisons.

Chapter four concentrated on the practices within legal aid clinics. This chapter revealed the operational aspects pertaining to legal aid/law clinics as they are experienced and obtained from the field work. It was revealed that there exists no generic format for the administration and management of legal aid, and that legal aid clinics prescribe their own format.

Chapter five outlined the empirical study undertaken to evaluate the management techniques, principles and practices of legal aid clinics of selected institutions with regard to service delivery. It is important for one to consider the scientific and systematic study of legal aid clinics for the future. Legal aid managers favour much of their time on verbal media - engaging in consultation and negotiation on behalf of their clients. The question one needs to ask: Will managers now begin to eschew face-to-face discussions in favour of face-to-terminal decision-making, or will they continue to confer and keep busy while others feed to them an ever-increasing flow of processed information, requiring interpretation, evaluation and further discussion. The research was centred around the core issues raised in chapter one.

In chapter six, the data was processed, measured and presented by using structured questionnaires and various statistical analyses. The findings highlight the need to develop responsive, dynamic legal service delivery that continuously assesses its purpose and seeks the most effective management techniques to serve the best interests of the community. Through this chapter, the

researcher drew conclusions which emerged from the literature study and appropriate recommendations were discussed.

Despite huge differences in legal systems, legal firms (both in private and public arenas) around the world face remarkably similar management problems. The problem is that lawyers are intolerant of management. Lawyers are advisors who do not like receiving advice. It is a challenge to herd them without their realisation.

From the afore-going, it is evident that the environment of public administration consists of political, social, economic and technological sub-environments and cultures, and that these have to be recognised by public managers when carrying out functions. Only if suitable management and administrative reform takes place, will it be possible for legal aid clinics to meet the ever-increasing demands of society in the future.

Legal aid clinics would need to adopt new strategies to meet the challenges of the 21st Century, strongly competitive, yet open to co-operation. Clinics should strive to deliver high quality legal assistance at the lowest cost of resources. The need to create new ways for disadvantaged communities to access services, information and decision-making forums using the most sophisticated technologies and managerial skills is of necessity. Legal aid clinics should not be daunted by advances in technology, by the speed of communication, by statutory measures or by a modern economy increasingly based on knowledge and services (Kellar 1998: 4). Effective clinics of the future should possess investment in competent human resources, skills-based training, transparent and accountable practices and a strategic vision that facilitates meaningful involvement of the legal profession. They should accommodate the needs of indigent persons by increasing their accessibility and becoming more flexible while retaining a quality orientation and a commitment to core values.

Clinics are playing a leading role in meeting the needs of poorly disadvantaged communities. They serve an important function of the state, ie. community welfare. Quality legal services is gaining importance in communities. Clinics must realise their role within the principles enshrined in the Constitution, the involvement of communities and key stakeholders in developing a strategic vision for the future. The key is for clinics to have access to new technologies,

knowledge and innovative strategies that will help them maintain and enhance the delivery of legal aid to the maximum. They either strive for efficiency and effectiveness, or begin to stagnate.. Managing public services is an extremely complex activity: public managers must constantly develop new skills and adopt new perspectives, combining the relevance of processes and rules, enduring accountability and acting in the public's interest. Theorists may develop and propose elaborate models and approaches, however, practitioners need to apply their minds with circumspection regarding public sector management. Research findings suggest that managers will continue to rely on sound administrative and management systems to provide effective and efficient services. Therefore, public management is the social science which provides the professional and practical effort of successful legal aid management, which is an art.

### **7.3 RECOMMENDATIONS**

In light of the aforementioned, the following recommendations are made:

**The recommendations will be based on two dimensions:**

- ☛ **Recommendations based on the methodology of the study; and**
- ☛ **Recommendations based on the results of the study.**

#### **7.3.1 RECOMMENDATIONS BASED ON THE METHODOLOGY OF THE STUDY**

The following recommendations are proposed:

##### **7.3.1.1 FURTHER RESEARCH**

It is recommended that further research be undertaken to evaluate the management of legal aid systems of clinics within a legislative and contextual basis on a regional, national and international perspective. The focus currently is on the legal profession and practical aspects of the law with little emphasis on management principles and practices.

There is currently very little focus in the form of research on management systems within clinics.

### **7.3.1.2 DURATION OF RESEARCH PROCESS**

The research process was conducted during 1997 to 1998. Following this period there would have been substantial developments in the legal fraternity regarding legal aid. In light of this, the public defender system was being proposed as a way forward for clinics in terms of broadening access to justice. This system needs to be further investigated, and to determine the perceptions of communities with regard to this system.

The legal profession is beginning to emphasise the need for effective practice management. Therefore, further developments through workshops, seminars and field visits will inform this research with new developments.

### **7.3.2 RECOMMENDATIONS BASED ON THE RESULTS OF THE STUDY**

The following recommendations are put forward:

#### **7.3.2.1 Review of legal aid management within an administrative framework with particular reference to:**

- ☞ **legislative measures and policy directives;**
- ☞ **functions, skills, applications; and**
- ☞ **technology and techniques**

A discussion of these issues follow.

#### ☞ **legislative measures and policy directives**

Inherent in the administrative framework is the challenge of the political environment. Public administration and management is conducted in a political milieu. The administration and management of justice in South Africa is also influenced by the political environment. Significant changes to the political system will invariably impact on the manner in which legal aid is rendered and managed. Changes in government policies will cause public managers to formulate new organisational structures, devise new goals and objectives, create new priorities to deliver services

for reconstruction and development of the country. Currently the legal system has undergone fundamental transformation, including its judicare system. Legal aid is gaining prominence as a community service.

#### ☛ **functions, skills, applications**

Legal aid managers also face tremendous challenges in terms of intellectual capacities. Legal aid clinics must provide managers with competencies and analytical skills to deal with sensitive and often delicate legal issues and use their intuition when dealing with clients. Managers must be able to make decisions regarding future developments. Legal aid managers serve both civil society and government and must therefore aim to effect reform in public activities. It is therefore acknowledged that there needs to be administrative and management reform in clinics.

#### ☛ **technology and techniques**

The quality of legal aid is dependant, to a large extent on technology. Information technology is becoming increasingly important to public management and the legal profession. Legal aid managers are reliant on properly designed and managed information systems using appropriate technologies. It is therefore recommended that resource management be fully supported with global information technology.

### **7.3.2.2 LEGAL AID MANUAL ON ADMINISTRATIVE AND MANAGEMENT TECHNIQUES AND SKILLS**

It is imperative that clinics have in their possession a manual outlining the generic management functions, skills and internal organisational arrangements to expedite the functional activities of the clinic. The acquisition of operational guidelines is especially useful not only for already established clinics as a form of bench-marking, but also a valuable source document for newly established clinics. The guidelines of the relevant legislative body could be provided as well. This manual needs to be updated from time to time informing the latest developments, following amendments to legislative requirements and workshops held regularly.

Inherent in the recommendation for manuals, is also the need for the formulation and compilation of a directory of all law schools, public interest law organisations, community-based legal aid centres and legal aid board clinics, which is continually updated. This document would serve as a useful resource document for locating and informing communities and clinics respectively of the whereabouts of particular services.

Currently, legal aid clinics do not have such a manual. The University of Natal has a manual which emphasises the legal aspects and basic procedures for implementing legal aid. No emphasis is placed on the generic guidelines relating to the functional activities of clinics.

### **7.3.2.3 MANAGEMENT SKILLS-BASED TRAINING**

Line managers must undergo training in the knowledge, skills and application of the functional activities of public administration. Since legal aid management is one of the specialised sub-branches of public administration, and comprises the component activities of public administration, it follows then, that legal aid managers apprise themselves of the basic principles and practices of public administration. The knowledge and resources necessitate the necessary skills and expertise required for ‘function-specific’ management.

Currently, the legal profession does not allow for such training in its formal component of study.

However, the profession has introduced such training on a small scale in workshops and seminars. It is strongly recommended that a summarised course in public management be offered to legal aid managers in this regard.

### **7.3.2.4 TECHNOLOGY-BASED SERVICE**

It is necessary to establish an advanced computer network whereby clinics are in constant contact with each other through a central networking system, allowing access on a regular basis. Also the provision and maintenance of a web site for legal aid clinics to access and update their activities continually is recommended. The exchange of information relating to the activities of clinics and the legal profession is a vital link in the co-ordination and integration of legal aid.

(Caiden. 1971. 286) highlights the importance of technology:

*“Scientific discovery is largely responsible for man’s turbulent environment. If new knowledge ceased, a greater measure of stability would probably exist. Such a possibility diminished in time as galloping technology becomes a fact of life. Unfortunately technology has outstripped his capacity to control the consequences”.*

It is therefore highlighted that technology plays a dominant role in legal aid management. In order to speed up service delivery and optimise resources, one has to rely on technology. The legal profession relies to large extent on technology to provide management information systems and legal precedents for solving legal problems and court proceedings. Legal aid managers are therefore dependent on technological developments from time to time. Therefore support for up-to-date information technology (legal suite and practice management software) enabling legal aid clinics to provide more efficient and effective services to their clients is imperative.

Currently, legal clinics operate very basic technology. The major constraint for achieving more advanced systems is a financial one.

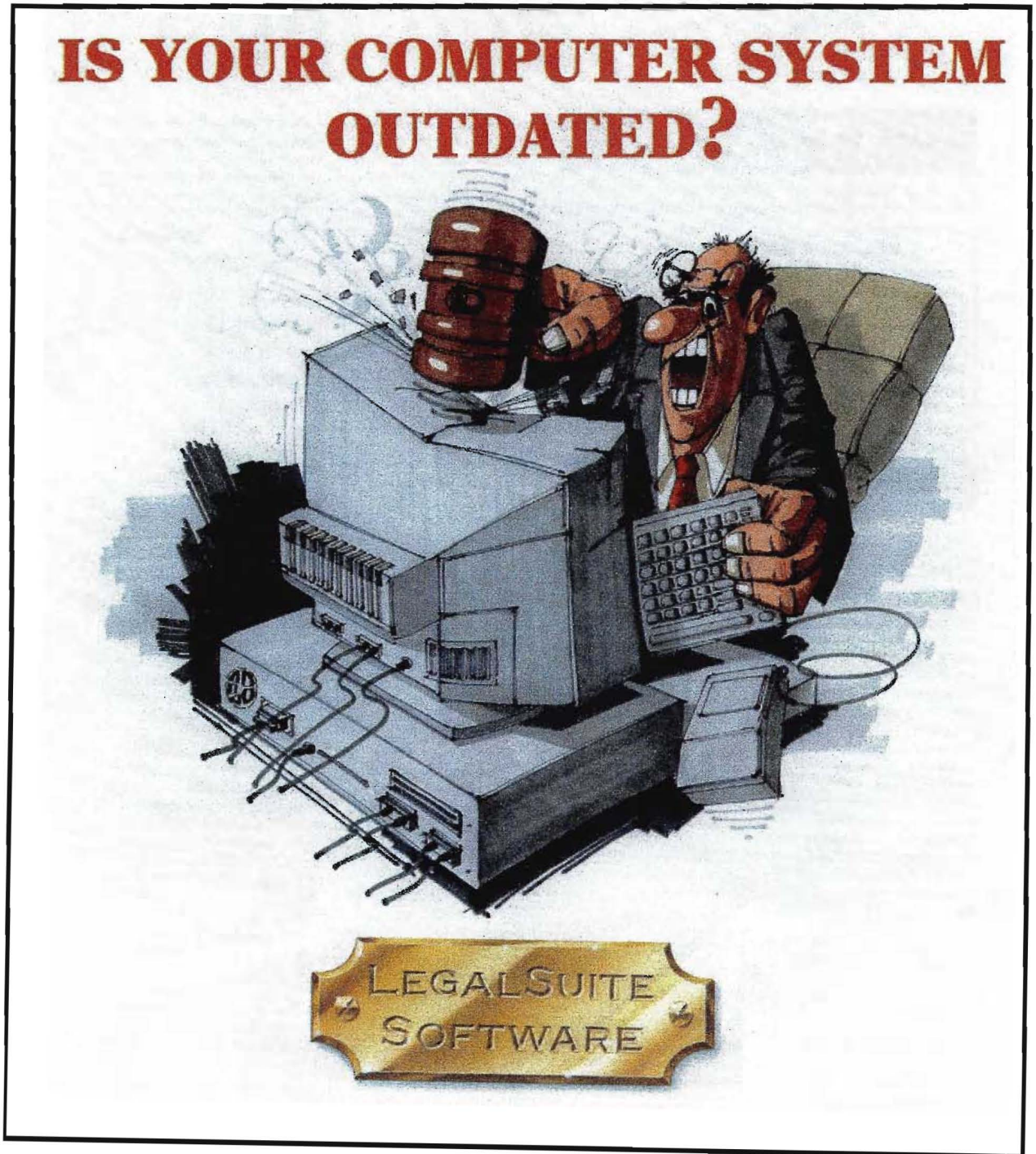
**Figure 7.1** illustrates an outdated computer system.

### **7.3.2.5 FUNDING**

The provision of legal aid relies wholly on sources of funding, partially from the state and donor agencies, non-governmental organisations and the private sector. Since legal aid clinics play a crucial role in service delivery, it is imperative that the funding of such activities receive priority. It is recommended that more funds be allocated from the state for the provision of legal aid, and support from public institutions, in this instance, universities, together with international organisations be solicited to effect quality services.

Currently, clinics face tremendous pressure and challenges in this regard. They operate on a contract basis with no guarantee of continued funding.

Figure 7.1



### **7.3.2.6          INTERNSHIPS**

It is imperative that legal aid clinics engage in clinical legal management internships for sharing and exchanging managerial competencies and skills. The knowledge and experience gained can be useful for newly established clinics and to adopt innovative techniques with the developed clinics. Currently, internships has been implemented. However, only a few universities (not more than five) have participated in this exercise. The experience has been most enriching and is highly supported by clinical directors.

### **7.3.2.7          REPORT CARD SYSTEM**

Formulation of performance measurement systems for legal aid clinics to ascertain client responses and feedback for improvements is highly recommended. A report card system would enable clients to evaluate the services rendered by clinics, thus providing the necessary feedback. To date, no clinics use this system. Most clinics depend on the enquiry from clients and their own feedback system with diarising of files.

### **7.3.2.8          IMPROVEMENTS IN LEGAL AID MANAGEMENT**

It is of fundamental importance that the State and public institutions, ie. universities and other statutory bodies recognise the fundamental role of legal aid clinics in service delivery. It is therefore recommended that:-

- ✓ further support be given to legal aid clinics in terms of sufficient resources so that diverse opportunities can be created to meet the legal needs of communities. A work study process needs to be undertaken to ensure that resources are channelled in the most effective way as possible.

- ✓ an integral component of legal aid clinics is ‘good governance’. This can only be achieved through the notion of partnerships, whereby the various stakeholders involved collaborate their efforts thereby strengthening the fiduciary responsibility and the mutual benefit thereof. It is therefore necessary to redefine and reaffirm the roles and responsibilities of the stakeholders, namely government (State), communities, non-governmental organisations, donor agencies, public institutions and the private sector.
- ✓ creating an environment that recognises and inspires excellence in management, thus fostering the professional and personal development of its employees is vital. Performance measurement and management is dependent on ensuring that employees are motivated and compensated accordingly. To this end, it is necessary to advocate training programmes and invest in the development of employee performance.
- ✓ financial planning and management is essential to ensure optimal utilisation of scarce resources and achievement of predetermined objectives. The utilisation of limited budgets and prioritisation of functions, budget reports, record-keeping and other planned activities must be monitored and evaluated on a regular basis.
- ✓ developing business plans can assist legal aid managers by guiding analysis, creating a synthesis for new insights, communicating the mission and vision of legal aid to potential donors and promoting overall management action. The provision of legal aid is an active process where planning and performance needs constant review. The development of business plans would not only expedite the functions entrusted to clinics, but serve to identify and highlight those areas where opportunities and unexpected challenges might arise.
- ✓ applying clear and sound judgement through strategic management while developing the necessary competence and seizing available opportunities for improving legal aid. Legal aid managers ought to engage in management principles and practice, e-commerce and knowledge management. The future of legal aid is influenced by the significant

development of the justice system and managers need to be aware of these limits and prepare strategically to secure the future of legal aid.

The initiation, development and implementation of these recommendations will serve the delivery and management of legal aid in South Africa.

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## **INSTRUCTIONS FOR THE COMPLETION OF THE QUESTIONNAIRE**

The questionnaire is compiled with structured (closed) and unstructured (open) questions. It has been designed to obtain information for computer analysis and to obtain perceptions and suggestions for improvement of the management structures.

Where necessary, some questions require a **tick ( -/ )**, while others require a brief explanation. Should you decide to furnish any additional information, please use the space provided at the end of the questionnaire.

The information you provide is extremely valuable and will be treated as confidential.

PLEASE COMPLETE THE FOLLOWING DETAILS:

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**KINDLY RETURN THE QUESTIONNAIRE BY 8 JANUARY 1999**

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THANK YOU FOR YOUR SUPPORT!

1998

**SURVEY ON MANAGEMENT OF LEGAL AID CLINICS**

NAME OF CLINIC: \_\_\_\_\_

IS THE CLINIC PART OF: THE UNIVERSITY \_\_\_\_\_ **01**  
LEGAL AID BOARD \_\_\_\_\_ **02**  
COMMUNITY LAW CENTRE \_\_\_\_\_ **03**

NAME & TITLE OF PERSON COMPLETING THE SURVEY: \_\_\_\_\_

QUALIFICATIONS: \_\_\_\_\_

YEARS OF EXPERIENCE: \_\_\_\_\_ 0 - 5Years **01** \_\_\_\_\_ 6 - 10Years **02**  
\_\_\_\_\_ 11 - 15Years **03** \_\_\_\_\_ Over 15Years **04**

NUMBER OF YEARS AT THE CLINIC: \_\_\_\_\_ 0 - 5Years **01** \_\_\_\_\_ 6 - 10Years **02**  
\_\_\_\_\_ 11 - 15Years **03** \_\_\_\_\_ Over 15Years **04**

TEL. PHONE, FAX & E-MAIL OF PERSON COMPLETING THE SURVEY:  
\_\_\_\_\_  
\_\_\_\_\_

DATE SURVEY COMPLETED: \_\_\_\_\_

**1. POLICY & STRATEGIC ISSUES**

1.1 When did the Clinic commence its operations? \_\_\_\_\_

\_\_\_\_\_

1.2 Is there a mission statement? \_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**  
If Yes, kindly attach a copy.

1.3 Is there any business plans for the Clinic? \_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

Specify \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.4 What are the aims, objective & goals of the Clinic? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.5 How are these aims, objectives and goals linked with the University's overall mission statement? Answer if your clinic is university-based.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.6 Is there any strategic planning exercises undertaken?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

1.7 If so, how frequently are they held.

\_\_\_\_\_ Monthly **01**                      \_\_\_\_\_ Quarterly **02**  
\_\_\_\_\_ Half-yearly **03**                      \_\_\_\_\_ Annually **04**

1.8 The table below indicates a SWOT matrix. Fill out the strengths, weaknesses, opportunities and threats experienced by your Clinic.

<b>Strengths</b> <b>01</b>	<b>Weaknesses</b> <b>02</b>
<b>Opportunities</b> <b>03</b>	<b>Threats</b> <b>04</b>

1.9 What is the impact of the above factors on the operational issues of your Clinic?  
(Provide as much information as possible)

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**LEGISLATIVE MEASURES FOR LEGAL AID**

1.10 To what extent is the Legal Aid Act followed by your Clinic?

\_\_\_\_\_ Fully **01**                      \_\_\_\_\_ Partially **02**                      \_\_\_\_\_ Not affected **03**

1.11 If you've answered **01** or **02**, discuss the extent to which you are governed by the Act.

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1.12 What are the shortcomings/limitations/restrictions surrounding the Legal Aid Act that you experience or perceive in your Clinic's operations?

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1.13. What is the link between the legal aid clinic and the following:

**01** Legal Aid Board \_\_\_\_\_

**02** Law Society \_\_\_\_\_

**03** Any other bodies \_\_\_\_\_

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1.14 Chapter 10 of the Constitution of Republic of South Africa, Act 108 of 1996 discusses the basic values and principles governing public administration. These include inter alia:

professional ethics  
impartial service delivery  
transparency  
public participation in  
policy-making

efficient & effective use of scarce resources  
accountability and equity  
good human resource management

Would you say that your clinic contributes to this overall objective.

\_\_\_\_\_ Yes **01**

\_\_\_\_\_ No **02**

Specify \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.15 Would you say that your clinic's activities contribute to the government's objective of the Reconstruction & Development Programme (RDP)?

\_\_\_\_\_ Yes **01**

\_\_\_\_\_ No **02**

1.16 How is the means test applied to your clients? \_\_\_\_\_  
Attach a copy of the means test.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.17 What other policy documents are used to guide the activities of your legal aid clinic?  
Specify. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**2. HUMAN RESOURCE MANAGEMENT**

2.1 Number of staff in your Clinic? \_\_\_\_\_

\_\_\_\_\_

2.2 Number of administrators/office managers/secretaries present?

\_\_\_\_\_

\_\_\_\_\_

2.3 Provide an organisational chart indicating how legal aid management is conducted.  
(A hierarchy indicating levels of accountability and reporting mechanism would be useful).  
(Use a separate sheet for your flow diagram or hierarchical structure)

2.4 Is there sufficient staff to manage the volume of administrative and managerial tasks?

\_\_\_\_\_ Yes **01**          \_\_\_\_\_ No **02**

Comment \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2.5 Is any training provided for effective office management?

\_\_\_\_\_ Yes **01**          \_\_\_\_\_ No **02**

2.6 If yes, who provides the training? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. PROCEDURAL ASPECTS & MANAGEMENT OF INFORMATION SYSTEMS**

3.1 Do you have sufficient computers in the clinic? \_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

3.2 Is there reliable (on site) technical support for your technology?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

3.3 What other mechanisms of management support do you enjoy? Please Specify.

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3.4 Do you have: internet facilities \_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

e-mail \_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

office suite software \_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**  
ie. Spreadsheets, word processing, database and presentations

3.5 How are case statistics recorded in your clinic?

\_\_\_\_\_ computer **01** \_\_\_\_\_ manual **02**

3.6 Is there any support to improve the technology in the clinic?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

Specify \_\_\_\_\_

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3.7 Is there any skills-based training offered to management staff relating to information technology?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

3.8 Do you have any manuals or guidelines for managing the office?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

3.9 Would you support the idea of a training manual for managing the legal aid office?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

3.10 What would you like to see included in the manual? Provide as much detail as possible.

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#### **4. ORGANISATIONAL ARRANGEMENTS**

4.1 Who is responsible for the overall office management? \_\_\_\_\_

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4.2 Is the administrator responsible for devising a system of managing the office?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

4.3 If not, who provides the model or system? \_\_\_\_\_

Explain how this is done?

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4.4 Are reports prepared regularly on the management of the clinic?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

4.5 Who prepares the management reports of the Clinic? \_\_\_\_\_  
\_\_\_\_\_

4.6 What suggestions do you have for any improvements to the current system?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. PUBLIC RELATIONS AND NETWORKING**

5.1 How much contact do you have with other clinics? Explain briefly nature of interaction.

Regularly	Occasionally	Never
<b>01</b>	<b>02</b>	<b>03</b>

5.2 How much contact do you have with the following bodies:

**01** Local Legal Aid Clinics \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**02** International Legal Aid Clinics \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**03** Legal Aid Board \_\_\_\_\_  
\_\_\_\_\_

**04** Law Society \_\_\_\_\_  
\_\_\_\_\_

**05 Association of University Legal Aid Institutions** \_\_\_\_\_

\_\_\_\_\_

**06 Any other bodies** \_\_\_\_\_

\_\_\_\_\_

5.3 Do you have directories with updated information on other clinics?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

5.4 Would you like to receive a directory of this nature?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

5.5 Do you have any suggestions to improve communication between legal aid clinics?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.6 Do you think that there is a need for the legal aid scheme to be more widely advertised?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

5.7 Is your present communication with clientele satisfactory?

\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

Specify \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5.8 Have you been part of a fellowship programme, with internships from other clinics?  
\_\_\_\_\_ Yes **01** \_\_\_\_\_ No **02**

**6. FUNDING**

6.1 How is the Clinic funded? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.2 What are the sources of funding? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.3 What is the cycle of funding?

1 Year	2 Years	3 Years	Other
<b>04</b>	<b>03</b>	<b>02</b>	<b>01</b>

6.4 Is the funding sufficient? \_\_\_\_\_  
Specify.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.5 What is your annual budget? \_\_\_\_\_  
\_\_\_\_\_

6.6 What is the estimated annual expenditure? \_\_\_\_\_  
\_\_\_\_\_



# APPENDICES

**UNIVERSITY OF  
DURBAN-WESTVILLE  
LAW CLINIC**

**Annexure 1**

**UNIVERSITY OF DURBAN-WESTVILLE**

**LAW CLINIC**

I, the undersigned, do hereby apply for legal assistance to the Law Clinic and certify that the information furnished hereunder is true and correct.

SURNAME :.....

FIRST NAMES :.....

IDENTITY NO. :.....

ADDRESS (HOME) :.....

(WORK) :.....

TEL. NO. (HOME) :.....

(WORK) :.....

NO. OF DEPENDANTS :.....

MARRIED STATUS :.....

<b>PLACE OF ORIGIN</b>	<b>REF. NO.</b>	<b>CAMPUS LAW CLINIC</b>	<b>ADVICE OFFICE</b>	<b>PARA-LEGAL ADVICE OFFICE</b>	<b>TELE-PHONIC ADVICE</b>	<b>OTHER</b>

**NATURE OF PROBLEM:**

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DECISION TAKEN	UNIT & FILE NO.	OTHER REFERRAL	CLOSED

NET MONTHLY INCOME OF YOURSELF :.....

YOUR SPOUSE IF LIVING TOGETHER :.....

DO YOU HAVE ANY FIXED ASSETS?  
IF SO, WHAT VALUE? :.....

ANY ENCUMBRANCES THEREON. eg. Bond :.....

OTHER ASSETS (VALUE) :.....

Have you consulted an attorney about this legal problem? : Yes / No

If yes, Name of Attorney's firm :.....

Is the Attorney still acting for you in this matter : Yes / No

SIGNATURE:.....

DATE :.....

**Exclusion of Liability and indemnity**

I, the undersigned \_\_\_\_\_  
apply for legal services from the Law Clinic, and acknowledge:-

1. The Clinic is a non-profit organization which renders legal services to needy persons, free of charge.
2. The service is rendered by Law students who are not fully qualified in the promise of law, under the supervision of professional staff:

I, accordingly on behalf of myself, my heirs, executor or assigns hereby absolve, indemnity and hold harmless the University of Durban-Westville, its staff, students and other persons appointed or co-opted by the Clinic in respect of my case, against and from any liability which might attach to them in any manner whatsoever as a result of any advice or service rendered to me by the said persons and Law Clinic.

I, further on behalf of myself and my estate indemnity the University of Durban-Westville, its Law Clinic, staff and students and any other persons appointed or co-opted to assist me in the running of the said Law Clinic against and from any liability that might attach to them. To any third party as a result of any legal services rendered to me by the Law Clinic and the said persons.

I hereby cede to the University of Durban-Westville any order for costs awarded in my favor in this matter and agree that the University of Durban-Westville may recover those costs for its own account. I undertake to assist in this regard.

**SIGNATURE** : \_\_\_\_\_

**WITNESS** : \_\_\_\_\_

**PLACE** : \_\_\_\_\_

**DATE** : \_\_\_\_\_

**Annexure 2 - UNIVERSITY OF DBN-WESTVILLE LAW CLINIC**



Students at the University of Durban Westville Law Clinic, who trained as candidate attorneys, with management.



A student receiving her Practical Legal Training Certificate from the Director of the Law Clinic at UDW.



Management & paralegals at the UDW Law Clinic.

**Annexure 3**



UDW Community Services Association  
CHATSWORTH

**Annexure 4(i)**



UMLAZI LAW CLINIC

Annexure 4(ii)





University of  
Durban-Westville

PRIVATE BAG X54001 DURBAN  
4000 SOUTH AFRICA  
TELEGRAMS: 'UDWEST'  
TELEX: 6-23228 SA  
FAX: (031)204-4363  
☎ (031)204-4111

Annexure 5

**NB: NEW LABOUR UNIT**

# We also have a specialised Labour Unit under the supervision of an Attorney, which deals with labour matters/disputes such as:

- \*Unfair Dismissals
- \*Unfair labour practice
- \*Compensation claims (Injuries, Diseases and health)
- \*Retrenchment
- \*Unemployment benefits (Blue Card) etc.

**NB : UPHIKO OLUSHA OLUPHATHELENE NEZINNKINGA ZOMSEBENZI**

Sinazisa ukuthi sinophiko olubhekene ngo nezinkinga eziphathele nezemisebenzi, abasebenzi, ukusebenza. Njengo :

- \*Kuxoshwa ngokungafanele
- \*Kwenza noma ukvenziswa into engaphathele nezemisebenzi wakho
- \*Kunxephezela (Ngokulimala, ukugula nezempilo)
- \*Kudiliswa emsebenzini
- \*Kufaka isicelo sika Blue Card; NJLL

Sinxusa zonke izikhungo . . . nakathi nezomthetho ukuthi zisebenzise loluphiko ukuze kusizakale . . . nakathi eziyisebenzelayo.



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TF: (031)204-4111

LAW CLINIC  
UNIVERSITY OF DURBAN - WESTVILLE

LAW CLINIC  
UNIVERSITY OF DURBAN - WESTVILLE

**DO YOU HAVE A LEGAL PROBLEM ?**

- # Accidents happen!! e.g Death at work, knocked down by vehicle, bitten by neighbours dog, etc
  - # Need to claim for damages? e.g Bodily injury, medical expenses, repairs you paid for someone, etc
  - # Physical/ sexual abuse is illegal, have you been abused in anyway?
  - # Have been defamed? i.e your dignity lowered in public by another person.
  - # Nuisance is prohibited in law!! i.e You can not sleep because your neighbour is having a party.
  - # Labour problems, e.g retrenchment problem, unfair dismissal, pension funds, etc
  - # Landlord/ Tenant problem, e.g tenant does not pay rent, landlord does want to maintain the property, etc.
- 9\*\* All these above and many more others are legal problems which need legal advice.

