

DELIVERING LEGAL AID IN NEWFOUNDLAND:  
AN EXPLORATION OF DECISION MAKING,  
EMOTIONAL LABOUR AND TIME MANAGEMENT

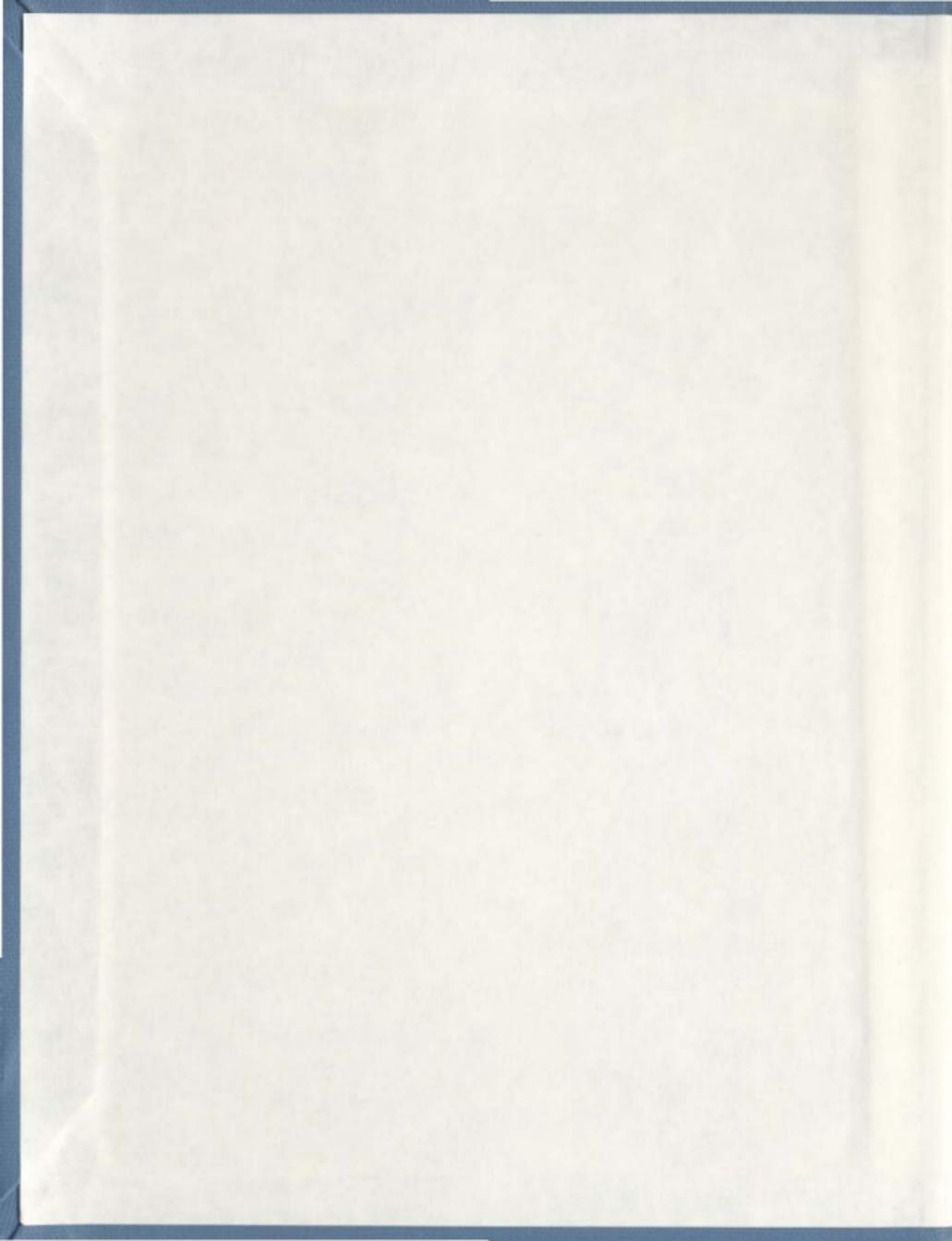
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Delivering Legal Aid in Newfoundland: An Exploration of Decision Making,  
Emotional Labour and Time Management

by  
Johanna Alexena MacDonald

A thesis submitted to the  
School of Graduate Studies  
in partial fulfilment of the  
requirements for the degree of  
Master of Arts

Department of Sociology  
School of Graduate Studies  
Memorial University of Newfoundland  
August 2001

## **Abstract**

This thesis explores the delivery of services to clients requiring legal representation in the Newfoundland Legal Aid System. Generally, the aim of legal aid is the provision of legal representation to persons that are unable to afford these services. A qualitative methodological approach, using semi-structured questionnaires, was used to collect data for this study. Twenty-four organizational members were interviewed including: thirteen staff lawyers, two intake workers, two receptionists, six legal secretaries and the Director of Legal Aid for Newfoundland. Because the Newfoundland Legal Aid System was intentionally sought as a research site, a non-probability sampling technique, known as purposive sampling, was used. In order to provide a varied perspective on service delivery to clients, a cross-sectional view of various work roles and practices was examined in conjunction with the organizational environment of legal aid. To facilitate this exploration the following three concepts were used: the decision making process, emotional labour (known as the management of client emotions) and the element of time.

While organizational rules govern and structure the decision making process in an effort to dispense uniform delivery of services, research findings indicate that organizational members across various occupational categories have the capability to influence the determination of client eligibility for legal aid funding. Though a lack of uniformity with regard to service delivery could suggest unfairness, findings indicate that the acceptance of some cases requires the consideration of extenuating factors that may be particular to a case. Emotional labour, engendered by clients and accompanied by

organizational pressures to provide services with limited budgets and voluminous caseloads, has the capacity to negatively influence the work roles of organizational members by usurping a valuable and limited commodity – work time. Also, the computer system, recently installed for administrative purposes within the Newfoundland Legal Aid Organization, is generally regarded as slowing down the production of work tasks. Consequently, the ensuing provision of services to clients can, at times, be negatively affected.

### **Acknowledgments**

The research for this thesis would not have been possible without the assistance of several individuals. First and foremost, I would like to thank the members of the Newfoundland Legal Aid Organization. Your willingness to participate in my study is greatly appreciated. I would also like to thank my supervisors Peter Sinclair and Bob Hill for their guidance and support during the writing of this thesis. Without the support of my family this thesis would not have been completed. Therefore, I would like to thank my four sisters Ann, Teresa, Donelda and Margie; my two brothers Ronnie and Daniel; and my parents Carmella and Dannie for their encouragement and support. I would like to extend my gratitude to Daniel for his exceptional insights regarding my work and to wish him luck on his journeys at the PhD level. Also, I would like to thank Donelda. While you may not have realised it, you helped me by simply being there. A special thanks to Rich whose love and support was an invaluable resource necessary for the completion of this thesis.

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## Chapter 1 Introducing Legal Aid

### 1.1 Introduction

The research problem for this thesis is to describe and explain the complexity involved in the delivery of services to clientele<sup>1</sup> requiring legal representation in the Newfoundland Legal Aid System. The delivery of legal aid services should be a fundamental component of any judicial system in order to ensure the legitimacy of the legal process. Generally, the aim of legal aid is the provision of legal representation to persons unable to afford these services. Specifically, the Newfoundland Legal Aid Commission (1989:18) maintains that the Newfoundland Legal Aid Organization provides “legal assistance to individuals who have *serious* legal problems and who are financially unable to engage the services of a lawyer” [italics added]. Both professional and nonprofessional members of the Newfoundland Legal Aid Organization were interviewed in order to provide a cross-sectional view of various work roles and practices, and thus a varied perspective of service delivery to clients.<sup>2</sup>

This thesis will explore the work experiences of members of legal aid, including their views of their work roles and the organizational environment of legal aid. In order to accomplish this exploration the following three concepts will be used: the decision making process, the management of client emotions (hereafter referred to as ‘emotional labour’)<sup>3</sup> and

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<sup>1</sup> For the purpose of this thesis, application of the word clientele or clients will refer to both incoming applicants and current clients of the organization.

<sup>2</sup> Although a complementary fit for this study would include an exploration of the experiences of legal aid clients, time limitations precluded a dual study of both organizational members and clientele (see 7).

<sup>3</sup> The use of this term began with Arlie Hochschild’s (1983) study of emotional labour and flight attendants almost two decades ago.

the element of time. It will be argued that a combination of emotional labour and time constraints has the capacity to negatively influence the work role of organizational members.<sup>4</sup> The decision making process determining client eligibility can be conceptualized using an agency and structure perspective, as outlined by Giddens' theoretical framework known as structuration theory. Organizational members occupying various work roles have the capacity to influence the decision making process that determines client eligibility. Although objective rules and organizational mandates (e.g. the Legal Aid Act) facilitate the determination of client eligibility for legal aid, when performing such work tasks as the financial assessment of incoming files, human beings perform the actions necessary for the delivery of services to clients. According to Scott (1997:53), "on a continual basis, public policies are shaped by service providers as they determine how existing policies and regulations are to be implemented, or even circumvented, in their day-to-day interaction with clients."<sup>5</sup>

This thesis will demonstrate that emotional labour exists as part of the organizational environment of legal aid, thereby affecting the overall delivery of services to clients. Organizational members are required to manage the emotions of clients as part of the performance of their individual work tasks, regardless of whether these tasks are

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<sup>4</sup> Application of this term will include both professional workers and the non-professional support workers.

<sup>5</sup> Similar to Scott, Kelly (1994) maintains "street-level bureaucrats" should be studied because the implementation of policies accedes discretionary action to these workers (see also Kelly 2.3.2).

administrative or legal in nature. As professionals, lawyers need to maintain objectivity when representing clients. Yet, they are required to provide emotional support to their clients. Thus, lawyers seek to reconcile the need to perform work tasks objectively while subjectively managing client emotions. Support workers also seek ways to reconcile the necessity to manage the emotions of clients while conducting administrative work tasks. Furthermore, it will be shown that the performance of emotional labour takes up valuable work time.

Finally, it will be argued that the delivery of services to clients is negatively influenced by the constraints of time. Time is viewed as both a valuable and limited resource with respect to the performance of work tasks. As such, the volume of work tasks that can be executed during a period of time has implications for the delivery of legal aid services. Members seek to control time by increasing individual and organizational efficiency. Accordingly, they must consistently renegotiate the amount of time allocated for the performance of work tasks. For instance, due to the unpredictability of daily events in the workplace, organizational members are required intermittently to prioritize and re-prioritize current and incoming files. I will demonstrate that time is viewed as a scarce resource in the legal aid organization. Also, computer applications, originally deemed to increase organizational efficiency, are viewed as wasting time that could be better spent on service delivery.

This thesis will provide an understanding of how the Newfoundland Legal Aid System delivers services to clients and the factors that impinge upon these services. From this study potential areas for future research studies of legal aid will be discussed (see 7.2).

Additionally, this research will provide several policy recommendations aimed at improving the level of services rendered to legal aid clients (see 7.3). Next, I will briefly discuss my reasons for choosing to study the area of legal aid, specifically the delivery of legal aid services to clients of the Newfoundland Legal Aid System.

## **1.2 Why Study Legal Aid**

My objective when choosing to study legal aid was fundamentally altruistic in nature. I hoped to contribute to an accumulation of knowledge regarding the provision of legal services to clients of the Newfoundland Legal Aid System. The Canadian Council of Social Development (1975:v) states, “those who benefit most from any successful effort to improve the scope and effectiveness of legal aid in Canada are the clients of legal aid – the poor.” As opposed to costly institutions that fail to meet the needs of the poor, Cappelletti and Garth (1981:xv) emphasize the need to create legal aid institutions that function for the benefit of clients. Currently, there are no other studies of the Newfoundland Legal Aid Organization. Consequently, this project will contribute to a knowledge gap within the area of legal aid in Canada and Newfoundland and Labrador<sup>6</sup>, in particular. From a research knowledge standpoint, the social sciences will benefit from a study of the legal aid organization, and such work will contribute to the area of study regarding the concepts utilized to explore the delivery of legal aid services – the decision making process, emotional labour and the element of time. The analysis of work tasks and the structural environment of legal aid as

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<sup>6</sup> The official name of this province was changed to Newfoundland and Labrador in 2001. For ease of reference ‘Newfoundland’ will be used hereafter.

experienced and perceived by organizational members has the potential to increase our knowledge and understanding of the delivery of legal aid services to clients.<sup>7</sup>

### 1.3 Theoretical Framework

Anthony Giddens' structuration theory will be used to guide the analysis. This theoretical framework emerged from Giddens' study of functionalism and his criticism of interpretive sociology (Giddens, 1977:96-134; see also Joas, 1987:13). Giddens' (1979:69) theoretical approach refers to the "duality of structure<sup>8</sup> and the *mutual dependence of structure and agency*" (italics in original). Giddens (1979:49) further explains that "agency and structure are 'formed' based on the activities of human agents; an account of the conditions and the consequences of action; and the agent's interpretation of 'structure.'" Notably, neither the human agent nor society (or social institutions) should be regarded as maintaining primacy (Giddens, 1982:8). Structure exists only through the actions of social actors who produce and reproduce societal structures by applying rules and resources in day-to-day social activities. The concepts of action and power are linked. While action consists of the agents "intervention in events" that occur in the world and the production of fixed outcomes, power can be "understood as [the] transformative capacity" of the social agent (Giddens, 1979:88).

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<sup>7</sup> The current research is similar to Farrall and Bowling's (1999:254) study of human development and desistance from crime whereby they maintain that "the insights drawn from Giddens' work provide strong bases for the interpretation of *experiences* of crime (e.g. episodes of offender victimization and anxiety) as they are experienced by individuals and communities" (italics in original).

<sup>8</sup> For a discussion of the duality of structure in relation to the subject/object dualism see Mouzelis (1989).

As such, power can be viewed as the capability of an agent to reach a desired or intended outcome. The worker's capacity to transform rules and resources is an important part of human agency (Giddens, 1979:104). For example, organizational members maintain the capacity to employ the 'exceptions to the rule' strategy or reinforce the status quo when providing legal aid services to clients.

Social actors have the capacity to choose among various courses of action at various points in time (Giddens, 1984:9). Both legal aid clients and organizational members have the capacity to act by way of executing or refraining from executing an action. For example, clients have the capacity as human actors to withdraw their application at any time. They also have the right to appeal a decision which rejects their application for legal aid funding. Giddens (1984:281) contends that "all social actors know a great deal about the conditions and consequences of what they do in their day-to-day lives." However, social actors may not be aware of the consequences of their actions. Unintended consequences can occur during the production and reproduction of actions (Giddens, 1982:33). For instance, the intended goal of an organizational member may be to provide legal services to the poor. However, their actions may achieve success only in the short term (see mediation, 4.5). These consequences are conceptualized as actions that "escape" the actor's intended purpose for the activity (Giddens, 1979:59). Accordingly, Giddens' theoretical framework will facilitate an exploration of the actions of organizational members and the organizational environment of legal aid, thereby facilitating an understanding of the delivery of services to clients.

#### **1.4 A Brief Historical Overview: Early Attempts to Provide Free Legal Services**

According to Geser (1992:432), “organizations are . . . action-constituted entities, in the sense that past actions were necessary in order to found them and to fix the parameters (e.g. charter, goals, rules, programs, technologies) that define their actual structure and activities.” Briefly situating the formation of legal aid in Canada, within an historical context, will provide a useful background for understanding the provision of legal aid services in Newfoundland. While the amount of literature on the formation of legal services to the poor in Canada is limited (Arthurs et al. 1986:522), it is virtually non-existent for the province of Newfoundland.

During the early part of the twentieth century the “Social Service Organization of the Anglican Church and the Social Service Council of Canada began actively working to pass legislation to grant aid to people charged with a crime but unable to retain a lawyer” (Jones, 1931:272). While early development of legal aid had begun in 1911, in Montreal, legal aid services slowly spread to Winnipeg, Windsor, Edmonton, Saskatoon and Vancouver in the 1920s and 1930s (Hoehne, 1989:360). In 1929, a special committee was set up by the Canadian Bar Association to consider making legal aid available to the poor (Jones, 1931:272). Following the passage of several resolutions<sup>9</sup>, a petition to appoint salaried Public

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<sup>9</sup> These resolutions included the following: (1) “the problem of Legal Aid for the Poor is a pressing one and demands the attention of agencies adapted to its administration according to the varying needs of communities; (2) that the Committee . . . ascertain whether there are any Provincial Governments, municipal bodies, or groups of interested persons who are willing to initiate in Canada some permanent form of organization to give effective leadership to this important step forward; [continued next page]

Defenders, signed by more than 500 members of the Ontario bar, was sent to the Ontario government. In 1963, Graham Parker commented that “nothing came of this” petition and there was little progress on these resolutions after 1929 (1963:180). Cuthbert Scott (1935:155) stated, “the desirability of the appointment of public defenders has been considered on several occasions by the Canadian Bar Association,” but no lawyers were appointed to take on this position. Manitoba set up a system that granted certificates for legal services to poor persons in 1937 (Brooke 1977:536). Although legal services for this program were provided by lawyers, free-of-charge, clients were held responsible for miscellaneous costs and court fees.

In 1942 the Canadian Bar Association approved a proposal by Margaret Hyndman to establish a committee that would offer legal aid assistance to members of the armed forces and their dependants (MacKenzie, 1946:198). The Committee on War Work functioned under the supervision of the Canadian Bar Association and the Department of National Defence. On January 1, 1946, a policy was launched to extend this service to ex-armed forces personnel and their dependants. However, legal matters were limited to those that arose “during or by reason of the period of active service of the person concerned” (MacKenzie, 1946:201). The Department of Veterans’ Affairs joined the Department of National Defence and the Canadian Bar Association, thereby ensuring that legal aid was available to eligible

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[and] (3) that Provincial Governments be requested to investigate the subject with a view to passing enabling legislation so that in one or more suitable districts the feasibility and efficiency of the principle of the appointment of Public Defenders may be tested and applied to cases in which counsel are in charge of prosecutions” (Jones, 1931:272).

persons. More than 15,000 cases were handled during the period these legal services were available (Nelligan, 1951:605).

In 1951 Ontario developed a legal aid plan that was administered by lawyers on a voluntary basis (Parker, 1968:476). Although eligibility for legal aid was determined via a screening process that utilized a means test to determine an applicant's income level (originally \$1,200 for a single person or \$1,800 for a married person; later it was raised to \$1,700 and \$2,500 respectively), the directors of legal aid maintained "discretion" regarding the eligibility of applicants (Parker, 1968:475). In 1956, the Junior Bar of Montreal created a private, nonprofit corporation entitled The Legal Aid Bureau of the Bar of Montreal (Brooke, 1977:539). Two full-time lawyers were employed by the agency to assign legal aid cases to 1,800 lawyers who worked in Montreal.

Legal aid services in the postwar era were offered by provincial or local bar associations on a charity basis designated as pro-bono<sup>10</sup> services. In 1965, the Joint Committee on Legal Aid, appointed by the Attorney General of Ontario, recommended that the administration of justice should be considered a right as opposed to charity (Parker, 1968:472). The poor would be entitled to legal aid services as a right. Although the legal aid system in Canada was based on ideals stemming from both American and British legal services, the American view of legal aid was a far greater influence (Hoehne, 1989:16).<sup>11</sup>

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<sup>10</sup> This "voluntary-charitable model" was part of a "professional ethos" associated with being a lawyer (Lightman, 1987:23).

<sup>11</sup> Notably, Great Britain maintained a legalistic approach to legal services, while the United States advocated a social rights approach (Hoehne, 1989:14).

The first provincially funded Legal Aid Plan was provided by the Ontario government in 1967 (Zemans, 1978:663). This funding enabled Ontario to be the first province to employ lawyers who could handle both civil and criminal cases.<sup>12</sup> The Department of Health and Welfare, in 1971, contributed the first federal funds for the construction of four community legal aid offices,<sup>13</sup> which ultimately “influenced the whole legal aid movement in Canada” (Penner, 1977:1-13). Information gained from the operation of these offices demonstrated the need for further development in the area of legal aid. Lowry (1972:184) maintained the high percentage of poverty in Canada signified that many people cannot afford to pay for a lawyer, subsequently “it has become apparent that there is a vast area of unmet legal need.” In a government brief, the Attorneys General of the Provinces maintained that the contribution of federally funded grants was the beginning of the “movement of legal aid from a traditional lawyer based service into an expanded delivery of service” (Penner, 1977:148).

The various provinces and territories administer an “individual legal aid program with resulting diversity in services, delivery systems and administrative structures”<sup>14</sup> (Arthurs et

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<sup>12</sup> Prior to 1951 legal aid was limited to the provision of legal services to individuals charged with capital offenses and other serious criminal charges, while persons involved in civil cases did not receive legal services (Parker, 1968:475; see also Hoehne, 1989:362).

<sup>13</sup> The community legal services projects included the following: Dalhousie Legal Aid Service in Halifax (Nova Scotia); Community Legal Service Inc. in Point St. Charles, Montreal (Quebec); Parkdale Community Legal Services in Toronto (Ontario); and the Saskatoon Community Legal Assistance Society in Saskatoon (Saskatchewan) (Penner, 1977:1).

<sup>14</sup> Under the Constitution Act of 1867 (section 30 and 31) each province has responsibility for the delivery of legal aid services (Arthurs et. al., 1986:523). The BNA act maintains that the federal government holds the authority in matters of criminal law (see criminal law, section 91 [27]), while the provincial government maintains legislative authority for the administration of justice (section 92 [14]) (Lightman, 1987:23).

al., 1986:523). Between the years 1972 and 1974 all ten provinces and two territories entered into negotiations with the federal government for cost-sharing expenses incurred by the delivery of legal aid services (Lightman, 1987:23). In 1972-1973 the Department of Justice “funded eighteen community legal services” agencies that totaled \$198,000 (Hohne, 1989:156). Among those agencies that received federal funding was the St. John’s legal aid office, which received a grant of \$12,000.

According to a senior official with Legal Aid in Newfoundland, the legal aid organization began with Judge Aleworth, a “practicing lawyer back in the early 1960s who had to do a number of cases that he didn’t get paid for.” He organized a meeting with all Newfoundland lawyers asserting that a legal aid organization needed to be established. As a result of this meeting, the “law society established a committee to implement a plan for legal aid and a number of members were appointed.” Legal aid began to deliver services “formally” to clients on January 26<sup>th</sup>, 1968 (The Newfoundland Legal Aid Commission, 1989:18). The province of Newfoundland signed an agreement with the Federal Department of Justice on February 21, 1973 to cost-share legal aid expenses for the purpose of handling criminal law cases (Statistics Canada, 1981:16-17; see also Implementation Work Group, 1981:37). According to the Encyclopedia of Newfoundland and Labrador (1991:271), the “opening of the first office outside St. John’s occurred in Corner Brook on October 1, 1969.”

A senior official with Legal Aid in Newfoundland maintains “in 1976 the Legal Aid Organization had a budget of \$425,000 with one lawyer and two offices.” The initial goal of the Legal Aid Commission consisted of securing permanent staff lawyers to work in the legal

aid offices outside St. John's. Staffing was a concern because the organization had difficulty getting lawyers to service the rural areas. Compounding this problem, the inhabitants of Newfoundland were widely distributed across the island. Decentralization of legal aid offices was initiated to facilitate the availability of legal aid services to clients in various provinces and territories (Statistics Canada, 1981:14). A senior official with Legal Aid maintains that the founders of the current Legal Aid System determined that the placement of staff lawyers at "strategic locations" throughout the island would be the most economical way to fund legal aid services to rural residents.

Currently, ten legal aid offices exist throughout the province. While eight area offices are spread throughout Newfoundland and Labrador, the main office is located in the City of St. John's. Additionally, a conflicts office is located in St. John's.<sup>15</sup> Area offices are located in Carbonear, Clarenville, Corner Brook, Gander, Grand Falls, Marystown, Stephenville and Happy Valley.<sup>16</sup> There are 102 people working in the Newfoundland Legal Aid System. While forty members are lawyers, the remaining sixty-two consist of accountants, librarians, research staff, law students and clerical staff (Statistics Canada, 1999a:6-7).

According to a senior official with Legal Aid, during the 1970s and 1980s the legal aid office in St. John's depended on private lawyers "to handle a number of legal aid cases." He maintains that problems arose in 1991 following the onset of a strike by private lawyers who maintained that they were not going to do any more legal aid at the rate they were being

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<sup>15</sup> For additional information on the conflicts office see 4.5.

<sup>16</sup> For a map of office locations throughout Newfoundland, see Appendix I.

paid. These lawyers wanted an increase in the tariff. A senior official at Legal Aid maintains that at this point “money was freed up.” However, rather than pay the lawyers a higher rate for their legal services, the Newfoundland Legal Aid Organization began to hire more lawyers to staff the St. John’s office. According to a senior official at Legal Aid, “in the space of a year – a year and a half we probably increased our staff by 10 or 12 lawyers.”

Statistics Canada (1999a:7) contends that “Legal Aid Plans receive funding from three main sources including government contributions, client contributions and cost recoveries<sup>17</sup>, and contributions from the legal profession.” Notably, the majority of legal aid funding is derived from government contributions. Direct legal aid expenditures include payments allocated for legal advice, information, representation and referrals. Administrative expenses are not deemed to be direct legal aid expenditures (Johnstone and Thomas, 1998:6).

In 1980, Health and Welfare (now Human Resources Development Canada) formally began sharing the cost of civil legal aid with the provinces and territories under the Canada Assistance Plan (CAP). In 1996, Canada Health and Social Transfer (CHST) replaced the Canada Assistance Plan for federal funding of a number of social programs, including civil legal aid. The federal government now determines the amount spent directly on civil legal aid in the province (Johnstone and Thomas, 1998:5). The CHST distributes federal funding to provincial governments in the form of a block transfer as opposed to single funding allotments specifically delineating the distribution of federal funds. Currently, the provinces

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<sup>17</sup> These recoveries include legal aid applicants who are able to pay a portion or all of the costs associated with legal aid representation (see payment agreements 4.3).

are responsible for the allocation of funds received from the federal government under the CHST. Accordingly, the provincial governments now have “more flexibility in their own funding priorities” (Statistics Canada, 1999a:8).

### **1.5 Models of Delivering Legal Aid**

In order to facilitate an understanding of legal aid, various models of delivering legal aid services to clients will be discussed. The *judicare* model is a fee-for-service system whereby eligible applicants are given the opportunity to select a private lawyer. Upon selection, a legal aid organization issues a certificate permitting the private lawyer to bill the cost of the client’s legal representation to the organization. In the *staff* system of delivering legal aid, lawyers are hired to work for a legal aid organization on a full-time basis hence the term *staff* lawyers. Accordingly, eligible applicants are provided with legal representation from a *staff* lawyer as opposed to being given the opportunity to hire a private lawyer. The *mixed* model employs elements found in both the *judicare* and the *staff* model. This model utilizes both private and *staff* lawyers to deliver legal aid to eligible clients.

Considerable diversity exists among the provincial and territorial legal aid systems. Each province and territory has adopted variations of the *staff* model, *mixed* model or the *judicare* model of delivering legal aid to the poor.<sup>18</sup> Currently, the Legal Aid Systems in New

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<sup>18</sup> Arthurs et al. (1986:525) in an essay on the legal profession in Canada maintains the “unfortunate reality of the Canadian system is that government decisions about models of legal services are generally based on cost control rather than on an analysis of the most effective utilization of limited public resources.” Easton et al.’s (1994) quantitative study of the various forms of legal aid delivery in relation to cost and efficiency across Canadian provinces and territorial systems indicates that an expansion of the legal aid system in Canada is inevitable and the pattern of growth suggests that expenditures will increase.

Brunswick, Ontario and Alberta are regarded as utilizing primarily *judicare* models. The provinces of Quebec, Manitoba, British Columbia, Northwest Territories and the Yukon have a mixed model of delivering legal aid. Staff models are found in Nova Scotia, Saskatchewan and Prince Edward Island. Griffiths and Verdun-Jones (1994:287) maintain that Newfoundland's Legal Aid System is based on a combination of *judicare* and staff systems, designated as the mixed model (see also Zemans, 1986:46-7; Arthurs et al., 1986:524). In contrast, Statistics Canada (1999a:5) maintains the Newfoundland Legal Aid System utilizes a staff model because the majority of "direct legal expenditures" for services rendered are allotted to staff lawyers. According to a senior official at Legal Aid, the province of Newfoundland changed from a mixed system of delivering legal services to a staff system in the 1990s to reduce expenditures.

#### **1.6 The Governing Body of Legal Aid: The Newfoundland Legal Aid Commission**

The Newfoundland Legal Aid Commission was launched on January 26, 1968, with a provincial government grant of \$10,000 (Newfoundland Legal Aid Commission, 1989:18). At that time "applicants were interviewed by solicitors on a voluntary basis and cases were assigned to members of the Society who provided their services free of charge"<sup>19</sup> (Implementation Work Group, 1981:37). The law society agreed to fund a pro-bono arrangement whereby all "members of the law society" would accept cases on a rotating basis

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<sup>19</sup> Prior to the 1950s, lawyers were not always paid for their services (Statistics Canada, 1981:9). At the request of a judge, lawyers could be appointed to represent individuals unable to afford the legal services.

(Newfoundland Legal Aid Commission, 1989:18). Although a full-time secretary was employed in 1968, it was not until January 1, 1972, that a full-time administrator was hired (Implementation Work Group, 1981:37). Federal-provincial funding allocated to Newfoundland in 1973 enabled the legal aid system to expand its services. Consequently, lawyers were provided with partial financial compensation for their work on behalf of legal aid clients (Newfoundland Legal Aid Commission, 1989:18).

The Newfoundland Legal Aid Commission is a seven-member board whose principal goal is the administration of legal aid funds. Five members of the board are appointed by the Lieutenant-Governor in Council, while the remaining two members include the Deputy Minister of Justice and the Provincial Director of Legal Aid (Government of Newfoundland, 1990:2). The Newfoundland Legal Aid Act, passed in 1975 (Encyclopedia of Newfoundland and Labrador, 1991:271) regulates the actions of members belonging to the Legal Aid Commission. Under the guidelines of the Act, commission members “may take any action considered necessary to establish and administer the legal aid plan” (Statistics Canada, 1999b:80). The Act authorized the formation of the Legal Aid Commission, the interpretation and administration of the Act, and the delineation of the financial operation governing the legal aid system (see Government of Newfoundland, 1990:2).

### **1.7 Thesis Outline**

In the next chapter, a review of relevant literature concerning the areas of legal aid, decision making, emotional labour and time will be conducted. Chapter Three will describe the methodology used to collect and analyse the data. In Chapter Four, the decision making

process involved in legal aid's determination of client eligibility will be explored. Decision making as a part of service delivery does not occur in a vacuum. In the work environment of legal aid, actions and interactions occur which directly or indirectly constrain and/or enable the actions of organizational members. According to Watson (1987:205), the "meaning and expectations which prevail in any given organizational setting are partly imposed upon organizational members by those holding power and are partly negotiated between the variety of parties involved in that situation."

