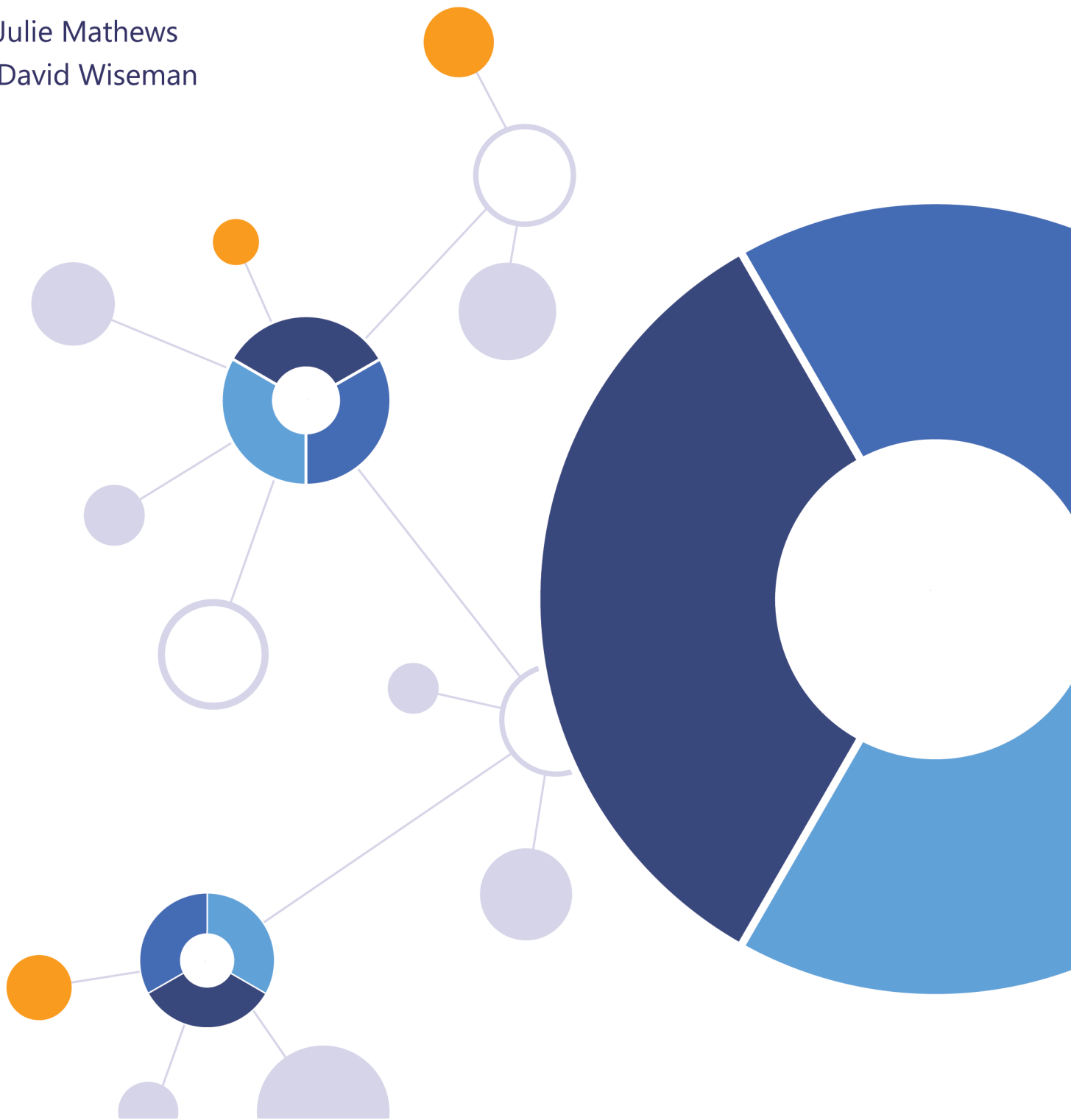


Community Justice Help:

Advancing Community-Based Access to Justice

A discussion paper

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Toronto: Community Legal Education Ontario, June 2020

This discussion paper is the result of research and consultations undertaken by Julie Mathews, Executive Director of Community Legal Education Ontario, and Professor David Wiseman, University of Ottawa Faculty of Law, from September 2018 to December 2019. Julie's participation in the project was enabled by a Community Leadership in Justice Fellowship awarded by The Law Foundation of Ontario. While the project was financially supported by The Law Foundation of Ontario, the authors are solely responsible for all content. The project was supported by Community Legal Education Ontario.





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Chapter 1.

Introduction

Exploring community justice help

When people who have low incomes or face other social disadvantages need help with basic needs and rights, they need it urgently. They often turn to community workers they already know and trust. Frontline workers (staff and volunteers) in Ontario's not-for-profit, community-based sector have deep roots in their communities and strong connections to their clients. They provide holistic support to multi-dimensional problems, including those that are law-related. These workers may provide some help directly, refer clients to other sources of support (legal and non-legal) and work alongside others, including lawyers and paralegals, to get clients the full range of support they need.

The clients don't have knowledge of the processes that they're going to face... We help guide them through the processes... We don't duplicate what the legal clinics do... It's a symbiotic relationship... We take away all the stuff that they should never have to handle and let them deal with the issues of law.¹

The significant contribution of community workers to improving access to justice has been recognized more in recent years, prompting us to explore how their work could be better enabled and supported. In this paper, we propose a framework that describes the key elements of good quality community justice help. The framework includes three key features: community justice helpers have the knowledge, skills and experience they need; they work within a not-for-profit organization and an ethical

¹ Jacqueline Thompson, Executive Director, LIFE*SPIN, <https://cleoconnect.ca/cleo-research/learn-about-community-justice-help/>, <https://peachslmvideos.s3.amazonaws.com/pID-487/338890-1572880842-high.mp4>. (See the Appendix for a snapshot of the organization.)

infrastructure; and, they provide holistic support to meet clients' multi-dimensional needs. The framework also includes markers or indicators for each feature.

We recommend that this framework be supported by providers of community justice help, as well as by other partners, including licensed legal service providers, funders of community-based access to justice programs, the Law Society of Ontario (LSO) and other bodies that regulate or support legal, social, community or other relevant services.

In making this recommendation, we hope to achieve recognition of three building blocks that we believe are essential to improving community-based access to justice:

- That community justice help is an important and valid component of the broader ecosystem of access to justice services;
- That all components of the ecosystem must be adequately supported through public funding and other means; and
- That community justice help already aligns with the regulatory framework overseen by the LSO for the practice of law and the provision of legal services.

About this project

This discussion paper is the result of research and consultations undertaken by Julie Mathews, Executive Director of Community Legal Education Ontario (CLEO), and Professor David Wiseman, University of Ottawa Faculty of Law, from September 2018 to December 2019. Julie's participation in the project was enabled by a Community Leadership in Justice Fellowship awarded by The Law Foundation of Ontario. The project was supported by CLEO. It builds on the extensive research and findings of a 2018 two-part report prepared for The Law Foundation of Ontario, *Trusted Help: The Role of Community Workers as Trusted Intermediaries Who Help People with Legal Problems* ("Trusted Help").²

In addition to reviewing relevant literature, we conducted interviews with key staff from community-based organizations on their practices. We are grateful to all of them for their time and effort and their willingness to share their experiences openly with us. We also benefited from the feedback of colleagues in the academic, justice and not-for-profit sectors, and appreciate their time and engagement. We have not attempted to represent the diversity of opinions we heard in this paper. Its views and analysis are our own and we are responsible for any errors or omissions. Finally, we are grateful to a number of students at the University of Ottawa Faculty of Law who provided research assistance (see Acknowledgements).

² K. Cohl, J. Lassonde, J. Mathews, C. L. Smith and G. Thomson, *Trusted Help*.

We refer to our paper as a “discussion paper” because it raises issues and includes recommendations that will require further discussion among the key partners mentioned above. We hope that our paper will move the discussion forward and encourage others to collaborate with us on advancing community-based access to justice.

Notes about terminology

This discussion paper focuses on supporting the work that staff and volunteers (trained and supervised by staff) undertake in not-for-profit, community-based organizations to help people with life-affecting problems with a legal element. We refer to this kind of work as “**community justice help**.” The clients of these organizations are predominantly people who experience low (or moderate) incomes and other social disadvantages (e.g. low literacy, housing insecurity, discrimination, lack of fluency in an official language, physical or mental health issues).

We prefer to say “**life-affecting problems**,” as opposed to “everyday legal problems,” to signify that these problems are often critical and related to basic needs. For example, they may be related to maintaining adequate housing, as opposed to starting a small business.

We prefer to use the term “**problems with a legal element**” or “**law-related problems (or needs)**,” as opposed to “legal problems,” to avoid the assumption that these problems are exclusively or predominately legal in nature and can only be resolved with the assistance of lawyers or paralegals. We often refer to lawyers and paralegals together as “**licensed legal service providers**.” For some problems, help from a licensed legal service provider may be useful or necessary; for others, it may not.

Many life-affecting problems are multi-dimensional and may have both legal and non-legal elements intertwined. Helping to resolve these problems requires holistic approaches that recognize all of their facets and the social context of people’s lives.

As the “Trusted Help” work found, people who are vulnerable often seek out help for life-affecting problems from people they already know and trust. These “trusted intermediaries” may be frontline workers in not-for-profit, community-based organizations or may be other trusted professionals (e.g. doctors, nurses, educators, union colleagues, staff of local businesses). In this discussion paper, we focus only on those trusted intermediaries who are staff or volunteers in not-for-profit, community-based organizations. We refer to them as “**community justice helpers**.”

The structure of this discussion paper

This discussion paper is divided into six chapters and one appendix, as described below:

Chapter 1 includes an introduction and notes about the terminology we use in the paper.

Chapter 2 sets the context for our proposed framework, by offering a definition of “access to justice” for the purpose of this paper. The Chapter provides some of the key findings from surveys and reports on access to justice, including the results of the most recent national survey conducted by the Canadian Forum on Civil Justice on the cost of justice. The Chapter explains why we chose to focus on community justice help—one of the many approaches that are needed to achieve greater access to justice for people who experience social disadvantages. Finally, it provides an overview of the “Trusted Help” report and discusses the constraints on community justice help.

Chapter 3 describes our proposed framework, made up of three features of good quality community justice help, and markers or indicators to identify and support each of the three features. It includes a discussion of how the framework should be used; and examples of community justice help scenarios, based on the work of organizations we interviewed as part of our research.

Chapter 4 situates community justice help in the broader ecosystem of access to justice, through a discussion of “access to justice” versus “access to the formal legal system,” and the challenges of providing access to justice. It highlights some of the LSO’s regulatory and program initiatives to improve access to justice; and emphasizes the vital roles of all justice partners, including community legal clinics, licensed legal service providers and community justice helpers.

Chapter 5 provides an overview of some of the approaches to quality assurance in the not-for-profit sector (from funding requirements to formal accreditation) and argues that any future approaches to quality assurance for community justice help should be voluntary and build on what already exists. The Chapter then explains why we believe it is important to move away from a “dividing line” approach between providing legal information and referrals on the one hand, and providing legal advice on the other. **Finally, it provides the basis for our view that community justice help already aligns with the LSO’s regulatory regime that applies to the provision of legal services.**

Chapter 6 includes a brief conclusion and our recommendations to advance community-based access to justice. We make three overarching recommendations and a number of supporting recommendations for consideration by the LSO, funders

of community justice help, not-for-profit organizations providing community justice help and the legal community.

The Appendix provides snapshots of the work and practices of a few of the Ontario organizations we interviewed as part of our research, as well as a broader initiative in British Columbia.



Chapter 2.

Access to Justice & Community Justice Help

What is “access to justice”?

Numerous surveys and reports document a significant and persistent lack of access to justice in Ontario and throughout Canada.⁴ “Access to justice” has been defined in different ways and encompasses a wide range of issues. For the purpose of this discussion paper, we offer this definition:⁵

For many clients, the help they receive from a community worker is the only help they will get for their legal problem.³

Access to justice exists when people can pursue their goals and address their law-related problems in ways that are consistent with fair legal standards and processes; and can obtain, understand, and act on information and services related to the law, where necessary, to achieve just outcomes.

The findings of the various surveys and reports are generally consistent. Drawing on them and specific details from the most recent national survey on the cost of justice

³ K. Cohl, et al., *Trusted Help, Part 2*, 36.

⁴ See, for example, Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change*; Canadian Bar Association, *Canada’s Crisis in Access to Justice*; Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act*; A. Currie, *Nudging the Paradigm Shift, Everyday Legal Problems in Canada*; and M. J. Trebilcock, A. Duggan and L. Sossin, eds., *Middle Income Access to Justice*.

