

LEGAL AID GOES VIRTUAL

HELP OR HINDRANCE FOR ACCESS TO JUSTICE?

Anna Wong

The last few years bore witness to a number of significant changes at Legal Aid Ontario (LAO).

As part of its modernization plan, in 2009-2010, LAO closed its network of 51 legal aid application offices and moved to a new service delivery model that focuses on services from 56 courthouse locations, call centre and Internet-based services.

There is a growing realization of the promise that technology holds as a means to connect those in need with information and resources for their legal problems. In December 2008, LAO established, initially as a pilot, a toll-free help line that provides general information, referrals, processing of legal aid applications, and up to 20 minutes of summary legal advice in family and criminal matters. Assistance is available in 120 languages through the use of interpretation services. Despite some hiccups early on - in the form of long wait times and dropped calls - the call centre responds to an average of 1,300 calls per day.

The other cornerstone of LAO's new service delivery model is the revamped website with more in-depth information, in English and French, for clients and lawyers doing legal aid work. The expanded section for clients includes a "where to start" tool, an interactive office locator, and links to external resources such as the Lawyer Referral Service, social services and crisis centres. In the past year, about 770,000 people visited its website for legal information and resources.

While LAO's embrace of change through technology is commendable, one must ask: what are the ramifications of the changes for low-income Ontarians?

A shift towards electronic and telephone services can improve efficiency, save costs, and create greater accessibility for clients with mobility difficulties, be it due to a disability, because they live in rural or remote areas or are otherwise not able to leave their homes. According to the May 2010 Listening to Ontarians: Report of the Ontario Civil Legal Needs Project, when faced with a legal problem, 27% of people would go online for information and assistance, and 12% would seek help over a telephone advice line. While the figures are not insignificant, it does suggest that electronic means of delivering service cannot substitute for face-to-face advice.

The advantages to be wielded from telephone and Internet-based services are predicated on the assumption that all or most clients have or can get access to these technologies. The reality is far different. Statistics Canada's 2010 study "Canadian Internet Use Survey" reveals that only about half of those Canadians with a household income of \$30,000 or less used the Internet. For someone who makes less than \$18,000 a year, which is the threshold to qualify for duty counsel and summary legal advice assistance, ready and private access to Internet and telephone may be a luxury that is out of reach.

Avvy Go, director of Metro Toronto Chinese & Southeast Asian Legal Clinic, cautions that the Internet is useful as

a source of legal information only for people who have access to a private computer and sufficient computer literacy and knowledge of legal issues to be able to interpret the information provided. As Ms. Go puts it, “clients with no legal training can only take the information they obtain online so far, depending on language barrier and education.”

The typical LAO client, who is not fluent in English, does not have a high level of educational attainment, and tends to be marginalized socially and economically. According to Cynthia Pay, staff lawyer at Parkdale Community Legal Services, most of her clients do not access legal information on the Internet.

Compounding the matter is the language barrier faced by many low-income Ontarians. Ontario has the highest proportion of immigrants and the second highest proportion of visible minorities in Canada. In 2006, 28.3% of Ontario’s population, or 3.4 million individuals, are foreign-born; of this group, 1 million are newcomers who arrived in the past 10 years. Visible minorities numbered 2.7 million, dominated by South Asians and Chinese (Statistics Canada). They may not be proficient in the English or French languages of the LAO website.

Another concern brought about by this move to technology is the corresponding reduction in investment in community legal clinics and specialty clinics. Community legal clinics provide legal advice and representation primarily in poverty law matters, such as housing, social assistance, and workers’ compensation. Each clinic is governed by a locally elected board of directors that is well positioned to observe and respond to the specific needs of the community that the clinic serves. Clinics also engage in public legal education, law reform activities and test case litigation. As the population grows and with the poverty rate set on an incline by the recent recession, funding for community legal clinics has barely kept pace. According to the Ministry of Finance, in 2010 \$61.8 million (or 16.6%) of LAO’s total \$371.7-million expenditures went to clinics. The allocation to clinics dropped slightly from the year

prior, despite the government’s investment of an additional \$150 million into the legal aid system over four years, starting in 2009.

Community legal clinics, meanwhile, are struggling to keep up with increasing demands. As of April 1, 2010, LAO eliminated certificate coverage for civil litigation cases including claims for reinstatement of disability insurance, malicious prosecution, assault or wrongful detention, real estate actions, and personal injury claims. In 2009/2010, civil matters accounted for 73% of all legal aid applications received. Clients with these issues are now expected to find lawyers to take on these cases on contingency, or knock on the door of legal clinics.

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LAO’s strict financial eligibility requirement is below the poverty line in Ontario, meaning that many who are in dire financial straits are turned away. The financial eligibility threshold to receive clinic services has not changed since 1993, not even to index for inflation. Family, criminal, immigration and poverty laws are complex, voluminous, and subject to frequent legislative amendments. Legal forums, save for Small Claims Court, are designed with lawyers in mind. People who go to court without a lawyer tend to spend a lot longer in the system and have a much more frustrating experience.

As we reflect on the changes to LAO and contemplate plans going forward, it is important to remember the vital role that legal aid plays in ensuring access to justice.

Access to justice is one of the main pillars of the rule of law and a fundamental right on its own accord as it is an enabler of other rights. Simply put, substantive rights can have no meaning for those who cannot access the justice system and get the help that they require.



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