

# COMMUNITY LEGAL WORKERS IN ONTARIO: A PARALEGAL CASE STUDY

Frederick H Zemans

*BA LLB*

*Professor Emeritus*

*Osgoode Hall Law School of York University*

*Toronto, Canada\**

## SUMMARY

This article examines the history of community legal workers in Ontario, within the context of the community legal clinic movement that began in Toronto, in the early seventies. Tracing the emergence and development of community legal clinics and how their role has changed, the author directly connects the changes in the legislation, as well as the administrative changes in clinic governance, to the shifting role of the CLW's within Ontario's community legal clinics. The article identifies the shift in the CLW's role from one largely of community outreach and education addressing systemic problems in access to justice, to one where, increasingly, CLWs are principally expected to address the growing demand for casework and related tasks. Ontario's experience illustrates how funding formulas and models of governance directly impact not only on the way in which legal clinics connect to their community, but also how they contribute to social change. The significance of the innovative and strategic use of community legal workers is underlined by their continued importance within Ontario's growing community legal clinic system.

## 1 INTRODUCTION

This article represents a case study of the changing role of the community legal worker (CLW) in the Ontario legal aid clinic movement. Its findings offer a perspective not only on the specific role of the paralegal within the clinic movement in Ontario but also, by extrapolation, on the changing dynamic of the clinic movement itself. The clinic movement, which began in 1971 in Toronto with the opening of Parkdale Community Legal Services, is now over 30 years old. In the intervening years, its philosophy, administrative models, and governance have shifted; those shifts are embodied in the changing perspectives and the issues surrounding the role of the community legal worker within the clinic today.

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In this article, I will examine the history of CLWs within the legal clinic system in Ontario and how their role has changed, through an examination of the various studies of individual clinics and the clinic movement more generally, legislative changes to the administration of the act which governs the clinics, administrative changes in clinic governance, and through interviews with CLWs.<sup>1</sup>

As the distinctive designation of “CLW” suggests, the CLW was not intended to be simply the poverty law equivalent of a paralegal employed by a traditional law firm. Rather, the first CLWs were recruited to complement the legal presence within the clinic, to provide in-depth knowledge of the specific community and to assume functions such as community development and legal education that, though associated with the law, were rooted in social work, community development and educational approaches as well. Indeed, the role of the CLW was to bridge the gulf between the legal profession and low-income individuals by dealing with the systemic issues related to poverty. Outreach, public legal education campaigns to inform people of their legal entitlements, community organising, advocating for law reform, *etcetera* were all core elements included in the job description. While staff lawyers also looked to new models of lawyering through test cases, class actions and law reform, their work was largely taken up by traditional legal representation on a case-by-case basis. In short, they were to engage in activities, often innovative, that would render the provision of legal aid more effective. The article examines the importance of community legal workers in the evolution and development of the community legal clinic system in Ontario and their changing role within that system.

## 2 FROM CHARITY TO RIGHTS: THE EVOLUTION OF THE CLINIC MOVEMENT

The network of almost 80 legal clinics across Ontario began through the initiative of lawyers, legal academics and community leaders who were committed to providing low-income Ontarians with adequate access to justice. Prior to 1951, the private bar provided legal aid services to needy individuals on a strictly voluntary basis. In 1951, the Law Society Amendment Act introduced statutory legal aid, authorising the Law Society of Upper Canada to create a plan to provide legal services to the indigent, to be known as “the Ontario Legal Aid Plan” (OLAP).<sup>2</sup> The Act specified the types of legal services eligible for coverage and required that financial eligibility for legal aid be based on annual income, the number of dependents, and a discretionary “needs” test. The Plan paid lawyers only for disbursements and other administrative expenses.<sup>3</sup>

By the 1960s, it had become clear that voluntary legal aid was not meeting the growing need for legal services for low-income citizens. In 1963,

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<sup>1</sup> The interviews of community legal workers in Ontario were conducted by the author in early 2005.

<sup>2</sup> Statutory legal aid in Ontario originated in 1951 with the Law Society Amendment Act, which was modeled on British legislation in the form of the Legal Aid and Advice Act, enacted two years earlier. R.S.O 1960, c.207.

