

Clinic law services strategic direction

Introduction

Legal Aid Ontario (LAO) is the provincial agency responsible for promoting access to justice for low-income Ontarians. The *Legal Aid Services Act* makes LAO responsible for:

- providing high-quality legal aid services in a cost-effective and efficient manner
- encouraging and facilitating flexibility and innovation in the provision of legal aid services
- identifying, assessing and recognizing the diverse legal needs of low-income Ontarians and
- doing so within a framework of accountability for the expenditure of public funds

Each year, hundreds of thousands of low-income Ontarians depend on LAO and the legal aid system to provide legal services to protect and advance their rights in the most serious and complex legal proceedings. Over the past 40 years, millions of low-income Ontarians have relied on legal aid to assist them in the areas of criminal, family, clinic and refugee law.

Ontario's legal aid system is facing many challenges. LAO, like all public organizations, must ensure that the public funds it receives are spent effectively and efficiently.

LAO and other justice organizations must also meet the challenge of the "access to justice" crisis in Ontario. To take but one example, there is a growing gap between LAO's financial eligibility guidelines and the poverty line in Ontario. This gap creates a major unmet legal need in Ontario.

Legal needs research and experience also suggest that the legal aid system needs to consider new or emerging legal needs.

Through innovation and sound management, LAO believes that the legal aid system can do more to improve access to justice in Ontario and address the unmet legal needs of low-income Ontarians.

LAO has already done a great deal to transform legal aid services across Ontario. To date, LAO has begun transformation projects in criminal law, family law, refugee law and in its own administration. Notable LAO modernization initiatives include:

1. Fiscal responsibility and innovation. LAO has been effective in its modernization program by adding to its client service mix while simultaneously increasing the number of clients served and eliminating its operational deficit.
2. The Client Service Centre (CSC). LAO developed and supports the CSC, a toll-free telephone hotline that has significantly increased access to LAO client services, including summary legal advice and client applications. LAO is forecasting approximately 300,000 client calls to the CSC in 2012/13.
3. LAO courthouse services expansion. LAO has improved access to legal aid services by establishing frontline offices in 56 courthouses across Ontario.
4. Criminal law modernization. LAO has:
 - streamlined lawyer payments through initiatives such as block fees and expanded criminal duty counsel services
 - introduced new panel quality standards, expanded case management of criminal cases, improved junior counsel services and increased fees for experts
5. Family law modernization. LAO has improved services for family law clients, including:
 - expanding the range and number of access points and services
 - expanding access to mediation
 - establishing the Family Law Information Program, an online family information resource available to all Ontario residents
 - establishing several Family Law Service Centres – in-court holistic service offices that offer eligible clients a range of legal resources and support for family matters
6. Expanded translation and interpretation services. LAO has introduced professional

interpretation and translation services in over 200 languages for community legal clinics.

7. Aboriginal Justice Strategy. LAO has established a dedicated strategy to improve services to Aboriginal people.
8. Streamlined and improved administration. LAO has introduced major reforms to its administration. Most notably, it has:
 - introduced regionalization
 - simplified financial eligibility testing, which drastically reduces time and cost to complete legal aid applications while improving the accuracy of eligibility testing
 - implemented a Lawyer Workforce Strategy
 - improved performance management
 - implemented better financial tracking and major technology improvements

These initiatives and others have helped LAO reduce its administrative costs by more than 40 per cent between 2009/10 and 2012/13.

9. Mental health and paralegal strategies. LAO is currently developing dedicated projects to improve legal aid services to clients with mental illnesses and to expand the use of paralegals within the legal aid system.
10. Improved research and management information. LAO has improved its capacity for legal aid research, including major research projects on financial eligibility and client needs, lawyer payment programs, quality standards and the client service continuum. LAO's analysis of management information has also improved significantly.

In summary, LAO's modernization process so far has improved and expanded client services, improved cost-effectiveness, improved the management of legal aid services, improved accountability for the use of public funds, leveraged technology and built organizational capacity during these challenging times.