**FREE LEGAL ADVICE !!**

Univ. of Durban - Westville law clinic is offering FREE legal advice on legal issues to the under serviced and disadvantaged communities, in particular the indigent people and those who earn less than R1000- per month.

WHERE : Law Clinic  
Univ. of Durban - Westville  
New law buildings, Ground floor  
WHEN : Mon - Fri : By making an appointment  
Phone (031) 204 - 4859/4929/4952  
Fax : (031) 204-4858

Service offered by : Attorneys and fully supervised final year law students

Advice offered in the following languages: English, Xhosa and Zulu

**Unayo vini iinkinga emayelana nezomthetho?**

- # Ukungatholi isondlo sabantwana
- # Izinkinga emsebenzini wakho (Ukuxoshiwa ngokungafanele; izinkinga nge mali yempesheni njll)
- # Izinkinga mayelanana baqashi (ngokungakho kholi irenti) noma abaqashisi (ngokungakho kholi umqasho)
- # Izingozi ziyenzeka !! Njengokufa noma ukulimala emsebenzini; nokulunywa yinja, kanye nokushayiswa yimoto
- # Ukungaphatheki kahle ngento eyenziwa umakhelwane, njengokubangelwa umsindo umasekulelwe kanye nokukhulunywa kabi emphakathini.
- # Ukuhlukunyekwa ngokomzimba noma ngokocansi akuvunyelve ngokomthetho

9\*\* Konke lokhu okungenhla kanye nanoma iyiphi iinkinga emayelana nezomthetho, kudinga usizo lokululekwa ngezomthetho

**UKULULEKWA KWAMAHHALA NGEZOMTHETHO !!**

I-law-clinic inikeza ngesizo lwamahhala lokululekwa ngezomthetho. Kubantu abanekinkinga ngezomthetho kulabo abangasebenzi kanye nalabo abahala ngaphansi kuka R1000-00 ngemanga.

Abedinga lolusizo abafonele kulezinombolo zocingo : (031) 204-4859/4929/4952  
Ihlangandaba : (031) 204-4858

Lolusizo lunikezwa ngobomi kanye ngabafundi abenza umyaka wokucina kwezomthetho.

Usizo lwenziwa ngentlami esilandelayo: [law@uow.ac.za](mailto:law@uow.ac.za) kanye ngelwimi.

**Annexure 7**

# **LEGAL AID ACT**

**LEGAL AID ACT  
NO. 22 OF 1969**

[ASSENTED TO 14 MARCH, 1969]

[DATE OF COMMENCEMENT 26 MARCH, 1969]

*(English text signed by the State President)*

as amended by

Legal Aid Amendment Act, No. 56 of 1971  
General Law Amendment Act, No. 102 of 1972  
[with effect from 5 July, 1972-see title GENERAL LAW AMENDMENT ACTS]  
Legal Aid Amendment Act, No. 47 of 1989  
Legal Aid Amendment Act, No. 1 of 1991  
General Law Amendment Act, No. 139 of 1992  
[with effect from 7 August, 1992-see title GENERAL LAW AMENDMENT ACTS]

---

**ACT**

To provide for legal aid for indigent persons and for that purpose to establish a Legal Aid Board and to define its functions; and to provide for other incidental matters.

1. **Definitions.**-In this Act, unless the context otherwise indicates-

"board" means the Legal Aid Board referred to in subsection;

"Minister" means the Minister of Justice.

2. **Establishment of Legal Aid Board.**-There is hereby established a board to be known as the Legal Aid Board, which shall be a body corporate, capable of suing and being sued in its corporate name and of performing, subject to the provisions of this Act, all such acts as are necessary for or incidental to the carrying out of its objects, the exercise of its powers and the performance of its functions.

3. **Objects and general powers of board.**-The objects of the board shall be to render or make available legal aid to indigent persons, and to that end the board shall, in addition to any other powers vested in it by this Act, have power-

(a) to obtain the services of legal practitioners;

(b) to purchase or otherwise acquire or to hold or alienate any movable property or, with the approval of the Minister acting in consultation with the Minister of Finance, any immovable property;

(c) to hire or let any movable or immovable property;

(d) to fix conditions subject to which legal aid is to be rendered, including conditions in accordance with which any rights in respect of costs recovered or recoverable in any legal proceedings or any dispute in respect of which the aid is rendered, shall be ceded to the board, and conditions relating to the payment of contributions to the board by persons to whom legal aid is rendered:

[Para. (d) substituted by s. 1 of Act No. 47 of 1989.]

(e) to do all such things and perform all such functions as may be necessary for or incidental to the attainment of the objects of the board.

**4. Constitution of board.**-(1) The board shall consist of-

- (a) a judge of the Supreme Court of South Africa appointed by the Minister;
- (b) one practising advocate and four practising attorneys, nominated by the General Council of the Bar of South Africa and the association of Law Societies of the Republic of South Africa, respectively, and appointed by the Minister;
- (c) the Director-General: Justice;
- (d) the State Attorney;
- (e) a member appointed by the Minister by virtue of his knowledge and experience in the field of legal aid or any other field which in the opinion of the Minister will be to the advantage of the board;
- (f) three members nominated by the members referred to in paragraphs (a), (b), (c), (d) and (e) by reason of the fact that in the opinion of the members making the nominations they can further the aims of the board and appointed by the Minister.

[Sub-s. (1) amended by, s. 2 of Act No. 47 of 1989 and substituted by s. 1 (a) of Act No. 1 of 1991.]

(1A)(a) The members of the board referred to in paragraphs (a), (b), (c), (d) and (e) of subsection (1) may co-opt one or more persons who in their opinion have the appropriate knowledge and experience, as associated members of the board for such period as the board may determine.

(b) An associated member may attend meetings of the board only by invitation of the chairman.

(c) An associated member may take part in the proceedings of the board during meetings and perform the functions assigned to him by the board, but may not vote on any matter and shall not be taken into account for the purpose of the constitution of a quorum in terms of section 6 (1).

[Sub-s. (1A) inserted by s. 1 (b) of Act No. 1 of 1991.]

(2)(a) The Minister may appoint a person to serve as an alternate in the stead of any member referred to in paragraph (b) or (e) of subsection (1), during such member's absence from any meeting of the board, if such person is qualified to be appointed as such member and has been nominated in the same manner as such member.

[Para. (a) substituted by s. 9 of Act No. 139 of 1992.]

(b) If any member of the board referred to in paragraph (c) or (d) of subsection (1) is unable for any reason to attend any meeting of the board, he may designate any officer in his department or office or, with the approval of the Minister, any other person to represent him at such meeting.

[Para. (b) substituted by s. 2 (c) of Act No. 47 of 1989 and by s. 1 (c) of Act No. 1 of 1991.]

(3)(a) The appointed members of the board and their alternates shall hold office for such period, not exceeding three years, as the Minister may at the time of the appointment determine.

(b) Any member of the board or his alternate whose term of office has expired, shall be eligible for re-appointment.

(c) The Minister may, if in his opinion there are good reasons for doing so, at any time terminate the period of office of any appointed member or his alternate.

(4) No decision taken by the board or act performed under the authority of the board shall be invalid merely by reason of a vacancy on the board or the fact that any person not entitled to sit as a member sat as a member at the time the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the required majority of members present at the time, who were entitled to sit as members.

(5) The member referred to in subsection (1)(a) or in his absence the member referred to in section (1) (c) or his representative shall preside at any meeting of the board: Provided that if both those members and the said representative are absent from any meeting of the board, a chairman elected by the members present from among themselves, shall preside at such meeting.

(6) The board shall out of its funds pay to a member of the board or his alternate, not being in the full-time service of the State, such remuneration and allowances and afford him such transport facilities in respect of his services as such a member or alternate as the Minister in consultation with the Minister of Finance may determine.

**5. Meetings of board.**-(1) The meetings of the board shall be held at such times and places as the board may determine.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA - COURTS

*Legal Aid Act, No. 22 of 1969*

ss. 5-9

ss. 5-9

(2) The chairman of the board may at any time, and shall at the request in writing of not less than six members of the board, convene a special meeting of the board, to be held at such time and place as he may determine.

**6. Quorum and procedure.**-(1) The quorum at any meeting of the board shall be six members thereof

(2) Any decision at any meeting of the board shall be by majority of votes of the members present, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

**7. Delegation of powers of board.**-The board may delegate to any member, officer or agent of the board or to any officer in the public service any of its powers, but shall not thereby be divested of any power which it may so have delegated, and may amend or withdraw any decision by a member, officer or agent.

**8. Officers and agents of board.**-The board may, with the consent or in accordance with the general instructions of the Minister acting in consultation with the Minister of Finance, appoint on such conditions and at such remuneration as may be approved by the Minister so acting, officers or agents to assist it in the performance of its functions.

**8A. Recovery of costs by board.**-(1) Whenever in any judicial proceedings or any dispute in respect of which legal aid is rendered to a litigant or other person by the board, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement or otherwise, it shall, subject to the powers of the board referred to in section 3 with regard to the fixing of conditions, be deemed that such litigant or other person has ceded his rights to such costs to the board.

(2) If a litigant or person referred to in subsection (1) or his legal representative or the board has, at any time before payment of the costs deemed in terms of subsection (1) to be ceded to the board, whether before or after such costs become payable, given the person by whom the costs are to be paid at his last known address and the registrar or clerk of the court concerned notice in writing that legal aid is being or has been rendered, the board may proceed in its own name to have such costs taxed and to recover them, without being substituted on the record of the judicial proceedings concerned, if any, for the said litigant.

(3) The costs referred to in subsection (1) shall be calculated and the bill of costs concerned, if any, shall be taxed as if the litigant or person to whom legal aid was rendered, had obtained the services of the legal representative acting on his behalf in the proceedings or dispute concerned, without the aid of the board.

[S. 8A inserted by s. 24 of Act No. 102 of 1972 and substituted by s. 3 of Act No. 47 of 1989.]

**9. Finances of board.**-(1) The funds of the board shall consist of-

(a) moneys appropriated by Parliament in order to enable the board to perform its functions;

(b) moneys received from any other source.

(2) The board shall, subject to the provisions of subsections (3) and (5), utilize its funds for defraying expenses in connection with the performance of its functions.

(3) The board may receive donations, bequests or contributions from any person and shall utilize moneys so acquired for such purpose and in accordance with such conditions as the donors, testators or contributors may determine.

(4) The board shall deposit all moneys received by it in an account opened by it with a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965).

STATUTES OF THE REPUBLIC OF SOUTH AFRICA - COURTS

ss. 9-10

*Legal Aid Act, No. 22 of 1969*

ss. 9-10

(5) The board shall invest any moneys not required for immediate use or as a reasonable operating balance, with the Corporation for Public Deposits or in such other manner as the Minister may in consultation with the Minister of Finance determine.

[Sub-s. (5) substituted by s. 4 (a) of Act No. 47 of 1989.]

(6) The board may utilize any balance of its moneys remaining at the end of the financial year of the board concerned, for any expenses in connection with the performance of its functions.

(7) The financial year of the board shall terminate on the thirty-first day of March in each year.

(8) The board shall cause proper records of all its financial transactions, assets and liabilities to be kept.

(9) The accounts of the board shall be audited by the Auditor-General.

[Sub-s. (9) substituted by s. 4 (b) of Act No. 47 of 1989.]

(10) The board shall furnish the Minister with such information as he may call for from time to time in respect of the activities and financial position of the board, and shall in addition submit to the Minister an annual report, including a balance sheet and statement of income and expenditure certified by the Auditor-General.

[Sub-s. (10) substituted by s. 4 (c) of Act No. 47 of 1989.]

(11) The Minister shall lay the said report upon the Table in Parliament within 14 days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of the next ensuing ordinary session.

[Sub-s. (11) substituted by s. 4 (d) of Act No. 47 of 1989.]

**9A.** .....

[S. 9A inserted by s. 1 of Act No. 56 of 1971 and repealed by s. 2 of Act No. 1 of 1991.]

**10. Short title.**-This Act shall be called the Legal Aid Act, 1969.

---

**LEGAL AID AMENDMENT ACT  
NO. 47 OF 1989**

[ASSENTED TO 27 APRIL 1989]

[DATE OF COMMENCEMENT: 12 MAY 1989]

*(English text signed by the State President)*

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**ACT**

To amend the Legal Aid Act, 1969, so as to provide that the Legal Aid Board may recover costs in a dispute in respect of which it rendered legal aid, but which is later settled, and may fix conditions regarding such right of recovery; to amend certain designations; and to empower certain members of the board to designate any person who is not an officer in their departments or offices to represent them at a meeting of the board; and to provide for incidental matters.

1. Amends section 3 of the Legal Aid Act, No. 22 of 1969, by substituting paragraph (d).
  2. Amends section 4 of the Legal Aid Act, No. 22 of 1969, as follows: paragraph (a) substitutes subsection (1)(b) in the Afrikaans text; paragraph (b) substitutes subsection (1) (c), (d) and (e); and paragraph (c) substitutes subsection (2)(b).
  3. Substitutes section 8A of the Legal Aid Act, No. 22 of 1969.
  4. Amends section 9 of the Legal Aid Act, No. 22 of 1969, as follows: -paragraph (a) substitutes subsection (5); paragraph (b) substitutes subsection (9); paragraph (c) substitutes subsection (10); and paragraph (d) substitutes subsection (11).
  5. **Short title.**-This Act shall be called the Legal Aid Amendment Act, 1989.
-

Annexure 8

# LEGAL AID GUIDE



**JUSTITIA OMNES  
AD**

**LEGAL AID GUIDE  
REGSIULPHANDLEIDING  
1996**



## **OUTLINE OF THE LEGAL AID GUIDE**

**The Legal Aid Guide** serves as a policy document for clinics operating under the auspices of the Legal Aid Board. The following outline of the guide is used for the administration and management of justice within clinics:

(A brief compilation of the main issues confronting legal aid clinics and the policies relating to these issues is attached for reference)

The Guide is updated from time to time, in accordance with the Legal Aid Act.

### **1 INTRODUCTION**

- Definitions
- Establishment and objectives of the Board
- Powers of the Board
- Legal aid Scheme and administration thereof

### **2 DETERMINATION OF INDIGENCY AND MEANS TEST**

- Indigency
- Means Test
- Proof of Qualification
- Contribution towards the Board's costs
- Exceptional circumstances - Director's discretion

### **3 MATTERS EXCLUDED FROM THE SCHEME**

- Criminal cases
- Civil Cases
- Divorce Cases

- Residence of applicant and seat of court
- Personnel disqualification

4

#### **OPERATION OF THE SCHEME AND FUNCTIONS OF LEGAL AID OFFICERS**

- Evaluation of application
- Choice of legal representative
- Completion and safekeeping of documents
- Stamp Duties
- Confidential nature of information
- Signing of documents
- Registers, statistics and returns
- General provisions
- Aid in criminal appeals
- Aid in civil appeals
- Appeal against refusal of legal aid

5

#### **LEGAL AID AND THE LEGAL PRACTITIONER**

- The legal practitioner
- Notice that legal aid is being rendered
- Reference in correspondence
- Correspondence and postal matters
- Copies of records and documents
- Substituted service
- Medico-legal services and expert witnesses
- Progress Reports
- Abuses and incurring of costs

- Basis of remuneration of attorneys
- Tenders, settlements and payments into court
- Basis of remuneration of advocates
- Cession of costs
- Recovery of costs
- Disbursements
- Attorneys' Account
- Compulsory contribution to the legal aid fund
- Security and court fees
- Postponements
- Abuses of the system of legal aid

## 6           **GENERAL**

- Discretionary powers of the Director
- General
- Commencement

## 7           **VAT**

## CHAPTER 1

### INTRODUCTION

#### 1.1 DEFINITIONS

1.1.1 In this guide, unless the context indicates otherwise -

- a) "**Benefit to the Board**" means the amount accruing to the Board in terms of paragraph 5.19 and recorded in Annexure H from time to time;
- b) "**calculated income**" means income calculated in terms of paragraph 2.2;
- c) "**client**" means the party who applies for and/or receives legal aid from the Board;
- d) "**contribution**" means the payment of a contribution to the Board in terms of section 3(d) of the Act, by a person to whom legal aid is rendered. (See annexure D);
- e) "**dependent child**" means an applicant's own or legally adopted child wholly and actually supported by him;
- f) "**Director**" means the officer referred to in paragraph 1.4.2;
- g) "**disbursement**" means a sum of money paid by an attorney in a matter other than as fees or charges;
- h) "**disposable income**" means cash on hand not required for the usual daily necessities of life;

## HOOFSTUK 1

### INLEIDING

#### 1.1 WOORDOMSKRYWING

1.1.1 In hierdie handleiding, tensy uit die samehang anders blyk, beteken -

- a) "**afhanklike kind**" 'n applikant se eie of wettig aangename kind wat ten volle en werklik deur hom onderhou word;
- b) "**behoefte persoon**" 'n natuurlike persoon wat in gevolge die middeletoets in hierdie handleiding uiteengesit, vir regshulp kwalifiseer;
- c) "**belastingverpligting**" of "**inkomsbelasting**" die bedrag wat maandeliks van applikant se salaris of loon in gevolge die looper betaalstelsel of as SIBW afgetrek word, of wat aftrekkings nie volgens dié metode gedoen word nie, een twaalfde van die belastingaanslag vir 'n belastingjaar wat die aansoekdatum onmiddellik voorafgaan;
- d) "**berekende inkomste**" inkomste in gevolge paragraaf 2.2 bereken;
- e) "**besteembare inkomste**" kontant voorhande geld wat nie vir die gewone daaglikse lewensbehoefte benodig word nie;
- f) "**bydrae**" die betaling van 'n bydrae aan die Raad in gevolge artikel 3(d) van die Wet deur 'n persoon aan wie regshulp verleen word (Sien Bylae D);
- g) "**Direkteur**" die beamppte bedoel in paragraaf 1.4.2;
- h) "**gelde**" of "**fooie**" enige of alle gelde deur prokureurs of advokate en waar die bedrag vasgestel is as so 'n item, is dit die gelde of fooie sonder uitgawes en BTW, behalwe waar dit anders blyk;

- i) **"fees"** or **"charges"** shall mean any or all fees of attorneys or charges of advocates. Where the amount is laid down for such an item it shall be the fee or charge free of disbursements and VAT except where the context indicates otherwise;
- j) **"indigent person"** means a natural person who qualifies for legal aid in terms of the means test set out in this guide;
- k) **"legal aid officer"** means an officer referred to in paragraphs 1.4.7 and 1.4.8;
- l) **"married person"** is a person married as provided for under the law of South Africa. It also means a person joined in a union recognised under any law or customary law as a marriage, and "spouse" has a corresponding meaning;
- m) **"tax duty"** or **"income tax"** means the amount deducted monthly from an applicant's salary or wage in terms of the pay-as-you-earn system, or as SITE, or failing such deductions, one twelfth of the tax assessment for the tax year immediately preceding the date of application;
- n) **"the Act"** the Legal Aid Act, 1969 (Act 22 of 1969) as amended.

## 1.2 ESTABLISHMENT AND OBJECTIVES OF THE BOARD

1.2.1 The Legal Aid Board is an autonomous statutory body established by the Legal Aid Act, 1969.

**The objective of the Board is to render or to make available legal aid to indigent persons as widely as possible within its financial means.**

1.2.2 The Legal Aid Board's mission is to render legal aid to as many indigent persons as possible.

1.2.3 Every person is entitled to equality before the law. The Legal Aid Board therefore endeavours, within its means, to balance the scales of procedural inequality in an independent and impartial manner.

- i) **"getroude persoon"** is 'n persoon getroud volgens die reg van Suid-Afrika. Dit beteken ook 'n persoon verbind by wyse van verbintenisse wat ingevolge enige wet of gewoontereg as 'n huwelik erken word en word **"gade"** dienoooreenkomstig uitgelê;
- j) **"kliënt"** die party wat aansoek doen om regshulp en/of regshulp van die Raad ontvang;
- k) **"regshulpbeampte"** 'n beampte bedoel in paragrawe 1.4.7 en 1.4.8;
- l) **"uitgawe"** enige bedrag geld deur 'n prokureur in enige saak betaal met uitsondering van fooie en gelde;
- m) **"voordeel vir die Raad"** die bedrag wat die Raad ingevolge paragraaf 5.19 toeval en wat van tyd tot tyd in Bylae H aangeteken word;
- n) **"die Wet"** die Wet op Regshulp, 1969 (Wet 22 van 1969), soos gewysig.

## 1.2 INSTELLING EN OOGMERKE VAN DIE RAAD

1.2.1 Die Regshulpraad is 'n outonome, statutêre liggaam wat by die Wet op Regshulp, 1969 ingestel is.

**Die doel van die Raad is om so wyd moontlik binne sy finansiële vermoëns regshulp aan behoeftige persone te verleen of beskikbaar te stel.**

1.2.2 Die Regshulpraad se missie is om aan so veel behoeftige persone moontlik regshulp te lewer.

1.2.3 Elke individu het die reg tot gelykheid voor die reg. Die Regshulpraad poog dus om binne sy vermoë prosessuele ongelykheid op 'n onpartydige en onafhanklike basis uit te skakel.

1.2.4 Owing to financial limitations the Legal Aid Board is compelled to restrict the aid it provides and in certain instances must decline to offer assistance. Details of such restrictions are set out in 3.3.1, 3.3.2 and 3.3.3. Other than these exclusions and provided funds are available, the Legal Aid Board will fund legal assistance to all persons complying with the means test in all criminal, civil and labour matters, provided that, in the opinion of the Director, the applicant's cause has a reasonable prospect of success.

1.2.4 As gevolg van finansiële beperkings is Regshulpraad verplig om die hulp wat verleen, te beperk en in sekere gevalle moet bystand weier. Besonderhede van sulke beperkings word in paragrawe 3.3.1, 3.3.2 en 3.3.3 uiteengesit. Afgesien van hierdie uitsluitings en indien fondse beskikbaar is, die Regshulpraad regsbystand aan alle persone wat aan die middeletoets voldoen, in alle siviele en arbeidsake befonds, met die voorbehoud, dat die applikant, na die mening van die Direkteur, 'n redelike vooruitsig op sukses het.

### 1.3 POWERS OF THE BOARD

### 1.3 BEVOEGDHEID VAN DIE RAAD

1.3.1 For the attainment of its objects, the Board may inter alia -

1.3.1 Ter bereiking van sy oogmerke kan die Raad onder andere -

- a) obtain the services of legal practitioners and remunerate them;
- b) stipulate conditions subject to which legal aid is rendered, including conditions in respect of the recovery of costs ceded to the Board, and conditions with regard to the payment of contributions to the legal practitioner by persons to whom legal aid is rendered;
- c) stipulate benefits which accrue to the Board from legal actions;
- d) initiate and establish new procedures for rendering legal aid; and
- e) do all such things and perform all such functions as may be necessary for or incidental to the attainment of its objects.

- a) die dienste van regspraktisyne verkry en vergoed;
- b) voorwaardes stel waarop regshulp verleen word met inbegrip van voorwaardes ten opsigte van die verhaal van koste wat aan die Raad geskend is en voorwaardes met betrekking tot die betaling van bydraes aan die regspraktisyn deur persone aan wie regshulp verleen word;
- c) voordele wat die Raad uit regsgedinge toekomaal;
- d) nuwe prosedures vir die verlenging van regsbystand instel en vestig; en
- e) alles doen en alle werksaamhede verrig wat nodig is vir of in verband staan met die bereiking van sy oogmerke.

### 1.4 LEGAL AID SCHEME AND ADMINISTRATION THEREOF

### 1.4 REGSHULPSKEMA EN ADMINISTRASIE DAARVAN

1.4.1 The Act does not describe in what manner the Board is to attain its objects nor does it provide for regulations to be promulgated in this respect. Consequently the Board itself devised a scheme under which legal aid is rendered or made available. Particulars of the scheme and the procedure for its administration are set out in this guide.

1.4.1 Die Wet omskryf nie die wyse waarop die Raad sy oogmerke moet bereik nie en maak ook geen voorsiening vir die uitvaardiging van regulasies in dié verband nie. Gevolglik het die Raad self 'n skema daargestel waarvolgens regshulp verleen of beskikbaar gestel word. Besonderhede van die skema en die prosedure waarvolgens dit geadminestreer word, word in hierdie handleiding uiteengesit.

1.4.2 The scheme is administered by way of resolutions of the Board and these resolutions are carried out under supervision of the Director of the Legal Aid Board.

1.4.2 Die skema word by wyse van Raadsbesluite geadministreer en die uitvoering van die Raadsbesluite geskied onder toesig van die Direkteur van die Regshulpraad.

1.4.3 The scheme was implemented throughout the Republic on 2 March 1971.

1.4.3 Die skema is op 2 Maart 1971 dwarsdeur die Republiek geïmplementeer.

#### OFFICES OF THE LEGAL AID BOARD

#### KANTORE VAN DIE REGSHULPRAAD

1.4.4 The Board's head office is situated in ANIVA Building, Joubert Street, Sunnyside, Pretoria.

1.4.4 Die Raad se hoofkantoor is geleë in Harmoniegebou, Walkerstraat, Sunnyside, Pretoria.

1.4.5 Correspondence to the Board must be directed to: The Director of the Legal Aid Board, Private Bag X163, Pretoria 0001

1.4.5 Korrespondensie aan die Raad moet gerig word aan: Die Direkteur van die Regshulpraad, Privaatsak X163, Pretoria, 0001.

1.4.6 The telegraphic address of the Board is "JUVAMEN" and its head office telephone numbers are Pretoria 341-8750/9 and the fax number is Pretoria 341-8747. In addition, the Board has branch offices as listed in Annexure B.

1.4.6 Die telegramadres van die Raad is "JUVAMEN" en sy telefoonnummers is Pretoria 341-8750/9 en die faksnr is Pretoria 341-8747. Daarbenewens het die Raad takkantore soos in Bylaag B uiteengesit.

1.4.7 At the request of the Board the Department of Justice has appointed officials of the department at each magistrate's office in the Republic to act as representative of the Board. (See also paragraph 4.1.1). An officer thus representing the Board is known as the legal aid officer.

1.4.7 Die Departement van Justisie het op versoek van die Raad beamptes van die Departement by elke landdroskantoor in die Republiek aangestel om as verteenwoordiger van die Raad op te tree. (Sien ook paragraaf 4.1.1). 'n Beampte wat die Raad aldus verteenwoordig, staan bekend as die regshulpbeampte.

1.4.8 Where possible, the Board aims to replace the officers of the department concerned with its own officials and to open additional branch offices. Particulars of branch offices already in operation appear in Annexure B. The officials at its branch offices act as representatives of the Board.

1.4.8 Waar moontlik stel die Raad hom dit ten doel om die beamptes van die betrokke departement deur sy eie beamptes te vervang en om bykomende takkantore te open. Besonderhede van takkantore wat reeds funksioneer, verskyn in Bylae B. Die beamptes by sy takkantore tree op as verteenwoordigers van die Raad.

1.4.9 The Board regards the provision of legal aid as an important element in fair litigation. It is therefore the duty of legal practitioners to advise prospective clients of the availability of legal aid in appropriate circumstances at the earliest opportunity. Likewise practitioners should ensure that they are in possession of

1.4.9 Die Raad beskou die verlenging van regshulp as 'n belangrike element van billike litigasie. Dit is dus die plig van regspraktisyne om voornemende kliënte by die vroegste geleentheid van die beskikbaarheid van regshulp in gepaste omstandighede in kennis te stel. Net so moet praktisyne seker maak dat

the latest guide when accepting instructions. Copies of the Guide may be obtained from the Board at a charge determined by the Board from time to time. The Board reserves the right to request that practitioner prove that he is in possession of the latest guide, and if not, to supply him with one at this charge.

hulle in besit is van die jongste handleiding wanneer hulle opdragte aanvaar. Afskrifte van die Handleiding kan van die Raad verkry word teen 'n bedrag wat deur die Raad van tyd tot tyd bepaal word. Die Raad behou hom die reg om 'n praktisyn te versoek om te bewys dat hy in besit van die jongste handleiding is en indien nie is nie, om hom van een te voorsien teen hierdie bedrag.

1.4.10 Traditionally legal aid has been funded by the Board under the Judicare system. This means that where legal aid is granted it is done so on an ad hoc basis in each individual case and payment in each matter is dealt with in terms of this guide (see paragraph 5.11, 5.12 et seq). Legal aid is also granted in appropriate circumstances where the client is represented either by a public defender in the employ of the Board or by a legal representative at a law clinic run in co-operation with the Board. Referrals to these legal representatives are normally made by the legal aid officer.

1.4.10 In die verlede is regshulp deur die Raad onder die "Judicare" Stelsel verleen. Dit beteken dat waar regshulp verleen is, dit in elke saak op 'n ad hoc basis verleen word en dat betaling sodanige gevalle ooreenkomstig hierdie handleiding (sien paragraaf 5.11 en 5.12 et seq) gemaak word. Regshulp word ook in toepaslike omstandighede, waar die kliënt deur 'n openbare verdediger in diens van die Raad, deur 'n regsverteenvoerder van 'n Regskliniek wat in samewerking met die Raad bedryf word, verteenwoordig word. Verwysings na hierdie regsverteenvoeders word normaalweg deur die Regshulpbeampte gedoen.

## CHAPTER 2

### DETERMINATION OF INDIGENCY AND THE MEANS TEST

#### 2.1 INDIGENCY

2.1.1 The term "indigent" is not defined in the Act and because of this the Board has laid down a means test, which is revised from time to time, to determine indigence for the purposes of the legal aid scheme.

2.1.2 In applying the means test, the joint income and assets of an applicant and his spouse are taken into account, and a "calculated income" is determined. Annexure G must be used to determine the calculated income.

2.1.3 The means test relates to the total financial situation of the parties. It may well be that a person has an income sufficiently low in terms of Annexure C to qualify for assistance because, for example, he has lost his work. Other factors, however, also play a role. Means also refers to his other resources. It may be possible for the applicant to use his other assets to raise what is required to pay for legal representation. Only genuinely indigent people should benefit from the scheme, and as many of them as need assistance should receive it. Granting legal aid to a wealthy person who has no income would be unfair to the indigent and an improper application of the funds of the Legal Aid Board. Legal aid must be refused in these cases unless there are good reasons for the Director agreeing to offer it.