In Chapter Five, it will be argued that emotional labour exists as a constituent part of the legal aid work environment. This form of labour is experienced subjectively by organizational members and thus has the capacity to influence the delivery of services to clients of the legal aid organization. The application of time in terms of voluminous caseloads, work tasks, the computerized time management information system and overall organizational efficiency will be explored in Chapter Six. In the final chapter a summary of the findings, potential directions for future research and the implications and policy recommendations of the thesis will be presented.

## **Chapter 2 Literature Review**

### **2.1 Introduction**

This chapter will explore the literature relevant to a study of the Newfoundland Legal Aid System. While several government funded studies have been conducted regarding provincial legal aid systems in Canada, there have been no studies of the Newfoundland Legal Aid System. A general examination of studies conducted on legal aid in Canada and other countries will be presented. Studies of legal aid in other countries will act as potential frameworks with which legal aid in Canada can be compared (see 7.2). Next, the concepts of decision making, emotional labour and time will be discussed.<sup>20</sup> Each of these concepts will be discussed in different sub-sections of this chapter.

### **2.2 Canadian Studies of Legal Aid: Models of Delivering Legal Aid**

Inter-provincial comparisons of Legal Aid are complicated by “fundamental differences in the structure” of organizations delivering this service (Statistics Canada, 1999a:5). A primary difference is the use of different models of delivering legal aid.<sup>21</sup> As previously mentioned (1.5), three models of delivering legal aid are utilized in the Canadian legal aid system. These models include the staff system; the judicare system and an amalgamation of the two systems

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<sup>20</sup> While a literature review of studies utilizing the concepts of decision making, emotional labour and the element of time will be conducted in this chapter, definitions of each concept and its relationship to the data will be discussed more fully in later chapters.

<sup>21</sup> With regard to the delivery of services internationally, much diversity exists (Brantingham, 1985:67).

known as the mixed system.<sup>22</sup> The legal aid staffing model currently utilized in the Newfoundland Legal Aid System is the staff model.

A report by the National Council of Welfare (1995:76) maintains that current “legal aid plans do a very poor job of meeting the legal needs of low-income people.” The report maintains that staff models are more effective, in most instances, in meeting the needs of the poor compared to judicare systems. The Council contends that the psychological needs of the poor and the greater accessibility of “decentralized staff offices” comply with the needs of the poor (National Council of Welfare, 1995:61-2). However, Burns and Reid (1981), in a study of the delivery of criminal legal aid services in Canada which focussed on the models of delivering legal aid, maintain that one system is no more effective than the others.

In a paper evaluating legal aid services across several Canadian provinces, Poel (1993:126) maintains that the Canadian Bar Association (CBA), upon a review of studies conducted on Nova Scotia, New Brunswick, Manitoba, Alberta, British Columbia and Saskatchewan, concluded that none of the “models alone are capable of delivering an adequate mix and range of legal services in an effective manner.”<sup>23</sup> Arthurs et al. (1986:525), in an essay discussing *The Canadian Legal Profession*, maintain that the “variety of legal

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<sup>22</sup> For a brief discussion of the *Models of Legal Aid* see Arthurs et al. (1986:523-526) and Brantingham (1985:68).

<sup>23</sup> Similarly, a recent study of legal aid in Ontario claims, the “empirical evidence does not point unambiguously to the superiority of either model in terms of cost, quality of service, or access to justice in a modern legal aid context where choice of models is highly context-specific, reflecting differences in the nature of legal problems, legal clients, and geographic context” (Report of the Ontario Legal Aid Review, 1997:6).

services in Canada should not be overemphasized” because the “predominant concern of Canadian legal aid is to deal with the discrete claims and readily categorized legal problems of clients who present themselves to legal services programs.” While several studies have been conducted on the various models of delivering legal aid, findings do not indicate that one model is more effective relative to the others.

### **2.2.1 Delivering Legal Services in Other Countries**

This section will explore studies of legal aid in other countries. These studies will facilitate an understanding of the way structural aspects inherent in the organizational environment of legal aid, such as voluminous caseloads and demands from clients, impinge upon the delivery of services to clients.

Meadow and Menkel-Meadow (1985) conducted a study of personalized and bureaucratized forms of justice in the delivery of legal services to the poor in the United States. The data for this study were collected through the legal services lawyers<sup>24</sup> and through interviews conducted with these professionals. Meadow and Menkel-Meadow (1985:400) hypothesized that conflicting expectations in their work role “engender in legal services attorneys a ‘sociological ambivalence.’” For legal services lawyers, this ambivalence stems from conflicting expectations of their work role. Similar to solo practitioners, these lawyers maintain much professional autonomy and limited supervision. However, similar to lawyers working in larger corporations these professionals also work in “small units of large

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<sup>24</sup> Legal services lawyers in the United States are the equivalent of Canadian legal aid lawyers.

bureaucratically structured organizations and are salaried” (Meadow and Menkel-Meadow, 1985:400). Furthermore, these lawyers “mix aspects of the private, personal advocate with the obligations of the public social work employee to service all eligible clients” (Meadow and Menkel-Meadow, 1985:400). While factors such as large caseloads and continual demands from clients may increase the likelihood of some lawyers behaving more bureaucratically, their findings indicate that other lawyers may act more independently by exercising their discretionary capability<sup>25</sup> (Meadow and Menkel-Meadow, 1985:411). The lawyer’s personal decisions regarding work tasks are part of an “adaptive strategy to avoid the sociological ambivalence and frustration that would be revealed if they saw themselves as purely bureaucratic and nonautonomous actors” (Meadow and Menkel-Meadow, 1985:412).

Bogoch (1994) conducted a qualitative study of power, distance and solidarity in the professional-client relationship within a legal aid organization in Israel. Content analysis was utilized to code conversations between lawyers and their clients. His findings indicate that the traditional authoritarian model, whereby the lawyers’ as professionals maintain greater power in the professional client relationship, exists in the Israeli legal aid office.<sup>26</sup> The lawyers’ specialized knowledge (i.e. legal jargon) was found to create a distance between the

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<sup>25</sup> See Kelly’s (1994) study below (2.3.2) of the relation between discretionary action and social judgements with regard to dispensing individual justice.

<sup>26</sup> For a study of the unequal power relationship between doctors and patients see Lupton (1996) below 2.4.3. Also, for a discussion of the lawyer-client relationship in the context of the Newfoundland Legal Aid Organization see 5.3.1.1.

lawyer and client, thus reinforcing the hierarchal status of the lawyer relative to the client. The organizational goals of the legal aid office were viewed as taking priority over the needs of the client. The findings indicate that these lawyers did not view the client's emotional expressions to be a part of their "professional objective reality" (Bogoch, 1994:65). Instead, the client's expressions of emotion were viewed as part of the client's lifeworld.

Studies of legal aid in other countries utilize such concepts as personalized and bureaucratized approaches to delivering legal aid. Other studies have explored the lawyer's specialized knowledge as a professional in relation to the client's lifeworld to facilitate an understanding of legal aid. As previously mentioned, studies of legal aid in other countries can act as frameworks to conduct studies of legal aid in Canada. Next, a literature review of studies utilizing decision making and the decision making process will be explored.

### **2.3 Considering Decision Making**

This section will begin with a brief discussion of studies examining the decision making process in the context of organizations. Although many of these studies focus primarily on decision making in the business sector as opposed to routine service delivery decisions, these studies will contribute to a general understanding of the decision making *process*. Then, studies focussing on the discretionary action of organizational members in the context of decision making will be discussed. This thesis explores the determination of client eligibility for legal aid and the general delivery of services via the decision making process. An exploration of the process by which decisions are made in service organizations is essential

because the implementation of policies by street-level bureaucrats has the potential to impact on the life chances of those individuals seeking these services.

### **2.3.1 The Decision Making Process**

Mintzberg et al. (1976) conducted a field study of twenty-five decisions to initiate mandatory retirement at age sixty-five in various organizational settings. The settings ranged from a small manufacturing business to a hospital. Participants for this study consisted of persons holding upper level executive positions. To facilitate an understanding of decision making, the authors drew on the notion that each “decision maker deals with unstructured situations by factoring them into familiar, structurable elements” (Mintzberg et al., 1976:247). Based on this assumption, the authors proposed that all twenty-five decisions could be represented by one model of decision making with some minor alterations. The authors utilized the notion of satisficing<sup>27</sup>, whereby decision makers attempt to reduce the complexity of the decision making environment through problem solving shortcuts (Mintzberg et al., 1976:247).

According to Paul Nutt (1984:414), Mintzberg et al.’s study “made a key contribution by identifying key phases of decision making and external factors that influence” the decision making process. In a longitudinal study of seventy-eight case studies of decision making, Nutt (1984:414) aimed to explain the process whereby managers make decisions. The author maintains that decision making processes can be explored by either imposing a framework

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<sup>27</sup> This concept was originated by Simon (1960) who maintains that decision makers will accept incomplete searches or ‘satisfice’ when making complex and political decisions.

upon the data or examining the data for patterns. The storytelling of participants is “content analyzed to determine how decision making is conducted within organizations” (Nutt, 1984:415). According to Nutt (1984:415), the “emergent approach used by Soelberg (1967), Bower (1970), Witte (1972), Mintzberg, Raisinghani, and Theoret (1976), and others examines the raw data (each case) and use intuition to organize decision activities into patterns that describe the nature and sequence of key phases and within-phase steps.” A framework for the decision making process, constructed by Carroll and Johnson (1990) (see 4.1), and a search for patterns were utilized to examine the data for the present thesis. Although Nutt (1984:415) maintains the framework approach can become unwieldy when many case studies are examined, as it becomes difficult to “tease out patterns,” only one case study was utilized to collect data for this study. Therefore, the data were not considered to be unwieldy.

Peyrot (1982) conducted a study that focussed primarily on caseload management in a community mental health care agency. The discretionary act of choosing suitable clients (screening and assigning applicants) was explored as a way to regulate limited agency resources. Peyrot’s (1982) study is the sole research project considered in this literature review that utilized the stage model of the decision making process across multiple job categories (both professional and non-professional) and within a service organization. In Perot’s (1982) study, participant observation and interviews were used to collect data regarding the determination of client eligibility for organizational services. The decision making process began with the applicant’s first contact with the agency through the

switchboard operator/receptionist. Workers made decisions concerning whether the agency could fulfill the needs of each client, while determining whether or not the case constituted an emergency. The next stage included the client's contact with a medical case worker who was required to assign the client to a care provider. The final stage included the care provider who decided on a treatment for the client.

While medical case workers considered the entire agency caseload when making a decision, findings indicate that the hands-on care providers were concerned only with those cases assigned to them (a subset of the agency's caseload). "Designations of clients as suitable, which threatened to increase demands on an overburdened staff . . . were rigorously tested before being accepted" (Peyrot, 1982:165). Furthermore, staff members were more apt to underestimate as opposed to overestimate client suitability. In contrast to many studies focussing on the decision making of managers, this study acknowledges the discretionary power of organizational workers holding lower level positions. Therefore, Peyrot's study is particularly relevant to this thesis in that it investigates decisions made at many levels of a service organization. In addition, Peyrot (1982:166) suggests that a contextual model integrating features such as client attributes and caseload management "would be an important contribution to the study of decision-making." Thus, the organizational environment of legal aid will be explored in this thesis to determine how much it impinges on the delivery of services to clients. Next, the concepts of decision making and discretion in the context of service organizations will be discussed.

### 2.3.2 Street-Level Bureaucrats: Decision Making and Discretion<sup>28</sup>

Kelly (1994) conducted a qualitative study of the relationship between discretionary action and the social judgement of street-level bureaucrats.<sup>29</sup> The author maintains that organizational cultures have the potential to facilitate or constrain the actor's view of justice in relation to their discretionary action. The target population interviewed for this study consisted of schoolteachers who worked in an educational institution and office workers employed in an Employment Development Department (EDD). The findings indicate that when teachers believe they have more control over situations, and constraints are perceived as manageable, discretionary actions are generated according to their sense of justice. A majority of EDD workers, on the other hand, emphasize structural constraints (i.e. departmental rules and constraints on time) as circumventing actions that could potentially lead to fair outcomes for clients. When EDD workers perceive their environment as less rule-centered, individual client factors (the attributes of each case) are perceived as having greater

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<sup>28</sup> Lipsky (1976:176) maintains that although the street-level bureaucrat "works within a bureaucratic structure, his [sic] independence on the job is fairly extensive." These workers' maintain independence in their work role, which enables them to use their discretion when making decisions. Referring to Lipsky's definition of discretion as a "range of choice within a set of parameters" (Lipsky, 1980), Scott (1997:37) maintains that the parameters in which choices are made can be identified as "organizational rules, or they can be externally sourced, being grounded in laws or even norms or codes associated with professional practice." Notably, the power of discretionary action held by street-level bureaucrats has the potential to affect the clients "significantly" (Lipsky, 1976:176).

<sup>29</sup> Kelly (1994) defines street-level bureaucrats as those individuals who execute public policy at the lowest level.

influence over the workers' discretionary action.<sup>30</sup> To this extent EDD workers and teachers were found to arrive at their decisions in a similar manner.

Similarly, Cantley and Hunter (1985) conducted a case study of criteria that General Practitioners (GPs) use to support decisions regarding referrals to geriatric clinics and admissions to hospital beds for the elderly. They conclude that GPs exercise a vast amount of discretion when handling referrals for future patient care. Individual attributes of the doctors have been found to influence decision making. The manner in which GPs utilize services depends on their "perceptions and expectations of other services," in addition to their perception of "their own skills and responsibilities" (Cantley and Hunter, 1985:283). As several studies in the literature document, the environment in which services are rendered to clients influences decision making. Professionals are simultaneously influenced by internal pressures such as patient complaints and by external pressures such as insufficient resources or other service operations.<sup>31</sup>

In an experimental study of factors that determine discretion by public administrators when delivering organizational services, Scott (1997) found that organizational control followed by client characteristics had the greatest influence over the delivery of services. The

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<sup>30</sup> Clark-Daniels and Daniels (1995) conducted a case study of social workers' street-level decision making and their application of decision rules to service rationing in elder mistreatment policies. The findings indicate that structurally oriented administrative power had a greater impact on decisions relative to the individual social worker's gatekeeping power.

<sup>31</sup> For similar studies see White's (1998) study of bureaucratic and lived time within social service departments and Yoels and Clair's (1994) study of medical interns who attempt to limit the emotional demands of clients, thereby saving time (see below 2.5.1).

professional as a specialist was also found to be influential, but to a lesser degree. The findings indicate that client attributes greatly influence decisions made by service providers at both high and low levels of organizational control. Accordingly, persons identified as high-compassion clients were provided with greater benefits and services by organizational members.

Difficulties can be found with experimental studies. Data were collected through a laboratory experiment wherein an artificial training session was developed for hiring new case workers in a public assistance agency (Scott, 1997:40). While compassion as an individual attribute of the decision maker was examined, the question remains how the decision maker can truly feel compassion for a client when he or she is aware the applicant is not actually in a situation that calls for compassion. Although laboratory experiments can permit the control of one variable relative to others, the social reality of face-to-face interactions between service provider and client cannot be reconstructed in a laboratory setting. Nonetheless, this experimental study is similar to Cantley and Hunter's (1985) study in which the findings indicate that individual attitudes toward clients have the potential to affect services rendered. Similar to other researchers above, Scott (1997) maintains that the organizational environment must be accounted for when analyzing decisions made by public administrators in service organizations.

Organizational dynamics differ between organizations that seek to increase resources by way of gaining clientele compared to service-oriented organizations such as legal aid wherein clientele are striving to obtain services. The majority of organizations referred to

above have utilized *strategic* decision making processes. Accordingly, decisions are executed as part of a strategic event<sup>32</sup> meant to advance resources or other advantages for the organization. Excluding Peyrot's (1982) study of caseload management, the majority of studies examined above used managers or executives as the target population. There are few studies of the decision making process that include lower-level workers as the target population with the exception of participative decision making (PDM) studies.<sup>33</sup> These types of studies include the participant as a stakeholder with regard to the decision being made as opposed to an organizational member who makes decisions regarding the delivery of services. Although organizational parameters (i.e. internal organizational rules and externally sourced rules of professional conduct) limit the choices a service provider can dispense to clients, there is much discretion on the part of organizational members. A review of the literature suggests that organizational environments should be explored in order to advance

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<sup>32</sup> Through an examination of power in the strategic decision making process, Wilson et al. (1986) examine how managers are constrained by "organizational repertoires of decision procedures." Sharfman and Dean (1997) examine the requirement for flexibility in the strategic decision making process by examining informational processing and ideological perspectives. For an examination of four models (the unitary rational, the organizational, the political and the contextual) utilized to "predict and understand strategic decisions in organizations" see Schoemaker (1993). For additional studies of strategic decision making see Butler et al. (1991) and Harrison and Phillips (1991).

<sup>33</sup> Black and Gregersen (1997) conducted a study of participative decision-making regarding the relationship between the employee's involvement in decision-making processes relative to their satisfaction and performance levels within a multi-national manufacturing organization. Locke et al. (1997:295-6), in their study of participative decision making, argue that PDM (as an organizational process) should be used to explore information exchange and knowledge transfer as opposed to furthering motivation and commitment. For a study of PDM, job autonomy and perceived control see Evans and Fischer (1992).

an understanding of the decision making process. Next, prominent themes found within the literature on emotional labour will be discussed.

#### **2.4 Emotional Labour**

This section will begin with a discussion of prominent themes found in the literature on emotional labour. The first theme is the consequences of emotional labour both negative and positive (2.4.1). The second theme is the gender differences among those who experience emotional labour (2.4.2). Finally, studies of emotional labour considered most relevant to the current thesis will be explored in detail (2.4.3). There are no studies that have used this concept in terms of understanding legal aid organizations. Emotional labour includes feelings<sup>34</sup> that are “underplayed, overplayed, neutralized, or changed according to specific organizational feeling rules and in order to advance organizational goals” (Yanay and Shahar, 1998:347). Feeling rules occur when the company informs the worker of the “right” way to interpret “incidents and events during work” hours (Yanay and Shahar, 1998:347-8).

In the legal aid environment, organizational members from a variety of occupational categories experience emotional labour. Nonetheless, Yanay and Shahar (1998:370) maintain, “emotional labor in professional organizations is not easily identified or recognized, mainly because rules of regulation and disciplinary practices are disguised as ethical codes, professional techniques, and special knowledge.”

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<sup>34</sup> While there has been “an enormous shift from a strictly rationalistic view of organizations” in organizational theory, there is very little emphasis on “feelings” (Fineman, 1993:1).

#### **2.4.1 Consequences of Emotional Labour**

Morris and Feldman (1996:1006) maintain that the majority of research on emotional labour has focussed on the “negative consequences for employee well-being.” Problematic in discussions of only the negative aspects of emotional labour is the misguided assumption that workers are unable to control their personal emotions because managers exercise control within the context of the work environment. Disregarding the worker’s control over their emotions ignores the agency of the individual worker. My research does not indicate an attempt by managers to control the emotional labour of organizational members. Emotional labour emerges as a consequence of working in the context of the legal aid environment.

Wharton (1993:218), in her study of the social-psychological consequences of frontline service work, found that “emotional labor is positively related to job satisfaction.” This finding is “consistent with prior research (e.g., Hodson, 1989; Wharton and Baron, 1987, 1991)” indicating that “women and those with high job autonomy or high job involvement express higher levels of job satisfaction than other workers” (Wharton, 1993:218). Furthermore, Wharton’s (1993:226-7) study found that “the impacts of job autonomy, job involvement, and self-monitoring on emotional exhaustion differ depending on whether the respondent performs emotional labor.” For instance, while high job involvement was found to have positive consequences for a worker’s sense of well being, the opposite effects were found for those individuals who perform emotional labour. Jobs that have a combination of emotional labour and job characteristics consisting of low job

autonomy, longer working hours and increased tenure were found to have higher levels of job exhaustion (Wharton, 1993:227).

In a later paper, Wharton (1999) maintains that emotional labour may not necessarily be associated with negative outcomes. Notably, studies such as Wharton (1993) and Wharton and Erickson (1995) and Adelman (1995) found that “workers who performed emotional labour no more likely than others to report job burnout . . . [also] they were significantly more satisfied with their jobs than other workers” (Wharton, 1999:165). However, in a study of worker burnout, Maslach (1982) maintains that higher levels of emotional exhaustion are associated with workers who have frequent face-to-face interactions with clients. In a participant observation study of a McDonald’s restaurant and a Combined Insurance Company, Leidner found that many service workers do not possess a status shield to protect them from emotional onslaughts precipitated by clients. Nonetheless, “extreme routinization of the job and standardization of the interactions made it easier for workers to avoid taking mistreatment personally or seeing themselves as deserving the low regard in which many obviously held them” (Leidner, 1999:92).

In an essay examining the psychological well-being of workers, Ashforth and Humphrey (1993:89) utilize social identity theory to argue that the negative effects of emotional labour can be decreased through an individual’s personal and social identities. Positive effects can be found when a worker performing a service identifies with the person for whom they perform the service. Ashforth and Humphrey (1993:89) maintain that

emotional labour can facilitate task effectiveness and self-expression, but it may be a causal factor in emotional dissonance<sup>35</sup> and self-alienation.

Studies conducted on emotional labour demonstrate that emotional labour in the context of service organizations can result in such negative consequences as worker burnout and job exhaustion. Frequent face-to-face interactions with clients can lead to emotional exhaustion for workers. However, other studies reveal the existence of positive consequences such as increased job satisfaction. For this thesis the negative consequences of emotional labour are particularly relevant as most workers in the legal aid organization experienced negative as opposed to positive consequences.

#### **2.4.2 Gender Differences Regarding Emotional Labour**

Gender differences have been found to be important variables in the workplace. For example, Hunt (1984) maintains that within the police academy, a dichotomy exists between the work roles of males and females. While “high status ‘men’s work’” involves work tasks such as crime fighting, “low status ‘women’s work’” involves work tasks such as social relations and secretarial labour (Hunt, 1984:287). Nicky James (1989:19), in a study of emotional labour and the social regulation of feelings in the public and private domain, argues that present forms of emotional labour construct an image of women as “unskilled” while simultaneously

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<sup>35</sup> Rafaeli and Sutton (1987:32) designate emotional dissonance as “person-role conflict, or a clash between personal values and role requirements” identified as a “clear threat to employee well-being.” In a qualitative study of bill collectors, Sutton (1991) found that socialization practices were initiated to reduce the dissonance between the workers’ actual felt emotions and their expressed emotions when interacting with clients. The potentiality of employees feeling sympathy for clients when they are supposed to be hard on them was thought to create emotional dissonance for the worker.

stigmatizing them as emotional rather than rational persons. Accordingly, emotional labour is perceived as a task that women naturally perform in the workplace.

Hochschild's (1983) study of flight attendants indicates that women are less likely than men to have protection from emotional labour in the form of status shields. In contrast, from a quantitative study of frontline workers in both banking and hospital industries, Wharton (1993) found that being a female did not increase the worker's chances of experiencing emotional exhaustion when doing emotional labour. Similarly, from a data set collected while developing the Gender Neutral Comparison System (GNCS) Steinberg and Figart (1999:189), found that "emotional labour and emotional demands are not confined primarily to female occupations." Furthermore, the authors maintain that "occupations with very different gender labels can contain similar dimensions of emotional skills and demands" (Steinberg and Figart, 1999:189).

This review of studies on emotional labour indicates that males have greater protection from the effects of emotional labour in their occupations, relative to females. This is particularly relevant to the current thesis because all the support workers are female, while the majority of professionals are male. Next, studies of emotional labour in service organizations will be discussed in detail.

#### **2.4.3 Emotional Labour in Service Organizations**

Lupton's (1996) qualitative study of interactive communication among doctors and patients in Sydney, Australia found that patients perceive doctors to be good or bad based on their

interaction with them. Utilizing both Giddens' (1990) argument that "trust in intimate relationships involves mutual self-disclosure" and Foucault's (1978) conception that individuals who reveal important details about themselves have less power relative to those who hear their confessions, Lupton (1996:168) argues that some aspects of trust are not encouraged in the professional-client relationship. While the patient is required to divulge intimate thoughts, the doctor is not required to reciprocate. The majority of patients consider interpersonal communication with their doctor more important compared to the expert medical knowledge of the professional. The ability of the doctors to "'listen' and 'communicate' and their willingness to 'spend time with you' and 'talk things over'" were considered significant to the client's perception of the doctor (Lupton, 1996:159). Bad doctors were characterized as "not listening to the patients concerns or questions" and spending insufficient time with patients overall (Lupton, 1996:160). Thus, unequal power relationships are viewed as contributing to the negative perception of professional-client relationships. This particular finding links the concept of emotional labour to the allocation of time in relationships and organizations.

Yanay and Shahar (1998) conducted an ethnographic study of psychology student counsellors in a psychiatric facility in Israel. The student's work role consisted of acting as companions to facility residents. One aim of the study was to explore the students' emotion management, particularly how the students "dealt with their own emotionality in relation to the professional ideology of emotional self-control" (Yanay and Shahar, 1998). Feeling rules,

objectivity, neutrality and caring were concepts used to examine the power of professionals and their limitations. Students were socialized to believe that the display of too many feelings when interacting with residents, whether affection or anger, was improper behaviour. Rather than drawing upon professional emotional distance or neutrality when interacting with psychiatric residents, students tended to react emotionally. According to Yanay and Shahar (1998:370), the display of the “right feelings” emphasizes a “legitimate contrast between common sentiments [unprofessional display of emotions] and the science of emotions [professional display of emotions].” Accordingly, the authors maintain that “emotional labor in professional service organizations is the product of contested professional discourse” (Yanay and Shahar, 1998:371).

Although the legal aid organization is oriented towards the goal of providing legal services to those unable to afford these services, legal aid workers are required to manage the emotions of clients prior to achieving this organizational goal. Whether employers monitor or direct the emotional labour of workers is contingent on the organization’s demand for clients. Organizations such as “government agencies and other providers with a captive customer base . . . are less likely to focus on the quality of their workers’ emotional labor” because the employers are secure in the knowledge that they have “a steady demand for its services regardless of the quality of service interactions” (Leidner, 1999:84). Nonetheless, as shall be seen in chapter five, this organizational dynamic does not prevent the occurrence of emotional labour.

## 2.5 Time

The notion of clock time (also known as chronological time or even time), defined as unitary, linear and mechanical, “has evolved historically” in western culture (Bluedorn and Denhardt, 1988:300-2) through industrial control of work-time. Hassard (1989) maintains that conceptualizations of time as quantitative and homogenous advance a limited view of time (see also Clark, 1985; Whipp, 1994; Holmer-Nadesen, 1997). In this section, research on time will be discussed briefly. Only studies utilizing qualitative research methods will be discussed in detail as these studies are most applicable to the current thesis. Notably, there are few research studies that have used qualitative methodology to explore the element of time in organizations. There are no studies that have critically applied the concept of time to a study of legal aid in Canada. Although time is a “fundamental dimension of organizational life and action,” this concept has been neglected in the current literature (Butler, 1995:925). Existent studies conceptualize time in terms of linearity, rationality and quantitative aspects.

Gherardi and Strati (1988:149) maintain studies of “time and motion . . . , the reduction of working hours, shift work, the allocation of time in strategic choices, planning schedules, the time-horizon of an organizational actor when dealing with a certain event” are all comparable in the sense that all these studies utilize units of “objective and external time.” In contrast to this objective way of studying time, Gherardi and Strati (1988:149) argue for “a plurality of internal and particular times within each individual organization.” Whipp’s (1994) review of the literature on time criticises the dominant view of time as

regular and linear, in the context of western society. Whipp (1994:100) argues that although the concept of time as regular and linear is dominant in the study of time management, this view of time is rudimentary and undeveloped as many “meanings” of time exist in organizations. Whipp (1994) emphasized the need to contextualize the plurality of meanings of time. While Whipp (1994) recommends further studies of time as non-linear and subjective within the context of management studies, there is a need to explore time within a variety of areas, particularly service delivery organizations.

In an essay on time, Butler (1995:925) delineates a “conceptual framework for thinking about time in organizations.” This model delineates organizational time as a socially constructed *variable* whereby the focus on time is based on “the interpretation and experience of” events occurring in the present (Butler, 1995:925-6). Sahay (1997:240) maintains that the view of time as a unilinear variable, as discussed in Bluedorn and Denhardt (1988) and Butler<sup>36</sup> (1995), “seems to imply that time is rather unproblematic and measurable.” Whether the variable is treated as dependent or independent, Sahay (1997:240) maintains that limitations are placed on the notion of time that “prevent a deeper and more sophisticated analysis relating to the constituting and constituted nature of time with respect to social practices.” The next section will provide a detailed analysis of qualitative research studies utilizing the element of time to explore various facets of work processes and organizations.

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<sup>36</sup> Although Sahay (1997) delineates the publication year as 1996, the correct date for Butler’s study is 1995.

### **2.5.1 Qualitative Studies of Time**

Fine (1990) conducted a qualitative case study of four restaurant kitchens utilizing participant observation. The target population for this study included restaurant cooks. This study demonstrated that features external to work tasks have the potential to influence the amount of time required to conduct work tasks. According to Fine (1990:111), organizational work periods that are both rushed and slow have the potential to “provide insight into the ways in which workers attempt to structure their jobs to make them self-satisfying and to provide themselves with some measure of autonomy.” The following topics were investigated in Fine’s study: synchronization pertaining to the interdependence of workers required to perform work tasks; sequencing and prioritization of work tasks (i.e. the necessity for one task to be conducted prior to another); and finally the duration of time required to conduct work tasks. The findings indicate that work demands which imposed time limitations have the potential to cause felt emotions. For example, cooks felt angry and tossed a plate of food in the garbage on some occasions when the number of food orders became high. Furthermore, control over work time was deemed important with regard to work satisfaction. For instance, cooks would occasionally take a break regardless of the consequences, such as backed-up food orders, ensued by annoyed customers and employers.

Yoels and Clair (1994) conducted a study of the management of time as a scarce resource from the perspective of medical school residents. The study took place over a two year period. In this study, time was explored as a central component of social organization. The authors explored how medical residents sought to control their work through the

management of time. Residents learn to manage their work time as part of their professional socialization. Additional findings indicate that controlling time was viewed as a way of “limiting the emotional demands on doctors” (Yoels and Clair, 1994:200). Although residents would cause hospital patients to wait, these patients would direct their anger towards the nurses. Yoels and Clair (1994:197) maintain that “low-income, minority patients” may perceive the nurses as possessing less power and status relative to the residents, thus acting as a less threatening outlet for their anger. The nurses, in turn, were angry towards the residents because the residents were deemed to be the cause of the patients’ anger. This study shows the link between time and the need to manage the emotions of clients. Organizational time pressures can affect the emotions of workers and subsequently the delivery of services to clients.

