

Ensuring quality defence in legal aid matters

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1. INTRODUCTION

The delivery of legal aid in South Africa has undergone a major transformation during the last decade. From being on the verge of financial bankruptcy, with our contingent liability in excess of R200million and the auditor general unable to express an opinion on our financial records, we can now say with great pride that we have turned the corner and are delivering on our mandate in terms of the constitution. This all against a background of good corporate governance and three successive unqualified audits by the auditor general.

The transformation that took place within the Legal Aid Board involved a shift in operations, from a primarily outsourced method of instructing private practitioners through our judicare system, to delivering legal aid by our salaried in-house lawyers employed at our network of justice centres located throughout the country. The primary driver behind this shift of operations was to reduce our costs as well as to better manage the Legal Aid scheme in our country.

It soon became apparent that this shift in operations resulted in tremendous cost savings to the LAB, with the average cost per case for a matter done by our in-house lawyers nearly half of what it would have cost us if a judicare practitioner was instructed. This therefore enabled us to serve many more clients than what we would have

been able to do if we continued with the judicare system as our main delivery vehicle of legal services.

However, the challenge that we now have to face is to ensure that the quality of the work done by our in-house lawyers is comparable to that of lawyers in private practice. This is critical to the sustainability of the in-house model. Our clients will have to have confidence in the quality of the legal service rendered by our practitioners.

Hence, the challenge for us currently and for the future is to ensure that we are able to consistently provide quality legal services, thus ensuring that our clients and communities and vulnerable groups in our country can access justice. In doing so, we would also be able to constructively engage other stakeholders within the justice cluster to positively impact on the inefficiencies within the sector.

2. LEGAL AID IN SOUTH AFRICA

2.1 Delivery systems

South Africa currently makes use of a mixed model approach. This includes:

- LAB justice centres employing in-house legal practitioners;
- Judicare which are legal aid instructions given to private practitioners and
- Co-operation agreements which usually involves partnerships with NGOs and university law clinics.

The shift in the past five years was towards greater use of the in-house

justice centre model as reflected in Table 1 below:

Table 1: New matters per delivery system – 2002 to 2005

	02/03	03/04	04/05	% Variation 04/05 to 02/03
Justice Centres	114,189	236,282	258,185	+126%
Judicare	87,178	46,613	40,238	-53%
Co-ops	13,113	17,244	8,231	-37%
Totals	214,480	300,139	306,654	+43%

2.2 JC Infrastructure

The in-house delivery system involves the opening of justice centres at strategic locations throughout the country. Justice centres normally serve the courts within a radius of 100 km.

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Salaried practitioners normally drive to the courts that they have to serve on a daily basis. Where the distances are greater than 100km, satellite offices are opened.

Table 2: Number of justice centres

	00/01	01/02	02/03	03/04	04/05
Justice Centres	8	26	44	58	58
Satellite offices	0	0	2	27	35
High Court units	0	1	7	13	13

2.3 Staffing

Justice centres operate very much like law firms. Both legal and admin staff are employed. These offices are headed by a Justice centre executive who is usually a lawyer. Both admitted attorneys (PAs) and candidate attorneys (Cas) are

employed. PAs normally serve the regional magistrates courts whilst CAs serve the district magistrates courts. Paralegals are also employed and they normally do the first consultations with our clients and process the applications for legal aid as well as provide general legal advice to clients.

Table 3: LAB Staff numbers

	01/02	02/03	03/04	04/05
Legal	326		1036	1446
Non-legal	482		471	486
Total	708	960	1507	1932

3. Key challenges faced by the LAB in implementing the Justice Centre (JC) model

Whilst there were a few challenges faced by the LAB in implementing the justice centre model, including establishing the rollout of the infrastructure on a national level, as well as our ability to recruit and retain legal staff, the primary challenge however was the inadequate quality of the legal services rendered by our practitioners.