⁵ Our definition draws on a variety of sources, including, in particular, T. C. W. Farrow, “What is Access to Justice?,” 983; K. Cohl, *Access to Justice Themes: “Quotable Quotes,”* 5; and R. L. Sandefur, “Access to What?,” 50.

conducted by the Canadian Forum on Civil Justice⁶ (the survey), we provide below the common findings that are most relevant to community justice help:

- **Civil legal problems⁷ are prevalent in many people's everyday lives**, in particular, problems related to family, housing, employment, and debt and consumer issues. The survey found that, over a given three-year period, 11.4 million or almost half of adult Canadians will experience at least one everyday legal problem that they consider serious.⁸
- **Social disadvantages can increase the risk and prevalence of experiencing legal problems, which can also occur in clusters**, with one problem triggering others.⁹ This is particularly true with respect to legal problems experienced by people with lower incomes.¹⁰ Law-related problems are also frequently interwoven with other problems or needs, such as those related to health, social issues, finances and housing.¹¹
- **Affordable and accessible legal services (i.e. legal advice and representation from a licensed legal service provider) are lacking for many common civil legal problems,¹²** including problems that have potentially serious consequences. The survey found that only about 19 per cent of people with everyday legal problems seek formal legal advice and only about seven per cent engage courts or tribunals.¹³ The report on the survey results notes that it is "well established in the literature that perceived high cost is a significant impediment to consulting a lawyer."¹⁴
- **In taking action to resolve their legal problems, people often seek assistance from non-legal organizations in their community.** About 28 per cent of people with everyday legal problems consult non-legal sources of assistance, including government agencies, voluntary associations, unions and advocacy groups.¹⁵

⁶ The survey data is available in T. C. W. Farrow, A. Currie, N. Aylwin, L. Jacobs, D. Northrup and L. Moore, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*. The statistics reported here are drawn from the analysis of the survey data in A. Currie, *Nudging the Paradigm Shift, Everyday Legal Problems in Canada*.

⁷ Our discussion paper primarily considers civil, rather than criminal, legal problems.

⁸ A. Currie, *Nudging the Paradigm Shift, Everyday Legal Problems in Canada*, 4.

⁹ *Ibid.*, 7-15.

¹⁰ *Ibid.*, 8.

¹¹ *Ibid.*, 7-15 and 24-28. See also P. Pleasence, C. Coumarelos, S. Forell and H. M. McDonald, *Reshaping Legal Assistance Services: Building on the Evidence Base. A Discussion Paper*, 5-17.

¹² Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change*, 14.

¹³ A. Currie, *Nudging the Paradigm Shift, Everyday Legal Problems in Canada*, 15.

¹⁴ *Ibid.*, 17.

¹⁵ *Ibid.*, 15. See also T. C. W. Farrow, et al., *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, 107.

- **There is a high level of satisfaction with both legal and non-legal sources of assistance.** People who receive help from licensed legal service providers regard it as somewhat or very helpful—about 79 per cent of people for a first problem and 83 per cent of people for a second problem.¹⁶ For help from non-legal sources, the corresponding percentages were about 68 per cent (for a first organization consulted for both a first and a second problem) and 79-84 per cent (for a second organization consulted for the same problems).¹⁷
- **There is a high level of dissatisfaction with the outcomes for problems that are resolved.** The survey found that a little over half of respondents said that their problems were resolved,¹⁸ with almost half of these respondents indicating that they felt the outcome was unfair.¹⁹
- **People would prefer to receive one or more types of assistance in trying to resolve problems.** Over 40 per cent of people who did not seek assistance from either lawyers or non-legal organizations (“self-helpers”) believe they would have achieved a better outcome with some assistance.²⁰ Still, about 70 per cent of these self-helpers expressed a preference to deal with their problem on their own, as much as possible.²¹ They identified different types of assistance that they thought would have been useful: “better information” (80 per cent); “someone to explain legal aspects and help with forms” (68 per cent); “an advocate to intervene on their behalf” (69 per cent); and “a lawyer to handle the problem through the legal system” (33 per cent).²²

While these findings provide only a partial picture of access to justice issues, they do provide a solid basis for saying that there is a gap between people’s need for help with life-affecting, civil legal problems and the accessibility and affordability of help for those problems. Many actions on many different fronts are required to close the gap and improve access to justice.

¹⁶ A. Currie, *Nudging the Paradigm Shift, Everyday Legal Problems in Canada*, 23.

¹⁷ *Ibid.*, 22-23.

¹⁸ *Ibid.*, 20.

¹⁹ *Ibid.*, 21.

²⁰ *Ibid.*, 18.

²¹ *Ibid.*, 19.

²² *Ibid.*, 18.

Why we focus on community justice help

Both licensed legal service providers and non-legal community-based workers can provide pathways to get people the help they need with life-affecting problems. Indeed, their work should be connected and complementary. In Chapter 4, we highlight some of the efforts being made to improve the availability of accessible and affordable help from licensed legal service providers.

This paper explores how to strengthen the availability of help with life-affecting problems with a legal element from community workers. While this pathway has received relatively less attention than the licensed legal service provider one, it has, in recent years, become the subject of greater inquiry and activity. This interest has validated the existing role and relevance of community justice help, as well as its potential.

We focus on community justice help, as we are especially concerned about improving access to justice for people who have low incomes or face other social disadvantages. People who are poor often encounter the law in their daily lives. As Stephen Wexler has said, “[p]overty creates an abrasive interface with society; poor people are always bumping into sharp legal things.”²³ Given the life circumstances and needs of people who experience disadvantages, enabling and supporting not-for-profit, community-based organizations to assist them is both practical and appropriate. It is practical because these organizations are already working with these clients and providing assistance at no cost. It is appropriate because workers at these organizations understand the social context of their clients, are skilled in engaging them and have earned their trust.

Through our research and consultations, we have come to recognize that improving access to justice requires solutions that are broader than improving access to licensed legal service providers. Rebecca Sandefur, a leading researcher on access to justice in the US, emphasizes that it should not be presumed that the assistance of licensed legal service providers, or participation in formal legal processes, is necessarily required or desirable to secure all legal entitlements, resolve all legal problems, or resolve the entirety of a legal problem consistent with legal norms.²⁴ We believe that such a presumption is particularly problematic when cost and other barriers prevent people from accessing help from a lawyer or paralegal, and when people’s life-affecting problems are not exclusively legal in nature.

²³ S. Wexler, “Practicing Law for Poor People,” 1050.

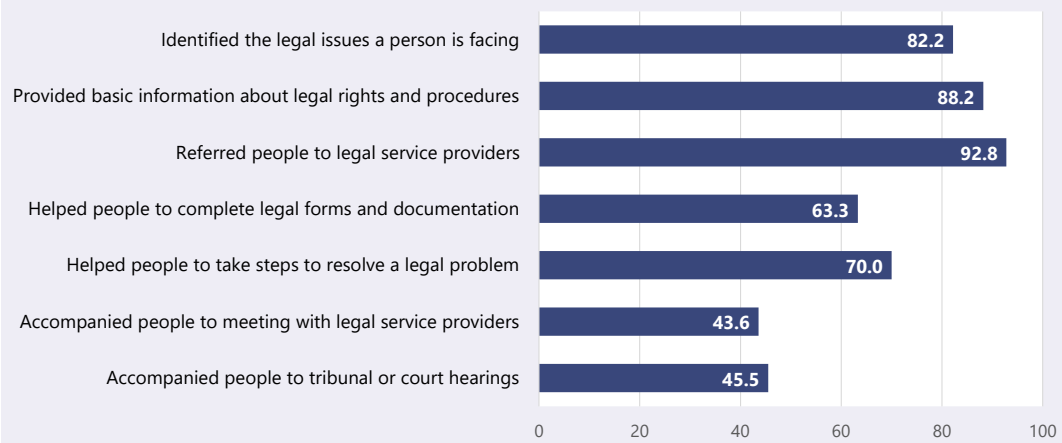
²⁴ R. L. Sandefur, “Access to What?,” 52-53.

Trusted help in communities

Ontario is fortunate to have a well-developed system of not-for-profit, community-based organizations and workers. The community service sector is at the frontline of providing help to people with life-affecting problems—a housing maintenance issue, a family breakdown, the loss of a job. Many of these problems may include a legal element—the right of a tenant to a habitable apartment, the obligation of a parent to pay child support, the entitlement of a worker to employment insurance, or the right to be free of discrimination in the workplace.

The role of community-based organizations in reaching people living on low incomes or experiencing other social disadvantages is documented in the “Trusted Help” report (and other research).²⁵ The “Trusted Help” report shows (in the graph below) that many people who are vulnerable in Ontario turn to community workers they trust for a wide range of law-related support and assistance.²⁶

Figure 1: **Help provided by frontline workers (%)**



Based on survey responses from 231 respondents self-identifying as a staff member or volunteer providing frontline services in a non-legal community organization

²⁵ See, for example, Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change*; Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act*; and K. Cohl and G. Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services*.

²⁶ K. Cohl, et al., *Trusted Help, Part 2*, 15.

The “Trusted Help” report found that many people, especially people who are vulnerable or have low incomes, will not receive help with their legal problems without intervention from a trusted intermediary in a community organization.²⁷ The report identifies a number of reasons why people turn to trusted intermediaries, including “client comfort and trust, early intervention, difficulties in gaining access to legal services, complementing the role of legal practitioners, and holistic approaches.”²⁸

The report also describes a number of ways community workers complement the work of licensed legal service providers who serve vulnerable clients:

They support clients by accompanying them to meetings and provide context and data to the legal team about the systemic issues related to the client’s case... They also [help] clients gather the documents the lawyers or paralegals need. This kind of help makes better use of the limited time available with the legal professionals and helps the legal team deliver more focussed and efficient service.²⁹

Community workers typically provide services day-in, day-out, drawing on the depth of knowledge and skills they have developed through education, training and on-the-job experience. Many have some form of specialization. For example, they provide settlement services to immigrants and refugees, housing support to tenants, consumer or credit counselling services to people with problematic contracts or debt, or family support services to people experiencing family breakdown or intimate partner violence.

In addition, community workers are well positioned to understand the social context of the people they serve, such as the realities of income and housing insecurity, the barriers of discrimination, and the support systems on which people in the community rely. Workers may also have cultural or linguistic connections with the clients they serve. These connections, and the workers’ knowledge and understanding, enable them to build trust with clients and to respond to their needs holistically.

Community workers fall into many different occupational categories or job types, such as information and referral specialists, social workers, educators, settlement workers, system navigators, advocates and support workers. They typically work in accordance with occupational and/or organizational principles and policies of service that seek to respect and protect the dignity and privacy of their clients. They do not

²⁷ Ibid., 27.

²⁸ Ibid., 28.

²⁹ Ibid., 32.

accrue profits from their clients and the very purpose of their work is to serve the public interest.

As we learned from our consultations, community workers have a keen awareness of their own limits as helpers and a strong sense of responsibility to connect clients to other sources of help, including licensed legal service providers, where needed and available. Indeed, we identified promising practice models where community workers and licensed legal service providers work in a complementary fashion.

Some not-for-profit programs in Canada are dedicated and resourced to help people with the legal elements of their problems and rely on trained community workers to do so.³⁰ Examples include Family Court Support Workers (Ontario),³¹ volunteer navigators (Nova Scotia)³² and legal advocates (British Columbia).³³

The constraints on community justice help

There is the perception in Ontario that community workers and others who are not licensed legal service providers may provide only general legal information and referrals. The relevant rules presumptively restrict the practice of law and the provision of legal services to licensed legal service providers.³⁴ The definitions of “practice of law” and “legal services” are open to interpretation and not entirely clear, but potentially encompass a very broad range of law-related support and assistance.

³⁰ In many cases, their provincial regulatory regimes neither explicitly permit nor prohibit them from providing their services.

³¹ See, for example, Luke’s Place, <https://lukesplace.ca>. (See the Appendix for a snapshot of the organization.)

³² The Legal Information Society of Nova Scotia Public Navigator Project, <https://www.legalinfo.org/current-projects/about-the-pn-project>.

³³ The Law Foundation of British Columbia, <https://www.lawfoundationbc.org/our-work/continuing-programs/links/>. (See the Appendix for a snapshot of the program.)

³⁴ There is a considerable body of literature that explains the rationale for the tight restrictions on legal services. The rationale is based on a few premises that are common in discussions of monopolies and other forms of market restriction. These premises suggest that restrictions may be necessary where: a) the services are so specialized in nature that only people with extensive, specialized training should be allowed to perform them; b) allowing people who have not received the specialized training to provide services puts the public interest at risk, both because the risk of error is high in the specialized field, and because the consequences of error can have profound implications on a person; and c) a potential consumer of services may have difficulty assessing the extent of specialization offered by unlicensed service providers. However, much of the literature dealing with legal services regulation fails to address the reality of many people in Ontario who cannot afford or otherwise access services from a licensed legal service provider. A monopoly becomes highly problematic when the regulated services are essential and yet, not widely accessible—a situation that applies to law-related services, but not to health care in Ontario. N. Semple, in *Legal Services Regulation at the Crossroads: Justitia’s Legions*, canvasses the various goals behind the regulation of legal services in common law jurisdictions and offers proposals for regulatory reform that are client-centred and advance access to justice. See also G. K. Hadfield and D. L. Rhode, “How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering.”

