



Hamilton Community Legal Clinic Clinique juridique communautaire de Hamilton

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Legal Aid System Modernization Project Consultations – Hamilton Community Legal Clinic Submission

September 2019

We acknowledge the opportunity to provide our input to the consultation and look to Legal Aid Ontario's Board of Directors for support in our shared goal of promoting access to justice for marginalized people in our Province.

It is unfortunate that the consultation on how to improve the clinic system is taking place shortly after budget cuts have been received and shortly before more cuts are due. There have also been statements issued about altering the foundations of the clinic system that require a response. Naturally, we feel the highest priority is to identify the need for supporting clinics before we can turn to the ideas for improvement that we have. We hope that this is a beginning to a new dialogue between the clinic system and LAO.

There is tension between LAO and the clinic system: a strong expectation on the part of LAO as a hierarchical organization that independent clinics be incorporated into that organization. The first LAO Board Chair, Justice Sidney Linden, recognized that would be counterproductive and antithetical to the role of community legal clinics. He, himself, wrote the Memoranda of Understanding that governs the relationship to date. We understand that the ACLCO and LAO had intended to re-visit the foundational documents of that relationship prior to this consultation. When the foundations are sure once more, we hope this will commence.

As a Member clinic in the Association of Community Legal Clinics of Ontario, we have read and endorse the submission provided by the ACLCO. Our intention here is to support that submission from our own perspective as a general service clinic serving the people of Hamilton.

The most fundamental elements of the foundation for the effectiveness of clinics are:

1. Local community governance
2. Practice in the areas of poverty law
3. Legal response provided through a broad array of services

*A Community Legal Clinic Funded by Legal Aid Ontario
Une clinique juridique communautaire financée par Aide juridique Ontario*

4. Core/presumptive funding for clinics

1. Local Community Governance

No one knows Hamilton better than the people who live and work here. We have the institutional history at the clinic that cannot be duplicated elsewhere. When the clinic system began, Hamilton enjoyed a robust industrial economy centered upon DOFASCO and STELCO as well as all of the spin-off industries they stimulated. The constants of Social assistance and Housing were supplemented by Workers' Compensation, Canada Pension Disability, and other employment-related issues. The recessions at the end of the 20th and beginning of this century have severely curtailed the steel industry.

Hamilton now has one of the highest poverty rates in the Province. The need for social assistance is intense and the search for alternatives had led to participation in the canceled Basic Income experiment. Since the '90's, Hamilton has seen significant waves of newcomers arrive in search of a more affordable cost of living. Sadly, many live in poverty. The support of translation services has become essential to clinic practice.

The City is changing as it becomes closer to the Greater Toronto Area by means of improved transit links. The opportunity to acquire residential properties in advance of the transit development is tantalizing. The loss of affordable housing is frightening. The struggle to preserve existing tenancies is increasingly difficult and bitter. The clinic is the hub for legal information regarding legal rights and how to act on them for marginalized people in these difficult times.

Responding to the local legal needs of the poor and marginalized in Hamilton is both an important function and a great challenge. We need to know the anatomy of the City and how its parts are affected. We have learned to seek out what we do not know and that doing so is just as important, if not more so, than acting on what we already perceive.

Our current Strategic Plan reaches for inclusive justice; that translates to targeted initiatives for marginalized communities that have not historically come to the clinic but who comprise populations legal aid is intended to serve. The following illustrates why local governance and control is necessary to best meet unique local needs:

- *French Language Services*: We became a bilingual agency, certified under the *French Language Services Act* in 2012 just after our amalgamation. We recognized the need for the capacity to serve a growing Francophone community. We partnered with the largest Francophone agency in the City to establish a satellite, as well as ensure a strong "active offer" at our main office.
- *YÉN:TENE*: Hamilton has a significant Indigenous population and is in close proximity to the largest First Nation in Canada, yet the clinic historically was

being utilized by only a small percentage of the potential client group. An Indigenous Board member insisted that we address the mistrust that was the biggest barrier to access. YÉN:TENE is an initiative to build relationships of trust with the Indigenous community. It was started in 2013 with a community Advisory Committee and the hiring of an Indigenous Justice Coordinator. We have developed our capacity to deliver culturally appropriate services, are serving many more clients and continue to collaboratively engage in significant community development and PLE initiatives.