In implementing the JC model, the typical staff structure at a justice centre consisted of:

- 1 x Justice Centre Executive (a person defined as a principal attorney in terms of the attorneys act)
- 6 x Professional Assistants (admitted attorneys)
- 10 x Candidate Attorneys (all directly registered to the JC Executive)
- 1 x paralegal
- 4 x admin support staff.

The Justice Centre Executive was therefore the only management member at the justice centre, responsible for both the administrative and professional management of the centre as well as the training, mentoring and coaching of the professional staff, especially the candidate attorneys. Given the fact that most of the justice centre executives, were themselves mainly lawyers in small legal practices, the burden of managing a fairly large legal office was itself a daunting task. JCEs invariably found their time consumed with the general office management issues and hence there was no effective supervision and training of professional staff.

The justice centres were also allocated a wide court coverage area and invariably this resulted in practitioners having to cover a number of courts, often resulting in the unethical practice of double bookings, etc. This invariably resulted in various justice stakeholders, particularly the judiciary and the prosecutions,

becoming extremely frustrated with the LAB resulting in many complaints.

Our candidate attorneys were often also not properly supervised by their principal attorneys. This was primarily due to the multiple functions that the Justice Centre Executive had to perform. Hence, it was not uncommon for our candidate attorneys to be under prepared for their court appearances, which invariably led to poor representation at court, hence prejudicing our clients.

We have tackled these challenges directly by making the delivery of quality legal services a key strategic priority of the Legal Aid Board in our last three business plans. In doing so, a number of interventions have been implemented to improve the quality of our services. These quality measures have inspired renewed confidence in our service by both our clients, as well as our stakeholders, and this has contributed significantly in enhancing the status of the Legal Aid Board. The shift to the justice centre model as our primary delivery vehicle of legal services has thus been consolidated.

4. Quality interventions implemented by the Legal Aid Board.

4.1 Increasing supervisory staff at justice centres

A key intervention in our quest to improve the quality of legal services was to increase the supervisory capability and capacity at our justice centres. This included the creation of the following new posts at the majority of our justice centres:

- Administration managers – this position is responsible for the management of the administrative functions of the justice centre. This position reports directly to the Justice Centre Executive (JCE). In creating this position, valuable time of the JCE, that was previously consumed with routine administration activity, is

- freed so that he/she can concentrate on the professional management of the centre, in particular, the training and development of the professional staff.
- Principal attorney – this position was created in mainly the larger centres, and these members of staff are there to assist the JCE in the professional management of the centre, focusing particularly on improving the quality of the services rendered by our practitioners as well as working in close coordination with the other justice stakeholders.
 - Supervisory Professional Assistants – all JCEs are allocated between one and three SPAs depending on the size of the justice centre. This position is primarily responsible for the supervision of the legal programme of candidate attorneys and professional assistants and to assist and support them in the management of their case load as well as the quality of their preparation, consultation and court work.

Table 4: Ratio of supervisory staff to candidate attorneys @ 31st March 05

No	Province	No of justice centres	No. of JCEs	No. of principal attorneys	No. of SPAs	No of CAs	Ratio of supervisory staff to CAs
1	Gauteng	8	10	8	19	133	3.1
2	North West	7	6	0	7	41	2.8
3	Limpopo	5	5	0	6	40	3.6
4	KZN	10	10	5	16	108	3.4
5	Mpumalanga	4	4	1	7	39	3.2
6	Eastern Cape	10	10	5	13	66	2.1
7	Free State	4	4	2	4	28	2.7
8	Western Cape	7	7	8	9	125	5.2
9	Northern Cape	3	3	0	3	24	4.0
		58	58	29	84	604	3.5

Noting that the law society allows an attorney in private practice to have three CAs articulated to him/her, our ratio of supervisory staff to CAs is very favourable, especially noting that none of our supervisory staff have any case load, which is unlike an attorney in private practice who has to ensure that he/she generates their monthly fees.

