

INSTITUTION / ORGANISATION		REPRESENTED BY	
NAME	Department of Judicial Administration, Ministry of Justice, Finland	FIRST NAME/SURNAME	Merja MUILU
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SCHEME SUBMITTED	
TITLE	LEGAL AID SCHEME OF FINLAND
DATE OF INTRODUCTION	June 2002

DESCRIPTION OF THE SCHEME

In June 2002 a reform of public legal aid introduced important changes to the previous system. An important legal policy aim of the reform was to enlarge access to public legal aid and to transform public legal aid from a right for people with limited means toward a civil right.

With the old system, the legal aid affairs only granted legal aid to their own clients. Now it is extended to applicants who wish to have a private attorney granted.

EFFECTS ON THE WORKINGS OF THE COURT

- Finland has designed an impressive legal aid policy. Legal aid is considered as part of completing the construction of Finland's comprehensive welfare state.
- Currently Finnish eligibility for legal aid is generous. The criteria for non-criminal cases were adjusted in 2002 so that the proportion of the population eligible expanded from 44% to 75%. The reform also made the eligibility criteria common for litigation and non-litigation aid.
- For non-litigation matters, the choice of lawyer is limited to the public lawyer offices, while the eligible applicant might choose a private lawyer (advocate) for cases involving litigation. The Finnish legal aid offers a varied service, well tailored to the individual need of its clients.

FUTURE ADDITIONS TO IMPROVE THE RESULTS

The possibility of developing telephone advice lines is worth investigating. The experiment with legal advice over the telephone will be continued and expanded to new offices in the autumn of 2005. The advice is provided by experienced Public Legal Aid Attorneys.

- Another experiment, to begin in the autumn of 2005, will be the road sign service offered in a few Legal Aid Offices. The point of the service is to direct the person seeking assistance to the correct authority or to any other organisation which would be able to provide the necessary assistance.

PUBLIC AUTHORITY SUPPORT

YES

"Legal aid" is governed by the Legal aid act, the Law on the state legal aid offices, and three Government degrees.

POSSIBLE APPLICATION IN EUROPEAN COURTS

YES

ANNEXES

1. Jon T. Johnsen and Francis Regan: "Does access to lawyers solve the problem of access to justice? An international evaluation of Finnish legal aid". A report to the Finnish Ministry of Justice. March 2004.
2. Kari Alasaari and Marjukka Litmala: "Follow-up study on the reform of public legal aid act (2002)", part 1. 2004. (<http://www.om.fi/optula/uploads/euph7b.pdf>)
3. Legal Aid Act (<http://www.finlex.fi/en/laki/kaannokset/2002/en20020257.pdf>),
4. Decree on Legal Aid (<http://www.finlex.fi/en/laki/kaannokset/2002/en20020388.pdf>),
5. Decree on Legal Aid Fee Criteria (<http://www.finlex.fi/en/laki/kaannokset/2002/en20020389.pdf>)
6. Information on Legal Aid (<http://www.om.fi/esitteet/14267.htm>)

"THE CRYSTAL SCALES OF JUSTICE"
THE EUROPEAN PRIZE FOR GOOD PRACTICE
IN Civil JUSTICE ORGANISATION AND PROCEDURE

Entry form

1. Details of entrant (institution/organisation)

Name: Department of Judicial Administration, Ministry of Justice, Finland

Address: Ministry of Justice, PO Box 25, FI-00023 Government, FINLAND

2. Represented by

First name/Surname: Merja Muilu

Post held: Government Counsellor

3. Scheme submitted

Title: Legal aid scheme of Finland

Date of introduction: June 2002

4. Items to be attached

Please attach in English or French:

- a. A description of the scheme
- b. A description of the effects of the scheme on the workings of the court (*attachment b*)
- c. Any possible future additions which might improve the results of the scheme
- d. Any documents, press articles, evidence from members of the public, etc, relating to the scheme (*attachment d: a report by Prof Jon T. Johnsen and Assoc Prof Francis Regan; a link to the follow-up study by Marjukka Litmala and Kari Alasaari: (Appendix I)*)

5. Does the scheme have the support of the responsible public authorities in your country? If so, please give details.

Legal aid is governed by the Legal aid act, the Law on the state legal aid offices, and three Government degrees: one on legal aid, one on legal aid fee criteria and one on the state legal aid offices. Legal aid is administered by state legal aid offices and by decisions of the courts. The government and parliament are strongly committed to legal aid as part of completing the construction of Finland's comprehensive welfare state.

Both public and private attorneys generally hold a positive opinion about the image of public legal aid. They consider that there is a fairly favourable attitude toward legal aid among the public, and equally so among private law firms and the judiciary. They also consider that the reform in 2002 has had a positive effect on the image of public legal aid. Both public and private attorneys believe that the views about public legal aid are most positive among the judiciary.

6. Do you believe the scheme to be usable in other courts in European states? Give your reasons.

According to the report by Prof Jon T. Johnsen and Assoc Prof Francis Regan, Finland's policy is generous and comprehensive with respect to legal services for people with legal problems involving litigation. The extension of eligibility under the recent reforms means that significantly more than half the population have access to assistance with problems involving litigation. Viewed comparatively this is a considerable achievement compared to many other societies where the eligible proportion of the population is often well below fifty per cent.

Finnish policy is also unusual because the scheme incorporates what is proportionally probably the world's largest public, salaried sector in a legal aid scheme. In a comparative perspective, the public legal aid offices are remarkably well functioning. They appear as efficient and professionally independent deliverers of legal services to individual clients. They have avoided the ideological conflicts and high rates of burn out and turnover of staff that mark many public law centres in the common law countries.

The level of co-operation in Finland also is unusual by international standards. In a number of other societies the relationships between the private legal profession, public legal aid offices and government are far less harmonious than in Finland. The co-operative relations have been fundamental to the successful incremental development of Finland's legal aid policy over the last few years. (*See the attached report.*)

A description of the scheme

By definition legal aid is the granting of state-funded assistance needed by people who are financially unable to meet the costs involved in a legal matter. Legal aid covers the fees of an attorney wholly or against deductible according to the financial situation of the recipient of legal aid. The court charges and other similar payments as well as necessary costs of interpretation and translation are waived for a recipient of legal aid. Legal aid generally covers all kinds of legal matters and all the needed actions, such as assistance in court proceedings in civil and criminal matters, assistance in proceedings at administrative courts, document drafting and advice.

In June 2002 a reform of public legal aid was introduced. The reform introduced important changes to the previous system. An important legal policy aim of the reform was to enlarge access to public legal aid. This aim was in the preparatory documents expressed as an intention to transform public legal aid from a right for people with limited means toward a civil right. In addition to extending access to public legal aid to a larger part of the population, the reform also included many other important changes. For example legal aid is not given if the person has legal expenses insurance that covers the matter in question.

The state legal aid offices have two tasks: to provide legal aid and to grant it. Since June 2002, the task of granting legal aid through the legal aid offices was extended to those legal aid applicants, who wish to have a private attorney appointed. Before this the legal aid offices only granted legal aid to their own clients. The legal aid office has the right to contact the authorities and insurance companies so as to check the information that the applicant has provided on his or her financial circumstances. The Ministry of Justice is vested with the overall management and supervision of legal aid offices. Public legal aid attorneys are nevertheless independent and only under the supervision of the Finnish Bar Association when providing legal aid.

With population of about 5,2 million, and area about 340 000 km², Finland has 66 legal aid offices, which are located mainly in municipalities with a district court. The legal aid offices have 17 branch offices and 97 branch clinics where clients are seen as required. Legal aid offices are small: they have from 4 to 26 salaried employees. The total number of employees is just 460, of which half are lawyers (public legal aid attorneys) and the other half office staff. Applicants of legal aid may choose which legal aid office they wish to use.

Legal aid covers approximately 75 % of households in Finland. Legal aid is granted on the basis of the applicant's income, expenses, possessions and maintenance liability. The legal aid office calculates the applicant's monthly available means. Legal aid can be free of charge or the recipient of legal aid may have to pay a percentage of the fee of the attorney (basic deductible). Whether he/she has to pay, and the percentage, depends on the monthly available means of the applicant.

Legal aid is provided by private lawyers and by public legal aid attorneys. Private lawyers are advocates or other private lawyers. An advocate is a lawyer who is a member of the Finnish Bar Association and whose activities are supervised by the Bar Association and the Chancellor of Justice. Other private lawyers are lawyers who are not under any public supervision. Public legal aid attorney is a lawyer working at a state legal aid office. The activities of public legal aid attorneys are supervised in the same manner as those of advocates. Half of public legal aid attorneys are members of the Bar. In most cases, the applicants first contact with the lawyer of his/her choice, who then draws up the application for legal aid. The recipient of legal aid has a choice of attorney in any court case. In matters that are not to be brought before a court (e.g. advice or drawing up of a document, such as an estate inventory or an agreed distribution of matrimonial property), legal aid is given only by public legal aid attorneys. In these situations the recipient of legal aid cannot choose a private lawyer, unless there is a special reason for it.

A description of the effects of the scheme on the workings of the court

The widely accepted international goal of legal aid policy is to promote equality before the law for all citizens of the relevant society. In accordance with the strategy of the Ministry of Justice, access to justice in Finland must be available on an equitable basis; it must also be available at the earliest possible stage, in proceedings that are suitable and flexible, and at reasonable cost. This is the basis for the development of the network of Legal Aid Offices so that the supply and demand of their services are in balance.

Finland has designed an impressive legal aid policy. The Finnish legal aid has gone further than most societies in shaping legal aid policy that effectively promotes equality before the law. Legal aid is considered being a part of completing the construction of Finland's comprehensive welfare state. It is hard to conceive of a society being fair and reasonably equal if citizens do not have access to, for example, legal advice and legal services for court cases.

