

MEETING NOTES

Poverty Law Advisory Committee Meeting of November 5, 2009

Advisory Committee Members Present

John D. McCamus, Chair
Justice Sidney B. Linden
Lenny Abramowicz
Aly Alibhai
Marion Boyd
Avvy Go
Julie Mathews
Trudi McCormick
Ed Montigny
Ryan Peck
Jeff Schlemmer
Gary Stein
Bob Ward (*ex officio*)

Legal Aid Ontario Representatives Present

Randy Ellsworth
Rod Strain
Coreen Lapointe
Heather Morgan
Stephanie Mealing

Others Present

Juliet Robin, MAG
Brent McCurdy, MAG

Introductions and Opening Remarks

Committee Chair John McCamus opened the meeting and welcomed the participants. There were introductions around the table and on the phone. The Chair thanked the members for their participation and Justice Sidney Linden for his assistance in facilitating the committee process.

The Attorney General has asked for advice on the best use of the new funding which has been made available to LAO. The new money is earmarked for new initiatives and improvements, and is not to be used to address the current financial situation. The Chair noted that, despite LAO's budget difficulties, no cuts will be made this year to clinics' operating budgets.

Members were invited to make opening remarks before turning to the specific questions in the Committee Terms of Reference.

Opening Remarks by Participants and General Comments

It would be easier to make recommendations for improvements if members had more information about the financial situation. It is helpful to know that clinic operating budgets will not be cut this year, but more information would be useful. For example, what does the situation look like for important clinic supports like training and learning, and the Clinic Resource Office: the availability of these supports has an impact on what clinics are able to do, and thus will affect the advice that the committee can provide. LAO was urged to provide any further information on the budget that is available. The Chair indicated that the financial picture is changing every week, but that LAO will do what it can.

There was a suggestion that, since the timeframe for completing the advisory process is quite short, perhaps the advisory committee could be reconvened after December 15 to provide further advice, for example on implementation issues.

It was noted that, since the mid-1990's, clinics have been fighting a rearguard action. They are no longer to provide service in a number of areas of former clinic practice. It is good to be part of a process that will focus on how clinics can turn fewer people away.

The fact that this new funding has been made available to LAO during the current economic climate demonstrates that the Attorney General is supportive of legal aid and that there is hope for this process. The Law Society also wants to see this process succeed.

LAO should keep in mind how the clinic and certificate sides of service delivery interact and mesh: for example, if certificate services stop being available in some areas and clinics take those areas over, clinics will need more resources.

It is important that the solutions developed through this process address the needs of the people in poverty that clinics serve. Women, racialized communities, people with disabilities and Aboriginal people are over-represented among the poor, and they are marginalized. LAO is urged to keep these target individuals and communities in mind.

Summary advice is not a panacea. For some clients, maybe one in ten, summary advice is enough. For others, it is not: the clinic has to take them through the steps. Clinics are seeing increasing demand for services, and they are turning away too many people that need representation.

The new Law Society licensing regime has added to clinic workloads, because social workers who formerly provided certain legal services can no longer do so.

Good people are leaving the clinic system for other government jobs with better salaries and pensions. Recruitment and retention are important issues. We are the last ones left in the Ontario government who have not had a catch-up raise since the Harris years. A new JP with no experience makes more money than an experienced clinic ED. The Chair said that LAO values greatly the work performed by clinic lawyers and understands the financial sacrifices they make.

Many people within the clinic system have already been thinking and brainstorming about transformative ideas. The ACLCO has developed a list of topics, or categories, that can be discussed in more detail at the next meeting. It was noted that SLASS issues had not been directly considered while this list was being developed. The broad categories that have emerged are as follows:

- Recruitment and retention, and the loss of clinic staff to better-paying jobs
- Serving racialized communities and increasing access to those who do not have English or French as a first language
- Increasing collaboration and coordination, for example through list-serves and workgroups
- Serving more clients: this may simply come down to the need for more staff
- Appropriate use of technology in an appropriate way

There was a question about whether LAO had ideas to share about the questions embedded in the committee's mandate. The Chair said that, while staff have been thinking about clinic issues, there is no policy position on clinics that has reached the Board level.

Justice Linden noted that this process is not about taking money out of the system. It is about the best way to use new money. It is a process that can yield some good ideas.