4.2 Legal training and development

The development of our professional staff is a key priority of the LAB. A legal skills audit has just been completed and the results of this audit will greatly shape the legal training programme in the months ahead. All practitioners have targets for the number of days per year that has to be devoted for training. Currently the target is 10 days per practitioner per year. Our justice centres

also have targets of 75 hours per practitioner per annum for training. Training is conducted at three levels:

4.2.1 Justice Centre training interventions – All justice centres are required to conduct a minimum of one legal discussion forum per month on a relevant area of the law. This target is usually exceeded as many justice centres conduct these forums on a weekly basis. Justice centres are also allocated a budget to organize training programmes for their professional staff. This generally involves procuring outside service providers to conduct the training sessions. Our justice centres also ensure that all candidate attorneys participate in the 5 week practical legal training programme run by the law society. Paid leave is given to CAs to participate in this programme.

4.2.2 Regional office training interventions – regions are also required to arrange training interventions on a regional basis. This includes ensuring that all newly recruited candidate attorneys attend beginner candidate attorney courses organized by the Legal Education And Development (LEAD) which is a sub committee of the Law Society. Regions also arrange legal seminars for all practitioners in the region on areas of the law that is of particular interest to LAB lawyers.

4.2.3 National office training interventions – the training co-ordinator employed at a national level, is responsible for facilitating training programmes emanating from a needs analysis conducted with executives. These training programmes are usually facilitated by external consultants in their respective fields of expertise.

4.3 Mentorship, coaching and support programmes

4.3.1 CA Mentorship programme - All candidate attorneys are aligned to a professional assistant at every justice centre. They are usually paired in such a way that they serve the same courts as well as sit in close proximity to each other at the offices. These professional assistants provide immediate and continuous support to the candidate attorneys in all aspects of their work.

4.3.2 Case discussion forums – All attorneys, including candidate attorneys, participate in daily/weekly case discussion forums facilitated by a supervisory staff. In these discussion forums, defence strategy of all cases currently being handled by practitioners is discussed.

4.4 Quality review self assessment
All practitioners are required to review all files that they have closed on various aspects of their legal representation, including the quality of their preparation for the case, their consultation and communications with the client, their performance in court, etc. These measures are monitored by the justice

centre executives when they sign the file closure certificates and also when they have to conduct the quarterly quality review for each practitioner. This intervention therefore forces practitioners to be sensitive to the quality requirements for all aspects of all cases that they conduct.

4.5 Candidate Attorney (CA) checklists

4.5.1 Court readiness checklists - All newly appointed candidate attorneys must complete a programme on court readiness before they are allowed to appear in court. A checklist is in place that is monitored on a weekly basis to ensure that each CA gets sufficient practical training on various aspects of court readiness. The programme is intended to be completed within 6 weeks of the recruitment of the candidate attorney. A supervisory professional assistant assigned to the candidate attorney is responsible to ensure that the programme is completed and it is only when the checklist is fully completed is the CA allowed to take on any matters in court.

4.5.2 Pre-admittance checklists – All candidate attorneys, on completion of their period of articles, apply to the high court for admittance into the attorneys profession. This checklist, which is monitored monthly, is designed to ensure that our candidate attorneys gain sufficient practical experience in all areas of law that a CA would need to be exposed to in order to qualify for admission into the profession. Hence, we will ensure that the CA is given some practical exposure to areas of the law that we in the Legal Aid Board would not normally give legal aid to. In this way, we ensure that the attorneys are well rounded and developed to practice after their admission into the profession.

4.6 Research support to LAB legal practitioners

4.6.1 Access to internet - all our justice centres have internet cafes where practitioner are allowed to log on to law sites to conduct their legal research.

Practitioners also have online access to jutastat.

4.6.2 Legal reference material – all our justice centres are resourced with legal reference materials including law journals and legal textbooks that practitioners can make use of for their research and preparations.

