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The Role of Technology in the Provision of Poverty Law Services

LENNY ABRAMOWICZ*

“Hello, press 1 if you want information on taking your case to the Supreme Court of Canada, press 2 if you want information on organizing a rally against your landlord.”

THERE ARE TWO STATEMENTS that preface virtually every discussion about technology that has occurred in the last forty years. Both are suspect at best. The first statement is that advances in technology will have the impact of freeing us from work, making our lives easier and allowing more leisure time. Those of us who are now effectively “on the job” 24-7 because of the *liberating* effects of technology have reason to question that assertion.

The second statement is that technology is never an end in and of itself; rather, it is merely a tool to more readily accomplish your task. However, a cross-jurisdictional examination of how technology has been used in legal aid and community legal clinics leads to the question of whether technology has become the tool or the master in the provision of legal aid services.

To properly understand whether technology is playing a positive or negative role in community legal aid clinics, we should not begin by examining the types of services that technology can facilitate. Instead, we should begin by examining the purpose and work of community clinics, and how technology can help or impede the realization of that purpose.

Although this article will focus on Ontario’s community clinics, it will also look at the broader experience of community legal clinics.

I. THE PURPOSE OF COMMUNITY LEGAL CLINICS

In the 1960s, when legal aid began in most parts of the Western world, it was based on the small “I” liberal notion of equality prevailing at that time, that progress occurred by creating circumstances for the poor that were in line with those of the middle class. In the field of legal aid, this meant enhanced access to justice, primarily through judicare programs that would allow low-income individuals to replicate the legal experience of those with the means to hire a lawyer. Low income individuals were given legal aid certificates that would enable them to hire the same private bar lawyers that the middle class hired, and to do the same work that these lawyers did for the middle class.

The arrival of judicare programs was a big step forward because it allowed low-income individuals to actually retain and instruct lawyers, as opposed to appearing before courts and tribunals unrepresented, or relying on the *noblesse oblige* of the legal profession to provide *pro bono* services. However, after a few years it became apparent that this liberal approach was insufficient to meet the actual legal problems of poor and disenfranchised communities. There were a number of limitations with the traditional judicare program:

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- The principal legal issues of low-income individuals and communities dealing with the “basic necessities of life” – such as income maintenance, rental housing, refugee claims, etcetera – were not areas of expertise for most members of the private bar. In fact, some of these issues were not even recognized as legitimate areas of legal practice;
- Most of the legal issues confronting low-income communities were not localized to one individual who had run afoul of the law, but were systemic in nature. Consequently, the solutions to these legal issues needed to be systemic as well;
- Lawyers and government agencies were not appropriately placed to identify the primary legal issues of the poor and to develop solutions to fix them. Rather, this was a task for the low-income communities themselves.

While these limitations were becoming apparent, the prevailing notion of how to create equality was also shifting. The old liberal notion of treating everyone the same was evolving into a recognition that solutions needed to be tailored to meet the actual needs of the group in question. For example, in the area of employment equality, simple statements like “everyone, regardless of their circumstances, has the right to this job” were replaced by affirmative action programs tailored for particular groups, and obligations on employers to accommodate the special needs of certain groups and individuals. In a similar vein, there was a recognition that access to justice for low-income individuals and communities could only flow from special legal services uniquely created to meet their needs. This was the basis for the creation of the community clinic model throughout the United States, England, Australia, and Canada.

Community clinics in these areas were created and funded on the basis of two fundamental principles. First, the clinics are independent organizations, rooted in and governed by their local communities. In this way the community clinic:

- Is responsible for determining the priority needs and services of the particular community it serves, and is accountable to that community through its locally elected board of directors;
- Is flexible and responsive to the needs of the local community;
- Is the vehicle through which the poor gain control of the solutions to their own problems rather than relying on the intervention of outside experts;
- Is independent of the government, which is often the adversary in many poverty law issues.

Second, the clinic model was created to effect systemic solutions to the legal problems of the low-income community it serves. Clinics were given the express mandate of engaging in test cases, law reform, public legal education, and community development work, in addition to doing individual casework. In fact, individual casework was meant to inform and drive more fundamental systemic work. To help accomplish this goal, community clinics were typically staffed by community legal workers, policy analysts, and experts in test case litigation, in addition to the caseworkers who represented individual clients.

The community clinic model was developed on the basis that the legal aid services would be rooted in the local community (geographic or otherwise) and would engage in systemic impact work. These driving factors remain the fundamental principles of Ontario’s community clinics.

II. PRESENT REALITY

Community clinics in most of the Western world were created during the late 1960s and early 1970s during a time of expanding social programs aimed at alleviating poverty and creating a more equal society. The first American clinics were part of that country's "War on Poverty," while Canada's clinic program began as part of Prime Minister Trudeau's vision of a "Just Society" that recognized the principles of equality and justice. Resources were made available in both Canada and the United States to create and expand the clinic model.

