ACCESS TO JUSTICE IN CANADIAN LEGAL CLINICS

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Access to Justice Summary Report 2022-2023
Future of Law Lab and Downtown Legal Services

Introduction

This summary of Future of Law Lab research activities is divided into two parts. The first part examines the general issues related to access to justice and proposes wider-ranging improvements. The second part examines one particular use case relating to implementation of access to justice recommendations at a legal clinic in the Greater Toronto Area.

Part 1: General Issues Surrounding the Access to Justice Discussion

Access to Justice is a pervasive issue within Canada's justice system, and it is one that has been discussed for years on end. As early as 2005[i], leaders in the legal profession have recognized the need for systemic improvements that provide equity for historically excluded groups, embrace the needs of the middle class and their ability to obtain "everyday justice", and utilize technology in a way that modernizes the legal system.[ii] With so many excellent resources produced in the subsequent 18 years, this summary does not aim to relitigate all of the issues involved in the justice crisis, but instead to provide a short overview that frames the implementation activities of the working group.

There are a variety obstacles and barriers that prohibit the average citizen from satisfying their justice needs in a timely, cost-effective, and comprehensive manner:

1. *Access to Legal Information*

There are two main issues relating to the ease of access to legal information. The first is an abundance of available, but unreliable, information in various online forums. There is no shortage of legal text in every corner of the internet, but it is nearly impossible for the average Canadian to determine the accuracy and reliability of the information. While there are incredibly useful sites like CLEO's Steps to Justice[iii], the odds of an individual landing on that particular site are minimal. Many of the best legal sites are not optimized for search engines and fail to appreciate the natural language search capabilities of modern search engines. Until there is targeted awareness of specific resources, it is unlikely that Canadians will derive significant benefit from online information. This becomes an even greater issue as the amount of mis- and dis-information balloons in the social media space.

The second problem is that even when individuals land on the correct website, much of the information is written in legalese that is not easily understood by the general population. Many sites read as if they are written for lawyers by lawyers, rather than aimed at the end user. Generative AI Language models[iv] and editing applications[v] provide an opportunity to review and rewrite legal information in a manner that speaks to the average user of the justice system.

2. Assistance for Self-represented Litigants

Canada's justice system has a self-represented litigant issue. The National Self-Represented Litigants Project ("NSRLP") estimates that up to 80% of the users of the family justice system do so without legal representation. [vi] NSLRP suggests that nearly 75% of self-represented litigants lost their hearings, and only 14% had a winning outcome.[vii]

Much of the focus has been on why self-represented litigants are not hiring legal representation, but it may be time to acknowledge this is no passing fad, especially as perceptions of sophistication and savviness among consumers increases with the correlated ease of access to information. As noted, much of the information may be incorrect, which provides an opportunity to create resources and tools geared towards improving the court experience of self-represented litigants. Again, the use of generative AI tools may create templates and forms, tailored to the expectations of the court, that would previously have been out of the reach of these litigants.

3. Enhancing Legal Capability for People Living in Poverty

Some of our most vulnerable citizens are often the ones experiencing the worst outcomes in the justice system. If we acknowledge unreliability of online information - and, possibly, the difficult of at-risk citizens even getting online -it may be worth experimenting with different methods of disseminating legal education. Partnering with respected community vendors, religious and social institutions, libraries, and other gathering places may provide opportunities to host workshops and information sessions that provide meaningful education for citizens living in poverty.

4. Pathways to Justice

Every individual experiences their own justice journey, and each can take a number of different pathways to resolution. While the court system may be the baseline for some individuals, others explore mediation, arbitration, and personal negotiations. It is important to explore the decision-making factors associated with the different routes to resolution, and gain an understanding of why individuals make the choices they do. Incorporating behaviour science and recognizing the nudge theory that may lead to predictably irrational decisions can help build a substantial evidence base around the experience of various justiciable problems.

5. Social and Economic Costs of Unresolved Legal Problems

Similar to the healthcare system, where unmet needs often manifest in chronic ailments and significant expenditures, there are social and economic costs to unresolved legal problems. Personal health, childcare, economic stability, living arrangements, and residency status are all factors that can be affected by uncertainty of legal status. It is important to recognize the network of issues at play in a given legal

dispute, and how they may have a holistic impact on the individuals involved. Providing assistance and support in these adjacent areas may promote improved choices in legal disputes and better overall outcomes.

6. *Constructing adequate supports for Women*

Most are well aware of the wage gap, where women make 89% of every dollar men make, and racialized women are at an even greater pay disparity.[viii] The same patterns crop up in the justice system, where women are impacted in profound and complex ways, and doubly so for those who sit at the intersectionality of gender, race, culture, socioeconomic, or immigration status.[ix] The Ontario Women's Justice Network, Women's Legal Education and Action Fund, and the Law Society of Ontario, among others have made inroads in promoting and improving access to justice among women. However, bridging the access to justice gap may require additional tailored programming and initiatives geared towards issues specific to how women interact with the legal system. There is a particular need for this in the criminal law space.

