

LAO MODERNIZATION CONSULTATION

AUGUST/SEPTEMBER 2019

Summary of consultation input
and themes



LEGAL AID ONTARIO

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Table of contents

| | |
|---|----|
| Overview and thematic highlights | 1 |
| Modernization challenges: need for system-wide modernization | 3 |
| Putting clients first | 6 |
| Unmet client need and service gaps | 13 |
| Service provision and service providers | 18 |
| Taking a broader approach can be more efficient and effective | 35 |
| Changes to legal aid legislation | 39 |
| Modernization is a process, not a project | 43 |

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Overview and thematic highlights

In August and early September 2019, LAO's Board Chair hosted a series of consultation roundtable sessions to obtain input on the LAO Modernization Project. In addition to roundtable discussions in the areas of criminal, family, clinic and immigration and refugee law, there were meetings with staff, with officials of LAO's two staff unions, with clinic executive directors and clinic board members, and with LAO's nine advisory committees to the Board, which incorporate the perspectives of a wide variety of community service providers, stakeholders and academic experts.

A number of strong themes emerged from the roundtable discussions and were also reflected in the approximately 75 written submissions which LAO received.

- **Impact of systemic issues and the need for full justice system modernization and earlier intervention**

Justice system issues and other external factors have an impact on LAO's ability to be effective and efficient. It is difficult for LAO to modernize when the system isn't doing the same, and the justice system itself needs to be reformed to make greater use of technology and focus on users. Unaddressed social problems and mental health needs are putting tremendous pressure on the justice system, suggesting a need for more cross-sector coordination and earlier intervention.

- **Support for legal aid's "foundations", but at the same time a need for client-focused improvement**

While the private bar and clinic service delivery models offer many benefits and should remain foundational (the important role of services provided to communities by clinics was repeatedly highlighted), the need for improvement is clear. Service delivery needs to become more client focused and this includes a client-informed approach to improving access to legal aid and meeting legal needs, allocating funding and delivering services in ways that recognize demographic changes, and ensuring that service provision reflects the values of equity and diversity. Many participants raised a need to address quality service issues in the current system.

- **Providing more seamless access through improved coordination, use of technology and integrated services**

There needs to be more seamless access to legal aid services, and this requires greater use of technology and more coordination between legal aid's service delivery channels, which are currently too siloed and reliant on existing information-gathering technology and processes that do not "talk" to each other. Many participants spoke of the benefits of integrated services and "one stop shops" in addressing clients'

intersecting legal and related needs, particularly for clients from over-represented and vulnerable client groups. Others identified outreach initiatives and innovative partnerships with health providers and a variety of trusted intermediaries in the community as being effective ways to increase access and the reach of legal aid services. Improving access for clients in rural and remote communities was also identified as important. LAO heard that there is a need for consistency in access to and delivery of legal aid services across the province. At the same time, LAO heard that “one size fits all” approaches do not meet the needs of some communities.

- **Addressing unmet legal needs**

LAO also heard that many substantive client needs are not being adequately addressed. Participants identified restrictive financial and legal eligibility criteria as barriers to meeting needs. Unmet need in family law is huge, and criminal accused who are ineligible for a certificate because they are not facing incarceration have limited options, including where they have a viable defence. Participants offered a variety of options for better serving these clients, including making more effective use of LAO’s staff resources to expand coverage.

- **Modernizing LAO’s legislation**

LAO’s current legislative framework was viewed by many as barrier. Participants emphasized that new legal aid legislation must continue to protect LAO’s independence from government, the independent, community board-governed status of clinics, and the foundational aspect of private bar and clinic service delivery. However, participants indicated that LAO requires better tools for ensuring service quality, and more flexibility than the current legislation affords in how it provides and pays for services. Across all areas of certificate practice, the tariff structure was described as inflexible and out of sync with modern practice.

- **Modernization should be an ongoing, transparent and evidence-based process**

Participants urged LAO to approach modernization as an ongoing process, rather than as a short-term “project” with a March 2020 deadline. LAO heard that ongoing engagement with service providers and stakeholders will be helpful, as will a user and data-informed, evaluative approach to modernization that sets goals for improvement and tests what works, without making prior assumptions about what is best or about how clients want to receive services. Modernization and the allocation of LAO’s resources must be evidence-based, informed by demographics and guided by client input.

Modernization challenges: need for system-wide modernization

LAO provides services within a wider system and factors beyond its control have an impact on its ability to be effective and efficient. Many consultation participants identified justice system issues and broader environmental factors which challenge LAO.

Regarding the justice system itself and LAO's role within it, LAO heard that:

- Legal aid is, to a great extent, captive to justice system processes and local practices, which also need to be looked at.
- Modernization won't be able to make LAO more efficient unless the courts become more efficient.
- System modernization will support the cost effectiveness of LAO.
- It is hard for LAO to modernize when other players aren't modernizing or being required to modernize; these issues should be addressed holistically by government.
- Ideally, LAO modernization should be undertaken after issues in the larger justice system have been addressed.
- The family justice system requires "full system" modernization. LAO should request a "Family Modernization Table" with the Ministry of the Attorney General (MAG) (similar to the table that exists for criminal law).
- There needs to be greater use of technology throughout the whole process. One submission stated that "Ontario's courts are ripe for red tape reduction", noting that an emphasis on user-focused justice requires increasing the availability of digitized justice services and streamlining court processes.
- The justice system itself needs to be reformed to focus on the users of the system, not on the judges and lawyers.

Some participants provided specific examples of justice system inefficiencies and barriers that could be addressed by improving administrative processes and making better use of technology:

- Legal aid dollars will stretch further if lawyers aren't sitting in court, waiting.
- Court rules make it difficult to effectively use students and paralegals.
- Set date courts are a "waste of time" and need to be overhauled.
- There is a need for modernization and better use of technology in relation to court

transcripts and disclosure.

- Technology can be leveraged to permit counsel or clients to attend CPTs/ JPTs remotely. Courts should make greater use of real-time audio/visual (as opposed to in-person) appearances, and these also require fewer court resources, translating into justice system savings.
- The need to provide reliable, secure Wi-Fi access across Ontario courthouses was noted.
- Better coordination with court services is needed.
- There was a suggestion for a “211” type of system that would allow clients to be “effectively directed within the entire court system and legal aid system”.

LAO also heard that unaddressed social problems and mental health needs put tremendous pressure on the justice system, suggesting a need for more cross-sector coordination and earlier intervention:

- An emphasis on early intervention will keep more people out of the system: “social ills” have legal aid consequences. Studies show 80% of inmates have mental health and addiction issues; these are often people who attract “nuisance” charges and instead of being prosecuted they should have more robust health and social supports.
- Innovation and more pilots in partnership with all stakeholders can help to deal with “front-end” needs that lead to criminal behaviour and will support an evidence-based approach to doing what works, and learning what is most effective. This should be a priority for all stakeholders.
- One submission suggested carrying out a cost-benefit analysis of the value of providing “front end” assistance, including diversion, as opposed to allocating resources at the “end of the line”, and looking at improvements in other jurisdictions and other sectors, including health care where a good deal of cross-sector and process-improvement work has already been done.
- Stronger direction to MAG/ police is required so that minor matters do not bog down the system. Crowns have to be supported in making decisions not to charge and prosecute low-level offences, because these clog up the courts and drain the court system and LAO resources.
- It would help to have legal aid duty counsel working with Crowns who engage in meaningful negotiation to facilitate more resolutions.
- Some submissions from LAO staff and clinics recommended participation in local Situation/Risk tables which have been rolled out across the province. These tables focus on pre-charging interventions and help to create networks with other service providers. Critically, it was felt, these tables include police participation and support. The FOCUS

table network in Toronto was cited in one submission as a multidisciplinary crisis intervention model which LAO and the Ministry of the Attorney General could consider supporting and working to expand to other parts of the province.

- For clinics, grappling with the issue of Ontario Disability Support Program (ODSP) appeals, and the need for better decision-making at first instance to reduce the number of appeals, requires the Ministry of Community and Social Services (MCSS) to be at the table.

LAO also heard about other kinds of factors, external to the justice system, that pose significant challenges to LAO:

- Effective client referrals depend on the availability of services in a community and not all communities have a sufficient number of services.
- Clients in northern and rural areas lack the access to technology that urban Ontarians have; many are still using “dial up” internet service or have no access to service at all. These problems are exacerbated by the scarcity or non-existence of public transportation in rural and Northern Ontario, which further isolates these clients. Some clinics stated that the telephone is still the most important piece of technology at their disposal, and is what connects them with clients who are unable to attend a clinic or one of its satellite locations.
- Student Legal Aid Services Societies (SLASS) are concerned by the fact that supporting SLASS services through the university student levy is no longer mandatory because SLASS services are not considered “essential”. This change is expected to have a significant impact on an important source of SLASS funding.
- In refugee and immigration law, it was stressed that one-time federal funding commitments that put services in peril on an annual basis create too much uncertainty in the system.

