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Can Community Clinics Survive?: A Comparative Study of Law Centres in Australia, Ontario and England

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Can Community Clinics Survive?
A Comparative Study of Law Centres in Australia, Ontario and England

FREDERICK H. ZEMANS AND ANEURIN THOMAS

Introduction

This Chapter grows out of the authors’ research into contemporary developments in legal aid in Canada and the international environment. It focuses particularly on community clinics and their equivalents in Australia, Ontario and England. All three jurisdictions have adapted the American store-front legal clinic model to the needs and legal cultures of their society. In Ontario and England, legal aid has been dominated by the judicial system, emphasising the case-by-case delivery of legal services by private members of the legal profession (Zemans, 1994). Australia has a mixed model, in which over half of individual casework is dealt with by salaried lawyers in legal aid commissions (Fleming, 1994; Crockett, 1994). However, community-based organisations, variously called ‘community legal centres’ in Australia, ‘legal clinics’ in Ontario and ‘law centres’ in the United Kingdom, have made a contribution to legal aid services that is out of proportion to the resources devoted to them (Kuras, 1994; Stephens, 1991; OLAFS, 1991).

Here we look at each jurisdiction in turn. We start by examining the history of these clinics and their progressive roots. We then consider their present activities and future in a world in which governments increasingly emphasise centralised decision-making and control. Governments now speak the language of priorities, cost-effectiveness, financial and operational accountability, quality assurance and co-ordination. Centres perceive such demands for accountability as a threat to their independence. They fear a profound change, that will jeopardise their community roots and hamper innovation. We ask whether strategies are available to allow clinics to retain their independence and uniqueness in the face of these pressures to ‘bureaucratise’.

Australia

Out of the three jurisdictions, Australia has the most generous provision. In 1997, there were 151 community legal centres, or 8.1 centres for every million people
This compares to 6.4 centres per million population in Ontario and a mere 1.1 in England.

The first centre, Fitzroy Legal Service, was established in 1973. At the heart of the movement to develop community legal centres was a fundamental disenchantment with the manner in which traditional legal services dealt with the disadvantaged of society which was placing a particular emphasis on individuals and a case-by-case approach (Basten et al., 1983; Chesterman, 1996). Inspired by a commitment to equality before the law and a belief that social and structural change could be achieved through the legal system and community-based activism, centres sought to dismantle the barriers faced by the poor in securing access to justice. Consequently, their work has focused on disadvantaged individuals and groups within Australian society.

Australian community legal centres may be defined as community-based and community-managed organisations, structured to provide 'free, accessible and easy to understand legal services . . .' (NACLC, 1996). To combat the economic barriers, the early legal centres offered free legal advice to their clients. Although community legal centres lacked sufficient resources to provide extensive litigation services, they provided support in the form of advice and education for clients engaged in litigation. Some centres were able to finance public interest or test cases with legal aid funds from the state Legal Aid Commissions. Cases were selected on their capacity to benefit the greatest number of people in a client group and on the requirement of a reasonable chance of success.

Client involvement was central to the community legal centre movement's ideology. It was intended to overcome the sense of powerlessness of those confronting the legal system. The community legal centres also established networks of people facing similar problems, with the intention of relieving the sense of isolation felt by many disadvantaged clients and facilitating a view of their problems which encompassed the broader social context. Leaders of the community legal centre movement saw the formation of community groups and organisations as a vehicle for solidarity with the capacity to create community campaigns and social movements addressing the social problems facing their clients. As well, the community legal centre served as a resource for the community, providing assistance and advice.

1 This does not include the 23 Aboriginal and Torres Strait Islander legal aid services, which are managed and funded entirely separately and tend to concentrate on criminal law issues. These particular services are outside the scope of our study.

2 However, English law centres are larger. While Australian centres have an average of 6.2 full and part-time staff per centre, English law centres have 8.9 (NACLC, 1997; personal communication with Law Centres Federation, London).

3 This practice has generally been limited to some of the specialist centres such as the Consumer Credit Legal Services, the Disability Discrimination and Welfare Rights services and the Environmental Defenders Office. See National Association of Community Legal Centres, 1996.

4 For example, landlord-tenant disputes were a common class of problems faced by clients of community legal centres. These disputes arose from the fact that in many jurisdictions in Australia there was inadequate low-cost housing and furthermore, tenancy laws generally were overwhelming in favour of the landlord. See Basten, Graycar and Neal, 1983:180.
Many of their features were perceived as radical at the time of their development, including informal physical surroundings, accessible opening hours, group work, community legal education, law reform and a heavy reliance on volunteers. They have been typified as adhering to notions of 'grass-roots level organization, community control, empowering the recipient, de-professionalisation, human rights ... free access to services' (Basten et al., 1983:179). In the 1970s and 1980s, the community legal centres' programme roots and radical style of delivery prompted conflict with the private profession due to fears of loss of work and income (Chesterman, 1996). Relations with governments have also been heated at times. Nevertheless, although conflict persists over funding levels to community legal centres, they have finally been accepted by the profession and governments as integral to the legal aid infrastructure.

Commonwealth and state governments provide the overwhelming majority of funding. Despite this, centres have always stressed their independence, from both government and the legal profession. Originally, decisions were made by the membership, a broad concept that included not only volunteers and employees but also members of the community. During the formative stages of Fitzroy Legal Services, for example, extensive open meetings were held for all members (Chesterman, 1996). However, the ideal of community control, central to the centres' original mandate, has not been fully realised (Basten et al., 1983:180). Centres have progressed from relying almost entirely on volunteers to being employing organisations. As a result, the character of centres has changed and paid staff have become the dominant decision-makers. Despite this, there continues to be a strong reliance on volunteers, including not only volunteer lawyers, but also social workers, paralegals and students. The National Association of Community Legal Centres (1997:31) calculates that on average each centre has two to three solicitors, three or four other paid staff and 21 volunteers.

Centres have been defined by two different notions of community. Generalist centres are organised with reference to communities defined by geographical boundaries and offer services covering most areas of non-commercial law. Specialist centres are organised around communities of common interest (such as tenants, young people, refugees, women or consumers) and provide services designed to deal with problems in these areas. While generalist centres tend to concentrate on referral, information, advice and education, the specialist centres conduct more test cases and carry out significant law reform activities (OLAFS, 1991).


6 Data is drawn from a survey of 140 centres for a professional indemnity scheme. Between them the 140 centres employed 316 full or part-time solicitors, 554 full or part-time other staff and used 3,004 volunteers. The involvement of volunteers is much greater than in the UK, where law centres use on average only 5 volunteers each (Law Centres Federation, personal communication, 1998).
The various Australian states differ markedly in their mix of specialist and
generalist centres. Table 3.1 shows the distribution of community legal centres in
1992, illustrating the differing state traditions when it comes to funding centres.