2.1.4 If the applicant has assets these must be considered in calculating his financial qualification. Presently 1% per month of the nett realisable value of the applicant's immovable property is taken into account. This means that he is presumed to have an annual income in respect of the nett value of the immovable property. Provision is made in annexure G to

## HOOFSTUK 2

### VASSTELLING VAN BEHOEFDIGHEID EN DIE MIDDELETOETS

#### 2.1 BEHOEFDIGHEID

2.1.1 Die uitdrukking "behoefte persoon" word nie in die Wet omskryf nie en om dié rede het die Raad 'n middeletoets, wat van tyd tot tyd hersien word, vasgestel waarvolgens 'n "behoefte persoon" vir die doeleindes van die regshulpskema bepaal word.

2.1.2 By die toepassing van die middeletoets word die gesamentlike inkomste en bates van 'n applikant en sy gade in aanmerking geneem en daarvolgens word 'n "berekende inkomste" bepaal. Bylae G moet gebruik word om die berekende inkomste te bepaal.

2.1.3 Die middeletoets hou verband met die totale finansiële posisie van die partye. 'n Persoon kan 'n inkomste hê wat ingevolge Bylae C laag genoeg is om hom vir bystand laat te kwalifiseer, omdat hy byvoorbeeld sy werk verloor het. Ander faktore speel egter ook 'n rol. Middele verwys ook na sy ander hulpbronne. Dit kan byvoorbeeld vir die applikant moontlik wees om sy ander bates te gebruik om voldoende geld te verkry om vir regsverteenvoording te betaal. Dit is nie net so dat slegs werklik behoefte mense uit die skema voordeel moet trek nie, maar ook dat soveel moontlik van dié wat bystand nodig het, moet dit ontvang. Die verlenging van regshulp aan 'n ryk persoon wat geen inkomste het nie, sou onbillik teenoor behoeftiges en 'n onbehoorlike aanwending van die fondse van die Regshulpraad wees. Regshulp moet in hierdie gevalle geweier word, tensy daar goeie redes bestaan vir die Direkteur om in te stem om dit te doen.

2.1.4 Indien die applikant bates het, moet dit oorweeg word wanneer sy finansiële kwalifikasie bereken word. Tans word 1% per maand van die netto realiseerbare waarde van die applikant se onroerende eiendom in aanmerking geneem. Dit beteken dat daar aangeneem word dat hy 'n jaarlikse inkomste ten opsigte van die netto waarde van die onroerende eiendom het

consider the other cash and money-related assets of the applicant. If the total of these assets is sufficiently large to cover the expected legal costs, legal aid must be refused even if the applicant qualifies under "income". The primary test, however, remains that of the income of the applicant and if his income exceeds the laid down requirements, he does not qualify for legal aid.

2.1.5 The means test applies to the following:

- a) The **joint income** of spouses except in **divorce matters** where the income of **only the applicant** will be considered.

If it appears likely that the applicant will succeed in an interim application for a contribution towards costs in terms of Supreme Court Rule 43, relief will initially be granted for an application in terms of that rule. After the application in terms of rule 43 has been dealt with, the applicant may **reapply for assistance** for the divorce and the outcome of the Rule 43 application will be taken into account when the application is reconsidered. (See paragraphs 3.3.3 and 4.1.19)

- b) The joint income of spouses where an application is made for **legal aid for their dependent minor child**.
- c) The **income of the minor alone** if he is self supporting.
- d) The **income of the one parent** who has children from a **previous marriage** if those children have not been legally adopted by the applicant's present spouse and application is made for legal aid for those children.
- e) The **joint income** of parents if legal aid is sought for a **major who is still fully supported** by his parents.

In Bylae G word voorsiening daarvoor gemaak om die ander kontant- en geldverwante bates van die applikant te oorweeg. Indien die totaal van hierdie bates groot genoeg is om die verwagte regs-koste te dek, moet regshulp geweier word selfs al kwalifiseer die applikant onder "inkomste". Die primêre toets is egter altyd van die inkomste van die applikant en indien inkomste die vasgestelde vereistes oorskry kwalifiseer hy nie vir regshulp nie.

2.1.5 Die middeletoets is van toepassing op die volgende:

- a) Die **gesamentlike inkomste** van gades, behalwe in **egskeidingsaangeleenthede**, waar slegs inkomste van die **applikant** oorweeg sal word.

Indien dit waarskynlik is dat die applikant slaag in 'n tussentydse aansoek om 'n bydrae tot koste ingevolge Hooggeregshof reël 43, bystand **aanvanklik** toegestaan word vir aansoek ingevolge reël 43. Nadat daar met aansoek ingevolge reël 43 gehandel, kan die applikant **wéér aansoek** om bystand **doen** vir egskeiding en die uitslag van die reël 43 aansoek sal in ag geneem word wanneer die aansoek heroorweeg word. (Sien paragraaf 3.3.3 4.1.19).

- b) Die gesamentlike inkomste van gades waar aansoek om **regshulp vir hulle minderjarige kind** gedoen word.
- c) Die **inkomste van die minderjarige** alleen hy selfonderhoudend is.
- d) Die **inkomste van die een ouer** wat kinders van 'n **vorige huwelik** het, indien daardie kinders wettiglik aangeneem is deur die applikant huidige gade nie en die aansoek om regshulp dié kinders gedoen word.
- e) Die **gesamentlike inkomste** van ouers indien regshulp vir 'n **meerderjarige** wat steeds volle deur sy ouers **onderhou** word, verklaar word.

2.1.5.1 Subject to the provisions of paragraph 2.1 calculated income means income from nett salary or apportioned profit, (the calculation of which is set out in Annexure G) from farming, business or all other sources (including interest or income received from investments/dividends and income from letting/subletting), plus 1% of the unencumbered value in excess of R1 000,00 of the joint assets including investments, of the applicant and/or his spouse.

Should the asset be used to obtain an income (for example an investment or shareholding) the value of the asset may be ignored if the income from that asset is included in "income" otherwise the applicant would be prejudiced if the asset was realised for legal costs and be simultaneously lost as part of his future income.

#### 2.1.5.2 PROOF OF INCOME

An official salary voucher, or a letter of confirmation from the employer, or a certified statement of income and expenditure and any relevant tax assessment and/or bank/building society statements including certificates of investments together with documentary evidence on all matters referred to in Annexure G, must be submitted with the legal aid application.

2.1.5.3 In a matter referred to in paragraph 2.1.5 (d) maintenance received in respect of a dependant child must be included in income.

## 2.2 MEANS TEST

2.2.1 The determination of the means test is set out in Annexure G. The calculated income and contributions payable in each case are set out in Annexure D.

2.1.5.1 Behoudens die bepalings van paragraaf 2.1 beteken berekende inkomste inkomste uit netto salaris of toegedeelde wins (die berekening hiervan word in Bylae G uiteengesit) uit boerdery, besigheid of alle ander bronne (met inbegrip van rente of inkomste uit beleggings/dividende ontvang en inkomste uit verhuring/onderverhuring) plus 1% van die onbeswaarde waarde bo R1000,00 van die gesamentlike bates, met inbegrip van beleggings, van die applikant en/of sy gade.

Indien die bate gebruik word om 'n inkomste te verkry (byvoorbeeld 'n belegging of aandeelhouing) kan die waarde van die bate geignoreer word indien die inkomste van daardie bate ingesluit word by "inkomste", anders sal die applikant benadeel word indien die bate vir regskoste gerealiseer word en gelyktydig verlore gaan as deel van sy toekomstige inkomste.

#### 2.1.5.2 BEWYS VAN INKOMSTE

'n Amptelike salarisbewys of 'n bevestigingsbrief van die werkgever, of 'n gesertifiseerde staat van inkomste en uitgawes en enige toepaslike belasting-aanslag en/of bank/bouverenigingstate met inbegrip van beleggingssertifikate saam met dokumentêre bewys van alle sake wat in Bylae G vermeld word, moet saam met die regshulpaansoek voorgelê word.

2.1.5.3 By inkomste is onderhoud ontvang ten opsigte van 'n afhanklike kind in gevalle wat onder 2.1.5 (d) val, ingesluit.

## 2.2 MIDDELETOETS

2.2.1 Die bepaling van die middeletoets word in Bylae G uiteengesit. Die berekende inkomste en bydraes betaalbaar in elke geval word in Bylae D uiteengesit.

2.2.2 Notwithstanding the provisions of paragraphs 2.1 legal aid may not be rendered to a person if the Director is satisfied that the applicant has sufficient disposable capital or assets which may be utilised to raise sufficient finance to pay for the required legal aid himself.

## 2.3 PROOF OF QUALIFICATION

2.3.1 An applicant for legal aid must satisfy the legal aid officer that he is a natural person who is indigent as set out in this Guide and documentary proof of income, value of assets, number of dependent, actually supported children and other relevant information must be obtained where possible. Whenever practicable the legal aid officer must ensure that documentary evidence is furnished in respect of income, assets and liabilities. All such information, must accompany the application form (LA2-C). Consider, for example, obtaining a copy of the applicant's last income tax return if there is doubt.

2.3.2 If legal aid is granted to a person without income, the reason why such person has no income must be stated briefly by the legal aid officer on instruction form (LA2-C). The officer must be satisfied that the applicant is not intentionally remaining unemployed so as to obtain legal aid.

## 2.4 CONTRIBUTION TOWARDS THE BOARD'S COSTS AND OTHER COSTS ISSUES

2.4.1 Depending on the applicant's calculated income and bearing in mind the provisions of paragraph 2.5, the applicant may be required to make an initial contribution to the Board's costs determined in terms of Annexure D. The legal aid officer must inform the applicant of the contribution he is required to make. The officer does not himself collect any of this contribution. He merely records the amount on the instruction form and advises the client that the contribution required must be paid to the practitioner concerned in advance. The applicant must also be informed that this contribution has nothing to do with the recovery by the Board of any costs in the matter from the other side (the costs are in fact ceded to the Board in terms of the Act) or

2.2.2 Nieteenstaande die bepalings van paragraaf 2 kan regshulp nie aan 'n persoon verleen word indien die Direkteur tevrede is dat hy of sy voldoende beskikbare kapitaal of bates beskikbaar het wat gebruik kan word om voldoende geld te verkry om self vir die nodige regshulp te betaal.

## 2.3 BEWYS VAN KWALIFIKASIE

2.3.1 'n Applikant om regshulp moet die legal aid officer se regshulpbeampte tevrede stel dat hy 'n natuurlike persoon is wat behoeftig is soos in hierdie Gids en dokumentêre bewys van inkomste, waarde van bates, getal afhanklike kinders wat werkloos onderhou word en ander tersaaklike inligting verkry word. Wanneer redelik moontlik moet die regshulpbeampte dokumentêre bewys van inkomste en waarde van bates en laste verkry. Alle inligting moet die opdragvorm (RH2-C) vergeesel. Oorweeg dit byvoorbeeld om 'n afskrif van die applikant se laaste inkomstebelastingopgawe te verkry indien daar twyfel bestaan.

2.3.2 Indien regshulp aan 'n persoon sonder inkomste toegestaan word, moet die rede waarom die persoon geen inkomste het nie, bondig deur die regshulpbeampte op die opdragvorm (RH2-C) aangedui word. Die beampte moet tevrede wees dat die applikant nie doelbewus werkloos bly te einde regshulp te verkry nie.

## 2.4 BYDRAE TER BESTRYDING VAN DIE RAAD SE KOSTE EN ANDER KOSTE AANGELEENTHEDE

2.4.1 Afhangende van die applikant se berekende inkomste en deur die bepalings van paragraaf 2.5 in gedagte te hou, kan daar van die applikant verwag word om 'n aanvanklike bydrae tot die bestryding van die Raad se koste te maak. Die regshulpbeampte moet die applikant verwittig van die bydrae wat hy moet maak. Die beampte vorder self geen bydrae in nie. Hy teken bloot die bedrag op die opdragvorm aan en stel die kliënt in kennis dat die nodige bydrae vooraf deur die betrokke praktisyn inbetaal moet word. Die applikant moet ook verwittig word dat hierdie bydrae niks te doen het met die verhalings deur die Raad van enige koste in die aangeleentheid van die ander kant nie (die koste word inderdaad

with the contribution to the Board made by the client out of the benefits of the action as set out in paragraph 5.19.

2.4.2 It is important to stress that the Legal Aid Board instructs the attorney in civil matters and the attorney or advocate in criminal matters and stands pays his costs as provided for in this guide. The Board is not liable to any other person for costs or any other order made in any matter. The client remains personally responsible for any such order.

## 2.5 EXCEPTIONAL CIRCUMSTANCES DIRECTOR'S DISCRETION

2.5.1 The Director may consider the application of any person who does not qualify in terms of the means test but who, subjectively judged, is indigent and who deserves sympathetic consideration on the grounds of exceptional or other circumstances, and may also fully or partially exempt from payment, a person who on account of circumstances beyond his control cannot make the prescribed contribution.

2.5.2 A fully motivated application must be handed to the legal aid officer concerned, who in turn must forward it together with his comments to the Director for consideration.

ingevolge die Wet aan die Raad gesedeer) en ook nie met die bydrae wat aan die Raad gemaak word deur die kliënt uit die voordele van die geding, soos in paragraaf 5.19 uiteengesit, nie

2.4.2 Dit moet beklemtoon word dat die prokureur in siviele sake en die prokureur of advokaat in strafsake van die Raad opdrag ontvang en sy koste, soos in hierdie gids uiteengesit, betaal. Die Raad is nie teenoor enigiemand anders aanspreeklik vir kostes of ingevolge enige ander bevele gemaak nie. Die kliënt is persoonlik daarvoor aanspreeklik.

## 2.5 UITSONDERLIKE OMSTANDIGHEDE - DIREKTEURSDISKRESSIE

2.5.1 Die Direkteur kan die aansoek van enige persoon oorweeg wat nie ingevolge die middeletoets kwalifiseer nie maar wat, subjektief beoordeel, behoeftig is en wat simpatieke oorweging op grond van uitsonderlike of ander omstandighede verdien, en kan ook 'n persoon wat weens omstandighede buite sy beheer nie die voorgeskrewe bydraes kan maak nie, gedeeltelik of ten volle daarvan kwytsteld.

2.5.2 'n Volledige gemotiveerde aansoek moet aan die betrokke regshulpbeampte oorhandig word, wat dit op sy beurt weer saam met sy kommentaar vir oorweging aan die Direkteur moet deurstuur.

## CHAPTER 3

### MATTERS EXCLUDED FROM THE SCHEME

#### 3.1 CRIMINAL CASES

3.1.1 Legal aid is not available in the following instances:

- a) Where **pro Deo** defence is available. **In such cases the advocate must be appointed as pro Deo counsel** in terms of the Pro Deo system which is administered by the Department of Justice.

Where an attorney's services are essential to assist a **pro Deo** advocate, the advocate or attorney may apply for appointment of the attorney giving full reasons. **Only the Director** may consent to such an appointment.

- b) In respect of an offence for which an admission of guilt fine has been determined or can be arranged by the accused.
- c) In respect of a case where the commission of the offence is admitted and the accused's defence or excuse is so simple that it can be advanced by the accused himself without assistance. This does not mean that in appropriate cases where mitigating circumstances are involved or complicated, legal aid will not be granted to assist the accused in raising these for reduction of or alternative sentencing. It may be allowed.
- d) In respect of a traffic offence or any other offence connected with the driving of a motor vehicle such as **reckless** or negligent driving or driving under the influence of alcohol or drugs. A charge of culpable homicide arising from these matters will, however, qualify for legal aid. The Director always has the discretion to allow legal aid on the grounds of exceptional circumstances.

## HOOFSTUK 3

### AANGELEENTHEDE UITGESLUIT VAN DIE SKEMA

#### 3.1 STRAFSAKE

3.1.1 Regshulp is nie in die volgende gevalle beskikbaar nie:

- a) Waar **pro Deo**-verdediging beskikbaar is, moet **die advokaat as pro Deo-advokaat aangestel word** onder die pro Deo-stelsel deur die Departement van Justisie geadministreer.

Waar 'n prokureur se dienste noodsaaklik is om 'n **pro Deo**-advokaat by te staan, kan die advokaat of prokureur aansoek doen om die aanstelling van die prokureur met verstrekking van volle redes. **Slegs die Direkteur** kan tot 'n aanstelling toestem.

- b) Ten opsigte van 'n misdryf waarvoor 'n skulderkennings-boete vasgestel is of wat deur die beskuldigde gereël kan word.
- c) Ten opsigte van 'n saak waarin 'n aangeklaagde se verdediging of verskoning, waar die pleging van die misdryf erken word, so eenvoudig is dat die aangeklaagde dit sonder hulp kan aanvoer. Dit beteken nie dat in gepaste gevalle waar versagende omstandighede teenwoordig is en die saak ingewikkeld is, regshulp nie toegestaan sal word om die beskuldigde by te staan om hulle te oppoort vir vermindering van of 'n alternatiewe vonnis te verkry nie. Dit mag toegelaat word.
- d) Ten opsigte van 'n verkeersoortreding of enige ander oortreding wat met die gebruik van 'n motorvoertuig in verband staan, soos roekeloos of nalatige bestuur, of bestuur onder die invloed van drank of dwelms. 'n Klag van strafbaar manslag wat uit hierdie aangeleentheid voortspuit, sal egter vir regshulp kwalifiseer. Die Direkteur kan altyd na goeë dunnke regshulp op grond van uitsonderlike omstandighede toelaat.

- e) For the institution of a private prosecution.
- f) In the cases and circumstances relating to appeals referred to in paragraph 4.10.1.
- g) In matters excluded by the Board from time to time, currently charges in respect of white collar crime for example, commercial fraud and dealing in drugs or habit producing substances.
- h) Where a person is charged for the third or subsequent time on a charge within the same category as his previous convictions.
- i) Save with the consent of the Director where the accused is charged with any offence under the Maintenance Act No 23 of 1963 or any other offence arising from the accused's alleged failure to maintain any person(s) whom he was legally liable to maintain.

- e) Vir die instelling van 'n privaat vervolging.
- f) In die gevalle en omstandighede ten opsigte van appèlle in paragraaf 4.10.1 vermeld.
- g) In aangeleenthede van tyd tot tyd deur die Raad uitgesluit, tans byvoorbeeld aanklagte ten opsigte van witboordjiemisdaad, kommersiële bedrog en handel in dwelmmiddels of gewoontevormende middels.
- h) Waar 'n persoon vir die derde of daaropvolgende keer vir 'n aanklag aangekla word wat in dieselfde kategorie val as sy vorige veroordelings.
- i) Behalwe met toestemming van die Direkteur, waar 'n beskuldigde aangekla word van enige oortreding ingevolge die Wet op Onderhoud, Nr 23 van 1963, of enige ander oortreding wat uit die beskuldigde se beweerde versuim om enige persoon(e) wat hy wetlik verplig was om te onderhou, spruit.

3.1.2 Legal aid shall cease if the accused client fails to appear in court on the appointed day without reasonable excuse. In such circumstances the practitioner must cease acting for the accused and render his account to the Board up to that date.

3.1.2 Regshulp word beëindig indien die aangeklaagde kliënt versuim om op die vasgestelde dag in die hof te verskyn sonder 'n redelike verskoning. In sodanige gevalle moet die praktisyn van die saak onttrek en sy rekening aan die Raad lewer.

3.1.3 When an attorney handles a bail application for an accused it will be deemed to be included in the criminal matter as a whole. The normal tariffs payable for criminal matters will be applicable.

3.1.3 Wanneer 'n praktisyn 'n borgaansoek vir 'n beskuldigde hanteer sal dit as integrale deel van die strafsak in die geheel beskou word. Die normale tariewe wat vir strafsake betaal word sal van toepassing wees.

3.1.4 Where an accused is charged with an offence where legal aid is provided as set out in Annexure O, legal aid must be granted under the Constitution and not in terms of the Legal Guide. In such cases, the Legal Aid Officer will indicate on the instruction form (top right-hand corner of the LA2) as follows: ~~SECTION 25(3)(e)~~

3.1.4 Waar 'n persoon aangekla word vir 'n oortreding waar regshulp voorsien is soos uiteengesit in Bylaag O sal regshulp toegestaan word deur die Regshulpbeampte onder die Grondwet en nie in terme van die Regshulphandleiding nie. In hierdie gevalle sal die Regshulpbeampte op die opdragvorm (bo regterkant van die R112) as volg aantekene: **ARTIKEL 25(3)(e)**

**35(3)g**

### 3.2 CIVIL MATTERS

### 3.2 SIVIELE AANGELEENTHEDE

3.2.1 No legal aid shall be rendered for the following:

3.2.1 Geen regshulp word in die volgende gevalle gelewer nie:

- a) In proceedings in terms of section 65, 72 and 74 of the Magistrates' Courts Act, 1944 (Act 32 of 1944). This exclusion also includes proceedings

- a) By verrigtinge ingevolge artikels 65, 72 en 74 van die Wet op Landdroshowe, 1944 (Wet 32 van 1944). Hierdie uitsluiting geld ook vir

in terms of these sections which originate from proceedings where legal aid has already been granted to a litigant.

The Director may, however, consent to proceedings in terms of these sections to recover costs on behalf of the Board.

- b) For the administration of an estate and for the voluntary surrender of an estate.
- c) In an action for damages on the grounds of defamation, breach of an engagement contract, infringement of dignity, infringement of privacy, seduction, adultery and inducing someone to desert or stay away from his spouse.  
*no L/A FOR DEFENCE ALSO  
SANDIA/LUCAS 11/3/78 3229/99*
- d) In a claim for maintenance, or save without the consent of the Director to resist a claim for maintenance which, in terms of the Maintenance Act of 1963, can be determined by a maintenance court without the assistance of a legal practitioner.
- e) In the circumstances and cases referred to in paragraph 3.3.
- f) For any action which the applicant may institute in a small claims court established by section 2 of the Small Claims Courts Act, 1984 (Act 61 of 1984). In addition, legal aid is not available for the prosecution or defence of a claim not exceeding the quantitative jurisdiction of the Small Claims Court by more than 25%. The reason is that the likely costs of the matter rarely justify legal action and the matter can easily be brought within the jurisdiction of the Small Claims Court by means of abandonment of part of the claim.
- g) In the circumstances and cases referred to in subparagraph 4.11.
- h) Arbitration, mediation, conciliation or any other forms of alternative dispute resolution.
- i) In matters where there is no substantial and identifiable benefit to the client.
- j) In matters excluded by the Board from time to time.

verrigtinge ingevolge hierdie artikels wat voortspruit uit verrigtinge waar regshulp reeds aan 'n gedingvoerder verleen is.

Die Direkteur kan egter toestemming verleen vir verrigtinge ingevolge die artikels om koste namens die Raad te verhaal.

- b) Vir die bereddering van 'n boedel en vir vrywillige boedeloorgawe.
- c) Vir die instel of verdediging van 'n geding om genoegdoening op grond van laster, die verbreking van 'n verlowingskontrak (troubreuk), skending van waardigheid, skending van privaatheid, seduksie, owerspel en die oorreding van iemand om weg te gaan of weg te bly van sy gade.
- d) In 'n eis om onderhoud wat ingevolge die Wet op Onderhoud van 1963 te vorder waar die aangeleentheid sonder bystand van 'n regspraktisyn in die onderhoudshof bereg kan word, of waar die Direkteur toegestem het dat 'n eis om onderhoud teengestaan word.
- e) In die omstandighede en gevalle vermeld in paragraaf 3.3.
- f) Vir enige geding wat deur die applikant aanhangig gemaak kan word in 'n Hof vir Klein Eise, ingestel by artikel 2 van die Wet op Howe vir Klein Eise, 1984 (Wet 61 van 1984). Daarbenewens sal regshulp nie beskikbaar wees vir die instel of verdediging van 'n eis wat nie die kwantitatiewe jurisdiksie van die hof vir klein eise met meer as 25% oorskry nie. Die rede is dat die moontlike koste van die aangeleentheid selde regsoptrede regverdig en die aangeleentheid baie maklik binne die jurisdiksie van die Hof vir Klein Eise gebring kan word deur afstand te doen van 'n gedeelte van die eis.
- g) In die omstandighede en gevalle vermeld in subparagraph 4.11.
- h) Arbitrasie, mediasie, versoening of ander vorme van alternatiewe geskilbeslegting.
- i) In aangeleenthede waar daar geen beduidende en identifiseerbare voordeel vir die klient is nie.
- j) In aangeleenthede wat van tyd tot tyd deur die Raad uitgesluit word.

- k) In matters where the Director is of the opinion that the chances of successful enforcement of an order in favour of the applicant are slim.
- l) In enquiries in the children's court without the prior approval of the Director.
- m) For an application to obtain an interdict in respect of the prevention of family violence or harassment as a result of domestic or family disputes, since an interdict in these matters can be obtained without the assistance of a legal practitioner.

- k) In gevalle waar die Direkteur van mening is dat die kanse om suksesvol die gunstige bevel af te dwing skraal is.
- l) In ondersoeke in die kindershof sonder die voorafverkreë toestemming van die Direkteur.
- m) Vir 'n aansoek om 'n interdik ter voorkoming van geweld of teistering voortspruitend uit huishoudelike of gesinsrusies omdat so 'n interdik sonder bystand van 'n regspraktisyn ingevolge die Wet op Voorkoming van Gesinsgeweld (No 133 van 1993) verkry kan word.

### 3.2.2 LABOUR MATTERS

3.2.2.1 Legal aid shall be allowed in labour matters only to the following extent:

- a) where it is claimed that the worker has been unfairly dismissed, legal aid may be granted by the legal aid officer in terms of S43 of the Labour Relations Act of 1956. Such instruction may only be granted if the time period referred to in the section can be complied with. A status quo order is only available where the application for such order can be made within 30 days of the date on which notice of the unfair labour practice was given or if no such notice was given, within 30 days of the implementation of such unfair labour practice.
- b) In respect of relief envisaged by S46(9) legal aid will **only** be granted for a **merit report**. The merit report will be considered by the Director who shall decide whether further legal aid may be granted or not.

### 3.3 DIVORCE CASES

3.3.1 Legal aid will not be rendered in a divorce case if -

- a) there is a reasonable possibility of reconciliation. The applicant must indicate at the time of application what steps have been taken and what proposals have been made to resolve the disputes;
- b) the Director is of the view that improper and insufficient attention has been given to settling the dispute;

### 3.2.2 ARBEIDSAANGELEENTHEDE

3.2.2.1 Regshulp sal in die volgende mate in arbeidsaangeleenthede toegestaan word:

- a) Waar daar beweer word dat die werker onbillik ontslaan is, mag regshulp deur die regshulpbeampte, ingevolge A43 van die Wet op Arbeidsverhoudinge van 1956, toegestaan word. Sodanige opdrag mag slegs toegestaan word indien daar aan die tydsbepelings, soos in die artikel bepaal, voldoen kan word. 'n Status quo-bevel is slegs beskikbaar waar die aansoek vir sodanige bevel binne 30 dae van die datum waarop daar kennis van die onbillike arbeidspraktyk gegee was, of indien geen sodanige kennisgewing gegee was nie, binne 30 dae na die aanvang van sodanige onbillike arbeidspraktyk.
- b) T.o.v regshulp soos deur A46(9) beoog, sal regshulp **slegs vir 'n merieteverslag** verleen word. Die merieteverslag sal deur die Direkteur oorweeg word wat daarvoor sal besluit of verdere regshulp toegestaan sal word al dan nie.

### 3.3 EGSKEIDINGS

3.3.1 Regshulp ten einde 'n egskeidingsgeding in te stel word nie gelewer nie indien -

- a) daar 'n redelike moontlikheid van versoening bestaan. Die applikant moet tydens die aansoek aandui watter stappe geneem is en watter voorstelle gemaak is om die geskille op te los;
- b) die Direkteur van mening is dat onvoldoende aandag aan skikking van die geskil gegee is;

- |   |  |
|---|--|
| <p>c) the applicant has previously sued for and obtained a divorce or has defended and been granted a divorce with the Board's assistance;</p> <p>d) the applicant had previously sued for divorce with the Board's assistance, but failed to proceed with the action, unless it is proved that the Board's expenses in connection with the previous case have been recovered;</p> <p>e) there are no children involved in the divorce;</p> <p>f) taking all the circumstances into account, it does not appear to be a deserving case.</p>   | <p>c) die applikant vantevore met die Raad se bystand 'n egskeiding ingestel en verkry het of 'n egskeiding verdedig het en dit toegestaan is;</p> <p>d) die applikant vantevore deur die Raad bygestaan is om 'n egskeidingsgeding in te stel, maar daarmee voortgegaan het nie, tensy bewys gelewer word dat die Raad se uitgawes in verband met die vorige saak verhaal is;</p> <p>e) daar geen kinders in die egskeiding betrokke is nie;</p> <p>f) dit, met inagneming van al die omstandighede, nie 'n verdienstelike geval blyk te wees nie.</p>  |
| <p>3.3.2 Legal aid shall only be granted to proceed with the variation or enforcement of a divorce order when it deals with the custody of the children or access to the children and the application is supported by a report of a social worker or the family advocate.</p>   | <p>3.3.2 Regshulp word slegs verleen vir die wysiging of afdwinging van 'n egskeidingsbevel wanneer dit oor die toesig en beheer oor of toegang tot kinders handel en die aansoek deur 'n maatskaplike-werkersverslag of 'n verslag van die gesinsadvokaat ondersteun word.</p>  |
| <p>3.3.3 If a <u>legal aid officer at a branch office</u> of the Board has reliable information at his disposal that the other party in a divorce action has the financial ability to make a contribution towards costs or to pay the costs, he must first grant legal aid for a rule 43 application, in which is claimed, inter alia, a contribution towards costs. In so far as the outcome of the Rule 43 application has not been sufficiently successful, a further application for legal aid may be made. (See paragraph 4.1.19). An official of the Department acting on behalf of the Board at the seat of the court may not grant permission to bring a Rule 43 application. This authority must be granted by the Director.</p> | <p>3.3.3 Indien 'n <u>regshulpbeampte by 'n takkantoor</u> van die Raad betroubare inligting tot sy beskikking het dat die ander party in 'n egskeidingsgeding oor die finansiële vermoë beskik om 'n bydrae tot koste te kan maak of om die koste te kan betaal, moet hy eers regshulp verleen vir 'n reël 43-aansoek, waarin daar 'n bydrae tot koste geverg word. Indien die uitkoms van die reël 43-aansoek nie genoegsaam suksesvol is nie, kan 'n verdere aansoek om regshulp gedoen word. (Sien paragraaf 4.1.19). Toestemming om 'n reël 43-aansoek te doen kan nie deur 'n beampte van die Departement wat namens die Raad optree by die setel van die hof, verleen word nie. Hierdie magtiging moet in dié gevalle deur die Direkteur toegestaan word.</p> |
| <p>3.3.4 If legal aid is granted for the institution of a divorce action within the jurisdiction of the Divorce Court, it must be indicated on the instruction form (LA2) that the action must be instituted in that court unless the Director has granted prior approval that it may be instituted in another court.</p>   | <p>3.3.4 Indien regshulp verleen word vir die instel van 'n egskeidingsgeding binne die jurisdiksie van die Egskeidingshof, moet daar op die opdragvoorskrif (RH2) aangedui word dat die geding in daardie hof ingestel moet word, tensy die Direkteur vooraf goedkeuring verleen het dat dit in 'n ander hof ingestel mag word.</p>   |
| <p>3.3.5 The attorney who acts for the applicant in his/her capacity as Plaintiff <u>must</u> include a prayer for costs in the summons. An endeavour must be made throughout to recover costs or to enforce an order for costs against the defendant.</p>  | <p>3.3.5 Die prokureur wat vir die Regshulpapplikant optree sy/haar hoedanigheid as Eiser(es) optree <u>moet</u> 'n bede vir die betaling van koste in die dagvaardiging invoeg. Daar moet deurgaans gepoog word om koste te verhaal of 'n kostebevel teen die verweerder af te dwing.</p>   |

Paragraphs 5.12.1 and 5.15.2 must be borne in mind at all times. The following must be submitted on completion of the matter:

- a. final account;
- b. copy of final order;
- c. copy of settlement agreement (if any);
- d. report on the benefit accrued to the Legal Aid Board applicant and how paragraph 5.19 will be complied with;
- e. report on the cost aspect and its recoverability.