<sup>3</sup> *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* (Toronto: Ontario Legal Aid Review, 1997) 10 (hereinafter “*McCamus Report*”).

the Attorney General appointed a Joint Committee of the provincial government and the Law Society to study the delivery of legal aid in Ontario and to make recommendations for reform. The 1965 *Report of the Joint Committee on Legal Aid* declared that "legal aid ... is no longer a charity but a right". It recommended that the plan should continue to be administered by the Law Society and that legal aid should be publicly funded and widely available.<sup>4</sup> In 1966, the Legal Aid Act,<sup>5</sup> building on the report's recommendations, established a certificate scheme based on the British *judicare* model of legal aid. According to the new scheme OLAP would issue certificates to any financially eligible individual requiring the services of a lawyer, provided their case was approved by the local legal aid director as falling within the provision of the legislation (principally in the areas of criminal and family law). A legal aid certificate could be presented to any member of the private bar on the legal aid panel willing to accept it. The certificates reimbursed lawyers for both counsel fees and disbursements according to a prescribed fee tariff. The Act specified that OLAP was to be funded by the provincial government. Crucially, it placed no limitation on either the number of certificates that could be issued annually or on the annual budget of the legal aid plan. The amount of provincial funding for the Plan was thus "open-ended", based entirely on the number of certificates issued and their cost. By 1980, the Plan was issuing more than double the number of certificates it had a decade earlier.<sup>6</sup>

The dissatisfaction with the *judicare* model which gave rise to the clinic system was based primarily on lack of accessibility of legal services, particularly in the area of poverty law (housing, social welfare, employment and immigration issues). The clinic model is based on the philosophy that the legal needs of low-income individuals differ significantly from those of the typical fee-paying client. Wexler wrote: "Poor people are not just like rich people without money."<sup>7</sup> Their needs centre on matters such as housing and social assistance issues, in which most lawyers have little experience. In addition, poorer members of the community are often ill-informed of their legal entitlements and unaware of their legal options.

Clinics were introduced to address this gap in service by specialising in the provision of services commonly needed by low-income clients and pursuing community development and public legal education programmes so that the poor would avail themselves of these services. The first experimental clinic in Ontario was established in central Toronto in September 1971. Modelled after examples set by American university-based legal aid clinics and the community legal clinics which had been developed under the Office of Economic Opportunity's War on Poverty,<sup>8</sup> Parkdale Community Legal Services (PCLS) was attached to York University's

<sup>4</sup> Ontario, Ministry of the Attorney General, *Report of the Joint Committee on Legal Aid* (Toronto 1965), quoted in Mossman "Community Legal Clinics in Ontario" 1983 3 *Windsor YB Access Just* 375 378.

<sup>5</sup> S.O. 1966, c. 80.

<sup>6</sup> *McCamus Report* 12-13. The number of certificates issued in 1970 was 40 000. This had increased to 83 000 by 1980.

<sup>7</sup> Wexler "Practicing Law for Poor People" 1970 79 *Yale LJ* 1049.

<sup>8</sup> See Cahn and Cahn "The War on Poverty: The Civilian Perspective" 1964 73 *Yale LJ* 1317; and "What Price Justice: The Civilian Perspective Revisited" 1965-1966 41 *Notre Dame L Rev* 927.

Osgoode Hall Law School's clinical legal education programme and was funded as one of four pilot projects by the Canadian Department of Health and Welfare and the University.<sup>9</sup>

To ensure responsiveness to the particular needs of poorer neighbourhoods, PCLS and the other clinics that followed were governed by "voluntary community boards of directors". The clinics employed a mix of staff lawyers and salaried paralegals. First employed in 1972, as "community legal workers" (CLWs), these paralegals specialised in issues of poverty law, developing and implementing community outreach programmes that addressed many of the systemic problems of access to justice for low-income individuals.<sup>10</sup> Initially, these early legal clinics were not integrated into Ontario's legal aid scheme. Relying for funding on a variety of grants from government and charitable foundations, they enjoyed considerable independence in structuring their operations and setting their priorities.

