

**Discussion Paper on
Roles, Responsibilities, Relationships and Accountability
Regarding Clinic Law Services**

Legal Aid Ontario

July 2008

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Executive Summary

The purpose of this discussion paper is to facilitate the clarification and delineation of the respective roles of LAO, the Association of Community Legal Clinics of Ontario (ACLCO) and clinics, and a movement towards more professional, modern and workable relationships. The analysis starts with first principles – LAO's governing statute, which clearly provides that clinics are the foundation for the provision of legal aid services in the area of clinic law. The Act also stipulates that LAO is a funder of clinics, and has an obligation to monitor and supervise clinics in the context of administering an efficient and effective legal aid system. These principles require that LAO's management obligations are not fettered by vague accountabilities or consultative processes that in effect, if not in intent, result in joint decision-making by LAO and clinics. Moving towards clear accountabilities and relationships requires examining the following:

- LAO's present role as both a funder of clinics and a provider of services to clinics: This dual role arguably contributes to a lack of clarity on roles, and results in LAO micro-managing clinics, and in clinics as funding recipients being inappropriately entangled in internal LAO processes. Transferring clinic support services to individual clinics, or an external clinic services body should be explored.
- Clinics' accountability to LAO for funds received: currently, LAO requires clinics to report on expenditures and service statistics, and to complete self-assessment tools that attempt to measure some aspects of client service. However, LAO does not require clinics to meet substantive performance standards in exchange for funding. LAO is therefore not being adequately accountable for the money it spends on clinic law services, and clinics are not adequately accountable for the funding they receive. More meaningful criteria, in consultation with clinics, must be developed – criteria that ensure accountability, and that also measure the true value and impact of clinic work.
- Funding models: New clinic funding models that provide for flexibility, and that encourage innovation and efficiency may be explored, in consultation with clinics.
- Respective roles in determining local client need: The statute provides that both LAO and clinic boards play a role in determining client need. Further clarity is needed in defining the borders of these respective roles
- The role of the ACLCO: LAO funds the ACLCO directly, and one of the ACLCO's major functions is to advocate to LAO for increased funding or for changes in administrative or consultative practices. This is an anomalous relationship, and a challenging one. LAO must receive value for its funding dollar. A new role of the ACLCO must be envisioned so that it provides supports to clinics, and provides value to LAO. The ACLCO could continue to be a representative voice of clinics in consultations with LAO, but in order for that to be an effective and efficient relationship, there must be a move away from advocacy, towards a professional and modern relationship aimed at problem solving and collaboration where appropriate.

- Consultation practices with clinics: Currently, LAO consults with clinics, either individually, or through the ACLCO, on a wide variety of matters. While clinics concede that they do not share decision making power on most of the topics of consultation, the arduous consultation process, and the advocacy style of consultations slows down LAO decision making to the point that in effect, clinics in some respects have slipped into a co-management role. A re-envisioning of consultation practices could include developing yearly consultation plans, or more clearly defining the types of matters upon which LAO will consult clinics, and what form these consultations should be carried out.

The analysis of the above issues may be encapsulated in the following statements to guide the next steps in improving the relationship between clinics and LAO:

- Clinics are the foundation for the provision of clinic law services. Clinics do vital work in serving the clinic law needs of individuals in communities throughout the province and must continue to be supported in this important work.
- The delineation of responsibilities and accountabilities must be grounded in the Act. The Act sets out LAO's role as a funder, as well as its obligations to monitor and supervise clinics.
- The delineation of roles must also be informed by sound, modern, professional management practices that are conducive to LAO fulfilling its mandate.
- LAO depends on clinics to deliver clinic law services, and clinics depend on LAO for funding. In relation to determining local client need, LAO and clinics have complementary roles. The line between respective roles requires further clarification.
- Consultation with stakeholders and service providers is an important component of sound and professional management. Consultation practices must be conducive to effective, efficient and professional management, not detract from it.
- A funder which is also a service provider creates potential conflict situations, and contributes to undue micro-management. LAO's dual role as funder and service provider must be re-examined.
- The role of the ACLCO, and its receipt of direct funding from LAO needs to be re-examined. A key function of the ACLCO is to advocate to LAO, its funder. LAO is accountable for the funds it spends on the association, and must receive value for its dollar.
- New clinic funding models could be explored that contribute to clinic empowerment to manage their affairs, that encourage innovation and the finding of efficiencies, and that are reciprocated by effective performance standards.

- Meaningful accountability measures are necessary in order for a funder to be accountable for the funding it receives, and for service providers to be accountable for funding they in turn receive. Measures should be meaningful, in that they measure results and impact on clients, while not being so administratively burdensome that the fundee's ability to serve its client base is hampered.
- The relationship between the ACLCO and LAO and between LAO and clinics needs to be modernized and more professional in nature, moving away from advocacy in relation to LAO to exploring together the best ways to serve clinic law clients. Behaviours of the players involved must be professional, and relationships must be transparent, and based upon clear accountabilities and responsibilities.

Summary of Consultation Questions

The following is a summary of the major issues and questions posed throughout the paper. While discussing the specific questions below, it is important to keep in mind the one larger question which permeates all of the more detailed inquiries: In what ways may accountabilities be clarified and responsibilities be redefined in order to ensure that high quality clinic law services are provided to clients in an efficient and effective manner?

- **Based on what criteria should clinic funding decisions be made?**
- **Should clinic funding allow clinic more flexibility in budgeting and spending? If so, how? What challenges and opportunities would more flexible funding produce?**
- **How could current consultation practices be clarified and modified to ensure that LAO is not encumbered in its management function, and that meaningful clinic input on system wide issues is received where appropriate in order to inform sound and effective management decisions?**
- **What subjects are appropriate subjects of consultation? What types of LAO decisions should not require system-wide consultation?**
- **How should LAO's and clinics' respective roles regarding the determination of local client needs be further clarified?**
- **In order to address conflicts of interest and LAO's anomalous role as both a funder and service provider to its fundees, in what other ways could clinics obtain the services currently provided by LAO?**
- **What are the positive and negative impacts of the current service provision regime? What are the potential positive and negative impacts of changing the current regime?**

- **What services could a body other than LAO take on most easily as a preliminary step towards transfer of services?**
- **What should the ACLCO's role be in relation to clinics and LAO? What should the ACLCO's primary functions be? From what body or bodies should the ACLCO receive its funding? In what ways could the ACLCO be re-envisioned in order to better serve the needs of clinics, clinic clients and to better facilitate communication and consultation between LAO and clinics?**

Roles, Responsibilities, Relationships and Accountability Regarding Clinic Law Services

Context, Purpose and Scope

LAO has undergone significant changes recently, including an internal reorganization along regional lines and the development of a management strategy that will guide LAO for the next five years. These changes set the stage for a renewed vision of the relationships and accountabilities between LAO, its funders, and the clinics that LAO funds. The management strategy was developed in the context of increasingly more stringent demands placed on LAO by the government to be accountable to the government and the public for the funds it receives, and for the funding it transfers to service providers such as clinics. The provincial government's Transfer Payment Accountability Directive is an example of these stringent accountabilities that LAO, as a recipient of payments from public funds, must meet.¹

LAO's management strategy is built on five principles:

Innovation: Establish an even more vigorous corporate culture that allows ideas to come forward and embraces new approaches to solving problems.

Measurement: Create and implement modern tools to measure LAO's performance, identify its successes, and inform its decisions.

Prioritization: Set up inclusive and accountable processes and criteria for making clear and principled decisions on LAO's priorities and the allocation of resources.

Accountability: Ensure clear, sound management and financial accountability systems are in place throughout LAO, leaving no doubt where responsibility lies for taking action and making decisions at all levels; and scrupulously follow the legislation governing LAO and setting out its precise roles and functions.

Co-ordination: Maximize impact for clients by improving co-ordination of legal aid services and ensuring LAO is managed in a way to create synergy among programming and administrative functions.

These principles will result in greater efficiencies and ultimately will result in LAO having the capacity to provide more and better services to clients. It will also result in greater accountability of LAO for the funding it receives and for the funding it distributes to service providers. This need for greater accountability is borne not only out of statute and professional business management principles, but is a non-negotiable demand placed on LAO by the provincial government. LAO is required to vigorously report on

¹ See the Ontario Government's Transfer Payment Accountability Directive, with which LAO must comply.

and be accountable for the public money it receives and distributes. In turn, LAO must require its funding recipients to be accountable for the funds they receive, and ensure that it is receiving value for its funding dollars.

This paper seeks to further the management strategy by asking questions and suggesting possibilities for modernizing and professionalizing relationships between LAO and clinics, fostering clinic empowerment to innovate and manage and clarifying accountabilities and responsibilities so that LAO may fulfil its statutory mandate to administer an efficient and effective legal aid system.

How will re-envisioning and clarifying relationships ultimately benefit clients? Clear systems, sound and professional management, and clear accountabilities reduce micro-management tendencies. It also empowers organizations, including clinics and LAO to think strategically and innovatively to better meet client needs. It frees up time and energy previously devoted to unnecessary and duplicative work and navigating the complexities of problematic relationships and allows it to be channelled into direct client service.

