

Community Justice Help: Advancing Community-Based Access to Justice

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Draft Discussion Paper – Summary and Preview
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Preface

This summary and preview of a draft discussion paper has been produced in the course of a Community Leadership in Justice Fellowship awarded by the Law Foundation of Ontario to Julie Mathews, the Executive Director of Community Legal Education Ontario (CLEO). The year-long fellowship enabled Julie to conduct research on “advancing community-based access to justice”, in partnership with Professor David Wiseman of the Faculty of Law at the University of Ottawa.

The purpose of the research project is to explore how the not-for-profit community-based sector in Ontario can be better supported to help people who come to them with life-affecting problems with a legal element. The research builds on the extensive work and findings produced through a recent report prepared for the Law Foundation of Ontario, *Trusted Help: The role of community workers as trusted intermediaries who help people with legal problems* (the “Trusted Help” report).¹

The discussion paper refers to the work that trusted helpers do in relation to helping people with life-affecting problems that include a legal element: “community justice help”. We propose a framework that supports community workers in the not-for-profit sector in providing community justice help that is of good quality across three dimensions: knowledge and skills, ethical infrastructure, and responsiveness to the community-based context.

In addition to reviewing relevant literature, we conducted interviews with key informants from community-based organizations on their past and current practices. We are grateful to all informants for the time and effort they devoted to sharing this information.

In developing the discussion paper we have also benefited from informal feedback provided by colleagues in the academic, justice and community-based services sectors. We are grateful for their time and engagement, but we do not purport to have attempted to represent the diversity of feedback in the content of the discussion paper. The views and analysis expressed in this summary are our own and only we are responsible for any errors or omissions. We are also grateful for the research assistance provided by a number of students in the Faculty of Law at the University of Ottawa.

¹ Karen Cohl, Julie Lassonde, Julie Mathews, Carol Lee Smith, George Thomson, *Trusted Help: The role of community workers as trusted intermediaries who help people with legal problems* (Toronto: Law Foundation of Ontario, 2018) [*Trusted Help*]

The need for this research

Numerous surveys and reports have documented the access to justice “crisis” that exists in Ontario and, indeed, throughout Canada.² Although “access to justice” is a broad term that encompasses a range of issues, it is common ground that:

- Legal problems are prevalent in many people’s everyday lives, particularly problems relating to housing, family, debt and consumer issues, and employment.³
- Legal problems typically come in clusters, with one problem (whether legal or other) triggering other problems. This is particularly the case with respect to legal problems experienced by people with lower incomes. Law-related problems, in other words, are frequently interwoven with a range of other problems, such as health, social, financial, housing, and other problems.
- Affordable and accessible “legal services” – legal advice and representation from a licensed legal professional – are lacking for many of the most common legal problems, including problems that, if unresolved, have potentially serious consequences. This lack of access to help is an important contributor to the access to justice crisis.⁴

The gap between people’s need for help with legal problems and the availability of accessible and affordable help for those problems is wide.⁵ Many actions, on many fronts, will be required to make inroads in closing the gap and improving access to justice.

From the perspective of the particular needs and actions of people with life-affecting problems that include a legal element,⁶ and who live on limited or modest means or experience other social disadvantages, the discussion paper explores options for moving forward in one part of this quest, a part that is emerging as a crucial component: community-based access to justice.

² Canadian Bar Association Access to Justice Committee, *Equal Justice: Balancing the Scales*, (Ottawa: Canadian Bar Association, 2013), online: Canadian Bar Association http://www.cba.org/CBA/equaljustice/secure_pdf/EqualJusticeFinalReport-eng.pdf >; Ab Currie, *Nudging the Paradigm Shift, Everyday Legal Problems in Canada*, (Toronto: Canadian Forum on Civil Justice, 2016); Michael J Trebilcock et al, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012)

³ These are areas of people’s regular or “everyday” personal lives and so these problems are often referred to as “everyday” legal problems. However, we avoid the modifier “everyday” to describe the common occurrence of certain types of legal problems because “everyday” – with its connotation of “ordinary” or “typical” – risks minimizing the impact of serious legal problems that frequently occur in people’s lives.