4.6.3 Monthly legal newsletters – a full time legal researcher is stationed at our national office whose task includes the electronic publication of a monthly newsletter that contains updates on the most recent case studies and changes in legislation.

5. Quality monitoring measures implemented by the LAB

5.1 Quality assessment reviews

A quality assessment instrument (Annexure A) has been developed to monitor the quality of legal work in respect for both civil and criminal matters. It involves an examination of the case file of a practitioner to determine the attorneys level of preparation, consultation, and court performance. This instrument is then used for the following ways:

5.1.1 JCE quality reviews – all justice centres are required to conduct a quarterly quality review of all practitioners. JCEs would review a sample for current pending files or files closed during the quarter to conduct this review. This is again based on the quality assessment instruments which is scored for all practitioners. All practitioners have quality targets that they have to meet. If practitioners fall below these targets, then individual intervention plans are agreed between the practitioner and the justice centre executive. These scores are monitored on a quarterly basis by both regional and national management of the Legal Aid Board.

5.1.2 Regional office quarterly reviews – all justice centres are under the direct control of a regional office, of which there are four in the country. Each region co-ordinates the operations of

two provinces except for one region that has three provinces to oversee. All regional offices are staffed with a small legal component whose primary function is to monitor the delivery and quality of legal services in the region. This includes the conducting of justice centre quality audits on a quarterly basis. A sample of practitioner files are reviewed by the regional teams using the quality assessment instrument. The regional teams also rate the practitioners and all significant differences between the regional office quality scores and the scores of the justice centres are discussed and consensus is reached. These regional office scores are also reviewed by regional and national management on a quarterly basis.

The Legal Aid Board has set a quality target of 75% during the last financial year. Only our candidate attorneys have failed to achieve this target by year end. This can be primarily attributed to the fact that at any given time, there are always CAs who are very new at our justice centres and the impact of our training and development programme is still to see the fruits of our efforts. We have increased the target for this financial year (2005/06) to 80%.

5.2 Peer review

All practitioners are required to identify a peer who would conduct a bi-annual review and provide feedback on his/her performance. Peer reviews include both file management and court work feedback. These reviews are intended for practitioner development purposes. It is envisaged that this feedback from peers would be seen to be more objective and hence any individual intervention plan developed to cater for weaknesses would be more readily accepted and implemented by the practitioner. Peer review feedback is also checked by management when they conduct their quality reviews, hence ensuring that peer review feedback is objective.

5.3 Stakeholder feedback

5.3.1 Justice centre stakeholder visitation plans – all justice centre executives are required to interact with justice stakeholders, including magistrates and prosecutors. Feedback on the performance of practitioners is received during these visits which assists us in the LAB in developing individual intervention plans to improve the quality of the representation by practitioners.

5.3.2 Judicial officer surveys – the LAB has conducted a countrywide survey amongst judicial officers that was designed to obtain objective feedback from them on the quality of the representation given by our practitioners. The results of this survey was used by the Legal Aid Board in reviewing our training programmes to cater for some of the weaknesses identified in this survey.

5.3.3 Client satisfaction surveys - all LAB clients, whether they are visiting our justice centre for legal advice, or are receiving representation in a criminal or civil case, are requested to complete a client satisfaction survey. This is analysed by the justice centre and the client satisfaction scores are reported regionally and nationally on a quarterly basis. The survey scores indicate to management the areas of the operations at the Justice centre where there could be weaknesses and where clients believe that improvements need to be effected.

5.4 Performance management

5.4.1 Practitioner performance management reviews – all practitioners are required to enter into performance contracts at the beginning of each financial year. The provision of quality legal services is an important programme in the performance contracts of all legal professional staff. Performance reviews of all staff are conducted on a quarterly basis. Amongst other key performance areas, practitioners are rated on their

achievements on attaining their quality targets. The performance management system is linked to an incentive scheme and all staff are aware of the implications of not performing which results in reducing their chances of obtaining performance bonuses.