We argue that the perception that community workers may provide only general legal information and referrals is in fact a misperception (and lawyer-centric reading) of the LSO's regulatory framework for the licensing of legal service providers and the provision of legal services. (We, ourselves, were under this misconception before undertaking our research and analysis.) The framework we propose is based on existing good practices in the not-for-profit, community-based sector *and* is in alignment with the current regulatory scheme for the provision of legal services. (We explain this in more detail in Chapter 5.)

Although our research did not reveal any examples of the LSO's prosecution of not-for-profits for the unauthorized practice of law,³⁵ we do know that it does occasionally pursue investigations and take action short of formal prosecution in the courts.³⁶ We learned from our consultations that when investigations and actions do take place, word of them spreads widely among community-based organizations and they are remembered for many years to come.³⁷ Although not-for-profits may be unaware of the specific risks they face, they are generally aware that the LSO has the authority and means to take action against individuals or organizations that are not licensed under the LSO regime and go beyond providing legal information and referrals.

Research that explores the dividing line between legal information and legal advice—using a refugee assistance project as a case study—discusses the potential chilling effect on community justice help that results from worry about violating the LSO's rules.³⁸ The "Trusted Help" report notes that some community workers are afraid to give certain types of help "for fear of straying across the line."³⁹ Community workers in Ontario, unless subject to an express exception by the LSO, must be mindful of the restrictive rules and offer help with caution. This is the case even where there are no

³⁵ A search of legal databases did not identify any case reports of prosecutions for the unauthorized practice of law in a not-for-profit context.

³⁶ For example, a cease and desist letter was sent to the Toronto-based FCJ Refugee Centre (see the Appendix for a snapshot of the organization) and an investigation ensued. This case is briefly discussed in J. Bond, D. Wiseman and E. Bates, "The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector," 11-12. A program offering free legal assistance to street-involved people was subjected to similar regulatory action and had to cease operating (until regulations were changed). See S. Bouclin, "Regulated Out of Existence: A Case Study of Ottawa's Ticket Defence Program." See also Bishop v. LSUC, 2015 ONSC 1018 (CanLII), where initiation of an investigation is mentioned at para. 3, <https://www.canlii.org/en/on/onsc/doc/2015/2015onsc1018/2015onsc1018.html>.

³⁷ Our research did not explore the nature of investigations undertaken by regulators for the unauthorized practice of law, for example, who typically bring complaints, to what extent are they brought against staff or volunteers of not-for-profit organizations, and how often complaints allege actual harm or injury to a person. Concerns about the lack of attention to actual harm in investigations of unauthorized practice of law in the US are raised in D. L. Rhode, "What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers," 432.

³⁸ J. Bond, et al., "The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector," 23-24.

³⁹ K. Cohl, et al., *Trusted Help, Part 2*, 36.

affordable or otherwise accessible licensed legal service providers with appropriate expertise⁴⁰ to whom a client could be connected.⁴¹

The ability of community workers to help clients with life-affecting problems can also be impeded by federal laws. For example, salaried settlement workers at not-for-profit agencies have been stymied by an administrative interpretation of a federal law that sets out the rules for providing legal assistance to newcomers to Canada. The law is being applied in a way that prohibits settlement workers from assisting newcomers beyond communicating information, but allows volunteers at the same agencies, and immigration consultants who charge clients for their services, to provide a range of legal services.⁴²

Almost any help that is responsive to a person's individual law-related problem must draw on some knowledge of the law and legal system. Once a community worker attempts to offer help by assessing a client's situation, identifying the nature of the problem and selecting a relevant website or brochure, they are already applying their knowledge and judgment.⁴³ The more that information addresses a person's situation, the closer it may get to being considered legal advice.⁴⁴ This dilemma is explored in the research on the refugee assistance project mentioned above:

... as this [legal] information becomes less static and general and more dynamic and contextualized—or, in other words, as it becomes more useful to an individual and more effective as an access to justice resource—it may also begin to take on some characteristics of legal services.⁴⁵

⁴⁰ By "appropriate expertise," we mean licensed legal service providers who have the general or specific legal knowledge to address a problem, *and* an awareness of the life circumstances and challenges of the client.

⁴¹ Legal Aid Ontario covers only certain types of legal issues and only for those who qualify financially. The for-profit services of licensed legal service providers are beyond the financial means of many low- and middle-income people.

⁴² *Immigration and Refugee Protection Act*, s. 91. This issue was discussed in Standing Committee hearings. See *Starting Again: Improving Government Oversight of Immigration Consultants. Report of the Standing Committee on Citizenship and Immigration*. Immigration, Refugees and Citizenship Canada (IRCC) has attempted to respond to the settlement sector's concerns by clarifying the types of assistance that workers in not-for-profit agencies can provide. See <https://ocasi.org/section-91-questions-and-answers-ircc>. However, in our view, the clarification falls short of providing useful guidance to settlement agencies and fails to address the anomaly created by IRCC's application of section 91.

⁴³ For example, a community worker helping a client who is worried about getting evicted would, ideally, find out about the client's arrangement for paying rent before pointing them to a brochure or website dealing with eviction. Someone paying rent directly to a landlord has full rights under the *Residential Tenancies Act*, while someone paying rent to a roommate may not have the same protection.

⁴⁴ This dynamic is increasingly common in the context of online, interactive legal information, which can be designed to respond to inputs from a user.

⁴⁵ J. Bond, et al., "The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector," 11-12.

Community workers in Ontario are already helping their clients with life-affecting problems with a legal element. However, their unease about providing services that might be considered “legal” impedes their ability to offer this help. This chilling effect hinders workers’ ability to address openly the challenges of doing this kind of work, and to access training and other resources. Our proposal recognizes the vital work they are doing, strives to support them with this work, and provides a framework to promote community justice help of good quality.



Chapter 3.

A Framework for Supporting Community Justice Help

We recommend that community justice help should be enabled and supported, rather than discouraged or prohibited. Our framework is guided by a core principle: people in Ontario should be able to access effective, good quality help with their life-affecting problems, including those that have a legal element.

Our framework includes three key features of good quality community justice help and markers or indicators for each feature.

We've had an ethical code in our office for the last 30 years... and we know how to react and we know the system and we know the agents of the system as well... We help [the clients]... I don't say to people, "no, sorry I'm not going to be able to do anything about this... that's never my answer." One of the mottos that we have in our office is [people] don't leave with their hands empty. [If so], you destroy self-esteem... The ball has to stop somewhere. I don't say we take the whole case, but we help.⁴⁶

⁴⁶ Francisco Rico-Martinez, Co-Director, FCJ Refugee Centre, <https://cleoconnect.ca/cleo-research/learn-about-community-justice-help/>, <https://peachslmvideos.s3.amazonaws.com/plD-487/338890-1572880842-high.mp4>. (See the Appendix for a snapshot of the organization.)

Three features of good quality community justice help

We propose that community justice help be regarded as “good quality” when the following three features are present:

1. **Community justice helpers have the knowledge, skills and experience they need to assist people with the legal elements of their problems and to navigate relevant legal processes.**
2. **Community justice helpers work within a not-for-profit organization and an ethical infrastructure that protects the dignity, privacy and consumer welfare of the people they are assisting.**
3. **Community justice helpers provide support that responds to their clients’ needs in a holistic way,** based on an understanding of the multi-dimensional nature of their needs, the social context of their lives, and the availability of other appropriate services in the community. In a nutshell, community justice helpers know their clients and know their communities inside out:
 - They recognize that needs can be multi-dimensional (e.g. psychological, economic, social, legal) and that multiple dimensions may need to be addressed at the same time;
 - They respond to clients’ needs, based on an understanding of the particular social context (e.g. socio-economic status, racialization, communication barriers) in which the needs arise and how that context must be taken into account in providing assistance; and
 - Their responses are informed by knowledge of the service community and what other sources of appropriate support, including licensed legal service providers, are available.

Figure 2: **Good Quality Community Justice Help Features**



Good quality community justice help matches the needs of clients, the competencies of the workers (operating within not-for-profit, ethical organizations), and the broader context of available supports in communities.

Markers for the features of good quality community justice help

We propose the following markers to support and confirm the presence of each of the three features above:

Feature 1: Community justice helpers have the knowledge, skills and experience they need



Knowledge,
Skills & Experience

- 1.1 The organization and its staff are specialists in providing help and performing tasks related to their clients' particular problems (e.g. settlement, housing insecurity, intimate partner violence, family breakdown); they provide this help and carry out these tasks routinely.
- 1.2 Staff have comprehensive, up-to-date knowledge and skills.
- 1.3 Staff participate in appropriate training or other learning opportunities regularly, or as needed, to update and enhance their knowledge and skills.
- 1.4 The organization has ongoing relationships with community legal clinics or other appropriate licensed legal service providers whom they consult as needed.
- 1.5 Staff are well supported within their organization, are connected to external peers and mentors, and receive appropriate oversight.
- 1.6 Staff help people with forms or other tasks that many people would expect to be able to do on their own, or with some assistance, but without the help and expense of hiring a licensed legal service provider. Examples of such tasks include those that governments and government-supported legal aid services have categorized as "do-it-yourself," such as fillable forms, often with associated guides and templates.

Feature 2: Community justice helpers work within a not-for-profit organization and ethical infrastructure

Not-for-Profit
Organization &
Ethical Infrastructure

- 2.1 The organization's staff receive a salary but do not accrue any direct payment from clients for providing community justice help (i.e. there is no risk of over-charging, or other financial abuse or fraud that may exist in for-profit services).
- 2.2 The organization has accountability structures in place, usually overseen by a board of directors, to ensure that the organization is operating according to its policies (e.g. staff supervision and performance evaluation).
- 2.3 The organization has policies in place (e.g. client confidentiality, code of conduct) and well-established practices on ethical issues to guide the organization and the delivery of services.
- 2.4 The organization has a complaints policy that is accessible to clients, and clients' complaints are responded to appropriately and in a timely way.
- 2.5 The organization has a liability insurance policy⁴⁷ in place that provides for compensation to clients in the event of negligence or error by a staff member.

⁴⁷ Experts in supporting Ontario's not-for-profit sector indicate that not-for-profit organizations that provide services to the public typically carry liability insurance, both to protect the public and to protect the organization. See the Ontario Nonprofit Network's insurance policy for not-for-profits, <https://theonnc.ca/services/nonprofit-insurance/>.

Feature 3: Community justice helpers provide holistic support

Holistic Support

- 3.1 The organization typically offers holistic support that is informed by an awareness of the following types of factors:
 - The multi-dimensional nature of problems;
 - The social context of clients' lives;
 - The levels and types of specialization or expertise required for various aspects of problems;⁴⁸
 - The need for and availability of targeted, timely and joined-up services;
 - The barriers to accessing other potential providers of assistance in the community, including licensed legal service providers; and
 - The follow-up and longer-term support available from the organization or from others.
- 3.2 The organization frequently assists with law-related needs that are unmet or underserved by licensed legal service providers in the community.
- 3.3 The organization offers help that connects to and supports good quality legal services⁴⁹ from local licensed legal service providers, where such services are available and accessible to people in the community.

⁴⁸ For example, staff at a community-based organization may help clients with housing-related issues, such as finding an affordable place to live, discussing the importance of a rental agreement and some of the key terms that should be included, dealing with a landlord who will not repair broken appliances, or discussing what to do about a bedbug problem. However, staff would also be aware of the limits of their expertise and would be familiar with the services available at a local community legal clinic. They would refer a client on a low income to the clinic for help with fighting an eviction or illegal rent increase.

⁴⁹ Good quality legal services encompass the following elements: relevant and sufficient experience in the particular area of law; adequate understanding of the person's social context and the potential need for holistic supports; geographic proximity; and provision of services in a language that the person understands or can confidently access with an interpreter's help. Examples of accessible legal services are those available through a community legal clinic, a legal aid program, a pro bono program, or other affordable law-related program.

How our framework is intended to be used

Our proposed framework reflects the good practices of workers at not-for-profit organizations that offer community justice help in communities across Ontario. The markers are based on our in-depth interviews with a range of these organizations, all of which are highly regarded for their work in this area.⁵⁰ In developing the markers, we also drew on our research into the nature of not-for-profit work in Ontario, and similar indicators for other occupations and professions, including the legal profession.

While the list of markers is reflective of existing practices in Ontario's not-for-profit sector, some organizations—often smaller ones, serving the most marginalized communities—may be challenged to meet the same standards as better-resourced organizations. These markers may help less-resourced organizations build stronger practices and appeal for increased funding.⁵¹

The markers:

- Can be used as a guide or checklist for organizations offering community justice help;
- Are generic to support the full spectrum of community justice help provided by not-for-profit, community-based organizations, including identifying an issue and referring a client, helping to write letters or complete forms, identifying options for action, and navigating a court or tribunal process; and
- Support good matches between the knowledge, skills and experience of community workers and the tasks they undertake to help clients. Where community workers lack the required knowledge and skills, they turn to their networks, taking into account the broader community context of available and appropriate services.