In particular, Finnish policy is generous and comprehensive in the extent to which it assists people with litigation. Currently Finnish eligibility for legal aid is generous. The criteria for non-criminal cases were adjusted in 2002 so that the proportion of the population eligible expanded from 44% to 75%. The reform also made the eligibility criteria common for litigation and non-litigation aid.

The scheme incorporates all professional strategies or problem solving techniques that lawyers use to help clients, and leaves the choice in the single case to the professional judgement of the lawyer assigned. For non-litigation matters, the choice of lawyer is limited to the public lawyer offices, while the eligible applicant might choose a private lawyer (advocate) for cases involving litigation. The Finnish legal aid offers a varied service, well tailored to the individual need of its clients.

Future additions which might improve the results of the scheme

In order to increase the volume of legal advice and reduce client queues, the possibility of developing telephone advice lines is worth investigating. The experiment with legal advice over the telephone will be continued and expanded to new offices in the autumn of 2005. The advice is provided by experienced Public Legal Aid Attorneys.

Another experiment, to begin in the autumn of 2005, will be the road sign service offered in a few Legal Aid Offices. The point of the service is to direct the person seeking assistance to the correct authority or to any other organisation which will be able best to provide the necessary assistance.

Appendix I

Documents, press articles, evidence from members of the public, etc, relating to the scheme

- Report from *Jon T. Johnsen and Francis Regan*: Does access to lawyers solve the problem of access to justice? An international evaluation of Finnish legal aid. A report to the Finnish Ministry of Justice. March 2004.

For other relevant documents, you can consult the following links:

- *Kari Alasaari and Marjukka Litmala*: Follow-up study on the reform of public legal aid act (2002), part 1. 2004. (<http://www.om.fi/optula/uploads/euph7b.pdf>)
- Legal Aid Act (<http://www.finlex.fi/en/laki/kaannokset/2002/en20020257.pdf>),
Decree on Legal Aid (<http://www.finlex.fi/en/laki/kaannokset/2002/en20020388.pdf>),
Decree on Legal Aid Fee Criteria
(<http://www.finlex.fi/en/laki/kaannokset/2002/en20020389.pdf>)
- Information on Legal Aid (<http://www.om.fi/esitteet/14267.htm>)

Does access to lawyers solve the problem of access to justice?
An international evaluation of Finnish legal aid

A report to the Finnish Ministry of Justice

by

Prof Jon T. Johnsen and
Assoc Prof Francis Regan
March 2004

Introduction

This report assesses the extent to which Finland's legal aid policy promotes equality before the law for all Finns. The research was undertaken because from a comparative perspective it appeared that Finland's policy is in a number of respects going against the tide of legal services policy. Finnish policy appeared to be unusual because the proportion of the population eligible for legal aid was recently expanded to include the middle class, and because the scheme incorporated what is probably the world's largest public, salaried sector in a legal aid scheme. By contrast, a number of societies have in recent years undertaken an almost diametrically opposed pattern of reforms including cutting eligibility and closing public sector legal aid offices. Together these features suggested that Finnish policy was worthy of further analysis. As comparative legal aid scholars we were able to apply the insights from international research in order to assess Finland's policy against external and research based criteria.

The unique contribution that we are able to offer in this report is an informed outsiders' perspective on Finnish policy. This comparative perspective draws on our combined experiences and analyses of legal aid developments in many societies. Our comparative perspectives have been developed in the academic literature examining legal aid policy in many societies. Between the two of us we have examined legal aid in Norway, Sweden, Denmark, the Netherlands, Belgium, England, USA, Australia, China, Fiji, Uganda as well as earlier research examining legal aid in Finland. In addition we have also produced reports for governments and government agencies in Norway, Australia and China. We trust that our observations, analysis and recommendations will provide some fresh and useful insights to assist the further development of what we think is a very impressive, and one of the world's best developed, legal aid policy.

The particular focus of this report is an assessment of the extent to which policy promotes equality before the law for all in Finland. This is the aspect of policy where our international and comparative experience can make the strongest and most useful contribution. This means that we focus primarily on assessing the services that are offered by way of the legal aid scheme. This focus allows us to assess the extent to which Finnish legal aid assists the citizens with the full range of the legal problems they experience.

It is also important to explain what the report is not. The report is not a comprehensive and detailed analysis of all aspects of Finnish legal aid policy. The report is not, for example, a detailed examination of the structure and administration of the scheme, or the legislation that implements policy. Nor do we consider the financial aspects of the scheme including the funding levels and costs of different types of cases and different types of service delivery. These are matters that we consider to some extent in the body of the report but not in detail. A comprehensive and detailed analysis would have been a very different type of study to the one that we were able to undertake. We think that such an analysis is also best undertaken by those who have more time and access to more information than we had in our two weeks in Finland. Fortunately, the current evaluation by the National Research Institute for Legal Policy – Finland, will provide just such a detailed report in its evaluation of the 2002 reform.

The report draws on a number of data sources. First we had access to the paper prepared by Ms Merja Muilu for the International Legal Aid Group Meeting at Harvard University in June 2003. We also had access to the small amount of international scholarly literature examining Finnish legal aid. Second, we spent two weeks conducting fieldwork for the research in Finland in the second half of August 2003. In that two-week period we were able to interview representatives of almost all of the main stakeholders in legal aid policy. The main stakeholders in the legal aid policy we interviewed include representatives of the Finnish Bar Association and the Finnish Legal Aid Lawyers Association, members of the judiciary, a representative of the Finnish Consumer Council, researchers in the Institute of Legal Policy Research, and the legal insurance section of the Finnish Insurance Federation. In addition, we interviewed a number of people directly involved with shaping and implementing legal aid policy including members of the Parliamentary Committee, and staff from the Ministry of Justice. Finally, and very importantly, we interviewed legal aid service delivery personnel in Helsinki and a number of branch offices in rural Finland. The fieldwork also allowed us to collect statistical data and publications from the respective stakeholders. The one group that we did not consult were legal aid clients or their representatives. While client interviews would have enriched our report we do not believe that they were an essential element of a study of the design of policy. Furthermore, we understand that the evaluation currently underway will include client interviews.

We are grateful to all those who agreed to be interviewed for the openness and willingness to answer our numerous questions.

We are especially grateful, however, to Ms Merja Muilu, Legal Advisor Ministry of Justice, who arranged and rearranged the schedule of meetings for us. In addition, Ms Muilu was a gracious and thoughtful host during our time in Finland.

Finally, it goes without saying that if there are errors of fact or inaccurate interpretations of data in the report they are our responsibility alone. We also take this opportunity to apologise for any such errors because they are unintentional on our part.

*Prof Jon Johnsen
Dean of Law
University of Oslo
Norway*

*Dr Francis Regan
Assoc Prof of Legal Studies
Flinders University
Australia*

5 March 2004

Executive Summary

The widely accepted international goal of legal aid policy is to promote equality before the law for all citizens of the relevant society. Achieving this goal, however, is not easy. In order to assess Finnish we propose a model of “best policy” legal aid. The model establishes benchmarks for comprehensiveness of services and generosity of eligibility criteria.

Empirical and comparative research suggests that there are two, at least partly contradictory purposes of legal aid policy. The first is well known, that is, to assist people when they experience legal problems involving litigation. This is achieved by providing people with subsidised legal services when they are involved in litigation. The second is less widely recognised but is nevertheless integral to promoting equality before the law. It includes assisting people with services when they experience the common, but perplexing family and civil legal problems of every day life. Without this combination of purposes people are either abandoned to their own devices when they are involved in litigation, or when they are involved in problems that do not initially involve litigation. Research demonstrates, however, most societies rarely pursue these two purposes effectively and simultaneously.

Empirical and comparative research also suggests that legal aid most effectively promotes equality before the law when policy is generous and comprehensive. That is, when most of the population is eligible for legal aid services and when most legal problems are included in the coverage of legal aid services. This means that most people are eligible for legal aid with respect to litigation and also with respect to the common legal problems of every day life.

Using this “best policy” model to assess Finnish policy leads us to conclude that Finland has designed a very impressive legal aid policy. We conclude that Finnish legal aid has gone further than most societies in shaping legal aid policy that effectively promotes equality before the law. In particular, Finnish policy is generous and comprehensive in the extent to which it assists people with litigation. It is less so, however, with respect to the legal problems of every day life. There are also a number of additional significant strengths of Finnish policy identified in the report including the administrative structure, the network of public legal aid offices, and the co-operative relationships between the stakeholders.

The report also identifies a number of what we refer to as desirable ‘add-ons’ to Finnish legal aid services. These add-ons would ensure that equality before the law is promoted more effectively with respect to the common and often not initially litigious legal problems of every day life. The add-ons could also be developed incrementally and with very little additional budget impact. The add-ons are the focus of the recommendations.

Summary of recommendations

Recommendation 1

In order to increase the volume of legal advice and reduce client queues, we recommend that the Ministry of Justice and the legal aid managers investigate the feasibility of developing telephone advice lines at each of Finland’s larger legal aid offices. Such a service should be professional, high quality, free of charge, offered consistently throughout the year, offered to all Finns including use of a ‘toll free number’, and widely publicised in the respective local communities.

Recommendation 2

In order to further improve legal literacy in Finland we recommend that the Ministry of Justice develop simple legal information and legal advice materials that are free of charge and widely available. The materials should be prioritised in a three-year development programs and should

- be published in attractive, short, easy-to-read publications*
- also be provided on the Internet via the Ministry of Justice and legal aid office websites*
- also be translated into the main languages in Finnish society in order to ensure their accessibility*

Recommendation 3

In order to further improve the overall level of legal literacy in the society we recommend that the Ministry of Justice investigate the feasibility of establishing legal education and

training courses for professionals and for the public. These courses should be offered by staff employed in the legal aid offices.

Recommendation 4

We further recommend that both types of courses be fee paying. The aim is to be cost neutral for the offices rather than either profit making or increasing staff workloads.