Victoria leads the way, though Tasmania is generous in proportion to its small
population. In New South Wales the specialist tradition predominates. South
Australia, on the other hand, has little in the way of specialist provision, and lacks
the same culture of educational or reform work. In Western Australia, centres take
what has been termed a ‘social-work’ approach, motivated by a strong suspicion
of lawyers.

Despite these differences, however, there are many common threads. Across
all centres, assistance to individuals is a major, and often predominant, aspect of
centres’ work. Centres estimate that, collectively, they assist approximately
300,000 people annually (NACLC, 1997). A government study of four centres
carried out in the 1990s found that 26–48 per cent of time was spent on advice,
representation and referrals to other agencies. Community legal education took
8–16 per cent of time, law and administrative reform 6–14 per cent and adminis-
tration and service development 19–54 per cent (OLAFS, 1991: 100–1). However,
although the time allocation was relatively low, all four centres carried
out an impressive range of community education work. They prepared guides and
newsletters, gave local talks and courses and even produced radio programmes.
Increasingly, centres are co-operating in such activities and implementing
programmes through State Federations and working groups.

The pressing question is how far community legal centres will be able to
survive the change of political cultures implicit in the rise of the ‘New Right’.
Centres developed as part of the expansion of the welfare state, whereas now:
‘The ideology of the “neo-conservative” New Right rejects the concept of the

<table>
<thead>
<tr>
<th>State</th>
<th>No. of centres</th>
<th>No. of centres per m. pop.</th>
<th>No. of specialist centres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>38</td>
<td>9.0</td>
<td>15 (39%)</td>
</tr>
<tr>
<td>New South Wales</td>
<td>24</td>
<td>4.1</td>
<td>16 (67%)</td>
</tr>
<tr>
<td>Queensland</td>
<td>18</td>
<td>6.0</td>
<td>10 (56%)</td>
</tr>
<tr>
<td>South Australia</td>
<td>7</td>
<td>4.8</td>
<td>1 (14%)</td>
</tr>
<tr>
<td>Western Australia</td>
<td>10</td>
<td>6.1</td>
<td>5 (50%)</td>
</tr>
<tr>
<td>Tasmania</td>
<td>5</td>
<td>10.7</td>
<td>1 (20%)</td>
</tr>
<tr>
<td>Aust. Capital Terr.</td>
<td>1</td>
<td>3.4</td>
<td>1 (100%)</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>1</td>
<td>6.0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>104</td>
<td>49 (47%)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Williams (1992: 293)
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welfare state, takes the rhetoric of individualism literally and downplays the probable adverse social and political consequences of the "conflictual order" it advocates (Jayasuriya, 1996:19–20).

With a growing focus on economic rationalisation, the desire of governments to 'balance the budget' seems to apply regardless of which political party is in power. Social spending has been cut and programmes abandoned, reduced or transferred to the private sector. With cuts to welfare and other social programmes, the gap between the rich and the poor in Australian society has increased and more and more fall below the poverty line (Jayasuriya, 1996; Noone, 1997).

Despite the rise of the New Right, however, community legal centres have fared reasonably well for most of the last ten years, securing increased official recognition. In 1987, for example, the Labor Commonwealth Government created the National Legal Aid Advisory Committee (NLAAC) to advise the Minister responsible for legal aid. The Committee, which undertook a comprehensive review of the Australian legal aid system, published its final report in 1990 calling for the Commonwealth Government to take a more active leadership in the provision of legal aid (NLAAC, 1990). It was positive about the role of centres, and recommended improved access for the socially excluded, such as social security claimants, homeless young people and prisoners.

Shortly thereafter the Minister of Justice and the Commonwealth Attorney-General formed the Access to Justice Advisory Committee to 'make recommendations for reform of the administration of the Commonwealth Justice and legal system to enhance access to justice and render the system fairer, more efficient and more effective' (AJAC, 1994). When, in 1994, this Committee released its report, it also affirmed the notion that the Commonwealth should play a leadership role as the major funder of Australian legal aid. It endorsed the work of community legal centres and called for more programmes designed to provide community legal education, telephone advice and legal training for community and social workers (AJAC, 1994).

Alongside these endorsements came a steady increase in funding. The number of centres rose from 104 in 1992 to 151 in 1996. The Labor Government responded to the report with the Justice Statement of May 1995, by announcing that national funding of legal aid would increase by $68 million over a four year period, including an additional $14 million for law centres. The introduction stated that: 'The Commonwealth will also assert its proper role and authority as the major provider of legal aid funding. It will ensure that community needs regarding legal assistance are addressed fairly and efficiently, and that legal aid policies are oriented to meet community expectations' (Government of Australia, 1995:1).

It recognised the importance of community legal centres and endorsed the principle of community control: 'The government recognises that community legal centres' close links to their communities are an important part of their
effectiveness and accessibility and will continue to support and foster this fundamental characteristic through community participation and development’ (Government of Australia, 1995:109).

Implementation of the new package, however, was interrupted by the election of a new Conservative Government in March 1996. At first, the legal aid system seemed reasonably secure but the climate soon changed. Regan explains that:

In the election policy statements the then Opposition pledged to ‘maintain current levels of legal aid funding as well as funding to community legal centres’. Legal Aid Commissions were therefore shocked when, in the August budget, the new government announced its decision to cut legal aid expenditures. The proposed $33 million cut for each of the following three years represented approximately 20% of the Commonwealth expenditure, a drastic reduction by any measure. Surprisingly, instead of Attorney General Daryl Williams arguing that legal aid was ineffective, or inefficient, he argued that the cut was part of his Department’s contribution to the new government’s debt reduction strategy (Regan, 1997).

While the brunt of the cuts fell on the official legal aid commissions, community legal centres experienced a smaller but significant cut of 4 per cent of Commonwealth funding over the next two years. The additional monies promised by the Justice Statement were also cut. Needless to say, the cuts created difficulties for many centres, though none was forced to close.

Governments are not only reducing funding, but are also increasing managerial control. So far, the main effect has been felt within the legal aid commissions but pressure is also mounting on community legal centres. In 1995, the Attorney-General of Victoria introduced legislation which transformed the state legal aid commission into Victoria Legal Aid, a body which is corporate in structure and function. The old commission included representatives from a wide range of those concerned with legal services: the legal profession, community legal centres, salaried legal aid staff and the Council for Social Services. These were removed from Victoria Legal Aid, which was structured to provide greater efficiency and control (Noone, 1997:27). Meanwhile the Commonwealth and state governments have begun joint reviews of community legal centres in three states ‘with a view to increasing the efficiency and effectiveness of their operations’ (Keys Young, 1997). Governments may, in the future, rationalise centres and intervene in their activities more than they have to date.