⁵⁰ We are not, of course, suggesting that all Ontario community-based, not-for-profit organizations have exemplar policies, practices and staff in place that will always result in good quality help for clients with law-related problems. But, generally, there is no incentive for community workers to exceed their level of expertise. As we have noted, they do not charge clients for assistance and the very nature of their work is to serve the public interest. We did not find in our research any evidence to suggest that the risk of workers exceeding their expertise is high or pervasive.

⁵¹ Not-for-profit, community-based organizations are often challenged by the high demand for their services, difficulties in securing adequate, stable funding and high staff turnover. We are not suggesting that these organizations should be expected to provide more services or meet more requirements within their existing budgets.

The markers are not intended to:

- Be exhaustive or fixed, as organizational practices are continually evolving to meet clients' needs;
- Impose a rigid structure on one particular type of community justice help. They do not reflect sector-specific practices that are followed by not-for-profit organizations serving particular communities (e.g. agencies providing settlement services to refugees). Many sectors in Ontario and Canada, focussing on particular communities, types of services, or both, already have standards or best practices in place that apply to their work. These standards or best practices differ from sector to sector (or from organization to organization) and are tailored to the unique services they offer; or
- Be used as the basis for a new regulatory regime or disciplinary tool that would impinge on the ability of community-based organizations to continue to provide good quality community justice help.

Examples of community justice help scenarios

To illustrate the framework, we provide a few broad examples below of services where the features of good quality community justice help (evidenced by the markers) would likely be present:

- Well-trained and supported settlement workers assisting newcomers to prepare permanent residence applications;
- Well-trained and supported family court support workers, operating out of an organization providing services to women experiencing intimate partner violence, assisting women to prepare applications for restraining orders and divorce;
- Well-trained and supported housing workers assisting tenants to prepare tenant applications about maintenance; and
- Well-trained and supported community information workers assisting people to get government-issued photo identification.

For further illustration, in the Appendix we provide brief snapshots of the work and practices of a few of the Ontario organizations we interviewed as part of our research, as well as a broader initiative in British Columbia.⁵² Several of these organizations participated in a panel discussion at a public legal education event in October 2019,

⁵² The Ontario organizations are FCJ Refugee Centre, Federation of Metro Tenants' Associations, LIFE*SPIN and Luke's Place. The BC initiative is a network of advocacy programs supported by The Law Foundation of British Columbia.

co-hosted by CLEO and the Ontario Justice Education Network. The event was part of Ontario's Access to Justice Week, coordinated by The Action Group on Access to Justice in collaboration with the LSO. The panel discussion was video recorded and provides a better sense of these organizations' work and the steps they take to promote good quality community justice help.⁵³

Our interviews and the panel discussion left us with the strong impression that *intentionality* is a common thread in these organizations' work.⁵⁴ They are very purposeful in the services they provide, in particular, when those services intersect with the law. They are aware that the law is complicated; a misunderstanding of the law can lead to devastating consequences for people, especially those who are already vulnerable; and where assistance is required from licensed legal service providers, they must make every effort to facilitate those connections for their clients. Giving the best referrals they can is an essential part of providing good quality community justice help.

The organizations we interviewed:

- Are committed to proper training, mentorship and supervision of staff so that they have the knowledge, skills and guidance they need to give effective and confidential community justice help to their clients;
- Have codes of conduct, complaints policies and other relevant policies to support ethical practices (e.g. they do not handle clients' money);
- Typically carry liability insurance;
- Have broad community networks and connections so that they can refer their clients to other services and experts as needed;
- Are extremely reluctant to see clients leave empty-handed and go to great lengths to connect them with the help they need; and
- Are already stretched to fulfill their mandates and are not interested in doing the work of lawyers or paralegals; instead, they foster relationships with licensed legal service providers in their communities who can provide appropriate and affordable services to their clients.

⁵³ See <https://cleoconnect.ca/cleo-research/learn-about-community-justice-help/>, <https://peachslmvideos.s3.amazonaws.com/pID-487/338890-1572880842-high.mp4>

⁵⁴ An excellent example is the Connecting Ottawa project, funded by The Law Foundation of Ontario. The project supports an active network of over 50 Ottawa community-based organizations—health, legal, immigration, disability and social service agencies—that serve people who face linguistic and other communication barriers. The project facilitates regular meetings and sessions so workers have the opportunity to share resources and ideas, and collaborate on common challenges. The project employs two lawyers who regularly consult with workers at network organizations so that the workers are more comfortable and knowledgeable to help their clients who have law-related problems. See <http://connectingottawa.com>.



Chapter 4.

Community Justice Help & the Broader Ecosystem of Access to Justice

Distinguishing between “access to justice” and “access to the formal legal system”

Like others working in this area, we distinguish “access to justice” from “access to the formal legal system” (i.e. services from licensed legal service providers and participation in formal legal processes). They are not the same thing. In our view, people should be able to access *both* justice and the formal legal system, but access to justice may be achieved even where a person does not or cannot access the formal legal system. Legal norms—consistency with fair legal standards and processes, and just outcomes—must always be the reference point for defining when justice has been accessed.⁵⁶

As long as the problem of unmet legal needs remains a problem to be solved by those with legal training, we lose the opportunity to increase dramatically the resources potentially at our disposal.⁵⁵

⁵⁵ R. Engler, “Opportunities and Challenges: Non-Lawyer Forms of Assistance in Providing Access to Justice for Middle-Income Earners,” 171.

⁵⁶ We refer here to “fair legal standards and processes, and just outcomes,” in order to preserve space for contesting the fairness and justness of prevailing legal norms. We acknowledge that many communities experiencing social disadvantages are treated unfairly and unjustly in the current legal system. We also acknowledge that First Nations, Métis and Inuit communities have justifiable claims to using their own Indigenous legal norms as the relevant reference point.

Community justice help is needed because justice must be accessible to people in all social contexts, including people living on low incomes or experiencing other social disadvantages. Justice must be responsive to the experience of people who face barriers to accessing the formal legal system; and people are entitled to access to justice whether or not they can participate in the formal legal system. Community justice help recognizes two things: the formal legal system is out of reach for many people who are disadvantaged; and justice does not necessarily need to be accessed through legal service providers and legal processes.

There is a tendency to characterize all life-affecting problems with a legal element as “legal problems” because the law is interwoven into almost every aspect of our lives.⁵⁷ However, as we noted in our discussion of terminology, there is a risk in defining problems this way because it limits the responses to these problems to formal legal services and processes. As Rebecca Sandefur argues: “If the problem is people’s unmet legal needs, the solution is more legal services. If the problem is unresolved justice problems, a wider range of options opens up.”⁵⁸

She notes that many people work out their problems “in a way that is roughly consistent with the law but without reference to or contact with it”⁵⁹ and observes that:

Resolving justice problems lawfully does not always require lawyers’ assistance. Evidence shows that only some of the justice problems experienced by the public benefit from lawyers’ services or other legal interventions, while others do not. That is because such intervention is excessive or because it might be the wrong treatment for the problem.⁶⁰

Moreover, Sandefur points out that not all people with legal problems want to address those problems at all or, if they do, they do not necessarily need or want legal help.⁶¹

⁵⁷ R. L. Sandefur describes the “[t]housands of Americans [that] every day find themselves facing troubles that emerge ‘at the intersection of civil law and everyday adversity,’ involving work, finances, insurance, pensions, wages, benefits, shelter, and the care of young children and dependent adults, among other core matters.” “What We Know and Need to Know about the Legal Needs of the Public,” 443. See also S. S. Silbey, “After Legal Consciousness,” for a discussion of the commonplace nature of the law in our lives.

⁵⁸ R. L. Sandefur, “Access to What?,” 50.

⁵⁹ R. L. Sandefur, “What We Know and Need to Know about the Legal Needs of the Public,” 451.

⁶⁰ R. L. Sandefur, “Access to What?,” 51.

⁶¹ *Ibid.*, 51-53.

Providing access to justice: needs and challenges

Two key challenges are identified in research exploring the reach and effectiveness of legal services provided by lawyers to people who experience social disadvantages and need holistic support.⁶² The first is simply reaching people, which itself requires particular approaches. The second is providing help that is responsive and appropriate.

These challenges are reflected in a study from Australia (based on comparative literature and experience) that identifies four themes important to effective legal service delivery in this context: "... targeted (to those most in need), joined-up (with other services likely to be needed), timely (to minimise the impact of problems and maximise the utility of services) and appropriate (to the needs and capabilities of users)."⁶³

Another study from Australia that undertook a meta-analysis of studies on the effectiveness of outreach legal services highlights some of the challenges that need to be addressed in providing appropriate services to clients with "complex needs":

As well as actually reaching "hard-to-reach" clients, several findings of the review identified the importance of providing legal assistance in a way which is appropriate for clients with complex needs. Clients with complex needs may have multiple intersecting legal and non-legal issues. While they may only come to an advisor or lawyer about one issue, this issue may well be bound up with other issues in their lives. In addition, due to the nature of their disadvantage, these clients tend to have difficulties in working with lawyers and dealing with their legal issues. They may have cognitive impairment or literacy issues which affect their interactions with lawyers and others. They may feel intimidated and lack trust in the prospect of dealing with lawyers and may feel embarrassed about seeking assistance (particularly for debt related problems). They may not always attend appointments, may not have necessary documentation and may be difficult to locate for follow up assistance.⁶⁴

A report produced as part of a review of civil legal aid in Ontario notes other factors that contribute to the challenges of reach and effectiveness of legal services: a lack of accessible and appropriate information to develop legal understanding, a need to assert rights in contexts of dependency and vulnerability, physical barriers and

⁶² Some researchers refer to people who experience social disadvantages and need holistic support as people with "complex needs."

⁶³ P. Pleasence, et al., *Reshaping Legal Assistance Services: Building on the Evidence Base. A Discussion Paper*, xiii.

⁶⁴ S. Forell and A. Gray, *Outreach Legal Services to People with Complex Needs: What Works?*, 10.

language barriers.⁶⁵ Another Ontario report draws attention to the challenges faced by people living in rural and remote communities who want to access legal information and services.⁶⁶ An additional factor is a continued lack of digital literacy and internet access, particularly in some communities, at a time when legal information and resources are increasingly available online.⁶⁷ A two-part Canadian study highlights the fact that many people may not have a level of functional or technical literacy to understand and complete forms related to legal claims and processes.⁶⁸

One way to mitigate these challenges is to review and revise the approaches to the delivery of traditional legal services. Another way—our focus—is to recognize that community justice help is provided in a context that is keenly aware of (and sensitive to) the challenges of serving people who are socially disadvantaged. Community justice help is already within the reach of these clients and community workers are already significantly equipped to help them. In terms of holistic approaches, community justice helpers are often in the best position to respond to clients' multi-dimensional needs.

Regulatory and program initiatives for improving access to justice

Our focus on advancing community-based access to justice is reinforced by a number of initiatives undertaken over the past decade or so by the LSO. However, we note that we could find very little information on the impacts these initiatives are actually having on vulnerable individuals and groups.

Some of the LSO's long-standing programs, such as the Law Society Referral Service, support access to justice. A more deliberate approach to regulatory reform that could improve access to justice stems from the introduction of the *Access to Justice Act* (the Act) in 2006. Among other things, the Act established access to justice as a specific regulatory principle and introduced the licensing of paralegals.

⁶⁵ J. E. Mosher and I. Morrison, "Barriers to Access to Civil Justice for Disadvantaged Groups," 650-651. In referring to "a lack of accessible and appropriate information to develop legal understanding," we are trying to acknowledge what Mosher and Morrison identify as two crucial barriers to developing what they call "legal consciousness": a lack of accessible legal information resources and, more fundamentally, a lack of social power needed for knowledge production and dissemination.

⁶⁶ K. Cohl and G. Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services*.

⁶⁷ See T. Hadziristic, *The State of Digital Literacy in Canada: A Literature Review*; and R. Smith, *The Digital Delivery of Legal Services to People on Low Incomes*.

⁶⁸ A. Salyzyn, L. Isaj, B. Piva and J. Burkell, "Literacy Requirements of Court Documents: An Under-Explored Barrier to Access to Justice;" and A. Salyzyn, J. Burkell, E. Costain and B. Piva, "What Makes Court Forms Complex? Studying Empirical Support for a Functional Literacy Approach."