Recommendation 5

In order to ensure that legal aid policy is responsive to community needs we recommend that structures be established in order to facilitate more responsive and accountable legal aid policy development and to facilitate community input into development of policy and of service delivery. We recommend that two types of structures be established - a National Legal Aid Consultative Committee and a network of Community Consultative Committee linked to the legal aid administrative regions.

Recommendation 6

In order to enhance their distinctive public service identity we recommend that the legal aid offices further distinguish their work from that of the private legal profession. This could include contributing more to law reform campaigns, test cases in controversial and ambiguous areas of law that impact regularly and negatively upon groups of legal aid clients.

Section One – Research, Theory and Policy

The purpose of this section is to draw on recent research and theory in order to propose a set of “best policies” of legal aid with which to assess Finland’s policy. We argue that to effectively promote the ideal of equality before the law requires an extensive policy of legal aid. Equality means that legal services are available to most members of the population and in respect of most legal problems. Effective legal access is required if equality before the law is to be achieved in practice. Our evaluation standards are explained in this section including the range of legal aid services that is implied. We draw on a pool of best policy principles gathered from research in many western industrialized welfare societies. We also examine recent empirical research that investigates the common legal problems people experience and how they respond to those problems. The implications of that research for the design of services are also considered.

Best Policies for Legal Aid

Comprehensive social policies, where all or at least most of the population are eligible for social programs, are widely supported in the policy literature. For the purposes of this report it is sufficient to summarise the arguments.¹¹ First, comprehensive policies promote equal citizenship for all the members of a society. Instead of, for example, a person’s income determining whether they can afford to access health care or education, membership of the society itself equips people with a right to equal treatment including access to public services. The ideal of equal citizenship includes equality before the law. Second, because there is no stigma involved in qualifying, comprehensive policies are more likely to reach all the relevant citizens than selective policies targeted to the disadvantaged or other specific social groups.

The ideal of equal access does not imply that public schemes need to provide free legal service to everyone. For people with wealth, it is more efficient to make them go directly to the market, and buy what they need. It is sufficient that most, rather than all, members of the society are eligible for programs. Policies that exclude the wealthy are also popular because they are of lower cost to government. Legal aid policy, for

¹¹ The literature includes: Titmuss R. (1987a) “Universal and Selective Social Services”, in: Abel-Smith, B. & Titmuss, K., eds., *The Philosophy of Welfare: Selected Writings of Richard M Titmuss*, London: Allen & Unwin; Goodin, R. (1988) *Reasons for Welfare*, Princeton: Princeton University Press; Baldwin, P. (1990) *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875-1975*, Cambridge: Cambridge University Press; Goodin, R. E. & Le Grand, J. (1987) *Not Only the Poor: The Middle Classes and the Welfare State*, London: Allen & Unwin.

example, was designed in some societies in the post World War II period so that all but the wealthiest members were eligible.¹²

We define as generous the legal aid schemes that include at least fifty per cent of the population as eligible.¹³ Generous schemes mean, therefore, that income and other eligibility criteria are designed to include most of the population rather than targeting disadvantaged groups alone. Generosity therefore implies offering legal aid to the middle classes in respect of high cost cases in order to protect them from the risks associated with such cases. As mentioned, it might be difficult to justify the expenditure necessary to offer legal aid to the richest members of society in view of their capacity to pay. Instead, sliding eligibility scales can be used to gradually reduce the contribution made by the state as the client's income and wealth increases. Then legal aid mainly protects the well-off from unusual or exorbitant, rather than all, legal costs.

Second, we consider legal aid schemes are comprehensive if they include assistance for most of the relevant legal problems. Comprehensive legal aid includes professional assistance in all stages and in all types of litigation unless assistance is offered by other means. Furthermore, it includes assistance with most day-to-day legal problems unless assistance is offered by other means. There are also, however, reasons to argue that the services should not be completely comprehensive. In particular, there are two main reasons for not offering assistance for litigation in all cases in all courts and tribunals. First, if legal aid was offered for all litigation it would be most likely to have a number of negative consequences. It might mean, for example, that frivolous cases could proceed to court more easily, or that legally aided clients could continue with litigation when other self-funded citizens could not. The main argument made, however, is that it would result in an impossible burden upon the public purse by effectively encouraging all potential litigation to proceed to court.¹⁴

Having explained what we mean by generous and comprehensive policy, the next section considers in more detail the legal aid services required by the "best policy" approach.

Research findings and their implications

The purpose of this section of the report is to explain the range and type of services implied by the "best legal aid policy" approach.

Empirical research conducted over the last 30 years reminds us that ordinary citizens in modern western societies experience a wide variety of legal problems, only a small proportion of which involve litigation. In fact the research demonstrates again and again that while many people report experiencing common and frustrating legal problems in a number of areas of life, they rarely go to court. The Scandinavian findings are thoroughly analysed in Johnsen¹⁵. The recent research conducted by Genn in England, and Genn and Paterson in Scotland reflects similar conclusions. The research,

¹² Sweden and the Netherlands legal aid reforms in the post World War II period meant that all but the wealthiest members of society were eligible for at least some assistance with litigation services. The Swedish scheme in the early 1990s is described in Ling, O. (1994) "Legal Aid Costs in Sweden", paper to: *Legal Aid in the Post Welfare State Society*, the International Legal Aid Conference, Den Haag, The Netherlands, April; and Regan, F. (1994) "Are there 'Mean' and 'Generous' Legal Aid Schemes?", paper to: *Legal Aid in the Post Welfare State Society*, op.cit.. For the Netherlands see: Goriely, T. (1992) "Legal Aid in the Netherlands: A View From England", *Modern Law Review*, Vol. 55, pp. 803-821.

¹³ The historically generous eligibility criteria in Sweden are discussed in Bruzelius, A. & Bolding, P. O. (1975) "An Introduction to the Swedish Public Legal Aid Reform", in: Cappelletti, et.al., eds., p. 567. For the Netherlands see: Goriely (1992) op.cit. The generosity of the two schemes has not, however, survived political pressures in favour of slim governments. The recent Swedish cuts to eligibility criteria are discussed in Regan, F. (2000) "Retreat from Equal Justice? Assessing Sweden's Recent Legal Aid and Family Law Reforms", *Civil Justice Quarterly*, Vol. 19, pp. 168-184. The recent Dutch changes are discussed in Klijn, A. (1999) "The Dutch 1994 Legal Aid Act as a New Incentive Structure", in: Reilly, J. T., Paterson, A. A. & Pue, W. W., comps., *Legal Aid in the New Millennium*, Papers to the International Legal Aid Conference, University of British Columbia, Canada, June.

¹⁴ This means that such services should not be offered for relatively simple types of cases including, for example, no-fault divorce applications that do not involve complex questions of children and property. The preferable solution is to assist people to act for themselves in such cases by offering classes, kits and other publications. Another group of cases that do not require legal aid are those heard in Small Claims courts. Finally, there is a deeper philosophical issue at stake. While the courts provide procedures to resolve many types of legal problems, other processes, including mediation and self-help, are also important. In other words, if litigation services were completely comprehensive it could encourage all citizens to take all their legal disputes to court. This outcome would make courts unworkable and foster a destructively litigious society.

¹⁵ Johnsen, Jon T. (1987) *Retten til juridisk bistand. En rettspolitisk studie* (Oslo Tano)

therefore, has important implications for the design of legal aid policy.¹⁶ In particular it suggests that legal aid schemes incorporate all types of legal services necessary to solve legal problems, whether it be the common legal problems of every day life or the rarely occurring ones where litigation is inescapable.

The research also suggests that different disadvantaged groups, including the poor, illiterate and disabled, face particular difficulties in responding to legal problems regardless of whether they involve litigation or not. These groups should therefore be a priority for legal aid services.

Recent research in the common law countries, for example, surveyed ordinary citizens about whether they had experienced any of a common range of problems that had a legal remedy, and their experiences if they had done anything about those problems.¹⁷ In other words, rather than examining the legal system from the 'top down' perspectives of judges, lawyers, and justice system administrators, the researchers adopted a 'bottom-up' approach and asked individuals from all social groups about *their paths through the justice system*. When such research was undertaken in the past it often focussed on low-income or other disadvantaged groups alone. While this 'legal needs of the poor' focus, as it is referred to, is undoubtedly important, it does not provide a comprehensive picture of all social groups in a society.¹⁸ By contrast, the comprehensive nature of the bottom-up research provides a detailed understanding of the legal problems that all people in the society experience, how they respond, and the consequences of doing so.¹⁹

Scandinavian legal aid research has also used a 'bottom up' approach. Researchers asked people about the problems they experienced and tried to identify their legal aspects. These projects offered their respondents free professional legal services for all problems presented, and studied the effects of the aid provided. Therefore, the Scandinavian studies map with considerable precision the relationship between the respondent's experience of welfare problems and specific parts of the legal system's regulations, organisation and case handling. In contrast to the "paths to justice" studies that maps peoples existing problem solving patterns, they produce a rich and accurate picture of what legal assistance actually means to the respondent's welfare. Together, however, these two approaches enable us to develop knowledge that is highly relevant to a best policy approach to legal aid, namely an improved understanding of what *difference* legal aid makes to people's problems. However, as far as we know, no study has used the two research strategies in combination.

One of the strengths of the 'bottom up' research is that it highlights the often-misunderstood importance of legal aid services for legal problems that are outside of litigation. It is widely accepted in the rich western societies that legal aid services should assist with litigation but other legal problems are often not seen as a priority for legal aid policy. As we explain below, the research suggests that legal problems that are outside of litigation also need to be a priority in order to effectively promote equality before the law.

