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Another means of promoting consumer choice, as well as giving clients a greater degree of control over the costs of legal services, is to require that an estimate of costs be given or that there should be an explanation of the basis upon which costs will be charged.

Providing information on costs is important to help clients evaluate all the options available to them in pursuing a claim, and in deciding on legal representation intending a matrimonial cause for example a client need to be imposed possibly in writing about: approximate costs to the client up to and including conciliation conveyance, the estimated future costs of preparation for trial and the estimated costs of first day of trial. However, providing such information can only be a small part of providing access to justice. Consumers of legal services are not used to shopping around to obtain the most reasonably prices advice, and the nature of legal advice is that often only after a quite extensive interview can the legal problems be identified, and a preliminary assessment of the options available be made.

It has also been recommended that surveys be conducted of the fees lawyers charge for different kinds of services, with appropriate adjustments being made for the different levels of seniority of the lawyer and the size of the firm, so that consumers are able to make a more informed assessment of the estimated charges in their own cases.

Where lawyers preparing matters for litigation charge according to court scales, the costs may be assumed to be competitive with other practitioners. However, this can depend upon the way in which the scale is constructed. If the scale allows many of the costs to be calculated by reference to the time spent on a matter, then the actual cost of the legal representation will depend to some extent upon the efficiency of the practitioner.

Contingency Fees

A further reform which has been implemented in some parts of the common wealth, which is under consideration elsewhere, is the use of contingency fees. Contingency fees are widely used in North America and Australia. Typically, the arrangement is used when the claim is for a monetary sum such as damages. The lawyer agrees not to charge if the client losses, (other than court fees in some cases) but is allowed to charge more than her or his normal rate if the client is successful. In North American, it is common for the contingency fee to be calculated as a percentage of the sum recovered. However, this is not the only form of contingency fee arrangement. Australia allows “conditional costs agreements” by which lawyers may charge a premium on their normal fees of up to 25 per cent, if the litigation succeeds. Contingency fees

may also be permitted, subject to certain requirements, and the practitioner is allowed to charge up to double the scale rates if the client succeeds.

Contingency fee agreements, while superficially attractive, have their disadvantages. First, as long as the cost-indemnity rule continues, by which the loser pays some or all of the winner's legal costs, contingency fee agreements only protect the litigant from having to bear her or his own costs. Failure in the litigation may still leave the client with the responsibility of paying a very large bill incurred by the defendants. Secondly, contingency fees usually only benefit plaintiffs, since they are premised on the basis that the legal fees will be paid out of the compensation recovered in the litigation. Therefore, they do nothing to reduce the problem of costs for the defendant. Thirdly, their success is dependent either on practitioners having high ethical standards, or on strict independent scrutiny, or both. Contingency fees ought to be used when the client has a significant risk of failure in the litigation as well as of success. There is an obvious danger that clients with clear entitlements to receive damages will be persuaded to accept a contingency fee arrangement even though the risks of losing the case are negligible.

It has been suggested that contingency fees be allowed of up to 100 per cent above the practitioner's normal charges, so that if the chances if success are only 50 per cent, the practitioner ought to be able to charge double her or his ordinary fees, while the percentage increase would be lower if the chances of success in the litigation were higher. It is recommended that such contingency fees should be permitted in all cases other than criminal law cases and family law cases, and that the reasons for offering a contingency fee, and for the percentage increase involved, should be recorded in writing. Such agreements could be set aside if the client complained subsequently. Furthermore, the client should be given the opportunity to seek independent legal advice.

While this may increase access to justice, it is questionable whether it provides sufficient safeguards against abuse. Obtaining independent legal advice will incur additional expense for the client, and for a client already worried about legal costs, this may be a deterrent. Furthermore, once an agreement is entered into, the safeguard against abuse lies in the client's ability and willingness to complain. This presupposes that he or she will have access higher than the lawyer had represented.

Legal Aid

A Legal Aid scheme exists to provide access to the legal system for many people who are unable to afford a lawyer, and to provide legal advice.