Not only will a re-envisioning allow for more energy to be devoted to serving legal aid clients. It will ideally allow LAO and clinics to be more in tune with what client needs are, and to work collaboratively, in a transparent and professional relationship, to meet those needs in the most effective and efficient way possible.

LAO's new regional structure will foster an improved ability to work together and be in tune with client needs, and with all components of the legal aid system. Regional Vice Presidents are now responsible for all LAO operational activity offered in four geographic regions across the province. The Communication and Innovations Division oversees specialty clinics. This new organizational design is more responsive to the needs of clients and staff and improves the co-ordination of services by breaking down silos, while fully engaging local stakeholders in legal aid's programs. Managers will be in closer contact with front lines staff, and legal aid service providers across core business areas will be in greater contact with other legal aid business areas in their regions.

Against this backdrop, this paper is intended to provide a basis for consultation with clinics and other stakeholders on the relationship between LAO and clinics, between the ACLCO and clinics, and between LAO and the ACLCO. It is intended to provide a forum for addressing fundamental relationship problems that result in barriers to effective, efficient, modern, professional and functional management of clinic law services by LAO, and ultimately result in less attention and energy being focused on serving clients. The paper addresses the non-negotiables that are grounded in the Act, such as LAO's obligation to monitor and supervise clinics and to administer an effective and efficient legal aid system. It also raises issues for which there are not clearly defined answers grounded in the statute, such as a potential change in the source of clinic support services, and the potential re-envisioning of the role of the ACLCO.

Historical and current relationships have produced challenging dynamics. The ACLCO, funded by LAO, spends a considerable amount of time advocating to LAO regarding clinic issues. The funder is both a subject of this advocacy work, and is a service provider to clinics. A functional, co-operative relationship in which all parties work together to innovate and create efficiencies that ultimately improve client service remains elusive. In addition, a lack of effective and meaningful clinic performance standards, and cumbersome and unclear consultation practices detract from LAO's ability to fulfil its statutory obligations to provide an efficient and effective legal aid system with high quality legal aid services, to manage it well and to be accountable to the government for the public funds that it spends. While recent relationship-building efforts have slowly begun a tide of transformation, a fundamental shift is required in order to move away from advocacy-based dynamics and more towards professional and modern working relationships that involve clearly defined roles and accountabilities and solid business practices that include meaningful consultation, transparency and a spirit of collaboration.

This paper has been informed by joint LAO/ACLCO meetings, as well as a literature review and informal discussions with both LAO and clinic staff. The relationship issues discussed in this policy paper have been raised over the years, both internally, and with the assistance of outside consultants. While these discussions have been helpful, and each have helped to improve relationships and provide some measure of increased clarity, it is intended that this paper will start with first principles to address a number of issues that will both clarify roles and responsibilities, identify current problems and explore real, workable solutions.

Specifically, this paper will address the following issues:

- How roles and responsibilities and accountabilities are set out in the Legal Aid Services Act. Starting with the Act as a first principle will set the stage for further clarifying functions and roles
- How these first principles require sound and efficient management and supervision by LAO of all of its service providers, and how this requires changes to current consultation practices and to clinic performance measurement.
- Clarifying roles and responsibilities regarding the identification of local client need. This discussion is tied to the concept of clinic independence.
- Conflicts that arise as a result of LAO's current role as both a funder and service provider to clinics
- Re-envisioning the role of the ACLCO in relation to LAO and to clinics. Issues include current funding arrangements, potential service provision functions of the ACLCO, and shifting the ACLCO's current function of advocate to a more functional and modern role that better serves clinics, LAO and clinic law clients.

The exploration of these issues are based on several key premises, which will inform the analysis contained in this paper. These premises are:

- LAO recognizes that clinics are a vital part of the legal aid system, and, as the Act sets out, clinics are the foundation for providing clinic law services. Re-envisioning relationships and roles is with a view of strengthening clinics and the legal aid system, not damaging them, or legal aid clients.
- An analysis of roles and responsibilities must start not with historical debates and politics or the present state of the union, but with the Legal Aid Services Act (“the Act”)
- In addition to the Act, principles of sound, professional and modern effective business practices, in the social justice context, should guide the reformulation of relationships.
- Moving forward with clarifying and improving relationships must not only start with the Act, but must include an openness to not continuing current practices simply because things have always been done a certain way. At the same time, it must include an openness to recognizing what, in the current way of doing things works well. In other words, either maintaining the status quo or rejecting it for the sake of it must be avoided in order to make room for creative and effective visioning that is in line with LAO’s statutory mandate.
- That there is common ground on key issues which provide a strong foundation for moving forward. It appears to be commonly agreed that a) regardless of how LAO and clinic responsibilities are defined, LAO is currently too much of a micro-manager of clinics, and that effective relationships and efficient client service must entail moving away from this b) a key source of frustration is a current lack of clarity on roles and responsibilities. While parties may not agree on every outcome of this process, clarity on roles and responsibilities will be a giant leap forward, and in itself will improve relationships. c) the ultimate goal of this exercise is to provide efficient and effective and improved services to legal aid clients.

Statutory Requirements Regarding Roles, Responsibilities and Accountabilities of LAO and Clinics

The following are excerpts from the Legal Aid Service Act that set out LAO's broad mandate, and detail LAO's obligations in terms of supervising and monitoring clinics, and clinics' mandates and responsibilities (emphasis added).

The Act sets out LAO's responsibilities in detail. Its broad mandate is described in s. 4:

- (a) to establish and administer a cost-effective and efficient system for providing high quality legal aid services to low-income individuals in Ontario;
- (b) to establish policies and priorities for the provision of legal aid services based on its financial resources;
- (c) to facilitate co-ordination among the different methods by which legal aid services are provided;
- (d) to monitor and supervise legal aid services provided by clinics and other entities funded by the Corporation;

....

Section 12 expands on LAO's broad mandate in relation to providing legal aid services:

12 (1) The Corporation shall establish and administer a cost-effective and efficient system for providing high quality legal aid services within the financial resources available to the Corporation

(2) for the purpose of subsection (1), the Corporation shall,

- (a) determine the needs of low-income individuals and of disadvantaged communities in Ontario;**
- (b) establish priorities for the areas of law, types of cases and types of proceedings for which it will provide legal aid services; and
- (c) establish policies for the kinds of legal aid services to be provided in the different areas of law, types of cases and types of proceedings.

Section 33 sets out LAO's responsibilities in relation to clinics:

33.(1) The Corporation may provide funding to a clinic to enable the clinic to provide legal aid services to low-income individuals or disadvantaged communities

(2) In deciding whether to provide funding to a clinic, the Corporation shall consider any matter it considers relevant to the decision, including,

(a) the legal needs of the individuals or communities that the clinic will serve;

(b) the cost-effectiveness and efficiency of providing legal aid services through the clinic;

(c) the past performance of the clinic, if any, in meeting the legal needs of the individuals and communities that it served in a cost-effective and efficient manner.

(3) In deciding whether to provide funding to a clinic, the Corporation may also consider the legal needs of other communities, funding applications by other clinics, the Corporation's policies and priorities established under section 12, the financial resources of the Corporation and any other matter that the Corporation considers relevant.

34(5) The Corporation may impose any terms and conditions on the funding of a clinic that it consider appropriate, including,

(a) that the members of the clinic and of the board of directors of the clinic are members of the community or communities served or to be served by the clinic;

(b) that the clinic employ at least one lawyer in the clinic;

(c) that some or all of the staff of the clinic undergo training specified by the Corporation.

(d) that the clinic assess the eligibility of applications for legal aid services to be provided by it.

s. 35(1) An application for funding by a clinic shall be accompanied by information, as requested by the Corporation, respecting the organization, activities, methods of business and financial transactions of the clinic, and such other information that the Corporation may request.

Section 37 addresses LAO's obligations regarding monitoring the activities of clinics:

37(1): The Corporation shall **monitor the operation of a clinic** funded by it to determine whether the clinic is meeting the Corporation's standards for the operation of clinics, and the Corporation may conduct audits of such clinic, as it considers necessary for that purpose.

(2) A clinic funded by the Corporation shall provide the Corporation, in the form and at the times requested by the Corporation,

(a) audited financial statements for the funding period;

(b) a summary of the legal aid services provided by the clinic during the funding period, specifying the number of each type of case or proceeding handled by the clinic;

- (c) a summary of the complaints received by the clinic from individuals who received or were refused legal aid services from the clinic, and from persons affected by the legal aid services provided by the clinic and a description of the disposition of each such complaint;
- (d) any other financial or other information relating to the operation of the clinic that the Corporation may request.