In 1973, a Task Force on Legal Aid was appointed to consider the future of legal aid in Ontario.<sup>11</sup> In the face of considerable concern and opposition from the legal profession, the Osler Report recommended moving away from the strict *judicare* model of legal aid to a "mixed" staff/*judicare* model that would allow for the further development of additional community legal clinics. In 1976, the government passed a regulation to the Legal Aid Act that established provincial funding for the community legal aid clinics.<sup>12</sup>

A subsequent study of legal aid, undertaken in 1978 by Mr Justice Samuel Grange,<sup>13</sup> resulted in a further and more elaborate regulation to the Legal Aid Act relating to clinic funding. The Grange Report specified that the Ontario Legal Aid Plan (OLAP) was to fund an "independent community-based clinical delivery system". It rejected criticism from the legal profession in Canada that the new mixed-delivery system would harm the private bar. It also endorsed the community development work conducted by clinics as a key element of their mandate. The new regulation established a Clinic Funding Committee (CFC) as a standing committee of the Law Society. Wholly distinct from the Legal Aid Committee, the CFC had a separate budget, thus further underlining the importance of clinic independence. The new governance structure created a "*de facto*" partnership between the CFC and the individual clinics' volunteer boards of directors. The tensions within this relationship continue to this day.<sup>14</sup>

<sup>9</sup> It was also the only Canadian legal clinic to receive funding from the American Council on Legal Education and Professional Responsibility (CLEPR), a subsidiary of the Ford Foundation.

<sup>10</sup> Zemans "The Dream is Still Alive: Twenty-five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law" 1997 35 *Osgoode Hall LJ* 499 503-504.

<sup>11</sup> The Task Force was appointed by the Ministry of the Attorney General and headed by the Honourable Mr Justice John Osler, highly respected former labour and employer lawyer. Ontario, Ministry of the Attorney General, *Report of the Task Force on Legal Aid, Part I* (29 November 1974).

<sup>12</sup> R.R.O. Reg. 557 (1970) as amended by R.O. 536 (1976).

<sup>13</sup> The Attorney General appointed the Honourable Mr Justice Samuel Grange (hereinafter "Grange Report") a former corporate commercial lawyer who had been an early member of the board of directors of PCLS.

<sup>14</sup> *McCamus Report* 15-16.

Community legal workers have been an essential feature of the clinic model from its beginnings in an inner city neighborhood legal clinic through its expansion and evolution to a province-wide "system" of government-funded community legal clinics. They have been central to the development of innovative approaches to the peculiar problems of providing adequate legal services to the poor. The comprehensive role of the clinics is clearly articulated in the regulation on clinic funding under the Legal Aid Act, which states that funding is directed at the provision of:

"[L]egal or paralegal services or both, including activities reasonably designed to encourage access to such services or to further such services and services designed solely to promote the legal welfare of the community."<sup>15</sup>

Drawn from a variety of employment experiences and from different cultural and linguistic groups in the community, CLWs have brought fresh perspectives to the challenge of providing legal services to the poor.

The experience of other jurisdictions employing non-lawyers in legal aid fortifies the hypothesis that clinic-based paralegals will develop specializations in "poverty law" matters and engage in innovative problem solving. In the United Kingdom, specialist paralegal positions have emerged in law centres and Citizen Advice Bureaux. These include Welfare Rights Officers, Money Advice Workers, and Environmental Health Officers. Most often, paralegals working in low-income communities have a "team approach" to providing legal services. For instance, a law centre may be divided into a number of units, such as immigration, employment, women, housing, etc. Each unit consists of a lawyer and several paralegals who have gained expertise in a particular area of law. Such teams work exclusively in their areas of specialization, providing not only legal services but also associated advice and community education and development.<sup>16</sup>

Although the Ontario clinics were initially modeled on similar legal aid community clinics in the United States, the American clinics did not enjoy the same flexibility in the delivery of their services, since they had no complementary certificate-based system to supply the need for more "traditional" legal aid services. The presence of a private bar alternative in Ontario was a crucial element in creating the capacity for clinics to engage in essential law reform activities central to effective legal services provision. Once government funding was regularized, however, the extent to which government-funded clinics would be permitted to engage in law reform activities that were critical of government policy became a more contentious issue. In an appeal to the CFC that ultimately proved persuasive, an umbrella organization of clinics known as "Action on Legal Aid" (ALA) argued forcefully for the freedom of clinics to aggressively pursue law reform activities in the interests of low-income persons. The brief, submitted to the CFC on 4 May 1976, noted that it was the professional responsibility of lawyers, in whatever field of law they practiced, to lobby actively in support of legal reform where this was necessary for the development of the law to better serve the public interest. It would have been completely incongruous, then, and certainly regressive, for professionals specializing in poverty law to

<sup>15</sup> Reg s 148(s) quoted in Mossman 1983 3 *Windsor YB Access Just* 387.