Of course, today's environment is different. Rather than a "War on Poverty", we seem to be witnessing a "War on the Poor." Whereas governments spent money to create equality and justice for the poor in the 1960s, they now demonize and attack the poor. At the very least, most governments in the West, regardless of political stripe, appear more energized by a "War on the Deficit" than by creating a just and civil society. In general, the last few decades have seen a decrease in clinics and overall funding almost everywhere as a result of the neoliberal shift. Ontario has been an exception, but its growth is tied to very specific circumstances and decisions to re-allocate resources from other legal aid programs. Over the last couple of years, however, Ontario has begun experiencing a similar shortage of funds. Funds for legal aid and community legal services are less available than they were up to thirty years ago depending on the jurisdiction in question. In the wake of this reality, governments pressure funders and legal aid administrators to find ways to reach more people using fewer resources.

So as to achieve this goal of doing more with less, many funders have turned to technology for the solution. Legal aid has traditionally been built around services provided in-person by people trained in legal services. Not surprisingly, these service providers are the largest cost in the provision of these services and the next greatest cost lies in the bricks and mortar needed to house these people. Thus, from the perspective of cash-strapped funders, providing legal aid services through technology could lead to substantial cost savings. Funders also suggest that some technological tools could actually expand the reach of the services to more people.

In adopting this approach, legal aid funders were not unique. They were simply pursuing the path adopted by businesses and governments around the world. Long ago, banks replaced most of their tellers with automated withdrawal machines. Similarly, many companies replaced their front-line staff with automated phone lines, retaining only a skeleton staff of workers to deal with those who couldn't be helped by pressing their telephone touch pad. Other companies closed local offices and centralized their operations, including client service, to one location, often only reachable via telephone or internet.

In the world of legal aid, most jurisdictions in Canada, Australia, the United States, and England began to make use of various technological tools to offer services, usually in the wake of significant funding cuts leading to a decrease in the ability to provide services through local human service providers. One of the starkest examples of this trend can be found in British Columbia, Canada. In 2002, the new Gordon Campbell provincial government slashed the budget of the Legal Services Society—the organization that provides legal aid in British Columbia—by 38.8 per cent over three years. In addition, this period saw the closing of approximately forty-five branch offices, including community law offices and Native community law offices, as well as the elimination of poverty law services.¹ In their place sprung 1-800 phone lines and public legal information materials. The weight of these budget cuts ultimately launched

¹ Leonard T. Doust, *Foundation for Change* (Vancouver, BC: The Public Commission on Legal Aid, March 2011) at 40.

a *Charter* challenge brought by the Canadian Bar Association (CBA) to establish a constitutional right to civil legal aid.² Although the case was dismissed by both the Supreme Court of British Columbia in 2006 and the British Columbia Court of Appeal in 2008, the principles raised by the CBA are likely to resurface on appeal to the Supreme Court of Canada.

The most common technological tools adopted have fallen into these categories:

- *1-800 phone lines*: although clients still obtain help from a human, that human being is typically housed far away from the client, usually in a central location. The assistance is limited to one interaction with an anonymous helper. Because the service provider is not in the same location as the client, the service provided is typically limited to basic summary advice, with the goal of providing the client with enough information to resolve the matter him or herself.
- *Kiosks*: these machines were placed in government offices and other locations where low-income people seeking legal advice might come across them. Clients would navigate the machine's menu to obtain legal information on the topic they needed. The service was limited to providing the client with information and sometimes allowed the client to print forms to file in court or at a tribunal.
- *Interactive websites*: websites have for the most part taken the place of kiosks. Like kiosks, they are solely a technological response, with the only human involvement at the stage of program creation. But unlike kiosks, access to these websites can occur anywhere an individual has access to the internet. The more advanced websites provide some level of interactivity, allowing clients to enter questions and obtain specific responses from a human service provider. Again, the service is predicated on providing the client with enough information to allow for self-representation.

Although each of these technology-based services is different, they share a few common characteristics:

- The service is centrally developed, located, and operated;
- The service is aimed at assisting individuals rather than groups, or at seeking systemic impact; and the goal of the service is self-help.

As technology advances and as funders become more strapped for cash, more and more jurisdictions are turning to these technological solutions as an alternative to more comprehensive and locally-based legal services. In particular, Legal Aid Ontario (LAO)—responsible for administering the province's legal aid program—recently launched its “modernization strategy” with the stated purpose of improving resources for clients, providing better value for taxpayers, and supporting Ontario's justice system reforms.³ LAO has also expressed the desire to shift its programs from individual representation to online legal representation with the aim of providing more assistance to more clients at a lower cost.