Legal aid policy in comparative perspective

In the previous section, we explained that in order to effectively promote equality before the law, legal aid policy must offer a holistic approach. In this section we draw on the comparative literature to explain the different priorities developed by different groups of societies and we will combine them in

¹⁶ The England and Wales research is reported in Genn, H. (1999) *Paths to Justice: What People Do and Think About Going to Law*, (Oxford: Hart; the Scottish research is reported in Genn, H. & Paterson, A. (2001) *Paths to Justice in Scotland: What People in Scotland Do and Think About Going to Law*, (Oxford: Hart). The Legal Services Commission in England will conduct a similar study every five years in order to monitor changes in people's paths to justice. Researchers in a number of other societies including the Netherlands, Canada, and Australia are planning similar studies.

¹⁷ The research focussed solely on civil law problems but not criminal matters.

¹⁸ The 'legal needs of the poor' research conducted in the 1960s and 1970s includes: for the UK Abel-Smith, B., Zander, M. & Brooke, R. (1973) *Legal Problems and the Citizen*, (London: Heineman); for the USA, Curran, B. (1977) *The Legal Needs of the Public*, (Chicago: The American Bar Foundation, 1977); for Canada, Messier, C. (1975) *Les Mains de la Loi*, (Montreal: Commission de Service Juridiques, 1975); and for Australia, Cass, M. & Sackville, R. (1975) *Legal Needs of the Poor*, (Canberra: Australian Government Publishing Service, 1975).

¹⁹ The research proceeded in three stages. In the screening survey in England and Wales, a random sample of 4,125 people over the age of 18 were asked whether they had experienced any from a list of common legal problems. Intensive interviews were then conducted with the 1,134 people who had reported experiencing problems in order to find out how they had responded and to identify the consequences. Finally, a small group of 40 respondents who pursued their cases to a decision were interviewed about their experiences with and attitudes towards the justice system. The research method is described in Genn, op.cit.

a “best policy” model. In this way we are able to highlight the strengths and weaknesses of Finnish policy. Then we compare Finnish policy to other societies.

Comparative research suggests a number of important lessons for the design of legal aid policy. First, many ordinary people need help when they experience common civil and family, (non criminal) law problems in life. Many people know what to do about problems including divorce and they seek appropriate assistance from a solicitor. Many people attempt to resolve many other common problems by negotiation or other forms of self-help and are quite often successful in doing so. However, there are many problems where many people do not know what to do, and do not seek advice from any source. That is, the research demonstrates that people need help with knowledge and information about how to respond to common legal problems.

In other words, lawyers, courts and tribunals are important in resolving common legal problems, but they do not exhaust the assistance that the citizens require. There is also a large number of problems which people try to resolve by, for example, talking and negotiating with the other person. And they might be able to do this more effectively if further assistance is readily available. Finally, there is a large volume of problems that is currently left unresolved and where people could benefit from better and more forms of assistance. The design of legal aid schemes and particularly the purposes they are meant to fulfil, therefore, matters.

Instead of giving the sole, or even main, priority to assistance in court cases the research suggests that legal aid schemes need to pursue two partly contradictory priorities. The first priority is to assist people with the common but nevertheless worrying, often relatively uncomplicated, civil and family law problems of everyday life. As Genn and Johnsen’s research reminds us, in these types of matters litigation is unlikely to be involved. The purpose of legal aid in such problems is not necessarily to assist people to pursue or promote litigation. Instead, it is to assist people with information about their options and the consequences of those options if they decide to respond. Once they understand their position their options might decide to, for example, avoid, bypass, threaten, and sometimes even consider initiating litigation.²⁰ Equality before the law suggests that they not only understand the law relating to these problems but what their options consist of.

The point is that these problems are not only common and worrying. In addition, the options that are available to people are often unclear unless they can get guidance about those options. Finally, these problems rarely end up in court. Assistance of this kind is referred to in this paper as 'outside litigation' services because they are designed to assist people who, although have a legal problem, do not necessarily want or need to pursue litigation. In many societies such services include:

- Legal advice and information in two forms, either
 - in face-to-face interviews
 - over the telephone
- Minor assistance including explaining documents, writing letters, telephone call, drafting simple wills, drafting other simple legal documents, etc.
- Public education and training about legal rights and obligations including
 - workshops, classes and seminars for professionals and members of the public on specific legal issues
 - publications about relevant, recurring and relatively simple legal issues including short pamphlets, booklets, and Do do-it-yourself kits
 - material on the Internet including pamphlets, booklets, and general information about relevant laws

The second and more familiar priority of legal aid is to assist people when they are involved in litigation in all areas of law. The capacity to effectively defend and assert legal rights inside litigation is widely accepted as fundamental to the ideal of equality before the law. The second main purpose of legal aid schemes is, therefore, to promote citizens’ capacities to successfully pursue litigation. Schemes therefore need to offer what are referred to here as 'litigation' services. They often include:

- legal advice in relation to all types of court cases including for criminal cases involving
- legal assistance to people in prisons and/or held in police stations

²⁰ This discussion draws on the conceptual model of 'legal mobilisation' developed in F.K. Zemans (1982) "Framework for analysis of legal mobilisation: A decision-making model", *American Bar Foundation Research Journal*, p. 989.

- duty solicitor services in courts where lawyers assist unrepresented parties with bail applications, adjournments, mitigation and guilty pleas
- legal representation in court in all types of cases

If the combination of two types of services is not offered, the citizens are abandoned to their own devices when they have to deal with common everyday legal problems, or when they have to go court, or both. Either result conflicts with the ideal of equality for all before the law.

To summarise, a “best policy” approach to legal aid needs to be generous and comprehensive with respect to services also where litigation is not involved. Under a “best policy”, most of the population will be eligible for legal aid for all types of legal problems of some seriousness. In addition, policy will be designed to ensure that a range of services is offered that respond to the different categories of legal problems. Table 1 summarizes the main characteristics of the “best policy” approach. Since existing schemes usually distinguish between litigation aid and other forms of service, we have divided the table similarly.

Table 1 “Best policy” model - Generous and Comprehensive services

<i>Coverage</i>	<i>Outside litigation services</i>	<i>Litigation services</i>
<i>Eligibility</i>	<i>Generous</i> Most of population eligible; Contributions tailored to costs and economy	<i>Generous</i> Most of population eligible; Contributions tailored to costs and economy
<i>Type of problems</i>	<i>Comprehensive</i> Assistance offered for most commonly occurring legal problems not involving litigation	<i>Comprehensive</i> Assistance offered for most legal problems
<i>Range of services</i>	Varied – tailored to the problem and reform oriented Information and education services, counselling, advice, drafting, negotiations, applications, complaints, mediation, test cases, law reform etc	Varied - tailored to the problem and oriented towards general issues All necessary legal representation and minor assistance in courts

In sum, the model includes all the types of legal aid services, inside and outside litigation, that are necessary to promote equality before the law. It requires that all services need to be generous and include more than fifty per cent of the population. It also requires that it covers most legal problems where litigation is involved and most day-to-day legal problems, and that the range of services included are comprehensive. In the following section we examine Finnish legal aid and assess how well it conforms to the “best policy” principles.

Section Two – The Strengths and Deficits of Finnish Legal Aid Policy

The purpose of this section of the report is to highlight both what we see as the considerable and significant strengths of Finnish legal aid policy and to point out some parts that we think leave space for improvements. We compare it to the best policy principles that we described in the previous section. In order to develop our analysis further, we also compare Finnish legal aid policy to legal aid in the common law and the Scandinavian countries. Our intention is not to describe the existing policy in detail for the Finnish government and Ministry of Justice. On the contrary our understanding as external comparative scholars is destined to be limited and less accurate than that of many scholars

and officials in Finland. Nevertheless, we think it is useful to highlight what we have identified as the main features of the legal aid system from a comparative and scholarly perspective.

We will evaluate the Finnish scheme on two levels. First we focus on legal aid policy, as it appears in the present legislation and regulations, and from our interviews. Then we focus on the implementation of policy through the legal aid administration, public legal aid offices and the private profession.

Finnish legal aid ideology

Eligibility

Currently Finnish eligibility for legal aid appears to be generous. The criteria for non-criminal cases were adjusted in 2002 so that the proportion of the population eligible expanded from 44% to 75%. The reform also made the eligibility criteria common for litigation and non-litigation aid. The Ministry of Justice has the power to adjust the means test. Contributions seem reasonably tailored to the costs of the case and the economic situation of the applicant. The result is a reasonably fair split between the applicant and the public's responsibility for costs.

Criminal legal aid has a separate statute with slightly different principles.²¹ A suspect can ask for a defender, paid by the public purse, in cases with a maximum penalty of more than four months in prison, and also when the suspect is arrested or detained and if the suspect is over the age of eighteen. If convicted, however, the courts can order the public costs wholly or partly repaid according to the contribution system applied in civil legal aid cases.

We learned that the percentage contributions currently has no ceiling. The reason was cost control. When the costs reached the previous ceilings, neither the party nor the lawyer had any incentive to limit them.²² In high cost cases, percentage contributions without any maximum might function as a deterrent against using legal aid instead of a cost sharing arrangement. Neither does litigation aid cover costs to the counterpart, even if they are exorbitant. The risk of court costs might also function as a deterrent against access to justice, similar to the percentage contributions. If such cases actually occur, although the risk is probably low, one cannot exclude conflicts with the right to counsel embedded in the European Convention on Human Rights art 6 (1) and 6 (3) d that entitles every one to a fair trial.²³

Type of problems

The Finnish legal aid acts provide a comprehensive coverage of legal problems. The legal characteristics of the problem do not matter. The main criterion is that the applicant is in need of a lawyer to handle the issue competently. Coverage relates to seriousness, not the legal nature of the problem.

Range of services

The scheme incorporates all professional strategies or problem solving techniques that lawyers use to help clients, and leaves the choice in the single case to the professional judgement of the lawyer assigned. For non-litigation matters, the choice of lawyer is limited to the public lawyer offices, while the eligible applicant might choose a private lawyer (advocate) for cases involving litigation. We therefore think that Finnish legal aid offers a varied service, well tailored to the individual need of its clients.

