

LITERATURE REVIEW

GTA CLINICS TRANSFORMATION PROJECT

FEBRUARY 2014

ELEMENTS OF EFFECTIVE COMMUNITY CLINICS

Effective legal clinics rely on ensuring that people living on low incomes have access to the legal support that successfully meets their needs and facilitates their access to the justice system.

CLINICS USE EFFECTIVE STRATEGIES

Considerable research has been devoted to the comparative value of the clinic staff model of legal service delivery as opposed to the judicare model (Buckley, 2000; Currie). Much of the data in these articles points to economic advantages of clinic staff, but it also describes the reason for the effectiveness of the clinic model. For example, Currie notes that staff lawyers are less expensive than judicare in British Columbia, Nova Scotia, Manitoba, and Saskatchewan *because* staff lawyers are more time efficient. Evidence indicates that clinic staff are more likely to negotiate effective solutions earlier in the process. Clinic staff have a better record than the private bar at making deals, pleading cases, and resolving matters through negotiations, resulting in lower costs for the system, less uncertainty for their clients, and generally less severe convictions (Buckley, 2000).

MULTIDISCIPLINARY, HOLISTIC SERVICE

The literature underscores the value of adopting an integrated multi-disciplinary approach to service delivery that includes legal as well as non-legal assistance. Holistic models of legal service for people living on low incomes are attractive from a variety of perspectives and can be approached in a variety of ways.

Several jurisdictions, including South Africa, the UK, B.C. and Australia, have experimented with differing models of integrated, holistic models for delivering legal services. All offered staff-based clinics that sometimes blurred the lines between legal and non-legal supports and that invariably had at least strong connections to non-legal services providers to support their clients (Long & Beveridge, 2004).

PARTNERSHIPS

Examples from British Columbia explored heavily integrated approaches for intake and appropriate referrals of legal and non-legal issues (Buckley, 2000). Working in close partnership with other community agencies, social workers, mental health professionals, and other relevant organizations allowed clinics to provide a one-stop, holistic approach to client services (Cook, 2006; Newman; Trubek, 1998). Foster and Glick (2007) describe a wide array of roles where community lawyers' flexibility allows them to collaborate innovatively as partners with community groups. In some cases, lawyers are fully integrated into a

community-based organization's decision-making processes (Foster and Glick, 2007). Cook (2006) recommends that clinics be part of a formalized network of agencies and involved in program planning with partners. Being part of a community, however, is not always related to geography; there are different experiences that can unify and create communities (Tokarz, Cook, Brooks, & Bratton Blom, 2008).

United Kingdom models incorporated even greater cooperation between clinics and their partners, often providing partner agencies with training to support issue identification, limited advice, and referral (Long & Beveridge, 2004). However, research found that these non-legal partners were most effective at preventative efforts and were prone to errors when offering advice (Smith, 1997). In particular, the UK experiment with Advice Centres proved a poor alternative to multi-faceted clinics, while training "problem noticers" in health centres and community service sites proved a more helpful tool in prevention, early identification, and referral (Long & Beveridge, 2004).

South Africa has created a hub office model located in a regional centre and connected to a variety of satellite offices. Supported by close supervision from hub office lawyers, the satellites are able to offer evening advice clinics, increase visibility, and promote accessibility to legal advice and support through paralegals and volunteer lawyers (Long & Beveridge, 2004).

For all partnerships, efforts to make relationships systematic and strong were valued. More intensive training in partner organizations is best coupled with a commitment to quality referrals that connect clients to specific people and specific services in other organizations, preferably through a harmonized intake, and ensure follow up to confirm that the connection was made successfully. Joint efforts and outreach, organization and mobilization deepen these relationships and the effectiveness of the work (Eagly, 1998; Forster & Glick, 2007; Leask, 1985; Long & Beveridge, 2004; Moore; Newman, 2007; Trubek, 1998). Opportunities for successful collaboration are often lost due to the informality of relationships and inconsistent communication between partners (Ministry of the Attorney General, 1997).