In an ethnographic study of social workers in a social services agency in Britain, White (1998) argued that time has a central place in the delivery of social services. The author maintains that both structural, bureaucratic characteristics and human agency influence the practice of delivering services in organizations. White (1998) explored the social workers’ work routines and the linguistic practices utilized in negotiations of time. In White’s study two meanings of time are explored: bureaucratic rational time and lived time. Lived time involves the agency of the social workers and their control over their personal time in the private sphere. White (1998:57) maintains that rational time, delineated as clock time, “dominates human experiences” in western societies, particularly in complex bureaucracies such as social service departments. The distinction between bureaucratic and

lived time involves the recognition that the client's life progresses whether or not the social workers are present. Also, the clients' *life-world* impacts on the activities of the social workers employed in the service organization. For example, during a social worker's vacation many events may have occurred in a client's life. These events have the potential to influence the social worker's activities upon his or her return from vacation. In essence, this means that the client's life-world has an influence on the social worker's activities. Although social workers are professionals who maintain a degree of professional autonomy and negotiate work time through discourse, rational time is viewed as exerting much influence over the professional-client relationship (White, 1998:63). The social workers' discretionary capability and the structural constraints of the organization influence the delivery of services in service organizations.

The literature discussed in the final section of this chapter supports the view that time can be explored in a variety of ways. However, there are few studies that use qualitative methodology to explore time in organizations. As such, there is a need to explore the subjective experiences of workers and professionals in the context of organizations. Furthermore, there is a need to differentiate among the experiences of a variety of organizational employees holding different positions within an organization. Such studies, conducted by Fine (1990) and Yoels and Clair (1994), delineate the importance of analyzing time from a qualitative perspective. They provide valuable insight for the current study because they establish a link between emotionalism and time in work organizations.

## **2.6 Conclusion**

This chapter has reviewed literature relevant to a study of legal aid and the subsequent delivery of services to clients. An exploration of the various models of delivering legal aid in Canada was provided, followed by a brief exploration of legal aid studies conducted in other countries. The study of legal aid in Canada, particularly the province of Newfoundland, is largely undeveloped. The decision making process was explored next in relation to the discretionary capability of street-level bureaucrats. For the purposes of this thesis, it is important to examine the discretionary capability held by street level bureaucrats because they have the potential to impact the life chances of individuals seeking legal aid services. Next, emotional labour in terms of both positive and negative consequences was discussed. Notably, the negative consequences of emotional labour are more relevant to an understanding of service delivery in the Newfoundland Legal Aid System. The effect of emotional labour was explored in relation to traditionally held female and male occupations. This is particularly relevant to this study because all support workers are female, while a majority of the professionals are male. Lastly, the element of time was explored in relation to the organizational time pressures while working in service organizations. The experience of emotional labour and the pressures of time have the potential to interact and negatively affect the delivery of services to clients of service organizations.

The following chapter will describe the methodology used to collect and analyze the data presented in chapters four, five and six.

## **Chapter 3 Research Methodology**

### **3.1 Introduction to Qualitative and Quantitative Research Methodologies**

This chapter will describe the methodology used in this thesis. Qualitative and quantitative methods attempt to “study and represent social life in different ways” (Ragin, 1994:155). Greater reliability can be attached to conclusions based on quantitative data from a large number of cases. In contrast, qualitative research methods emphasize “similarities” through the construction of a “single, composite portrait of the case” (Ragin, 1994:87). Qualitative research is usually inductive as opposed to deductive. Accordingly, “researchers develop concepts, insights, and understanding from patterns in the data, rather than collecting data to assess preconceived models, hypotheses or theories” (Taylor and Bogdan, 1984:5) as would be the case when utilizing quantitative research methodologies.

Research data are judged according to the criteria of validity and reliability. According to Babbie (1998:303):

Validity concerns whether measurements actually measure what they’re supposed to rather than measuring something else. Reliability, on the other hand, is a matter of dependability: If you made the same measurement again and again, would you get the same result?

Quantitative research methods such as highly structured questionnaires rely on consistency when collecting data. Qualitative methods, on the other hand, emphasize the “immersion of the social researcher in the research setting and the effort to uncover the meaning and significance of social phenomena” (Ragin, 1994:88). Accordingly, qualitative research methodologies “refer to the meanings, concepts, definitions, characteristics, metaphors,

symbols and descriptions of things” (Berg, 1995:3). Exploratory studies are utilized “essentially whenever a researcher is breaking new ground, and they can almost always yield new insights into a topic for research” (Babbie, 1998:91). The flexibility, inherent in qualitative methods, allows the researcher to “modify [their] research at any time” (Babbie, 1998:198) in an effort to pursue unanticipated themes. Qualitative methodology will be utilized to explore the work roles of the people working for legal aid and the subsequent delivery of legal aid services in the Newfoundland legal aid organization.

### **3.2 Participants**

“Inductive researchers begin by assuming their naivete about the phenomenon of interest, and use the exploratory phase to acquire new insights, particularly through the perceptions of those who inhabit the research site” (Palys, 1997:78). Members of organizations accumulate experiential knowledge with regard to the day-to-day functioning of the organization. Therefore, support staff and legal aid lawyers were specifically sought for their knowledge of the legal aid process that determines applicant eligibility for legal aid funding. The target population for this study consisted of support staff and lawyers who had direct contact with clients of the Newfoundland legal aid organization. Twenty-four organizational members were interviewed for this study: thirteen staff lawyers, two intake workers, two receptionists, six legal secretaries and a senior official for Legal Aid. Intake workers (also known as financial assessment officers) conduct financial assessments that determine whether applicants qualify for legal aid based on their financial status. Legal aid lawyers (also known as staff lawyers) determine whether an applicant qualifies for legal aid based on the legal

merits of their case. Staff lawyers work for legal aid on a permanent basis as opposed to private lawyers who choose to provide legal services for clients on a fee-for-service basis.<sup>37</sup>

### **3.3 Sampling**

Two broad types of sampling techniques are used to collect research data. These include probability and nonprobability sampling. The former is utilized to provide “an efficient method for selecting a sample that should adequately reflect variation that exists in the population” (Babbie, 1998:198). A non-probability sampling technique, known as purposive sampling, was utilized to facilitate the exploratory nature of this research project. This type of sampling stipulates that “people or locations are intentionally sought because they meet some criterion for inclusion in the study” (Palys, 1997:37). The Newfoundland Legal Aid System was intentionally sought as a research site and organizational members as participants because the primary objective of this research project included an exploration of the decision making process determining client eligibility for legal aid services in this province. Because the target population was not randomly selected, the results of this study cannot be considered entirely representative of other legal aid offices.

While the total population of workers in the non-professional occupations are female (including intake workers, legal secretaries and receptionists), a clear majority of professional workers are male. Only one of the lawyers interviewed for my study is female, the remaining twelve are male. The data collection spanned the months of November 1999 to March 2000.

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<sup>37</sup> Additional information regarding the duties and responsibilities of each occupational category will be delineated in the data analysis chapters (see chapters 4, 5 and 6).

However, the majority of interviews were conducted in the months of December 1999 and January 2000.

Data were collected from one legal aid office located in St. John's and one smaller office located outside St. John's. As various offices are spread across the island (see 1.4), these sites were chosen due to their geographical location relative to St. John's, where I reside. While a third legal aid office, located outside of St. John's, was initially proposed, I was unable to gain access. I was specifically informed that if I was granted access, I would be contacted. Otherwise it was recommended that I should not call again.

### **3.4 Designing the Questionnaires**

Given the contrasting job categories among the participants and their different work roles and level of knowledge of the organization, five different questionnaires were developed. Each participant was asked questions based on their work role in the organization. Questionnaires were constructed based on information gathered through a standard literature review. However, specific questions to obtain information regarding the internal operation of the Newfoundland legal aid organization had to be developed. To aid the construction of the research design, a preliminary interview with an intake worker was conducted. Anthony Giddens' theoretical orientation, conceptually identified as structuration theory (see 1.3), was utilized to aid the design of the questionnaires. Structuration theory helped form questions that would unearth data from both an agency and organizational structural perspective.

According to Ragin (1994:91), "without concepts, it is impossible to select evidence, arrange facts, or make sense of the infinite amount of information that can be gleaned from

a single case.” The original point of focus for this research project consisted of gathering data regarding the decision making process as a social practice in the legal aid organization. Accordingly, the interview questionnaires consisted of the following sections: the process of applying for legal aid, the duties and responsibilities of the organizational members, the role of computer applications in the legal aid organization, and the goals, rules and resources viewed as regulating client eligibility for legal aid funding (see appendix II). During the process of gathering data, additional themes were discovered. A major unexpected theme that emerged during the process of gathering and analyzing the data was emotional labour.

A balance between formal and informal phrasing of the questions was sought. Despite this effort to ensure full comprehensibility and clearness of the proposed questions, additional explanation was provided to clarify questions. Characteristic of qualitative methodologies, the researcher is permitted to clarify questions without compromising the participant’s response and the ensuing data. However, if the researcher is required to repeatedly interpret a question, it should be revised. Furthermore, a participant may interpret their lack of understanding adversely, thereby causing them to feel inadequate. Ethically this is unsound. Other participants may simply become bored, impatient or irritated with awkward questions. Consequently, the quality of the research data could be affected. In fact, requests for clarification occurred infrequently and rarely involved the same question.

A combination of open-ended and structured questions, known as funneling, was utilized to design the questionnaires (Palys, 1997:166). Open-ended questions allow for greater detail and responses considered salient by the individual. Furthermore, these types

of questions allow the “informants responses to be minimally affected by the researcher” (Palys, 1997:166).<sup>38</sup> Structured questions allow participants respite from long drawn-out responses. Questions were designed to elicit responses whether participants provided positive or negative responses (i.e. if yes or if no, see appendix II). This structural design minimized the potential for non-informative, monosyllabic responses.

### **3.5 Gaining Access: Disappointing Time Delays**

An irrefutable truth regarding methodological approaches, whether quantitative or qualitative, surrounds the inability to remove all subjectivity from the research design, the collection of data and subsequent analysis of the data. Becker maintains (1966:242) that “it is not possible” to conduct “research that is uncontaminated by personal and political sympathies.” As such, the researcher’s values have the potential to impact upon some aspect of the research process. According to Palys (1997:8),

Researchers are people too . . . like everyone, they bring certain understandings and values along on their voyage of discovery. If that baggage goes unacknowledged, social scientists risk becoming ‘knowledge lobbyists’ whose ‘truths’ reflect little more than personal biases.

Subjectivity will enter any research study whether or not all social researchers agree with this statement. Consequently, it is important that social scientists acknowledge their position with regard to their research project. This section will acknowledge my individual frustration while attempting to gain access to the legal aid organization. It is also important to

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<sup>38</sup> For information on reactive bias, see below 3.8.1.

acknowledge the difficulties of attempting to gain access to organizations for the purpose of conducting research studies.

Access to the legal aid organization was fraught with difficulties. Several months after I decided to do my thesis in the area of legal aid, I contacted a member<sup>39</sup> of legal aid to inquire about the likelihood that an MA student would be permitted to conduct a study of their organization. I was told that a meeting could be set up with one of the intake workers. During this phone call I attempted to explain the aim of my study, but the organizational member appeared uninterested in the details. During the final stages of my research design, I contacted this member to reaffirm access. On this occasion, the worker appeared to be irritated as access had been previously granted. Although I was encouraged that access would not be denied, I was also uneasy as I felt that the extent of my study had not been fully recognized. However, I did not want to cause any negativity. Consequently, I thanked this person as I ended the telephone conversation. Following my interview with the intake worker, which was set up by legal aid, problems arose. When I contacted the second intake worker to conduct an interview, she informed me that she did not know anything about my research project. Therefore, she would have to obtain permission prior to being interviewed. The following day, the worker that I had originally contacted regarding access to the legal aid organization contacted me. Contrary to the previous phone calls, I was asked pertinent

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<sup>39</sup> For ethical reasons, this individual's work position and gender will not be identified.

questions involving the nature of my study. Then, I was informed that I would be contacted at a later date.

Next, a senior official at Legal Aid contacted me. He informed me that I would require permission from the Legal Aid Commission prior to the commencement of a study. Accordingly, I sent a copy of my proposal, a release form and a letter outlining my intentions to the Legal Aid Commission. Approximately a week and a half later, I received a letter from a senior official at Legal Aid stating that the commission members wished to meet with me during their monthly conference meeting. The upcoming meeting would be held during the week of October 11-15, 1999. I was very pleased with his prompt reply. Consequently, I called legal aid to confirm a time. I was informed by my original contact that I would be contacted later in the week to set up a time. By the week of October the 11<sup>th</sup>, I had not received a phone call. Consequently, I attempted to establish contact with the person who was slated to confirm my meeting with members of the Legal Aid Commission. However, I was unable to establish contact. Concerned, I called a receptionist who informed me that my contact was already attending the conference.

At this point, I was slightly overwhelmed at the swell of road blocks. As I had been ready to begin interviewing for several weeks, time was a consideration. If I could not meet with the commission members at this time, I would have to wait another month. With utter frustration, I realized that I wanted an answer regardless of whether it was positive or negative. I did not feel comfortable at an impasse. Armed with information I could make other plans, whether or not this included the development of a new research proposal.

Uncertainty regarding permission to conduct a study is not a secure place for any social researcher (Crompton and Jones, 1988:69), least of all a student whose MA degree is contingent upon finishing a thesis.

Fortunately, the receptionist passed along my message to a senior official at Legal Aid. He contacted me about two hours later to schedule an appointment to meet with members of the Legal Aid Commission. Although I am currently unaware of any reasons for forgotten phone calls or misunderstandings, I suspect this particular worker (my contact) was simply busy. While I had attempted to express my intentions clearly on two occasions in an effort to establish access to the organization, I believe the organizational member that I contacted focussed on the word *student*. Consequently, this member did not feel it necessary to hear or ask questions regarding my intentions for a proposed study. Initially, I thought the word *student* would invoke a less threatening image, thereby facilitating my effort to study the organization. For this study, I believe I was incorrect.

While this study was important for me as a student researcher, I realize that my original contact might have considered this study less important relative to the day-to-day work priorities and functioning of the organization. Delays are simply part of the process of gaining access to organizations. Indeed, organizational members must ensure that their interests are protected. Researchers such as Taylor and Bogdan (1984:19) state, "it is not uncommon for researchers to 'to spin their wheels' for weeks, even months trying to break into a setting." My experience while attempting to gain access to the legal aid organization confirms this assertion.

### **3.5.1 Meeting with the Board Members**

According to Taylor and Bogdan (1984:20), it is important to convince gatekeepers that you are “a nonthreatening person who will not harm their organization in any way.” Accordingly, social researchers should delineate identifiable payoffs to members of the organization as an avenue to gaining formal access to an organizational setting (Hertz and Imber, 1995:46). In my opening statement to the members of the Legal Aid Commission, I indicated that my proposed research project would include the study of the decision making process that determines client eligibility for legal aid funding by looking at the organizational structure of legal aid and the work roles of organizational members. I emphasized that feedback from my proposed study had the potential to improve the scope and effectiveness of legal aid as an organization. As such, the organization as a whole could potentially benefit from a research study. Although ethical considerations are an integral part of social science research and were addressed in the research proposal sent to commission members, they expressed concern regarding the identification and confidentiality of participants. I confirmed that participants would be required to sign a consent form prior to the initiation of each interview and that every effort would be made to remove possible identification of persons from the final analysis. Finally, I was granted access to the legal aid organization for the purpose of conducting the study.

### **3.6 Establishing Contact**

Although I had gained entrance to the legal aid organization for the purpose of conducting a study, my next endeavour involved obtaining organizational members willing to

participate. All of the intake workers and receptionists agreed to participate in my study. However, the first legal secretary I called refused to participate. She stated that she would be uncomfortable being interviewed. I responded by stating that she “did not have to participate” if she felt uncomfortable. The second legal secretary stated that she “only worked at legal aid on a part-time basis.” Thus, she did not want to participate. Although I feared that a trend had begun, my fears were allayed in subsequent phone calls. Six out of eight legal secretaries consented to participate in this study.

Although several legal secretaries thoughtfully offered to speak with the lawyers they worked with regarding their willingness to participate in my study, I chose to speak directly with the lawyers because I anticipated that they might be more willing to participate in my study if I did so. Direct communication would enable me to immediately alleviate any misconceptions or misapprehensions about the aims of my research. I was given an internal listing of telephone numbers for organizational members. Using this list of phone numbers, I began to contact staff lawyers, but many of them were not in their offices. Although I had envisioned messages being left on answering machines and people forgetting or refusing to return my phone calls due to either time constraints or disinterest, to my surprise the majority of messages were returned promptly. Nonetheless, several phone calls resulted in ‘phone tag’ due to our conflicting schedules. Thirteen of seventeen lawyers that were contacted consented to participate in my study. Lawyers unable or unwilling to participate included two who were ill, one who was on work leave and a fourth who simply did not return my phone

messages. Notably, a lawyer and legal secretary located in a rural area office agreed to participate in the current study. Both individuals were included in the study.

When each participant was contacted, they were informed that I had permission from the Legal Aid Commission to conduct a study. While the majority of people accepted this fact at 'face value,' one individual asked me whether I had met with the board members. I affirmed that I had indeed met with members of the commission. Following my response, he very quickly inquired whether I knew the name of the head of the commission. Subsequent to the correct response, this participant appeared satisfied and consented to an interview. I was left with the impression that if I had failed the test put before me, I would not have received an interview.

### **3.6.1 Administrative Aspects of Field Work**

In addition to the use of a weekly date-book, I designed an organizational table to track contact information. Meticulous control of contact information was necessary because establishing communication with some organizational members required several attempts. Following each phone conversation, detailed notes were made regarding the details discussed. Additional notes were made regarding the content of phone messages including whether I had left them on their machine or with their legal secretary or whether they had left a message on mine. The organizational table recounted the following information to aid the scheduling of participant interviews: agreement to participate; request to call back at a future date (e.g. a participant wanted me to contact them the following month because they were too busy at the time I made contact); cancellations and [re]scheduling; and the date and time

I established contact with organizational members. Both the organizational table and weekly planner were valuable administrative tools that probably prevented errors. Perceived incompetency regarding simple administrative tasks could have prompted participants to regret their agreement to participate. An image of a social researcher as incompetent could have set a negative tone for an upcoming interview or the participant may simply have canceled the interview outright. Furthermore, when scheduling interview appointments, easy access to unblocked times is vitally important because researchers want to present themselves as well-organized individuals who would not waste participants' time if granted an interview.

### **3.7 Ethical Considerations**

Informed consent forms were used to ensure that each participant had the opportunity to know the aims of my research and that they could, at any time, terminate the interview process (see appendix III). These consent forms were issued prior to each interview and required the signature of both participant and researcher. This activity allowed me to establish "the knowing consent of individuals to participate as an exercise of choice, free from any element of fraud, deceit, duress, or similar unfair inducement or manipulation" (Berg, 1995:212). Nonetheless, possible problems may arise when using consent forms. The potential exists for this written statement to hinder the communication process. Due to the image of legality, participants may believe that signing a consent form requires them to stringently monitor their verbal responses. Nonetheless, all participants were willing to respond to each question and they did not appear to be monitoring their responses. Indeed, they appeared to respond openly to all questions.

All interview consent forms were secured in a safe location to protect the identity of each participant. Due to the possible identification of research subjects' in this thesis, "an active attempt" was made "to remove from the research records [and ensuing final analysis] any elements that might indicate the subjects identities" (Berg, 1995:213). According to Berg (1995:213), complete anonymity of subjects is "virtually nonexistent" in qualitative research because researchers know who their subjects are in the context of the collected data. However, the highest level of confidentiality was attempted.

Precautions were taken to prevent the easy identification of receptionists and intake workers. Blurring the boundaries of work roles allowed me the opportunity to ensure the work titles of receptionists and intake workers would not simply refer to two workers in each occupational category. A full-time receptionist and a records clerk (acting as a receptionist on various occasions) were utilized to gather information regarding the receptionists' work role in the St. John's office. A third worker from a rural area office maintains the duties and responsibilities of a legal aid secretary and receptionist because she is the only support staff working in the office. Three organizational members contributed information regarding the receptionist's work role because each member possessed intimate knowledge of this position. Similarly, a lawyer working in a rural area office maintains the duties of financially assessing incoming applicants. Therefore, this lawyer has contributed his knowledge of the intake process.<sup>40</sup>

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<sup>40</sup> Differences regarding the intake process in the St. John's office and the rural area office have been noted where applicable.

### **3.8 The Interview Process**

Semi-structured interviews were utilized to gather data for this study. There are several advantages of face-to-face interviews as a means to collect data. First, there is a higher participation rate for interviews. According to Palys (1997:154), “participation rates among people approached for a face-to-face interview are often around 80 percent or even 90 percent – comparable to some self- and group-administered questionnaires, and considerably better than mail-out questionnaires.” Accordingly, possible biases in relation to differences between individuals granting interviews and those unwilling to participate are minimal. Secondly, the interviewer can “ensure that the appropriate person completes the interview . . . clarify any confusion about particular questions, and encourage verbally stingy respondents” to add richer detail to their responses (Palys, 1997:154). To further clarify my understanding of the information being presented, I encouraged interviewees to augment their responses with examples. Additionally, I would carefully reiterate portions of their response to validate my interpretation of the participant’s response.

Upon arriving for a scheduled interview, I waited in the reception area until the interviewees informed me that they were ready. Occasionally, the receptionist would buzz me in early. Thus, I would set up for an interview prior to the arrival of the participant. The design of the legal aid offices prevents clients from having physical access to organizational members. Although receptionists are visible to clients in the waiting room, these workers labour behind a glass partition. In this work area, legal secretaries and receptionists do not have a closed-in office space. Therefore, all interviews conducted with secretaries and

receptionists were conducted in a small room that was typically used to conduct interviews with clients. Interviews with the intake workers and eleven of the lawyers were conducted in their offices. Only two lawyers elected to be interviewed in an interview room. One lawyer maintained his office was too small for the comfort of an interview. Another lawyer decided that it would be more convenient to use the interview room because he arrived late for his interview. The status of the organizational member was reflected in their ability to choose between their personalized office space and an interview room. While some participants might have been more comfortable in their own work space, all interviews were conducted in a private setting. Accordingly, interviews were conducted without supervisors or other members who may have inhibited participants' responses. All interviews were conducted face-to-face.

### **3.8.1 Identifying with Informants**

Three support workers exhibited visible signs of nervousness at the beginning of the interview process. These participants expressed fear regarding their ability to respond adequately to the interview questions. Two of these participants suggested their co-workers would have the knowledge to explain the subject matter better than them. In these instances I did not feel comfortable with the role of being an interviewer, which identified me as the person who generated their nervousness. I endeavored to ease the tension by explaining that I was there to learn about the organization from each member. I explained that although I had read much literature pertaining to both legal aid and the decision making process, I was unfamiliar with how this process was conducted in their organization. I explained that each

organizational member, regardless of their work position, could contribute valuable knowledge to my study. I emphasized that there was no right or wrong answer.

In addition to alleviating the participant's anxiousness regarding the interview process, this explanation had the double impact of preventing bias. According to Palys (1997:155), caution should be used to prevent "reactive bias" as participants could potentially impart information that they think the researcher wants to hear. Although Manning (1967:308) was referring primarily to survey interviews when he suggested that interviewees may attempt to gain the interviewer's approval through "ingratiating tactics," it is important to note that interviewers conducting other types of interviews, such as semi-structured interviews, be aware of this possibility.<sup>41</sup> During the initial part of the interview process, the nervousness that was felt by some participants decreased as they became more comfortable with the interview. Participants did not appear to have difficulty when responding to the interview questions. The reason for the lack of difficulty was most likely because the questions focussed on their knowledge of their everyday work experiences. Also, I believe the participants became more comfortable with me as the interviewer. In an attempt to dispel a one-dimensional image of me as being only a researcher, I informed the support workers who appeared nervous that I had formerly worked as an administrative clerk. This allowed me to align myself with their work role. According to Kirby and McKenna

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<sup>41</sup> Indeed Stenross and Kleinman (1989:438) employed Manning's statement to further an understanding of their qualitative interviews conducted with police detectives.

(1989:67), “for quality interviewing, there must exist a sense of equality between the person gathering the information and the person whose knowledge is sought.”

I had anticipated a power differential between the lawyers, as professionals, and myself as the student researcher. However, there was no discernible indication of this phenomenon during the course of the interviews. As I continued conducting interviews, I gained more confidence. Contributing to my confidence gain was the realization that I could converse knowledgeably about the area of legal aid and the decision making process. Also, it became apparent that the members of legal aid accepted my research aims and were very generous with their time and knowledge.

### **3.8.2 Variation of Interview Times**

The duration of the interviews ranged from a low of forty-five minutes with a legal secretary to a high of three hours with a lawyer. The average length of interviews was one and a half hours. When I originally contacted participants I estimated the interviews would take forty-five minutes to an hour. However, I did not anticipate that participants would provide long, drawn-out responses in the form of examples and stories. Although this was unexpected, I greatly appreciated the extended responses and their willingness to continue the interview process beyond the originally quoted times. The lawyers and intake workers appeared to have greater flexibility regarding their work time relative to the legal secretaries and receptionists. Although the secretaries and receptionists answered all the questions posed, they expressed concern regarding the need to “get back to work” to complete required work tasks.

The interview process for one lawyer was divided into two segments because all interview questions could not be asked during the allotted time. Although I waited an hour for one interview and another interview was delayed by fifteen minutes, the remaining interviews began on time.

### **3.9 Collecting the Data: Tape Recording**

Tape recording was thought to be best-suited for this research because interviews were expected to be lengthy. Additionally, I wanted to capture verbal responses accurately and in their entirety. Nonetheless, the act of tape recording was not assumed. Each participant was asked for their permission to be taped, prior to each interview. The act of tape-recording interviews was viewed as safeguarding the accuracy and natural flow of general conversation. Recording data allowed me to capture, verbatim, statements generated by participants. The tape recorder was compact and unobtrusive. This device was strategically placed (off to the side of the participant), so as not to hinder the interview process. Ninety minute tapes were used to minimize interruptions precipitated by turning the tape to the other side. Despite this the tape required turning at least once during the majority of interviews. While interviewing, I was alerted when it was time to turn the tape to the other side by a very small clicking noise. In most cases, the natural flow of dialogue was interrupted only briefly. Therefore, these interruptions were not generally harmful. The tape recorder was checked ten minutes after the commencement of each interview to avert technological difficulties and subsequent loss of data.

In one instance, prior to my verification that the tape-recorder was working properly, Lawyer C requested that I playback a brief exchange to verify that the conversation was being taped. This particular individual had stated that a study of legal aid was “long overdue,” and thus he considered the interview process a worthwhile endeavor. Only one participant refused to be tape recorded. Lawyer G stated, “Don’t you know you are dealing with lawyers. No lawyer is going to let you tape them.” Accordingly, hand written interview notes were utilized to record this interview. It did not seem necessary to inform this person that several lawyers had already consented to the recording of their interview sessions. In fact, excluding this individual, the remaining lawyers assumed they would be taped in order to expedite the interview process. Furthermore, two lawyers maintained they were used to being taped in a courtroom setting.

Although I was careful to ensure that I had the necessary tools for the interview process (i.e. questionnaires and a tape recorder), on one occasion I neglected to bring replacement batteries. Unfortunately, on this particular day the batteries failed. Similar to the interview whereby the lawyer refused to be taped, hand written notes were utilized to collect data. Minimal loss of information occurred as I had checked the tape recorder shortly after the interview process had begun. The participant’s previous responses were quickly rewritten and the interview resumed. The two interviews, requiring hand-written notes, were immediately transcribed following the interview process. Thus, any possible loss of information was minimized.

Some drawbacks existed with regard to the transcription process. Periodically, noises such as squeaky chairs or clicking pens distorted the conversational dialogue. A potential loss of information was counterbalanced by the use of a transcription machine, which allowed the researcher to slow-down the taped dialogue and reduce distortion. Approximately 500 pages of notes were transcribed (an average of 21 pages per interview). The longest transcribed documents were generated by the lawyers.

### **3.10 Analyzing the Data: Coding and Counting**

The coding process began with a thorough reading of two transcribed interviews from each occupational category and the sole interview conducted with a senior official of Legal Aid. Subsequent to the identification of thematic patterns from these nine interviews, there were very few additions or alterations following a thorough rereading of all twenty-four interviews. Participants were not given pseudonyms during the collection, transcription and analysis of the data. They were simply identified by number for the purpose of research analysis. A numerical code was attached to each transcribed interview for the purposes of counting and coding. This code identified the occupational category and the participant for each transcribed interview. To facilitate a comprehensive understanding of the research data, an alphabetical code was utilized for direct quotes stated by the lawyers' and utilized within this research project.<sup>42</sup> Following the numerical code, concepts identifying the thematic pattern were delineated (e.g. 013/Emotional Labour/Work Role/Organizational Rules). This

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<sup>42</sup> Because the number of participants were smaller for the legal secretaries, the intake workers and the receptionists (see above 3.2), the likelihood of identifying these participants was increased, therefore alphabetical coding was not utilized.

example indicates that themes related to emotional labour, work roles and organizational rules were found in the identified quote. Initially, some quotes spanned half a page while other quotes would include only two or three sentences. Upon becoming more familiar with the data, the larger quotes were broken down further. During the original coding process, initial insights were identified and highlighted in the data. These initial insights provided valuable information for the final data analysis.

Following a thorough reading and rereading of the transcribed interviews and an indepth coding of the collected data, I was ready to write. A descriptive style was utilized to present the data. According to Patton (1980:343),

Description and quotation are the essential ingredients of qualitative inquiry.

Sufficient description and direct quotations should be included to allow the reader to enter into the situation and thoughts of the people represented in the report.

Although much of the data are presented as direct quotations, paraphrased statements are also used. In direct quotations repetitious phrases were removed to facilitate the interpretation of the data. As shall be seen in the following chapters, I have pursued various themes in an attempt to understand the events and processes that combine to influence the delivery of services to legal aid clients.

## **Chapter 4 An Exploration of Decision Making Processes**

### **4.1 Introduction: Conceptualizing Decision Making**

This chapter will explore the decision making process that determines client eligibility for funding within the Newfoundland Legal Aid System. Though the final decision to accept or reject an application for legal aid can be made by the director of Legal Aid, other organizational members participate directly and/or indirectly in this process (see Easton et al., 1994:31). These members include receptionists, intake workers (also known as financial assessment officers), legal secretaries and staff lawyers. Below, participation will refer to a staff member's involvement in any aspect of the decision making process. Small pockets of decision making will be explored as part of the larger process that ultimately determines the eligibility of each applicant. These pockets include the following: (1) the receptionists' scheduling of appointments for legal aid clientele; (2) the financial assessment officers' determination of financial eligibility; and (3) the staff lawyers' determination of legal merit. Secretaries have the least direct contact with incoming applicants. Therefore, these workers will be discussed only briefly in this chapter. Additionally, the role of a senior official with the Newfoundland Legal Aid System will be discussed in relation to the delivery of services where applicable.