The next area for LAO to modernize is clinic law services. These services are a high priority for low-income Ontarians, LAO, and Ontario's access to justice community.¹

¹ Clinic law services in Ontario are delivered by many people and institutions. Clinic law services and clinic law needs are not "owned" by anyone. As a result, LAO uses the phrase "clinic law services" rather than "community clinic system" throughout this paper to emphasize a broader, collective responsibility to address clinic law client needs.

Clinic law clients and low-income communities depend on legal aid to ensure access to crucial legal rights and procedures that protect the basic necessities of life, such as social assistance, housing, health, education and human rights.

LAO has previously issued three papers discussing a range of issues and challenges facing clinic law services in Ontario.² This most recent paper sets out LAO's strategic direction – the path for the modernization of Ontario clinic law services – over the next five years. It is the result of considerable research and consultations on clinic law needs and issues over the last several years.

LAO's analysis was positively influenced by the recent provincial strategic plan prepared by the Association of Community Legal Clinics of Ontario (ACLCO). The ACLCO strategic plan represents the first comprehensive strategic plan developed by Ontario's community clinics. Many of the themes and specifics of LAO's strategic direction and the ACLCO strategic plan are consistent, which suggests great potential to move forward and improve access to justice for low-income Ontarians.

LAO's analysis was also influenced by many local or regional initiatives that were supported by LAO and are already underway in the clinic law system. The "Hamilton" model and other initiatives demonstrated the benefits of new thinking and dedicated efforts to improve access to clinic law services for clinics and LAO.

Clinic law services today

The fundamental objective of the legal aid system and clinic law services is to meet the needs of low-income clients and their communities. Clinic law clients – like all legal aid clients – depend on legal aid services to ensure their access to crucial legal rights and procedures. Clients and

² LAO, "Discussion Paper on Roles, Responsibilities, Relationships and Accountability Regarding Clinic Law Services," online: http://www.legalaid.on.ca/en/news/newsarchive/downloads/0807_clinic_relationship_consultation_paper.pdf [2008 Discussion Paper]; LAO, "Discussion Paper on Addressing Clinic Administrative Costs," online: http://www.legalaid.on.ca/en/publications/downloads/clinicconsultation/2010may5_clinicconsultation.pdf [2010 Discussion Paper]; LAO, Ideas for the Future Development of Clinic Law Delivery Services in Ontario, online: LAO http://www.legalaid.on.ca/en/publications/downloads/1204_A%20Discussion%20Paper%20for%20the%20Strategic%20Visioning%20Process%20by%20Ontarios%20Legal%20Aid%20Clinics.pdf [2012 Discussion Paper]

low-income communities rely on clinic law services to protect their basic necessities of life, such as social assistance, housing, health, education and human rights. They also depend on these services to be accessible, high-quality, cost-effective and a responsible use of public resources.

LAO recognizes the important legacy of the clinic law community. Ontarians can be proud of the lawyers, community legal workers, paralegals, students, office staff, volunteers and board members who have dedicated themselves to providing clinic law services in this province. Ontarians can also be proud of the staff and board members of LAO and provincial government officials who share a commitment to improving access to justice to clinic law services. Clinic law services are delivered by creative, committed, and skilled individuals who have made important and even historic contributions to low-income Ontarians and their communities. Many clinics are properly seen as leaders and innovators in the advancement of access to justice and social justice in Ontario.

LAO also recognizes that clinic law services in Ontario are at an important crossroads. Many of the most important institutional arrangements, policies and processes have not been updated in 20 years. Common sense tells us, and modern public administration demonstrates, that it is important to reassess the underpinnings and assumptions of clinic law services to ensure that they remain relevant and sustainable in the current environment.