<sup>16</sup> See Noone "Paralegals and Legal Aid Organizations" 1988 4 *JL & Soc Pol'y* 146 153-54.

have been prevented from fulfilling their professional responsibility in this regard. The brief argued that if there were areas of the law wherein law reform should *not* be retarded, these should be in those areas that affect the underprivileged.<sup>17</sup> In practice, this meant freedom to lobby on now familiar issues such as tenants' rights, the rights of refugees and new immigrants, welfare reform, and other similar matters. Generally speaking, therefore, law reform campaigns undertaken by clinics are regarded as an appropriate function of community legal clinics.

The second director of PCLS, Ron Ellis, argued strongly that as a fundamental principle, community clinics, although in receipt of government funding, should remain strictly independent in terms of governance. Yet, though the funding scheme is intended to ensure that clinic boards retain their independence in deciding which activities to prioritize, the CFC was perceived as still capable of placing subtle pressure on clinics through its ability to set broad "funding guidelines", which continue to apply universally to all clinics. Thus the requirement that clinics report their work to the CFC (now Legal Aid Ontario) in terms of "files," arguably privileged the traditional casework over more radical strategies.<sup>18</sup> A report of the CLW Consultation Committee, discussed in more detail later, noted, in particular, that an individual community development "file" might typically relate to a long-term project spanning several years and remain open for the entire period. It therefore recommended that some alternate method be adopted for reporting such work, which was principally undertaken by CLWs, so that its significance with respect to clinic operations could be more accurately reflected in clinic statistics.<sup>19</sup>

It has been argued that the CFC and Clinic Funding Committee staff (CFS), through the issuance of funding guidelines have had a significant effect on the character of clinic work, and in particular on that done by CLWs.<sup>20</sup> This was especially the case during the period of rapid expansion in the 1970s and 1980s, which saw the number of clinics grow from a dozen in 1976 to 66 by 1990. Both the CFC and CFS were bodies composed almost entirely of lawyers. Since new clinic proposals required the approval of the CFS, moreover, there appears to have been an inherent bias towards approving funding for clinics proposing to deliver legal aid services in the manner of a traditional law office.<sup>21</sup> This bias is reflected in the relative numbers of lawyers and CLWs hired during the early expansion of Ontario clinics. In 1980, clinics employed 39 lawyers and 88 CLWs. By 1987, 149 lawyers were working in community clinics, whereas the number of CLWs employed had increased to 117.<sup>22</sup> By 1990, the number of lawyers had risen

<sup>17</sup> For the full text of this brief, see Ellis "The Ellis Archives – 1972 to 1981: An Early View from the Parkdale Trenches" 1997 35 *Osgoode Hall LJ* 535 563-65.

<sup>18</sup> Sheldrick "Law, Representation and Political Activism: Community-based Practice and Mobilization of Legal Resources" 1995 10 *CJLS* 155 181-82.

<sup>19</sup> CLW Consultation Committee, *Final Report: The Community Legal Worker in the Legal Clinic System* (Toronto: 1991) [unpublished] 24 (hereinafter "*Final Report*").

<sup>20</sup> This argument appears in Sheldrick *The Political Activism of Community Legal Aid Clinics in Ontario: Democratic Representation and the Bridging of the Law-Politics Dichotomy* (PhD. Thesis, York University, 1996) [unpublished]. Similar concerns are raised with respect to the role of the senior administration of Legal Aid Ontario.

<sup>21</sup> Sheldrick 177.

<sup>22</sup> *Final Report* 1.

to 162, though there were still only 117 CLWs working in the clinic system.<sup>23</sup> New clinics, created after the regularization of provincial government funding, were, as a general rule, focused on casework with limited emphasis on community education or development.<sup>24</sup>

### 3 THE CLW'S PERSPECTIVE

In 1988, to address growing concerns among CLWs regarding their continuing role and status in the clinic system that had arisen in part from the shift in the composition of clinic staff, the CFC created the CLW Consultation Committee. Composed mainly of clinic CLWs, the Committee's mandate was to examine the skills and training needs of CLWs.<sup>25</sup> The Committee's 1991 report, the first to be presented from the perspective of the paralegal, addressed four key issues: status, salary scale, training and job definition.