For the purpose of this study, Carroll and Johnson's (1990) interpretation of the decision making process will be utilized to explore the determination of client eligibility. However, all of the stages identified by Carroll and Johnson may not be used during decision making nor followed sequentially. The following concepts will be used to explore the

decision making process that determines client eligibility for legal aid funding: formulation, information search, judgements or choices with an interrelation between action and feedback (Carroll and Johnson, 1990:21).

Formulation involves the agent's examination and classification of the decision making environment. According to Lawyer E, the main objective of legal aid involves the provision of "clients with a level of service they would expect to receive if they had the financial ability to retain private counsel." This is important because organizational members' subjective understanding or interpretation of the situation (the objectives and values relevant to the decision making environment) may influence the outcome of decisions. Sanctions, norms and the constitution of meaning are important in relation to following rules (Giddens, 1979:82). While norms exist in combination with rules to set boundaries that limit right and wrong modes of conduct, normative sanctions help to guide the social practices of human agents. Though formal rules specify particular requirements, informal rules tend to be more general and imprecise "rules of thumb" (Carroll and Johnson, 1990:23). It is the actor's capacity to interpret and apply decision rules as a distinct practice that can influence the decision making process determining client eligibility.

Another element of the decision making process is the search for information relevant to the decision. Determination of eligibility for legal aid involves gathering information on the financial and legal aspects of an applicant's case. At this time, attributes relevant to various alternatives are sought. Depending on the decision being made and the roles and

responsibilities of various workers, information may be collected by some workers and used by others as clients move through the organization. For example, contact notes made by the intake workers and transferred via the computer are helpful to the lawyers determining legal merit.

The third element of the decision making process includes judgments and choices. While choices involve the comparison of several alternatives, judgments involve the classification of alternatives or attributes on a scale of importance (Carroll and Johnson, 1990:23). Though organizational members may strive to examine legal aid information objectively, these individuals are not automatons. They are human beings who actively and subjectively process information based upon their present knowledge and former experiences. According to Cowan (1991:463), “information-processing shortcuts, e.g. heuristics” are used to help the agent “identify and manage [the complexity of] important changes in day-to-day decision-making.”

The concept of action refers to the activities of human agents. The actions of human agents are not predetermined by the larger social structure of the legal aid organization or society in general. Accordingly, “at any point during the process of acting social agents can choose an alternate course of action” (Giddens, 1979:56). As previously suggested (see 1.3), social agents cannot be aware of all possible consequences resulting from their actions. Because the mere “existence of a legal aid scheme” does not presuppose the “availability or use of legal resources within a society . . .” (Regan, 1994:213), an examination of the services rendered to potential clients could provide practical information regarding the

delivery of legal aid services. Moreover, examining feedback derived from research has the potential to increase learning, and thus lead to “changes in substantive knowledge and decision rules” (Carroll and Johnson, 1990:23) that currently govern the process of determining client eligibility for legal aid funding. Feedback involves receiving information relating to the decision and subsequent examination of consequences related to the action (Carroll and Johnson, 1990:23).

#### **4.2 Receptionists Making Appointments**

Making appointments includes the actual scheduling and subsequent determination of appointment times for incoming clientele. Both structure and agency guide the worker’s decisions regarding this activity. The receptionist is the first person the client comes into contact with when applying for legal aid. Receptionists are required to make appointments for applicants who need to be interviewed by the intake workers. These workers must determine whether an applicant receives an appointment immediately or whether they can be scheduled for a later date. According to a receptionist, “I use my judgment to determine who gets an appointment. I feel it out.” The organizational search for information begins with the receptionist. These workers gather information about clients. They collect information regarding the applicant’s name, phone number and date of birth. Receptionists make a note of whether individuals have sought legal aid services in the past and whether the legal matter is criminal, family or civil.

Receptionists must determine whether a situation constitutes an emergency. They must ascertain whether the applicant has a forthcoming court date and whether they have

been served papers by the court. When a client replies no to both questions, the receptionist allocates a date specific to their situation. For example,

‘Today is the 9<sup>th</sup>. Well, I can give you an appointment on December 15<sup>th</sup>.’ You don’t take that as an emergency. But, if someone called and said that they have to be in Unified Family Court for the 14<sup>th</sup> – you fit them in. If you are filled like every 15 minutes, then you just tell them to come on in. We have to make a decision, ‘Well, Ok. Is this really vital? Is it or isn’t it.’

Receptionists must consider the availability of staff lawyers when scheduling walk-ins. Walk-ins are incoming applicants who have not previously booked an appointment. These individuals simply walk in off the street.

The receptionist’s understanding of the decision making environment can be influenced by the actions and expectations of individuals for whom they provide a service. For example, a woman who was waiting in the reception area needed to see a lawyer, but developed a migraine. Regarding the individual with compassion, the worker attempted to get a lawyer to see her prior to her previously scheduled appointment time. However, securing a lawyer was problematic because the lawyers were too busy. Some applicants possess prior information indicating they require the services of a lawyer, but simply refuse to book the appointment in advance. Compounding their failure to book in advance, many of these clients also express what receptionists call an “attitude.” The attitudes of these individuals are unlikely to encourage workers to extend their services beyond the boundaries of their work role. These individuals are not regarded with sympathy or understanding. As

stipulated by a receptionist, these clients will frequently assert, “Well, I have court tomorrow and I have to have a lawyer. The judge told me I have to have a lawyer.” Though the receptionist maintains that “there is nothing you can do about it,” the willingness to extend additional effort to incoming clients is within this worker’s control. Structural influences also have the capacity to influence their work tasks. A receptionist maintains that “at a recent legal aid conference” organizational members were told that “clients come first” because they are the main reason for the existence of legal aid. Furthermore, members were told that “if legal aid didn’t have clients,” organizational members “wouldn’t have jobs.”

Occasionally, applicants causing a disturbance in the waiting room will be seen immediately because organizational members do not want other clients to be disturbed. According to a receptionist, these clients are “hard to get along with and they make a big fuss.” Consequently, these situations, designated as emergencies, would not be handled solely by the receptionists. They would generally enlist help from the intake workers and/or a senior official with the legal aid organization. For example, a receptionist explains,

We had one irate client who was really upset and it took three or four people to calm him down. A senior official with legal aid came out to speak with him. The intake worker and a lawyer spoke with him. You can tell when someone is really upset, so usually you got to try to accommodate them.

Next, the intake worker makes the decision that determines whether an applicant will be accepted or rejected for legal aid funding, based on their financial status.

### 4.3 Financial Assessment of Incoming Applicants

According to an intake worker, applicants are able to “qualify on a month-to-month basis if their monthly expenses exceed their monthly income.” Prior to the introduction of the computer system within the St. John’s office, intake workers would manually calculate the income of applicants using an official monthly list of expenses.<sup>43</sup> This table of allowable expenses delineates basic requirements such as food allowance, clothing and personal articles (toiletries). An intake worker contends that the calculated monthly rate for “two adults and one child would be \$529 a month.” Although the subjective view of intake workers describes this predetermined scale as being “quite low,” both intake workers maintain the “primary responsibility” of legal aid is the provision of “legal counsel for people who fall within the mandate we represent.” When calculating an applicant’s total expenses, intake workers use the following allowable expenses: Visa, MasterCard, loan charges, car insurance and house insurance. An intake worker maintains that when calculating an applicant’s financial status, they maintain the “discretionary” capacity to include additional expenses such as transportation expenses and long distance telephone charges.

Structurally based financial guidelines are used to help the intake worker assess an applicant’s financial status. An intake worker maintains that knowledge of whether the applicant possesses “any mortgages, homes or equity, any investments such as RRSPs and

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<sup>43</sup> This list, known as *The Newfoundland Legal Aid Commission Modified Long Term Assistance Monthly Rates*, was issued by the Department of Social Services effective April 1, 1992.

GICs are the most important questions in determining eligibility” because these items “can be liquidated.” For example, an applicant receiving money from “his or her share of matrimonial property” upon divorce potentially has the finances to pay for a lawyer. Accordingly, allocating funds to these applicants would not be considered part of the official mandate of legal aid. These applicants would be referred to a private lawyer who would legally represent them on a “contingency basis.” An intake worker provided this example to explain the meaning of contingency.

This means that once the \$20,000 is coming to that individual and the private lawyer has incurred say \$2,000 of his or her time into getting this settled, the lawyer would take the \$2,000 from the \$20,000 and give that person the \$18,000. The fee would pay for their services rendered even though that individual could not provide for their services monthly.

Furthermore, as the legal aid organization does not have a trust account they cannot get involved in an exchange of money. However, a person in this situation may go to a private lawyer who may say it is not worth their while because the case may take months or years to settle. In this instance, legal aid will reassess the client’s case if the individual returns with three letters from private lawyers stating that they will not take the case on a contingency basis. Nonetheless, a case that is not accepted by a member of the private bar does not receive an “automatic acceptance.” An intake worker maintains that individuals accepted by legal aid would have a “lien taken on their property” or legal aid would have them “sign a form” saying they would take their legal fees from the client once the case is settled.

Although all cases may appear to be solely within the power of legal aid members, and therefore the legal aid organization, applicants have the capacity to alter the decision making process. An intake worker provides this example:

If there is a matrimonial home with no mortgage or a small mortgage and the other party is not interested in having the house sold, they say, 'Look, I'll sign it over to you because it just doesn't mean anything more to me. I just don't want anything more to do with it.'

While there would be no exchange of money, there would be a "deed of conveyance" and legal aid would "draft up the papers." The individual could qualify on a "month-to-month basis" because they would not be receiving any income from the sale of the house.

An intake worker contends that in some situations she may set up a payment agreement, which means the "client contributes to the cost of their case." For example:

If someone was in a surplus of \$75 or under per month and they wanted to get a divorce – assuming the case would cost \$75 a month – then they are within that guideline. But, if they have a surplus of \$150 a month we would have to reject it.

For payment agreements, lawyers provide the intake workers with estimates regarding the length of time required for a case. In this quote, an intake worker illustrates the process whereby the cost of a divorce is estimated:

The preparation and court time is about nine hours. So it takes about nine hours to do a divorce. The cost per hour is \$55. That is the lawyer's fee. The disbursements, which means the filing of the documents with the court, is estimated at \$150. The estimated cost would be \$645 to do a divorce.

Both intake workers designate the “long term assistance monthly” rates and the “Legal Aid Act” as the written rules that guide their work “if they are questioning something.” Though intake workers maintain the majority of incoming cases “fall within a rigid criteria,” they have the power to make “judgment calls as every situation is not going to be covered by rules.” When anomalies occur, the intake workers discuss these cases between themselves. Both intake workers maintain there are cases that “we can’t make up our mind whether it should be approved or not.”

For example, there is a couple who have grandchildren placed with them and they are seeking custody. They are receiving money from the Department of Social Services as guardians of the children. Taking this money into consideration, their income exceeds their expenses. Normally, talking about this case I would have rejected it. We might take it on with a payment agreement.

Work role pressures have the potential to influence the intake worker’s subjective understanding of the decision making environment. Periodically, the intake worker has difficulty eliciting information from incoming applicants during the interview process. According to an intake worker, “There are times you feel like you have to fish all this information out. I would say, ‘Tell me as much information as you possibly can – it would make it easier.’ I find that really frustrating.” An intake worker maintains that many clients question why the intake workers are asking “all these financial questions” because they “just don’t know what it is that we do around here.” Additionally, she contends that there is “a range of some people who come in with complete ignorance and others who have been here five or ten times who could explain the system to me.”

#### **4.3.1 Gathering and Verifying Information**

An intake worker maintains that “the computer forces [her] to get more detailed information.” While the additional time required to gather this detailed information is viewed negatively by most workers across various job categories (see 6.6), further information has the potential to reveal important factors necessary for the determination of financial eligibility. For instance, the clients say, “Oh, I forgot to tell you we have \$10,000 invested or that we have land up in Salmonier Line or that they have a cabin that they forgot to mention.” The intake worker’s contact notes and the lawyer’s case merit notes are accessible, via the computer, to workers requiring this particular information. The accessibility of previously gathered information through the computer has the potential to save work time, while facilitating the transfer of information among organizational members.

An intake worker maintains that the length of time required to conduct financial assessment interviews “depends on how much personal information the party brings in with them.”

For instance, if there is a family situation I call them the full meal deal. They have the house, the land, the vehicles and all their bills. Whereas a criminal application, for the most part, they are not as heavily filled with all this information.

Organizational work expectations require that intake workers maintain documentation validating their actions within the context of their work role. For instance, because the organization is audited every year, intake workers will not process a file without the client’s

proof of their income and expenses.<sup>44</sup> According to an intake worker, verification is necessary “because anyone can walk-in and say, ‘I make this and I pay out this.’” Because intake workers do not want to be accused of treating people differently, they must justify their actions.

The actual execution of the decision, whereby an applicant receives legal representation, is a fundamental component of the decision making process. Occasionally, a client’s financial status changes, thereby nullifying their previous acceptance for legal aid funding. For example, an applicant may have been accepted while on social assistance, but if they begin working or living common-law and their partner has a good job they no longer qualify for legal aid funding. Though applicants accepted by legal aid sign a form that obligates them to reveal any changes to their financial status, some applicants do not disclose pertinent financial information. Nonetheless, organizational members can sometimes find out from another source. According to an intake worker, there are many cases whereby a secretary will ask, “Why did this person qualify when they have an RRSP?” She contends that this can be “really, really frustrating.” Another intake worker states that legal aid has an obligation to do something about information they receive from any source. For example:

A disgruntled spouse could call up and say, ‘I don’t understand why my ex is getting legal aid. They are living common law.’ This obligation extends to a follow-up of that person.

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<sup>44</sup> Proofs include “receipts for social assistance or EI stubs.” These proofs document the incoming money that contributes to an applicant’s household finances or other stubs whereby the applicant is “paying out” money.

The intake workers maintain that clients who are asked to verify information typically “get upset and angry.” When further assessment reveals additional income or the person refuses to respond to the allegations legal aid can reject the file.

#### **4.3.2 Considering Financial Assessments**

The Newfoundland Legal Aid System uses a needs test as opposed to an income cut-off to assess the financial eligibility of applicants. According to an intake worker, an income cut-off maintains a ceiling whereby “either the person is below it and they are fine or the person is above it and the person doesn’t qualify.” While a senior official with Legal Aid maintains income cut-offs are “too rigid,” he views the needs test as sufficiently flexible to aid those individuals who “have fallen on hard times.” Furthermore, he maintains there could be “serious consequences” for those individuals who have a real need, but cannot go to the bank and borrow money to pay for a lawyer. For example, circumstances may exist whereby certain expenses must be maintained and the parents are fighting over custody.

One of the children goes home with the other parent and their eligibility changes because their income changes. The additional income probably still wouldn’t provide for them to hire a private lawyer to represent them.

While the needs test retains positive aspects, two intake workers and three staff lawyers maintain that the lack of an income ceiling is beneficial for some applicants who would otherwise not merit free legal services. According to an intake worker, “If some of that money was freed up, there might be other individuals who could be represented.” Some applicants applying for legal aid “make considerably more, but they maxed their Visa,

Mastercard and they are making car payments. While legal aid does not allow a full payment on their credit cards, they do allow the minimum payment on it.” This intake worker states, “It seems to be a little unfair that I have to reject someone who makes \$700 a month, while I am accepting someone who is netting considerably more. It doesn’t sit real well.” Another intake worker maintains that she “doesn’t know what the system should be.” Nonetheless, she contends that “a little bit more discretion on our part, at legal aid, is needed.” For example,

I could say, ‘Yes, you may have five charge cards. But, I am sorry we are not going to represent you.’ I could tell them, ‘Go out and charge a little more and pay for a lawyer’ because these people do have access to funds and you got that person who doesn’t.

Assisting those individuals who have the ability to pay for a lawyer is not part of legal aid’s mandate. Thus, the acceptance of these individuals becomes an unintended consequence of using a needs test.

#### **4.4 The Staff Lawyer’s Determination of Legal Merit**

While financial eligibility of all incoming applicants is determined by the intake workers, there are two different directions to send an application to determine legal merit. An intake worker describes these directions as the family and criminal stream.<sup>45</sup> Staff lawyers, on

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<sup>45</sup> Only criminal files are processed in the criminal stream, while the remaining cases such as family and civil are processed in the family stream.

rotation<sup>46</sup> as the intake lawyer, determine the legal merit of family and civil cases. Criminal applications are sent via the computer system to the lawyer who co-ordinates all the provincial criminal court matters on a full-time basis. Following this lawyer's duty at the courthouse, he returns to his office at legal aid and reviews the applications of all the people who have applied. Then, he makes a decision on whether they qualify. Upon the determination of legal merit for a criminal application, this lawyer redirects the client's file to another legal aid lawyer. He attempts to coordinate files with individuals previously slated to work in a particular area. For example, if a file necessitates travel to Labrador, he will attempt to match this file with someone who is going to be in the Labrador area.

Depending on whether the case is criminal, family or civil, various types of information are required to determine legal eligibility. If the applicant has a family problem, lawyers need to ask sufficient questions about what the problem is, what they have done about it and what the response has been from the other side in order to determine whether or not this problem needs legal assistance. For criminal matters, the lawyer requires information regarding the crown's case against their client, also known as disclosure. Upon receiving the disclosure, the lawyer examines the crown's evidence to identify the flaws in the crown's case. Essentially, the disclosure package will inform the lawyer whether the crown has a good or bad case. The next step involves a meeting with the client to give them

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<sup>46</sup> Several modifications to the intake system and the distribution of files have been made in the preceding years. The system of intake presently referred to includes the most recent change. For further information see 6.3.

the chance to tell their story. Then, the lawyer makes a recommendation to the client regarding future action on their case. Lawyer C states:

If the client accepts the recommendation then they go on to the next step. Now, we might look at it and say, 'You're screwed. Deal with it. Authorize me to talk to the crown about negotiating a sentence.' If they say yes, we call the crown and work back and forth on that. Then we come up with something.

When clients want to plead not guilty they are given a trial date that may be three or four months away. For criminal matters, the lawyer has to go through the file and figure out whether there is a defense, whether the client has a record and whether or not it is a first offence. Criminal offences can be broken down into three categories, indictable, summary and hybrid offences. Indictable offences such as manslaughter, murder, break and enter, assault causing bodily harm and assault with a weapon are more serious. Summary conviction charges include shoplifting, causing a disturbance and damage to property. The latter offences tend to be considered more minor than indictable offences. Lawyer M contends that hybrid charges depend on "which way the crown chooses to go."

There are time limitations on some events so that, if they are passed, then they will choose to go by indictment, which gives them a longer time limitation. Usually the crown will proceed by indictment where they want a little bit of a more serious sentence imposed, if there is a conviction.

The determination of action on files such as workers compensation, EI and Canada Pension depends on the stage at which the client seeks legal aid. For instance, Lawyer A contends:

There is no point appealing a workers compensation decision because we would only be appealing on errors of law. What they are saying is – he found this fact instead of this fact. The court will not reverse that, so there is no point in us trying.

In these types of cases, the applicant generally has to bring in the documentation, so the lawyer can read it before they can determine whether there is merit.

Both family and criminal cases require the lawyer, on intake, to listen to the person's story, then decide what the issues are and whether they are covered by the Legal Aid Act or not. According to Lawyer A, administrative cases such as "administrative law, refugee law and so-on is basically merit driven." These cases are not so much based on what the applicant says, as the rules regarding the appeal. This lawyer contends that "ninety-nine percent of refugee cases get accepted" because these individuals "come in with a story that they will be killed or imprisoned. So, they are always considered important enough."

When the intake lawyer determines legal merit, they must consider the goals of legal aid. Lawyer C stated, "A couple wanted to get married and some bureaucrat said they needed a letter from a lawyer saying their original divorce from the United States was good." The lawyer rejected the application because "there is no requirement in the law that this be obtained. It was just a bureaucrat's idea that they should get a letter from a lawyer. This is not what legal aid is about." According to this staff lawyer, "We have got limited resources, unlimited demand and we have to try to help the client of modest means in the areas where we have traditionally helped them. We cannot start adding areas right now maybe not for

many, many years.” This lawyer also questioned, “How do I know if a Chicago divorce is valid in Canada? As far as I know it is, but I am certainly not going to do 20 hours of research to find a case that says so.” The lawyer’s subjective interpretation of the decision making environment must be considered as influencing the final decision. Lawyer F expresses his dislike of the intake process:

Intake is not something I look forward to. It is very hectic. Some days you feel like a Maytag repair man. Some days there might be 10 people in an afternoon. Sometimes I don’t feel that I am spending proper time with them. Other times I will maybe have three files. So, it is like Russian Roulette.

#### **4.5 Detailing Decision Making Rules**

Next, the decision rules that help the staff lawyer<sup>47</sup> determine whether a client will be accepted or rejected for legal aid will be discussed. For the purpose of examination, these rules have been deconstructed. Rules can be formal or informal and vary in complexity and universality of their application. Though conduct in a role can be defined through institutional structures and social expectations (Chen and Regan, 1985:242; see also Collins, 1988:457), it should be noted that human decision makers can be “expected . . . to impose an imprint of self on the decision-making process and not just passively ‘process’ information” (Hunt and Magenau, 1984:121).

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<sup>47</sup> Given the diversity of decision rules, each lawyer listed only a few during the course of an interview.

According to Lawyer B, “Different lawyers have different approaches to how they do their work . . . but the code of ethics and the law society have certain ground rules.”<sup>48</sup> For example, if a lawyer is negligent and a client suffers the lawyer could be sued. According to Lawyer N, ethical codes are taken-for-granted because they are “sort of obvious – don’t steal, don’t lie, return your calls, etc.” The actual representation of the client is guided by the code of professional conduct, various rules of court and the rules of procedure that include the criminal code. Both private and legal aid lawyers are governed by these rules. The following example, provided by Lawyer C, describes possible reactions by lawyers who have knowledge that their clients are going to commit perjury.

I can’t be a party to that. I am an officer of the court and I have a responsibility. In cases like that, I have treated it as a case that I must withdraw from, while other lawyers have just said they aren’t going to let the perjury go ahead and they continue to represent the person. They tore a strip off them, probably swore at them a couple of times, put them on the stand and dealt with them properly.

While the rules of professional conduct, the various rules of court and the rules of procedure emanate from a source external to the organization, the Legal Aid Act itself imposes constraints from within the organization. According to Lawyer F, “You work for an organization, but you are a lawyer at the bar. There is a different set of rules, I think, because

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<sup>48</sup> According to Lawyer C, “The supreme court of Canada in a case called *Martin vs. Grey* said the court’s authority over lawyers is really delegated to the law society. So, the law societies have incorporated the *Canadian Bar Association Code of Professional Conduct* as their bible.”

clients have a right to some lawyer at legal aid.” As such, applicants who “qualify under the Act and regulations are entitled to receive legal aid. It is an entitlement, not a discretionary thing.” Consequently, lawyers must determine whether the matter is not specifically prohibited in the Legal Aid Act.<sup>49</sup> Furthermore, it has to be a matter that legal aid has traditionally covered, such as wardship cases (discussed below).

Lawyer C maintains that when people qualify for legal aid “we have to provide. Our problem comes up in that we don’t have the resources to cover everything that should qualify. So, we have triaged some stuff out in particular ways.” Lawyer D maintains,

Any time there is another body to deal with a problem we won’t do it. For example, if it was a case of unjust dismissal or a union matter, it would go to their union. If it is a charter of rights argument, the human rights people have their own investigators in St. John’s to deal with it.

When dealing with family matters, the intake lawyer must inquire whether the client has attempted mediation because the courts have imposed a rule that the person is not going to get to see a judge unless the person has tried mediation first.<sup>50</sup> According to Lawyer D, if the mediation office did not exist and legal aid “had to accept all those people, we just couldn’t

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<sup>49</sup> According to Lawyer C, “Section 51 of the Legal Aid Act includes such matters as defamation, breach of promise of marriage, loss of services of the female in consequence of rape or seduction, alienation of affection, criminal conversation – those are completely banned.”

<sup>50</sup> Lawyer J maintains that the unwritten way of dealing with some family situations in the St. John’s area is Unified Family Court mediation services. People who provide these services will meet with each party separately, then together in an attempt to resolve the issues.

physically cope” with the workload. Occasionally, mediation works only temporarily and “in three weeks time the relationship has deteriorated and one party is refusing any contact.” Accordingly, the legal aid organization’s initial rejection and subsequent referral of the applicant to mediation could change to acceptance.

Decisions to grant legal aid are not made in a uniform manner. Lawyer H maintains a need for organizational flexibility when he states,

We bend the rules a little for someone who really needs help and can't do it on their own. If I know one of our lawyers is going to be in the courtroom that day, anyway, doing another trial, what's the harm in him having to spend another hour doing a second trial? We are not so inflexible as to just stick rigorously to some guidelines.

Though files need to be accepted based on legal merit, there are exceptions. According to Lawyer G, wardship cases (also known as foster care situations) are accepted whether or not there is any merit because “the commission has always had the view that it is the capital punishment of family law – taking someone’s kids.” In some cases where the individual has a mental illness and consequently there is “very little merit, lawyers have spent days and days going through the motions and letting people have their say knowing full well that they are not going to get their kids.” Staff lawyers have accepted these cases because many believe the “person should get their say.”

On the other hand, the presence of legal merit does not necessarily ensure the acceptance of a file. According to Lawyer C, the Legal Aid Act specifies that “anything

where the cost of achieving a remedy is more than the cost of the remedy,” such as defamation suits and private prosecutions, will not be accepted for legal aid.

For example, when people split-up and there is about \$3000 or \$4000 worth of furniture and the applicant is saying that the other person has kept it all. We will say, ‘While your case is legitimate, we can’t do it because it would cost us more to do it than the benefit to you.’

Utilization of decision rules that advocate cost-benefit analysis reflects a rational “cut and dried” process for determining client eligibility for legal aid funding. Nonetheless, this process is determined by human beings who may experience conflicting emotions with respect to their decisions. Four of the staff lawyers cited the difficulty of rejecting some applicants. One of these lawyers states, “Your own personal opinions of whether it’s right or wrong and who should get a lawyer differs on what legal aid says we should or shouldn’t accept. It’s easier to accept someone than to reject someone.” He provided the following example of “a little old lady” that he rejected for legal aid and subsequently he “felt so bad” when he told her. This applicant was charged for a first offence shoplifting of a pair of mittens. The lawyer described the applicant as “sixty-seven and on a pension.” The applicant stated, “I have never been charged with a criminal offence in my life and I didn’t do it.” Regarding this type of case, the lawyer must ask the following question, “Will a criminal conviction affect your livelihood?” He reasoned that the applicant would receive “a \$50 fine or probation.”

I thought to myself well maybe I should just say, 'Yes, you are approved.' But, if I did do that I would be breaking the rules that *they* have set down. I don't think I have the discretion to make a charity case because she is no different from anyone else. So, I just said, 'No.' I didn't feel good about it, but I felt that I did my job. I felt this kind of deviation in my thoughts. It just didn't feel right. *They* set the rules and I have to apply them. It is not my personal decision.

He further maintains that "in a private organization I would just have to say, 'Pay me.'" But, as an organizational employee, he must determine whether the person meets the legal criteria that legal aid has set up.

It is legal aid's mandate to reject cases when applicants can afford to pay for private counsel. This rule guides both intake workers (see above 4.3) and staff lawyers alike. Also, legal aid is required to reject cases that could generate a fee for private lawyers. For example, legal aid does not get involved in "purely civil acts," such as someone slipping and falling. Generally, legal aid will not accept cases where there is little or no chance of success. In criminal cases there has to be a reasonable chance that the person will be found not guilty. For example, if a person was caught by a security guard in a store with the goods and gave an admission to the police, the person is going to be found guilty. While a staff lawyer may be provided to help the person plead guilty and make sure the sentence is appropriate, legal aid would not go to trial on it because there is no merit. Legal aid would not accept a case where the person was charged with a minor criminal offence such as shoplifting, unless the person was facing serious consequences such as losing their job. For example, Lawyer F

contends that a cab driver who has a chance of losing their licence due to a drinking and driving charge would be accepted for legal aid funding. However, this lawyer maintains that legal aid would not typically accept a similar case from people like himself (as a lawyer) and myself (as a student) “or any one like us who doesn’t need a car for their living.”

Applicants who encounter any risk of incarceration as a result of a conviction would be accepted for legal aid, provided there is a defence. In this example, Lawyer K explains the difference between first and second offence impaired driving charges and the subsequent connection to the risk of incarceration:

Generally, someone who comes in with an impaired driving charge as a first offence – that is not something that I would do because they are not going to go to jail. It’s going to be a fine and they will lose their license for a year. For a second offence, they are going to jail if they are convicted. Then it is mandatory because it would be a second charge.

Lawyer D suggests that “the Act is worded rather poorly in terms of what the criteria are for summary conviction offences.” This lawyer further maintains that although some legal aid offices will not approve a file with a summary conviction charge, he will “if the person is looking at jail time.” He contends that problems arise when clients who have dealt with a rural area office move into the St. John’s area and subsequently get charged with something. The client may say, “They accepted my application there. Why won’t you accept it here?” This lawyer further contends that divergent “interpretations,” made by various area directors, “probably depends on how busy they are more than any other standards.”

Although the legal aid organization adopts the governing rules of the law society, other regulations exist to supplement these rules. Client confidentiality is the most significant of these organizational rules. According to Lawyer E, “Client confidentiality is always a concern within an organization such as legal aid. We don’t want to be found representing an issue when the fella across the hall from you is representing the other side.” While legally representing both sides within the same firm is considered to be a conflict, opposing sides can be represented by lawyers working in separate legal aid offices. Prior to a legislative amendment in 1996, staff lawyers were unable to oppose one another in court because the organization was regarded as one law firm. An intake worker maintains that when a conflict arises within the St. John’s office, “the accused has the financial assessment done, then the requisite proofs are provided and sent to the office in Atlantic Place.” However, the certificate would be issued from the St. John’s office because “no one else could have access to the information in that file. It is strictly confidential.” When the Atlantic Place office (also known as the conflicts office) is also “in conflict, the case could go to another legal aid office.”<sup>51</sup>

According to Lawyer E, the legal aid organization is preparing a policy manual<sup>52</sup> whereby it will formally state “here is what happens” within the context of a particular situation. The objective of this manual involves “setting down guidelines and categorizing

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<sup>51</sup> For a listing of the other legal aid offices located throughout Newfoundland and Labrador see 1.4.

<sup>52</sup> One of the staff lawyers has been relieved of his duties generated by his law practice for a period of six months, so that he can prepare this manual.

different types of conflict.” While three lawyers stress the need for consistency regarding the application of rules throughout the legal aid organization, an additional three lawyers are concerned that the coding of rules within an official format will nullify their discretionary action.