The main weakness is the limitation upon lawyer services and the criteria of seriousness. It means that the huge amount of everyday legal problems that are too small or legally insignificant to justify the use of lawyers, currently falls outside the scope of the scheme. The scheme's focus on lawyers' traditional techniques for solving individual clients' problems. It means that legal literacy programs, community education, and the development of do-it-yourself packages, largely fall outside the scope of the legal aid scheme. It also means that group strategies like law reform, group litigation and test cases also fall outside. The Finnish schemes primary goal seems be to equality between the citizens in access to lawyers as individuals. It does not aim at providing a remedy for other forms of inequality in access to justice.

²¹ Lag om rättegång i brottmål 11.7.1997/689

²² RP 82/2001 rd p 40. (Regeringens proposition till Riksdagen med förslag till rättshjälpslag och vissa lager som har samband med den. Swedish version)

²³ *Airy v Ireland*

Co-operation between stakeholders

We observed a remarkable consensus about legal aid policy among all the interest groups we interviewed. The meetings that we attended also demonstrated this easily overlooked strength of Finland's legal aid policy. There is undoubtedly a high level of co-operation and good will between the different legal aid stakeholders in Finland. The stakeholders include the Parliament, the Ministry of Justice, legal aid service delivery personnel, the Legal Aid lawyers Association, the Finnish Bar Association and the Legal Insurance section of the Insurance Industry.

The only controversy over principle seemed to be about the extent of involvement of the private bar in policy and service delivery. The Finnish Bar Association argues that the legal aid regulations create market conditions that are unfair to the private profession. First, the public sector's monopoly on non-litigation aid effectively excludes private practitioners, and limits the eligible client's choice of lawyers. Second, the public sector is exempted from VAT. Although the government compensates VAT for the fees paid by the public purse to private lawyers, the VAT also increases the contributions paid by the clients themselves with 23 percent. They also believe the private sector is able to offer a superior quality delivery of legal services, legal aid included, and should be allowed to compete on equal terms.

Including the private profession in all aspects of service delivery would obviously increase the scheme's capacity. Fair competition might also improve quality and efficiency, while collaboration might improve specialization and division of tasks, and thereby the range of professional services available in legal aid. We return to this point when we discuss Finnish legal aid in practice.

Finnish legal aid in practice

The evidence available to us suggests that the combination of recent policy reforms has been successful. In brief, the reforms were in two stages. First, in 1998 the network of municipal legal aid offices was transferred to the responsibility of the Ministry of Justice. Second, in June 2002 the legislation was amended in a number of ways.

Capacity and use

Statistics show that Finland's scheme is not only comprehensive in theory but also provides quite comprehensive coverage in practice. Actual coverage of legal problems seems to be most developed with respect to litigation. In principle, Finnish policy is also generous with respect to legal problems that are outside of litigation. However, the system appears significantly more restrictive in practice, mainly due to three conditions.

First, since non-litigation aid is a monopoly for the public lawyers, their capacity to deliver services is crucial to the actual operation of the scheme. When we interviewed staff in the legal aid offices we were told about the long queues for appointments at some legal aid offices over the last year or two. These long queues mean that in practice there have been significant restrictions on the supply of legal advice. It appears from our interviews that queuing also mean that at least some legal problems are filtered out of the legal aid system. We think that it is likely that this barrier disproportionately filters out the problems of poor people and non-litigation problems. We believe, therefore, that in practice Finnish legal aid is not currently able to be generous with respect to legal problems that are outside litigation. As we explain below, we do not believe this is primarily a problem of inadequate staffing and financial resources. Instead, we think that it is an organisational issue.

Legal aid for problems involving litigation does not face similar problems, since both the public and the private sector can deliver such aid. Together, the public and private sector seem to have sufficient capacity, even if the government pays the private profession significantly less for legal aid than the market average. We also heard no evidence that the private profession is withdrawing its involvement in the legal aid scheme. We therefore think that almost all Finns who apply and qualify currently, receives sufficient assistance with legal problems that go to court. We also noted that some public offices deliberately transferred more litigation to private lawyers in order to reduce queuing for such services.

Second, we think that a potential capacity problem exists, due to the large extension of the scheme that took place in the middle of 2002, which increased the proportion of the population who are eligible from 50% to 75%. It is widely accepted that neither the public nor the private sector has seen an increase in clients from the middle class. The composition of clients has also not changed much since

the reform. We registered different explanations during our interviews and in fact the interviewees admitted they were uncertain about the causes. There are ample reasons to believe that poor people have more legal problems and less capacity to solve them without aid, than the middle class. Still we think there is an obvious and serious under-consumption of legal aid services by the Finnish middle class. If the middle class demand increases significantly, which might well happen, then the lack of capacity will become more pressing for non-litigation aid and make it clearly inadequate. The legal aid scheme might also experience capacity problems with respect to legal aid for litigation. We also fear that a strained capacity will disadvantage the poor in particular. Middle class people are generally more effective in securing their entitlements to services than the poor. They might therefore, in effect, push the low-income clients away if services have to be more tightly rationed due to lack of capacity.

Third, the Finnish legal aid scheme only offers legal services from lawyers, which is a costly and highly specialized service delivery model. While providing lawyers is an adequate approach to litigation problems, it is less so for non-litigation problems. As mentioned above, research shows that huge amounts both of every-day and more serious welfare problems exist that have legal aspects of differing complexity. Many “legal” problems in this sense might be solved more efficient with other types of service and techniques than a lawyer’s traditional service, which is the focus of the Finnish schemes, or with a combination of the two.

We learned from our interviews that the legal aid offices did to some extent screen clients. The staff advise people who only had minor problems or non-legal problems that the legal aid office was unsuited for them. The secretaries usually do this advising work. The secretaries inevitably get asked questions about simple legal issues or procedures. They also refer clients to other agencies, especially to the consumer office, if the problem is not appropriate for the legal aid office. The secretaries’ role must therefore be understood as playing an important role of filtering a lot of the legal inquiries for the office. It was also acknowledged in our interviews that the secretaries actually do a lot of simple legal advice and referral work over the telephone.

We observed in our interviews that opinions about the advice function of the secretaries differed. But when we asked the secretaries they agreed that they did such work – it was practical for them to do so for minor problems where they were confident about the answers. But the legal staff had reservations, mainly about the quality of the advice and information given by the secretaries. In one office, a jurist usually looked through notes about such cases before they rejected them. It was also argued that a thorough screening by the secretaries also meant a better use of the lawyers in terms of their capacity as well as the cost of their time. Especially when the influx of clients was high, it was important to target the problems that could profit the most from a lawyer’s assistance.

We agree that such a priority is in accordance with the main goal of the Finnish scheme, namely to improve equality in access to lawyers’ service. It might also seem to be a waste of resources to use lawyers for problems that could be handled as well and more efficient by other means. However, and more importantly in terms of promoting equality before the law, relying solely on the lawyers also means that more legal problems in the wide sense are left without adequate service. We suggest that it is important to be able to more accurately identify the actual volume of this minor advice provided by the secretaries. Statistics could be collected in each office for one month in order to get a picture of the volume of such assistance. Such statistics will also have the effect of better reflecting the actual volume of legal advice and referral work that is currently being undertaken in the legal aid offices.

We also observed that additional services exist currently in Finland for consumer and debt problems, provided by the Finnish Consumer Council and the debt advisory service. Although significantly different in organization and problem solving methods, these organisations apply a broad, client-centered approach to consumer and debt problems respectively. They obviously improve and supplement significantly the services offered by the legal aid offices and also reduce the pressure for services from those offices. The consumer and debt organizations also demonstrate that lawyer’s service are not by necessity the best answer to all types of legal problems. We noted that consumer and debt offices often had a common location with the legal aid offices when they were located in the municipalities. This allowed an easy transfer between the organizations, and a broad and seamless service for the public. When government relocated the legal aid offices to the Ministry of Justice it seems to have impacted negatively on this collaboration.

Research clearly shows that the space for additional services extends far beyond consumer and debt problems. Family, inheritance, property, employment and welfare benefits might serve as examples. Our

interviews generated considerable evidence to support this assumption. The Finnish Bar Association figures provided to us, for example, show that there is high level of demand for the free short advice interview scheme offered by the members of the Finnish Bar. Members of the Bar provided over 2,000 such advice interviews in 2002. Second, as explained below, there is also a demonstrated high level of demand for telephone legal advice at the Espoo legal aid office. In 2003, the Espoo office gave advice to about 2,000 people. Both sources indicate that there is a large unmet and potential demand for additional legal services for legal problems that are outside litigation.

The Finnish policy, along with similar policies in other Nordic societies, has not developed a range of additional services to assist people with the common non-litigious legal problems of every day life. The Nordic societies have not fully seen the need for such services but have given a marked priority to assisting people involved with litigation. We think it is time to embrace a more extensive approach to policy that incorporates a more comprehensive range of services for legal problems outside litigation. In the following section of the report we examine some of the relatively low cost ways that this could be achieved in Finland.

Value of the Public Sector

There are also a number of what we regard as significant additional strengths in Finland's policy. First, Finland has constructed a large, stable and high quality public sector in the legal aid scheme. The benefits of doing so are numerous. In particular, this means that there is a group of legal workers in Finland who are dedicated solely to legal aid work rather than, for example, trying to fit this work into their existing and busy private practice. The public sector lawyers can also be required to do types of legal aid work that private lawyers would not normally choose to do and in places where they might not prefer to establish offices. Public sector lawyers, for example, are not able to refuse clients while private lawyers retain that right. The large network of public legal aid offices results in extensive coverage of the rural areas as well as the cities, although the governmental take over in 1998 also meant a significant centralization of the municipal network.