Although slightly over half (51%) of CLWs surveyed responded that they intended to remain permanently in their positions, they were frustrated with the lack of formal recognition of this career stream.<sup>26</sup> Experienced CLWs also expressed frustration at the perception of a lower status than lawyers even when performing similar tasks. Many expressed concern that their specialized knowledge of the low-income community and of community development was not appropriately valued.<sup>27</sup> The Committee identified, as a key problem, the fact that the entrance salary and the scale of pay for CLWs did not reflect an individual's level of education or previous work experience.<sup>28</sup> (Despite the Committee's recommendation that the salary grid should be expanded to take into account relevant pre-clinic experience of new CLWs, this issue has not been addressed.<sup>29</sup> Though today, a lawyer's starting salary is based upon the year of her/his call to the bar, an incoming CLW is not credited for any relevant experience outside of the clinic system.)<sup>30</sup>

The CLW Consultation Committee identified the absence of any formal training programmes for CLWs as a critical problem. (In 1984, the CFS had phased out its programme of specialized training for new CLWs.)<sup>31</sup> The Consultation Committee identified the following as sources of training available to CLWs:

- (a) The training programme, formal or informal, instituted in their individual clinic (if such a programme existed in the particular clinic);

<sup>23</sup> Law Society of Upper Canada, Annual Report (8 February 1991).

<sup>24</sup> Blazer "The Community Legal Clinic Movement in Ontario: Practice and Theory, Means and Ends" 1991 7 *JL Law & Soc Pol'y* 49 66. The general-service clinics that gave priority to casework over outreach had come to be referred to pejoratively as "Kentucky Fried Clinics".

<sup>25</sup> *Final Report 1*.

<sup>26</sup> *Final Report 18*.

<sup>27</sup> *Final Report 2*.

<sup>28</sup> *Final Report 15-16*.

<sup>29</sup> *Final Report 14* (recommendation #5).

<sup>30</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005). The system for crediting lawyers was introduced in January 2004.

<sup>31</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005) 28.

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- (b) Regularly offered regional training programmes in one of the four regions (the north, the east, the southwest and Metro Toronto);
  - (c) Written materials in various areas of poverty law, developed by CLO staff, including some practice manuals;
  - (d) Attendance at relevant continuing education programmes of the Law Society or the Bar Association;
  - (e) Attendance at inter-clinic working groups on specific areas of poverty law;
  - (f) Attendance at specific province-wide training events often with some specific funding from the Clinic Funding Committee;
  - (g) Attendance at the province-wide “Clinic Institute”<sup>32</sup> (it noted, with some dismay, that the “Clinic Institute”, designed to provide advanced legal training in tribunal work, had originally been restricted to clinic lawyers).<sup>33</sup>

The Consultation Committee recommended that the recently established Clinic Resource Office (CRO) should coordinate the training efforts of the clinics, developing materials tailored to the special role of CLWs in community development.<sup>34</sup> It also recognized that specialized training focused on community development work and public legal education could best be provided by experienced CLWs.<sup>35</sup>

In 1994, in the face of significant financial problems in the province’s legal aid system, a fundamental change to the certificate system was implemented when the Law Society and the provincial government committed to a four-year Memorandum of Understanding in response to the escalating costs of, and demand for, legal aid certificates. In the agreement the provincial government guaranteed funding for the Legal Aid Plan, provided that the Law Society administered legal aid within the limitations of a fixed budget. Despite numerous austerity measures, the Law Society proved unable to introduce effective cost-controls, prompting the provincial government to commission an independent task force to undertake a comprehensive review of legal aid. The resulting report, *A Blueprint for Publicly Funded Legal Services* (1997), documented an increased demand for “traditional” direct legal representation in clinics – a situation the authors attributed to the reduction in the number of certificates being issued in those areas of law in which clinics specialize.<sup>36</sup> The fiscal crisis, it appears, had placed increasing pressure on clinics to set their budget priorities on addressing individual cases – the manner favoured by the CFC.

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<sup>32</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005) 28.

<sup>33</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005) 38-39. It in this case urged that specialized legal training be made available to both lawyers and CLWs with similar experience in representing clients before tribunals.

<sup>34</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005) 35.

<sup>35</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005) 29.

<sup>36</sup> *McCamus Report* 191.



In 1998, the Legal Aid Services Act removed the administration of legal aid from the hands of the Law Society and transferred it to an independent legal services corporation called Legal Aid Ontario (LAO).<sup>37</sup> A Memorandum of Understanding between LAO and the community legal clinics explicitly recognized that the individual clinics' business plans could include "law reform, public legal education and community development" activities among their approved services.