#### **4.5.1 Discretion Regarding *Grey Area* Files**

Though lawyers have objective rules such as the Legal Aid Act that guide their actions, circumstances unique to an individual case can alter the decision making process. Eight lawyers agree that discretion is an integral part of the decision making process determining client eligibility. A staff lawyer, working on intake, can take the file to the Provincial Director or the staff solicitor suggesting that they do the case because of the hardship criteria.<sup>53</sup> For example, Lawyer D maintains that “if an applicant is in a wheelchair with a speech impediment” he would accept the applicant even though, as a lawyer, he would have to “fight more” to grant eligibility to the applicant.

Five lawyers maintain that “in an iffy situation, grey area files are affected by the demands of the job.” Therefore, lawyers working on intake must carefully prioritize incoming files because there are many cases and time is a scarce resource (see chapter 6). Though the lawyer encountering the file on intake is generally the only one involved in the

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<sup>53</sup> According to Lawyer D, this criterion contends that “if a person is really being victimized by the system and they qualify financially legal aid will generally try to find ways to help them – unless the only caveat to that is availability to counsel.” Though applicants were required to “prove” their hardship status in the past, the Legal Aid Commission has since repealed this criterion. While the Legal Aid Commission maintains the power to accept, reject or hand down new guidelines on cases, they have not done so for a long time.

legal assessment of an applicant's file, occasionally lawyers encounter questionable files that could be accepted or rejected. In these cases, the Director or other lawyers may be consulted for their opinion. According to Lawyer F, consultations occur infrequently because "most cases are pretty cut and dried." However, occasionally an organizational member "will go to bat" for an applicant. Lawyer A provides this example,

An intake worker could come in and say, 'Look, you know this is a grey area. I don't think this person is really able to handle this themselves. Can you do something for them?' We have a bit of discretion like that.

Lawyer G contends that individuals from outside legal aid could have "befriended a refugee or some local person may come in and say that the person is concerned about this or can you do this for them." These individuals, acting on behalf of the legal aid applicant "could be from another organization or just an individual wanting to help. There is no structure to it. It just happens." Though the lawyer may not accept the person immediately, they will look into it and see what they can do.

#### **4.5.2 Reassessments of Previously Accepted Cases?**

Applicants rejected for legal aid based on financial or legal criteria end their application with legal aid, unless they want to appeal the decision (see below 4.5.2.1). Applicants accepted both financially and legally are referred to a lawyer who will handle their case. The legal secretary will open a certificate and a file for the client. Then, she will send a notice of disposition to the client.<sup>54</sup> This acceptance does not end the decision making process. As

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<sup>54</sup> This notice will disclose the name of the lawyer who will act as the client's legal representation.

previously mentioned, action refers to the activities of human agents regarding the execution of a decision. Lawyer J explained that “things may happen either financially or legally” which necessitate a reassessment of a file. During emergency situations in which a child is being removed from their home, organizational members cannot always obtain pertinent information promptly. Lawyer E explains that a file can be approved “on the basis of doing the initial work in order to keep the child in the jurisdiction.” However, the file may later be rejected “because of X, Y and Z.” Furthermore, he maintains that “by the very nature of representing the individual, each lawyer is obligated to inquire behind a lot of the issues that were only raised superficially” during the original intake assessment. As such, a lawyer working on intake may ultimately hear that a client was rejected for reasons that may not have been obvious to them in the 15 or 20 minutes they had with the client when they made the decision.

While only one lawyer stated, “There is no rejection of cases once it is accepted,” six lawyers disagreed. Lawyer A maintains that “it doesn’t happen often,” but he has said to some clients, “Look, I don’t know why you were approved there is nothing we can do for you.” Consistent with the previous solicitor, Lawyer J contends that lawyers, in general, can disagree on points, but “you don’t get too many cases coming in with people saying, ‘What law school did you go to?’” Some cases require reassessments because there are particular kinds of files “that we didn’t want to do or they knew someone involved in a file” (conflict file). Lawyer B maintains that these types of cases “would just go along to be re-assigned to someone else.” Similarly, Lawyer C maintains, “Once a person is told they have legal aid

it is extremely difficult to tell them ‘No, you don’t actually qualify.’ So the lawyer is stuck carrying on through.”

#### **4.5.2.1 The Appeal Process**

There is a two-step appeal process whereby any case that is rejected by legal aid can be appealed to the Appeals Board of the Legal Aid Commission – that is something that is set out in the Act. This mandate includes those cases that legal aid does not traditionally accept. Lawyer D states, “Even if the person is accepted and the lawyer says, ‘I don’t think that you should have been accepted and I don’t think you qualify,’ they can appeal that too.” This process grants protection to applicants and enables them to tell their story. Lawyer G contends that sometimes applicants appeal a decision “to see if they can get some more free advice.” However, he maintains these individuals do not receive any free advice.

The first level of the appeals process involves an optional meeting with the Provincial Director. The applicant can either choose to meet with the Director or ask the intake worker to inquire whether the Director has chosen to overturn the appeal. If the appeal was not overturned by the Director, the applicant may proceed to the second level of appeal. The second level gives the applicant the right to tell their story before members of the appeals board. Board members consist of both lawyers and non-lawyers and meet once a month. If the appeals board overturns their application, no recourse exists for the applicant.

If a lawyer rejects an applicant he or she is expected to provide written reasons why they rejected the person, in the form of a memo-to-file or notes. Lawyer M contends that he will reject an applicant if, “what the person is offering as a defence just will not float. If he

is being quite unreasonable.” While he may reject an applicant if it “stretches the rules too much,” he may recommend to either the Director or the Appeals Board of the Legal Aid Commission that the person be approved for legal aid. Lawyer D maintains that other than stating a reason why they rejected an application, staff lawyers “don’t have anything to do with the decision” made by the board. Lawyer M contends “it is fine with me” when his decision for denying an application is overturned.

I hate seeing people go through the system without a lawyer. If it were up to me everyone would qualify, but I realize we can’t. It’s not practical. We got to turn some people down. The lawyers here got enough on their plate as it is without going into overload.

Accordingly, organizational caseloads do impact on the decisions rendered by organizational members (see chapter 6). This section has demonstrated that individuals denied legal aid have some recourse. As such, applicants seeking legal aid have some measure of power with respect to gaining eligibility status, and therefore the discretionary capability of organizational members cannot be viewed as absolute.

#### **4.6 Conclusion**

As part of the delivery of services within the Newfoundland Legal Aid System, the decision making process determining client eligibility for legal aid was explored in this chapter. To facilitate a holistic understanding of this process, small pockets of decisions were explored in detail. The receptionists’ scheduling of appointments for clients was the first decision process that was explored. My findings indicate that these workers must prioritize

appointments for all legal aid clients. In order to accomplish this work task, the receptionists must gather information such as whether the applicant has a forthcoming court date and whether they have been served papers by the court. Then, the decisions made by the intake workers regarding the financial eligibility of incoming clients were explored. To assess the applicant's current financial situation, these workers must gather sufficient financial information from prospective clients. This action will determine whether the individual has the finances to pay for a lawyer without help from legal aid. My findings indicate that although the worker attempts to gather all the necessary information, applicants do not always provide complete financial records. Nonetheless, legal aid members can discover this information from other sources such as an ex-husband or ex-wife who may decide, of their own volition, to divulge information regarding the client's financial situation.

Next, the staff lawyers' assessment of legal eligibility of incoming files was discussed. Cases that are accepted for legal aid funding are assigned to a staff lawyer on a permanent basis. Notably, lawyers assigned these cases may or may not agree with the initial legal assessment. As such, cases could be rejected following an initial acceptance. Nonetheless, this practice rarely occurs. Though the work tasks of legal aid lawyers are guided by decision making rules originating from within the legal profession and from within the legal aid organization, the lawyer's subjective understanding of each case is influenced by their interpretation of the decision making environment. For example, grey area files exist whereby a case may not have legal merit, but the lawyer accepts the case. On the other hand, some cases that have legal merit may not be accepted for legal aid.

The decision making process was explored using an agency and structure perspective. This dual process guides the actions of all organizational members as client eligibility is determined. As part of the organizational structure of legal aid, objective rules and organizational mandates aid the determination of client eligibility. Nonetheless, workers subjectively gather and interpret information surrounding decisions. The member's subjective interpretations of the decision making environment and their discretionary capability has the potential to influence client eligibility for legal aid funding. Consequently, the actions of legal aid workers are not predetermined by the rules and regulations of the legal aid organization. Notably, some legal aid clients rejected for legal aid may apply to have their case reassessed by the Appeals Board. Accordingly, legal aid members maintain a degree of power.

While the decision making process was the first concept utilized to explore the delivery of legal aid services, the impact of emotional labour and the role of time will be discussed as part of the organizational environment of legal aid in chapters five and six. The management of client emotions in the form of emotional labour and the limitations of time will be presented as an integral part of the organizational environment of legal aid. These concepts will be discussed in relation to their impact upon the various work roles of organizational members and ultimately the delivery of services to clients of the organization.

## **Chapter 5 Experiencing Emotional Labour within an Organizational Context**

### **5.1 Introduction: Defining Emotional Labour**

In this chapter, emotional labour will be explored as a dominant theme in the organizational life of legal aid. Putnam and Mumby (1993:36) contend that “people regard emotion as a value-laden concept which is often treated as inappropriate for organizational life.” However, Ashforth and Humphrey (1995:98-105) maintain that “emotions are an integral and inseparable part of everyday organizational life,” yet researchers have overlooked the study of “emotions and emotional regulation” in the context of organizations. Nicky James (1989:19-20) states, “emotional labour is hard work . . . [i]t demands that the labourer gives personal attention, which means they must give something of themselves” to those individuals requiring these services. Accordingly, emotional labour affects the organizational members’ work role in meaningful ways. Merging both work roles and emotional labour, Putnam and Mumby (1993:37) define emotional labour as “the way roles and tasks exert overt and covert control over emotional displays.” However, the emphasis placed on external control of the individual does not negate the actor’s capacity to influence their work tasks and external work environment.

Repeated work activities requiring emotional labour have the potential to exhaust both organizational support workers and professionals alike (see James, 1989:19). Accordingly, an organizational member’s subjective experience of work can potentially affect their work role, and thus the overall goal of delivering services to legal aid clients. Ronnie Steinberg (1999:144-9), who refers to emotional labour as “relational work,” contends that “the objectives of most client-oriented organizations, whether profit making

or nonprofit, are integrally tied to the effective performance of emotional labor.<sup>55</sup> While the handling of client emotions was not included as an official part of each member's job description, research indicates that the performance of particular acts of emotional labour is sanctioned by the organization as these actions promote the main goal of the organization. Problems arise because organizational members must help individuals cope with their immediate, emotional circumstances in order to move on to the provision of more tangible services, whether it be booking appointments or providing legal services.

Events that occur in the legal aid office affect the day-to-day work lives of professionals and support workers differently depending on their organizational position. In a study of the emotional labour experienced by police detectives, Stenross and Kleinman (1989:449) suggest two ways to make "emotional labor bearable for other workers: organizational shields provided by the organization, and status shields provided by prestige."<sup>56</sup> Receptionists, as front-line service workers, are the first persons to encounter incoming clients. Data analysis indicates that both support workers and professionals regularly experience emotional labour as clients move through the organization receiving services.

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<sup>55</sup> Amy Wharton (1999:160), in her study of the psychosocial consequences of emotional labour, operationalized emotional labour as "the effort involved in displaying organizationally sanctioned emotions by those whose jobs require interaction with clients or customers and for whom these interactions are an important component of their work."

<sup>56</sup> For a discussion on status shields see 2.4.2.

The intake workers are the first workers to interview applicants in a private setting. These workers are the first to listen to the applicants' stories, and therefore frequently receive the brunt of emotional onslaughts. Over the course of time the legal secretaries become familiar with client stories. These workers act as gatekeepers for the lawyers. Given their high status as professionals, lawyers are thought to maintain a status shield. This shield should protect these professionals from emotional clients, and thus the lawyers should handle only rational, legal activities.<sup>57</sup> Although there are various levels of workers for the client to go through prior to coming into contact with legal aid lawyers, research indicates that these professionals experience considerable emotional labour originating from client interaction. In order to provide overall legal representation, the staff lawyers must blend the rationalism of legal doctrine and the emotionalism of helping clients cope with their private lives. Finally, a senior official with Legal Aid has the least direct contact with clients. Although this individual may experience some forms of emotional labour from clients, this was not indicated in my interview.

## **5.2 Handling the Emotions of Others**

Interactive communication such as face-to-face or voice-to-voice contact with clients is an integral component of the support workers' and professionals' work roles in the legal aid organization. In their critique of the devaluing of caring work, England and Folbre (1999:40)

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<sup>57</sup> According to Parker (1994:162), lawyers "prefer to keep clients distant to avoid spending emotional resources on them, and so that their professional judgment will remain unclouded."

define caring work as “any occupation in which the worker provides a service to someone with whom he or she is in personal (usually face-to-face) contact.” However, caring work can also occur through written or telephone contact (see Steinberg and Figart, 1999; Hoshchild, 1983). Receptionists, as the first workers to encounter the organization’s clients, negotiate communication between legal aid as an organization and those who require services. The receptionist’s main tasks include responding to and rerouting incoming queries regarding legal aid through the main switchboard and making appointments. In doing this these front-line workers experience a substantial amount of emotional labour. A receptionist maintains that the number of calls could reach “200 to 500” on any particular day. Yet, these workers are required to placate callers. When receptionists receive several calls simultaneously, they have to put people on hold. According to a receptionist, they were informed that “*they* don’t want the phones to be ringing a long time.” For example, with “five calls coming in” the receptionist has to say “Legal Aid Commission Good Morning - one moment please - one moment please - one moment please . . .”. Frequently, the receptionist is emphatically told, “Don’t you put me on hold anymore” by those persons who become upset when they are required to wait. The receptionist maintains, “You just have to make a judgment call on it whether the client gets upset or not.”

All of the secretaries interviewed have interactive communication with clients whether it is voice-to-voice or face-to-face contact. Four of the legal secretaries are responsible for meeting with clients in an effort to reassure them that their cases will be processed. A legal secretary maintains that clients who “drop in without an appointment are

stressed sometimes because they have a court date pending” or maybe these clients “have never been to court before.” When clients become upset the secretaries talk to them. These workers tell the clients that “it is nothing to worry about – making the first appearance. The lawyer will see them in court and he will handle it.”

While some legal secretaries are able to modify the behaviour of demanding clients, other secretaries are unable to manage this task effectively. The following two quotes explore the way two secretaries handle demanding telephone conversations with their lawyer’s clients. The first secretary expresses her frustration regarding the amount of “pressure” found at legal aid. She contends their work environment resembles a “rat race” due to the “client per lawyer ratio” and the many “demanding clients who don’t know how the system works.” This secretary states:

At times, I have gotten calls from one client as high as 15 times a day that probably doesn’t have court until March 2000 (this interview occurred in early December). There are a lot of demands here until you have to get absolutely blunt with them, ‘Look, your trial is not until March 2000 or your case is down in Unified. I will set-up an appointment with you in the new year.’ You hang up and 20 minutes later they are back on the phone again. . . . a lot of it is emotional stress. I have come to the place where I have had to say, ‘The more you are calling me the longer it is going to take you to get in here.’

Although the remaining secretaries concur with the previous secretary regarding the number of incoming calls, other secretaries attempt to understand the client’s perspective and regulate their behaviour accordingly.

While the following secretary uses an approach comparable to the previous one (informing the client that they simply could not see the lawyer), she discerned that this approach would have consequences for the performance of her work in general. The second secretary states, "When clients drop in, it increases the workload for the legal secretary." This occurs because time and energy are expended on the client in lieu of other work tasks. Nonetheless, she reassures the client, thereby reducing the amount of telephone calls. When this secretary began working for legal aid, she found the clients' behaviour "very frustrating." Similar to the first secretary, she would tell clients, "He is not in. I told you several times that you have to make an appointment." However, she "found they got more hyper and nervous" and called more frequently. Now, she contends "that if I take the time, the first few times they drop in, to really talk to them . . . to give them some time and explain it, then they are not so bad." She contends those clients who "can't control it are, maybe, hyper-nervous, needy and maybe a little obsessive. It's just the way they are."

Having empathy for others and attempting to understand them constitutes the core of emotional labour (see Hochschild 1983). Another secretary who empathizes with clients, although they "phone in four or five times" regarding the same issue, explains that these clients "have a right to . . . If it was me on the other end I don't know if I could be as calm as some of these people." Furthermore, she maintains that "sometimes it is two maybe three weeks or four weeks or two months down the road" before clients have an interview with their lawyer. Consequently, these clients become very frustrated. Some days, "I will get

umpteen calls saying, 'I really thought I'd be seen before this' and I feel really badly. I can understand that and I can appreciate that."

Steinberg and Figart (1999:184) found that "no matter how trivial, unimportant, or difficult a situation seems to a police constable or a public health nurse, both must understand the feelings and concerns of the victim or client." The following intake worker was frustrated with an applicant who applied for legal aid because he continually asked her questions regarding the information she requested. He refused to sign a financial release form because he wanted to know "where this piece of paper was going . . . it was like he didn't want anyone to know he was there because it was really embarrassing." She stated, "After he had gone, to be quite honest, I was thinking 'I had to go through all that.' But, then I thought about it. Well, I would want to know about it too – like how does it work." According to Putnam and Mumby (1993:38), "emotional labour is experienced most strongly when employees are asked to express emotions that contradict their inner feelings." Clearly shown in the context of the following quote is a contradiction between the worker's outward expression of patience while interacting with the client and their authentic suppression of frustration. The following receptionist refers to this action as being professional:

It depends on where they are coming from. Some of the clients are hard cases and stuff, so you got to be a bit patient with them. Sometimes it is hard to look at it from their point of view – you got to have a lot of patience. Sometimes you want to just scream at them, but you can't. You got to be professional; it depends on the person.

### **5.2.1 Being Emotionally Drained**

In this section, legal aid workers describe how their encounters with clients emotionally drains them and how they struggle to cope with these experiences. One intake worker, who had taken a suicide prevention course, maintained that she did not realize until after the course had finished that such emotional incidents occurred at her workplace. For instance, an applicant that she financially assessed had many problems and required a lot of emotional support. During a financial assessment interview, the client passed her a note that stated “if things weren’t better by Friday she would kill herself.” The intake worker stated that the client’s “husband had left her, she had a stroke and everything was really negative.” Consequently, the intake worker “sat with the lady for awhile.” She was required to inform the other intake worker that she would be busy for a period of time. Although she explained that dealing with such an emotional issue “is a little over and above what” they do at legal aid, she maintains that “We get a few incidents like that in a year.” When asked why she thought an individual had come to legal aid seeking help of this kind, the intake worker replied, “When people go to legal aid, it’s their last resort. This individual didn’t know where else to go and they didn’t want to go to family.” Another intake worker maintains, “Some days we just look at the computer screen and there is nothing on it – just to avoid looking at the client. These people who come in don’t have a lot of coping skills. They come in and unload.” By choosing to regard an inanimate unemotional object, the intake worker can detach from emotional clients if only briefly.

Comparable to the experiences of the intake worker, Lawyer H explained his experiences regarding clients who actually had committed suicide:

The first time a client committed suicide, it just blew me apart. I just found it difficult to deal with. I wound up asking myself, 'Was it because of me?' One of the second two people I had to deliver bad news to killed himself a couple of days later. It didn't affect me in the same way because I had distanced myself. The doctor gave me some very good advice, 'View it as the problem that comes in the door . . . don't get emotionally involved.'

Now, this lawyer contends that although he "relates well to people it is a problem I deal with. When the problem is finished, I close the file and I move on." He further maintains, "It took me a while to pull myself back together enough to be able to do that" because "I had ended up on sick leave for a while."<sup>58</sup>

Repeatedly handling emotional clients can be very exhausting for those required to perform this kind of labour. Some of the workers discussed the fact that encounters with clients left them emotionally drained. In the following quote, a legal secretary describes her feelings regarding her interaction with clients:

I really like my work. I dislike when I am talking to a client face-to-face that is really, really needy or crying or upset because I feel a little drained after they leave. Then I get another phone call right on top of that or there is an emergency facing me right after that and I don't have time. Then I think 'Oh my'. It catches up to you.

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<sup>58</sup> Griffiths (1986:172) conducted a study of lawyer-client relations during divorce cases. He maintains that most lawyers' conception of their role includes giving the client some "moral support, but all consider it very important to maintain their distance from the client."

Similar to the secretaries, intake workers discuss the need to replenish their energy following emotional encounters with clients. According to an intake worker:

There are days that I have a lot of empathy. We need to fill up again because we give so much of ourselves. It is stressful. At the end of the day and we saw eight or ten people and all of those people had the same common denominator, we go home and we are just beat. There is a happy medium between becoming an automaton and taking on their problems. Sometimes it is difficult to find that. Some days you feel like you are helping people and other days you just don't want to help anyone. There is a system, but many clients don't want to hear it because they feel very hard done by – by the system.

For example, when an applicant entered an intake worker's office already angry regarding an assault charge against his wife, the worker "tried to explain that the police have little discretion" in these circumstances. Although she tried to appease him through explanation, the applicant remained angry. She contends, "Sometimes you will have people who will come in with exceedingly big chips on their shoulders and you are perceived as the enemy. These times can be really difficult." Although encounters with clients vary in terms of the emotional labour experienced by organizational members, both professional and non-professional members of the legal aid organization must seek ways to cope with these encounters.

### **5.3 Providing Emotional Support to Clients: Lawyers as Social Workers?**

Lawyers define their primary responsibility within the context of their work role, as the

provision of legal representation for their clients (see Jack and Jack, 1989:29; Countryman et al.,1976:230-231). In addition to the provision of legal support, ten staff lawyers profess that they provide emotional support for their clients. While three lawyers accept this responsibility as part of their work role, the remainder are frustrated with this added responsibility. Lawyer E accepts that helping the client emotionally is part of his responsibility as a lawyer:

A lot of our clients are needy because they have been disenfranchised most of their lives. They need sometimes to know that someone is there. As lawyers, I think that it is our obligation to assist them and to let them know they are going to be ok.

Lawyer J stresses the difficulty of separating the client's emotional social needs from their legal needs. He states that, "Anyone who says that legal aid is not part social work is crazy because they are missing the boat totally. Often, there is a need for greater compassion and understanding." Furthermore, he maintains that "A lot of the needs that people have when they come here are not purely legal. How do you separate it? Certainly not in their minds." Contrary to the previous statements, Lawyer F insists that helping clients emotionally does not fit his preconceived notions of working as a lawyer. He states "I don't view family law as being a lawyer; I view it as social work." Furthermore, he maintains that "If I wanted to be a social worker, I would have got my Arts degree and not gone to law school. I don't like doing it and don't enjoy it. But, someone has to be an advocate for these people." Similarly, Lawyer L refers to his work as being similar to the work performed by a social worker:

Social services were threatening to take this woman's kids away from her. The father was beating the kids up all the time. I said, 'Look, you got to get away from him or you are going to lose your kids. Do you love your kids? or Do you love your husband who is a monster?' Eventually she got her kids, a divorce, a restraining order; and she was happy.

He contends that this work is "more of a human thing than a legal thing" because he did not perform "any great legal strategy, any great legal argument." Instead, he simply "did her divorce and got a restraining order that the guy stay away from her." While he maintains "a lot of work" was conducted on the case, he "couldn't have 100 cases" similar to this one because he would not have the time to "serve them properly."

Four lawyers find that family files are the cause of emotional stress. Lawyer B claims that whether they work in private practice or legal aid, lawyers that maintain "a high volume of family files find it very, very stressful – very difficult."

Many of the lawyers resent the need to provide emotional support to their clients because they do not consider this support a fundamental component of legal representation. Whether or not legal aid lawyers want to provide emotional support for their clients, findings indicate this support is an essential part of their work roles. Some lawyers contend that their emotional work for the clients is similar to the labour of social workers as opposed to lawyers.

### **5.3.1 Reconciling Emotional Labour and Objectivity**

"Professional conduct is a type of role-determined behaviour in which the defining attributes of the role specify how a professional relates to other people" (Bacharach et al., 1995:441).

Accordingly, being a professional helps to shape the lawyer-client relationship. Jack and Jack (1989:34) state that the role of the lawyer as “*neutral partisan* both requires and justifies an attorney’s preference for the interests of the client over those of others” [italics added]. While disagreement exists whether lawyers should provide emotional support for their clients, consensus exists regarding the need to maintain objectivity as a professional in the lawyer-client relationship. Developing an emotional attachment to the client would be harmful to the representation of an individual because objectivity is necessary for the purpose of properly representing the person. Lawyer E maintains the need to “get close to the client,” he also maintains there is a “struggle to be objective.”

It is hard not to attach some sort of emotional underpinnings to what is going on, especially if you, as the lawyer, feel they are being hard-done by the other side. You have to consciously resist it – that urge to get involved and make it personal.

He further argues that lawyers “can’t get sucked into the vortex of their emotional difficulties.” As such, when lawyers “feel” their case has “become personal,” they should “ask another lawyer to take it over.” Similarly, Lawyer L maintains, “We should not be getting involved in clients’ lives” because “we cause some of the difficulty for the clients.”

Difficulties may arise because:

clients begin to depend on us to solve some of the problems they, in fact, should be resolving. They stop talking to the other side. They become entrenched in their position. They say, ‘Go talk to my lawyer’ when they should be talking to each other.

Lawyer E contends that although there are various cases that lawyers dislike, “We do it and you don’t necessarily have to like the client or what they are accused of doing. You have to always remember that your job is to represent them – to present the best possible defence.” For example, this lawyer maintains that he conducted a cross-examination in which a young girl “just broke-down in tears.” Rhetorically, he questions, “Did that make me feel bad? Yes, but I still had to do it because that is what my client required. So however distasteful – it is not us. We have to remove ourselves from that.” Comparable to the previous lawyer, Lawyer G emphasizes a separation of his “moral convictions” regarding clients and his personal perspective when he states, “I can represent the most despicable characters because I believe in the system and it is not my role to judge.” Only one lawyer declared he would be unable to achieve this separation in some cases. Consequently, he “refuses” to accept these files.

#### **5.3.1.1 Subjective Client Stories**

The presentation of a client’s story, in the form of a legal affidavit, is fundamentally important for the legal representation of that client. Lawyer F contends that lawyers must question whether the clients’ stories could, “on a reasonable basis, be true!” Because “the judge and the jury are reasonable, the client has to be reasonable.” Both an affidavit and an application are necessary to begin the proceedings. The affidavit contains the substance of the individual’s claim. Although all the lawyers contend that sticking to the facts (being reasonable) allows them to better represent the client in the court of law, divergent opinions exist regarding the acquisition of information for affidavits. Some lawyers advocate getting to know the client on a personal level as a way to understand their stories. Initially, getting

to know the client on a personal basis appears contradictory to the notion of objectivity. However, Lawyer K maintains that although the client “opens up to you, you can still remain objective.” He contends that clients may withhold information from the lawyer if they are uncomfortable with them, thereby nullifying access to the truth. For instance, he maintains that a male lawyer talking to a female about a sexual assault offence has to “know where they are coming from and where they have been.” Furthermore, he states that,

We have to weave the affidavit, weave the application and realistically we are the ones talking in court. If you can't get there with them, then it is hard to sort out what is fact and what is fiction and some of it is fiction.

While researchers such as Countryman et al. (1976:230-231) contend that the primary role of lawyers is the representation of the client, they argue that a conflicting role of responsibility to society's interest also exists. Lawyer C maintains that legal aid exists to provide a “basic service for a client of modest means. I interpret that to lay the law down that I am not your backyard neighbour. I tell people that up front.” Furthermore, he proclaims that,

It is a waste of time listening to garbage that has no relation to the law. I don't know how many times I have heard, 'Well it is important to me.' So be it. Well, it is not important to me or to the courts. I don't get too many thank-you cards, but then again I get the job done and I get a lot of jobs done.

Furthermore, he maintains “it is the taxpayer's money.” Clients are “just as divorced without coddling” as they are “with coddling.” Coddling refers to those clients who spend a fortune

on private lawyers in family matters where the person is encouraged to call if their spouse or ex-spouse calls them a nasty name. He maintains that this type of service is geared toward “an hour long phone call to the lawyer and it is also good for \$300 or \$400.” However, he also contends that this practice is not legal. He maintains that legal aid lawyers “don’t do that” because they “haven’t got the time and it is just business only please.”

Amendments to the Legal Aid Act authorized that persons charged with murder would no longer have their choice of representation. Problems in the lawyer-client relationship have arisen due to this amendment. According to Kahn (1964:68), “some substantial degree of mutual trust is required for free and open communication.” Lawyer N contends that “a person charged with murder is a difficult client because he is scared to death.”<sup>59</sup> Therefore, the lawyer must obtain:

his confidence and try to calm him down. He thinks, automatically, because you are on a salary paid by the taxpayer, a government employee, you are a piece of shit. Consequently, a private lawyer is a much, much better lawyer. Without trust it is hopeless because they won’t confide in you and they won’t take your advice. It becomes very difficult.

In these situations, staff lawyers are required to expend more time and energy in an attempt to gain the clients’ trust. Furthermore, this lawyer maintains that prior to the amendment staff

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<sup>59</sup> As part of an original longitudinal study conducted by the Centre of Criminology at the University of Toronto, Ericson and Baranek (1982) explored the criminological organization of the Canadian Criminal Justice System. Their results indicate legal aid lawyers were viewed as possessing inferior knowledge relative to “regular” (private) lawyers, while duty counsel were viewed as being the least preferable.

lawyers “still ended up representing people on murder charges” because some clients would say “I know you now and I talked to you a couple of times now and I want you to represent me. I have confidence in you.” In contrast, nowadays, he says that when he represents a client charged with murder they say, “I don’t have any choice. I’m stuck with you. So, they resent it and it becomes much more difficult.” Consequently, “It is almost preferable if they could have the choice of a private lawyer” at this time. While contradictory opinions exist with respect to hearing client stories, the element of trust emerges as an essential ingredient necessary to properly represent clients in emotionally demanding cases such as rape and murder. In contrast, emotional support for minor family matters is viewed as coddling.

#### **5.4 Unreasonable Clients and Explaining the Reality of the Legal System**

According to Nicky James (1989:17), “emotion is rarely seen as systematic or structured and is often, by direct reference or association, used as a contrast with ‘rational.’” Furthermore, “rationality is held supreme,” while the notion of “‘feelings’ have come to acquire negative connotations of unpredictability and irrationality” (James, 1989:17). All the lawyers maintain that legal aid clients have to be reasonable when they are attempting to solve their cases. Contradictory to the rational structure of the law, many clients are perceived to act with emotion as opposed to rationality, which leads to problems. For support workers and professionals alike, more time is required to handle emotional clients.