Australian community legal centres are a success story. Until very recently, they have managed surprisingly well in the darkening economic and political climate. However, things are now taking a distinct turn for the worse. While the Commonwealth Government may endorse community participation in community legal centres, recent developments in the legal aid system indicate that the measure of success is the quantity of legal services purchased for every dollar (Noone, 1997:28). Community legal centres will have to compete for decreasing funding with the private profession, with commissions, with other welfare organisations and with each other. At the same time, poverty is increasing and legal aid
Commissions have fewer resources to help people in need. Community legal centres find their workloads rising at a time when their own resources are declining. Finally, the movement towards both more 'corporate like' structures for the administration of legal aid and to national planning, threatens the community basis of the legal centres' movement. This restricts the voice of the community and lessens the ability of the disadvantaged to express their views and to effect change through the system (Noone, 1997:29).

**Ontario**

If Australia's community legal centres have been successful, Ontario's have been even more so. Ontario's 1967 Legal Aid Act established a statutory right to legal aid and acknowledged the obligation of the government to individuals who could not afford a lawyer. The Act was premised on a desire to make the same legal services available to the poor as were already available to 'fee-paying' clients. Legal services were to be delivered through the judicare model, using private lawyers as service providers. The Act effectively established legal aid as a government-funded social programme for the poor.

The Act also set out the basic governance and management structure of the Ontario Plan, specifying that the Law Society would administer and determine policy for the Plan, and establishing with accompanying regulations, its coverage and basic financial eligibility criteria. The Plan was embraced by the profession. Approximately half of all Ontario lawyers registered their names on legal aid panels to be called if their services were required. The Plan was also embraced by the public, and both the number of certificates issued by and the total costs of the Plan grew considerably during this period.

Despite the growing number of certificates, in the late 1960s and early 1970s many lawyers and social activists concluded that poor people often had much different legal needs from 'fee-paying' clients. These analysts believed that judicare lawyers were not qualified to address the legal needs of the poor (Taman, 1971:9). As a result, a different delivery model was required: the community legal aid clinic, a model based on the American neighbourhood legal clinic. As in Australia, early community clinics were guided by five principles: a strong focus on the legal needs of the poor; community involvement in decision-making; independence from government and the Law Society-controlled Ontario Legal Aid Plan (OLAP); a broad definition of 'legal services', including law reform, public legal education and community development; and reliance on staff lawyers and non-lawyers to deliver services.

The early clinics' radical focus was reflected in their governance structure and staffing policies. Clinics were governed by 'community boards of directors' and were staffed by a combination of salaried lawyers and salaried 'community legal workers'. The community legal worker concept was new to the province. Neither
lawyers nor administrative staff, ‘CLWs’ were primarily community organisers whose focus was community legal education, law reform and community development.

The first community legal aid clinic in Ontario was established in 1971. The early clinics were established outside of the existing OLAP management structure and funded by a variety of charitable and government grants. As a result, the clinics had a considerable degree of independence. At this time, the clinics were not formally organised into a ‘clinic system’.

As the number of clinics grew, pressure mounted on the provincial government to provide them with funding. As a result, the provincial Attorney General appointed a Task Force on Legal Aid in 1973. Officially recognising the validity of the clinic approach to legal services for the poor, the 1974 Task Force Report on Legal Aid (the Osler Report) recommended a ‘mixed’ delivery system for legal aid in which the existing judicare system would be supplemented by staffed neighbourhood legal clinics funded by the provincial government. Mr Justice Osler noted that ‘the poor have many problems peculiarly their own ... [the poor] are tenants not landlords, debtors not creditors, purchasers not vendors’ (Osler Report, 1974:39). More precisely their needs have been seen as relating to housing law, income maintenance law (including welfare, family benefits, employment insurance, Canada Pensions, and workers compensation); work-related issues (including employment standards and occupational health and safety); and consumer and debt problems. Like other areas of law, the interpretation of the complex statutory and regulatory schemes in these fields often depends on legal assistance.

The provincial government accepted the Osler Report’s clinic recommendations. In 1976, a regulation under the Legal Aid Act established funding for the existing twenty-two legal aid clinics in the province (Ontario Regulation, 1976). In 1978, Mr Justice Samuel Grange conducted another provincial inquiry into legal aid, intended to examine the relationship between the clinics, OLAP, and the private bar. Like the Osler Report, the Report of the Commission on Clinical Funding (the Grange Report) affirmed the mixed delivery system of legal aid in Ontario, concluding that community clinics played a significant role in Ontario’s legal aid system. (Grange Report, 1978) The Report found that the clientele and legal issues addressed by the certificate programme and clinic programme were very different. As a result, the Report viewed the relationship between clinics and the private bar as one of co-operation, not competition, encouraging the growth of clinics to complement the services provided by the private bar under judicare. Importantly, the Report concluded that clinics should have ‘autonomy with respect to policy and administration, subject only to accountability for the public.

7 Parkdale Community Legal Services was a pilot project funded by the Federal Department of Health and Welfare, the Council for Legal Education for Professional Responsibility, and York University (Zemans, 1997).
funds advanced and for the legal competence of the services rendered' (Grange Report, 1978:22). Policy and administrative autonomy were considered necessary to ensure community control and preserve the clinics’ law-reform mandate.

In 1979, the Grange Report’s recommendations were incorporated into a regulation of the Legal Aid Act establishing the structure of provincial funding for clinics. The ‘Clinic Funding Regulation’ attempted to preserve clinic autonomy by effectively dividing the governance of community legal clinics between the Law Society’s Clinic Funding Committee (CFC) and volunteer, elected community Boards of Directors specific to each clinic. The CFC, like the Legal Aid Committee, is a Standing Committee of the Law Society, separate from the Legal Aid Committee, responsible for establishing policy and guidelines in respect of the funding of clinics and administering the clinic funding programme (Ontario Regulation, 1990). The clinics’ operational policies—including determination of case priorities, other activities and financial eligibility—are intended to be determined by democratically elected, volunteer Boards of Directors. The Regulation attempts to preserve clinic autonomy by establishing a complicated series of checks and balances between the CFC and the clinic funding staff (CFS). Initial funding decisions are made by the CFS but are ultimately determined by the CFC (Ontario Regulation, 1990). Distanced from the application process, the CFC hears appeals of funding decisions (Mossman, 1983).

There are currently seventy clinics in Ontario, serving over 100 communities; there are two main categories of clinics: general and specialty clinics. Fifty-six clinics are general service clinics, offering services in core areas of poverty law practice. Fourteen clinics are specialty clinics which specialise in a particular area of law or in the legal needs of a specific client group, such as the Advocacy Centre for the Elderly, the Advocacy Resource Centre for the Handicapped, Justice for Children and Youth, the Centre for Spanish-Speaking Peoples, the Canadian Environmental Law Association and university clinics.8 Ontario also has three clinics affiliated with university law schools in the province: the Correctional Law Project (Queen’s University), Legal Assistance of Windsor (University of Windsor) and Parkdale Community Legal Services (Osgoode Hall Law School).9

In 1996, clinics carried 37,097 files, provided summary advice in 147,636 poverty law matters, made approximately 70,000 referrals to social services, community agencies or private lawyers, conducted 2,055 public legal education sessions (reaching more than 72,000 people) and presented 792 briefs or

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8 The list of specialty clinics also includes: Aboriginal Legal Services of Toronto, Community Legal Education Ontario, Correctional Law Project, Industrial Accident Victims Group of Ontario, Injured Workers’ Consultant, Landlord’s Self-Help Centre, Metro Tenants Legal Services, Metro Toronto Chinese and Southeast Asian Legal Clinic, Pay Equity Advocacy and Legal Services, Metro Toronto Chinese and Southeast Legal Clinic, Pay Equity and Legal Services and Toronto Worker’s Health and Safety Legal Clinic.