LAO has concluded that the legal aid system in Ontario can provide more clinic law services in a more efficient and effective manner. Notwithstanding the system's strengths and the considerable skills of the people within it, the system needs reforms to progress forward. Most obviously, clinic law services are hampered by a series of institutional arrangements that can frustrate innovation, thwart progressive reforms, and hinder the development and implementation of the highest quality, most accessible and most cost-effective services for low-income Ontarians. Absent significant reforms, the long-term future of clinic services could be at risk.

LAO has further concluded that the time to begin clinic transformation is now. LAO, clinics and other members of the clinic law community need to respond positively to the widely acknowledged access to justice issue in Ontario. There are important and growing gaps in the legal needs of low-income Ontarians. For example, there is a wide gap between LAO's financial eligibility guidelines and the poverty line in Ontario. The clinic financial eligibility guidelines have not been adjusted in 20 years (since 1993). The guidelines for certificate services have not changed since 1995.

At the same time, public services in Ontario are being evaluated with unprecedented scrutiny and held to exacting new standards. In its 2012 budget, the Government of Ontario

recommitted to “revisiting and scrutinizing existing assumptions and traditional public service delivery models”³ and committed to “act based on evidence of what delivery model provides the best and most cost-effective results.”⁴ The provincial government has further stated that “[I]f programs are not achieving the desired results and ensuring the best use of taxpayer dollars, they need to be transformed.”⁵ Questions about the sustainability and effectiveness of clinic law services have been raised in recent reviews.⁶

Finally, LAO – like all legal aid plans in Canada and in many parts of the world – faces constant challenges between meeting the legal needs of clients and the overall resources available. Fortunately the primary funder of the legal aid system, the Government of Ontario, has made substantial, multi-year investments in legal aid over the last several years. The provincial government also announced additional new funding of \$30 million over three years for legal aid in its May 2013 budget. The legal aid system needs to use its scarce resources effectively to best serve clients.

LAO’s objectives

LAO’s reform initiatives in criminal law, family law, refugee law, and elsewhere have been organized around consistent themes or objectives which are also applicable to clinic law services. These themes are embedded in the *Legal Aid Services Act* and are reflected in LAO’s business planning, stakeholder consultations, and operations.⁷

LAO’s objectives for clinic law transformation are as follows:

1. Expanding access to justice and providing fair and equal access to clinic law services

³ Government of Ontario, “Strong Action for Ontario: 2012 Ontario Budget,” online: <http://www.fin.gov.on.ca/en/budget/ontariobudgets/2012/>, Chapter 1. [Budget 2012]

⁴ Budget 2012, Chapter 1

⁵ Budget 2012, Chapter 1

⁶These reports include the Deloitte Report, the Trebilcock report, the Connecting Report, and the recent Auditor General report. See LAO’s Discussion Papers for more analysis of these issues.

⁷ See, for example, LAO’s 2012 Discussion Paper, page 26.

across the province.

Access to justice for low-income individuals and their communities is a fundamental principle of Canada's justice system and democracy. LAO is therefore committed to **expanding** access, **improving** legal aid services, **increasing** the number of clients served and **leveraging** the impact of legal aid services across Ontario's justice system.

LAO believes that clients could be even better served if there were more points of client access available throughout the province. This could be accomplished by significantly increasing the number of potential satellite offices, using telephone and the Internet more innovatively and expanding the use of legal workers or intermediaries, especially in rural and remote areas.

Simply expanding access to justice is not sufficient, however. Clinic law clients also deserve equal access. Legal aid services are publicly-funded services and it is unfair if low-income Ontarians in one part of the province can access important clinic law services while others cannot. As a result, LAO believes that clinic law services need to be improved across two dimensions: the system needs to provide more services and more equal access to those services.

2. Providing a continuum of client-focused, high-quality, cost-effective services while promoting innovation.

There has never been a single definition of clinic law legal needs. The clinic law needs of low-income Ontarians range across a broad spectrum of areas of law and legal proceedings. These needs can be met through a broad continuum of legal services, including representation, legal advice and assistance, self-help materials, public legal information and/or systemic advocacy.