Failure to comply herewith will necessarily result in a delay in payment of accounts.

See also paragraphs 5.13.2, 5.13.3 and 5.16.

### 3.4 RESIDENCE OF APPLICANT AND SEAT OF COURT

3.4.1 Except in matters excluded from the scheme or which are excluded by the Board from time to time, legal aid shall ordinarily be rendered to all indigent persons who are permanently resident or economically active in the Republic of South Africa, provided that the Director may grant legal aid in exceptional circumstances. If in a matter in which legal aid is sought the issues are justiciable in a Court of the Republic of South Africa, but the applicant is not resident or economically active in the Republic of South Africa, the Director may approve an application in exceptional circumstances.

### 3.5 PERSONAL DISQUALIFICATION

3.5.1 If there is good reason to believe that an applicant is wilfully abstaining from entering into employment which is within his capabilities or that he resigned from employment, merely to obtain legal aid, assistance shall be refused/suspended.

Paragrafe 5.12.1 en 5.15.2 moet te alle tye in gedagte gehou word. By afhandeling van die saak moet die volgende verskaf word:

- a. Finale rekening;
- b. afskrif van finale bevel;
- c. afskrif van skikkingsakte (indien enige);
- d. verslag oor die voordeel wat Regshulpraad-applikant toeval en hoe daar aan paragraaf 5.19 voldoen gaan word;
- e. verslag oor die koste-aspek en die verhaalbaarheid daarvan.

Versuim om hieraan te voldoen bring noodwendig 'n vertraging met betaling van rekening mee.

Sien ook paragrafe 5.13.2, 5.13.3 en 5.16.

### 3.4 WOONPLEK VAN APPLIKANT EN SETEL VAN DIE HOF

3.4.1 Behalwe in die aangeleenthede wat van die skema uitgesluit is of wat van tyd tot tyd deur die Raad uitgesluit word, word regshulp gewoonlik aan alle behoeftige persone verleen wat permanent in die Republiek van Suid-Afrika woonagtig of ekonomies bedrywig is. Die Direkteur mag dit in buitengewone omstandighede toestaan. Indien 'n aangeleentheid waarin regshulp verlang word, in 'n hof van die Republiek van Suid-Afrika beregbaar is, maar die party nie in die Republiek van Suid-Afrika woonagtig of ekonomies aktief is nie, kan die Direkteur in buitengewone omstandighede 'n aansoek goedkeur.

### 3.5 PERSOONLIKE DISKWALIFIKASIE

3.5.1 Indien daar grondige rede is om te vermoed dat 'n applikant hom opsetlik daarvan weerhou om 'n betrekking binne sy vermoë te aanvaar of dat hy uit 'n betrekking bedank het bloot ten einde regshulp te bekom, word regshulp geweier/opgeskort.

- 3.5.2 In civil matters the Board must always be satisfied that there are merits to the case. If there is not a **reasonable prospect of success and recovery**, legal aid will be refused. In order to determine these issues, the legal aid officer must always issue an instruction in civil matters as follows: "To investigate a civil claim/defend a civil action (state legal problem here) and the attorney must, when submitting such a report, furnish the following information before further costs are incurred:
- 3.5.2 In siviele sake moet die Raad altyd oortuig wees dat daar meriete in die saak is. Indien daar nie 'n **redelike vooruitsig op sukses en verhalingsprospek** is, sal regshulp geweier word. Ten einde hierdie kwessies te bepaal, moet die regshulpbeampte 'n opdrag in siviele sake soos volg gee: "Om ondersoek te doen na die instel/verdediging van 'n siviele eis (beskryf hier die regsprobleem) en die prokureur wanneer hy sy verslag indien, moet hy die volgende inligting verskaf voor verdere koste aangegaan word:
- 3.5.2.1 Whether the applicant is plaintiff/claimant or defendant/respondent. 3.5.2.1 Of die applikant klaer/eiser of verweerder/respondent is.
- 3.5.2.2 The court where the matter is to be heard. 3.5.2.2 Die hof waar die saak gaan dien.
- 3.5.2.3 The nature and amount of the claim. 3.5.2.3 Die aard en bedrag van die eis.
- 3.5.2.4 The factual background to the matter. 3.5.2.4 Die feite van die saak.
- 3.5.2.5 Full details of the merits of the matter and a detailed explanation of the success which may be expected. 3.5.2.5 Volle besonderhede van die meriete van die aangeleentheid en 'n gedetailleerde verduideliking van die sukses wat verwag kan word.
- 3.5.2.6 The availability of evidence and witnesses. 3.5.2.6 Die beskikbaarheid van getuienis en getuies.
- 3.5.2.7 The need for experts and the expected costs relating to their evidence and testimony and that of other witnesses. 3.5.2.7 Die behoefte aan deskundiges en verwagte koste verbonde aan hul getuienis en dié van ander getuies.
- 3.5.2.8 The expected date for hearing and duration of trial. 3.5.2.8 Die verwagte datum vir en duur van verhoor.
- 3.5.2.9 The financial ability of the other side to satisfy the claim and costs if successful. 3.5.2.9 Die finansiële vermoë van die ander party om aan die eis en koste te voldoen, indien suksesvol.
- 3.5.2.10 The expected defences to be raised. 3.5.2.10 Die verwagte verweere wat aangevoer sal word.
- 3.5.2.11 The stage to which the matter has progressed at the date of application and all cost implications of such proceedings. 3.5.2.11 Die stadium waartoe die aangeleentheid gevorder het op datum van die aansoek en die koste-implikasies van die verrigtinge.
- 3.5.2.12 The nature and effect of any prior orders in the matter. 3.5.2.12 Die aard en uitwerking van enige vorige bevels in die aangeleentheid.
- 3.5.2.13 The possibility for settlement of all or part of the dispute. 3.5.2.13 Die omvang of moontlikheid van skikking van alle of te dele.

- 3.5.2.14 The total expected financial involvement of the Board.
- 3.5.2.14 Die totale verwagte finansiële betrokkenheid van die Raad.
- 3.5.2.15 **At least four weeks before the hearing**, or if legal aid is granted within a shorter period before the hearing, at the time of legal aid being granted, the attorney himself, or where an attorney has instructed an advocate, both jointly must furnish the Director with a **full and comprehensive budget** of the expected expenditure for the hearing and a reevaluation of the issues referred to in paragraphs 3.5.2.5 - 9 and 3.5.2.13 and any other relevant information which can be reasonably expected to be necessary or essential for the Director to decide whether to proceed with the action or to dispose of it in some other manner. If, at any stage during proceedings, circumstances change so as to differ from those already communicated to the Director, such change in circumstances must forthwith be conveyed to the Director, and if necessary, the matter must stand down or a short postponement be arranged in order to communicate with the Director and make a decision on the further availability of legal aid.
- 3.5.2.15 **Ten minste vier weke voor die verhoor**, of indien regshulp op korter kennis toegestaan is, dan wanneer regshulp toegestaan word moet die prokureur self, en waar 'n advokaat ook opdrag ontvang het, albei gesamentlik die Direkteur van 'n **volledige begroting** voorsien waarin die verwagte uitgawes aangaande die verhoor uiteengesit is en 'n herwaardering van die besonderhede in paragrawe 3.5.2.5-9 en 3.5.2.13 uiteengesit, voorsien tesame met enige ander relevante inligting wat redeliker wys verwag kan word om die Direkteur in staat te stel om met die aksie voort te gaan of om dit op 'n ander wyse af te handel. Indien ter enige tyd gedurende die verrigtinge die omstandighede wesentlik verander van die wat reeds aan die Direkteur bekend gemaak is, moet sodanige verandering onmiddelik aan die Direkteur oorgedra word en indien nodig moet die saak afstaan of 'n kort verdaging gereël word sodat die inligting aan die Direkteur oorgedra kan word en 'n besluit gemaak kan word oor die voortsetting van regshulp.
- 3.5.2.16 **The provisions of paragraph 3.5.2.15 shall also be applicable retrospectively to all matters where legal aid has already been granted and which are in process of finalisation.**
- 3.5.2.16 **Die bepalings van paragraaf 3.5.2.15 sal ook terugwerkend van toepassing wees op alle sake waar regshulp reeds toegestaan is en wat in die proses van afhandeling is.**
- 3.5.2.17 Should it be necessary to prevent prescription taking place or a default judgment being taken, the attorney may take reasonable steps to protect the applicant simultaneously while complying with the provisions of paragraph 3.5.2.
- 3.5.2.17 Indien dit noodsaaklik is om verjaring te stuit of om die bestaan van 'n verstek vonnis te voorkom, mag die prokureur redelike stappe neem om die applikant te beskerm gelyktydig met die voldoening aan die bepalings van paragraaf 3.5.2.
- 3.5.2.18 A Practitioner who undertakes and completes a merit assessment report as required by paragraph 3.5.2 shall be entitled to remuneration in accordance with the applicable tariff in an amount not exceeding the instruction fee applicable and to disbursements incurred. However, the Director may, in his sole discretion waive such a limitation and pay an increased fee where exceptional circumstances may justify this.
- 3.5.2.18 'n Regspraktisyn wat ingevolge par 3.5.2 'n merieteverslag aanvaar en voltooi sal geregtig wees op vergoeding volgens die toepaslike tarief in 'n bedrag wat nie die toepaslike tarief vir die neem van opdrag oorskry nie en op die uitgawes daarvoor aangegaan geregtig is. Die Direkteur mag egter sy eie diskresie uitoefen om van sodanige beperking afstand te doen en 'n verhoogde bedrag te betaal waar uitsonderlike omstandighede dit mag regverdig.

Remuneration in respect of this report is payable as an instruction fee when the final account is rendered or when a decision is made by the Director not to proceed with the matter.

Vergoeding vir hierdie verslag is as 'n opdragfooi betaalbaar wanneer die finale rekening gelewer is of wanneer deur die Direkteur besluit is om nie met die aangeleentheid voort te gaan nie.

## CHAPTER 4

### OPERATION OF THE SCHEME AND FUNCTIONS OF LEGAL AID OFFICER

#### 4.1 EVALUATION OF APPLICATION

4.1.1 At the centre where the Board has no representative of its own and a legal aid officer has been designated at a magistrate's office in the Republic such officer's powers in respect of legal aid work shall be confined to matters to be heard within the jurisdiction of the Division of the Supreme Court or the magisterial district concerned unless undue financial burden would otherwise be caused to client. In the latter instance the Director may permit one legal aid officer to grant legal aid in a matter to be heard in a different jurisdiction provided all the relevant information has been furnished to the Director to enable him to make a decision.

4.1.2 When a person approaches the legal aid officer for assistance, the officer must first determine whether it is indeed legal aid which is required and that the problem is a matter in which the Board renders assistance. (See paragraphs 3.1, 3.2, 3.3, 3.4 and 3.5). If this is not the case, he must inform the applicant that the Board is not able to assist him. In the event of a state or other institution possibly being in a position to be of assistance, he shall refer him to such institution.

4.1.3 If in fact legal aid is required in a matter in which the Board renders assistance, an application form (LA 1) must be completed by the applicant, or on his behalf where he is unable to deal with the matter personally. The legal aid officer must ensure that the form is properly completed. The legal aid officer must then apply the prescribed means test and if the applicant does not qualify in terms thereof or for other reasons the legal aid officer must inform him accordingly.

## HOOFSTUK 4

### WERKING VAN DIE SKEMA EN DIE FUNKSIES VAN DIE REGSHULPBEAMPTTE

#### 4.1 EVALUERING VAN AANSOEK

4.1.1 Op 'n plek waar die Raad nie 'n eie verteenwoordiger het nie en 'n regshulpbeampte by 'n landdroskantoor in die Republiek aangewys is, is sodanige beampte se bevoegdheid ten opsigte van regshulpwerk beperk tot aangeleenthede wat binne die jurisdiksie van die betrokke afdeling van die Hooggeregshof of landdros- of magistraatsdistrik val, tensy dit andersins 'n onredelike finansiële las op die applikant sal plaas. In hierdie geval mag die Direkteur toelaat dat 'n regshulpbeampte regshulp mag toestaan in 'n saak wat in 'n ander hof aangehoor gaan word. Alle relevante inligting moet aan die Direkteur verstrekk word om hom in staat te stel om sy besluite te neem.

4.1.2 Wanneer 'n persoon die regshulpbeampte vir bystand nader, moet die beampte eers besluit of dit inderdaad regshulp is wat benodig word en of die persoon se probleem 'n aangeleentheid is waarin die Raad bystand verleen. (Sien paragraaf 3.1, 3.2, 3.3, 3.4 en 3.5). Indien dit nie die geval is nie, deel hy die applikant mee dat die Raad hom nie kan help nie. In 'n geval waar 'n staats- of ander instelling hom moontlik behulpsaam kan wees, verwys hy hom na so 'n instelling.

4.1.3 Indien dit wel regshulp is wat benodig word en dit 'n aangeleentheid is waarin die Raad bystand verleen, word 'n aansoekvorm (RH 1) deur die applikant self ingevul. Indien dit nie vir hom moontlik is om dit self in te vul nie, mag dit in gepaste omstandighede deur iemand anders voltooi word. Die regshulp-beampte moet toesien dat dit behoorlik voltooi is. Die regshulp-beampte pas dan die voorgeskrewe middeletoets toe en indien die applikant nie daarvolgens of om ander redes kwalifiseer nie, moet die regshulpbeampte hom so mededeel.

- 4.1.4 Should he qualify, then the legal aid officer must complete an instruction form (LA 2) in typewritten form and refer the applicant to an attorney either of the applicant's choice or strictly in terms of the applicable system of rotation. If the attorney to be instructed was chosen by the client this fact must be recorded on the form, alternatively the appointment must be done on the rotational basis and this indicated on recorded on the form.
- 4.1.5 The correctness and completeness of all particulars furnished by an applicant shall, as far as possible, be verified by the legal aid officer. Wherever appropriate, documentary proof must be called for in regard to the applicants income, expenditure, assets and liability.
- 4.1.6 The legal aid officer should always ascertain whether -
- all dependent children named are, in fact actually supported by the applicant;
  - the applicant has possibly previously been refused legal aid in respect of the same matter, elsewhere;
  - the applicant in an intended divorce action has attempted to settle the issues. Information must be provided with regard to proposals or steps taken;
  - the applicant has not already engaged an attorney in connection with his problem and is merely using the Board to obtain a second opinion;
  - an estimated sum for legal expenses to be spent in the matter is available and if not the legal aid officer should obtain an estimate from the attorney; and
  - the other side is not already receiving assistance from the Board.
- 4.1.7 In the event of any suspicion of irregularity or abuse, the matter must be referred to the Director. Full reasons must be submitted so that the Director can make a proper decision.
- 4.1.4 Kwalifiseer hy egter, vul die regshulpbeampte opdragvorm (RH 2) in tikskrif in en verwys die applikant van die applikant se keuse of na die prokureur streng volgens die toepaslike rotasiesistelsel. Indien die prokureur deur die applikant self gekies is, moet dit as sulks op die opdragvorm aangedui word. Alternatiewelik moet die aanstelling volgens die rotasiesistelsel gedoen word en as sodanig aangedui word.
- 4.1.5 Die juistheid en volledigheid van alle besonderhede wat deur 'n applikant verstrekte word, moet sover moontlik deur die Regshulpbeampte gekontroleer word. Waar moontlik moet dokumentêre bewys aangevra word ten opsigte van inkomste, uitgawes, bates en laste.
- 4.1.6 Die regshulpbeampte moet byvoorbeeld al die volgende opsoek -
- alle afhanklike kinders wat genoem word werklik deur die applikant onderhou word;
  - die applikant nie moontlik reeds elders regshulp ten opsigte van dieselfde aangeleentheid gewaar is nie;
  - die applikant in 'n voorgenoemde egskeidingsgeding gepoog het om die saak te verplek. Inligting aangaande voorstelle of stap geneem moet verstrekte word;
  - die applikant nie reeds 'n prokureur in verband met sy probleem in diens geneem het en die Raad slegs gebruik om 'n tweede mening te bekom nie;
  - 'n bepaling gemaak kan word van die redelikerwys aan regsuitgawes in die aangeleentheid bestee sal kan word en indien nie bepaal kan word nie, moet die beampte 'n skatting van die prokureur verkry; en
  - die ander kant nie reeds bystand van die Raad ontvang het nie.
- 4.1.7 Waar daar 'n vermoede van onreëlmatigheid of misbruik bestaan, moet die aangeleentheid na die Direkteur verwys word. Volledige redes moet voorgelê word sodat die Direkteur 'n behoorlike besluit kan neem.

- 4.1.8 In order to decide on an application for aid in instituting divorce proceedings, the legal aid officer acting as such a magistrate's court shall call for a social worker's report dealing inter alia with the socio-economic conditions and matters referred to in paragraph 3.3 and stating whether or not the applicant or the applicant's children are in danger of being physically and/or psychologically abused by the other spouse. Where the legal aid officer is in the employ of the Board at one of its offices, this requirement may be dispensed with.
- 4.1.9 Reports by social workers must be called for from the bodies from which the reports are normally obtained and if in doubt this matter should be clarified or instructions obtained from the Director of the Board.
- 4.1.10 Reports by social workers shall serve as a **guideline** to legal aid officers in deciding on applications. Legal aid officers shall not necessarily be bound by the recommendations made in the reports. Where necessary, supplementary information may be called for. The necessity of a report from the Family Advocate where the needs of the children require it, must be considered.
- 4.1.11 Where an application for legal aid is lodged at a magistrate's court, the application of a person qualifies in terms of the means test and who intends instituting divorce proceedings, must be held over for decision until the prescribed reports have been received. Social workers must integrate appropriate cases with family care services, for example, the Family Advocate and the applicant must be notified that delays may ensue before the reports are available. When a social worker's report has been received and a decision made, the applicant must be summoned and the application dealt with further in terms of these guidelines. Unless the Director decides to the contrary, the Board will be bound by the provisions of the report of the Family Advocate.
- 4.1.8 Ten einde te besluit oor 'n aansoek om hulp om 'n egskedings-geding in te stel, moet die regshulpbeampte by 'n landdroskantoor 'n maatskaplikewerkverslag aanvra waarin daar onder meer oor die sosio-ekonomiese omstandighede en aangeleenthede bedoel in paragraaf 3.3 gerapporteer word en waarin ook vermeld word of die gade enige fisiese en/of psigiese bedreiging vir die applikant of die applikant se kinders inhou. Waar die regshulpbeampte in diens van die Raad is, word afstand van hierdie vereiste gedoen.
- 4.1.9 Maatskaplikewerkverslae word aangevra van die liggame van wie die verslae normaalweg verkry word en indien daar onduidelikheid is moet hierdie inligting of opdrag van die Direkteur verkry word.
- 4.1.10 Maatskaplikewerkverslae dien as riglyn vir regshulpbeamptes om oor aansoeke te besluit. Regshulpbeamptes is nie noodwendig gebonde aan die aanbevelings wat daarin gemaak word nie. Waar nodig kan aanvullende inligting aangevra word. Die noodsaaklikheid van 'n verslag van die Gesinsadvokaat waar die belange van kinders dit vereis, moet oorweeg word.
- 4.1.11 Die aansoek van 'n persoon wat ingevolge die middeletoets kwalifiseer en wat egskedingsverrigtinge wil instel, word in gevalle waar aansoek vir regshulp by die landdroskantoor gedoen is vir beslissing oorgehou totdat die voorgeskrewe verslae ontvang is. Maatskaplike werkers moet gepaste gevalle by gesinsorgdienste, byvoorbeeld die Gesinsadvokaat, inskakel en applikante moet verwittig word dat dit moontlik 'n geruime tyd sal duur alvorens die verslae beskikbaar sal wees. Wanneer 'n maatskaplikewerkverslag ontvang is en daar oor 'n geval besluit is, word die applikant ingeroep en word daar verder ooreenkomstig die voorskrifte met die aansoek gehandel. Tensy die Direkteur tot die teendeel besluit, sal die Raad gebonde wees aan die bepalinge van die verslag van die Gesinsadvokaat.

- 4.1.12 When an application has been granted, a copy of the social worker's report must accompany the instruction form (LA2-C) sent to the Board's head office, if it has not previously been submitted.
- 4.1.12 Wanneer 'n aansoek toegestaan word, moet 'n afskrif van die maatskaplikewerkverslag die opdragvorm (RH2-C) vergesel wat aan die Raad se hoofkantoor gestuur word, indien dit nie reeds voorheen ingedien is nie.
- 4.1.13 If a legal aid officer is satisfied that the delay in obtaining a social worker's report will delay the rendering of legal aid to institute or defend divorce proceedings to such an extent that the applicant will be seriously prejudiced, or that the welfare of the applicant or the children of the applicant will be endangered, the social worker's report may be dispensed with. This decision must be referred to the Director for confirmation before instructions are issued to an attorney.
- 4.1.13 Indien 'n regshulpbeampte oortuig is dat die tydsverloop by die verkryging van 'n maatskaplikewerkverslag die toestaan van regshulp om 'n egskeidingsgeding in te stel of verdedig, sodanig sal vertraag dat dit die applikant ernstig sal benadeel of dat dit die welsyn van die applikant of die applikant se kinders in gevaar sal stel, kan daar afstand gedoen word van die maatskaplikewerkverslag. Hierdie keuse moet na die Direkteur vir bevestiging verwys word voordat opdragte aan 'n prokureur uitgereik word.
- 4.1.14 If no report is called for, the reasons for not doing so must be briefly set out on the instruction form (LA2-C).
- 4.1.14 Waar geen verslag aangevra word nie, moet die redes kortliks op die opdragvorm (RH2-C) aangedui word.
- 4.1.15 An applicant to whom aid is rendered in connection with divorce proceedings, must himself and at own expense obtain a marriage certificate. If the other party has to be traced the applicant must do so at own cost.
- 4.1.15 'n Applikant aan wie hulp verleen word in verband met 'n egskeiding, moet self die huweliksertifikaat bekom. As die teenkan opgespoor moet word, moet die applikant die opsporing van die ander party op sy eie kost bewerkstellig.
- 4.1.16 The means test for "single persons and estranged spouses" (see Annexure C) must be applied to applications for aid in connection with matrimonial actions between spouses.
- 4.1.16 Die middeletoets vir "alleenlopende persone en vervreemde gades" (sien Bylae C) word toegepa by aansoeke om hulp in huweliksgedinge tussen gades.
- 4.1.17 In applications for the variation of a final divorce order with regard to the custody of children or access to children a social worker's report must always be called for, but may be dispensed with where a Family Advocate is able to furnish this report. If a possible delay in obtaining a report will endanger the children, the report may be dispensed with and the reasons must be set out briefly on the instruction form (LA2-C). These instances must be referred to the Director for approval before instructions are given to the attorney.
- 4.1.17 By aansoeke om wysiging van finale egskeidingsbevele ten opsigte van toesig en beheer oor of toegang tot kinders moet daar in alle gevalle 'n maatskaplikewerkverslag aangevra word, maar in gevalle waar die Gesinsadvokaat hierdie verslag voorsien, mag daar van die welsynsverslag afstand gedoen word. Indien moontlike vertraging by die verkryging van verslag die kinders in gevaar sou stel, kan daarvan 'n verslag afstand gedoen word en moet die redes kortliks op die opdragvorm (RH2-C) aangedui word. Hierdie gevalle moet na die Direkteur vir goedkeuring verwys word voordat opdragte aan die prokureur gegee word.

4.1.18 When **both parties** apply for legal aid in divorce matters, the matter must be referred to the Director for a decision. In such cases an indication must be given of the following:

- a) In whose care the children are;
- b) whether the children are legally supported by the other party and whether documentary proof has been submitted to that effect; and
- c) what merits exist with regard to a possible settlement of the action.

4.1.19 If there is a reasonable prospect of success in obtaining a contribution towards costs and interim relief for maintenance etc, approval should be given to bring a Rule 43 application. (See paragraphs 2.15(a) and 3.3.3). This will play a role in deciding on whether or not legal aid should thereafter be granted. The Rule 43 application **should not primarily** be sought only for interim maintenance and custody. Consideration shall **at all times** be given to the obtaining of a **contribution to costs** under this procedure. If the contribution towards costs ordered in the Rule 43 application is less than the amount of legal aid required, legal aid may be granted for the shortfall. If the award is greater than the amount allocated for legal aid, further assistance should not be given, but in this instance the costs order in respect of the Rule 43 application will in terms of Section 8A of the Act accrue to the Board and the normal provisions of costs will apply. A legal aid officer in employ of the Board at a branch office may personally authorise the institution of a Rule 43 application. Other legal aid officers must refer such matters to the Director for a decision. The tariffs for Rule 43 applications are set out in Annexures E (attorneys) and F (advocates).

4.1.20 When application is made for legal aid for urgent interdicts, the matter must be referred to head office telephonically for a decision and information must be furnished with regard to -

4.1.18 Wanneer **albei partye** in 'n egskeidingsgeding om regshulp **aansoek** doen, moet die aangeleentheid na die Direkteur vir 'n beslissing verwys word. In sulke gevalle moet 'n aanduiding van die volgende gegee word:

- a) In wie se sorg die kinders is;
- b) of die kinders wettig deur die ander party onderhou word en of dokumentêre bewys te dien effekte ingedien is; en
- c) watter meriete ten opsigte van 'n moontlike skikking van die geding bestaan.

4.1.19 Wanneer daar 'n redelike vooruitsig van sukses is in die verkryging van 'n bydrae tot koste en tussentydse bystand vir onderhoud ensovoorts, moet toestemming vir 'n Reël 43 aansoek gegee word. (Sien paragrawe 2.15(a) en 3.3.3). Dit sal 'n rol speel in die besluit of regshulp daarna toegestaan moet word of nie. Die Reël 43 aansoek **behoort nie uitsluitlik** ingestel te word slegs in gevalle van tussentydse beheer en toesig nie. Oorweging moet **te alle tye** aan die verkryging van 'n **bydrae tot koste** met hierdie prosedure gegee word. Indien die bydrae tot koste wat in die Reël 43 aansoek beveel word, minder is as die bedrag van regshulp wat gevra word, kan regshulp vir die tekort toegestaan word. Indien die toekenning groter is as die bedrag wat vir regshulp toegeken is, moet verdere bystand nie verleen word nie, maar in hierdie geval sal die kostebevel ten opsigte van die Reël 43 aansoek ingevolge artikel 8A van die Wet die Raad toekom en sal die normale bepalinge ten opsigte van koste van toepassing wees. 'n Regshulpbeampte in diens van die Raad by 'n takkantoor mag self die instel van 'n Reël 43 aansoek magtig. Ander regshulpbeamptes moet die aansoeke na die Direkteur vir beslissing verwys. Die tariewe vir Reël 43 aansoeke word in Aanhangsels E (prokureurs) en F (advokate) uiteengesit.

4.1.20 Wanneer daar om regshulp vir dringende interdikte aansoek gedoen word, moet die aangeleentheid telefonies na hoofkantoor vir 'n beslissing verwys word en moet inligting verskaf word ten opsigte van -

- a) the grounds for the application;
- b) in the case of an interdict to protect life and/or the safeguarding of property, how real the threat is;
- c) what effect it will have on the children of the marriage, (where applicable), and
- d) why an interdict is the only remedy that could be utilised.

#### 4.2 CHOICE OF LEGAL REPRESENTATIVE

*See Circular 2 of 1998*

4.2.1 Subject to sub-rules 4.2.1 a) - d) the legal aid officer must refer an applicant whose application has been approved to the lawyer of his choice. If there is not a lawyer chosen the applicant must be referred to any local attorney or advocate, strictly in terms of the system of the rotation list, currently in force, who is prepared to accept the instruction, provided that:

- a) If no local practitioner is available, the nearest available practitioner may be instructed.
- b) Where practical, in the event of a criminal case (including the regional court), a practitioner shall be instructed at the centre where the case is to be heard.
- c) The rule that the practitioner of choice must be instructed is subject to the condition that this does not result in unreasonable additional expense. If there is such extra expense, then the practitioner appointed must come from the rotation list.
- d) A rotation list is compiled annually from the names of practitioners in the area who are prepared to do legal aid work in different categories in terms of this Guide. Each year the list must be renewed and revised in each

- a) wat die gronde van die aansoek is;
- b) in die geval van 'n interdik ter beskerming van lewe en/of beveiliging van eiendom, hoe werklik die bedreiging is;
- c) watter uitwerking dit op die kinders van die huwelik sal hê, (indien toepaslik), en
- d) waarom 'n interdik die enigste regs middel is wat gebruik kan word.