In conception, this was an ambitious scheme to achieve a significant increase in the access of the lass of people to legal services. The aim was for a network to shop front law centers which would not only act in individual cases but play a role in public interest advocacy. This scheme for improving access to justice was an integral part of government's vision for a more equitable social order. However, the vision was never realized. From its inception, the Legal Aim Scheme is heavily reliant on solicitors in private practice and thus the idea of salaried matter which lawyers on a "shop front" basis was not fulfilled. The scope of matter which legal aim convinced could handle was limited, and the salaried lawyers who were employed met with resistance from the private profession.

The federal government has responsibility for legal aid and maintains legal aim convene in the zones and state. Thus, the initiative to establish a major legal aid service at federal level has grown into an integrated service on a State by State basis in which people could seek assistance in matters both of Federal and State law at the same office, there has been a significant increase in the public funding of legal aid. The income from solicitors' trust accounts, contributions from assisted persons and costs received by the Commission.

In some parts of the commonwealth, the legal aid scheme enjoys additional sources of revenue from various models for legal aid schemes have tried around the world. In some jurisdictions, the legal aid scheme operates through the private profession. In others, there has been am emphasis on salaried full time legal aid lawyers. Australia combines the two approaches. In 1992-1993, the Legal Aid Commission paid 57.2 per cent of their budges to private practitioners, although the percentages varied from State to State. There are advantages in having salaried lawyers as the basis for a legal aid scheme. It provides an opportunity for lawyers to develop expertise in areas of law most likely to be of concern to indigent people (although private practitioners may choose to specialize in this way as well). Against this must be offset the problem of retention of marketable legal aid lawyers in the fact of higher salaries in the private sector.

Legal aid scheme have two major functions, that of providing advice, and assistance. Legal representation is subject to means tests and merit tests. It may be available only for certain categories of legal problems. Legally aided persons may be asked to make a contribution, and costs may be recovered out of the proceeds of a successful legal claim. The

merit test is a requirement that the applicant has a reasonable prospect of success in the case. Legal assistance and representation may also be provided for people supports charge with grievous crimes who appear in court and are without legal representation.

The priority in the granting of legal aid has traditionally been for defendants in criminal trials, in particular, in cases where a prison sentence may be imposed. This prioritization of criminal matters was reinforce by the decision of the Australia High Court in Dietrich v R (1992). The court held that if an indigent person who is facing trial on a serious criminal charge is unable to obtain legal representation through no fault of her or his own, then the trial should be adjourned or stayed until such representation is available. Mason CJ and McHugh J acknowledged that this decision would probably require a re-ordering of the priorities for legal aid unless further government funds were made available to the legal aid commissions.

Where listed 13 different circumstances in which the Family Court should order separate representation for the child or children in custody and access cases. The effect of this decision is that separate representatives will be appointed in a much lager number of cases than previously. Since separate representation for children is provided from legal aid funds, the decision in Re K, like the decision in Dietrich, is likely to affect the way in which legal aid is allocated between deserving claimants.

This is a healthy development which the legal aid council of Nigeria consider if it is not to be left behind. However, the priority given to defendants in criminal trials seems to have a discriminatory impact. Since most criminal defendants are men, and most applicants for legal aid in criminal trial are men, the majority of recipient of legal aid are men. Apart from criminal law, the other area of law which accounts for a significant proportion of legal aid expenditure is family law. While the right to legal representation in criminal trials ought to be regarded as of very great importance, it has been argued that the loss of custody of one's children may be as significant a loss for many women as is the loss of liberty.

Another area in which the grant of legal aid may be discriminatory is against women victims of domestic violence. In Nigeria, police do not often seek protection orders on behalf of victims, and the onus is upon the complainant to bring her own application which seldom occurs. The effect of legal aid may be that the government does much more to provide legal assistance to the perpetrators of violent crimes than it does to assist the victims.

The problem which Legal Aid Council has in prioritizing very scarce resources amongst different categories of needy claimants are immense. Ultimately, the decisions which must be made are political decisions, concerning the respective priorities of criminal law, family law and other categories of case, and the extent to which the society will tolerate the denial of justice to claimants who cannot afford to litigate, or to defend themselves in litigation, without legal representation.