While the number of licensed paralegals continues to grow, very little is known about the extent to which their services are being used by people living on low incomes or experiencing other social disadvantages.⁶⁹ Likewise, very little is known about whether paralegals are attracting new clients who would not have engaged lawyers, or merely competing with lawyers for a share of the existing pool of paying clients. One case study on the prevalence of paralegals in Landlord and Tenant Board proceedings indicates that paralegals have increased, but only as substitutes for experienced non-lawyer representatives on the landlord side of proceedings.⁷⁰ Nevertheless, there is a role for paralegals in improving access to justice in general.⁷¹

Other reforms, more modest in scope and potential impact, have also been introduced since about 2006:

- **Authorization for limited retainers (known as “unbundling” of legal services)** enables clients to engage lawyers for only certain aspects of a legal matter, thus reducing costs. The family bar recently launched a program to support unbundled services (also known as “limited scope services”), offering training to family law lawyers and making dedicated efforts to communicate the availability of these services to the general public.⁷²
- **The LSO introduced a modified (less strict) conflict standard for lawyers offering pro bono services in specified pro bono contexts.**⁷³ While there are no reports indicating the extent of its use, Pro Bono Ontario has found it effective⁷⁴ and it has since been expanded to cover more contexts. The programs that rely on the standards, such as those of Pro Bono Ontario, are typically aimed at people living on lower incomes or experiencing other social disadvantages.⁷⁵

⁶⁹ Some of the limited information available about the activities of paralegals and others who are authorized to provide legal services for profit in Canada is found in L. Trabucco, “Lawyers’ Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada.”

⁷⁰ D. Wiseman, “Paralegals and Access to Justice for Tenants: A Case Study.”

⁷¹ See the comprehensive discussion of the general justification for paralegals and other types of new legal service providers, and issues arising in relation to training, ethics and scope of practice, in A. Woolley and T. Farrow, “Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges.”

⁷² See <https://www.familylawlss.ca>.

⁷³ LSO, *Rules of Professional Conduct*, Rule 3.4-16.2 to 3.4-16.6. According to the definition of “lawyer” relating to the expanded, modified conflict standard, it is available to lawyers in the following contexts: (i) a volunteer lawyer who provides short-term legal services to clients under the auspices of short-term provider or (ii) a lawyer providing services under the auspices of a Pro Bono Ontario program; (iii) a lawyer providing short-term legal services under the auspices of a Legal Aid Ontario program or clinic; or (iv) a lawyer providing short-term legal services under the auspices of a clinical education course or program.

⁷⁴ Pro Bono Ontario was quoted as calling the modified conflict standard “a resounding success” in its submission to the LSO’s call for input on whether to expand the rule, Law Society of Ontario, Paralegal Standing Committee, *Amendments to the Conflict of Interest Rules — Pro-Bono and Other Short-Term Legal Services*, 3.

⁷⁵ The flourishing of pro bono programs in Ontario is evidenced by the success of Pro Bono Ontario, which operates a free hotline that enables people living on lower incomes to access 30 minutes of summary legal advice from a lawyer (in areas other than family and criminal law).

- The LSO has incrementally increased the allowances for law and paralegal students to perform tasks associated with practising law and providing legal services. Initially, the allowances were limited to law students undertaking summer legal employment, or working for a designated list of not-for-profit legal clinics and entities. The allowances have been expanded to include law and paralegal students undertaking work on a voluntary basis or as part of experiential learning associated with a law school or paralegal program.

The LSO has somewhat moved away from the “designated list” approach by structuring allowances around the existence of direct supervision of students by a licensee. Again, there are no reports of the impact of this change, but anecdotal evidence suggests that it has enabled some new programs to be established and some existing programs to continue with greater clarity about the legitimacy of student contributions.⁷⁶

- As an initial, limited and targeted form of Alternative Business Structures for the delivery of legal services, the LSO has implemented a regime to enable not-for-profit, civil society organizations (CSOs) to employ licensees to provide legal services directly to clients whom the CSOs typically serve. Several CSOs have registered under this regime to date,⁷⁷ but it is too soon to say what the longer-term take-up and impact will be. In submissions to relevant LSO committees, we identified some elements of the regime that may limit its adoption.⁷⁸ Nevertheless, this initiative is directly aimed at improving the accessibility of legal services to people who are marginalized and need community justice help.
- Following the Family Legal Services Review,⁷⁹ a potentially significant regulatory change is currently under consideration that would permit paralegals to undertake specified tasks in family law matters.

We also note the proactive role played by The Law Foundation of Ontario (LFO) to promote access to justice. The LFO uses its funding power to nurture and support a range of innovative initiatives, emphasizing the importance of research, community-based work and collaboration.

⁷⁶ To use as an anecdotal example the University of Ottawa Faculty of Law experience, with which one of the authors of this paper has firsthand knowledge, the increased allowances and clarifications supported the resumption of the Ticket Defence Program (which assists people who are street involved), the continuation of the Access to Justice Lab (which operates Free Law events and services), and the development of a practicum course associated with the Jail Accountability and Information Line.

⁷⁷ As of June 2020, the LSO website lists 10 CSOs that are registered under this system, <https://lso.ca/about-lso/initiatives/civil-society-organizations>.

⁷⁸ We suggested that greater flexibility be allowed in the nature of the employment relationship between a lawyer and a CSO, and that explicit allowance be provided for non-lawyer staff at CSOs to participate in the delivery of legal services under the supervision of the employed lawyer. J. Mathews and D. Wiseman, “Submission Letter to the Consultation on Civil Society Organizations/Alternative Business Structures Regulatory Framework,” and “Submission Letter to the Law Society of Ontario Access to Justice Committee.”

⁷⁹ A. E. Bonkalo, *Family Legal Services Review*.

Our proposal to support community justice help fits into this broader landscape of regulatory and program initiatives aimed at improving access to justice. And it offers an opportunity to strengthen the crucial role of community justice helpers who serve disadvantaged individuals and groups.

Community justice help, legal aid and community legal clinics

Our greatest concern in proposing a framework for community justice help is that it could be used to rationalize reducing support for legal aid services in Ontario. This is the opposite of what we intend. The services provided through Ontario's legal aid system, including by private lawyers retained by certificate, court and tribunal duty counsel, and a network of independent, community-based clinics that offer poverty law services, are vital and, if anything, should be expanded.

Our proposal counts on a well-resourced legal aid system, enabling highly-trained lawyers and paralegals to serve people who are disadvantaged and respond to community needs. Indeed, we would not be proposing this framework if the community legal clinic system did not exist in Ontario. Lawyers, paralegals and community legal workers in clinics play a vital role in communities across Ontario, in particular, with respect to poverty law problems (e.g. housing, social assistance, employment). Community workers rely on being able to consult with them when giving help on law-related problems and to refer clients to them when needed.

Since community legal clinics were established in Ontario about 50 years ago, they have worked closely with other community-based organizations to meet people's needs. In more recent years, this work has flourished. Several clinics have led or participated in initiatives to build stronger connections with other local not-for-profit organizations (many supported by The Law Foundation of Ontario). Examples include Connecting Ottawa,⁸⁰ Justice and Health Partnerships undertaken by a number of clinics and community health care providers,⁸¹ legal secondary consultation⁸² offered by a few clinics to make it easy for community workers with questions to contact a clinic lawyer, and the growing number of clinics that are part of community hubs.

Our framework for supporting community justice help reflects the community-based services that many community legal clinics have been providing or striving toward for many years. We are simply encouraging greater recognition and support for initiatives that connect the access to justice work of not-for-profit, community-based

⁸⁰ See note 54.

⁸¹ M. M. Leering, "Innovating, Intervening, & Transforming: Justice & Health Partnerships in Ontario."

⁸² A. Currie, *Legal Secondary Consultation: How Legal Aid Can Support Communities and Expand Access to Justice*.

organizations with the legal services of local clinics, and with other accessible licensed legal service providers in the community.⁸³ Our vision is that community justice help will be recognized as an important and valid component of the broader ecosystem of access to justice services in Ontario, which includes the vital legal services provided by community-based clinics.

All components of the ecosystem must be adequately supported through public funding and other means. We would oppose any suggestion that resources that support legal aid services in Ontario (resources that are already insufficient) be diverted to support community justice help. At the same time, we believe that delaying proposing and using this framework for fear that it could undermine the case for well-funded legal aid and community legal clinics would be a mistake. It would miss an opportunity to improve access to justice for the most vulnerable people in our communities.

We have a strong commitment to a robust legal aid system, but are frustrated by what seems to be fairly widespread reluctance (despite some of the positive initiatives described above) to discuss the possibility of fundamental changes that could lead to concrete, major advances in access to justice. This reluctance seems to be based largely on the view that the only way to protect the public interest is by keeping a tight rein on the practice of law, relying on a dividing line between legal information and legal advice. We believe that protecting the public interest includes helping the large number of people in the province who are unable to access and afford a licensed legal service provider to get help with life-affecting problems.

The critical role of licensed legal service providers

Ontario's adversarial-based legal system was designed for highly-trained lawyers to advise and represent clients. Many tasks that are part of a legal process rely on knowledge of legal language, familiarity with the rules of procedure and the court, and other specialized knowledge and skills. Many of these tasks can only be performed effectively by experienced, licensed legal service providers.⁸⁴

⁸³ As these initiatives continue to flourish, it will be important to find ways to ensure that organizations know what others are doing, reduce duplication, and encourage collaboration and shared learning.

⁸⁴ Thinking about the roles that should be solely within the purview of lawyers has evolved on many fronts in recent years. See Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada*: "It has been clear for most people within the profession that only lawyers can and should, for example, appear in superior courts, negotiate and draft highly complex documentation, or advise on the implications of large and difficult bodies of regulations. However, as new methods for the delivery of legal services emerge, it is far from clear that the work that used to be the sole province of lawyers — either because of regulation or due to the deep expertise and experience required — can only be undertaken by lawyers in the future," 18. One of the report's recommendations is to require "effective" supervision of non-lawyers, rather than "direct" supervision, 49.

Our framework does not minimize the importance of lawyers and paralegals. We are not proposing that community workers be enabled or expected to take on these tasks. However, in a context where traditional legal expertise is inaccessible to many low-income people, and community-based expertise is accessible, we believe it is appropriate and necessary to facilitate community justice help.

We intentionally refrain from defining a list of tasks that community justice helpers should not provide (or conversely, that should only be undertaken by licensed legal service providers). We believe it would result in fruitless debate and unnecessarily delay the steps we recommend to advance community-based access to justice. More important, the holistic nature of community justice help suggests that a narrow, task-based approach is likely to fall short of reflecting the integrated nature of that help. While we heard anecdotes of bad help being provided by both licensed and non-licensed sources of law-related assistance, our research and consultations did not reveal evidence to support a generalized concern that community workers in Ontario provide services that go beyond their specific knowledge and skills.

Considering when assistance from a licensed legal service provider is necessary

Identifying when a lawyer's help is pivotal to a client's success can inform strategies to increase access to justice and support governments and others in allocating resources to services in a rational and cost-effective way. However, both randomized studies and more in-depth qualitative research struggle to isolate the "value add" of a lawyer in various contexts, compared to assistance, for example, from trained court staff or trained navigators who help people complete forms.

Several reports⁸⁵ that assess the quality of outcomes resulting from a variety of forms of legal assistance (e.g. lawyers, paralegals, consultants, trained court staff) underscore the importance of experience, training and expertise⁸⁶ in generating good-quality outcomes. We summarize some of their key findings below:

⁸⁵ Legal Services Board (UK), *Sections 24 and 26 Investigations: Will-Writing, Estate Administration and Probate Activities*; D. L. Rhode, "What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers"; and R. L. Sandefur, "What We Know and Need to Know about the Legal Needs of the Public." Additional sources are provided in the subsequent notes for this section.

⁸⁶ Sandefur describes "expertise" as follows: "Expertise exists when possessing knowledge and skills necessary to perform certain tasks involves a degree of specialization and devoted training that generates unequally distributed understanding... Sociological theories highlight two elements of professional expertise, one reflecting knowledge of professional theories, concepts, and tools, and the other reflecting skill at navigating the social contexts of professional work." "Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact," 911.

- Formal legal training may matter less than expertise and day-to-day experience with the particular aspects of the legal process and legal settings;⁸⁷
- Lawyers with more experience in the particular area of law achieve better outcomes for clients than lawyers with little experience;⁸⁸
- Lawyers have a larger potential impact with respect to addressing more complex legal issues and managing more complex procedures, and in adversarial forums (compared to simplified forums); lawyers' relational expertise (i.e. negotiating interpersonal aspects) also helps courts follow their own rules;⁸⁹
- The effectiveness of representation by lay advocates turns on whether they have received specialized training in advocacy related to the particular context in which they are working;⁹⁰
- The greater the power imbalance between parties, the greater the need for a skilled advocate with expertise in the forum;⁹¹ and
- Trained non-lawyers (backed by lawyers when necessary), such as trained navigators in courthouses and volunteers embedded in communities, can give effective help to people with legal problems, such as completing forms⁹² and navigating legal processes.⁹³

Considering when basic human needs require a licensed legal service provider

Where basic human needs are at stake—income support, housing, the ability to remain in Canada, personal liberty—a human rights lens demands that people have access to the services that are most likely to assist them to meet those needs. In fact, many (if not all) basic human needs are also basic human rights, which governments

⁸⁷ H. M. Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work*, 201-203; and R. Moorhead, A. Sherr and A. Paterson, "Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales," 795.

⁸⁸ S. Rehaag, "The Role of Counsel in Canada's Refugee Determinations System: An Empirical Assessment."

⁸⁹ R. L. Sandefur, "Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact," reviews and analyzes a number of studies, 921-926.

⁹⁰ R. Engler, "When Does Representation Matter?"