The following sections set out the responsibilities and obligations of clinic boards of directors in terms of accountability to LAO and determining the legal needs of the community:

Section 39 sets out the obligations of a clinic's board of directors:

39(1) The board of directors of a clinic funded by the Corporation shall ensure that,

- (a) the clinic complies with this Act and the terms and conditions attached to the funding;
- (b) the clinic complies with any direction issued by the board of directors for the Corporation; and
- (c) the clinic meets the operational standards established by the Corporation.

(2) Subject to this Act, the board of directors of a clinic funded by the Corporation shall determine the legal needs of the individuals and communities served or to be served by the clinic and shall ensure that the clinic provides legal aid services in the area of clinic law in accordance with those needs.

Analysis

The Act provides answers, or at the very least, helpful indicators, on a number of issues that have been in dispute for many years. Disputed issues, such as whether LAO and clinics are in partnership, or to what extent clinics are independent are largely answered by the Act in terms of setting out accountabilities, obligations and mandates. The Act does not set out in minute detail how the division of responsibilities will play out on the ground, but it is quite clear in terms of who is ultimately responsible and accountable for what actions. It is therefore not only a useful starting point, but an essential one.

There may be some hesitance to perceiving the Act as having answers to age-old points of contention. There are several arguable reasons for this. First, it would be fair to say that the Act has been neglected as it applies to needs determination. Rather, historical practice, and the politics and personalities between LAO and clinics have self-replicated a discussion framework that has distanced parties from the defined roles in the Act. Rather than starting from the middle of current debates, it is useful to start from first principles and examine seriously the roles

and mandates set out for LAO and for clinics by the legislature. Once the fundamentals of division of responsibilities are distilled from the Act, the nuts and bolts of how these responsibilities are carried out may be defined more productively.

The Act makes it clear that LAO's role in relation to clinics is to fund clinics, and to monitor and supervise them, all within the context of providing efficient and effective, high quality legal aid services. The Act gives LAO broad powers in relation to clinics, including the power to set policies and establish priorities. There are several accountability measures that the Act requires LAO to collect and clinics to provide. These are set out in s. 35 and 37. LAO also has broad power to impose wide-ranging conditions of funding on clinics. In deciding whether or not to grant funding to a clinic, LAO must consider "any matter it considers relevant" (s. 33(2)), and must analyze legal needs, cost-effectiveness and efficiency, and past performance of clinics (s. 33 (a) to (c)). Section 34(5) gives broad power to LAO to "impose any terms and conditions on the funding of a clinic that it considers appropriate". All of these obligations on LAO are within the context of LAO's broad mandate to ensure the cost-effectiveness and efficiency and high quality of all of its services including clinic law services.

In short, the Act makes it clear that LAO is a funder of clinics, but its role is not limited to simply transferring funds for clinics to do as they wish. Rather, LAO has both broad powers to set out conditions on funding, and to require various forms of clinic reporting. Similarly, clinics' obligations in relation to LAO involve far more than simply receiving funds and providing clinic law services as it sees fit. Rather, clinics are accountable to LAO for the funds received, and must report to LAO in the manner determined by LAO. This is common ground among LAO and clinics, although the details of how these principles are, or should be put into practice, are matters of continuing exploration.

The articulation of responsibilities and accountabilities in the Act at a high level reflect current understandings by all parties about division of powers. Joint ACLCO/LAO meetings, and the research and informal discussions that have informed this paper establish that there is common ground in that both LAO and clinics agree that accountabilities do not end once money is transferred. It is commonly accepted that clinics must be accountable for the funding received. It is also commonly accepted the both clinics and LAO have a role in determining the needs of low-income individuals in the province. It is the appropriate extent and content of these accountabilities and roles that is lacking in clarity. While the Act provides for certain specific requirements, the wide powers granted to LAO in terms of what it may require of clinics in terms of reporting is quite broad. Solely under the statute, LAO could, if it chose, micro-manage day-to-day operations, or on the other end of the scale, take a more hands off approach.

The question of the appropriate level of supervision and monitoring is therefore not explicitly defined by statute. However, these directions must be attributed with

some meaning both by reading them in the context of the statute as a whole, and by reference to sound management practices. Reading the statute as a whole, LAO is obligated to run an efficient, effective and high quality legal aid system. It follows then that its duties to monitor and supervise must work towards maximizing efficiency, effectiveness and high quality. There are two key areas in which LAO is arguably not optimally fulfilling its legislative mandates. One is clinic performance measurement, and the second is historical consultation practices with clinics.

Evaluation and Funding Criteria

Consultation question: What evaluation criteria should LAO use as a basis for clinic funding decisions?

While the Act makes it clear that LAO is responsible for monitoring and supervising clinics, and is responsible for providing high quality legal aid services, LAO currently does very little in terms of monitoring the substantive performance of clinics. Instead, clinics are required to report on finances², and to complete self-assessment tools on matters such as timeliness of client service.³ LAO does very

² Currently, the reporting that LAO requires of clinics is set out in the LAO and Clinic Funding Agreement. Section 16 of the Agreement requires clinics to “make reasonable efforts to ensure that the Clinic complies with LAO’s policies, priorities and operational standards of which it has been advised by LAO. It also requires clinics to “develop such policies and guidelines as are necessary for the effective and efficient operation of the Clinics, and to ensure that Clinic staff and board members participate in appropriate training.

The Agreement requires clinics to meet several financial records and reporting obligations, including: maintaining financial records regarding services provided

Allowing CLAO staff to inspect and audit financial records

Presenting a financial report to the clinic board at each regular board meeting

Submitting quarterly financial reports to LAO, in a form approved by LAO.

Submitting to LAO an audited financial statement and reconciliation report with respect to the services provided

Adhering to any additional financial reporting requirements specified by LAO in its policies.

The Agreement also requires clinics to report quarterly statistics in the form approved by LAO, and “such other information concerning the operation of the clinics as specified in the request for funding”.

³ LAO requires clinics to report on Client Service Measures and Self Assessment Tools. These consist of the following:

The Client Service Measures (CSM) framework developed by LAO provides clinics with guidance on measurement, but allows clinics some flexibility in determining how to measure client service. The CSM are designed to measure the quality of service being provided by clinics to clients and to demonstrate accountability for public funds. The CSMs were developed in consultation with clinics and the QSO Clinic Advisory Committees.

The CSM initiative allows clinics to decide to a certain extent what to measure. Clinics have the choice of: Using their own existing CSMs if CSMs include measures of access, timeliness and client feedback.

Requesting support from the QSO in developing CSMs that address issues of access, timeliness and client feedback and tracking and reporting systems or

little however to ensure that clinics are operating efficiently or providing high quality clinic law services to clinics. By contrast, LAO rigorously measures the performance of other legal aid service providers. In the certificate system, for example, LAO scrutinizes certificate billings, and ensures that certificate lawyers meet established standards before being admitted to certificate panels. In relation to clinics however, LAO appears to at one end of the spectrum very hands-on in relation to certain aspects of clinic law service provision, but at the other hand is virtually hands off regarding evaluation criteria and performance measurement. This lack of performance measurement of clinics by LAO is a matter of concern, and arguably results in LAO not fulfilling its statutory mandates in relation to clinics. The Deloitte report⁴ explored quality assurance and reporting mechanisms in other jurisdictions, which included detailed analysis of case outcomes, peer reviews on selected files, time docketing and client satisfaction surveys. LAO's current monitoring and supervising activities in relation to clinics fall very short of the evaluation frameworks in place in other jurisdictions

LAO's lack of evaluation criteria is anomalous. Most funders, regardless of the wording of its authoritative statute, monitor the performance of its funding recipients, and require a standard of performance to be achieved as a condition of ongoing funding. It would be a matter of common and sound business practice for LAO to demonstrate sound use of public funds, in accordance with its statutory mandate, and to satisfy itself that it is receiving value for its investment.

Having effective and meaningful evaluation criteria in place is a benefit to both funders and funding recipients. While evaluations and reporting take time, it can contribute to more trusting relationships that ultimately require less day to day

Using three CSMs that were included in the QSO's consultation paper on CSMs (which address access, timeliness and client satisfaction, based on client surveys).

Clinic Self Assessment Tool (SAT) allows clinics to self assess their performance in a number of areas. Clinics undergo this process once every three years, and submit their self-assessments anonymously to the QSO, which aggregates the data. Clinics self-assess using a survey provided by LAO, which poses questions, includes an area for comments, action needed in a particular area and an improvement plan. The SAT addresses issues including:

- Board composition: planning for diversity and succession
- Good governance
- Fiscal responsibilities
- Community relations
- Human resources accountability
- Needs assessment and annual planning
- Range and integration of services
- Provision of services
- Provision of services - supervision

⁴ This report was the culmination of a review of clinic law services in Ontario. Many of its recommendations have been considered by LAO and clinics, but many recommendations and observations have not been fully considered.

effort. A funding recipient who feels that the criteria by which it is evaluated truly capture the value of the work done by it feels like its work is being recognized and valued. That could contribute to a sense of empowerment and ownership and encourage innovation and creative thinking. A funder that feels that its criteria and measures provide an accurate and meaningful picture of the work that the funding recipient does rests assured that it is receiving value for its funding dollars and that clients are being served well. This could reduce a tendency towards micro-management, and result in the fundee being given more room to innovate.