- *Hamilton Legal Outreach:* At a meeting we facilitated with stakeholders from across the City, we developed a mechanism to overcome barriers for people experiencing mental health and addiction issues. A unique community-embedded service delivery model was piloted in 2014 to ‘meet people where they’re at’. In collaboration with LAO and numerous community partners, caseworkers see clients at eight social service agencies where people already frequent. With FEG funding we hired a case coordinator, a social worker who assists individuals to navigate the justice, mental health, addiction and social services systems to address multiple and overlapping legal and related issues.
- *Together We Rise! S’élever Ensemble!:* Hamilton has a large Black community, but historically members have not been using Clinic services proportionately. We held a community forum on access to justice for the Black community in 2018 and one of the calls for action was a targeted approach to service. A Black Justice Coordinator was hired and a work plan was developed by an enthusiastic Advisory Committee representative of the diverse, African diaspora in the city. The initiative is bilingual, as the increase in Hamilton’s Francophone population is due to immigration from African countries and the Caribbean. The mandate of Together We Rise is to combat individual and systemic Anti-Black racism by providing a range of clinic law services.
- *Queer Justice Project:* Working with community partners we identified that services unique to the LGBTQ2SAI community would benefit individuals struggling to obtain safe, appropriate services. Funding was obtained from the provincial government to develop a bilingual website and outreach materials. In March 2019 we officially launched the Queer Justice Project. We are involved in community ID clinics to apply for name changes and to change gender markers on official documents and we conduct trainings on serving the LGBTQ2SAI community.
- *Hamilton Roundtable for Poverty Reduction:* We are the sponsoring agency for this award-winning HRPR, a non-incorporated coalition of individuals, business, not-for-profit and government representatives focused on reducing poverty in Hamilton. We sit on the Organizing Committee and the staff members are employees of the Clinic. We collaborate extensively on the systemic side of our

mandate and it has greatly increased our capacity to do meaningful community development, PLE and law reform.

- *Anti-Racism, Anti-Oppression Plan*: To best serve diverse client communities and support staff, the Board and community partners, we are developing a robust ARAO Plan that will inform our policy development, human resources, service delivery, programming and community engagement.

2. Practice in the Areas of Poverty Law

Clinics practice in the areas of basic human needs: food and shelter. While our clients also experience other legal issues, addressing food and shelter crises is imperative. If legal resources are shifted away from this focus, the impact on people is disproportionately severe. Clinics may be attractive places to solve the other needs for legal services that are increasingly evident such as civil litigation for low and moderate income individuals. Preserving the focus of clinics on Poverty Law from competing priorities was a reason for protecting the mandate in the *Legal Aid Services Act* and the need for continuing to do so remains.

3. Legal Response Provided through a Broad Array of Services

The Full Mandate

The mandate of the clinics includes Public Legal Education, Community Development, and Law Reform. It is good to remember why they were incorporated into the community legal clinic model from the beginning. Stephen Wexler, in his article *“Practicing Law for Poor People”* 79 Yale Law Journal 1049, 1049-1059 (1970), wrote that: *“poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms.”* He added: *“Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things.”* Community legal clinics are intended to address this reality. The limited resources available at the best of times require clinics to use strategic thinking. This has been so since the creation of the system. *“A seemingly neutral policy of “first come, first-served” cuts against the least informed, the least mobile, and the most oppressed.”* Public Legal Education, Community Development and Law Reform efforts benefit the broad clientele of a community legal clinic. Using these strategies acts like a force multiplier to the work of the clinic. These activities allow us to “punch above our weight”, get a “bigger bang for the buck” and “get to the root of the problem.”