Putting clients first

Client-centric approach and indicators of client success

LAO heard that putting clients first, and having a client-centred system, needs to be paramount:

- LAO's priority must be serving clients, and particularly the most vulnerable clients, as opposed to serving the court system.
- Being client-focused includes being mindful of barriers to service, such as language barriers, literacy barriers, lack of interpretation services, lack of access to phones or internet, and transportation barriers.
- LAO must modernize its client facing technology, streamline policies and processes, train staff and ensure that staff have the proper tools to serve clients. Clients face access barriers now that cannot be broken down without engaging both technology and people to serve clients in an integrated way.
- Client-centric design requires actively engaging clients themselves and getting their feedback as these improvements are made over the coming years.

A point that was frequently made is that, while many clients want and will benefit from barrier-free access to LAO through technology, there are some clients for whom this form of access will create more barriers than it dissolves. This is particularly the case for clients facing language or literacy barriers, and for those challenged by mental health issues. These are clients who are likely to need a more personalized, hands-on approach – something that LAO can better provide if efficiency gains made through greater overall use of technology can free up resources for providing more assistance to those who require it.

However, LAO also heard that assumptions should not be made about how today's clients want to receive services; technology can help to overcome distance barriers for clients and the point was made that today's clients are comfortable with technology.

For clinic clients, LAO heard that client-centric approaches often necessitate outreach and going where the clients are, whether that is in a clinic outreach van that brings services directly to communities or through having clinic service providers embedded in health care settings and other places where clients frequently need access to legal assistance. Some clinic submissions provided detailed descriptions of these types of initiatives, as well as of ways in which some clinics are utilizing technology to reach more clients and serve them better.

Several written submissions to the consultation suggested specific indicators of client

success. These included the following:

- Client is able to access needed and consistent quality legal aid service at first contact no matter where they are located in Ontario
- Timeliness of response from the service provider
- On the spot decisions are made to avoid delay in client service including providing upfront information, advice and referrals
- Ensuring there is no wrong door, with a system placing fewer barriers and less red tape between the eligible client and justice
- Client is confident that the best frontline service has been provided, where a court appearance is meaningful and the matter is moving forward
- A client is able to get diversion, and maintain employment and housing
- The number of charges a client faces is reduced
- Accessible and high quality legal representation
- Culturally competent legal representation
- Clarity of service: the client understands and is an informed participant in the process
- Client is afforded respect

Improving the client path: access to services and service providers

Coordination and system navigation

The majority of consultation participants identified a need for more integration and coordination, both within the legal aid system itself and between the legal aid system and other providers in the community who work with the clientele that legal aid serves.

- Mental health clients need more system navigation support. Specialized training for LAO staff, and improved coordination and communication between LAO and clinics would be helpful.
- LAO should connect with community-based service providers to support outreach about LAO's services.
- LAO could encourage and facilitate connections and relationships between certificate lawyers and community service providers.

- Clinics could be well-placed to facilitate connection and system navigation across the system for clients.
- Criminal law clients have needs in other areas, and if these needs can be flagged at the beginning of the assessment process the appropriate linkages can be made, reducing delay. Linkages could be formed with clinics to improve these referrals.
- Enabling lawyers to make a legal aid application on a client's behalf would be helpful, especially for mentally ill clients and clients who are in custody.
- Agencies could be connected with LAO through a self-serve portal.
- Staff should also be able to connect clients with agencies, via text or other means.
- Immigration and refugee practitioners often have small practices and feel challenged in providing clients with referrals to non-legal assistance. Good communication and good relationships, including with LAO, is crucial to solving problems and ensuring that services meet the needs of clients.
- Too often the certificate services side doesn't know what clinics do, and it would be beneficial if the two sides knew more about each other and the services that each provides. If criminal or family duty counsel could come out to a local clinic they would get to know what the clinic does and this would facilitate future referrals between them.
- Use of a "mixed model" approach, with a family lawyer coming into a clinic to provide services, would be helpful.
- Family Law Service Centres could be moved into courthouse spaces.
- There is a need for greater integration between LAO and clinics. Cross-training of LAO and clinic staff was a suggestion that came from both staff and clinic participants.
- Staff also identified a need for better connections and information-sharing between different parts of LAO to assist in referring and directing clients in a more streamlined way: more connection between LAO's call centre and people in the districts is required, as well as better transfer of "on the ground" knowledge.
- An online searchable "knowledge base" that can be easily accessed by any LAO staff member could be used to assist clients with referral and service options.
- Something as simple as a province-wide directory of LAO services could assist staff in helping clients.

The point was also made that LAO should be able to offer consistent services and points of access to services across Ontario, so that eligible clients will not be denied legal aid services because of where they live.

Clinic perspectives on referral networks and navigation “quarterbacks”

- A clinic executive director participating in one of the roundtables expressed the view that clinics are often in the best position to act as a referral and navigation “quarterback” across the system, because clinics have the flexibility to work with the client across their range of issues. An advisory committee member also felt that clinics could be an appropriate referral system for services, creating a “web of referrals”.
- Some written submissions from clinics also expressed the view that clinics can, and in many ways already do, act as a system “quarterback” for clients who present with multiple issues.
- One clinic submission noted that, because many clients who contact the clinic have issues in areas like criminal or family law that the clinic does not assist with, their “first point of contact” staff have become skilled in making effective referrals to get people where they need to go for assistance, be it LAO or elsewhere. This system could be improved if both LAO and clinics had a method for direct contact to confirm whether services are available or to facilitate the warm transfer of a client.

Role of technology in enhancing client access

Consultation participants indicated that technology has a key role to play in increasing clients’ ability to more easily access legal aid services:

- A clinic participant said that a lot of people want to receive services differently today, and it would be a mistake for clinics or LAO to presume to know what the public wants. There is a place for new options, and this includes a role for technology. Clinics could pilot the use of technology to help clients who need letters written or court forms filled out. Skype could be used to patch clinic clients through to a call centre.
- Technology can be used to assist with triaging clients who are unable to travel to reach services: the legal aid website could use the client’s address, postal code and information about their legal matter to “send” them to a nearby service location.
- An integrated “live chat” referral system would allow clients to be referred by LAO to clinics and other agencies.
- An agency portal could be used to by agencies to assist their clients in accessing LAO services.
- Computers could be located in courthouses, with someone available in the court to provide clients with assistance in making an online application for legal aid.
- A Criminal Law advisory committee member identified an opportunity to use the internet

to provide more online information about the law as a means of increasing access to justice, while other members of this committee indicated that the need for advice is greater than the need for information. However, participants indicated that there is a shortage of both information and advice.

- The Immigration and Refugee Law advisory committee suggested using technology to address the needs of clients who live in areas where there are few lawyers working in refugee law. A lot can be done over the phone or by Skype without having to meet face to face. Today's clients are comfortable with technology and regularly use FaceTime on their phones.
- Several clinic submissions pointed out ways in which clinics are currently harnessing technology to enhance service provisions. Others spoke of a need to make additional use of technology. One clinic that is making extensive use of technology cited examples including the use of video technology for client interviews, including in locations where a physical satellite office is not warranted, and for conducting hearings at the Social Benefits Tribunal (clients save travel and waiting time, and it is more efficient for staff).

Although consultation participants generally felt there should be a bigger role for technology in serving clients, they cautioned that there are limits to technology and that technological solutions are not always appropriate for all clients and are therefore not a panacea: clients still need human interactions with lawyers. Access needs to be meaningful and needs to have context, as a member of the Racialized Communities advisory committee pointed out. A clinic submission emphasized the importance of clients being able to talk to a person, with the technology happening behind the scenes.

Finding a certificate lawyer

Currently, finding a certificate lawyer to take their case is frequently a challenge for LAO's clients. LAO heard that:

- In family law, clients have a hard time accessing lawyers who have a good understanding of how to work with clients who have experienced domestic violence. Clients also have trouble finding child protection counsel.
- The private bar in large part is not picking up services to Indigenous people, particularly in child protection law. Indigenous clients are given a list of lawyers on the child protection panel, but frequently these clients can't find anyone on the list to take their case. There are no staff lawyers in remote and rural communities, and it can be hard to find anyone at all who wants to do the work.
- In immigration and refugee law, clients located outside of the GTA or not near a staff office (staff offices are located in Toronto, Hamilton or Ottawa) struggle to find a lawyer. Refugee claimants need the more affordable housing that can be found in

smaller locations but are reluctant to leave major centres like Toronto because of the high importance they assign to securing legal representation. Kitchener, Windsor and Fort Erie are pockets of need. Finding a Francophone immigration/refugee lawyer is particularly difficult. Persons in immigration detention have a very hard time finding a lawyer, as few lawyers do this work.