The Government of Ontario is increasingly requiring its funding recipients to be more stringently accountable for the funding it receives as part of its fiduciary duty as a funder to ensure that it is receiving value for its public dollar.⁵ LAO is required to undergo rigorous performance measurement, and to report regularly on its efficiency, productivity, service to clients, and the quality of its services. These rigorous requirements provide further texture to the interpretation of LAO's own fiduciary duties towards the service providers that it funds. It makes both logical and sound management sense then that LAO's obligation to monitor and supervise must entail a duty to measure performance in order to be fully accountable to its own funder, and in order to ensure that its funded services are performing efficiently and effectively.

LAO need not re-invent the wheel when developing, in consultation with clinics, funding criteria. There is considerable expertise within LAO, clinics, and in the broader public sector, on effective and meaningful performance criteria.⁶ LAO's Quality Assurance Program (QAP), for example, in consultation with clinics, developed quality evaluation criteria (measured, in part through the Self-Assessment Tool). A number of quality dimensions were articulated in this process: board governance, overall management, understanding the community,

⁵ LAO is required to comply with a number of Management Board directives, including a Transfer Payment Accountability Directive. This directive is meant to ensure that transfer payment recipients are responsible for delivering the required services and are accountable for the funds that they receive and the results they achieve. It also is meant to ensure that the government is accountable for protecting the government interest and that value for money is required in the expenditure of government funds. In addition to compliance with this directive, MAG requires LAO to establish an internal audit function in order to enhance its accountability standards.

⁶ For example, the Legal Services Corporation in the United States has developed a comprehensive set of criteria for evaluating community legal clinics throughout the country. The LSC is governed by statute, and is mandated to ensure the provision of economical and effective delivery of legal assistance by legal service programs throughout the United States. The criteria developed by the LSC are used to assess program performance generally and to inform funding decisions. The measures are focused on outcomes and results, but include examinations of systems, process and inputs, since their presence makes it more likely that successful outcomes can be replicated consistently. The statutory mandate of the LSC is very similar to the Legal Aid Service's provisions regarding effectiveness and efficiency. The LSC considers effectiveness to involve looking at results achieved, and being economical as attempting to achieve a particular result as efficiently as possible. The LSC's full evaluation criteria document may be viewed online at <http://www.lsc.gov/pdfs/LSCPerformanceCriteriaReferencingABASStandards.pdf>

communications (external and internal), program planning and evaluation, range and integration of services, provision of services and service delivery).

The expertise in LOA and clinics recognizes that there are difficulties in quantifying certain aspects of services to client, impact on clients, and in crafting performance measures that do not result in service providers working to satisfy the measures, rather than working to best meet client needs. It also recognizes that clinics often address systemic problems facing low-income individuals and communities. One clinic may open fewer files, but may have launched a campaign, test case or law reform initiative that has a dramatically positive impact on large numbers of people. As stated in the McCamus review, "Efforts are frequently expended where a single case might have the greatest impact". (pg 945). Another clinic may open twice as many files, but may not be addressing systemic issues. Meaningful measurements will ensure that a clinic will not be presumed to be less productive or impactful if its file numbers are lower than in previous years, or than other clinics.

Drawing on the work done by the QAP, the LSC framework, which largely mirrors the QAP criteria, LAO's mandate, and LAO's goals and objectives as articulated in the management strategy, below are some potential criteria by which clinic performance may be evaluated. These criteria are meant to generate discussion and provide a starting point for consultation on evaluation criteria development.

Organizational Criteria

Evaluation of the clinic's ability to carry out the proposal and achieve the desired results:

- Does the clinic have a relevant vision, mission, an emphasis on excellence and innovation, a proven track record and good operating systems? Does the clinic provide high quality services?
- Is the board of directors representative of the diversity of the community and do its members have the collective skills to provide effective oversight and good governance? This would include promoting awareness of clinic law services, involvement in policy development, holding program management accountable, obtaining assurance of access and utilisation by the whole low-income population and protecting and defending client interests (including conflict-of-interest policies and controls)?
- Does the clinic have the ability to properly manage the funding provided and does it have a plan for continuous improvement and expansion of services through innovations in service delivery?
- Does the clinic have an appropriate organizational structure and skill sets to be responsive to community needs and opportunities?
- Does the clinic have a history of partnership with others?

Management Criteria

Evaluation of the ability of a clinic to manage effectively:

- Is there a realistic relationship between the clinic's business plan, the funding it manages, and the needs of the clients?
- Has the clinic set outcome-oriented goals and objectives and developed strategies for their implementation within a clear and coherent service delivery model and a focus on value-for-money?
- Is the overall management and administration of the clinic good (e.g. compliance with funder requirements, competent personnel, appropriate allocation of resources, periodic evaluation of administrative procedures)?
- Does the clinic have appropriate financial management policies and practices (including internal controls and effective budgeting and oversight)?
- Is human resources management effective (including recruitment and retention) and in compliance with applicable laws (e.g. pay equity)?
- Are innovations being undertaken to improve client service and increase service capacity?
- Are internal communications effective?
- Does the clinic have a significant accumulated deficit?
- Does the clinic have any significant unrestricted or internally restricted reserve funds?
- Do the financial statements of the clinic have a clean opinion?

Community Engagement Criteria

Evaluation of a clinic's engagement with stakeholders and clients

- Are there clear, measurable benefits to the community?
- Does the clinic engage the low-income community in setting its goals and objectives? Does the clinic have community support in the form of volunteer time, contributions from other organizations, individual donors and client contributions?
- Is the clinic involved with community partners in planning, doing and evaluating holistic client services?
- Does the clinic have support from people who are knowledgeable about clinic services?
- Is the clinic respected in the community (among clients and community partners)?
- Is the clinic's efforts making a lasting impact on the community it serves (e.g. creating permanent change through law reform, community partnerships, shared learning, etc)?

Funding Models

Consultation question: Should clinic funding allow clinic more flexibility in budgeting and spending? If so, how? What challenges and opportunities would more flexible funding produce?

Discussion

Closely related to the issue of performance measures, and funding being contingent on effective performance is the issue of funding models. A lack of meaningful and useful performance measures and standards arguably leads towards tendencies to micro-manage. Logic dictates that if a system of performance standards, measurement and funding criteria are not in place, the funder will seek to be more hands on regarding the day to day management of fundee operations, because it is not otherwise satisfied that it is receiving value for its funding dollars. In turn, fundees are arguably burdened by administrative requirements imposed by the funder, have less time and energy to devote to client service, and may feel disempowered.

The creation of a comprehensive, workable and meaningful system of performance standards, measurement and funding criteria could naturally be tied to moving towards more flexible funding arrangements that allow clinics to have more freedom to decide how they spend their money. This funding model would mirror the type of funding that LAO receives from its funder. As discussed earlier, LAO is subject to increasingly rigorous reporting requirements. It is accountable for the funding it receives and that it flows to service providers. In turn however, LAO has wide latitude within its funding to manage its business. While reporting requirements do take administrative effort, flexible funding and a professional, workable relationship with its funders gives LAO room to creatively innovate, prioritize and manage its business without being unduly constrained by an inappropriately involved funder.

LAO's current funding model places certain restrictions on clinics. Clinics have a certain amount of flexibility which allows them to move funding from one budget line to another, but cannot spend salary funding on operations or vice versa. In addition, clinics are somewhat restricted in terms of what salaries it may pay to its staff. If a senior lawyer leaves the clinic and is replaced by a junior lawyer, clinics lose the difference in salary costs. Another restriction on clinic funding is the treatment of surplus funds. Clinics are required to return certain portions of their surplus to LAO. The current model could be characterized as a hybrid of line by line, and envelope funding. The term envelope funding is not a concretely defined term, but generally speaking, it involves providing a lump sum of funding which the funding recipient is free to manage as it sees fit. It doesn't necessarily mean that there are absolutely no restrictions. The type of restrictions, if any, that are appropriate and make the most sense is an open question that this consultation process will begin to address.

Without at this point defining the potential terms of more flexible funding, in general terms, it is reasonable to expect that if funding were more flexible, clinics would be more empowered to be innovative and creative, and manage its affairs more freely. If clinics were to receive more flexible funding from LAO, there may be an administrative burden on clinics regarding reporting on how funding is used. This is an inherent necessity of receiving funds, particularly out of public dollars. However, if the reporting requirements and measures were meaningful to both parties, and alleviated micro-management of clinic affairs, it is foreseeable that in fact time and energy would be freed up to place greater emphasis on serving client needs.

Flexible funding is the most common model for government funding agencies. A move to this type of funding model would conceivably put more responsibility on clinics to do strategic financial planning. If, for example, an infrastructure need arose, it would not have the same recourse to its funder to appeal for cost-specific additional funding. Instead, generally speaking, the clinic would manage within its existing budget. This reality may be offset by the increased flexibility that envelope funding provides to clinics to manage its affairs and business as it sees fit, subject to LAO's requirements.