Public Legal Education

A traditional legal model assumes an individual who identifies that they have a legal problem and shops for an appropriate legal service. Public Legal Education is a proactive legal service to inform the public of their legal rights and remedies. When that

portion of the public is marginalized, there are the additional challenges of reaching certain communities, communicating effectively across a variety of barriers and even establishing the trust necessary to receive the message. Community legal clinics invest resources carefully into all of these areas. In Hamilton, we have developed relationships with various oppressed and marginalised communities over many years, such as injured workers, and tenants.

As noted, Hamilton is experiencing a bit of a renaissance, but the dark underbelly of gentrification has been the displacement of low income tenants. Working in collaboration with two community partners, the Social Planning & Research Council of Hamilton and Good Shepherd, we obtained funding from the Law Foundation of Ontario for “The Displacement Project”. Together we developed and delivered training and materials for community leaders and front line agency staff to combat landlord and developer actions to end tenancies. The first phase of the Project was so successful that the LFO approached us to do a second phase for tenants more generally; this work is underway. Again, a locally governed clinic enabled this unique, local response to this need for legal information and support.

Community Development

Wexler again: *“The hallmark of an effective poor people’s practice is that the lawyer does not do anything for his clients that they can do or be taught to do for themselves. The standards of success for a poor people’s lawyer are how well he can recognize all the things his clients can do with a little of his help, and how well he can teach them to do more.”* The language is dated but the concepts very much continue to apply today. Community Development activities build upon Public Legal Education efforts and lead to the effective exercise of legal rights. Consider tenants of a multi-story high rise served with an Above Guideline Increase application: can they participate in the process effectively? Clearly, that is the expectation of the legal process but what resources are available to low income tenants? Community legal clinics are here to assist with explanations of the law and with developing grass roots organizations that will be needed to meet the legal issues facing such groups of people.

In Hamilton, the clinic has launched and supported dozens of tenant associations and other community groups so that marginalized voices can continue to be heard. We support the Hamilton Tenant Solidarity Network, an umbrella organization that fights for tenant concerns across the city, as well as ACORN and the Hamilton & District Injured Workers’ Group. More recently, we have co-founded the No Hate in the Hammer campaign to address the rise in brazen hate speech by alt-right groups; we have started a broad coalition of individuals and organizations to support diversity and inclusion. These are a few examples of critical CD work at the local level and unique to Hamilton’s particular circumstances.

Law Reform

The legal welfare of the community often involves proposed changes to laws themselves. Change may be suggested by policymakers or stakeholders. In the former case, the community legal clinics support marginalized community groups as they participate in the debate alongside other, often well-resourced, stakeholders. As well, the shared experience of community groups sometimes suggests changes to laws that clinics assist in bringing forward. For example, at one time tenants had to file a Dispute form before being able to participate in a hearing at the tribunal. The experience of the community was that this barrier was inordinately difficult to overcome for marginalized people and those who did not read English or French. The law was reformed to end the Dispute form requirement that had, in addition, slowed the function of the tribunal as it dealt with adjournment and review requests.

Hamilton Example of the Utilization of all Components of our Systemic Mandate along with Traditional Legal Services

Four high-rise towers in the East end of Hamilton were purchased by a real estate investment trust based in Ottawa. The stated mission of this REIT is to “reposition the building”, i.e. renovate, evict and attract new tenants paying higher rents. The towers are home to several generations of low income newcomers and immigrants from around the world.

The Clinic supported the tenants of the four towers with a rent strike. It required an infusion of community development support over a lengthy period to develop associations, decision-making mechanisms and leadership skills. We worked in collaboration with grassroots organizers, particularly ACORN.

We delivered numerous PLE sessions to educate tenants and their associations about residential tenancies law, especially around issues such as maintenance & repair, above-guideline increases (AGI's) and notices to terminate tenancies. Much summary advice was provided along the way at the Clinic, duty council and meetings.