Lawyer N dichotomizes criminal and family law. Criminal law allows the lawyer to “make technical arguments and fine distinctions” such as getting “your guy acquitted and

evidence excluded so the jury wouldn't consider certain evidence." In the following quote he details why "there isn't any law" in family cases.

When it comes right down to it . . . It can be really dull and extremely petty. Sometimes when people have these arguments over 6:30 or 7:30, as a time to bring the kids home, it gets very, very tedious. Meanwhile, you are trying to get your clients to be more reasonable.

Clients who understand the capabilities, and therefore the limitations of the legal aid system, are considered reasonable clients. Clients expecting services beyond the perceived capability of legal aid are designated as unreasonable. The goal of legal aid is the provision of legal representation to clients unable to afford these services. Lawyer J maintains the "client of modest means can't afford an Eddie Greenspan defence" simply because they want their case to continue. Furthermore,

They can't afford to have a room this size loaded with filing cabinets all on one case and to have experts brought in from all over the world for a simple custody case.

As such, he further maintains that "time is very important. That is why you have to focus on the issues and not get bogged down on the development matters, especially in family matters." As such, lawyers are required to limit the contextual information surrounding the client's story. In family court the judge wants to know what is happening now and how the children can be best looked after as opposed to whether or not the couple had a stormy relationship ten years ago.

Lawyers are cognizant that judges are unwilling to consider unreasonable courses of action in the courtroom. Consequently, a lawyer must maintain a reputation as a reasonable lawyer to get the client a better deal. According to Lawyer C, staff attorneys “taking unreasonable positions because their client has instructed them will get a reputation for that.” As such, judges will carefully scrutinize documents brought forward by the lawyer. However, if the lawyer “consistently puts a very reasonable position before the judge – the judge is more likely to say, “That sounds reasonable. I’ll go along with that.”” He further maintains that, “There is overall success that way – a sort of bigger picture success.” Lawyer H maintains that clients unwilling to be “co-operative” and “realistic about their defence are difficult clients.” These individuals can “ruin the lawyer’s day or week.” Staff lawyers attempt to resolve family issues prior to court to prevent files from coming back to them later. Family clients that are contentious can prevent the closure of their files by refusing to be reasonable. Clients can be perceived as either rational or irrational depending on their knowledge of the legal aid system. Rational clients are perceived as being easier to handle because they have a better understanding of the legal system as opposed to irrational clients who fail to understand the rational nature of this system. Potentially, more time and energy is spent on the latter cases.

### **5.5 Clients’ Lack of Appreciation**

Stenross and Kleinman’s (1989:447-8) study of police detectives found that a lack of appreciation on behalf of victims was an “emotional burden.” Appreciation from clients, regarding work conducted on their behalf, can provide positive feedback to members of legal

aid. Positive feedback from clients can increase the worker's positive perception of their work tasks and work role in general. A legal secretary maintains that although "we do provide support to people in crisis that support is overlooked." Nonetheless, another secretary maintains there are some clients who express their appreciation, which she maintains is a "vital thing."<sup>60</sup> A receptionist stated, "We try to make the clients feel as comfortable as possible" because sometimes "all they need is just someone to listen." For example,

We had a client who came in this morning. I could tell she felt embarrassed. I said, 'That is all right, that is what we are here for.' That made the client feel better. When she was leaving she said thank-you to me. Some clients come back and say thank-you.

However, on other occasions "it doesn't matter what you do for them, they won't appreciate it." There are "some people you can't please" such as the "ones who keep coming back, the ones who are always in trouble."

Eight lawyers maintain that clients evaluate legal services based on the results of the case not the job performance of the lawyer. Accordingly, if the client gets good results the lawyer is perceived to have performed well – irrespective of the quantity of time spent on the case or the quality of work performed on the client's behalf. Lawyer J maintains that when

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<sup>60</sup> Bulan et al. (1997:252) found that "women may feel better about their work when they feel that their effectiveness in fulfilling the affective requirements is valued."

a client's case has negative results, the lawyer is perceived as "not good at their job." Lawyer D maintains,

The things that you dislike are the clients that turn on you and call you all sorts of names after thanking you profusely for the job that you have done. Then the person doesn't like the look of the jail cell. That happens all the time.

Four lawyers contend that criminal clients appreciate the lawyer's work on their behalf, while the family clients do not appreciate their work. According to Lawyer H, "Criminal clients know what the score is, what is realistic and they know when a good job was being done." These clients will "shake your hand and thank you," if they believe the lawyer has "gone that extra mile for them" although they may have been convicted. Similarly, Lawyer D contends that "no matter what you do, at the end of the day" the family clients "still have a broken family." Therefore, "it is not realistic to expect them to be overflowing with gratitude because the lawyer got them an extra \$100 out of the EX or another night's visit with the child." Lawyer K states, "I wouldn't say that they are never satisfied, but they never seem to be as happy as some of the criminal clients."

### **5.6 Experiencing Emotional Labour: Defining the Boundaries**

Periodically, the worker's personal and work environments conflict. According to an intake worker, "When applicants apply for legal aid I try to be objective. I try to disengage myself from those individuals I am familiar with on a personal level." This intake worker maintains, "Several people who knew that I worked for legal aid would call me at home. I don't like that." A specific incident occurred in which she was acquainted with an applicant, and

subsequently she referred the person to the other intake worker for their financial assessment. Problems arose when the intake worker familiar with the applicant became aware there was information she did not provide. Consequently, she told the other intake worker that she would have to do a reassessment. Later that day the applicant called the intake worker and angrily demanded, "Who do you think you are . . . blah, blah, blah."

Stress<sup>61</sup> occurring during a workday has the potential to cross over into the person's private life. In the following quote a receptionist recounts a particularly stressful workday.

It was frustrating. The phone was going nuts, there was courier people there, there were clients there and people were calling saying, 'Is this client out there?' My God, I was just out to lunch.

When the workday concluded and she returned home, her head was "literally banging" and ultimately she "cried."

While two lawyers chose to differentiate clearly between their personal and professional time, others allowed this line to blur. According to Wharton (1993:218), "emotional exhaustion is higher among those working longer hours." In this study, five lawyers maintain that working overtime is necessary to complete all required work tasks. Lawyer E stated, "Some lawyers are workaholics that are here all hours of the night and day." According to Lawyer J, "it is not possible to do a thorough, decent job" without working overtime. Nonetheless, he contends that "it is possible to do a mediocre job." Yet, another

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<sup>61</sup> According to Krahn and Lowe (1988:168-9) workers have "little control" over stressors defined as "objective situations" occurring in the workplace.

lawyer contends that without working overtime “people would have to wait longer. Service would be poor. Then I would have to deal with people being upset or whatever.”

In contrast, the following lawyers draw definite boundaries between the public sphere located in their work environment and the private sphere. In the following quote, Lawyer E clearly differentiates his role as a professional lawyer working for legal aid and his private life.

I have to be on top of my workload and it gets to be too much. I didn't join legal aid to work 80 hours a week. I do have to work at night because I am a professional person. The main problem with legal aid is that we got great lawyers, but they can only do so much.

Lawyer C describes his approach as “a survival mechanism because burn-out<sup>62</sup> is a real risk at legal aid. Most years we have had someone off on sick leave due to the stress.” According to a senior official with Legal Aid, “a number of people have gone on stress leave.” Nonetheless, he is “not convinced that the stress leave that the person has gone on is totally job related.” Accordingly, he maintains that:

any professional person that is dealing with the public has a lot of pressure and often feel that they have more demands on their time than they can reasonably fulfill. Professionals have to decide how they are going to manage their practice and how they are going to react to all these pressures.

According to a senior official with Legal Aid, “working with an organization that has sick leave days” could make it “easier” for lawyers to implement leave, as a way to “deal with

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<sup>62</sup> For a brief discussion on worker burn-out see 2.4.1.

stress” in their personal life. He questions whether staff lawyers would “try to implement an approach that would allow them to manage their stresses if they were in private” practice. In the following excerpt, a senior official with Legal Aid compares the professional work of being a doctor with a lawyer.

Surgery is scheduled at 9:00 in the morning because emergencies have it bumped until 4:00 in the afternoon. Although the doctor has been on his feet for 10 hours, he has still got to go do his job. Is the quality compromised because of that or is that stress going to cause him to take time off work? There are certain hazards in the profession and being a professional person these things happen.

Although this senior official questions the issue of work, stress and leave, he maintains, “I am not going to deny that it’s a factor.” Lawyer K suggests that lawyers, in general, have “just got to know when enough is enough and don’t take the job home with you.” However, he contends this boundary is “difficult” to maintain because “you are dealing with emotions.”

Although organizational members attempt to maintain a boundary between their private lives and their public work role within the organizational environment of legal aid, this attempt can be difficult. Organizational members acquire information about clients, generally thought to be personal to the individual. For instance, Lawyer G suggests that there are “things that you learn about other people and their private lives . . . their whole emotional beings are laid bare.” In some cases, “their whole sexual relationship is laid bare.” This access to the personal details of clients makes it difficult for workers to remain objective, and consequently draws workers closer to the personal lives of their clients.

## **5.7 Conclusion**

In this chapter, emotional labour as experienced by organizational members of legal aid has been discussed. The findings indicate that emotional labour is experienced by organizational members, including men and women and by individuals in both professional and non-professional work roles. These organizational members contend that face-to-face and voice-to-voice contact is emotionally draining. Therefore, subsequent to these interactions members may become fatigued. Moreover, this labour has the potential to generate stress for organizational members. While receptionists and legal secretaries experience emotional labour during administrative work tasks such as booking appointments, intake workers experience this type of labour while executing work tasks such as financially assessing clients. Although the legal representation of clients requires rational, unemotional work performance, lawyers also experience emotional labour when they are required to offer emotional support to their clients.

While most of the legal aid lawyers provide emotional support for their clients, only a few of these professionals perceive this aspect as an acceptable part of their work role. Indeed, a majority of lawyers resent this feature of their work role. Some lawyers perceive their work role, particularly the emotional labour required on family files, as similar to social work. While some lawyers maintain that there is a need to provide emotional support for their clients, they also emphasize the need to remain objective in order to properly represent their clients.

Although appreciation for one's work could generate positive feedback for legal aid workers, some support workers claim it is overlooked by clients. Similarly, lawyers contend that clients assess their services based on the results of the case as opposed to the actual job performance of the lawyer. For instance, there may be a lack of appreciation from clients when lawyers do not win the case for them even though the lawyer may have represented them well. In order to cope with some of the emotional labour, some organizational members strive to instill a boundary between the public sphere in which they work and their private, personal lives. Nonetheless, this boundary does not always shield the worker from this type of labour.

Emotional labour exists as a definite part of the legal aid environment, and therefore affects the work roles of organizational members. Workers required to handle emotional clients or customers without sufficient training or skills may experience adverse effects such as stress, burnout and alienation. It is therefore critical to recognize the existence of this emotional labour and its effects on the organization. When legal aid workers experience emotional labour, the potential for the services rendered to legal aid clients to be negatively affected increases. Conceivably emotional labour exists within this environment because the majority of legal aid clients are the marginalised and the disenfranchised within our society. Consequently, when they are seeking legal aid services they may carry over problems that are unrelated to the legal representation of their case.

## Chapter 6 Using Time Effectively

### 6.1 Introduction: Conceptualizing Time

Time permeates all facets of organizational life. Bluedorn and Denhardt (1988:303) contend that organizations manage time as a scarce resource to accomplish organizational objectives, while attempting to reach peak efficiency and effectiveness. The organizational objective of legal aid is the delivery of legal services to individuals unable to afford these services. Organizational members have made several attempts to control time by way of increasing organizational efficiency. For example, various systems of distributing files among lawyers have been tried. A combination of insufficient manpower, large numbers of incoming files and the time required to handle emotional clients influences the services rendered to clients.

Gherardi and Strati (1988:153) maintain that multiple forms of time exist within organizations. I concur with their interpretation and conceptualize time as a scarce resource (engendering organizational efficiency) and as inherent within events (melding a subjective interpretation of work tasks and structural constraints). Although time will be explored in terms of scarcity, rationality and efficiency, it is not my intention to further the “dominant image” of time as objective, homogeneous, quantifiable and uncontrollable (Hassard, 1989:31; see also Sahay, 1997:239). Accordingly, the role of time will be explored through the experiences of organizational members. Clark (1985:36) maintains that “time is *in* the events and events are defined by organizational members” [italics in original].<sup>63</sup> Because

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<sup>63</sup> Peter Clark (1985:36) states, “sociological analysis requires a theory of time . . . [as] a socially constructed, organizing device by which one set, or trajectory of events is used as a point of reference for understanding, anticipating and attempting to control other sets of events.” For additional commentary on Clark’s work and a concise, albeit brief literature review regarding the cyclic-qualitative research in the work-place see John Hassard (1989:24-31).

organizational members are knowledgeable about their individual work tasks and the environment of legal aid, they have the capacity to provide insight regarding the delivery of services to clients. Although one secretary maintains that the organization is meeting the needs of their clients, the expectations of clients are “never met in the sense that they want their service faster.” Similarly Lawyer M states,

We have to juggle so many files at one time. We just kind of wonder when it is going to get the best of us. Unfortunately, because of that some clients feel and sometimes the public perception, is that the clients aren't getting the service that they should be.

The ongoing flow of events within legal aid demands the prioritization of tasks. Consequently, there is a need to assign times for the completion of work tasks. However, organizational members must be flexible regarding the time in which their work tasks are performed. Failla and Bagnara (1992:678) maintain that the “organization of work is becoming less rigidly defined by highly rationalized time patterns,” particularly in organizations that utilize information technologies for professional work. Flexibility of time can be achieved through flexible labour, which furthers “management control over task, duration, and scheduling of activities, usually rationalized by the pursuit of minimum costs” (Blyton et al, 1989:134). Below, the relationships among funding, caseloads and computer generated administrative duties and the ultimate goals of the organization will be explored in relation to a conceptual understanding of time and the delivery of organizational services.

## 6.2 The Unpredictability of Scheduling

Structurally, legal aid is striving to implement more effective use of time with regard to first contact scheduling practices. Currently, the intake workers are contemplating whether they should be double-booking people, the number of applicants that are no-shows and the number of people legal aid is processing. An intake worker maintains that the legal aid organization is allocated funding in relation to the number of people they process during the year. When the legal aid organization informs the Department of Justice that “*X* number of people” were processed during the fiscal year, potential funding cuts could occur if the numbers are considered low. Although she maintains the importance of this funding criterion, she views her role as being far more important than merely processing the maximum number of cases.

Zerubavel’s (1976:88-9) definition of timetables as a “set of blocks of time within which events are durationally fixed, sequentially ordered and located between absolute points in time” is viewed by Blyton et al. (1989:6) as “the rationalization of time use and the scarcity of time as a basic work resource.” While events *can* be quantitatively fixed within absolute points of time, the unpredictability of the legal aid environment does not allow events always to occur during the anticipated time-frame. According to the intake workers, work days are unpredictable and the number of incoming applicants is sporadic. For instance, though workers may expect the office to become busy when they return to work following a long weekend, occasionally only a few applicants will apply for legal aid. Similarly,

workers do not expect applicants to apply during bad weather. Nonetheless, during bad weather the office could be blocked with people.

Receptionists and intake workers are unable to organize their schedules with the assurance that clients will show-up for previously scheduled appointments. On some occasions the computer screen will indicate that legal aid is booked-up for the whole day, but the organization will receive no-shows and people canceling appointments. Consequently, what starts out looking like a very busy day does not end up being busy. Applicants who have not called to cancel their appointments cause problems with scheduling because workers are unable to schedule additional applicants. An intake worker maintains that instead of calling to cancel, most people simply do not turn-up for their appointment. For example, an intake worker called an applicant the day of his interview to re-schedule, but the applicant had forgotten that he had an appointment.

I asked him if he wanted to re-schedule it. He said, 'No, I don't know if I want legal aid to represent me. I'll get back to you.' Some days we could have any number of those.

There are fewer problems with people who walk in without an appointment because these applicants can be assigned to the canceled or no-show time slots. However, if legal aid is having a busy day, the individual would have to make an appointment for another day. According to an intake worker, to offset some of the unpredictability, appointments originally booked every half hour are now being booked every fifteen minutes.

### **6.2.1 The Legal Secretaries' Scheduling of Appointments**

The unpredictability of the lawyers' schedules affects the secretaries' work tasks and ultimately the clients of legal aid. While some lawyers allocate specific times for the secretaries to schedule their clients, other lawyers prefer to arrange their own schedules. A legal secretary maintains that the most efficient way to schedule appointments is "when you really know you will have the time." However, the identification of these times can be difficult, primarily because the lawyer's schedule can "suddenly change out of the blue." Consequently, these workers must call up the clients, cancel and then reschedule. This act can be frustrating because clients have difficulty understanding why a secretary cannot schedule an appointment. The following secretary states, "I just explain it to the clients. Sometimes ten times a day, which gets kinda – but, then I think this person hasn't heard this before and we have to take our time with everyone."

During their time in court, the lawyers often obtain new court dates for their clients. Problems arise when lawyers do not give this information to their secretaries. A secretary states, "Scheduling appointments is really, really difficult with provincial court lawyers – criminal lawyers" because the secretaries "don't know when they are going to be back. It's a fluid thing." As such, the lawyers "could be in court going for a review or something that they think will be a half hour, but they come back two hours later." Sometimes they have to wait for other activities to take place in court before they can present their case or their work simply took longer than they had expected. A secretary maintains that the amount of time the lawyer spends with the client depends on the disclosure and the client's story.

For example, they may go to visit clients at the penitentiary. How long does that take? Nobody knows. They may intend to see three clients, but only see one.

Consequently, these lawyers have to go back at another time to see the other clients. Another secretary maintains that her lawyers “have to take their own time with things.” Accordingly, these lawyers are flexible with their work time.

When lawyers are required to handle cases in other parts of Newfoundland, a rippling effect occurs among other organizational members as they are influenced by these changes. Frequently lawyers are sent out to handle a two-day trial that could turn out to be a five day trial. For major crimes or charges such as murder, lawyers are required to stay for a prolonged period of time. While the lawyer handles this case their main files, retained in the St. John’s office, must be managed by other lawyers willing to take on these cases. Secretaries must inquire of other lawyers, “Can you go down and do this today?” A secretary maintains that “it’s just running and covering. It’s just a rat race due 100% to the caseloads.”

### **6.3 Old System vs. New System: A Search for Organizational Efficiency**

Over the years, several attempts have been made to find legal aid’s most efficient, quick and fair way to assess and distribute files to legal aid lawyers. These systems will be discussed in an effort to understand the organizational dynamics that make the ongoing search for the best way to distribute files a challenging task. An earlier system of allocating files among staff lawyers is known as the file assignment and distribution system. Within this system, the majority of lawyers acted as intake lawyers on a rotating basis. Lawyers had a mixed practice (also known as a general practice) that required them to accept criminal, family or other

administrative files.<sup>64</sup> Following the acceptance of a file on intake, files were distributed among various lawyers at file assignment meetings that occurred twice a week. Because many files had court dates that were previously set, the acceptance of files was based on the availability of lawyers. However, Lawyer B maintains that occasionally lawyers would accept a case “simply out of interest.”

The Supreme Team and Provincial Team (also designated the Group Approach) began in 1998 as a way to cope with the reduction of staff lawyers by two members within the St. John’s office. Lawyers assigned to the Provincial Team were required to handle the criminal files and they were assigned to a court-room or series of court-rooms. A staff lawyer maintains that the Supreme Team handled all the family, civil and administrative law files, all matters in the supreme court including criminal or family appeals to the court of appeal in St. John’s, and all conflicts and over-flows originating from the offices outside the St. John’s area. The Supreme Team became badly over-loaded because there were not enough lawyers to handle the work-load. The system of distributing files to the Supreme Team and Provincial Team came to a crisis because as most of the lawyers maintain, they could not take any more files. Lawyer A maintains that “Files were coming in and no-one was getting them.” Following complaints by some of the lawyers, the system was changed.

A new system of intake was introduced in January of 1999 whereby one lawyer was assigned intake duties and responsibilities on a full-time basis. As part of this system,

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<sup>64</sup> A small number of lawyers have it specified in their work contract that they will accept only one type of file. According to Lawyer A, they were able to obtain this stipulation prior to the expansion of legal aid, when “most of the work had been sent out.”

lawyers reverted back to accepting all types of files. The permanent intake lawyer assessed the legal merit of incoming applications, then assigned files to staff lawyers based on a distribution list. Clients would receive an appointment two or three weeks following their initial assessment. The assigned lawyer would meet with the client to obtain basic facts for the application. A third meeting was required to allow the client to sign their application for court. According to Lawyer D, this system was deemed to be “a waste of time” because clients were required to “make three trips instead of two trips.” Similarly, Lawyer L states, “Things went to hell primarily because people were able to take themselves off the list to receive files.” Furthermore, he maintains that during “large chunks of the year there were only two, three or four people on the list taking files,” yet the files continued to come in faster than he could close out existing ones.

The current system requires that most staff lawyers act as intake lawyer on a rotating basis. Lawyer A maintains, “All we are doing is rearranging the deck chairs on the Titanic.” Furthermore, he contends, “If there aren’t enough bodies to do the work under the old way, there aren’t enough bodies to do the work under the new way. It is still going to be that we are not going to have enough time to do a proper job on each file.” In the current system, the lawyer acting as intake lawyer reviews only those files being rejected because the Act requires it. Lawyer N maintains that accepted applications are sent onwards to the lawyer who will be representing the client. This prevents wasting time with someone who will not necessarily be their lawyer.

With the current system Lawyer H maintains that lawyers acting as intake lawyer, “tend not to take the weak ones,” known as the “sympathy files,” because they know they will have to handle these files. He maintains that these files have “very little merit, but there is a heart-breaking story that makes your sympathy gland throb.” For example,

The woman is on welfare. There is no way she can get a mortgage, but she wants to buy out the husband’s interest in the family home. The lawyer can spend 30, 40, 50, 60 or a 100 hours trying to find some way . . . Then, the lawyer finally finds a way (household finance will do it). They manage to come up with a co-signer. Then, they decide they don’t like the chimney and it will have to be replaced. It will cost another \$2500 and she can’t swing that because social assistance will not increase the amount she is prepared to pay against the mortgage. As it was there would have been 30% interest on it.

Lawyer L maintains that when lawyers can “just accept cases and have someone else deal with them – then it is oh, I am so sympathetic, ‘Yes my dear, we will have someone deal with that – here you go.’”

Problems with scheduling occur when lawyers maintain a general practice. Frequently, the family law cases conflict with the criminal law files in terms of previously scheduled dates. Criminal matters are scheduled for court up to four months in advance. Consequently, court dates are scattered throughout the lawyer’s calendar, which leaves them fairly fully booked in court three days a week. Meanwhile, as Lawyer D maintains, they get family law files “dropped on them” with three days notice. In such cases time is wasted

because the lawyer “who is all prepared for the criminal trial and who has been carrying the family file and knows it – now has to give one of them up.” Lawyer C maintains,

Those taking-on these files have to reinvent the wheel on getting to know that file. They have to go in and do the trial and build the rapport with the client. That is difficult. The clients says, ‘Who is that stranger. I have been dealing with so-and-so all along. Now, I’ve got this guy. Who is this bozo? Why is he telling me to do that.’<sup>65</sup>

Lawyer N maintains that some family files were “changing hands multiple times – going through three, four, five or six lawyers before anything of substance had been done. That is not fair to the client.” Similar to the previous lawyers, Lawyer G contends that there is a “fair amount of movement” with respect to the lawyers’ files. Inadvertently, this movement put a lot of stress on clients. Furthermore, securing lawyers for the family files became difficult because some lawyers did not want to accept these files. Attempts to distribute files fairly have been exacerbated by a reduction of lawyers, a high volume of cases and the difficulty regarding the measurement of work conducted on family and criminal files (simple vs. complex files, unpredictability of the organizational environment, and trying to provide a level of service while prioritizing files), as will be discussed below.

#### **6.4 The Complexity of Determining the Lawyer’s Caseload: Sufficient Numbers**

A majority of the staff lawyers state that the lack of time and the large amount of files affect services rendered to legal aid clients. The legal aid organization has been attempting for

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<sup>65</sup> For the importance of client trust, see 5.3.1.1.

several years to define a workload for each lawyer by determining an appropriate number of files that each lawyer should carry. Lawyer M contends that if the organization “had more lawyers we could provide better service simply by virtue of the numbers game.” In 1996, the revised statutes of Newfoundland proclaimed that individuals charged with murder are unable to have their choice of lawyer.<sup>66</sup> Consequently, staff lawyers are required to handle almost all incoming files as opposed to redirecting some files to private lawyers. Cost projections were delineated as justification for this revision. Lawyer A maintains that legal aid’s open-ended budget during much of the 1980s<sup>67</sup> allowed funds to be spent “very quickly, without a lot of control.” The inexperience of some private lawyers who spend hundreds and hundreds of hours researching the law was a contributing factor to the amendment. According to Lawyer N, “Representing a client may cost \$100,000, \$200,000 or \$300,000 and you have a set budget of 5 million dollars, not 5.3 million dollars.” He maintains that if a private lawyer is handling a case legal aid could be “way over budget.” Consequently, it becomes difficult for legal aid to predict the budget from year to year. Nonetheless, most lawyers maintain that the requirement to handle all files in-house left them with “no safety valve” when they became overloaded.

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<sup>66</sup> The Legal Aid Act was amended in July, 1996 (Statistics Canada, 1999b:81). In accordance with this amendment, subsection 31 (4) was repealed. While the original Legal Aid Act of 1975 (RSN 1990 cL-11, 1990:13) allowed individuals “charged with offences that carr[ie]d a minimum of life imprisonment” to choose their legal representation, the amended Act revoked this choice (RSN 1990 cL-11, amendment, 1996:25).

<sup>67</sup> A fixed budget came into effect in the 1990s.

In 1996-1997, two full-time staff lawyers from the St. John's office were assigned to a newly developed conflicts office, but their positions were not replaced. Although the number of lawyers decreased, the remaining lawyers on staff handled the same number of files. Furthermore, the senior staff lawyer reduced his file intake from "about 90 or 115 cases to about 55 active files about a year ago." Increased administrative responsibility brought about this action. Although the number of lawyers available to accept files has been reduced, the St. John's office continues to provide legal aid services.

#### **6.4.1 Time to Do Files**

Lawyer J maintained that 1997 was "a brutal year." During this period, he had informed a senior official with Legal Aid three times that he could not accept additional files. Being overworked led him to believe that he would be unable to provide the service necessary to handle an increased number of files. Lawyer M contends that while private lawyers have "a little more of the luxury of taking a file and putting in a lot of work on that file before going on to the next one," the volume of work at legal aid regulates the completion of files. For example, he maintains that "There is never enough time to do all you want to do on a file. Over the years I have found that there is less and less time for each file." Furthermore, he contends, "It is a bit of a joke. People will say, 'What research have you done on that case?'" The person will say, 'Research – you have time for research?'"

A lawyer's legal experience can influence the time required to conduct research. Their perception of files evolves over time. As lawyers become more aware of the legal

issues, they recognize where there is a defence to work with and where there is not. Lawyer F explains:

When the person gets their first B&E (break and enter) the lawyer tries to research every issue and fire it out. A few years later, the lawyer reads through the disclosure and says, 'I will argue it on this particular point' or just say to their client, 'You're screwed. Let's deal with it.'

Ultimately, each lawyer accepts the maximum number of cases they can handle. The maximum often depends upon the lawyer's sense of professionalism. The lawyer's provision of legal representation is regulated externally and internally by the law society and the organizational procedures of legal aid (see 4.4). According to Lawyer D, "We don't want to put ourselves in a position where we are over-worked . . . if we forget matters, if we do a sloppy job then the lawyer will look bad in front of their peers and no one wants that." However, two secretaries and four lawyers agree that lawyers "slip up" occasionally whereby such things as "a court date is forgotten." Slip-ups have the potential to occur because most legal aid lawyers handle anywhere from 100 to 150 active files. Two lawyers maintain that in any organization there are bad lawyers and "legal aid is no exception." According to Lawyer E:

There is the perception in the community that it isn't worth your time and effort to come down to legal aid because you are not going to get a good job done if you're not paying for it. That is a valid one for those clients that don't get a good level of service. There are 37 lawyers in this organization. Use the 10% quotient – then 3.7% aren't performing the way they should.

Only one lawyer maintains there is “lots of time” to do files. Consequently, he does not see a need for additional staff lawyers. This lawyer states, “Everyone else will tell you that there should be more staff lawyers, but every bureaucracy will tell you that. For the most part, every bureaucracy is lying.” He gave the following reasons for his belief that additional staff members were not needed.

Number one – When you are working for legal aid you don’t have to worry about making money. Most private lawyers spend about 30% of their time just trying to make money, trying to attract more clients, trying to take care of bills such as paying for the secretary, trying to pay for the office equipment. As legal aid lawyers, all our time is spent on our cases. Number two – We end up doing the same case over and over and over again. So, we don’t have to spend nearly as much time on research, after you have been doing it for a while. Number three – We have a lot of staff. There are 35 lawyers, I think. So, I think we have plenty of staff and plenty of time.

In spite of his affirmation that “there is time for all cases,” this lawyer later commented “sometimes I wonder if I am missing something,” given the high caseload.

#### **6.4.2 The Simplicity and Complexity of Files**

When considering the number of files a lawyer should handle, seven lawyers concur “a file number isn’t really significant.” Accordingly, Lawyer J maintains that one lawyer “could actually have 60 files and be far busier than someone with 150 files. It really depends on what you have.” Lawyer E differentiates between a “straightforward divorce” (designated a no-brainer) and a “a heavy-duty custody case.” A straightforward divorce would require

approximately three meetings with the client. The first meeting would involve eliciting required information. The second meeting would involve reviewing the petition and having the client sign it. The lawyer would see the client again in court during their third meeting. In contrast to the simplicity of this type of case, the lawyer for a heavy-duty custody case could meet with the client six, eight or even ten times. The case could involve a supreme court jury trial and all kinds of charter arguments. The preparation and work required for the custody case would be far greater. The case could be set for six weeks or a month and necessitate a lot of material. The lawyer contends that “it takes time to go through it and you have to keep refreshing” the information previously reviewed because “you get a time lag between the time you first see them and the trial date.”

Three lawyers contend that the time spent on files has increased because the law has become more complex. While some changes within the law were initiated to simplify case matters, Lawyer J maintains that these changes have created a situation whereby cases actually take longer. For instance, the newly instituted child support guidelines “would be incredibly simple to do,” because obtaining disclosure is presumed to be straightforward. However, he expends “a lot more time fighting to get financial disclosure.” Therefore, although the determination of income has become less complicated “it takes more time to get to that step.” While complex files require greater periods of time to complete, simple files require less time. Accordingly, these file features must be considered when assessing the caseload of each lawyer, and therefore the overall number of lawyers required to handle incoming cases.