The question of resource allocation for clinics should also reflect that, as individual organizations, clinics do not innovate at the same speed or in the same way at all times. The funding process could support innovation in service delivery and permit experimentation. This is particularly relevant now as innovation is identified as a key principle for LAO's management strategy.

Efficient and Effective Management

LAO is obligated to ensure that not only are its funded services being delivered efficiently and effectively, but that LAO itself is being managed efficiently and effectively. A sound, functional and professional relationship between a funder and service provider is a vital element of efficiency and effectiveness. Consultation practices can either contribute to a functional relationship, and make it flourish, or mire it in complexity and inefficiency. LAO and the ACLCO, in its recent dialogues, have been finding more common ground in relation to consultation principles. These positive developments are moving the relationship between clinics and LAO farther away from the inefficient and unworkable practices identified in the Deloitte report which, on page four, stated "LAO often engages the clinics in an extensive consultation process before it implements major initiatives. While it is important to obtain feedback from clinics on new initiatives, consultation is extensive which slows down or in certain situations completely stalls the decision making process. This is an indirect cost to the system since a significant amount of resources are expended in the consultation process."

Consultation practices then are not simply practices that can be crafted and negotiated with clinics. Rather, consultation at the very least must not impede LAO's fulfillment of its statutory obligations to manage efficiently and effectively, and at best must be undertaken in order to further its statutory mandate. If consultation practices impede efficiency and effectiveness and sound administration and management practice, LAO is arguably in breach of its statutory obligations.

At the present point in relationship building, there is common ground on some high-level principles: that consultation is a vital component of building trust and functional relationships, that consultation where appropriate is essential to making well-informed management decisions, and that consultation must foster, not discourage, efficient management functioning. With agreement on the fundamentals, the issues to be discussed and clarified are the types of matters on which LAO should properly consult.

There has been an increasing level of clarity as a result of ongoing dialogue on the difference between consultation and decision making power. Clinics acknowledge that LAO has broad decision-making power, and that consultation does not equal joint decision-making power. LAO sees that even decisions that it has the power to make unilaterally may warrant consultation with clinics if the matters would have a significant impact on clinics.

It is key to note that despite this clarity on principle, an unworkable level of consultation could effectively result in joint decision making power, since decision-making would be slowed or even halted because of extensive consultation processes. Further clarification on consultation practices is therefore needed in order to ensure that consultation does not impede LAO's obligation to manage efficiently and effectively, and that on the other hand meaningful, transparent consultations are undertaken where appropriate.

Fulfilling statutory requirements of efficiency and effectiveness arguably require LAO to be able to manage its affairs without being unduly encumbered by unworkable consultation practices that impede efficiency and effectiveness. At the same time, LAO is arguably obligated to consult in situations in which a lack of consultation could result in not getting things right the first time, which would contribute to inefficiency and a lack of effectiveness. Making well informed decisions that are based on as much information as can be acquired within an amount of time and effort that is reasonably proportionate to the issue in question is simply a fundamental part of sound corporate practice. While LAO is not directly obligated by statute to consult with clinics, its obligations to identify legal needs and to administer an efficient and effective legal aid system arguably necessitate consultation with clinic law service providers. Obligations aside, there could be little argument against the statement that meaningful consultation makes good business sense, is part of sound management practices, and builds trusting collaborative relationships. On the other hand, consultations must serve a meaningful purpose,

and not stand in the way of LAO's ability to make management decisions in a timely way. In other words, consultation should help facilitate, not stand in the way of, informed, efficient management. Meaningful consultation, while it does take time and effort, ultimately saves time, increases efficiencies, and ultimately better serves legal aid clients.

The options below assume the desirability of meaningful consultation, and assume that the distinction between consultation and joint decision-making has been clarified.

Consultation Question: How could current consultation practices be clarified and modified to ensure that LAO is not encumbered in its management function, and that meaningful clinic input is received where appropriate in order to inform sound and effective management decisions? What subjects are appropriate subjects of consultation? What types of LAO decisions should not require system-wide consultation?

As discussed, there is a lack of clarity regarding the types of issues that should appropriately be the subject of consultation. It is fair to say that clinics tend to think that a wider range of issues should be consulted on than LAO does. A discussion on what constitutes a significant impact on clinics would allow clinics and LAO to broaden the common ground.

This section concerns issues that may appropriately require system-wide consultation. It is not a discussion on the day to day consultation and communication that involve isolated issues, or matters that affect an individual clinic. Communication and dialogue and seeking stakeholder input are clearly an important part of business functioning, and happen on a daily basis. The issue of consultation in the context of this section deals with more systemic issues that may require more formal or substantial consultation with clinics throughout the province.

Significant impact

As a starting point to aid in the discussion on what should appropriately be considered matters that could have a significant impact on clinics, below is a non-exhaustive list of the types of decisions that LAO may make that could conceivably have at least some impact on clinics. It is not meant to be a list of what LAO sees as qualifying as issues that have a significant impact on clinics. Rather, they are areas that generally involve all clinics and have some degree of impact. The consultation process will help to further define which of these, and potential others, have an impact that is significant and would be appropriate matters for consultation:

- New policies regarding clinic reporting requirements

- Changes in clinic budgets
- The addition or elimination of new clinic programs
- Development of new reporting requirements
- Changes in clinic foundational documents such as the Funding Agreement or Memorandum of Understanding
- Possible pilot projects or new service delivery models to address clinic law needs
- Changes to criteria upon which clinic funding decisions are based
- Changes in clinic funding structures

Responsibility for effective consultations

Section 2 of the current policy stipulates that “LAO and the community legal clinic system share responsibility for effective consultations.” The policy however almost entirely places obligations on LAO, and few on clinics or the ACLCO. In addition, the policy does not address behaviours required on both sides in order to better ensure that consultations are carried out in a spirit of cooperation and professionalism. Throughout this policy process, parties may wish to consider the advisability of spelling out behaviours required, including:

- Optimal behaviour on the part of the ACLCO when communicating with clinics on consultation topics
- Optimal behaviour on the part of LAO when deciding on what issues require consultation, consultation timing and transparency, and in its dealings with clinics and the ACLCO
- Strategies for dealing with conflict when one party feels that the behaviour of another party does not adhere to the spirit of co-operative and meaningful consultation

Having less reliance on formal consultation policies, and moving instead towards a more functional relationship that inherently involves meaningful and timely consultation

It could be said that ideally, a consultation policy in an organization with positive and functional relationships with its service providers and other stakeholders, would be unnecessary. Instead, management would recognize the value and importance of consultation on system-wide issues and would consult prior to making important decisions that would significantly impact the stakeholder and the organization. In addition, in day to day operations, management would recognize the value of stakeholder input and seek it out when making business decisions.

Input would be viewed as a powerful decision-making aid, and a practice that contributes towards efficiency and effectiveness. In turn, stakeholders would trust that their expertise and input was valued, and would provide it not for the purpose of advocating to protect its interest, but in a spirit of co-operation and a desire to assist the funder in arriving at the best decision that will ultimately best serve client needs and organizational effectiveness and efficiency.

Recent meetings between the ACLCO and LAO are moving both parties towards this vision. Although there are differences of opinion on when consultation is advisable, and when it is required under the current policy, there is an increase in trust and greater transparency, which reduces the tension when differences of opinion arise. In furtherance of this new era of co-operation and mutual respect, it may be that a legalistic consultation policy would set the stage for a continued adversarial, position-based relationship.

Absent a formal consultation policy, in addition to consultations arising organically as part of a healthy, mutually respectful relationship, the following options may be considered:

- As part of its yearly business planning process, LAO could draft a consultation plan, outlining the major issues on which it intends to consult with clinics
- LAO could promote predictable and meaningful input into clinic-related issues by issuing a regular statement of upcoming issues, forecasts or key questions

The evolution of the relationship between LAO and its funder, the Ministry of the Attorney General, provides a useful example of how improved relationships are conducive to effective and appropriate consultation. In the past, the relationship between LAO and MAG were secretive. LAO and MAG were often surprised by decisions made by the other party. The relationship was largely based on advocacy – LAO was advocating to MAG for increased funding. Over the past year, the relationship has transformed dramatically. LAO operates transparently, proactively sharing with MAG its plans and decisions, and actively seeks its input. In turn, MAG shares with LAO the information that it is able to share. There is an imbalance – LAO shares with MAG more than MAG shares with LAO, but this is just the nature of a relationship between a funder and fundee. MAG does not consult with its funding recipients on every decision. Often LAO is taken by surprise, but LAO recognizes that this is simply a reality of being a fundee. As a result of a new relationship based on trust and collegiality, and on a sense of working together towards shared goals, LAO and MAG enjoy a trusting relationship that is more transparent, communicative and co-operative. LAO contributes to this functional relationship by not advocating to MAG, but working with it to achieve common goals.