- Prisoners have a host of legal issues, and they encounter real problems in accessing lawyers. For a prisoner in remand custody, the only time they may see or speak to a lawyer is when they are brought to court. Lawyers face difficulty gaining access to institutions unless they are coming to see a specific client.

Some suggestions were made:

- LAO could think about having a roster of immigration and refugee lawyers who sign up to be assigned cases on a rotating basis; this was done by LAO in the 1990s and would help to ensure clients do not go without a lawyer. It would need to be a transparent process and the lawyer would have to agree to take the case.
- To help criminal law clients find a lawyer, LAO could partner with local bar associations which could help to ensure that lists of counsel are up to date and that they only include lawyers who are available to take on work.
- For Indigenous clients, access can be improved by providing one-stop shopping options, including through Aboriginal legal services corporations, and increasing access to services delivered by Indigenous providers.
- For prisoners, onsite services at the prison represent the only real way to deal with the issue of access to a lawyer.

Access to certificates from court locations

A frequently-raised barrier related to taking in-court legal aid applications, specifically for criminal law clients. Several participants noted the difficulties that clients, and vulnerable clients in particular, are having now that staff do not take applications in courthouses.

- Staff suggested that, while LAO must manage according to available resources, in-court application-taking should not be rejected out of hand as a matter of policy. Vulnerable clients in particular need this assistance.
- The submission of the Society of United Professionals, representing nearly 400 LAO staff lawyers and articling students, indicated that nearly 90% of their members who responded to a member survey agreed that access to justice would be improved by onsite access to legal aid applications.

- The criminal roundtable noted that, if applications could be made at the courthouse at first appearance, this would reduce a huge amount of strain on both clients and the courts.
- The Criminal Law advisory committee felt that in-court computers, with staff on hand to assist in making an online application, could be helpful.
- Allowing lawyers to make applications on behalf of clients was another suggestion.
- The Submission of the Ontario Public Service Employees Union (OPSEU), representing 450 frontline, non-lawyer LAO staff, recommended issuing certificates (same day) in the courthouse to specific client groups, including clients receiving social assistance, those who are homeless or living in a shelter with no income, and “reoccurring” (repeat) clients.

Unmet client need and service gaps

Consultation participants identified service gaps currently affecting legal aid clients, including specific client groups, and offered suggestions for solutions.

Eligibility for legal aid services

LAO heard that financial eligibility for legal aid is too low, and legal eligibility is too narrow. The current financial eligibility test is a barrier to access to justice and does not reflect modern realities: anyone working full-time and earning the minimum wage must have at least a family of three in order to qualify for legal aid.

- LAO's financial eligibility asset exemptions should match those of Ontario Works and the Ontario Disability Support Program, which are significantly higher.
- Old Age Security entitlements should not be considered in calculation of income.
- Legal eligibility should be widened to include persons without a criminal record where a conviction could affect their employment, future employment, or ongoing education.
- Eligibility must be flexible in mental health law, where a person's assets are being withheld from them and where a client may be mistaken about their assets or their ability to pay privately for legal services.
- LAO might be able to assist more people, including for types of legal issues that it does not currently provide coverage for, if its legislation could be amended to allow it to administer a legal assistance plan similar to legal expenses insurance that is currently available in the private sector.

Specific areas of unmet client need

Indigenous clients

LAO heard that there are many gaps and justice system failings affecting Indigenous clients.

- Solutions lie within Indigenous communities and agencies. There is a need for more Aboriginal Legal Services Corporations (ALSCs).
- LAO could create an Indigenous Justice Division (IJD) within LAO. The Ministry's IJD has good relationships with Indigenous communities province-wide; they know who is doing what.

- One-stop shops, provided by Indigenous people, is what works best.
- Centralized, Toronto-centric solutions are not what the community needs.
- In light of the findings of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls regarding inconsistent application of *Gladue* principles across Canada, there is a need for the Ministry of the Attorney General and LAO to develop a clearly articulated *Gladue* strategy for Ontario.
- The Ontario Federation of Indigenous Friendship Centres called for a coordinated approach between LAO and Indigenous service delivery organizations, perhaps including embedding LAO services within Friendship Centres, to reduce Indigenous people's engagement with the criminal justice system and to help build healthy communities.

Racialized clients

LAO heard that clients from racialized communities are disproportionately over-represented among the poor, and are more likely to have intersecting legal issues and face additional barriers in accessing justice. Ontario is home to the largest population of racialized people in Canada, and this population is a significant user of legal aid services, including clinic law services.

- Service models, and new legal aid legislation, should be informed by values of equity and inclusion.
- Many racialized clients have little or no knowledge of English. They will not neatly fit into a one-size-fits-all model.
- Racism and discrimination are important factors which must be considered. There is a need to look at systemic racism and use the language needed for an intersectional analysis.
- There is a need to use data on race to identify demographic shifts in the community and be able to adapt to those changes. Poverty in Ontario is becoming increasingly racialized and it is becoming increasingly youthful.

Mental health clients

LAO heard that people with fitness issues are easy to spot, but a large client segment does not even recognize that they have mental health issues and cannot prioritize their needs. LAO needs to be more proactive in serving these clients.

- LAO's duty counsel triage services are now more limited, and mental health clients really do need more duty counsel help in court, including assistance with agency work

even if the client has a private bar lawyer.

- Early intervention, making change of solicitor requests easier, and funding test cases should all be priorities for mental health clients. Specialized training for staff in serving these clients is also important.
- Clinics are well placed to serve clients with mental health issues in the community.
- More support is needed for family members of incapable persons with guardianship matters and end-of-life Consent and Capacity Board matters.

Francophone clients

- Effective referrals are crucial for providing access to justice in French. Services are available but referrals are not being made.
- “Active Offer” is a best practice in the promotion of language rights.
- Courts in some regions are out of compliance with FLS requirements, and in some parts of the province lack of resources threatens LAO’s ability to remain in compliance with FLS obligations.
- Some clinics are designated agencies under the *French Language Services Act*, providing important services to the Francophone community and especially the most vulnerable Franco-Ontarians. Clinics can craft systemic responses in providing services.
- Imposing a blanket solution does not work for the French-language community.

Family Law and child protection clients

LAO heard that there is huge unmet client need in family law, and a need for more access to family law services.

- Family law needs frequently intersect with needs in other areas, particularly in poverty law; solutions that were suggested ranged from creating more linkages between LAO’s family law services and clinic services, to co-locating these services, to enabling clinics to offer family law services.
- Conflict of interest rules make it more difficult for LAO to provide services to family law clients, and LAO heard that the issue of conflicts is one reason why it may not be feasible for clinics to offer family law services.
- Child protection clients need to have access to a “Brydges” service or other kind of duty counsel hotline because these clients frequently need urgent assistance.

Criminal law clients

The most frequently raised service gap is that criminal accused who have a viable defence (a “triable issue”) but do not meet LAO’s loss of liberty test (they are not “screened for jail”) are not generally eligible for a legal aid certificate, even if they face serious secondary consequences. A client’s case may raise viable *Charter* issues, but because the Crown knows the case will not be brought to trial but will instead stay with duty counsel, the Crown has no incentive to resolve the matter.

- LAO should consider bringing back expanded legal eligibility for criminal certificates, which enabled clients not facing jail to have access to a trial in some circumstances.
- Increase access to diversion for clients, to reduce the likelihood of attracting a criminal conviction record and of having further involvement with the criminal system.
- Enable staff duty counsel to take a case to trial where a client has a triable issue but does not qualify for a certificate because incarceration on conviction would be unlikely.

Refugee law clients

Participants emphasized that refugees and immigrants come to Canada for a reason – and it’s not just to have a better life. Often they come here just to be able to live at all.

- It is vital that refugee claimants, who risk being sent back to places of death or torture, have legal representation and wise legal counsel.
- Because the consequences for these clients can be so serious, ensuring quality service provision is extremely important.
- There are shortages of refugee lawyers, including Francophone lawyers, in parts of the province not served by staff offices.
- Technology can enable lawyers to reach and provide assistance to clients across distance. Today’s clients are comfortable with using technology.

Prisoners

Prisoners are particularly marginalized and their ability to access legal help is poor, especially for their non-criminal-law issues. Technology is not a solution for providing access to this group, as persons in custody have no access to the internet.

- LAO really needs a greater presence within facilities and the ability to meet a wider variety of the legal needs prisoners have.

- The differences that exist between federal and provincial (chiefly remand) custody are so great that the legal issues often look very different depending on which system the prisoner is in. The sheer size and legal innocence of the remand population – there were over 46,000 remand admissions in 2015, and 38% of these people were released without conviction – and the impact of detention on their lives should be considered.
- Provincial incarceration is a revolving door and those prisoners tend to have multiple intersecting poverty law issues.