⁹¹ R. Engler, "Opportunities and Challenges: Non-Lawyer Forms of Assistance in Providing Access to Justice for Middle-Income Earners."

⁹² M. E. McClymont, *Nonlawyer Navigators in State Courts: An Emerging Consensus*; R. L. Sandefur, "Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact," 921; and R. L. Sandefur and T. M. Clarke, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects*.

⁹³ *Ibid.*; and S. Bouclin, "Regulated Out of Existence: A Case Study of Ottawa's Ticket Defence Program."

are obligated to uphold in accordance with various interlocking legal standards.⁹⁴ Access to justice in relation to claiming and protecting human rights is itself an integral component of those legal standards.⁹⁵ People who have low incomes often face multiple disadvantages, have little power and are at the mercy of better-resourced governments, landlords, employers and others. Research documents the devastating consequences when appropriate legal assistance is lacking and those needs are at stake,⁹⁶ particularly in adversarial adjudicative proceedings.

Ontario's legal aid system supports people with low incomes with serious criminal law problems, first-level efforts to claim refugee status, intimate partner violence crises and contested family law matters involving children. Ontario's independent community legal clinics, part of the legal aid system, support people with low incomes with legal problems related to income support, housing, employment, disability and human rights. We believe strongly that access to these publicly-funded, needs-based services from experienced lawyers and paralegals is critical to assist people with poverty law and other legal problems where their basic human needs and rights are at stake, especially in adjudicative proceedings.

As we have argued in this paper, community justice helpers play a vital role in offering holistic approaches to often multi-dimensional problems. The support they provide is different than (but often complementary to) the assistance provided by lawyers and paralegals, even in the poverty law context. Community workers are specialists in the particular services they provide and have a deep understanding of the social context of their clients.

People with life-affecting problems with a legal element, including problems involving basic human needs and rights, may need help with a variety of tasks (e.g. writing a letter, completing a form, navigating a tribunal or court process). Putting aside for a moment the issue of whether licensed legal service providers are accessible, their assistance may or may not be the best match for a client's needs, depending on the circumstances and context. We sum up our argument this way: access to licensed legal service providers where necessary, but not necessarily access to licensed legal service providers.⁹⁷

⁹⁴ Relevant sources of human rights obligations in Canada and Ontario include: the *Canadian Charter of Rights and Freedoms*, the *Ontario Human Rights Code* and the *International Covenants on Civil and Political Rights*; and *Economic, Social and Cultural Rights*.

⁹⁵ See, for example, L. Farha, *Access to Justice for the Right to Housing - Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context*.

⁹⁶ R. Engler, "Opportunities and Challenges: Non-Lawyer Forms of Assistance in Providing Access to Justice for Middle-Income Earners."

⁹⁷ A similar phrase ("... court if necessary, but not necessarily court") was used in Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change*, 11.

Russell Engler, a professor of law whose research underscores the importance of the right to counsel where basic human needs are at stake, suggests the following access to justice strategy in the US context:

- Consider an expansion of the roles of the court system’s key players so that they can better assist self-represented litigants;
- Develop the full menu of programs that support people with legal problems, including assistance from non-lawyers, and pair this development with rigorous evaluation; and
- Adopt a civil right to counsel approach where the above two prongs are insufficient.⁹⁸

Engler points out that the underlying goal of the justice system is to be fair and just, and that given a choice “[a]s between abandoning the goal and changing the roles [of the various players in the justice system, including non-lawyers], we should change the roles.”⁹⁹

We agree entirely with Engler’s insistence on “rigorous evaluation” and recommend to funders of community justice help and organizations providing this help that they support and undertake evaluations (see Recommendations in Chapter 6). Evaluations are critical to assess the effectiveness of services, identify areas for improvement, and build an evidence base for program and policy development. Evaluations that focus on the outcomes and impacts of community justice help in assisting people to resolve their law-related problems are important and challenging (in contrast to those focused primarily on client satisfaction, for example). Equally important are corresponding evaluations of services by lawyers, paralegals and other legal service providers. The data from all such evaluations should be shared to promote learning and continuous improvement in services for clients.

⁹⁸ R. Engler, “When Does Representation Matter?,” 159.

⁹⁹ R. Engler, “Opportunities and Challenges: Non-Lawyer Forms of Assistance in Providing Access to Justice for Middle-Income Earners,” 160.



Chapter 5.

Community Justice Help, Quality Assurance & Regulatory Alignment

Promoting quality assurance in the not-for-profit sector

Quality assurance for community justice help is important to protect the public interest and, in particular, vulnerable people seeking this help. It is especially important because research on the regulation of legal services has found it is difficult for people to assess the quality of services when they are looking for assistance, or once they have received it.¹⁰¹ This would presumably be the case for services from community justice helpers, as well as from licensed legal service providers.

There are lots of quality assurance mechanisms in Ontario's non-profit sector and organizations consistently assess and improve their services. An Ontario Nonprofit Network report found that 94 per cent of Ontario non-profits are engaged in evaluation, focused on outputs, outcomes and quality. More supports and training that take into account existing good practices, rather than more layers of administration or compliance requirements, would be a huge help.¹⁰⁰

¹⁰⁰ Cathy Taylor, Executive Director, Ontario Nonprofit Network, from a discussion with the authors of this paper, referring to D. Lasby, *The State of Evaluation: Measurement and Evaluation Practices in Ontario's Nonprofit Sector*.

¹⁰¹ N. Semple, *Legal Services Regulation at the Crossroads: Justitia's Legions*, 18-27; and M. J. Trebilcock, "Regulating the Market for Legal Services," 217-219.

A scan of selected literature indicates a variety of approaches for promoting and monitoring quality in the not-for-profit, social service sector. These approaches include risk assessment frameworks and reporting used by funders, third-party certification and accreditation, and regulatory bodies for specific professions.

Governments and their agencies, and other major funders of not-for-profits, normally impose application and reporting requirements that relate to quality of services, and frequently request many of the same documents from grant recipients as are required by accreditation processes. Funders want to support services that provide value and present little or no risk of harm to the public.

The Ontario government is in the process of looking at implementing a common risk assessment framework to assess the organizational health and operations of all not-for-profits that receive transfer payments.¹⁰² Other funders may be able to adapt and apply the framework to their grant recipients. While such risk assessment tools and frameworks cannot guarantee good quality, they do contribute to promoting good practices.

Quality assurance is also promoted in Ontario's not-for-profit sector through certification or accreditation by third-party bodies, based on qualifications or standards applicable to the area of work. Typically, certification is provided to individuals and accreditation to organizations. Many not-for-profits apply for accreditation from several associations, and staff may apply for certification from more than one body. Potential clients and funders may look to these stamps of approval as indicators of quality, stability and integrity.

According to the Ontario Nonprofit Network, there are six accreditation bodies that set standards and are available to health, social, community and human service not-for-profit organizations in Ontario. Imagine Canada¹⁰³ offers 73 standards for charities and not-for-profits, with different levels for small, medium and large organizations. More geared to industry and consumer products, the CSA Group and the International Organization for Standardization (both non-profits) work with industry, government, and non-governmental and not-for-profit organizations to set standards and offer related programs.

Some community workers are licensed or registered through their profession's regulatory body.¹⁰⁴ Mandatory licensing or registration regimes are established by legislation and delegated by the government to professional bodies to set

¹⁰² See the "Joint Funding Reform Forum Terms of Reference" for the Ontario government and non-profit sector to work together on planning and implementing the Ontario government's funding reform and transfer payment modernization initiatives, <https://theonn.ca/wp-content/uploads/2015/05/JFRF-Terms-of-Reference-FINAL.pdf>.

¹⁰³ Imagine Canada works to strengthen charities, non-profits and social entrepreneurs, https://www.imaginecanada.ca/sites/default/files/2019-06/standards_program_handbook.pdf.

¹⁰⁴ For example, the Ontario College of Social Workers and Social Service Workers, <https://ocswssw.org>.

regulations and ensure the smooth and proper functioning of the profession. The regulations often result in a monopoly on services and the professional title. Applicants who meet specific qualifications and requirements can obtain a licence or become a registered member. They are then permitted to carry out certain activities and present themselves as representatives of the profession (e.g. a registered social worker).

Ontario not-for-profit, community-based organizations that provide community justice help and workers at these organizations participate in these various quality assurance regimes.¹⁰⁵ A separate report describing these regimes, existing standards in various sectors, and the participation in them by organizations and individuals providing community justice help, would be useful to increase understanding of the best practices already in place.

Any new quality assurance standards for community justice help should be voluntary and build on what already exists. Funders should provide organizations with training and supports to develop, meet and enhance the standards. It is also important that community-based organizations and their associations have the lead role in identifying, implementing, monitoring and encouraging compliance with standards.

Alignment with the Law Society of Ontario's regulatory regime

Moving away from the "dividing line" approach

As help from a community worker is the only help many vulnerable people in Ontario will get, we argue that access to justice demands a proactive approach to supporting community justice help.¹⁰⁶ In our view, attention and energy are best directed toward ensuring that people are able to access good quality community justice help, including referral to licensed legal service providers where needed. Our proposed framework describes the key elements of good quality community justice help and is informed by existing practices of organizations providing this help.

Our approach does not rely on the identification of a "dividing line" between providing legal information and providing legal advice, which appears to underlie the

¹⁰⁵ Many sectors have developed their own voluntary standards, and umbrella organizations conduct training and provide supports to their members to meet the standards. See, for example, <https://ocasi.org/orgwise-osi-self-assessment-tool>.

¹⁰⁶ See R. Engler's discussion of the need to support and nurture non-lawyers (e.g. social service agencies, government officials, public libraries) to provide meaningful assistance and support to those they encounter. Engler argues that the critical corollary of this approach is "continuous evaluation... [to] help match the available non-lawyers with the scenarios in which they are most effective." "Opportunities and Challenges: Non-Lawyer Forms of Assistance in Providing Access to Justice for Middle-Income Earners," 171.

regulatory framework overseen by the LSO. Nor does it invite the LSO to apply the same regulatory mechanisms it uses for lawyers and paralegals to community justice helpers. A dividing line (even if it could be drawn with some precision) undermines the essential work being done by not-for-profit, community-based organizations to help people with life-affecting problems with a legal element. Imposing too rigid or too onerous a framework on community justice helpers would also undermine their work.

We recognize the concern that some community workers might provide help that exceeds their knowledge and skills, putting the public at risk of inadequate service. This concern needs to be considered in light of the fact that many people in Ontario are unable to access a licensed legal service provider, putting the public at risk of injustice. To evaluate meaningfully the quality of law-related help people receive, we need evidence that compares the risks and benefits of community justice help to other sources of accessible help in the community. But moving forward on enabling and supporting community justice help should not wait for this systematic comparison—people need the help now.

As we have noted, we did not find through our research a high or pervasive risk of bad quality help, or evidence of substantial harm resulting from bad help. We have also highlighted above the various approaches that already exist to promote and monitor good quality services by not-for-profits in Ontario. Our framework seeks to enable and support good quality *and* good accessibility. An approach based on dividing lines or licensing requirements will not achieve this.

Also, as we argue below, a dividing line approach is not necessary or appropriate, as community justice help already aligns with the regulatory framework for lawyers and paralegals and the provision of legal services in two key ways. First, the literal language of the rules permits frontline workers to provide community justice help where it is part of their normal professional or occupational activities. Second, the substance of our three features of good quality community justice help is consistent with the underlying objectives of the LSO's current regulatory framework.

Overview of the regulatory framework

The LSO is empowered by the *Law Society Act* to ensure that “all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.”¹⁰⁷ The terms “practise law” and “provide legal services” refer to lawyers and paralegals, respectively. The LSO has established distinct educational and other requirements for eligibility for licensing as either a lawyer or a paralegal.

¹⁰⁷ *Law Society Act*, s. 4.1(a).

Activities that constitute the practice of law are not expressly defined in the *Law Society Act* or the LSO's by-laws. Reference is simply made to practising law as a "barrister and solicitor,"¹⁰⁸ which results in a circular definition, based on an implicit understanding of the activities that lawyers typically and traditionally engage in.

By contrast, the "provision of legal services" is defined as engaging in conduct "that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person."¹⁰⁹ Doing any of the following is expressly deemed to be providing legal services:

- Giving a person advice with respect to their legal interests, rights or responsibilities (or those of another person);
- Selecting, drafting, completing or revising, on behalf of a person, a document that affects their legal interests, rights or responsibilities and any document for use in an adjudicative proceeding;
- Representing a person before an adjudicative body; and
- Negotiating the legal interests, rights or responsibilities of a person.¹¹⁰

While the provision of legal services encompasses a broad range of activities, an important limitation on the activities that paralegals are entitled to perform is contained in the LSO's by-laws. In defining the conditions of a paralegal licence (Class P1), the LSO only authorizes advice, document preparation and negotiation activities that relate to adjudicative proceedings.¹¹¹ Providing these types of legal services when they relate to transactional law (e.g. preparing contractual documents related to commerce or employment, personal or corporate business documents, wills) are excluded. In addition, paralegal licensees are only authorized to represent people before a limited number of adjudicative bodies and range of proceedings.¹¹²

¹⁰⁸ *Law Society Act*, s. 1(1).