The large salaried public sector also works in a complementary and generally harmonious relationship with the private legal profession. The more successful and comprehensive legal aid schemes in the rich societies favour such a 'mixed model' of service delivery, as it is known. There are a number of good reasons to do so. For example, it provides a degree of competition between the two sectors. This acts to some extent as a brake on the costs of legal services as well as mechanisms for checking quality of service delivery of private and legal aid lawyers. Indeed, societies that rely purely on *judicare* have experienced problems with substandard service. We observe that the private profession emphasized quality when they argued that they should be allowed to give legal aid outside litigation. As mentioned, competition also opens for a degree of choice of type of lawyer by legal aid clients.

There are, however, a number of ways in which the public sector legal aid offices could further develop their distinctive public character. We note that promoting the public sector generally, is also an emphasis in the report by Bouckaert, et.al. (2002). We examine a number of ideas for promoting the public sector character of legal aid and propose a recommendation relating to this issue in the last section of the report.

Administrative structure

The 1998 reform was designed primarily to develop a more centrally administered scheme within the Ministry of Justice. The current administrative structure involves the Ministry of Justice having oversight of the legal aid scheme and includes responsibility for administering the budget and personnel. Currently the offices are widely spread across Finland. The 67 legal aid offices also administer a total of 14 branch offices and 114 branch clinics. The offices are divided into 6 legal aid districts with a Head of District manager in charge of each district. The Head of District is in charge of performance discussions, proposal for using branch and clinic offices and recommending appointment of public legal aid jurists. The offices employ a total of 460 staff, half of whom are legally trained jurists. The remaining employees are administrative staff.

The administrative reform of 1998 has, on almost all the measures available to us, been an outstanding success. For example, staff morale is high as is the quality of services offered by the staff. Professional development is also more widely available than under the previous municipal arrangements and the larger number of staff means that there is, to some extent, a promotion pathway. Some minor problems remain including the difficulty of developing a more extensive promotion pathway for the legal and administrative staff within the legal aid system. The age of the legally qualified legal aid staff

is also increasing and is likely to emerge as a major challenge in the next 5-10 years. The reason is that a large number of legal staff will retire in the next few years and they will not be easily replaced in terms of their memory and experience. It also may be difficult to attract new lawyers into the legal aid system if the private profession grows rapidly and offers higher salaries.

We have one reservation about the new administrative structure. That is the structural links that legal aid offices have with local communities are weaker than they were under the municipal administration. We think this issue is worthy of attention in order to further develop Finland's legal aid policy. We consider some ways that it could be developed in the discussion in the following section of this report.

Government support

More generally, we were encouraged to find that the government and parliament are strongly committed to legal aid as part of completing the construction of Finland's comprehensive welfare state. We agree that this policy area is a non-negotiable and integral part of modern welfare states. It is hard to conceive of a society being fair and reasonably equal if citizens do not have access to, for example, legal advice and legal services for court cases. We commend the Finnish government for its support of legal aid over the last few years and particularly the administrative re-organisation, the expansion of eligibility to include the middle class, and the commitment to maintaining the salaried sector of public legal aid offices. As we have explained, our comparative research suggests that if legal aid is to effectively promote equality before the law for all, government policy is required to incorporate these elements.

Our research suggests that the consequence of these reforms is a generous but also an efficient centrally administered legal aid scheme. It is also one of the world's most impressive schemes in terms of the generosity and comprehensiveness of legal aid for cases involving litigation.

These conclusions are even clearer if we compare Finnish legal aid with other societies with well-developed legal aid policy.

Finnish legal aid in a comparative perspective

We have summarized our main evaluations of Finnish legal aid policy in Table 2.

Table 2 Finnish legal aid

<i>Coverage</i>	<i>Outside litigation services</i>	<i>Litigation services</i>
Eligibility	Generous Three quarters of the population eligible. Contributions can become steep	Generous Three quarters of the population eligible. Contributions might can become steep
Type of problems	Less comprehensive Legal advice offered for most common legal problems. Restricted to problems suited to traditional legal practice	Comprehensive Assistance offered for most legal problems involving litigation
Range of service	Restricted Mainly lawyer services provided. Minimal information and education services. Exceptions: Consumer and debts	Varied All necessary legal representation and minor assistance in courts

The existing Finnish legal aid schemes achieve many of the goals that we proposed in the best policy model of legal aid policy presented in Table 1. The qualities of the Finnish scheme become more significant if we compare it to schemes in other western countries.

A comparative perspective helps to highlight the fact that in practice different groups of societies have developed different legal aid policy priorities. As the following two tables make clear, the societies with highly developed legal aid schemes, namely the group that undertook major legal aid reforms in the last third of the twentieth century, rarely give an equally high priority to litigation service and outside litigation service. The group of societies includes the USA, Canada, England, Australia, Sweden, Norway and Denmark. Instead, there is a marked distinction between the Nordic societies and the English-speaking, common law countries.

At one extreme are the English-speaking, common law societies highlighted in Table 3.

Table 3 Legal Aid in the Common law societies

<i>Coverage</i>	<i>Outside litigation services</i>	<i>Litigation services</i>
<i>Eligibility</i>	Generous Most of population eligible for legal advice, information and education services, most of which are free of charge	Tight Small proportion of population eligible for legal representation and minor assistance
Type of problems	Comprehensive Most common legal problems not involving litigation included	Limited Restricted range of legal problems included
Range of services	Restricted Standardized, high volume service, offered by lawyers, non-lawyers and other advice agencies	Varied All necessary legal representation and minor assistance in courts

In sum, the English speaking societies give a relatively low priority to assisting people when they are involved in litigation. In most of these societies, legal aid is solely for the poor and often includes less than 30% of the population. By contrast the outside litigation services described earlier often include most of the population, the services are often free and they are usually quite comprehensive.

The contrast between the priorities of the Scandinavian societies and the English -speaking societies is stark, as Table 4 demonstrates.

Table 4 Legal Aid in the Nordic societies

<i>Coverage</i>	<i>Outside litigation services</i>	<i>Litigation services</i>
<i>Eligibility</i>	Generous More than half of the population eligible. Contributions can become steep	Generous More than half of population eligible. Contributions can become steep
Type of problems	Limited Legal advice only offered for most common legal problems	Comprehensive Assistance offered for most legal problems involving litigation
Range of service	Limited Mainly lawyer services provided. Minimal information and education services except for consumer matters, other services	Varied All necessary legal representation and minor assistance in courts

	not offered	
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In general, the Nordic societies give a high priority to assisting people to go to court, or with litigation services. Over the last twenty-five years this often meant most of the population were eligible for such assistance. What is also clear is that none of the Nordic societies have given a strong priority to what we refer to here as outside litigation services. While legal advice is usually offered, it is generally emphasised in relation to disputes, rather than to the less serious legal problems of everyday life where litigation is not necessarily involved.

Consumer matters and debts are significant exceptions. Liberal schemes exist in all Scandinavian countries with no limits on eligibility, comprising all types of consumer problems, legal or non-legal, and providing a wide range of services.²⁴

Finland generally conforms to the other Nordic countries, and is currently the most comprehensive scheme in the Nordic group. First, Finland’s policy is generous and comprehensive with respect to legal services for people with legal problems involving litigation. The extension of eligibility under the recent reforms means that significantly more than half the population have access to assistance with problems involving litigation. Viewed comparatively this is a considerable achievement compared to many other societies where the eligible proportion of the population is often well below fifty per cent. Furthermore the Finnish extension of eligibility is in marked contrast to the reduction of eligibility that has occurred elsewhere. This is a major achievement and is unusual compared to most rich countries’ schemes.

Finnish policy is also unusual because the scheme incorporates what is proportionally probably the world’s largest public, salaried sector in a legal aid scheme. In a comparative perspective, we think the public legal aid offices are remarkably well functioning. They appear as efficient and professionally independent deliverers of legal services to individual clients. They have avoided the ideological conflicts and high rates of burn out and turnover of staff that mark many public law centres in the common law countries.

Our comparative research experience is that the level of co-operation in Finland also is unusual by international standards. In a number of other societies the relationships between the private legal profession, public legal aid offices and government are far less harmonious than we found them to be in Finland. We believe that the co-operative relations have been fundamental to the successful incremental development of Finland’s legal aid policy over the last few years. This high level of co-operation is a tribute to the good will of all those involved in what could otherwise have been very divisive and disruptive in the reform processes in 1998 and 2002. It is also a solid basis for ongoing support for the existing policy as well as for examining further reforms in the future.

Section Three – Developing “Add-ons” to the Existing Policy

The purpose of this section is to identify a number of ways of further developing what is already very good legal aid policy in Finland. In particular, we suggest a number of small and related reforms that will achieve two related goals. First the reforms will enhance the extent to which Finnish legal aid promotes equality before the law. Second they will further develop the specifically public service character of Finnish legal aid. We see these reforms as ‘add-on’ services to what is currently offered rather than another reform of what already exists. In other words, the proposals do not represent substantial changes in direction of policy compared to what is offered at present. Nor would the proposals be expensive to implement.

Rationale

Earlier in this report we pointed out that legal aid policy in Finland gives a very high priority to offering services where people’s legal problems involve litigation. We agree that this is an important priority but think that it should not be the only high priority. A relatively minor reorganisation and minor increase in expenditure will ensure that legal problems outside of litigation also become a high priority. Below we suggest a number of ‘add-on’ services that will achieve the goal of enhancing the

²⁴ For Norway, see Johnsen, J.T. (1997) “Norwegian consumer legal aid – a distinct delivery model?”, paper to the *ILAG Conference*, Edinburgh, June 18-21

extent to which Finnish legal aid assists people with legal problems that are outside of litigation. Such minor and inexpensive reforms will further improve what is already very good legal aid policy. As we have explained, from a comparative perspective Finland goes further than most other societies in the extent to which it promotes equality before the law for legal problems involving litigation.