⁴ Lack of access to help is only part of the lack of access to justice because access to help with legal problems is only part of what may be needed to achieve access to justice.

⁵ It should be recognized, as Rebecca Sandefur’s work has noted, that not all people with legal problems want to address those problems nor do they necessarily need or want ‘legal’ help, see Rebecca L. Sandefur, “The Importance of Doing Nothing: Everyday Problems and Responses of Inaction” in Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., *Transforming Lives: Law and Social Process* (Stationery Office Books: London, 2007; Rebecca L. Sandefur, “Access to What?” (2019) 148: 1 *Daedalus* 49.

⁶ We prefer to use the term “life-affecting problems with a legal element” rather than merely “legal problem.” The designation of a common law-related problem as a “legal problem” may tend to produce or reinforce an assumption that the problem can only be resolved via the assistance of a licensed legal professional (in Ontario, a lawyer or paralegal). There is also the potential for the “legal problem” label to obscure the possibility that a problem is multi-dimensional (a problem may have both legal and non-legal elements). In fact, the legal aspect is often secondary to non-legal aspects in many situations; a resolution may need to reflect an approach that doesn’t resort to the law as a primary course of action and a person may need to seek multi-disciplinary help to identify a range of possible approaches.

Building on what exists: community-based help that responds to needs

Ontario is fortunate to have a well-developed system of not-for-profit community-based service organizations and practitioners. The community-based sector is at the frontline of providing help to people with life-affecting problems – a housing maintenance issue, a family relationship breakdown, loss of a job. Many of these problems include a legal aspect either in how the problem is defined or how the problem might be resolved, or both – the legal right of a tenant to a habitable apartment, the legal obligation of a separating parent to pay child-support, the legal protection against discrimination in employment, or a legal entitlement to employment insurance.

Often, life-affecting problems will have other dimensions as well – social, financial, health-related, and so on. The legal dimension of a problem may be dominant or it may be minor or somewhere in between. Access to help that can address the legal dimension may be useful or necessary to resolving these problems. Of course, when a life-affecting problem is multi-dimensional, other types of help – such as social or financial help – may also be necessary.

The Trusted Help report, as well as other research, documents the fact that many people in Ontario who face law-related problems turn to someone in the community they trust, notably staff or helpers at community-based organizations. And these trusted helpers respond to the requests for help in ways that reflect their knowledge, skills and resources; their support spans a spectrum in terms of depth and breadth, ranging from information that a legal right exists, to some information about the nature of the legal right and important things to be aware of, to a description of options, to helping complete forms, to accompanying to meetings or even to tribunals or courts, to referring to legal services or other forms of assistance.

Community workers typically provide their roster of services day-in and day-out, bringing the knowledge and skills they've developed through prior education and training and through on-the-job experience. Indeed, many community workers have some form of “specialization”; they provide settlement services to refugees, housing support services to tenants, consumer or debt services to people with a problematic contract or debt, or family support services to people who are experiencing family breakdown or partner abuse.

Trusted helpers – or community workers – offer assistance that is grounded in the reality of what people in the community face; for example, the realities of income security, housing arrangements, security of family units, security of status in Canada, barriers of discrimination, and support systems that people in the community rely on. Community workers have the experience and training to understand the context for and respond holistically to the mix of needs of community members, including law-related needs. We are calling this type of community-based help, “community justice help”.

In Ontario, there are significant perceived constraints on the extent to which trusted helpers can provide or enable help on a problem that has a legal element. The relevant rules presumptively restrict the “practise of law” and “the provision of legal services” to licensed legal professionals (lawyers and paralegals). The definitions of “practise of law” and “legal services” are open to interpretation and not entirely clear, but potentially encompass a very broad range of legal support and assistance, which has produced a perception of significant constraint.