#### 4 CLWs IN THE LEGAL SYSTEM TODAY

A profile of today's CLW may be helpful. A disproportionate number of CLWs are women. While this is also true of staff lawyers, among whom women outnumber men almost 2 to 1, there are roughly four times the number of women CLWs as men working in clinics. Relative to lawyers, the remuneration of CLWs is significantly lower. Moreover, the funding grid established by the Clinic Funding Office of Legal Aid Ontario provides for proportionately greater increases in salary for lawyers than it does for CLWs with respect to experience.<sup>38</sup> Individual clinics, however, are free to allocate salaries in whatever manner they wish and may pay especially valuable and experienced CLWs above the grid with funds from other sources.<sup>39</sup> A senior CLW observed that while there has been a marked improvement in recent years, the pay disparity between lawyers and CLWs remains a particular source of concern, particularly with respect to the level of the maximum salary on the CLW grid.

Of the 130 CLWs working in clinics today, over 50% have worked in the clinic programme for more than ten years, while one third (38) have worked five or fewer years in the system.<sup>40</sup> In a major expansion of the clinic system in 2002, in which the number of clinics was significantly increased, staffing needs were met primarily through the addition of lawyers. From 2002 to 2003, the number of lawyers increased from 182 to 238, while the number of CLWs increased only marginally from 113 to 127.<sup>41</sup> The shift in hiring practice reflects in part the growing public demand for traditional case-by-case legal services and the community boards' attempt to meet that need. One reason for this increased demand was the change in social policy introduced in 1995 by the provincial Conservative government. At that time, welfare benefits were reduced by 22.6%. Although the Liberal government, elected in 2003, has recently increased social assistance by 3%, this still represents a drop in real terms of about 40% since the early 1990s. While CLWs were historically at the forefront of providing "non-traditional" legal services such as community development and public legal education, CLWs in the clinic system have been under increasing pressure to devote a greater proportion of their time to traditional casework. One CLW with whom we

<sup>37</sup> S.O. 1998, c. 26.

<sup>38</sup> The 2003-2004 grid was \$56 242-\$98 123 for lawyers (without becoming a director) and \$45 794-\$59 995 for CLWs. Interview with Lenny Abramowicz, Executive Director, Association of Community Legal Clinics of Ontario (8 and 11 February 2005) (hereinafter "Abramowicz interview").

<sup>39</sup> Abramowicz interview.

<sup>40</sup> Interview with Sue McCaffrey, Vice President, Clinics and Special Services, Legal Aid Ontario (22 February 2005).

<sup>41</sup> *Ibid.*

spoke in 2005 described his clinic as “swamped” with cases of persons denied welfare.<sup>42</sup>

A 2004 *Report on Clinics* conducted by the Business Analysis Unit of LAO showed that the number of open case files steadily increased between 1998 and 2002 and that expenditures by LAO on clinics grew by 50% from 1998/1999 (\$34.2-million) to 2002/2003 (\$52.1-million).<sup>43</sup> The study noted that the increase in open files was due to the fact that fewer cases than in the past were being closed during the course of a single year. In fact, there were fewer new cases opened in the same year than in the previous year.<sup>44</sup> The authors of the report speculated that case files were remaining open for longer periods due both to their increased complexity and to the fact that fewer cases were being resolved at the first level of decision-making.<sup>45</sup> Not surprisingly, as the caseload rose, the volume of law reform and community development files decreased. Though the report noted that the volume of public legal education files did increase during the period, the total number of law reform, community development and public education files combined represented only 11 to 14% of all clinic files.<sup>46</sup>

Today, the majority of CLWs are generalists, performing essentially the same role as clinic lawyers. As in the past, clinic casework generally focuses on four principal areas of law: social assistance, housing (particularly landlord and tenant matters), disability support, and other forms of income maintenance including worker’s compensation.<sup>47</sup> Although in-court representation (except for small claims court) is restricted to lawyers, CLWs are able to represent clients before tribunals. CLWs with less than two years experience must be closely supervised in the handling of casework. It is estimated that CLWs with less than six months experience require approximately 25% of a supervising lawyer’s time.<sup>48</sup> Supervision of new CLWs remains a critical issue. Experienced CLWs generally require limited supervision. In some cases, CLWs head up teams composed of lawyers, CLWs and volunteers. Several CLW’s hold senior positions within a clinic, including, in certain circumstances, the position of co-director.<sup>49</sup>

As the statistics show, though CLWs were originally employed to fill a unique niche in the delivery of poverty law services through the provision of “non-traditional” legal services, in recent years they have increasingly been required to respond to the growing demands for case-oriented service.