9 Law students in these programmes complete a one-term placement in the clinic, earning academic credits while undertaking practical clinical work.
submissions in court or tribunal cases.\textsuperscript{10} They also produced videos and pamphlets, pursued law reform initiatives and launched community development projects which assist clients to organise and to form self-help groups focused on low-income issues, including injured workers and tenant associations (Law Society of Upper Canada, 1992:7). Simple case totals, however, may not reflect the relative complexity or impact of a single case. One clinic may specialise in complex test-case litigation, another in high-volume case representation. Clinics have always operated under capped budgets and their funding has been frozen since 1993. In 1995/6 the clinic system cost slightly more than 10\% of the total legal aid budget (Ontario Legal Aid Review, 1997; Clinic Funding Submission).

As not-for-profit corporations, clinics are managed by elected boards of directors who are responsible for clinic administration, personnel management (boards are the employers of the staff of each clinic), financial management, the determination of legal services to be provided (both the choice of area and the methods or strategies to be used) and the evaluation of services.\textsuperscript{11} The day-to-day management of each clinic is the responsibility of the executive director (a member of the staff).

The practices of most geographically based clinics are heavily weighted in the areas of social assistance (family benefits, general welfare assistance), workers' compensation, employment insurance, Canada pensions, housing (landlord and tenant, homelessness), and consumer problems: those areas of law which impact pervasively upon the lives of poor persons. The specialty clinics address a range of other legal issues of particular significance to their communities. Casework is the predominant activity of most clinics. Over the more than two decades of clinic operation, some clinics have offered limited services in criminal, family and other civil matters on an exceptional basis. Such assistance, however, has generally been provided only where clients have little access to other legal services, primarily in remote areas.

Two recent reports prompted by the fiscal crisis in OLAP's certificate programme strongly supported the goals and operations of Ontario's community clinic system and recommended the clinic system as a model for Ontario's legal aid system as a whole. The first, From Crisis to Reform: A New Legal Aid Plan for Ontario (Zemans and Monahan, 1997) was a privately funded report written

\textsuperscript{10} See Community Legal Clinics Statistics Discussion Paper, 1996, and letter from Clinic Funding Staff to Boards and Deans of Law Schools (29 Nov. 1996) [unpublished]. The clinic funding staff have stated that there are many problems in the processes used to gather the information reported by these statistics. For example, there is a lack of consistency between matters identified as case files and those identified as summary advice; the swearing of affidavits may be counted as summary intake in one clinic and as a case file in another. The clinic funding staff have finalised a new scheme for data collection, based upon new (and defined) categories to match actual clinic practices better, and this new system was put in place in 1998.

\textsuperscript{11} These responsibilities are spelled out in the Clinic Funding Operating Manual for clinics and in Clinic certificates.
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by Osgoode Hall Law School Professors Frederick Zemans and Patrick Monahan. The second, A Blueprint for Publicly Funded Legal Services (Ontario Legal Aid Review, 1997) (hereinafter McCamus Report), was a report by an independent task force funded and appointed by the provincial government. The McCamus Report stated that:

The community clinic model meets many of the goals we have identified for the larger legal aid system. The community clinic system can run on a capped budget; it works to understand and respond to individual and community needs; it utilizes lawyers, non-lawyers, public legal education initiatives, and other delivery systems in order to deliver services cost-effectively; it prioritizes needs and attempts to meet them strategically; it has developed linkages to nonlegal service providers; and it has recently adopted a quality assurance program (McCamus Report, 1997: vol. 1, c. 11).

Both reports strongly endorsed the principle of community governance as fundamental to the success of the clinic system and the delivery of poverty law services. Each noted the importance of community-elected boards to the independence of the clinics, to identifying and prioritising community needs and to ensuring accountability to the clinic community.

Both reports also noted that the present division of responsibilities between the Legal Aid Committee and the Clinic Funding Committee does not work very well. The Zemans-Monahan Report stated that the two committees exist as 'two solitudes', with decisions by each committee often, if not usually, being made without reference to the other. Despite this strong statement, both reports ultimately recommended comparatively modest efforts to improve co-ordination between clinics and the overall system.

The Zemans-Monahan study recommended that the provincial community clinic system should be integrated into the same regional board structure they recommended for the system as a whole (Zemans and Monahan, 1997:167). The study stated that these regional boards should eventually assume the duties and responsibilities of the current CFC. The formal relationship between a community clinic and its regional board should be established in a detailed operating agreement or an equivalent of the current clinic certificate issued by the clinic Funding Committee. The McCamus Report recommended even more limited structural reforms. Rather than recommending a full integration of the clinic system, the McCamus Report recommended that individual clinics and the overall clinic system should initiate a multi-year strategic planning process and that the Executive Director of each clinic and the Area Director of each OLAP area office should sit on each other's boards. Both reports recommended clinic representation on the Board of Directors of the proposed new statutory agency.

The more controversial recommendation of each report was that the clinic budget and the system's overall budget be integrated. The current Legal Aid Act explicitly separates the certificate programme budget and the clinic programme

12 The study was funded by The Donner Canadian Foundation.
budget. Each programme has its own distinct statutory funding regime. As a result, monies designated for one programme cannot be transferred to the other.\textsuperscript{13} The two reports came to the same conclusion. The Zemans-Monahan Report argued that clinics face grave threats to their funding if they remain dependent upon direct grants from the provincial government. They thought that the current funding structure, organised around dedicated grants to the Clinic Funding Committee, did not sufficiently protect clinics from potentially severe budget cutbacks initiated by a provincial government which was intent on cutting costs across the board or one which might be resentful of the clinics’ law reform activities. They argued that the current funding structure, organised around dedicated grants to the clinic structure, unnecessarily narrows the political constituency supportive of clinic funding (Zemans and Monahan, 1997:105).

Implicit in both reports was the conclusion that the present funding structure has contributed to the ‘two solitudes’, separating the clinic and certificate programmes. Both reports recommended that the budget integration be phased in over a period of years.