¹⁰⁹ *Law Society Act*, s. 1(5).

¹¹⁰ *Law Society Act*, s. 1(6). Further, s. 1(7) provides more detail on what activities are included in "representation in a proceeding."

¹¹¹ LSO, By-Law 4, s. 6(2).

¹¹² *Ibid.*: Small Claims Court, Ontario Court of Justice (*Provincial Offences Act* proceedings), summary conviction court (*Criminal Code* proceedings), provincial and federal tribunals, and claims dealt with by other persons.

Alignment of community justice help with the “profession or occupation” exception

The foundation of the LSO’s regulatory framework is that only licensed legal service providers can practise law or provide legal services. (It is accepted that no one is prohibited from providing legal information.) However, the regulatory framework also includes explicit exceptions that allow various types of non-licensees to engage in activities that would otherwise be treated as the unauthorized practice of law or provision of legal services. The exception directly relevant to our proposal for community justice help is phrased in a somewhat different way in two regulatory rules.

The first rule is contained in section 1(8) of the *Law Society Act*. This section sets out a variety of categories of people who are deemed not to be practising law or providing legal services. (We quote the first category and bold it, as it is most relevant, and paraphrase the other four categories.)

1. **“A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.”**
2. An employee or officer of a corporation performing in-house activities;
3. A person performing activities for themselves;
4. An employee or volunteer representative of a trade union acting for the union or a union member in relation to a labour matter; and
5. Other categories of people as authorized by LSO by-laws.

The second rule is contained in section 28 of the LSO’s By-Law 4. This rule also sets out a variety of categories of people who are deemed not to be practising law or providing legal services. (As above, we quote and bold the most relevant category, in this case, the second, and paraphrase the others.)

1. A person acting as a courtworker as part of the Aboriginal Courtwork Program;
2. **“A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body;”** and
3. A person whose profession or occupation is not a legal one, who participates on another person’s behalf in a committee of adjustment proceeding.

In our view, the exception in both rules for people acting in the normal course of their profession or occupation is directly relevant to community justice helpers. They provide community justice help in the normal course of carrying out their professional or occupational role as community workers. Moreover, many of the people who provide community justice help are registered members of professions or occupations that are subject to statutory regulation (e.g. registered social workers). Therefore, the literal language of the rules already appears to permit community workers to give help that might otherwise be considered the practice of law or the provision of legal services.

It is important to note, though, that from the point of view of our framework for good quality community justice help, the “profession or occupation” exception in By-Law 4 is overly broad, as it is not confined to not-for-profit service delivery. A key element of the effectiveness and appropriateness of community justice help in advancing access to justice is that the help is provided in a not-for-profit context—community workers do not receive direct payment from clients. For this reason, we would support a modification to the “profession or occupation” exception in By-Law 4 to limit it to not-for-profit service providers.¹¹³

Alignment of community justice help with LSO regulatory objectives and key components

As set out above, the primary regulatory objectives of the LSO are to require that practitioners of law and providers of legal services meet appropriate standards of learning, professional competence and professional conduct. The purpose of these objectives is to protect the public interest by helping to ensure good quality services.¹¹⁴ The LSO predominately ensures compliance with these objectives through a series of requirements for entry to the legal profession as a licensee, along with annual reporting on the completion of continuing professional development hours.

¹¹³ This exception could be further defined—for example, it could be limited to “public benefit corporations” (the language of the *Ontario Not-for-Profit Corporations Act*, not yet proclaimed). The LSO could also consider taking more explicit action, such as authorizing the provision of community justice help, specifically, or the not-for-profit provision of legal services, more generally. (One province, British Columbia, exempts non-lawyers who provide services at no cost to the client from the prohibition against the unauthorized practice of law, but it is not clear whether this exemption has significantly lessened the chill related to the provision of law-related assistance by community justice helpers in that province. Anecdotal evidence suggests that, in the last year or two, BC not-for-profits that are providing law-related help have become increasingly aware of the exemption and are reassured by its existence.) Alternatively, the LSO could consider the approach taken in England and Wales, i.e. tying its regulatory framework to the regulation of certain categories of legal service providers, such as lawyers and paralegals, and moving away from regulating the practice of law or legal services. As discussed, defining problems and related responses as strictly “legal,” and basing a system of regulation on that definition, casts the net very widely in terms of what may be considered “legal services.”

¹¹⁴ See the discussion of the purposes of regulation in S. Mayson, *Independent Review of Legal Services Regulation: Findings, Propositions and Consultation*. Mayson points out that the proper role of formal regulation is not necessarily to set the highest standards of performance, but to define the minimum acceptable level of competence or performance required to meet the public interest objectives of state intervention in otherwise private transactions. Consumer protection is important, but it is not a sweeping rationale for regulation. It is relevant, for example, where there is a significant risk of detriment and where there is scope for irreversible loss or harm.

The substance of our proposed framework is consistent with these objectives. It also emphasizes adequate professional or occupational competence (through knowledge, skills and experience) and ethical conduct, in order to protect the public interest.

The licensing (or accreditation) and practice requirements of licensed legal service providers and of community justice helpers are, of course, different. Assessing the merits of the current regulatory regime for lawyers and paralegals (with its emphasis on entry requirements) is beyond the scope of this paper. However, in our view, there is no one right way to help ensure good quality services. The approach must reflect the nature of the service provider and services, the needs of clients, the accessibility of appropriate legal services, and the level of risk and likelihood of harm to clients from poor services.¹¹⁵

As we have discussed, the fundamentals are already in place in Ontario for good quality community justice help:

- Many staff and organizations comply with certification and accreditation requirements;
- Community workers are trained, mentored and supervised in the course of their work and many have graduate degrees;
- They are skilled at addressing clients' intersecting needs, guided by clients' goals, and are well connected with others in the community, including licensed legal service providers, to whom they can refer clients when they lack the expertise;
- They are governed by codes of conduct, complaints policies and other ethical practices;
- They do not receive direct payment from clients or handle their money; and
- Organizations providing community justice help typically carry liability insurance.

These practices should be built on and supported, rather than be expected to mirror the licensing requirements that apply to lawyers and paralegals. We suggest that these fundamentals of organizations providing community justice help are already aligned with the underlying objectives of the LSO's regulatory regime and that the public interest is appropriately protected.

In our recommendations in the following chapter, we suggest a number of strategies to clarify and support alignment between the LSO's regulatory regime and our framework for good quality community justice help.

¹¹⁵ M. J. Trebilcock, in "Regulating the Market for Legal Services," describes a variety of policy instruments available for use in seeking to protect consumer welfare in relation to legal services. See also N. Semple, *Legal Services Regulation at the Crossroads: Justitia's Legions*.



Chapter 6.

Moving Forward on Community Justice Help

Conclusion

Our proposed framework recognizes two important realities in Ontario: first, many people who have low incomes or face other social disadvantages access help with life-affecting problems with a legal element from not-for-profit organizations in their communities; and second, the services of lawyers and paralegals are out of reach for many people who have low incomes or face other barriers to accessing appropriate licensed legal services.

Our framework seeks to enable and support the vital role of community justice helpers, in order to help alleviate the lack of access to justice in Ontario.

When people need help with problems that affect their basic needs and rights, they need it urgently. They often turn to community workers they already know and trust. As we have said, our proposal is both practical and appropriate. It is practical because not-for-profit, community-based organizations are already working with people who are socially disadvantaged and providing assistance at no cost. It is appropriate because frontline workers understand the contexts of their clients' lives and they

There is rarely only one solution or resolution to a legal problem. There are many paths to justice, some leading toward and others away from formal court and tribunal processes. Those paths must be integrated to a much greater degree than at present and we need additional paths to meet everyone's needs.¹¹⁶

¹¹⁶ Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act*, 64.

know their service communities. They provide holistic responses to multi-faceted problems and refer people to other sources of help, including licensed legal service providers, where required and available.

Guided by our core principle that people in Ontario should be able to access effective, good quality help with their life-affecting problems, including those that have a legal element, our proposal provides a framework to help ensure that community justice help is of good quality. The fundamentals are already in place in Ontario for good quality community justice help but the work of community justice helpers must be recognized and better supported. And, as we have argued, their work is already aligned with the underlying objectives of the LSO's regulatory regime and the public interest is appropriately protected.

While additional funding for training and other supports would be helpful to promote good quality community justice help, our proposal does not require a large investment of funds. We are not suggesting that any funding should be diverted from legal aid or any other existing services to support community justice help. Our proposal counts on a well-resourced legal aid system, enabling highly-trained lawyers and paralegals to serve people who are marginalized.

Both increasing access to the formal legal system and supporting community justice help are vital to improving access to justice for people who experience social disadvantages. In our view, this is not an either/or proposition. In fact, access to justice is best served when community justice helpers and licensed legal service providers are connected in communities and can draw on one another's specific areas of expertise to meet clients' needs.

Many not-for-profit, community-based organizations in Ontario are already helping their clients with law-related problems. However, their unease about providing services that might be considered "legal" impedes their ability to offer community justice help. We propose our framework and the recommendations that follow to recognize, validate and support their work. We believe this intentional approach to enabling community justice help would be a meaningful step forward in advancing access to justice.

Recommendations

Overarching recommendations

Based on our research and discussions on how to advance community-based access to justice, we make three overarching recommendations:

- Where the three features of our proposed framework for good quality are present, people and organizations working in the access to justice area should recognize community justice help as an important and valid contribution to advancing meaningful access to justice.
- The LSO should recognize that community justice help already aligns with its regulatory regime that applies to the provision of legal services by interpreting the *Law Society Act* and by-laws in a way that does not discourage or prohibit community justice help. It should consider relying on the “profession or occupation” exceptions in the Act and by-laws for this interpretation.
- Community workers in not-for-profit, community-based organizations who provide community justice help should be enabled and supported through practical tools and resources (e.g. best practice guidelines, checklists) developed by these organizations and supported by, and in collaboration with, appropriate justice sector partners, such as the Association of Community Legal Clinics of Ontario, the LSO, the LFO, lawyers’ associations, Pro Bono Ontario and Connecting Ottawa.
 - The LSO or the LFO could take the first step by convening a series of facilitated roundtables to move forward on implementing this recommendation, and possibly, to discuss other aspects of this paper and its recommendations.¹¹⁷

¹¹⁷ Representatives from the not-for-profit and legal sectors could be invited to participate in the roundtables. For example, they could include: LFO, LSO, ONN, LAO, the Association of Community Legal Clinics of Ontario, a few legal clinics that are already well connected with community organizations and, most important, organizations providing community justice help, including those described in the Appendix. We assume that such a group would be willing to consult with leaders of successful training programs in Ontario’s not-for-profit sector, and to learn from other experts who can support the development of practical tools and resources.

Supporting recommendations

We recommend that the following steps be considered:

By the Law Society of Ontario:

- Issue an explicit endorsement of the view that the current regulatory framework permits community justice help.
- Adopt and communicate a protocol of regulatory restraint to remove the chilling effect that potential prosecution has on community justice help.
- At a minimum, or in addition to acting on one of the recommendations above, support initiatives by community workers to build their knowledge and skills to provide community justice help, and collaborate with other bodies to strengthen community justice help.

By funders of community justice help:

- Encourage and support training and other programs that promote the exchange of expertise between not-for-profit, community-based organizations providing community justice help in particular law-related areas and licensed legal service providers with expertise in those areas of law.
- Make publicly available any standards or conditions that must be met by organizations that receive funding for providing community justice help to increase awareness of good quality practices.
- Working with not-for-profit, community-based organizations that provide community justice help, consider the development of voluntary accreditation programs. These programs should build on existing accreditation programs, propose goals or standards and demonstrate trust to the public. Support organizations to meet the goals or standards, without increasing their administrative burden.
- Encourage and support practical evaluations, including periodic external evaluations, of community justice help provided by not-for-profit, community-based organizations, in order to monitor quality in this emerging field and provide ideas for continuous improvement.

By not-for-profit, community-based organizations providing community justice help:

- Review markers of good quality community justice help and pursue opportunities to enhance knowledge, skills training and mentoring, and take other steps to improve service quality, as and where needed.

- Build, maintain and strengthen relationships with licensed legal service providers and legal associations in the community to facilitate knowledge sharing and collaboration to improve services to clients.
- Consider and adopt approaches to support service quality and continuous improvement, such as best practice guidelines; competency profiles for various types of community justice helpers; and voluntary standards and accreditation programs that build on what exists and strengthen public trust.
- Undertake evaluations of community justice help to identify potential areas for improvement and demonstrate effectiveness.

By lawyers and paralegals and related associations, and legal educators:

- Recognize, connect with and offer support to not-for-profit, community-based organizations that are providing community justice help in their communities.
- Develop training programs and other resources to support community justice help.
- Consider how to improve ways for people to identify good quality and accessible legal services in their community.
- Consider how to improve the accessibility (including affordability) of legal services from licensed legal service providers, and to provide more options for holistic, integrated services from licensed legal service providers and community justice helpers.