Then existing problems in providing adequate means of access to the legal system through legal aid suggest that questions need to be asked about the multiplication of laws, legal rights and new tribulations as a means of dealing with social problems. Every new set of legal rights is likely to give to greater demands on legal services for the enforcement of those tights and therefore, more claims for legal aid, unless the possibility of obtaining legal aid is arbitrarily excluded. Another by-product of creating new rights is that pressure upon the court system is also increased, exacerbating the problems of delays in obtaining a court hearing and escalating the costs of providing courts and judges.

There is a tendency for some governments to multiply laws, rights and tribunals without adequately considering the additional strains this might place upon the legal system, and the extent to which the existence of the new category of rights will mean that less public resources are devoted to the protection of existing rights. A question which needs to be asked is how much justice the society can afford to have, and how many rights it can afford to protect at a reasonable level of effectiveness. Legal rights and remedies are only one means of dealing with social problems, and as legal aid colonial has to make hard decisions about priorities, so perhaps, dress the National Assembly.

Legal Services for the Disadvantaged

Some jurisdictions have responded to the need for access to justice for those who cannot afford legal representation or who are otherwise disadvantage by establishing a number of organization and community legal centers for the purpose of providing legal advice and assistance.

1. The Aboriginal Legal Service

A number of Aboriginal Legal Services founded by the Federal Government operate in different parts of Australia providing legal advice and assistance to people of Aboriginal and Torres Strait Islander descent (and their spouses).

The Aboriginal Legal Services have played an important role in bridging the gap between white legal culture and Aboriginal society and have found considerable acceptance in Aboriginal communities. They are controlled by Aboriginals even though often the lawyers are white. In the main, Aboriginal Legal Service work is confined to criminal defence work, but the Services have increased their involvement in civil matters and endeavour to make Aboriginals aware of the use which can be made of the legal system to achieve particular goals.

The Australia Law Reform Commission has recommended that a separate legal service should be established for Aboriginal women. One reason for this is that in traditional Aboriginal culture, there are some things which are "women's business" and may only be revealed to other women. Furthermore, there are some matters in which women's needs are not met by Aboriginal Legal Services.

2. Community Legal Centres

An important aspect of the movement to give disadvantaged people access to justice has been the development of Community Legal Centres. These are publicly funded, "shop front" centers for legal advice and assistance which either operate in disadvantaged localities or as specialist agencies dealing with particular problems such as tenancy advice. Inasmuch as they are publicity funded and generally employ salaried lawyers providing free legal advice, they have some features in common with the Legal Aid Commission Offices. However, in origin, philosophy, and modus operandi they are quite different and operate alongside the formal legal aid structures rather than being subsumed under the organizational system of State Legal Aid Commissions. Indeed, they endeavour to remain strictly independent of such institutional control.

The Legal Aid Council has offices in most sate capitals. They entrust with legal aid structure in say Australia. They former is untraced, the latter is decentralized, it is instructive to examine community legal centers operates in the jurisdictions where they exist.

There are variations between different legal centers in regard to their precise functions and means of working. Case works in of course a central aspect of the work of most legal centres. Full time lawyers and volunteer lawyers combine to provide legal services to clients. Often the centres operates evening sessions staffed by volunteers. Qualified lawyers are frequently assisted by law students and non-lawyers. The legal aspect of a person's housing problems may be an eviction notice, but her or his needs go beyond assistance with resisting an eviction order. Thus, many legal centres endeavour to function in local communities alongside other welfare services and agencies, to provide a co-ordinated and multi-disciplinary response to the problems which clients face.

Legal centres vary in the extent to which lawyers are willing to undertake legal representation in court. Some prefer to leave court work to the legal aid system because of its time-consuming nature, and to confine their work primarily to giving advice, writing letters, assisting with legal aid applications, and other such non-court work. Others take "referrals back" from Legal Aid Commissions more readily. Clients thereby apply for legal aid but are represented in the matter by the solicitor from the community legal centre.