This type of partnership does not mean that there are not differences of opinion, or that MAG's necessary lack of disclosure and consultation in certain circumstances

does not present its challenges. However, they are navigable, since the relationship is built on a common sense of purpose, trust and, to the degree possible and appropriate, transparency.

It is important to note that this co-operative relationship, which leads organically to functional consultation practices, does not detract from the fact that in terms of the work that it does, LAO and its service providers are often strong advocates that challenge government action. Clinics and LAO often advocate against the government in tribunals and courtrooms, and through community development and law reform initiatives. This however is a separate sphere than the administrative boardrooms, where both parties work co-operatively to manage their respective organizations well.

The roots of developing such a co-operative relationship between LAO and clinics are taking hold. The regional reorganization of LAO has fostered increased communication between regional management and clinics, and among all service providers in each region. In actuality, consultation happens every day, and it is important to note that consultation does not only happen when it is formalized or expansive. Some matters are specific to one clinic, rather than systemic issues, and consultation may consist of a telephone conversation between a clinic ED and a regional VP as part of everyday business practice. In addition, LAO does consult with clinics on a regular basis through regional conferences, teleconferences between LAO's CEO and VP of Policy and Research and representatives of the ACLCO, and through the Clinic Law Advisory Committee. These continuing forms of consultation and two-way communication are an indication that LAO sees the value of consultation and engages in it on a regular basis outside of the commitments set out in the consultation policy.

The above discussions set out LAO's mandatory responsibilities under the Act, and modifications to current practices regarding measurement and consultation that are required in order to ensure that LAO meets its fiduciary obligations as a funding recipient and a funding provider. Below are discussions and options on further clarifying roles and responsibilities of LAO and clinics, and visions of the future that could see a redistribution of clinic services and a re-envisioning of the role of the ACLCO.

Responsibility for Determining Local Need

Consultation Question: How should LAO's and clinics' respective roles regarding the determination of local client needs be further clarified?

Discussion

Statutory provisions

The Act provides that both LAO and clinics have responsibilities regarding the determination of local client needs. Clarity regarding these roles is required in order to minimize work duplication, to reduce conflict associated with this lack of clarity, and to allocate tasks so that both parties fulfil their statutory requirements while ensuring the local needs are determined accurately, meaningfully, effectively and efficiently.

Section 12 of the Act states that LAO shall “**determine the needs of low-income individuals and of disadvantaged communities in Ontario**”. This requirement, in combination with LAO's power to set policies for clinics and attach terms and conditions to funding, provide LAO wide berth in terms of how and to what extent it will be involved in determining local client need and setting service priorities. LAO has the clear authority to prioritize services, and to decide what types of legal aid services it will and will not fund.

Section 39 of the Act details the duties of clinic boards of directors. In subsection 2, the act states that “**Subject to this Act, the board of directors of a clinic funded by the Corporation shall determine the legal need of the individuals and communities to be served by the clinic and shall ensure that the clinic provides legal aid services in the area of clinic law in accordance with those needs**”.

The words “subject to this Act” provides a limitation on the need-determination undertaken by clinic boards. It suggests that needs-determination must be accomplished in line with other provisions of the Act, such as requirements of efficiency and effectiveness, and in line with LAO's broad responsibility for supervision, monitoring and needs assessment. . In other words, clinics have the responsibility to determine and address needs, but this would not usurp LAO's statutory responsibilities and ultimate accountability for public funds.

The complementary nature of clinic and LAO roles regarding needs assessment and prioritization is not only articulated in the Act, but in the LAO/clinic Memorandum of Understanding which states in section 11 that “clinics and LAO agree to support each other by sharing information about the diverse legal needs of low-income individuals and disadvantaged communities in Ontario”.

It would not be productive to read this as resulting in duplication of work. Rather, it makes sense that mutual obligations should be read together so that the work of both LAO and clinics complement each other and reflect the reality that LAO is a funder and supervisor, and clinics are on the front lines, close to the communities they serve, and are in a well positioned vantage point from which to determine the nuts and bolts of how to address legal issues that are specific to their communities. This conceptualization was articulated in the Deloitte report on page 10:

[T]he LAO/Clinic Memorandum of Understanding (“MOU”) defines the roles and responsibilities of LAO and individual clinics in the delivery of clinic law services. The MOU also recognizes that LAO and clinics have legitimate, distinct and complementary roles and responsibilities in delivering legal aid services. While LAO is a funder, program manager and has decision-making authority within that context, individual clinics have management responsibilities and decision-making authority at the individual clinic level.

Concept of independence

Clinics have often pointed to section 39 of the Act to assert that clinics are independent of LAO. While to a certain extent, clinics operate at arm’s length from LAO, in that they have local Boards of Directors, and have staff to manage the operation of the clinics, the Act makes it clear that clinics are accountable to the funder, and that LAO is responsible for monitoring and supervising clinics, and has broad powers in relation to policy and priority setting. As was articulated in the Corlett Operational Review of the Community Legal System, 1993, and in the Grange report, independence in relation to clinics actually means independence from government, since clinics often challenge government action. To the extent that clinics are accountable to LAO, they cannot be said to be independent from LAO. Rather, the relationship between LAO and clinics is interdependent. Clinics depend on LAO for funding. LAO depends on clinics to deliver quality clinic law services to clients.

Aside from statutory accountabilities however, it is important to acknowledge the importance of local governance and needs assessment. The importance of local board governance was stressed in the McCamus review. As Professor Janet Mosher stated in the McCamus review at page 914 in relation to clinics, “community governance – the retention of local community boards – is integral to the identification of the legal needs of communities, as well as to innovation and responsiveness”. Later in the McCamus review, it is stated that “local governance is essential to any meaningful sense of ‘community’; take away local governance and one effectively takes away the community” (page 946), and on page 947, “autonomy with respect to policy and administration, subject only to accountability for the public funds advanced and for the legal competence of the service rendered” is essential. While the concept of community was not defined in these

passages, the general principle is that service providers need to be in touch with those that they serve in order to assess their needs.

LAO may not always be in the best position to make micro-level determinations of the challenges faced by local clinic clients, and how to best address these challenges. Clinics on the other hand are physically located in the communities they serve, and interact with their client base on a daily basis. Clinics may be in the best position to evaluate, for example, how local employment conditions, such as the closing of a local industrial plant, will likely have an impact on demands for assistance with income security issues. At the same time, LAO occupies a better vantage point from which to see legal aid system-wide issues, and to examine needs from a province-wide perspective. Coupled with its statutory duty to assess needs, prioritize them and to monitor and supervise clinics, LAO must have a hand in determining how clinic law services will fit within the entire legal aid system to address client needs throughout the province.

The new regional structure within LAO may provide further opportunities for clinics and other LAO service providers to work collaboratively to identify local needs and strategize as to how to best meet these needs. It is important to note that needs assessment and priority setting relating to clinic law services has an affect on other legal aid service delivery areas. If a clinic reaches capacity on a certain type of service, this may have an impact on the certificate system, or on the workload of a neighbouring clinic. By necessity and by virtue of interdependence then, both clinics have an interest in priority setting and needs assessment.

In order to recognize the undesirability of LAO being a micro manager, the positioning of clinics within their communities, and at the same time recognize LAO's obligation to monitor and supervise clinic law services and clinics, it may make both management sense and best promote efficiency and effectiveness if division of responsibility were envisioned as follows:

- Clinics are responsible for developing systems and methodologies for assessing local clinic law needs, implementing those systems and methodologies, and developing plans to meet those needs in efficient and effective ways.
- LAO is responsible for monitoring and supervising clinics in these tasks by ensuring the quality and effectiveness of the systems that clinics have in place to determine and address local needs.
- LAO is responsible for determining legal aid client needs on a province-wide basis, and to explore the ways in which clinic law services could meet some of those needs.
- LAO may contribute to clinic successes by helping to build and circulate better service planning tools, by promoting clinic capacity, and by encouraging clinics to generate internal efficiencies and innovations that may go towards increasing clinic capacity.

It may be advisable for clinics to, if they have not done so already, document their current and/or future methodologies for determining client need, without dictating the nuts and bolts of the policy content. LAO could, if it chose, include the development of internal clinic policies regarding the assessment of local needs as a requirement in the Funding Agreement. Currently, the Funding Agreement between LAO and clinics requires clinics to develop policies in a number of areas. LAO does not dictate the actual content of the policies, but requires clinics to develop and adhere to them. As part of its supervisory role, LAO assures the adequacy of the policies.

LAO's Role as Funder and Service Provider

Consultation Question: In order to address conflicts of interest and LAO's anomalous role as both a funder and service provider to its fundees, in what other ways could clinics obtain the services currently provided by LAO?

Discussion

The provision of services to clinics is not mandated by the Act. LAO has however provided various centralized support services to clinics, including the following:

IT purchasing, network and support: The Information Technology group works with the LAO regional and clinic reps for planning, development, and implementation the overall technology environments in clinics. LAO funds, maintains and supports centralized and decentralized infrastructure including workstations, servers and all network supported peripherals (i.e. printers and scanners). In addition, IT is partly responsible for defining, establishing, and implementing policies and procedures to ensure IT systems are secure and that LAO's computing infrastructure and environments run effectively with minimal downtime.

