

2-1-2021

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The Needs of Helping Organizations in the Community



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February 2021
Toronto, Canada



The Canadian Forum on Civil Justice (CFCJ) is a national not-for-profit organization dedicated to civil justice reform and access to justice research and advocacy. Established by the Canadian Bar Association and affiliated with Osgoode Hall Law School, the CFCJ envisions an accessible, sustainable and effective justice system for all Canadians. Learn more about the CFCJ at www.cfcj-fcjc.org.



The Community-Based Justice Research (CBJR) project (2018-2021) is a three-year study that seeks to compare the costs, benefits, challenges and opportunities for providing and scaling access to community-based justice services in Canada, Sierra Leone, Kenya and South Africa. Learn more about the CBJR project at <https://cfcj-fcjc.org/our-projects/community-based-justice-research-cbjr/>.

Author: Ab Currie, Ph.D.

Source: Canadian Forum on Civil Justice (CFCJ)

Citation: Ab Currie, *The Needs of Helping Organizations in the Community* (Toronto: Canadian Forum on Civil Justice, February 2021).

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BACKGROUND

In access to justice, needs are ordinarily conceived in terms of individuals experiencing legal problems requiring assistance from someone with expertise and resources to resolve that problem. Legal problems studies have pointed out the vast number of problems with possible legal aspects experienced by members of the public. In Canada, repeated national surveys have estimated that about half of all adult Canadians will experience one or more problems within a three-year period. This amounted to more than 11 million people estimated by the most recent Canadian study and a greater number of problems because some people experience multiple problems.¹ This volume of need would overwhelm conventional legal services providers who embrace the notional goal of meeting the needs of the public. However, there are many examples of how access to justice can be extended toward meeting the needs of the public by partnering with community organizations that already assist people with problems. Developing successful collaborative partnerships between legal clinics and community-based helping organizations requires the recognition that these organizations have needs as do the individuals they assist. Meeting these needs is integral to expanding access to justice. Two kinds of needs are discussed in this paper; 1) needs related to assisting helping organizations better serve their own clients and 2) needs that arise from the collaborative partnership between legal service providers and helping organizations itself.

There is an enormous reservoir of community-based organizations to which people go for help with everyday problems, with which community legal clinics can connect to expand the historic access to justice project.² Two recent projects have shown that these organizations are eager to establish partnerships with community legal clinics. In phase II of the legal health check-up project, within a 6-month period, 12 clinics in Southwestern Ontario developed partnerships with 125 community organizations to act as intermediaries, using the legal health check-up tool to carry out the gateway intermediary functions of problem spotting and making good referrals.³ The legal secondary consultation project emerged as an extension of the legal health check-up project to assist organizations that as part of their existing activities were attempting to resolve problems for clients or members of their constituencies. In this project within a 6-month period 103 helping organizations requested consultations with 3 Southwestern Ontario clinics.⁴ The organizations covered a wide range from government-funded services and large national NGO's with professionally trained staff to small voluntary associations with volunteer service providers. The remainder of this paper draws heavily on the secondary consultation project.

¹ Trevor C. W. Farrow, Ab Currie, Nicole Aylwin, Les Jacobs, David Northrup and Lisa Moore, *Everyday Legal Problems and the Cost of Justice in Canada*, Canadian Forum on Civil Justice, York University, Toronto, 2016.

² Karen Kohl, Julie Lassonde, Julie Matthews, Carol Lee Smith and George Thomson, *Trusted Help: the role of community workers as trusted intermediaries who help people with legal problems*, Part 1 Summary and Recommendations and Part 2 Detailed Research Findings, Law Foundation of Ontario, Toronto 2018 and Julie Matthews and David Wiseman, *Community Justice Help, Advancing Community-Based Access to Justice*, A discussion paper, Community Legal Education Ontario, Toronto, 2020.

³ Ab Currie, *Engaging the Power of Community to Expand Legal Services to Low-Income Ontarians*, Canadian Forum on Civil Justice, York University, Toronto, 2017.

⁴ Ab Currie, *Legal Secondary Consultation: How Legal Aid Can Support Communities and Expand Access to Justice*, Canadian Forum on Civil Justice, York University, Toronto, 2018.

