

Submission to the Legal Aid System Modernization Project Consultation

September 6, 2019

Introduction

Legal aid programs exist to provide poor people with access to justice, based on the principle of equal justice for all. Access to justice means more than allowing low-income individuals to access the court system. It supports the rule of law by giving marginalized individuals and communities the means to address shortcomings in the legal system that create negative impacts on their lives. These can range from having a lawyer in Court preventing a wrongful conviction to pushing back when businesses are seeking to undermine consumer protection through regulation change. There is no access to justice where the formal or informal institutions of justice or the mechanisms by which laws are enacted are financially inaccessible to the poor.

The goal of legal aid modernization must be to expand access to justice. This requires an evidence-based approach that supports what works and that holds people accountable when their efforts are not contributing to progress toward this goal.

About ACTO

ACTO is a specialty legal clinic and a non-profit, non-governmental organization with a broad mandate to practice poverty law focussed on housing. ACTO is governed by an independent Board of Directors selected through a carefully thought-out process to represent the variety of client communities across Ontario. ACTO is the only organization in Canada that provides a full range of legal services to facilitate access to justice in housing for low-income people. In our work, including our systemic advocacy, we are confronting many of the largest institutions in the country and their legal advisors in the largest law firms. This work cannot be accomplished without a reliable funding model that is committed to advancing access to justice for all Ontarians.

Governance

Our board is composed of 12 regional members from Toronto, Eastern Ontario, Southwestern Ontario and Northern Ontario and 2 general members. Each region has a member from the staff of a clinic in that region, and 2 members representative of the tenant community in that region. The 2 general members are appointed by the Board to ensure that the diversity of Ontarians is accounted for. Our governance structure ensures that we are connected with tenants of every region in Ontario and to the people who provide services to them including clinics. This ensures that our services are client- and community-focussed, informed by local knowledge and responsive to each region's specific needs.

What we do

Case Work: We provide unbundled legal services at all locations where hearings of the Landlord and Tenant Board are conducted. This service reaches about 20,000 tenants per year, each of whom may receive summary advice, brief service, referral and representation, depending on their need and their ability to advocate for themselves.

Through co-counselling, document reviews, participation in on-line discussion forums and referrals, we also provide highly developed legal expertise to clinics on advanced procedural or substantive issues that they confront in their legal cases.

We initiate or respond to significant legal cases that address housing and human rights issues based on our work with a broad range of community partners and contacts with individuals in the low-income housing field across Ontario.

Systemic Legal Work: Systemic work is an upstream preventative approach that provides significant efficiencies throughout the system. We seek out test cases that have the potential to protect the rights and vital interests of multiple tenants at once. Regardless of outcome, these cases can clarify the rules and relieve the strains on the justice system that uncertainty can bring. Given the kinds of cases that we do, this work can be of significant benefit to legal aid service providers, particularly clinics, saving them from repetitive advocacy on situations that should be resolved by higher-level decisions.

This approach is also taken with our advice to provincial Ministries and agencies, and municipal bodies. We can provide a frank assessment of the impact of existing policies and practices or of new policy proposals on low-income tenants based on our expertise in this specialized area of law. This advice is often offered as the result of a general or specific call for consultation on matters of public policy that impact our client communities.

Legal Education: Access to justice can be further advanced through ensuring that the public, particularly those facing economic or other disadvantage, are well-informed about their rights and obligations in relation to their housing. We contribute public legal education materials, public information sessions and open discussion forums to this important public service. These activities are another form of prevention that can stop a minor issue from turning into a crisis for an individual or a community.

As well as addressing the information needs of clients and the general public, we provide high-quality training sessions to others working in the housing field. Clinic staff and other legal aid service providers have always been a priority for us, but we deliver extensive training to the legal and paralegal professions, law students, community workers and non-profit organizations to share our knowledge about housing law and tenancy issues.

How we work

Multi-faceted approach: We have an integrated, multi-faceted approach to addressing legal issues to ensure that we provide the most effective solution and are not constrained by the limits of a purely case-by-case approach. We are able to combine the expertise of our lawyers, community workers and policy analysts to address a problem in a number of ways in a cost-effective manner.

Streamlined service: We have tenant duty counsel stationed at every Landlord & Tenant Board location in the province. This service is seamlessly integrated with clinics and other service providers, such as the Rent Bank, ensuring efficiency and effectiveness and is based on clients' needs. Where they need further follow up on their immediate legal issue, clients are referred to their local clinic. At the same time, information and experience from this program informs ACTO's systemic work, particularly as it relates to the operation of the Landlord and Tenant Board.

Collaboration: We have 7 staff focussed on systemic legal work. Collaboration with other clinics and/or non-profit organizations with diverse expertise is critical to our reach and effectiveness. It's also cost-effective, expands our knowledge and expertise about local issues across the province, and ensures sustainability of our work.

Evidence based approach: We leverage data, using various reliable data sources (Stats Can, Tenant Duty Counsel Program etc.) and the best available research to gain a more holistic understanding of client needs and the social conditions within which they arise.

