



# Adapting to suit changing client needs: beyond the traditional model of access to legal aid

*By Angela Longo, President/CEO, Legal Aid Ontario,  
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## INTRODUCTION

It's a pleasure to be here today to share with you some perspectives on access to justice from Legal Aid Ontario.

This is a very interesting opportunity for Legal Aid to be involved in an important justice system summit – for many years, we have been the quiet partner of our justice system here in Ontario. Despite that, I know I don't have to tell the audience here today that legal aid is an essential component of an accessible, fair, effective and efficient justice system.

Legal Aid Ontario is both a mature thirty year old system and a newly revitalized organization. The new organization results from the merger of two very separate and culturally distinct delivery organizations – the Ontario Legal Aid Plan and the Community Legal Clinic Program – which were merged into a single government agency with a single service approach in 1999. Our mandate is to ensure that poverty does not become an insurmountable barrier to the justice system. Our mission is to: promote access to justice throughout Ontario for low income individuals by means of providing high quality legal aid services in a cost effective and efficient manner.

As one of its first tasks in 1999, our newly created board of directors developed a four-year strategic plan with a much improved balance of client service and support for panel lawyers and clinics.

The board mounted an aggressive approach to modernizing legal aid's management and infrastructure that has resulted in a more client-focused, outward-looking, high performance organization.

We have rebuilt our relationships with the independent community legal clinics. After much hard work, we now have the first ever memorandum of understanding and funding agreements with the clinic system, clearly setting out the roles and responsibilities of Legal Aid Ontario and individual clinics.

We have also worked hard to improve relations with the bar, volunteers and other stakeholders and we've set up advisory committees, working together to provide better service for our clients. Our consistent and persistent efforts to lobby for the tariff increase are a good example of working together to achieve a common purpose.

We are grateful for the enormous volunteer services of over 800 lawyers and lay-people who serve on our area committees and the 500 community clinic board members plus more than 100 professionals who assist on a myriad of advisory committees from all across the province. We are actively using these advisory committees to address service issues and to find ways of improving services.

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Today, Legal Aid Ontario's focus is on:

- delivering high quality legal aid services to low income clients across Ontario;
- delivering services in the most cost effective way possible; and
- improving and expanding our delivery channels to achieve effective and efficient service delivery and client satisfaction.

Our priorities are criminal, family and refugee law, mental health, prison law and clinic services.

After the provincial government, Legal Aid Ontario is the biggest justice agency in the province. We serve more than one million people every year. That's about four thousand people every day, or more than the entire population of Sioux Lookout and many more people than are served by Ontario's biggest law firms. It's also nearly one half of the total number of Ontarians financially eligible for legal aid. So Legal Aid Ontario is very much "where the rubber hits the road" when it comes to ensuring access to justice in our society.

It's important to remember that LAO provides such services in the face of many challenges. Our resources are limited and unlikely to be significantly increased when political debate is focused on the need to rebuild our public health system and the straining capacity of our education system.

One of our biggest challenges is finding ways of serving more clients and serving them better, within the same budget. We've been successful at this – in the last five years, we have been able to increase services in all areas of law – with the same amount of money.

For example, since 1998, we have:

- Increased the number of certificates available for criminal, family and refugee cases by 34 per cent.

- Increased the number of people assisted by duty counsel – we helped more than 650,000 people last year alone.
- Increased access across Ontario to community legal clinics by expanding the reach of ten existing clinics to areas that previously had no services, and creating nine new clinics, including specialty clinics for housing and income security issues. French language clinics have been set up in Ottawa and Toronto – in partnership with existing Francophone community agencies, to provide one-stop access to services in French. Clinics helped close to 200,000 people last year – largely with housing or income issues.

Another challenge is the declining participation of members of the private bar. About 4,000 private lawyers work with us to provide legal aid services, and we couldn't function without them. However, the number of lawyers accepting legal aid cases has dropped by almost 30 per cent in the last five years. The legal aid bar is also greying - in clinics, in certificates, in duty counsel. In fact, over 60 per cent of the lawyers doing legal aid work have more than ten years experience. This is an issue we have in common with every other legal aid service organization we talk to.

We've worked with the private bar to increase the tariff and this past year we were successful in getting two modest increases to the hourly rates paid to lawyers. We're also working hard to convince new lawyers to make legal aid work a part of their legal practice. Like any service organization, we are out there promoting and marketing our job and learning opportunities. Where else can you get immediate courtroom experience as a new lawyer? We're attending law school job fairs across the country and bar admission courses to provide information on the different options for doing legal aid work. And for the first time in four years we are starting to see an increase in our new panel members.

**B**ut Legal Aid Ontario faces another serious challenge, one that has nothing to do with the resources at our disposal or the scope of the task that confronts us. I'm speaking now about thinking quite differently about how we provide access to justice. Access for legal aid clients may be more than just "getting their day in court".