In turn, this perceived constraint serves to restrict community justice help services in Ontario, even where there are no affordable or otherwise accessible services from licensed legal professionals to

which a client could be connected. As the Trusted Help report notes, “For many clients, the help they receive from a community worker is the only help they will get for their legal problem.”⁷

It is the proposal of this discussion paper that these community-based trusted helpers – community justice help providers – should be embraced and supported as justice partners as an important step forward in improving meaningful access to justice.

A proposal: supporting and enabling community justice help

Our proposal is guided by a core principle: people in Ontario should be able to access effective, good quality help or assistance with their life-affecting problems, including problems that include a legal element. Indeed, it is the obligation of the legal profession – and governments that are responsible for setting the terms that govern people’s access to essential services – to facilitate people’s access to good quality help with life-affecting problems that include a legal element. This is in the public interest, for the public good.

Our proposal has three components:

- a three-feature framework for defining “good” community justice help
- a set of markers or indicators for each of the three features
- a list of key elements of a “supporting, equipping and enabling” approach to community justice help

We propose that community justice help for life-affecting problems that include a legal element should be supported and assisted, rather than prohibited or discouraged. Our proposed framework embodies the principles that underpin the regulation of the legal profession (and other occupations and professions), but also reflects the importance of supporting people in getting help with their problems that include a legal element.

Three-feature framework

This “equip” not “restrict” approach should be followed where three features are present.

1. Community-based service workers in the not-for-profit and government sectors have the **knowledge, skills and experience to perform tasks** that assist people in dealing with the legal dimensions of their problem and to navigate through relevant legal processes.
2. Community-based service workers in the not-for-profit and voluntary sectors are working within an **ethical infrastructure**.
3. Community-based service workers are providing support that is community-contextualized in that it **reflects and responds to the justice needs of people in their particular community context**. They offer context-specific and typically holistic services that may be similar to but are different in nature from services available from a licensed legal professional.

⁷ *Trusted Help*, above n.1, at 29.

Markers of “good” community justice help

In accordance with the framework of features of “good” community justice help, and informed by our research on past and current practices in relevant community-based and not-for-profit organizations, we also propose the following quality markers or indicators of these features and the good quality of services they underwrite.

This list is not exhaustive and it is not a fixed list; clients’ needs and organizations’ practices in responding to those needs are always evolving. Striving for high quality, which embodies multiple aspects when using a “people-centred” focus, must be seen as a continual goal by all not-for-profits operating in this sphere. The list of quality markers or indicators can serve as a guide or “check list” for those offering community justice help.

Feature 1: Indicators of “knowledge, skills and experience to perform tasks” to help people in dealing with the legal dimensions of their problem.

- 1.1 *The organization and its staff are specialists in providing help with these types of problems, including performing tasks;*
- 1.2 *Staff have comprehensive, up-to-date knowledge base;*
- 1.3 *The organization has relationships with expert legal professionals whom they can and do call on as needed;*
- 1.4 *The organization and its staff are well supported and connected, and receive appropriate oversight.*

Feature 2: Indicators of working within an ethical infrastructure.

- 2.1 *The organization works in the not-for-profit sphere and as such the organization’s staff do not accrue direct financial gains from the clients to whom they provide community justice help (central to avoiding the risks of over-charging and other financial abuse or fraud that may exist in for-profit service provision);*
- 2.2 *The organization has an accountability structure in place (usually overseen by a board of directors) to ensure that the organization is operating per its policies (for example, on staff supervision);*
- 2.3 *The organization has proper policies and practices in place on key ethical issues – for example, a policy on client confidentiality and a code of conduct – to guide both the organization and the delivery of services;*
- 2.4 *The organization has a complaints policy, which is accessible to clients, and clients’ complaints are accepted and responded to appropriately;*
- 2.5 *The organization has a liability insurance policy in place, that provides for compensation to clients in the event of negligence by a staff member at the organization.*

Feature 3: Indicators of context-specific support and assistance for people who experience problems; the integrated nature of the support may be similar to but is different in nature than that provided by a licensed legal professional.⁸