LAO MODERNIZATION GOALS – ACTO'S RECOMMENDATIONS

1. Efficiency and Value for Money

The 2018 Auditor's report shows legal clinics as the most sustainable of all legal aid programs including program administration. Clinic funding costs increased by only 13.6% in the 5 years between 2013-14 and 2017-18 - the lowest of all legal aid programs. This is an annual average increase of 2.7% per year, despite significant new investment by the former government. The ability of LAO to contain costs for clinics is achieved largely through the capped, core funding model.

The core funding model allows clinics to run efficiently with the funds they have while maintaining the ability to plan long-term, retain staff and volunteers and significantly reduce administrative costs. ACTO has leveraged technology to significantly reduce administrative costs and redirect staff time to program work. In addition, core funding gives ACTO a solid base from which we can seek grants from other funders in order to expand the scope of our work. Over the years we have received funding from the Trillium Foundation and the Law Foundation. Currently the Canada Mortgage and Housing Corporation (CMHC) is supporting a housing research project which is a collaboration between ACTO and a group of 11 Northern clinics.

Recommendation

We recommend that the independent legal clinic model, with capped, core funding be maintained. It is the most sustainable means by which LAO can meet its mandate of advancing access to justice in poverty law.

2. Enhanced Accountability

As a non-profit organization, ACTO has multiple accountability requirements. We have to comply with financial laws and regulations and meet professional obligations to the Law Society. We are accountable to our funders, including LAO, through their funding application processes. We have horizontal accountability to the formal and informal government and civil society institutions through the knowledge and legal expertise we provide. Most importantly, we are accountable to our clients and the communities we serve through our Board of Directors. All these forms of accountability contribute to the credibility on which our effectiveness is based.

ACTO has always complied with all of LAO's accountability requirements. We have no objections to enhancement of this requirements provided that they do not undermine accountability to the community. However, LAO currently lags significantly behind other funders in leveraging appropriate technology to meet its role in monitoring and evaluating clinic work.

Recommendation

We recommend that the statutory independence of clinics under the governance of community boards be maintained to ensure that clinics remain accountable to the clients and communities they serve. Eliminating this independence will tether the clinic to an administrative department that does not have knowledge of the community being served or see its primary interest as the well-being of that community. The role of administrative bodies is often at best, ensuring efficiency rather than advancing access to justice. Ensuring accountability to the community is the reason that the independence of clinics is enshrined in the legislation.

We also strongly recommend that LAO leverage technology to replace the funding application with a web-based system. This will have significant benefits to both LAO and clinics: It is cost-effective, easily accessible, user-friendly, and can serve as a repository of clinic information. Clinics will also need less time to complete the funding process and redundant reporting can be avoided.

3. Modernized, High Quality service delivery that is integrated and nimble

The clinic system is a model of integrated and nimble service delivery for extending access to justice to the most vulnerable. The continuum of services provided by clinics - from Tenant Duty Counsel through litigation, public legal education, community development, public interest litigation and law reform - are deployed based on client or community need.

An example of an innovative needs assessment process is ACTO's project with Advocacy North (an organization comprising 11 northern legal Clinics). Through StatsCan data, we found that housing affordability was not as much of an issue in the North as it was in the rest of the province. However, major repair issues affect as many as 60% of dwellings in some northern communities. ACTO and Advocacy North received funding from CMHC to do further qualitative research into the housing need in those communities. This is an example of modern and high-quality service using an evidence-based approach to service delivery based on current, reliable data. It is integrated and nimble because it involves the relevant clinics working collaboratively to determine how a pervasive community problem can be addressed most effectively.

Recommendations:

We recommend that LAO use an evidence-based approach and reliable data for decision-making on service delivery. LAO has cancelled both their Quality Assurance Program for clinics and the clinic Learning and Training budget. This runs counter to the expressed goal of providing high quality service. We recommend that those functions be reinstated.

4. Client-focussed, streamlined and one-system approach to service delivery:

Client focus, in the context of access to justice, means resolving a legal issue with the client's or community's perspective informing the outcome. It's a bottom-up and collaborative approach to problem solving that requires understanding of clients' needs and their experience.

A one-system approach is the opposite of a client-focussed approach. It denotes a service model that streamlines clients into a system regardless of their need. It is an administrative model of service delivery that celebrates efficiency, regardless of its impact on access to justice. It will invariably increase bureaucracy and red tape rather than reduce it.

Recommendation:

LAO maintain and support the current client-focussed approach of the clinic system. Service delivery must be based on a holistic, systemic approach to problem solving that addresses complex and varied needs in the most effective manner. The clinic system has proven its ability to do just that.

Conclusion

In addition to these submissions, ACTO endorses the submissions of two groups of which we are members - the Association of Community Legal Clinics of Ontario and the Specialty, Ethno-racial and Linguistic Clinics Group.

But the review of written submissions and consideration of the comments at the brief Skype Town Halls cannot provide an adequate basis for significant changes to a clinic system that has achieved so much in almost 50 years of evolution. We seek assurance from Legal Aid Ontario and the Ministry of the Attorney General that there will be a continuing two-way dialogue with legal aid service providers including ACTO. It is only through such a dialogue that we can continue to make progress toward the goal of equal rights for all, including the members of Ontario's marginalized communities.

Submitted on behalf of the Board of Directors of the Advocacy Centre for Tenants Ontario