As people who work full time in the justice system, we are sometimes blind to the fact that the system is designed for the professionals who work in the system – not for the average citizen who rarely needs to access it. There are codes and cues and quantities of paperwork and a special language. The legal world is also set up for traditional advocacy and litigation – one lawyer, one lawsuit. And our legal aid systems have been designed along the same lines.

For those who don't qualify for a legal aid certificate financially or on legal merit – it's often been an all or nothing proposition. What we've learned though, is that our clients' needs go beyond the simple legal problem. Many of our legal aid clients are facing multiple obstacles and issues. And we shouldn't assume that making sure the client has a lawyer is necessarily going to help them solve their problems.

Our clients are the very poor with incomes under \$29,000. They are the very vulnerable – with language and cultural issues, literacy and education issues, mental health issues, drug and alcohol challenges, victims of domestic violence or human rights violations. Another challenge is the geography of Ontario itself, which makes it difficult to ensure access to services.

We have started to think beyond the traditional model of access for legal aid – focused more on solutions and less on litigation. This has allowed us to test new ways of helping people, beyond providing them with a list of lawyers who can take their case. The benefits are that we serve the clients better, and we can serve more people, because we don't serve every client using our most expensive service delivery method.

Let me give you an illustration: about one quarter of our clients in the criminal justice system have some kind of mental health problem. So we are working with the mental health bar to target our services to deal with their special issues, and to provide training and resources to the bar who help these most vulnerable clients. In the past five years there has been a nearly 50 per cent increase in the number of accused entering the Review Board system for reasons of unfitness to stand trial or findings of Not Criminally Responsible by reason of a mental disorder. According to the Canadian Mental Health Association there has been an increase of approximately 56 per cent in the number of apprehensions under the *Mental Health Act*. The Centre for Addiction and Mental Health reports that 42 per cent of the clients served in mental health court had no fixed address.

Just this month, Justice Marshall congratulated a number of people for their work in assisting a mentally ill and physically disabled person who wound up in jail. Everyone involved – the police, health care workers, duty counsel and the Crown – worked together to help this man. The client did have a legal problem – he had been charged with a minor offence. But his biggest challenge wasn't a legal problem at all. The client was eventually taken back to a hospital where he could receive medical treatment and appropriate housing could be arranged. This was truly an issue of access to justice – not an issue of access to the legal system. And it took all the justice partners to resolve it.

#### **REFORMS UNDERTAKEN SINCE 1999**

With a limited budget we know that there are many people who need legal help and can't afford it, but who don't qualify for legal aid. Under our narrow eligibility guidelines, we turn thousands of people away a year. Our criminal law services are focused on clients with liberty issues. What about clients threatened with livelihood issues? What if we could provide them with some advice or information – enough to at least get them in the door, to begin to make informed decisions.

In real estate, the slogan is location, location location. In legal aid justice services, the slogan should be information, information, information. For example, Legal Aid Ontario has expanded its duty counsel program to provide advice lawyers in all the Family Law Information Centres in our courts. These centres allow people to have access to advice and assistance with preparing court documents. Often that's all people need – enough information to get them started and find out how to navigate the justice system. In some courts we have been creative and used pro bono law students to assist the clients under the supervision of the duty counsel on the family front line.

In the last couple of years, Legal Aid Ontario has begun to serve specific client needs by staffing specialized courts such as the Aboriginal court, drug treatment court and mental health court with duty counsel who have expertise and experience in those issues. Specialized duty counsel work with community agencies and other partners to deliver legal services in ways that meet the unique needs of these client groups.

In the Aboriginal or Gladue court, duty counsel lawyers are specifically trained and experienced in issues facing Aboriginal people, as well as the range of programs and services available to Aboriginal people in Toronto. This allows the court to craft decisions that take into consideration sentencing options other than incarceration. We are including Gladue training in our duty counsel training.

In addition to our core certificate and duty counsel services, LAO has some of the most innovative and far-reaching legal aid pilots in the world.

We have set up a pilot in five sites to test the effectiveness of specialized youth courts. Youth court workers work with the young person and the lawyer to develop community-based structured plans which offer the court an alternative to sending the young person to jail. In the first six months of the program, it has accepted more than 165 referrals and completed over 80 plans, 90% of which were accepted by the court.

The Refugee Law Office has been testing new community outreach and education principles. Last year, the office developed a comprehensive community education strategy for over 100 organizations involved in providing services to immigrants and refugees.

This also included numerous workshops on the legal needs of refugees, as well the development of new outreach materials and information. We are also working closely with the refugee bar to develop quality standards that will provide better consistency of service to clients.