VOLUNTEERS AND PRO BONO SUPPORT

Working in partnerships can also include partnerships with pro bono lawyers and students. There are many models in other jurisdictions that have successfully integrated these services within their clinic law systems. In Australia, the system has a 4:1 volunteer to staff ratio; in Washington the state-wide legal services program has pro bono involvement at all 41 of their clinics; and New Mexico has initiated a state-wide Volunteer Attorney Program partnership with the State Bar of New Mexico to strengthen support for underserved rural areas (Long & Beveridge, 2004; Marks, 2013). Houseman found a significant volume of available pro bono service in surveys of lawyers in the United States, with two thirds of lawyers offering pro bono service to low income residents and most firms offering 3-5% of staff time to pro bono work. Similar findings were made in Victoria, B.C. (Houseman; Giddings & Noone, 2004).

There are limits to reliance on volunteer services. Literature indicates that pro bono lawyers cannot successfully replace a base of paid staff or government funding. Additionally, student caseloads must be managed so that they do not lose the time for education and reflection

(Brodie, 2006; Beveridge & Long, 2004). There are many different ways to draw upon the voluntary component, which different jurisdictions are doing. These collaborations and partnerships require a formalized arrangement requiring clarity and guidelines around each other's roles, responsibilities, communications, and administrative capacity in order to develop and maintain them.

COMMUNITY LEADERSHIP

The community governance model is a central tenant of the community legal clinic system (Ministry of the Attorney General, 1997). Janet Mosher (1997) writes that “community boards are essential to the appropriate identification of legal needs of discreet communities. Community boards that are frequently well placed ... understand and address the specific barriers to access encountered by discreet groups of disadvantaged people; to understand why particular members of the community do not knock on the clinic door (even though it may be in an accessible and visible location in the community) and fostering trust in the target community.” Virtually every commission and review regarding access to justice reinforces this point. Community leadership ensures that the clinics respond to the changing needs of clients in sensitive and appropriate ways, and is vital to the success of this model (Abramowicz, 2004; Brodie; Leask, 1985; McMurtry, 1997; Ministry of the Attorney General, 1997; Newman, 2007). However, drafting residents from the geographical area around the clinic is not a sufficient condition for effective representation. Board members from the community bring knowledge and awareness of their constituencies, but are generally found to benefit from training in governance and representative functions (Abramowicz, 2004; Ministry of the Attorney General, 1997).

OUTREACH, COMMUNITY DEVELOPMENT, AND PUBLIC LEGAL EDUCATION

Though community boards are repeatedly identified as critical to responsive services, outreach is also seen by many authors as a valuable driver of service priorities. Buckley (2000) underscores the importance of integration in all aspects of the clinic's work, from outreach and public legal education through to advice, case work, and law reform as the best way to ensure that the various interactions with low income residents inform each other in a systematic effort at access to justice (Buckley, 2000). Cook (2006) and others go further, following Wexler (1970) in defining community development and mobilization as critical to success. She rejects the notion that a clinic bestows professional service on low income residents and supports a “two way street” approach, with lawyers learning from the community and the community drawing on legal expertise to develop strategies for access to justice (Alfieri; Alvarez, 2007; Cook, 2006; Eagly, 1998; Wexler, 1970).

The pressure of casework often strains the commitment to community development, outreach, and public legal education. Authors repeatedly stress the importance of avoiding that trade-off (Ministry of the Attorney General, 1997; Trubek, 1998). Mosher (1997) goes so far as to assign a numerical value, stating that 20% of the clinic's time should be devoted to these activities.

AREAS OF LAW

Buckley (2000) argues that family law services are needed in greater supply. Family law litigants are shown to have too little guidance on how to prepare, present, or settle their cases, and too little time with duty counsel, compounded by increasingly complex cases and inappropriate documents, which can place greater demands on court staff. Similar concerns are raised in other areas of law not offered by clinics, notably civil law, employment law and increasingly, criminal law (Buckley, 2000; Giddings & Noone, 2004; National Council on Welfare, 1995). However, Buckley (2000) also finds that the private bar may be a poor option for low-income residents. Legal aid certificates are decreasingly effective as access tools because they do not pay well for the decreasing number of private bar lawyers who accept them.

This trend has progressively increased the reliance on Duty Counsel. Duty Counsel has been a valuable assistance to those who do not connect to a clinic or a lawyer prior to a hearing. However, the disconnection of Duty Counsel from other more long-term supports for low income residents in the justice system is a concern. Duty Counsel, although helpful, needs some built-in ways to sustain continuity of representation for some cases, or the ability to forward more complex cases to a more senior Duty Council lawyer (Buckley, 2000; Currie; Ministry of the Attorney General, 1997).