Moreover, many low-income communities have unique clinic law needs that require dedicated services to ensure they have equal access to the justice system.

LAO believes that legal resources can be used more strategically, and that clinic clients deserve access to a full continuum of legal services that allocates resources in accordance with the complexity and significance of their legal needs.

Finally, LAO believes that all clinic law service providers should provide cost-effective services, that innovation and best practices of those services be promoted effectively, and the quality be evaluated.

3. Meeting the highest standards of public administration in Ontario, including the

highest standards of transparency and accountability.

Clinic law services – like all legal aid services – are public services funded with public resources. Public funding for clinic law services in Ontario is approximately \$70 million per year, much higher than any other province. As a result, everyone in the legal aid system has a responsibility to use resources wisely and accountably. Public resources for legal aid services are also limited.

LAO believes that individual service providers and clinic services as a whole would benefit from uniformly strong management practices and governance structures. For example, sophisticated needs assessments, detailed management information, high-quality research, and community consultations would help clinics improve services and set priorities. Clinic law services would also benefit from regular strategic planning, business planning, performance measurement and priority-setting processes.

In addition, clinic law services need to be as transparent and accountable as other publicly-funded services.

In the past, several clinics have run into problems as a result of poor administrative practices. These situations can disrupt client service and divert limited public resources. The best approach is to ensure that the management and governance of service providers is professional, high-quality and consistent with the highest standards of public service across Ontario.

Finally, administrative costs should be minimized so that a greater proportion of public resources can be devoted to client services.

4. Providing more and better services in a more cost-effective way.

LAO has a statutory duty to:

- promote access to justice, irrespective of LAO's financial position
- monitor and adjust services to ensure LAO provides the most cost-effective services possible.

In other words, LAO needs to continue to find ways to unlock resources and capacity to ensure that it can meet new needs, including those resources used in meeting the needs of clinic law clients. As a result, LAO, clinics and other participants in the clinic law system will be continually challenged to find more cost-effective and innovative ways to ensure optimal client service.

Strategic directions

LAO is committed to the long-term success of clinic law services in Ontario. LAO is also committed to the principle of governance structures that are rooted in client services/community needs and the need to provide a full spectrum of legal services to clinic law clients and low-income communities.

LAO believes that the objectives set out in this document can be translated into concrete organizational and structural reforms for LAO, individual clinics and other participants in the clinic law system in Ontario. To that end, LAO has developed a comprehensive list of strategic directions that LAO believes are fundamental to clinic transformation.

LAO is optimistic that clinics can meet the many challenges ahead *and* expand access to justice at the same time. Over the last several years, Ontario's legal aid system has seen unprecedented creativity and commitment to developing new approaches, solving problems and improving services. This period has also seen unprecedented developments in the range of tools available to assess, manage and deliver client services. LAO's strategic directions attempt to build upon and advance these efforts in the area of clinic law. LAO is optimistic because of the broad commitment across Ontario to developing a long-term, structured plan to improve and sustain clinic law services.

LAO's strategic directions for clinic law services are as follows:

Multi-year commitment to expand access to justice

1. The delivery of clinic law services in Ontario is facing many challenges. Failure to act responsibly and promptly to meet these challenges puts client services at risk and threatens the sustainability of all clinic law services. Accordingly, LAO and others need to commit to a multi-year effort to **expand** services, **increase** the number of clients served, **leverage** the impact of clinic law services across Ontario's justice system and do so with significantly increased cost-effectiveness.

Equal access to a continuum of client services

2. Equal access to justice means that every low-income Ontarian, regardless of location or clinic catchment area, should have fair and equal access to a full spectrum of clinic law services, including law reform, representation, brief services, community development, legal advice and self-help materials.

