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## **Tapping the Community Voice: Looking at Family Law Self-Help through an Access to Justice Lens**

### **Themes and Recommended Next Steps**

**Community Legal Education Ontario (CLEO)  
September 5, 2008**

#### **I. Background**

In March, 2008, CLEO received funding from the Law Foundation of Ontario (LFO) to organize and host a full-day Think Tank on the effective use of self-help family law materials by low income and marginalized communities. The concept of bringing together key interested players, including those who work extensively and directly with low-income and disadvantaged communities, was prompted by the preliminary research conducted by CLEO about two years ago related to the advisability of developing self-help materials to assist unrepresented individuals who are seeking an uncontested divorce.

As part of that preliminary research, CLEO consulted with staff at the Ministry of the Attorney General and with Legal Aid Ontario, including Family Law Offices (FLOs), advice lawyers at the Family Law Information Centres (FLICs) and duty counsel. Feedback from staff at these offices indicated that such tools and materials would be useful to low-income individuals, but that providing them would have certain challenges and implications that should be explored before proceeding. The overall objective of the Think Tank was to explore those issues by bringing together community organizations that work with disadvantaged and marginalized communities as well as policy-makers, academics, members of the judiciary, and other “thinkers and planners” involved in the Ontario justice system to discuss the effectiveness of self-help family law materials and initiatives for these communities.

The more detailed goals of the Think Tank were outlined in the initial project proposal submitted by CLEO to the LFO, as well as in the fuller outline prepared in March, 2008. Both pieces recognized that self-help approaches have been extensively used in jurisdictions in the United States and are increasingly being relied on in Canadian provinces, and that Ontario is now looking at self-help approaches and strategies to help address the challenges posed by unrepresented litigants.

#### **II. Overview of the day**

Through the Think Tank, an open and respectful dialogue was initiated among community-based agencies that serve low-income and disadvantaged communities, policy-makers, academics and other justice system players. The tone for the day – as set by the agenda, the materials circulated in advance of the day, and the two lead speakers – was thoughtful and non-positional. The discussions, both in the plenary and small groups, were not dominated by a single voice or

position – although many participants clearly held strong opinions – and many views were exchanged and listened to, courteously and with interest.

**In our view, the emphasis on and success in using an inter-sectoral approach was a considerable achievement of the day; an affirmation that strategies and initiatives will be most effective if their building and development involve those players and communities who have first-hand knowledge of and experience with the “target audience” as well as those with high-level responsibility for developing policy and delivering programs and services.**

Participants were engaged and anxious to contribute their views and suggestions, resulting in animated and passionate discussions in the plenary and small group sessions. Many participants from the community sector spoke of the obstacles to getting legal help faced by their clients, and how the development and delivery of effective legal information and services need to be based on an understanding of these barriers. Judges spoke of the profound needs of and the range and level of assistance required by many people who appear before them without legal counsel. Legal aid and government policy-makers spoke of the need to move forward, as constructively and effectively as possible, to take steps to address the legal services needs of those who are unrepresented – even if the tools or programs may not work for everyone.

In terms of identifying where and how self-help family law information could effectively be used for low-income and disadvantaged communities, strong concerns about its use in this context were voiced by many participants throughout the Think Tank.

A few participants expressed frustration by the lack of focus of some of the discussions at various points in the day. At the end of the day, most participants seemed to feel that a further discussion on the core issues is needed, and most seemed interested in participating in those further conversations. Comments and suggestions were offered, at the wrap-up session as well as at other points in the day, that would serve as a useful starting point for further discussion.

And, importantly, the extremely strong and constructive presentation given by the keynote speaker, Russell Engler – with a thought-provoking commentary by Rollie Thompson – provided a tangible base on which planners and thinkers, in the future, could begin to develop a more detailed model or framework for ensuring that any supported self-help initiatives, limited assistance programs, and other legal services constitute an increase – rather than a reduction – in access to justice for low-income and disadvantaged communities in Ontario. All verbal and written feedback gave high praise to these speakers and the substance of their presentations.

### **III. Key achievements**

Through its mix of presentations and small group discussions, the Think Tank succeeded in achieving its key objectives. In summary, the Think Tank:

- involved the community service and social justice sectors in the discussion – already underway by mainstream legal system players – about whether and how self-help strategies should be used for their communities,

- brought together and engaged a myriad of interested players from a diversity of sectors – including on-the-ground community organizations, government ministry and legal aid policy-makers, members of the judiciary, academics, and other “thinkers and planners” involved in the justice system – in a frank, energetic, and constructive dialogue, and
- highlighted principles and parameters that should be considered before moving forward with the development of self-help or limited assistance tools and initiatives – assuming an access to justice underpinning – and set the stage for further discussion and constructive work on this front.