The public, legal aid stakeholders, and the provincial government were very supportive of the McCamus Report’s recommendations. Seeing the writing on the wall, and itself fed up with the constant headaches of administering a large social welfare programme, in February 1998 the Law Society voted overwhelmingly in favour of a motion to transfer responsibility for the administration of the Legal Aid Plan to an independent statutory corporation (Makin, 1998). They proposed that the Board of the new agency should be made up of provincial government appointees, Law Society appointees, and a Chair appointed from names recommended by a nominating committee comprised of the Attorney-General, the Treasurer of the Law Society, and a mutually agreed third party. In contrast to both the Zemans-Monahan and McCamus recommendations, the Law Society model did not explicitly include a clinic representative on the Board of the proposed agency.

Clinic representatives were alarmed by the Law Society model’s lack of a dedicated clinic or consumer representative on the Board, interpreting the Law Society’s proposal as a major regression from the McCamus model. Moreover, the model obviously ignored many of protections built into the McCamus model, including a Board-level clinic committee with dedicated staff. By way of contrast, the Association of Community Clinics of Ontario recommended a Board and agency structure which would considerably dilute the perceived power of judicair

\textsuperscript{13} This separation was intentional. The authors of the original Clinic Funding Regulation feared that ‘pooling’ the clinic and certificate programme budgets would give the Law Society the opportunity to systematically divert clinic resources to the certificate programme. This fear—which many, if not most, contemporary clinic supporters share—is founded on a belief that the Law Society’s commitment to private-bar delivery of legal aid would take precedence over its commitment to clinics, especially during times of fiscal restraint. According to this view, the formal separation of the two budgets is absolutely critical to the continued survival of the clinics.
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It is recommended that the Board should have as many non-lawyers as lawyers; that the Law Society should be obligated to appoint at least one clinic staff person; and that at least three members of the Board should be consumer representatives. It also recommended the establishment of a Standing Board-level clinic committee with dedicated staff and that the agency should have a dedicated clinic budget, expressed as a minimum percentage of the overall legal aid budget.

To date, the provincial government has not made any final decision on legal aid reform, although legislation is expected in the near future. In the present environment, clinic representatives are extremely wary of what they fear may be significant changes to the long-standing rules governing relationships between independent community clinics and the funding authority. They have repeatedly stated that the basic governance and funding structure set out in the Grange Report were fundamentally sound. They are suspicious of efforts to introduce system-wide statistical collection, quality assurance measures, performance measures, or service priorities and consider such initiatives as infringements on clinic independence.

Clinic resistance to contemporary provincial government social programme management techniques (quality assurance, performance measures, co-ordination of services, etc.) has led many commentators and stakeholders—including the authors of the Zemans-Monahan and McCamus Reports, clinic funding staff, administrators of the certificate programme, and representatives of the provincial government—to criticise the community clinic system as being inefficient or lacking accountability. The debate has intensified with the capping of certificate programme funding and the pressure on government and legal aid administrators to improve the cost-efficiency and financial accountability of the entire system.

The ongoing debate about integration, co-ordination and independence is often reduced to a recital of the merits of clinic system ‘centralisation’ versus the merits of relatively unfettered clinic ‘autonomy’. Some analysts argue that the CFC’s funding power gives it authority and responsibility to take a more assertive role in co-ordinating clinic planning and operations in the name of promoting accountability, efficiency and system-wide co-ordination. Others stress the importance of clinic independence, arguing that the CFC’s funding power is limited by the power of community boards to determine individual service priorities and clinic operations.

More than twenty years after the promulgation of the original Regulation, the debate remains vibrant. The paradox of the 1970s Grange model is that the same governance structure which has historically protected the clinic system against intrusions from judicare lawyers and the provincial government has also led to significant criticisms of clinics. The same transformative activities (law reform, community development) which make the clinic system successful also render it politically vulnerable. In fact, the clinic system is in a bind. Community clinics cannot easily embrace the ethos of cost-effectiveness and
co-ordination or integration within the larger system without significant consequences; any attempt to justify law reform or community development initiatives on the ground of cost-effectiveness, however valid, is a hard sell to the same politicians and funders who are often the focus of the clinic’s political organising.

Opponents of the clinic model often criticise the focus on law reform. They argue that law reform activities are not strictly ‘legal’, that law reform diverts attention and resources away from individual clients, and that it is inappropriate to spend public money on ‘political’ activities. This latter argument is particularly common within the halls of government. By way of contrast, community clinic supporters have argued that law reform is an integral and inevitable part of the clinics’ work. As Janet Mosher has argued, ‘The law reform work of clinics, particularly in situations where clinics act as a resource to low-income communities to facilitate their direct participation in law reform activities, enhances justice. At a more pragmatic level, participation of low-income communities will result in better laws’ (Mosher, 1997:935). Our view is that the long-term success of the community clinic model depends upon community clinics retaining their law reform focus. The original justification for the law reform mandate remains as valid today as in the early 1970s, perhaps even more so.

Clinics such as the Advocacy Resource Centre for the Handicapped, Justice for Children and Youth, the Correctional Law Project, and the Advocacy Centre for the Elderly, the unquestioned experts in their respective fields, have made invaluable contributions to the development of laws and policies for the betterment of all Ontarians. These specialty clinics have been able to devote more resources to law reform activities than general service clinics. As well, they are more likely to have well established links to social/political movements with the same goals. Finally, specialty clinics have been able to develop larger strategies, working with others in a larger social/political movement, in order to target resources and skills effectively. The Advocacy Resource Centre for the Handicapped, for example, is often viewed as the legal arm of Ontario’s disability movement. In contrast, while general service clinics often assess and litigate cases based upon their view of the long-term strategic impact of that case on a class of individuals or group, as a matter of necessity and mandate they are often required to restrict the scope of their law reform analysis to local activities and circumstances. As a result, the impact of their law reform activities is often localised. Most importantly, limited funding and the dire needs of their clients put incredible pressure on general service clinics to focus on individual casework.

Important challenges confront the community clinic system’s ability to benefit persons with low incomes through law reform. First and foremost, law and litigation is a limited, discrete tool. Political change generally requires a broad-based political strategy, of which legal work and litigation may be but one component. Political change also requires development of broad-based community support, media, lobbying, etc.—all of which requires more diverse skills than clinics are
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likely to be able to provide. Secondly, law reform often draws unwanted attention to the clinic system, raising the obvious potential for a government to cut off funding for clinics in order to silence political critics. In Ontario this potential has not been realised to date, despite the grumbling of successive provincial governments. Thirdly, it is not yet clear how law reform activities can be assessed, quantified or evaluated within ‘modern’ legal aid administrations which emphasise business planning, quality assurance, cost-effectiveness and management accountability.

Although the Provincial Government has not formally announced its plan for legal aid reform in Ontario, both the Attorney-General and staff in the provincial Ministry of the Attorney-General have been consulting with community clinic representatives on the basis that the community clinic system will continue to be an important component of the ‘new’ legal aid system in Ontario; amendments to the Province’s Legal Aid Act will preserve independent community boards; the new legislation will require the new legal aid agency to deliver ‘poverty law’ services and that, at the very least, the board of the new agency will include consumer representatives.

