

CALC: Celebrating 35 Years and Looking to the Future

Mary Jane Mossman
10 November 2015

Introduction

Thank you very much for your kind invitation to join you for this 35th anniversary event at Community Advocacy Legal Centre. It is really wonderful to be here for this celebration 35 years after the Clinic Funding Committee at the Ontario Legal Aid Plan authorized the initial funding for a community legal clinic in Belleville. I have very good memories of the meetings in Belleville in 1979-80, and especially the energy and vision of the founders of the community legal clinic here.

In this brief presentation, I am going to reflect on Ontario's system of community legal clinics, both by looking back and also by looking to the future. This means a bit of history about community legal clinics and their mission, and then some comments about how their mission remains crucial going forward.

First a bit of History

This history is fundamental to visions about the future for community legal clinics.

First, community legal clinics were created with a 'bottom up,' and not a 'top down' process.

- To understand this concept, it is important to begin with the *Legal Aid Act* in Ontario in 1966. This legislation introduced a province-wide legal aid program, with a centralized head office in Toronto and local application offices around the province.
- Crucially, the legal aid services that were initially offered by the *Legal Aid Act* were modelled on services provided by lawyers to paying clients, mainly criminal law and family law services.
- Lawyers in private practice provided these services on 'certificates' and were paid by the head office.
- Interestingly, at the beginning, there was no cap on the funding available, so that all eligible legal services under the *Legal Aid Act* could be provided to eligible clients.

Fundamentally, of course, this was a centralized 'top down' approach to providing legal aid services.

Second, some community activists and some idealistic law students and lawyers envisaged both

quite different kinds of legal aid services for marginalized communities and also different ways of delivering them: A “bottom up” approach. What did this mean?

- These activists, law students and lawyers believed that legal services were not just ‘services’ to be provided to clients, but envisioned how the delivery of legal services could be used to promote empowerment for individuals and communities;
- These activists, students and lawyers also believed that legal services for marginalized communities needed to address the kinds of legal problems experienced by members of these communities – because their problems were quite different from those of many paying clients; and
- These activists, students and lawyers believed that members of marginalized communities should be actively engaged in defining priorities for services (including systemic legal action) through the establishment of Boards of Directors representing clinic communities.

Third, it is critical to understand that all of the earliest community legal clinics in the 1970s were established outside the formal legal aid system, with funding provided by a variety of governmental, social service, and university sources.

- In this context, early community legal clinics established their own principles with respect to services provided, delivery methods, and governance arrangements.
- However, as the early community legal clinics always had finite resources, they relied on their community Boards to engage in the hard challenges of defining service priorities.

During the 1970s, there was an ongoing debate about the ‘dual’ legal aid systems that existed in Ontario:

- the formal ‘top down’ legal aid certificate system; and
- the ‘bottom up’ community legal clinic system.

But there were also looming funding problems for these community legal clinics (outside the formal statutory program). Thus, there were two Commissions of Inquiry a few years apart in the 1970s:

- The Osler Commission in 1974, which recommended that the province’s legal aid system embrace community legal clinics and provide stable funding to replace the variety of funders, some of whom were unable to provide long-term funding; and
- The Grange Commission in 1978, which created the funding principles for

community legal clinics after the provincial legal aid system began to fund them directly.

- And by 1997, the McCamus Review endorsed the community clinic ‘bottom up’ approach within the newly-created Legal Aid Ontario.

And finally, after 1978, a small section of the provincial legal aid office was established: the Clinic Funding Office. As its Manager for the first four years, I was privileged to be involved in a significant province-wide expansion of community legal clinics, including Belleville in 1980.

And, of course, Attorney General Roy McMurtry was hugely supportive of community clinics too!

The Mission of Community Legal Clinics: Looking to the Future

I now want to suggest that the mission of community legal clinics going forward involves recognition of this history as three current principles:

1. Legal services for marginalized communities

In the background study on legal services relating to poverty, Janet Mosher suggested that the different and multifaceted problems of marginalized communities included much more than low incomes.

As she concluded, community legal clinics need to use their resources to meet not just the needs of individuals, but also groups within communities, and to develop specialized legal expertise and creative methods of delivering services.

For me, the fundamental message about legal services for marginalized communities is that the goal is to deliver not just access to justice, but real justice.