#### 4.2 KEUSE VAN REGSVERTEENWOORDIGER

4.2.1 Behoudens die voorskrifte van reëls 4.2.1 a) - d) moet die regshulpbeampte 'n applikant wat 'n aansoek goedgekeur is, na 'n regsvertegenwoordiger van sy keuse verwys. Indien 'n prokureur nie gekies word nie, moet die applikant streng volgens die rotasielyste verwys word na enige plaaslike prokureur of advokaat op die rotasielyste-stelsel, dan van krag, wat bereid is om die opdrag te aanvaar, onder die volgende voorbehoude:

- a) Indien geen plaaslike praktisyn beskikbaar is, mag 'n opdrag aan die naaste beskikbare praktisyn gegee word.
- b) Waar doenlik, in die geval van 'n strafsak (insluitende die streekhof), word 'n opdrag gegee aan 'n praktisyn op die plek waar die verhoor gaan word.
- c) Die reël dat die praktisyn van keuse opgedra word, is onderworpe aan die voorwaarde dat dit nie sal lei tot onredelike bykomende uitgawes nie. Indien daar sodanige bykomende uitgawes is, moet die praktisyn wat aangewys word, van die rotasielyste verkry word.
- d) 'n Rotasielyste word jaarliks opgestel uit die name van praktisyns in die gebied wat bereid is om regs werk in verskillende kategorieë in te dienste te stel. Hierdie Handleiding te onderneem. Die lys moet elke jaar by elke sentrum deur

centre by the legal aid officer. It is therefore necessary for him to liaise with practitioners in his area to ensure that all practitioners willing to participate in the Scheme are included in the rotation lists. Each name on the rotation lists must be given work in strict rotation bearing in mind the provision of paragraphs 4.2.1 a) - c). The legal aid officer must ensure that the work is distributed fairly amongst these practitioners.

- e) Although rotation takes place in respect of individual legal practitioners, in the case of attorneys the legal aid instruction must be given to the firm of which the practitioner is a member.
- f) Notwithstanding the foregoing provisions, the consent of the Director must be obtained, should it still be necessary to give an instruction to an attorney or advocate other than a local attorney/advocate or an attorney/advocate at the seat of the court.
- g) Certain practitioner's names may from time to time appear on the list of lawyers to whom matters must **not** be referred. Care must be taken to ensure that this exclusionary list is adhered to.

#### 4.3 COMPLETION AND SAFEKEEPING OF DOCUMENTS

- 4.3.1 Legal aid forms must be completed in full in a clearly legible manner. Particulars of the action, charge or legal issues, the extent of the assistance required and the particular court shall be briefly, but clearly stated. It must, for example, not simply be stated that legal aid has been granted for "civil action", "claim for damages" or "criminal case" or "continuation of action or proceedings". The provisions of paragraph 3.5.2 should be used as a guide as to what information is required.
- 4.3.2 Legal aid officers should, where necessary, assist the applicant with the completion of the application forms.

die regshulpbeampte hernu en hersien word. Dit is dus nodig dat hy met praktisyns in sy gebied skakel om te verseker dat alle praktisyns wat bereid is om deel te neem aan die Skema, by die rotasielyste ingesluit word. Elke naam op die rotasielyste moet in streng rotasie werk gegee word, met inagneming van die bepalings van paragrawe 4.2.1 a) tot c). Die regshulpbeampte moet verseker dat die werk billik onder hierdie praktisyns verdeel word.

- e) Hoewel rotasie ten opsigte van individuele regspraktisyns plaasvind, moet in die geval van prokureurs die regshulpopdrag aan die firma gegee word waarvan die praktisyn 'n lid is.
- f) Ondanks voorgaande bepalings, moet die goedkeuring van die Direkteur verkry word indien dit steeds nodig sou wees om 'n opdrag aan 'n ander prokureur of advokaat as 'n plaaslike prokureur of advokaat of 'n prokureur by die setel van die hof te gee.
- g) Sekere praktisyns se name mag van tyd tot tyd op 'n lys van name van praktisyns verskyn na wie aangeleentehede **nie** verwys moet word **nie**. Daar moet sorg gedra word om te verseker dat daar by hierdie uitsluitingslys gehou word.

#### 4.3 INVUL EN BEWARING VAN STUKKE

- 4.3.1 Regshulpvorme moet duidelik leesbaar en in alle opsigte volledig ingevul word. Die besonderhede van die geding, aanklag of regsprobleem, die omvang van die hulp wat verlang word en die betrokke hof moet bondig maar duidelik verstrekkend word. Dit moet byvoorbeeld nie slegs as "siviele geding", "skadevergoeding", "strafsaak" of "voortsetting van geding of verrigtinge" verstrekkend word nie. Die bepalings van paragraaf 3.5.2 moet as riglyn gebruik word vir watter inligting nodig is.
- 4.3.2 Regshulpbeamptes moet waar nodig die applikante behulpsaam wees met die invul van aansoekvorme.

- 4.3.2.1 Should assistance be rendered to more than one accused in a joint trial and they are referred to the same legal representative, the legal aid officer shall issue only one instruction form on which the first accused's particulars appear. The full particulars of the other accused shall appear in an annexure in order to prevent a possible duplication of fees when checking and paying accounts.
- 4.3.2.1 Indien daar bystand verleen word aan meer as een beskuldigde in 'n gesamentlike verhoor, hulle na dieselfde regsverteenvoerder verwys word, moet die regshulpbeampte slegs een opdragvorm waarop die eerste beskuldigde se besonderhede verskyn, uitreik. Die volledige besonderhede van die ander beskuldigdes moet in 'n aanhangsel verduur word ten einde die moontlike duplisering van gelde by die nasien en betaling van rekeninge uit te skakel.
- 4.3.3 The particulars of the person in whose favour the legal aid is required, must be filled in on the application form. Great care should be exercised in obtaining the correct first names and surname. If the person is, however, a dependent minor, his parent's or guardian's particulars must be inserted and the fact that legal aid is required on behalf of the minor, must be reflected under the heading "Particulars of legal aid required". This must also be indicated on the instruction form. If a minor is self supporting or is emancipated by law the instruction must be issued in his name. Where a person of age is still supported by his parents, he is dealt with as if he were a minor.
- 4.3.3 Die besonderhede van die persoon wat regsver hulp verlang, word op die aansoekvorm ingevul. Uiterste sorg moet gedra word dat die juiste voorname en familienaam verkry word. As die persoon egter 'n afhanklike minderjarige is, moet die besonderhede van sy ouer of voog ingevul word en die feit dat die hulp ten gunste van die minderjarige verlang word, onder die heading "Besonderhede van regshulp verlang" aangedui. Dié feit word ook op die opdragvorm aangedui. Indien 'n minderjarige selfonderhoudend deur emansipasie meerderjarig geword het, moet die opdrag in sy naam uitgereik word. Wanneer 'n meerderjarige persoon nog deur sy ouer onderhou word, word daar met hom soos met 'n minderjarige gehandel.
- 4.3.4 An applicant for legal aid must personally make application for legal aid. If, in exceptional circumstances, it is not possible for such a person to call on a legal aid officer personally, or to submit a completed application himself, a close relative or another responsible person familiar with the circumstances may furnish the required particulars and sign the application for legal aid on behalf of the person concerned. A practice of submitting applications through other persons must be avoided.
- 4.3.4 'n Persoon wat regshulp verlang moet persoonlik daarvoor aansoek doen. Indien in uitsonderende omstandighede dit nie vir die persoon moontlik is om persoonlik na 'n regshulpbeampte te gaan, kan 'n na verwante of ander verantwoordelike persoon wat met die omstandighede vertroud is, die nodige besonderhede verstrek en die aansoek vir regshulp namens die betrokke persoon onderteken. 'n Gebruik dat aansoeke deur ander persone voorgelê word, moet vermy word.
- 4.3.5 A single application form for legal aid must be completed. The instruction form must be completed in triplicate. A serial number, for example 1/1993, 2/93, 3/93 etc, must be allotted to every application and this number must be entered on all the prescribed documents relating to the case.
- 4.3.5 'n Enkele regshulpaansoekvorm moet voltooi word. Die opdragvorm moet in drievoud ingevul word. 'n Reeksnommer, byvoorbeeld 1/1993, 2/93, 3/93 ensovoorts, moet aan elke aansoek toegeken word en dié nommer moet op alle voorgeskrewe dokumente wat verband hou met die geval, aangebring word.

3.6 If an application is approved, the particulars of the practitioner to whom an applicant is referred must be clearly entered on the application form under the heading "Remarks", subsequent to having confirmed by telephone or otherwise that the attorney is prepared to handle the matter. Particulars of the firm of attorneys to whom an applicant has been referred, shall be entered in full on the instruction form together with any reference number of that firm if known.

3.7 Legal aid officers must deal with the application and instruction forms as follows:

- a) Whether or not an application has been granted, the application forms must be filed in numerical order in the office file of the legal aid officer concerned.
- b) the original and duplicate copy of the instruction form (LA2-A and B) shall be handed to the applicant with the request that he should submit them to the firm of attorneys concerned without delay;
- c) the triplicate copy of the instruction form (LA2-C) together with the social workers's report (where required), ~~documentary proof of income and value of assets~~ and any other relevant information, must be posted to the head office of the Board without delay, at the latest on the next business day.

3.8 Should a legal aid officer become aware after an instruction has been issued, that the matter is not being proceeded with by the attorney or the applicant, he must recover the instruction forms (LA2-A and B) and forward them to the head office of the Board so that the head office file may be closed.

3.9 When an instruction has been issued by a legal aid officer, his function is fulfilled in terms of the administration of the scheme. Legal aid officers may therefore not -

4.3.6 Indien 'n aansoek toegestaan word, moet die besonderhede van die praktisyn na wie die applikant verwys word, duidelik onder die hoof "Opmerkings" op die aansoekvorm aangebring word nadat daar telefonies of andersins vasgestel is dat die prokureur bereid is om die aangeleentheid te hanteer. Besonderhede van die prokureursfirma na wie 'n applikant verwys is, moet ook volledig op die opdragvorm ingevul word saam met enige verwysingsnommer van daardie firma, indien dit bekend is.

4.3.7 Regshulpbeamptes moet soos volg met die aansoek- en opdragvorms handel:

- a) Die aansoekvorms moet, of 'n aansoek toegestaan is al dan nie, in nommervolgorde op die betrokke regshulp-beampte se kantoorlêer gebêre word;
- b) die oorspronklike en duplikaatafskrif van die opdragvorm (RH2-A en B) word aan die applikant oorhandig met die versoek dat dit sonder versuim by die betrokke prokureursfirma ingedien moet word;
- c) die triplikaatafskrif van die opdragvorm (RH2C) tesame met die maatskaplikewerkverslag (waar nodig) en die dokumentêre bewys van inkomste en waarde van bates en enige ander tersaaklike inligting, moet onverwyld maar laastens op die volgende besigheidsdag aan die Raad se hoofkantoor geos word.

4.3.8 Indien dit, nadat opdrag uitgereik is, onder die regshulpbeampte se aandag kom dat daar nie deur die applikant of die prokureur met 'n aangeleentheid voortgegaan word nie, moet hy die opdragvorm (RH2-A en B) terugvorder en dit aan die Raad se hoofkantoor stuur sodat die hoofkantoorlêer gesluit kan word.

4.3.9 Wanneer 'n opdrag deur 'n regshulpbeampte uitgereik is, is sy funksie ingevolge die administrasie van die skema afgehandel. Regshulpbeamptes mag derhalwe nie -

- a) when instructing attorneys request that merit reports be submitted to them - such reports must be submitted directly to the Director;
- b) extend legal aid mandates, as this function is only vested in the Director; and
- c) issue instructions or related instructions in terms of paragraphs 4.10 and 4.11 (appeals). An application for legal aid for notice of an appeal, a decision concerning obtaining of the court record or a report on the merits, must be submitted in writing to the Director for a decision.

- a) in opdragte aan prokureurs versoek dat verslag oor meriete aan hulle voorgelê word aangesien sulke verslae direk aan die Direkteur voorgelê moet word;
- b) regshulpmandate uitbrei nie, aangesien hierdie funksie slegs by die Direkteur berus; en
- c) opdragte of aanverwante opdragte ooreenkomstig paragrawe 4.10 en 4.11 (appeal) uitreik nie. 'n Aansoek om regshulp vir kennisgewing van appèl, verkryging van hofoorrokonde of verslag oor die meriete moet skriftelik aan die Direkteur vir 'n besluit voorgelê word.

#### 4.4 STAMP DUTY

- 4.4.1 The Department of Finance has decided that legal aid documents are exempt from stamp duties in terms of the provisions of section 4(1)(f) of the Stamp Duty Act, 1968 (Act 77 of 1968). This exemption does not apply to summonses and processes issued by a legal representative.

#### 4.4 SEËLREGTE

- 4.4.1 Die Departement van Finansies het besluit dat regshulpdokumente van seëlregte, ingevolge die bepaling van artikel 4(1)(f) van die Wet op Seëlregte, 1968 (Wet 77 van 1968), vrygestel is. Dit sluit nie dagvaardings en prosesstukke deur die regsverteenwoordiger uitgereik word nie.

#### 4.5 CONFIDENTIAL NATURE OF INFORMATION

- 4.5.1 All information which comes to the notice of an official or representative of the Board must at all times be treated as confidential and may only be disclosed to the legal representative concerned acting on instructions of the Board. The privilege of the client must be recognised and applied. By implication, any information given in confidence to the legal aid officer may be conveyed to other officials of the Legal Aid Board and to the legal representatives appointed, but not to any other person.
- 4.5.2 If another person or body requires information, approval must first be obtained from the Director before any information is disclosed.

#### 4.5 VERTROULIKE AARD VAN INLIGTING

- 4.5.1 Alle inligting wat tot 'n beaampte regsverteenwoordiger van die Raad se kennis kom, moet te alle tye as vertroulik behandel word en mag slegs aan die betrokke regsverteenwoordiger wat namens die Regshulpraad optree, gegee word. Die privilegie van die kliënt moet erken en toegepas word. By implikasie mag inligting wat vertroulik aan die regshulpbeampte gegee word, aan ander beamptes van die Raad en aan die regsverteenwoordigers wat aangestel is, gegee word maar nie aan enige ander persoon nie.
- 4.5.2 Indien 'n ander persoon of liggaam inligting verlang, moet die toestemming van die Direkteur eers verkry word alvorens enige inligting gegee word.

#### 4.6 SIGNING OF DOCUMENTS

- 4.6.1 A representative of the Board shall sign legal aid documents in his capacity as legal aid officer and in the case of legal aid officers in government offices, shall make use of the office *date stamp*.

#### 4.6 ONDERTEKENING VAN STUKKE

- 4.6.1 'n Verteenwoordiger van die Raad onderteken regshulpstukke in sy hoedanigheid as regshulpbeampte en maak, in die geval van regshulpbeamptes in staatskantore, gebruik van die kantoorstempel.

## CHAPTER 5

## HOOFSTUK 5

### LEGAL AID AND THE LEGAL PRACTITIONER

### REGSHULP EN DIE PRAKTISYN

#### 5.1 THE LEGAL PRACTITIONER

#### 5.1 DIE REGSPRAKTISYN

5.1.1 If, after he has been instructed, an attorney or advocate decides not to accept or proceed with the case, he must inform the legal aid officer of his decision and send a copy of his letter in this regard to the applicant. The instruction forms must be returned to the legal aid officer.

5.1.1 Indien 'n prokureur of advokaat nadat 'n opdrag aan hom uitgereik is, besluit om nie die saak aanvaar of daarmee voort te gaan nie, moet die regshulpbeampte van sy besluit verwittig 'n afskrif van sy brief in hierdie verband aan die applikant saam met die opdragvorme aan die regshulpbeampte terugstuur.

5.1.2 If a practitioner accepts an instruction, he must satisfy himself that -

5.1.2 Indien 'n praktisyn 'n opdrag aanvaar, moet seker maak dat -

- a) the instruction form issued to him has been duly completed and that the instruction is clear;
- b) an indication has been given of a contribution that must be made by the applicant to the attorney. (See paragraph 2.4).
- c) he is **able and qualified to** render the required legal service. **By accepting the mandate he agrees to act in terms of this guide.**

- a) die opdragvorm wat aan hom uitgereik volledig ingevul is end at die opdrag duidelik is.
- b) daar 'n aanduiding gegee is van 'n bydrae deur die applikant aan die prokureur gemaak moet word. (Kyk paragraaf 2.4).

- c) hy **bevoeg en gekwalifiseerd** is om die verlangde regsdiens te lewer. **By aanvaarding van hierdie opdrag onderneem hy ooreenkomstig die bepalings van hierdie handleiding op te tree.**

5.1.3 If there is any illegibility, uncertainty or error, the matter must be taken up with the legal aid officer concerned, who must refer it to the Director, if it cannot be resolved. Where a contribution must be made by an applicant, the attorney concerned shall collect the amount before any costs are incurred.

5.1.3 Indien daar enige onduidelikheid, onsekerheid of foute is, word die aangeleentheid met die betrokke regshulpbeampte opgeneem en indien dit nie opgelos kan word nie, moet hy dit na die Direkteur verwys. Waar 'n bydrae deur die applikant gemaak moet word, vorder die betrokke prokureur die bedrag alvorens enige koste aangegaan word.

5.1.4 An attorney who accepts an instruction shall deal with the documents handed to him by the applicant as follows:

5.1.4 'n Prokureur wat 'n opdrag aanvaar, handel volgens met die dokumente wat deur die applikant aan hom oorhandig word:

- a) The original instruction form must be kept as proof of the Board's instruction to him.
- b) Accept the instruction by signing the certificate **probabilis causa** on the duplicate instruction form and submit it to the Director without delay. If the certificate **probabilis causa** cannot be submitted immediately, the instruction must be

- a) Die oorspronklike opdragvorm word bewaard as bewys van die Raad se opdrag aan hom.

- b) Die opdrag aanvaar deur die **probabilis causa** opdragsertifikaat op die duplikaatopdragvorm onderteken en onverwyld aan die Direkteur gestuur. Indien die **probabilis causa**-sertifikaat nie onmiddellik verskaf kan word nie, moet die

accepted, the instruction form (LA2-B) amended accordingly, signed and returned. The certificate **probabilis causa** must thereafter be submitted before any further costs are incurred, excluding the costs of submitting such certificate. It is important to evaluate the merits of a matter at the earliest possible stage to avoid fruitless litigation. Practitioners must therefore attend to this requirement as a matter of urgency. The practitioner may, however, take reasonable steps to avoid a default judgment being granted or to prevent prescription taking place providing such consequences were not occasioned by his neglect or oversight. Where such steps are taken the merit report must be submitted to the Director as a matter of urgency together with a summary of the steps taken and the reasons therefor.

opdrag aanvaar word en die opdragvorm (RH2-B) dienooreenkomstig gewysig, onderteken en teruggestuur word. Die **probabilis causa**-sertifikaat moet daarna ingedien word voordat enige verdere koste aangegaan word, uitgesluit koste om die voornoemde sertifikaat te verskaf. Dit is belangrik om so gou moontlik die meriete van 'n saak te oorweeg ten einde vrugtelose litigasie te vermy. Praktisyns word dus versoek om dringend na hierdie vereiste om te sien. Die praktisyn mag egter redelike stappe neem om verstekvonnis of verjaring te vermy met die voorbehoud dat sodanige gevolge nie deur sy nalatigheid of oorsig veroorsaak was nie. Waar sulke stappe geneem is, moet die merieteverslag op 'n dringende basis aan die Direkteur voorgelê word, tesame met 'n opsomming van die stappe en die redes daarvoor.

5.1.5 After being instructed, an attorney or advocate must render all assistance himself, and should brief a correspondent and/or advocate only where essential. An attorney may not, without the written consent of the Director, -

5.1.5 Nadat hy opdrag gegee is, verleen 'n advokaat of prokureur self alle bystand en net waar noodsaaklik gee hy opdrag aan 'n korrespondent en/of advokaat. 'n Prokureur mag nie sonder die skriftelike toestemming van die Direkteur -

- a) brief an advocate to render any service he is by law capable of rendering or normally renders himself.
- b) brief a senior advocate; and
- c) prosecute an appeal. (See paragraphs 4.10 and 4.11).

- a) aan 'n advokaat opdrag gee om enige diens te lewer wat hyself regtens instaat is, of normaalweg self lewer nie.
- b) opdrag aan 'n senior advokaat gee nie; en
- c) 'n appèl bevorder nie (kyk paragrawe 4.10 en 4.11).

5.1.6 The choice of a correspondent and/or advocate rests with the attorney concerned. The advocate is briefed in accordance with the rules of the local Bar Councils. A correspondent or an advocate so briefed must be prepared to render his services at legal aid tariff and subject to the provisions contained herein; he should be advised in advance that the matter is a legal aid matter.

5.1.6 Die keuse van 'n korrespondent en/of advokaat berus by die betrokke prokureur. 'n Advokaat word opdrag gegee ooreenkomstig die reëls van die plaaslike Balierade. 'n Korrespondent of 'n advokaat aan wie so 'n opdrag gegee word, moet bereid wees om sy dienste teen regshulptarief te lewer en is onderworpe aan die voorskrifte hierin vervat en moet vooraf ingelig word dat die aangeleentheid 'n regshulpsaak is.

5.1.7 If an attorney or advocate acting in a legal aid matter has reason to believe that -

5.1.7 Indien 'n prokureur of advokaat wat in 'n regshulpaangeleentheid optree, rede het om te glo dat -

- a) the applicant's problem is trivial or a matter arising from vexatiousness; or

- a) die applikant se probleem beuselagtig is of 'n aangeleentheid is wat uit kwelsug voortspruit; of

- b) the circumstances are such that no real or substantial benefit will be attained by the rendering of legal aid; or
- c) the legal costs involved would be out of proportion to the relief sought; or
- d) generally taking all the circumstances of the matter into account, legal aid should not have been granted for financial or other reasons,

**the attorney or advocate must refuse to proceed** and the attorney must inform the Director accordingly.

5.1.8 Before an attorney and/or advocate enters into or continues with litigation on a legal aid basis, he must satisfy himself that the client in a civil case has **reasonable prospects** of success and that in a criminal case he will **render an essential service** to the accused.

5.1.9 An attorney who has been briefed must not render assistance beyond the scope of his instruction and must not make applications (including rule 43 applications) or institute actions which are additional to or beyond the main instruction without the written consent of the Director. Providing legal aid beyond the initial scope of the instruction must be approved in advance by the Director.

Telephonic authorisation may be obtained for the proposed action, but the obligation rests on the attorney to confirm such authorisation in writing. Only then will the attainment of authorisation be deemed to be completed.

5.1.10 The Board has drafted a checklist for use in third party matters. This is appended as annexure K and should be referred to by practitioners.

## 5.2 NOTICE THAT LEGAL AID IS BEING RENDERED

5.2.1 In civil matters, the attorney must, on behalf of the Board, inform the opposing party and the registrar/clerk of the court in writing, in accordance with the provisions of section 8A

- b) die omstandighede sodanig is dat geen ware of wesenlike voordeel jdeur die verlening van regshulp bereik kan word nie; of
- c) die regskoste daaraan verbonde buite verhouding sou wees tot dit wat beoog word; of
- d) met inagneming van al die omstandighede van die geval, regshulp om finansiële of ander redes nie verleen moes gewees het nie.

**moet die prokureur of advokaat weier** of voort te gaan en moet die prokureur die Direkteur dienoooreenkomstig verwittig.

5.1.8 Voordat 'n prokureur en/of advokaat op 'n regshulpbasis tot gedingvoering toetree en daarmee voortgaan, moet hy homself tevrede stel dat die kliënt in 'n siviele saak 'n **redelike vooruitsig** op sukses het en dat hy in 'n strafsake 'n **wesenlike diens** aan die beskuldigde kan lewer.

5.1.9 'n Prokureur aan wie opdrag gegee is, moet nie hulp buite die omvang van sy opdrag verleen nie. Nie aansoeke (met inbegrip van reël 43 aansoeke) bring of gedinge bykomstig tot die hoofgeding instel sonder die skriftelike toestemming van die Direkteur nie. Die verskaffing van regshulp buite aanvanklike opdrag moet vooraf deur die Direkteur goedgekeur word.

Telefoniese magtiging vir die voorgestelde optrede kan verkry word, maar daar rus 'n plig op die praktisyn om sodanige toestemming skriftelik te bevestig. Eers dan sal die verkryging van toestemming geag voltooi wees.

5.1.10 Die Raad het 'n kontrolelys vir gebruik in derdeparty-aangeleenthede saamgestel. Dit word aangeheg as aanhangsel K en praktisyns behoort dit te gebruik.

## 5.2 KENNISGEWING DAT REGSHULP VERLEEN WORD

5.2.1 In die geval van 'n siviele geding moet die prokureur, namens die Raad, die teenparty en die griffier/klerk van die hof onverwyld skriftelik verwittig, ooreenkomstig die

of the Act, that aid is being rendered to the litigant by the Board and forward a copy of the notice to the Director. The attorney must also indicate on all pleadings that he represents a legal aid litigant. Failure to do this deprives the Board of its ability to recover costs in terms of the award which are ceded to it in its own name, and may lead to severe losses on the part of the Board. It may also result in the advocate appointed not receiving full payment of his fees. The Board reserves its right to settle only the nett account of the advocate as provided in this guide. In a criminal matter, during the accused's first appearance in court on legal aid, the attorney/advocate must hand in a similar notice to court that the accused has received legal aid, provide the public prosecutor with a copy and forward a copy to the Director.

bepalings van artikel 8A van die Wet, dat die Raad hulp aan die gedingvoerder verleen en 'n afskrif van die kennisgewing aan die Direkteur stuur. Die prokureur moet ook op alle pleitstukke aandui dat hy 'n regshulp-gedingvoerder verteenwoordig. Versuim in hierdie verband ontnem die Raad die bevoegdheid om koste, ingevolge die toekenning wat aan hom gesedeer is, op sy naam te verhaal en kan tot ernstige verliese aan die kant van die Raad lei. Dit mag ook daartoe lei dat die aangestelde advokaat nie ten volle betaling van sy fooi ontvang nie. Die Raad behou sy reg om slegs die netto bedrag soos deur die handleiding bepaal, te vereffen. In 'n strafsak moet die prokureur/advokaat tydens die beskuldigde se eerste verskyning in die hof nadat regshulp verleen is, 'n soortgelyke kennisgewing, dat aan die beskuldigde regshulp verleen is, by die hof inlewer, 'n afskrif aan die staatsaanklaer verskaaf en 'n afskrif aan die Direkteur stuur.

5.2.2 Should it come to the notice of an attorney who has been instructed that the opposing party is also acting on legal aid, no further proceedings in the matter should be taken and he must notify the Director **immediately** and furnish him with particulars. The Director will decide how legal aid shall be provided for the further prosecution of the matter.

5.2.2 Wanneer dit tot die kennis van 'n prokureur aan wie daar opdrag gegee is, kom dat die teenparty ook regshulp geniet, moet geen verdere stappe in die aangeleentheid gedoen word nie en moet hy die Direkteur **onmiddellik** daarvan verwittig en besonderhede daarvan aan hom verstrek. Die Direkteur sal besluit hoe regshulp verleen moet word vir verdere gedingvoering.

### 5.3 REFERENCE IN CORRESPONDENCE

### 5.3 VERWYSING IN BRIEFWISSELING

5.3.1 The applicant's surname and full names as they appear on the instruction form, the reference number of the legal aid officer and the reference number of the Board's Head Office, if known, must always be mentioned in correspondence. To merely refer to a matter as "Smit vs Smit" or to the minor on whose behalf the action is instituted, makes it impossible to trace the file and deal with any issue relating to it. When an **account is rendered** for payment, a copy of the instruction must accompany that account.

5.3.1 Die van en volle name van die applikant soos dit op die opdragvorm verskyn, die verwysingsnommer van die regshulp-beampte en die verwysingsnommer van die Raad se hoofkantoor, indien bekend, moet altyd in briefwisseling vermeld word. Om byvoorbeeld bloot na 'n geval te verwys as "Smit vs Smit" of bloot na die minderjarige te verwys namens wie opgetree word, maak dit onmoontlik om die lêer op te spoor en met enige kwessie wat daarmee verband hou, te handel. Wanneer 'n **rekening gelewer word** vir betaling, moet 'n afskrif van die opdrag daardie rekening vergesel.

### 5.4 CORRESPONDENCE AND POSTAL MATTERS

### 5.4 KORRESPONDENSIE EN POSAANGELEENTHEDE

5.4.1 Except where otherwise indicated in this Guide, a legal aid officer's task is completed after he has referred the applicant to an attorney. Any other

5.4.1 Behalwe waar in hierdie Handleiding anders aangedui word, is 'n regshulpbeampte se taak afgehandel nadat hy die applikant na 'n

matter or problem which the attorney may experience thereafter which he cannot solve by reference to the provisions of this Guide, must be taken up with the Director. In the same way, any queries or other issues related to the client must be reported directly to the Director.

5.4.2 If at all possible, the mailing of documents by registered or certified post must be avoided; care must be taken that sufficient postage is affixed.

## 5.5 COPIES OF RECORDS AND DOCUMENTS

5.5.1 If the record of judicial or administrative proceedings or a copy of a document is essential to carry out the instructions of the Board, the instructed attorney must first obtain consent from the Director to obtain such an item before he can recover the costs from the Board. When applying for consent a quotation relating to costs must be submitted.

## 5.6 SUBSTITUTED SERVICE AND EDICTAL CITATION

5.6.1 If necessary, an attorney who has been instructed may proceed by way of substituted service or edictal citation with the prior consent of the Director.