Several authors (Abramowicz, 2004; Ministry of the Attorney General, 1997) argue against the provision of legal services that are neither unique to low-income families nor generally characterised as pitting low income individuals against people and institutions outside their community. This argument suggest that the private bar may be better positioned to deliver services such as family law, criminal law, and consumer law, either because they practice in that area more often, or because it avoids potential conflicts of interest, with the clinic representing both sides of a case.

It was also shown that combining public legal education with summary advice was an effective model for dealing with issues that fall outside the scope of legal aid services, and that these should be combined with representation and law reform within a single organization to be able to respond to client needs on an appropriate scale (Buckley, 2000; Currie, 2000).

STAFFING

Authors point to the success of staffing models that are integrated and team oriented. Integrated models make effective use of a wide variety of skills, allowing staff to draw on a range of skills and knowledge, and can provide support to other team members on an ongoing basis. These teams can include lawyers, paralegals, pro bono lawyers and articling students, and may also include social workers, interpreters, health care workers, and community organizers. Teams are generally led by a key lawyer who plays a supervisory role (Leask, 1985; Long & Beveridge, 2004; Martin, 2001).

ACCESS THROUGH TECHNOLOGY

Besides face-to-face, one-on-one service, other methods of delivering services are explored

in the literature. In British Columbia, some resources were shifted from clinic law to a legal hotline. Although this saw an increase in the number of clients served, it decreased the quality of service. Research indicated that the problems were rooted in people working outside their area of expertise, with time limits to cases, poor infrastructure, and no clinic system to deal with clients when the hotline fails (Long & Beveridge, 2004). In addition to this, Houseman found in his study that while hotlines work for some clients, there is a significant proportion for whom it does not work well, with non-English speakers and people with no income performing significantly worse in this system. Moore, on the other hand, found that a well-run hotline can be useful for providing brief service and referrals. He writes that:

The hotline should have several built-in features to ensure quality: (1) careful note-taking by the hotline advocates which is reviewed by a supervisory attorney; (2) hotline advocate access to quick-reference, legal resources; (3) follow-up letters to the client to reiterate the telephone advice; and (4) matching the client's problem with the expertise of the hotline advocates. Since hotline advocates spend most of their time providing these services, they become very good at it. Providing clear, helpful advice that the client can understand is a skill that improves with experience.

Hotlines and other new technologies can be helpful when people are able to get good information from experts in their fields and when they know what choices are available to them (Houseman). Further innovations explored in the literature include access to basic legal information through touch screen kiosks, video conferencing for remote access, public legal education websites, and multilingual videos, as well as the transfer to electronic files (Houseman; Marks, 2013; Minnesota Legal Services Planning Commission Drafting Committee, 2004-2005; Zehren, 2013).

STRUCTURES AND TRANSITIONS

FACTORS INFLUENCING DECISIONS TO RESTRUCTURE

There are a variety of contexts that set the stage for agencies to consider rethinking and transforming the way they deliver services within their communities.

Although some mergers are driven by external or economic factors, sudden crises or other exogenous issues, restructuring also results from organizations realizing that they could provide enhanced services if they realign in a strategic way (Blumberg, 2009).

Amalgamation of the thirteen Children's Aid Societies (CAS) documented by the Ontario Government was "a way of enhancing the capacity of organizations lacking the scale to balance the goals of local delivery with quality, accessible and affordable child welfare services" (Ministry of Children and Youth Services, 2012). For CAS, amalgamation was one part of the first tier of a four-tier strategy created by the Commission to promote the sustainability of the child welfare system across the province of Ontario. These thirteen agencies lacked the capacity to follow through with this broader strategy; they were unable to meet goals for the number of children served and so pursued increased agency size in conjunction with local, "logical" partners (Ministry of Children and Youth Services, 2012).

Dallhoff and Bugg (2009) explore approaches to expansive change, which they describe as "scaling out" to address sustainability issues. Organizations achieve this by growing the existing organizations, pursuing a variety of partnerships, or through complete integration.