The Government has, however, also announced its intention to improve the cost-effectiveness and co-ordination of all the Ontario Legal Aid Plan’s services, including community clinics. To date, the Government has not announced details of these measures. The Government’s commitments have been clearly been influenced by, and are consistent with, the recommendations of the McCamus Commission. If Ontario’s new legal aid legislation matches these commitments, the community clinic system in Ontario will have retained an enviable measure of legislative protection and stability.

England and Wales

English law centres, like their Australian counterparts, have faced many challenges, first from the profession and secondly from their principal funders. Unfortunately for them, they have never managed to attract the all-round support afforded to Ontario community legal aid clinics. Yet it all began so optimistically. The introduction of judicare in the United Kingdom in the early 1950s contained provision for state-salaried lawyers (albeit appointed and controlled by the Law Society) to complement the efforts of the private profession in poorer areas. However, although retained in the legislation to the present day, the provision was never implemented. As a result the law centre movement in England and Wales, as in Australia and Ontario, owed its origins to a dissatisfaction with judicare as a means of addressing the legal needs of the poor. With the notable exception of the very first law centre to be set up in England and Wales in 1970, in North Kensington, the early neighbourhood law centres were attracted by the model of the community law centres in the United States. They focused strongly on the
legal needs of the poor, favoured community involvement and independence from
the private profession (including the professional bodies), were prepared to
handle test cases in pursuit of law reform, engaged in public legal education and
relied on a mix of staff lawyers and lay workers. North Kensington, however,
sought to restrict its efforts largely to individual casework, seeing itself as closely
akin to private practice.

Soon after the first law centres were established the Government bowed to the
pressure of the Society of Labour Lawyers, the Conservative Lawyers Group, the
National Consumer Council, and the Law Society, by introducing a greatly
expanded advice and assistance scheme, known as the ‘Green Form’ scheme.
With a simple financial eligibility test and covering any area of English law, it
was hoped that the Green Form scheme would encourage the private profession
to use it in poverty law areas, rather than crime and family cases which had domi­
nated judicare since its inception. While law centres found imaginative ways of
using the scheme, e.g. by combining multiple applications with extensions to
fund the acquisition of experts’ reports (Paterson, 1979) the private profession
showed no similar flexibility. Payments for social welfare law cases rose
painfully slowly from 10.7 per cent of Green Form accounts in 1975/76 to 16.6
per cent in 1985/86 and 21 per cent in 1990/91 (Goriely, 1994; Smith, 1997b).
During the same period it was estimated that nearly 60 per cent of the work of
English and Welsh law centres concerned housing, welfare, employment and
immigration matters.

In 1986, the Legal Aid ‘Efficiency Scrutiny’, established by the Government,
recommended that large sections of the Green Form scheme be transferred to the
voluntary advice sector. Fierce debate arose and the recommendation was never
implemented, although it did set the stage for future Government intervention.
The Scrutiny made another suggestion, subsequently implemented with little
protest. In 1988, the Government passed the Legal Aid Act 1988 which trans­
ferred the administration of legal aid from the Law Society to the newly created
Legal Aid Board (LAB) (Lord Chancellor’s Office, 1986). In the past, the Law
Society had wanted control over the administration of legal aid, but by 1986 it
was somewhat relieved to be absolved of responsibility, given the amount of criti­
cism it had received from its members (Smith, 1997b:154).14 (We noted a simi­
lar response in 1998 by The Law Society of Upper Canada.)

Unfortunately, the transfer had no impact on law centre financing. Contrary to
the position in Australia and Ontario, funding for United Kingdom law centres has
never been part of the mainstream of publicly funded legal service. Many centres
were funded initially from Urban Aid, a partnership between central and local
government concentrating on inner-city rejuvenation, or by charitable foundations.

14 In one experiment involving microfiche, a legal aid office was paralysed and unable to admin­
ister itself. After the Legal Aid Board took control, the Law Society would not have to worry about
such embarrassments.
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These grants were time-limited, so every centre sooner or later faced major financing problems. In 1975 the Labour Lord Chancellor extended central government funding to seven law centres with financial problems but this concession was never expanded. Surprisingly, the concession was continued under Conservative governments but only for those seven centres. From 1982 onwards governments took the view that law centres were for local authorities to support. The result was an unequal funding base for law centres across England and Wales: law centres located within the jurisdiction of Labour councils generally received better funding than those in Conservative jurisdictions. Such funding inequities were exacerbated by the allegedly ‘political’ activities of some law centres (e.g. community organisation or challenging the policies of the local authorities) which tended to upset Conservative councils more than Labour ones. Nor was it just the local authorities. As early as 1973, the Law Society had begun to criticise law centres for ‘stirring up political and quasi-political controversy far removed from their principal mandate of ensuring equal access to the protection of the law’ (Smith, 1997a:905). By 1979, the Labour Government’s Royal Commission on Legal Services was adding to that criticism (Royal Commission on Legal Services, 1979). The ‘Commission appeared hostile to any role for the centres beyond increasing provision for casework in social welfare law’. Particularly averse to the activist role asserted by the law centre movement, it recommended a new era of non-political citizens’ law centres (Smith, 1997a:907). The Commission also advised that law centre funding should be provided entirely by central government, rather than from a variety of funders which included local governments. This advice was never heeded since the Conservatives took office shortly after the publication of the report.

The Law Society’s opposition to political activities by law centres was symptomatic of their understandable suspicion of the early law centres. The centres espoused progressive forms of lawyering which were unsettling to traditionalists, and the fact that they offered their services free of charge was perceived as unfair competition. Operating a law centre required a waiver from the Law Society of the professional rules against advertising and sharing fees. This gave the Society the ability to control where and when a new centre could be established. In 1975 a group of local practitioners in Hillingdon, outraged by the imminent funding of a local law centre, pressed the Law Society into refusing to grant waivers to lawyers working in the centre. The Government intervened on the side of the law centres, threatening legislation. Eventually an accommodation was reached under pressure from the Labour Lord Chancellor. In future, provided centres agreed not to compete with private practitioners in such areas as adult crime, matrimonial and personal injury litigation, probate and conveyancing, the Law Society would no longer use its powers to grant waivers as a means of controlling the setting up of law centres (Smith, 1997b:152). In truth this compromise suited

15 This division of labour parallels that in Ontario between clinics and the certificate scheme.
both sides since few centres saw their mission as requiring them to invade the traditional areas of private practice. Moreover it soon became accepted that UK law centres, by referring such work to the private profession, generated income for the private profession rather than taking it from them.