Legal secondary consultation (LSC) is a form of outreach that was piloted in 3 Southwestern Ontario community clinics and has since become an ongoing part of the suite of service delivery approaches in each of the clinics.⁵ LSC invites helping organizations in the community to request assistance from the legal clinic to help them to assist their own clients or members of their constituency. The logic underlying LSC is that the problems with which community organizations normally assist their clients, members or constituents have legal dimensions with which the legal professionals at the clinic could help. LSC was initially viewed as a way for clinics to increase the number of persons served without taking on new clients directly through referrals.

TWO LEVELS OF NEED

The need for a legally informed assessment. The first level of need of helping organizations is a legally informed assessment of the potential legal aspects of problems they are attempting to resolve for their own clients. This follows the logic or the justiciable problems paradigm for understanding the legal problems experienced by the public. In a “law thick” world⁶, legal problems are very often embedded in the normal problems experienced by individuals in everyday life.⁷ It can be assumed that similar to individuals experiencing justiciable problems the service providers in helping organizations lacked the legal capability to determine if legal issues were involved and, it follows, might therefore not provide the kind of assistance leading to effective and durable solutions. In the LSC study legal professionals in the 3 pilot sites were asked to characterize the types of advice provided to service providers in community helping organizations. These responses provide an insight into the needs that helping organizations have by looking at what kind of advice LSC lawyers provided. The data were gathered from a case file review of 83 cases in 2 of the 3 clinics that determined the type of assistance provided in response to requests for consultation.⁸

The case file review revealed that in clinic B, legal advice (advice about the legal position in a specific individual matter) was provided in 4 of 42 cases (9.5%), in each case in combination with strategic advice (general advice about how the service provider should proceed with the matter). Legal information (information about how the law applies in general to the matter) was provided in 12 cases (28.6%). Among the 12 cases there were 6 in which legal information was the only information given and 6 cases in which legal information was provided along with strategic advice. Strategic advice (general advice on how to proceed with the problem) was provided in 17

⁵ *Ibid.*, p. 6. An email survey of the 12 clinics involved in the LHC project conducted by this writer indicated that other clinics had long done something similar but as an occasional and informal aspect of their relationships with community organizations.

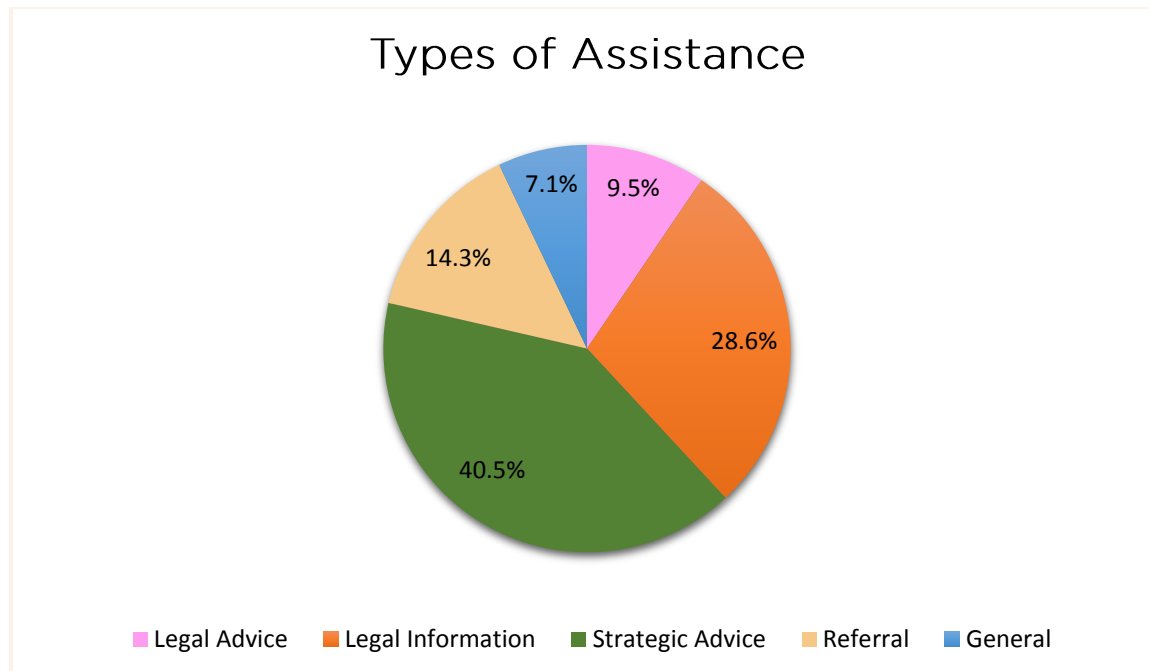
⁶ Gillian K Hadfield and Jamie Heine, *Life in a Law Thick World: The Legal Resource Landscape for Ordinary Americans* in S. Estreichin and J. Radice, *Beyond Elite Law: Access to Civil Justice in America*, Cambridge University Press, 2016.