7. *Recognizing unique challenges for Marginalized and Vulnerable Groups*

As with women, marginalized and vulnerable groups are the ones most at-risk at falling through the cracks in the justice system. Recent alterations to the policies of the Landlord and Tenant Board Hearings that move all hearings to a virtual setting are likely to cause at-risk groups to fall even further behind. While technological and procedural improvements are necessary to modernize the justice system, marginalized groups require special focus and consideration to ensure that their needs are met. The justice system is not a zero-sum game, and it is possible to make systemic improvements while also allocating resources, funding, programming, and support for the most disadvantaged communities.

Part 2: Specific Recommendations for Legal Clinics

1. Availability of multiple mediums for connection

In addition to in-person and telephone intake opportunities, clinics have an opportunity to introduce online intake through a variety of platforms. The platform could be as simple as Google or Microsoft forms, or it could be a customized product built specifically for the legal field.

The online intake should give clients the opportunity to list the legal issues they are facing, which can be transmitted to the clinic's review team before they contact the potential client.

While some clinics may have concerns/distrust about whether technology can accurately serve the needs and purposes of an intake, it is important to remember that the platform is simply a first point of connection and can be used as both a triage and filter. Basic suggestions to improve the ease-of-use for online intake forms include:

- Identify the most common questions and present directives in the preamble
- Group intake questions by topic, presenting a logical flow for prospective clients
- Use a client-friendly format and to not make the platform more complicated than needed
- Make it easy to find online, provide a clear call to action on the webpage

2. Limitations on Access to Technology – Building to Mobile Devices

Clinics are likely aware that their clients may not have access to computers or reliable access to the internet. However, surveys in 2023 show that over 95% of Canadians between the ages of 18-49 own a smartphone.[x] Most communities have access to the internet through public institutions while using their smartphone, and clinic websites and platforms must be built with, at minimum, a responsive design that scales to smartphones. In fact, it may be worthwhile to consider building from a "mobile first" philosophy.

In the event that segments of the population cannot access the online resources, clinics can make these available offline and provide alternative methods of communication. As referred to in part 1, there is value in utilizing multiple communications channels.

In response to clinic concerns that clients may not be familiar with a keyboard, especially if English is not their first language, there is an opportunity to incorporate voice-to-text functions through reliable and readily available software.

1) Customize Resources and Pathways

Clinics may have the natural concern that technology cannot adequately replicate the customization available when dealing with clinical staff. While this is a valid concern, many clinics are already stressed to capacity, and increased scaling in the amount of clients makes it unrealistic for all clients to meet with staff at each point of contact.

Instead, there are opportunities to use chatbots and flowcharts to provide customized information to each client as they seek information on their legal issue. There are hundreds of free and/or low cost chatbots that are simple to program and guide clients to the resources that are specific to their questions. Many chatbots are based on a simple flowchart methodology, where each answer guides clients down a particular wing of the flowchart. Best practices for creating the flowchart methodology may include:[xi]

- Decide the chatbot's purpose – is the goal to determine the legal issue, provide specific resources, collect information, guide next steps, etc.?
- Give your chatbot a persona – this adds authenticity to the bot, and determines the tone and writing style you will use. Will the chatbot provide relief? Assurance? Sympathy?
- Create a conversation diagram – replies should be brief and cut to the chase. Elements may include greeting, asking, informing, checking, guiding, apologizing, suggesting, and concluding.
- Write conversation scenarios – Use a flowchart to dictate pathways that clients are likely to follow, and provide specific educational resources within each pathway
- Test the conversation flow – Before implementing the chatbot as a live tool, ensure that various users have tested each of the flows
- Conclude the conversation – What is the next call to action for the client? Remember to provide guidance as to what happens next for them.

3. Ensure Privacy and Security

Privacy is top of mind for many legal clinics. While technology platforms may introduce some additional risk, most reputable vendors have excellent privacy and data security standards. In fact, many security breaches are a result of human error rather than a technology failure. Staff should implement strong password protocols and multi-factor authentication, as well as ensuring that only required information is collected and stored. Providing training on data security and notifying staff about common phishing scams can help to prevent security breaches.

4. Utilization of Generative AI Capabilities

Large Language Models with Generative AI capabilities (i.e. ChatGPT) have an opportunity to transform access to legal aid. Legal clinics may wish to consider the use of such tools for:[xii]

- *Legal research:*
    a) Find online legal studies and sources,
    b) Analyze, rephrase, and interpret legal documents, case laws, etc.
- *Document generation:*
    a) Plan and develop service pages,
    b) Translate legal documents from and into different languages
- *Providing general legal information:*
    a) Create drafts of legal documents and correspondences

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[ii] Ibid.

[iii] https://stepstojustice.ca/

[iv] https://openai.com/blog/chatgpt

[v] https://hemingwayapp.com/

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[xii] https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/