Discussion of Questions: Emerging Themes

1. How Clinics Can Expand Service to a Broader Range of People

Clinics can be creative in developing ways to expand their ability to provide representation. The clinics in Ottawa worked together on a strategic plan and have moved forward with two projects that are easing the pressures of ODSP appeals work and helping more clients to get legal representation:

- Three Ottawa clinics are sharing an ODSP appeals caseworker.
- University of Ottawa law students are doing placements for academic credit at the Ottawa clinics to help with ODSP appeal work (each clinic has

one student for 10 hours per week). This program is now in its third year and is going to be expanded.

One problem with clinics using the internet to provide advice is that requests for assistance can come from all over Canada and even from other countries: it can be overwhelming, and these people are not our clients. Also, some clinic websites are used more by social service agencies than they are by clients.

Technology can be helpful, but the key to helping clients lies in how technology is used and also in knowing who the clients are. Clients won't go to a website just because you tell them it's there. One has to think about their background, their needs, and who they identify with. For example, Chinese-speaking people will go to Chinese-language websites first: most have never even heard of English-language websites like Justice Ontario.

It is hard to come up with just one solution for expanding service, because low-income people have complex needs, in areas as diverse as employment, disability and human rights. In order to develop solutions, one has to think about the areas of law involved, and the clients one is dealing with. Clinic clients typically are dealing with a whole set of problems, and not just one issue.

Clinics that have a province-wide mandate face a particularly difficult task because they can never hope to provide direct service to all of the individuals who need their help. They form linkages with local clinics and with local social service agencies to assist clients in other parts of the province. However these kinds of linkages with others cannot be formed by e-mail – one has to go out and meet them. There is a lot of collaborative work that can be done, but it is hard to do that new work when the old work won't go away.

A lot of the clinic system's best work is not about providing direct service to individuals. It is about changing the law. Although case work is important, by looking at clinics mainly as service providers (a "case work factory"), there is a risk of losing sight of what clinics can do as law reformers and agents of change. While clinics will never be able to provide solutions to everyone's problems individually, it is possible through law reform to have an impact on the problems of entire communities. The new funds should also be used to ensure that clinics can continue to do this kind of work, acting as agents of change.

2. How Clinics Can Better Coordinate the Delivery of Inter-Ministerial Anti-Poverty measures and Social Services

This is a good time to consider the question of why making people go through the ODSP appeal process seems to be "second nature". The money spent on this could be spent instead on keeping people out of poverty. Everyone acknowledges the problem, but nothing is done, because ministries operate as

silos. The Ministry of Health does not see this as their problem, and yet we are all the same government, funded by the same taxpayer. Another area where people always have to appeal the initial decision is the area of CPP claims. The Chair noted that attention has been drawn to the ODSP appeal issue and that a solution is hoped for.

Providing opportunities for sharing best practices can lead to broader improvements. For example, at a recent training day for clinics in the Southwest, it was learned that some clinics have been working with hospitals to develop a cut-rate policy for accessing medical records. More clinics may be able to benefit from trying this approach.

There is never an easy division to be made between legal issues and social problems. It could be helpful for clinics to have a dedicated person to make the calls to social agencies and line up the social-agency work. Often there are barriers and problems and many times clinics just do the work themselves because that way the work gets done. Clinics do work with social agencies every day, but could not be co-located with them because sometimes they have to make complaints against them.

Clinics do not see themselves as coordinating what government does; rather, they work around the edges where the problems occur.

Not all tribunals are adversarial, and the practice that some clinics have of regularly providing representation to clients appearing before some of these non-adversarial boards (like Criminal Injuries Compensation, where many persons appear without representation) may not be the best use of the clinic's resources in that it may not be materially helping the clients. Of course there are tribunals, such as the SBT, where representation materially increases a client's chance of success. It would be a good idea for tribunals that feel they are essentially non-adversarial to meet with any clinics that are specializing in claims in their area, so that the parties may air both sides of the issue. There are likely efficiencies that can be found. This kind of coordination does take time and money, however.

There is a need to look at all of Ontario's models for adjudication, to see whether the expenditures in these different areas are proportionate, in the sense of being matched to where the needs are greatest. For example, Ontario has a Cadillac model for making complaints against health-care practitioners, even if the complaint is minor in nature. Full interpretation services are provided, and so on. However, at the SBT, many clients with language barriers appear without any kind of representation. There should be an examination of why a lot of money and resources are being allocated to some processes and not others.

Julie Mathews suggested that the group might be interested in reading a paper prepared by CLEO before the next meeting is held. It discusses the expansion of CLEONet. The paper can be circulated to the group by Stephanie Mealing.

Members were also invited to e-mail Stephanie at LAO with any additional ideas they would like to share.