Case work is not the only function of many legal centres. They are also active in publishing and community education. Handbooks, published by legal centres, exist in a number of State and provide a readable guide to the law for those who are not legally trained. Legal centres are also active in law reform and in campaigning for charge on various issues of importance to the disadvantaged. As one writer has said:

> "The element which most clearly distinguishes legal centres from other legal agencies in the public and private sector is their commitment to effecting structural change on behalf of the poor through the legal system. This contrast with traditional rhetoric about legal service delivery which focuses on the provision of legal services to specific individuals on a case by case basis… Essentially it is a political objective, aimed at re-ordering power relations between "the haves" and the "have-nots", which has formed the cornerstone in the ideology of the legal centres movement".

Reality has not always matched rhetoric. Early visions that the centres would be managed and controlled by "the community" through open and public management meetings have failed to reach fruition. The idea that hierarchies would be avoided, and that pay differentials between lawyers and non-lawyers would be minimized have had to compete with other constraints imposed by government award wages and the need to retain experienced staff. Nonetheless, an egalitarian spirit remains. A movement which was intended as a critique of the establishment has had to cope with its acceptance by that establishment. Legal Centres have representatives on some Legal Aid Commissions, and have played a significant role in the development of policy in the delivery of legal services to the disadvantaged.

An important development in the legal centres movement has been the emergency of specialized legal centres, notable in New South Wales. If Australia as the legal centres movement developed, it was realized that there were advantages in specialized services meeting the needs of those with a community of interests. Specialized services, dealing with consumer credit, immigration, intellectual disability and welfare rights are example of such specialized centres.

In its 1994 report, Equality Before the Law: Justice for Women, the Australia Law Reform Commission pointed to the effectiveness of the few women's legal centres, and those which specialize in assisting women who have been victims of domestic violence, as an indication of the value of such services as a means of providing greater access to justice for women. The Commission recommended that the government should fund one extra women's legal service in each State and Territory. Such legal centres can fulfil a valuable role in offering legal advice, referral and representation in areas of the law which are most likely to concern women. The identification of such centres as women's legal services can also help to overcome some of the estrangement which some women feel within a male-dominated legal system.

Alternative Dispute Resolution

Another response to the problems of access to justice has been the vast increase in services offering alternative dispute resolution (ADR) and, in particular, mediation. The common feature of all ADR mechanisms is that they involve the use of a neutral third party who endeavours to facilitate a settlement of a dispute without having the power to adjudicate on the matter. Mediation, conciliation, negotiation, facilitation and independent expert appraisal are all forms of such dispute resolution. Arbitration is sometimes listed as a form of alternative dispute resolution, but it differs from the others – and

resembles court-based adjudication – in that a neutral third party decides the case for the parties.

The form of alternative dispute resolution process which has attracted most attention in recent years is mediation. This is a form of structures negotiation in which the mediator (or mediators) controls the process while the parties control the outcome. Folberg and Taylor's widely used definition is that mediation "can be defined as the process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs. There are a number of different models of mediation. In family disputes, it is common for there to be two mediators, one male and one female. Where co-mediators are used, the mediators may also bring different professional backgrounds to the process of mediation. Mediation sessions are highly structured. Typically, the parties are each given the opportunity to present their story and to state what they are seeking in the mediation. The mediator identifies points of agreement and disagreement and encourages the generation possible solutions to the matters in dispute. The possible solutions are then evaluate, and the parties are encouraged to attempt to reach an agreement on a solution which would be mutually acceptable. The final stage is to endeavour to formulate an agreement which is realistic for the parties to carry out.

Mediation in encouraged by the court system in a number of ways. Mediation is voluntary. It has been extended to counseling facilities and other ADR processes which have been an aspect of the court's work since its inception. There are also a number of other family mediation services, which receive government funding.

Mediation is also used as a process of dispute resolution in a number of courts as a means of reducing court waiting lists in civil matters. Parties are encouraged to settle their cases and the resulting agreements are embodied in consent orders.

While many courts have thus encouraged mediation programmes, ADR is not necessarily an adjunct to court processes. Independently of the courts ADR has flourished in a variety of different contexts. Mediation or arbitration programmes exist to provide a forum for the resolution of commercial disputes, and mediation is increasingly used by government and business. In certain jurisdictions, the government fund dispute resolution centres which are established to mediate dispute between neighbours, family members and other such private disputes.