Service provision and service providers

Support for foundational service delivery models

Consultation input from the private bar and clinics supported continuation of the existing certificate and clinic models as the foundations for legal aid service delivery, as these were felt to be best suited for serving clients in their respective areas. Submissions stressed the need for the “foundational” aspect of service provision via the certificate bar and clinics to be maintained and acknowledged in legislation.

Although radical departures from the basics of service delivery were not recommended by most, many consultation participants made suggestions for improvement. As noted above, more communication and coordination between service channels was felt to be necessary and overdue, and there were numerous recommendations for making more and better use of technology. There were also some suggestions for new approaches and “thinking outside the box”.

Private bar perspective and ideas for new approaches

Key aspects and benefits of the certificate system

Submission from bar associations pointed to a variety of recognized benefits of the certificate model, including the effectiveness of independent counsel and the flexibility and ability of the private bar to take on lengthy and complicated cases. The certificate bar also spoke of the cost-effectiveness of their services (due to low tariff rates and service provision without overhead costs).

The submissions of the Federation of Ontario Law Associations, the Criminal Lawyers’ Association and the Mental Health Legal Committee emphasized that in order to ensure service quality, legal services should be provided only by lawyers, or by persons working under the supervision of lawyers. These submissions also recommended limiting the scope of duty counsel services (avoiding “mission creep” in the words of one submission) and limiting the expansion of staff offices in the absence of a demonstrated gap in private bar service availability.

Ideas for new approaches

In family law:

- The family roundtable and Family Law advisory committee suggested making greater use of law clerks, paralegals and students. Working with law students and articling

students also provides an opportunity to train and support future lawyers who are interested in doing social justice work.

- The Family Law advisory committee suggested some alternative service models: LAO could look at the Parents Legal Centre model in British Columbia, and the Barbra Schlifer Commemorative Clinic is also a good model.
- On-site mediators, who offer sliding scale services and are cost-effective, could work with the certificate bar to “stretch out” certificates. This view was also expressed in a written submission from the Ontario Association for Family Mediation, which stated that encouraging the use of mediation prior to a court process being started could reduce the number of hours needed on a legal aid certificate.
- There is a need to think outside the box regarding family law certificate services. Limited scope retainers are an up and coming area. There are many tools that LAO is not using. People don’t know how to do their family law paperwork; unbundled certificates for court document preparation would help.
- Duty counsel in family court are excellent and there may be no need for a certificate lawyer to step in until the case conference stage.
- LAO offers good settlement conference facilitation. Settling at an earlier stage would save LAO and the court system a lot of money.

In criminal law:

- Although criminal law participants were largely opposed to the use of paralegals in providing criminal law services, a need to think outside the box was acknowledged.
- A member of the Criminal Law advisory committee advocated for a re-assessment and evidence-based approach to what is the most effective way to provide services, as well as to which clients are most in need of certificate services. Given the high numbers of persons who are unrepresented at trial (because they do not meet the legal eligibility criteria for a certificate), providing trial representation could be a higher priority than plea representation. This committee member said that a new focus is needed to determine who LAO’s clients are and what the best use of limited resources is. It should not be automatically assumed that the certificate model is the best one in every case; instead it would be best to start with establishing some goals for serving clients in the criminal law process and then to test and evaluate what is the best way to meet a particular need.
- There was some support for LAO involvement in promoting diversion, although the majority of Criminal Law advisory committee members felt that a focus on legal work is more important for LAO than getting involved in the areas of diversion or social services.
- The Prison Law advisory committee urged LAO to look at different service delivery mechanisms to better serve incarcerated clients. Retained counsel can only access their individual client, and are unlikely to resolve intersecting legal issues. Privately retained

lawyers say that the complexity of the files, the extra process that is required to access the client, and the specific vulnerability issues of the client base, make it not worth a lawyer's while to take a legal aid certificate for an incarcerated client. These issues speak to how it may make sense to use staff lawyers rather than private bar counsel, or perhaps a combination of the two. The access barriers facing prisoners make the availability of onsite services tremendously important for this group.

Clinic services perspective and ideas for new approaches

Key aspects and benefits of the clinic system

The following characteristics were described in numerous clinic submissions, including that of the the Association of Community Legal Clinics of Ontario (ACLCO), as being fundamental, necessary to enshrine in legislation, and vital to clinics' success:

1. Local community governance
2. Practice in the areas of poverty law
3. Legal response provided through a broad array of services
4. Core/presumptive funding for clinics

A strong recurring theme was that community-based boards are crucial because "every community is different". Local boards facilitate local partnerships and ensure accountability to the community. Many clinic submissions described the characteristics of their own community and client group, from high-density, urban communities to rural and remote areas of the province where transportation networks and access to community services are scarce or non-existent.

Clinic participants stressed that clinic services are responsive and able to meet needs because clinics are independent, rooted in and accountable to communities, connected to community services and supports, trusted by clients, and capable of working together and supporting each other as a system.

The clinic model was described as cost effective due to factors including below-market compensation rates and leasing costs, reliance on students and volunteers, and the commitment of staff who put in many unpaid hours. Some clinics also pointed out that they have been able to leverage non-LAO funding to support their innovative work, making them even more cost-effective.

Most clinic participants indicated that clinics are already holistic in their approach

and skilled at providing seamless, integrated and responsive service delivery in their communities. Clinics, they felt, should be viewed as the “jewel in the crown” of the legal aid system. They provided various examples of ways in which clinics are integrated, “hubbed”, nimble and flexible in providing clients with access to a variety of services including through referrals, outreach and early intervention. They stressed that they are able to do this specifically because of their strong community connections and relationships, including through their independent local boards, and their knowledge of local needs and local services.

Most clinic input also reflected the following points of view:

- **Hub services:** location within hubs works for some, but not all, clinics. Specialty clinics noted that location within a hub would not work for clinics that have a provincial mandate. Others pointed out that hub services do not work in small, rural communities, whereas satellite clinics provide the best kind of service in these settings. It was suggested that lawyers working in multi-disciplinary environments end up trying to wear too many hats instead of focusing on being lawyers (the Immigration and Refugee Law advisory committee shared this concern).
- **Amalgamations:** the ACLCO cautioned that, while amalgamation may succeed in cases where it makes sense from the perspective of the community itself, it will rarely work if “imposed on a community from above”. Outreach, rather than being in a physical “hub”, was often felt to be the real key, with some noting that integration does not just happen in a hub. It was generally felt that “partnership” is a better approach than “integration”.
- **Centralization of intake,** it was generally felt, should be avoided. Instead, “multiple, community-based points of entry”, and flexibility in service delivery are needed. The point was made by some that centralized intake is a bad idea because many clinic clients are “walk-ins” who need to come to a place of safety to tell their story.
- **Standardized “baseline” clinic services** that can be obtained through any clinic, were rejected by most participants on the basis that clinics respond to local need, which is variable, and therefore all clinics cannot look the same. A strong theme was that local clinic boards must continue to have the ability to determine the mix of service provision. Lack of flexibility for individual clinics to respond to changes in their community was also identified by clinics as a negative aspect of the ‘baseline service’ approach. The ACLCO wrote that centralized priority-setting could “*never* be responsive in a timely way to the highly variable needs of marginalized people in Ontario’s widely divergent communities”. One participant argued that if a clinic has to respond to a sudden crisis in homelessness because the shelter in their community has closed, they will have to dial their other services back until the crisis is dealt with, and it will be a problem for them if they adjust in this way. Another said that if there are certain services that every clinic must offer without local flexibility to make adjustments, then clinics would need to be adequately resourced for this.

SLASS participants indicated that they are particularly well-suited to providing integrated services and filling gaps since they provide services in several core (and otherwise siloed) service areas, including poverty and criminal law, and more recently family law. It was pointed out that SLASS have enjoyed effective collaboration with LAO, for example by expanding their role to provide family law services. Because they are connected to their communities and know and have relationships with local players, SLASS can easily facilitate the development of new programs. SLASS are also cost-effective, as they are housed in university buildings and rely on law students who provide supervised services to clients for unpaid academic credit.