Our proposals are also designed to achieve another goal. That is, to enhance the public service character of Finnish legal aid. Finland has established a network of public legal aid offices employing a large number of staff and costing a significant amount of money. As we have explained we think that the public/private division in legal aid service delivery is justified from a number of perspectives including theoretical and comparative. But the public legal aid offices can also develop their work in a number of ways including the add-on services and other forms of litigation. The public sector is under challenge in many western societies. Sweden has recently dismantled its public legal aid offices. We think public agencies can contribute to equal justice in ways that the private profession cannot do, and that it is important to consciously develop the specifically public service character of state agencies such as the Finnish legal aid offices. Currently the Finnish government strongly supports state agencies but this may not be the case in the future. Our proposals are designed in good times to help to insure against the bad times that may come. The proposals below are therefore designed to extend the ways in which the legal aid offices serve the public in Finland, or to put it another way, they extend the public service character of Finnish legal aid. They do this by further distinguishing the public legal aid offices from the private legal profession.

Adding-on Telephone Advice Services

At the moment the public legal aid offices in urban areas are forced by the long waiting queues to in effect give a low priority to legal advice. Instead the main priority has become interviews related to various types of court cases or litigation. We learned that in principle approximately one third of the lawyers' should be spent on oral advice, one third on legal drafting, (letters, contracts, wills, matrimonial agreements, property transfer etc) and one-third on litigation. However, the court cases are currently consuming far more than their share.

Staff in a number of offices expressed frustration at the long queues because it puts them under greater work pressures. The waiting times for appointments also mean that people are discouraged from seeking advice for legal problems that do not involve litigation. As mentioned previously, our meetings with legal and administrative staff in the legal aid offices suggests that legal advice and referrals are sometimes offered by the administrative staff in each of the offices in order to minimise the queues and to have fewer frustrated clients. Some legal advice is also offered over the telephone because of the long queues for an appointment. At the same time one office, Espoo has recognised the importance of offering more advice and has developed a structured telephone advice scheme. As we explain below, the Espoo approach is low cost and has reduced frustration levels for staff and clients in that office.

There is an important role for legal advice according to the empirical research conducted in rich societies over the last 30 years including Johnsen (1987, 1997), Genn (1999), and Genn and Paterson (2001). The research demonstrates that all social groups experience large numbers of legal problems where they want advice about their legal rights and what legal and other options are available to them. The experience from legal aid schemes in the rich societies is that legal advice is an extremely high demand service. Indeed, the volume of legal advice services provided is often many times the volume of litigation services.

There are also a number of sources of evidence that suggest that there are high levels of demand for legal advice in Finland. Together these sources suggest that there is considerable unmet demand for legal advice by ordinary Finnish people. We have previously mentioned the high level of demand across the country for the 'Free First Interview Scheme' that is offered by the Finnish Bar Association. The Finnish Bar Association figures provided to us show that member of the Bar provided over 2,000 such interviews in 2002. Second, as we explain below, there was also a high level of demand for telephone legal advice at the Espoo legal aid office. In 2003 the office gave advice to about 2,000 people. The municipal consumer advice service have 100.000 contacts yearly, two thirds concern disputes.²⁵ As in Norway, we suppose that consumer advisers usually are non-lawyers, and that a

²⁵ Pirrko Grönlund (2003) Den kommunala konsumentrådgivningen. Sammandrag av verksamhetsåret 2002. Konsumentverkets publikationsserie 8/2003

significant share of the problems are satisfactorily dealt with by means of advice over the telephone. Significantly, the debt advisory office in Helsinki has twenty positions, compared to the ten lawyers in Helsinki legal aid office.

Finally, the experience from other societies lends further weight to the argument that there is usually a high level of demand for legal advice outside litigation in modern societies. This is the experience of other societies, including the USA, England and Australia. In Norway, the Sami legal aid office in Inner Finnmark, which is rather similar to the rural Finnish offices, has also developed an extensive advice service over telephone, that is appreciated by the clients.²⁶ The four student clinics at the Norwegian law schools also provide a significant share of their aid over telephone.²⁷

There are a number of possible design options that could respond to this gap in Finland's services. One approach is to establish a centralised telephone advice office that clients can access by means of a toll free number. In this way people could make a cheap telephone call from all over Finland and receive legal advice in relation to the simpler legal problems in their lives. We recommend that this option be considered in the future once the viability of our preferred telephone advice service has been demonstrated. The other reason for not proceeding with this option is that it would be more expensive to establish. Another approach is to employ more staff in the existing legal aid offices to give legal advice in face-to-face interviews. But this is also expensive and is not, in the short term, the option that we suggest.

The option that we recommend Finland adopt is for each of the larger legal aid offices to offer a structured telephone legal advice service along the lines of that offered currently by the Espoo office. This would involve little extra cost because as we explain below it primarily requires a minor reorganisation of existing staff and practices.

The Espoo office model of telephone legal advice can be summarised as follows. When clients ring wanting advice about legal problems that are outside of litigation they are asked to ring back for telephone legal advice. This is arranged for 12.30-1.00 every working day. When the client rings their call is re-directed to one of the 4-5 lawyers who are usually in the office. The average call length is about 5-10 minutes and the participating lawyers usually handle 2-6 calls. A simple income test is used but no fees are charged. This is because the service is designed to solve whatever problems it can and to take the worry out of legal problems for people who do not understand them. Many of the problems are about family law, inheritance and drink driving charges. Many of the clients are middle-income earners. Clients often seem in a panic, stressed and unhappy and are distressed when they hear that they will have to wait some weeks for an appointment. Most problems, 60-70% are either solved on the spot or referred on to a lawyer or other agency. About 30-40% of clients were referred to the legal aid office. The office gave legal advice over the telephone to about 2,000 people in 2003.

Such a model would help to further distinguish the public legal aid offices from the private legal profession in Finland. Private law firms do not offer telephone legal advice in Finland nor do they in other societies unless they have a contract to do so with a particular organization such as an insurance company. This means that the large demand for quick, cheap advice service will go unmet unless the legal aid offices establish it.

In sum, a telephone advice model is desirable in view of the work pressures on legal aid offices, is justified by empirical research and consistent with international practices. It would also be simple and very cheap to introduce into all legal aid offices across Finland. Finally, this model helps to clearly distinguish the public legal aid offices from the private legal profession.

Recommendation 1

In order to increase the volume of legal advice and reduce client queues, it is recommended that the Ministry of Justice and the legal aid managers investigate the feasibility of developing telephone advice lines at each of Finland's larger legal aid offices. Such a service should be professional, high quality, free of charge, offered consistently throughout the year, offered to all Finns including use of a 'toll free number', and widely publicised in the respective local communities.

²⁶ Jon T. Johnsen (1997) *Samisk rettshjelp. En analyse av Rettshjelpkontoret Indre Finnmark* p 180 Oslo; Tano Aschehough

²⁷ Jon T. Johnsen (1999) "Progressive legal services in Norway?" *International journal of the legal profession* Vol 6 no 3 pp 261-310 on p 287.

Promoting 'Legally Literate Citizens'

In addition to legal advice services we consider that legal aid schemes should also educate the citizens about the law. The aim is to promote what we refer to as 'Legally Literate Citizens'. This means citizens who are able at least to some extent to understand and respond to their own less complex legal problems. Ability to handle every day legal problems ought to be a part of modern citizenship. Dependence on legal services for such problems appears as a less preferable solution. We are not suggesting that all citizens become in effect 'mini jurists', but we are suggesting that many citizens are able with adequate training to respond to many of the legal problems they experience. What is more, doing so will often result in more satisfied citizens who have more respect for the law and legal system.

If people are able to handle more of their every day legal problems themselves, the pressure on legal aid also will diminish. It is also likely to result in lower costs to the legal system overall as the research suggests that people generally try to avoid litigation. (Johnsen 1987, Genn 1999). A leading scholar made the following observation about the citizen's lack of legal knowledge after conducting empirical research in England

[a] clear message that emerges from the study is the profound need for knowledge and advice about obligations, rights, remedies, and procedures for resolving justiciable problems. This is a need that exists to varying degrees across all social, educational, and cultural boundaries and for all types of justiciable problem[s]. It is a trite observation that citizenship requires knowledge, but the pervasive lack of the most rudimentary knowledge about legal rights and procedures for enforcing or defending rights can lead to an unnecessary level of helplessness even among the more competent and resourceful (Genn 1999, p. 255).

Norwegian research has come to similar conclusions. A widespread and huge legal *uncertainty* exists both in simple and complex legal problems. People want help to map their legal positions from legally competent advisors on a great variety of issues, but see no viable alternatives. A widespread legal impotence/powerlessness exists that leads to passivity and resignation in legal matters (Johnsen 1987, 509-11).

Finally, increasingly legal aid schemes around the world offer precisely this type of legal assistance including the USA (Houseman 2003) and Australia (Regan 2003). That is they offer various forms of legal education services for citizens in the society generally, as well as especially assisting legal aid clients. Although unfamiliar to traditional legal aid in the Nordic countries, a similar approach is used by the Nordic consumer organizations. Consumer education forms an important part of their work, and legal issues constitute a major part of such programs.

In general terms the education services take three forms: a simple overview of common legal problems, for example, what is the law and what are your options when you are charged with drink driving. Second is an extended overview of a specific area of law, for example, a lay persons' introductory guide to family law. Third is an extended overview in a book of all areas of law that are relevant to citizens in the society.

The services are generally offered in three mediums. First, easy-to-read and attractive publications, such as leaflets and extended booklets, that often use a simple question and answer format. Second, increasing use is being made of the Internet in order to make such material widely available. For example, such materials are increasingly uploaded onto the Internet in 'pdf' format so that they can be easily and quickly printed by clients or professionals. Alternatively, the extended book about the law can be uploaded onto the Internet in a 'searchable' version so that citizens can pursue information about any legal problems. Third, in order to ensure that different ethnic groups are also equal before the law, the materials are increasingly translated into the main community languages present in the relevant society.