⁷ Ab Currie, *The Legal Problems of Everyday Life* in Rebecca L. Sandefur, (ed), *Sociology of Law, Crime and Deviance*, Volume 12, *Access to Justice*, Emerald, UK, 2009 pp 1 – 42.

⁸ The data are presented for 2 of the 3 clinics in which lawyers responded to requests for secondary consultations. In one clinic a community legal worker provided many of the consultations and consultations were often referred within the clinic to others with appropriate specializations. This more complex model of LSC than the two clinics in which lawyers provided the service. For purposes of this brief paper, it is not included.

cases (40.5%). Among the 17 cases in which strategic advice was provided 7 involved only strategic advice, 6 in combination with legal information and 4 in combination with legal advice. Referrals to other organizations were made in 6 cases (14.3%), all of which involved this type of advice only. In 3 cases (7.1%) general information was provided that could not be categorized as strategic advice. 32 cases out of a total of 69 were reviewed which included 42 separate items of advice.⁹

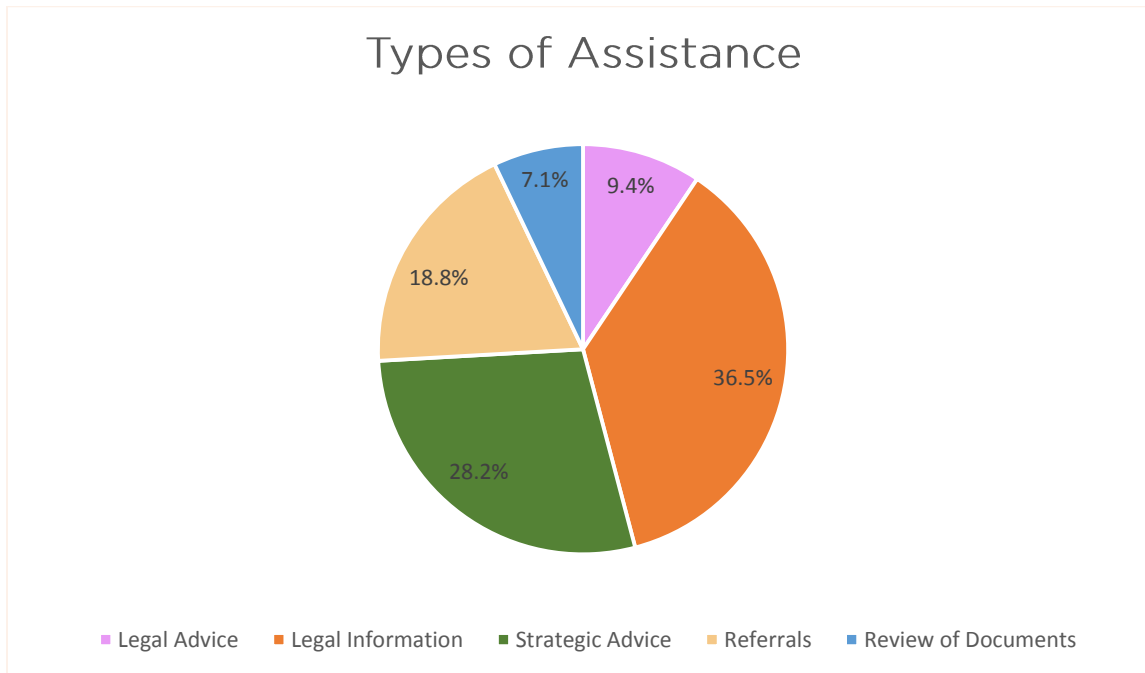
Figure 1. Types of Assistance Provided in Response to Requests for Secondary Consultation, Clinic B



