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Ten Ideas for Community Based Justice

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Ten Ideas for Community-Based Justice

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Canadian Forum on Civil Justice  Forum canadien sur la justice civile

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

Overview of the Community-Based Justice Research (CBJR) project. Globally, the evidence to understand, assess and scale access to justice and to make the business case for investing in justice is sparse, especially compared to other essential services like education and health. When people have no ability to access fair justice systems, they are left without the means to resolve grievances, protect their legal rights, livelihoods, assets or their physical security, resulting in inequity, alienation and abuse.

The Community-Based Justice Research Project (2018-2020) aims to compare the costs, benefits, challenges and opportunities for providing and scaling access to community-based justice services in Canada, Sierra Leone, Kenya and South Africa. This project will support, catalyze and promote the importance of evidence-based research designed to improve community justice for everyday people, and promote adequate support for justice reform from national and international sources. The lead research team includes: Trevor C.W. Farrow, Lisa Moore and Ab Currie.

The Community-Based Justice Research project is funded by the International Development Research Centre. For more details please visit Canadian Forum on Civil Justice, "Community-Based Justice Research", online: CFCJ <<http://cfcj-fcjc.org/our-projects/community-based-justice-research-cbjr/>>.



International Development Research Centre
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Introduction

Community-based legal services have long been a part of national legal services programs in countries that introduced legal aid programs in the early years of the access to justice movement. Because of inadequate funding for legal services the pressure to do more with less has been a constant in legal aid and access to justice services. This rationing of resources has driven much creativity, innovation and a wealth of ideas for improving the delivery of legal services and continues to do so. The ten ideas about community-based justice presented in this short paper are a small part of that much larger world. They are derived from projects exploring innovative approaches to the delivery of legal services carried out over several years with several community legal clinics in Ontario, Canada.¹ The ten ideas are not a systematic summary of research results or of lessons learned. They are the main ideas that emerged in the early development of the projects, in observing the projects through the pilot phases and understanding the outcomes.

¹ Ab Currie, *Extending the Reach of Legal Aid: Report on the Pilot Phase of the Legal Health Check-Up Project*, Canadian Forum on Civil Justice, Toronto, 2015; Ab Currie, *Engaging the Power of Community to Expand Legal Services to Low Income Ontarians*, Canadian Forum on Civil Justice, Toronto, 2017; Ab Currie, *Legal Secondary Consultation: How Legal Aid Can Support Communities and Extend Access to Justice*, Canadian Forum on Civil Justice, Toronto, 2018

1.

Engage the Power of Community

The community is a crucial resource for expanding legal assistance. The gap between unmet need and the resources to meet it is greater than what was previously realized. Legal needs research carried out over the past 20 years has raised the bar in terms of identifying hidden legal need and the need to develop outreach mechanisms to meet it. The scope of legal need has led to the realization that better ways to meet the needs of the whole community must be developed. Established legal services providers are unlikely to receive increases in resources from traditional sources sufficient to meet the greater demands as understood in terms of expanded, people-centered justice. Legal services providers in places with more recently established programs often funded mainly by large donor agencies may similarly lack the resources to serve the whole community. Existing community organizations already assisting people may have resources and skills to deal with elements of multifaceted problems that are not part of skill set of legal professionals. They may have relationships of trust with people that allow them entrée into people's lives that a legal clinic does not have. Community organizations have human and financial resources that may be substantial, especially when aggregated across the entire community. Community organizations share with legal services providers common objectives related to poverty reduction. High income areas with many government services and well-funded community agencies will have many resources. However, other communities that are less wealthy may have other institutions such as churches and traditional forms of assistance and dispute resolution that represent resources that legal services agencies do not. This is a powerful way to extend the reach of legal aid.

2.

Serve the Whole Community

It is important to set an aspirational goal of serving the whole community. People making up the community represent many groups differentiated by age, gender, sexual orientation, family composition and so on, each with a different set of needs. Other needs vary across life cycle stages such as medical care, education, employment and care for older people. Certain needs such as the safety and security of the person can mean different things in different contexts, such as domestic and other forms of violence or the availability of clean drinking water. There is a tendency for legal clinics of all sizes, but especially smaller ones with limited resources, to focus on a narrow range of needs in the community. Privileging one set of needs over another does not result in justice for all. At certain points in time some needs may take priority over others, but the

squeaky wheel should not always get the grease, nor should the funding priorities of governments or donor agencies.