² *Canadian Bar Assn v British Columbia*, 2008 BCCA 92, 76 BCLR (4th) 48 affirming *Canadian Bar Assn v British Columbia*, 2006 BCSC 1342, [2006] BCWLD 6325.

³ Legal Aid Ontario, “Legal Aid Ontario Transformation” (2010) online: Legal Aid Ontario <<http://www.legalaid.on.ca>>.

III. CLASH BETWEEN PURPOSE OF CLINICS AND TECHNOLOGY

It is unassailable that services provided through 1-800 numbers, kiosks and interactive websites are cheaper than those provided by legal workers who meet with and directly interact with clients. Proponents of these technologically-based services also argue that they are more accessible to many clients when compared with services that are only available at an office during regular business hours.

The traditional criticism of legal help provided through websites and 1-800 numbers is that it is limited in terms of quality and quantity. These services are based on the concept that after perusing a website or speaking to a legal worker over the phone for fifteen minutes, an individual will be able to solve his or her own legal problems. Although this notion may be the case in circumstances where the client is sophisticated and the legal issues are straightforward, it is not often a viable option for legal aid clients, many of whom experience compromised health (often due to poverty), have limited knowledge of English or French or of the Canadian judicial system, and who have a plethora of interconnected, complex legal issues. The self-help approach may produce impressive and easily quantifiable numbers (*i.e.*, hits on a website), but is seen by many access to justice advocates as a step backwards from the concept of offering quality in-person legal services to the poor and disadvantaged.

The introduction of centrally developed, technologically-based services also raises other, even more fundamental problems specific to the area of poverty law. As identified above, the community clinic model was built upon two fundamental principles: first, the provision of services that are local in nature and accountable to the particular community served; and second, the provision of a broad range of integrated services meant to respond to the systemic needs of the community served. Kiosks, 1-800 numbers, and central websites do not easily fit within this model for a number of reasons.

A. LEGAL SERVICES CONNECTED TO THE NEEDS OF THE PARTICULAR COMMUNITY

As part of what makes them cost-effective, these technological services are typically developed and offered centrally (for example, on a provincial or regional basis). But the genius of the clinic model is that clinics are rooted in the communities they serve. Not only does this mean that the clients using the service form a connection with the clinic (and in some cases join the organization or the board of directors), but it also means that the local clinic is keenly aware of the particular needs of its particular community. The local clinic knows what the priority legal issues are in its community and would be aware of the best way to resolve problems. A centrally located website or 1-800 number could provide a client with basic information on landlord and tenant laws or social assistance regulations, but only a locally-situated legal worker would know which local housing providers are willing to negotiate repayment schedules, which welfare offices and workers more readily make deals, and which employer has a history of ignoring workers health and safety rules. Moreover, ongoing local relationships between case workers and housing providers, welfare offices, and employers allow for more productive negotiations that could lead to the resolution of issues. In the area of poverty law, these locally-based factors are

typically far more important to the successful resolution of a legal problem than the wording of a particular subsection of a statute.

B. SYSTEMIC WORK

It is in every clinic's mandate to engage in a broad array of services, including systemic work such as public legal education, community development, test cases, and law reform. In fact, this obligation is expressly contained in the Funding Agreement of every community clinic in Ontario. Although the magnitude of systemic work varies depending on the type and size of the clinic and where it is situated, most clinics engage in at least some systemic work. So, although every clinic provides summary advice and self-help services to its community, those services are only a small part of what the clinic does. Individual case assistance, such as summary advice and representation before courts and tribunals, is supposed to inform and support a clinic's systemic work. The trends that can be identified from intakes are what lead a clinic to adopt law reform or community development campaigns, where individual clients with similar problems are linked together to form tenant groups or coalitions to fight for their collective legal rights. If a clinic does not maintain ongoing personal relationships with the clients, helping to organize them to fight for their collective rights is likely to be ineffective. Thus, while technology and the data gathered can be helpful in organizing efforts, what is critical is that the grassroots work be done locally, building on personal relationships. The use of 1-800 numbers and websites shifts the focus of the services away from collective impact work and towards individual self-help, while the use of central services separates the clinic from the ability to build systemic law reform campaigns.

C. IMPACTS NEGATIVELY ON THE CLINIC'S ABILITY TO DO LOCAL NEEDS ASSESSMENTS

One of the strengths of the clinic model is its constant assessment of the legal needs of the community it services. A clinic does this through its community-elected board of directors and through the connections its board and staff have in the community they serve. In addition, one of the best and most cost-effective ways a clinic has of assessing its community's needs is through its intake. A clinic is able to determine what the priority needs for its community are by continuously evaluating the individual requests for service. This allows the clinic to be flexible and to nimbly adjust services as needed. However, if these service requests are being received and dealt with at some central location (through a 1-800 number or central website), the clinic loses that instantaneous feedback it needs to remain relevant to its community.