<sup>42</sup> Interview with Richard Atkinson, CLW, Kinna-aweya Legal Clinic, Thunder Bay, Ontario (15 February 2005).

<sup>43</sup> Legal Aid Ontario, Business Analysis Unit, *Report on Clinics* (January 2004) 5 (hereinafter “*Report on Clinics*”). The number of open case files at the beginning of 1998 was 14 333, and in 2002 this had risen to 16 213.

<sup>44</sup> *Report on Clinics* 6.

<sup>45</sup> *Report on Clinics* 8.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Report on Clinics* 10. These four areas represent more than 80% of the casework dealt with by LAO’s Legal Aid clinics, with disability support and housing together accounting for more than 50%.

<sup>48</sup> Interview with Randall Ellsworth, Director, Clinic Services Office, Legal Aid Ontario (15 March 2005) 27.

<sup>49</sup> CLWs cannot be the *sole* director, however. In the case where a CLW is a co-director, a lawyer would be director of legal services, with the CLW filling the role of director of administration (see fn 38 above, Abramowicz Interview).

Decisions concerning the nature of their work and the allocation of their time, however, are determined by the priorities set by the clinics themselves and are the responsibility of individual Boards of Directors and clinic Directors. Parkdale Community Legal Services – the original community legal clinic – takes the position that the work of CLWs should be centred on innovative delivery of legal services; its six CLWs do no casework whatsoever. Not surprisingly, most transformative legal work occurs in specialised clinics, such as the Advocacy Centre for Tenants in Ontario (ACTO) and the Income Security Advocacy Clinic (ISAC), which are, by their mandates, oriented towards law reform and do not handle individual cases.<sup>50</sup> Responding to the shift in government policy with respect to welfare funding in the mid-1990s, one clinic assigned a CLW to work exclusively on community development in order to increase political awareness and mobilize opposition to the Conservative social agenda. Once the changes were enacted, the work of the CLW was redirected towards casework, including the launching of test cases.<sup>51</sup> The situation differs in the general service clinics where the increasing volume of casework has led many clinics to conclude that their CLWs should take on a greater number of case files. Analysis of the funding applications submitted by 67 of Ontario's community legal clinics in 1998 indicates that between 60-70% of staff activity was devoted to casework, with outreach accounting for the remaining 30-40%.<sup>52</sup> Our 2005 research confirmed this trend. Interviewees stated that it was typical for CLWs in the smaller clinics to spend at least 75% of their time on casework and only 10 to 15% of their time on community development and education.<sup>53</sup>

## 5 WHERE THEN?

In 2004, the Ministry of the Attorney General commissioned Deloitte Consulting to examine the “relevance, efficiency, effectiveness and affordability/sustainability” of the clinic system. This study, titled *Program Evaluation of Legal Aid Ontario: Community Legal Clinics and Student Legal Aid Services*, focused heavily on quantitative rather than qualitative analysis concluding that it “may be possible to reduce program expenditures ... by reducing the number of lawyers and increasing the number of community legal workers who are compensated at lower rate”.<sup>54</sup>

The Deloitte study focused primarily on a quantitative analysis of cost-efficiency. Building on the recent trend within the clinic movement to use CLWs as sources of lower-paid legal caseworkers, it found that, many cases can efficiently be handled by trained CLWs. Some fear that the study will reinforce the current direction and lead to a conversion of community legal clinics into conventional law offices that specialise in poverty law, with CLWs

<sup>50</sup> Each of latter focuses on test case litigation and employes CLWs who work as policy analysts and community organisers.

<sup>51</sup> See fn 38 above, Abramowicz interview.

<sup>52</sup> McDonald “Beyond Caselaw – Public Legal Education in Ontario Legal Clinics” 2000 18 *Windsor YB Access Just* 3 35-37.

<sup>53</sup> Interview with Susan Campbell, CLW, Lake Country Community Legal Clinic, Bracebridge, Ontario (21 February 2005).

<sup>54</sup> The full text reads: it “may be possible to reduce program expenditures ... and reinvest the savings into client service by reducing the number of lawyers and increasing the number of community legal workers who are compensated at lower rate” (17).

providing a significant portion of the client services. Indeed, several CLWs whom we interviewed believe that the future will see a continued diminution of the unique service that CLWs provides in bridging the cultural gulf between the legal profession and the communities that the clinics were intended to serve.