- 3.1 *The organization offers context-specific and typically holistic support;*
- 3.2 *The organization offers holistic support that “joins-up” with and supports good quality services⁹ from licensed legal professionals, where such good quality legal services are available and accessible to people in the community;*
- 3.3 *The organization offers support for tasks that governments and government-supported legal aid service providers have categorized as “do-it-yourself”, perhaps with associated guides and forms;*
- 3.4 *The nature of the task or activity are such that non-legally trained people would expect to be able to take this action without the assistance of (and usually the expense of retaining) a legal professional.*

Additional key elements of a “supporting, equipping, and enabling” approach

The three-feature framework and associated markers of “good” community justice help are central elements of our proposed approach to supporting, equipping, and enabling community justice help. We also propose the following additional key elements, on which we will elaborate in our forthcoming discussion paper:

- Recognition that the provision of community justice help already aligns with the regulatory scheme applied by the Law Society of Ontario to the practise of law and the provision of legal services in Ontario;
- Development of a practical system of supports that promote “quality assurance” for the public in the area of community justice help – such as practice guidelines, training, and possibly a voluntary, incentive-based registry – rather than through rules-based regulatory intervention and oversight;
- Prioritizing the needs of particularly underserved and disadvantaged communities, including Indigenous peoples and people with communication barriers;
- Recognition of community justice help as a valid and important component of the broader “ecosystem” of access to justice-oriented legal assistance services, and recognition of a need to adequately support all components of that system through public-funding and other means.

⁸ For example, staff at a local community-based organization may help clients with housing-related issues, such as finding an affordable place to live, discussing the importance of a rental agreement and some of the key terms that should be included, dealing with a landlord who won’t repair broken appliances, or what to do about a building-wide bedbug problem. However, staff at that same organization would also be aware of the boundaries of their expertise, and would be familiar with expert services available at the local community legal clinic; they would refer a client on a limited income to the clinic for help fighting an eviction, or when a landlord raises the rent beyond a legally prescribed rent increase limit.

⁹ Examples of accessible (and good quality) legal services include services at an affordable rate, including through a community legal clinic, a legal aid program, a pro bono program, or other law-related program. Good quality also encompasses the following elements: has appropriate, relevant experience in the particular area of law; adequately understands the relevant social context and the need for and methods of holistic help applicable to that context; works in a geographically proximate location (a location that the person can comfortably access); offers services in a language that the person understands or can confidently access with an interpreter’s help.

Issues and concerns: still working on them

This proposal is likely to raise several issues and concerns. We are preparing a more complete paper that gives details on what we've found through our literature review, interviews, review of quality assurance in various fields of not-for-profit work, and approaches to the regulation of legal services in Canada.

Our forthcoming paper will elaborate on a number of underlying principles and practices that we identified and considered, including the following:

- *The importance of quality assurance:* it is important that the general public, as well as those communities particularly in need of help, have some assurance that community justice help is “good” quality help
- *The importance of building on supports and standards that already exist in the not-for profit sector:* a supportive approach, building on good systems that exist – should be built on, expanded, promoted, and possibly incentivized
- *The need to consider where “lawyers matter” most:* we are not suggesting that this support-based framework for community justice help extend to such expert legal tasks as legal advocacy and representation in court, or preparing documents that interpret the law to make a legal argument
- *The importance of working in coordination:* The provision of community justice help should, to the extent possible, be consistent with and coordinated with the assistance available from licensed legal professionals (lawyers or paralegals) – and vice versa
- *The importance of keeping access to justice front and centre:* community justice help should be a means of mitigating, not exacerbating, a two-tiered “system” of access to (or lack of access to) assistance from licensed legal professionals

A note on “moving forward”: in step with other access to justice providers and initiatives

It is important to note that, in Ontario, people with low incomes who experience law-related problems may be able to access services from a lawyer or paralegal, at no cost to them, through Ontario's relatively well-funded legal aid system. A lynchpin of the holistic services provided by community-based organizations is their connection with lawyers and paralegals in their communities with whom they can check when giving help and to whom they can refer people who require the expertise of a lawyer or paralegal. Community-responsive, independent legal aid clinics, located in communities throughout the province, play this pivotal role, particularly with respect to poverty law problems, including housing and social assistance problems.