Areas for improvement and Ideas for new approaches

Some input from clinics indicated areas where improvement is needed:

- Clinics do need to work to become more client focused, including by recognizing changing demographics, and responding to the new face of poverty, which is increasingly racialized and youthful.
- Clinics need to adopt new approaches – including those that make greater use of technology - to better connect with clients and meet their needs. A lot of people want to receive services differently today, and it would be a mistake for clinics or LAO to presume to know what the public wants.
- Mobile van services are a great way to reach people who otherwise would never come to a clinic.
- Some clinic participants liked the idea of hub and “embedded lawyer” services and noted advantages to being in a multi-service environment or in a setting like a hospital/family health team.
- Others, particularly those with first hand experience in amalgamation, pointed to the benefits of clinic amalgamations, including the ability to operate more efficiently and provide greater depth and breadth of client services.
- One clinic said that there is “clear empirical Ontario evidence of the benefits of larger legal clinics”, adding that legal clinic mergers in the US have also shown that “the synergies in mergers are real”. This submission argued that, while amalgamations may not be possible in some areas, “the possibility of shifting to larger clinics should be considered across the province”.
- LAO heard from the Racialized Communities advisory committee that clinics are good at connecting and guiding clients in some communities but not everywhere; it depends on the clinic’s connection with the community and with other organizations and services. Sometimes the necessary services, specifically to serve some ethnic or linguistic communities, are lacking. Sometimes clients are referred to a clinic and the clinic

bounces them back to another organization, eg for immigration law assistance.

Several clinic submissions also addressed the need for clinics to move towards a more integrated, one-stop-shopping service model that would enable clients to receive services in areas of law not currently considered to be “clinic law”. The need for one-stop-shopping was often mentioned in the context of meeting the needs of Indigenous clients and clients from racialized communities. Family and child protection services were frequently mentioned.

- One clinic’s submission pointed to the 2007 Trebilcock Report’s recommendation for “facilitating greater integration ... minimizing attachment of particular legal aid services to particular classes of institutions or .. problems (the silo approach to legal aid service delivery), and enhancing single entry point or one-stop shopping approaches”. This clinic argued that further work to integrate and link clinics with other aspects of LAO services, including through “formalized pathways”, will be necessary in order to realize Professor Trebilcock’s recommendation.
- Another clinic’s submission, while reinforcing the view that it is very important for access points to still be located within communities, stressed that there is a need for access to “province wide telephone/computer advice for straightforward advice of a standard nature”. This clinic also stated that clients should be able to access a full range of services by contacting an access point: family, criminal, housing, income, immigration, employment. If the services are not available at that location, they should be seamlessly accessible: by skype, by telephone, by instant messaging. What is critical is that clients are talking to a person and the technology is happening behind the scenes. It must be as easy as possible for a client to walk in and tell someone what is going on and for the person they are talking to be trained on how to triage and respond holistically.
- Research shows that people tend to have legal needs in several different areas and that family law is the biggest area of unmet need; people would line up around the block to receive family law services from clinics.
- The submission from Aboriginal Legal Services stated that prohibitions on clinic practice areas mean that they are not able to assist clients with criminal and child welfare matters, which are services their clients need and which they would like to be able to offer in an integrated way. This is not only inefficient, it is “the biggest barrier we face”. LAO also heard from its Aboriginal Issues advisory committee that one-stop shops where services are provided through Indigenous agencies are best for clients, and also provide value for money. Aboriginal Legal Services Corporations are an ideal model.
- A member of LAO’s Racialized Communities advisory committee pointed out that clients need a one-stop service model that brings together legal and social services in combination with organizations providing those services.
- One clinic said that, in their view, “the integration of all areas of law would better serve clients across Ontario”; clinics should function as Justice Centres which are somewhat

“one-stop-shops” focusing on where clients can resolve a range of legal issues and receive referrals and seamless connections to other community services.

Staff services perspective and ideas for new approaches

Submissions from individual staff members and from the unions representing LAO’s lawyer and non-lawyer staff provided a clear indication that staff believe there are many ways in which LAO’s clients and the legal aid system can benefit from modernization and that staff support and encourage the adoption of new approaches that would allow them to provide more effective client service.

Staff union submissions also reflected consensus that there needs to be adequate support from the province, both to sustain existing legal aid services and to enable the success of modernization proposals, particularly those that require substantial investments in technology or in new “front end” service delivery.

Role of technology in supporting legal aid service delivery modernization

- The LAO call centre receives approximately 300,000 calls per year and many of these calls (information and status checks) could be self-serve and dealt with online.
- Virtual access to all services that the client needs would be ideal: access to summary legal advice, access to certificate applications, and a way for clinic referrals or clinic applications to be made from one access point.
- There should be mandatory use of LAO’s “service integration” worksheet in courts so that clients do not have to keep repeating their story to duty counsel on each appearance. The inability to use the “service integration” tool in family courts is a barrier.
- Technology needs to enable clearly eligible clients to self-serve, although some clients, including those with mental health issues and those who are in custody, are not well suited to online or call centre access or are unable to use technology to access legal aid.
- There needs to be a single point of access and intake for clients, and a way to make client information accessible in one system across all of legal aid.
- Submissions from individual staff members and from OPSEU, representing staff, referred to a legacy integration project, initiated by LAO between 1998-2000, which was never implemented. This project was intended to provide “full integration across all offices and agencies” but the project was sidelined and instead, the reality today is a “disjointed and siloed system infrastructure”, with systems/platforms that do not speak to each other. There is a tremendous need for system infrastructure to enable a single point of access and intake for clients, and to ensure client information is readily available

in one system to all staff. OPSEU's submission called on the Ministry of the Attorney General to provide capital funding support to remove the silos and achieve system integration as initially envisioned.

- Other ideas suggested by staff included an online 'knowledge base' that can be used by any staff member anywhere to serve a client, and service area mapping that can be accessed through both phone and desktop devices.
- The role of staff in providing valuable direct input into the improvement of legal aid services, including through the introduction of new technology, was emphasized by SUP. Technological tools are critical to service delivery, and a "bottom up" approach can identify problems (for example when a tool is not user-friendly) at an early stage.

Role of staff and scope of staff services

Staff believe that better use can be made of staff resources and that there is room to expand the scope of what they can do in providing services.

- The work done by staff, particularly duty counsel, is largely prescribed by legislation and this has had an impact on how people view duty counsel and how duty counsel deliver services and interact with the private bar. It was suggested that LAO look at whether there is value in changing the way the work of staff is described in legislation (as well as in eliminating the title "duty counsel", which the SUP submission described as a barrier to access to justice and a source of confusion to clients who visit the duty counsel office and are unclear as to whether they received legal advice from a lawyer or legal information from a non-lawyer). A staff participant said that the idea that duty counsel can't do trial work creates an unnecessary distinction between duty counsel and the private bar.
- The SUP submission recommended that LAO consider whether staff lawyers in criminal duty counsel offices can take on more responsibilities, including trial advocacy, as resources permit. A primary example would be cases in which a client has a meritorious defence but is not legally eligible for a certificate because incarceration is not probable. Another example could be providing full representation in appropriate cases for lower level offences, particularly those frequently resolved through guilty plea.
- Licensed paralegals have no role in the current legislation. OPSEU's submission recommended a change to LAO's legislation to recognize the role of licensed paralegals working within their scope of practice.
- Making better use of non-lawyer Legal Aid Workers (LAWs) was recommended by both OPSEU and SUP. LAWs are well placed to assist staff lawyers in bail court and can contribute, including through drafting under supervision, to more cost-effective family law services. Making better use of LAWs will open up the ability of staff lawyers to take on more work. SUP recommended that LAO review the professional standards of LAWs and apply these consistently across the province.

- Staff research lawyers could provide expanded and integrated research and training services to frontline staff, and could develop resources to assist self-represented persons.

Providing meaningful input

Staff who are providing front-line, on-the-ground services want to be able to contribute more to LAO's understanding of problems as well as to the development of workable solutions. They have a unique perspective and can offer realistic advice on whether a proposed solution will bring the desired benefits.

The submission of SUP recommended mechanisms, including online and regional consultations, for ensuring that members of staff are able to provide timely and substantial input to LAO on the issues and needs of low-income Ontarians. Engagement and collaboration with SUP members should also be a standard practice when developing tools (including the introduction of technology) and training.

Ideas for new approaches

OPSEU's submission recommended that:

- LAO should be granted additional funding to invest in the development of diversion programs that could divert clients charged with minor offences out of the system in order to address the detrimental secondary consequences of a criminal conviction.
- Family mediation should be rolled out across the province as a means of seeing timely resolution to family law issues.

SUP also made recommendations around opportunities to better use staff resources to expand access to services in both family and criminal law:

- Staff lawyers specializing in family law could be trained as parenting coordinators, who mediate child-related disputes between parents. This could lead to a reduction in the number of court appearances and LAO could potentially expand access to these services to unrepresented litigants.
- Access to independent legal advice for all financially eligible participants in publicly-funded family mediation services could be provided by family staff lawyers and would reduce court system costs and ultimately reduce LAO's certificate costs.
- Staff criminal lawyers in duty counsel offices could be enabled to provide full representation to clients in summary conviction matters (or hybrid matters where the Crown has elected to proceed summarily) where a financially eligible client is not legally

eligible for a certificate but has a meritorious defence.