Expand access, meet needs, build capacity, and improve services

3. Community clinics can be structured to improve their ability to expand access to justice and client services. Clinic structures and catchment areas can be analyzed against their ability to meet current and future client needs, not historic catchment areas or funding formulas. One might be able to make the case, for instance, that a smaller number of larger clinics with greater capacity could result in more clients served, more strategic and effective use of resources, more innovation, and reduced administrative costs. Larger clinics could be better positioned to leverage technology and/or develop partnerships that actually expand client access to clinic law services.

LAO does not have a fixed view of how many larger clinics would be desirable. However, LAO believes that larger clinics can be responsive to local conditions and client needs if they are structured appropriately. LAO does not believe in funding or catchment areas based on a rigid predetermined provincial formula calculation.

Improved needs assessment and service planning

4. Needs assessment is at the centre of delivering high-quality client services. The entire legal aid system needs to work creatively to improve its understanding of how best to deliver the full range of services to low-income Ontarians, including linguistic minorities, Aboriginal people, racialized individuals and communities, persons with disabilities, persons who have mental illnesses, and low-income persons with unique legal needs. LAO, clinics and others in the clinic law community need to commit themselves to improving needs assessments and service planning. This will require new tools, better management information, high-quality research and community consultations.

Holistic responses to legal needs

5. Clients often have legal needs that transcend traditional legal boundaries. In the future, the legal aid system will need to effectively address “holistic” legal needs. As a result, LAO, clinics, private lawyers, duty counsel, paralegals and others will need to work creatively to integrate and/or coordinate services locally, regionally and provincially.

Law reform and systemic legal services

6. Law reform and systemic advocacy are important features in the provision of legal services to low-income clients and their communities. Clinics have been at the forefront of vital social justice advocacy. LAO believes that this key function to address poverty

law needs should be maximized for even greater client benefit through improved coordination, streamlining of management, prioritizing cases and effective reporting.

Leveraging technology to expand access to justice

7. Experience has shown that technology can expand access to justice and reduce costs under the right circumstances. As a result, clinic law services in the future will need to utilize technologies and practices that improve the coordination, accessibility, quality and cost-effectiveness of client intake, advice and brief services. Telephone or web-based services can significantly improve the accessibility and cost-effectiveness of services for some clients, particularly if organized across provincial, regional or larger local areas. Service providers will also require the capacity to provide client intake/advice/brief services for vulnerable populations, persons with immediate legal needs, and/or persons unable to access telephone or Internet services.

Finally, clients require access to state-of-the-art websites, online services, and online public legal education materials. Similarly, service providers require modern case management and database management systems. Clinic IT systems will need to be upgraded to facilitate these changes.

Leveraging resources to serve more clients

8. The legal aid system of the future will need to be streamlined. The system cannot afford to duplicate efforts or use resources inefficiently. LAO believes it is possible to manage and staff the system to promote specialization, economies of scale, and the most cost-effective use of limited resources. For example, certain clinic law services (such as back-office functions and services) could be delivered effectively on a province-wide or regional basis.

Promoting strong governance and management

9. Strong governance and management is a prerequisite to high-quality and cost-effective client services. Every client and every organization in the legal aid system benefits from strong management practices and governance structures. Management and governance in the clinic system could improve if all clinics had executive directors who were professional, full-time managers. Clinics are most effective when they are governed by boards that blend community awareness, understanding of client needs, and management acumen. LAO, clinics and others can work together to develop best practices, protocols and policies to achieve this objective.

Accountability and transparency for public resources

10. Legal aid is an important public service funded with significant public resources. Accordingly, all legal aid programs have a responsibility to demonstrate that the expenditure of public funds is wise and appropriate. Clients, boards, funders, and the public at large need be able to assess the planning, policies, performance and financial management of clinic law services. As a result, it is important that service providers and funders meet contemporary standards for transparency and accountability. Examples of these standards would include standards respecting freedom of information, disclosure of financial statements and salary disclosure. These should mirror the requirements of the provincial government's transfer payment accountability directive.