Alternative dispute resolution mechanisms have many advantages. They are generally cheaper and more speedy than court processes. For these reasons they are popular with governments which want to reduce legal aid bills, court costs and court waiting lists. They allow the parties the opportunity to tell their stories in their own way; parties are not confined by rules or evidence nor are they limited to presenting those facts which are relevant to prove a particular cause of action. They are not confined either by the range of remedies available to courts. They may devise remedies and solutions which are most appropriate to them.

Despite these many advantages of alternative dispute resolution, there are many dangers in this shift towards ADR. One is that ADR, together with tribunals, will become the justice system for the majority of private citizens, while government and commerce monopolize the civil courts. There are some indications that this is happening in the range of matters which are currently sent to ADR-family matters, consumer complaints, social security claims, disputes between neigbours. Mediation and conciliation may offer useful means of resolving many such disputes, but it should not be assumed that dispute resolution equates with justice.

The limitations of AR are first, that alternative dispute resolution mechanisms presuppose that the claim can and should be compromised. In some disputes, compromise is quite appropriate, especially where the parties are likely to continue in a relationship with one another, as parents must do even after divorce, and neighbours must do for as long as they remain neighbours. But if people need to compromise on their rights in order to get any justice at all, then mediation offers, not justice in the shadow of the law, but dispute resolution outside of the law.

Secondly, mediation and other forms of facilitated dispute resolution presuppose that the parties are both articulate and able to defend their own interest. In many cases, this is simply not so. Linguistic and cultural barriers to assertiveness are likely to diminish the capacity of the person to participate effectively in mediation, and this is likely to be a problem especially for women of non-English speaking backgrounds. A history of domestic violence to stand up to perpetrators, as well as allowing for the possibility of further violence occurring before or after the mediation session. For these reasons, some mediation services do not mediate between couples where there is a history of domestic violence, ad endeavour to screen for indications of such violence when assessing the suitability of the couple for mediation.

Thirdly, the effectiveness of mediation as a means by which parties may protect and assert their legal rights depends on the extent to which they are aware of those rights. Frequently, the advantages of mediation are contrasted with the disadvantages of litigation. However, since the great

majority of all disputes are settled without an adjudication by a judge, the proper comparison to be made is between mediation and negotiation between solicitors. Negotiations take place against the background of solicitors' awareness of the parties' legal rights and their assessment of the chances of success in litigation. Negotiations between solicitors, properly conducted, have many of the same advantages of cheapness and flexibility which are attributed to mediation, with the added advantages that the client is represented by a knowledgeable and articulate representative who will endeavour to gain the best possible settlement for the client. Negotiation is a form of alternative dispute resolution which has been at the heart of legal practice for generations.

There must be concerns therefore about whether governments' enthusiasm for ADR is motivated by the best interest of vulnerable citizens or be an overriding concern to process as many disputes as cheaply as possible. Those who are in a position of bargaining strength in a dispute are much more likely to favour mediation than negotiation between solicitors or litigation in the courts. The more vulnerable party in the mediation will not have the advantage of a representative, and if he or she has not received-and understood-proper legal advice, will not have the bargaining chips derived from knowledge of her or his legal entitlements.

Mediation, supported by legal advice and with agreements scrutinized for their fairness by legal representatives after the mediation, has a valuable role to play in the legal system for some people and in some kinds of disputes. However, where the primary motivation for its introduction or encouragement by governments is to cut costs, there is the danger that it will be used inappropriately, and that people will be forced to attend mediation as a precondition to receiving what they really want-an adjudication by the court in accordance with the law.

Access to Justice and the Problem of Centripetal Law

While governments are increasingly encouraging people to settle their own disputes by alternative dispute resolution, and withholding legal aid for civil litigation, they have so far failed to recognize the problem of centripetal laws which have the effect of drawing parties inexorably towards a judicial resolution, rather than conferring upon them the clear bargaining endowments which would facilitate settlements.

Many Nigerian laws are written on the premise that they will be used by courts in deciding cases, rather than by parties in settling disputes in the shadow of the law. Numerous laws confer broad discretions on judges, for example, to set aside unfair contracts or to compensate for deceptive and misleading practices in trade and commerce. Discretion is a