Strengthening quality and effectiveness: legal aid certificate panels

Quality standards and enforcement of standards are important. This was a consistent theme across all areas of certificate practice. LAO heard that it takes only a few people to cause problems and create damage, and that having good panel standards, and enforcing them, can achieve two things at once: good client service and increased efficiency. There is a link between poor quality client service and improper billing.

LAO's Racialized Communities advisory committee noted the importance of quality control in providing services to vulnerable clients. They suggested working with the Law Society on quality and issues that LAO has with "problem lawyers".

Quality was identified as a very important issue in refugee and immigration law. These clients can face serious consequences – deportation – as a result of poor quality legal services. The quality issues may fall short of what would be reported to the Law Society but are still a problem. There should be a requirement for lawyers to submit their work, and LAO should ensure there is a strong quality support system through mentoring.

The Family Law advisory committee noted that quality includes having connections to communities serving the clientele as well as having professional skills.

LAO's French Language Services advisory committee noted that LAO should have greater control over the panel management process. There are concerns regarding lawyers not reaching a resolution in order to "max out" their certificates. Greater oversight (through spot audits, mentorship etc) is required to ensure quality of service. There needs to be a competency element to panel standards, not just requirements like 10 cases per year. There is a need for in-person training; a lot of junior lawyers are learning on the backs of clients on legal aid certificates.

Finding a *good* lawyer is a big issue for Indigenous clients. LAO heard from a member of its Aboriginal Issues advisory committee that LAO needs to look past its current model, which relies too much on block fee services from lawyers whose work LAO is unable to control. Having lawyers check a box to indicate they have done something is not enough; LAO has to find a way to prove the lawyer has done the work. There should be a competence obligation for doing legal aid work, and there are resources available to support competence.

The written submission of Aboriginal Legal Services indicated its support for good quality

assurance and for training to support skilled lawyering, adding that quality assurance must include Indigenous perspectives.

Several roundtable participants spoke of the importance of mentoring initiatives and quality supports such as training and research memos from LAO LAW. Both criminal and family law participants felt that LAO's Second Chair mentoring program is valuable. Family law participants stressed the importance of LAO-developed training, particularly on child protection, mental health and domestic violence, while criminal law participants also noted a need for more training opportunities, including within legal aid itself (in the form of training, mentorship, and webinars).

The criminal roundtable also provided these suggestions for strengthening quality:

- Liaise with the Law Society on quality review
- Random peer review could be a good idea but how it is carried out needs to be carefully considered; peer review of appeal transcripts is another idea
- Consider a preferred supplier model, with a higher threshold to trigger audits but with more teeth once an audit is triggered
- Work with law associations where there are concerns or complaints; senior members of the bar could reach out and have a chat with the lawyer in question (sharing panel management with local bar associations, or delegating it to them, was also suggested in a written submission from the Defence Counsel Association of Ottawa, which additionally suggested the development of joint educational programming to support quality service).

OPSEU's submission indicated a need to make removal of panel lawyers easier for LAO, where there is a demonstrable reason for removal. The submission of SUP strongly supported the creation of a quality assurance program for certificate work that would include after-case peer review. This could be accomplished by LAO working with the Law Society or through legislative amendments that would permit LAO to develop and implement its own quality assurance program. SUP also suggested that LAO staff could support a peer review process by conducting in-house peer reviews of "standard" certificate cases where quality of representation concerns are raised by staff.

A submission from a staff member suggested requiring lawyers seeking empanelment with LAO to complete an online test to demonstrate awareness of LAO's key rules and expectations. LAO should also think about whether the requirements for joining a panel should be the same as for maintaining panel membership, since records show that lawyers often meet the initial experiential standard (for example 10 files per year) to get on a panel but then do not maintain their level of experience over time. Some problem lawyers easily meet the experiential requirements but fall short on compliance with LAO's rules and

application of professional judgment. Panel standards, therefore, should focus on all of these things. Other staff submissions recommended mandatory training on specific issues such as *Gladue* and mental health, thinking about the maximum numbers of cases that may be accepted, keeping in mind that not all cases are the same, and having better ways of obtaining feedback from clients as well as staff. Having meaningful sanctions when standards are not met was another staff recommendation.

The submission of the Federation of Ontario Law Associations supported amending s.92 of the current Act to provide LAO with the power to conduct quality assurance audits of lawyers:

While the Law Society has the infrastructure and historical task of lawyer discipline, its process tends to be slow and cautious given the very serious consequences of a potential finding of fault or insufficiency. Law Society sanctions encompass the lawyer’s entire ability to practice whereas Legal Aid merely needs to control its own process of service delivery to poor and vulnerable society members. Simply put, Legal Aid needs to be more nimble than what the Law Society accomplishes”.

The submission of the Ontario Federation of Indigenous Friendship Centres also recommended that quality assurance audits be “a priority area” for LAO’s modernization project.

The Mental Health Legal Committee recommended that LAO engage with the Law Society to conduct quality assurance audits and that LAO be proactive in establishing and enforcing panel standards in all areas of practice. Lapses should be identified through the results of quality assurance audits as well as through complaints processes. Enforcement should include a range of remedies including temporary removal from a panel pending remedial action to permanent removal from a panel.

Strengthening quality and effectiveness: clinic governance and oversight

Clinic participants felt that clinic boards play a key role in ensuring accountability. Many participants made suggestions for strengthening and supporting clinic boards, and ensuring that they function optimally.

The Clinic Law advisory committee noted that, as in any system, some clinic boards struggle, although most work well. Any issues with a board need to be identified and addressed early, as opposed to being allowed to fester. The clinic roundtable indicated that

there is a need for early warning systems, which work better than penalties or audits.

The clinic roundtable stated that more training is needed for clinic boards and managers. This group also identified a need for board development, and for succession planning to ensure the board remains strong. Participants at the clinic board and executive director roundtables also indicated that training and resources for boards are helpful. The ACLCO submission described clinic-led learning and training for boards and managers as an “indispensable” part of any program to support/improve clinic governance and management. It suggested that a new quality assurance or accreditation program could develop a set of criteria and indications of quality clinic services, incorporating “a significant role for peer support and oversight”.

SLASS participants indicated that because of their unique structure within universities, governance is not a concern from their perspective. They noted that because they work with students, the SLASS have an additional obligation to model ethical practice.

LAO also heard that:

- There should be basic requirements for clinic boards (e.g., having term limits, requiring clinic boards to be representative of the communities they serve (not just geographically, but also based on demographic data including on race and gender); requiring clinic boards to be made up of individuals with different skills and experience in relevant areas such as law, accounting and social services).
- There is a need to think about clinics like organizations, in terms of quality control.
- There is a need for clinic staff and boards to be more representative of the communities they serve; in many cases they lack sufficient diversity. Clinics should also collect disaggregated demographic data (including race and gender) of their clients.
- The clinic foundational documents (including the memorandum of understanding) need to be updated.
- In a multi-service hub there is an accreditation process that has to be gone through every three years. This is a rigorous and efficient process that provides good quality assurance.
- Oversight and high level direction in the clinic system could also be accomplished through mechanisms such as mandatory consultation with local community members, reliance on statistical data, and information-sharing and gathering between other legal clinics and other social service providers.
- LAO could provide sample policies on board governance.
- LAO should require regular audits of clinics, including on board governance/structures.
- LAO should ensure ongoing executive director evaluations are conducted by boards.

Funding allocations and formulas

Several consultation participants addressed funding allocations, mainly but not exclusively in relation to LAO's funding of clinics:

- A written submission from an individual LAO staff member argued that there is a need to recognize and adequately address needs in the North, where the challenges are very different than in southern Ontario: "Fund the North ... we desperately need services and our clients have much less access to services generally and way worse outcomes on all kinds of social determinant measures". This submission pointed out that specialty clinics with a provincial mandate are all located in the south, without travel budgets or satellite offices, and that providing funding to only some Indigenous political organizations to provide client services in the North means that "some communities are receiving services and some aren't".
- It was noted by some clinic participants that demographics are changing, dramatically, and poverty is changing. There has been a great shift over the past 40 years, and clinics do need to change in order for them to be client focused - the status quo will no longer do. Funding decisions must reflect demographics and data must be used to inform both funding and planning decisions.
- Indigenous clients represent 20% of all of LAO's certificate clients, but 20% of LAO's budget is not spent on Indigenous clients. It is important to look at broader factors of poverty and discrimination, and the fact that Indigenous and racialized people are over-represented among the poor.
- For Indigenous services, LAO also heard that project funding is not effective; it is not long-term, and has funding restrictions that prevent Indigenous service providers from evolving as they need to in order to serve clients.
- An equity, rather than an equality, lens should be used in allocating funding.
- Perhaps the Ministry of Health should be funding some services.