MODELS FOR RESTRUCTURING

The literature reviewed considered a range of ways that legal clinics, community health centres, and non-profit organizations have worked together. In many cases, the language used to describe restructuring efforts varied, but the process and outcomes were similar. The range of partnership options includes different degrees to which agencies can choose to collaborate or integrate some or all of their programming and/or administration (California Health Care Foundation, 2009; La Piana & Kohm, 2003). In collaborations, organizations share varying levels of administration and programming, without any permanent organizational commitments. These generally meet short term or narrow goals for the organizations. There may be sharing of information, coordination of programming, or other efforts, but there is no transfer of assets, staff, or decision-making power (California Health Care Foundation, 2009). Joint ventures are usually characterized by two organizations working together to meet a specific programmatic or administrative end. Management service organizations (MSOs) are an option when organizations require support with administrative, back-office functions such as human resources, fundraising efforts, and accounting. In some cases, MSOs provide support to multiple separate organizations. Parent/subsidiary relationships, sometimes at "arms-length," occur when one of the organizations oversees another. Strategic restructuring or strategic alliances involve some level of administrative consolidation and/or joint programming and commitments for the future, including shared or transferred governance roles (California Health Care Foundation, 2009; La Piana & Kohm, 2003). In mergers or "amalgamations," two or more organizations

fully combine their programming, administration, and governance structures (California Health Care Foundation, 2009; La Piana & Kohm, 2003; Reed, 2009).

One article specifically explored a federated model of service delivery. Dallhoff and Bugg (2009) summarize this model from Yankey, Jacobus, and Koney, who describe it as:

[...]an alliance of member organizations established to centralize common functions. This type of alliance frequently coordinates fundraising, public relations, training and lobbying for members. Members are independent, but the alliance often determines members' roles and resource allocation through policy development.

PROCESS

There is not one set path that a structural realignment process takes in order to be successful, but the literature noted many similar key factors for organizations to take into consideration along the journey.

Organizations intending to integrate with each other should consider whether they are generally prepared in terms of leadership, resources, governance and process (Babcock, Charles Chiu, Hofmann, Macrae, & Tremblay, 2012; Dallhoff & Bugg, 2009). Blumberg (2009) provides a detailed list of questions, which assist prospective partners in delving further into these considerations (appendix 1). They relate to assessing the reasons for considering a merger, the structure of each organization including governance, membership, legal powers, number of employees, assets, liabilities, litigations, organizational cultures, communication strategies, plans for implementation and details as to what their merger will look like. For Blumberg (2009), it is very important to the outcomes of the merger or realignment that prospective partners are clear on the answers to these questions. Preparing for structural change is a complex process that requires detailed work.

Stakeholder engagement and communications are very important to leading to the success of the process. These stakeholders include boards and executive leadership, staff, clients, and communities. Clearly defined, communicated, and benchmarked plans are required. Organizations should establish goals and timelines, set communication goals as well as integration goals. Effort should be made to provide information in ways that reduce stress and uncertainty for staff and board members regarding integration activities (Babcock et al., 2012; Dallhoff & Bugg, 2009; Owen, Pittman, Kelly, & Reed, 2012). Owen et al recommends “a holistic process of inter-organizational engagement and trust-building” that provides due diligence, risk assessments, and assessment of potential returns. These steps are necessary to ensure clarity and confidence in a process that has actively considered the scope of consequences of the process (Owen et al., 2012).

External consultants have been used with successful outcomes in assisting merging agencies. They provide expertise in the technical aspects of a merger, as well as experience in facilitation, negotiation, and engagement of key stakeholders. Consultants can also offer a neutral, third party perspective and protect the interests of the merging agencies (Owen et al., 2012; Reed, 2009).

The Ministry of Children and Youth Services (2012) report on CAS integrations notes that

the Commission developed a guidance plan to assist CASs to develop the key requirements of their amalgamation plan. These included a high level overview of the development of the new organization; plans for governance and leadership; change management and stakeholder engagement; service delivery during transition; financial alignment; and information systems alignment and risk management. These principles supported effective long term services and organizational successes, such as a focus on service improvement for children, value for money, the idea of new organizations instead of takeovers, retaining connections to local communities, as well as respect and support staff, foster parents, and volunteers. The Commission also identified that amalgamations should result in improved capacity due to the increased scale of the newly formed organizations and the pooling of resources for training, development, and organizational vitality.