We are not well enough versed in the patterns of legal problems in Finland to be able to identify the legal problems that should be addressed in these education services. But based on the experiences in other societies they should at least include the following broad areas:

- the more common criminal law matters
- driving and related matters not included in the criminal law
- family law especially dissolution of marriage and other cohabitation and related issues including marriage and cohabitation contracts, parental rights and duties, divorce, child custody and support, and property division
- wills, property transactions, housing
- consumer transaction problems including faulty goods, debts, and contracts
- welfare and health benefits and pensions
- tax
- employment
- problems with government agencies

This proposal also helps to distinguish the public legal aid offices from the private legal profession. The private profession is most unlikely to develop legal education materials if the experience in other societies is anything to go by. Furthermore, the international perspective suggests that if legal aid organizations do not undertake this work it will inevitably be overlooked. The reason is that the private law firms are designed primarily to assist clients with legal services and this is not understood to include educating the public generally about the law.

We registered some small-scale activity in legal literacy during our interviews. Staff at the legal aid offices had talked about legal issues to schools and pensioners and written newspaper articles. However, no organized efforts seemed to be in place. We think that the legal aid offices possess a unique insight into the legal problems of ordinary and poor people that is indispensable in developing good legal literacy programs. Their extensive legal aid experience also produces an intimate understanding of which parts of the law produce difficulties for people, what the mechanisms are, and how to select and structure the knowledge that might remedy them.

There are initial start-up costs involved in producing these materials including staff time, design and printing. There are also on-going costs including updating materials. In order to minimise the cost implications we suggest that priorities be identified for a three-year development program. The priorities could be identified as a result of discussions with the National Legal Aid Consultative Committee discussed below.

Recommendation 2

In order to further improve legal literacy in Finland we recommend that the Ministry of Justice in cooperation with the legal aid offices, develop simple legal information and legal advice materials that are free of charge and widely available. The materials should be prioritised in a three-year development program and should

- *be published in attractive, short, easy-to-read publications*
- *also be provided on the Internet via the Ministry of Justice and legal aid office websites*
- *also be translated into the main languages in Finnish society in order to ensure their accessibility*

Legal Literacy for Non-Jurist Advisers

Another means of improving legal literacy involves establishing legal education and training courses for advisers in legal matters who lack a jurist's education. These courses are also substantiated from a comparative perspective. Legal education and training is increasingly required by many workers including public servants and professionals such as teachers and social workers in modern societies. In order to undertake their work they often need to understand specific areas of law, be able to locate and understand different types of legal materials, and recognise when and where to get more detailed legal assistance. Some advisers might have received some legal training as part of their professional education, and the unions of such professions might provide post school courses that comprise legal matters. Some organizations that provide legal advice, such as the Nordic consumer offices, also provide work place courses for their advisers. Law schools also sometimes offer courses that non-jurists can undertake. Still, we think there is room for significant improvements.

We think that the reasons we gave for involving legal aid offices in legal education to the public also bear on legal education to non-jurist advisers. If they handle the legal aspects of their problems more efficiently, the pressure on legal aid offices will diminish. Legal aid offices also have a similar expertise about the deficits of the legal advice provided by such agencies and might be able to identify the best remedies. We learned in our interviews in Finland that some exchanges take place to day, especially between legal aid staff and consumer, debt advisers and social workers. But this is mainly on an ad hoc and occasional basis. Needless to say, by offering such courses the legal aid offices would further distinguish their public character.

We recommend that the feasibility of establishing education and training courses for other professionals, should be investigated by the Ministry of Justice in cooperation with the legal aid offices. We suggest that two legal education and training strategies be investigated. First, the Ministry of Justice and legal aid offices could offer courses to educate and train groups of relevant professionals in the legal issues relating to their work. Courses could be offered to relevant professionals including social welfare workers, family advisers, teachers and other professionals in the basic legal problem solving skills that are increasingly required in their work. These courses should be fee paying and cost neutral to the Ministry and/or legal aid offices. They should be designed in consultation with the relevant professionals.

In addition, the legal aid office should establish legal training courses for the public in the common areas of law that ordinary citizens want and need to know about. These courses should also be fee paying and cost neutral to the Ministry and/or legal aid offices. They should be designed in consultation with the relevant groups such as professionals.

We recommend that legal aid office staff offer these courses because they are likely to have a good sense of what is needed and how to transmit the knowledge in an understandable fashion. Where appropriate they should also take advice from adult educators about course design and instruction methods.

Recommendation 3

In order to further improve the overall level of legal literacy in the society we recommend that the Ministry of Justice investigate the feasibility of establishing legal education and training courses for professionals and for the public. These courses should be offered by staff employed in the legal aid offices.

Recommendation 4

We further recommend that both types of courses be fee paying. The aim is to be cost neutral for the offices rather than either profit making or extra workloads for existing staff.

Building stronger community links

One of the challenges facing legal aid policy makers and service delivery personnel is to ensure that they maintain links with the communities that they serve. Maintaining such links ensures administrators develop a more accountable and responsive administration of legal aid. These are important goals of modern public sector administration in most societies. In practice, this means establishing structures that ensure a bottom-up process of listening to and learning from the communities in order to ensure that policy and service delivery appropriately responds to community needs. Such structures also allow administrators to better explain to community members the purposes and the developments of legal aid policy and service delivery.

Our discussions with officials and service delivery personnel in Finland suggest that these links with the community can be strengthened. One of the consequences of the administrative reforms to legal aid in the late 1990s was a weakening of the relationship between the legal aid offices and the local communities that they served.

In order to improve those links we recommend that two types of consultative structures be established. First a National Legal Aid Consultative Committee be established that is made up of representatives of key stakeholder groups including the Finnish Bar Association, the Consumer Council, the Legal Aid Lawyers Association, and Social Welfare authorities. The purpose is to advise the Parliament and the Ministry of Justice about the overall development of policy.

We also recommend that a District Consultative Committee be established in each of the legal aid administrative regions. The purpose of the District Committee is to give input about the local service delivery including overlooked legal problems in the area. In addition, the committee will provide an opportunity for administrators to explain the development of policy. The membership of the committees should include relevant local service delivery personnel such as teachers and social workers, consumer and debt advisers and professionals including private jurists. Local politicians, appointed by the municipality councils, might also participate.

The national and community committees should meet approximately twice annually in order to present their work to the stakeholders and to receive ideas and feedback about the performance, priorities and services offered by legal aid. There should be minimal costs involved with establishing the committees.

Recommendation 5

In order to ensure that legal aid policy is responsive to community needs we recommend that structures be established in order to facilitate more responsive and accountable legal aid policy development and to facilitate community input into development of policy and of service delivery. We recommend that two types of structures be established - a National Legal Aid Consultative Committee and six District Consultative Committee linked to the legal aid administrative regions.

Representing collective interests

Finally, while it can be argued that in many ways the public legal aid offices are similar to the private jurists offices, we disagree. The legal aid offices certainly undertake some of the same legal work that private law firms undertake including litigation and legal advice. But that is not all that they do. Nor is it all that they could do. We consider it is important for the public offices to further highlight what distinguishes them from private legal offices. We note that the Bouckaert et. al. paper also recommends something similar when it proposes that the government “Explicitly ‘sell’ the significance of public sector work” (p.26-27).

There are a number of reasons for the view that the distinguishing features of the public legal aid offices should be further highlighted. First, in an era when ‘public’ is seen as a pejorative term in many societies, it is important to consider ways in which public service is developed and understood in the community. Second, the public character of Finnish legal aid needs to be articulated against criticisms like those that were expressed in Sweden in the mid 1990s and which ultimately lead to the closure of the network of public legal aid offices in that society. The offices were seen as indistinguishable from the private law firms, as less efficient, and that the increase in the number of private jurists meant that there was no longer a need for the public offices.

There are a number of things that the public legal aid offices in Finland could be doing that they are currently not doing and which the private legal profession is very unlikely to undertake. We have already proposed a number of changes to the work of the legal aid offices in the earlier recommendations. Our final proposal is designed to build on the legal representation work currently undertaken by the staff in the legal aid offices.

We think that the special public character of the legal aid offices would be enhanced if the staff represented their clients’ collective interests as well as representing them as individuals in court. This could be done by representing their clients’ collective interests in the process of designing and reforming laws that impact upon the clients. We observed that the legal aid offices and the Association of Public Lawyers are to some extent already involved in law reform, by giving evidence and commenting on proposals for new legislation on issues that concerns their clients. We also think that the legal aid offices could focus more on principled litigation to develop the law. We did not register any conscious efforts to forward test cases, group cases, or cases that might produce precedents during our interviews. Both law reform and principled litigation might solve legal problems for larger parts of the community, and reduce the demand for individual assistance. The legal aid offices are in a unique position to identify problematic laws that impact negatively upon their clients. Furthermore, the

private legal profession is unlikely to undertake such work. We might again point to the Nordic consumer agencies that use such strategies as an integrated part of their work. Such work could include the following:

1. Law reform projects: Each legal aid office could establish an annual goal whereby they identify, for example, two law reform priorities to which the staff contribute. This could mean that the staff identify a law which impacts unfairly on legal aid clients and then bring it to the attention of the government. Or it could mean that the staff respond, as some offices do already, to government commissions when they undertake reviews of laws. Unless there is a clearly identified goal for each office it is unlikely that law reform will become a priority.
2. Test cases: Each legal aid office could also develop a list of laws which are controversial or ambiguous and as a result impact unfairly upon legal aid clients. This could be because the laws are, for example, poorly designed or implemented, and consequently unfairly impacting on particular groups of legal aid clients. The aim would be that every two years each office would consciously mount a test case in the courts to test the fairness or effectiveness of the law.

Recommendation 6

In order to enhance their distinctive public service identity we recommend that the legal aid offices further distinguish their work from that of the private legal profession. This could include contributing more to law reform campaigns, test cases in controversial and ambiguous areas of law that impact regularly and negatively upon groups of legal aid clients.

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