5.6.2 By agreement with the Board, the Press Union of South Africa has recommended to its members that they publish advertisements in legal aid cases at a reduced tariff (welfare tariff). When applying for consent an estimate of the cost involved must be submitted. When an advertisement is submitted, it must be accompanied by a certificate from the attorney concerned to the effect that it is a matter where the Board is rendering assistance to an indigent person as well as by a copy of the instruction form (LA2-A). A copy of the certificate must accompany the account for payment.

prokureur verwys het. Enige ander aangeleentheid of probleem wat die prokureur daarna mag ondervind en wat hy nie aan die hand van die bepalinge van hierdie Handleiding kan oplos nie, moet met die Direkteur opgeneem word. Eweneens moet die Direkteur direk van enige navrae deur of ander kwessies rakende die kliënt verwittig word.

5.4.2 Indien enigsins moontlik moet die versending van stukke per geregistreerde of gesertifiseerde pos vermy word en sorg moet gedra word dat voldoende posseëls op stukke aangebring word.

## 5.5 AFSKRIFTE VAN NOTULES EN DOKUMENTE

5.5.1 Indien die oorkonde van geregtelike of administratiewe stappe of die afskrif van 'n dokument noodsaaklik is om uitvoering aan die opdragte van die Raad te gee, moet die prokureur aan wie daar opdrag gegee is, eers goedkeuring by die Direkteur kry om sodanige item te verkry voordat hy die koste op die Raad kan verhaal. Wanneer aansoek gedoen word om goedkeuring, moet 'n kwotasie ten opsigte van koste ingedien word.

## 5.6 VERVANGENDE BETEKENING EN EDIKTALE SITASIE

5.6.1 Indien nodig, kan 'n prokureur aan wie opdrag gegee is, by wyse van vervangende betekening of ediktale sitasie voortgaan met die vooraf verkreeë goedkeuring van die Direkteur.

5.6.2 Volgens ooreenkoms met die Raad het die Persunie van Suid-Afrika by sy lede aanbeveel om advertensies in regshulpsake teen 'n verminderde tarief (welsynstarief) te publiseer. Wanneer aansoek om goedkeuring gedoen word, moet 'n raming van die koste daaraan verbonde ingedien word. Wanneer 'n advertensie ingestuur word, moet dit vergesel gaan van 'n sertifikaat van die betrokke prokureur ten effekte dat dit in verband staan met 'n aangeleentheid waarin die Raad regshulp aan 'n behoefte persoon verleen het, asook van 'n afskrif van die opdragvorm (RH2-A). 'n Afskrif van dié sertifikaat moet die rekening om betaling vergesel.

5.7 MEDICO-LEGAL SERVICES AND EXPERT WITNESSES	5.7 REGSMEDIESE DIENSTE EN DESKUNDIGE GETUIES
5.7.1 If the services of medical practitioners or other expert witnesses are required, an attorney may obtain these with the prior consent of the Director. In order to enable the Director to consider the application, an estimate of the costs must accompany the application. Annexure J should be completed for this purpose. If more than one quotation for an expert cannot be obtained, or if only two quotations are obtainable, the reasons for furnishing only one or two quotations must be submitted.	5.7.1 Indien die dienste van mediese praktisyns of ander deskundige getuies noodsaaklik is, kan 'n prokureur dit met die vooraf verkreeë goedkeuring van die Direkteur bekom. Ten einde die Direkteur in staat te stel om die aansoek te oorweeg, moet 'n beraming van die koste die aansoek vergesel. Aanhangsel J moet vir hierdie doel voltooi word. Indien meer as een kwotasie vir 'n deskundige nie verkry kan word nie, of indien net twee verkry kan word, moet die redes vir die verskaffing van slegs een of twee verskaf word.
5.7.2 The Medical Association of South Africa has recommended to its members that services in legal aid cases should be rendered at seventy five percent (75%) of the customary fees. This recommendation is contained in the minutes of a meeting held by the Federal Council of the Medical Association in May 1986. Whenever the services of medical practitioners are called upon in a legal aid case, the fact that the litigant is an indigent person assisted by the Board must be brought to the attention of the medical practitioner concerned. The medical practitioner's attention must be drawn to the recommendation of the Medical Association and a copy of the instruction form (LA2-A) must accompany such notice. A copy of the aforementioned notice must accompany the account for payment.	5.7.2 Die Mediese Vereniging van Suid-Afrika het by sy lede aanbeveel om dienste in regshulpsake teen vyf-en-sewentig persent (75%) van die gebruikelike gelde te lewer. Hierdie aanbeveling is vervat in die notule van 'n vergadering van die Federale Raad van die Mediese Vereniging in Mei 1986. Wanneer daar van die dienste van mediese praktisyns in 'n regshulpsaak gebruik gemaak word, moet die feit dat die gedingvoerder 'n behoeftige persoon is wat deur die Raad bygestaan word, onder die aandag van die betrokke mediese praktisyn gebring word. Die mediese praktisyn se aandag moet op die aanbeveling van die Mediese Vereniging gevestig word en 'n afskrif van die opdragvorm (RH2-A) moet sodanige mededeling vergesel. 'n Afskrif van die mededeling moet die rekening vir betaling vergesel.
5.7.3 The Board does not pay costs related to the <b>medical treatment</b> , operations or hospitalisation of the applicant, nor travelling costs for visiting medical practitioners, or the costs of client attending court.	5.7.3 Die Raad betaal nie die koste verbonde aan die <b>mediese behandeling</b> , operasies of hospitalisasie van die applikant nie en ook nie die vervoerkoste vir besoeke aan mediese praktisyns of die onkoste van die kliënt om die hof by te woon nie.
5.8 TRACING AGENTS AND OTHER CONSULTANTS	5.8 OPSPORINGSAGENTE EN ANDER KONSULTANTE
The Board is not obliged to settle the expenses of tracing agents, investigators, claim consultants or persons who render services of a similar nature, unless such services and the maximum costs attached have previously been approved in writing by the Director.	Die Raad staan nie in vir die uitgawes van opsporingsagente, ondersoekers, eisbemiddelaars of persone wat soortgelyke dienste lewer nie, tensy dié dienste en die maksimum koste daaraan verbonde vooraf skriftelik deur die Direkteur gemagtig is.

## WITHDRAWAL

A legal practitioner acting in a legal aid matter may withdraw under the same circumstances under which he normally could have withdrawn, had it not been a legal aid matter. Such a withdrawal can result in considerable additional costs for the Board, owing to the fact that fresh instructions will have to be given to another legal practitioner. Thus, before a legal practitioner withdraws, the matter must be considered very thoroughly and the Director must, where possible, be informed of the circumstances beforehand.

## 5.10 PROGRESS REPORTS

5.10.1 Except in simple matters and those which are resolved within three months of the instruction, the attorney instructed shall advise the Director on **four-monthly** basis regarding the circumstances of the matter and its progress. Any information relevant to the disposal of the matter, its complexities, financial implications, settlement, limitation of proceedings or the like must be transmitted to the Director whenever they arise.

5.10.2 A file is opened at the head office of the Board in respect of each case in which legal aid is rendered and these files must from time to time be closed and destroyed. As soon as the necessary legal aid has been rendered to a person, or a matter becomes stale or for some other reason is not disposed of, this fact must be reported to the Director so that the matter may be finalised in accordance with the provisions of the Board.

5.10.3 If a practitioner who has been instructed on behalf of the Board does not submit a final account within six months from date of instruction or report **four-monthly** on the progress, he may be requested in writing to do so within twenty-one days. If an attorney remains in default of compliance with such a request, the Board's file will be closed. It will be accepted, without waiver of any rights of the Board, that no moneys are owed to the attorney.

## ONTTREKKING

'n Regspraktisyn wat in 'n regshulpaangeleentheid optree kan hom onttrek in dieselfde omstandighede as waarin hy hom normaalweg sou onttrek het as dit nie 'n regshulpaangeleentheid was nie. So 'n onttrekking kan vir die Raad aansienlike bykomende koste tot gevolg hê deurdat daar opnuut opdrag aan 'n ander regspraktisyn gegee sal moet word. Alvorens 'n regspraktisyn hom dus onttrek, moet die aangeleentheid baie deeglik oorweeg word en moet die Direkteur waar moontlik vooraf van die omstandighede verwittig word.

## 5.10 VORDERINGSVERSLAE

5.10.1 Behalwe in eenvoudige sake en sake wat opgelos word binne drie maande na die opdraggewing, moet die prokureur aan wie die opdrag gegee is, die Direkteur op 'n **viermaandelikse** grondslag inlig oor die omstandighede van die aangeleentheid en die vordering wat met die saak gemaak is. Enige inligting wat betrekking het op die afhandeling van die aangeleentheid, sy ingewikkeldhede, finansiële implikasies, skikking, beperking van verrigtinge en dies meer, moet wanneer dit ook al ontstaan, aan die Direkteur oorgedra word.

5.10.2 'n Lêer word by die hoofkantoor van die Raad geopen ten opsigte van elke geval waarin regshulp verleen word en hierdie lêers moet van tyd tot tyd gesluit en vernietig word. Sodra die nodige regshulp aan 'n persoon verleen is of as 'n aangeleentheid doodloop of as dit om die een of ander rede nie afgehandel word nie, moet daar oor hierdie feit aan die Direkteur verslag gedoen word sodat die aangeleentheid ooreenkomstig die voorskrifte van die Raad afgesluit kan word.

5.10.3 Indien 'n praktisyn aan wie daar namens die Raad opdrag gegee is, nie binne ses maande vanaf die datum van opdrag 'n finale rekening lewer of nie **viermaandeliks** verslag oor die vordering doen nie, kan hy skriftelik versoek word om dit binne een-en-twintig dae te doen. Indien 'n prokureur in gebreke bly om aan so 'n versoek te voldoen, sal die Raad se lêer gesluit word. Daar sal aanvaar word, sonder afstanddoening van enige regte van die Raad, dat geen gelde aan die prokureur verskuldig is nie.

- 5.10.4 At the end of any matter or when any interim order is granted the practitioner must submit a full report to the Board indicating the outcome of the matter or order and where appropriate, all issues relating to costs and the possibility of recovering costs and or enforcing an order.
- 5.10.4 Aan die einde van enige saak of wanneer enige tussentydse bevel gegee is, moet die praktisyn 'n volledige verslag aan die Raad voorsien waarin die uitslag van die saak en waar toepaslik, alle omstandighede rakende koste, die verhaal daarvan en die afdwinging van die bevel uiteengesit word.
- 5.11 POSSIBLE ABUSES AND INCURRING OF COSTS**
- 5.11 MOONTLIKE MISBRUIKE EN AANGAAN VAN KOSTE**
- 5.11.1 During the handling of legal aid matters, attorneys and advocates must at all times be on their guard against abuse of the Board's services by the applicants (from the commencement to the finalisation of a case). A considerable period may elapse from the commencement and the applicants' circumstances may change considerably during this time. Changes which may affect the qualifications of a client for the continuation of legal aid must be reported immediately to the Director.
- 5.11.1 Tydens die hantering van regshulpaangeleenthede moet prokureurs en advokate te alle tye bedag wees op misbruik deur applikante van die Raad se dienste. Van die begin tot die afhandeling van 'n saak kan 'n aansienlike tyd verloop en die applikante se omstandighede kan gedurende hierdie tydperk heelwat verander. Veranderinge wat die voortsetting van regshulp aan 'n kliënt kan beïnvloed, moet onmiddellik by die Direkteur aangemeld word.
- 5.11.2 During subsequent interviews, the attorney must establish from a client whether he continues to qualify for legal aid according to the means test. If he ceases to do so the matter may not be proceeded with on a legal aid basis without the Director's written consent. Any irregular obtaining or use of the Board's services which may come to light must also be reported immediately.
- 5.11.2 Tydens latere onderhoude moet die prokureur by 'n kliënt vasstel of hy steeds ingevolge die middeletoets vir regshulp kwalifiseer. Indien hy nie meer kwalifiseer nie, mag daar nie sonder die skriftelike toestemming van die Direkteur op regshulpbasis met die aangeleentheid voortgegaan word nie. Enige onreëlmatige verkryging of gebruik van die Raad se dienste wat aan die lig kom, moet ook onverwyld aangemeld word.
- 5.11.3 The Board is financed inter alia from public funds and it is in the public interest that legal costs be kept as low as possible. Legal aid clients whose actions lead to unnecessary costs must be discouraged from doing so and problems in this regard must be brought to the Director's attention immediately. (See subparagraph 5.12.3). No unnecessary costs will thus be permitted.
- 5.11.3 Die Raad word onder andere uit openbare fondse gefinansier en dit is in die openbare belang dat regskoste so laag moontlik gehou word. Regshulpkliënte wie se optrede onnodige koste meebring, moet ontmoedig word om dit te doen en probleme in hierdieverband moet onmiddellik onder die aandag van die Direkteur gebring word. (Kyk subparagraaf 5.12.3). Geen onnodige koste mag derhalwe aangegaan word nie.
- 5.11.4 It is important to note that once legal aid has been granted to a client the costs aspect of the matter changes. The interest in costs is ceded to the Board together with a percentage of the proceeds of the action as determined by the Board from time to time - **the Benefit**. The client therefore has no further interest in the costs issue. The attorney is paid by the Board in
- 5.11.4 Dit is belangrik om daarop te let dat nadat regshulp aan 'n kliënt verleen is, die koste-aspek van die aangeleentheid verander. Die belang in koste word aan die Raad gesedeer tesame met 'n persentasie van die opbrengs van die geding soos van tyd tot tyd deur die Raad bepaal - die **Voordeel**. Die kliënt het dus geen verdere belang in die kosteaspekte nie. Die prokureur

terms of this Guide. The Board's interests must therefore continue to be considered and protected and the legal practitioners involved must see to the despatch and finalisation of the matter and ensure that proper consideration is given to the interests of the Board.

Any attempt to bring the matter to finality which has a direct or indirect impact on the Board's right to recover costs, must be referred to the Director for **prior consent before conclusion**. An order or agreement that each party will pay its own costs must for example not be proposed, put forward or accepted without the consent of the Director. An agreement that a party will pay his costs to the date legal aid was granted and thereafter each party will pay its own costs, is likewise unacceptable. Any action on the part of any attorney/advocate acting in the matter which would unnecessarily increase any legal costs without good cause must be avoided. The Board reserves the right to refuse payment of any costs or charges occasioned in this manner.

5.11.5 If a matter is settled for a lump sum inclusive of costs or for a capital sum with a contribution towards costs the Board will interpret this and apply it so that the party and party taxed bill will be deemed to be included in this sum. The consequence is that these costs will have to be paid to the Board out of the proceeds together with the Benefit, on the balance referred to in paragraph 5.19. It is the duty of the legal practitioner to inform the client of this situation and to ensure that these sums are paid over to the Board.

5.11.6 The Board reserves the right to withhold settling any outstanding accounts due to practitioners until the provisions of paragraphs 5.11.4 and 5.11.5 have been complied with or any dispute resolved.

5.11.7 The Director may, should the circumstances of the matter warrant it, seek confirmation from the presiding officer that the client was satisfactorily represented or that proper appearances in court took place and that no unnecessary postponements were obtained by the legal representatives.

word ooreenkomstig hierdie Handleiding deur die Raad betaal. Die Raad se belange moet deur die deurentyd in ag geneem en beskerm word en die betrokke regspraktisyns moet toesien dat die aangeleentheid afgehandel en gefinaliseer word.

Enige poging om 'n aangeleentheid wat 'n direkte of indirekte uitwerking het op die Raad se regte om koste te verhaal, af te handel, moet, voor **afhandeling**, na die Direkteur verwys word vir **toestemming**. 'n Bevel of ooreenkoms dat elke party sy eie koste moet betaal, moet byvoorbeeld nie voorgestel, aan die hand gedoen of aanvaar word sonder die toestemming van die Direkteur nie. 'n Ooreenkoms dat 'n party sy koste sal betaal tot die datum waarop regshulp toegestaan is en dat elke party daarna sy eie koste sal betaal, is insgelyks onaanvaarbaar. Enige optrede aan die kant van 'n prokureur/advokaat wat onnodiglik regskoste, sonder rede, vir die Raad verhoog, moet vermy word. Die Raad behou die reg voor om betaling van enige koste, op die wyse veroorsaak, te weier.

5.11.5 Indien 'n aangeleentheid geskik word vir 'n globale bedrag, met inbegrip van koste of 'n globale bedrag plus 'n bydrae tot koste, sal die Raad dit so interpreteer en toepas dat die getakseerde rekening van die party-en-party koste geag word in hierdie bedrag ingesluit te wees. Gevolglik sal hierdie koste aan die Raad betaal moet word uit die opbrengs tesame met die Voordeel bedoel in paragraaf 5.19. Dit is die plicht van die regspraktisyn om die kliënt in te liggooi oor hierdie situasie en om te verseker dat hierdie bedrae aan die Raad oorbetaal word.

5.11.6 Die Raad behou hom die reg voor om die betaling van enige uitstaande rekenings aan die praktisyns te weerhou totdat die bepalinge van paragraaf 5.11.4 en 5.11.5 nagekom is of die geskil opgelos is.

5.11.7 Die Direkteur kan, indien die omstandighede van die aangeleentheid dit regverdig, bevestiging verzoek van die voorsittende beamppte dat die kliënt nagehoor behore verteenwoordig is of dat behoorlik verskynings in die hof plaasgevind het en dat geen onnodige uitstelle deur die regsverteenvoerders verkry is nie.

## CHAPTER 6

### GENERAL

#### 6.1 DISCRETIONARY POWERS OF THE DIRECTOR

6.1.1 The Director has a general discretionary power with regard to the administration of the legal aid scheme as prescribed by the Board from time to time.

#### 6.1.2 Delegation of powers of the Director

The Director may delegate certain powers to other officials of the Board.

#### 6.2 GENERAL

6.2.1 The Board revises its scheme periodically and suggestions in connection with possible solutions to problems and improvement of the practical operation of the scheme are welcomed. Legal practitioners must submit their suggestions to their respective Law Societies and Bar Councils for transmission to the Board.

6.2.2 The rendering of legal aid for certain services may be suspended by the Board from time to time, and the Board may also from time to time institute restrictions on legal costs in certain matters.

#### 6.3 ANNEXURES

A - Legal Aid Act 1969

B - List of the Board's branch offices

C - Means test

D - Contribution tables

E - Tariff of fees (attorney)

F - Tariff of fees (advocate)

G - Table for calculating means test

## HOOFSTUK 6

### ALGEMEEN

#### 6.1 DISKRESIONÊRE BEVOEGDHEID V DIREKTEUR

6.1.1 Die Direkteur beskik oor 'n algem diskresionêre bevoegdheid ten opsigte van administrasie van die regshulpskema soos tyd tot tyd deur die Raad voorgeskryf.

#### 6.1.2 Delegasie van Direkteur se magte

Die Direkteur mag sekere bevoegdhede ander beamptes van die Raad deleger.

#### 6.2 ALGEMEEN

6.2.1 Die Raad se skema word periodiek hersien voorstelle in verband met moontlike oplossi vir probleme en verbetering in die prakti werking van die skema sal verwelkom we Regspraktisyns moet hulle voorstelle by h onderskeie Prokureursordes en balierade ind vir voorlegging aan die Raad.

6.2.2 Die verlening van regshulp vir sekere dier word van tyd tot tyd deur die Raad opgeskort daar word ook van tyd tot tyd deur die Raad beperkings op die regskoste van sek aangeleenthede gestel.

#### 6.3 BYLAES

A - Wet op Regshulp, 1969

B - Lys van Raad se takkantore

C - Middeltoets

D - Bydraetabelle

E - Tarief van gelde (prokureur)

F - Tarief van gelde (advokaat)

G - Tafel vir berekening van middeltoets

H - Benefit payable by client to Legal Aid Board.

I - Amount of Benefit due by client

J - Estimate of costs of expert witnesses

K - Third party checklist

H - Voordeel betaalbaar deur kliënt aan Regshulpraad.

I - Bedrag van Voordeel verskuldig deur kliënt.

J - Beraamde koste van deskundige getuies.

K - Derdeparty Handleiding

## 1 COMMENCEMENT

1.1 This Guide is called the Legal Aid Guide, 1996 and comes into operation on 1 January 1996.

1.2 This Guide replaces the Legal Aid Guide of July 1995. All instructions, provisions and resolutions of the Board already in force, but which have not been incorporated in the Guide, still remain in force, provided that all instructions, provisions and resolutions which may be made from time to time and are not incorporated in the Guide, will also be in force.

## 6.4

### 6.4.1

### 6.4.2

## INWERKINGTREDING

Hierdie Handleiding heet die Regshulphandleiding, 1996 en tree in werking op 1 Januarie 1996.

Hierdie Handleiding vervang die Regshulphandleiding van Julie 1995. Alle voorskrifte, bepalinge en besluite van die Raad wat reeds van krag is maar nie in die Handleiding opgeneem is nie, bly steeds van krag: met dien verstande dat alle voorskrifte, bepalinge en besluite wat van tyd tot tyd neergelê en/of geneem gaan word en wat nie in die Handleiding opgeneem word nie, ook van krag sal wees.

## CHAPTER 7

### VAT - Self Invoicing

- 7.1 The Board is registered as a vendor for VAT.
- 7.2 To facilitate the issuing of VAT invoices for the correct amount the Board has obtained permission from the Commissioner for Inland Revenue to make use of the self-invoicing method in terms of Section 20(2) of the Value Added Tax Act (89 of 1991)
- 7.3 Practitioners who are registered as vendors for VAT must thus NOT issue tax invoices, debit or credit notes to the Board in respect of fees, but must furnish a statement instead on which they also quote their VAT registration number.
- 7.4 Once the statement has been taxed the Board will issue a tax invoice on behalf of the practitioner forwarding the original to the practitioner together with its remittance and retaining the copy for its records.
- 7.5 Practitioners must account to the Receiver of Revenue for the VAT per the tax invoices provided by the Board.
- 7.6 Practitioners who are not registered as vendors for VAT will continue to invoice the Board as before stating on the invoice that they are not registered for VAT.
- 7.7 The new system of self-invoicing will be implemented as follows:
- 7.7.1 From 2 January 1996 all new legal aid instructions will be issued on new forms incorporating the self-invoicing system and all payments in terms thereof will be made by the Board under these provisions.
- 7.7.2 All outstanding fees accounts which can reasonably be expected to be finalised by 31 March 1996 and which were issued under the old system will be finalised under the previous system.
- 7.7.3 All other accounts should be dealt with under the new system of self-invoicing and the Board will arrange with practitioners in these instances to consent to the system of self-invoicing.

## HOOFSTUK 7

### BTW - Self Fakturering

- 7.1 Die Raad is vir BTW as 'n ondernemer geregistreer.
- 7.2 Om die uitreik van BTW-fakture vir die regte belasting te vergemaklik is toestemming van die Kommissaris vir Binnelandse Inkomste verkry om die self-fakturering metode te gebruik volgens Artikel 20(2) van die Wet op Belasting op Toegevoegde Waarde (89 van 1991).
- 7.3 Praktisyns wat as ondernemers vir BTW geregistreer is, moet dus NIE fakture, debiet- of kredietnota's uitreik nie, maar moet pleks daarvan 'n staatsverklaring uitreik waarin hulle ook hul BTW-registrasienommer vermeld.
- 7.4 Sodra die staatsverklaring getakseer is, sal die Raad 'n belastingsfaktuur namens die praktisyn uitreik en die betaling oorspronklik saam met sy betaling aan die praktisyn versend. Die Raad sal 'n afskrif vir sy rekords hou.
- 7.5 Praktisyns moet verantwoording aan die Ontvanger van Inkomste doen vir die BTW per die belastingsfakture wat deur die Raad voorsien is.
- 7.6 Praktisyns wat nie as ondernemers vir BTW geregistreer is nie, sal voortgaan om die Raad te faktureer. Hulle sal op die faktuur vermeld dat hulle nie vir BTW geregistreer is nie.
- 7.7 Die nuwe stelsel van self fakturering sal soos volg geïmplementeer word:
- 7.7.1 Vanaf 2 Januarie 1996 sal alle nuwe regshulpopdragte op nuwe vorms wat die self-fakturering stelsel in korporasie uitgereik word en sal alle betalings ingevolge daardie opdragte volgens die nuwe stelsel gemaak word.
- 7.7.2 Alle uitstaande foederekeninge redelikerwys teen 31 Maart 1996 gefinaliseer kan word en wat onder die ou stelsel uitgegee is, sal onder die bepalinge van die ou stelsel afgehandel word.
- 7.7.3 Alle ander rekeninge behoort onder die nuwe stelsel van self fakturering behandel te word en sal die Raad reëlings met praktisyns maak hierdie gevalle tref om toestemming tot self fakturering te gee.

**ANNEXURES  
TO LEGAL AID  
GUIDE**

## **MEANS TEST**

### **SINGLE PERSONS AND ESTRANGED SPOUSES**

A person with a **calculated income** not exceeding R500,00 per month together with an addition thereto of R150,00 per dependent child, qualifies for legal aid and shall contribute the amount indicated opposite the appropriate column of Part 1.

### **MARRIED PERSONS**

A married person with a **calculated joint income** not exceeding R1 000,00 per month together with an addition thereto of R150,00 per dependent child, qualifies for legal aid and shall contribute the amount indicated opposite the appropriate column of Part 11.

DEEL 1

PART 1

ALLEENLOPENDE PERSONE EN VERVREEMDE GADES  
SINGLE PERSONS AND ESTRANGED SPOUSES

INKOMSTE PER MAAND

INCOME PER MONTH

Geen kinders No Children	1 Kind 1 Child	2 Kinders 2 Children	3 Kinders 3 Children	Bydrae Contribution	4 Kinders 4 Children	5 Kinders 5 Children	6 Kinders 6 Children	Bydrae Contribution
0-200	0-350	0-500	0-650	0	0-800	0-950	0-1100	0
201-250	351-400	501-550	651-700	25	801-850	951-1000	1101-1150	25
251-300	401-450	551-600	701-750	35	851-900	1101-1050	1151-1200	35
301-350	451-500	601-650	751-800	45	901-950	1051-1100	1201-1250	45
351-400	501-550	651-700	801-850	55	951-1000	1101-1150	1251-1300	55
401-450	551-600	701-750	851-900	65	1001-1050	1151-1200	1301-1350	65
451-500	601-650	751-800	901-950	75	1051-1100	1201-1250	1351-1400	75

7 Kinders 7 Children	8 Kinders 8 Children	9 Kinders 9 Children	Bydrae Contribution
0-1250	0-1400	0-1550	0
1251-1300	1401-1450	1551-1600	25
1301-1350	1451-1500	1601-1650	35
1351-1400	1501-1550	1651-1700	45
1401-1450	1551-1600	1701-1750	55
1451-1500	1601-1650	1751-1800	65
1501-1550	1651-1700	1801-1850	75

DEEL 11

PART 11

GETROUDE PERSONE

MARRIED PERSONS

INKOMSTE PER MAAND

INCOME PER MONTH

Geen kinders No Children	1 Kind 1 Child	2 Kinders 2 Children	3 Kinders 3 Children	Bydrae Contribution	4 Kinders 4 Children	5 Kinders 5 Children	6 Kinders 6 Children	Bydrae Contribution
0-400	0-550	0-700	0-850	0	0-1000	0-1150	0-1300	0
401-500	551-650	701-800	851-950	50	1001-1100	1151-1250	1301-1400	50
501-600	651-750	801-900	951-1050	70	1101-1200	1251-1350	1401-1500	70
601-700	751-850	901-1000	1051-1150	90	1201-1300	1351-1450	1501-1600	90
701-800	851-950	1001-1100	1151-1250	110	1301-1400	1451-1550	1601-1700	110
801-900	951-1050	1101-1200	1251-1350	130	1401-1500	1551-1650	1701-1800	130
901-1000	1051-1150	1201-1300	1351-1450	150	1501-1600	1651-1750	1801-1900	150

7 Kinders 7 Children	8 Kinders 8 Children	9 Kinders 9 Children	Bydrae Contribution
0-1450	0-1600	0-1750	0
1451-1550	1601-1700	1751-1850	50
1551-1650	1701-1800	1851-1950	70
1651-1750	1801-1900	1951-2050	90
1751-1850	1901-2000	2051-2150	110
1851-1950	2001-2100	2151-2250	130
1951-2050	2101-2200	2251-2350	150

## TARIFF OF FEES PAYABLE TO ATTORNEYS

- A. With regard to legal aid instructions issued prior to 1 April 1988 attorneys shall be remunerated in accordance with the provisions and tariffs as set out in the Legal Aid Guide of July 1983.
- B. With regard to legal aid instructions issued from 1 April 1988 attorneys shall be remunerated in accordance with the provisions and tariffs as set out in the Legal Aid Guide of July 1993.
- C. With effect from 1 July 1993 attorneys will be remunerated in accordance with the tariffs of this guide. Please note that the Board may from time to time impose restrictions on the maximum amount of the legal costs indicated on the legal aid instructions. The relevant tariff remains applicable in such cases. It is only the maximum amount of legal costs that may be limited. A specified account must therefore still be submitted by the attorney. With regard to certain categories of work attorneys are, however, remunerated in a global amount and in such event it is only necessary to comply with the prescribed requirements. It is not necessary to draw up a bill.
- D. All sums referred to are amounts **exclusive** of VAT.

### TARIFFS:

1. **Matters in the Appellate Division of the Supreme Court (including criminal appeals):**

The current statutory tariff for the Appellate Division of the Supreme Court, less 20%.

2. **Supreme Court Matters (including criminal appeals and defended divorces):**

The current statutory tariff for the Supreme Court, less 20%.

3. **Magistrate's Court Matters (civil):**

The current statutory tariff for Magistrate's Courts, less 20%

4. **Matters justiciable by Quasi-Judicial Tribunals:**

Scale A of the current statutory tariff for Magistrate's Courts, less 20%.