A law reform issue that we uncovered in this process was that the City's financial incentives to this REIT were in part used to “renovict” vulnerable tenants involved in this strike and AGI appeal. We recently brought this to the attention of Council, who asked staff to investigate and report back.

We represented numerous tenants at the Landlord and Tenant Board on issues related to this strike and ongoing litigation tactics amassed by the landlord. It has been an intensive effort for our Housing Team, but would not have been possible without the support of community groups and partners, relationships developed through the Clinic's systemic work. This example epitomizes the benefits of the clinic model of service delivery, including local control over the allocation of resources to meet community needs.

The Future

Our clinic sees the need daily for the full mandate of community legal clinics: casework, summary advice, public legal education, community development, and law reform. We have had a much larger constructive impact on the community as a result of our efforts in all of these areas than we would have if we had been limited to just a few elements. The development of local connections required to be effective is further enhanced by drawing our Board of Directors from the local communities. Local decision-making is efficient and effective in responding to the changing legal issues faced by the community the clinic serves. These are the fundamental activities of a community legal clinic, why they were included at the beginning, why they have remained, and why they are essential for the future.

4. Core/Presumptive Funding

The work of the clinic is long term. The professional obligations to clients is for as long as it takes to resolve the proceeding. The engagement with the community follows the twists and turns of changing legal environments. Core, presumptive funding is necessary to fulfill the commitments made and to plan for the future and the system would benefit from multi-year funding cycles to improve planning capacity and service delivery.

Recommendations for Improvement of Legal Aid Services Delivered by Clinics

When the foundation of the system is secure again, we can return to exploration of ways to improve:

1. *Restore Learning and Training and develop a quality assurance/accreditation program:* The clinic system needs its own, focussed educational resources for our areas of law and broad activities, including board training and support. These are not available elsewhere. We were in the process of building a system that could be even more effective if we can facilitate the sharing of knowledge. A program that lifts all clinics, supported by peers, would be an excellent way of assuring quality service and continuing to learn ways to improve.
2. *Ensure adequate resourcing of Specialty Clinics:* Communities of special need have been well-served by clinics specifically directed to assist them. General Service clinics are well-served by specialty clinics focussing on the areas of law we practice. They provide legal education training for our staff, conduct and co-ordinate appellate leading case strategies, and resource public legal education efforts.

3. *Develop a comprehensive funding allocation formula with ACLCO:* In 2016 the ACLCO provided a submission that served to highlight the various factors that should be considered such as the size of the low income population, the depth of poverty, particular marginalization of certain communities, and practical obstacles such as distance that represent cost challenges.
4. *Encourage clinic-community partnerships where respective service to the community can be enhanced:* Clinics have partnerships in the community that allow partners to be more effective. For example, we have been working closely with the McMaster Family Practice Team, helping to improve legal outcomes for their patients as we help them avoid health crises by preserving housing and income maintenance. Funding the Hamilton Legal Outreach program has increased our ability to assist at-risk clients of mental health service providers. These activities could be replicated elsewhere and clinics supported by our experience.
5. *Support Technology:* in order to operate in the emerging reality, clinics will require reliable and secure video conferencing and electronic filing capacity, including up-to-date scanning capability.

Next Steps

We hope to hear that the clinic structure and foundation will be recognized and protected in the proposed legislative changes. Local independence will continue to be exercised by community boards, determining the areas of poverty law needed in their respective communities and addressed using the full array of casework/advice, education, community development, and law reform. The ability to plan for the future assured by core, presumptive funding.

Subsequently, we look forward to working with LAO on the many ways the clinic system can continue to improve. Great strides can be made if based upon the learning gained from many decades of hard work in the system and our eagerness to share and build upon our experience.

Sincerely,

HAMILTON COMMUNITY LEGAL CLINIC/
Clinique juridique communautaire de Hamilton