5.4.2 Justice centre performance monitor – is an instrument developed to monitor the overall performance of justice centres on various aspects of their operations including the rendering of quality legal services, governance, finance and human resources. The JC performance monitor is reported on quarterly per JC at a national level. It also serves as a modifier in the performance management system and hence all justice centres place great emphasis on ensuring that they deliver on all the key performance areas in the monitor.

5.5 Complaints monitoring

5.5.1 Stakeholder complaints – all complaints received by a justice centre are logged on a complaints register that is kept at the justice centre. This is reviewed by the justice centre executive on a regular basis and interventions are put in place to resolve complaints, in particular if this has to do with a service delivery complaint.

5.5.2 Ethics hotline complaints – the LAB has an ethics hotline in place that is managed by an independent company. Any person can lodge complaints, including service delivery complaints, to the hotline without need for them to reveal their identity. All complaints, relating to service delivery issues, are investigated by the justice centres/regional offices.

5.6 Maintaining Professionalism

5.6.1 LAB code of conduct including appropriate ethical practices – all employees of the legal aid board are required to comply with our code of conduct. This includes all practitioners

conducting their legal work in an ethical manner and consistent with our values. A dedicated programme has been implemented in the past year to build a culture within our organization that is consistent with our values, especially ensuring that all our practitioners have the value: passion for justice.

5.6.2 Compliance with the law societies ethical requirements – all our practitioners are required to be members of their respective provincial law societies. The law societies have a regulatory function to ensure compliance within the profession. Our legal practitioners are required to comply with the ethical requirements of their association. These law societies have the authority to strike off practitioners from their roll if they do not comply with their ethical requirements. All attorneys practicing in our courts are required to be members in good standing with their respective law society. Hence, if an attorney of the LAB does not look after the best interest of their client, he/she can be disciplined by the law society.

5.7 Business Intelligence

The Legal Aid Board has recently implemented our Ad Infinitum computer software system. This is an integrated finance and legal administration system which is designed to, amongst other important functionalities, provide key business intelligence information on our operations. All our practitioners are required to complete daily matter activity reports on the cases they have worked on during the day and the type of activity that was preformed on this matter.

This system will be able to produce various reports for justice centre management that will provide invaluable information on the quality of the work done by the practitioners at the centre. This includes information on the amount of time spent per case on preparation and consultation, the turn around time of case per court and per practitioner. Managers can also examine the outcomes of matters amongst different practitioners and they will be able to see at a glance the practitioners with good

acquittal rates as well as those practitioners with high conviction rates or a high percentage of guilty pleas in their finalized matters.

This business intelligence is going to take our quality monitoring to new heights as we will be able to pick up on areas of concern or weakness amongst practitioners very easily. Interventions can then be implemented immediately to ensure rectification of any weaknesses.

6. Conclusion

The Legal Aid Board has tackled the issue of poor quality of legal representation in a number of ways. In addition to implementing quality intervention programmes, we have also improved on our monitoring capabilities and hence we are able to pick up on quality issues at an early stage. This enables us to implement intervention programmes speedily to iron out any problems.

A concern for us in our continuous quest to improve quality is our inadequate ratio of practitioners to courts. Invariably our professional assistants have to serve the regional courts on a daily basis because of the demand emanating from these courts. This however leaves them with little time for adequate consultation and preparation. We are currently motivating for additional resources to cater for this situation.

The allocation of additional supervisory staff at justice centres is critical to the justice centre quality improvement programme. This however impacts on the costs of the justice centre model. When these costs are factored in to the justice centre model, the cost savings using in-house lawyers as compared to private practitioners is not as high as originally calculated. It is however still cost effective for the Legal Aid Boards to in-source this work.

A major reason for this model is that we control the quality of the representation in a very direct way. This is critical in our quest to improve the perception of our clients on the quality of our work.

We are confident that we are making significant gains in this area of our work. The delivery of quality legal services will however always be a priority programme for the Legal Aid Board.