5. **Rule 43 Applications:**

5.1	Undefended .....	R300,00
5.2	Defended .....	R350,00

(plus expenses)

(See also Annexure F par 6.2 for advocate's fees as well as par 5.1.5(a) of the Guide)

## 6. Undefended Divorce Actions (Supreme Court):

- 6.1 An attorney who acted in an undefended divorce action on the instructions of the Board may, instead of rendering an account in accordance with the tariff for Supreme Court matters, render an account for the fees mentioned hereunder:
- (a) Where one attorney appeared R750,00 plus all necessary disbursements;
  - (b) Where two attorneys (instructing and correspondent) appeared R1 000,00 plus all necessary disbursements.
- 6.2 Only disbursements need to be specified in the account and where applicable, vouchers must be attached.
- 6.3 Where two attorneys appeared, the apportionment of the fees must be mutually resolved. The attorney instructed by the Board must render the account, supply a copy of the final order and certify that the services of a correspondent were used.
- 6.4 Payment of an account is made to the attorney who has been instructed by the Board and he in turn must pay the disbursements and the correspondent, if any.
- 6.5 The fixed sums referred to in 6.1 relate to the attorney's fees only and do not include VAT or disbursements.

## 7. Criminal cases:

- 7.1 An attorney who acted in a criminal case on the instructions of the Board, shall be remunerated in a global amount of R      in the district court and a global amount of R      in the regional court subject to the following conditions: additional sums will be permitted as laid down in paragraph 6.1(a).
- (a) The abovementioned global amounts include all costs and disbursements for defending the case irrespective of the duration thereof or the number of accused to whom legal aid is rendered and irrespective of the number of instructions issued.
  - (b) The Director of the Legal Aid Board has the authority, after finalisation of the case, to allow a higher global amount in exceptional circumstances.
  - (c) After the case has been finalised, the legal representative must inform the Director in writing in the prescribed form which shall include the following:
    - (i) the case number
    - (ii) the court where the matter was heard
    - (iii) the outcome of the matter

- (iv) the duration of the hearing
  - (v) any other material information
- (d) The global amount will be paid to the legal representative without him rendering a specified account.
- (e) Criminal cases in the Supreme Court. The current statutory tariff for the Supreme Court (civil), less 20%.

## **8. Industrial Court Matter**

- 8.1 For a consultation after legal aid had been granted or if section 43 proceedings follow - fees as prescribed for a consultation under scale B of the tariff in the Magistrate's Courts Rules, less 20% to a maximum of R500. A fully specified account must be submitted.
- 8.2 If the mandate was extended to include section 46 proceedings - fees as prescribed in scale B of the tariff in the Magistrate's Court Rules, less 20%, up to a maximum of R500,00.

## **9. Matters not including litigation - excluding alternative dispute resolution procedure and purely administrative actions:**

- 9.1 Magistrate's Courts Matters - the current statutory tariff for Magistrate's Court on the lowest scale, less 20%.
- 9.2 Supreme Court Matters - the current statutory tariff for the Supreme Court, less 20%.

## **10. Travelling fees:**

The current tariffs allowed by the taxing master of the various courts.

## **11. Drawing up of Bills of Costs and Taxation**

The current tariffs and rules of the various courts, less 20%.

## **12. General:**

- 12.1 The attorney is obliged to report and account fully to the Board in terms of the rules of the relevant Law Society on the same basis as he would be required to account to his own client. All monies received from the Board and from other sources and all disbursements and fees due or charged shall be reflected in such account. The attorney shall also indicate the likelihood of successful recovery of costs or benefit to the Board in any matter and account in the same manner in respect of these items.
- 12.2 The provision of paragraphs 5.12 to 5.20 of the Guide must be taken into account when accounting.
- 12.3 Accounts must be rounded off properly and must be submitted in triplicate to the Director of the Legal Aid Board, Private Bag X163, Pretoria, 0001.

- 12.4 All fixed fees referred to in this annexure in par 5 to 8 are not subject to any rebate.
- 12.5 Reference to the 'current statutory tariff' is a reference to the statutory tariff applicable when the attorney did the work.

**RULES RELATING TO FEES PAYABLE TO ADVOCATES  
IN CONNECTION WITH LEGAL AID WORK**

1. The General Bar Council has undertaken to do legal aid work for which the services for an advocate may be required, but each local bar council is entitled to administer its own scheme for the distribution of such work amongst its members.
2. Each local bar council will inform the provincial law society concerned whether an attorney is entitled to brief counsel directly or whether the bar council must nominate an advocate who may be briefed.
3. This arrangement will apply to all legal aid work for which counsel is retained by an attorney, including work before any tribunal.
4.
  - 4.1 Subject to the provisions of paragraphs 5.13.4(a) & (c), 5.14 and 5.18.4 counsel in a legal aid case will be entitled to claim the fees indicated below, after having completed his instructions.
  - 4.2 Such fees may include the reasonable and actual travelling incurred by the advocate in connection with the case concerned and approved in terms of this guide.
  - 4.3 All sums of money shall be amounts exclusive of VAT.
5. Pro Deo matters: where an advocate may be instructed under the Pro Deo scheme of representation administered by the Supreme Court, he must take instructions under that scheme. If Pro Deo appointments in criminal matters are not possible he may receive direct instructions in criminal matters from the Board subject to the provisions of Annexure E, paragraph 7.
6.
  - 6.1 **MATRIMONIAL PLEADINGS**  
     Per Pleading ..... R60,00
  - 6.2 **RULE 43 APPLICATIONS**  
     Undefended ..... R80,00  
     Defended ..... R170,00  
     (See also Annexure E par 5 for the tariff of fees for attorneys)
  - 6.3 **UNDEFENDED DIVORCES**  
     (a) Consultation and final order ..... R112,50  
     (b) Postponements ..... R45,00  
     (c) Unopposed applications for substituted service

or edictal citation .....	R80,00
(d) Perusing and settling of application for substituted service or edictal citation - per half hour .....	R26,00

6.4 **THIRD PARTY MATTERS IN TERMS OF THE MULTILATERAL MOTOR VEHICLE ACCIDENTS FUND ACT, 1989** or its predecessors

Particulars of claim - per quarter hour .....	R70,00
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(The abovementioned fees need not be certified by the Taxing Secretary)

6.5 **ALL OTHER FEES**

- (a) Upon duly carrying out his instructions counsel must, except in the case of instructions carried out in terms of paragraph 6.1-6.4, prepare a specified list of the fees claimed. Such list must contain particulars of any travelling expenses claimed **and approved**.
- (b) For audit purposes of the Legal Aid Board, counsel must furnish in his fee list the name of the legal aid litigant, the reference number appearing on the Board's instruction form (for example 225/93 Pretoria) and the name of the instructing attorney and/or his correspondent.
- (c) Unless all the items on the fee list fall under paragraph 6.1-6.4 above, the fee list must be submitted to the Secretary of the Bar Council or such other person or committee as may be authorised by the Bar Council. (Such person or committee is hereafter referred to as the "Taxing Secretary"). All information relevant to the determination of a fair and reasonable fee must be furnished by the advocate to the Taxing Secretary to enable him to exercise his discretion.
- (d) The Taxing Secretary must then tax the fee list so as to allow a fair and reasonable fee for the matter.
- (e) The Taxing Secretary must thereafter certify that the fees reflected on the fee list are in his opinion fair and reasonable and must sign the said fee list.
- (f) The taxed fee list is then returned to the advocate concerned by the Taxing Secretary. Counsel must receive an amount equal to 75% of the fee certified to be fair and reasonable by the Taxing Secretary except in the case of the items referred to in paragraph 6.1-6.4 above where the full fee provided shall be payable.
- (g) Where direct payment is to be made Counsel must thereafter submit his fee list to the Board clearly indicating the actual amount due for payment for inclusion in full in the bill of costs. In all other cases he must submit it to the attorney.

- (h) Such fee list must at all stages be kept separate from any other ordinary fee list rendered to the attorney.
- (i) On receipt of such account and subject to the provisions of par 5.13, 5.14 and 5.18.4 the Board shall pay the advocate the fees stipulated in paragraphs 6.1-6.4 and otherwise 75% of the certified fee. Such payment will be made as provided in 5.18.5.
- (j) The Director reserves the right to submit any information to the Taxing Secretary which he deems necessary to make a fair determination. Such representation shall be considered by the Taxing Secretary in making his allocation even after his finalization of the relevant account. The Director reserves the right to refuse payments of any monies regarded by him as excessive or unreasonable. The Director also reserves the right to resubmit the account to the Taxing Secretary for certification on the basis of any information in his possession and on reasonable grounds to pay only a portion of the account.

#### 6.6 **WHERE ATTORNEYS TAX A BILL**

- (a) The provisions set forth in paragraph 6.5 (above) will also apply in those instances where taxation takes place in pursuance of an order for costs being awarded in favour of a legal aid litigant and/or the Board. The certification by the Taxing Secretary must constitute a basis for determining counsel's entitlement even though such fee is reduced on taxation.
- (b) Any amount allowed on taxation in excess of counsel's entitlement as set out above, will be for to benefit of the Legal Aid Board.

#### 6.7 **ADVOCATES WHO ARE NOT MEMBERS OF BAR ASSOCIATIONS** **(Private Advocates)**

- (a) Fees guidelines of Bar Associations will be used as a guide for reasonableness of charges by private advocates who are not members of any Bar Association.
- (b) Where appropriate private advocates will be required to have their bills taxed by the relevant taxing master.
- (c) Instructions will only be given to private advocates in areas where they practise.
- (d) With regard to any dispute or disagreement relating to fees or other matters, the private advocate involved will endeavour first to resolve such dispute by negotiations with the Director.
- (e) Should the private advocate be guilty of any serious transgression of the provisions of this guide, the Director may take steps to have his name removed from the rotation list.

**6.8 The abovementioned fixed fees are payable to attorneys who render the service provided for of an advocate.**

# MEANS TEST CALCULATION

Situation : \_\_\_\_\_ Applicant : \_\_\_\_\_ Ref No : \_\_\_\_\_

		Applicant	Spouse	
<b>GROSS INCOME :</b>		<b>MONTHLY</b>		
	Salary	R	R	Salary
Plus	Allowances	+R	+R	Allowances
Plus	Subsidy	+R	+R	Subsidy
Plus	Bonusses	+R	+R	Bonusses
Plus	Interest	+R	+R	Interest
Plus	Rentals	+R	+R	Rentals
Plus	Other	+R	+R	Other
<b>TOTAL :</b>		<b>=R</b>	<b>=R</b>	<b>TOTAL</b>
Immovable property : PLUS				
	Reasonable market value :	=R		=R
	less bonds :	-R		-R
		R		R
	Bank Balances & Savings :	+R		+R
	Invstments & Deposits :	+R		+R
	Monies due to applicant :	+R		+R
	NET Value :	=R		=R
	<b>DIVIDE BY 1200 =</b>	<b>=R</b>	<b>+ R</b>	<b>+ R</b>
	<b>Gross Income :</b>	<b>=R</b>	<b>=R</b>	

<b>DEDUCTIONS :</b>				
Income Tax	R			R
Unemployment Insurance Fund	+R			+R
Compulsory Group Insurance	+R			+R
Medical Fund Contributions	+R			+R
Pension	+R			+R
Rent or Mortgage instal (MAX R1000)	+R			+R
Maintenance (in terms of Court Order)	+R			+R
School fees & contributions ***	+R			+R
<b>TOTAL DEDUCTIONS :</b>	<b>=R</b>	<b>-R</b>	<b>- R</b>	<b>=R</b>

\*\*\* not in regard to private schools

**Calculated joint income ->** = R  
**DEDUCT R500 FOR APPLICANT** - R  
**DEDUCT R500 FOR SPOUSE (IF APPLICABLE)** - R  
**DEDUCT R150 PER CHILD (IF APPLICABLE) ..... X R150 =** - R  
**No legal aid if there is a PLUS balance** = R

Applicant & spouse

Dependants actually supported by applicant :			
Name:	Age :	Name:	Age :
Name:	Age :	Name:	Age :
Name:	Age :	Name:	Age :

**I certify that the information set out on this form is true, complete and correct in all details. I realise that supplying false or partial information may lead to criminal proceedings and summary suspension of legal aid.**

Signature	
Applicant	
Signature	
Spouse	

Qualifies/Disqualifies for legal aid

Contribution by applicant	R
---------------------------	---

Legal Aid Officer : .....

Date : ..... / ..... / 19....

# Calculation of payments

Given :

①	Claim :	R100,000	
②	Party & party costs :	R20,000	20 % rebate = R4,000 ⑥
③	Attorney & client costs :	R25,000	20 % rebate = R5,000 ⑦
④	Disbursements already paid :	R2,000	
⑤	Benefit for Board @ 15% :	R15,000	

<b>Case 1</b>	<b>The attorney recovers</b>	<b>R122,000</b> No attorney & client costs are claimed
---------------	------------------------------	--

	Claim and costs in trust	R122,000	① ② ③
Pay to Legal Aid Board	benefit :	R15,000	⑤
	rebate :	R4,000	⑥
	refund :	R2,000	④
		R21,000	
		R101,000	
	attorney retains :	R20,000	②
	less rebate :	R4,000	⑥
		R16,000	
	<u>Client receives</u>	R85,000	= R100,000 - 15%

<b>Case 2</b>	<b>The attorney recovers</b>	<b>R122,000</b> Attorney & client costs are claimed
---------------	------------------------------	---

	Claim and costs in trust	R122,000	
Pay to Legal Aid Board	benefit :	R15,000	
	rebate :	R5,000	⑦
	refund :	R2,000	
		R22,000	
		R100,000	
	attorney retains :	R25,000	
	less rebate :	R5,000	
		R20,000	
	<u>Client receives</u>	R80,000	(= R100,000 - 15% - R5000 a/c costs)

<b>Case 3</b>	<b>Case 1 but attorney only recovers R40,000 from the defendant</b>
---------------	---

	Claim and costs in trust	R40,000	
Pay to Legal Aid Board	benefit :	R6,000	
	rebate :	R4,000	
	refund :	R2,000	
		R12,000	****
		R28,000	
	attorney retains :	R20,000	
	less rebate :	R4,000	
		R16,000	
	<u>Client would receive</u>	R12,000	This is less than 50% of the claim and so
	<b>Reduction in payment to LAB</b>	****	R8,000 the LAB's portion is reduced by R8000
	<u>Client now receives</u>	R20,000	(AT LEAST 50% OF CLAIM)

<b>Case 4</b>	<b>Case 1 but settled in a global amount of R105,000</b>
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	Claim and costs in trust	R105,000	
	less a/c costs :	R25,000	
	disbursements :	R2,000	
		R78,000	Capital
Pay to Legal Aid Board	benefit :	R11,700	15% of R78,000
	rebate :	R5,000	⑦
	refund :	R2,000	
		R18,700	
		R86,300	(R105,000 - R18,700)
	attorney retains :	R25,000	
	less rebate :	R5,000	
		R20,000	
	<u>Client receives</u>	R66,300	

# MEANS TEST CALCULATION

Situation : \_\_\_\_\_ Applicant : \_\_\_\_\_ Ref No : \_\_\_\_\_

GROSS INCOME :		MONTHLY		Applicant	Spouse	
		Salary		R	R	Salary
Plus	Allowances		+R		+R	Allowances
Plus	Subsidy		+R		+R	Subsidy
Plus	Bonusses		+R		+R	Bonusses
Plus	Interest		+R		+R	Interest
Plus	Rentals		+R		+R	Rentals
Plus	Other		+R		+R	Other
TOTAL :			=R		=R	TOTAL
Immovable property : PLUS						
Reasonable market value :		=R				=R
less bonds :		-R				-R
		R				R
Bank Balances & Savings		+R				+R
Invstments & Deposits		+R				+R
Monies due to applicant		+R				+R
NET Value :		=R				=R
DIVIDE BY 1200 =		=R		+ R	+ R	=R
Gross Income :				=R	=R	

DEDUCTIONS :				
Income Tax	R			R
Unemployment Insurance Fund	+R			+R
Compulsory Group Insurance	+R			+R
Medical Fund Contributions	+R			+R
Pension	+R			+R
Rent or Mortgage instal (MAX R1000)	+R			+R
Maintenance (in terms of Court Order)	+R			+R
School fees & contributions ***	+R			+R
TOTAL DEDUCTIONS :		=R	-R	-R

\*\*\* not in regard to private schools

Calculated joint income ->	= R	+ = R	Applicant & spouse
DEDUCT R500 FOR APPLICANT		- R	
DEDUCT R500 FOR SPOUSE (IF APPLICABLE)		- R	
DEDUCT R150 PER CHILD (IF APPLICABLE) ..... X R150 =		- R	
No legal aid if there is a PLUS balance		= R	

Dependants actually supported by applicant :			
Name:	Age :	Name:	Age :
Name:	Age :	Name:	Age :
Name:	Age :	Name:	Age :

**I certify that the information set out on this form is true, complete and correct in all details. I realise that supplying false or partial information may lead to criminal proceedings and summary suspension of legal aid.**

Signature Applicant	
Signature Spouse	

Qualifies/Disqualifies for legal aid

Contribution by applicant	R
---------------------------	---

Legal Aid Officer : .....  
Date : ..... / ..... / 19.....

1. Benefit to the Board will be 15% of the benefit to client on the proceeds of the action financed by the Board effective on all instructions issued on or after 1 July 1993.

# EXPERT WITNESSES

Reference No :	Client :	Plaintiff/Defendant	Branch :	Date :	/ /
Attorney Address			Telephone		
			Fax		
			Reference :		

<b>DATES</b>					
Trial :	/ /	Summaries :	/ /	Rule 37	/ /

	Expert 1	Expert 2	Expert 3
Name			
Occupation			
Tariff : consultation			
Tariff : preparation			
Tariff : research			
Tariff : attending			
Tariff : other			
Global cost per day			
Estimated days			
Disbursements			
Urgency			
Reasons for choice			

Reason for request	
Nature of evidence	
Area of dispute	

Decision :	
------------	--

Official :	Date :	/ /
------------	--------	-----

Signature :	Sent by :	Date :	/ /
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## LEGAL AID BOARD MMF CLAIMS CHECKLIST

(references are to paragraphs in the Legal Aid Board Guide 1995)

### 1. INITIAL INSTRUCTIONS

- 1.1 Receive LA2 "Instructions to Legal Practitioner" - collect contribution, if any, from client and arrange consultation.
- 1.2 Consult with client in detail.
- 1.3 Sign and return LA2 form and merit report in terms of paragraph 3.5.2.
- 1.4 Wait for further instructions unless prescription imminent.

### 2. PREPARATION OF CLAIM

#### 2.1 Calculate Prescription dates:

2.1.1 Last date for submission of claim

2.1.2 Last date for service of summons

2.1.3 If the claimant is a minor, calculate the last date for service of summons in respect of general damages and post majority special damages.

#### 2.2 Locus Standi and Jurisdiction

##### 2.2.1 *The client* - obtain details and"

2.2.1.1 If the claimant is a minor, identify which parent is to claim on the minor's behalf, bearing in mind the provisions of the Guardianship Act 192 of 1993; obtain copies of birth certificates, adoption orders and divorce orders.

2.2.1.2 If appropriate seek the Board's consent to the appointment of a curator ad litem and/or a curator bonis.

2.2.1.3 if the claimant is the surviving spouse or other dependant of a deceased person check on the matrimonial regime and obtain a copy of the marriage certificate and any maintenance order.

2.2.1.4 Obtain any necessary variation of the board's original instruction.

## 2.2.2 *The Defendant*

- 2.2.2.1 Identify the authorised insurer/appointed agent and its physical address. If in doubt check by correspondence. (Insurance companies *en passant* are not incorporated under the Companies Act but under the Insurance Act.)
- 2.2.2.2 If dealing with a hit and run driver (or and uninsured driver under Act 56 of 1972 of the A A Mutual or President) the Defendant will be the Fund (or an agent appointed by it). At this stage consult the relevant regulations to refresh your memory before proceeding further.

## 2.2.3 *The Court*

- 2.2.3.1 If it can be done without incurring any additional expenditure, summons must in due course be issued in the court in which the event giving rise to the claim occurred.
- 2.2.3.2 If this is not possible without incurring additional expenditure, the court having jurisdiction over the defendant must be identified.
- 2.2.3.3 In matters where it is not immediately obvious whether action will be in the supreme or the magistrate's court it may be necessary to identify both.

## 2.3 Medical reports etc.

- 2.3.1 Complete MMF1/MVA13 form to the extent where it is possible to forward such to the medical practitioner who first treated the claimant after the event.
- 2.3.2 Send away the MMF1/ MMV form for completion and periodically check on return.
- 2.3.3 Where appropriate obtain a death certificate and a copy of inquest finding.
- 2.3.4 If appropriate obtain further brief medical reports from medical practitioners who treated the claimant pursuant to the injuries in question. Such brief medical reports might be telephonic, by letter or by completion of a further Mmf1 medical report. Do not at this stage, except in exceptional circumstances and then only with the prior written consent of the Board - see paragraph 5.7, obtain either any reports from any person/hospital who/which did not treat the claimant prior to the initial consultation or any detailed medico-legal report.
- 2.3.5 Draw and have signed suitable consents to enable your firm and the appointed agent/the Fund to inspect the claimant's hospital and medical records.
- 2.3.6 Obtain copies of the hospital and medical records. If the cost is likely to exceed a trivial amount obtain the Board's consent - paragraph 5.5.1.
- 2.3.7 Where necessary, and if the information has not already been secured, obtain and

estimate in respect of anticipated future medical costs.

- 2.3.8 Obtain copies of medical reports that may have been submitted to the Workman's Compensation Commissioner. See again paragraph 5.5.1.

2.4 The Merits

- 2.4.1 Obtain the Road Traffic Collision Report(s) and plan (if any) from SAP or traffic authorities. If the report completed by and official ans a result of information supplied by your client is incorrect in any material respect place this on record at this stage.
- 2.4.2 Ascertain whether any criminal prosecution followed the event and if so what the outcome was. Ascertain the cost of obtaining a copy of any criminal record but do not order it at this stage without the written consent of the Board - paragraph 5.5.1.
- 2.4.3 If you have not already done so, ascertain whether any inquest followed the event and if so what the outcome was. Ascertain the costs of obtaining a copy of any inquest record but do not order it at this stage without the written consent of the Board - paragraph 5.5.1.
- 2.4.4 Ascertain the result of any investigation conducted by the Workman's Compensation Commissioner.
- 2.4.5 Draw client's statement up and have it signed. Submit a copy to the Board, if appropriate, with your next report.
- 2.4.6 Draw a sketch plan for client's consideration and approval. If necessary conduct and inspection *in loco* and take photographs and measurements. If a correspondent is necessary the board's consent must be obtained - paragraph 5.18.5(g). Do not at this stage appoint an investigator or claims consultant. (The Board will seldom pay for an appointment of this nature at any stage and then only if the maximum fee has been agreed and the Board's consent has been given - paragraph 5.8).
- 2.4.7 Consult with all necessary witnesses and obtain statements from them. If it is necessary to trace an essential witness the Board's consent to the employment of a tracing agent must be instructed on a no trace no charge basis.
- 2.4.8 Do not exclude the possibility at this or at any subsequent stage of obtaining a statement from the allegedly negligent driver. You may in certain circumstances however be under an ethical duty to announce your intention of doing so.
- 2.4.9 Consider whether the Apportionment of Damages Act no 34 of 1956 applies or whether you need prove only 1 % negligence.
- 2.4.10 Consider the merits with the aid of authorities such as Cooper and form a revised opinion as to:
- 2.4.10.1 Whether it will be possible to prove negligence on the part of any

person other than the claimant.

- 2.4.10.2 Whether, if the claimant was a passenger, it is necessary to submit more than one driver may be to blame for the event giving rise to the claim.
- 2.4.10.3 Whether as a result of any statutory limitation on the claimant's claim it will be necessary to claim from any person other than the appointed agent.
- 2.4.11 Do not use an advocate to assess the merits at this stage, or indeed at any other stage, except in exceptional circumstances and then only with the prior written consent of the Board and after the advocate has agreed to do the work at the appropriate attorney's tariff - paragraphs 5.1.5(a) and 5.1.6 - unless you are prepared to accept that you will probably not be reimbursed in respect of the advocate's charges in excess of what you would have been entitled to charge for the same work.

## 2.5 Quantum

- 2.5.1 Consider general damages with the aid of authorities such as Corbett and Buchanan.
- 2.5.2 Calculate future loss of income with the aid of authorities such as Honey or Koch.
- 2.5.3 Calculate future medical expenses with the aid of the medical reports (see paragraph 2.3 above).
- 2.5.4 Calculate past loss of income from client's instructions and documentation. Obtain a suitable certificate from the injured/deceased person's employer/accountant. Remember to claim for any remuneration paid *ex gratia* but not if remuneration was paid as a result of a statutory or contractual obligation.
- 2.5.5 Calculate past hospital and medical expenses from client's documentation and from hospital and medical records.
- 2.5.6 Deduct any amount received from the Workman's Compensation Commissioner.
- 2.5.7 Apportion in accordance with your assessment of the merits - although 100 % will appear in the MMF1 form.
- 2.5.8 If in doubt, err on the side of generosity but within reason.
- 2.5.9 Do not use an advocate to assess the quantum at this stage, or indeed at any other stage, except in exceptional circumstances and then only with the prior written consent of the Board and after the advocate has agreed to do the work at the appropriate attorney's tariff - paragraphs 5.1.5(a) and 5.1.6 - unless you are prepared to accept that you will probably not be reimbursed in respect of the advocate's charges in excess of what you would have been entitled to charge for the same work.

2.5.10 If you decide that the quantum likely to be recovered is R2 500.00 or less report to the Board.

## 2.6 Submission of the claim

2.6.1 Submit the claim to the appointed agent together with all necessary supporting documentation. Do not withhold anything useful to the assessment of the claim unless there is a sound reason for doing so.

2.6.2 If delivered by hand obtain proof of delivery.

2.6.3 If posted make use of registered post and retain proof of posting.

## 2.7 Report to the Board - paragraph 5.10.3

If the interval between receipt of the Board's reaction to the merit report and the submission of the claim is more than six months may be necessary to report in the interim.

### 3. SETTLEMENT NEGOTIATIONS

3.1 Deal with any queries from the appointed agent.

3.2 If an offer for an all inclusive amount is received, endeavour to persuade the appointed agent to split capital and costs - paragraph 5.12.2. It should be made clear that this is being done without rejection of the offer.

3.3 Report any settlement offer to the Board together with the client's attitude and your recommendation. If necessary remind the client of the Board's entitlement to the Benefit - Annexure I - and costs - Section 8A Annexure A.

3.4 Report any repudiation and the reasons therefor to the Board.

3.5 If appropriate place the appointed agent on terms.

3.6 Bear in mind at the settlement stage that even without prejudice correspondence may be drawn to the attention of the court when costs are argued.

3.7 In concluding a settlement at this or at any future stage, indeed particularly once the matter has been set down for hearing and experts are likely to have been instructed, it is important to remember to make express provision in a settlement agreement for the costs of experts. In the absence of an agreement to the contrary the qualification fees of experts are not recoverable between party and party. The costs of an expert consulting with the claimant, attorney or counsel, the costs of an expert report and the cost of an expert attending court are also (usually) irrecoverable on a party and party basis in the absence of an agreement to the contrary. Avoid all unnecessary debate by stipulating, if possible, in any settlement agreement who will pay how much for what expert services by which expert.

3.8 Report to the Board - paragraph 5.10.3.

#### 4. PLEADINGS

- 4.1 If you have not already done so, decide whether to proceed in the Supreme Court or Magistrate's Court. If you consider that the ultimate capital recovery is likely to be R20 500,00 or less, proceed in the Magistrate's Court abandoning as much as may be necessary to bring the claim within the jurisdiction court.
- 4.2 If a correspondent is necessary, obtain the Board's consent - paragraphs 5.1.5(a) and 5.1.6. At this stage it is practical to discuss with your correspondent which of you will be taking the trial. This will largely be determined by distance. The Board will not permit a correspondent if the Plaintiff, if successful, would not be permitted by the taxing master to tax two bills of costs.
- 4.3 Draw particulars of claim. This is always your responsibility - even where such are settled by counsel in the Supreme Court.
- 4.4 If the matter is to proceed in the Supreme Court brief counsel to settle particulars of claim. Counsel's attention must be drawn to the fact that the Plaintiff is being assisted by the Legal Aid Board and to Annexure F.
- 4.5 Where appropriate peruse counsel's settled particulars of claim and, if correct, sign such.
- 4.6 Draw and issue summons and deliver to Sheriff for service.
- 4.7 Forward counsel's and sheriff's accounts to the Board.
- 4.8 Peruse sheriff's return and appearance to defend and immediately thereafter:
  - 4.8.1 Give formal notice that the Plaintiff is being assisted by the Legal Aid Board - paragraph 5.2.
  - 4.8.2 Advise the Defendant's attorney that it is the Plaintiff's intention to ask the court to split the merits and the quantum and to determine the merits first if the matter is not settled before trial. Ask the Plaintiff's attorney to agree to this procedure. If agreement is refused or if the Defendant's attorney fails or refuses to respond this fact to the Board.
- 4.9 If necessary supply further particulars and thereafter call for and, if necessary, enforce the filing of the Plea. Forward a copy of any special plea to the Board.
- 4.10 Consider whether any further particulars of replication are/is necessary.
- 4.11 Report to the Board - paragraph 5.10.3.

#### 5. PRE-TRIAL PREPARATION

- 5.1 Invite the defendant to attend a pre-trial conference if proceeding to trial in the Supreme Court.

- 5.2 Apply for a trial date.
- 5.3 Call for discovery and, if necessary, enforce such.
- 5.4 Discover
- 5.5 Index and paginate court papers in Supreme Court.
- 5.6 Analyse the issues - it may be helpful to have regard to authorities such as Morris. The briefing of advocates to prepare an advice on evidence is not however encouraged and will not be paid for by the Board without its prior written consent pursuant to a detailed motivation as to why you are unable to do this work.
- 5.7 Set the matter down for hearing on receipt of a trial date.
- 5.8 Advise client of trial date.
- 5.9 Subpoena witnesses.
- 5.10 Give notice of diagrams and photographs.
- 5.11 Arrange a pre-trial conference, attend same and prepare minutes thereof to be signed by both attorneys. Endeavour to discuss settlement of the merits at pre-trial conference.
- 5.12 If in the Supreme Court, brief counsel. Do not brief SC without the consent of the Board - paragraph 5.1.5(a). Given the cost the Board is understandably reluctant to permit the briefing of senior counsel but in appropriate circumstances this permitted. No hard and fast rules can be laid down but senior counsel are usually permitted in matters where the quantum realistically likely to be recovered exceeds R1 million. Senior counsel are usually only permitted if the attorney can persuade the SC in question to act on a contingency basis.
- 5.13 If in the Magistrate's Court, the attorney or candidate attorney who will attend the trial on behalf of the client will need to prepare. An attorney is not encourage to brief counsel in a matter in which he is himself entitled to appear unless he obtains the prior written consent of the Board or the counsel agrees to render an account on the appropriate attorney's tariff - paragraph 5.1.5(a). If this is not observed the attorney will be unable to recover counsel's charges in excess of those to which the attorney would himself have been entitled.
- 5.14 Report to the Board - paragraph 5.10.3.