To a certain extent, the changes in the job description of the CLW reflect the increasing employment of paralegals in the legal profession generally. With the growing number of specialised tribunals and the greater scope for non-lawyer involvement in them, it was inevitable that the non-lawyer staff of clinics would be pressured into handling a greater number of case files, especially given burgeoning demand and the clinics' strictly limited resources. We have also found, however, that most of the main actors in clinic legal services, and especially the CLWs themselves, recognise that it is vital to the clinic system that CLWs continue to apply themselves to the activities for which they are uniquely qualified. It would appear that boards of directors of clinics are themselves becoming more aware that the innovative approaches that CLWs bring to clinics as a result of their varied backgrounds remains critical to effective service delivery, even where diverting them from casework may not appear on its face to be the most economically efficient use of the CLWs' time.

In spite of recent developments that appear to have devalued the community development aspects of CLW work, a number of senior CLWs with whom we spoke remain hopeful regarding the continuing unique role of CLWs in the community legal clinic. In particular, they note that the heavy demands on CLWs to perform casework may have peaked, since those demands were linked to the financial crisis of legal aid in Ontario that precipitated the Legal Aid Review and the subsequent creation of Legal Aid Ontario in 1998. They also point to recently created CLW-inspired organisations such as the Ontario Project for Inter-Clinic Community Organizing (OPICCO) as well as the important role that CLWs play in specialty clinics such as ACTO, ISAC and the Advocacy Resource Centre for the Handicapped.<sup>55</sup> The latter, which grew out of a Toronto community legal clinic training session held in April 2002, not only facilitates the coordinating of province-wide campaigns for law reform but also serves to inform and educate boards of directors of community legal clinics with respect to this important facet of CLW work.

Even in the area of traditional casework, it has been noted that CLWs can be the source of innovative approaches that lawyers may not be predisposed to pursue. For instance, one clinic has adopted a "team" approach to handling social assistance cases. CLWs, because they come from varying backgrounds, are often not as timid in exploring alternatives to the individual solicitor-client approach in which lawyers are acculturated. Regular group review of the volume of welfare benefits cases allows the clinic more easily to pinpoint law reform issues worth pursuing.<sup>56</sup>

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<sup>55</sup> Online: <<http://www.opicco.org>>.

<sup>56</sup> Interview with Terence L Hunter, Simcoe Community Legal Clinic, Orillia, Ontario (23 February 2005).

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## 6 CONCLUSION

It is obviously impossible to extrapolate direct correlations from the experience of the now well-established and well-funded Ontario clinics. Several lessons are, however, clear.

- The role of the legal clinic and the role of the CLW must be clearly defined. While the paralegal may support the lawyer in her/his work within a clinic, the CLW, by definition, should have much broader responsibilities. Indeed, the danger lies in not including within a clinic's mandate responsibility for community development, legal education, test case litigation, *etcetera*, as priorities.
- Community boards, like the community legal worker are essential elements in creating capacity for a legal clinic to truly serve the needs of its clients. Board education, like staff education, is a critical element for creating broad understanding.
- Job definition, on-going training, and an appropriate scale of remuneration are all critical to ensuring that the paralegal is not only valued but *feels* valued and is able to best fulfill her/his function.
- Each clinic will have different needs. Central management and funding are valuable and efficient; centralised control over a legal clinic's day-to-day activities is not.

Inevitably, there will be continuing pressure to provide accountability; and there will be continuing emphasis on the provision of quantifiable evidence of success. Yet, evaluation of the role of the community legal worker cannot be based only on quantifiable data. New evaluation models must be developed in order to ensure that results are measured qualitatively as well as quantitatively.

The Ontario experience began with the vision that a case-by-case approach to legal issues was only one part of the solution to the issues faced by low-income communities. Legal clinics, working in partnership with other community agencies, have the ability to change society through community development, legal education and, where appropriate, test case litigation. Ontario provides a number of different models for the delivery of paralegal work including the team approach and dedicated CLWs in various fields of development, as well as their traditional role of front-line case-workers in poverty law cases. Even with a comprehensive and inclusive approach, however, there will always remain the tension created by limited resources and the tensions between the delivery of traditional services and the need to address systemic problems. It has been said that CLWs represent a barometer of the health of the clinic system. Evidence suggests that the system will only remain healthy if CLWs continue to make their unique contribution.