Acknowledgements

We would like to thank the people below who took the time to share their thoughts, educated us about the work of their organizations, sent us materials and research, reviewed various drafts of the paper and connected us with others. Some of the people who provided feedback may not agree with our analysis and recommendations, and we are solely responsible for the content of the paper and any errors that may have crept in.

Lenny Abramowicz
Carol Barkwell
Julie Bishop
Andréanne Charron
Neil Cohen
Karen Cohl
Emilie Coyle
Pamela Cross
Sabreena Delhon
Janet Dench
Geordie Dent
Alexandra Derisier
Lynn Eakin
Lois Gander
Gina Grosenick
Chloë Hill
Patricia Hughes
Drew Jackson
Julie Lassonde
Tanya Lee
Michele Leering
Jean Marquis
Kristin Marshall
Andrée-Anne Martel

Susan McDonald
David McKillop
Malcolm Mercer
Cara-Marie O'Hagan
Ryan Peck
Darrel Pink
Duberlis Ramos
Maggy Razafimbahiny
Jessica Reekie
Sue Rice
Francisco Rico-Martinez
Wayne Robertson
Amy Salyzyn
Lois Shelton
Peter Showler
Carol Lee Smith
Gary Stein
Juda Strawczynski
Cathy Taylor
Jacqueline Thompson
George Thomson
Diana Vazquez
Sheena Weir
Lisa Wintersteiger

Thanks to the fellowship host, the University of Ottawa Faculty of Law, for supporting this research with funding from the Work-Study Program and access to other research resources, as well as providing a lively and encouraging environment for exploring our ideas. Thanks, too, to the following University of Ottawa Faculty of Law students who provided valuable research assistance:

Regeena Alapat
Savannah DeWolfe
Michael Iankilevitch
Angela Lee
Tara McDonald
Kayleigh Pink
Mariam Rafo
Daniel Shih
Janet Son
Bard Suen

Thanks to the following organizations for allowing us to present at events or meetings they hosted. The insights we gained through these opportunities informed and improved the numerous iterations of the framework and paper:

- The Action Group on Access to Justice (TAG) (CLEO-Ontario Justice Education Network-coordinated event at Ontario's Access to Justice week)
- Canadian Council for Refugees (Fall Consultation)
- Connecting Communities, a CLEO community of practice (meeting)
- Connecting Ottawa (workshop)
- LawMatters, a program of The Law Foundation of British Columbia (meeting)
- Law Society of Ontario Access to Justice Committee (meeting)
- Ontario Council of Agencies Serving Immigrants (OCASI) Board of Directors (meeting)

Thanks to the members of Public Legal Education Association of Canada who provided generous support throughout the project, including giving feedback on preliminary outlines and drafts of the paper, and sharing materials produced by their organizations.

A Note from Julie

Many thanks to The Law Foundation of Ontario for the Community Leadership in Justice Fellowship. One of the things I enjoyed most about my fellowship was the opportunity to speak with so many thoughtful people about their work and views on the issues discussed in this paper. There are many other people I hoped to speak with but could not connect with during the timeframe of this project. I look forward to speaking with them in the future, as the work to support community justice help continues.

Finally, special thanks to CLEO for its support throughout the project, including the CLEO Board of Directors, that enabled and supported me to take the fellowship opportunity; Jane Withey, Director of Clinic Operations, who stepped in willingly as Executive Director during my leave; Anne Marie Predko, who oversaw the CLEO Connect part of my work; Kristina Brousalis who helped me with various aspects of the paper; and last but not least, the CLEO staff, especially the CLEO Connect team, who were patient and flexible in adapting to the changes resulting from my fellowship.

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Appendix:

Snapshots of Organizations Providing Community Justice Help

FCJ Refugee Centre

Toronto, Ontario

<https://www.fcjrefugeecentre.org>

FCJ Refugee Centre offers immigrant and refugee support services, including information and assistance with the refugee process, housing for refugee women and children, settlement services and education.

Client community: Refugees and others at risk due to their immigration status.

Nature of services:

- Explain the refugee process to clients;
- Help clients fill out forms (e.g. work permits, student permits, Humanitarian and Compassionate Applications, Pre-Removal Risk Assessments) and make applications (e.g. sponsorship, Protected Person permanent residence, appeal forms, travel documents, legal aid);
- Help clients gather evidence and organize translation and interpretation;
- Provide guided group tours of refugee hearing rooms at the Immigration and Refugee Board and an orientation to the Refugee Appeal Division;
- Help clients access Ontario Works, find housing and schools, and arrange doctor and psychologist appointments; and
- Make referrals to legal aid and other lawyers.

Who provides services: Three internationally trained lawyers, migrant case worker, housing worker, health and wellbeing worker, access to education and youth coordinator, anti-human trafficking project coordinator, pro bono and other law students, social work students and other volunteers (including former clients).

Training: New staff get hands-on, ongoing training, overseen by experienced staff. Lawyers conduct two training sessions per year for volunteers and law students— topics include preparing for a refugee hearing or basis of claim, and Humanitarian and Compassionate Applications.

Other supports: New staff get guides, manuals and other materials (e.g. a 69-slide training presentation which includes guides to applications, links to Steps to Justice and other CLEO resources, and links to the Immigration and Refugee Board website). New staff shadow experienced staff for at least a week.

Policies: Complaints policy; policy that more than one staff member reviews anything that is sent out of the office (one staff signs).

Connections with licensed legal service providers: A lawyer who works frequently with the organization also does pro bono work. Another lawyer monitors and reviews the work done by pro bono law students. Migrant and refugee cases with legal aid certificate numbers are referred to lawyers.

Federation of Metro Tenants' Associations Tenant Hotline

Toronto, Ontario

<https://www.torontotenants.org>

The Federation of Metro Tenants' Associations (FMTA) helps tenants remain in their homes. FMTA runs a free tenant hotline that answers tenants' questions about their rights. The hotline answers about 30,000 calls a year and FMTA receives about 500 emails a year from tenants.

Client community: Tenants in Toronto.

Nature of services:

- Give legal information to tenants about their rights and responsibilities;
- Explain policies and systems (e.g. the tribunal process, legal requirements for landlords, penalties against landlords); and
- Make referrals to legal clinics or other legal services.

Who provides hotline services: Executive Director, hotline counselors.

Training: Extensive onboarding training including housing law essentials, helpful referrals and resources; ongoing training; close supervision for an extended period of time; and ability to consult with the Executive Director or more experienced workers on challenging or unique questions.

Other supports: Hotline orientation manual and in-house knowledge-sharing platform maintained for all areas of hotline work; staff also stay up to date on the law through several networks and working groups that monitor housing law developments.

Policies: Process for dealing with complaints and a complaint section on their website; Board of Directors has a code of conduct, general liability insurance, and Directors' and Officers' insurance; established principles of service and professional guidelines that hotline workers must follow.

Connections with licensed legal service providers: Executive Director and other staff check with community legal clinic staff lawyer or other lawyer, as needed (e.g. questions regarding how new rental control exemption works, when tenancy begins).

LIFE*SPIN

London, Ontario
<http://lifespın.org>

LIFE*SPIN (Low Income Family Empowerment*Sole-support Parent Information Network) provides information and support to individuals living on low incomes, including social benefits mediation, public legal education, income tax preparation, financial literacy, nutrition, children's and seniors' programs, affordable housing and a Free Store.

Client community: People living on low incomes in the London, Ontario area.

Nature of services:

- Assist with applications for Ontario Works, Ontario Disability Support Program (ODSP), Canada Pension Plan Disability, assistive devices, Old Age Security, Guaranteed Income Supplement, social housing;
- Conduct internal reviews for ODSP, if additional medical documents for claimants have been received, while they await determination by the Disability Adjudication Unit;
- Help clients navigate local medical providers and use hospital and police forms;
- Provide information and referrals for social services and legal services; and
- Provide public legal education workshops on landlord/tenant issues, income maintenance and end of life planning, as well as workshops on health, nutrition, financial literacy and financial planning.

Who provides services: Community advocates (BSW), Executive Director; former clients are also hired or work as volunteers.

Training: On-the-job training for community advocates, supervised by Executive Director and external training on trauma-informed approaches; volunteers receive training, depending on the work they do.

Other supports: Executive Director keeps up to date on the law through regular meetings with ODSP and Ontario Works managers, and works closely with two local legal clinics.

Policies: Complaints policy and standard liability and Board liability insurance; Board of Directors has protocols, codes of conduct and confidentiality protocols; monthly file reviews, data tracking and statistics reports.

Connection with licensed legal service providers: Have established relationships with particular lawyers, including clinic lawyers, who can be consulted with or referred to for guidance, depending on the client's legal issues; educate lawyers—LIFE*SPIN has expertise in how the laws actually affect clients and serves as a practicum site for Western University.

Luke's Place

Oshawa, Ontario

<https://lukesplace.ca>

Luke's Place provides support to women who have been subjected to intimate partner violence, including helping them navigate the family law process and assisting with safety planning. It also provides provincial training and resources; and conducts community engaged academic research and multi-stakeholder consultations on family law and violence against women.

Client community: Women in the Durham Region who have experienced intimate partner violence, women in rural and remote communities; frontline workers, lawyers and others.

Nature of services for women:

- Offer in-person and virtual pro bono summary legal advice clinics with family law lawyers and individual consultations with legal support workers;
- Assist with safety planning;
- Provide access to computers for confidential use and assistive technology;
- Offer workshops on a variety of family law topics for women;
- Refer clients to other community services; and
- Accompany women to meetings with lawyers or courts, debrief and follow up.

Nature of provincial services:

- Provide in-person and online training, including training for Ontario's Family Court Support Workers (FCSWs) and accredited training for lawyers;
- Moderate online discussions;
- Provide family law information, resources and tools, and policies and procedures templates; and
- Conduct community engaged research; lead and participate in law, public policy and best practice consultations.

Who provides services: FCSWs, legal directors (lawyers), pro bono lawyers.

Training: In-person training for service providers, lawyers, FCSWs and others across Ontario, annual conference for FCSWs; online courses and moderated discussions.

Other supports: Weekly website postings on updates to the law, family law support strategies, case law and new resources; FamilyCourtAndBeyond.ca, a court survival workbook for women leaving abusive relationships; virtual legal clinic for women in rural and remote communities.

Policies: Comprehensive code of conduct, staff training and supervision support, understanding of legal information versus legal advice; client complaints policy and process is posted in service areas; liability and errors and omissions insurance; pro bono clinics are registered Pro Bono Ontario projects and approved by LAWPRO (lawyers' professional liability insurer in Ontario).

Connection with licensed legal service providers: Legal directors are licensed lawyers; pro bono lawyers are insured and in good standing with the LSO, and receive training and oversight from Luke's Place.

Advocacy Programs, The Law Foundation of British Columbia

The Law Foundation of British Columbia (the Law Foundation) has established a network of advocacy programs—legal advocates who work for not-for-profit organizations around the province. It currently funds 50 poverty law and 24 family law advocacy programs in more than 70 organizations, employing over 110 advocates. Legal advocates provide free assistance to low-income clients.

Client community: People in BC living on low incomes who need legal assistance; legal advocates.

Nature of services:

- Provide direct services as per the scope of services developed by the Law Foundation in collaboration with legal advocates and lawyers;
- Interview clients to help identify legal needs and prioritize legal issues, advocate with decision-makers on behalf of clients, negotiate when possible, and represent/assist clients at tribunals and other hearings;
- Help complete government and court forms; and
- Work in the community, including systemic advocacy, law reform and public legal education.

Who provides services: Law Foundation-funded legal advocates working at not-for-profit organizations.

Training: The Law Foundation has a comprehensive support and training process to support advocates:

- New advocates, without an equivalency, must take a two-week training course that covers the legal information and skills relevant to either poverty or family law advocacy and must successfully complete tests and assignments;
- All advocates are given a binder of information about supports and resources;
- All advocates are invited to an annual three-day conference, where they attend different streams for updates and skills development in their field; and
- The Law Foundation's Education and Training Fund supports the professional development of advocates, as needed.

Other supports:

- Advocates are supervised by experienced lawyers hired on contract by their organization—funding from the Law Foundation covers this expense;
- Experienced lawyers staff dedicated advocate support phone lines for poverty and family law advocates;
- The Law Foundation provides a statistical database for advocates and organizations that want it;
- All advocates are invited to join the PovNet network and listserv that provide advocates with a forum to network and discuss challenging issues with other advocates and some lawyers; and
- Advocates who have experienced trauma may receive funding for counselling or a safety audit through the Education and Training Fund.

Policies governing advocates: All new advocates, without an equivalency, must successfully complete prescribed training, which includes written tests and assignments; new advocates are provided with suggested prototypes for file and case management; all advocates must work with a lawyer who supervises their work and report according to guidelines set by the Law Foundation; all organizations must submit statistical and activity reports on a regular basis; all advocacy programs are subject to periodic evaluations by the Law Foundation.