Our three family law offices are also a valuable new resource – not just for representing hard to serve clients, but also for their ability to specialize in areas such as child protection. They have relieved the pressure on the private bar, particularly where the number of lawyers in the community is small and they may be able to provide the private bar with extra supports and training for these types of cases.

In the extended duty counsel offices, we found that staff duty counsel with an office in the courts allowed clients who do not qualify for legal aid and do not have their own lawyer, to have some continuity with their family law cases. That way, the client doesn't have tell their story over and over again to a different duty counsel lawyer every time they return to court.

Through the new housing clinic called the Advocacy Centre for Tenants Ontario, we have established duty counsel services in the Ontario Rental Housing Tribunal. Tenant Duty Counsel provide on the spot advice and representation to tenants facing eviction from their homes and other housing problems.

In the area of child protection, we are working in partnership with the Children's Aid Society and the family courts in London to test mediation techniques. For too long, the child protection system has been set up as a win-lose situation. Using mediation where appropriate, we hope to find win-win solutions – to help families before the problems get worse.

In Northern Ontario, we are supporting Nishnawbe-Aski Legal Services in a special project called "Talking Together" to test the use of restorative justice techniques in child protection cases, in parallel with the court process in Aboriginal communities. In communities where up to 50 per cent of the children are Crown wards and where the nearly half the population is under 20, what have we got to lose by getting outside the box?

We recognize that different people may need to access the justice system in different ways. Not all of our clients are capable of finding their way into a legal aid office to ask for help. In downtown Toronto, we have set up a pilot project to reach homeless people and provide them with legal services. A lawyer and a community legal worker go directly to four different shelters, to provide legal aid services in an environment where the homeless are comfortable, rather than making referrals or making them come to our office.

The project served over 150 clients in its first six months. They have been able to provide immediate assistance in criminal law matters, family law issues, child welfare, immigration and social assistance cases, and a few landlord and tenant cases.

Taken together, these reforms we have undertaken since 1999 mean that Legal Aid Ontario has been on the cutting edge of reforms to improve and promote access to justice.

#### **PLANS FOR 2003/04**

However, we are not content to rest on our accomplishments. We are moving ahead with plans that will bring us closer to our vision of providing the best service possible, when the client needs it, and in the way that best suits their needs. Let me provide you with a brief overview of some of the initiatives we are working on.

Our Client Access and Service Program is designed to improve client services, ensure consistent access to high quality services across the province and expand the range of service delivery models by which we provide those services.

Using a mix of certificates, staff lawyers, duty counsel and innovative partnerships with the private bar, we hope to gain the flexibility needed to respond to the varied and complex needs of our clients. For example, this year we are introducing a small number of criminal staff lawyers, as well as regional service networks and specialized services to respond to local needs and changes in clients' requirements.

We are not talking about just recreating services in the image of the private bar model. We are going to build services that are responsive to client needs and local circumstances.

Youth court workers, native court workers or other kinds of community legal workers could be contracted to assist with case planning for clients. If there are unmet client needs in a particular area of the law, lawyers could be hired to develop expertise in specialized areas such as youth justice, Aboriginal law, mental health or prison law. As the office develops expertise, it would become a resource for the private bar in the development of precedents, best practices, and training for junior lawyers.

**W**e have recently established duty counsel services for inmates in the Court of Appeal in Kingston and Toronto. This is a service coordinated on a pro bono basis by a private bar lawyer. It's a modest initiative but provides the right service on an as needed basis.

We are also moving on the human side of service delivery to promote quality and accountability. We have recently enhanced a new program dedicated to supporting quality service initiatives throughout the legal aid system. The Quality Service Office will coordinate performance reporting and benchmarking exercises.

Building on this approach to service delivery is what we have in mind for the future – to fulfil our statutory mandate of ensuring that anyone who qualifies for legal aid services will have access to a lawyer, regardless of where in the province they live.

We are also taking a closer look at how we can better meet unique client needs. I spoke earlier about some of the innovations we have undertaken to address the clients involved with child protection matters. Another example of the win-win approach that we're testing there is the work we are undertaking in the area of Family Law Services and Collaborative Law.

There has been a growth in alternative dispute resolution models in this area, with many experts claiming that mediation or collaborative law is more cost-effective and results in better client satisfaction. As a result, we are working with the private bar to test the use of collaborative law and examine if and how our services can support the use of such models and if they work for our clients.

Another initiative is aimed at thinking about new challenges for community clinics in the 21<sup>st</sup> century. In partnership with the clinics, we are holding a major international conference on clinic law in June. We hope to use the conference as a catalyst to improving our creativity in providing clinic law services, building on the success of the existing clinics. We expect to have representatives from a dozen different

jurisdictions to exchange ideas and strategies for common challenges - from Australia, South Africa, the US, England, Scotland, Germany, Bangladesh, Zambia, Uganda, the Netherlands and BC, Manitoba and Saskatchewan.