The ALCLO and individual clinic submissions addressed the issue of clinic funding formulas. The ACLCO submission stated that LAO should develop a comprehensive allocation formula that takes into account a variety of factors which should include:

- The size of the low income population served by the clinic
- The depth of poverty and factors such as language and race which compound the experience and impact of poverty and legal vulnerabilities
- Remoteness/isolation of a community
- FLS obligations

- Availability of other legal and non-legal services

Several participants noted the importance of looking beyond census numbers in determining funding allocations to particular clinics or areas of need:

- Funding should take into account the differences that exist between the north, where there are large catchment areas and large distances which must be covered, and the south, where the issues are different.
- In the north, Indigenous individuals are often not in the census. There are also clients that are constantly moving; they are lodgers and movers. Their shelter is not permanent; sometimes clients come to a clinic and don't have an address. LAO should keep in mind that census numbers reflect the people who have homes and can answer the census.

One clinic, however, emphasized the importance of developing a funding formula for clinics, relying on data which is comparable across the province. It noted that, in not having a funding formula, clinics are unlike most other public services (such as schools or hospitals). This clinic argued that the funding formula for clinics “should be based mostly on the low income population in a legal clinic’s catchment area”. This clinic was not opposed to using factors other than the LIM population; however, it noted that “it does not appear that there is other useful data which is uniformly available across the province for legal clinic catchment areas. As well, the inclusion of other data is unlikely to change the results. Refraining from using a reliable indicator of need because theoretically there may be better ways of defining need (although those cannot practically be implemented) does a disservice to low income Ontarians.”

In terms of the mechanics of funding, the point was made several times, at roundtable meetings and in written submissions, that clinics need stable multi-year funding in order to be more effective. There should be a core presumption of funding and there should be long-term funding.

Some clinics suggested that a simplified, user-friendly web-based system should replace the current funding application process, which is administratively cumbersome and time-consuming.

One clinic stated that legal clinics should move to “envelope funding” to improve clinics’ planning capacity and allow for more efficient operation.

Tariff issues

Practitioners in all areas of certificate practice identified issues with the tariff and identified a need to more easily make changes to address these issues. The inflexibility of hourly allocations in the regulated tariff was identified as a problem.

In family and child protection law, the tariff is out of sync and does not reflect current practice. This has an impact on clients' rights and outcomes. The rigidity of the tariff also makes it hard for lawyers to work as effectively as they want to.

- Family roundtable and Family Law advisory committee participants told LAO that changes to legislation could give LAO more flexibility to make the kinds of changes that are needed to deal with tariff problems. LAO needs to have more control over how it funds family law cases.
- The tariff needs to be more robust, and it needs to provide access to more resources early in the process in both family and child protection matters.
- The tariff should be front-loaded and should encourage early resolution. The tariff may be incentivizing trials by paying for them, and thus providing a disincentive to settlement. Allowing clients and their counsel to challenge things early in the child protection process can also help direct the course of litigation.
- The advisory committee suggested aligning the tariff with the Family Law Rules and having it reflect changes that are made to the Rules.
- In terms of alternatives to the tariff, the advisory committee suggested a model similar to the one used by the Office of the Children's Lawyer or the model used in Family Case Management be used (providing a set of hours to start with, with the ability to seek additional hours).

In criminal law, it was noted that the tariff's allocation of hours dates to the 1980s, before pre-trials came to prominence. As a result, lawyers aren't compensated for the front-end work they need to do. This acts as a disincentive, as does having to make multiple "asks" for discretion. The tariff was felt to provide a perverse incentive to lawyers to do a minimal amount of work on resolving a case.

- Criminal law participants suggested tying the tariff to the cost of living, and expanding cases that are eligible for mid case management.
- A statutory mechanism for tariff review by an independent body was suggested in the written submission from the Criminal Lawyers' Association.

In mental health law, the Mental Health advisory committee pointed out that clients with mental health needs can be difficult to serve and often have complex legal matters; the tariff does not cover the amount of work required to serve them.

In immigration and refugee law, the advisory committee told LAO that the tariff offers minimal coverage both in terms of disbursements and the hourly rate. The disbursement system is antiquated; it provides inadequate coverage for medical reports and is “not worth it” for interpreters, once they have paid for their transit or parking. Quality lawyers don’t stop working when the funding runs out, but they put in many unpaid hours and it is not a good system to live with. The point is that what LAO is paying for is competent service.

- There should either be additional hours in the tariff, or else a realistic opportunity to seek discretion. Lawyers are frustrated when they have to go through hoops for a couple of additional hours.
- LAO could look at making the interpreter rate a flat rate.
- If LAO took over responsibility for the tariff it would be fine but regardless of who controls the tariff the money has to come from somewhere; LAO would probably end up having to take money from one area of law to give to another.
- LAO could take another look at Alternative Fee Arrangements for lawyers.

Taking a broader approach can be more efficient and effective

Value of test case and systemic work

Many participants endorsed the value of test case and systemic work, both in terms of assisting low income clients and as examples of cost-effective and efficient service delivery:

- Test cases are efficient, since an issue can be litigated once instead of repeatedly, bringing certainty and consistency to the application of the law and dealing with problems before they arise.
- One test case can address the needs and concerns of a thousand people: there is no better use of funds.
- Test case litigation is inherently innovative, providing meaningful justice system responses to the day to day issues confronting clients.
- Test case work and the work of LAO's core client strategies are very important in terms of making systemic changes. LAO's bail strategy work, including its bail review initiative and the decision in *R. v Tunney*, have changed the way that bail works. This work has proven results.
- Test cases are a vital part of LAO's mandate in refugee and immigration law, ensuring fairness for refugees and addressing problems in the system. Test cases can also create savings for LAO. They are important from both a fiscal perspective and a justice perspective.
- Systemic racism and discrimination are problems that lend themselves to systemic work and clinics need to be able to do systemic work that addresses these issues; it is impossible to separate front-line client service from systemic issues.
- Systemic advocacy work is client-focused work, and it is important to change the perception that specialty clinics are "lobbyists". Clinics are non-partisan and they provide valued advice working with ministries on changes to laws and policies. It is very difficult to separate "advocacy" from "education".
- It is in test case work that clinic independence is most important. LAO should be the funder, not the driver, of test cases.

Value of innovative, collaborative work that includes data collection and evaluation

One submission from a specialty clinic indicated that the importance of partnerships in the provision of services could not be overstated, as these connections enable clinics to collectively leverage resources to meet community needs.

Many participants cited examples of successful partnerships between clinics and the private bar, agencies, and other service providers who work with the same clients. Often, it was pointed out, these partnerships are made possible at the local level due to the “rootedness” of a clinic and its board within the community. SLASS also noted that, within the university environment, they have been able to partner with other faculties – social work and nursing – to offer multidisciplinary services.

A particular type of partnership which many clinics rely on is one formed with “trusted intermediaries”. Forging relationships with trusted intermediaries was identified as very important, particularly for the most vulnerable clients. One submission noted that these relationships are “essential in order to build trust and provide effective and efficient services to communities who, for good reasons, are wary of engaging with legal and other systems”. Another pointed out that working with trusted intermediaries, including social service organizations, health care providers, faith groups, public libraries and many other types of organizations and groups, “is an approach that responds to and resonates with the findings of access to justice studies” and supports early intervention, prevention, and holistic approaches to meeting legal needs.

Some particular types of innovative partnership initiatives were highlighted by clinics that have pioneered these approaches as being very promising for modernization:

- **Justice & Health Partnerships**

A specific type of partnership initiative that fosters early, multidisciplinary interventions for low-income individuals and families with overlapping medical and legal problems is the “Justice & Health Partnership” or JHP (known in the US as a Medical-Legal partnership). These initiatives have been piloted in Ontario since 2014 and are currently the subject of study in the US, Australia and Britain. Ontario’s “Justice & Health Partnerships Community of Practice” group, made up of representatives from LAO, 15 clinics, Pro Bono Ontario and St. Michael’s Hospital in Toronto, has presented internationally on its work. This group’s written submission and the submission of the Community Advocacy & Legal Centre (CALC) clinic, a key player in the development of JHPs in Ontario, asked for support in making connections with the Ministry of Health to explore scaling up and expanding these services as has been done in other jurisdictions. CALC’s submission spoke to early evaluation results from Ontario’s 11 JHPs, involving 9 hospitals and 27 partners, as promising, and referred to a recent

mapping study which is available online¹.

- **Legal Health Checkups and Legal Secondary Consultations**

Halton Community Legal Services began the use of “legal health check-ups” in 2014 and “legal secondary consultations” in 2015. As set out in the clinic’s submission, according to evaluations conducted by Dr. Ab Currie these are tools that have extended the reach of clinic services, enabled more integrated service provision, and built on the capacity of other community agencies to (in the legal health check up) identify the “everyday legal problems” of their own clients and (in the legal secondary consultation) help the other service provider resolve problems for their own clients. The clinic has developed and maintains a strong network of community partners in sectors including healthcare, newcomer services and employment services, and their submission states that building these relationships and offering barrier-free access are key to early intervention.