However, the division of labour did not solve the long-term funding crisis facing the law centre movement. Gradually they were forced to turn more and more to individual casework funded by legal aid rather than the more innovative forms of poverty lawyering which they had espoused in the early years. Indeed, the amount of casework a law centre pursues is largely determined by the existence of other sources of legal aid. Following the deregulation of the profession in the 1980s the Law Society lost its ability to curtail the work of law centres through waivers. This has created the intriguing scenario of law centres moving into the areas of work previously colonised by the private profession. It remains to be seen to what extent the dependence on casework encourages moves in that direction. To date, most centres have tried to maintain a broader concept of ‘access to justice’: ‘Use of the [Green Form] scheme by Law Centres is indeed regarded with a certain ambivalence by the people who work in them . . . [W]hile ‘Green Form’ work (and other legally aided work) provided a useful source of revenue, it was not regarded as a mainstream activity of Law Centres. It was even in some respects viewed as representing something of a diversion from the main work that staff wished to undertake [sic]’ (Baldwin and Hill, 1988:102).

The Law Centres Federation, the voice of the law centre movement, views casework as merely one aspect of the function of a law centre. Indeed, as reflected in the Federation’s definition of a law centre, casework is often considered only a minor aspect in the provision of services by law centres: ‘Law Centres aim to make the most efficient use of their resources and so have developed several methods of work to achieve the best results. These include case work, participating in the process of legal reform, campaigning, education work, development work and resourcing (providing a valuable source of information and support for all sorts of agencies and groups)’ (Law Centres Federation, 1991).

Law centres have structured themselves to deal with the need for flexibility, by generally encouraging horizontal power structures, self-servicing, skill-sharing and community control. Nonetheless, these values are not all manifested in every centre. As in Australia, community control has proved elusive in the UK, either because the salaried staff take de facto charge of policy or because some local authorities insist on a hierarchical management structure as a requirement for funding.

Despite financial difficulties, the number of law centres grew from 28 in 1979 to 56 in 1986. The number of citizens’ advice bureaux (CABx), lay advice centres grew from 473 in 1966 to 869 in 1986. In the same time period the volume of enquiries at CABx had grown from 1.3 million to 6.8 million. In the 1970’s, CABx had also experimented, on a pilot basis, with the employment of solicitors; in some cases they also combined efforts with law centres. Between 1990/1 and 1995/6, the
amount of money received by law centres for ‘Green Forms’ increased from £1 million to £1.9 million. However, ‘Green Form’ payments to the private profession in social welfare areas increased by a greater margin in the same period. Similarly, funding to advice agencies that employed lawyers increased from £202,000 to £1.2 million (Smith, 1997a:912). Moreover, in 1996, as part of a pilot project, the LAB dispersed another £2.6 million to advice agencies that did not employ lawyers. Since 1986, CABx and the private profession have come to attract an ever greater percentage of legal aid funds flowing towards social welfare law. Three principal reasons account for the shift in the delivery capacity of CABx and private practitioners. First, private practitioners—particularly those in niche social welfare firms (often near law centres and staffed by ex-law centre workers) began to use the ‘Green Form’ scheme extensively for social welfare work (Goriely, 1994). They also colonised special interest groups influential within the field. Secondly, advice centres have overtaken law centres in terms of volume of casework. Finally, high-level test cases have become much more a specialty of national not-for-profit pressure groups such as the Child Poverty Action Group, Shelter (a housing campaigning organisation), and Liberty (formerly the National Council for Civil Liberties) (Smith, 1997a:897,913). It must be remembered, however, that the law centre movement does not generally measure its success by its volume of casework or by the number of individuals served.

In recent years, legal aid policies have begun to change. The advent of franchising (see Paterson and Sherr, Chapter 10, below) offered new opportunities for funding for law centres. Franchising is a system that rewards providers who can satisfy criteria of competence in their work as well as adhering to key practice management standards (Legal Aid Board, 1989:6).

A number of law centres became franchised. However, in a White Paper (UK, 1996) published by the Conservative Government, franchising evolved into the concept of contracting. In future, only providers with quality assured contracts with the Legal Aid Board will be able to provide ‘Green Form’ work. The allocation of the contracts would be based on geographic assessments of need and competition between service providers. While franchises were not intended to be exclusive (i.e. any number of service providers could qualify to be franchised) contracting is effectively exclusive insofar as there are a finite number of contracts available.

Shortly after the publication of the Conservative White Paper, the Labour Party was voted into government. While the new Government adopted the Conservative plans for contracting, Labour has also made a commitment to a community legal aid service (Lord Chancellor’s Department, 1998).

16 Organisations such as the Housing Law Practitioners Group or the Immigration Law Practitioners Association, largely dominated by private practitioners, are very influential.
17 In other jurisdictions, the function of these groups may be handled by specialty legal aid clinics. However, in England and Wales there exist both specialty clinics and lawyer-employing pressure groups.
While the proposals have not been passed into law at the time of writing, the Government seems committed to transferring 'Green Form' resources towards advice for social welfare law. This will result in opportunities for law centres and advice agencies to obtain exclusive contracts to provide advice on aspects of social welfare law (ibid.). While this will place them in competition with the private sector, it will only be with private firms specialising in social welfare law, of which there are relatively few.

Overview and conclusion

We return now to the questions that began this Chapter: can independent community clinics survive in a world in which governments increasingly emphasise centralised decision-making and determination of service priorities, cost-effectiveness, financial and operational accountability, quality assurance and co-ordination of service providers? Can clinic supporters adopt strategies to ensure that they are able to retain their independence and uniqueness in the face of countervailing pressures to 'bureaucratise' or centrally manage their operations? Our review of the clinic systems in Australia, England and Wales, and the Ontario case study demonstrate that there are no simple answers to these questions.

Law Centres in England and Wales have never been as significant an element in the legal aid system as the legal clinic in Australia or Ontario. The historic lack of substantial funding for Law Centres has considerably limited their development and effectiveness. Moreover, Law Centres are now being tempted to compete with the private bar and the advice sector for limited funds. Australian Community Legal Centres have not suffered the same lack of funding and central support as England’s law centres. There are, however, major challenges which threaten to alter fundamentally the nature of Community Legal Centres, including the focus on centralised planning and the concurrent lack of consumer or Legal Centre representation on the bodies governing legal aid. Of the three jurisdictions, the Ontario community clinic system appears at present best placed to meet the current challenges effectively. Indeed, the reforms which have been suggested by the Ontario Government do not fundamentally change the governance or operations of the community clinic system. In fact, they may strengthen it.

To what can we attribute the comparative success of Ontario’s community clinic system? Several factors can be identified. These include the Province’s long, successful experience with community clinics; the size and the sophistication of the system; the protection afforded clinics by the Grange governance and funding structure; the fact that political attention in recent years has been focused on the ‘crisis’ in OLAP’s certificate programme; the clinics’ success at building community networks; continued support for clinics among legal and bureaucratic elites (many of whom worked in clinics as students); and the strong endorsement
of Ontario’s clinic system by domestic and international observers.