3.

Build Service Delivery on a Foundation of Outreach

The way to serve the whole community is to build access to justice services based on the principles of outreach. 1) Go out to the community to learn about the needs of the people living there. Community leaders and service providers in community organizations have unique and grounded knowledge about the needs in the community, as do the individuals experiencing problems. That is knowledge that is not available to outsiders whose experience and formal education are not grounded in the community. 2) Develop partnerships with the community to address the problems. Community organizations not only have unique knowledge of local problems, they have unique entrée to typically hard-to-reach groups and perspectives on how to address their problems grounded in the realities of their lives. 3) Go out to where people live or where they spend their time to provide assistance. People experience many barriers to accessing assistance; lack of trust in institutions including lawyers and courts, lack of transportation, substance abuse, lack of knowledge about the availability of assistance, inertia. 4) Serve people who would not otherwise receive assistance. People know when they have a problem but they may not recognize the legal aspects of the problem and therefore may not take appropriate action, may not know where to go for help or may feel that the problems is an inevitable condition of life for which no help is available.

4.

Build Trust

Highly disadvantaged people with life long and multigenerational poverty may have negative attitudes toward lawyers, seeing them as outsiders, extensions of the government bureaucracies that they may view as having ignored their needs, mistreated them and as being responsible for their troubles. Going out to where people live, working through trusted intermediaries, demonstrating a willingness to listen, a proactive offer of assistance and a commitment to help in any way possible regardless of whether the assistance is strictly legal are important for building trust.

5.

Let people play a role in defining their needs and shaping solutions

The provision of service should be participatory and individualized allowing people experiencing problems to play an active role in constructing the solutions. In combination with outreach activities this makes it more likely that individuals will obtain the help they need for the problems they are experiencing, especially as the problems may come in clusters of inter-related legal and related non-legal issues. There may be several ways to deal with the problem(s) and the best solution may be unique to the particular problem. As a service provider you are dealing primarily with people not problems. There are other important outcomes of participatory forms of assistance. One is building legal capability; the capacity to recognize legal problems early, to take preventative action and to seek help from competent sources.

6.

Encourage Empowerment

It is likely that disadvantaged people are on the weak end of power imbalances in disputes with other parties such as landlords, employers and government services. They may fail to take action because of a fear of reprisal. There can be an element in empowerment in providing legal assistance. People who know their rights and who are alerted to the importance of critically assessing contracts and rental agreements may be able to prevent problems. They may have greater confidence in asserting their rights knowing that help is available from the legal clinic or other trusted advisor. Similarly, community organizations that assist disadvantaged people may do so more confidently and effectively if they know the basics of the law and the administrative procedures that apply in addressing a particular problem. Empowerment comes from building the legal capability of both individuals and community agencies.

7.

Holistic and Integrated Service

Problems frequently do not occur in isolation. They may be multifaceted having interconnected legal and non-legal aspects and they may occur in clusters of interconnected problems. Holistic assessment is

necessary for identifying and fully understanding the problems experienced by people in need. Combining the efforts of several organizations with skills and resources not available to legal clinics may be necessary to deal effectively with people. This observation is related to the second element of outreach outlined above, forming collaborative partnerships between legal services providers and community services agencies and civil society groups with mandates to assist disadvantaged people. It is also related to the principle of allowing people to tell their own story in their own words, allowing aspects of the problem that might not otherwise be evident to come out. As part of taking a holistic approach, build a trauma-informed service. Some people in need of assistance may have experienced and continue to experience overwhelming levels of stress and trauma. The trauma may not be directly related to the immediate problem for which they are receiving assistance. However, providing effective assistance to these clients may depend on discovering and taking into account the ongoing trauma they are experiencing.

8.