#### **IV. Major themes**

Although the morning presentations and the afternoon discussions covered a range of issues relating to the effectiveness of self-help family law information for low-income communities, several themes – articulated by many participants in different ways and at various times – emerged throughout the Think Tank, as follows:

1. There are areas of law and circumstances in which access to full legal advice and representation is essential to Ontarians’ concept of justice, and where supported self-help or other limited assistance programs are inappropriate. The legal aid system as well as the community and social justice sectors in Ontario are different – in significant ways – from jurisdictions in which self-help approaches are heavily relied on.<sup>1</sup>
2. Self-help legal information is generally not an effective means of legal services delivery for people who experience one or more barriers to access to justice (e.g., low-income, systemic discrimination, trauma, literacy, language, isolation, disability).
3. Devoting already scarce resources to developing self-help tools and initiatives risks detracting from the attention and resources needed for the development and delivery of the full range of legal advice and representation services for people who experience low-incomes and other disadvantages.
4. Numerous people in Ontario who are low-income or disadvantaged are not able to obtain the legal advice and representation services they need. Many already use legal information pieces as a form of self-help (e.g., as a substitute for legal help from a trained legal professional), whether or not such pieces or materials were designed for such purposes.
5. Self-help materials – relying on “lay” participants (or parties in a legal process) to complete legal documents or take steps in the legal process – should not be provided without an appropriate system of supports, particularly where the materials are intended for communities that face barriers to access to justice, including low-income and disadvantaged communities.

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<sup>1</sup> Indeed, self-help and limited assistance programs are heavily relied on in jurisdictions, in states in the U.S. and elsewhere, that lack adequate public funding for the provision of legal aid services by lawyers and trained legal workers; closer to home, British Columbia has moved quickly into the provision of self-help and online legal information after the gutting of its legal aid and community legal offices.

The type, level and location of supports needed will vary depending on the particular person or user.

6. To be effective for low-income and disadvantaged communities, self-help or limited assistance tools, initiatives or supports should:
  - Involve community-based organizations in their development and delivery, as those organizations have the knowledge of and experience with the people who need and will be using the tools and supports,
  - Be accompanied by trained in-person supports, embedded in the community,
  - Use experts, such as educational consultants and literacy experts, in developing the tools,
  - Look to other jurisdictions for examples of good practices, where relevant for Ontario.
7. Self-help or limited assistance programs come in many different forms, with differing goals, services, and staffing. It is critical to be precise and explicit about these components when developing a self-help or limited assistance program, whether it's a program that is entirely new or whether it draws on or uses materials from other programs.

## **V. Further thoughts and proposed directions**

In this section, CLEO offers further thoughts and proposed directions prompted by the presentations and discussions at the Think Tank, as well as our review of relevant studies and reports and our understanding of the framework for and provision of legal information and other legal services for low-income and disadvantaged communities in Ontario. We do not identify “leads” or “key players” for the various directions and actions; in most cases, we believe that the participants at the Think Tank provide a pool from which interested people and organizations, with relevant experience and constructive ideas, could be drawn to work together and move forward. (CLEO is willing to discuss our thoughts on this more fully with the LFO.)

1. Numerous participants at the Think Tank were concerned about the dearth of legal advice and representation services available to low-income and disadvantaged communities in Ontario, and were worried that community players not be co-opted into supporting an approach that will result in second-tier justice for the most marginalized people in Ontario. As stated by one participant at the Think Tank, “We must continue to support advocacy for better funding and other policy changes that support our client communities. I think it was well demonstrated at the Think Tank that the challenges for and the needs of these communities continue to grow. Self-help initiatives will not be enough.”

**Proposed direction:** *Opportunities for improving full access to professional legal advice and representation need to be explored and should go hand-in-hand with the exploration of self-help and other limited assistance programs.*

2. Despite their intrinsic “second-best” nature, self-tools and initiatives are more appropriate and effective in some areas of law and circumstances than others. (For example, we have not heard community organizations express major concerns about the lack of access to lawyers by litigants in small claims cases.)

**Proposed direction:** *Given the reality of self-help, identifying specific areas and circumstances in which full access to professional legal advice and representation is essential to fundamental access to justice – and where full access may not be essential – would be useful. Among other purposes, it could prevent the large-scale development and reliance on limited assistance programs by institutional players who may be driven by a range of considerations (such as cost) which, at times, may be at odds with access to justice considerations.*

**Proposed direction:** *Russell Engler’s analytical framework, and the concluding questions he posed in his presentation at the Think Tank, provide a solid starting point and should be used in building a model or framework for moving forward in this area in the Ontario context.*

3. On-the-ground community organizations are well-positioned to know and understand the needs of their communities and to provide input on how to effectively meet those needs -- for example, on identifying the family law issues on which their clients and communities need information and help, effective ways to reach them with information and challenges that need to be borne in mind, cultural and other considerations unique to each community, and effective supports that should be provided.