Learning/training for clinic staff and clinic boards: LAO promotes a coordinated approach to employee and board learning and development. It provides relevant reports and recommendations concerning budget, planning, implementation, and outcomes of learning initiatives. LAO supports organizational and individual learning in all roles within the clinic structure

Leasing: LAO provides funding and assistance in identifying potential new office space, establishing what market rates in a clinic's area are, provides negotiating services with landlords if requested by clinic, provides general advice on landlord, leasehold and rent issues. LAO provides guidance and hands-on support on the process of acquiring space, negotiating space, space requirements (size and location), etc.

Leasehold improvements: LAO provides funding and assistance to clinics in the form of advice, employing or recommending contractors, reviewing technical requirements, etc.

Research support (Clinic Resource Office): The Clinic Resource Office provides litigation support and research support to clinics. In addition it produces the Journal of Law and Social Policy.

Quality support: LAO's Quality Services Office performs clinic site visits and assists in the development of performance measures for clinics.

Benefits, insurance, RRSPs: LAO funds and provides administrative support and liaises with insurers on behalf of each clinic. LAO provides funding for benefits and RRSPs, although clinics are now responsible for their administration.

Purchasing: LAO purchases and arranges for the best rates on some equipment on behalf of clinics: computers, printers, faxes.

Clinic Services Advisors: Clinic Services Advisors provide advisory support to clinic management and boards. They also engage in policy development, liaison and administration, business support services, financial management and analysis and business and strategic planning analysis.

These services are provided at an annual cost of approximately \$5M to \$5.5M.⁷

The relationship of LAO to clinics as both a funder and a service provider is unique. In most public sector spheres, funders are not also service providers. The fact that LAO takes on this dual role arguably contributes to the lack of clarity on roles and responsibilities. It also creates a conflict situation in which clinics are both fund recipients accountable to LAO, and are also customers of LAO. In essence, if there is a question of the quality, efficiency or effectiveness of services to clinics, LAO would be investigating and/or auditing its own work. If on the other hand services were being provided by an outside body, clinics would clearly be the clients of the service provider, and would not be in the position of having to raise concerns regarding service with its funder. At the same time, the current arrangement does provide certain advantages. The following outlines some of the key impacts of maintaining the current system, or exploring options for decentralizing clinic support services. The potential of the ACLCO in particular taking on a service provision role is discussed more fully in the section on the role of the ACLCO.

Impacts of the current arrangement

- The provision of services that are provided and co-ordinated centrally provides for economies of scale. For example, centralized research services are more cost effective than each clinic hiring a research lawyer. Similarly, IT contracts and hardware purchased in bulk is likely more cost effective than individual clinics purchasing hardware and software. Providing IT support services to clinics however may not necessarily result in economies of scale. LAO funds 80 clinics, and each has its own unique systems and needs.
- The current system ensures that each clinic receives the relatively same level and type of service. This is not necessarily an ideal. Decentralized services could allow individual clinics to determine their own levels of service needs. Levels may vary from clinic to clinics, as they individually examine their needs and priorities.

⁷ Actual clinic services related costs are difficult to pinpoint, since some types of services, such as IT services, are provided both to LAO and clinics. The \$5M to \$5.5M range encompasses estimated portions of services dedicated to clinic services.

- LAO has greater oversight over how funding dedicated to clinic law services is spent. This may be a double-edged sword. On one hand it perhaps makes it easier for LAO to monitor and supervise clinics. On the other hand the structural set-up almost encourages micro-management, and detracts from individual clinic empowerment to determine their own needs.
- Centralized services allows clinics to focus more of their energies on direct client service, rather than administrative duties. On the other hand, LAO as a service provider contributes to the conflicts that arise as a result of lack of clarity regarding roles and responsibilities. The energy spent on navigating these conflicts on both the part of clinics and LAO detracts from client service.
- LAO may not be the best body to provide clinic services. Doing so may be a distraction from the work that LAO does best. There has not been an analysis of whether LAO is best positioned and able to provide services. Rather, the current arrangement was arrived at somewhat by default.
- A centralized support system may aid in fostering communication among clinics and between LAO and clinics. LAO is more in tune with clinic issues and needs. Again, this may be a double-edged sword. While communication may be better facilitated, the level of micro-interaction contributes to conflicts and lack of clarity regarding roles and responsibilities.
- Clinics do not make their own decisions regarding their own central support services. This arguably contributes to a sense of disempowerment, and an inappropriate dependency on their funder. If clinics were more responsible for their own service provision, it may contribute to professionalizing the relationship between LAO and clinics, and further empower clinics to take ownership of not only their administration, but their own capabilities to innovate and adjust internal processes to generate efficiencies and thus improve client service. Clinics would be empowered to work within their budgets and make spending decisions as they see fit, and be relieved from inefficient micro-management by LAO.

Potential Impacts of changing the current arrangement

- LAO would be more clearly in the role of a funder, as contemplated by the Act. The relationship between LAO and clinics may be simpler, and more free from the conflicts that the current relationship produces.
- Clinics may feel a greater sense of independence if they had greater control over their services, and more avenues of recourse if it is not receiving optimal service.
- There would be a need to minimize the work duplication that may result from decentralized services. This minimization would likely have to involve greater communication and information/resource sharing among clinics, perhaps facilitated by the ACLCO.

- LAO would need to be the ultimate funder of clinic support services (even if clinics funded another centralized body, these funds would be provided by LAO), but would have less control over what services were provided and over quality assurance matters

In light of the impacts described above, there are several options for re-examining LAO's service provider role. They include:

- **Have clinics be responsible for their own service provision:** The disadvantage to this is that it may be more costly for clinics to each be responsible for their own administration and service provision. LAO would need to provide adequate funding to clinics to provide and support the services that LAO currently provides, and may sacrifice the advantages of bulk purchasing and centralized support co-ordination and provision. The advantage would be that conflicts of interest would be more easily avoided, administration for LAO would be simplified, and clinics would have greater control over assessing and addressing their needs.
- **Have services provided centrally by a body other than LAO:** With this arrangement, LAO would have less control over what services are provided and by whom, which would have advantages and disadvantages. If services were provided by another centralized body, whether it were the ACLCO or another outside clinic services body, the body would have to be funded for both the provision and support of centralized services, and that body would have to demonstrate that it could be a good manager, and would have the required expertise to provide the services. The potential role of the ACLCO in clinic service provision is discussed in more detail in the next section.
- **Examine each provided service individually:** LAO and clinics could look at each service and determine whether it makes sense in light of all the factors discussed, and other factors that may come to light during the consultation process, to have individual clinics be responsible for the service in question, or to have that service be provided by an external body (such as the ACLCO, LAO or another external service provider). It may make sense, for example, for LAO to continue to provide one service, for a variety of reasons, including efficiency and co-ordination, but it may not make sense to continue to provide other services. The potential impact on cost, efficiency, logistics, clinic administrative independence, relationship building, role clarification and client service could be evaluated in relation to each LAO-provided service, and decisions made accordingly.

Note that regardless of which option is chosen, transfer of services would not have to happen all at once. Rather, they could be transferred one by one, according to a schedule that suits both LAO and the new service provider, and which results in minimal disruption to clinics and client.

Role of the ACLCO

Consultation question: What should the ACLCO's role be in relation to clinics and to LAO?

- **What should the ACLCO's primary functions be?**
- **From what body or bodies should the ACLCO receive its funding?**
- **In what ways could the ACLCO be re-envisioned in order to better serve the needs of clinics and better facilitate communication and consultation between LAO and clinics?**

Discussion

Currently, the ACLCO is directly funded by LAO. According to the terms of the Funding Agreement between LAO and ACLCO, funding is granted in order for the ACLCO to "support and assist community legal clinics and the community legal clinic system" through:

- (a) Fulfilling its mandate as set out in its Constitution and By-laws
- (b) Where appropriate, partnering with LAO in communicating and consulting about clinic system issues
- (c) Where appropriate, partnering with LAO in communicating and consulting about other legal aid issues.

The bylaws of the ACLCO sets out its mandate as follows:

- To promote the improvement of the legal welfare of the communities served by its member legal clinics
- To Promote unity and understanding among legal clinics in Ontario
- To represent and advocate on behalf of legal clinics in Ontario; and
- To promote and advocate for the expansion of the legal clinic system in Ontario.

In practice, the reality is that a large amount of the ACLCO's efforts are expended on advocating clinics' position to LAO on improving clinic services, increasing funding, or by registering complaints regarding LAO's actions in relation to clinics. The association is therefore funded by LAO but accountable to clinics.

Recent joint meetings between the ACLCO and LAO indicate that there is common ground on seeing a need for change, and for the ACLCO to play a more meaningful

and substantive role in assisting clinics in doing the work they do to serve clients and far less time doing battle with LAO.