2. Community involvement in decisions about priorities for delivering justice to marginalized communities

Unfortunately, but realistically, effective use of scarce legal resources has always been a feature of community legal clinics. However, as their history reveals, community legal clinics have also always involved their communities in decision-making about priorities.

It is necessary to acknowledge, in this context, that:

- Being on a community clinic Board is hard work; and
- Making decisions about priorities presents hard challenges.

But these hard tasks are fundamental for the mission of community legal clinics because they result in promoting the mission of community building. That is, community legal clinics are not just ‘legal service centres’ although they do, of course, provide a great deal of ‘service’ to their communities

But the clinics are also partners with their communities, engaged in creative joint decision-making to promote community building, and empowerment to both individuals and communities.

This mission of community building, through the impact of community Boards of Directors was recognized best, in my view, in the Grange Report back in 1978. As this Report emphasized, many of those who are marginalized as individuals or who are members of disadvantaged communities have most often encountered law and lawyers as opponents of their interests:

- As accused persons in criminal matters,
- As tenants trying to avoid eviction,
- As defendants in debt collection or consumer matters, or
- As recipients of bureaucratic decisions about social assistance, ODSP, EI or workers comp.
- For these persons, as the Grange Report articulated:
- ‘If there are to be effective services to the poor, the traditional distrust felt by the poor towards lawyers, the legal profession and even towards the law itself, must be reduced.... To the extent that [these communities] have now placed their confidence in the [community legal] clinics, much of the credit must go to the strong role played in their development and operation by boards of directors. If the movement is to develop and progress with the continuing confidence of the clients, that role must not be eroded. The boards must continue to govern the affairs of the clinics, both as to policy and administration.’

In this context, the justice mission of community legal clinics can be achieved only with the active involvement of communities and their community-based Boards of Directors. More specifically, Boards of Directors are (and must be) the ‘voices’ of their communities, and they must be strong voices, articulating the ‘bottom up’ needs to LAO.

3. Systemic legal action to promote social inclusion: the ‘community building’ mission

The history of community legal clinics, and especially their origins with scarce legal resources, emphasized creativity in delivering legal services to marginalized communities.

Thus, rather than focus only on one by one services to individual clients, community legal clinics often engaged in systemic legal action to address

underlying causes of legal problems: including lobbying politicians, test case litigation, group actions, and assistance with community negotiations.

More recently, this mission has been captured in the language of ‘social inclusion.’ What does this mean?

A ‘social inclusion’ approach focuses directly on the systems and practices that create poverty, exclusion and inequality – and on how to change them.

In the legal aid context, a social inclusion approach moves away from defining problems in terms of legal categories for individual services to focus on changing underlying social and legal arrangements that create and perpetuate problems of exclusion.

To put this more concretely, a social inclusion approach tries to encourage its clients to feel that they are ‘citizens’ with opportunities to participate in their communities, not ‘consumers’ who are simply the recipients of repeated legal handouts.

A social inclusion approach is fundamentally about empowerment of individuals and communities. And, in this context, of course, community Boards of Directors are vital.

In addition, a social inclusion approach creates new ways of understanding “community.” That is, in addition to thinking about geographical spaces as communities, we also need to identify social relationships as communities, a ‘search for belonging’ in our society, and how we all identify with many different communities, based on issues of:

- personal and family identities,
- individual interests and needs, and
- aspirations for our city, our province and our country.

Conclusion

In thinking about social inclusion and the future of this community legal clinic, here are some questions to ponder:

- How can we (re)imagine relationships between clinics and their (many) communities in ways that encourage community building?
- How can we use community legal clinic resources to create meaningful opportunities for existing and potential clients to promote their roles as citizens, not just consumers?
- How can we use scarce resources to foster transformations that result in justice, in addition to access?

And, in my view, any effort to define the future requires critical attention to the history of community legal clinics, and especially:

- The need for community legal clinics to engage with the most marginalized individuals and communities to promote justice, not just access to justice.
- The fundamental role of the Board of Directors in articulating the ‘voices’ of marginalized individuals and communities; and
- The creation of new approaches to foster social inclusion for individuals and communities: the goal of creating citizens and not just consumers.

In its excellent work for the past 35 years and in its continued acceptance of these ongoing challenges, this community legal clinic is part of an extraordinary accomplishment in Ontario, one that is envied the world over.

It is a blessing to be here to celebrate with you and to wish you ongoing success for the next 35 years!