In addition, legal clinics work with other organizations in their communities in efforts to offer inter-connected services to people who have problems, including law-related problems. That work has flourished in recent years, as several clinics have led and participated in efforts to build and support broader, strong connections with other not-for-profits serving local communities; the Law Foundation of Ontario has supported many of these initiatives. Examples include Connecting Ottawa, health-justice partnerships undertaken by several clinics and community health care providers, and the increasing number of clinics that are part of community hubs.

In addition to supporting Ontario's legal aid and community legal clinic system, justice sector institutions and associations, including the private bar, have themselves made efforts to improve meaningful participation in the justice system. These efforts not only convey the deep commitment by leaders in Ontario's legal profession to increase access to justice, but serve as building blocks for further advances in access to justice, such as those proposed in the discussion paper.

Highlights of some recent initiatives include:

- the enabling of paralegals to provide legal services in defined administrative law areas
- the support for a greater number of and more robust Family Law Information Centres
- the enabling of “unbundling” and, most recently, the initiative led by the family bar to support limited scope retainers in family law
- the Law Foundation of Ontario's proactive efforts to support – through research, funding, and an encouragement of collaboration – the work of trusted intermediaries across the province
- Pro Bono Ontario's summary advice line, which enables lower-income people to access 30 minutes of summary advice (in areas other than family and criminal law) from a lawyer for free
- the enabling of civil society organizations that employ lawyers to provide legal services

In short, our proposal builds on a solid – and deepening – foundation: on Ontario's vibrant community-based sector, on our renowned community legal clinic system, and on recent achievements of justice sector organizations.

Discussion questions

1. What is missing in the proposed approach to community justice help? What have we not considered?
2. What does “good quality” help with law-related problems look like to you? What are its most important attributes?
3. Are there markers that you would add to the list? Are there a few particular “markers” or fundamental practices that not-for-profits giving community justice help should be expected to have in place, such as a complaints policy available to the public? What are those?
4. Are you concerned that, under the “support, equip, enable” approach suggested in this paper, some workers in the not-for-profit sector might give “bad” help? What are some circumstances in which this might happen? Do you think that this would be a significant problem? Do you have a suggestion on how to minimize the possibility of this happening?
5. The discussion paper discusses the reasons that are often used to support the tight control of the provision of legal services; those reasons rely on the need to “protect the public interest” – an important and legitimate policy goal. But the paper suggests that Ontario’s reality indicates that people who work in the not-for-profit community-based sector are already giving good help to people with law-related problems, and argues that a less restrictive approach is called for because:
 - most people with law-related, life-affecting problems are unable to afford or otherwise access licensed legal services for those problems;
 - the assistance sought by many people with respect to their law-related problems does not require a deep level of legal specialization
 - the problems faced by people with problems that include a legal element are interwoven with many other non-legal problems – they can not be defined exclusively as “legal” – and the services needed in response are not necessarily specialized legal services from a licensed legal professional

What do you think of these arguments? Do you agree with them, and why or why not?

6. What types of training and supports do you think are most needed by workers giving “community justice help” in Ontario? How do you suggest that these support programs be developed? Who should be involved? Can you suggest any current training or supports that could serve as examples?
7. The proposal recommends a ‘bottom-up’ rather than ‘top-down’ approach to ensuring good quality in community justice help – community-based organizations should have primary responsibility for defining and supporting good quality, rather than being directed by a regulatory body like the Law Society of Ontario. Do you agree? Or do you think a regulatory system for monitoring quality of “community justice help” needs to be put into place? If so, who should run it? Should it be mandatory and thus subject to enforcement; if so, who should be responsible for the enforcement? If not, what approaches can be used to encourage or support a culture, network, or commitment to good quality community justice help?
8. Are you aware of models in other fields, or in other jurisdictions, that promote and give some assurance of good quality in the provision of important services to the public?