Improving quality, promoting innovation and partnerships

11. LAO has a statutory duty to provide high-quality services. Everyone in the legal aid system needs to be committed to promoting high-quality legal services. In the future, appropriate performance measures and improved quality evaluation will be important for improving and measuring quality. High-quality services can also be promoted through initiatives such as ongoing training.

LAO also has a statutory duty to promote innovation and flexibility. LAO, clinics and others in the legal aid system can work together creatively to promote and evaluate service innovations. Promising practices can be shared more effectively. In the future, it will also be important to expand alternative service delivery and the mix of service providers in delivery of clinic law services. A "mixed" system will promote new ideas and perspectives, help target skills and resources more effectively and help everyone in the clinic law system learn from alternative approaches. To achieve this objective, LAO will need to develop the capacity of staff lawyers and/or paralegals to provide clinic law services where necessary. It could be beneficial for lawyers, community legal workers and paralegals to support client services in other institutions as well.

LAO, clinics and others can improve their partnerships with community agencies, pro bono lawyers and other institutions and individuals committed to serving the same clientele.

Policy reform

12. The agreements, policies, and formulas currently in use to manage the LAO/clinic relationship need to be updated to reflect modern management practices and

contemporary needs. The rigidity and barriers to innovation and flexibility embedded in the current instruments can be addressed.

Moving forward

As noted above, implementation of these strategic directions will require hard work, dedicated resources, and a commitment to addressing hard questions with the goal of better and more accessible services for clients. LAO, individual clinics, the ACLCO and other access to justice leaders within Ontario will have to work together to build the innovative and accessible clinic law services that low-income Ontarians need and deserve.

Fortunately, there are already significant areas of momentum within the access to justice community in Ontario on the substance and specifics of clinic law reform. LAO, the ACLCO and many clinics (and groups of clinics) have already begun to work on important clinic law transformation projects.

Finally, it is important to note that the recent provincial strategic plan prepared by the ACLCO has many themes and proposals consistent with LAO's strategic direction. For example, the ACLCO plan emphasizes the importance of needs assessments, technology initiatives, clinic mergers where appropriate, improving the capacity for systemic work, improved accountability, and coordination.

LAO's five-year plan

This is a broad and deep agenda that will take several years to implement. Accordingly, LAO is committing to a five-year plan for clinic transformation. At this point, LAO anticipates three distinct phases to the implementation plan:

First year: building the foundation

The first phase of LAO's five-year plan is likely to be devoted to building the foundation for the reform of clinic law services. LAO anticipates that this phase may take a year. High priorities for the first year could include:

- updating existing clinic IT hardware and infrastructure
- implementing the Clinic Management Information System (CIMS)
- implementing other clinic technology projects to enhance access to justice
- reducing administrative costs
- updating LAO/clinic policies, agreements, and funding formulas
- improving the transparency/accountability of clinic planning/financial management
- studying the dispute resolution process
- studying the consultation process
- studying intake models
- developing system-wide performance measures
- developing toolkits to support needs assessments, strategic/business planning
- undertaking studies of clinic amalgamation and/or clusters
- supporting existing initiatives to amalgamate or cluster clinics, including the development of merger toolkits and related resources
- examining the consolidation of back-office functions and services – including audit, bookkeeping, and payroll functions – and developing implementation plans where appropriate

Years two, three and four: creating the new clinic law system

Years two, three and four of the clinic transformation project will likely continue the work that began in the first year. Major activities during this period will likely include continued support/development of clinic mergers, clusters, or amalgamations, continued implementation of technology initiatives, and improving the coordination, management and delivery of clinic law services.

Final year: consolidation, assessment and adjustments

LAO expects that the final year of the clinic transformation project will likely be focused on documenting, consolidating and assessing the work undertaken so far. LAO is committed to making adjustments as necessary to ensure its overall objectives are met.