Extend the Reach of Legal Aid

In a strongly people-centered approach the boundary between legal and non-legal aspects of the problems experienced by people is very porous. Legal problems are usually aspects of the normal transactions and transitions of everyday life; buying and selling, gaining and losing employment, obtaining, moving or losing housing and so on. Part of the work of a legal clinic attempting to build a community-based approach is to convey to community organizations an understanding that the problems for which they attempt to assist people within their mandates may have legal aspects. There may be more than one solution and going to law may not be the best or the only one. Community organizations should be encouraged to take ownership of everyday legal problems, along with the legal clinic. Many community organizations will have broadly similar poverty reduction and social justice agendas with providers of community legal services. Engaging in outreach, learning about problems from community organizations then partnering with them to address those problems will lead to common definitions and approaches, even though there will certainly be a division of labour in which lawyers employ their special and unique skills. Through this approach legal services becomes an integral part of the community, sharing common objectives and developing integrated, collaborative activities directed toward the same objectives with civil society groups.

9.

Leadership from the Legal Clinic

Leadership from lawyers with progressive views about community justice is a key element in developing this expanded, community-focussed approach to legal services. Volunteer and professional service providers in community agencies may hold to a conventional concept of lawyers that reflects lawyers in private practice and that is predominant in the popular culture. They may not be familiar with the progressive ideas about legal problems and about holistic and integrated solutions. They may not immediately appreciate the value to their organization of collaborative partnering between legal services providers and community agencies. It may come as a surprise that the lawyer from a community legal service is “a different kind of lawyer.” It may require effort by community-focussed lawyers to familiarize community organizations with the kind of service provided by the clinic.

People in the community may think about their work in terms of social justice rather than legal issues. Legal professionals with a community legal service will also have a social justice orientation but will also have the skills to find the legal issues in the tangle of everyday problems that to the community represent unfairness and inequality. A community justice orientation can bridge legal justice and social justice, laying a strong foundation for access to justice partnerships between community groups and the legal clinic.

10.

Strengthen the Community

Building the capacity of community groups to participate effectively as a partner with the clinic is important. Community organizations will not come readily informed and equipped as effective partners. There are many ways to strengthen the community. Some will flow from particular outreach projects and some will be more generic. Providing public legal information on topics relevant to organizations and individuals in the community is one. It may involve equipping community agencies with the knowledge so they can carry out the basic or gateway roles of intermediaries, problem spotting and making good referrals. It may involve assisting an agency to serve their own clients better. This can be done by making the lawyers or legal workers at the clinic available for consultations with other service providers if they encounter a client with problems that may have legal implications.

Sustainability

Assuring the sustainability of community justice initiatives undertaken by legal clinics is essential. Adopting outreach as the foundation for providing community legal services represents to one extent or another a process of transformation from providing service to a relatively narrow slice of the community to providing service for a broader range of needs. As the legal clinic develops a presence in the community and community organizations become aware of the value of partnering with the legal clinic for helping their organization in meeting the needs of their clients or constituents, the process can develop a momentum of its own. Connections with new organizations can multiply quickly because of overlapping memberships in community organizations. Members of one group that is developing a promising relationship with the legal clinic, or who may simply have been present at a one-off presentation about the services available, will often suggest making a connection with another group in which they are a member. One thing leads to another in unpredictable ways. On the one hand, this is the great strength of a community focussed or community development approach to legal services. Outreach creates many pathways into the community that on the return trip become paths to justice (or at least assistance) as people and organizations begin to use them to connect with the legal clinic. However, this can be a strain on the resources of the legal clinic if the resulting change proceeds too quickly. It will take time for a good outreach project to mature into an effective part of the overall service delivery model. Even the best of projects will require some on-going maintenance as do all partnerships. Success creates its own energy that can drive ever more activity, but this has to be managed to assure sustainability.

In building partnerships with community agencies, do not ask too much of them. Front line agencies may be extremely busy. Community service organizations may already have their own processes for dealing with clients. Adopting something in addition to what they already do may be a burden. A community group should be able to see how the partnership with the legal clinic adds value to their capacity to serve their own clients or people in the community. Like all relationships, partnerships between community groups and the legal clinic require some on-going tending. After the initial period in establishing a community-clinic partnership in which there may have been intensive developmental work the clinic should continue to reinforce the relationship.