The value and importance of monitoring, data collection and evaluation was another strong theme that emerged from the consultation.

Data collection (including client demographic information) was felt to be necessary to ensure responsive client service, to monitor quality and operational effectiveness, and to study the impact and effectiveness of new and innovative approaches.

Some submissions to the consultation highlighted, citing examples, the value of LAO and clinics working collaboratively with academic researchers and other justice system evaluation experts to pilot innovations and to validate outcomes and systemic improvements resulting from new service delivery methods.

The submission of the John Howard Society of Ontario highlighted the 1000 Finch Courthouse Duty Counsel Pilot, which involved a collaboration between LAO, academics and stakeholders to collect data and test the impact of certain changes, including targeted duty counsel training and changes to intake processes, on remand outcomes for criminal accused. Despite the limitation of not having a comparator location involved in the study, the data collected over the course of the pilot showed both improved bail outcomes for clients and a reduction in system inefficiency, due to a decline in over-reliance on sureties. According to the submission:

Embracing LAO’s role in affecting system outcomes and policy to improve court efficiency and criminal and civil outcomes will lead to a sustainable legal aid; solution oriented as opposed to reactionary to caseload flow, court cultures, and justice system silos.

¹ Innovating, Intervening, & Transforming: Justice & Health Partnerships in Ontario: <http://communitylegalcentre.ca/wp-content/uploads/2019/08/ILAG-2019-JHP-Ontario-CoP-version-1.pdf>

.... Introducing a culture of evaluation and accountability, where research and evaluation are core components to each LAO service, and all aid in informing an overall theory of change for how LAO serves low-income people, will lead to innovation.

Changes to legal aid legislation

Several consultation participants directly addressed the issue of what needs to be included or changed in new legal aid legislation.

Independence

- The submission from the Criminal Lawyers' Association stated that independence is “a critical aspect of the Act given that there are many occasions where the Government and lawyers representing legally aided clients are adverse parties to litigation. In the criminal sphere, this is always the case. A lack of independence would raise appearance of fairness and constitutional concerns”. The Federation of Ontario Law Associations also strongly supported the independence of LAO from government, emphasizing that the state “cannot be responsible for both the prosecution of and defence of a person”. The Mental Health Legal Committee’s submission set out the importance of LAO being independent from government in the mental health context, where hospitals and psychiatrists perform a governmental role in making decisions that restrict clients’ liberty and security of the person rights.
- Clinic input also emphasized a need for independence to be maintained. The Association of Community Legal Clinics of Ontario indicated in their submission that having community boards that are independent of government ensures that the interests of communities served by clinics are able to be advanced, and that clinics are free to pursue systemic remedies. An individual clinic submission stressed that it is “vitaly important that we are arm’s length from Government” in order to be able to advocate for clients in situations where government decisions and actions impact on their rights.

Service providers and areas of service

- Many participants stressed the need to enshrine the foundational nature of private bar services in criminal and family law and community-based, board-governed clinic services in poverty law.
- The Mental Health Legal Committee’s submission recommended adding a provision to indicate that the private bar is also the foundation for provision of mental health law services.
- In addition to protection for clinics as the foundation for providing clinic law services, clinic submissions called for legislative protection for independent community board governance, provision of a broad range of poverty law services (including systemic advocacy) and core funding for clinics.
- Several clinic submissions also addressed the need for clinics to move toward a more integrated, one-stop-shopping service model that would enable clients to receive

services in areas of law not currently considered to be “clinic law”. The need for one-stop-shopping was often mentioned in the context of meeting the needs of Indigenous clients and clients from racialized communities; Aboriginal Legal Services said that their inability to provide criminal and child protection services, because they are considered to be a clinic, is the “biggest barrier we face”.

- Legislation should continue to address the role of SLASS.
- Written submissions from lawyer associations referenced the importance of representation by counsel of choice.
- The Federation of Ontario Law Associations voiced concern about LAO duty counsel “mission-creep” and suggested that more effective and efficient service delivery would result from using duty counsel services to support the private bar rather than to provide ongoing services “for which the position was never intended”.
- The Criminal Lawyers’ Association and Mental Health Legal Committee argued that legislation must continue to prohibit the provision of legal services by unsupervised paralegals or other non-lawyer agents. They also recommended restricting staff office and duty counsel services to areas where the certificate bar does not provide services or, in the case of staff offices, to areas where there are service gaps.
- The Defence Counsel Association of Ottawa suggested amending the legislation to “de-fund non-core services” in poverty law which, although important, are not funded by other provinces. This suggestion was not made by any other consultation participant.
- The work of duty counsel is largely prescribed by legislation and staff suggested changing this, as it has an impact on how people view duty counsel and how duty counsel deliver services and interact with the private bar.
- Staff recommended recognition in legislation of the right of licensed paralegals to operate as legal aid professionals within their scope of practice.

Tariff and financial eligibility

- Roundtable participants in family, criminal and immigration law felt that it was a good idea for LAO to have more flexibility in ensuring quality and in managing the tariff. A family roundtable participant said that the more that things can be kept out of the legislation, the better, as it will allow LAO to be more responsive.
- The Criminal Lawyers’ Association made suggestions in their written submission for statutory mechanisms providing for reviews of financial eligibility and the tariff by an independent body.

Quality assurance, panel management and client focus

- The Federation of Ontario Law Associations called for legislative change to enable LAO to “include lawyers in their mandate of assuring high quality legal service” by removing the current prohibition on LAO conducting quality assurance audits of lawyers: “[s]imply put, Legal Aid needs to be more nimble than what the Law Society accomplishes”.
- The submission from OPSEU recommended legislative reform that will place the focus “on the clients for whom the system is intended”, rather than on the stakeholders of legal aid services. OPSEU suggested changes to legislation to enable easier panel removal to ensure quality services to clients, and to provide greater latitude for LAO to determine how to provide high quality services in a cost effective and efficient manner. Individual staff also referenced the need for legislation to facilitate quality assurance, saying that they need better panel management tools to help them carry out their role in managing the panels.
- OPSEU also recommended that the legislation address the need for clients to have access to a meaningful but streamlined eligibility appeal process in cases when eligibility is denied.

Access to information to facilitate reporting

- The submission of OPSEU argued that changes to LASA are needed to ensure that staff have access to and are able to report on client data across the spectrum of legal aid services. A staff member’s submission added that “[i]t is only once we get a clear and accurate accounting of Clinic and PS [PeopleSoft, ie LAO] data that we will be able to report to MAG on exactly how many clients and types of services we are providing. This will allow us to create more diverse services and respond to changing times and needs of our clients”.

Composition of LAO’s Board

- The Federation of Ontario Law Associations supported a legislated requirement for LAO’s Board to have a broad skill set, and suggested representation from each legal practice area (eg, criminal law, family law) identified in the legislation.
- The submission of the Mental Health Legal Committee recommended removing restrictions on the number of lawyers and benchers on the Board.
- SUP, representing LAO staff lawyers, felt that members of the legal profession should be better represented on LAO’s Board.
- Additionally, the SUP submission recommended amending the legislation to provide for recommendation and selection of board members not only by the Attorney General

and the Law Society, but also by organizations that represent the providers and users of legal aid services, including SUP itself. The SUP submission further recommended that diversity in gender and ethnicity be ensured on LAO's Board.

- The clinic roundtable also suggested making diversity on LAO's Board a legislated requirement.

Indigenous recognition

- Legislation should specifically address the legal landscape that applies to Indigenous people. In law, Indigenous people have been found to have unique needs and a unique constitutional role.
- Aboriginal Legal Service Corporations should be afforded better protection in LAO's legislation, since justice system solutions lie within Indigenous communities and Indigenous agencies.

Equity, diversity and inclusion

- The review of LAO's legislation should be guided by the values of equity and inclusion.
- Racialized clients do not easily fit into a one-size-fits-all model, and legislation should recognize this.

Modernization is a process, not a project

Some participants noted the short timeline for legislative change and expressed the hope that LAO would continue to engage with them as the details of modernization are worked out. Some expressed concern about the risks involved if big decisions are made too quickly. In general, those who participated in the consultation felt that modernization must be an ongoing process, not one that ends in March 2020.

There is a need to set goals for Modernization and to develop a mechanism for measuring success.

Ongoing consultation was recommended by many participants.

In the spirit of transparency and openness, it was also requested that LAO and the Ministry of the Attorney General make “all facets of the Modernization Project consultation and implementation” available to the public.

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