## **6. THE TRIAL ON THE MERITS**

- 6.1 Refresh your memory on paragraph 5.12 of the Legal Aid Guide concerning settlements and payment into court.
- 6.2 Proceed to trial.
- 6.3 Report to the Board - paragraph 5.10.3.

- 6.4 If unsuccessful on the merits or if the apportionment against client is so adverse that the further costs are, in consultation with the Director, considered likely to exceed the capital that is likely to be recovered, withdraw as attorney of record and proceed to the accounting stage.

## **7. PREPARATION FOR THE TRIAL ON QUANTUM**

- 7.1 Obtain a trial date and set the matter down for hearing.
- 7.2 Determine the types of experts that will be required.
- 7.3 Complete expert witness form (Annexure J) furnishing if possible, three quotations from each type of expert and forward such to the Board. If not possible, furnish reasons to the Director. A medical practitioner or other expert witness (eg actuary) may not be briefed without the prior consent of the Board - paragraph 5.7.1.
- 7.4 When the Board's consent is obtained, proceed to brief experts keeping in mind paragraph 5.7.2.
- 7.5 Obtain and peruse reports, timeously give notice of intention to use an expert witness and provide a summary of the said expert's opinion and his/her reasons.
- 7.6 Where necessary give timeous notice of intention to amend (eg quantum) and, if appropriate, file amendment pages.
- 7.7 Arrange a father pre-trial conference on the quantum, attend same and prepare minutes thereof signed by both attorneys. Endeavour to settle quantum or at least to limit the issues in dispute.
- 7.8 Brief counsel/prepare for trial - see paragraph 5.12 and 5.13 above.
- 7.9 Report to the Board - paragraph 5.10.3.

## **8. THE TRIAL ON QUANTUM**

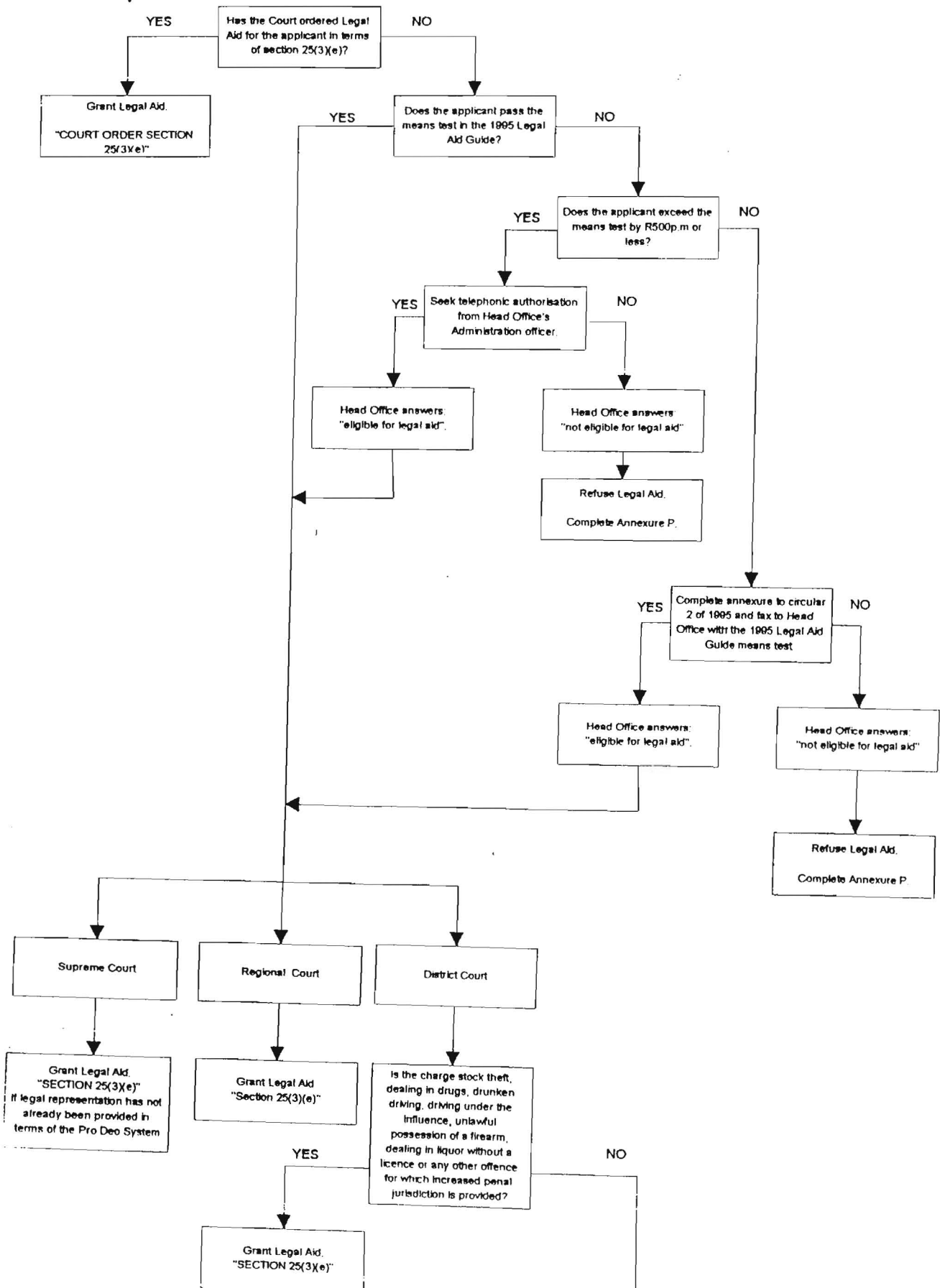
- 8.1 See paragraph 6.1 above.
- 8.2 Proceed to trial.
- 8.3 Report to the Board - paragraph 5.10.4.
- 8.4 In unsuccessful on the quantum and if the Board determines that there is no reasonable prospect of success on appeal proceed to the accounting stage.

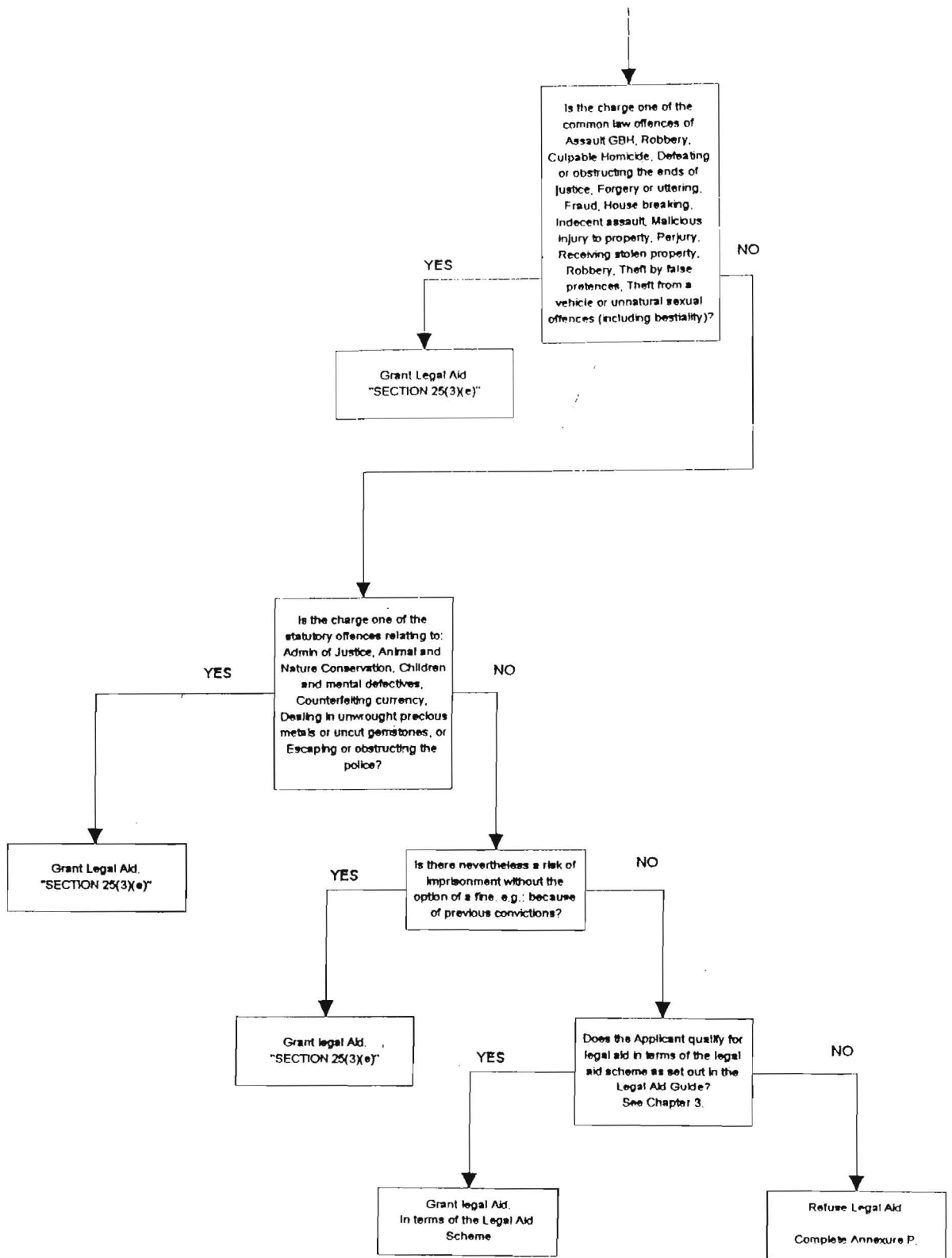
## **9. ACCOUNTING**

- 9.1 See paragraph 5.13 to 5.20, chapter 7 and Annexure E, F, H and I.

- 9.2 The client may be paid 50% of capital before accounting.
- 9.3 The Board is entitled to 20% of taxed (by the Board) attorney client fees, 5% (if instructions were issued prior to 1/8/93)/15% (if instructions were issued on or after 1/8/93) of capital and reimbursements of disbursements paid by the Board. (In matters where the Board obtains a discount - eg on counsel's fees and on medico-legal reports - the Board is entitled to the gross amount, or, if the attorney has paid the nett amount without claiming reimbursements the Board is entitled to the amount of the discount).
- 9.4 The attorney is entitled to 80% of taxed attorney client fees and reimbursements of nett disbursements not previously reimbursed, while he must refund the Board's disbursements paid by the Board.
- 9.5 The client is entitled to the balance.
- 9.6 Where the operation of the above would result in the client receiving less than 50% of the capital, the Board will bear the difference between 50% and the lesser sum.
- 9.7 If the attorney elects not to tax attorney client bill but to instead submit a taxed party and party bill his fees (and those to which the board is entitled) will be base thereon.
- 9.8 The attorney is not entitled to receive any additional attorney client fee nor, is he entitled to receive any monies from the client other than the contribution, if any, specified by the initial instruction.
- 9.9 All payments must be brought into account and the attorney must account fully to the Board at the end of the matter and reconcile all costs and payments.

# Legal Aid Officer's Quick Guide to Circular 2 of 1995 as amended.





## REFUSAL OF LEGAL AID IN A CRIMINAL MATTER

I, the undersigned

\_\_\_\_\_  
(Full Names)

have applied to the legal aid officer for the appointment of a legal practitioner to represent me at State expense in a criminal matter but have been refused legal aid.

I certify that the legal aid officer has advised me that:

1. The Constitution of the Republic of South Africa Act No 108 of 1996 provides that:  
  
“Every accused person shall have the right to a fair trial which shall include the right to be represented by a legal practitioner of his or her choice or, where substantial injustice would otherwise result, to be provided with legal representation at State expense and to be informed of these rights”.
2. The constitutional court has decided in the case of State v Vermaas, State v du Plessis 1995(3) SA292(CC) that:  
  
“The effect of the disjunctive “or” appearing in the section immediately before the reference to the prospect of “substantial injustice”, is to differentiate clearly between two situations, the first where the accused person makes his or her own arrangements for the representation that must be allowed, the second in which the assistance of the State becomes imperative and to cater for the personal choice of a lawyer in the first one alone”.
3. I have a right to appeal to the director of the Legal Aid Board against the decision of the legal aid officer, which may be exercised by addressing written representations to the director of the legal Aid Board and by handing such to the legal aid officer for onward transmission to the director either with or without comment.
4. I have a right to approach the court which I am to stand trial for an order that legal representation should be provided for me at State expense.

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
DATE

REGSHULPRAAD  
LEGAL AID BOARD  
REKENINGSTAAT: VASTE TARIEF: STRAFSAAK  
ACCOUNT: FIXED TARIFF: CRIMINAL CASE

FIRMA NAAM: .....  
FIRM'S NAME .....

Ons Verwysingsno. ....  
Our Reference no.

U Verwysingsno. ....  
Your Reference no.

Poskode .....  
Postal Code

BTW/VAT No .....

NAAM VAN BESKULDIGDE: .....

NAME OF ACCUSED:

HOF: DISTRIKSHOF/STREEKHOF: (Plek) .....

SAAKNOMMER: .....

CASE NUMBER:

HOFNOMMER: .....

COURT NUMBER:

DATUM OPDRAG ONTVANG: .....

DATE OF INSTRUCTION:

DATUM VAN VERSKYNINGS/UITSTELLE DATE OF APPEARANCE/POSTPONEMENTS	TYD TIME	REDE/OPMERKING REASON/REMARKS	R
1	Van From tot to		
2	Van From tot to		
3	Van From tot to		
4	Van From tot to		
5	Van From tot to		
AFHANDELING/UITSLAG/VONNIS FINALISATION/RESULT/SENTENCE			
	Van From tot to		

REISKOSTE/TRAVELLING EXPENSE

..... km @

R1,00/km

BTW/VAT

**TOTAAL/TOTAL**

Indien u vir BTW geregistreer is, heg 'n blanko faktuur hierby aan.

If you are registered for VAT annex a blank invoice

Voltooi vir elke beskuldigde.

Complete for each accused

**LET WEL/NB**

Ingeval van 3 of meer uitstelle moet die serifikaat op die keersy hiervan deur die staatsaanklaer voltooi en

onderteken word. In the event of 3 or more postponements the certificate on the back of this must be completed and signed by the Public Prosecutor.

**RULINGS PERTAINING  
TO LAW CLINICS**

(Attorneys' act of 57 1979)

Extract from the Natal Law Society

## RULING 9

### RULINGS PERTAINING TO LAW CLINICS

- 9.(1) Subject to and conditional upon adherence by a Law Clinic, as defined in the Act and approved by the Council for the purposes of the Act, and its employees to the guidelines set out below, the following Rules and Rulings of the Society are suspended and modified in respect of members of the Society acting in the course and scope of their employment with such Law Clinic -

#### Rules Suspended in Whole

- 14(b)(vi) - Touting.
- 14(b)(vii) - Supervision by an attorney.
- 14(b)(ix) - Sharing of offices with persons other than attorneys.
- 18(a) - Sharing of fees.
- 20 and 21 - Keeping of proper accounting records.

#### Rulings Suspended in Whole

- Ruling 5(1) - Attracting work unfairly.
- Ruling 5(8) - Undercutting.
- Ruling 7(2) - Sharing of offices.
- Ruling 7(6) - Supervision of staff.

#### Rulings Suspended in Part

Ruling 2(4)(b) is suspended in respect of litigation which is in the nature of a test case intended to result in a judgment which will materially benefit members of the public who are not parties to the litigation.

- 9.(2) (a) Attorneys, who are not members of the Society but who are employed by such Law Clinic, may be declared to be members of the Society by the Council in terms of section 57(2) of the Attorneys Act.
- (b) An attorney, who has been declared to be a member of the Society in the circumstances referred to in Ruling 9(2)(a), will not be required to pay subscriptions for so long as he -
- (i) remains in the employ of such Law Clinic; and
  - (ii) does not practise on his own, or as a partner or employee of any firm as defined in the Rules.
- 9.(3) This Ruling is subject to amendment by the Council and it does not give rise to any contract between the Society and such Law Clinic, or any member of such Law Clinic.

shall, notwithstanding the provisions of section 86, continue to exist as juristic persons.

**57. Membership of Society.**

- (1) Every practitioner who practises in any province, whether for his own account or otherwise, shall be a member of the society of that province.
- (2) A society may by notice in writing addressed to any person who has been admitted and enrolled as an attorney or a notary or conveyancer in any court in the province of its society, or whose name has been placed on the roll of such court, but who does not practise in that province, declare such person to be a member of such society with effect from a date fixed in that notice.
- (3) The person who holds office as State Attorney in terms of section 2(1)(a) of the State Attorney Act, 1957 (Act 56 of 1957), shall be a member of every society.
- (4) If a member of any society is suspended from practice he shall during the period of such suspension not be entitled to the rights or privileges of membership of any society, and if a member of any society is struck off the roll of any court, such member shall cease to be a member of every society of which he is a member.
- (5) The provisions of this section shall not apply in respect of any person who is in terms of the Natal Conveyancer Act, 1926 (Act 24 of 1926), entitled to practise as a conveyancer, but who is not an attorney.

**58. Objects of Society.**

The objects of a society shall be -

- (a) to maintain and enhance the prestige, status and dignity of the profession;
- (b) to regulate the exercise of the profession;
- (c) to encourage and promote efficiency in and responsibility in relation to the profession;
- (d) to deal with all matters relating to the interests of the profession and to protect those interests;
- (e) to uphold the integrity of practitioners;
- (f) to uphold and improve the standards of professional conduct and qualifications of practitioners;
- (g) to provide for the effective control of the professional conduct of practitioners;
- (h) to promote uniform practice and discipline among practitioners;
- (i) to encourage the study of the law;

- (j) to initiate and promote reforms and improvements in any branch of the law, the administration of justice, the practice of the law and in draft legislation;
- (k) to represent generally the views of the profession;
- (l) in the interests of the profession in the Republic, to co-operate with such other societies or bodies of persons as it may deem fit.

59. Powers of Society.

A society may for the purpose of achieving its objects -

- (a) acquire or hire movable or immovable property;
- (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property of the society;
- (c) make donations of property (including money) of the society;
- (d) accept, draw, endorse, issue, make, pay or perform any other act in respect of negotiable instruments;
- (e) with or without security, invest or lend money of the society;
- (f) with or without security, borrow or raise money required by the society in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (g)
  - (i) employ, fix the remuneration and other conditions of service of and discharge a secretary, one or more assistant secretaries and other officials and employees of the society;
  - (ii) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services;
- (h) establish or promote or administer or assist in the establishment or promotion or administration of -
  - (i) insurance schemes;
  - (ii) medical aid schemes or medical benefit schemes;
  - (iii) pension funds or provident funds or pension schemes or benevolent schemes,

for members and ex-members of the society, for employees of such members, for officials and employees of the society and for dependants of such members, ex-members, officials and employees;
- (i) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;

- (j) appear in support of or in opposition to, or to abide the decision of any court in, any proceedings brought in terms of the provisions of this Act, and if permitted by any other law, such law;
- (k) generally, do anything that is necessary for or conducive to the attainment of the objects of the society, and the generality of this provision shall not be limited by the preceding paragraph of this section.

**60. Council to Manage and Control Affairs of Society.**

- (1) The affairs of a society shall be managed and controlled by a council, which may, subject to the provisions of subsection (2), exercise the powers of the society.
- (2) The alienation or mortgaging of any immovable property of a society, the appointment of the auditors of a society and the fixing of any subscription, fees, levies or other charges payable to a society by its members, shall be subject to the approval of such majority of the members of that society who are present or represented at a general meeting or at a meeting specially convened for that purpose, as may be prescribed.

**61. Constitution of Council and Election and Period of Office of Members.**

- (1) A council shall consist of such number of members of the society concerned as may be prescribed.
- (2) The members of a council shall be elected in the prescribed manner by the members of the society concerned.
- (3) A member of a council shall hold office for the prescribed period.

**62. Vacation of Office, Suspension from Office and Filling of Vacancies.**

- (1) A member of a council shall vacate his office -
  - (a) in the prescribed circumstances;
  - (b) if he is removed from office by the council in the prescribed circumstances and manner.
- (2) When a member of a council vacates his office before the expiration of the prescribed period of office, the council may appoint a member of the society to fill the vacancy for the unexpired portion of such period of office.
- (3) A council may in the prescribed circumstances and manner suspend from office any member of that council and may in such case appoint any member of its society to act during the period of suspension in the place of the member so suspended.

**BILL  
OF  
RIGHTS**

**BILL OF RIGHTS**



**Rights**

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

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**Note to s 7:** S 39 deals with the interpretation of the Bill of Rights and of other law.

See s 234 which states 'in order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution'.

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**Application**

8. (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
- (2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- (3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court –
- (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
- (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
- (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

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**Note to s 8(1):** S 239 states:

'In the Constitution, unless the context indicates otherwise –

**organ of state** means –

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –
- (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
- (ii) exercising a public power or performing a public function in terms of any legislation,

but does not include a court or a judicial officer'.

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**Equality**

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.



- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

**Note to s 9:** South Africa is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (1979).

**Note to s 9(1):** *S v Ntuli* 1996 (1) SA 1207 (CC); 1996 (1) BCLR 141 (CC) held that s 305 of the Criminal Procedure Act 51 of 1977 which restricted the access of convicted persons serving prison sentences to the Supreme Court to prosecute an appeal infringed IC s 8(1) which is similar to s 9(1).

**Note to s 9(4) (transitional arrangement):** Schedule 6 item 23(1) requires s 9(4) legislation to be enacted within three years of the date on which the new Constitution took effect (4 February 1997).

### Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

### Life

11. Everyone has the right to life.

### Freedom and security of the person

12. (1) Everyone has the right to freedom and security of the person, which includes the right –
- (a) not to be deprived of freedom arbitrarily or without just cause;
  - (b) not to be detained without trial;
  - (c) to be free from all forms of violence from either public or private sources;
  - (d) not to be tortured in any way; and
  - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right –
- (a) to make decisions concerning reproduction;
  - (b) to security in and control over their body; and
  - (c) not to be subjected to medical or scientific experiments without their informed consent.

**Note to s 12:** See additional rights for children in s 28(1)(d),(g) and (h).

**Note to s 12(1)(e):** A similar provision in the IC was interpreted to prohibit the death penalty (*S v Makwanyane* 1995(6) BCLR 665 (CC)).

The Correctional Services Act 8 of 1959 deals with treatment of prisoners. A provision permitting corporal punishment has been deleted (Correctional Services Second Amendment Act 79 of 1996).

### Slavery, servitude and forced labour

13. No one may be subjected to slavery, servitude or forced labour.

### Privacy

14. Everyone has the right to privacy, which includes the right not to have –
- (a) their person or home searched;
  - (b) their property searched;
  - (c) their possessions seized; or
  - (d) the privacy of their communications infringed.

**Note to s 14:** Criminal Procedure Act 51 of 1977 ss 20 - 27 provides for searches.

*Case v Minister of Safety and Security* 1996 (3) SA 617 (CC); 1996 (5) BCLR 609 found the far-reaching ban on possession of erotic material in the Indecent or Obscene Photographic Material Act to infringe IC s 13. (The Films and Publications Act 65 of 1996 repeals the Indecent or Obscene Photographic Material Act.)



## Freedom of religion, belief and opinion

15. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that –
- those observances follow rules made by the appropriate public authorities;
  - they are conducted on an equitable basis; and
  - attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising –
- marriages concluded under any tradition, or a system of religious, personal or family law; or
  - systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

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**Note to s 15(2):** The National Education Policy Act 27 of 1996 lists religious freedom in schools as a Directive Principle (s 4(iv)).

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## Freedom of expression

16. 1. (a) freedom of the press and other media;
- freedom to receive or impart information or ideas;
  - freedom of artistic creativity; and
  - academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to –
- propaganda for war;
  - incitement of imminent violence; or
  - advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

## Assembly, demonstration, picket and petition

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

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**Note to s 17:** See also s 23 (Labour relations).

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## Freedom of association

18. Everyone has the right to freedom of association.

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**Note to s 18:** See also s 23 (Labour relations).

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## Political rights

19. (1) Every citizen is free to make political choices, which includes the right –
- to form a political party;
  - to participate in the activities of, or recruit members for, a political party; and
  - to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right –
- to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - to stand for public office and, if elected, to hold office.

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**Note to s 19(2) and (3):** The legislative bodies established in terms of the Constitution are the National Assembly (s 46), NCOP (s 60), provincial legislatures (s 105) and municipal councils (s 155).

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## Citizenship

20. No citizen may be deprived of citizenship.



**Note to s 20:** The South African Citizenship Act 88 of 1995 provides for the acquisition, loss and resumption of citizenship.

### Freedom of movement and residence

21. (1) Everyone has the right to freedom of movement.  
 (2) Everyone has the right to leave the Republic.  
 (3) Every citizen has the right to enter, to remain in and to reside anywhere in the Republic.  
 (4) Every citizen has the right to a passport.

**Note to s 21:** See the South African Citizenship Act 88 of 1995 and the South African Passports and Travel Documents Act 4 of 1994.

### Freedom of trade, occupation and profession

22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

**Note to s 22:** S 198(b) prohibits mercenary activities unless they are specifically permitted by legislation: 'The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.' (The implementation of s 198(b) is suspended by Schedule 6 item 21(2).)

Various Acts regulate professions, for example, Public Accountants and Auditors Act 80 of 1991, Admission of Advocates Act 74 of 1964, Attorneys Act 53 of 1979, Medical, Dental and Supplementary Health Service Professionals Act 56 of 1974, and the Engineering Profession of South Africa Act 114 of 1990.

### Labour relations

23. (1) Everyone has the right to fair labour practices.  
 (2) Every worker has the right –  
 (a) to form and join a trade union;  
 (b) to participate in the activities and programmes of a trade union; and  
 (c) to strike.  
 (3) Every employer has the right –  
 (a) to form and join an employers' organisation; and  
 (b) to participate in the activities and programmes of an employers' organisation.  
 (4) Every trade union and every employers' organisation has the right –  
 (a) to determine its own administration, programmes and activities;  
 (b) to organise; and  
 (c) to form and join a federation.  
 (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).  
 (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

**Note to s 23:** See the Labour Relations Act 66 of 1995, Agricultural Labour Act 147 of 1993, Basic Conditions of Employment Act 3 of 1993, Wage Act 5 of 1957, Unemployment Insurance Act 30 of 1966. See also International Labour Organisation conventions to which South Africa is a party.

**Note to s 23:** See additional rights for children in s 28(1)(e) and (f).

### Environment

24. Everyone has the right –  
 (a) to an environment that is not harmful to their health or well-being; and  
 (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –  
 (i) prevent pollution and ecological degradation;  
 (ii) promote conservation; and

- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

**Note to s 24:** Many matters relating to the environment fall within the legislative and executive competence of provincial and local government. (The matters falling into Part B of Schedules 4 and 5 are matters over which local government has control while national and provincial government or, in the case of Schedule 5, only provincial government, retain regulatory power.)

S 152(1)(d) provides that one of the objects of local government is 'to promote a safe and healthy environment'.

Existing national legislation includes the Health Act 63 of 1977, Conservation of Agricultural Resources Act 43 of 1983, Prevention and Combatting of Pollution of the Sea by Oil Act 6 of 1981, Mine Health and Safety Act 29 of 1996 and Occupational Health and Safety Act 85 of 1993.



## Property

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application –
- (a) for a public purpose or in the public interest; and
  - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –
- (a) the current use of the property;
  - (b) the history of the acquisition and use of the property;
  - (c) the market value of the property;
  - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - (e) the purpose of the expropriation.
- (4) For the purposes of this section –
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
  - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

**Note to s 25:** See among others the Expropriation Act 63 of 1975, Restitution of Land Rights Act 22 of 1994, Land Reform (Labour Tenants) Act 3 of 1996, and Interim Protection of Informal Land Rights Act 31 of 1996.

**Note to s 25(7):** See Restitution of Land Rights Act 22 of 1994 (s 4 of the Act establishes a Commission on the Restitution of Land and s 7 establishes the Land Claims Court).



**Note to ss 26 - 29:** *Certification Judgment I* (para 78) states that: these 'socio-economic rights are 'at least to some extent justiciable' (ie can be protected by the courts) and 'can be negatively protected from improper invasion'.

### Housing

26. (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

**Note to s 26:** Housing falls under Schedule 4 (area of concurrent national and provincial competence).

For national legislation see, for example, Housing Act 4 of 1966, Less Formal Township Development Act 113 of 1991, Development Facilitation Act 67 of 1995 and Interim Protection of Informal Land Rights Act 31 of 1996.

### Health care, food, water and social security

27. (1) Everyone has the right to have access to –
- (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

**Note to s 27:** Health services and welfare services fall under Schedule 4 Part A (area of concurrent national and provincial competence). Child care facilities fall under Schedule 4 Part B (local government matter controlled concurrently by national government and province). Ambulance services fall under Schedule 5 (area of exclusive provincial competence).

For national legislation see, for example, Health Act 63 of 1977, National Policy for Health Act 116 of 90, Social Assistance Act 59 of 92 and Unemployment Insurance Act 30 of 1966.

### Children

28. (1) Every child has the right –
- (a) to a name and a nationality from birth;
  - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - (c) to basic nutrition, shelter, basic health care services and social services;
  - (d) to be protected from maltreatment, neglect, abuse or degradation;
  - (e) to be protected from exploitative labour practices;
  - (f) not to be required or permitted to perform work or provide services that –
    - (i) are inappropriate for a person of that child's age; or
    - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
  - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –
    - (i) kept separately from detained persons over the age of 18 years; and
    - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
  - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and