It is important to note that LAO's relationship with the ACLCO, and the ACLCO's relationship with clinics, is voluntary. The Act does not mention the ACLCO. LAO's obligations in the statute are to clinics, not to the ACLCO or to a clinic system. Outside of the Funding Agreement with the ACLCO, LAO is not obligated to fund an association. Nor is LAO obligated to communicate with or otherwise deal with the association. Similarly, clinics are not obligated to deal with the association. Since relationships between LAO and the ACLCO, and between the ACLCO and clinics is completely voluntary then, it stands to reason that the existence of the ACLCO and its function must serve an interest of each party, and should contribute to LAO fulfilling its mandate.

It is logical to state that a funder would not be getting value for its funding dollar by funding a body that has as one of its main functions advocating to its funder. Furthermore, LAO is accountable for its funding, and how it distributes it. LAO would arguably be not meeting its statutory obligations if it were funding a body and not receiving value for that funding, or not requiring the ACLCO to be accountable to LAO for that funding. Currently, the ACLCO is not required to meet specified performance requirements or to report on efficiency or effectiveness in exchange for funding. A re-envisioned association could be focused not on advocating in relation to its funder, but on providing more substantive supports to clinics. In this way, it could indirectly be providing a service to LAO, as it could be assisting LAO in providing clinic law services more efficiently and effectively by, for example, fostering communication among clinics, co-ordinating and/or providing services, and developing strategic province-wide responses to clinic law issues. Joint meetings between LAO and the ACLCO indicate that both parties are interested in exploring such an evolution of the ACLCO.

While LAO is not obligated by statute to deal with the ACLCO, its interests may be served by the association if the re-envisioned ACLCO acted as a representative voice for clinics, and if it focused much of its attention on supporting clinics in the delivery of clinic law services. System-wide consultations with clinics, for example, may be facilitated more efficiently and effectively through the ACLCO, rather than LAO consulting with each individual clinic. Clinic members of the ACLCO have, by resolution, authorized the ACLCO to speak on their behalf. While the association does not have the authority to contractually bind clinics, clinics have granted the ACLCO the authority to represent clinic voices in its dealings with LAO. The ACLCO has a consultation policy that ensures that its voice will truly be representative of clinics' voices, and will note any divergence of opinion on specific issues. With increasing trust between the parties, and functionality of the association, LAO could receive better value for its dollar by dealing with the association in some respects as a representative voice of clinics and being confident in a workable and meaningful consultation process.

If LAO were to communicate with clinics through the ACLCO, on either an occasional basis or as a general practice, both LAO and clinics would have to be satisfied that the association was truly representing the diverse voices of clinics, and that it was open to working together to explore new solutions to new and old problems. The association would have to be open to advancing and representing more than one service delivery model, recognizing that one size does not fit all. Treating the association as the voice of clinics would require confidence and trust on both sides that all ideas will come forward and that there will be mutual openness to creative and innovative service delivery approaches. The ongoing dialogue between LAO and the ACLCO has gone a long way toward building that necessary trust and confidence.

Clearly, consulting via the ACLCO would only be workable, and allow LAO to manage its affairs efficiently and effectively if consultation was done in a spirit of mutual co-operation, and if consultations were themselves carried out efficiently and effectively. Meaningful feedback must be provided in a timely manner so that consultations do not add to the complexity of LAO decision-making, and detract from LAO's ability to carry out its mandated role. Modifications to the consultation process, as discussed earlier in this paper, may go a long way to address this concern. For example, if the association and clinics were aware at the beginning of each business planning cycle the issues upon which LAO intended to consult with clinics, the association may be better able to prepare for the consultations and deliver the views of clinics in a timely manner.

There is more common ground between LAO and the ACLCO than has perhaps previously been openly acknowledged and understood by both parties. Common ground includes an agreement that LAO is not statutorily obligated to deal with the ACLCO; that the ACLCO does not have the power or authority to legally bind clinics; that the ACLCO should move more towards a support for clinics; that there are potential efficiency gains in the ACLCO facilitating communications and consultations between LAO and clinics.

Acknowledging this common ground and building upon it by further professionalizing the relationship between the association and LAO both in terms of function and interactive behaviours will ideally increase mutual trust and co-operation and make it easier to engage in a meaningful examination of the potential future role of the ACLCO – a role that serves both the associations members, clinic clients, and LAO well in furtherance of LAO's mandate.

Potential options for ACLCO re-envisioning

An examination of the role of associations similar to the ACLCO in other jurisdictions reveals the following:

- Associations commonly engage in a wide variety of representation activities, including lobbying governments, acting as a local or national voice on public policy

or legislative issues that are of concern to members, advocacy on specific issues or for specific groups, awareness raising, etc.

- Associations almost always offer a wide variety of services and products to their members. Most offer conferences and training opportunities, scholarships, group benefits, professional discounts, research opportunities, group insurance, information and database services etc.
- The relationship between the ACLCO and LAO is unique in that LAO is the funder of the association that advocates against it.
- The ACLCO provides far fewer services to members than any other associations examined. Instead, many of the required clinic services are provided by LAO.

At the October 4, 2007 meeting between ACLCO and LAO representatives, the group collectively identified several existing and potential association spheres of excellence. Identifying these may help guide discussions on a potential re-envisioned role for the ACLCO. These identified spheres of excellence are:

- Facilitating communication among clinics. The association is in continual contact with clinics, and is in an ideal position to facilitate communication among clinics in order to help keep clinics informed about what other clinics are doing, to avoid work-duplication, and to identify potential province-wide strategies and responses to systemic poverty issues
- Training/learning: The ACLCO may be well positioned to identify training needs and create and deliver training programs, including management training.
- Quality assurance: The ACLCO could play a role in developing quality assurance measures and assisting clinics who are sub-performing, and.
- Providing support to boards such as education and training
- Policy and research: Potentially develop strategic policy options, centrally research and develop strategy on developments in the law, research possible systemic approaches to poverty issues
- Recruitment and co-ordinating movement of staff throughout the system. The ACLCO could work on initiatives such as inter-clinic secondments as well as recruitment and retention initiatives
- Promoting innovative services and the expanded use of technology
- Supporting clinics as a clinic *system*. The ACLCO may be best positioned to further explore the meaning of a clinic system, supporting and promoting it in order to better serve client needs, and advising LAO on whether and how it could further its own mandate by supporting the idea of a clinic system.

Issues involved in the ACLCO's potential role in taking on LAO's clinic services functions

As discussed previously, LAO could opt to move clinic services out of LAO and to another centralized body, which could be the ACLCO, or a new body. As discussed, there are both positive and negative impacts involved in potentially transferring some clinic support services from LAO to an external body, or to individual clinics. There are also issues that are specific to the possibility of transferring services to the ACLCO.

First, if the ACLCO were to take on a greater service-provision role, it would have to develop the capacity to do so, in terms of adequate resources and professional competencies. Resources would have to be sufficient to cover not only the service or product (such as IT hardware), but the cost of administering the services (i.e. IT tech support). Professional competencies would have to be fostered by hiring experts in each area of service provision.

ACLCO Funding Sources

LAO currently funds the ACLCO directly and entirely. In addition, LAO provides a number of supports which to the ACLCO including:

- (a) Information technology such as computers, printers, telephones, fax machines
- (b) Services of other LAO departments as appropriate and as capacity allows
- (c) Payment of insurance policy coverage for ACLCO employee's professional liability
- (d) Payment of Directors and Officers Liability insurance policy coverage for ACLCO's Executive
- (e) Training opportunities for ACLCO staff and Executive, as capacity allows.

Associations in other sectors are funded most commonly from membership fees, and, secondarily, from grants, earned revenue, gifts, project funding and other sources. It is highly unusual for an association not to be funded by its members. As discussed the funding of the ACLCO by LAO is made more anomalous by the fact that one of the ACLCO's functions is to advocate its position to its funder.

If the ACLCO were to be funded by clinic members, rather than by LAO, the practical difference may be subtle, since, as clinics' funder, LAO would still ultimately be funding the ACLCO. However, providing clinics with adequate funding so that they may pay membership fees to the association may make a conceptual difference and help to clear up accountability relationships, resulting in feelings of clinic empowerment, and less of a tendency towards LAO micro-management of clinic operations. A potential risk of having the ACLCO funded by members is that it may seem more appropriate for the association to take on a role primarily focused on advocacy in relation to LAO, since LAO would no longer be its direct funder.

Conclusion

The above questions and discussion points are meant to provide a springboard for re-envisioning the parts that LAO, clinics and the ACLCO could ideally play in providing clinic law services, in a way that is collaborative and functional, but that also is based on clearly defined roles and responsibilities. The starting point is the first principles articulated by the Act. The Act provides the non negotiables regarding obligations and accountabilities. Within this broad mandatory framework, delineation of roles and responsibilities may be navigated by reference to sound management principles, increasing the functionality and efficiency of professional relationships, and creating systems that ultimately provide the best possible service to clients. This consultation process will ideally be a forward leap to re-envisioning the future of clinic law services based on healthy and transparent relationships.