#### **6.4.2.1 External Influences: Slowing-down the Process**

Butler (1995:931) contends that time can be experienced through the pacing of “events outside the control of the participants.” As part of the larger justice system, legal aid must co-ordinate events (e.g. scheduling court time for clients) with other organizations and departments. Therefore, these organizations have the capacity to influence the delivery of legal aid services to clients of legal aid. Lawyer C states,

We have been told that the attitude of the Department of Justice is slow it down – slow down the provision of the service. So, if someone comes in looking for legal aid and they got to wait eight to ten weeks to have it dealt with, well then they got to wait eight to ten weeks . . . We have had to impose that internally, as well. So, it is going to take longer for people to get things done.

Similarly, Lawyer H maintains that this “slow-down has snowballed to the point that people are getting nothing done and it is not fair to them.” Three staff lawyers agree “that any judge that has been on the bench for 20 years will tell you that a jury trial that took three days in 1983 takes four months now.”

Courts rely on the legal aid organization to help the justice system function effectively. In the past, judges did not want legal aid lawyers in their courtrooms because they would slow the system down. Nowadays, Lawyer D maintains that judges “know that without a lawyer their day is going to be long and frustrating.” Individuals who “represent themselves by giving legal evidence slow down the whole court process.” Lawyers are required to utilize the court’s time efficiently. Lawyer G, who “worked the circuit,” contends

that if he declared “everyone not guilty, the trial would be on their next circuit.” Since lawyers are “up there only 10 times a year the system would not function” (see 5.4). Lawyer A, who views legal aid “as a major cog in the justice system,” maintains that,

Without legal aid, the wheels of justice would not be turning as efficiently as they are. Now, some people would argue that they aren’t turning at all. While they turn slowly, they turn efficiently because we are involved. So, we assist the process and oil the machine.

#### **6.4.3 The Lawyer’s Prioritization of Files**

Allocating time is a response to time pressures within organizational environments (McGrath and Rotchford, 1983:85). Time is constrained by the number of lawyers available to take on files and the voluminous caseloads. Consequently, lawyers must prioritize action regarding incoming files. Lawyers manage their caseload by “triaging” files. Files with impending court dates have time constraints. Therefore, these files are designated as urgent. When emergency events occur, they require immediate attention. These events necessitate an immediate re-prioritization of the lawyer’s current caseload (see also ‘Temporal Overload: The Rush,’ Fine, 1990:107). For instance, as explained by Lawyer K, emergencies, such as when a child has been taken out of province, require:

a lot of paper-work done very quickly and seeing a judge to get some kind of emergency type order. When things like that come in, other things have to stop and there is no predicting when that might happen.

During these periods, organizational members increase the pace of their actions to accommodate a smaller framework of time. Furthermore, considerable interdependence among members of legal aid is required when emergencies occur. When an emergency situation occurs, secretaries depend on the receptionists to advise them when clients arrive. Receptionists will contact secretaries via the switchboard as opposed to the customary communication by way of voice mail. If the secretaries are not located within their office space, receptionists will track down the worker to convey the information person-to-person. During emergencies, secretaries are required to locate other lawyers who are willing to accept immediate responsibility for the remaining files.

Lawyer E distinguishes between open files and active files. Active files are highly active and generate a lot of activity. Although “back-burner” files generate less activity, they are still considered active. Consequently, the latter require considerably less time. Inactive files are ones that are still open, but nothing is being done on them. Inactive files do not require immediate attention, and therefore they are set aside for future action. A legal secretary maintains that, generally, lawyers and legal secretaries examine their files “two or three times a year” checking for inactive files. When there has been no contact from clients regarding their files for approximately six months, secretaries send a letter to the client. The letter generally states, “If you don’t contact us by such-and-such a time – then we will have to close the file” and the client will have to come in and reapply.

#### **6.4.3.1 Does the Squeaky Wheel Get the Better Service?**

Less work may be generated on a file due to a combination of the lawyer's high caseload and clients who choose not to contact their lawyers regarding the status of their files. Lawyer L contends that legal aid is "really client-driven." Similarly, Lawyer M states, "I think my practice has become 'Who is making a fuss right now?' and 'What has time pressures on it right now?'" Furthermore, he maintains,

I have a chunk of files in my cabinet that are important and things that need doing, but I haven't got to them in a long time. The clients aren't making a fuss and it isn't a situation which is about to blow-up. When I get time I will start dealing with those.

Lawyer D maintains that as the "crisis" continues, other files "become more and more distant. Then it becomes a blur." He refers to these files as "guilt files" or "widow files" whereby the "client doesn't bother you because they think they might be a nuisance." Lawyer A maintains, "If the client has not said anything, then I am not going to say anything because frankly I don't have the time." Nonetheless, he maintains that occasionally "there are times I say, 'I really ought to do something with that file,' but again I don't have the time." In contrast, other files exist whereby the client calls frequently. According to Lawyer K, "If you have a complaining client you'll shut them up—do something to get them off your back" (see also 5.2). While the previous lawyer contends, "The squeaky wheel does indeed get the grease," Lawyer A advocates an alternate method of dealing with "complaining" clients. He maintains that the "more insistent" clients do not necessarily get work done on their file

“quicker” than other clients. Furthermore, he notifies clients, when he receives their file, whether he will be allotting “case priority or average priority” to their file.

Five lawyers contend that if they have not heard from the client “they probably don’t have a problem and they may have resolved the issue they came to legal aid about.” Furthermore, with regard to some family files Lawyer E maintains that “it is better that there be no activity on” a file because both “parties will have a chance to cool their jets and let some pressure off – that factor is important.” There are some files where a trial date is set for six months down the road. The lawyer may begin preparations approximately three weeks before trial. Lawyer D maintains that although lawyers postpone files during rush periods, they make a conscious effort to activate these files at some point. This type of file activation system is identified as a “tickler system” whereby “no file would stay dormant for longer than say three weeks before you would get your hands on them.”

According to Lawyer K, lawyers are “required, from time-to-time, to give a fairly good estimate on what their time for a particular case is going to be.” For instance, when payment agreements are being set up (see ch 4.3) lawyers are required to provide an estimate of the cost for the forthcoming case. However, five lawyers maintain that estimates provided ahead of time can be unreliable. According to Lawyer E, difficulty arises because lawyers do not know “when things are going to explode and things that you think are going to take a while resolve themselves very quickly.” Nonetheless, a degree of predictability exists in the sense that lawyers are knowledgeable about their profession and the inner workings of the legal aid organization. For example, a lawyer accepting a murder file will anticipate that such

a trial will consist of “50, 60 or 70 witnesses.” A lawyer accepting a murder file can anticipate that it will require much time. Accordingly, they recognize that this type of file has the capacity to encroach on work tasks required for other files.

#### **6.4.4 The Secretaries’ Prioritization of Work Tasks**

The legal secretary’s work environment is significantly affected by their lawyer’s work tasks. Each lawyer has an individual practice. Therefore, the secretary’s prioritization of work tasks must be aligned with the lawyer’s workload. According to a secretary, the work tasks required by the lawyer for the current working day such as drafting documents receive top priority. The next priorities are “the things I have to talk to the lawyer about and I have a question or two, then my close-outs,” which “I usually put aside.” Finally, the “stuff that I have reviewed and I know they are a lower priority.” A secretary affirms that within the legal aid office, “there is always a bustle because someone is always in a crisis.” Consequently, there is “always a buzz in the office.” For example, “If someone is running . . . if they come in and they have a time date on anything, like appeals, there would have to be a rush-on to get the appeal done in time.” Problems have the potential to arise because each secretary works for more than one lawyer and emergency situations require immediate action. A secretary provides the following example,

Three of them could be applications to Unified Family Court to get children back; and three of them are standing there with their files out to you saying, ‘I need it right away, I need it right away and I need it right away.’

Secretaries handle these situations by aligning their priorities relative to the lawyers. A

secretary states, “If someone has something that has to be done for 2:00 and someone has something that is due for 5:00,” the task due for two o’clock receives the higher level of priority. Notably, the priority of work tasks can change. For example, a task such as copying cases for court, previously due the following week, may suddenly become part of a deadline if the lawyer puts “a stack of books on the secretary’s desk for a factum” required the following day. According to a secretary, “Right now everyone is to the max. As long as we are given time to do it and everything that is put on your desk is not due within an hour. That is a good thing.”

#### **6.5 Private and Legal Aid Secretaries: Increased Work Role Autonomy**

The legal aid lawyer’s high caseload level and their time constraints have increased the job autonomy of legal aid secretaries, while expanding their level of responsibility. According to a secretary, lawyers “depend on us for a lot when they aren’t around.” Another secretary maintains, “You have no other choice, but to be more involved because the caseloads are huge.” In contrast to secretaries working in the private sector, one legal aid secretary explains they are “given a lot more responsibility – as much as they can handle.” She maintains that private secretaries are instructed not “to negotiate.” Therefore, she maintains that private secretaries refuse to speak with her because “they don’t have the power.” In contrast, the legal aid secretary can speak directly to the private lawyer. They have the power to ascertain the lawyer’s “view on a matter,” which relates to a client “looking to negotiate da, dot ta da.” She maintains, “I feel bad for the private secretaries because I know they have the

intelligence. I would not be able to leave here and go to the private bar and keep my mouth shut after working here and having such freedom.”

#### **6.6 The Time Management System: Saving Time or Wasting Time**

According to Hunt and Magenau (1984:120-1), information processing has become a central part of the decision making process. However, Failla and Bagnara (1992:669) state, “the use of information technologies is mainly directed at increasing organizational efficiency, and only marginally involves the work activity governed by individual decision-making based on the active use of knowledge.” The Newfoundland Legal Aid Organization has installed a computer system known as the Legal Aid Management Information System (LAMIS). Computers, a part of the organizational environment of legal aid, further the accumulation of detailed information, which is essential for making decisions that determine client eligibility for legal aid funding (see 4.3.1, *Gathering and Verifying Information*). According to a senior official with Legal Aid, computer generated statistical information is required “to compile claims to the federal government,” thereby increasing the efficiency of their organizational information. The time management system was primarily adopted to record the lawyer’s active time on a file, thereby justifying the lawyer’s actions and expenditure of time on each file. This detailed information legitimizes organizational action funded by public expenditures.

My findings indicate that organizational members, across all job categories, perceive the computer as creating more work tasks and decreasing the speed at which tasks are

conducted. The time-consuming demands of the new computer program have resulted in many organizational members becoming dissatisfied with the use of computers within the context of legal aid. In the past, prior to the introduction of computers, lawyers recorded their time for each file on a time sheet. Time sheets were initiated to account for the amount of time that a lawyer spent on individual work tasks and the file, in general. Nonetheless, Lawyer F maintains that some lawyers would account for their time by simply “taking it off the top of their head” when the case was completed or account for time “only at the end of the year.” With the introduction of the computer system, lawyers were required to account for their actions as time evolved on each file. Furthermore, the requirement for detailed information increased when organizational members were required to account for their time on the computer.

Lawyer J maintains that lawyers, in general, are “getting kind of frustrated” with the computer. According to Lawyer G, the increased pressure to enter time on the computer is “like Big Brother is watching you.” Furthermore, he states, “You are a lawyer, not a person recording time. I haven’t got time to punch my time in.” Consequently, he delegates this work task to his secretary. Lawyer N maintains, “We are supposed to record every minute of every day and to record every minute of every day takes a minute. So, you are spending half of your time recording what you are doing.” Lawyer C dichotomizes between the administrative side of working as a lawyer (time management) and the actual hands-on representation of the client.

If I was putting all the time into LAMIS as I should be, I think that it would take away time from the clients. I am sticking with my time slips and keeping handwritten notes. The tracking of all the information in LAMIS is not the main part of my job. The main part is providing the representation to the client.

Four secretaries contend that computers are not good for day-to-day operations within the organization. However, the introduction of the computer system is beneficial for long-term administrative purposes. A secretary maintains,

If information was required six months down the line I could go in and say, 'Yes, that went on the 21<sup>st</sup> and I personally brought it up to the sheriff's office' because that is on the system. Whereas before I would have to think, 'When did I bring it up?'

Accordingly, a secretary maintains that her work "has become more efficient in terms of backing up" information. Instead of the secretaries going to "one area, like when your files are in storage, you don't have to go to those files. It will keep your old files and new files." Therefore, stored information, necessary to determine whether conflicts exist, can be retrieved more easily. Similarly, the intake workers contend that the storage of the client's financial information on the computer facilitates retrieval after the fact. For example, an intake worker contends that if someone gives her a name and there are good notes she will be able to pull it up and tell what has been going on in the file. The receptionists maintain that computers allow them to make appointments at a faster rate, relative to the manual organization of appointments. Using computers, receptionists simply enter all the necessary

information, make a note on the computer and save it. However, some days the receptionist is working on the computer and suddenly it will shut down for two hours. A receptionist states,

Then you have to call all these people back and make appointments. It is really slow because you are writing everything down manually – that makes extra work.

Currently, receptionists do not have access to files stored on the computer. If someone calls looking for information on the status of their file, the receptionist has to call them back. Receptionists maintain that if they had access to client files on the computer system, it would save some time.

#### **6.6.1 Before and After Computers**

Five legal secretaries described their work as dichotomized between before the use of computers and after the installation of this system. According to a legal secretary, “We were told we should be saving time because we are on the computers, but we are not saving time.” Another secretary maintains that, prior to the installation of the computer system “you typed a letter, you sent it out and put a copy in their file.” In contrast, she states,

Now, if you type a letter, you send it out and put a copy in their file. Then you go into the LAMIS system, explain the main gist of the letter again and save it. You are doing it twice in order to print it and get it out.

Both workers and professionals, across all job categories, contend that the number of screens required to enter information on the computer is a waste of time. According to an intake worker,

We were initially promised with the installation of the computer system that work would take shorter periods of time. I have to open twenty different screens during the course of an interview. I could do an interview far faster by hand using a hand-written application form than I can on the computer.

A secretary suggests that "if you were to look over our shoulders and see the steps in opening a file, you would see that it is sort of a waste of time." For instance, the computer "asks you the crown, the judge's name, was there a plea given and was it a St. John's matter or was it Stephenville." The problem arises when the secretary is required to enter identical information repeatedly because the computer does not retain the previously entered information. Currently, closing out a file is accomplished electronically on the LAMIS system. A secretary states, "If it is only one, two or three it is not so bad, but when you have seventeen" types of information to enter, "it is more labour intensive . . . and time consuming." From an organizational perspective, the secretary states that "close-outs" are considered "very important because they give us our stats." However, from an intake worker's individual perspective, "When you have a lot of current work that has to be done today and you have a close-out that you can kind of put off until tomorrow – you sometimes put that off until tomorrow."

Currently, legal secretaries are required to input the lawyer's time when they act as duty counsel. Prior to the installation of the computer system, the secretaries were not required to perform this task. Instead, this task was performed by an administrative worker located in the accounting department. From an organizational standpoint, this work task

“should be taking only five minutes perform,” but the secretary maintains that this expectation is feasible only “when you get really good at it and all the information is there.” In reality, a secretary maintains that they are required to stop their work in order to ask their lawyers whether they “remember” particulars “from that day back – maybe that was two months ago.” The software does not allow the secretaries to omit certain fields. According to Lawyer C, when the secretary enters the information the “machine is spitting it back at her or it insists on knowing which subsection it was.”

The criminal code has about five different offence sections, ranging from not showing up for court to failing to appear for identification. Lawyers who are in a hurry tend to write section 145. If his secretary doesn't know what subsection, then it is going to be a problem.

This work task was not performed by secretaries prior to the installation of computers. The fact that necessary information is often lacking has compounded the secretaries' dissatisfaction with computers. Nonetheless, a secretary maintains that discussions regarding the design of another duty counsel form are ongoing because the lawyers are not giving the secretaries the necessary information.

## **6.7 Conclusion**

Throughout this chapter, the role of time with regard to the delivery of legal aid services was explored. Specifically, computer technology and factors such as the lawyers' caseloads and organizational funding and organizational goals were discussed in relation to the aspect of time. This chapter began with an exploration of the unpredictability of scheduling clients.

Receptionists contend that increasing the efficiency of their scheduling practices was difficult. Some clients who fail to attend previously scheduled appointments neglect to cancel these appointments in advance. Consequently, receptionists are unable to fit another client into this time slot unless someone just walks in off the street looking for an appointment. The legal secretaries affirm that their schedules are often difficult to maintain because the lawyers' work schedules are often unpredictable.

In order to increase the efficiency of the file intake system, there have been many changes to the distribution of files among legal aid lawyers. The efficiency of this system has been inhibited by a reduction of lawyers and a high volume of incoming files. Moreover, assessing the number of files handled by each lawyer is difficult. Files range in terms of their complexity, and therefore the amount of time required to complete them. Furthermore, there are external influences from other organizations and departments that have the capacity to slow-down the process of completing files, and therefore the delivery of services to legal aid clients. Due to voluminous caseloads, lawyers are compelled to carefully prioritize their work tasks. Legal secretaries also prioritize their work tasks because they work very closely with the lawyers. Due to the constraints of time, an unintended consequence has occurred whereby the job autonomy and responsibility of legal secretaries has increased relative to their counterparts within the private sector.

Generally, time can be viewed as either a scarce or plentiful resource within an organizational context. Given the large caseloads and the decreased number of lawyers over the years, time is considered a scarce commodity within the legal aid organization. From the

perspective of organizational members, conducting work tasks that are viewed as non-beneficial to one's immediate work environment is perceived as usurping time. Organizational members, across all work categories, maintain the new computer system causes them to waste valuable work time. From an organizational and individual perspective, increasing the efficiency of work tasks such as scheduling incoming clients and distributing files among lawyers would help unblock work time. Accordingly, legal aid services could be provided to a greater number of clients.

## **Chapter 7 Conclusion**

### **7.1 Summary of Findings**

According to Wharton (1993:207), “the delivery and consumption of services is central to contemporary societal developments.” In the preceding chapters, an exploratory study of the delivery of legal aid services to clients of the Newfoundland Legal Aid Organization was reported. Anthony Giddens’ theoretical framework, structuration theory, was used to explore the organizational structure of legal aid and the agency of professional and non-professional organizational members. Structuration theory maintains that both structure and agency are implicated in the performances of social actors (see 1.3). For this research project, the primary goal was an exploration of the action surrounding the delivery of legal aid services to organizational clientele. Actions relating to the decision making process, time management and the management of client emotions were examined.

Following a review of literature and discussion of the methodology, data analysis began with the decision making process. Decisions ranged from the receptionists who made appointments for clients to meet with intake workers to lawyers determining whether applicants qualified for legal aid based on legal merits. Employing the concept of decision making to understand the delivery of legal aid services highlighted the lack of uniformity within this process. While organizational rules govern and structure the decision making process in an effort to dispense uniform delivery of services, research findings indicate that organizational members across various occupational categories have the capacity to influence the determination of client eligibility for legal aid funding. This discretionary capability has the potential to generate positive and negative consequences for organizational clientele.

Although a lack of uniformity with regard to service delivery could suggest unfairness, the acceptance of some cases requires the consideration of extenuating factors. In spite of the importance of decision making, Brunsson (1982:32) maintains that “making a decision is only a step towards action . . . [p]ractitioners get things done, act and induce others to act.”

According to Lipsky (1980:82), street-level bureaucrats “operate under work conditions characterized by inadequate resources, few controls, indeterminate objectives, and discouraging circumstances.” In chapter five, emotional labour, as experienced by a variety of organizational members, was discussed as a constituent part of their work roles. The element of time, with regard to the performance of work tasks, was explored in chapter six. These latter concepts (emotional labour and the element of time) were employed to facilitate an understanding of the contextual environment within which the decision making process occurs and to account for the overall delivery of legal aid services to organizational clientele. Some lawyers maintain there is a need to provide emotional support to clients. However, in order to represent clients properly they must remain objective. Many lawyers perceive their work role as similar to social work. Only a few of the lawyers interviewed for this study, perceive a requirement to provide emotional labour as an acceptable part of their work role.

According to James (1989:26), “emotional labour does not exist in isolation from the conditions under which it is carried out, rather the circumstances under which it takes place influence the content and form of emotional labour.” A similar statement could be expressed for the element of time. Due to the high volume of caseloads and general work tasks that organizational members are required to perform as part of their work roles, time is perceived

to be a valuable and limited commodity. The unpredictability of conducting work tasks, brought about by emotional labour, requires organizational members to re-prioritize work tasks. For example, due to the potential of having to handle an emotional client, it is difficult for a lawyer to predict the amount of time that should be allocated for a client meeting. Other organizational members such as secretaries are also affected by emotional labour. For instance, while performing general administrative tasks these workers are required to handle emotionally charged face-to-face or telephone conversations. Ultimately, time spent attending to the emotional needs of clients decreases the amount of time that could be allotted for other more practical and potentially essential legal matters.

Analysis of the findings derived from an exploration of the two concepts, emotional labour and the constraints of time, indicates that these may have a negative influence on the work roles of organizational members. Several recommendations to improve the organizational environment of legal aid will be presented below (see 7.3).

## **7.2 Potential Directions for Future Research Studies**

As previously mentioned (2.1), no academic studies have been conducted on the Newfoundland Legal Aid System. Consequently, research in this area would benefit from a wide range of studies. To begin, future studies of legal aid should focus on the delivery of services from the perspective of clients. Such a study could explore the experiences of clients as they move through the bureaucratic organization of legal aid. Such a study would complement this research. Another worthwhile study could focus on the potential financial and other consequences incurred by individuals who are considered ineligible for legal aid

funding, particularly the working poor. An exploratory study of the lawyer-client relationship, within the context of legal aid, would provide valuable insight into the perspective of power held by both clients of legal aid and the professionals who represent them (see 2.2.1, Bogoch, 1994). Data for this type of study could be gathered via interviews with lawyers and clients of legal aid. The current thesis has provided fundamental information regarding the delivery of legal aid services within the Newfoundland Legal Aid System. Notwithstanding, comparative studies of legal aid service delivery within rural area offices, spread across the province of Newfoundland and Labrador, should be considered as future research projects.<sup>68</sup>

The National Council of Welfare (1995) recommends that paralegals should be used to deliver services to legal aid clients. According to the National Council of Welfare (1995:63) lawyers' associations "want to restrict the role of paralegals to the performance of subordinate tasks under direct lawyer supervision." In an interview with a senior official with Legal Aid, regarding the cost-effectiveness of paralegals, he affirmed that "it hasn't been a big area in Newfoundland however, it is something that needs to be looked at and considered." Primarily, he questions whether overall cost efficiency would be served if the secretarial support staff were increased or whether it would be more efficient to retain some paralegals. Notwithstanding, he maintains that paralegals could aid the lawyer in certain areas.

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<sup>68</sup> For a potential service delivery variation, see 4.5.

The National Council of Welfare (1995:63) maintains that “it seems ludicrous for legal aid plans to insist on using only lawyers to perform” work tasks for legal aid clients when paying customers are generally satisfied with the services of paralegals. They suggest that because lawyers are more expensive than paralegals and legal aid funds are limited, many services cannot be conducted for clients. Therefore, they suggest that the non-use of paralegals is “obviously not in the interests of the poor” (National Council of Welfare, 1995:63). Accordingly, a quantitative study could be conducted on the costs and benefits of utilizing paralegals relative to increasing the number of support staff. It would facilitate feedback to know if paralegals have sufficient knowledge and legal capability to execute varied work activities without the supervision of lawyers. If yes, would the additional cost required to hire a paralegal prove effective in terms of time and funding? Ultimately, if the paralegals are unable to execute many work tasks beyond those currently performed by support workers, the employment of these workers would not be cost-effective.

As a cost saving measure, the National Council of Welfare (1995) recommended that mediation services should be initiated within legal aid organizations. Mediation services, initiated within the Newfoundland Legal Aid System, were found to be effective (see 4.5). Nonetheless, mediation services should be examined further, particularly regarding client satisfaction and overall cost effectiveness. Interviews with members of the Legal Aid Commission, regarding the allocation of organizational resources, could have facilitated a better understanding of legal aid services within the Newfoundland Legal Aid organization. Knowing the basis on which resources are allocated to some areas of service delivery as

opposed to others has the potential to advance knowledge of service delivery within legal aid. Therefore, in order to provide a holistic perspective, I recommend that future studies of legal aid in Newfoundland incorporate interviews with members of the Legal Aid Commission.

Several directions for future research studies have become evident as a result of this study. Particular attention should be given to furthering the exploration of work experiences and the effects of emotional labour upon organizational members of legal aid. Leidner (1999:82) maintains that the study of emotional labour is important because service sector jobs are increasing and emotional labour is becoming more widespread within the context of work. Leidner further maintains that the impact of emotional labour “on workers, the public, and the culture at large is an important project for social scientists” (ibid). Notably, emotional labour was an unanticipated, emergent theme of my research (see 3.4). Although I maintain that the collection of data for this study was not misguided or skewed in any way, similar to Fineman (1993) I propose that there is more focus on the negative aspects of emotional labour almost to the exclusion of anything positive. Therefore, I propose that a research study with questionnaires specifically designed to account for and measure the presence of emotional labour be conducted. This type of study would potentially uncover previously untapped information surrounding legal aid and emotional labour. My findings for the current research project indicate that time constraints have distinct positive benefits for some workers (see 6.5). To further substantiate this finding, a comparative analysis of legal secretaries within the private and legal aid sector could be conducted utilizing concepts related to work role autonomy and the routinization of work tasks.

This research indicates that a majority of lawyers resent the need to manage their clients' emotional baggage in addition to handling the legal facts of each case. Presupposing that individuals become lawyers because they want "to avoid the helping professions,"<sup>69</sup> research questions could consist of the following: What factors motivate some students to desire employment in legal aid organizations?; Why do some students, originally motivated to work in the area of legal aid, reject this area of work following their completion of law school?; and Are law students encountering a socialization process that promotes an accumulation of wealth through occupational income? Upon securing employment in the legal aid sector, do newly employed lawyers continue to work in this area? Why or Why not? Capturing the students' perceptions of the lawyer's work role prior to the beginning of law school and upon completion would facilitate an understanding of the factors that motivate people to work in the area of legal aid as opposed to the private sector.

### **7.3 Implications and Policy Recommendations**

Hunter et al., (1995:50) maintain that "formal equalities may function for the benefit of all, but background social inequalities mean that they do not function for the equal benefit of all." For the most part, legal aid clientele are disenfranchised (for exceptions, see 4.3.2). Consequently, those who seek the services of legal aid do not possess the same life chances as those who enjoy the greater power that accompanies ownership of financial resources.

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<sup>69</sup> This proposal was prompted by a lawyer who delineated this reason for becoming a lawyer.

Accordingly, I argue that those individuals who seek legal aid services require greater measures of emotional support because they are disenfranchised.<sup>70</sup>

“The same organizational characteristics that limit resources also maximize discretion at the level of the street-level bureaucratic employee” (Clark-Daniels and Daniels, 1995:461). The potential for increased power on the part of organizational members increases the need to explore ways of improving the decision making process that determines legal aid funding. According to Weiss (1982:82), “training to improve decision quality may miss the mark unless it is aimed at raising performance on all the skills necessary for the decision.” Furthermore, the author maintains that not only should decision-makers “master a repertoire of decision-making skills, but also they must know how to use the skills in combinations appropriate to the decision at hand” (ibid). Skills such as time management and the capacity to cope with emotional labour are also necessary in the delivery of legal aid services.

In order to make emotional labour more tolerable for some workers, organizational shields and status shields were suggested (see 4.6). These recommendations are problematic in that the application of organizational shields begs the question of the emotional labour of the workers who act as shields. What about care for the caregiver? Support workers utilized as human shields, to deflect the emotions of clients from professionals working within the organization, are inadequate for both the individual worker and for the organization as a

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<sup>70</sup> This is not to say that organizational members of legal aid necessarily experience greater amounts of emotional labour relative to those who work in the private sector. This is a further area for more research.

whole. If professionals warrant shielding from the handling of emotional labour, why should support workers be given this work task when they are not provided with training to handle these problems? While discussing ways to cope with client emotions, an intake worker stated,

It is important to have service training to remind you of what perspective you should be coming from. This is called in-service training. We don't have much. We have the opportunity, occasionally, when it is offered through the provincial government. The legal aid workers are encouraged to participate, particularly for the intake people who are dealing with this barrage on a daily basis. Learning skills to deal with the clients' emotions is important.

Nicky James (1989:26) argues that "emotional labour requires learned skills in the same way that physical labour does." Organizational members require skills to facilitate their ability to cope with this type of labour as opposed to simply ignoring it.

The Newfoundland Legal Aid organization, in particular, and other legal aid organizations, in general, could examine the potential benefits and/or disadvantages of hiring a social worker to work with organizational members requiring emotional support. A senior official with Legal Aid maintains that the first intake position was created for a social worker because "almost every person that came to legal aid – had social needs. But, the problem then became could you afford to provide legal services and social services to individuals applying for legal aid."

Prior to the employment of support workers and legal aid attorneys, these individuals should be informed that emotional labour is an integral part of the delivery of legal aid

services. A selection process could be initiated whereby the attributes of potential legal aid lawyers could be assessed relative to their willingness to perform this type of labour in addition to their principal task of legal representation. Some lawyers maintain that these tasks are inextricably joined (see 5.3). Furthermore, a selection process could be conducted whereby individuals would be hired based on their willingness to help others. Psychological testing could aid this process (see 2.4.1).

According to Whipp (1994:99), time management has been identified as a “common skill” within leading companies and industries. Similar to emotional labour, the management of time, as a skill, requires training for both professionals and non-professional workers. Yoels and Clair’s (1994) study of medical interns found that these professionals learn to manage time through work socialization. Similar to the current study, time constraints were found to negatively impact the services rendered to patients. New computer technology was introduced to the Newfoundland Legal Aid system. Given the aforementioned value attached to the element of time, the performance of additional work tasks due to the installation of the computer system is viewed negatively by the majority of organizational members. My findings indicate that, while the computer database is effective with regard to the long-term storage of information, the installation of the computer system (LAMIS) was deemed to be wasting valuable work time. While all features cannot be considered when initiating new technology, due to the multiplicity of variables involved, further study could examine what changes, if any, could be made to the current computer program to decrease the time required to perform computer generated work tasks within the day-to-day operation of the

organization. Organizational members required to utilize the computer system (LAMIS) should be consulted for their input regarding elements that could improve the current computer program.

### **Final Comments**

Within this thesis, an exploratory study of the Newfoundland Legal Aid System was conducted to further an understanding of the legal aid organization and the subsequent delivery of legal aid services to clients. Although organizations such as legal aid may be expected to deliver services in a uniform manner, the reality exists that the situation for each legal aid client is not identical. As such, discretionary action, on the part of organizational members, is an intricate and necessary part of the services delivered to legal aid clients. It is generally the disenfranchised within our society that have insufficient finances to afford legal representation. If not for legal aid, these individuals would have little or no recourse within the law. Accordingly, work roles that allocate discretionary power to workers within organizations such as legal aid need to be monitored to ensure equality of service delivery. Although a concern for the quality of services rendered to clients of legal aid emerged as a chief objective within this study and organizational members of legal aid provide well intentioned and seemingly adequate services, one must question the quality of services rendered to legal aid clients. My findings indicate that the delivery of services to clients is negatively influenced by the constraints of time and emotional labour.