We are excited by the possibilities of some of the planned workshops on rural and remote services. We are also excited to learn about new technology ideas such as kiosks with custom designed software to help unrepresented litigants get legal information, create basic court documents, obtain referrals to legal services where necessary to provide client service.

On the technology front, we will continue to roll out our PeopleSoft implementation – an initiative that will replace our outdated computer systems with Internet technology and provide a single repository for all our information. This will help us to provide better service by making client information accessible from any location. Clients will be able to access us from multiple places.

It will give our staff access to better information to help us manage our programs, anticipate problems, create new solutions quickly, knowing we can conduct research with improved and accurate data. The new system will also allow lawyers to have an e-business relationship with Legal Aid Ontario, giving them faster and easier access to more information about their accounts and payments. In short, we want to make it a lot easier for lawyers to do business with us. We have already introduced online billing. Since it was introduced in late 2001, nearly 20 per cent of our lawyers are using it – so there's definitely no looking back.

We have introduced video technology for legal aid applications for in custody clients in five different locations in Ontario and it is hugely successful. It is an excellent example of integrating technology in our daily business. It's faster for the client – same day or same hour service, allows the lawyer of choice to be brought on board sooner, easier for the correctional facilities to manage and our client surveys tell us that we have high satisfaction rates. And, we can see more clients every day and save time and money doing it.

## VISION FOR THE FUTURE

While we're working to improve our own operations and the system of justice today, we also have an eye on where we want to lead things tomorrow. We need to help build a vision for the future where access to justice is improved for all citizens of Ontario.

As we continue to focus on new ways of providing access to justice for the most vulnerable people in our society, there is a growing concern about how far the reach of legal aid can go. Without throwing more money at the problem, how can we provide access to justice to substantially more people?

In my view, we need to look for ways to put more resources into what I call the front-end of our system – the preventative services that can help people find justice without resorting to court action. This will in turn help to preserve resources for the back-end – courts where larger disputes must be more formally adjudicated. One simple initiative is our planned introductory test of “bail officers” to assist duty counsel with locating sureties, calling lawyers, etc. and freeing up duty counsel to do the quality professional work they're trained to do.

I see this approach in much the same light as the debate that has evolved in health care – where discussion focuses on how to put more resources into health promotion, disease prevention and community care.

Just as knowledge of the determinants of health is key to a healthy population, so too can information provide the key to improving access to justice in society. We need to provide clients with more access and more information on choices other than our system of courts.

For example, advice lawyers can provide family law clients with more information and advice on the choices available to them. If they can see that there are other options available to them, they may be able to choose another “doorway” that doesn't lead to court.

Legal Aid Ontario can also help to provide more information and support with its partners in the justice system. For example, we can look for ways to collaborate with others on training and support for lawyers, which will help them better serve the needs of our clients.

We need to also look at the ways in which we deliver information - whether technology can help us to provide better service through the increased use of telephone, video, and other applications, just as they have through the Telehealth system here. This is especially true when considering how to best meet needs in Northern and rural Ontario, where factors like distance and weather play a huge part in determining access to justice.

Here in Ontario, I believe we need to analyse some of the systemic issues to promote better access. As someone who didn't “grow up” in the justice system, but who has worked in it now for almost ten years, I am still amazed at the strange ways in which our justice system operates. Can you imagine if your family doctor asked every patient she was going to see on Monday to show up at 9 o'clock in the morning and then had you all wait until it was your turn? And if you step outside for a moment, you go to the back of the line or even the next day!!!! That's what happens now in our system. No wonder clients and the public find the justice system mysterious and hard to navigate.

We take it for granted that it's normal to have several dozen lawyers, judges, clients, sureties and witnesses waiting around for hours in the courts for their cases to be heard. Imagine the cost! And we never think about the cost of the job time lost – for witnesses and sureties.

These are just some of the areas where I think we need to take the discussion on improving access to justice. Legal Aid is ready and willing to do its part creatively.

## CONCLUSION

**F**or legal aid systems today, I believe that the key to improving access to justice lies not in the specific method of delivering the service, but in the recognition that no one service delivery method can adequately meet the needs of all the clients, nor can it help us to serve more clients, with limited budgets.

Legal Aid Ontario is leading the charge by designing a multi-faceted system that is flexible and can adapt to suit the changing needs of all our clients. We are focused on providing the right service to the right client at the right time.

While we're making the improvements we need today, I hope we can continue discussions throughout the justice system – to build a vision of even better access to justice tomorrow.

*Ms. Angela Longo was appointed President and Chief Executive Officer of Legal Aid Ontario (LAO) in December 2000. She has a proven track record of expert leadership in significant public policy initiatives, and worked previously at the Government of Ontario.*