In clinic H, legal advice was provided in 8 cases (9.4%). In four cases the legal advice was combined with strategic advice and 4 with referrals. Legal information was provided in 31 cases (36.5%). In 9 cases legal information was the sole action, in 12 cases it was combined with referrals, and in 10 cases with strategic advice. Strategic advice was provided in 24 consultations (28.2%). In 8 cases this was the sole action, in 10 cases it was combined with legal information and in 6 with review of documents. Review of documents was provided in 6 consultations (7.1%). Finally, referrals were provided in 16 cases (18.8%). The analysis is based on 51 cases out of a total of 97, with 85 separate items of advice.

⁹ The data presented in Figures 1 and 2 were adapted from Table IV, p 14 in Currie (2018). The unit of analysis was changed from case to type of advice. Since there were multiple types of advice provided for most cases the numbers are different from the original table.

Figure 2. Types of Assistance Provided in Response to Requests for Secondary Consultation, Clinic H



Legal advice was provided in a minority of secondary consultations. The most common forms of assistance were legal information and strategic advice. The nature of problems for which the helping organizations requested secondary consultations as indicated by the range of appropriate advice or other assistance went well beyond legal needs and the need for legal advice. This is consistent with Professor Sandefur's view that legal needs is a narrow construct reflecting the perspective of the legal profession.¹⁰ The assistance provided to the helping organizations can be interpreted as having been focused on finding resolutions rather than primarily on meeting legal needs.

The need for a new legal consciousness. Legal consciousness refers to social practices or forms of participation that sustain, reproduce or alter hegemonic structures and meanings about going to law. In the context of helping organizations in communities, legal consciousness refers to developing awareness about the connections between the law and their activities assisting people with everyday problems and developing ways to gain access to assistance in order to better serve their clients, members or constituents. One weakness of secondary consultation as a mechanism to assist helping organizations is that these organizations may lack sufficient knowledge about the legal aspects of the problems they are attempting to resolve for individuals or where to go to find appropriate assistance. This might be related a view of lawyers that is formed by the predominant image of lawyers in popular culture. Holistic and integrated practices of community-based legal clinics may not be well known. A second weakness very much related

¹⁰ Rebecca L. Sandefur, *Access to What?*, *Daedalus*, 148 (1) Winter 2019.

to the first is that requests by helping organizations for secondary consultations are voluntary. Parallel with individuals experiencing legal problems, if the service providers in helping organizations lack the basics of legal consciousness they will not suspect that the problem they are dealing with may have a legal aspect and therefore may not seek the help they need. Overcoming these weaknesses requires outreach strategies by legal clinics.

The needs of helping organizations take the form of understandings of holistic justice. One need of helping organizations is to understand the everyday legal problems perspective, essentially that legal problems are aspects of the problems experienced by people everywhere. Problems experienced by people in everyday life have both legal and non-legal aspects and that although there is a legal dimension, a legal solution is not always the only or the best option. This is an empowering concept that encourages helping organizations to take ownership of problems for which they offer advice.

A second and closely related need of helping organizations is to understand the way in which legal clinics that employ a holistic and integrated approach deal with problems. This is a corollary of the first need. Legal professionals that follow a holistic approach are interested in resolving problems and not limiting the effort to aspects that can be resolved by legal means. This may fly in the face of preconceived understandings of what lawyers do, perhaps rooted in dominant perceptions of lawyers in popular culture. During an interview carried out in the research on the first legal health check-up pilot study with a service provider from Voices for Change-- a community organization made up of people with lived experience with poverty-- an attempt was made to clarify the nature of the holistic service provided by Halton Community Legal Service. After listening carefully, the respondent remarked: *you certainly are a different kind of lawyer.*¹¹