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## Appendix I

**Legal Aid Offices in Newfoundland and Labrador**

Happy Valley •

Corner Brook • Grand Falls • Gander  
Stephenville • Clarenville • Carbonear  
Marystown • St. John's

## Appendix II Interview Questionnaires

### Questionnaire / Intake Worker

Interview: \_\_\_\_\_

Date: \_\_\_ 1999

Position: Intake Worker (Financial Assessment Officer)

**I would like to begin this interview by asking you some information regarding your work experience.**

1. What type of work do you do?
2. How long have you been working for legal aid?

**Now I would like to ask you about the process of applying for legal aid as you understand it.**

3. Who is the first person the client comes into contact with when they apply for legal aid?
  - a. If receptionists are not specified — Do all receptionists take turns “greeting” legal aid applicants in the “reception area” and on the phone?
4. What are the basic financial eligibility requirements for legal aid funding?
  - a. Are there any others?
  - b. Are there any conditions under which clients are accepted who do not fit these eligibility requirements?
5. What are the most important questions asked of applicants to determine their eligibility for legal aid?
  - a. Are there additional questions that may be asked?
  - b. Are there any circumstances surrounding a clients case that may require special questions specific to that case?
    - i. Can you give me an example?
6. Are financial assessments considered to be the first stage when applying for legal aid?
  - a. If No — What is the first stage?
  - b. If Yes — What are the other stages?
7. Who makes the final decision that determines the financial eligibility of potential clients?
  - a. What do these individuals do regarding the financial eligibility of clients?

**Now I would like to talk to you about your work role as an intake worker.**

8. What are your duties and responsibilities as an intake worker, within legal aid as an organization?
9. Does your first encounter with a potential client occur during their financial assessment?
  - a. If No — What is involved in your first encounter with the client?

10. Are you [and the other intake worker] the only legal aid workers involved in the financial assessment of applicants?
    - a. If No — What other workers are involved in determining this assessment?
      - i. What function do these workers play in the financial assessment of clients?
  11. After a client receives funding — Is their financial status assessed again at any other point in time?
    - a. If Yes — Under what circumstances would a client's financial status be assessed more than once?
  12. Who receives the completed financial assessments?
  13. **Now I would like to discuss how your work connects or relates to co-workers and superiors?**

We'll start with the . . .

    - i. the receptionists
    - ii. the legal secretaries
    - iii. the staff lawyers
    - iv. senior officials for legal aid
    - v. Are there other workers that I did not mention?
  14. Does anyone directly or indirectly supervise your work? (to assess possible conflicts - stress)
    - a. If Yes — Who directly or indirectly supervises your work?
      - i. How involved are they in your work?
  15. Can you give me a brief example of a typical work-day as an intake worker? (organization of their work schedule)
  16. Now — Can you give me an example of a non-typical work-day you may have encountered recently?
  17. How would you describe your work as an intake worker?
    - a. Are there aspects of your work that you like or [dislike] more than other aspects?
      - i. Why do you like or [dislike] these aspects of your work?
  18. Do you think you help legal aid applicants?
    - a. To what extent do you help applicants?
- Now I would like to talk to you about the role of computer applications in the legal aid organization.**
19. Is the client's financial information stored on the computer?
    - a. Is client information more or [less] accessible on the computer than when it was stored manually?
      - i. Why is it more or [less] accessible on the computer?
    - b. Which legal aid workers have access to the client's financial information on the computer?

- i. What do these legal aid workers do with the client's financial information?
20. After the financial assessment is complete — Who is responsible for putting the client's financial information into the computer?
  - a. When is this information put into the computer?
    - i. What is this task referred to as?
21. What legal aid workers have access to the client's financial information?
  - a. Why would some legal aid workers not be allowed access to the client's information?
22. Are there any important ways that your work as an intake worker has been affected by the installation of the computer system?
  - a. During the installation of this system — Did work 'slow-down'?
    - i. If Yes — What are some ways that the computer system slowed-down the work of legal aid?
    - ii. If No — Why do you think legal aid work did not slow-down?
23. Did your duties or responsibilities as an intake worker change in any way when the computer system came "on line"?
  - a. If Yes — Can you give me some specific ways that your job has changed?
24. Has legal aid work become more or less efficient with the introduction of an online computer system?
  - a. Can you give me some specific examples of your work that have become more efficient or [less] efficient due the use of this computer system?
25. Do you think computers helped or [hindered] your job as an intake worker?
  - a. What are the most important ways that computers have helped or [hindered] your job as an intake worker?
  - b. Are there other ways?

**Now I would like to ask you about the goals, rules and resources of the legal aid organization.**

26. Can you give me an estimate of the number of clients that you may see in a typical week?
  - a. Are there times during the year that the number of clients increase?
    - i. When does this increase occur?
  - b. Are there times during the year that the number of clients decrease?
    - i. When does this decrease occur?
27. Do you receive any preliminary information regarding an applicant's case before you assess them?
  - a. If Yes — What is included in this information?
    - i. Who gathers this information?
28. Are clients told they have met the financial requirements before they see the legal intake lawyer?

29. Do you feel any pressure from those involved in the determination of client eligibility?  
We'll start with . . .
- clients?
  - co-workers?
  - superiors?
  - influences outside the organization?
  - Are there others that I did not mention that may influence your work?  
(worker expectations)
30. Are there limitations on your time as an intake worker?
- If Yes — How do these limitations affect your interaction with clients?
31. Are clients permitted to tell their individual “stories” surrounding their need for legal aid?
- If Yes — Can their “stories” influence their eligibility for legal aid?
    - If Yes — How do their stories influence their eligibility for legal aid?
32. If there were more staff members do you think that more clients would qualify for legal aid?
33. Are there written rules or regulations that determine the financial assessment of applicants?
- If Yes — What are the most important of these rules?
  - Are there any others?
  - Do you have any individual discretion in applying these rules?
34. Are there occasions that allow the intake worker to work outside these “rules”?
- If Yes — Under what circumstances could an assessment officer work outside these rules?
  - Can you give me an example?
35. Are there any informal rules that are not written-down, but are generally accepted and used when assessing applicants?
- If Yes — What are the most important rules?
  - Are there others?
36. Are there some applicants that need legal aid, but don't qualify for it based on written rules or regulations?
- Can you give me an example?
37. Other than not meeting the financial eligibility requirements and the legal technical rules surrounding a client's case — Are there any other reasons that an applicant may not receive legal aid funding?
38. What are the main objectives or goals of this organization?
- Are there any other goals or objectives of this organization?
    - If the interviewee does not mention clients specifically — What are the main objectives with respect to prospective clients?

39. Do you think legal aid applicants understand the goals and objectives of this organization when they apply for legal aid?
  - a. If No — How do you think their perception affects their expectations of legal aid funding?
40. How far do you think the needs of the clients are met by this organization?
  - a. If needs are not being met — What are the main causes of their needs not being met?
    - i. Are there any other possible causes?
41. Do you think there is any other information that I should know, but did not ask about?

### Questionnaire / Receptionist

Interview: \_\_\_\_\_

Date: \_\_\_ 1999

Position: Receptionists (administrative staff)

#### Background Information

1. I would like to begin this interview by asking you how long have you been working for this organization?

**Now I would like to ask you about the process of applying for legal aid as you understand it.**

2. As a receptionist — Are you the first person the client comes into contact with when they apply for legal aid?
  - a. If Yes — Do all administrative staff (including the payroll department, records department and the statistics personnel) take turns “greeting” legal aid applicants in the “reception area” and on the phone?
  - b. If No — Who is the first person the client comes into contact with at legal aid?
3. Are there specific questions that you need to ask legal aid applicants when they apply for legal aid?
  - a. If Yes — What are the most important questions that you need to ask them?
    - i. Are there additional questions that may be asked?
4. What legal aid workers receive the information that you collect from applicants?
5. Do you have access to the financial and legal information that is collected from clients?
  - a. What types of client or applicant information do you have access to?
  - b. Is this information on the computer or stored manually?
6. Do you, as the receptionist, make appointments for legal aid applicants?
  - a. Are the receptionists the only ones who make the appointments?
7. Approximately — How many telephone calls do you get in a day from applicants that are looking for legal aid?

8. Approximately — How many “walk-ins” does this office receive within a week?
  - a. Do all “walk-ins” get appointments with intake workers the day they “walk-in”?
  - b. If No — Are these applicants scheduled for an appointment at a future date?
    - i. Under what circumstances would a “walk-in” be scheduled for another day?
9. Do you think there times during the year that the number of clients increase?
  - a. When does this increase occur?
  - b. Why do you think the number of clients increase during this time of year?
10. Do you think there are times during the year that the number of clients decrease?
  - a. When does this decrease occur?
11. Are there any differences [and/or similarities] between processing applicants that make their appointments over the phone and those applicants who are walk-ins?
  - a. What are the most important differences and/or similarities?
    - i. Are there others?
12. Do you have any responsibility with respect to mail-in applicants?
  - a. If Yes — What do you do regarding mail-in applicants?
13. Does the legal aid office keep client information on the financial and legal status of applicants that do not qualify for legal aid?
  - a. If Yes —
    - i. Who keeps them?
    - ii. How long are these files kept?
    - iii. What is the purpose of keeping these files [if the applicant is not eligible for legal aid]?
    - iv. Are these non-eligible files stored on the computer or held manually?
14. What types of information do you store on the computer?
  - a. Do any of these types of information help to determine an applicant’s eligibility for legal aid?
    - i. If Yes — What types of information do you collect that helps to determine the eligibility of an applicant for legal aid?
15. What types of files do you keep in the reception area that relate to the job of reception?
16. What types of files are kept in the records department that refer to the client’s eligibility for legal aid?
  - a. Are there other types?
17. Is there a particular organization or classification system that you use to organize case files?
  - a. If Yes — Can you explain this system to me?
    - i. Before the computer system was installed — How did you organize or classify case files?
18. Do you input information regarding applicants or clients of legal aid?

- a. What type of information is this?
- 19. Does a priority listing exist with regard to the scheduling of legal aid applicants?
  - a. If Yes — What criteria is used to determine whether an applicant an applicant is scheduled before another applicant ?
- 20. Are there any other duties or responsibilities that you have as a receptionist that we haven't covered?
- 21. **Now I would like to discuss how your work connects or relates to co-workers and superiors?** [What type of contact do you have with these individuals within the context of the legal aid organization?]
 

We'll start with the . . .

  - a. the intake workers
  - b. the staff lawyers
  - c. senior officials for legal aid
  - d. the legal secretaries
  - e. Are there other workers that I did not mention?
- 22. Do other legal aid workers directly or indirectly supervise your work? (to assess possible conflicts - stress)
  - a. If Yes — Who directly or indirectly supervises your work?
    - i. How involved are they in your day-to-day work?
- 23. Can you give me a brief example of a typical work-day as a receptionist? (organization of their work schedule)
- 24. Now — Can you give me an example of a non-typical work-day that you may have encountered recently?
- 25. How would you describe your work as a receptionist?
  - a. Are there aspects of your work that you like or [dislike] more than other aspects?
    - i. Why do you like or [dislike] these aspects of your work?
- 26. Do you think you help legal aid applicants?
  - a. To what extent do you help applicants?

**Now I would like to talk to you about the role of computer applications in the legal aid organization.**

- 27. Do you think information that is stored on the computer is more or [less] accessible compared to the storage of this information manually ?
- 28. Are there any important ways that your work as a receptionist has been affected by the installation of the computer system?
  - a. During the installation of this system — Did work 'slow-down'?
    - i. If Yes — What are some ways that the computer system slowed-down the work of legal aid?
    - ii. If No — Why do you think legal aid work did not slow-down?

29. Did your duties or responsibilities as a receptionist change in any way when the computer system was installed?
- a. If Yes — Can you give me some specific ways that your job has changed?
30. Has legal aid work become more or [less] efficient with the introduction of the present computer system?
- a. Can you give me some specific examples of your work that have become more efficient or [less] efficient due the use of this computer system?
31. Do you think computers have helped or [hindered] your job as a receptionist?
- a. What are the most important ways that computers have helped or [hindered] your job as a receptionist?
- b. Are there other ways?

**Now I would like to ask you about the goals, rules and resources of the legal aid organization.**

32. Are there limits or constraints on your time as a receptionist?
- a. If Yes — How did these limitations affect your interaction with clients?
33. Do you feel any pressure from those involved in the determination of client eligibility?
- We'll start with . . .
- a. clients?
- b. co-workers?
- c. superiors?
- d. influences outside the organization?
- e. Are there others that I did not mention that may influence your work? (worker expectations)
34. If there were more staff members do you think that more clients would qualify for legal aid?
35. Are there written rules or regulations that determine how you do your job as a receptionist?
- a. If Yes — What are the most important of these rules?
- i. If the receptionist does not mention rules surrounding appointments for applicants:  
— Are there written rules or regulations that determine who receives an appointment with an intake worker?
- ii. Are there any others?
- iii. Can you use your individual judgement when applying these rules?
- (1) Under what circumstances would you as the receptionist work outside these rules?
- (2) Can you give me an example?
36. Are there any informal rules that are not written-down, but are generally accepted and used when applicants apply for legal aid funding?
- a. If Yes — What are the most important rules?
- b. Are there others?

37. What do you think are the main goals or objectives of this organization?
  - a. Are there any other goals or objectives of this organization?
    - i. If the interviewee does not mention applicants and clients specifically — What are the main objectives with respect to applicants and clients?
38. Do you think legal aid applicants understand the goals and objectives of this organization when they come in to apply for legal aid?
  - a. If No — How do you think this lack of understanding affects how they see legal aid funding?
39. Do you think the clients' needs are satisfied by this legal aid organization?
  - a. If No — What are the main causes of their needs not being satisfied?
    - i. Are there any other possible causes?
40. Do you think there is any other information that I should know, but did not ask about?

### Questionnaire / Legal Secretary

Interview: \_\_\_\_\_  
 Position: Legal Secretaries

Date: \_\_\_ 1999

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#### Background Information

1. I would like to begin this interview by asking you how long have you been working for legal aid?

#### Now I would like to talk to you about the communication you have with legal aid clients as a legal secretary.

2. As a legal secretary — Do you have any responsibilities regarding individuals that apply for legal aid?
  - a. If Yes — What are your responsibilities regarding individuals that are apply for legal aid?
3. Regarding communication with the lawyer's clients —
  - a. Do you, as the legal secretary, meet with legal aid applicants or clients at any point in time?
    - i. If Yes — Would this meeting be a regular occurrence?
      - (1) Would you refer to yourself as an intermediary between the lawyer and the clients?
    - ii. If No — What type of communication do you have with the clients?
  - b. What are some of the more important questions that you would need to ask the client?
  - c. Are there any circumstances surrounding a clients case that may require additional questions that are specific to a case?
    - i. Can you give me an example?

**Now I would like to talk to you about your duties and responsibilities as a legal secretary.**

4. How would you describe your duties and responsibilities as a legal secretary, within legal aid as an organization?
5. What types of information do you maintain or generate for legal aid clients?
  - a. Do you store this information on the computer?
6. What types of information do you maintain or generate for the lawyer that you work for?
  - a. Do you store this information on the computer?
7. What legal aid workers are permitted access to the client information that you hold?
  - a. Which is their objective or function regarding this information?
8. Before the computer system was installed — How did you organize or classify files?
9. Do you make appointments for clients to meet with their assigned lawyers?
  - a. If Yes — Does a priority list exist with regard to making appointments with lawyers and their clients?
    - i. If Yes — What criteria is used to determine whether one client is scheduled prior to another clients?
    - ii. Are there any circumstances that would allow a client to meet with their lawyer without an appointment?
      - (1) If Yes — Under what circumstances would an applicant get a meeting without an appointment?
10. **Now I would like to discuss how your work connects or relates to co-workers and superiors?**  
 We'll start with the . . .
  - i. the receptionists
  - ii. the intake workers
  - iii. the staff lawyers
  - iv. senior officials for legal aid
  - v. Are there other workers that I did not mention?
11. Do other legal aid workers directly or indirectly supervise your work?  
 (to assess possible conflicts such as stress)
  - a. If Yes — Who directly or indirectly supervises your work?
    - i. How involved are they in your work?
12. Can you give me a brief example of a typical work-day as a legal secretary?  
 (organization of work schedule)
13. Now — Can you give me an example of a non-typical work-day that you may have encountered recently?
14. Are there aspects of your work that you like or dislike more than other aspects?
  - a. Why do you like or dislike these aspects of your work?

15. Do you think there is enough time to do the tasks that are required of you as a legal secretary?
  - a. If No — How does a lack of time affect the work you do as a legal secretary?
16. Do you feel any pressure from those involved in the determination of client eligibility?

We'll start with . . .

  - a. clients?
  - b. co-workers?
  - c. superiors?
  - d. influences outside the organization?
  - e. Are there others that I did not mention that may influence your work?  
( worker expectations)
17. If there were more staff members do you think that more clients would qualify for legal aid?
18. Do you think you help legal aid clients?
  - a. To what extent do you help clients?

**Now I would like to talk to you about the role of computer applications in the legal aid organization.**

19. Do you have access to the financial and legal information that is collected from clients?
  - a. What types of client or applicant information do you have access to ?
  - b. Is this information on the computer or stored manually?
20. Are there any important ways that your work, as a legal secretary, has been affected by the installation of the computer system?
  - a. During the installation of this system — Did work 'slow-down'?
    - i. If Yes — What are some ways that the computer system slowed-down the work of legal aid?
    - ii. If No — Why do you think legal aid work did not slow-down?
21. Did your duties or responsibilities as a legal secretary change in any way when the computer system was installed?
  - a. If Yes — Can you give me some specific ways that your job has changed?
22. Has your work as a legal secretary become more or [less] efficient with the installation of the computer system?
  - a. Can you give me some specific examples of your work that have become more efficient or [less] efficient due the use of this computer system?
23. Do you think computers helped or [hindered] your job as a legal secretary?
  - a. What are the most important ways that computers have helped or [hindered] your job as a legal secretary?
  - b. Are there other ways?

**Now I would like to ask you about the goals, rules and resources of the legal aid organization.**

24. Approximately — How many clients does a lawyer actively deal with during a week or a month?
  - a. Do you have client files that are inactive ?
    - i. What is the purpose of retaining these files?
25. Are there times during the year that the number of clients increase?
  - a. When does this increase occur?
  - b. Why do you think the number of clients increase during this time of year?
26. Are there times during the year that the number of clients decrease?
  - a. When does this decrease occur?
27. Are there written rules or regulations that determines who receives an appointment with the lawyer?
  - a. If Yes — What are the most important of these rules?
    - i. Are there any others?
  - b. Can you use your individual judgement when applying these rules?
    - i. Can you give me an example?
28. Are there any informal rules that are not written-down, but are generally accepted and used within the context of your job as a legal secretary?
  - a. If Yes — What are the most important rules?
  - b. Are there others?
29. What are the main objectives or goals of this organization?
  - a. Are there any other goals or objectives of this organization? If the interviewee does not mention clients specifically — What are the main objectives with respect to legal aid clients?
30. Do you think legal aid applicants understand the goals and objectives of this organization when they apply for legal aid?
  - a. If No — How do you think their lack of understanding affects their expectations of legal aid funding?
31. Do you think the needs of the clients are met by this organization?
  - a. If No — What are the main causes of their needs not being met?
    - i. Are there any other possible causes?
32. Do you think there is any other information that I should know, but did not ask about?

**Questionnaire / Staff Lawyer**

Interview: \_\_\_\_\_

Date: \_\_\_ 1999

Position: Staff Lawyer

**I would like to begin this interview by asking you some information regarding your work experience.**

1. How long have you been working for legal aid?
2. Have you worked at other law organizations prior to your employment with legal aid?
  - a. What position did you hold at this agency? (examine the experience of lawyers)
3. Why did you join the legal aid organization?

**Now I would like to talk to you about your work as a lawyer.**

4. How would you describe your duties and responsibilities as a staff lawyer, within legal aid as an organization?
5. What is your average caseload in a typical week?
  - a. For more difficult cases — How many times would you meet with a client?
  - b. What factors would make a case more difficult relative to others?
6. Are some cases given priority relative to other cases?
7. Now I would like to discuss how your work connects or relates to co-workers and superiors?

We'll start with the . . .

- a. the intake workers
- b. other staff lawyers
- c. the receptionists
- d. senior officials for legal aid
- e. Are there other workers that I did not mention?
8. Does anyone directly or indirectly supervise your work? (to assess possible conflicts)
  - a. If Yes — Who directly or indirectly supervises your work?
    - i. How involved are they in your day-to-day work?
9. Are there aspects of your work that you like more than other aspects?
  - a. Why do you like these aspects of your work?
10. Are there aspects of your work that you dislike more than other aspects?
  - a. Why do you dislike these aspects of your work?
11. What are the most important written rules or regulations that guide your work as a lawyer working for legal aid?
  - a. Are there occasions or circumstances that allow you to work outside these formal "rules" and use your own discretion or judgement?
12. Has computerization affected your work in any way?
  - a. If Yes — Please explain how computerization has affected your work?

**Now I would like to ask you about the process of applying for legal aid as you understand it.**

13. What are the basic legal eligibility requirements for legal aid funding?
  - a. Are there any others?
  - b. Are there any conditions under which clients are accepted who do not fit these eligibility requirements?
14. What are the most important questions asked to applicants to determine their legal eligibility for legal aid funding?
  - a. Are there additional questions that may be asked?
  - b. Are there any circumstances surrounding a clients case that may require special questions specific to that case?
    - i. Can you give me an example?
15. What types of legal problems qualify for legal aid?
  - a. What types of legal problems would not allow a person to qualify for legal aid?
16. When you take your turn as the legal intake lawyer are you the only legal aid lawyer involved in the legal assessment of applicants?
  - a. If No — What other legal aid workers are involved in determining this assessment?
    - i. What function do these workers have in the legal assessment of clients?
17. Are you the person who makes the final decision that determines the legal eligibility of potential clients?
  - a. If No — Who makes the final decision?
18. When it is your turn to be the legal intake lawyer do you “take-on” the cases that you assess or do you assign these cases to other lawyers?
  - a. If Yes — Do these lawyers re-assess the cases that are passed on to them?
19. Approximately, what percentage of applicant cases are rejected ?
  - a. Are there some types of cases that are rejected more often than others?
  - b. If Yes — If you feel able to discuss it can you give me an example of a case that you may have rejected recently?
    - i. Were reasons for the rejection given to the client?
      - (1) If Yes — What were they?
      - (2) If No — Why were the reasons for the rejection not given to the client?
20. Other than not meeting the financial and legal eligibility requirements — Are there any other reasons that an applicant may not receive legal aid funding?
21. Do you have a function or role regarding the appeal process for legal aid?
  - a. If Yes — What is your function regarding this process?

**Now I would like to ask you about the goals, rules and resources of the legal aid organization.**

22. What determines your caseload as a staff lawyer?
  - a. Can you as a staff lawyer determine the number of cases you accept?
23. What criteria is used to estimate the time allotted for each case?
24. Do you feel that you have enough time for each case?
25. Do you feel any influence from other people involved in the determination of client eligibility?

We'll start with . . .

  - a. clients?
  - b. co-workers?
  - c. superiors?
  - d. influences outside the organization?
  - e. Are there others that I did not mention, but that may influence your work? (worker expectations)
26. If there were more staff lawyers do you think that more clients would qualify for legal aid?
27. What are the main objectives or goals of this organization?
  - a. Are there any other goals or objectives of this organization?
    - i. If the interviewee does not mention clients specifically — What are the main objectives with respect to prospective clients?
28. Do you think legal aid applicants understand the goals and objectives of this organization when they apply for legal aid?
  - a. If No — Does the client's perception of legal aid affect their expectations for legal aid funding?
29. How far do you think the needs of the clients are met by this organization?
  - a. If needs are not being met — Why are their needs not being met?
    - i. Are there any other possible causes?
30. The revised Statutes of Newfoundland state that individuals charged with a (criminal) indictable offence will not be able to have their choice of lawyer — What was the main reason for this revision?
  - a. What are the implications for client's today?
  - b. Have there been any other legislative changes, court decisions or government policies that have affected the services rendered to legal aid clients?
    - i. Have any of these changes '*increased*' the legal eligibility of clients for legal aid?
    - ii. Have any of these changes '*decreased*' the legal eligibility of clients for legal aid?
31. Does the Newfoundland Legal Aid System allot funding for:
  - a. Class action suits (for specific clients)
  - b. Public interest advocacy (for client groups)

- c. Public legal education (and general dissemination of information surrounding legal aid)
    - i. If No — Do you think that legal aid should allot funding for these areas?
      - (1) Why do you think legal aid should (or should not) fund these areas?
32. Do you think there is any other information that I should know, but did not ask about?

**Questionnaire/ Senior Official with Legal Aid**

Interview : \_\_\_\_\_

Date: \_\_ 2000

Position: Senior Official with Legal Aid

**I would like to begin this interview with a very brief discussion of your work experience.**

1. How long have you been working for legal aid?
2. Why did you join the legal aid organization?

**Now I would like to talk to you about your duties and responsibilities within the Newfoundland Legal Aid System.**

3. What are your most important duties and responsibilities?
  - a. Are there others?
4. How often do you hold meetings with legal aid lawyers?
  - a. What business would be conducted at these meetings?
5. How often do you hold meetings with legal aid support staff?
  - a. What business would be conducted at these meetings?
6. How often do you meet with legal aid applicants or clients?
  - a. What is the purpose of these meetings?
7. Can you explain to me how the appeal process works?
  - a. [If not addressed in the above response] — What is your role regarding the appeal process?
8. What is the role of the Legal Aid Commission regarding the functioning of the legal aid organization?
  - a. [If not addressed in the above response] — Does the Legal Aid Commission determine the allocation of the budget for legal aid?
    - i. If No — Who determines the allocation of the budget for legal aid ?
9. How often would you meet with members of the Legal Aid Commission?
  - a. What is the general purpose of these meetings?

**Now I would like to ask you about financial and legal resources and how this affects clients.**

10. What are the main objectives or goals of this organization?
  - a. What implications, if any, does the availability of funding have regarding the attainment of these goals?
11. Can you tell me what factors have influenced the creation of the current financial guidelines?
12. Are the current financial guidelines the same as the financial guidelines established in the 1970s?
  - a. If No – Can you tell me what the changes were?
    - i. What factors determined these changes?
13. Do you think the current financial guidelines should be changed to allow a greater number of applicants access to legal aid funding?
  - a. If Yes — What changes do you think should be made?
    - i. Who has the authority to initiate these changes?
  - b. If No — Why do you think the present financial guidelines should not be changed?
14. Have you observed any changes to the legal guidelines that regulate an applicants eligibility for legal aid funding during the time you worked within the Newfoundland Legal Aid System ?
  - a. If Yes — What are the most important changes that have affected applicants?
    - i. Are there any others?
15. Do you think that legal aid services should be expanded to cover *a wider range of legal problems*?
  - a. If Yes — What are the most important legal problems that you think should be covered?
    - i. Are there any others?
  - b. If No — Why not?
16. What criteria are used to determine the allocation of legal aid funding within this organization?
  - a. What legal aid services are given the most priority?
  - b. What legal aid services are given the least priority?
17. What does the availability of legal aid services depend on?
18. What implications does the amount of funding have regarding the year-to-year operation of this organization?
19. What factors influence the number of support staff and lawyers employed with legal aid?
20. Since you began working with legal aid have you observed any other legislative changes, government policies or other factors that may have affected the eligibility of applicants for legal aid ?

If the following questions are not addressed in the preceding response:

- a. The revised Statutes of Newfoundland state that individuals charged with a (criminal) indictable offence will not be able to have their choice of lawyer — What was the main reason for this revision?
  - b. In recent years the mixed model of legal aid delivery in Newfoundland was changed to a staff oriented approach — What was the main reason for this change?
    - i. Are there any others?
21. Does the current number of lawyers on staff influence the decision to allocate legal aid funding to potential applicants?
    - a. If Yes — Can you explain how the number of lawyers on staff can influence this decision?
  22. Do you think a better quality of service would be provided to the client if the number of staff lawyers were increased?
    - a. If Yes — Can you explain how a better quality of service would be provided to the client?
  23. Have legal aid lawyers ever requested leave due to job-related stress?
    - a. If Yes — What do you think are the reasons leading to these requests?
      - i. What are the implications for the organization as a whole when staff lawyers are given stress leave?
      - ii. What are the implications for clients?
  24. Are there sufficient support staff to do the work required for the operation of this organization?
    - a. If No — In what way would this organization benefit if additional support staff were hired?
      - i. How would additional support staff affect the service provided to the client?
  25. Can you tell me why computers were introduced to the Newfoundland Legal Aid System?
    - a. Are there any other reasons?
  26. How has the introduction of computers affected the operation of legal aid as an organization?
    - a. Are there any other effects of computers?
  27. Has the introduction of computers affected the delivery of legal aid services provided to applicants and clients?
    - a. If Yes — How has the introduction of computers affected the provision of legal aid services?
  28. Has the introduction of computers affected your work in any way?
    - a. If Yes — Can you explain how the introduction of computers has affected your work?

29. Are there any other effects of computers that you can think of?
30. Do you think there is any other information that I should know, but did not ask about?

**Appendix III****AGREEMENT TO PARTICIPATE FORM**

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I am carrying out a study that focusses on the decision making process which determines client eligibility for legal aid services within the Newfoundland legal aid system. This study is part of my requirement for the degree of Master of Arts. This project is being supervised by the Department of Sociology at Memorial University. This research project will study the work roles and responsibilities of legal aid workers; the impact of legal aid resources, such as computer technology; and the rules, regulations and goals of the legal aid organization.

Your participation in this study is voluntary and you may end the interview at any time. You may refuse to answer any question. All information will be held in strict confidence and your name will not be released to any organization or appear in the written thesis report. With your permission the information you provide will be tape recorded and will not be accessible to third parties. Following the completion of data transcriptions, tapes will be returned upon request or erased. The information collected from this study will be used for the thesis report and academic talks. These assurances of privacy are intended to allow you to provide honest answers that are as complete as possible. If you have any questions that cannot be answered by me, you may contact my thesis supervisors Dr. Robert Hill (737-4592) and Dr. Peter Sinclair (737-4020) of the Department of Sociology.

I would like to thank you, in advance, for your assistance with this project.

Having read the above, I agree to take part in the study:

Participant: \_\_\_\_\_

Date: \_\_\_\_\_

Researcher: \_\_\_\_\_

Date: \_\_\_\_\_