CHALLENGES

There are many challenges that restructuring organizations face. The human component includes emotional baggage that people within organizations carried with them, which may lead to staff and board not supporting the change (Blumberg, 2009; La Piana & Kohm, 2003). Where there is a perceived lack of choice, lack of clarity about the rationale, and lack of understanding of the benefits and what the restructuring actually entails, staff and board members may resent or resist the process. Change can instill fears of takeover and job loss, leading to further disengagement and lack of support from staff. Leaders may also be jockeying for positions in the new restructured entity and unable to put the vision and mission of the new organization ahead of their career aspirations (Blumberg, 2009; Ministry of Children and Youth Services, 2012). Realigning organizations may not have fully developed trust between themselves, even where well-intentioned agreements exist, and this can also pose real challenges to the process (Blumberg, 2009).

Sometimes merging or aligning organizations find that they do not actually fit well together, that their core mission and values differ. There may be identity issues and governance challenges, including the late selection of an interim leader, which have all found to challenge in some way the alignment process (California Health Care Foundation, 2009; La Piana & Kohm, 2003; Ministry of Children and Youth Services, 2012). Pershing (2006) found that ongoing post-merger challenges include budget constraints, lack of operational systems, and the development of an overarching statewide culture.

One common mistake that can impede the process is underestimating the importance of communication. Ongoing and frequent communication strategies engender appropriate expectations, credibility, and good will among those who will be affected by restructures. This can help to reduce internal/external resistance and manage fears of job loss (Reed, 2009). Underestimating the importance of organizational culture, timelines, costs, and the complexity of mergers and restructuring can also have negative effects (Reed, 2009).

During their amalgamation, the CASs faced many challenges. During the development and implantation phase, they found that though tight timelines and time commitments kept the process moving forward, they were also challenging, especially for board members whose time was donated on a volunteer basis. They also faced the issue of maintaining equity in planning and decision making. In one case, this was addressed by assigning the board chair from one legacy organization to be chair of the new entity and assigned the director from

the other legacy organization to be the director of the new entity. Budgeting for unknown costs related to amalgamation and operations of the new entity was also found to be a challenge, as was the readiness of the ministry, which did not have much previous experience with amalgamations. There were further challenges with governance and leadership, including navigating the complexity of transitional structures, the delayed selection of an Executive Director, and the creation of a new unified organizational culture (Ministry of Children and Youth Services, 2012).

LESSONS LEARNED FROM OTHER RESTRUCTURINGS

There were many suggestions made for ways to help work through these challenges.

Keeping the mission in focus and up front as a way to remind stakeholders why the process is happening was helpful during hard times, as was having leaders who were strong, had vision, and believed fully in the mission of the realignment. In addition to this, using a collaborative approach, and including as many people as possible, helps to gain trust and buy-in. Those who are involved in the change must also be involved in celebrating those changes and successes post-merger (Dallhoff & Bugg, 2009).

Building trust with stakeholders is essential to this process. The literature suggests a variety of ways in which to do this, including open and frequent communication with the following groups: firstly, with staff, for instance by letting them know as far in advance as possible if their job duties will change; secondly, with boards, for example by providing opportunities for equity in the new governance structures (Dallhoff and Bugg (2009) suggest an equal number of board representatives in the new structure regardless of legacy organization size, while the Ministry of Children and Youth Services had success with appointing the chair from one organization and the director from the partner organization); and lastly, with clients, for whom even a minimal change in service can be disruptive. Clients need to be kept informed of changes and the process must include opportunities to gain their input (Dallhoff & Bugg, 2009; Ministry of Children and Youth Services, 2012). Dallhoff and Bugg contend that the more people are involved, the more readily they will become part of the transformation.

Any realignment process needs a robust, multi-pronged communications strategy. A good communications strategy will help to manage expectations and alleviate fears and misunderstandings (Owen et al., 2012). A key component of a successful communication strategy is listening. While it is important to get the message out, it is equally important to hear feedback and incorporate it into the planning. Planning needs to be strategic, but a realignment also needs a business plan that clearly outlines an execution plan that outlines deliverables, timelines, and who is responsible for what actions (Dallhoff & Bugg, 2009). Ongoing monitoring and evaluations are also important and should be built into the process (Ministry of Children and Youth Services, 2012).

Of note was that a number of articles mentioned that where a positive pre-merger relationship existed, the merger was found more likely to succeed (California Health Care Foundation, 2009; Ministry of Children and Youth Services, 2012; Owen et al., 2012; Reed, 2009).