D. CLIENTS ARE LEAST ABLE TO USE TECHNOLOGY OR ENGAGE IN SELF-HELP⁴

Clinics provide poverty law services, and as such, clinic clients, by their very nature, are among the poorest and most vulnerable members of our society. They are likely to have limited education, to be dealing with a disability, and/or to have multiple vulnerabilities and challenges,

⁴ See Russell Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed" (2010) 37:1 *Fordham Urb LJ* 37.

in addition to likely not being able to speak English or French. This does not mean that all of clients of clinics are unable to make use of technology; however, it does mean that clients are the persons in society least able to do so effectively. Many of our clients don't own computers, can't afford the internet, must rely on slow dial-up internet, or purchase cell-phone plans that charge them by the minute to make outgoing calls. Due to disability, language, or other limitations, they are unlikely to obtain an answer to their legal problems from a website or a fifteen minute phone call. Even if they could get the information they need, these same limitations can make it impossible for them to engage in the self-help practices these services are predicated on. So, in addition to arguments that the introduction of centrally-located, technologically-based services raises problems in the provision of traditional legal aid services, further arguments can be made in the area of poverty law that yield far more significant implications. In particular, the resulting diminishment of ongoing relationships between poverty clinics and their local communities may cause many low-income individuals not to seek out assistance. Many legal clinic clients are unlikely to make use of self-help remedies, yet they are the most in need of face-to-face and ongoing consistent human interaction. The introduction of centrally-located, technology-based services removes an important aspect of the clinic model,- continuity of care. Moreover, efforts to engage the community and the relevant stakeholders in law reform and community mobilization will be hampered without these relationships.

IV. TECHNOLOGY ASSISTING THE CLINIC MODEL

However, it is critical to note that not all technology is a bad fit with the community clinic model. In fact, clinics in Ontario have a long history of making use of technology to advance the provision of their services. Some examples include:

- Most clinics provide telephone summary advice to their clients. This practice is most commonly seen outside urban areas where clinics recognize that expecting a client to travel for hours to attend in-person for summary advice is not practical. But because this summary advice is provided by the community clinic, it is part of that clinic's holistic services and it is provided in a way that is appropriate for that community.
- Most clinics have websites that they use to advertise their services and offer information to their clients and community. Some clinics are in the process of developing regional websites to reach more clients more effectively.
- Community Legal Education Ontario (CLEO) is a community clinic with a provincial mandate to provide public legal education to clients. A few years ago, CLEO developed CLEONet, an online collection of legal information resources, news and events, and webinars for community workers and advocates who work with low-income and disadvantaged communities in Ontario. The collection includes over six hundred resources produced by hundreds of organizations and clinics. It covers a wide range of legal topics in over forty languages and in a variety of formats. CLEO is currently redeveloping CLEONet so that it is useful and easy to access by internet-users in Ontario looking for legal information and related news and events.
- The Simcoe clinic has created a website to support and expand the reach of the clinic's "live services." The website features automatic, interactive interviews for intake and automated document generation.

- In conjunction with LAO, the clinics have obtained funding from the Law Foundation of Ontario to develop a sophisticated new case management system which will have the two-fold goals of, first, allowing clinic caseworkers to better manage their files and, second, providing more detailed and useful information so that both clinics and LAO may assess clinic work and client needs. Clinics, through a series of advisory committees, have been working with LAO Project Managers to develop this new system.
- The clinics and LAO are working together on a knowledge management and transfer project meant to facilitate the creation and sharing of information and knowledge within clinics and between Ontario's seventy-seven independent clinics. This involves using technology (including Sharepoint and other tools) to improve the ways clinics work together, create and share collective wisdom, and learn from each other.

These are just a few examples of the ways in which clinics have made use of technology to improve the quality or quantity of the work done. Clinics are constantly looking for other ways to expand the use of technology. In fact, when LAO recently announced the creation of a new Innovations Fund, it was flooded with applications from clinics for grants to support innovative, new projects, many of which made extensive use of technology. This is evidence that clinics welcome the opportunity to make use of new and innovative technologies to support and expand the work we are mandated to do.

V. CONCLUSION

A review of how clinics have used technology is evidence of the fact that technology is not inherently inimical to the community clinic model. The real issue remains: what is the goal behind the particular technology in question?

When technology is used, as illustrated above, to assist in the work and mandate of community clinics, it is a tremendous benefit to clinics and clients. However when technology is used in a way that is not mindful of the purpose of the clinic model, not only is it unhelpful, but it can actually undermine the practice of poverty law.

The challenge in the future is for governments, funders and community clinics to work together to ensure that technology is used to support and expand the work of community clinics, rather than subvert it.