Another very basic need of helping organizations is the need to strengthen their capacity to better assist their own clients. The advice provided to them through secondary consultation works to achieve this. When asked about the value of secondary consultation to the community organization one respondent said that the advice provided is *Absolutely, precedent-setting. Every time I deal with a situation, I am educated more about what to do next time. It does happen where one [secondary consultation] helps future clients without needing to call [the]clinic again.*¹²

Reciprocal and mutually supporting needs. The needs of legal clinics and community organizations are reciprocal and mutually supporting. Helping organizations have important resources that enable legal services providers to more effectively identify and better serve the needs of the public. First, they have entrée into hard-to-reach segments of the community. Second, they may be “trusted intermediaries” in the sense that disadvantaged people may be comfortable going to them for help. Some clients of helping organizations may resist help provided directly from legal clinics. This can be true in Aboriginal communities or other disadvantaged communities with a longstanding mistrust of the institutions of mainstream society. Helping organizations likely have special knowledge about the needs and conditions of

¹¹ Ab Currie, *Extending the Reach of Legal Aid, Report on the Pilot Phase of the Legal Help Check-Up Project*, Canadian Forum on Civil Justice, York University, Toronto, 2015 p.25.

¹² Ab Currie, 2019, p.19.

people in the community not easily available otherwise to legal clinics. This knowledge is essential if the legal clinic is to provide good holistic advice in secondary consultation. Finally, helping organizations have resources. They have experienced and knowledgeable human resources. They have in-kind resources that allow for venues for the establishment of subsequent contacts, notably in locations where people live or spend their time. It is important for community clinics to be able to tap into these resources and meet their needs in order to extend the reach of their services. What is required to extend access to justice may extend beyond their core financial resources from conventional sources and the skill sets of legal professionals. The community itself becomes the resource required to identify people with problems in that community and meet their needs.

The kind of advice provided by lawyers in response to requests for secondary consultations indicate the importance of forms of advice other than legal. Nonetheless, legal needs remain important. The everyday legal problems narrative suggests that legal needs should always be considered as being potentially part of the everyday problems faced by people. Only people trained in legal matters are able to assess a problem for legal implications and provide legal advice. Even if a legal solution is not recommended as the best option to achieve a resolution, it may be important to make that decision weighing the legal implications. The involvement of legal service providers remains important.

Do collaborations between legal clinics and lawyers require the leadership of lawyers? Judging from the experience to date with the legal health check-up, secondary consultation, justice and health care partnerships, legal clinics have taken the lead organizing partnerships so far. Access to justice has historically been a project of the legal profession, although as the meaning of justice and access to justice and understandings of the nature of legal problems change, the center of gravity of clinic – community arrangements may be shifting away from a legal clinic-centric to a more balanced collaborative model. This may continue as legal clinics concentrate on strengthening the communities they serve. It remains the case, however, that lawyers are uniquely trained and capable of making technical judgements about possible legal issues and actions. Second, lawyers may be viewed by service providers in helping organizations as powerful allies. A service provider interviewed for the secondary consultation project provided the following assessment. *Although I have a generalist's knowledge of some of the legal issues that clients have, having immediate access to more in-depth legal information and advice is second to none. My hands would be tied helping transient patients without having access to secondary consultation. I often find with [government service] they are a barrier-filled organization; I copy [the LSC advisor] on emails to.....and that will get me a response.*¹³

¹³ *Ibid*, p. 19.

CONCLUSION

The evidence from the LSC study supports the idea that the needs of helping organizations include a broad range of strategies to bring about resolutions rather than only meeting legal needs. While the unique capacity community legal clinics is making assessments of legal need, the advice provided through secondary consultations with other service providers and volunteer problem-solvers in community organizations were more broadly resolution-oriented than legal. There are a great many helping organizations in the community that are eager to work with community legal clinics and find value in enabling them to better serve their own clients. Building partnerships with these organizations holds the promise to greatly extend access to justice. This is historically a project of the legal professions but is increasingly also the domain of all organizations committed to social justice. The refocusing on providing resolutions rather than legal advice and the increasing role of organizations that are part of the social organization of helping in communities may change the ecology of access to justice and in doing so expand access to justice.