APPENDIX 1

From: "Mergers and Amalgamations in the Canadian Nonprofit and Charitable Sector" by Mark Blumberg, Blumberg Segal LLP, Toronto, Ontario (2009), p 44

MERGER ISSUES AND STEPS

There are many issues that need to be analyzed before the organizations involved understand whether a merger is appropriate and what steps must be taken to successfully accomplish a merger. There are a few very informative American and Canadian publications on the subject.

The prospective partners to a merger should be clear on the answers to a series of questions and should take certain specific steps.

Questions to answer are:

1. What are the drivers for merger?
2. What are short, medium and long-term goals of merger?
3. Have you carefully identified a number of possible merger partners and if not, why not?
4. Is this the right time to merge?
5. Are the merger organizations unincorporated, trusts or incorporated?
6. What are the legal objects of each merger partner? Are they acting currently within objects? Will objects need to be changed?
7. Do the organizations have the legal powers necessary to effect the proposed merger? Does either organization need to modify their governing documents?
8. Have the necessary professional advisors, including a lawyer who is knowledgeable about mergers, been retained to assist and give advice on a merger? Is the lawyer knowledgeable about charity law if one of the parties is a charity?
9. How many voting members are there for each organization? Who are the members and will they support merger? What do the statute and by-laws provide in terms of quorum for a members' meeting and can this be achieved?
10. Who are the stakeholders of each organization and will they support merger?
11. Who is going to be the dominant party or will there be equality?
12. How many board members are there for each party to the merger? How many will there be with the merged entity? What skills, resources, diversity, and connections does each board member bring?

13. Is the merger in the best interest of both organizations? The directors of an organization must be satisfied that the merger is beneficial.
14. How much time will be spent on the merger discussions, and how long will it take for the merger to take place?
15. How many employees are there? Will all employees move to the merged entity? How many years has each employee worked for the organization? Is a review of factors relevant to termination and severance required? What was last year's total payroll? If one organization is paying its employees more than the other, will the more "efficient" organization have to raise the amount that it is paying its employees? Will there be employment law issues, pension liability issues, et cetera? Will there be redundancies at some point, and will they be handled appropriately by attrition or proper notice or termination and severance payments? If one organization is unionized, will the other one become unionized? If each has a union, which union will represent the employees or will both remain?
16. Are there any liabilities with respect to either of the parties?
17. Have both organizations been provided with a list of all actual and threatened litigation over the last five years?
18. Has each party reviewed the financial statements and information of the other?
19. Does one or both charities have any special purpose trusts or endowments, and what donor restrictions need to be complied with?
20. What name will the merged entity have, and has it been reserved?
21. Have debts been appropriately identified and dealt with?
22. What are sources of revenue for each organization? Will donors, funders, and earned income be able to continue and be assigned or transferred to the merged entity?
23. Are the organizations' cultures compatible, and is there a fit? Have both parties to the merger successfully completed work together?
24. Is there a communication strategy in place to consult with and communicate with each stakeholder?
25. Is there a plan for implementing the merger?
26. What will the post-merger structure look like?
27. What obligations will the merged entity take on in terms of continuing programs of one or the other organization, if any?
28. Are there any particular consents required for the merger? Are there provincial or federal acts or regulations that could affect the merger such as the Public Hospitals Act (Ontario) 5 for a hospital merger? It is important to obtain consents from funders to the merger and obtain commitments with respect to

funding. Funding after a merger can be less, the same, or more from a funder and it is important to know what the effect of the merger will be on a major funder or funders.

Steps to take are:

1. Obtain board approval for any negotiations.
2. Have a confidentiality and non-solicitation agreement with any prospective merger partner.
3. Establish a committee or representative from each organization to deal with the merger and establish terms of reference for the committee or representatives.
4. Work together with the other organization to discuss feasibility.
5. Identify all assets owned by each organization, restrictions on the asset and the ease with which that asset can be transferred to another entity. Assets could include real estate, intellectual property, valuable equipment, et cetera.
6. Identify all liabilities and ongoing obligations including service agreements, leases, employment, funding agreements, and partnership agreements with domestic and foreign partners.
7. Conduct a comprehensive due diligence process on your potential partner to identify any concerns or impediments to merger.