Ontario’s experience offers valuable insights as to the conditions required for the continuance and future success of the community-based legal clinics. It suggests that community legal clinics can survive, and perhaps thrive, in the face of contemporary challenges, but that their chances of survival can be enhanced if certain prerequisites are present:

a. clinics should have networks of supporters within their communities, the legal profession, government bureaucracies and the governing bodies of legal aid programmes;
b. legal aid systems should maintain a clear division of labour between the private profession and the clinics;
c. funding sources should be stable and secure;
d. independent community clinic boards should be preserved;
e. legal aid plans should have specific administrative structures dedicated to clinic issues; and
f. community clinics should adopt new management techniques, including quality assurance programmes, performance measures, and strategic planning, despite expressed concerns about their relevancy to the clinic model.

In many respects, the issues defined above, though specific to the Ontario case, identify critical aspects of a continuing clinic movement whatever the jurisdiction. For this reason, it is interesting to examine the issues in more depth and to extrapolate as to the general applicability of the issues and concerns. Each of these issues is discussed briefly below.

**Clinics should have networks of supporters within their communities, the legal profession, government bureaucracies and the governing bodies of legal aid programmes**

The community clinic model has developed a wide range of supporters in each clinic’s respective community, in the Province’s legal profession, and in the justice system’s bureaucracy. This network has been vital to preserving clinic funding throughout changes in governments and political philosophies. Community clinics, in both Australia and Ontario, have been effective in mobilising support at key moments to lobby in support of maintaining clinic funding. (By contrast, since 1995 Ontario’s funding for most community service providers has been cut dramatically and welfare rates have been reduced by over 20 per cent.) Representation of clinics on state or national governing bodies drawn from local clinic boards ensures that clinic issues and perspectives will be heard by the legal aid authority’s highest levels. Moreover, it ensures that the perspective of a person with experience in community-based service delivery will be integral to policy discussions.

From a clinic perspective, the appointment of a member (or members) either representative of, or associated with community clinics would obviously be the
best governance model. As discussed earlier, the recent changes in Australia seem to be moving away from clinic or community leadership in legal aid administration. Unlike the previous state legal aid commission, the board of directors of Victoria Legal Aid does not include any nominee from community legal centres or the community.

**Legal aid systems should maintain a clear division of labour between the private profession and the clinics**

There are two straightforward reasons for ensuring a clear division between clinic services and judicare services: fear of being ‘overwhelmed’ by criminal and family cases, and fear of competition from the private bar. In Ontario, clinic supporters argue in favour of a clear division between clinic services and judicare services because of a fear that clinics could be overwhelmed by either criminal or family cases, effectively eliminating their poverty law focus. Hence, clinic supporters in Ontario have always argued for a ‘bright line’ dividing clinic and judicare practice. In Australia, England and Wales, and Quebec the situation is reversed. The governments of these jurisdictions have intentionally promoted competition between alternative services providers as a means to lower costs. Rather than being overrun by criminal and family cases, Community Legal Centres and Law Centres are facing competition from the private bar on their own terms. Increasing numbers of private lawyers and other service providers now provide poverty law services.\(^{18}\)

One way to overcome the threat that this poses is to espouse a flexible, statutory definition of ‘Poverty Law’.\(^{19}\) Definitions which are overly specific run the risk that the board will refuse to authorise services being provided in areas not mentioned in the legislative definition. Just as importantly, a specific definition can be written and interpreted to preclude law reform activities. General definitions, on the other hand, give community boards the flexibility to respond to such local needs as they deem appropriate.

**Funding sources should be stable and secure**

Clearly the Australian and Ontario clinics started with the major advantage of central funding which has always been denied their English counterparts. However, as US legal services (see Chapters 1 and 2) have found, central funding can be lost where government and community support falter. Equally, hostility from the local legal profession or local government can jeopardise local funding, as several English law centres have discovered.

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\(^{18}\) As discussed above, the Commonwealth Government in Australia is increasingly shifting responsibility for social programmes such as legal aid to community legal centres and other social organisations. This has resulted in a greater demand on both the financial and personnel resources of community legal centres. It is anticipated that case-loads in community legal centres will increase.

\(^{19}\) For example, the Association of Community Legal Clinics of Ontario proposed the following definition to the Ontario Government during the Government’s legal aid consultation: ‘legal issues which particularly impact on low-income communities, and which are identified by those communities as being of critical importance to them’ (Ontario Legal Aid Review, 1997).
Independent community boards should be preserved

It is, or should be, axiomatic that the character of community clinics cannot survive without independent community boards. The recent Ontario Legal Aid Review in Ontario, like others that have examined community clinics, stated that ‘community governance is of fundamental importance to the mandate and operations of the community clinic system and the delivery of “poverty law” services’ (McCamus Report, 1997:193). The Report described the advantages of community governance succinctly: ‘Community boards have historically been important in ensuring independence from both the [Ontario Legal Aid Plan] and the provincial government; in assisting the clinic in identifying and prioritizing community needs; in ensuring accountability to their communities for the nature and quality of services provided; and, through their board members, in providing vital linkages to other community services’ (ibid. 193-4).

Moreover, independent boards offer several advantages to governments interested in saving legal aid costs: independent clinics hire their own staff, reducing government payrolls and operations; the government is not legally liable for lawsuits against the clinics; and community boards donate considerable time and skills which might otherwise have to be paid for.

Legal aid plans should have specific administrative structures dedicated to clinic issues

The experience in Ontario and Australia over the last 20 years has proven the immeasurable value of having an administrative structure within the larger legal aid system specifically dedicated to clinic issues and programmes. Clinic administration is fundamentally different to the administration of other parts of a legal aid programme, especially judicare. In the absence of a dedicated administrative structure, there is a real chance that clinic issues will be lost within the larger legal aid debate. A dedicated administrative bureaucracy can provide sophisticated policy analysis appropriate to, and reflective of, the community clinic system.

Adoption of modern management techniques

At this point, we must stress the distinction between adopting modern management techniques (such as quality assurance programmes, performance measures and business planning) and centralised, hierarchical control of service priorities and delivery mechanisms. In an era in which government and legal aid administrators emphasise the need for cost-effectiveness and financial accountability, clinic resistance to the adoption of modern management techniques is self-defeating. Future funding for clinics is clearly dependent upon clinics both being able to deliver their services cost-effectively and their ability to prove that they can do so.

Our consideration of the history and current developments in Australia, Canada (Ontario) and the United Kingdom have led to certain predictions concerning the future of the clinic movement. Despite current problems, we
conclude on an optimistic note. Though judicare represents the predominant model of service delivery in the United Kingdom and Ontario, and despite the movement away from community-based social programmes, community legal clinics have generally developed strong roots and distinctive structures that have a unique capacity to respond to the needs and agendas of the three jurisdictions studied. We anticipate that these strengths will allow them to continue to develop and to respond to the expectations and needs of low-income citizens in each of the three countries.