**Proposed direction:** *Community-based organizations should be involved in the development of and planning for any legal information, self-help or limited assistance tools, initiatives or supports intended for use by their communities; this is essential for optimal development and delivery. Given the diversity of views and strength of concerns, community groups need an additional opportunity to discuss and brainstorm about how to proceed on this front.*

4. The Think Tank was characterized by a critical combination of factors: a relatively small but diverse array of participants, a high level of interest and engagement, and high-quality presentations that framed the small group discussions.

**Proposed direction:** *Opportunities to build on the discussions initiated at the Think Tank should be identified and pursued.*

5. Several Think Tank participants expressed frustration over the lack of definition of the term “self-help”<sup>2</sup> and, indeed, over the use of the term itself. (For example, the recent “Law Help Centre” established by Pro Bono Law Ontario to provide tools and help for unrepresented litigants offers in-person assistance; using the term “*self*-help” to describe the Centre is misleading.) The terms “supported self-help” or “limited assistance programs” are sometimes used when discussing legal services that are less than full legal advice and representation services provided by a lawyer: usually some steps in the legal process are

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<sup>2</sup> For CLEO’s purposes, we use the term “self-help” to mean the following: tools, materials or initiatives designed to be used by a lay person, largely on their own, to enable them to complete legal documents and take steps in the legal process, including representation before a tribunal or court; alternatively, lawyers and paralegals would provide these services on a professional basis.

taken by the lay person/ party with in-person support or assistance provided at certain stages. All of these terms, including “self-help”, are imprecise without further elaboration.

**Proposed direction:** *Further discussions in this area should be premised on better definitions of and a common understanding of the terms that are being used.*

## **VI. Recommended next steps**

Although we think that the “thinking and talking” suggested in some of the above proposed directions are critical steps, they take time. In our view, the important access to justice considerations discussed at the Think Tank risk being swept to the side if tangible steps are not taken soon, by community organizations and others, to engage in the dialogue.

**Recommendation:** In the hope of providing some concrete ideas for action, we recommend that the following next steps be pursued in the near-term. CLEO is happy to meet with LFO to discuss how work on these next steps could be initiated in a way that would involve interested, knowledgeable community and justice system players – an essential component if a goal is to improve access to justice by low-income and disadvantaged communities.

1. A community discussion day, with specific objectives, participants, tangible outcomes, etc., should be held. The agenda for the day could include a discussion of Engler’s framework and its applicability to Ontario, the exchange of ideas on ways of ensuring that effective legal services and supports are provided to marginalized communities, and a discussion of how and where limited assistance programs might fit into an Ontario framework.
2. Reports that provide tangible ideas and guidance for moving forward in Ontario should be commissioned, as follows:
  - A report should be commissioned that would propose a framework for moving forward on self-help or limited assistance programs in Ontario, based on Engler’s analysis but *in the Ontario context*, and in collaboration with community organizations and responsible institutional players. We suggest, as a starting step, that inquiries be made as to whether Russell Engler can assist with this task – perhaps, at a minimum, by assisting with the creation of a terms of reference.
  - A report that identifies two to three pilots should be commissioned, including setting out possible terms of reference for each pilot, and including, at a minimum, the subject area, key players, and proposed evaluation methodology. We refer to the just-released report by a Boston Bar Association Task Force proposing nine different pilot projects for the purpose of establishing “starting points” for providing low-income people with legal counsel in civil proceedings “based on where the needs are most acute and the potential impact of not having legal representation is most

devastating”.<sup>3</sup> Although this proposal arises out of a very different context and set of circumstances than that which exists in Ontario, we believe that the approach and methodology are well thought out and would be of considerable assistance in developing a “pilot project” exercise for Ontario.

- A model or sample evaluation framework with clearly stated performance indicators should be developed that can be used and adapted by organizations introducing self-help legal information or limited assistance programs in Ontario. We are aware of less than a handful of evaluations in this field that could be referred to as a starting point; again, we believe that Russell Engler, if willing, would be a useful initial contact for this task given his experience with and sage reservations about improper evaluation.
3. This dialogue, involving community players, should be advanced at the fall CLEO/ University of Toronto community legal education conference by dedicating a session to the topic.

For each of these steps – except for the last – a small amount of funding would be a prerequisite to developing a full proposal. The first step – the holding of a community discussion day – would ideally occur in the next few months. The reports outlined in step two are discrete tasks and, although they would benefit from the community discussion day, could be pursued separately from the discussion day.

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<sup>3</sup> See news release, “Boston Bar Releases Plan to Expand Right to Counsel in Civil Cases”, September 2, 2008, on [www.bostonbar.org](http://www.bostonbar.org), with a link to the full report: Gideon’s New Trumpet: Expanding the Civil Right to Counsel in Massachusetts by the Boston Bar Association Task Force on Expanding the Civil Right to Counsel, September, 2008.